

## Main differences between a Norwegian private and public limited liability company

The main differences between a Norwegian private limited liability company (an AS) and a Norwegian public limited liability company (an ASA) can be summarised as follows:

### 1. Transferability of the company's shares

- (a) Only ASA can be listed on Oslo Børs or Euronext Expand.
- (b) For ASA it is mandatory to register the shares in a securities register. This means inter alia that the rules in the Norwegian Securities Register Act (Nw. verdipapirregisterloven) concerning legal protection (Nw. rettsvern) and identification (Nw. legitimasjon) in share transfers apply. For AS registration in a securities register is voluntary. Only shares registered in a securities register can be registered in the name of a nominee.
- (c) Shares in ASA are as a starting point freely transferable, but transfer restrictions can be set out in the articles of association. The opposite starting point applies for AS: The starting point is that the board of directors must consent to share transfers and that the shareholders have a right of first refusal unless the articles of association set out that the shares are not subject to such transfer restrictions.

### 2. The general meeting, board of directors, general manager and auditor

- (a) Pursuant to section 6-11 a of the Norwegian Public Limited Liability Companies Act (the “ASA Act”), which does have its parallel in the Norwegian Private Limited Liability Companies Act (the “AS Act”), both genders shall be represented as follows among the shareholder-appointed board members of ASA:
  - (i) If the board of directors has two or three members, both genders shall be represented;
  - (ii) If the board of directors has four or five members, both genders shall be represented with at least two;
  - (iii) If the board of directors has six to eight members, both genders shall be represented with at least three;
  - (iv) If the board of directors has nine members, both genders shall be represented with at least four, and if the board of directors has more than nine members, both genders shall be represented with at least 40%;
  - (v) The same applies to deputy board members.
- (b) ASA must always have a board of directors with at least three members and one general manager. If the company has a corporate assembly, it is required to have at least five board members. AS is not required to have a general manager and may settle for a board of directors with one member.

- (c) In the articles of association of AS it can be determined that the board members serve indefinitely. In ASA the maximum service period is four years.
- (d) In an AS with a general manager it is sufficient that the general manager informs the board of directors of the company's business, status and developments in earnings every four months. In ASA the general manager shall give such information every month.
- (e) In ASA the board of directors must prepare a separate statement about determination of salary and other remuneration to the general manager and management. This statement and any material amendments must be dealt with by the company's general meeting, and at least every four years. In addition to such statement, the board of directors shall ensure that a report of the salary and other remuneration to the general manager and management of the previous financial year is made. The report must be checked by the company's auditor before it is discussed by the general meeting, and then made publicly available. Corresponding rules do not apply to AS.
- (f) The shortest permissible deadline for sending notices of general meetings is 7 days for AS. For ASA the deadline is as a starting point 21 days for company's listed on a regulated marketplace and 14 days for other ASA companies.
- (g) The AS Act has rules about possibility for simplified general meeting procedures which permit deviation from the rules about notice to and procedure at general meetings. The ASA Act does not have corresponding rules.
- (h) In ASA the board of directors can resolve that shareholders shall be able to participate at general meetings by way of electronic means. In AS the shareholders are entitled to such participation unless the board of directors has reasonable causes to refuse.
- (i) The board of directors in ASA shall always have a meeting to deal with the annual accounts and annual report, as well as the statement about determination of salary and other remuneration to the general manager and management. In AS such matters can be dealt with without a meeting.
- (j) The general meeting in AS, but not in ASA, may on certain terms resolve that the company's annual accounts shall not be audited pursuant to the Norwegian Accounting Act. Certain ASAs which are listed on a regulated marketplace are subject to a stricter rule; being required to have an audit committee. Contrary to the ASA Act, the AS Act permits that the auditor participates at general meetings by way of electronic means unless the board of directors request physical presence.

### **3. Share capital increases and financial instruments**

- (a) ASA can invite the public to subscribe for shares in capital increases. AS can only invite shareholders or specifically named persons to subscribe for shares.
- (b) In the general meeting's resolution to increase the share capital or raise convertible loans the general meeting of ASA can authorise the board of directors to determine the subscription price. In AS the subscription price must always be determined by the general

meeting. Another matter is that the general meeting of both AS and ASA can authorise the board of directors to increase the share capital or issue convertible loans.

- (c) For ASA to a certain extent stricter rules apply to control of contributions in kind, as well as certain types of transactions between the company and a shareholder.
- (d) In AS it can be resolved that payment of share contributions shall be made directly into the company's account and that the funds can be used by the company before registration of the capital increase has taken place. ASAs do not have a corresponding possibility.
- (e) If an AS issues subscription rights or a convertible loan, the right to subscribe for shares cannot be separated from the shares or the loan receivable. An ASA may at its own discretion resolve that the subscription rights can be separated from the shares or the loan receivable.

#### **4. Authority to acquire treasury shares**

- (a) For ASA the nominal value of treasury shares cannot exceed 10% of the share capital. The AS Act only sets as a requirement that the company's share capital with deduction for the nominal value of treasury shares is at least NOK 30,000.

#### **5. Minority protection**

- (a) Pursuant to the AS Act a shareholder can on certain conditions require that the company redeems the shares if company refuses to consent to the share transfer. The shareholders of ASA do not have such a right.
- (b) The AS Act gives shareholders a conditional right to withdraw from the company, and the company can on its side subject to certain conditions require a shareholder to withdraw from the company.
- (c) The ASA Act provides a conditional right for the company to redeem minor shareholdings. A permit from the Norwegian Ministry of Trade, Industry and Fisheries is then required.
- (d) In the event of redemption of shares stipulated in the articles of association the board of directors in AS can on certain conditions resolve the necessary capital decrease. This is not permitted in ASA. In the ASA Act there is a specific rule regarding provision to a restricted fund which does not apply pursuant to the AS Act.
- (e) Certain minority protection rights, e.g. the right to require that an extraordinary general meeting be called, can in ASA be exercised by shareholders representing 5% of the share capital, whereas the corresponding limit in AS is 10%.

#### **6. Rights and obligations set out in the articles of association**

- (a) In the articles of association of ASA it can be determined that shareholders who wish to participate in a general meeting must notify the company within a certain deadline. It can also be determined that the right to participate and vote at the general meeting only can be exercised when the acquisition is entered into the register of shareholders the fifth day prior to the general meeting. Such articles cannot be introduced in AS.

- (b) In the event of change of ownership to shares in AS the transferor can exercise shareholder rights until they transfer to the transferee. In the event of change of ownership to shares in ASA the transferor's right to vote the shares lapse if the transferor ceases to have an actual interest as shareholder in the company. The transferor and the transferee may however agree that the transferor shall exercise shareholders rights until they transfer to the transferee.
- (c) If an AS has multiple classes of shares, the articles of association can determine that the shareholders in pro rata share capital increases within each class of shares only shall have preferential right to shares with the same class as they already own shares in. The articles of association for ASA can determine the same so long as the difference between share classes concern voting rights, dividend rights or rights in connection with distribution of the company's assets in liquidations.
- (d) In ASA voting restrictions set out in the articles of association must be approved by the ministry if the shares without voting rights or with reduced voting rights represent more than half of the company's share capital. Corresponding limitations do not apply in AS companies.

## **7. Mergers and demergers**

- (a) In mergers and demergers of ASA it is a requirement that the merger or demerger plan is filed to the Norwegian Register of Business Enterprises, which shall announce receipt of the plan before it can be dealt with by the general meeting at the earliest one month after the announcement.
- (b) In merger and demergers regulated by the ASA Act interim balance sheets for the participating entities shall be prepared if the merger or demerger plan is signed more than six months after the balance sheet date of the latest approved annual accounts and a semi-annual report pursuant to section 5-6 of the Norwegian Securities Trading Act is not enclosed to the plan. Such requirement does not apply pursuant to the AS Act.
- (c) The board of directors' report of a merger according to the ASA Act shall be more detailed than the board of directors' report of a merger according to the AS Act. The same applies to demergers. All shareholders in AS can approve that no report of the merger or demerger shall be prepared (provided, however, that a report of the merger's or demerger's potential meaning for the employees shall always be prepared).
- (d) In AS the report of the merger or demerger plan is prepared by the board of directors with confirmation by the auditor, and can to a large extent be omitted if all shareholders consent. In ASA the report is prepared by an independent expert and can only be omitted with the consent of all shareholders in all entities involved.
- (e) It is permissible to complete a merger between two wholly-owned AS companies by following a simplified procedure. Corresponding rules do not apply to mergers between two wholly-owned subsidiaries if one or both of the subsidiaries are ASA companies.

## **8. Share capital decreases**

- (a) In share capital decreases in ASAs the auditor must confirm that the company after the decrease has full coverage for the tied equity, and that the relationship to the company's creditors does not prevent completion of the share capital decrease. In AS the auditor is not required to confirm this.

## **9. Amount of share capital and minimum requirements to the articles of association**

- (a) The required amount of share capital is different, for AS it is NOK 30,000 and for ASA it is NOK 1,000,000.
- (b) The articles of association of ASA must state the number of board members the company shall have and which matters that shall be dealt with at the ordinary general meeting. The articles of association of AS can stay silent on these matters.

## **10. Electronic communication**

- (a) The AS Act permits electronic communication between the company and the shareholders to a much larger extent than the ASA Act does.

## **11. Accounting**

- (a) An ASA shall always be considered as a large enterprise (Nw. stort foretak) in the meaning of the Norwegian Accounting Act. The more lenient accounting rules that apply to small enterprises can consequently never be applied by ASA.