

THE ASSET
MANAGEMENT
REVIEW

TENTH EDITION

Editor
Paul Dickson

THE LAWREVIEWS

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REVIEW

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For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Paul Dickson

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PUBLISHER

Clare Bolton

HEAD OF BUSINESS DEVELOPMENT

Nick Barette

TEAM LEADERS

Joel Woods, Jack Bagnall

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PREFACE

Last year we reflected on how 2020 might primarily be remembered as the year of the novel covid-19 pandemic. A few events of global significance punctured covid-19's monopoly of economic news: the Democrats winning the White House; an eleventh-hour 'deal' being reached between the European Union and the United Kingdom a mere week before the end of the transition period; and a wrong turn in the Suez canal. However, a year on and the pandemic continues to dominate the global geopolitical landscape and remains a source of significant uncertainty. While it is clear that 2021 will also be overshadowed by the pandemic, successful vaccination campaigns appear to be providing fragile grounds for economic optimism in the near future. Yet unprecedented levels of government spending combined with labour shortages and supply chain disruption mean any recovery will have to grapple with rising inflationary pressures. In the asset management world, it is clear that the sector has faced one of its greatest and most sustained tests in recent history. The need for the industry to remain adaptable and resilient has perhaps never been greater.

Leaving all of this aside though, the importance of the asset management industry continues to grow. Nowhere is this truer than in the context of pensions, as the global population becomes larger, older and richer, and government initiatives to encourage independent pension provision continue. Both industry bodies and legislators are also increasingly interested in pursuing environmental, social and governance (ESG) goals through private sector finance. This should not be a surprise: lack of shareholder engagement has been identified as one of the key issues that contributed to the governance shortcomings during the financial crisis. Given the importance of the asset management industry in investing vast amounts on behalf of clients, the sector is the natural focus of regulatory and governmental initiatives to promote effective stewardship and take the lead in instilling a corporate cultural focus on sustainability and ESG initiatives.

The activities of the financial services industry remain squarely in the public and regulatory eye, and the consequences of this focus are manifest in ongoing regulatory attention around the globe. Regulators are continuing to seek to address perceived systemic risks and preserve market stability through regulation. Operational resilience – a concept focused on ensuring asset managers' holistic preparedness against any risk event, particularly significant operational risks – continues to be a significant focus point for global regulators.

It is not only regulators who continue to place additional demands on the financial services industry: the need to rebuild trust has led investors to call for greater transparency around investments and risk management from those managing their funds. Senior managers at investment firms are, through changes to regulatory requirements and expectations as to firm culture, increasingly being seen as individually accountable within their spheres of

responsibility. Industry bodies have also noted further moves away from active management into passive strategies, illustrating the ongoing pressure on management costs. This may, in itself, be storing up issues for years to come.

The rise of fintech and other technological developments, including cryptocurrencies, data analytics and automated (or ‘robo’) advice services, is also starting to have an impact on the sector, with asset managers looking to invest in new technologies, seeking strategies to minimise disruption by new entrants, or both. While regulators are open to the development of fintech in the asset management sector, they also want to ensure that consumers do not suffer harm as a consequence of innovations. Regulators across various jurisdictions launched the Global Financial Innovation Network (GFIN), which aims to facilitate collaboration and communication between regulators regarding financial innovation and to create a cross-border sandbox in which firms can test their new technologies. This continues to be a period of change and uncertainty for the asset management industry, as funds and managers act to comply with regulatory developments and investor requirements, and adapt to the changing geopolitical landscape and respond to the ongoing uncertainties brought about by the global pandemic. Although the challenges of regulatory scrutiny and difficult market conditions remain, a return of risk appetite has also evidenced itself, and the global value of assets under management continues to increase year-on-year. The industry is not in the clear, but, prone as it is to innovation and ingenuity, it seems well placed to navigate this challenging and rapidly shifting environment.

The publication of the tenth edition of *The Asset Management Review* is a significant achievement, which would not have been possible without the involvement of the many lawyers and law firms who have contributed their time, knowledge and experience to the book. I would also like to thank the team at Law Business Research for all their efforts in bringing this edition into being.

The world of asset management is increasingly complex, but it is hoped that this edition of *The Asset Management Review* will be a useful and practical companion as we face the challenges and opportunities of the coming year.

Paul Dickson

Slaughter and May

London

August 2021

NORWAY

Peter Hammerich and Markus Heistad¹

I OVERVIEW OF RECENT ACTIVITY

The Norwegian economy in general, and the asset management industry in particular, are affected by the Norwegian oil extraction and oil services industry, as well as with a state active in the financial markets. The state has substantial net financial assets in its sovereign investment fund, the Petroleum Fund (see Section VI.v). The economic activity represented by the oil and gas sector benefits the mainland and public economy as a whole, and has made Norway (relative to its size) an attractive investor market for both foreign and domestic asset managers.

Norway is, in an EU context, still a relatively small market, and the number of Norwegian managers of private funds is relatively low, entailing relatively large variations in fund raising year-on-year. The year 2020 saw record fund raising levels, with 20 billion kroner, even topping the previous record in 2016 (17 billion kroner), with new funds from long-standing managers such as FSN and Norvestor.² In addition, several new funds have been raised across different segments, from real property (e.g., under Arctic Fund Management and UNION real estate) to seafood (BlueFront Equity). In contrast to the high level of fund raising, the level of deals within private equity has remained depressed during 2020, likely owing to higher levels of perceived risks and difficulties in valuation under covid-19.

The Norwegian mutual funds market is dominated by a small number of large managers, such as the major banks and credit institutions present in Norway (e.g., DNB, KLP, Storebrand and Nordea, together representing approximately 72.5 per cent of the total). The covid-19 pandemic has, during the last year, also spurred significant growth in subscriptions to mutual funds, as both existing and new investors in the retail segment have prioritised savings and investments in liquid assets.³ No new hedge funds managed by Norwegian managers have been established since the Incentive Active Value Fund was launched in 2014. This may be related to the international trend of investors generally reducing their allocation to hedge funds.

Unregulated funds make up a significant portion of collective investments in Norway in both the retail and professional markets. This is particularly the case within real property investments, which is an important asset category in both the institutional and retail investor

1 Peter Hammerich is a partner and Markus Heistad is an attorney at Advokatfirmaet BAHR AS.

2 Norwegian Venture Capital and Private Equity Association (NVCA) statistics for 2020.

3 Norwegian Fund and Asset Management Association statistics.

markets. According to the regulator, such funds were, at the end of 2020 the second largest type of AIF in Norway with approximately 80 billion kroner under management, behind funds-of-funds with approximately 90 billion kroner under management.⁴

II GENERAL INTRODUCTION TO THE REGULATORY FRAMEWORK

Norway is a Member State of the European Economic Area (EEA), and the main body of legislation regulating asset management consists of EU legislation implemented in Norwegian law.

Under Norwegian law a distinction can be made between three types of collective investment schemes: mutual funds that are undertakings for collective investment in transferable securities (UCITS) funds,⁵ non-UCITS mutual funds and other collective investment schemes. Mutual funds fall within the scope of the Norwegian Investment Fund Act (the IF Act). As a general rule, all open-ended funds investing in financial instruments⁶ and bank deposits fall within the scope of the IF Act. Managers of non-UCITS mutual funds exceeding the threshold values of the AIFMD (€100 million under management) are regulated by the Norwegian Alternative Investment Fund Manager Act (the AIF Act), implementing the AIFMD, meaning that such managers must be authorised AIFMs and comply with the AIF Act. Sub-threshold managers may 'opt in' to benefit, in the future, from the marketing provisions of the AIF Act in other EEA jurisdictions.

All funds other than mutual funds are currently unregulated (at the fund level) in Norway. Closed-ended funds and open-ended funds investing in asset classes other than financial instruments and bank deposits (e.g., real property and commodities (directly and not in derivatives)), generally fall outside the scope of the IF Act. Following the entry into force of the AIF Act on 1 July 2014, the management and marketing of shares in such funds are regulated under the AIF Act. Norwegian law will reflect the additional EU fund types as European venture capital funds (EuVECA), European social entrepreneurship funds (EuSEFs) and European long-term investment funds (ELTIFs), and money market fund regulations are incorporated into the EEA Agreement and implemented in Norwegian law. Legislation implementing the EuVECA and EuSEF regulations was adopted in June 2021, and is expected to be enacted shortly.

The AIF Act and the implementation of the AIFMD in Norway are to a large extent based on a copy out approach, with little to no 'gold-plating'. Norway has implemented the 'private placement' provisions of the AIFMD with respect to funds or managers, or both, established outside the EEA. On this point, however, the rules are somewhat more strict than under the AIFMD, as they require prior authorisation from the Financial Supervisory Authority of Norway (FSAN) to market, rather than relying on notification. For fund managers established outside the EEA, there is a requirement that they are registered with a competent authority and subject to prudential supervision in their home state for the purposes of asset management.

4 Alternative investment funds, a report by the Financial Supervisory Authority of Norway, 15 June 2021.

5 Mutual funds complying with Norwegian rules implementing EEA rules corresponding to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to UCITS.

6 As defined in Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

Individual portfolio management is an investment service under the ST Act (implementing MiFID II). Only investment firms and credit institutions authorised under the ST Act, management companies for mutual funds or AIFMs authorised to provide portfolio management (as an ancillary service) may provide individual portfolio management services.

Activity falling within the scope of the IF Act, the AIF Act and the ST Act is under the supervision of the FSAN.

III COMMON ASSET MANAGEMENT STRUCTURES

Collective investment schemes established in Norway either fall within the IF Act, or outside specific regulation (at the fund level).

Funds that are regulated under the IF Act are required to be organised as contractual (rather than corporate) mutual funds under that Act. This is a specific form of organisation that implies a high degree of connectedness between the management company and the funds managed by such company. For example, shareholders in the funds are entitled to elect a number of members of the board of the management company (and the management company obliged to appoint these board members). The fund has a legal personality, but all dispositions must be taken by the management company.

Norwegian company law is generally not adapted to organise open-ended fund structures, as Norwegian limited company law does not allow for limited companies with variable capital. Unregulated (closed-ended) funds are typically organised as corporate structures (private limited companies), partnerships or silent limited partnerships. In recent years, some fintech actors have begun structuring crowdfunding vehicles as cooperatives, because shares in cooperatives may be marketed and sold without restriction under the prospectus rules or the ST Act.

Before June 2010, Norwegian legislation did not allow for the establishment of hedge funds in Norway. Because of this, many Norwegian promoters of hedge funds have traditionally chosen to establish funds in other fund jurisdictions, such as Ireland or Luxembourg, which has persisted.

Individual portfolio management is mainly restricted to institutional clients (pension funds) and high-net-worth investors through private banking offerings. The structuring of investments will typically be bespoke and adapted to the client at hand.

Since the entry into force of a new Act on Financial Undertakings and Financial Groups on 1 January 2016, Norwegian law no longer allows for the establishment of securitisation vehicles, and securitisation outside covered bonds is generally not possible on suitable terms. It is expected that Norway will implement any EU securitisation rules if and when they are proposed as part of the Capital Markets Union initiative. Whether there will be a delay in implementation of such rules, as with other financial regulations these past few years, remains to be seen. Rules governing synthetic securitisation were implemented upon incorporation of the Capital Requirements Regulation into the EEA Agreement.

In the retail segment, significant amounts are invested through unit-linked insurance policies. Several Norwegian insurance companies offer unit-linked life insurance, which offers policyholders the opportunity to invest in a number of assets (although mainly mutual funds and listed instruments) as underlying in a unit-linked insurance contract. Tax rules make holding investments through a unit-linked insurance policy more favourable (for private individuals) compared to holding these investments directly or through mutual funds. Insurers generally provide web-based tools for investors to monitor and make changes

to their portfolios, without triggering taxation. Changes to the applicable tax rules have been introduced to avoid different tax treatment of what – in substance – are similar-type investment products that require that the relevant unit link policy has a larger insurance element (pay out equal to 150 per cent, compared to 101 per cent). If the insurance element is below 150 per cent, taxation will be equal to investing in mutual funds directly. Rules for an ‘equities savings account’ provide more favourable tax treatment of securities accounts of private individuals containing only equity instruments and equities mutual funds compared to direct investment. Investments are made directly in the name of the investors (as is the case for individual portfolio management), and may be offered by credit institutions, investment firms and management companies for mutual funds.

IV MAIN SOURCES OF INVESTMENT

Apart from institutional investors, high net worth individuals, family offices and retail investors, the Norwegian government is also a sizeable investor in the Norwegian financial markets in listed securities, private equity and the venture and seed segment.

The government-owned investment company *Argentum Fondsinvesteringer AS* and its affiliates are the government’s investment company specialised in private equity investments, with 9 billion kroner under management at the end of 2020. In 2019, the government established a seed fund initiative through *Innovasjon Norge* (a government-funded initiative for the development of Norwegian businesses). *Alliance Venture Spring* and *ProVenture Management* have been appointed as the managers for the new seed funds, which is now (since May 2020) administered by *Investinor*. Each fund will have commitments equal to approximately 500 million kroner, of which 50 per cent will be subscribed by the government.

Retail investors represent large investments indirectly, as members of defined contribution pension schemes, typically with individual investment options.

V KEY TRENDS

i Pressure on costs and fees

Combined with generally low returns in fixed income markets, market volatility has led to investors across all categories to be more aware of the level of fees. In the retail market, the Norwegian Consumer Council has focused on a long-time practice among Norwegian managers of mutual funds to levy success fees without implementing a high-water mark, meaning that volatility will benefit the manager and be to the detriment of investors. This practice has not been present in the institutional market, but larger investors are increasingly pushing for lower management fees for all fund types.

The FSAN has compelled both *DNB Asset Management* (the asset management arm of Norway’s largest bank) and *Nordea* to take fee cuts on some of their mutual fund offerings boasting ‘active management’. The FSAN found the funds to be ‘closet index funds’, where the fees imposed on investors did not provide the investors with any realistic chance for higher returns. The consumer organisation *Forbrukerrådet* has since led a class action lawsuit against *DNB* claiming damages on behalf of 150,000 investors. The judgment was appealed to the Supreme Court, which upheld the judgment and awarded damages to the investors.

In 2020, the Norwegian Consumer Council also criticised the same providers for favouring their active managed (and higher fee) options to pension clients, steering pension investments from the individual members into higher fee investments. Time will tell whether

this will lead to regulatory action or litigation. The FSAN has also signalled that they hold the insurance legislation to require insurance providers (pension providers) to include their fees in underlying investments as cost components in their own cost disclosure to clients. Likely, such a requirement would require amending the relevant legislation.

Norwegian occupational pension rules are generally poorly adapted to the situation where employees have several employers throughout their career. The government has tried to remedy this with new rules on pension accounts for defined contribution schemes, whereby pension contributions are allocated to a personal account for each employee, with individual rights to transfer the account between offerors (also outside the insurer chosen by the employer), which entered into force in 2021. In addition, the government proposed certain adjustments to the rules concerning defined benefit schemes presented in June 2021.

ii Persistent legislative delay

As a member of the EEA, Norway is required to implement EU financial sector legislation. The establishment of the EU system of financial supervision in 2011, with the EU supervisory organisations, the European Banking Authority, the European Securities and Markets Authority, and the European Insurance and Occupational Pensions Authority, holding competences that are partly supranational, run afoul of the principle of the EEA Agreement, whereby no sovereignty shall be relinquished by the EEA Member States. The European Free Trade Association and the European Union reached an agreement concerning integration into the EU system of financial supervision, which was approved by the Norwegian parliament in June 2016. However, the agreement entails that each and every legal instrument must be amended before incorporation into the EEA Agreement. The high level of change in EU financial legislation since the financial crisis in 2008, combined with the long-time unresolved supervisory question, have led to long delays in the implementation of several pieces of EU financial legislation in Norway, which the current mechanism does not solve.

VI SECTORAL REGULATION

i Insurance and pensions

Norwegian insurance companies and pension funds are regulated under the Act on Insurance Activity⁷ with appurtenant regulations and the Act on Financial Undertakings and Financial Groups, which contains the ‘institutional’ rules and capital requirements. Together, these Acts implement Solvency II, including the rules concerning investment freedom and qualitative investment rules (the ‘prudent person principle’).

Asset management carried out by insurance companies and pension funds is regulated through the insurance company legislation and under the supervision of the FSAN. The main rule applicable to their asset management is the prudent person principle and the risk-based capital requirements under Solvency II. This requirement concerns both the investment process and the placements themselves.

As of 1 January 2019, pension funds are subject to a Solvency II ‘lite’, with risk-sensitive capital requirements combined with investment freedom. The new rules are more complex

⁷ Act on Insurance Activity No. 44 of 10 June 2005.

than before, and while they may provide pension funds with more flexible rules to maximise returns and match their assets with their liabilities, they represent a higher cost for the many small pension funds.

ii Real property

There is no specific regulation of real property funds established in Norway (see Section II). These funds typically fall outside current investment fund regulation (as they are normally closed-ended).

Norwegian real property funds are typically unlisted private limited companies, but public companies also exist.⁸ The sale of shares in such companies will be subject to public offering rules, and services related to such shares (e.g., brokerage services) are investment services subject to the ST Act.

The management and marketing of real property funds are regulated by the AIF Act. Project finance has been a traditional product in the Norwegian investment market, attracting investors to invest in special purpose vehicles holding typically one or a few capital-intensive assets, often called single asset funds. The management and marketing of funds not falling within the IF Act had been unregulated in Norway prior to the advent of the AIF Act. Consequently, there have been few regulatory concerns. In May 2019, the FSAN issued a circular in which it clarified that it considered most typical project finance and syndicated investments to fall within the definition of an 'alternative investment fund'. This means that the special purpose vehicle must appoint a manager that is either registered or authorised. Further, marketing of alternative investment funds to non-professional investors may only be done with prior authorisation from the FSAN. This may produce a decrease in products offered in the retail segment until the relevant actors have obtained the necessary approvals and completed any reorganisations that may be required. FSAN scrutiny may also mean that some products with inappropriate risk-reward profiles are denied marketing authorisation.

iii Hedge funds

Hedge funds (special funds) established in Norway may only be managed by management companies authorised under the IF Act, or foreign management companies authorised under equivalent rules in their home state. In practice, only management companies established in another EEA Member State will be eligible. Managers exceeding the threshold values of the AIF Act (€100 million or €500 million under management) must be authorised in accordance with the AIF Act (or local legislation implementing the AIFMD).

The marketing of shares in hedge funds to professional investors is (for above-threshold managers) subject to the provisions of the AIF Act. The FSAN has held that the marketing rules of the IF Act apply to the marketing of these funds.

Sub-threshold managers may market shares in hedge funds pursuant to the rules of the IF Act. This requires prior authorisation from the FSAN, and this authorisation may only be granted if, inter alia, an agreement on supervision has been entered into between Norway and the home state of the manager of the foreign special fund, and the foreign special fund and its manager are subject to home state regulation that grants investors in Norway protection at least on par with that offered by the IF Act. In practice, authorisation may only be obtained if the manager is subject to AIFM-level regulation.

⁸ See, for example, Norwegian Property ASA, listed on the Oslo Stock Exchange.

iv Private equity

There is no specific regulation of private equity funds in Norway (see Section II). Such funds typically fall outside the current fund regulation (as they normally are closed-ended). However, the management and marketing of such funds is now regulated in the AIF Act.

Norwegian private equity funds have traditionally been organised according to the typical private equity fund organisation, consisting of a fund and an adviser. The fund will then be organised as a Norwegian partnership, silent limited partnership or similar foreign entity (e.g., Guernsey or Jersey limited partnership). With the AIF Act, certain advisers chose to offshore their operations to avoid changes, but following the start of the Brexit process, both investors and managers generally seem more positive towards onshore structures.

v Other sectors

Other than what has been described above, there is no other general regulation of asset management activity in Norway, with the exception of individual portfolio management, which is an investment service subject to the ST Act. Unit-link insurance products may only be manufactured by life insurance companies, and are typically distributed by insurance agents (tied insurance intermediaries).

The Government Pension Fund Global: the Petroleum Fund

The Petroleum Fund is a sovereign wealth fund established on the basis of a special Act.⁹ It is not a fund in the traditional sense, but a body of assets owned by the government and deposited in an account with the Central Bank of Norway. Further, it is not a pension fund in the traditional sense; it is not liable to earmarked payments, but is rather a tool for government savings and value preservation.

There is broad political consensus concerning a cap on annual use of equal to an estimated return on the investment of the fund. For several years this has been set to 4 per cent of the value of the fund, but was lowered to 3 per cent in 2017, as returns over time have been lower than 4 per cent. The goal to avoid macroeconomic stress and inflation in Norway as a result of excess public spending. It is not unlikely that this consensus may fracture going forward if the effects of covid-19 prove lengthy and severe for the real economy, and the budget for 2021 is based on using 3.7 per cent of the fund, punching a hole in the cap.

The management of the Fund is carried out by a department of the Central Bank called Norges Bank Investment Management (NBIM). The Ministry of Finance has appointed a strategy council to advise on the investment strategy of the Fund. Further, the Ministry has adopted ethical guidelines for the Fund, and an ethics council has been appointed. The investment mandate of the Petroleum Fund has been under continuous development, expanding to real property. Proposals for expanding into unlisted securities have not been acted on, but future initiatives concerning changes to the mandate are to be expected, as several stakeholders push for more ‘impact investing’ and more predominant environmental, social and governance and social responsibility investment restrictions.

9 Act No. 123 of 21 December 2005 on the Government Pension Fund.

Argentum Fondsinvesteringer, Investinor and Nysno

Argentum Fondsinvesteringer AS, an important government-owned private equity investor, has developed into a private equity actor in its own right by expanding from primary investments to co-investments with funds in which Argentum is an investor, and owing to its relatively high investment activity in the secondary market. Argentum has also established investment programmes whereby other investors are invited to invest alongside Argentum. At the end of 2020, its investment portfolio amounted to 9 billion kroner.

Investinor AS was established by the government as an investment fund to invest directly in Norwegian businesses with essentially a venture fund investment strategy, investing in the early growth and expansion stage of these businesses. Investinor is the largest investor in the Norwegian venture and expansion market, and was, as a response to covid-19, provided an additional 1 billion kroner to further investment activity.

Nysno klimainvesteringer AS was established in 2017, as a tool for government-backed sustainability investments. The company is 100 per cent state owned, and invests both directly and indirectly through investment funds (hereunder the government-backed seed funds). At the end of 2020, its portfolio amounted to 394 million kroner.

VII TAX LAW

Taxation of collective investment schemes under Norwegian tax law will depend on whether the scheme is regarded as opaque or transparent for tax purposes. Mutual funds are opaque, while private equity funds are either organised as tax-transparent entities (silent partnerships or similar) or opaque entities (limited liability companies). Tax transparency implies that the fund is not a separate taxpayer, and that the investors are taxed directly on the profits of the fund.

As a starting point, mutual funds are subject to general Norwegian corporate tax rules, which imply that they are taxed at a rate of 22 per cent on net income. However, mutual funds are entitled to the general tax exemption method for shares, which implies that they are largely tax-exempt on dividends and capital gains on shares in EU and EEA companies (they are subject to an effective tax rate of 0.66 per cent on dividends covered by the tax exemption method). Further, mutual funds are exempt from taxation of capital gains (but not dividends) on shares in non-EU and EEA companies. Mutual funds may also claim tax deduction for distributions made to investors to the extent these distributions are taxed as interest income at the hands of the investors (see below). As for taxation of Norwegian investors, the rules imply that distributions from mutual funds with an equities portion higher than 80 per cent are taxed as share distributions in full (at a rate of 0.66 per cent for corporate investors and 31.68 per cent for individual investors, but in the latter case only to the extent they exceed a tax-free allowance). Distributions from mutual funds with an equities portion lower than 20 per cent are taxed fully as interest income (at a flat rate of 22 per cent for both corporate and individual investors). Distributions from mutual funds with an equities portion between 20 and 80 per cent are divided into one part that is taxed as share distribution and one part that is taxed as interest, calculated proportionally based on the value of the fund's equities portion compared with the total value of the fund at 1 January of the relevant income year (where cash is excluded from the fund's total value). The simplified rule for determining the fund's equities portion applies correspondingly for the taxation of any gain upon realisation, however, so that only the equities portion in the year of purchase and the year of realisation is relevant.

The proportion of equity investments of a fund must be reported to the Norwegian tax authorities. Foreign funds will not have an automatic reporting obligation, but can report voluntarily. If not, the reporting obligation lies with the Norwegian investors. Failing to provide sufficient documentation implies that distributions and gains will be fully taxed as interest income.

Non-Norwegian investors in Norwegian mutual funds and private equity funds organised as opaque entities are taxable in Norway on any distribution of dividends from the fund. The domestic tax rate is 25 per cent, but is reduced to 15 per cent (or lower) in most tax treaties. In addition, corporate investors resident in the EU or EEA may be exempt from dividend withholding tax under specific rules. From 1 July 2021, withholding tax at the rate of 15 per cent will be levied on a limited scope of interest and royalty payments. Norway does not currently impose withholding tax on capital gains.

Non-Norwegian investors in Norwegian private equity funds organised as tax-transparent entities may have tax liability in Norway for a fund's income (irrespective of whether the income of the fund is distributed to the investors or not) due to being deemed to participate in the fund's business activities that are managed from Norway. However, for corporate investors participating in a tax-transparent fund, their share of any share capital gains realised by the fund are as normally tax-exempt, while their share of any dividends received by the fund are normally taxed at an effective rate of 0.66 per cent. The same 0.66 per cent tax rate applies to distributions from a tax-transparent private equity fund to corporate investors.

Norwegian asset managers (and other financial sector undertakings) are subject to a 'financial sector tax', comprising a 25 per cent net income tax rate (i.e., 3 percentage points higher than the general 22 per cent tax rate) and an increased rate on employers' social security contributions.

VIII OUTLOOK

i Covid-19

There is still uncertainty as to the 'end point' of the covid-19 pandemic, or whether it will take on endemic and seasonal characteristics. Further, the effects of covid-19, in terms of different consumer patterns, changes to commercial real property and generally higher cost levels for businesses

Norwegian funds in the mutual fund and private equity fund segments have seen high inflows from investors. In contrast to the high level of fund raising, the level of deals within private equity has remained low. Funds with significant dry powder will eventually have to press on in spite of difficulties in getting high confidence in valuations and growth scenarios.

The Norwegian government has increased spending to abate the effects of covid-19, in particular in the hospitality sector, and spending will likely exceed the previously agreed upon cap for outflows from the Petroleum Fund. It may be that the government will seek to shift – at least partially – from relief measures to more active investing to stimulate the economy.

ii Sustainability

The years 2019 and 2020 saw the adoption of sweeping sustainability-focused rules in the financial sector, with the Taxonomy regulation and Sustainable Finance Disclosure Regulation. These will also be supplemented with more sector specific rules applicable to

investment firms and asset managers. The Norwegian government has moved to prioritise implementation of these rules – on a fast track compared to other EU-initiated financial sector legislation.

Compliance with the sustainability requirements will increase costs, which likely, at least partially, will be borne by clients and investors, and generally reducing returns. The rules are intended to reduce greenwashing and increase investments into sustainable sectors – as defined under EU legislation. Asset managers that intend to be in the space of sustainable investments will need to introduce sound and documented investment procedures, and take efforts to correctly communicate risks to its clients and investors to avoid unhappy investors or litigation.

ABOUT THE AUTHORS

PETER HAMMERICH

Advokatfirmaet BAHR AS

Peter Hammerich has been the head of BAHR's asset management and private equity group since its inception in 2005. He has extensive experience within financial services and regulation and the asset management industry generally, advising domestic and international asset managers, investment banks, insurers, pension plans, funds and government-sponsored enterprises across their operations. Peter's areas of expertise include industry-wide regulations, compliance, fund formation, employment and executive compensation, pensions and tax. He has for many years been recognised in independent rankings as one of the leading Nordic advisers within these fields.

MARKUS HEISTAD

Advokatfirmaet BAHR AS

Markus Heistad is part of BAHR's asset management and private equity group, and advises on financial regulatory matters as well as transactions typically involving regulated targets or counterparties (such as banks, insurers, payment institutions, investment firms and asset managers). Markus's practice spans financial institutions' businesses in the widest sense, and he regularly advises on matters concerning marketing laws, contracts and personal data as well as confidentiality and reporting obligations applicable to his clients' operations. Markus also has wide experience from advising on application processes and dialogue with Norwegian and multinational financial and other regulatory bodies.

ADVOKATFIRMAET BAHR AS

Tjuvholmen allé 16

0252 Oslo

Norway

Tel: +47 21 00 00 50

Fax: +47 21 00 00 51

ph@bahr.no

marhe@bahr.no

www.bahr.no

an LBR business

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