Board of Directors' Handbook 2021

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The editorial team for the Directors' Handbook 2021 comprises Signe Moen, Eli Moe-Helgesen, Martin Henrik Alexandersen and Lise Welo.

Please contact our auditors, lawyers and/or advisers with any questions you may have about the contents of this handbook.

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Introduction

2020 was quite a year, and the effects of the pandemic, uncertainty and changing framework conditions will continue to be felt in 2021. Individuals, politicians and businesses face the unprecedented challenge of having to make decisions, on a weekly basis, in areas and on matters with which they have no previous experience. Robust, dependable board work that takes into account history, status and the future has never been more important.

In a changing world, company boards have a particularly important role to play in ensuring that management monitors risks and opportunities. Boards must ensure that companies implement effective risk-reduction measures and seize new business opportunities. Not least, boards play a key role in helping companies to take social responsibility requirements and expectations seriously. Sustainability and the environment are becoming ever more prominent on the corporate agenda. Integrating sustainability issues into strategy development is critical for both society and individual businesses. Company boards must make focused efforts to ensure the adoption of targets, achievement of results and performance reporting, including in non-financial business areas.

The Directors' Handbook discusses subjects including the role and responsibilities of the board, strategy development and reporting requirements. A new topic this year is the new Auditors Act which entered into force on 1 January 2021 and which is relevant to audit committee work, among other things. The book also includes a general update on amendments to laws and regulations which will entail new agenda items for many boards, such as changes to capital markets rules, tax rules and executive remuneration. The preparation of annual financial statements for 2020 will be challenging for many companies, and the Directors' Handbook therefore includes good advice and guidance for both directors and finance staff.

Some chapters of the Directors' Handbook 2021 have been translated into English. We have also published the "PwC Guide" for boards and managers of small and medium-sized enterprises. The purpose of these publications is to provide an overview of key framework conditions for board work. Electronic versions are available in our portal for directors: pwc.no/no/publikasjoner.html. Here you will also find publications designed to support audit committees.

Oslo, 2 January 2021

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The role and responsibilities of the board

Accepting a board appointment

Being asked to accept a board appointment can be flattering, and is always exciting. However, such appointment entail significant responsibility, and it is therefore important to consider a number of factors thoroughly before accepting. If something goes wrong, it is not necessarily because the board members have done a poor job – the problem may be fundamental issues within the company.

Certain types of companies are subject to complex regulatory requirements. Potential amendment of such framework conditions represents a particular challenge, and requires close monitoring. The possible risks involved in accepting an appointment should always be closely considered beforehand.

Financing and liquidity can present their own challenges. If liquidity or solvency become a significant issue, a board appointment may develop into something entirely different from what was expected, and may demand a much more extensive commitment than anticipated. The possibility of criminal penalties and liability in damages may also increase.

The checklist below is based on PwC's own new-customer due diligence procedures, and has been adapted for board candidates. Although not exhaustive, the list should help board candidates to conduct a thorough assessment before accepting the appointment.

Due Diligence

- What do I know about the owners, management and the board of directors?
- Are any of the persons involved defined as politically exposed persons?
- Does a Google search indicate caution?
- Does the company face reputational challenges, legal disputes or regulatory issues?
- If board members or managers have resigned recently, what are reasons for this?
- What is the board composition? (Expertise, is there a majority of “party representatives”, their reputation, etc.)
- Who is the board chair, and what reputation does he/she have?
- What reputation does management have?
- Is management competent?
- What agreements have been entered into with management?
- If a group is involved, does the company structure appear appropriate? In other words, is the rationale behind a complex structure clear?
- Is the business model comprehensible, and does it appear realistic?
- Who are the most important customers?
- Who are the most important suppliers? Who are the most important partners (involved in a chain or other cooperation)?
- Have demergers, mergers, liquidations or other relevant transactions been registered in relation to the company in the Register of Business Enterprises (see brreg.no)?
- Have regulatory authorities inspected the company and made subsequent comments?
- Are any targets relating to financial data, acquired assets or commercial cooperation unrealistic?
- Does the company have assets, liabilities or non-balance sheet items that may entail particular risk?
- Does the company have sufficient capital and long-term financing, and is liquidity satisfactory?
- Are there any special conditions related to the company’s financing (covenants)?
- Are there any special conditions linked to leases and/or leasing agreements?
- Does company and accounting information give a professional impression?
- Does the company conduct a significant proportion of its operations in a geographical region where ethical standards are highly uncertain?
- Does the company have a reputable auditor?
- Are key audit issues and any audit exceptions and clarifications in the audit report comprehensible and manageable?
- Have risks been identified, and are these manageable?

Other questions

- What does the board’s annual plan look like (number of meetings, length of meetings, topics/fixed agenda items)?
- Does the board of directors have sub-committees (audit, remuneration, risk, etc.), and who sits on these?
- Will a board candidate’s personal expertise contribute positively to the board? What can the candidate contribute to the board, and what will his/her role be? Does the candidate have relevant expertise?
- Could conflicts of interest arise in connection with the board appointment?
- Is the remuneration on offer reasonable relative to the amount of work involved, and is it in line with/approved by a ordinary general meeting resolution on board remuneration?
- What is the risk of liability and damages claims if the company’s finances fail? Does the company provide liability insurance? Is there a tradition that the ordinary general meeting approves liability limitations/exemptions for members of the company’s board?

The above are some key points. The list is not necessarily exhaustive.

The role and responsibilities of the Board of Directors

The Norwegian Private limited liability company act and the Norwegian public limited liability company act state that the responsibility for the management of the company falls to the board of directors (the board). The managing director's (CEO's) role is defined such that he or she is in charge of the day-to-day management of the company's business and responsible for complying with the guidelines and instructions issued by the board. In practice, this means that the board is responsible for the management of the company and delegates the day-to-day management of the company to the managing director.

A well-functioning board has the following characteristics:

- Exercises its oversight authority effectively,
- Safeguards the company's interests and objectives,
- Makes decisions, and
- Ensures internal controls are effective.

Cooperation with shareholders and management

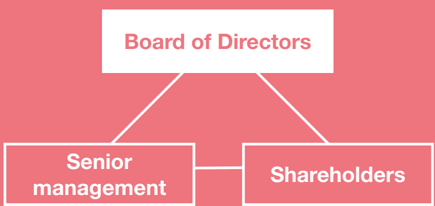
It is important for the board to create and maintain good cooperation between themselves, the shareholders and management, while also taking into consideration the interests of the other stakeholders. Important values in this regard are transparency, information-sharing and collaboration. The board bears the primary responsibility for the proper functioning of these relationships, and trust between all of the parties involved is essential.

The shareholders, as owners of the company, have a responsibility to clearly communicate clearly to the board their investment objectives. The board is then responsible to actively promote and implement good governance and management practises on behalf of the shareholders.

Transparent, relevant and concise reporting are key factors in gaining the trust of the capital markets as well with the other stakeholders, including

- lenders,
- customers,
- suppliers,
- joint venture and collaborating partners,
- employees,
- interest groups and
- the local community and society in general.

Cooperation triangle – The Board of Directors



Management and the board support their own interests by responding to the stakeholders' demands for greater transparency and effective communication. This only strengthens trust and support for the board as well as their good reputation.

Focus on shareholder value

Perhaps the most important task of the board is to create value for the shareholders and communicate to the shareholders the value that has been created. The board achieves its goals in collaboration with the company's senior management and the shareholders. Ideally, the board functions as a link between the shareholders on the one hand and senior management on the other. The board is appointed by the owners to safeguard and manage the shareholders' investment.

It is important that the shareholders have an understanding and appreciation that the board of directors works for them, and compensate the board accordingly with respect to the level of work expected from the board to achieve the shareholders' expectations. The boards' compensation is agreed by the shareholders at the General Assembly. The shareholders normally receive a return on their investment in the form of dividends and/or an increase in the share price.

It is important to recognise that companies may have differing goals and strategies, and that the shareholders goals may not necessarily be to maximise shareholder value. A board that successfully safeguards shareholder interests will be regarded as a "value generator" and receive acceptance from the shareholders and management that it is the board who has the primary responsibility for the success or failure of the company.

The board can be viewed as a "rubber-stamping" body if the board allows management to direct their decisions and if the board does not take a pro-active approach and work positively to achieve the shareholders goals.

What regulates the boards' duties and responsibilities?

The board's responsibilities and duties are primarily determined by the three central documents as shown in the figure below.

Regulatory framework

What laws and policies regulate board responsibilities and duties?

The Norwegian limited liability companies act	The company´s articles of association	Mandate to the board

Many boards have a tendency to forget that the company has articles of association which may be relevant for governing board activities. All articles of association contain a purpose clause, and it is an important responsibility of the board to ensure compliance. Articles of association and the share-holder agreement may also contain other terms and conditions of which the board should be aware and take under advisement when carrying out their duties.

Companies with employee-elected board members (reference to sections 6–3 and 6–4 of the Norwegian limited liability companies act) are required to have written instructions for the board. This is a requirement of section 6–23 of the Norwegian limited liability companies act.

The Norwegian Corporate Governance Board (NCGB) issues recommendations on corporate governance. The purpose of the recommendations is to ensure a clear distinction between the roles held by shareholders, the board and top management, over and above the statutory minimum requirements.

The Norwegian limited liability companies act

The Norwegian limited liability companies act contains, in chapter 6, key provisions with which all board members must be familiar. Sections 6–12 and 6–13 are particularly important, as section 6–12 defines the board's governing responsibilities and section 6–13 specifies the board's oversight and control responsibilities.

Through such provisions, the limited liability companies act establishes guidelines for the work of the board. The purpose of assigning ultimate responsibility and specific tasks to the board is to give it a mandate to ensure that management performs all necessary tasks in a cost-effective, optimal manner.

Perhaps the most important factor is to achieve the correct balance between board involvement in the development of operational strategies, supervision and control of the company's progress on key priorities and implementation of approved projects and plans.

Administrative responsibility

1. The governance and administration of the company is the responsibility of the board. The board shall ensure the proper organisation of the business.
2. The board shall adopt the necessary plans and budgets for the company's activities, and establish operational guidelines.
3. The board shall keep itself updated on the company's financial position, and work to ensure that commercial activities, accounts and asset management operations are subject to satisfactory controls.
4. The board shall request information and take investigative steps as it deems necessary for the performance of its tasks. The board shall initiate such investigations if requested to do so by one or more of the individual board members.
5. If it has been agreed that the company should not have a corporate assembly, as referenced by section 6–35, second paragraph, then the applicable law in section 6–37, fourth paragraph, of the Public Limited Liability Companies Act shall apply correspondingly.

Section 6-12 of the limited liability companies act makes it clear that the governance of the company is a board responsibility. The board has overall responsibility and full authority to manage the company's business, including the control over company assets and legal rights.

While the ordinary general meeting legally is the company's supreme governing body, the ordinary general meeting does not participate in the management and governance of the company.

The ordinary general meeting is not authorised to represent the company. Representation occurs through the board, both externally in dealings with contractual partners and public authorities and internally vis-á-vis the managing director and top management.

Section 6–12 states that the board shall (not may or should):

- Ensure that the business is properly organised,
- Adopt necessary plans and budgets for the company's activities, and
- Keep itself updated on the company's financial position and ensure that commercial activities, accounts and asset management are subject to satisfactory controls.

It is also a clear mandate in section 6–12 that the board initiate such investigations as it deems necessary for the performance of its tasks. This is to ensure that it is not good enough to state that the board "did not know", if it was clear that the situation indicated that the board should/must initiate an investigation.

Supervisory responsibility (section 6–13)

1. The board shall supervise the day-to-day management of the company, and its activities generally.
2. The board can issue instructions on day-to-day management.
3. The boards of single-shareholder companies shall ensure that agreements between the company and the shareholder are executed in writing.

The board of directors can also establish guidelines for the business and operations.

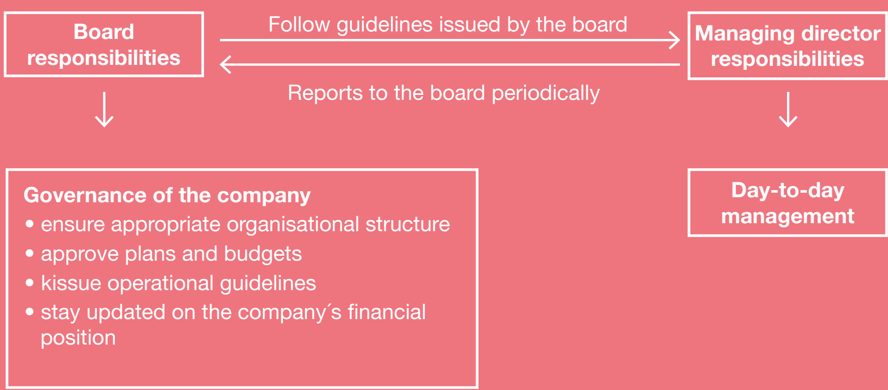
Section 6–13 of the limited liability companies acts likewise requires the board to supervise the day-to-day management of the company and the operations.

Section 6–2 of the limited liability companies act states that the board shall appoint the company's managing director and determine the compensation package unless the shareholders at the ordinary general meeting have reserved the right to make such decisions themselves. Accordingly, one of the most important tasks of the board is to ensure that the company has a managing director who performs well in respect to the company's objectives and strategies.

The daily operations of the company must be overseen by the managing director/top management, but the board of directors guides and supervises such that the managing director does their job in the best manner possible and in accordance with the guidelines established by the board.

The interplay of board responsibilities and management responsibilities can be illustrated as shown in the figure below. The managing director has a responsibility to report to the board on a regular periodic basis. This specific duty of the managing director is derived from sections 6–14 and 6–15 of the limited liability companies act, as well as from instructions issued by the board.

Interplay between the board of directors and the managing director



The managing director's duties related to the board of directors (section 6–15)

1. The managing director must inform the board, in writing or in a meeting, on the company's operations, financial position and profitability at least every four months (Limited Liability Companies Act) or monthly (Public Limited Liability Companies Act).
2. The board can at their own discretion at any time require the managing director to provide the board with a detailed account of specific issues. Individual board members can also request additional information directly from the managing director.

The managing director of a public limited liability company (i.e. a Norwegian ASA) is required to keep the board updated on a monthly basis. The managing director has a reporting duty irrespective of any specific requests made by the board. The board and managing director should have an agreement as to the content, structure and form of the monthly reporting and how it is communicated to the board, such that the board has the necessary information to perform their supervisory duties related to internal controls, financial reporting and maintenance of shareholder value.

Division of responsibilities between the board and the managing director

The board shall be actively engaged with a focus on the general goals for the company, such as the mission statement, company vision and overall strategy. The managing director is responsible for the day-to-day planning and implementing of the goals and objectives established by the board. The division of work between the managing director and the board is a key aspect of the board's activity. A well-functioning relationship between the board and the managing director is a crucial factor for the achievement of the company's objectives. The board and managing director must be in agreement as to the success factors for the company, and work together on the appropriate issues. Finding and hiring the best and most competent managing director is therefore very important.

It is often the case that when the managing director is underperforming, that the board is not functioning well and that the company is also underperforming.

A necessary replacement of the managing director is the board's responsibility. One reason for the many errors made in this area is, quite simply, that it is an unpleasant task. The board has a desire to make as many allowances as possible for the managing director. This will often create risks for the company associated with the replacement of a managing director.

Performance evaluation of the managing director

The board has a duty to evaluate the performance of the managing director. The board and the managing director should have a common understanding beforehand on the specific criteria and performance targets that will form the basis for the evaluation. When both the managing director and board are in agreement about the performance criteria, it is easier for the board to conduct the annual evaluation. The evaluation is often best conducted in connection with the annual assessment of the managing director's compensation package.

Adequate equity and liquidity in respect of risk

Section 3–4. Requirements for adequate equity and liquidity
The company shall at all times have sufficient equity and liquidity as are deemed adequate in view of the risks associated with the operations and scope of the company's business.

Section 3–5. Duty to act upon loss of equity
1. If it is presumed by the board that the equity is inadequate in view of the risks associated with the operations and scope of the company's business, the board is required to address the situation immediately. Within a reasonable period of time, the board shall call a ordinary general meeting and provide the ordinary general meeting with an account of the company's financial position. If the company lacks adequate equity pursuant to section 3-4, the board shall propose corrective measures at the ordinary general meeting to rectify the equity situation.
2. If the board sees no basis for proposing corrective measures as described in the first paragraph, fourth sentence, or if such measures cannot be implemented, the board shall propose the liquidation of the company.

The board of public limited liability companies (i.e. Norwegian ASA) are also subject to a duty to act if it is presumed that the company's equity has decreased to less than half of its share capital.

Companies are subject to a statutory requirement to have adequate equity and liquidity in view of the risks associated with the operations and scope of the business activities. Pursuant to section 3–4 of the Limited Liability Companies Act, the board has a duty and responsibility to monitor equity and liquidity. This is illustrated in the figure below.

Adequate equity and liquidity

Monitor significant risk factors

- Suppliers
- Products
- Customers
- Competitors
- Equity
- Financing

Understand the company´s business

Financial statements

- Organisation
- Management
- Systems
- Reporting
- Liquidity
- Investments

Define significant risk factors

Continuous monitoring

Section 3–4 of the Limited Companies Act must be read in conjunction with section 3–5, which requires the board to act if equity is deemed to be inadequate.

The board should monitor the company´s equity

Correct assessment of equity

Action plan for corrective measures instituted by the board

Convene a general meeting to consider the action plan, if relevant

The general meeting expresses their viewpoints on the matter

Equity

There is no definitive or general answer to the question of what risk profile and related equity level is acceptable for a specific company. According to the basis for conclusions in the exposure draft to the Limited Liability Companies Act, risks should be assessed within the context of the nature of the business. A high-risk business is subject to stricter equity requirements than a low-risk business. Many other factors and circumstances are also relevant, including: debt-to-equity ratio, growth projections, whether the business is meeting targeted goals, start-up operations, and seasonal fluctuations, to name a few examples. The reference to equity in section 3–5 of the Limited Liability Companies Act is not referring to the equity recognised in the balance sheet, but rather to the company's real equity.

When assessing real equity, the board can take into account non-balance sheet items, as well as remeasuring balance sheet items to a new valuation, for example goodwill, intangible assets, and certain liabilities in accordance with section 6–12. Additionally, as part of the adequacy of equity assessment, financing should be incorporated into the assessment: long-term, stable financing and subordinated loans can contribute to changing otherwise low equity to adequate.

If the company comes into a situation where the board has an obligation to act where assets need to be converted to cash, it is often the case that the company will not be able to realise full normal market values for the assets.

Sections 3–4 and 3–5 of the Limited Liability Companies Act must be considered in conjunction with the managing director's duty to keep the board updated on the company's operations, financial position and profit development pursuant to section 6–15. In our opinion, there are far too many instances where the board fails to take sections 3–4 and 3–5 seriously. If the board fails to meet its duty to act, a trustee could have a liability case against the board members in the event of a bankruptcy.

What if there is a liquidity crisis?

In the event of financial turmoil, access to liquidity funding may be critical for both the company's continued operations and market share price valuation. While the possibility of a liquidity crisis should not dissuade management from utilising debt financing, it does reinforce the importance of having a "plan B" to secure liquidity needs.

Sometimes management becomes familiar with the bankruptcy laws. Pursuant to section 61 of the Bankruptcy Act, a company becomes insolvent when it can no longer meet its liabilities as they fall due, unless its inability to pay is deemed as temporary. However, insolvency does not arise if the debtor's assets and income together are deemed to cover the liabilities in full, even if payment will be delayed because assets have to be sold first.

This insolvency rule is relevant in the assessment of whether the company may apply the going-concern assumption when preparing their financial statements. If the company lacks adequate liquidity and an asset sale will not cover all liabilities, the company is deemed to be insolvent. In such cases, the board has a duty to engage in debt renegotiation proceedings or declare bankruptcy.

This obligation of the board carries a possible prosecution penalty, as failure to fulfil this duty is subject to penalties, with contravention being punishable by imprisonment for up to two years if the person in question has been negligent and the asset recovery opportunities of the company have been reduced.

A liquidity crisis may influence the assessment of whether the financial statements can be issued in accordance with the going-concern assumption.

The going-concern assumption may only be applied if in the board's opinion it is likely that the company will continue to operate over the next 12 months after the balance sheet date. Before issuing the annual accounts, the board must conduct a thorough and well-documented assessment of whether or not the company has adequate equity and liquidity to support the going-concern assumption.

Board activities in connection with special measures

The limited liability companies act also specifies many other board activities and responsibilities which are not discussed further here.

These include:

- Company incorporation
- Changes in capital
- Mergers/demergers
- Transformation
- Board meetings
- General assembly meetings
- Special agreements
- Insider trading

Summary of the five main tasks of the board

Simply put, the board is required to make decisions based on legal frameworks and requirements, decisions and requests made by shareholders, employees, the authorities and other stakeholders. The board shall set goals and devise strategies, organise, make plans and budgets, set deadlines, supervise and monitor company activities. In addition, board decision-making that does not include a focus on competitive advantages will eventually produce poor operating results. Company reporting is also a board responsibility, and is becoming increasingly more important in terms of ensuring transparency for the company. This includes reporting related to corporate social responsibility and sustainability.

Board activities can be grouped into the following main categories:

1. Strategic
2. Organisational
3. Supervisory
4. Reporting
5. Independent assignments

The first three categories cover the requirements laid down in the limited liability companies act, section 6–12, while the formal reporting requirements are in the Norwegian accounting legislation and stock exchange rules and regulations.

In its day-to-day practical work plans, the board should plan their activities based on the operational priorities it has defined for the company with consideration for the nature and needs of the company. There may, of course, be additional tasks the board considers central and relevant to pursue in specific circumstances. It is important to discuss such priorities with shareholders and management, and to secure a consensus on the objectives the board is to pursue before the work of the board is carried out.

What specific tasks or activities are included in the above categories?

A non-exhaustive list of tasks is given below.

1 Strategic

- Define targets and goals.
- Establish strategic plans, including an action plan to meet the targets.
- Adopt general guidelines for operational plans.
- Establish a business plan.
- Ensure preparation of and approve budgets.

2 Organisational

- Ensure that the business has an appropriate organisational structure.
- Ensure that the business has sufficient resources and expertise to perform tasks and achieve adopted targets.
- Allocation of responsibility and authority.
- Ensure that the company has written job descriptions and operating directions.
- Ensure effective internal and external communication.
- Ensure effective reporting levels.
- Oversight of the resource development activities of the organisation.

3 Supervisory

- Is the company on course to meet targets and goals? If necessary, implement corrective measures.
- Risk management.
- Quality, management and control: monitor the general and internal control functions.
- Financial reports, accounting reports, audit reports and budget management.
- Customer satisfaction – “voice of the customer”.
- Working environment – the company’s “blood pressure”.
- Compliance with laws, rules, regulations and framework conditions.
- Insurance coverage.
- Cybersecurity and risk.
- Corporate social responsibility and sustainability.
- Oversight of and active communication with the external auditor.

4 Reporting

- Define and ensure acceptance within the organisation of a reporting strategy: reporting must as a minimum meet statutory requirements, but may also be an important instrument for communication with stakeholders.
- Ensure adequate internal control procedures for financial reporting.
- Double-check that all statutory reporting duties are fulfilled.

5 Independent tasks

- Self-evaluation by the board: ensure that the composition and organisational structure of the board facilitates optimal board performance on all levels.
- Board evaluation of the managing director.

The role and responsibilities of the board

Developing strategies and deciding the long-term direction of a company's development and value creation are among the most important board tasks.

In addition to creating value for shareholders, companies must have guidelines in place on the incorporation of stakeholder interests into company priorities. The board's role in the context of strategy development is to adopt frameworks and requirements for the strategy development process, thereby ensuring that the administration establishes a process tailored to the company and its situation.

The board must invest time in evaluating the strategy. All board members have an objective responsibility to ensure that the board adopts a working method that helps ensure the most efficient and thorough consideration possible of matters of strategic importance to the company. In most companies, the board holds an annual strategy meeting at which it considers various recommendations by the administration. In recent years, however, there has been a trend towards a strategy development process whereby the board includes different strategic topics on its agenda throughout the year. This can help the board to get more involved in major strategic discussions related to the company. High volatility and rapid changes in the company's operating environment increase the importance of effective, regular strategic discussions between the board and the administration. Moreover, the board must be involved in ensuring that the organisation is prepared to deliver on adopted strategic targets.

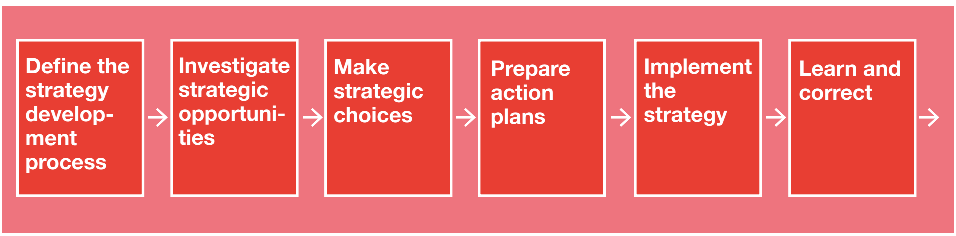
As part of the strategy development process, the board should ask itself a number of fundamental questions, including:

- Does the board know what external factors will affect the industry and the company going forward?
- Does the board prepare robust assessments of the company's short-, medium- and long-term directional choices?
- Does the strategy support sufficient value creation?
- Does the strategy development process help identify and particularise future competitiveness? Is the board ready to make concrete choices, including decisions not to engage in certain activities?
- Is the strategy development process supporting the development and evaluation of new ideas? Does the board have a sensible growth strategy?
- Is the board correctly positioned for restructuring necessitated by technological advances and new objectives and opportunities?
- Does management invest sufficiently in strategic assessments, or is management's time consumed by day-to-day operations and "firefighting"?
- Does the strategy development process help the board to formulate clear targets?
- Is sufficient use being made of board expertise in the strategy development process?
- Is the strategy development process suitable for generating energy and motivation among the company's management and employees?
- Is the strategy plan being followed up with clear measures to implement the strategy in a satisfactory manner?

If the reply to one or more of these questions is no, the board should help to reinforce/improve the strategy development process.

The steps in a generic strategy development process

There are innumerable variations on how strategy work can be done. However, experience indicates that a strategy development process normally comprises six phases. The content of and role to be played by the board in each phase are described below.



1 Define the strategy development process

The board's role:
It is important that the board initiates a discussion with the administration on how the strategy development process can best be implemented. The board should establish a framework and requirements for the strategy development process, for example:

- Scope – is this a minor revision or a new strategy?
- Time horizon – one year, two years or several years?
- Deadlines and delivery requirements
- How will the actual strategy development process be implemented?

The board should ask the administration the following questions:

- What is the outlook for the industry, and what are the company's main challenges and opportunities?
- What is the competition situation like? What are competitors doing and is the company "on track" with respect to the technological shift?
- Is the volume of new knowledge such that employees outside of senior and middle management need to be involved? Or external parties?
- How can the board develop a good decision-making basis in strategic areas?

2 Investigate strategic opportunities

The board's role:
The board does not normally play an active role in procuring supporting documentation for strategic decisions. The board should ensure that strategic diagnoses (external and internal analyses) are of satisfactory quality.

The board should ask the administration the following questions:

- How is the competitive situation expected to develop going forward?
- What are the key drivers of current and future competitiveness?
- What different future scenarios are likely, and how should the company respond to them?
- What new ideas have been analysed and evaluated?
- What competitive advantages does the company have?
- Does the company have the right human capital?

3 Make strategic choices and formulate strategic objectives

The board's role:
The board's primary task in the context of strategy development is to make decisions on behalf of the shareholders regarding implementation of a strategy that increases the company's value. The strategic objectives must be clear and realistic. The normal working method during this phase is that the administration provides the board with assessments, including of the main features of the strategy. Often, working meetings are held with the board at which proposed strategies are discussed and challenged. In recent years, it has become increasingly common for the administration to give the board more regular briefings on key strategic issues throughout the year. This is a good opportunity for the board and the administration to engage in regular, open discussion of strategic topics, and allows the board to involve itself more closely in strategy development.

The board should ask the administration the following questions:

- What should the company's strategic targets be?
- Are strategic decisions in line with the company's vision and values?
- Does the company have sufficient management capacity and expertise to implement the strategy?
- What risks are related to the strategy, and how can these be minimised?
- Does the company have sufficient financing and liquidity?
- What challenges have to be overcome in order to implement the strategy?
- How should the strategy be communicated within the organisation?
- How will competitors and other external stakeholders respond to the strategy?

The board should adopt requirements specifying how the strategy is to be particularised and implemented.

4 Utarbeide handlingsplaner

The board's role:
The board's task is to ensure progress and facilitate future follow-up of measures proposed by the administration.

The board should ask the administration the following questions:
- What measures are required to adopt and implement the strategy?
- What strategic projects should be prioritised?
- What should be omitted?
- How should performance and progress be reported to the board, and how should the board follow up on such reports? What key performance indicators (KPIs) need to be measured to evaluate progress?
- Does the company have an optimal governance model for delivering on the strategy?

It is important that persons who are to implement action plans for implementing a strategy take ownership of them, and that the strategy is recorded in writing. It must be clearly specified who is responsible for what, as well as the deadline for completion. It is also important that strategy plans are flexible and can incorporate new information and lessons learned along the way. It must therefore be possible to revise and amend action plans as needed.

5 Implement the strategy

The board's role:
The board's main tasks during this phase are to ensure that progress on adopted plans/actions is evaluated, that the company is on track and that there is room for any necessary course adjustments. The board also has a responsibility to ensure that management has sufficient resources to implement adopted strategies.

The board should ask the administration the following questions:

- Has the company achieved, or is it on track to achieve, adopted targets?
- How can the company derive maximum benefit from achieved and planned results?
- Are there external changes, for example in opportunities or threats, that may necessitate revision of the strategy?
- Does the board understand the consequences of potential changes in internal and external framework conditions?
- What does the company need to become even more innovative?
- Are strategic projects pulling the company in the same direction?
- Does the company have necessary expertise and capacity?

6 Learn and correct

The board's role:
In this phase, the board's primary role is to evaluate implemented measures, assess whether a change of course is needed and identify strategic areas of improvement. Improvement points must then be implemented and reinforced within the company.

The board should ask itself the following questions in this connection:

- Has the board really understood the key drivers of the company value? Is there a sufficient focus on these drivers in strategies and action plans?
- Does the board have adequate measurement and incentive systems to understand where the company is and to reinforce the desired direction and conduct?
- Is the board learning, and is it able to identify and preserve gained knowledge? Is the board good enough at making available and applying knowledge and lessons learned within the company?

A critical factor in succeeding with strategy implementation is ensuring ownership of targets, vision, values and action plans among employees, so that everyone is pulling in the same direction. The board should monitor that the administration is involving employees at the right level and at the right time and communicating the new strategy effectively.

PwC recommends the following in connection with strategy development:

- Look for opportunities to change the rules of the game in the industry before someone else does.
- Do not wait for a strategy development process to generate major revelations, but instead ensure that the process is fact-based and implemented in such a way that it generates a continuous stream of new ideas and evaluation of these.
- In many companies, strategy development is increasingly a continuous process. Strategies should not be seen as "the big plan" which must be perfectly formulated, since that plan can never be achieved. Strategies are just as much about regular re-evaluation of direction, in-depth consideration of individual topics and testing of new ideas, and then re-evaluating again.
- Ensure that the board plays an active role in formulating a strategy, ensuring support within the organisation and implementation.
- Adopt a deliberate focus on social responsibility and sustainability. Focusing on climate and the environment is business-critical.
- Have a clear opinion on where the company is heading, and adopt clear strategic targets for the company's achievements.
- In an increasingly volatile global situation, it is important to be able to change course. The rapid pace of change requires companies to be more flexible.
- Digitalisation and disruption risk cannot be ignored. New players may threaten the industry and the business, and not making changes may quickly prove to have been a critical decision.
- The primary objective is always to identify strategies for increasing company value. The company's strategy must be relevant and clear, and the board must make concrete decisions. Strategy development also involves deciding what a company should not do.

The board's role in management by objectives and strategy implementation

A company can only implement its strategies and achieve its objectives if it has an effective, clear governance model. Rapid changes in the competitive situation, digitalisation and changing framework conditions may put pressure on a company's strategic management models, and it is therefore crucial to consider what constitutes effective, robust management and control. PwC recommends that the board evaluates the company's value creation targets and strategy regularly, and at least once a year.

Many companies struggle to find effective management-by-objectives-based governance models. In the early 1990s, Kaplan and Norton launched their model for balanced management by objectives (the Balanced Scorecard), which proposed that organisational assessment systems should be founded on adopted strategies. Since then, both the Balanced Scorecard model and other management-by-objectives approaches have progressed from static models to models with a stronger strategic management focus.

In recent years, there has been an increasing focus on measurement of non-financial targets. Companies are increasingly realising their responsibility and need to measure non-accounting parameters. It is necessary to adopt a broader approach to measurement, highlighting non-financial effects, particularly in the area of environmental, social and corporate governance (ESG). The most successful companies in this area integrate strategy and ESG.

To ensure effective governance, it is critical that companies:

- Break down their strategic targets into measurable KPIs/value drivers that can be influenced and are integrated into operational processes to ensure the right focus. It is vital to formulate targets in such a way that they are understood within the company.
- Maintain an overview of their financial situation and capacity.
- Identify and respond quickly to changes in market conditions and risks.
- Support important strategic, tactical and operational decisions.
- Monitor action plans, measures and risks throughout the value chain.
- Ensure effective, consistent monitoring of performance and establish a performance culture that ensures continuous improvement.
- Involve staff and management in the company's activities.

Effective evaluation systems cover the entire management value chain, from strategy development, target-setting and planning to operational follow-up, reporting and evaluation and learning. These governance processes are supported by ongoing analysis, forecasting and risk assessment.

Technological developments are constantly improving digital tools for building strong links between strategies, plans and activities. Such management portals or dashboards provide access to updated governance information for management and staff, enabling management to make rapid decisions in response to changes or if desired outcomes are not achieved.

Main trends related to management-by-objectives models

1 Integration of governance processes

Many companies are working to integrate strategies, target-setting, planning, operational follow-up, reporting and evaluation more closely. Success in linking these key processes facilitates more efficient resource utilisation and better-targeted action by the company. A well-designed governance process will produce ambitious relative targets, realistic plans, expectation-focused forecasts, and systematic follow-up of initiatives and measures.

2 KPIs also cover external circumstances and risks

The traditional model for balanced management by objectives incorporates four different perspectives (finance, market/customer, processes and learning/growth), all linked to a dedicated set of KPIs which are supposed to reflect the company's strategies and values. The purpose of the model is to ensure that the KPIs provide good decision-making bases for managers, both to establish a foundation for good decision-making and to support strategy implementation. Choosing the correct KPIs is critical in this regard, and many companies choose to supplement their traditional perspectives with new areas on the basis that correct, strategically focused indicators are more important than faithfulness to the model's somewhat theoretical starting point.

Traditionally, the scorecards have adopted an internal perspective. However, as the need has grown to take account of external circumstances and stakeholders, many companies have started to make changes. KPIs are increasingly being derived from market conditions, framework conditions and risk. Moreover, companies are increasingly integrating KPIs linked to non-financial social targets, such as the UN's Sustainable Development Goals (SDGs), with governance targets and the management of risk factors and opportunities.

3 Forecasts are playing a clearer role in management by objectives

Many companies are experiencing substantial changes in their markets, framework conditions and technologies. Demand, access to capital and customer behaviour have undergone drastic changes in many industries, and many companies have therefore found traditional budgeting to be poorly suited as a management tool. Instead, many companies have decided to adopt rolling forecasts, using these as instruments for ensuring effective management by objectives. Many companies are working to incorporate the best possible information into their forecasting processes: value drivers, macro-variables, important events and risk factors. Correspondingly, there is an increased focus on predicting future cash flow and working capital needs.

4 A stronger forward-looking focus

Many companies continue to invest substantial amounts of time in reporting on current status and historical figures, instead of focusing more on the future. This is why various companies are seeking to improve their working methods and decision-making structures. Typical changes include:

- Focusing on action plans rather than non-conformances
- Asking “How is it likely to go?” rather than “How did it go?”
- Asking “What lessons can we learn, and how can we ensure that we achieve targets going forward?” rather than “Why did this happen?”
- Focusing on active dialogue rather than moderate management involvement

5 Management portals ensure access to relevant governance information

Companies are increasingly integrating data and providing managers with dashboards or management portals containing regularly updated, reliable governance information. An important objective in this regard is to ensure consistency between strategies and action plans and budgets, forecasts and actual figures. An effective management portal will illustrate trends in critical KPIs – both financial and non-financial – and will help develop closer links between strategies, targets and activities. Such portals provide constant access to relevant governance information, and are intended to support informed decision-making. Good dashboards also simplify reporting processes.

Companies that successfully establish effective dashboards or management portals give board members access to relevant data so that they can monitor and retrieve information instead of – or as a supplement to – the administration’s own reports.

The role of the board

Company boards should evaluate company targets and strategies regularly, and at least once a year. In a group, the board of the parent company is responsible for all operations. Many groups are managed across legal entities, for example by segment or geographical region. Robust management and control demand a focus not only on defined segments or geographical regions, but also on individual legal entities.

The different legal entities within a group have their own boards. It is normal for the group parent to exercise control through representation on the boards of subsidiaries. Ensuring that the boards of subsidiaries have the right expertise and focus is critical for satisfactory management and control.

The relationship between a parent company and its subsidiaries is governed by section 6-16 of the Private Limited Liability Companies Act. The boards of subsidiaries have a duty to provide the parent company's board with the information it needs to evaluate the group's position and the results of group operations.

Correspondingly, parent companies must inform the boards of subsidiary companies of important matters and significant situations before any decisions are made.

Significant entities that are not consolidated, for example where the parent

company's share of voting rights or its shareholding is less than 50%, it may be difficult for the group board to establish satisfactory management and control. A group board can employ various measures to meet its responsibility. This includes ensuring that the boards of subsidiaries have requisite expertise and clear shareholder agreements, where relevant.

Board involvement

Companies that successfully implement effective management by objectives are characterised by having evaluated the role of the board by reference to the factors outlined below, and by having established a clear structure and plan for involvement and exerting influence.

Integrated measurement and management

- The board has a defined, clear role in various governance processes, strategies, target-setting, planning, follow-up, reporting and evaluation.
- The board is involved in adopting clear strategic objectives for the company – regarding society, finance, customers/markets, the value chain and organisational structure.
- The board promotes a consistent governance model – from the board to group management and further in breakdowns of strategic objectives and action plans for the company.
- Active use of forecasts, scenarios and sensitivity analyses.
- Effective processes for monitoring, reporting and evaluating investments.
- Effective meeting structures and efficient board meetings.
- Correct and updated governance information.
- Focus on value drivers/macro-variables, risk factors and important events at board meetings and in dialogues with management.
- Scorecards for the group and the managing director covering strategic objectives, KPIs and strategic initiatives.
- Active use of benchmarking and trend analysis.

Effective reporting processes

- The board and management have a shared understanding of the governance model.
- Clear guidelines on the development and updating of KPIs in the group scorecard.
- The right organisational structure and expertise.
- A board member with special responsibility for the governance model – scorecards, KPIs and analyses.
- Clear incentive schemes promoting use of the governance model, including scorecards.
- Conscious use of technological support (e.g. management portal).
- Easy accessibility of board reports and important analyses.
- Automatic despatch of board reports and analyses.

The company must have clear guidelines on the board's involvement in management by objectives, just as it must have guidelines on e.g. organisational structure and governance. Effective management by objectives where the board's involvement is clearly defined demands strong ownership by management, a clear plan for implementation of governance processes and effective communication of critical governance information.

It is also crucial that the composition of the board ensures representation of persons with commercial insight and functional governance expertise.

Liability of board members

Case law shows that most damages claims against Norwegian board members are brought by creditors after a company has failed to meet its liabilities. Damages claims therefore often arise in the aftermath of an economic downturn, albeit with a slight time lag.

Section 17-1 of the Private Limited Liability Companies Act/Public Limited Liability Companies Act contains general rules on liability in damages:

"The company, shareholders and other parties may claim damages from the managing director, a board member, a member of the corporate assembly, an investigator or a shareholder in respect of harm which such a party has intentionally or negligently caused to the person in question in the said capacity."

In the case of public limited liability companies, "independent experts" are also included among the persons who may be held liable.

Liability in damages is conditional on the fulfilment of four requirements:

- A basis of liability must exist. The basis of liability is an intentional or negligent and liability-inducing act. The basis of liability may comprise deliberate decisions, such as unlawful distributions or continuing operation without sufficient equity. Experience shows that, in practice, the basis of liability often focuses on omissions. It may be that the board has paid insufficient attention, that it has failed to undertake necessary investigations, that it has not intervened in management actions when it should have done so, etc. The due care requirement must be evaluated in each individual case, but will – according to case law – be stricter when the company is in financial difficulties.
- An economic loss must exist. Such a loss is easy to document when a creditor has not received payment. The shareholders who have decided not to sell their shares, based on a polished set of annual accounts, will suffer a loss if the share price

drop below the price for which they would have sold their shares if they had access to correct information.
- A causal link must exist between the basis of liability and the loss.
- A sufficiently close and foreseeable link must exist between the negligent or intentional act or omission and the loss which is the subject of the claim.

To whom is a damages claim addressed?

Most damages claims target the board chair. However, it is important to remember that board liability is joint and several.

A party that has suffered a loss may choose which board member to sue, provided that the board member is among the board members who – according to a concrete assessment – have acted negligently and may be held liable. The liability rules do not distinguish between board members elected by shareholders and employee representatives.

Whether specific conduct is negligent must be assessed individually for each board member. Nevertheless, there are limits on the scope of liability exemptions. Persons who have agreed to a board appointment have also accepted an obligation to fulfil the requirements of the appointment. In practice, board members are not exempted from liability in damages even if they:

- Had insufficient time to fulfil the requirements of the appointment
- Lacked insight into management, accounting rules, companies legislation or other relevant areas of expertise
- Feel that their own influence on board decisions was limited
- Received insufficient information, if they should have requested it
- Delegated the relevant task to subordinates.

Liability in damages linked to organisation of the company

As explained in the chapter on the role and responsibilities of the board, the board bears overall responsibility for the proper organisation of the company and for adopting operational plans, budgets and guidelines. The board must ensure that the company is organised expediently, including that it has sufficient qualified personnel and an orderly organisational structure for daily operations. Further, the board must ensure that the company, accounts and asset management are subject to proper controls.

Breach of these fundamental obligations will often constitute grounds for liability in damages.

Liability in damages linked to business decisions

The board is also responsible for commercial decisions. In principle, the board can be held liable for choosing the wrong strategy, taking on excessive

risk, choosing the wrong business partners, etc. The board may also be held liable if it does not try – in good faith – to ensure that the company meets its liabilities.

When it is clear that the company will be unable to meet its liabilities, or that the company is approaching a payment stoppage, the board may easily become independently liable to contractual partners.

However, the Supreme Court has stated that:
"The courts should normally be cautious about reviewing the exercise of commercial discretion and the industry knowledge on which the company's financial or operational targets are based."

Documentation is a keyword. The board minutes should document:

- Assessments undertaken by the board
- The assumptions underpinning a decision
- The reasons for a decision
- Any dissenting opinions among board members, and which board members expressed those views.

Damages claims by contractual partners

In recent years, the courts have heard a number of damages claims brought by contractual partners against company boards, as well as cases brought against companies and boards seeking performance or damages in contractual relationships. In newer case law, board members have been held liable for the company's deficient contractual performance when the company has gone bankrupt.

Liability in damages linked to legal offences

The rules on tax deductions are strict and absolute. Failure to transfer funds to a tax withholding account constitutes a legal offence, and can easily result in liability in damages. Care must be taken!

Key points in the Private Limited Liability Companies Act:

- Objective liability in connection with capital increases

Share capital and share premiums reported as paid-in but not received by the company can be claimed regardless of whether the company has suffered a loss.

- Dividend distributions and shareholder loans

The rules on dividend distributions have become more flexible and discretionary in recent years, in that the formal restrictions on distributions have been reduced. This gives the board considerable responsibility, and means that stricter requirements apply to the board's assessments of what constitutes a careful, proper dividend distribution. If the board has participated in an unlawful distribution, or if the board understood or should have understood that a distribution was unlawful, the board will be liable for repayment of the sum in question to the company.

Given the possibility of potential damages claims against the board, it is important to note the importance of the board documenting its assessments related to distributions. It is also important that the board ensures that the company has reliable procedures in place for monitoring shareholder loans.

The Private Limited Liability Companies Act specifies when a company may make loans to shareholders. Loans from private or public limited liability companies are subject to dividend taxation in accordance with the shareholder model.

- Appropriate equity and liquidity?

The equity and liquidity of private and public limited liability companies must always be appropriate in view of the risk and scope of the company's activities. If they are not, the board has a duty to act, and must deal with the matter immediately. The same duty arises in the case of public limited liability companies if it must be concluded that the company's equity has dropped below 50% of the share capital. The board must arrange

an ordinary general meeting within a reasonable period of time, and must provide a statement on the company's financial position and propose measures to restore equity to an appropriate level. See also the chapter on the role and responsibilities of the board.

- Agreements with the company's shareholders and their related parties, etc.

Such agreements are subject to special procedural and documentation requirements intended to ensure that agreements are binding on the company. If administrative procedures are not in accordance with such procedural and documentation requirements, a duty of restitution will be triggered, and liability in damages may arise.

Employee-elected board members

Employees are entitled to elect board members and board observers. When this applies, and how extensive these rights are, depends on the size of the company's workforce and on whether the company has a corporate assembly.

1 When can employees demand seats on the board?

Where a private or public limited liability company has more than 30 employees, a majority of the employees may demand the election of representatives to the board, as long as the company does not have a corporate assembly.

The right of employees to be represented on governing bodies depends on the type of company, but the right of representation usually corresponds to the rules applicable to private or public limited liability companies.

All company employees must be counted, but employees who work less than 50% of a full-time equivalent must be counted as half an employee.

When a company is a member of a group, the Dispute Resolution Board may, on application, decide that the employees of the group as a whole shall be deemed employees of a group company for board representation purposes.

2 Does board liability extend to employee-elected members?

In principle, employee-elected board members have the same rights and duties as shareholder-elected board members, and can be held liable on the same basis as the shareholder-elected board members. In this context, employee-elected board members are obligated to ensure that they have sufficient expertise relating to matters considered by the board. The company should therefore arrange skills-building measures for employee-elected board members, if necessary.

3 When may employee-elected board members be disqualified in matters affecting the workforce?

Boards will have to deal with issues closely related to employee-elected board members' employment, for example reorganisations and downsizings. In such cases, the general impartiality rules apply. This means that if a decision-making process or decision is particularly important to a board member or a related party of a board member and the board member must therefore be deemed to have a clear personal or financial interest in the matter, the board member will normally be considered disqualified.

4 Duty of confidentiality of employee-elected board members

Generally, board members are not subject to a statutory duty of confidentiality related to their board work, but many companies impose a duty of confidentiality on board members, for example through board instructions. However, instances may arise where it is sensible to exempt employee-elected board members from their duty of confidentiality to enable them to discuss relevant issues with an adviser – for example an employee representative or a lawyer – and thus perform their duties properly.

Board self-evaluation

A strategic and well-functioning board is vital for good corporate governance. PwC recommends that the board evaluate its work and expertise by reference to good practice and adopted targets annually, as a means of ensuring continuous improvement of the board's work.

The board's annual evaluation should include an assessment of the board's functioning at both individual and group level, and of whether the board has the right expertise. The objective is to assess whether the board is working efficiently and in accordance with good practice and recognised good governance principles, and to identify potential areas of improvement. An important aspect of board self-evaluation is how well the board chair is performing his/her role relative to the board and in cooperation with the managing director. The evaluation may reveal critical issues, and can help the board in its work. The results of the evaluation should be discussed by the board, which should collectively agree to any improvement measures.

PwC recommends that such self-evaluations are not published, and that the answers from the survey and interviews with individual board member evaluations are kept anonymous. This will help ensure the identification of any sensitive topics that may be important for the board's further work. To ensure process credibility and integrity, it may often be sensible to engage external expertise to facilitate the self-evaluation process.

Four phases of board evaluation

1. Planning: clarify topics and develop an evaluation form.
2. Collect data through the evaluation form and/or interviews with board members.
3. Analyse and evaluate results.
4. Discussion and reflection by the board, and development of an action plan.

Phase 1: Planning	Phase 2: Data collection	Phase 3: Analysis	Phase 4: Discussion and reflection

The board's self-evaluation can be completed in four phases, as illustrated by the above model. During the planning phase, the board defines the timetable for the evaluation and assesses whether there are special topics that should be covered. Experience indicates that it is helpful for individual board members to complete a questionnaire and for this to be followed up on with individual interviews, if necessary, with some or all board members and the managing director or CEO. In relevant cases, it may also be helpful to interview other key members of the administration.

The content of an evaluation form can be structured in many different ways. Experience shows that the following main topics are key to a robust structure:

1. The work of the board
2. Board expertise and composition
3. Time spent on board meetings
4. Board documentation
5. Cooperation with the administration
6. Cooperation and dynamics during board meetings
7. Control tasks of the board

It is logical to include some questions in each topic that use a scale to assess the quality of the board's work, for example ranging from poor to very good. It will also be very useful to include space for comments, as these often deliver the greatest insights in a self-evaluation context. Given the current pandemic situation, it is logical to cover the impact of Covid-19 on the board's work and the dynamics of board meetings in the evaluation.

The questionnaire results and any interviews should be analysed and used as a basis for board discussions. PwC recommends that the review focus on a good discussion of key findings, rather than on covering all aspects of the evaluation. This helps focus attention on what improvement areas the board should prioritise going forward.

Experience of board evaluation and coordination indicates that boards often find certain topics to be difficult:

- **Too much time spent looking back and too little time spent deciding future direction.** The board spends too much time on control tasks and looking back, and too little time developing strategy and discussing opportunities.

- **Unclear distribution of roles, and interaction challenges between the board and management.** In some companies, there are tensions between the board and the administration. The board considers that the administration presents important matters too late and that matters are, in reality, decided before they reach the board. The administration, on the other hand, considers that the board is too concerned about details and micromanages instead of supervising, interfering with the details of daily operations. The boards which appear to be most successful in making cooperation work practise a clear distribution of roles between the board and the administration. The administration usually presents matters at an early stage, perhaps long before they reach the decision stage. The administration involves the board through more and less detailed briefings before a final decision is made. This appears to create trust between the parties and simplifies the board's deliberations when difficult decisions have to be made. The board, on the other hand, should focus on whether the administration has implemented sufficiently robust processes and procedures, and should not engage in unnecessary micromanagement of individual circumstances.

- **Excessively long agenda items and presentations, and insufficient time for discussions and decisions.** Agenda documentation sent out in advance of meetings is often too long and detailed, and the presentation to the board often reiterates the content of the documentation. The result is too much time spent on presentations, leaving too little time for discussion and decision-making linked to important agenda items.

- **Insufficient focus on risks and opportunities.** The board spends too little time discussing different risk-related topics. What risk profile should the company have, and what is the desired level of risk? Instead, the board focuses on fire-fighting related to circumstances which have already arisen, and spends too little time assessing whether the company has reliable processes in place for eliminating undesirable risk. In particular, there is insufficient focus on circumstances which are changing and may affect the company's future, such as cyber threats, digitalisation and the consequences of global megatrends.

- **Uncertainty about efforts related to irregularities, anti-corruption and whistleblowing cases.** The board finds matters involving irregularities, anti-corruption and whistleblowing challenging, both with respect to prevention procedures and procedures for handling reported cases. If the board does not know how a good prevention system should look, it is difficult to ask the administration the right questions.

Board annual workplan

Q1

- Q4 report (voluntary)
- Annual report
- Board statement relating to the annual report and board of directors report
- Statement on corporate governance, social responsibility and, if relevant, integrated reporting
- Meeting with auditor (without the administration)
- Audit committee
- Statement of the remuneration committee on executive pay and other remuneration for executive personnel*

Q2

- Q1 report (voluntary**)
- Audit committee, if the company issue Q1 report
- Nomination committee's recommendation to the ordinary general meeting on the election of new board members
- General meeting agenda items
- Ordinary general meeting
- Election of remuneration committee and audit committee

Q3

- Half-yearly report
- Responsibility statement by the board on the half-year financial statements and the half-yearly report
- Audit committee
- Strategy, values and social responsibility
- Risk assessment
- Any visits (subsidiaries/projects/important or new locations)
- Review of new rules on guidelines and executive remuneration report (deadline 1 October 2021)*

Q4

- Financial calendar
- Board self-evaluation
- Board evaluation of managing director
- Q3 report (voluntary**)
- Audit committee, if the company issue Q3 report
- Next year's budget
- Risk management and internal controls (potentially undertaken by audit committee)
- IT and IT security (including cyber risk)

* In 2019, new rules on remuneration guideline for executive persons were introduced for all listed public limited liability companies through amendment of section 6-16a of the Public Limited Liability Companies Act and the inclusion of a new section 6-16b of the Public Limited Liability Companies Act on guidelines and reporting on executive remuneration for listed companies. Companies whose financial years coincide with the calendar year must adopt guidelines compliant with the new requirements no later than 1 October 2021, and must present a remuneration report in accordance with the new regulations to the ordinary general meeting in 2022. See further discussion of this topic in a separate chapter.

** In its investor relations (IR) recommendation, Oslo Stock Exchange recommends that companies should issue interim reports pursuant to IAS 34 (or other corresponding GAAPs) for the first and third quarters even though this is not required by law. Oslo Stock Exchange's IR recommendation is available on the Stock Exchange's website.

2

Board sub-committees

Mandatory and optional requirements

The board may organise its work into different sub-committees. Some committees – such as the audit committee – are mandated by law, while others are recommended in the Norwegian Code of Practice for Corporate Governance.[1] The Code explicitly recommends having both a nomination committee and a remuneration committee. The board should adopt specific instructions for these committees. According to the Code, the board should use the annual report to inform shareholders of board committees, their mandates, their composition and their work processes.

Audit committee – a statutory requirement for companies with issued securities listed on a regulated market

Companies with issued securities listed on a regulated market are required by law[2] to have an audit committee (with certain exemptions). An audit committee is also mandatory (by law) for banks, mortgage providers and insurance companies, as well as financing companies which have issued securities listed on a regulated market. This is clear from section 6–41 of the Public Limited Liability Companies Act, section 8–18 of the Financial Institutions Act and section 12–1 of the Securities Trading Regulations.[3]

1 The Norwegian Code of Practice for Corporate Governance: http://nues.no/wp-content/uploads/2018/10/NUES_eng_web_okt2018_2.pdf. The Code is also discussed in the chapter on corporate governance statements.
2 Oslo Stock Exchange Circular 4/2009 contains a detailed description of the reasons for implementing these rules. However, since the circular is a few years old, parts of the description may be outdated.
3 Special laws relating to audit committees have been issued for commercial banks, savings banks, insurance companies and finance companies, but these are not discussed further here. Note that the Stock Exchange Regulations were repealed with effect from 1 January 2019 in connection with incorporation of MIFID II into Norwegian law, and that the requirement for companies listed on a regulated market to have an audit committee was instead included in the new Securities Trading Regulations.


BØRSE

Audit committees are also discussed in the Norwegian Code of Practice for Corporate Governance, which contains further recommendations and guidance going beyond the statutory requirements.

The category "securities" includes shares, equity certificates, certificates, bonds, warrants, exchange-traded commodities and exchange-traded notes.[4] The regulated markets in Norway are Oslo Stock Exchange and Euronext Expand (formerly Oslo Axess). The exchanges Nordic ABM (for bonds), Euronext Growth (formerly Merkur Market) and OTC (both for shares) do not require an audit committee.

The audit committee is a sub-committee made up of members of the board of directors, and its members are therefore elected by and from among the board members.

The requirement to have an audit committee is intended to improve corporate risk management and internal controls in connection with financial reporting, and was introduced in response to several major international accounting scandals around the year 2000.

See also the separate chapter on audit committee work and the dedicated chapter on changes to audit committee requirements.

4 The implementation of MAR into the Norwegian Securities Trading Actas of 1 March 2021 will entail a slight expansion of the definition of securities.

Remuneration committee – recommended by the Norwegian Corporate Governance Board

The Norwegian Code of Practice for Corporate Governance recommends that the company board should consider establishing a remuneration committee to ensure thorough, independent consideration of executive remuneration matters. The remuneration committee is responsible for preparing all agenda items related to executive remuneration schemes for consideration by the board. The committee should be made up of board members who are independent of the management of the company.

The remuneration committee's tasks will include preparing the following for the board:

- Guidelines on, and agenda items relating to, executive remuneration.
- The executive remuneration statement (see section 6–16a of the Public Limited Liability Companies Act).
- Other material (personnel-related) matters involving executive staff.

Remuneration committee– mandatory for companies in the financial sector pursuant to regulations

Holding companies in the financial sector, banks, finance companies, insurance companies, pension undertakings, investment firms and securities fund management companies with more than 50 employees or more than NOK 5 billion in capital under management must have a remuneration committee; see section 15–3 of the Financial Institutions Regulations.

The committee is intended to function as a preparatory body for the board in relation to monitoring of the company's general remuneration programme and the setting of remuneration for the managing director and management. The remuneration committee must include at least one employee representative. Committee meetings are convened by the committee chair, and the committee must meet at least once a year. It is logical for the meeting to be held in advance of the board's consideration of executive remuneration.[5]

Risk management committee – statutory requirement pursuant to the Financial Institutions Act

Financial institutions are required by law to have a risk management

5 See The Financial Supervisory Authority (Finanstilsynet) Circular no. 2 2020 (replacing Circular no. 15 2014) for further details: https://www.finanstilsynet.no/nyhetsarkiv/rundskriv/2020/godtgjorelsesordninger-i-finansforetak-og-verdipapirforetak.

committee. Read more about this in the chapter on risk management committees. Alternatively, an audit committee mandate can be expanded to include the responsibilities and tasks that would otherwise be performed by a risk management committee. Undertakings which are not bound by the Financial Institutions Act may also establish a risk management committee.

Nomination committee – recommended by the Norwegian Corporate Governance Board

According to the Norwegian Code of Practice for Corporate Governance, companies listed on a regulated market should have a nomination committee. The ordinary general meeting should elect the committee chair and members, set their remuneration and adopt guidelines for the committee's work. The Code recommends that companies include the establishment of a nomination committee in their articles of association.

In preparing its proposal on new board members, the nomination committee should consult shareholders, existing board members and the managing director. The composition of the committee should be such as to ensure that the interests of the community of shareholders are safeguarded. The majority of the nomination committee should be independent of the board and other executives. At least one member of the nomination committee should not be a member of the corporate assembly, the supervisory board or the board of directors. No more than one member of the nomination committee should be a board member, and this member should not stand for re-election to the board. The nomination committee should provide a statement of reasons explaining its nomination of each candidate.

The work of the audit committee

The primary purpose of an audit committee is to ensure independent supervision of a company's financial reporting and corporate governance.

Developments in audit committee responsibilities

Audit committees have a long international history, and have been used by US companies since as far back as the early 1940s as an instrument for monitoring the integrity and quality of financial reporting by public-interest entities.

The role and responsibilities of audit committees are developing and becoming increasingly demanding. Increased regulation, a stronger focus on financial reporting quality, the development of more complicated accounting standards, technological advances and a trend towards increased reporting on topics like social responsibility and sustainability are all signs of a growing workload and higher expertise requirements.

The new auditors act and audit regulation was adopted in November 2020. The new act will primarily take effect for financial years starting on 1 January 2021, but some provisions took effect as of 1 January 2021, i.e. from the start of the calendar year. The changes give audit committees greater responsibility and new tasks, and are discussed further in the chapter Audit Committee – new requirements.

Background and framework conditions

In Norway, audit committees became mandatory for banks, insurance companies, other financial institutions and companies with securities listed on Oslo Stock Exchange/Euronext Expand in 2009. Exceptions apply to smaller listed companies who have fulfilled at

least two of the following three criteria in the last financial year:

1. Average number of employees below 250
2. Total assets below NOK 300 million at the end of the financial year
3. Net turnover below NOK 350 million.

The Public Limited Liability Companies Act specifies in section 6–41 which entities must have an audit committee. Section 6–42 regulates the election and composition of audit committees, while section 6–43 sets out audit committee tasks. Corresponding provisions exist in section 8–18, section 8–19 and section 8–20 of the Financial Institutions Act, and the provisions can also be found in section 12–1 of the Securities Trading Regulations. The Norwegian Code of Practice for Corporate Governance, which is primarily addressed to listed companies, contains recommendations on the establishment of audit committees.

Audit committee tasks are normally further specified in board instructions.

In Europe, the introduction of Article 41 of the Statutory Audit Directive (Directive 2006/43/EC) has required EU and EEA member states to regulate the role of audit committees in public-interest entities, including listed companies. The OECD Principles of Corporate Governance contain guidelines on good practice in the area of corporate governance, and cover key topics related to audit committees.

Purpose and tasks of the committee

The purpose of the audit committee is to be a preparatory body in connection with the board's supervisory roles with respect to financial reporting, external auditor, and the company's internal control and risk management systems, including the internal audit function, if established. The committee's overarching task is therefore to conduct its responsibility for supervision of the company's financial reporting and corporate governance. The audit committee only prepares matters for consideration by the full board of directors, which makes final decisions and bears ultimate responsibility.

Financial institutions delegate supervision of risk management dedicated risk committees. This is regulated by section 13–6(4) of the Financial Institutions Act and section 13–2 of the Financial Institutions Regulations, and is discussed further in chapter 3. The board should prepare audit committee instructions that reflect tasks, duties and available resources. The instructions must cover, as a minimum, the requirements laid out in laws and regulations. Activities should be managed by means of an annual plan which organises regular topics and tasks into a meeting schedule for the calendar year (see, by way of example, the annual audit committee workplan in the next chapter).

The audit committee should be allowed to utilise key expertise within the company or, when needed, to engage external advisers to provide advice and make recommendations.

The committee's monitoring of the accounting process should include a review of the company's processes and internal controls related to the issuance of financial statements and publication of other financial information.

Relevant topics related to the accounting process may include follow-up of:

- The appropriateness of selected accounting practices in key areas, and new accounting standards.
- Significant accounting estimates, for example valuations and write-down assessments that include management's judgement.
- Transactions involving related parties.

The audit committee should include a review of the company's risk management system as a topic in its annual plan. This is an important aspect of monitoring that the company identifies and manages material risks associated with the company's operations.

The audit committee must conduct an ongoing dialogue with the company's elected auditor regarding auditing of the annual financial statements, and the auditor must provide the audit committee with a description of key audit issues, including any material weaknesses found in the company's internal controls linked to the financial reporting process.

Further, the audit committee must assess and monitor the auditor's independence and comment on the proposal regarding election of the auditor. The statement must be presented to the ordinary general meeting before the auditor is elected. For audit committees, the new Auditors Act and audit regulations from 1 January 2021 means that guidelines and an approval procedure for additional auditor services must be in place as of this date (see further discussion in the chapter on Audit Committee – new requirements.

The committee should evaluate its work at regular intervals, considering changes in regulatory provisions and areas of responsibility, the mandate issued by the board and the practical execution of meetings.

In larger companies, the audit committee should report formally to the board in the form of separate written minutes. Since the committee is a preparatory and advisory body, its meetings will normally take place a few days prior to board meetings, particularly around the publication dates of quarterly and annual financial statements.

Composition of the committee

Pursuant to section 6–42 of the Public Limited Liability Companies Act, audit committee members must be elected by and from among the board members. The articles of association may provide that the board as a whole shall function as the company's audit committee.

Board members who are also company executives may not be elected to the audit committee. At least one member of the audit committee must be independent of the company and have accounting or auditing qualifications. The audit committee as a whole must possess the expertise the committee needs to perform its tasks, taking into account the company's organisational structure and activities.

Moreover, the Norwegian Code of Practice for Corporate Governance includes a number of specific recommendations, including that majority of audit committee members should be independent of the company (i.e. going beyond the statutory requirement), and that the company should not utilise the statutory power to have the board of directors as a whole function as the audit committee.

Industry expertise is an important prerequisite for commercial insight, which in turn is a prerequisite for assessing and understanding accounting solutions.

Moreover, industry expertise may well require an understanding of technological developments. It is also recommended that the audit committee collectively is knowledgeable in the areas of risk management and internal control.

It is important to ensure that the audit committee has the right composition and experience. A well-functioning audit committee starts with a good chairperson. Strong leadership and efficiency go hand-in-hand. A good chairperson will bring the best out of each committee member, company management and the external auditor. The responsibilities of the chairperson are further described in the PwC publication "Guide for audit committee chairpersons" ("Revisjonsutvalgets arbeid En praktisk guide for lederen av utvalget"), which is available in our portal for directors on pwc.no.

The committee chair should give priority to ensuring that the composition of the audit committee is appropriate in view of the tasks to be performed by the committee. A strong audit committee does far more than simply comply with formal statutory requirements. General risk management, cybersecurity risk, altered business models resulting from technological developments and expertise on effective internal controls are all examples of topics to be considered by the audit committee. The EU is working on new statutory requirements to strengthen corporate sustainability reporting. There is no doubt that sustainability reporting will also become a topic for audit committees in the near future.

Diversity is considered by most nomination committees when proposing candidates for election to the board of directors. In this context, diversity encompasses more than simply gender balance. Diversity is achieved when the committee members come from different types of companies, when there is a mix of senior and younger members and when the members include both current and former managing directors/ CFOs of other companies and/or experienced former auditors. It is also helpful to rotate members from time to time to include new perspectives.

How many members should the audit committee have?

PwC has seen audit committees ranging from one to six members, and examples where the board of directors as a whole constitutes the audit committee. It is recommended that the audit committee should have at least two members, but a committee of three to four members could be an optimal solution for many companies, depending on individual size and complexity. A small committee can be more efficient in terms of scheduling and holding meetings. It is easier to elect replacement members when the committee is small. On the other hand, a small committee is often more vulnerable to absences or in crisis situations. It could also be vulnerable if only one member has accounting expertise.

Thorough planning and well-prepared documentation increase the quality of audit committee work

The audit committee and the administration should establish a realistic and appropriate timetable for the preparation of meeting documents to the committee members. Effective consideration of agenda items is dependent on the committee having sufficient time to prepare for each meeting.

Extensive documentation may present a challenge. It is therefore advantageous to include an executive summary describing the background to the agenda item, management's assessment and conclusion, proposed measures and a timetable.

If documents are updated on an ongoing basis, new items should be clearly identified. It may also be helpful to include details in appendices rather than the main document.

Some examples of meeting documents which committee members should receive well before a meeting are as follows:

- Annual report and board of directors report.
- Periodic financial statements / quarterly reports.
- The CFO’s summary of important matters and related assessments concerning financial reports and internal controls.
- In the case of a complex and/or material accounting issue, it may be appropriate to draft a separate memo discussing the issue and explaining the administration’s proposed solution.
- Communications with supervisory authorities.
- A summary of unresolved matters, disputes, legal issues etc.
- Correspondence with the external auditor: letter of engagement, management representation letter, legal correspondence, the auditor’s audit plan, letter or reports received from the auditor and written replies to the auditor.

Annual audit committee schedule

Q1

- Q4 report (voluntary)
- Annual report or plan for annual report and any separate sustainability and social responsibility reports
- Events after the balance sheet date
- Management summary of governance and internal controls
- Auditor's summary report
- Auditor's independence and audit fee (potentially in Q2), and approval of any non-audit services provided by the auditor*
- Audit opinion, including KAM (key audit matters)
- Any breaches of laws, rules and internal guidelines, as well as whistleblowing cases
- Material events and transactions, accounting questions, new accounting standards
- Any reports on or meetings with the internal auditor

Q2

- Annual report and any separate sustainability and social responsibility reports
- Q1 report (voluntary)
- Management plan for governance and internal controls
- Work plan for the audit committee
- Audit plan and the auditor's fee budget (potentially in Q3) and approval of non-auditservices provided by the auditor*
- Material events and transactions, accounting questions, new accounting standards
- Discussion of risk of irregularities
- Transactions with related parties
- IT efficiency and security, including GDPR and cybersecurity
- Discussions with key individuals in the organisation (IT, tax, financing, etc.)

Q3

- Half-yearly report (Q2), including the board's responsibility statement
- Audit status and approval of non-auditservices provided by the auditor*
- New accounting standards
- Material events/accounting questions
- Risk management and internal controls
- Valuations/impairment assessments
- Uncertainty and assumptions incorporated into the company's material accounting estimates
- Appropriateness of accounting practices in key areas
- Social responsibility/sustainability work and reporting

Q4

- Q3 report (voluntary)
- Status interim audit and approval of non-auditservices provided by the auditor*
- Annual report – discussion/evaluation
- Any signals received from supervisory authorities over the past year
- Self-evaluation by the audit committee
- Assessment of the administration's expertise and capacity in the areas of risk management, internal controls and financial reporting
- Material events and transactions, accounting questions, new accounting standards
- Discussions with key individuals in the organisation (IT, tax, financing, etc.)
- Any breaches of laws, rules and internal guidelines, as well as any whistleblowing cases
- Any reports on or meetings with the internal auditor

* For audit committees, the new Audit Act from 1 January 2021 means that guidelines and approval procedure for non-audit services provided by the auditor must be in place as of that date. See also further discussion in the chapter on Audit committee – new requirements.

Potential topics for in-depth consideration

- Taxes
- IT – efficiency and security, including GDPR and cybersecurity
- Bonus schemes
- Sustainability work and reporting
- Risk of irregularities
- Changes in market conditions with an effect on the company's financial position and asset valuations
- Material transactions and acquisitions
- Financing
- Inside information
- Consequences for the company of any new or amended accounting standards
- The company's insurance solutions/cover

3

Risk management and internal controls

Characteristics of a robust risk management and internal control system

The board bears overall responsibility for ensuring that the company's activities, financial statements and asset management are subject to satisfactory governance and control measures. This normally requires the board to adopt a formal structure and to ensure that the following are established and monitored:

Risk management

- A framework for identifying, analysing and managing risk and for implementing suitable risk-reduction measures (including internal controls) in the company.
- A general policy describing implementation of the process for conducting risk assessments and reporting these to the board, and specifying the allocation of risk management roles and responsibilities.
- Systematic, regular review of the company's risk exposure.

Risk-reduction measures/ internal controls

- Policy documents describing the company's objectives and values, corporate governance model, authorisations, roles and responsibilities, as well as principles and requirements constituting the framework for the company's activities.
- Formal board instructions containing guidelines on the content of the board's annual work plan, agenda documents and board minutes.
- Formal instructions to the managing director, including guidelines on implementation of the board's

overarching risk management and internal control guidelines and mandatory updating of the board to facilitate process monitoring.

- Key checks at management level. Control questions from the board to management (for example analysis and follow-up of reporting and relevant key parameters for the company).
- Risk-based key checks at process and transaction level (for examples checks examining the company's sales and purchasing activities), scheduled annual activities linked to risk assessment, and amendment and updating of key checks.

Monitoring compliance with risk-reduction measures/internal controls

- Defined monitoring processes that help ensure actual compliance with adopted requirements, guidelines and key checks.
- Implementation of measures when compliance-related weaknesses or deficiencies are identified.
- Process for management's reporting of status updates and any non-conformances to the board.

The board's duties to ensure proper organisation of the company and that financial statements and asset management are subject to satisfactory controls are longstanding requirements. These requirements apply not only to listed companies and public-interest entities, but also to private limited liability companies in general.

Control questions for the board

How can the board ensure that risk management and internal controls actually ensure that the company identifies and manages risk in a satisfactory manner and issues a credible corporate governance statement in compliance with applicable requirements? The answer to this question depends on factors such as the nature, complexity and size of the company.

Below are 14 points that expand on this overarching question. The answers to the questions below will reveal where the board should investigate further and consider measures to refine the company's governance and control procedures.

1. Has the board made risk management and internal controls an independent topic on the board agenda?
2. Have targets, quality requirements and risk management and internal control principles been adopted?
3. Are there written guidelines for critical business processes?
4. Does the company take a systematic approach to identifying and analysing risk?
5. Are risk assessments documented and communicated to relevant parties?
6. Does the company have systems to ensure that all material risks are assessed and that adequate measures are implemented and monitored?
7. Have clear roles and responsibilities related to risk management and internal controls been allocated? Are these recorded in writing?
8. Are checks updated as the risk profile changes?
9. Are checks updated systematically and periodically?
10. Is the implementation of checks documented in a verifiable manner?
11. Is the implementation of critical checks monitored systematically?
12. Have appropriate internal controls been established in connection with financial reporting?
13. Does the board receive regular reports on the status of internal controls, and is the board trained in what to do with such reports?
14. Are action and follow-up plans implemented when weaknesses or non-conformances are identified in internal controls?

Board responsibility for risk management and internal controls – checklist

The board is responsible for ensuring that the company has robust internal controls in place, as well as appropriate risk management systems in view of the complexity, scope and nature of the company's activities. The board should therefore conduct an annual review of the company's key risk areas and internal controls designed to address identified risks.

A checklist setting out control questions which the board an use in general discussions of risk management and internal controls follows below. The checklist is intended to foster structured, more comprehensive board discussion of risk management and internal controls. An initial practical measure can be to give the list to the administration to ensure that the board receives necessary information.

The questions in the introduction to topics 1 and 2 are designed for use with each of the sub-topics in the same table.

1 TOPIC **Roles and responsibilities**	**OK?**
Questions on roles and responsibilities: • Are roles and responsibilities clearly and appropriately defined? • Are roles and responsibilities adequately formalised in the form of mandates/instructions? • Have mandates/instructions been communicated and understood? • Are lines of communication and reporting clear? • Is an integrated description of the system as a whole available?	
1. Governing bodies • The board and board committees of the group parent • The board and board committees of subsidiaries • Audit committee • Others	
2. Management functions • Managing director • Group management • Managers of subsidiaries • Others	
3. Control functions (second line of defence) • Controllers • Compliance function • Risk management function • Others	
4. Audit functions (third line of defence) • Internal auditors	

2 TOPIC **Governance, planning and follow-up**	**OK?**
Questions on governance, planning and follow-up: • Has the board been provided with a process description? • Is the level of detail in the information provided to the board appropriate? • Is the process design expedient? • Does the process function in practice? Is the board given briefings on this?	
5. Planning processes • Strategy • Annual action plan • Budgets/forecasts • Scorecard • Other	
6. Follow-up processes • Monthly reports • Quarterly reports • Scorecard follow-up • Management discussion and analysis (MD&A) • Business reviews • Other	
7. Financial reporting • Monthly financial statements • Quarterly financial statements /interim financial statements • Half-year financial statements • Annual financial statements • Other	

3 TOPIC **Risk management and internal controls**	**OK?**

Questions on risk management og internal controls:

- Do the board and management have a clear understanding of what risk management and internal controls are and how they should be designed?
- Has the board been provided with a process description?
- Is the level of detail in the information provided to the board appropriate?
- Are the framework design and the process design expedient?
- Does the process function in practice? Is the board given briefings on this?
- Are risk management and internal controls an annual checklist item alongside management activities, or are they integrated into planning and follow-up processes?

8. Risk assessment

- Is the board involved in discussions of the company's risk appetite?
- Are the right persons/bodies involved in risk assessments?
- Is there a clear procedure for risk assessments, including support tools for execution?
- Has a technical methodology been identified for risk assessments (inherent, residual, scale, etc.)?
- s the board familiar with material risks facing the company, and are these reported to the board regularly (at least annually)?

3 TOPIC **Risk management and internal controls**	**OK?**
9. Design and implementation of risk-reduction measures/ internal controls • Are adopted internal control measures sufficiently formalised through governance documents such as policies, procedures and handbooks? • Are governance documents maintained/updated regularly, and are they made available in a format that allows retrieval of required information? • Have key checks been adopted that systematically address material risks facing the company? • Have regular activities been established to ensure change management and maintenance of the design of these controls? • Are internal controls sufficiently standardised to facilitate best-practice sharing? • Is the board familiar with the internal control measures that address material risks facing the company?	
10. Monitoring of risk and internal controls • Is the board regularly provided with information on whether risk management and internal controls are being implemented in accordance with requirements and guide-lines, and whether the system is working satisfactorily? • Is the board regularly provided with information on developments in material risks? • Has the auditor summarised his/her view on internal controls for the board?	

General Data Protection Regulation

Data protection is about safeguarding the right of individuals to a private life and the right to control their personal data. Digital services have developed at a rapid pace in recent decades. The volume of personal data which is being processed is increasing, and data are being processed in new ways. Data are no longer being processed in one company alone, but are being transferred across corporate and national borders.

Norway adopted a new Personal Data Act in 2018. The key part of the new act comprises the EU's General Data Protection Regulation (GDPR). The Regulation is a set of common European rules on the processing of personal data, and is the most extensive innovation in the European data protection field in modern times. The GDPR retains the key principles of the previous Personal Data Act, but also includes a number of changes. Primarily, the GDPR strengthens individual rights related to personal data.

All companies and public bodies that process personal data belonging to European citizens are required to comply with the GDPR. In other words, compliance with the legislative data protection requirements is mandatory for all undertakings, from small and medium-sized enterprises that only process the personal data of their own employees to large companies with many customers, or entities that process sensitive personal data.

To ensure compliance with the rules, and to ensure that individual rights are protected, the GDPR requires companies to have robust management and control procedures in place for their processing of personal data.

So that individuals can exercise their rights, the GDPR provide that companies must have robust management and control procedures in place for their processing of personal data.

The new rules therefore require undertakings to:

- Maintain an overview (record) of processes in which they process personal data.
- Develop an internal control regime with documented procedures for ensuring compliance with the GDPR, including a mechanism for demonstrating compliance with general data protection principles.
- Address any personal data security breaches and report breaches above a certain level of seriousness to the Norwegian Data Protection Authority within 72 hours of a breach being discovered. In some cases, individuals affected by a breach must also be notified.
- Conduct risk assessments related to the processing of personal data. Sometimes, an undertaking will also be required to conduct a data protection impact assessment and, in relevant cases, initiate an advance dialogue with the Norwegian Data Protection Authority regarding how data protection risks and threats can be minimised.
- Enter into data processor agreements with parties who process personal data on their behalf, and actively monitor such suppliers.
- Apply data protection by design principles to the processing of personal data in their systems. This is also known as “privacy by design”, and entails implementing the most data protection-friendly handling of personal data as the default setting for all systems.
- Comply with special requirements related to the transmission of personal data to countries outside the EU/EEA.
- Comply with the requirement for various private undertakings to appoint a data protection officer (the requirement applies to all public bodies).
- Ensure the protection of all citizens’ new rights, such as the right of access, the right to data portability and the right to demand erasure of personal data.

Breach of the GDPR may result in a fine of up to 4% of global turnover or EUR 20 million, whichever is the higher amount. Company boards should therefore ensure that their companies maintain an overview of processes involving the processing of personal data, and that procedures are developed to ensure compliance with GDPR requirements. Moreover, undertakings are increasingly adopting new technologies, including in the field of decision automation. If the company uses such solutions (automated decision solutions, solutions for developing deeper customer insight) or solutions involving artificial intelligence, the board should also ensure that these new solutions are compliant with GDPR requirements. The board should also evaluate whether the company needs to appoint a data protection officer.

Cybersecurity and risk

Companies have been tested in 2020. A new reality in which employees cannot meet as before has led many companies to expedite the adoption of new technologies. Many people consider that the digitalisation which has occurred during the Covid-19 pandemic would have taken several years to achieve under normal circumstances. These new technologies offer substantial benefits, but have also made things easier for criminals and spies. How then should companies protect themselves against digital threats, and what responsibilities do management and the board have in this context?

Digital trust creates opportunities in an otherwise uncertain world

As part of its annual Global Digital Trust Insights survey, PwC interviewed more than 3,000 board members and managers from all over the world. Their feedback was clear: in the first three months of the pandemic, digitalisation of their companies accelerated at a significantly faster pace than anticipated.

The replies also revealed other changes, including:

- A clear increase in the priority given to digitalisation efforts, and unanticipated effects on business strategies.
- Digital ambitions have skyrocketed, with a doubling in the number of respondents stating that they intended to amend their business model and redefine their activities compared to last year.
- Twice as many respondents as last year expressed an intention to take on new markets or industries.

Making things quicker or more efficient was the preferred digital ambition for almost one-third of the respondents. Approximately the same proportion wanted to modernise existing systems, and more than one-third stated that they were accelerating automation to cut costs. This is unsurprising at a time when revenues have become less secure.

New cybersecurity strategies are required in the "age of corona"

Rapid procurement, rapid implementation of technology and experimentation with new business models are generating new risks.

The survey shows that almost all respondents intended to adjust their cybersecurity strategies in response to the pandemic, and the number of respondents stating that they were more likely to incorporate cybersecurity considerations into all business decisions more than doubled from last year. Success in this area requires a culture in which employees are encouraged to consider the consequences of choices. Moreover, good decisions have to be made on the design of security measures so that these support operational objectives.

Chief information security officers must meet operational needs

A high pace of change and uncertainty mean new demands on chief information security officers (CISOs). In 2021, a CISO must have diversity expertise, as clearly illustrated by the survey. Transformation through digitalisation requires the ability to management inter-disciplinary teams. Moreover, CISOs must bring necessary speed and boldness to the company by developing flexible, forward-looking security and data protection strategies, making good investments and developing robust plans.

CISOs must be tacticians, technologically knowledgeable and have good business understanding. Operational targets and performance requirements must be balanced with the need for security and data protection throughout the company, against the backdrop of constant penetration attempts and a rapidly changing threat profile.

Characteristics emphasised in the survey include the ability to think strategically, the ability to take smart risks, leadership abilities and the ability to recognise and facilitate innovation. In other words, CISOs have to have different characteristics from those employees may normally associate with "the person who always says no".

From cybersecurity to digital trust

2020 marks a turning point in the cybersecurity field. When a company is in the middle of a digitalisation race, a commercially-driven cyber strategy will be an important developmental step for management generally and the chief information security officer in particular. Digital advances are also influencing how companies have to utilise budgeted funds, invest in security solutions, develop plans for building digital robustness and resistance, and improve how security work is organised. Succeeding with cybersecurity efforts can be decisive for piloting a company safely through unknown waters and building digital trust among customers and business partners.

Knowledge and process

How then should companies seek to protect their assets? Given that many companies are generally ill-equipped to handle the challenges presented by digital threats, it makes sense to rely on experts and adopt recognised industry practices and standards. Companies must develop knowledge about the technologies they are using so that they can understand the security and data protection challenges they have to overcome, and they must formalise processes to gain an overview of and manage risks that arise.

This sounds simple – and in principle it is – but a large part of the problem is that many companies have never addressed this issue properly.

What should companies do?

Statistics from various published surveys, including PwC's annual Cyber Crime Survey, indicate that almost all companies experience incidents that threaten their security during the course of a year.

Digital threats have become a serious societal problem, and companies have a responsibility to their customers, partners and investors to combat such threats and protect their assets. This requires the following to be in place:

- Valuation: identify company assets. These are what has to be protected.
- Threat assessment: identify relevant threats. These are what has to be protected against.
- Vulnerability assessment: identify vulnerabilities. These are what will be exploited in an attack.
- Risk assessment: a risk assessment comprises the three preceding elements. This determines priorities.
- Policy documents: adopt policy documents in the field of information security. Conduct regular checks to ensure compliance.
- Action plan: now that unacceptable risks have been identified, they must be addressed.
- Continuous improvement: once the first round of assessment and responses has been completed, the next round can begin.

Board members should ensure that they are updated on the company's risk profile. The administration should be asked to give a briefing on the 10 most significant identified vulnerabilities, and the risks associated with them. Protecting a company against digital threats is not complicated, but must be done. Tried and tested methodologies and frameworks are available for this. The responsibility of board members is to ask managers questions and demand and monitor the implementation of substantive risk-reduction measures.

Control questions for the board and management

1. What is the compliance status of statutory requirements related to cybersecurity and data protection?
2. How are cybersecurity efforts supporting the company's strategic objectives, and who is leading these efforts?
3. How is the company keeping employees' cybersecurity knowledge up to date?
4. How is the company handling cybersecurity in connection with acquisitions, expansion into new markets and product launches?
5. How is the company working to uncover and prevent unauthorised parties from accessing the company's key assets, and what is required to reduce risk to an acceptable level?
6. What plans does the company have to handle computer hacking and attempted sabotage, how are these plans tested and how are staff trained on them?
7. How can the company benefit from participating in information-sharing programmes with other relevant companies and organisations?
8. How does the company evaluate its cybersecurity efforts, and how does the company's performance compare to industry peers?
9. How does the company ensure that its suppliers comply with its security requirements?
10. What is the company's position on insuring against computer hacking, and what do any insurance policies cover?

Risk management committee

All companies assume some level of risk as part of their operations. It is important for the board to understand how risk affects value-generation and profits, and to adopt an active approach to the company's risk profile and risk tolerance. In recent years, larger companies – particularly in the financial services industry – have transitioned from pure bottom-line assessment and the return on equity to risk-adjusted performance assessment. Both the board and shareholders are concerned about value-generation relative to assumed risk. A risk management committee can help the board to gain a deeper understanding of key company risks and how they are managed.

Major financial institutions are subject to the requirement to establish a risk management committee. The discussion below is based on the requirements applicable to large financial institutions, but will also be of interest to the boards of non-financial undertakings as an aspect of integrated risk management.

The requirement for financial institutions to have a risk management committee was introduced in 2014 through the EU's rules for financial institutions: the Capital Requirements Directive (CRD) IV. The rules were designed to address weaknesses in risk and capital management in the financial services industry that contributed to the financial crisis. The requirement to establish a risk management committee can be found in section 13–6 of the Financial Institutions Act. The boards of other companies have a statutory responsibility to ensure proper management, including risk management. However, non-financial companies are free to organise their supervision of risk management under dedicated board committees, or through expansion of the audit committee's role.

In companies which are not subject to the Financial Institutions Act, including listed companies, similar tasks have often been assigned to the audit committee in accordance with section 6–43 of the Public Limited Liability Companies Act, which states that the audit committee must "monitor internal control and risk management systems". For more detailed information on audit committees, see section 2.

Organisation of the risk management committee

A risk management committee should function as the board's advisory and preparatory body, and should give the board an overview of the company's overall system of risk, governance and control mechanisms. To ensure the independence of the committee, its members may only include board members who are not involved in the day-to-day management of the company. Members of the risk management committee must have sufficient knowledge and expertise to understand and monitor the company's risk strategy and risk appetite.

The establishment of a dedicated risk management committee also requires the board to implement clear delimitation of the committee's mandate relative to the tasks of the audit committee and the remuneration committee. It is important to avoid work duplication, particularly in areas where responsibilities may overlap, such as internal auditing. A further example of potentially overlaps between the responsibilities of board committees is remuneration schemes. A risk management committee should consider the company's remuneration schemes and evaluate whether these promote responsible risk management and do not incentivise undesirably high risk-taking. The remuneration committee must always remain a body that evaluates remuneration schemes as a whole, develops guidelines on and agenda items concerning executive remuneration, and conducts ongoing assessments and monitoring of company policies in this area.

Section 13–1 of the Financial Institutions Regulations provides that financial institutions whose capital under management has been less than NOK 20 billion for more than 12 months may decide that the board as a whole shall constitute the company's risk management committee[1] Such companies may also choose to have a joint audit and risk management committee. The exception related to risk management committees is adapted to the exception from the requirement to have an audit committee. The draft new Financial Institutions Regulations

1 Section 13–1 of the Financial Institutions Regulations grants exceptions from the requirement to have a risk management committee for financial institutions which are wholly-owned subsidiaries within a financial group and where the parent company has a risk management committee that assesses risk and capital needs for the group as a whole pursuant to section 13–6 of the Financial Institutions Act, for mortgage companies that issue covered bonds and for finance companies without shares or equity certificates listed on a regulated market or issued bonds or certificates with a total nominal value of EUR 100 million or more.

include the proposal that the board as a whole may act as the risk management committee of small and non-complex companies; see Article 4(145) CRR.

Risk management committee tasks

The purpose of establishing a risk management committee is to increase the focus on risk management within the company. According, the purpose of the risk management committee is to improve the board's assessments of the company's risk culture, establish guidelines and policies for the company's level of risk appetite and monitor management's implementation of and compliance with these. The risk management committee must also help ensure clear links between general strategies, risk management and capital planning.

The risk management committee is a preparatory body, while the board is authorised to make decisions and bears full responsibility for the tasks performed by the risk management committee.

While audit committees largely focus on risk and internal controls in the context of financial reporting, as well as dialogue with the external auditor, the risk management committee has the following tasks:[2]

- Improve the board's assessments of risk and total capital requirements.
- Conduct a regular dialogue with the risk control function "risikokontrollfunksjonen" and receive relevant reports from the company's control functions.
- Review the company's risk policies at least annually.
- Monitor compliance with the company's risk policies.
- Assess whether the company's product prices are in line with the business model and risk strategy.
- Areas which the risk management committee should evaluate include:
- The company's frameworks for risk tolerance, risk appetite and risk management.
- The content, format and frequency of risk reporting by the administration.
- The company's self-assessment of risks and capital requirements (ICAAP, ORSA).
- The organisation and follow-up of the company's risk management function, with respect to expertise, resources and regulatory requirements.
- The design of incentive schemes, with respect to risk, capital, liquidity and earnings.
- The company's internal audit function, including internal audit plans, priorities and reporting.

The risk management committee's meeting schedule should be aligned with the dates on which financial institutions have to submit their capital plans, and with reviews, updates and revisions of the company's risk appetite, risk tolerance and related risk policies.

2 See section 13–2 of the Financial Institutions Regulations.

Board follow-up of compliance issues

A company may become involved in compliance issues,[1] often when this is least expected. Examples may include a situation where a company employee has breached applicable rules (legislation or internal policies) and situations where the company is somehow linked to corruption, money laundering, breaches of insider trading rules, "me too" cases, etc. Compliance issues can often put the company in a bad light and entail considerable reputational risk. In serious cases, such issues may also result in fines and penalties imposed by the authorities.

Compliance issues require an appropriate board response, and may expose board members for liability claims. Corporate governance is a key board task, and the board must therefore ensure appropriate organisation of the company. According to the Private Limited Liability Companies Act, "day-to-day management does not include matters which are unusual or of great importance in view of the company's circumstances".[2] Accordingly, the board must follow up on matters of an unusual nature or great importance. Further, the Private Limited Liability Companies Act states that, "The board initiates such investigations as it deems necessary for the performance of its tasks."[3]

It is important that the board reacts quickly when an compliance issue arises. Although experience indicates that the threshold for holding the board of directors liable for exercising poor

1 "Compliance issues" refers to breaches of laws, rules and/or internal policies by employees (and the company).
2 Section 6–14(2) of both the Public and PrivateLimited Liability Companies Act.
3 Section 6–12(4) of the Private Limited Liability Companies Act.

commercial judgment is high, any passivity from the board's side can quickly result in damages action brought against the board members.

Below is a list of recommendations as to the initial steps the board should take to gain control over a situation and to demonstrate that it is being proactive. A prerequisite (for our recommendations) is that all relevant compliance programmes (such as for instance an anti-corruption programme) are updated and in place.

1 Schedule a board meeting as quickly as possible, preferably the same evening

A board meeting must be scheduled immediately to consider the matter, if necessary by telephone. Although the facts are likely to be incomplete at this initial board meeting, waiting until the board has a complete overview is not a viable option. Scheduling a board meeting immediately is important to gain insight into the situation and assess next steps.

2 The board meeting

At the initial, first board meeting, the administration of the company must give a briefing on the situation. Draft board minutes may be prepared before the board meeting, as this provides a clear meeting agenda and ensures that an orderly record is kept from the start. In that regard the board should keep in mind that the minutes from the board meeting may later be reviewed critically by stakeholders and external authorities. Where the board concludes that a matter is particularly serious, this should be clearly stated in the minutes. Moreover, the minutes should comment on steps taken by the administration thus far and describe actions to be taken going forward.

As stated, the board and administration are unlikely to have all relevant information available at the initial board meeting. It is therefore crucial that the board asks the administration to take necessary follow-up steps (conduct a “fact-finding mission”) to clarify all aspects of the situation. The board minutes must describe the actions to be taken at this stage. A member of the administration must be put in charge of following up on the tasks assigned to the administration.

In such situations, the board should be open to the administration's suggestions regarding next steps and the approach to take, since the administration (as the executive body) is after all the responsible body for implementing measures, assessing their effectiveness and adequacy on an ongoing basis, and reporting back to the board. At the initial board meeting, a second board meeting must be scheduled for the near future to follow up on the tasks assigned to the administration in connection with the matter.

3 Next, an in-person board meeting

A second board meeting should take place shortly after the initial board meeting. The complexity and seriousness of the matter will determine how quickly the board reconvenes. This board meeting should be attended in person by all board members and relevant members of the administration to allow a more thorough review of the matter. The purpose of the meeting is to update the board on all facts gathered by the administration, and the meeting attendees may well include legal advisers or other experts who can explain specific aspects of the matter and advise the board on next steps.

Note that legal advisers can also consult individually with board members.

4 Subsequent board meetings

Depending on the size and complexity of the company, the board normally holds a limited number of board meetings every year. However, in situations where the board has to follow up on potential breaches of rules or other compliance issues, the board will usually have to meet more frequently. Holding several board meetings also signals that the board is aware of its obligation to be active in following up such matters, and is responding proactively to any potentially critical issues. Among other things, such active follow-up by the board may be relevant if the question of liability on the part of the board should come up at a later stage.

Further follow-up of compliance issues will vary from instance to instance, and it is therefore impossible to provide specific and complete guidance on how to follow up on such matters. In any event it is important to note that passivity by the board is not an option. Any decision by the board to await further developments is not in the company's best interests. On the contrary, the board must demonstrate the ability and willingness to engage with a compliance matter and act proactively. It is therefore important both to hold effective board meetings and that the board's active follow-up is well documented in the board minutes.

4

Reporting

Developments in corporate reporting

Financial stability and sustainable development are global objectives. The world's businesses are a key component of this ecosystem. Robust investment decisions, healthy corporate conduct and the sharing of correct information are critical for value creation and reputation. Demonstrating how a company supports global goals is therefore becoming ever more important for company boards and in external communications.

An important driver in this regard is increasing expectations among different interest groups regarding greater corporate responsibility. This may relate to environmentally-friendly conduct, efforts to reduce greenhouse gas emissions, protection of human rights and a focus on social conditions such as inequality. Ideally, consumer products and services should meet these expectations throughout the value chain. Moreover, information accessibility has increased to an unprecedented level. Companies therefore have to help their stakeholders through targeted communication in key areas. Information should be shared continuously, not just in quarterly and annual updates.

Financial reports alone are insufficient

This new reality has created a substantial reporting gap. Stakeholders expect more and better information from individual companies, and simply reporting traditional financial information is no longer sufficient. Non-financial matters also have to be reported on. The Green Deal is the von der Leyen Commission's strategic growth plan for making Europe the first carbon-neutral continent by 2050. One important measure in this context is the development of rules requiring large companies subject to EU disclosure requirements to publish sustainability information, and the development of a framework for a classification system for sustainable economic activity. Supplementary rules and requirements for Norwegian companies are also expected in the near future.[1]

Improved reporting = more opportunities

Structuring information and reports wisely is more important and more difficult than ever before. Experience indicates that the majority of large companies in Norway, and their managements, have realised that they have to focus and report on more than just financial circumstances. Many executives have also recognised that this offers new opportunities.

In PwC's annual Global CEO Survey, the majority of chief executives considered that measurement and reporting of company activities by reference to social, environmental and financial dimensions promotes improved and more long-term value creation by their company.[2]

This is supported by other surveys which have found that more integrated financial and non-financial reporting with a stronger focus on company strategy promotes more productive dialogue with investors and higher value creation.

In a study conducted by PwC in 2014, investors were asked for their views on the potential consequences of more transparent and strategic reporting. Their feedback was clear: 89% of investors stated that greater transparency about a company's strategy, risks, value drivers and opportunities had a direct effect on the company's cost of capital.[3] Investors also stated that the principles driving more strategic and integrated reporting allowed them to improve their investment analyses. In recent years, such an increased focus on non-financial reporting has become a reality, particularly for the largest global companies. A study conducted by the Investor Responsibility Research Center Institute (IRRCI) shows, among other things, that some 93% of the world's largest companies produce a sustainability report.[4]

Studies carried out by the University of Bern, the University of Hamburg and Harvard Business School document that more integrated external reporting has a positive influence on company

1 The Financial Supervisory Authority's (Finanstilsynet's) issuer seminar 2020: Sustainability reporting by listed companies.
2 PwC: PwC Global CEO Survey.
3 PwC: Corporate performance: What do investors want to know?
4 Investor Responsibility Research Center Institute (IRRCI): State of Sustainability & Integrated Reporting 2018.

value,[5] and allows companies to attract longer-term investors.[6] An extensive study by Blacksun[7] documents that companies which have adopted more strategic external reporting have achieved improvements in:

- Increased internal understanding of commercial opportunities and risks
- In-house decision-making
- Cooperation on strategies and objectives between the board and the company's strategic functions.

The main challenges related to current corporate reporting

Current financial reporting requirements are generally considered to be complex and not designed to present a complete picture of a company's actions and priorities, since they were drafted with different objectives in mind. Both Norwegian and international companies are attempting to fill the information gap as best they can, and the trend towards reporting of non-financial information is moving in the right direction. However, is progress quick enough?

In 2020, PwC analysed the non-financial information published by Norway's 100 largest companies.[8] The analysis covered both annual reports and other published information.

The analysis and PwC's own reporting and audit experience related to financial and non-financial information reveal a number of general trends and challenges related to the reporting practices of Norwegian companies:

- A large proportion (73%) of Norway's largest companies are now prioritising one or more UN Sustainable Development Goals (SDGs). Many companies are reporting quantified results and have adopted quantitative targets linked to the SDGs.
- Companies are increasingly integrating sustainability into their business strategies, although only a minority are working on sustainability at the strategic level (three out of 10 companies have integrated sustainability topics into their strategies).
- Greenhous gas emissions, energy consumption and climate risks and opportunities are the areas which most companies have incorporated at the strategic level.
- Many of Norway's largest compa-

5 Arnold, Bassen and Frank: Integrating CSR reports into financial statements: An experimental study.
6 Serafeim: Integrated reporting and investor clientele. Harvard Business School.
7 Blacksun: Realizing the benefits, the impact of integrated reporting.
8 PwC: Sustainability 100 and climate index.

nies have integrated climate risk into risk management in recent years and are working proactively to respond to societal changes. State-owned companies have a significantly stronger focus on all non-financial risk management factors, compared to private companies.
- Companies are increasingly measuring and quantifying the results they achieve in prioritised sustainability categories. Greenhouse gas emissions are the area for which the largest number of companies has defined quantified results and targets.
- Under-performance with respect to emissions reductions. PwC's analysis shows that only four of the 100 largest companies in Norway are documenting emissions cuts in line with the Paris Agreement.

Characteristics of "good reporting"

In recent years, different institutions, companies and enthusiasts have made targeted efforts to develop models for closing the information gap. Various proposals and initiatives have been launched. Work in this field is challenging, not least because additional regulation is often undesirable, particularly in areas where regulatory supervision is difficult.

In the absence of a formal framework, "good reporting" typically has the following recognisable characteristics:

- The company provides clear information on its objectives, including non-financial targets. The best companies include relevant targets linked to the SDGs and thereby demonstrate their efforts to engage with their environment.
- Provided information reflects risks and materiality, i.e. factors which are critical to the company's ability to create long-term value, and how the company's activities impact the external environment and social conditions.
- Company reports cover topics important for value creation, i.e. shared information is strategically focused, reflects core company processes and covers factors that promote and hinder target achievement in the short and long term. The links between strategies, targets, risks and achieved financial and non-financial results are shown. Both historic and future-oriented information is provided.
- Any material risk of non-achievement of targets, risk tolerances and measures to address undesirable risks are described.
- Information is complete (in view of what is material), relevant, brief, comparable over time and accurate.
- Information is genuine and true.

Three recommendations

Despite the fact that this is a challenging area, complex companies can issue good reports. There are several examples of this.

Experience indicates that three particular pieces of advice are important:

1 Communicate material issues

External reports must provide the information required to understand the company's value creation and what is important for the company's stakeholders. One size does not fit all – the company must tailor its reports to what is critical for its target audience. An important aspect of this is understanding the priorities of the company's stakeholders. Stakeholders include not only investors, but also employees, relevant authorities, suppliers and the community in which the company operates. The company's targets must (or should) therefore cover more than financial considerations alone.

2 Provide context

External reports must provide as comprehensive a picture of the company's value creation and future viability as possible. A comprehensive picture means an overview of strategies, targets, risks and achievements. Topics that should be covered typically include the business model, material external factors affecting the company, strategies, strategic risks and objectives, and indicators illustrating the degree of target achievement. The company must therefore provide real, deep insight into the drivers of value creation in the short and long term. The matters on which the company must report externally are probably – to a far greater degree than previously – also what guides the company's internal management. The "dashboard" of stakeholder information is what actually creates value, and should guide management in its decisions. Competition or confidentiality considerations may make it undesirable or even impossible to cover certain topics, but this is unlikely to be a significant problem in many cases. Companies should therefore seek to be as transparent as possible.

3 Report (truthfully) on target achievement

External reports must include information on target figures and important steps taken to achieve adopted targets (or reasons why targets have not been achieved). Where there are discrepancies between targets and target achievement, emphasis should be given to explaining these. Moreover, the company must exploit the opportunities offered by new technologies when reporting on target achievement, rather than increasing the number of manual operations. In summary, this means that companies must reveal more of their inner workings. They should not be afraid to relate their efforts to integrate non-financial considerations. External stakeholders are focused on what is happening within the company, what efforts the company is making and whether the company is actually assessing and managing its operations by reference to a broader range of factors than financial achievements alone.

The positive effects of transparent reporting

Saving the best for last: companies that have adopted the above approach in their external reporting in recent years are reporting positiveeffects. An increased focus on materiality, value drivers and risks in external reports appears to facilitate deeper insight, a stronger governance and management focus and improved decision-making. In other words, transparency in the external reporting context is moving companies in a positive direction.

The benefits of more integrated reporting
Ask yourself...

Internal reporting

- Are our reports flexible enough that we can register and respond to critical changes?
- Do we have market insights and the non-financial information we need to remain proactive, or are we too dependent on historical financial information?
- Are we measuring clear metrics that are familiar to everyone, and is it clear who is responsible?
- Are we able to compile a complete and accurate picture of what is happening in the company in financial and operational terms?

External reporting

- Can persons who do not know us from the inside understand what we do and how we create value?
- Do our reports demonstrate a clear link between strategies, targets and performance?
- Do we report on our actual risks and success factors?
- Are we sufficiently specific about our targets and how we measure our performance?
- Would we invest in the company based on the information provided, including financial and non-financial data and achieved results?

It is important for all management teams to examine themselves from an external viewpoint. Assess what the company is communicating externally with a sceptical eye, from the perspective of an investor, new employee, customer or supplier.

In the autumn of 2015, the UN member states adopted 17 sustainable development goals for the period to 2030.

Financial reporting by listed companies

Companies listed on Oslo Stock Exchange and Euronext Expand (formerly Oslo Axess) are required to issue annual and half-year consolidated financial statements. Most listed companies also issue voluntary quarterly reports in Q1 and Q3. Financial institutions have to issue interim financial statements for all quarters.

The boards and managing director of all listed companies have to issue a separate responsibility statement in annual and half-year financial statements and reports. The Financial Supervisory Authority (Finanstilsynet) monitors companies' financial reporting, i.e. the actual financial statements, that financial statements are issued on time and that annual and half-yearly reports fulfil formal requirements. Finanstilsynet is not authorised to grant exemptions from reporting deadlines.

Half-year financial statements are issued in accordance with IAS 34 Interim Financial Reporting, and pursuant to that standard comprise the following:

- Statement of comprehensive income taking the form of either:
  - one statement, or
  - two statements: a statement of profit or loss and astatement of other comprehensive income
- Balance sheet.
- Statement showing changes in equity.
- Cash flow statement.
- Notes.

Half-yearly and any quarterly financial statements pursuant to IAS 34 must be prepared on the basis of the same principles as apply to preparation of the annual financial statements, and reports must include comparable figures for earlier periods.

Interim financial reporting pursuant to IAS 34 also includes segment information and information on the profit/loss per share. The note requirements in IAS 34 focus on the presentation of information on material events and transactions during the reporting period. It should be noted that the same information must be provided about disaggregation of revenues as in annual financial statements. Experience shows that interim financial statements still often omit this information.

It is important to exercise great caution in connection with changes in accounting principles, implementation of new accounting principles or correction of errors. In such situations, it becomes necessary to decide how the change should be incorporated and discussed in notes, and to determine effects on earlier interim financial statements. The board should also be actively involved in deciding how this will be communicated to the capital market.

Voluntary reporting of Q1 and Q3 financial statements

Oslo Stock Exchange's IR recommendation states that listed companies should issue quarterly financial statements for Q1 and Q3. The recommendation also states that quarterly reports should be issued no later than the 15th day of the second month after the end of the accounting period. Oslo Stock Exchange also recommends that voluntary interim financial statements should be prepared in accordance with IAS 34. However, this does not prevent issuers from deciding to prepare shorter periodic reports based on consistent accounting principles. The market includes several examples of companies that have chosen this approach. In such cases, the companies should state explicitly that the interim financial statements have not been prepared in accordance with IAS 34 but that the applied accounting principles are consistent with the annual financial statements.

Half-yearly report

Listed companies must prepare a half-yearly report, which pursuant to section 5–6 of the Securities Trading Act must include:

- Half-year financial statements
- An interim BoD report
- A responsibility statement by the board and managing director.

The half-yearly report takes the form of a quarterly report (see above), but is supplemented by an interim BoD report and a responsibility statement from the board and the managing director as described below. The interim BoD report and the responsibility statement are two separate documents. Accordingly, the responsibility statement cannot be integrated into the interim BoD report.

The half-yearly report must be issued as quickly as possible, and no later than two months after the end of the relevant accounting period. Oslo Stock Exchange's IR recommendation states that the half-yearly report should be issued no later than the 15th day of the second month after the end of the accounting period. The issuer must ensure that the half-yearly report remains publicly available for at least five years.

Half-year financial statements

Half-year financial statements constitute interim financial statements in accordance with IAS 34, as described above.

Interim management report

Requirements relating to half-yearly reports are set out in section 5–6(4) of the Securities Trading Act:

"The interim management report[9] shall include at least an indication of important events that have occurred during the first six months of the financial year, and their impact on the half-yearly financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year. For issuers of shares, the interim management report shall also include major related parties transactions."

Pursuant to statutory requirements – and as when preparing the annual report – the board must exercise judgement to decide what information is of material significance to readers of the financial statements. The report must cover the entire first half of the year, even if events in the first quarter have already been discussed in a voluntary Q1 report.

Important events are ones which are having or may in future have a material effect on the financial statements. Examples of such events include purchases and sales of substantial assets or operations, conclusion/lapse of important contracts, new financing for the company, material effects of foreign exchange transactions or derivatives, and other one-off effects or unusual transactions. The discussion must be sufficient to allow readers to understand the impact of the events on the financial statements.

9 The translation of the Securities Trading Act uses the term management report about the report issued by the Board of Directors (BoD) and managing director. We use the term BoD report in this publication.

The interim BoDt report must also contain a description of risks and uncertainties. These should be specific the risk factors to which the company is exposed and on which the board and management are focusing. General discussion of industry risk factors is insufficient. Corresponding requirements related to discussion of risk factors in annual reports are relevant in this regard.

Section 5–3 of the Securities Trading Regulations includes disclosure requirements applicable to related-party transactions. As a minimum, the report must detail related-party transactions implemented in the first six months of the current financial year which have had a material effect on the company's financial position or results during this period.

It is also necessary to notify any changes in related-party transactions described in the previous annual report which could have a material impact on the company's financial position or results during the period.

Half-yearly statement by the board and managing director

The half-yearly report must include a responsibility statement by persons in charge at the issuer. The statement is linked to the interim BoD report and the half-year financial statements. In this context, "persons in charge" means the board members and managing director, as specified in section 5–2 of the Securities Trading Regulations. All board members, and the managing director, must sign the statement. It is insufficient for the board chair to sign on behalf of the board as a whole.

The content requirements relating to the half-yearly statement can be found in section 5–6(2) of the Securities Trading Act:

"Statements by the persons in charge of the issuer, including a clear specification of their names and job titles, confirming that

1. *the half-year financial statements have, to the best of their knowledge, been prepared in accordance with applicable accounting standards, and that the information in the financial statements provides a correct picture of the assets, liabilities, financial position and overall performance of the company and the group, and that*

2. *to the best of their knowledge, the interim management report provides a correct overview of the information specified in the fourth paragraph."*

The statement must be published as part of the half-yearly report and must cover the financial statements presented in the half-yearly report. As stated above, most listed companies only present group figures. If a company presents parent company figures – whether pursuant to a statutory duty or voluntarily – the statement must also cover these.

Examples of board statements on the half-year financial statements can be found in the final part of this chapter.

Quarterly and half-yearly reporting – role of the auditor

Interim financial statements do not have to be audited. This applies to both half-year financial statements and any voluntary quarterly financial statements. However, if an audit opinion or a review opinion for interim financial statements is issued, it must be published along with the interim financial statements. If the financial statements are unaudited, this must be clearly specified in the financial statements.

However, it may be wise to involve the company's auditor in the reporting of interim financial statements, especially when major transactions have taken place. This can help the company to avoid surprises when the annual financial statements are audited.

Annual report

According to section 5–5 of the Securities Trading Act, the annual reports of listed companies comprise:

- Consolidated financial statements and separate financial statements for the parent company
- BoD report
- Statement by the board and managing director

The consolidated financial statements must be prepared in accordance with IFRS. When preparing the separate financial statements for the parent company, it is possible to choose between IFRS, simplified IFRS and Norwegian accounting rules (NGAAP). Listed companies that do not issue group financial statements must prepare their separate financial statements in accordance with IFRS.

The annual report must be published as quickly as possible, and no later than four months after year-end. Oslo Stock Exchange's IR recommendation states that the annual report should be published no later than three months after year-end, unless the company publishes a Q4 report at an earlier date. The issuer must ensure that the annual report remains publicly available for at least five years.

The annual report must also include a corporate governance statement; see section 3–3b of the Accounting Act and further discussion of this topic in the chapter on corporate governance statements. Pursuant to section 3–3c of the Accounting Act, listed companies must also issue an annual statement on what they are doing to integrate different aspects of social responsibility into their business strategy, daily operations and stakeholder dialogue. If relevant, they must also state that the company does not have such guidelines, procedures and standards. See further discussion of this topic in the chapter on social responsibility reporting.

Moreover, section 3–3d of the Accounting Act and section 5–5a of the Securities Trading Act require companies which are engaged in activities in extractive industries and which fulfil certain specified criteria to prepare and publish an annual report containing information on their payments to authorities at country and project level ("country-by-country reporting"). The Securities Trading Act requires reports to be accompanied by a separate responsibility statement. The provision in the Accounting Act also applies to companies engaged in forestry activities in virgin (unplanted) forests. The annual report must include information on where the report has been published. Section 3–3d of the Accounting Act and related regulations contains further details of reporting requirements and reporting exceptions.

Statement by the board and managing director

The annual report must include a statement by the board members and the managing director on the annual financial statements and the annual report.

The requirement is set out in section 5–5 of the Securities Trading Act, which reads:

"Statements made by the persons responsible within the issuer, whose names and functions shall be clearly indicated, to the effect that

1. *to the best of their knowledge, the financial statements have been prepared in accordance with applicable accounting standards and give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and the group taken as a whole and that*

2. *the management report includes a fair review of the development and performance of the business and the position of the issuer and the group taken as a whole, together with a description of the principal risks and uncertainties that they face."*

Information about shareholders matters annual report

Section 5–8a of the Securities Trading Act requires companies which have issued securities listed on Oslo Stock Exchange or Axess and which are also subject to a legal obligation to maintain financial statements pursuant to the Accounting Act to provide the following information in the annual report:

1. a description of provisions in the articles of association that restrict the right to trade in the company's shares,
2. a description of who exercises rights attaching to shares included in any employee share scheme(s), if such rights are not exercised directly by the employees covered by the scheme(s),
3. shareholder agreements of which the company is aware and which restrict opportunities to trade in or exercise voting rights attaching to shares,
4. material agreements to which the company is a party and whose terms take effect, are amended or cease to apply as a result of a takeover offer, and a statement on such terms. If announcement of an agreement would create an unreasonable commercial disadvantage, the company may omit announcement of the agreement. The exception does not apply if the company is obligated to publish information about the agreement pursuant to other legislation.

Third-country issuers

If a company is registered outside the European Economic Area (EEA) but listed within the EEA, the company will be a so-called third-country issuer. Third-country issuers benefit from some exceptions related to the accounting language. Moreover, third-country issuers may apply to The Financial Supervisory Authority (Finanstilsynet) for an exemption from the requirement to publish an annual report, a statement by the board and managing director,

and parent-company financial statements if the company in question is subject to requirements in its home state that are deemed to be equivalent. This topic is discussed further in the PwC publication, “Financial reporting for foreign companies listed on the Oslo Stock Exchange”.

Example statements

Examples of how statements could be formulated in both Norwegian and English are provided below. However, it is important to note that some companies may have to frame the statement in such a way that it describes the company’s current situation. PwC’s examples below are not intended as a template or recommended statement text.

Statement on the half-year financial statements and interim management report

Statement by the board and the managing director

We confirm, to the best of our knowledge, that the interim financial statements for the period 1 January to 30 June 202x have been prepared in accordance with IAS 34 – Interim Financial Statements, and give a true and fair view of the assets, liabilities, financial position and profit or loss of the entity and the group taken as a whole. We also confirm that the Board of Directors’ Report includes a true and fair review of the development and performance of the business and the position of the entity and the group, together with a description of the principal risks and uncertainties facing the entity and the group

Place, date

Signatures
(Board members and managing director)

Statement on the annual financial statements and annual report

Statement by the board and the managing director

We confirm, to the best of our knowledge, that the financial statements for the period 1 January to 31 December 202x have been prepared in accordance with current applicable accounting standards, and give a true and fair view of the assets, liabilities, financial position and profit or loss of the entity and the group taken as a whole. We also confirm that the Board of Directors' Report includes a true and fair review of the development and performance of the business and the position of the entity and the group, together with a description of the principal risks and uncertainties facing the entity and the group.

Place, date

Signatures
(Board members and managing director)

Guiding – earnings guidance

If a company decides not to report on a quarterly basis but still provides investor guidance on future accounting figures, the company must pay increased attention to its guiding procedures.

Some companies guide the capital market based on expected EBITDA or profits in a specified future period, often the next financial year. This is acceptable to Oslo Stock Exchange and Finanstilsynet as long as the company updates the market with new information (for example new accounting figures, new sales figures, etc.) when the company sees that it will not achieve the result which is expected based on guiding. Updates must take the form of earnings guidance. The purpose of such guidance is to adjust the market's profit expectations, whether in a positive or negative direction.

Companies may not delay publication of such profit warnings until the next accounting report (in accordance with the financial calendar). Earnings guidance must be reported immediately once management becomes aware of the new information.

However, companies should note that if a capital transaction requiring a prospectus is to be implemented subsequently, such guiding will have to be discussed separately in the prospectus, and will require auditor confirmation (or confirmation by other competent advisers).

Priorities when issuing IFRS accounts

At the beginning of 2020, many companies expected a quiet year on the accounting front, having finally completed implementation of IFRS 9, 15 and 16. However, the Covid-19 pandemic has ensured that the 2020 financial year is also anything but business as usual.

Covid-19

Covid-19 will have a wide-ranging impact on the accounts of many companies this year. The primary need is for concrete information on how the company has been affected. For example, production capacity may have been reduced for part of the year, production may have stopped due to non-delivery by sub-contractors, there may have been challenges with the transportation of products to customers or infection-control measures may have severely affected operations. The most important priority in this context is specific qualitative information. It may also be helpful to quantify certain circumstances in management comments or notes to the accounts. Circumstances which can and should be quantified are characterised by the fact that it is possible to determine the size of the effect objectively. It will be difficult to establish objectively what proportion of a revenue change is due to Covid-19. It may be easier to quantify cost effects, by including notes specifying amounts spent on infection-control equipment, the total sum expensed as unutilised capacity (which may not necessarily be due solely to Covid-19), or increased payroll costs resulting from changes in shift arrangements in connection with infection control measures. Even if some effects can be quantified, companies should avoid adding additional lines or sub-totals to the profit and loss account in respect of Covid-19 effects.

The situation also has various other accounting effects. Assets may have declined in value, and credit risk linked to outstanding receivables and loans may have increased. Valuations are less certain and additional supplementary information will be required on any discretionary assessments and assumptions made. Qualitative and quantitative information about credit risk becomes more important when risk increases.

Some companies face greater liquidity challenges due to weaker earnings or reduced access to capital. As a result, information on financing and liquidity risk must be sufficiently detailed to give users of the accounts a good understanding of the situation. For example, it may be appropriate to use shorter time intervals in the debt maturity analysis, or it may be helpful to provide information on financing for each individual borrowing facility. Information on loan terms is also key.

In the hardest-hit companies, there may be uncertainty regarding the going-concern assumption. In such cases, a thorough analysis is required of whether the conditions underpinning the assumption are met. If the conclusion is that the conditions are met, the financial statements must clearly identify the circumstances which are causing uncertainty and what is required to secure continued operation. Assessments of such uncertainty must be updated with new information right up until the board of directors approves the accounts.

New rules applicable in 2020

While there are not any new standards applicable in 2020, the IASB did make some amendments to existing IFRS standards and interpretations that are in effect for the 2020 financial reporting year.

Businesses

IFRS 3 Business Combinations now includes a new, narrower definition of “business”. Further, a simplified assessment process is now permitted when evaluating whether an asset or a business has been acquired when the relevant transaction primarily involves an asset or several similar assets. The new definition and simplified rule mean that more acquisitions can be treated as asset purchases in the accounts. The question of whether an acquisition involves the purchase of an asset or a business is relevant to the accounting treatment of deferred tax, goodwill, transaction costs and contingent consideration. The changes are primarily relevant to the property industry and other capital-intensive sectors.

Materiality

The term “materiality” is central in accounting reports, and the definition of materiality in IAS 1/IAS 8 has been redefined and expanded. The general starting point remains the same: an accounting error is material if it could affect decisions by users of the accounts. The definition has been expanded by the statement that accounts are materially incorrect if information is “obscured”. Examples of situations where information may be obscured include:

- Information about a material item, transaction or other event is provided in the financial accounts

but is described in vague or unclear language.
- Information about a material item, transaction or other event is spread out across the various financial statements.
- Separate items, transactions or other events are aggregated inappropriately.
- Similar items, transactions or other events are disaggregated inappropriately.
- The understandability of the financial statements is reduced because material information is obscured by immaterial information to such an extent that a primary user cannot determine which information is material.

Rent concessions and Covid-19

In response to the Covid-19 pandemic, an emergency change was made to IFRS 16 in the spring of 2020. A simplified rule was introduced to allow tenants who benefit from rent concessions resulting from the Covid-19 pandemic to treat these as variable rent. The practical consequence is that rent concessions may be recorded in the profit and loss account in the periods to which they apply, instead of in accordance with the rules on modification of leases. When the general rule is applied, rent concessions will be recorded as changes in lease debt and the right of use. The profit effect will then be distributed across the residual lease period in the form of reduced depreciation and interest costs.

The IBOR reform

The IBOR reform (amendment of benchmark rates) has resulted in some changes to the rules on hedge accounting in IFRS 9. The rules have been adjusted so that the hedge accounting rules may still be used when the hedging instrument is a derivative linked to an IBOR rate, even if this rate will cease to be the benchmark rate during the term of the hedging transaction.

Going forward

Very limited changes will be required in accounts for the year 2021. A number of changes to various standards will take effect in 2022 and 2023. However, most of these changes are clarifications which are not applicable to many companies. More companies will be affected by the change to IAS 37 (as of 2022) regarding costs to be included in the identification of loss-making contracts (full-cost model) and the change to IAS 1 (as of 2023) regarding the distinction between current and long-term liabilities.

Priorities in The Financial Supervisory Authority's (Finanstilsynet's) accounting audits

Finanstilsynet plays an important role as an external controller of the financial reports of listed companies. Finanstilsynet's controls combine rotation and risk assessment. When conducting its checks, Finanstilsynet focuses on matters which it considers to be of material importance to users of the accounts. In addition to company-specific circumstances, Finanstilsynet

concentrates on priority topics. Selected control areas are coordinated at European level through the European Securities and Markets Authorities (ESMA).

In connection with 2020 accounts, Finanstilsynet will be focusing particularly on how companies address Covid-19 in their accounts. Finanstilsynet has emphasised that accounting information must be company-specific, and will be focusing especially on discretionary assessments in this context. A brief discussion of priority areas identified by Finanstilsynet is included below.

IAS 1 Presentation of Financial Statements

Where liquidity is significantly affected by the Covid-19 pandemic, supplementary note information is expected if there is material uncertainty about whether the going concern assumption is met, including when it is concluded that this is the case. The outcome range of estimates is expected to be greater as a result of the pandemic, and it is particularly important to specify any assumptions made and estimates which could affect the accounts for the next period significantly, and to provide specific information on sensitivity.

Companies are urged to hold back on presenting Covid-19 effects on separate lines in the profit and loss account. It is generally assumed that this approach could provide misleading information. Instead, comprehensive and supplementary information on the effects of the pandemic should be provided in the notes, preferably in the form of a separate, cross-referenced note.

IAS 36 Impairment of Assets

The Covid-19 pandemic has resulted in more pessimistic outlooks and a negative development of the real economy, and is generally a strong indicator of declining value. Even if an indicator-based test has been carried out in preceding quarters, an annual depreciation test is still required. It is recommended that this test should include a scenario analysis if this provides the best picture of potential future developments. Increased uncertainty can be reflected in more traditional value in use either by increasing the risk mark-up on the discount rate or by making a risk adjustment of cash flows.

Note particularly that IAS 36 requires greater emphasis on external information than internal information, and not least supplementary note information on all assumptions and assessments incorporated into calculations and sensitivity.

IAS 9 Financial Instruments and IFRS 7 Financial Instruments – Disclosures

Comprehensive information is expected on risks associated with financial assets and liabilities, particularly liquidity risk and market risk. Note information must include both how risks arise and how companies manage risk. It is likely that new risks have emerged as material as a result of the Covid-19 pandemic – compared to previously – and deferred payments, breaches, loan defaults, etc. are clear indicators of increased risk.

Loss allocations by credit institutions are crucial. Estimates of credit losses must be unbiased, forward-looking and take into account all available and relevant information. Note also the need to provide supplementary note information, including on changes in the loss model, the information and assumptions on which loss assessments are based, changes in loss allocations distributed by loan class, credit concentration, change analysis in respect of loss allocations, etc.

IFRS 16 Leases

Tenants must specify whether they have utilised the temporary change in IFRS 16 for 2020 in respect of rent concessions resulting directly from the Covid-19 pandemic (see discussion above). Lessors are required to provide information on any material deferment or non-payment of lease payments.

Finanstilsynet has monitored compliance with the disclosure requirements in IFRS 16 and has made the disclosure requirements in IFRS 16 a priority due to weak compliance.

Other focus areas

Finanstilsynet will continue its special monitoring of the use of alternative performance measures (APM) and information on sustainability and climate risk. In the area of sustainability, the focus will be on the requirements of the Accounting Act concerning the inclusion of information in the annual report.

Finanstilsynet has stated that some companies are still not compliant with the requirements related to note information on operating revenues. It has also observed that many companies are struggling to implement adequate mandatory reconciliation of changes in book debt with cash flow from financing activities.

Questions the board can ask when reviewing annual financial statements

The reporting process

- How does management ensure that accounting figures are correctly compiled and reported?
- Have all established control measures worked during the current period, or have there been changes and/or non-conformances?
- What improvement proposals has management received (from external parties and/or the internal audit function) related to the reporting process?
- How has management reacted?
- Are there material areas that still require attention?

Accounting principles/practice

- Do the financial statements clearly identify the accounting language which has been used (e.g. NGAAP or IFRS)?
- What effect will any changes in the accounting rules have on the financial statements?
- Have the accounting principles been changed during the year?
- How do the company's practices compare to those of industry peers?
- Have management and the auditor disagreed on accounting principles or practices? How was the disagreement resolved?

Accounting principles/practice

- What is the overall impression of the applied accounting principles and the company's accounting practices? Are they conservative or aggressive?
- What are the areas of greatest uncertainty regarding application of the rules, and where is estimation uncertainty the highest (risk of material impact next year)?
- Have errors been corrected with effect for earlier accounting periods? If so, why, and what is the effect?
- Have other corrections been made that affect earlier periods? What are the reasons for these?
- Have there been any material individual transactions during the period? If so, do the financial statements provide sufficient information about material individual transactions?
- Does the company use financial derivatives in its operations? If so, how does the company handle risks associated with entering into and following up on these instruments?
- Is hedge accounting applied?

The annual financial statements

- Do the annual financial statements contain specific information on how the company is affected by Covid-19?
- What are the criteria for revenue recognition?
- Is there a reliable analysis showing developments in gross income compared to last year (price, volume, mix)?
- Is the development logical?
- Have all accruals been made, such as bonuses and discounts?
- What material provisions/corrections were made during annual closing?
- How are maintenance and investments distinguished?
- Have costs related to potentially doubtful projects been capitalised? If so, why?
- What confirmations have legal advisers issued with regard to ongoing disputes and claims?
- What external valuations have been used to quantify value in the financial statements? Have these been quality-assured?
- Are there any related-party transactions in the period? If so, have these been handled in accordance with the Private Limited Liability Companies Act (see separate chapter on company-shareholder transactions), and has adequate information on related-party transactions and outstanding balances been included in notes to the financial statements?
- Is the company at risk of breaching loan agreements and loan terms? Have potential breaches and their consequences been adequately explained?
- What are the most important points of explanation related to the annual profit/loss and net cash flow?

Valuations and potential liabilities

- Has the company invested in unusual and/or complex financial instruments? If so, how have these been valued?
- How does the average age distribution of accounts receivable at year-end compare to last year? Can the quality of large outstanding debts be questioned?
- Are there indications that tangible fixed assets or intangible assets should be written down? If so, how has the valuation been prepared?
- If the company relies on external valuations, who has prepared these, and what are the principal assumptions and parameters with an effect on value?
- If the recoverable amount in impairment tests is based on value in use calculations, what are the principal assumptions, and how sensitive is the conclusion for changes in these assumptions? Are the assumptions neutral, reasonable and documentable?
- What procedures were carried out to identify obsolescence or surplus stock? Were material write-downs made?
- Are there statutory requirements, for example environmental, that may affect the value of assets negatively or require any provisions to be made?
- Are there any unresolved tax cases? If so, how have the potential outcomes been dealt with in the financial statements?
- Have “offensive positions” been taken in the company’s tax return for the current year?
- Are there liabilities or contingent liabilities that have not been taken into account?
- Does the company have removal or restoration obligations? If so, how have these been handled in the accounts?

Note disclosures

- Which areas currently feature the greatest financial risk, and how are thesehandled? Has sufficient information been provided on financial risk?
- Has relevant information been provided on factors influencing the going-concern assumption?
- Has sufficient information been provided on contingent liabilities and assets not recognised in the balance sheet?
- Has relevant information been provided on dealings between the company and non-consolidated entities (i.e. entities that are either related or where control is not determined by voting rights)?
- Are there material or unusual sums outstanding from management or employees?
- Are there other material transactions involving related parties that require specification?
- Have the board and executives personally checked/been given the opportunity to check note disclosures on pay and other remuneration?
- Has the company taken account of all auditor feedback on note disclosures? Which proposals currently remain open?

Transparency and overall impression

- Are the comments of the board and management on the annual financial statements balanced, comprehensive and comprehensible?
- Are deviations from the expectations described in last year's annual report explained?
- What material changes have occurred in the market in which the company operates during the year?
- Are changes reflected in the comments of the board and management?
- Have the company's financing and financial position been adequately explained?
- Does the annual report (the annual financial statements, the board's report and other parts of the annual report) provide a complete general picture of the company's operations and position?
- Based on a review of the annual financial statements, are there any indications of potential weaknesses in internal controls, or of irregularities or errors?
- Does the company use alternative performance measures? Have these been reconciled with the financial statements and been adequately explained?

Questions for the auditor

- Was the scope of the audit as planned?
- Did management place restrictions on or limit the scope of the audit in any way?
- How was the cooperation with management during the audit period? Did the auditor receive all requested information and explanations?
- Were material corrections made to the annual financial statements as a result of the audit?
- Are there any proposed audit adjustments that have not been implemented? What is the overall effect of these adjustments?
- What are the most important accounting judgments and estimates in the financial statements?
- How are the company's accounting practices rated? Conservative or offensive?
- Are there areas where the auditor has not obtained sufficient audit evidence yet?
- Which part of the financial statements does the auditor consider to carry the highest risk of a change with a material impact on the following year's profit/loss?
- What deficiencies in note disclosures identified by the auditor have not been taken into account?
- If the auditor had prepared the financial statements, what would the auditor have done differently?
- Does the audit raise any key issues in addition to those discussed in the audit opinion?

Corporate governance statements

Oslo Stock Exchange required listed companies to adopt the Norwegian Code of Practice for Corporate Governance developed by the Norwegian Corporate Governance Board (NUES) soon after the Code's publication in 2004. In 2011, the legislature followed up with a concrete requirement in the Accounting Act for listed companies to discuss their corporate governance principles and practices in either the annual report or a separate document referred to in the annual report.

Which companies have to prepare a corporate governance statement?

The following undertakings are required to issue a statement (section 3–3b of the Accounting Act):

- Companies subject to a legal obligation to maintain financial statements which have issued shares or bonds listed on Oslo Stock Exchange or Oslo Axess.
- Companies resident outside the EEA which have issued shares or bonds listed on Oslo Stock Exchange or Oslo Axess (i.e. third-country issuers who have Norway as their home state).
- Public limited liability companies which have issued shares listed on an authorised marketplace outside the EEA.

These listed companies must therefore comply with both the provisions of the Accounting Act – which establish minimum requirements related to the statement – and the corporate governance recommendations and rules applicable to the company in its capacity as a listed company, including the Norwegian Code of Practice for Corporate Governance.[1] The Accounting Act exempts companies that only have listed bonds from the

1 The Code of Practice is available on www.nues.no: https://nues.no/english/.

content requirements applicable to the statement.

The board must ensure that the description of the company's internal controls and risk management provide a correct picture of the company's actual situation, and that the content requirements applicable to the statement are met.

The statement is a disclosure requirement that necessitates expansion of the board's annual report (or preparation of a separate document to which the annual report refers) to include specific corporate governance information. The responsibility of individual board members for the statement corresponds to their responsibility for the content of the annual report otherwise.

The Norwegian Code of Practice for Corporate Governance – higher expectations than the minimum requirements under the Accounting Act

The Norwegian Code of Practice for Corporate Governance goes further than the Accounting Act as regards the statement explaining whether the recommendations are being complied with. The statement must cover every individual point in the recommendation.

Further, companies that do not follow the Code must both explain this decision pursuant to the statutory requirement and explain what alternative arrangements have been made. This is referred to as the "comply or explain" principle.

The Norwegian Code of Practice for Corporate Governance has been updated several times since 2004. The current version is the ninth edition, published in 2018.

Stricter reporting requirements related to executive remuneration

The Norwegian Corporate Governance Board has stated on NUES.no that the Code will not be revised in 2020, but that regulatory developments related to topics including executive remuneration may necessitate changes in 2021.

New and expanded requirements in the Public Limited Liability Companies Act[2] concerning guidelines and reporting on executive pay and other remuneration will enter into force in 2021. The proposed implementation date means that a statement and guidelines will have to be adopted by 1 October 2021, and that the executive remuneration policy statement will have to be prepared by the date of the ordinary general meeting in 2022. The statement must include guidelines on the setting of pay and remuneration for the next financial year, and the executive remuneration statement must address the preceding financial year, including how the guidelines on setting executive remuneration have been implemented. The statement must be checked by the company's auditor before being considered by the company's ordinary general meeting.

The rules will apply to companies listed on Oslo Stock Exchange and Euronext Expand, and are discussed further in the chapter in the Directors' Handbook on adopted and forthcoming changes.

Statement content pursuant to current rules

Companies should report in accordance with the Norwegian Code of Practice for Corporate Governance. As a minimum, companies must comply with the requirements of the Accounting Act. The statement must therefore contain at least the following; see section 3–3b of the Accounting Act:

1. A specification of corporate governance recommendations[3] and rules which apply to the company or which the company otherwise decides to follow.
2. Information on where recommendations and rules as mentioned in paragraph 1 are publicly available.

2 Section 6–16a of the Public Limited Liability Companies Act.
3 See The Financial Supervisory Authority's (Finanstilsynet's) letter dated 23 mars 2019 to the Ministry of Finance and Directive 2014/95/EU.

3. An explanation of any deviations from recommendations and rules as mentioned in paragraph 1.
4. A description of the main elements in the company's (and – in the case of entities subject to a legal obligation to maintain financial statements that also prepare group financial statements – potentially also the group's) internal control and risk management systems used in the financial reporting process.
5. Provisions in the articles of association that wholly or partly expand or deviate from the provisions of chapter 5 of the Public Limited Liability Companies Act.
6. The composition of the board of directors, corporate assembly, supervisory board and control committee, and of any working committees of these bodies, as well as a description of the key elements in applicable instructions and guidelines on the work of the bodies and any committees.
7. Provisions in the articles of association that regulate the appointment and replacement of board members.
8. Provisions in the articles of association and authorisations that permit the board to decide that the company shall buy back or issue treasury shares or equity certificates.

Companies that only have bonds listed on an exchange or a multilateral trading facility are exempt from providing information on the matters listed in paragraphs 1, 2, 3, 5 and 6, and may therefore issue a less comprehensive statement.

Further comments on paragraph 4
Companies must be prepared to substantiate claims related to internal control and risk management systems used in the financial reporting process. Although the requirements are not as strict as under US law (the Sarbanes–Oxley Act – SOX), the principles can give helpful guidance. Effective as of 1 January 2021, new rules have been introduced that expand on and clarify the responsibilities and tasks of audit committees. According to the new rules,[4] an audit committee shall:

a inform the administrative or supervisory body of the audited entity of the outcome of the statutory audit and explain how the statutory audit contributed to the integrity of financial reporting and what the role of the audit committee was in that process;
b monitor the financial reporting process and submit recommendations or proposals to ensure its integrity;
c monitor the effectiveness of the undertaking's internal quality control and risk management systems and,

4 See section 6–43 of the Public Limited Liability Companies Act on the tasks of the audit committee.

where applicable, its internal audit, regarding the financial reporting of the audited entity, without breaching its independence

The Financial Supervisory Authority (Finanstilsynet) has been given supervisory responsibility for the audit committee's areas of responsibility. Accordingly, the audit committee must expect closer and more direct involvement in matters such as the company's communications with the supervisory authority regarding its areas of responsibility, including internal controls and the financial reporting process. New rules are discussed further in a separate chapter of the Directors' Handbook.

Further comments on paragraph 5

In the statement, the board must provide information on provisions in the articles of association that deviate from the provisions of the Public Limited Liability Companies Act. Such deviations may relate to:

- Rules on the holding of ordinary general meetings
- The authority, etc. of the ordinary general meeting
- Special majority requirements, etc.
- Voting restrictions

In connection with listing on Oslo Stock Exchange or Euronext Expand, deviations from shareholder rights pursuant to the Public Limited Liability Companies Act will be considered and discussed in the listing prospectus. This will be a natural starting point for drafting the statement in subsequent periods.

Gender equality and diversity

To implement EU requirements concerning information on the company's gender equality and diversity guidelines, Finanstilsynet has proposed the inclusion of this topic as a new requirement in section 3-3b, second paragraph, of the Accounting Act.[5] The proposal has not been implemented in Norwegian law to date.[6] However, the Norwegian Code of Practice for Corporate Governance states that companies should have gender equality and anti-discrimination guidelines, and companies that follow the Code will therefore have to give an explanation if they do not follow the recommendation. Providing information on the company's gender equality and diversity guidelines therefore pre-empts anticipated regulatory developments. Reference is also made to the requirement that gender equality and non-discrimination infor-

5 See Finanstilsynet's letter dated 23 March 2019 to the Ministry of Finance and Directive 2014/95/EU.

6 See discussion in the separate chapter on the status of the work of the Accounting Act Committee.

mation must be included in the annual report and social responsibility reports. This is discussed in the chapters on changes to the Accounting At and social responsibility reporting.

Shareholder information in the annual report

At the same time as the requirement to issue a corporate governance statement was incorporated into the Accounting Act, the provisions on the content of the annual report were expanded through the inclusion of a shareholder information requirement (section 3–3a, final paragraph, of the Accounting Act and section 5–8a of the Securities Trading Act) applicable to companies listed on a regulated market (which in Norway means Oslo Stock Exchange or Euronext Expand). The requirement encompasses matters such as shareholder rights, restrictions in agreements or articles of association, and employee share schemes, as well as material agreements to which the company is a party and whose terms take effect, are amended or cease to apply as a result of a takeover offer. These requirements partly overlap with the requirements in section 3–3b of the Accounting Act. If a company decides to report on corporate governance matters in a separate document referred to in the annual report, the shareholder information requirements (as described in section 5–8a of the Securities Trading Act) must also be explicitly specified in the board's annual report.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Social responsibility reporting

Social responsibility reporting is important for a company's own activities and its environment. Stakeholders such as investors, employees and customers make company-related decisions based on such information. Experience shows that companies are struggling to report this type of information in way that meets stakeholder needs in terms of both content and quality. PwC's most important advice is to report matters of strategic importance to the company and improve the quality of reported information.

Who

While social responsibility reporting is required by law for some entities, it is voluntary for most companies.

"Large companies" (primarily listed companies, public limited liability companies, banks, finance companies and parent companies in financial groups) have a statutory duty to report on social responsibility; see section 3–3c of the Accounting Act. The purpose of the provision is to clarify the social responsibility of businesses and promote increased transparency in this area. This includes a clear expectation for large Norwegian companies to incorporate social responsibility into their business strategies, daily operations and dialogue with stakeholders. At present, customers, investors and society clearly expect businesses to manage their environmental and social impact. As a result, companies are increasingly reporting on their social responsibility and sustainability efforts voluntarily. Robust reporting is indicative of good corporate governance, and the results of sustainability efforts can affect a company's access to capital, pricing, reputation and commercial prospects.

Rules and regulations, guidelines and reporting

The Accounting Act requires the board to issue an annual statement on the company's efforts to integrate considerations such as human rights, labour rights, gender equality and non-discrimination, social conditions, the external environment and anti-corruption into their business strategies, daily operations and stakeholder dialogue. The statement must include information on guidelines, principles, procedures and standards used by the company to integrate these considerations into business strategies, daily operations and stakeholder dialogue. The statement must also explain how these considerations translate into action, detail achieved results and set out future expectations in this area. If the company does not have guidelines, this must be stated.

The requirement in the Accounting Act to issue a statement on gender equality and non-discrimination is linked to the Equality and Anti-Discrimination Act's requirement to issue a statement. The latter act establishes not only a duty to issue a statement, but also an activity duty, and the statement is intended to ensure – among other things – that the activity duty is met. The statement obligations in both acts can be fulfilled by issuing a joint statement in the annual report, or by preparing a separate, publicly accessible social responsibility document to which reference is made in the annual report.

The requirement to issue a social responsibility statement is directly relevant to the work of the board. The board is responsible for ensuring that company stakeholders have access to material information and that the company meets expectations regarding transparency and appropriate reporting. If these objectives are to be achieved, reports must take a form that allows owners and others to make informed decisions, for example with regard to investments, choice of employer and supplier selection. In this context, non-financial information on environmental and social conditions is also important to many stakeholders.

Reports must be considered by the board and be incorporated into the annual report or a separate, publicly accessible document to which reference is made in the annual report. This requires social responsibility efforts to be supported by the company's governing bodies. Through its strategy development, the board must provide guidance on the integration of social responsibility and sustainability into the company's business strategy and daily operations. Companies are expected to describe their social responsibility guidelines, and these have to be approved by the board. The value of social responsibility guidelines is maximised when they focus on challenges relevant to both the company's priority stakeholders and company objectives.

The board has a responsibility to practise transparency about how the company manages material risks. This includes topics like human rights, labour rights, social and environmental conditions and anti-corruption. Different companies have varying exposure to these challenges, and this exposure largely depends on the relevant industry and the geography of the company's value chain. A company engaged in extensive activities in emerging markets will face different challenges to a company that only operates in Norway. The statutory requirement envisages that individual companies will decide the scope of their reporting based on an assessment of risk and materiality.

The Accounting Act is largely in accordance with international developments, including the EU directive on social responsibility reporting requirements. The UN Sustainable Development Goals (SDGs) set out higher expectations of businesses and regarding companies' contribution to achievement of the 17 SDGs. Internationally, there is an increasing trend towards authorities imposing clear requirements related to this kind of reporting.

Oslo Stock Exchange has issued guidance on how listed companies can develop their statutory social responsibility reporting in a practical and integrated manner. The stock exchange has pointed out that deficient information in these areas can have consequences for company pricing, and the guidance is intended to serve as a practical and voluntary tool that helps companies to fill the information gap when preparing social responsibility reports.

Several Norwegian companies have already made significant progress in the area of sustainability reporting. Most companies state that increased transparency about the topic has created value. A number of companies see their next step as being to integrate such reports into their financial reporting. If this is done successfully, companies can clarify how sustainability topics affect financial value creation. Boards have an important role to play as drivers of increased awareness and transparency about companies' main challenges and opportunities.

In 2020, The Financial Supervisory Authority (Finanstilsynet) published a survey of sustainability reporting by listed companies, based on the companies' own reports to Finanstilsynet on sustainability in the year 2019.[1] In the survey, Finanstilsynet emphasised how companies are working on sustainability reporting, what information they are reporting and how this information is presented. The report is intended to provide an overall picture of current reporting practices, as well as guidance on companies' future reporting, and will constitute the basis for Finanstilsynet's supervisory work going forward.

1 https://www.finanstilsynet.no/globalassets/tilsyn/finansiell-rapportering/survey_companies_sustainability_reporting_2020.pdf

How to report on social responsibility successfully:

1. Define an overall strategy and targets for the company's social responsibility efforts.
2. Identify the company's most relevant sustainability challenges based on risks and the company's environmental and social impact.
3. Prioritise strategically relevant challenges.
4. Clarify the target group for external reporting.
5. Establish reporting parameters that define what is important to the company and external stakeholders, and measure progress. Are any of the UN SDGs relevant in this regard?
6. Report balanced, credible and complete information.
7. Ensure that reported information is correct through internal or external verification.

Going forward – regulatory developments

In addition to section 3–3c of the Accounting Act, the reports refers to current EU rules on sustainability reporting – the Non-Financial Reporting Directive (NFRD)[2] – and states that the rules are expected to be implemented in Norwegian law relatively shortly. Implementation of the NFRD will alter the approach to social responsibility reporting requirements from a prescriptive focus on the handling of specific topics to a clearer materiality focus.

The NFRD requires companies to issue a statement covering:

- an assessment identifying non-financial circumstances which are material to the company
- how material circumstances are incorporated into the business model and guidelines
- what due diligence assessments have been conducted
- the results of the company's work on material circumstances
- identified key risks
- KPIs (key performance indicators) linked to the material circumstances.

In the materiality assessment, the company must identify non-financial circumstances that could affect the company's development, results and financial position (focus on non-financial risk). Further, the company must also identify non-financial circumstances which are materially affected by the company's activities (focus on environmental and social impact).

2 https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en

Future reporting requirements will give greater emphasis to explaining how climate change and other sustainability-related factors represent risks and opportunities for the company, as well as explaining how the company integrates sustainability into strategies, operations and stakeholder dialogue.

In 2018, the European Commission published its Action Plan on Financing for Sustainable Growth and appointed the Technical Expert Group on Sustainable Finance to assist with the development of, among other things, new guidelines on climate-related reporting of the *EU's Sustainable Finance Disclosure Regulation*[3] and a *classification system for sustainable activities*. In October 2020, Finanstilsynet published a consultation paper on a draft new Norwegian act relating to sustainability information. The new act will incorporate the *Sustainable Finance Disclosure Regulation* and the EU's *classification system for sustainable activities* (usually referred to as the EU Taxonomy) into Norwegian law.

Among other things, large companies will in future be required to report the proportion of their activities that qualifies as sustainable pursuant to the EU Taxonomy's definitions of sustainable activities. The consultation response submission deadline for the proposed new act was 8 January 2021.

The Sustainable Finance Disclosure Regulation imposes new disclosure requirements on financial institutions covering how sustainability is integrated into risk assessments and investment advice and whether investments impact sustainability negatively. This information must be provided at company and product level.

The classification system will apply to financial institutions and other large companies. Financial institutions will have to inform customers and investors of the proportion of their investment products that qualifies as sustainable. Large companies will be required to report the proportion of their revenues and investments stemming from sustainable activities. Less directly, small and medium-sized enterprises will also have to prepare themselves to report on the sustainability of their activities to banks and investors.

3 The financial institutions subject to the regulation are insurance companies offering insurance-based investment products, investment firms engaged in portfolio management, pension undertakings, producers of pension products, managers of alternative investment funds (AIF managers), providers of pan-European personal pension products, managers of EuVECA funds and EuSEF funds, securities fund management companies (UCITS funds) and credit institutions that provide portfolio management services.

Integrated reporting

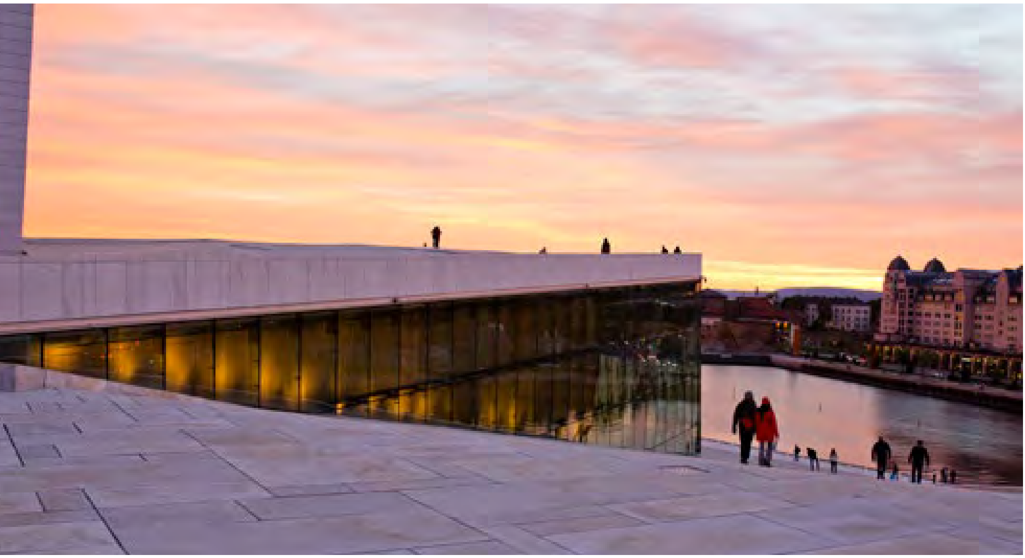
Integrated reporting entails reporting collectively on financial and non-financial matters. The objective is to communicate effectively how a company creates value and what value it is creating. The International Integrated Reporting Council (IIRC) launched a framework for integrated reporting in 2013.[1] The framework defines guiding principles and the content of joint annual reporting by reference to materiality. The purpose of the framework is to meet investor information needs related to company strategy, management by objectives and results. Among other things, this involves demonstrating the links between non-financial information, governance, risk management and financial results.

Current statutory corporate reporting is often insufficient to understand a modern company. Many companies provide little information on important topics like their business model, strategy, management by objectives, risks and future-oriented decisions. The accounting rules ensure the provision of important information, but the time is over when a one-sided focus on financial information in company reports met all user information needs. Investors and other stakeholders are increasingly demanding insight into social responsibility and corporate governance efforts, and over the past 20 years reporting has expanded into other areas like environmental reporting, governance reporting and reporting in accordance with the Global Reporting Initiative (GRI).

1 The IRRC integrated reporting framework was revised and updated in 2020. The updated framework was published in January 2021.

Why is it so important to report both on individual dimensions and from an integrated perspective? First, information-provision drives decision-making in the market. The capital markets exist to allocate resources to whatever will generate the greatest value. At present, this involves – among other things – allocating resources to overcoming critical global challenges. Success in this regard requires the adoption of a broader view on value and value creation than simply financial value, and the ability to recognise value. Today's incomplete corporate reporting results in uninformed and, potentially, poor decisions. Second, both owners and other stakeholders need credible information to be able to evaluate company performance. They can only reward value creation if they can identify it in a meaningful way.

The key is that reports identify and measure corporate value creation in a broad sense. To a far greater degree than previously, companies now have to report on specific topics of importance to owners and other stakeholders in a consistent and comparable manner. The current jungle of reporting regimes and inadequate report auditing means that the same company can be both a success and a disaster simultaneously, depending on which standards are applied.



The integrated reporting framework has achieved broad recognition since being launched, and is supported by almost all leading standard-setters and leading organisations in the fields of financial reporting, social responsibility, financial statements and auditing, as well as in the financial markets. The IRRC estimates that more than 2,000 companies all over the world are issuing integrated annual reports.

Key organisations in the field of sustainability reporting, including the IIRC, CDP, Climate Disclosure Standards Board (CDSB), GRI, IIRC and Sustainability Accounting Standards Board (SASB) have now agreed to cooperate on greater coordination of the different sustainability reporting standards and frameworks. In November 2020, the IIRC and the SASB announced plans to merge – a clear step towards simplifying the integration of financial and non-financial reporting.

PwC's analysis of corporate reporting in Norway – "Sustainability 100" – shows that Norwegian companies are increasingly integrating financial and non-financial information, and that various reporting frameworks are in use. The IRRC integrated reporting framework provides robust support and guidance for companies who wish to begin reporting on an integrated basis. Read more about this topic in the chapter on sustainability in the boardroom.

From the IIRC framework:

The primary purpose of an integrated report is to explain to providers of financial capital how an organization creates value over time. It therefore contains relevant information, both financial and other.

Sustainability in the boardroom: why and how should companies integrate sustainability?

Sustainability is about long-term value creation. Currently, companies are in the middle of a shift in expectations as to how companies should operate. Investors, banks, customers, consumers, employees and authorities increasingly expect companies to take responsibility for their impact on society, climate and the environment. Compliance with laws and regulations is no longer enough; companies must also be conscious of how they affect society and the environment, and must preferably supply products and services that lead society in a more sustainable direction.

Sustainability is also about risks and opportunities. One of the board's primary tasks is to ensure that the company is run viably in the both the short and long term. By focusing on sustainability, the board adopts a more integrated perspective and secures a broader information base for assessing risk and making strategic decisions on the company's further development and growth.

A more integrated risk perspective

A clear strategy and transparency about sustainability results give good insight into the ability of a company to manage non-financial risk, which in turn may affect the company's ability to create value over time. Financial institutions are therefore increasingly emphasising sustainability in their risk assessments of companies. Sustainability risk encompasses a number of different fields, and can be divided into climate and environment risk, social risks such as orderly and safe working conditions and threats to human rights, and corporate governance-related risks in areas like ethical business conduct and anti-corruption.

PwC's "Sustainability 100" report shows that Norway's largest companies are increasingly integrating sustainability into their risk assessments. Exposure to different sustainability risks varies by industry and geographical distribution of a company's value chain. Integrating sustainability into risk assessments gives the board a better basis for considering the entire risk profile, asking the right questions and developing a more integrated decision-making basis.

Sustainability creates opportunities

A sustainable company that delivers sustainable products and services has greater market opportunities and a better foundation for improving its strategic position and competitiveness.

Sustainable companies may have better access to capital because owners and investors are now rewarding sustainability to a greater degree. Companies that effectively address and report transparently on sustainability-related risk and negative social and environmental impacts build trust in the market. Sustainable companies demonstrate that they are operating responsibly and with a long-term perspective. Rising awareness of sustainability and climate-friendly consumption and production among workers gives companies with a sustainability focus an advantage in attracting the most skilled employees.

Moreover, a sustainable business strategy promotes innovation, since it demands continuous improvement and adaptive ability. For example, focusing on matters such as climate footprint and sustainable consumption may effectivise internal processes and improve profitability because such a focus often results in reduced consumption of materials and energy.

By assessing sustainability when deciding company strategy and direction, the board can develop a better understanding of new business opportunities and potential competitive advantages. In the longer term, this can also strengthen the company's strategic position, improve access to capital and secure better long-term profitability.

How can the board address sustainability systematically?

The companies which are best at sustainability adopt a structured approach to integrating relevant sustainability topics into both risk management and business strategy. Initially, the board can focus on four specific steps:

1. **Identify the most important sustainability topics** for the company in terms of both positive impact and negative footprint.

2. **Adopt clear targets** for the company's reduction of its negative social and environmental impact, or prioritise products and services with a positive social or environmental impact.
3. **Monitor implementation of measures by reference to the targets** by challenging management and requesting regular reports on and monitoring of sustainability-related performance.
4. **Ensure robust external reporting on the most important sustainability topics** to build trust in the market.

EU Sustainable Finance Action Plan

In March 2020, the EU published the first part of its taxonomy, a classification system for defining what qualifies as sustainable economic activity. The classification system is an important part of the EU's Sustainable Finance Action Plan. If the EU is to achieve its climate targets, it needs to reallocate capital from non-sustainable activities and companies to green industries.

The EU Taxonomy has established a common standard defining what is and is not sustainable. The classification system is based on six concrete environmental targets, and specific criteria have been or are being developed which include threshold values for sustainable activities in different sectors.

The classification system will not only create new reporting requirements. Companies that successfully reorient their operations and achieve green classification will be rewarded with improved access to financing and better financing terms. Companies in sectors for which criteria have been developed should therefore evaluate whether they qualify under the defined threshold values, and thereafter consider strategic and operational measures.

Companies that manage to show that their activities qualify as green under the classification system will have a significant competitive advantage, not least in the capital markets. Understanding the EU Taxonomy and how it affects different companies and sectors is therefore an important aspect of the board's sustainability work.

Market communication in challenging times

The information a listed company gives to the stock market affects how the company's shares are priced. Particularly when conditions are very challenging or company finances are weak, it may be difficult for management to provide relevant information in a timely manner. At the same time, it is precisely during such periods that it is especially important to keep investors well-informed. Potentially necessary capital transactions such as share issues, restructurings, etc. require shareholders to have confidence in management. If the stock market loses confidence in a company, it becomes more difficult to lead the company out of a downturn.

Confidence in management is inextricably linked with transparency about the business model, including key drivers of company value-creation and relevant risk factors that could affect the company negatively. During difficult financial times, it is important that management is open about material implemented commercial transactions, and that management addresses challenges almost before they arise.

Users of financial information want to understand how downturns affect the company's earnings, liquidity, financial position and key figures.

Transparency about business models and business drivers

If the company is transparent about and clearly communicates its business model and factors with a decisive impact on revenue, profitability and – not least – cash flow (usually referred to as "value drivers"), the company will support the development of knowledge about the company among investors, analysts and other stakeholders. The company must measure developments in value drivers and report these to the market in the form of relevant financial and non-financial key figures and performance measures.

Sensitivity analyses in the financial statements will help increase understanding of key business drivers, such as the effects of changes in interest rate levels and exchange rates. Correspondingly, it is important to be transparent about key terms such as covenants, repayment structures and any collateral provided under loan agreements. If the market has good information on such matters, this will reduce both uncertainty about the company's finances and the risk of incorrect speculation. This enables analysts and investors to adjust their expectations related to the company's financial position and performance more easily and more precisely during a downturn.

Transparency about key factors related to a company's operations and financing will help reduce share price volatility, in theory thereby also reducing the company's financing costs.

Identify relevant risk factors

Companies must also provide information on relevant risk factors that could affect them. These may include both macroeconomic and company-specific circumstances with different effects on companies' strategies, commercial foundation, financial position and financial needs. This does not mean that risk is necessarily "bad". On the contrary, investors accept risk. Some investors are looking for high risk, since this normally also means a higher expected return, while other investors may be more risk-averse. Providing reliable information on risk factors allows stakeholders to form their own opinions on whether the risk level is acceptable to them.

A transition from a healthy to an unhealthy financial position normally takes some time, and risk factors will usually be known to management and the board. Investors and stakeholders do not like surprises linked to risk factors that have not been communicated previously and have therefore not been priced into the share. Providing reliable, relevant information about risks in financial reports when times are good builds a robust foundation for communications when financial challenges arise.

Sensitivity analyses (which specify the range of possible outcomes in the event of changes in key assumptions) that examine financial loan terms, write-down assessments and assessments of financing needs, and the going-concern assumption, are key when describing risk factors. Useful supplementary information in this context will include repayment structures, utilised and unutilised financing capacity, minimum financial liabilities linked to e.g. lease obligations, and other contractual obligations.

The accounting rules require, and recommend, that such information be provided in the board's annual report and in notes to annual or interim financial statements. The format of such information must be adapted to the

company's situation, and will evolve along with the company. It is logical for the board and the audit committee to discuss the topic with management and the auditor to ensure that users receive effective guidance that eliminates surprises in the event of weaker financial performance.

It is also worth noting that a materiality assessment must be conducted when examining risk factors. There are numerous examples of situations where a company's material risk factors have been concealed in a long list of otherwise relatively immaterial risk factors. Sensible ordering of risk factors by materiality can help remedy such over-reporting.

When reviewing a company's financial reports, the board and audit committee should ask for management's assessment of how the financial reports collectively reflect relevant risk factors.

The board must be proactive during downturns

Cooperation between the board and management is particularly important during a downturn. It is vital that the board adopts an integrated perspective and is prepared for different future scenarios. If the board only takes action once problems have manifested themselves in the financial statements, this may undermine the credibility of the board and confidence in the company among investors, creditors and other stakeholders.

If management provides information on issues and its assessments of key accounting matters in advance, management will be able to maintain confidence even when finances are tight. This will be valuable if, for example, the company subsequently has to implement a capital transaction to secure new capital or has to renegotiate existing agreements.

Stock exchange notices are key, but so too is other current information

The Securities Trading Act and Oslo Stock Exchange require inside information to be reported immediately unless the company has legitimate reasons for so-called "delayed publication" of the information (see further discussion of this topic in the Stock exchange and capital markets update chapter). Compliance with these rules is obviously crucial for the stock market to have confidence in the company.

Alongside compliance with the company's obligation to report inside information, the company should also inform the market of other relevant information on an ongoing basis, even if such information is not notifiable inside information. As stated above, it is important to be transparent, particularly when times are challenging.

Guiding and earnings guidance (profit warnings) are separate topics in the field of stock exchange communications.

Some companies choose to guide the market on future profit developments with the aim of micromanaging analysts' expectations. The objective is to keep share-price volatility as low as possible. The advantages and disadvantages of this approach will not be discussed further here, other than to point out that it may be difficult for the company to monitor such guidance and any need for profit warnings, and that guiding can cause problems if the company subsequently makes a capital transaction that triggers the issuance of a prospectus.

See also the chapter on priorities when issuing IFRS financial statements.

The responsibilities and duties of board members in financial restructurings

Difficult financial times for a company are also challenging for the board. This chapter contains a brief description of the responsibilities and duties of board members when a company has to implement a financial restructuring. Such processes can be very complicated, and every restructuring has to be considered individually. The board should consider obtaining legal and financial advice to avoid making mistakes.

Stricter activity duty for the board

In a situation where a company is unable to pay its creditors, the monitoring of daily operations will become a board concern, rather than simply a matter for management. This is because day-to-day management cannot include matters of "great importance" to the company. The board therefore has an activity duty when the company has to implement a financial restructuring. In practice, this will normally include a substantial increase in the number of board meetings, and board members (often represented by the board chair) will engage in an ongoing dialogue with creditors and shareholders. In such circumstances, it is important to record activity and discussions at board meetings in board minutes, so that the board can subsequently document its active response to the matter.

Requirement to adopt budgets and duty to act if equity is lost

The board must keep itself updated on the company's financial position, and has a duty to ensure that its activities, financial statements and asset management are subject to satisfactory controls. This includes a responsibility to ensure that the company's liquidity is satisfactory in view of the company's risk level and scale of operations. The board must adopt plans and budgets for company activities as necessary.

If the real ("value-adjusted") equity is lower than necessary in view of the company's risk level and scale of operations, the board's duty to act will be triggered. The board has a responsibility to propose measures to the ordinary general meeting to remedy the situation within a reasonable period of time.[1]

Implementing action plans and financial restructuring

If the company's difficulties in paying creditors and lenders are deemed to be temporary, it may often be sufficient to begin by asking lenders for a short payment deferment and/or requesting waivers of loan terms. Financial creditors are often the key to continued operation.

However, the company's financial problems may also prove to be more serious, or permanent, and the company may then have to implement a payment stop while negotiating with creditors[2] and simultaneously implementing the plans developed by the board.[3] In such circumstances, the company will have to increase its cash flow to service the debt (cutting running costs and investments), and may also have to take steps to reduce its debt burden. The Act relating to debt settlement proceedings and bankruptcy permits companies to restructure their debts through so-called debt settlement proceedings and/or a composition with creditors. However, this legal regime is used relatively rarely, since the rules are quite rigid. Instead, companies usually negotiate with their creditors to agree a voluntary solution in which all parties (shareholders, creditors and employees) make concessions.

In March 2020, in response to the corona pandemic, the Storting (the Norwegian parliament) adopted a new

1 Section 3–4 of the Private Limited Liability Companies Act; see also section 3–5 and section 6–4.

2 Even if the company implements a payment stop vis-à-vis its creditors, it may be expedient to continue paying ordinary suppliers to keep the business operational. However, any continued operation at the expense of some or all creditors requires the consent of each individual creditor.

3 These may include action plans the board is required to prepare pursuant to legislation when parts of the equity capital have been lost; see further discussion of the board's duty to act in the chapter on liability in damages of board members and the chapter on changes to the Private Limited Liability Companies Act.

act on financial restructurings (the Restructuring Act), which entered into force on 11 May 2020. The act has temporarily replaced the Act relating to debt settlement proceedings and bankruptcy (the Bankruptcy Act), and will be repealed on 1 January 2022. Its purpose is to prevent unnecessary bankruptcies due to the corona pandemic. According to Brønnøysund Register Centre, 15 sets of restructuring proceedings had commenced as at 3 December 2020.

The Restructuring Act provides a solution closer to Swedish and Danish law, and is comparable to Chapter 11 proceedings in the USA, which allow companies to negotiate with their creditors while being protected against creditor recovery actions such as execution liens, bankruptcy petitions, forced sales and the termination of contracts due to payment default. One purpose of the new temporary act is to allow restructuring negotiations to start earlier than previously, while debtors still have some remaining funds. Any compulsory scheme of arrangement requires the consent of 50% of the creditors in order for the restructuring to be granted. The new act also allows restructuring costs to be secured by means of a charge with so-called super-priority over existing charges, subject to specified terms. Additionally, the act permits the conversion of debt into equity as part of the restructuring.

This is because creditors can usually secure larger (re)payments if the company continues operating, compared to a situation where the company is liquidated. However, the board must be open about the company's financial situation if the company is stilling purchasing from its suppliers on credit. For example, suppliers who have unknowingly sold goods on credit may bring damages claims against board members if the company fails.

The board will not necessarily be able to avoid board member liability if a bankruptcy petition is filed. On the contrary, the legislature has assumed that the board must fight to protect the company's assets.

If net asset value is lost

The company's financial problems may be so extensive that the company's entire net asset value is irretrievably lost. The board's focus must then shift from protecting shareholder value to protecting creditor value. If assets can still be best protected if the company continues to operate while the board seeks to secure concessions from creditors and lenders (normally new equity and/or conversion of debt), the company may continue operating at the expense of creditors. The board has to strike a difficult balance in such circumstances, and will have to obtain the informed consent of the creditors as a whole before continuing to operate the company at the creditors' expense.

Continued operation no longer possible: liquidation

According to the legal definition of the term, a company will be insolvent its assets are insufficient to cover its liabilities, it cannot meet its liabilities as they fall due and its payment problems are not temporary.

Further, if efforts to recapitalise the company fail and the company therefore has to be liquidated, the board will have to choose between a managed liquidation and filing for bankruptcy. In commercial terms, a managed liquidation[4] may release greater value for creditors. Another consequence of a managed liquidation is that earlier board transactions will not be subject to external review.[5] If the board files for bankruptcy and the company is insolvent, the district court will issue a ruling ordering the commencement of bankruptcy proceedings.

Liability of board members – summary

If the board makes a mistake in its assessments, including by failing to

4 A managed liquidation requires ordinary general meeting approval.
5 Note that a managed liquidation not resulting in full payment is conditional on the consent of the creditors.

comply with its duty to act in such a manner that the company's creditors have incurred losses, by failing to provide adequate information on the financial situation, by operating at creditors' expense without consent, by implementing transactions that deplete the company's assets to the detriment of creditors and/or by granting beneficial treatment to individual creditors, this may be liability-inducing and potentially also amount to criminal conduct.

Creditors and any shareholders may bring damages claims directly against individual board members if those board members have acted negligently in the performance of their obligations as board members and this has caused creditors, and potentially also shareholders, to incur financial losses.

See also the chapter on the role and responsibilities of the board.

5

Adopted and forthcoming changes

Changes to the Private Limited Liability Companies Act

As part of the Norwegian Government's ongoing simplification project, several changes have been made to companies legislation in recent years. One practical measure adopted in 2018 was the introduction of new rules on interim balance sheets for various transactions under company law. Entry into force of the new rules was deferred pending technical updates to the Register of Company Accounts and the Register of Business Enterprises, but the rules finally took effect on 1 January 2021.

Executive remuneration

In 2019, the provisions of the Public Limited Liability Companies Act on executive remuneration guidelines and reporting were amended. The rules were to be supplemented by regulations before entering into force, and regulations were circulated for public consultation on 1 October 2020. The amendments and their entry into force are discussed further in a separate chapter.

Interim balance sheets

Applies to transactions of all types that can be implemented on the basis of an interim balance sheet, including:

- Extraordinary dividends
- Related-party transactions pursuant to section 3-8
- Credit pursuant to sections 8–7 and 8–9
- Company-financed share acquisitions pursuant to section 8–10
- Acquisitions of treasury shares pursuant to section 9–3
- Bonus issues pursuant to section 10–20, and
- Capital reductions pursuant to chapter 12.

Interim balance sheets must be submitted to the Register of Company Accounts to ensure that transaction-related calculations are public and verifiable. This applies regardless of whether the interim balance sheet has been audited.

Transactions based on an interim balance sheet only enter into force once the interim balance sheet has been registered in the Register of Company Accounts and been announced in the Brønnøysund Register Centre's electronic announcements publication. The above comments on interim balance sheets apply equally to private and public limited liability companies.

If an interim balance sheet is used in a merger pursuant to the Public Limited Liability Companies Act, the interim balance sheet must also be submitted to the Register of Company Accounts.

If a distribution is made prior to registration, the distribution is invalid and the recipient must return the received sum. This applies to extraordinary dividends, credit and company-financed share acquisitions, and unlawful acquisitions of treasury shares. As regards bonus issues and capital reductions, related decisions may only be registered once the interim balance sheet has been submitted to the Register of Company Accounts and been officially announced.

In the event of a capital reduction with notice to creditors, the announcement must specify whether the capital reduction is based on the latest annual financial statements or an interim balance sheet. Correspondingly, the rules on authority to use an interim balance sheet to clarify the threshold value for a statement under section 3-8, second paragraph, of the Private Limited Liability Companies Act/section 3-8, third paragraph, of the Public Limited Liability Companies Act and in connection with company-financed share acquisitions under section 8-10, second paragraph, of the Private Limited Liability Companies Act or the Public Limited Liability Companies Act also entered into forced on 1 January 2021.

Authorisation to hold board meetings without in-person attendance, etc.

In response to the Covid-19 pandemic, a temporary act has been introduced that grants important practical exemptions from company-law requirements for in-person meetings, etc. Among other things, the temporary act contains exemptions from the requirements in the Private Limited Liability Companies Act and the Public Limited Liability Companies Act on in-person meetings. The temporary act allows the board of directors to hold board meetings remotely by electronic means. The proceedings must still be satisfactory, and all board members must be given the opportunity to participate, if possible. If an in-person board meeting is held, each board member is entitled to demand to attend by electronic means. The same applies to the auditor, the managing director and other persons with a right or duty to attend. Moreover,

this also applies to requirements under section 2–3 of the Auditors Act concerning auditor meetings with the board which are not attended by the administration.

The temporary act will remain in force until 1 June 2021, when it will be repealed. Any meeting scheduled before 1 June 2021 may be held in accordance with the provisions of the temporary act even if the meeting takes place after 1 June 2021.

Tax reform follow-up

In October 2015, the Norwegian Government published the white paper "Better Taxation – A Tax Reform for Transformation and Growth". In May 2016, six political parties represented in the Storting (the Norwegian parliament) signed up to a parliamentary tax agreement containing measures following up on the white paper. This agreement has been implemented in subsequent national budgets. An overview of the main changes decided for 2021 follows below.

For a complete overview, this chapter should be read in conjunction with the next chapter on cross-border tax planning.

22% tax on ordinary income

The tax rate on ordinary income was reduced from 23% to 22% for persons and companies as of 2019. The tax rate of 22% remains unchanged in 2021.

Tax on dividends

Lower tax on ordinary income makes it more profitable for owners who work for their own companies to pay out work income as dividends. To reduce the motive for income shifting, the Government has previously increased tax on dividends, etc. so that the total marginal tax rate is at the same level as marginal tax on pay. The adjustment factor for dividends was therefore increased to 1.44 in 2019. In isolation, therefore, the marginal tax rate on dividends is 31.68%. Including corporation tax on the same profit, the total marginal tax is thus approximately equal to the marginal tax rate on earned income (excluding employer's national insurance contributions). The adjustment factor is unchanged in 2021.

No changes have been made to the shielding rate of interest applied in the context of dividend taxation.

Wealth tax

Increased valuation discount for shares and operating assets, etc.

In the 2021national budget, the valuation discount on so-called working capital – including shares, operating assets, etc. – and commercial property was increased to 45%. The discount was 25% in 2019, but was increased to 35% in 2020. The reason for the increased discount is that reduced tax on shares and operating assets, etc. might encourage private owners to invest more in existing and new jobs. It was also pointed out that many businesses have been affected by the consequences of the ongoing corona pandemic.

Simplification of the valuation rules for primary residences, vacation properties and commercial properties (proposed removal of the safety-valve threshold value).

The asset value of residences, vacation properties and commercial properties is normally calculated using a standardised method. The value is established by multiplying the area of the property by a calculated average rate per square metre.

Owners of primary residences and vacation properties can reduce the calculated value by means of a safety valve, provided that they can document that the calculated sale value exceeds 30% (primary residences and vacation properties) or 78% (commercial properties) of the documented sale value of the property in question.

The threshold for using documented value for residences and commercial properties was eliminated in the 2021 national budget, while the valuation discounts applied when documented value is used were set equal to the discounts applied when calculated sale value is used.

Moreover, the rules applicable to commercial properties were simplified by providing that such documentation may be used for both current and the next four tax years. This arrangement is optional for taxpayers.

Financial transaction tax

In accordance with the parliamentary tax agreement, a financial transaction tax was introduced as of 1 January 2017. The tax has been framed as an additional employer's national insurance contribution, and is designed to compensate for the exemption of financial services from value added tax. The financial transaction tax rate is unchanged in the 2021 national budget, at 5%.

The financial transaction tax is not discussed specifically in the 2021 national budget, other than in a general account of the financial transaction tax's purpose and rates. It is therefore anticipated that the financial transaction tax will continue to apply unamended. However, other European countries are discussing financial transaction tax, financial transfer tax (FTT), etc. PwC expects Norway to consider amending its financial transaction tax if other, and particularly other Nordic, countries adopt different and more coordinated models.

Interest-limitation rules

With effect as of 2019, interest-limitation rules were introduced that also apply to external debt. In brief, the rules apply to companies included in an accounting group where the net annual interest costs of the Norwegian part of the group exceed NOK 25 million. For such companies, the interest-limitation rule introduced in 2019 apples to all types of interest costs, including both related and independent parties. Wholly Norwegian groups are not affected by the rules, since they will always qualify for an exemption.

The next chapter contains detailed comments on the interest-limitation rules. Below, a brief summary is provided of the main changes made to section 6–41 of the Tax Act, and regulations, based on previous interpretative rulings and changes in the 2020 national budget:

- Global group financial statements for comparison of equity shares can now be prepared by the most senior company authorised to prepare group financial statements. This represents a significant simplification for investment funds with complex ownership arrangements. Under earlier proposed rules, the exceptions would in some cases have been impossible to fulfil in practical terms, but this has now been addressed through the new regulatory provision in section 6–41–2 of the Tax Act Regulations.
- When calculating net interest costs for the Norwegian part of a group by reference to the NOK 25 million threshold value, the relevant entities are now Norwegian companies which are part of the group at the end of the tax year (previously the beginning of the tax year). This is regulated by section 6–41–1 of the Tax Act Regulations.
- The Ministry of Finance plans to issue regulations containing a definition of "related lenders outside the same group" when the Storting (the Norwegian parliament) approves the related statutory amendment. This will hopefully eliminate the pitfalls associated with acquisitions and sales during the year, including the use of shelf companies and the incorporation of new companies in connection with acquisitions.
- It is important to note that the only basis for comparison that may be used when applying the exception rule is complete group financial statements issued in accordance with specified accounting rules. To calculate the equity ratio of the Norwegian part of the group, however, an audited balance sheet is sufficient.
- The Norwegian Directorate of Taxes has been mandated to draft regulations specifying the requirements applicable to auditor approval of the equity escape clause balance sheet.
- Simplified documentation requirements have also been proposed for

wholly Norwegian groups through application of the exception rule, but this is also due to be particularised further by the Directorate of Taxes.
- Previously excluded interest may also be deducted before net interest costs for the year, even if the net interest costs of the Norwegian part of the group are lower than the threshold amount of NOK 25 million. This applies correspondingly when the exception rule is applied. This allows previously excluded interest costs to be "rolled forward" even if the EBITDA rule is not used.

Withholding tax on interest and royalties

The 2021 national budget introduces withholding tax at the rate of 15% on interest, intellectual property rights (royalties) and lease payments in respect of certain tangible assets.

The tax liability is to include i) interest on debts to affiliates in low-tax countries, and ii) payments to affiliates in low-tax countries related to the use of or right to use intellectual property rights (royalties) and certain tangible assets. The previous proposal on withholding tax on royalty payments was not limited to payments to low-tax countries.

The rules mean that withholding tax must be levied on interest, royalty and lease payments linked to certain tangible assets made by companies which are resident in Norway for tax purposes, as well as Norwegian branches, to affiliates which are resident in low-tax countries. The definitions of interest and intellectual property rights largely mirror the delimitations found in current Norwegian tax law. The tangible assets subject to withholding tax are ships, vessels, rigs, etc., aircraft and helicopters, corresponding to the asset group defined in section 14–41, (e) and (f), of the Tax Act.

The rules define an "affiliate" as a company, etc. which directly or indirectly owns or controls at least 50% of another company.

To ensure that the rules on withholding tax are consistent with EEA law, an exception has been introduced for payments to companies which are genuinely established and engage in reall economic activity outside the EEA. The power to levy withholding tax can also be restricted or blocked by provisions on taxation of interest and royalties, etc. in tax treaties with other countries. It has been proposed that withholding tax should be set by means of deductions, and that the payer of interest and royalties, etc. should assess tax liability and make tax deductions. The taxpayer will not be required to submit a tax return. The payer can be held liable for omitted deductions. Both the party with a duty to make deductions and the tax authorities can amend the assessment, and the taxpayer will be able to apply for reimbursement of excess paid tax.

Reporting occurs in accordance with the accrual principle, i.e. as of the date on which the paying company becomes subject to an unconditional obligation. Accordingly, whether or not a payment has actually been made is irrelevant to the duty to report withholding tax.

The rules enter into force on 1 July 2021 with respect to interest and royalties, and 1 October 2021 in the case of lease payments linked to certain tangible objects.

Statutory avoidance rule as of 2020

The non-statutory rule on anti tax avoidance has been developed in Supreme Court case law over a number of years. The rule permits transactions to be set aside if these are "primarily motivated by tax considerations" and "disloyal to the tax rules". Codification of the rules has been considered on several occasions and with reference to various grounds including the principle of legality and different views on the development of the law.

Since 1 January 2020, section 13–2 of the Tax Act has included conditions defining when avoidance is deemed to exist and when the tax authorities are therefore permitted to set aside the tax solution. The rules apply to all taxes referred to in the Tax Act, as well as value added tax. The main differences compared to the non-statutory avoidance rule are that:

- The taxpayer's position and motivation must be evaluated in purely objective terms
- Tax savings in other countries must generally be disregarded when assessing commercial effects and comparing them to tax effects
- Avoidance opportunities which are listed in the preparatory works but have not resulted in specific avoidance rules shall not automatically count in the taxpayer's favour
- The purpose of the tax rule which has been sought to be avoided is an important factor.

Cross-border tax planning

The board of directors has a general responsibility to ensure that shareholders receive the highest possible return on invested capital, within the framework of legal and adopted ethical rules. This includes a duty to ensure that the company maintains a satisfactory overview of tax costs and tax risks. There is an increasing focus on the tax practices and tax planning of large international companies, and terms like "transparency" and "fair tax" are high up on political and public agendas.

Primary considerations in the tax planning context

Robust, legitimate tax planning needs to have a "birth-life-death" perspective. That is, it must hedge against foreseeable and not unfavourable or unnecessary tax costs linked to an acquisition, during the period of ownership and in connection with exit. The structure should not be too complicated, so that it can be maintained through reasonable and predictable resource investment.

Since the financial crisis, the G20 countries have promoted the further refinement of international tax rules. The OECD is intensively advocating the greatest possible standardisation of the international taxation framework for international groups. The EU has also assumed a more active role. One consequence of these developments is that tax has gained greater significance as a reputational factor, and has moved up on the board agenda.

The board has a responsibility to ensure that the company has satisfactory internal controls in place, including in the area of tax. Internal controls and tax policy include assessment of and measures to address key areas of risk and the boundaries of legitimate tax planning.

Cross-border transactions represent a particular risk area. Cross-border tax planning takes many shapes and forms, and depends not least on the countries involved and the types of activities to be pursued in these countries. The focus is primarily on avoiding double taxation or other unfavourable tax treatment that results in additional costs. The next priority is to have a legal structure and transaction model in place that secure tax framework conditions approximately equal to those under which primary competitors are operating.

Focus on tax planning – BEPS and MLI

A material aspect of offensive cross-border tax planning is the allocation of income to jurisdictions with low or no taxes. The Norwegian and foreign press have focused intensively on this topic in recent years, and a new term has entered the tax vocabulary: "BEPS". BEPS is the abbreviation of Base Erosion and Profit Shifting, and is an OECD project focused on the shifting of profits across national borders. In response to pressure from the G20 countries, the OECD issued a series of reports in the autumn of 2015 that defined 15 action points. The OECD has concluded that the reports on changes in transfer pricing guidelines simply clarify existing law, while the other reports will necessitate amendment of national rules and/or tax treaties before taking effect. Some action points introduce minimum standards, while the majority of the action points comprise recommendations. In short, the minimum standards for tax treaties provide that tax treaty preambles must be amended to state that tax treaty protection shall not be granted in cases of so-called "treaty shopping", and a general avoidance rule must be introduced through an article on the principal purpose test (PPT). The minimum standard under domestic law involves country-by-country reporting. In brief, these rules establish a separate duty to submit country-by-country reports to the tax authorities, applicable to multinational companies with consolidated revenues exceeding NOK 6.5 billion (compared to the EUR 750 million threshold set in the OECD's BEPS project). The reporting duty applies to the group parent. General comments on country-by-country reporting can be found in the separate section below.

To ensure rapid and efficient implementation, the OECD has developed its own multilateral instrument to facilitate amendment of multiple tax treaties in one procedure. The multilateral instrument (MLI), which amended more than 1,500 tax treaties, was signed by 67 countries – including Norway – on 7 June 2017. Since then, several more countries have signed the MLI. Norway's decisions as to which tax treaties are included and the positions taken by Norway are detailed on the website of the Ministry of Finance (see www.regjeringen.no). In Norway's case, the MLI took effect on 1 January 2020 in respect of withholding tax and 1 January 2021 in relation to all other taxes. Where companies have made

preparations based on a reduced withholding tax rate pursuant to a tax treaty, a new assessment will be required of withholding tax exposure abroad and/or any duty to make deductions in Norway in connection with distributions to shareholders who are not resident in Norway. The following paragraphs relate just a few examples, since the changes resulting from BEPS are extensive.

Expansion of permanent establishment provisions in tax treaties

The OECD considers that many international companies that sell goods across national borders have used commission agents and agency structures to avoid local tax liability. In short, these are structures where a foreign company uses a so-called commission agent to sell its goods in the local market.

The commission agent sells the goods in its own name but at another party's expense. Thus far, as long as the principal has not been bound by contracts concluded by the commission agent, the principal has been able to avoid permanent establishment.

The tax authorities of several countries, including Norway in the Dell case in 2011, have lost cases in this area and have therefore requested more effective rules. As a result, the OECD has revised the permanent establishment provision in its tax treaties so that permanent establishment can exist even if the principal is not bound by contracts entered into by a commission agent. The proposed measures are also intended to cover various types of agency structure under which the local company is not authorised to enter into agreements on behalf of the principal but still plays the central role in the process leading up to signature of a contract.

The OECD has also proposed stricter rules defining what arrangements may be deemed to constitute an independent agency, i.e. what arrangements do not generally entail permanent establishment. Agents who exclusively or almost exclusively act on behalf of one or more associated companies can be deemed to be dependent agents and thus to constitute a permanent establishment of the principal company. The BEPS project has also addressed the permanent-establishment exception rule in model Article 5(4), which states that specified activities like warehousing, showroom operation and the running of offices for information-collection purposes, as well as preparatory or assistance activities, shall not be deemed to constitute a permanent establishment, even if they are performed at a fixed location. The exception rule has now been made narrower by introducing the condition that it only applies to preparatory and assistance activities linked to the activities of the specific company.

The OECD has also proposed changes that will make it more difficult to avoid permanent establishment by splitting up functions and contractual relationships forming part of an integrated commercial undertaking (identification).

Potentially affected companies will have to prepare updated assessments of their sales models, partly to reduce risk and partly to evaluate new solutions.

Changes in transfer pricing guidelines

It is an overarching objective that transfer pricing should reflect value creation.

The OECD's updated and expanded Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations provide guidance on how to proceed when identifying and analysing controlled transactions between affiliated companies.

The allocation of risk between parties must be more closely linked to their ability to control risk, and a new, specified, six-step analysis has been proposed for assessing risk allocation between parties. This emphasises both financial capacity to bear risk and functional ability to control it. Where there is an imbalance between the contractual risk allocation and the parties' financial and functional capacity to bear risk, the tax authorities may apply a risk allocation that is consistent with functional and financial capacity.

These changes necessitate a review of internal contracts and transfer pricing documents to ensure that these are updated and secure compliance with the new rules.

This is particularly relevant for groups whose value chains feature contractual risk allocations. One example is groups which have spread out tasks related to financing, development and exploitation of intangible assets among several companies.

Country-by-country reporting

As a result of the BEPS project mentioned above, a special duty was introduced with effect as of the 2016 financial year that requires multinational companies with consolidated revenues exceeding EUR 750 million to submit country-by-country reports to the tax authorities.

The value threshold under the Norwegian rules has been set at NOK 6.5 billion. Such reports encompass all countries in which a company has activities (subsidiaries and permanent establishments).

Reports must cover internal and external sales, profits, paid and payable tax, paid-in equity, retained earnings, number of employees and assets other than cash and cash equivalents for each individual country. Reports are only submitted in the country where the group parent is situated. The tax authorities may typically use the information to select companies for further checks. Country-by-country reports must be automatically exchanged by the tax authorities of all countries where the multinational company has subsidiaries or permanent establishments.

Norwegian subsidiaries of a foreign group parent are typically subject to a secondary reporting obligation in three instances: first, where the foreign parent company has no obligation to submit country-by-country reports under the legislation of its home state; second, where the home state of the parent company has not entered into an agreement on the automatic exchange of such reports with Norway in time; and third, where the Norwegian tax authorities have notified the Norwegian company that the parent company's home estate is not complying with the obligation to exchange country-by-country reports or is not sending country-by-country reports to Norway for other reasons.

Interest-limitation rules that also apply to external debt

The interest-limitation rules introduced with effect as of 2014 provide that interest costs linked to related parties are only deductible up to a cap of 25% of taxable EBITDA if the net interest costs exceed NOK 5 million. Up to and including 2018, interest on external debt was fully deductible unless a related party had provided collateral.

In connection with the 2019 national budget, the Storting (the Norwegian parliament) approved changes to the Norwegian interest-limitation rules which expanded the rules to include external debt. The rules took effect on 1 January 2019. Pursuant to the rules, both external and internal interest costs are not deductible if the net interest costs exceed 25% of taxable EBITDA. The rules only apply if the total net interest costs of the Norwegian part of the group exceed NOK 25 million. Wholly Norwegian groups are unaffected by the new rules, as they will always qualify for the exemptions discussed below. To avoid affecting “ordinary loan arrangements” – see the parliamentary tax agreement – exemptions have been introduced based on the equity ratio in an adjusted balance sheet.

The rules do not apply if a company can prove:

- either that the debt-to-equity ratio of the company is equal to or higher than the debt-to-equity ratio in the financial statements of the group of which the company is a member; or
- that the debt-to-equity ratio of the Norwegian part of the group is equal to or higher than the debt-to-equity ratio of the group as a whole.

The date on which the comparison is made is the date of the closing balance sheet in the financial statements for the year before the relevant tax year.

The equity ratio of the group is calculated based on book values in the group financial statements, provided that these have been prepared in accordance with GRS, IFRS, IFRS for SMEs, GAAP in an EEA country, US GAAP or Japanese GAAP.

The equity ratio of the Norwegian company, or of the Norwegian part of the group, is calculated based on book values in the company’s financial statements or separately prepared group financial statements, for the Norwegian part of the group. However, adjustments must be made if needed to ensure comparability, for example to ensure that the same accounting principles have been followed and that group assets linked to the Norwegian company are reflected in the balance sheet of the Norwegian company. The financial statements used as a basis for calculating the equity ratio must be “approved” by an auditor. It is therefore important that the company involves the auditor when planning the preparation of the financial statements and their content and presentation.

Even if a company qualifies for the "ordinary loan arrangements" exemption, it may still be subject to interest limitation if it incurs interest costs on loans to related parties outside the group. The defining characteristic of a related party is direct or indirect ownership or control of at least 50%. Examples in this regard include debts to personal shareholders who individually or together with related parties own 50% or more of the shares in the company.

The old interest-limitation rules continue to apply to companies which are not included in the accounting group, and in cases where the annual net interest costs of the Norwegian part of the group are lower than NOK 25 million. The old rules only apply when interest costs are payable to related parties and if the net interest costs exceed NOK 5 million per company.

Interest which has been deemed non-deductible can be carried forward for up to 10 years for deduction in a subsequent year where a deduction is permitted.

Companies that do not qualify for any exception and have external financing risk a substantial increase in their tax burden. This is particularly likely to affect Norwegian groups which are engaged in activities abroad but have arranged a material proportion of their financing in Norway. Even if a foreign company is not large in relative terms, it may – if it has a lower debt ratio than the rest of the group – mean that all of the group's external financing falls within the scope of the new rules.

Reference is otherwise made to the earlier chapter on changes to interest-limitation rules in the light of interpretative rulings and the 2020 national budget.

Proposal on the disclosure duty and duty of confidentiality of tax advisers related to tax arrangements

A committee appointed on 21 June 2017 examined the duty of confidentiality and disclosure duty vis-à-vis the tax authorities of tax advisers – including lawyers – in connection with the provision of tax advice (Official Norwegian Report (NOU) 2019:15). The committee also considered whether tax advisers' disclosure duty vis-à-vis the tax authorities should be expanded, including whether a disclosure duty should be introduced with respect to the purpose of financial transactions. The committee also evaluated whether the recommendations stemming from OECD BEPS project action 12 on the disclosure duty of tax advisers in connection with tax planning should be implemented in Norwegian law.

The report details the committee's proposed disclosure duty for tax advisers and customers regarding specified tax

arrangements, in line with the recommendations in BEPS project action 12 and the DAC6 Directive. The EU member states were required to implement the DAC6 Directive by 1 January 2020.

The proposal states that tax advisers must give notice within 30 days of any tax arrangement where the primary advantage, or one of the primary advantages, of the arrangement is to secure a tax benefit for any person. If, for example, a tax adviser is a lawyer with a duty of confidentiality, the reporting obligation may fall on the taxpayer. The committee proposed sanctions such as coercive fines and infringement penalties for non-compliance with the reporting obligation.

The consultation response submission deadline expired on 2 December 2019. In 2020, Norway was expected to introduce, or at least present concrete proposals for, rules quite similar or largely comparable to rules adopted abroad based on the DAC6 Directive. However, the draft national budget for 2021 makes no mention of the proposal, and it is therefore currently uncertain how the final proposal will look and when rules will be introduced. However, PwC assumes that a final proposal will be presented and rules introduced in the course of 2021.

Tax residence of companies

The Norwegian rules on where a company is deemed to be resident for tax purposes were amended with effect as of 1 January 2019. The rules can be found in section 2-2 of the Tax Act.

Following this change, companies incorporated under Norwegian companies law are deemed to be resident in Norway for tax purposes. Depending on the circumstances, companies which have already emigrated may therefore again be deemed resident in Norway. Companies incorporated under foreign law may be deemed resident in Norway for tax purposes if they have their place of effective management in Norway. When assessing whether the place of effective management is in Norway, consideration must be given to where board-level management and general management are undertaken, as well as other circumstances related to the company's organisation and activities. Accordingly, a broader assessment is envisaged than under the old rules, which generally used "decisions at board level" as the assessment criterion.

Note that the eighth paragraph of the provision includes a proviso covering cases where a tax treaty with another state exists. In such cases, the relevant tax treaty clause must be assessed to try to resolve the question of tax residence.

The purpose of amending the Tax Act – to avoid dual resident companies or companies that do not reside in any jurisdiction is consistent with the recommendations resulting from the OECD BEPS project.

Withholding tax

Withholding tax on dividends

When distributing dividends to shareholders who are not resident in Norway for tax purposes, withholding tax is in principle levied at the rate of 25%. The withholding tax rate may be reduced, or the withholding tax may be waived, if the foreign shareholder is resident in a country with which Norway has entered into a tax treaty and the shareholder qualifies under the treaty. In most of Norway's tax treaties, the withholding tax rate is reduced to 15%. Further, most treaties provide for a further reduction, often to 5% or 0%, if the recipient is a qualifying company that fulfils the applicable ownership requirements – often that it owns at least 10% of the capital of the distributing company. In the case of tax treaties covered by the OECD's multilateral instrument (MLI), an additional ownership-period requirement applies.

A corporate shareholder who is not resident in Norway may be exempt from withholding independently of any tax treaty. The conditions are that the corporate shareholder is incorporated in a form comparable to a Norwegian private limited liability company or similar entity covered by the exemption method, that the corporate shareholder is resident in the EEA and that the corporate shareholder is deemed to be actually established and undertaking real economic activity in the EEA (the "substance requirement"). The substance requirement is normally met by operational companies, but may be more difficult to prove in the case of holding companies.

If the status of a recipient is unknown, it is recommended that the distributing company deduct withholding tax at the rate applicable under national law, i.e. 25%. This is because the distributing company is jointly and severally liable for any under-deduction of withholding tax. The shareholder should instead be advised to apply for reimbursement of withholding tax based on a tax treaty or the exemption method. Alternatively, the shareholder can apply to the Norwegian tax authorities for pre-approval of a reduced withholding tax rate. If pre-approval is granted, the distributing company cannot be held jointly and severally liable even if the pre-approval is subsequently found to have been granted on incorrect grounds, as long as the distributing company was unaware of this.

As regards reporting of withholding tax, this is done using form RF-1005. The reporting and payment deadline is linked to the individual dividend payments. The deadline is generally seven days, but is extended to one month in the case of companies registered in the VPS register. If an incorrect deduction has been made, the company may correct the deduction by submitting a change report (updated form RF-1005B) within three months of the deadline for submitting a notice of deduction, alternatively no later than

31 December of the relevant tax year. Individual shareholders for whom a correction is to be made must be identified in the comment field, on the front page of the form or in a separate enclosure.

Withholding tax on interest and royalties

As stated in the previous chapter, the decision has been made to introduce withholding tax at the rate of 15% on interest, royalty and lease payments linked to certain tangible assets and made to affiliates resident in low-tax countries. For further details, see the review in the previous chapter. In the interest of completeness, it should be noted that withholding tax liability related to such payments may also lapse as a result of the so-called “EEA exception”, or be waived or reduced based on a tax treaty.

The rules will take effect on 1 July 2021 as regards interest and royalties, and on 1 October 2021 with respect to lease payments linked to certain tangible assets.

Withholding tax must be reported in accordance with the accrual principle. Where e.g. loan interest is accumulated but not paid until the loan is repaid in full, a duty may therefore arise to report withholding tax even if there has been no de facto payment of interest.

Stock exchange and capital markets update

This chapter contains a brief overview of the most important statutory and regulatory changes related to stock exchanges and capital markets implemented in 2020, as well as changes anticipated in 2021. A number of other changes affecting capital markets in Norway are also discussed.

Several Oslo Stock Exchange marketplaces have changed their names

Following the takeover of Oslo Stock Exchange by Euronext as of 30 November 2020, the names of several Oslo Stock Exchange marketplaces have been changed. Merkur Market is now called Euronext Growth, while Oslo Axess has become Euronext Expand. According to Oslo Stock Exchange, there will be no major changes to listing rules, procedures or ongoing commitments in these marketplaces.

MAR – changes related to inside information and primary insiders

The EU's Market Abuse Regulation (MAR) has been incorporated into the Norwegian Securities Trading Act with effect as of 1 March 2021. For listed companies (issuers) and primary insiders, this means – among other things – additional requirements related to insider lists and adjustments to how inside information is handled. The rules for primary insiders are also changed, related parties of primary insiders will now become subject to an independent requirement to notify trades in the company's financial instruments, furthermore a 30-day period is introduced (prior to mandatory financial reporting by companies) during which primary insiders and related parties are not allowed to trade in the company's financial instruments. The implementation of MAR will also have consequences for the investment banks (the underwriters that may raise capital for companies) in the capital markets and investors.

European Single Electronic Format ("ESEF")

Since 1 January 2020, all listed companies in the EU have had an obligation to prepare their annual reports in accordance with a common electronic format, referred to as the ESEF. The aim is to improve the accessibility and comparability of financial information from companies across national borders and languages within the EU.

Norway has in May 2021 implemented the requirement in Norwegian law, and the rules have become applicable to Norwegian companies. The implementation date take effect as of the 2021 financial year. The ESEF-format will be mandatory for annual reports from and including the financial year that began on 1 January 2021

The Shareholder Rights Directive and further information on executive remuneration in listed companies

The EU's Shareholder Rights Directive entered into force on 20 September 2020. The purpose of the directive is to provide optimal conditions for shareholders in listed companies to receive necessary information from the companies, to allow shareholders to be represented at ordinary general meetings and to vote, and to ensure that shareholders can exert real influence at ordinary general meetings. Among other things, the proposed rules will require companies to provide shareholders with more information on executive remuneration. In addition to implementation of the directive, the Ministry of Trade, Industry and Fisheries has proposed a number of Norway-specific amendments to section 3–8 of both the Public and the Private Limited Liability Companies Act on related-party agreements, and made some adjustments to the rules on company-financed share acquisitions in section 8–10.

Both the amended executive remuneration rules and the amended rules on company-shareholder transactions are discussed in separate chapters of the

Directors' Handbook. See also further discussion of the Shareholder Rights Directive.

Oslo Stock Exchange: Circulars and rule changes in 2020

Oslo Stock Exchange did not publish or announce any material new rule changes or recommendations in 2020. However, since being taken over by Euronext, Oslo Stock Exchange has published its listing rules and ongoing requirements in revised form, i.e. adapted to the common rules for the Euronext exchanges. This should not have brought about any material changes to processes, listing rules or regarding the continuing obligations which listed companies are subject to.

Brexit – 2021

For a transitional period ending on 31 December 2020, the United Kingdom remained a member of the European Union and the EU capital markets union. The UK has thus remained subject to the same capital markets directives and regulations (related to prospectuses, market abuse/MAR, Mifid, etc.) as the rest of the EU. The purpose of the EU rules is to ensure the greatest possible harmonisation of capital markets regulations across the EU.

Following the UK's departure from the EU, these EU rules are longer directly implemented in UK law, and instead have to be implemented as ordinary UK legislation. Unlike Norway (and the EEA), the UK is not obligated to implement the EU's capital markets rules, and thus has greater freedom. This gives the UK third-nation status relative to the EU, like countries such as Australia and Canada. This may have consequences for the free movement of capital between the UK and EU, and generally for trade with English companies. See also the information on Brexit provided on the The Financial Supervisory Authority (Finanstilsynet) website and the website of the Norwegian Government.

Finanstilsynet – sustainability reporting

Sustainability reporting by listed companies (sometimes also referred to somewhat imprecisely as ESG reporting), has become much more important in recent years. Finanstilsynet is therefore increasingly focusing on such reporting, and in 2020 conducted a survey of sustainability reporting by listed companies. The survey revealed material deficiencies. Sustainability reporting is discussed further in the chapter on sustainability in the board-room.

Finanstilsynet – focus areas for the financial year 2021

Finanstilsynet publishes an annual list of priorities for its review of financial reporting by listed companies. This is discussed further in the chapter on priorities when issuing IFRS financial statements.

Changes in audit committee requirements

The new Auditors Act and audit regulation became effective 1 January 2021. At the same time there have been amendments in the Norwegian Public Limited Liability Companies Act and the Financial Undertakings Act on audit committees. The amendments involve more responsibility and new tasks for the audit committee in public-interest entities.

The reason for the changes is mainly to strengthen the role of the audit committee and elucidate the tasks of the audit committee towards the statutory auditor, as further described in chapter 2.2 on the work of the audit committee.

Among the new requirements for the audit committees the most important is the extended responsibility to assess and monitor the statutory auditor's independence in public-interest entities (listed companies, banks, credit institutions and insurance companies). The responsibility includes monitoring the appropriateness of the provision of non-audit services to the audited entity. The audit committees also have to initiate a tender process for the appointment of a statutory auditor or an audit firm every 10 years. Public-interest entities are not allowed to have the same statutory auditor or audit firm for more than 20 consecutive years.

Changes in tasks and increased responsibility also require, in addition to broad experience, competence from other subject l fields. The audit committee should have sufficient competence to assess and ask questions related to the financial statements, the quality of internal control over financial reporting and to understand and form an opinion on significant and complex accounting issues.

The audit committee must have sufficient competence to challenge both management and the statutory auditor in areas where there is a risk that errors may occur in the accounts, the level of internal control over financial reporting and the auditor's approach in significant areas. Further, the audit committee must be able to form an opinion on the quality of the audit. This involves the understanding of situations that may jeopardise the auditor's objectivity and thus the auditor's independence, including the safeguards applied to mitigate threats to the auditor's objectivity.

Commencement

The regulations became effective from 2021. Special transitional rules induce that the effect of the regulations will be of importance from 2021 and the years ahead.

Special requirements for the audit committees

The tasks of the audit committee under the new legislation

The amendments in the Norwegian Public Limited Liability Companies Act and the Financial Undertakings Act involve more responsibility and new requirements for the audit committee.

The following outlines the adopted requirements, cf. section 6-43 in the Norwegian Public Limited Liability Companies Act. Similar amendments have been adopted in the Financial Undertakings Act.

The audit committee shall:

A. *inform the Board of Directors of the results of the statutory audit and explain how the audit contributed to financial reporting with integrity and the role of the audit committee in that process,*
B. *prepare the Board's following up of the financial reporting process and make recommendations or proposals to ensure its integrity,*
C. *as regards the company's financial reporting, monitor the internal control systems, risk management and internal auditing without violating the independent role of the audit committee,*
D. *maintain ongoing contact with the company's elected auditor about the audit of the financial statements, including in particular monitoring the audit in light of matters the Financial Supervisory Authority of Norway has pointed with reference to Article 26 no 6 of the Statutory Audit Regulation cf. section 12–1 of the Auditors Act,*
E. *assess and monitor the auditor's independence pursuant to chapter 8 of the Auditor's Act and Article 6 of the Statutory Audit Regulation, cf. Section 12–1 of the Auditor's Act, including in particular that services other than auditing are delivered in accordance with Article 5 of the Statutory Audit Regulation,*
F. *be responsible for preparing the company's choice of auditor and making recommendation in accordance with Article 16 of the Statutory Audit Regulation, cf. Section 12–1 of the Auditor's Act.*

Summary of tasks in new legislation for the audit committee

- Inform the Board of Directors of the results of the statutory audit and explain how the audit contributed to financial reporting with integrity and the role of the audit committee in that process.
- Make recommendations to the Board of Directors to ensure integrity in the reporting.
- Maintain ongoing contact with the auditor, assess and monitor the auditor's independence, including in particular that prohibited services are not provided and that the limit for total fees for legal services is complied with (70% audit fee vs. advisory fee).
- Responsible for the audit tender process and recommending the best auditor.
- Monitor auditor's rotation requirements.

The Financial Supervisory Authority of Norway has clearly notified that they will focus on and follow-up the audit committee and how the committee complies with its responsibilities.

- Involves stronger and clearer contact between The Financial Supervisory Authority of Norway and the audit committees in the future.

Follow-up of the audit and integrity in the financial reporting

Historically, the audit committee has mainly informed orally about its opinion on the financial reporting process and the statutory audit due to a short period of time between committee meeting and board meeting. The opinion is often based on summaries to the audit committee prepared by the management and by the auditor. The minutes from the audit committee meeting are normally adopted as final in the consecutive audit committee meeting.

It is important that the audit committee sufficiently reflects and documents in minutes from board meetings that the audit committee has complied with its responsibility to inform the Board of Directors about the result of the audit and how the audit contributed to financial reporting with integrity, including the role of the audit committee in that process.

Further on, it is important that the audit committee reflects and documents in the minutes from board meetings that the audit committee has complied with its responsibility to inform the Board of Directors about the financial reporting process and recommendations or proposals to ensure its integrity. It is of particular importance that the audit committee concentrates its attention on accounting items with material estimation uncertainty.

Requirements for the committee	Examples of how the requirements can be audit complied with
Inform the Board of Directors about the result of the statutory audit and explain how the audit contributed to financial reporting with integrity and the role of the committee in that process.	Examples of questions that can contribute to supporting the work of the audit committee: “The committee was informed about the assessment and the assumptions used by the management to make the estimates”, “The committee questioned some parameters and assumptions in the model”, “The committee further made an inquiry to the company’s auditor to confirm correct understanding of the regulations”, “The committee made an inquiry to the management about sensitivity in the calculations and thus the outcome of the assessment by changing parameter x, y z”.
Make recommendations to the Board of Directors to ensure integrity in reporting.	In order to support the integrity of the financial reporting process it is natural that the audit committee has sufficient insight into the financial reporting process and items subject to estimates in the financial statements. This can be supported by the management presenting documentation describing the internal control over financial reporting and the basis for the assessment of key items subject to estimates in the financial statements in sufficient detail for the audit committee to make recommendations or proposals to the Board of Directors in order to secure integrity of the financial reporting process.

Requirements for the committee	Examples of how the requirements can be audit complied with
Inform the Board of Directors about the assessment of auditor's independence	The explanations should comprise the process the audit committee has followed to monitor the auditor's independence, including the use of instructions, approval of services, material discussions with the auditor and the auditor's confirmation regarding their independence. The documentation supporting the conclusions can comprise description of services provided, duration or timing of deliveries, assessment of threats and description of measures, estimated effect on the audited consolidated financial statements and the assessment of materiality. Other useful documentation is description of the 70% calculation made by the auditor.

Auditor's reporting to the audit committee is extended

Monitoring the auditor's work is made through ongoing contact with the statutory auditor. The work is made somewhat easier through the increased reporting requirements from the auditor to the audit committee. The statutory auditor or the audit firm of public-interest entities is required to prepare a detailed annual report in addition to the audit report to the audit committee. The report shall include among other things:

Communication frequency

- A description of the frequency and the type of communication between the auditor and the audit committee, the management, the Board of Directors and/or other governing bodies and the auditor, including the date of these meetings.

Materiality level

- The materiality levels applied in the audit. Qualitative factors that have been assessed in the determination of the materiality levels.

Group assessments

- The group auditor must explain criterias applied in the assessment of what entities are consolidated and whether consolidation exemptions, if any, are in line with the accounting standards.
- Identify audit work conducted by an auditor outside the EU who is not a member of the auditor's network.

Audit approach

- A description of the scope and timing of the audit.
- A description of which balance sheet items that are verified directly and which are based on test of controls.
- An explanation of material changes in audit approach compared to the previous years audits.

Going Concern

- Report and explain the assessment of events and circumstances identified in the audit that can cause material doubt about the company's going concern assumption.

Valuation

- Report and assess valuation methods applied, including any effect of possible changes.

Reporting in the audit report

- The contents of the audit report will increase due to new legislation. For the audit committees, a particular useful piece of information, is to what extent the audit was able to detect fraud. This information must be tailored.

The audit committee shall approve non-audit services from the auditor

The audit committee shall approve non-audit services from the auditor, and this involves ongoing contact with the auditor and practical routines for approval. A practical routine may for instance be that the audit committee establishes guidelines for type of services and amounts, and gives a trusted employee (eg. CFO) in the company the authorization to approve.

The introduction of new rules is not expected to change the possibility to purchase services from the statutory auditor significantly compared to the current legislation. This is because most of the services that are prohibited through EU's regulation/rules are already prohibited in Norway.

The new rules include a list of services that the statutory auditor of the entity can not deliver (see enclosed list following the article). The prohibition only comprises these services. The auditor can deliver services that are not on the list, provided that the auditor complies with the provisions in the Auditors Act regarding independence and provided that the audit committee after having assessed threats to independence, and any safeguards applied to mitigate those threats, approves the delivery.

Certain tax services are allowed provided that the auditor complies with the general requirements for independence and that the services are immaterial to the audited financial statements.

As before, the auditor can deliver advisory services related to interpretation of accounting rules, tax rules and corporate issues. There is no prohibition of general legal advice from the auditor. It is prohibited, however, that the auditor or anyone in the auditor's network, for instance lawyers, act as permanent "office of general council" for the audit client.

The audit committee's approval of non-audit services

As a general rule, services that are delivered from the auditor in Norway, either to the entity or its subsidiaries, shall be approved by the audit committee. This also applies for services to subsidiaries within EU/EEA. Services related to decision making, bookkeeping and design and implementation of internal control related to financial information/ system can not be delivered to any company in the group. The audit committee must also approve services delivered to the parent company of the group.

The audit committee shall monitor the auditor's independence, including the limit for total fees for non-audit services

Auditor's fee for non-audit services can not exceed 70%t of the average of the fees paid in the last three consecutive financial years. The three first consecutive financial years will be 2021, 2022 and 2023. The first time an average fee can be calculated, is when 2023 is completed, i.e. in 2024. 70% of the average audit fee for these three years will be the upper limit for advisory fees in 2024. The calculations are to be made by the auditor based on the figures in the auditor's accounts. The results shall be communicated from the auditor to the audit committee.

All fees invoiced by the statutory auditor in Norway shall be included in the calculation. Audit fee is the fee paid for statutory audit. Fees for other services invoiced from the statutory auditor comprise for instance advisory services and interim audits and attestation services connected to equity transactions. Work related to attestation services that the statutory auditor is required by law to perform, shall not be included.

The rule applies to fees to public-interest entities in Norway and other entities controlled by this entity located in the EU and its parent company located in the EU. Fees for audit services provided by companies in the auditor's network abroad shall not be included.

The count commences the first financial year starting after the Act came into force. The first year to include will therefore be 2021. The first calculation of the fee limit shall be in 2024 if additional services have been provided from the auditor to the entity for three consecutive years. If additional services have not been provided in one financial year, the count shall start again.

Average audit fee for three consecutive years, for instance 2021, 2022, 2023 shall be measured against the fee for non-audit services in 2025. This fee can not exceed 70% of the average audit fee. The Financial Supervisory Authority of Norway may in special cases grant exemptions, for instance when reorganizations require considerable effort from the statutory auditor.

Appointment of the statutory auditor – the audit committee is responsible for the process

Public-interest entities have to rotate the auditor at certain intervals. The audit committee shall make sure that a tender process is carried out. The management can, however, be responsible for the practical procedures. The audit committee shall evaluate the process and submit recommendations regarding the selection of an auditor to the Board of Directors who shall convene the ordinary general meeting. The special process requirements do not apply for smaller public-interest entities, i.e. entities that do not exceed two of the following criteria: 250 employees, balance sheet total 43 million euro, annual sales revenue of 50 million euro, and has a market value below 100 million euro.

Tender rules applicable for all public-interest entities

- The audit committee (AC) shall submit a recommendation on at least 2 auditors to the ordinary general meeting (OGM) with preference for one of the recommended auditors.
- AC shall declare that the recommendation has not been influenced by third parties, and
- There are no contracts that have affected the choice.
- OGM has to explain deviations from AC's recommendation.

Additional rules for large public-interest entities

- AC is responsible and shall see to it:
  - The management prepares tender documents:
    - that enables the participants in the process to understand the business, and
    - from which the criteria for the selection of the auditor is specified.
- The management is free to invite auditors and carry out the process.
- The management shall assess the tenders based on the criteria, findings from inspections at the auditors shall be considered.
- The management shall prepare a report about the process with conclusions.
- AC shall approve the report.

No clear rules have been established for when the tender process shall be carried out. Therefore, in theory, the tender processes can be arranged in the eleventh year after the auditor was appointed. In practice this is not recommended. The current auditor can not legally take responsibility for the audit in year 11 prior to possibly being reappointed.Therefore, there is a risk that the company will be without an auditor for a period of time. Besides, the tender process can be time-consuming where many considerations must be weighed against each other.

Rotation of audit firm – the audit committee is responsible for the process and to ensure a timely change of auditor

Public-interest entities must initiate a tender process in order to rotate the audit firm at least every 10 years. The rotation requirement and the requirement to carry out a tender process came into force from the financial year 2021 onwards. The same auditor can not be retained for more than 20 years. After holding the position for 20 years the same auditor can only be reappointed after a cooling-off period of 4 years. The first term of office can not be less than one year. The following transition rules have been established for Norwegian entities by the introduction of new rotation requirements:

- Entities who have had the same statutory auditor for at least 20 consecutive financial years must appoint a new auditor for the financial year starting six years after the commencement date for the new provision, at the latest. This includes entities who have had the same auditor from 2001 or earlier. The transition rule implies that the same auditor can be retained through 2026. A new auditor must be appointed with effect from 2027.
- Entities who have had the same statutory auditor for at least 11, but less than 20 consecutive financial years, must appoint a new auditor for the financial year starting nine years after the commencement date for the new provision. This includes entities who have had the same auditor from the years between 2002 and 2010. The transition rule implies that the same auditor can be retained through 2029. A new auditor must be appointed with effect from 2030.
- For entities who have had the same auditor from 2011, 2012 and so on, the ordinary requirements regarding rotation apply. Entities who have had their auditor from 2011 at the time of commencement have had their auditor for more than 10 years. According to the EU-regulations a tender process must be arranged when the auditor has held the position for 10 years. Because the rotation requirements apply for financial years starting after the audit provision comes into force in Norway, the regulations must

be understood so that the tender process must be held in 2021 or 2022 with effect from 2022. The same auditor can be reappointed with effect from 2022 for another 8 years so that the last year of audit becomes 2030. If the first financial year subject to audit was 2012, the auditor will have kept the position for 9 years in 2020. Also in these cases a tender process must be arranged in 2021 or 2022 with effect for 2022. The same auditor can be reappointed with effect from 2022 for another 10 years so that the last year of audit becomes 2031.

In special situations The Financial Supervisory Authority of Norway may, upon application, extend the service period for the auditor by up to two years.

Has had the same auditor as from this financial year	Must carry out tender process with effect for this financial year at the latest, but may continue with the same auditor	Must carry out tender process and change auditor with effect for this financial year at the latest
2001 or earlier		2027
2011		2031
2011	2022	2031
2012	2022	2032
2013	2023	2033
2014	2024	2034
2015	2025	2035
etc.	etc.	etc.

Services that the statutory auditor can not provide

*) Services in the table indicated by an asterisk are **allowed in Norway** subject to the approval of the audit committee and that the services must be without or have insignificant influence on the financial statements.

**) For the provisions mentioned in E., a special rule applies. There must be a one year cooling-off period between the provision of the service and the first year to be audited. For instance, if the first year to be audited is 2021, the auditor can not have provided this type of service in 2020.

A. Tax services related to:
   - Preparation of tax forms*,
   - Payroll tax,
   - Customs duties,
   - Identification of public subsidies and tax incentives unless support from the statutory auditor or the audit firm in respect of such services is required by law*,
   - Support regarding tax inspections by tax authorities unless support from the statutory auditor or the audit firm in respect of such inspections is required by law*,
   - Calculation of direct and indirect tax and deferred tax*,
   - Provision of tax advice,

B. services that involve playing any part in the management or decision-making of the audited entity,

C. bookkeeping and preparation of accounting records and financial statements,

D. payroll services,

E. designing and implementing internal control or risk management procedures related to the preparation and/or control of financial information or designing and implementing financial information technology systems**,

F. valuation services, including valuations performed in connection with actuarial services or litigation support services*,

G. legal services, with respect to:
   - the provision of general counsel,
   - negotiating on behalf of the audited entity, and
   - acting in an advocacy role in the resolution of litigation,

H. services related to the audited entity's internal audit function,

I. services linked to the financing, capital structure and allocation, and investment strategy of the audited entity, except providing assurance services in relation to the financial statements, such as the issuing of comfort letters in connection with prospectuses issued by the audited entity,

J. promoting, dealing in, or underwriting shares in the audited entity,

K. human resources services, with respect to:
   - management in a position to exert significant influence over the preparation of the accounting records or financial statements which are the subject of the statutory audit, where such services involve:
     - searching for or seeking out candidates for such position, or
     - undertaking reference checks of candidates for such positions;
   - structuring the organisation design, and
   - cost control.

Changes to the Accounting Act

A draft new Accounting Act was proposed in 2015. The existing act was amended in 2017 and 2019, and minor amendments were proposed at the very end of 2020 which will take effect no earlier than in the 2021 financial statements. Accordingly, there were no changes in the rules applicable to companies that follow good accounting practice with effect on the 2020 financial statements. However, the world faces major challenges as a result of the corona pandemic, and these will impact the annual financial statements of many companies. A brief reminder regarding coverage of gender equality and non-discrimination in the annual report is provided below.

Annual report – discussion of gender equality and non-discrimination

An employer's activity duty and duty to issue a statement on gender equality and non-discrimination are regulated in the Equality and Anti-Discrimination Act. The duty to include a statement in the annual report (or another publicly accessible document) is linked to the activity duty. The duty to issue a statement is designed to ensure, among other things, compliance with the activity duty.

Both the activity duty and the duty to issue a statement were expanded with effect as of 1 January 2020. The changes applied to annual reports prepared and approved after this date, including the annual report for the 2019 financial year.

It may be difficult to determine the content and scope of the duty to issue a statement. Bufdir (the Norwegian Directorate for Children, Youth and Family Affairs) has issued a guide on gender equality statements, including a template for these. Both documents are available on the Bufdir website.

Simplified IFRS

The Regulations relating to simplified application of International Financial Reporting Standards (IFRS) have

not been updated as the IFRS have been updated, and since 2018 annual temporary provisions have therefore been incorporated into the regulations to remedy this. The 2020 update to the regulations maintained the exceptions from earlier years.

The simplification rules linked to IAS 39 apply correspondingly to IFRS 9 insofar as they are relevant.

Entities which are under a legal obligation to prepare financial statements pursuant to section 1–2 of the regulations and which do so for the first time in respect of an accounting period starting on 1 January 2019 or later, and which are a parent company or subsidiary in a group in which the parent company prepares group financial statements pursuant to IFRS or simplified IFRS, may apply the same implementation date and method for IFRS 16 as adopted in the parent company's group financial statements.

Proposed changes to the Accounting Act

A draft act based on recommendations made by the Accounting Act Committee in 2015/2016 was published at the end of December 2020. The purpose of the proposed changes is simply to ensure that the Accounting Act is compliant with EU Directives, and the changes are therefore less comprehensive than proposed by the Accounting Act Committee.

The draft act requires entities under an obligation to prepare a corporate governance statement to provide information on their gender equality and diversity guidelines, covering topics such as age, gender and educational and professional background, by reference to the composition of the board of directors, management and control bodies, and their sub-committees.

Under current legislation, large companies must prepare a statement on their work in the field of social responsibility. Some adjustments have been proposed to this provision to fulfil the directive's disclosure requirements related to non-financial reporting. This includes requirements for further explanatory and descriptive information not included in section 3–3c of the Accounting Act as presently worded, including that large companies must incorporate a social responsibility statement into their annual reports that provides information needed to understand the company's development, performance and position, as well as the consequences of company activities for environmental and social conditions. Moreover, a provision has been included to allow companies – in exceptional cases – to omit information that could harm their competitiveness (although it has been emphasised that the threshold for doing so is high).

Some minor changes have been proposed to the valuation rules in the Accounting Act. The cost of internally generated research and development (R&D) may no longer be recognised in the balance sheet. If the economic life of goodwill or development costs recognised in the balance sheet is deemed uncertain, the maximum depreciation period is 10 years. An impairment of goodwill shall not be reversed in a subsequent period.

The EU Accounting Directive restricts the note disclosures applicable to small companies, and it has therefore been proposed that certain note requirements which currently apply to small companies be repealed.

Executive remuneration – stricter guideline requirements and a new report

In 2019, the Public Limited Liability Companies Act was amended to include stricter requirements on guidelines in the area of executive remuneration, as well as a self-reporting requirement. Implementation of the amendments was postponed pending the issuance of regulations supplementing the new provisions. These regulations have now been approved, and entered into force on 1 January 2021. Executive remuneration guidelines must be approved by the ordinary general meeting in 2021, and the deadline for adopting guidelines in compliance with the new requirements is 1 October 2021 for companies with a standard financial year (ending 31 December) and 1 January 2022 for companies with a non-standard financial year. The first remuneration report prepared by the board of directors in accordance with the new rules must be considered by the ordinary general meeting no later than in 2022.

The purpose of the new rules is to promote transparency about remuneration policy and the actual remuneration received by executives, and to build stronger links between executive remuneration and company performance. A further objective is to encourage longer-term commitment among shareholders in listed companies.

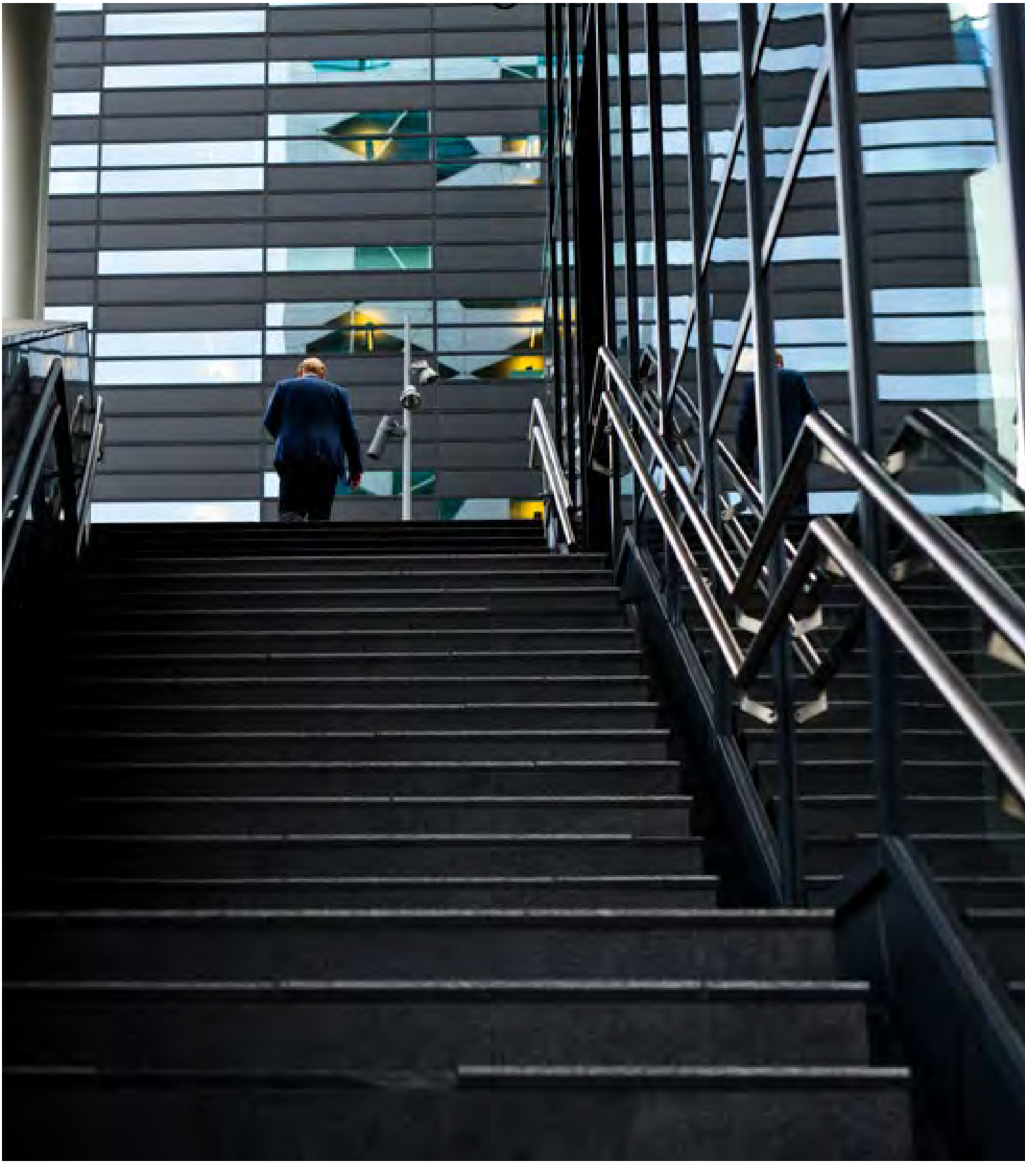
At the general level, the new rules impose stricter requirements relating to companies' executive remuneration guidelines, and require annual approval and publication of an executive remuneration report. The scope of the requirements is narrower than previously, as they only apply to companies with shares listed on a regulated market, i.e. companies listed on Oslo Stock Exchange and Euronext Expand (formerly Oslo Axess). Accordingly, other public limited liability companies will no longer be subject to the requirements, but it is important to note that applicable information requirements in the Accounting Act remain unchanged.

The board has a responsibility to prepare guidelines on the setting of executive pay and other remuneration. These guidelines must constitute a framework that defines the remuneration which individual executives may receive. All material changes to the guidelines must be approved by the ordinary general meeting, and generally at least every four years, and the guidelines must be published on the company's website.

Companies must prepare and publish an annual remuneration report, which must provide an overview of the remuneration received by or accrued to individual executives. The remuneration report must enable shareholders to compare actual remuneration with the current guidelines, show developments in the remuneration levels of individual executives over the past five years and illustrate the development of the company's profits and average pay level over the same period. The report must also show how the company's guidelines are being complied with.

The European Commission has developed a reporting template[1] which companies are encouraged to use, although this is not mandatory. The report is subject to statutory audit.

1 https://ec.europa.eu/info/sites/info/files/rrg_draft_21012019.pdf



Company-shareholder transactions

Private and public limited liability companies are independent legal persons. This means that companies and their affairs must be dealt with based on their independent interests, separately from any personal interests on the part of shareholders and/or other group companies. This is why the Private Limited Liability Companies Act and the Public Limited Liability Companies Act contain substantive and procedural requirements applicable to agreements between companies and shareholders/related parties of shareholders[1] and intra-group transactions. These rules apply in addition to other provisions in the acts intended to protect a company's interests, such as rules on abuse of authority, capital adequacy requirements, prohibitions against gifts, rules on distributions and capital increases, etc.

Intragroup transactions

Section 3–9 of the Private Limited Liability Companies Act and the Public Limited Liability Companies Act provides that transactions between companies in the same group must reflect ordinary commercial terms and principles. This implies that consideration must be given to market practice related to similar agreements. This applies to calculation of the value of the transferred asset(s) (the price), and is linked to the rules on arm's-length pricing. In addition to price, the provision also applies to other terms, such as demands for collateral, scope for taking legal action, guarantees, conclusion in writing, etc. Material agreements

1 See section 1–5 of the Private Limited Liability Companies Act/Public Limited Liability Companies Act.

between group companies must be concluded in writing. Whether an agreement is deemed material must, to some extent, be assessed objectively, but must probably also be assessed by reference to the size of the companies involved. An agreement that is material to a smaller company will not necessary be material to a larger company.

Agreements with shareholders or members of management, etc.

Section 3–8 of the Private Limited Liability Companies Act and the Public Limited Liability Companies Act contains both procedural requirements and content requirements applicable when a company enters into material agreements with a shareholder, the parent company of a shareholder, a board member, the managing director or a related party of such a person. Previously, such agreements required ordinary general meeting approval, but following a statutory amendment effective from 1 January 2020 such agreements now require board approval. The board must prepare an explanation of the matter which must be confirmed by an auditor, and must issue a statement

on the agreement. This documentation must then be sent to the shareholders, and must be registered in the Register of Business Enterprises. There are some exemptions from these requirements for certain types of agreement that fall outside the purpose of the rule. These exemptions are as follows:

1. agreements which are entered into in the course of a company's ordinary activities and which are based on ordinary commercial terms and principles
2. agreements under which the company's performance at the time the agreement is entered into has a fair value of less than NOK 100,000
3. agreements entered into in accordance with the rules in section 2–4, see also section 2–6, and section 10–2
4. agreements relating to the pay and remuneration of the managing director, and agreements as specified in section 6–10
5. agreements on the transfer of transferable securities as specified in section 2–4(1) of the Securities Trading Act for a price in line with the quoted price on a regulated market
6. agreements falling within section 8–7(4), first sentence, (2) and (3), see also second sentence, if the parent company or the legal person owns all shares in the company
7. agreements entered into in accordance with the rules laid down in or pursuant to section 8–10
8. agreements approved by Finanstilsynet in accordance with the rules in chapter 20 of the Financial Institutions Act.

Agreements entered into as part of a company's ordinary activities include transactions between the company and a shareholder that would also have been implemented with an external third party. The exemption is intended to cover agreements that appear to be commercial and ordinary.

With just a few exceptions, the provision in the Public Limited Liability Companies Act is identical to the corresponding provision in the Private Limited Liability Companies Act. The provision in the Public Limited Liability Companies Act Section 3–8 applies to companies whose shares are not listed on a regulated market.

Public limited liability companies are subject to an additional set of rules that apply when a company whose shares are listed on a regulated market or which is engaged in activities within the EEA enters into a material agreement with a related party (chapter 3.V. of the Public Limited Liability Companies Act, sections 3–10 to 3–19). These rules provide that such agreements require ordinary general meeting approval. The threshold value under section 3–11 is the same as under section 3–8. Moreover, the board must prepare an explanation of the matter and issue a statement, as under section 3–8. In addition, a notice describing the agreement must be prepared and published on the company's website.

Details of the threshold value that determines when the procedural requirement in section 3–8 of the Private Limited Liability Companies Act and the Public Limited Liability Companies Act applies

Section 3–8 of the Private Limited Liability Companies Act and the Public Limited Liability Companies Act applies to agreements where the value of the company's payment exceed 2.5% of the balance sheet total in the company's latest approved annual financial statements. Alternatively, an interim balance sheet can be prepared as the basis for the transaction, for example if there have been material changes in the company since the latest annual financial statements were issued. If the company has neither an approved balance sheet total nor an interim balance sheet, the threshold value is 2.5% of the total nominal value plus the premium on the shares issued by the company. For agreements entered into before 1 January 2020, the applicable threshold value is still 10% of the company's share capital.

To eliminate unnecessary administrative and financial burdens, a minimum amount of NOK 100,000 has been adopted so that agreements below this threshold fall outside the scope of section 3–8 of the Private Limited Liability Companies Act and the Public Limited Liability Companies Act. In practice, this exception will be relevant to companies with a balance sheet total of less than NOK 4 million. If the balance sheet total is higher, the threshold value of 2.5% will always total more than NOK 100,000. Under the previous statutory provision, agreements with a value below NOK 50,000 were exempt if approved by the board of directors.

The board's statement and the auditor's confirmation

As stated, the board must prepare a statement describing the agreement that has been entered into. Further, information must be provided on the principles which have been followed when valuing the assets the company is to receive. In the statement, the board must also declare that the assets to be taken over by the company have a value that is at least equal to the agreed payment. The statement must be confirmed by an auditor, and the auditor may normally only give such confirmation if a supporting valuation of the transferred assets has been prepared. The required scope of this valuation depends on the assets being transferred, but an internal valuation is normally sufficient. It may be beneficial to involve the auditor as early as possible in such transactions to ensure that the auditor agrees with the valuation method and principles used.

Invalidity

Pursuant to the old section 3–8 provision, an agreement which had not been

approved by the ordinary general meeting was not binding on the company. The rules have now been amended to protect agreement counterparties who have acted in good faith, and the agreement will now be valid unless the company can prove that the counter-party "understood or should have understood" that the board had not approved the agreement.

The preparatory works emphasise that only contravention of the requirement for board approval of the agreement may result in invalidity of the agreement, not the requirement to provide an explanation and issue a statement.