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# Norway

# VENTURE CAPITAL


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This country-specific Q&A provides an overview of venture capital laws and regulations applicable in Norway.

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# NORWAY
# VENTURE CAPITAL

## 1. Are there specific legal requirements or preferences regarding the choice of entity and/or equity structure for early-stage businesses that are seeking venture capital funding in the jurisdiction?

The *de facto* default entity for early-stage growth businesses is the *private limited liability company* (Nor: "aksjeselskap", abbreviation and statutory suffix "AS"), which offers essential legal qualities such as limited liability, legal personality for the entity (including also for tax purposes), the possibility of effective capitalization, as well as predictable but also flexible corporate governance.

## 2. What are the principal legal documents for a venture capital equity investment in the jurisdiction and are any of them publicly filed or otherwise available to the public?

Typically, investments are carried out by way of a share capital increase against issuance of shares against cash contribution (contributions in kind is however also possible). Required corporate documentation comprise resolutions by the board of directors and the general meeting (of shareholders), updated articles of association and an updated shareholders' register. The capital increase must be registered with the Norwegian Register of Business Enterprises ("**NRBE**") by submitting an online form with confirmation of receipt of the share contribution and copies of the shareholders' resolution and updated articles. The two latter documents will be publicly available.

As in most jurisdictions, a venture capital investment typically also involves commercial documents such as a term sheet, an investment agreement and a shareholders' agreement. These are purely contractual documents between the parties and do not have to be filed with any public register.

## 3. Is there a venture capital industry body in the jurisdiction and, if so, does it provide template investment documents? If so, how common is it to deviate from such templates and does this evolve as companies move from seed to larger rounds?

The relevant body is the Norwegian Venture Capital & Private Equity Association (the "**NVCA**"), consisting of members from the industry, including funds of all stages, corporate venture capital arms, family offices, advisors and others. The NVCA strives to help the industry grow through means such as conferences and gatherings and political work. The NVCA does not provide templates for investment documents.

## 4. Are there any regulatory frameworks in respect of companies offering shares for sale that need to be considered, for example any restrictions on selling and/or promoting the sale of shares to the general public?

Generally, few restrictions apply in Norway to the sale and/or promotion of securities by the company itself (third party marketing of securities is however regulated). The AS corporate form is not intended to, and is in theory limited by law to, raise funds from the general public (the intention is then that the company should transform into a public limited liability company – "ASA"). That said, there are no immediate consequences of an AS actually raising funds from the general public.

More relevant in this regard is the requirement to prepare a prospectus (simplified national prospectus or extensive EEA prospectus depending on the size of the investment round) in case of offerings of shares directed at more than 149 non-professional investors with a total consideration of at least EUR 1,000,000 within any given 12-month period. These restrictions have become increasingly relevant for the venture financing scene

 

with the emergence of equity-based crowdfunding.

## 5. Are there any general merger control, anti-trust/competition and/or foreign direct investment regimes applicable to venture capital investments in the jurisdiction?

Merger control regulations only apply in events of transfer of control and depending on financial thresholds. Norwegian FDI control applies only to the extent the target business is encompassed by the Norwegian Security Act, i.e. deemed part of critical infrastructure or otherwise being of particular national interest. The mentioned regulations may, but rarely do, apply in venture capital investments.

## 6. What are the prevailing tax incentives or structures offered to venture capital investors in the jurisdiction, if any?

There is a startup investment tax incentive scheme pursuant to which personal investors (using up to one intermediate investment vehicle) may be eligible, subject to a number of criteria, for a deduction equal to the investment amount in their taxable general income up to a maximum of NOK 1,000,000 annually (in total, across investments). Broadly speaking, the scheme applies to cash investments made by new, external investors against shares in small companies. Deductions are allocated by the company receiving the investment and is limited to NOK 5,000,000 annually for each investee company. Among several other criteria, a 4-year minimum holding period applies to shares, and the company is barred from making any kind of equity distributions in the same time period. In case of a subsequent breach with criteria, the tax deduction is subject to reversal.

## 7. What is the process, and internal approvals needed, for a company issuing shares to investors in the jurisdiction and are there any related taxes or notary (or other fees) payable?

Issuance of shares is regulated by the Norwegian Private Limited Liability Companies Act and is carried out by a shareholders' resolution to increase the company's share capital following proposal by the board. After the investors' subscription of the shares and payment of the share contribution, the capital increase is registered with the NRBE to finalise the share issue. The general meeting may as a practical alternative authorise the board to resolve share capital increases, within certain statutory limitations. The process of increasing share capital under the authorisation is similar to that described above, with the notable exception that no further shareholder approvals are required to issue the shares.

In early-phase funding and bridge financing, convertible loans and/or advance equity subscription instruments (SLIP, as described below) are quite common and contracts are quite standardised. Convertible instruments should ideally be resolved by the general meeting upfront and registered in the NRBE to provide assurance of conversion/exercise for the investor. However, especially in early-phase companies the process is often simplified, and agreements are commonly executed by the board alone (at some risk to the investors).

There is no notary system or stamp duties applicable in Norway, and all corporate registrations can be made electronically.

## 8. How prevalent is participation from investors that are not venture capital funds, including angel investors, family offices, high net worth individuals, and corporate venture capital?

This largely depends on the funding stage. Broadly speaking, the Norwegian startup and growth investor ecosystem is less mature compared to other leading jurisdictions, and there are generally more funding opportunities in early stages than in later growth stages. The Norwegian funding ecosystem relies a great deal on angel investors, high net worth individuals, family offices, CVCs and pre-seed funds, especially in earlier stage rounds. Larger family offices and early-stage institutional investors, including also CVCs and small VC funds are more common in later seed rounds. Venture capital funds, both Norwegian and international, are more prevalent in the growth stage, typically series A and onwards.

## 9. What is the typical investment period for a venture capital fund in the jurisdiction?

Typical investment period is around 5-8 years. However, naturally, this varies from fund to fund and also the prevailing exit market from time to time. Early-stage funds and governmentally funded venture capital institutions are quite common in the Norwegian market, and these may often practice longer and more flexible ownership periods for their investments, in some

 

instances even indefinite holding periods when the investors themselves are open-ended institutions.

### 10. What are the key investment terms which a venture investor looks for in the jurisdiction including representations and warranties, class of share, board representation (and observers), voting and other control rights, redemption rights, anti-dilution protection and information rights?

Very early-phase rounds are typically carried out using the SLIP or simple convertible debt agreements with fairly standardised terms.

The SLIP is a Norwegian simplified version of the more known SAFE instrument. Using the SLIP, the investor purchases against cash payment (the investment amount) a right/option to subscribe for shares at statutory face value (typically very low compared to market value) in connection with a later event (exit or qualified equity offering). The number of shares is calculated based on the market valuation of the company in the later conversion event, adjusted for any agreed discounts and/or valuation caps. Representations and warranties are very rarely provided in SLIPs. SLIPS convert into common shares or alternatively the share class issued in the qualified equity offering.

Key investment terms for direct share issues vary greatly across investment stages, but also from deal to deal on similar stages. In more mature rounds, terms are increasingly influenced by international VC market practice.

The majority of early-stage financing in Norwegian companies is done by issuance of common shares to investors without down-round anti-dilution rights. Protective pricing mechanisms such as liquidation preference and down-round anti-dilution clauses are however becoming increasingly common, and more common in later stages than earlier (presumably influenced by more frequent international investor participation in later stage rounds). Broad based weighted average is the most common anti-dilution formula, and 1x non-participating the most common liquidation preference.

The most common key terms in shareholders' agreements are vesting and leaver provisions for founders and key employees, board representation rights, information rights, establishment of a virtual employee share incentive pool, transfer restrictions and exit provisions such as drag-along and/or tag-along rights. Reserved matters and veto catalogues for lead investors are increasingly common.

Investment agreements are commonly used from mid- to late seed stage and beyond. These typically regulate the financing process and contain representations and warranties similar to those seen in comparable jurisdictions, sometimes also with special indemnifications for specific risks disclosed in the due diligence.

A notable limitation under Norwegian law is that an AS cannot legally agree to monetary liability for warranty breaches related to a share issue (the technical explanation is that paid-in share capital must be "surrendered unconditionally"). Various measures may be taken to compensate for this peculiarity, including compensation shares provided to investors essentially free of cost, and sometimes investors also require a limited monetary indemnification statement from founders.

### 11. How common are arrangement/ monitoring fees for investors in the jurisdiction?

Generally speaking, arrangement/monitoring fees are uncommon in the Norwegian market.

### 12. Are founders and senior management typically subject to restrictive covenants following ceasing to be an employee and/or shareholder and, if so, what is their general scope and duration?

Founders and senior management are typically subject to restrictive covenants both under their employment contracts and through shareholders' agreements. Generally speaking, the validity and enforceability of such clauses is limited both pursuant to EU/EEA competition law and the Norwegian Working Environment Act.

Under statutory employment law, non-compete obligations may only be imposed against compensation and for a maximum of one year following termination of employment. Solicitation of customers may be barred for one year after termination (without compensation), while clauses restricting the free movement of employees (non-solicitation of employees) are generally not enforceable.

Typically, more extensive restrictive covenants are imposed on founders and other employee shareholders

 

in shareholder agreements and are then connected to their ownership and post-ownership periods rather than employment. Even if widely used in practice, it is both arguable and a fairly complex legal question exactly how long and how strictly such covenants may apply when imposed on shareholders who are or were also employees, and the assessment depends on factors such as ownership stake, board representation, access to strategic information, etc. and quite certainly a number of shareholders agreements contain excessive, and as a result unenforceable, restrictive covenants.

## 13. How are employees typically incentivised in venture capital backed companies (e.g. share options or other equity-based incentives)?

Both share options and other equity-based incentives are widely used in the market. For tax reasons, it has generally been desirable for employees to own shares rather than options, and shares, which require at least some investment, are generally also considered to give better incentives. Share investment programs with various mechanisms to provide effective leverage and disproportional upside compared to risk are common.

Share options are also very commonly used, although generally less tax favourable. A statutory framework for more tax favourable share options in startups has been implemented in later years, under which option holders are granted both a more favourable taxation rate and the tax bill is postponed from the time of realisation of the options (exercise) until the time of realisation of the resulting shares (exit). The latter is a particularly important benefit from a liquidity perspective. However, a number of eligibility criteria apply both to the (i) company (e.g. maximum age, revenues, number of employees and book value), (ii) options (vesting, duration) and (iii) option holder (minimum work hours, maximum shareholding, employment both at option grant and exercise). The scheme must be used with great care, as the criteria are detailed and rigorous and since a tax favourable treatment will be rejected if all criteria are not met.

Additionally, due to a recent clarification of the Norwegian Tax Authorities' interpretation practice, we expect to see more frequent use of synthetic shares due to lower taxation rate on such instruments.

## 14. What are the most commonly used vesting/good and bad leaver provisions that apply to founders/ senior management in venture capital backed companies?

It is common to see four-year vesting periods including a one-year cliff (with three-year as the second most common). It is common to define bad leaver events, while events not within such definition are then good leaver. Typically, bad leaver events include termination for cause (as defined in applicable law) or employee's voluntary termination prior to the end of the vesting period. Whilst not always the case, renewed vesting schedules in subsequent financing rounds is not uncommon.

## 15. What have been the main areas of negotiation between investors, founders, and the company in the investment documentation, over the last 24 months?

In our experience, the main areas of negotiation have been, in no particular order, pricing protection mechanisms (liquidation preference and anti-dilution), potential renewed vesting periods in later stage investments, definitions of bad leaver events, the extent of the veto catalogue (reserved matters) and the extent of warranties and liability.

## 16. How prevalent is the use of convertible debt (e.g. convertible loan notes) and advance subscription agreement/ SAFEs in the jurisdiction?

Convertible debt and SLIPS are quite common in early-stage rounds and for bridge financing purposes in later stages, as these instruments allow for expedient fundraising and postponement of agreeing on price and other terms.

## 17. What are the customary terms of convertible debt (e.g. convertible loan notes) and advance subscription agreement/ SAFEs in the jurisdiction and are there standard from documents?

The SLIP agreement is standardised but commercial terms are customisable, such as discount and/or valuation cap, conversion trigger amount and exempt financing. It is customary to include a discount, typically around 20%, and also a valuation cap.

Convertible loan agreements typically contain similar commercial terms, but usually also an interest rate and a repayment obligation, although many early-phase loan

 

agreements have terms making it very likely or even mandatory that the loan will be converted into equity at maturity absent default.

## 18. How prevalent is the use of venture or growth debt as an alternative or supplement to equity fundraisings or other debt financing in the last 24 months?

Venture debt is not widely used in Norway, and there are few providers of venture debt in the Norwegian market. However, a limited number of later stage companies have raised venture debt in the last 24 months, typically for later growth stage funding rounds (series B onwards).

## 19. What are the customary terms of venture or growth debt in the jurisdiction and are there standard from documents?

It is customary to see relatively high interest rates, reflecting the risk of a venture growth investment, with payment-in-kind mechanics, subscription rights as sweeteners, a warranty and representations catalogue and equity and liquidity covenants. There are no standard form or even commonly used documents for venture debt in Norway. Due to the fact that most venture debt providers are from the U.S or U.K, and the relatively recent and seldom use of venture debt in the Norwegian market, documents are typically based on or heavily influenced by venture debt instruments regulated by U.S or English law.

## 20. What are the current market trends for venture capital in the jurisdiction (including the exits of venture backed companies) and do you see this changing in the next year?

The general trend throughout 2023 was an overall decline in investment activity in early-phase businesses compared to previous years. There were fewer investments made and valuation levels are generally coming down from peak. In later seed and growth stages, our general impression is that investors have prioritised follow-up investments in existing portfolio companies rather than initiating new investment cases, and that bridge financing rounds were largely carried out at valuations commensurate with the previous round or using convertible loans to postpone valuations. Several growth and early-phase companies have either been sold, have consolidated with peers or gone bankrupt. There have been no meaningful IPOs in the sector in 2023.

Furthermore, it appears that many investors are looking for more mature companies than they have previously done, seeking more traction and figures to verify their investment case and to limit technical and commercial risks.

We also saw the focus change back towards software companies after a “green technology” peak between 2020-2022. There is however generally still a focus on ESG/impact in investment cases.

Both equity and debt-based crowdfunding has gained popularity as a means of obtaining funding, which may either be a democratisation of finance trend and/or a sign that many are struggling to fundraise from professional investors. It remains to be seen how crowdfunded companies perform in the long term.

Looking forward, we expect the number of investments to increase slowly but steadily due to pricing corrections but also the recent challenging environment providing evidence of which companies show resilience and adaptability.

 

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