The Private Equity Review

Third Edition

Editor
Stephen L Ritchie

Law Business Research

The Private Equity Review

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Stephen L Ritchie

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EDITOR'S PREFACE

This third edition of *The Private Equity Review* comes on the heels of a very good 2013 for private equity. Large, global private equity houses are now finding opportunities to deploy capital not only in North America and western Europe, where the industry was born, but also in developing and emerging markets in Asia, South America, the Middle East and Africa. At the same time, these global powerhouses face competition in local markets from home-grown private equity firms, many of whose principals learned the business working for those industry leaders.

As the industry becomes more geographically diverse, private equity professionals need guidance from local practitioners about how to raise money and close deals in multiple jurisdictions. This review has been prepared with that need in mind. It contains contributions from leading private equity practitioners in 28 different countries, with observations and advice on private equity dealmaking and fundraising in their respective jurisdictions.

As private equity has grown, it has also faced increasing regulatory scrutiny throughout the world. Adding to the complexity, regulation of private equity is not uniform from country to country. As a result, the following chapters also include a brief discussion of these various regulatory regimes.

While no one can predict exactly how private equity will fare in 2014, one can confidently say that it will continue to play an important role in the global economy. Private equity by its very nature continually seeks out new, profitable investment opportunities, so its continued expansion into growing emerging markets appears inevitable. We will see how local markets and policymakers respond.

I want to thank everyone who contributed their time and labour to making this third edition of *The Private Equity Review* possible. Each of them is a leader in his or her respective market, so I appreciate that they have taken their valuable and scarce time to share their expertise.

Stephen L Ritchie
Kirkland & Ellis LLP
Chicago, Illinois
March 2014

Chapter 10

NORWAY

Klaus Henrik Wiese-Hansen and Stig Nordal[1]

I OVERVIEW

i General activity in the Norwegian private equity market

During 2012 and 2013 Norway continued to benefit from the strong petroleum industry and managed to experience growth, during a period that still saw a global slowdown and European financial turmoil. The GDP in Norway increased by 2.9 per cent in 2012, with a slightly lower level of growth estimated for 2013.[2]

Activity on the Oslo Stock Exchange was stronger in 2013 than in 2012, with an increase in the Oslo Stock Exchange Benchmark Index (OSEBX) of nearly 24 per cent against nearly 17 per cent in 2012. Much of the increase was related to the petroleum industry, although companies in the financial industry and fishing industry also performed well.[3]

The private equity market was at a low level from Q1 to the end of Q3 2012, both in the buyout market and in the venture market, and with regards to investments, exits and fundraisings in these two markets. From Q3 2012 and throughout 2013 at least one part of the private equity market had, however, a very positive development, namely the buyout market. The venture market has not followed the same path; instead seeing numbers on investments, exits and fundraisings reaching record lows in this period.

In other words the Norwegian private equity market is running on a dual track. The buyout segment saw record investment values from Q4 2012 through to Q3 2013, with investments during these four quarters totalling €2.1 billion, with a record of €1 billion in Q3 2013. In comparison, the investment level in 2012 amounted to

1 Klaus Henrik Wiese-Hansen and Stig Nordal are partners at Advokatfirmaet Steenstrup Stordrange DA.

2 Information from Statistics Norway – Annual National Accounts 2012.

3 Information from Oslo Stock Exchange.

€1.5 billion. The most notable investment in 2013 was Altor and Bain Capital Europe's joint acquisition of EWOS from the Norwegian state-backed company Cermaq, with a reported enterprise value of €821 million. Exit activity also boomed in the buyout market from Q4 2012 to Q3 2013, with completion of 25 exits in the period. The exit activity in Q2 2013 was the highest on record (Q1 2008–Q3 2013) in the buyout segment. Already by the end of Q3 2013 the exit activity surpassed the previous record of 12 transactions in a year for the buyout segment. By end of Q3 2013, 19 transactions were completed.

In the venture market the investment activity was higher in 2013 than in 2012. By the end of Q3 2013 a total of €83 million was invested in the Norwegian venture market. This is €6 million above the level for total investments in 2012. The most notable investment was the €47 million deal done by EQT in Itslearning in Q1 2013.[4]

ii The current Norwegian private equity fundraising market[5]

During the last 10 years the Norwegian private equity market has increased its assets under management significantly, with Norwegian funds raising close to €10 billion in the period. However, the fundraising levels in 2012 and in the first three quarters of 2013 were disappointingly low. In fact, 2012 had the lowest fundraising activity level in a year on record, even though the small- to mid-cap buyout fund manager Norvestor Equity managed to raise €410 million in December 2012.

Compared, however, with the fundraising activity in the rest of the Nordic countries, Norwegian fundraising was good in 2012. Norwegian private equity houses (Norwegian domiciled funds and foreign funds managed or advised by Norwegian entities) accounted for 45 per cent of the total fundraising in 2012 in the Nordic countries, having raised €600 million.

The low fundraising activity continued into the first three quarters of 2013, and the only private equity fund that raised capital in the first half of 2013 was the Stavanger-based buyout fund Progressus. In the third quarter there was no fundraising in the Norwegian private equity market. The Norwegian activity was also much lower than in the rest of the Nordic countries in 2013. As many as 15 funds were raised in the Nordics, with a total amount of €5.8 billion in the first half of 2013. A positive trend however was that several of these fund managers, including Creandum, Nordic Capital and CapMan has a strong position in the Norwegian market, implying that their capital will be available for Norwegian investments as well. The same will be the case for Accel Partners' new Nordic fund amounting to €350 million.

There are no statistics yet available on Norwegian fundraising activity in Q4 2013, but the clear trend is that the activity has increased considerably in Q4. FSN Capital raised €600 million and Northzone Ventures raised €150 million in this period. In addition ProVenture and Alliance Ventures, which joined forces with Springfondet, has been selected to manage one seed-fund each, backed up with €30 million of public funds in a 50/50 partnership with private investors, bringing each of these funds potentially up

4 Information from reports by Argentum and NVCA.

5 All of the information in this section is drawn from reports by Argentum and NVCA.

to €60 million. One of the funds will be investing in the ICT segment, and the other in the petroleum industry.

The low fundraising activity in 2012 and the first three quarters of 2013 indicates difficult funding environment for new funds. It seems increasingly important for a successful short fundraising process that the management team of the funds have solid track records from managing previous funds. Both FSN Capital and Northzone Venture have so far delivered good returns to their investors.

It also seems easier to raise funds in the buyout segment than in the venture market. The greater risk connected to the venture market plays a role in investors' assessment of investment cases. The two new seed funds, managed by ProVenture and Alliance Ventures/Springfondet indicates this, where private investors are offered a risk reduction of 15 per cent from the Norwegian state.

To sum up, going into 2014, the picture of available private equity capital should not be all that negative for Norway within the buyout and venture segment, despite the low fundraising activity in 2012 and the first three quarters of 2013.

With regards to the earliest stage or pre-seed stage in a business life cycle, there has been and still is, a lack of available capital in Norway. However, during 2013 there have been some interesting initiatives making capital available in these stages. Both Oslo Tech AS/StartupLab AS, connected to the University of Oslo, and the Technology Transfer Office at the University of Trondheim, have invited private investors to invest in small and effective funds, making capital available for early stage companies mainly within the ICT and Tech-sector. The Norwegian Cancer Association has also dedicated capital to invest in early stage or pre-seed companies that operate in the medical technology segment. The last initiative by year end 2013 came from SINTEF, the largest independent research organisation in Scandinavia, with their launch of a new seed investment fund of €25 million. The fund, which was established with support from the European Investment Fund and a local financial institution, will invest in early stage companies based on technology originating from the research centres at SINTEF.

II LEGAL FRAMEWORK FOR FUNDRAISING

i The preferred jurisdictions and legal forms for funds

Since the early 2000s the Norwegian private equity market has seen a considerable growth in the number of private equity managers, funds and assets under management. The Norwegian private equity market is still a young and, in relative terms, small market though. While the European Venture Capital Association (EVCA) was established in 1983 it took another two decades before the Norwegian Venture Capital Association (NVCA) was established, in 2001. At that time, the members of NVCA only had (approximately) €900 million[6] of assets under management. Today, the association's members manage €10 billion in total.

As would be evident from the aforementioned, the Norwegian private equity market has seen a considerable growth in the number of funds and assets under

6 At the exchange rate of €1:8.3 kroner.

management, and in professionalism, not least among the larger private equity houses who operate in an international environment and who compete against far more seasoned international private equity managers. This has been a truly impressive journey and it is reason to believe that the journey has only begun for the Norwegian private equity market as a whole.

The preferred jurisdiction and legal forms for funds depend on several factors, *inter alia* whether the fund will be marketed to international or Norwegian investors, the size of the fund, the size and professionalism of the fund manager and not least whether or not the fund will be operating in the venture or buyout market. All these factors are normally taken into account when private equity managers consider where to establish a fund. As the below will show, some clear distinctions can be made though, and larger private equity houses may in reality be left with few other options than establishing a fund abroad.

Unlike many other European and offshore jurisdictions, Norway has yet to adapt a fund legislation that is customised to cater the needs of the private equity industry and the investors in private equity funds. Norwegian private equity funds have to be established by using one of the ordinary commercial company structures, none of which have been developed specifically for the fund industry in general or private equity funds in particular. Seen with the eyes of international investors or the largest and most professional Norwegian private equity fund managers, the surrounding Norwegian infrastructure and back-office service providers are also less sophisticated and experienced than in many prominent European fund jurisdictions. Unfortunately, this implies that Norway is not a jurisdiction of choice for fund formation in the largest and most professional Norwegian private equity houses.

Currently the Norwegian private equity market can be split in three different levels:

The lower level consists of private equity managers who have established their funds in Norway and who exclusively target Norwegian investors. Many of these are smaller players who do not meet a requirement from their targeted investors to establish the fund in an internationally acknowledged fund jurisdiction. Further, their assets under management and administrative resources often do not justify establishing a fund abroad. Indeed, establishing the fund outside Norway could be a competitive disadvantage for many of these players when compared with other private equity managers operating in the same level and segment.

The mid-level consists of private equity managers who have established their funds in Norway and who only target international investors to a small degree in addition to Norwegian and Nordic investors, but who at the same time have an ambition to gradually expand their investor base to include more and larger international investors.

The upper level of the market consists of a relatively few larger Norwegian private equity managers who have established their funds outside Norway and who target an international investor base. At this level, fund formation within Norway has not been a realistic option for many years as a great number of their targeted investors require fund formation to take place in an internationally acknowledged fund jurisdiction. Most of these private equity houses have set up their funds on Guernsey or Jersey. Most, if not all, funds have been established as limited partnerships under local law. The majority of these are buyout funds.

In principle, private equity funds can be established in Norway using any of the local commercial company structures. That said, Norwegian private equity funds are normally structured as limited liability companies (AS), internal companies (IS) or limited partnerships (KS). Limited liability companies are taxed as such and are not tax transparent. Partly for this reason, but also for, *inter alia*, increased capital flexibility, many investors and fund managers prefer to set up or invest in a tax-transparent vehicle, such as an internal company or limited partnership. For the last five years or so, internal companies rather than limited partnerships have been the tax-transparent structure of choice for many Norwegian private equity houses.

In 2013 the Norwegian parliament amended the Limited Liability Companies Act (AS Act) and the Public Limited Liability Companies Act (ASA Act). The changes imply a significant simplification of the rules on the company capital, incorporation of the company and organisational matters. The share premium, i.e. paid-in equity in excess of the nominal amount of the share capital, will no longer be restricted equity, but form part of the company's distributable reserves. Further the rules on calculation of distributable reserves have been amended. The booked value of R&D, acquired goodwill and net deferred tax assets shall no longer be excluded in the basis for calculation of distributable reserves, thus generally increasing the dividend capacity.

While there previously were material restrictions on a limited liability company's ability to grant credit to, or provide security in favour of, foreign parent or sister companies, the new rules permit such credit and security, provided that the credit or security in question shall serve the economic interests of the group. It will suffice that one or more, not necessarily all, companies in the group benefit from the credit or security.

Further, the previous strict prohibition on a limited liability company granting credit or providing security in connection with a third party acquiring shares in the company itself or its parent company were modified. For private limited liability companies there will also no longer be a limitation as to how large portion of the company's shares the company may acquire as treasury shares (except that the company's share capital less the nominal amount of the treasury shares must not fall below the minimum requirement for share capital). Public limited liability companies (ASAs) may still not hold treasury shares with nominal value exceeding 10 per cent of the company's share capital.

Whereas not all of the above changes are directly relevant for private equity funds, it remains to be seen if the simplifications will increase the popularity of limited liability companies as company structure for Norwegian domiciled private equity funds.

ii Key legal terms and negotiable terms

As noted above, fund formation of a closed-ended fund in Norway will have to be made using any one of the ordinary commercial company structures. Norwegian legislation does not contemplate the concept of specific company structures for private equity funds; nor is Norwegian legislation familiar with an overlying investment vehicle structure where one can choose between several different company structures for the establishment of the fund, such as the Luxembourg SOPARFI or SIF legislation.

As none of the Norwegian company structures have been developed for investment vehicle purposes, the applicable company legislation for the fund in question do not contain key legal terms that are more often found in other European fund jurisdictions. As an example, the company legislation for the most frequently used company structures do not set out minimum risk-diversification requirements and do not contain requirements for eligible assets, or other similar terms. Such terms are traditionally drafted in the fund's constitutional documents, the governing partnership agreement and frequently also in side letters with the investors.

The types of negotiable terms vary to some extent, depending on the type of the fund in question. The most common negotiable terms are management or advisory fees; key-man provisions; requirements of co-investments from key-men; whether or not the fund manager shall be permitted to establish new funds within the lifetime of the fund in question (and if so, when); the lifetime of the fund; whether or not a prolongation of the fund shall be permitted; removal of a manager on a fault or no-fault basis; default provisions; etc. In recent years institutional investors have also increased their focus on corporate governance, transparency and social responsibility (SRI-principles) including environmental issues and ethical investments. It is to be expected that SRI-principles will be further developed in the years ahead and that more investors will negotiate on SRI-principles, as amended.

iii Disclosure and fiduciary duties

Norwegian private equity fund managers have been unregulated until now and will continue to be so until the EU Alternative Investment Fund Managers Directive (AIFMD) has been implemented in Norway. This will likely take place on or around 1 July 2014. As managers of closed-ended funds have been unregulated in Norway for years, and as Norwegian legislation has no specific company structures for private equity funds, there are no specific key disclosure or fiduciary duties that are specifically aimed at or tailored to fit private equity fund managers, nor other managers of closed-ended funds. Hence, key disclosure requirements must be sought in ordinary prospectus rules (the European Prospectus Directive, as implemented into Norwegian law), if applicable, and accounting law regarding requirements of publishing annual accounts and other reports, if applicable. Private equity funds are normally marketed under an applicable private placement exemption and prospectuses are thus rarely published. That being said, the same information will normally be provided in a PPM, although not necessarily on the same detailed level.

The fiduciary duty of the directors or the manager, if any, of a Norwegian private equity fund, when performing their duties of the said fund, follows from the minimum duty of care under the applicable company law. In many cases higher standards follow from an instruction for the board of directors, or another similar document.

iv Common methods of solicitation of investors and limitations on solicitation

Following the implementation of the Markets in Financial Instruments Directive (MiFID),[7] marketing of financial instruments no longer qualified as an investment

7 Directive 2004/39/EC of the European Parliament and of the Council of 1 November 2007 on Markets in Financial Instruments.

service in Norway under the Securities Trading Act. However, reception and transmission of orders and placing of issues of financial instruments qualify as investment services and require a local licence or MiFID passport in Norway to provide such service to investors of a private equity fund or to the fund itself, respectively.

Funds established as internal companies or limited partnerships fall outside this regime and are subject to a somewhat softer regulatory regime. When MiFID became implemented into Norwegian law, the Ministry of Finance's view was that interests in internal companies and limited partnerships fell outside the definition of 'financial instruments'. This implied that 'investment services' rendered with respect to such interests fell outside the applicable licensing and prospectus requirements.

In order to increase investor protection for investments in such interests, a soft regulatory regime was introduced from 1 January 2013. Partnership or internal company interests were not included in the definition of 'financial instruments' though, which would have made all sales (excepting sole marketing) of such interests subject to the full scope of MiFID. Rather, MiFID investment services made with respect to such interests became subject to MiFID licensing requirements unless the investment services are only being provided to professional clients or eligible counterparties; or each client undertakes a minimum investment or subscription amount of 5 million kroner. For closed-ended funds incorporated as limited partnerships or internal companies, the aforementioned implies that until the AIFMD has been implemented in Norway, non-MiFID licensed entities can market and sell (i.e., receive orders or place issues) interests in such funds under the above-mentioned exemptions without being locally licensed or MiFID passported.

III REGULATORY DEVELOPMENTS

i Regulatory oversight for the funds, the fundraising process and the investors

As noted above, private equity managers and advisers have been and still are unregulated in Norway. Following the implementation of MiFID in 2007, Norwegian regulatory authorities concluded that the advisory activities of private equity houses fell outside the definition of providing 'investment advice' under MiFID, as implemented in Norway through the Securities Trading Act. Hence, neither funds nor their sponsors have been approved nor registered by or with Norwegian regulatory authorities so far. Larger fund sponsors who have established their funds abroad (typically Guernsey or Jersey) have been subject to foreign local requirements, as applicable, but still the fund sponsors have not been registered nor approved in Norway.

Hence, private equity funds and their managers or advisers are currently non-regulated in Norway and fall outside the regulatory powers of the Financial Supervisory Authorities of Norway. This will change once the AIFMD becomes implemented in Norway, which is now likely to take place on or around 1 July 2014. How Norwegian private equity houses will be affected by the AIFMD largely depends on how they have structured their businesses. The largest fund managers who have established their funds outside Norway and who target an international investor base will have to become fully regulated under AIFMD as transposed into national law, when implemented. Fund managers who on the other side have established their funds in Norway and only target domestic investors typically fall below the AIFMD's threshold, and will in such case only have to be registered with the Financial Supervisory Authority of Norway. Private equity houses who have established their funds in Norway but who, gradually, wants to market their funds to international investors will have to be licensed under national law to pursue their international ambitions.

ii Taxation of private equity funds resident in Norway

As described above, private equity funds established in Norway are normally structured as limited liability companies, internal companies or limited partnerships. A limited liability company is taxed as such, and according to the rules that apply for such companies.

The income in a fund is normally made up of dividends and capital gains or losses. Hence, tax issues are related mainly to how dividends and capital gains or losses are taxed in the fund.

Norwegian funds organised as limited liability companies are through the exemption method, exempt from tax on dividends and on capital gains received on shares from Norwegian limited liability companies, except for that 3 per cent of the dividend must be entered as general income and taxed at the ordinary tax rate of 27 per cent. Losses upon the realisation of shares and costs incurred in connection with the purchase and realisation of such shares are equally not deductible for tax purposes.

The same exemption method applies for income that the funds may have from investments in limited liability companies and similar entities resident within the EU/EEA area. For income from investments outside the EU/EEA area, the exemption method applies if the investment has been done in a limited liability company or similar entity, the shares have been owned for at least two years, and the fund owns at least 10 per cent of the shares and the corresponding votes in the company.

Partnerships resident in Norway are as a general rule transparent for Norwegian tax purposes. Thus, if the funds are organised as partnerships, taxation occurs at partner level and each partner is being taxed on a current basis for its proportional share of the net income generated by the partnership, regardless of whether such income is being distributed to the partners or not. However, dividends or capital gains received by the partnership from investments in limited liability companies or similar entities in Norway, or within the EU/EEA area, are not taxed on a current basis.

iii Taxation of investors in Norwegian private equity funds

Investors resident in Norway

Dividends distributed from Norwegian limited liability companies to Norwegian individual shareholders are taxable as general income at a rate of 27 per cent to the extent the dividends exceed a calculated tax-free allowance. The allowance is calculated on a share-by-share basis, and is equal to the cost price of the share multiplied by a determined risk-free interest rate based on the arithmetic average rate after tax of interest on treasury bills with three months' maturity. The allowance will be calculated every income year. Any part of the calculated allowance one year exceeding the dividend distributed on the share the same year (unused allowance) is added to the cost price of the share and included in the basis for calculating the allowance the following year, and may also be carried forward and set off against future dividends received on the same share.

Sale, redemption or other disposal of shares are considered as a realisation for Norwegian tax purposes. A capital gain or loss generated by a Norwegian individual shareholder through a disposal of shares are taxable or tax deductible in Norway. Such capital gain or loss is included in or deducted from the basis for computation of general income in the year of disposal. The general income is taxable at a rate of 27 per cent. The gain is subject to tax and the loss is tax deductible irrespective of the duration of the ownership and the number of shares disposed of. The taxable gain/deductible loss on the realisation of shares is calculated per share as the difference between the consideration received and the cost price of the share, and costs incurred in relation to the acquisition or realisation of the share. Any unused allowance on a share (see above regarding taxation on dividends) may be set off against capital gains related to the realisation of the same share, but this may not lead to or increase a deductible loss, i.e. any unused allowance exceeding the capital gain upon the realisation of a share will be annulled.

For partners in partnerships who are Norwegian individual shareholders, taxation occurs when the dividends or capital gains received are distributed from the partnership to such partners. Such distributions will be taxed as general income at a rate of 27 per cent. The Norwegian individual shareholders will be entitled to deduct a calculated allowance when calculating their taxable income; compare with the description of tax issues related to individual shareholders above.

Norwegian corporate shareholders (i.e., limited liability companies and similar entities) are exempt from tax on dividends received on shares in Norwegian limited liability companies and similar entities. However, 3 per cent of the dividends shall be entered as general income and taxed at the ordinary tax rate. Norwegian corporate investors are also exempt from tax on capital gains upon the realisation of shares in Norwegian limited liability companies and similar entities. Losses upon the realisation of shares and costs incurred in connection with the purchase and realisation of such shares are equally not deductible for tax purposes.

Norwegian corporate shareholders holding shares through a partnership will be exempt from taxation of their proportional part of dividends received and distributed by the partnership, except for that 3 per cent of the dividends shall be entered as general income and taxed at the ordinary tax rate. Norwegian corporate investors are also exempt from tax on capital gains upon the realisation of shares in the partnership. Losses upon the realisation of shares in the partnership and costs incurred in connection with the purchase and realisation of such shares are equally not deductible for tax purposes.

Investors resident outside Norway

Dividends paid by Norwegian limited liability companies to foreign shareholders, both corporate and personal shareholders, are as a general rule subject to withholding tax in Norway at a rate of 25 per cent, unless otherwise provided for in an applicable income tax treaty with Norway, or the recipient is covered by the specific regulations for shareholders resident within the EEA (see below). The withholding obligation lies with the company distributing the dividends.

Foreign individual shareholders who are resident within the EEA for tax purposes are subject to Norwegian withholding tax on dividends received from Norwegian companies at the regular rate or at a reduced rate determined in an applicable tax treaty. Such shareholders are however entitled to a refund of an amount corresponding to the calculated tax-free allowance on each individual share (see above). Any unused allowance may be carried forward and set off against future dividends received on the same share.

Foreign corporate shareholders that are tax resident within the EEA are exempt from Norwegian withholding tax on dividends distributed from Norwegian limited liability companies and similar entities, provided that the shareholder is the beneficial owner of the dividends.

The taxation rules with regards to foreign partners in Norwegian partnerships are somewhat complicated, and not suitable for a detailed description in this article. But, in short, a foreign partner that receives dividend from the partnership will be regarded as conducting business in Norway, and thus taxable in Norway for that income at the regular tax rate for such income.

Capital gains on the realisation of shares in Norwegian companies owned by a foreign individual shareholder will not be subject to taxation in Norway unless the personal investor holds the shares in connection with the conduct of business activities in Norway; or has been a tax resident of Norway within the five calendar years preceding the year of the sale or disposition.

As a general rule, capital gains on the realisation of shares in Norwegian companies by foreign corporate shareholders are not subject to taxation in Norway. However, if a foreign investor is carrying on business activities in Norway and the shares are regarded connected with such business activities (permanent establishment in Norway), the foreign investor may be subject to the same capital gains taxation as Norwegian investors, as described above.

Carried interest

Finally, it is worth noting that Norwegian tax authorities since 2012 have focused on the taxation of carried interest for Norwegian private equity houses and the management of the fund.

A common private equity structure in Norway is that the management owns shares in the fund or directly in the portfolio company that the fund has invested in, through a private limited liability investment company. Carried interest for the management is connected to these shares. The management have in general classified the carried interest as tax exempt dividends or capital gains, while the Norwegian tax authorities more recently have classified this income as ordinary wage for the management, with an effective tax rate of approximately 50 per cent on the carried interest.

In a particular matter, the management of the advisory firm brought the decision by the tax authorities to the Oslo District Court, which ruled over the case in December 2013. The court concluded that the carried interest was not wage for the management, but taxable consultant's fee for their investment companies with a tax rate of 28 per cent (a tax rate that is now reduced to 27 per cent). The appeal period has not expired yet, so it remains to see if the Norwegian tax authorities will appeal the decision.

IV OUTLOOK

On the market side, there is reason to expect increased fundraising in the Norwegian market during 2014 and potentially also some few larger fundraisings from the major Norwegian players. Risk appetite has steadily returned to the Norwegian market and the pipeline for IPOs, capital market transactions and other deals is generally considered to be good, for the first time in several years. This change in risk appetite and market climate will presumably benefit Norwegian private equity houses as well, both on the deal side and with respect to fundraising.

The continued growth and increase of professionalism in many private equity firms is likely to continue, and the Norwegian market for private equity will most likely become more international than today. Even though the private equity industry has increased significantly since the early 2000s, the Norwegian private equity market is still a small market, in relative terms. Hence, the Norwegian private equity industry largely depends on international capital to sustain a continued growth, and several more private equity managers will be looking outside Norway for investors and investments. In line with this, we expect that international investors increasingly will be looking to Norway to put their money at work, in buyout funds as well as in venture, perhaps somewhat variable depending on the industry sector. We do also expect more activity on the investment side, particularly in venture capital. Many incubators connected to universities and various research institutes are doing a lot of interesting work and this will in turn lead to a larger deal flow of investment grade companies. The main challenges for an increased deal flow in the venture segment lies in capital access in the seed or pre-seed stage. The new government has, however, strongly signalled that it will provide much more financial support than the previous government. There is therefore reason to believe that capital access will improve in the early stage, including by the use of various tax incentives.

On the regulatory side, the main developments in the Norwegian market will be the (delayed) implementation of the AIFMD in national law this year, most likely on or around 1 July 2014. Following this implementation, Norwegian private equity houses will become regulated for the first time, although in various effects – some will have to become licensed, whereas many will only have to become registered with the Financial Supervisory Authority of Norway. There is reason to believe that the regulation will serve as a competitive advantage for the larger private equity houses due to their larger financial and administrative resources. The latter group of players are more able to adapt to new requirements and one should expect that this, in turn, will increase their investor appeal. Whether or not this will lead to an industry evolution and consolidation, or merely a further segmentation of the various levels of players in the Norwegian private equity industry, remains to be seen in the longer run. As always, there will be those who blaze a trail and those who follow behind.

Appendix 1

ABOUT THE AUTHORS

KLAUS HENRIK WIESE-HANSEN

Advokatfirmaet Steenstrup Stordrange DA

Klaus Henrik Wiese-Hansen is a partner and board member at Steenstrup Stordrange and works in the firm's corporate/private equity group. Wiese-Hansen has 13 years' experience in all areas of asset management and financial markets and capital markets legislation, including fund formation, fund management and alternative investments, as well as experience in private equity, including AIFMD regulatory advice. Wiese-Hansen also has extensive knowledge and experience relating to company law and corporate M&A. He represents Norwegian and foreign institutional clients in all aspects of their businesses relating to the aforementioned legal areas. He is the author of several publications within his fields of expertise.

STIG NORDAL

Advokatfirmaet Steenstrup Stordrange DA

Stig Nordal is a partner and board member at Steenstrup Stordrange and works in the firm's corporate/private equity group. He has nearly 16 years' experience within his fields of expertise. Nordal is specialised in national and international tax matters and M&A in the private equity market. He has extensive knowledge related to the structuring of funds and transactions, advising target or portfolio companies as well as the buying fund. Further, he has extensive knowledge in establishing incentive schemes and earn-out models. He holds board positions in several portfolio companies in the private equity market, and others in early stage or pre-seed funds. In addition to his master's degree in law, he also holds a master's of education degree in entrepreneurship and innovation from BI Norwegian Business School.

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