

# Act relating to the Norwegian Investment Fund for Developing Countries

DATE: ACT-1997-05-09-26  
MINISTRY: FO (Ministry of Foreign Affairs)  
LAST AMENDED: 2022-06-10-34  
ENTRY INTO FORCE: 01-06-1997  
CORRECTED: 25.08.2021 (technical footnotes removed)  
SHORT TITLE: THE NORFUND ACT

---

## List of chapters:

- Chapter 1. General provisions (Sections 1–8)
  - Chapter 2. Management of Norfund (Sections 9–19)
  - Chapter 3. General Meeting (Sections 20–24)
  - Chapter 4. Accounting, audits and supervision Sections (25–27)
  - Chapter 5. Closing provisions (Sections 28–31)
- 

Short title added by Act of 21 June 2013 no. 55

## Chapter 1. General provisions

### Section 1. Purpose and means

The purpose of the Norwegian Investment Fund for Developing Countries (NORFUND) is to assist in developing sustainable business and industry in developing countries by providing equity capital and other risk capital, and by furnishing loans or guarantees. The aim is to establish viable, profitable activities that would not otherwise be initiated because of the high risk involved.

Only countries classified by the OECD as lower middle income countries and countries having a lower income per inhabitant than the former countries, and other such countries as the Storting has decided may receive assistance through business aid schemes, qualify as recipients.

To achieve its objectives, Norfund may cooperate with others, including by participation in Norwegian and foreign companies. The Fund may establish and conduct its activities through subsidiaries.

Pursuant to Section 8, the General Meeting may lay down in the Statutes detailed conditions and guidelines for such establishment and conduct of activity through subsidiaries.

Norfund may also perform other management tasks assigned to it by the Ministry.

### Section 2. Group

Norfund together with a subsidiary or subsidiaries constitutes a group.

If, as a result of an agreement or as owner of shares or units in a company, it has a controlling interest in another company, Norfund is the parent company. Norfund shall always be regarded as having a controlling influence if Norfund:



## *Translation from Norwegian*

1. owns so many shares or units in another company that it represents the majority of the votes in the other company or
2. has the right to elect or to dismiss a majority of the members on the other company's Board of Directors.

A company related to Norfund in the manner defined in the second paragraph is regarded as a subsidiary.

When determining voting rights and rights to elect or dismiss Board members, the rights possessed by Norfund and Norfund's subsidiaries shall be taken into account. The same applies to rights possessed by someone acting in their own name, but for the account of the parent company or a subsidiary.

### **Section 3. *Ownership and liability***

Norfund is owned by the State. The State is not liable for Norfund's commitments.

### **Section 4. *Locus standi***

Norfund has its own rights and duties, is a party to agreements made with private and public authorities and has locus standi in relation to courts of law and other authorities.

### **Section 5. *Norfund's capital***

Norfund acquires funding for its activities through grants from the State.

### **Section 6. *Registration in the Register of Business Enterprises***

Norfund shall be registered in the Norwegian Register of Business Enterprises.

### **Section 7. *Relationship with other legislation***

The Act of 10 February 1967 relating to proceedings in public administration (the Public Administration Act (Norway)) does not apply to Norfund or to individual decisions adopted by Norfund on behalf of the State. Nevertheless, the rules against bias in the Public Administration Act shall apply in regard to Norfund's officers and employees and to persons performing work for Norfund.

The Act of 16 June 2017 no. 67 relating to civil servants etc. (the Civil Service Act) and the Act of 18 July 1958 no. 2 relating to public service disputes (Public Service Disputes Act) do not apply to Norfund.

The Act of 10 April 2015 no. 17 on financial undertakings and financial groups does not apply to Norfund.

### **Section 8. *Statutes***

The General Meeting can adopt statutes for Norfund's administrative procedures, organisation and activities.

## **Chapter 2. Management of Norfund**

### **Section 9. *Norfund's Board of Directors***

Norfund shall have a Board consisting of at least three members. The members of the Board shall be elected by the General Meeting, which shall also decide whether alternates should be elected. The Managing Director may not be a member of the Board.



## *Translation from Norwegian*

The rules in Section 20-6 of the Norwegian Companies Act regarding representation on the Board by both genders apply similarly.

The term of office of the Board members shall be two years. Shorter or longer terms of office may be laid down in the Statutes, but not more than four years. For supplementary elections, a shorter term of office may be laid down. The term of office is counted from the election date unless otherwise decided. It terminates at the end of the Ordinary General Meeting in the year in which the term of office expires. Even if the term of office has expired, the Board member shall remain in office until a new Board member has been elected.

The third paragraph does not apply to Board members who are elected pursuant to Section 10.

A Board member has the right to withdraw before his or her term of office has expired if there is a special reason for doing so. The Board of Directors and the party that elected the Board member shall be given reasonable advance warning. A Board member can be dismissed by the party that elected the Board member. This does not apply to a Board member elected pursuant to Section 10.

Remuneration to Board members, alternates and observers is fixed by the General Meeting.

### **Section 10. *Employees' right to elect Board members***

If Norfund has more than 30 employees, a majority of the employees may require that one Board member and an observer with alternates be elected by and from among the employees.

If Norfund has more than 50 employees, a majority of the employees may require that up to one third and at least two of the Board members with alternates be elected by and from among the employees.

If Norfund has more than 200 employees, the employees shall elect one Board member with alternate or two observers with alternates in addition to the representation pursuant to the second paragraph.

The King may issue regulations concerning the calculation of the number of employees, including the use of average figures. The King may also issue regulations concerning elections, including concerning conditions for voting rights and electability, the election method and decisions on disputes regarding elections. The King may also make exceptions from the first, second and third paragraphs.

When Norfund is part of a group, the King may, on application from the group, from unions comprising two thirds of its employees, or from a majority of the group's employees, decide that in connection with the application of the first, second or third paragraph, group employees shall be regarded as Norfund employees.

The King may decide that the fifth paragraph shall apply to parts of a group.

### **Section 11. *The powers of the Board***

The management of Norfund is the responsibility of the Board. The Board shall arrange for right and proper organisation of Norfund's activities.

The Board shall make plans and budgets for Norfund's activities to the necessary extent. The Board may also lay down guidelines for the activities.

The Board shall ensure that it remains informed of Norfund's financial position and undertakes to ensure that its activities, accounts and asset management are subject to satisfactory supervision.

The Board shall supervise the day-to-day management and the company's activities generally. The Board may issue instructions for the day-to-day management.

The Board adopts rules of procedure for the Board. These shall contain rules as to which matters are to be dealt with by the Board, and the Managing Director's responsibilities and obligations with respect to the Board. The rules of procedure shall also include rules for convening meetings and for meeting procedures.

The Board initiates such investigations as it deems necessary to enable it to discharge its responsibilities. The Board shall initiate such investigations if this is required by one or more of the Board members.





## **Section 12. Board meetings**

The Board Chair shall ensure that Board meetings are held as often as is necessary. Meetings shall be convened whenever so requested by a Board member or the Managing Director. Except when otherwise decided by the Board for the particular case, the Managing Director shall be entitled to attend and to speak at Board meetings.

Board meetings shall be chaired by the Board Chair or in his/her absence by a person elected by and from among the Board members.

Minutes shall be taken at Board meetings and signed by all Board members present. The Managing Director and/or any Board member who does not agree with a resolution adopted by the Board may require that their opinion be recorded in the minutes.

## **Section 13. Quorum and qualified majority requirement**

The Board has a quorum when more than half of the total number of Board members are present.

A Board resolution is valid when adopted by a majority of those present, and in the event of a tied vote, the Board Chair or the meeting chairperson has the casting vote.

For elections or appointments, the person who receives the majority of the votes shall be elected or appointed. The Board may decide in advance that votes shall be recast if nobody receives a majority of the votes cast. In the event of a tied vote when electing a person to chair a meeting, the matter shall be decided by drawing lots.

## **Section 14. Confidentiality**

Employees and officers of Norfund and persons performing work for Norfund are under an obligation to observe confidentiality regarding whatever they may learn in the course of their duties concerning the business or private affairs of others, except when the law requires them to disclose such information. This duty of confidentiality does not apply to communications made to the Ministry by the Board or its authorised representative on behalf of Norfund.

## **Section 15. Prohibition against accepting gifts etc.**

Board members, employees and persons performing work for Norfund may not accept, for themselves, or others, any gifts, commissions, services or other benefits, from any party other than Norfund, which may influence, or may be intended by the donor to influence, acts performed by them on behalf of Norfund.

Nor may gifts, services or other benefits such as mentioned in the preceding paragraph be accepted by the spouse or cohabiting partner of a person such as mentioned in the preceding paragraph or anyone related by blood or marriage in a direct line of ascent or descent to such a person, or a company in which such person holds a significant interest.

Any person who receives a benefit contrary to the rules of this section shall pay Norfund a sum corresponding to that unrightfully received.

## **Section 16. Managing Director**

Norfund shall have a Managing Director appointed by the Board. Remuneration for the Managing Director shall be determined by the Board.



### **Section 17. Powers of the Managing Director**

The Managing Director shall undertake day-to-day management of Norfund and shall follow the guidelines and instructions issued by the Board.

The day-to-day management does not include matters which, given Norfund's circumstances, are of an unusual nature or of great importance.

The Managing Director may otherwise make decisions on matters pursuant to a power of attorney from the Board of Directors in individual matters or when the Board of Directors' decision cannot be waited for without substantial disadvantage to Norfund. The Board shall be informed as soon as possible of the decision.

The Managing Director shall ensure that the company's accounts are in accordance with laws and regulations and that assets are managed in a safe and proper manner.

The Board of Directors may require at any time that the Managing Director provide the Board with a more detailed account of particular matters. Such an account may also be required of the individual Board member.

### **Section 18. Binding commitments on behalf of Norfund**

Norfund is represented by its Board of Directors in relations with third parties. The Board may authorise a Board member or the Managing Director alone, or several persons jointly, to make binding commitments on behalf of Norfund. Instructions issued pursuant to Section 8 may limit the powers given to the Board under the second sentence and may also contain provisions relating to the right to make binding commitments on behalf of Norfund.

Norfund shall be represented by its Managing Director in relations with third parties in matters that come within the Managing Director's powers pursuant to Section 17.

### **Section 19. Ultra vires**

If any person representing Norfund in relations with third parties pursuant to Section 18 acts in excess of his/her powers, the commitment will not be binding for Norfund if the other party to the contract knew, or should have realized that the person was exceeding his/her powers and that it would therefore be contrary to honesty and good faith to claim enforcement of the transaction in question.

## **Chapter 3 General Meeting**

### **Section 20. The powers of the General Meeting and the right and obligation to be present at the General Meeting**

The Ministry exercises supreme authority in Norfund through the General Meeting.

In addition to the Ministry, Norfund's Board of Directors, the Managing Director and the auditor have the right to be present at the General Meeting and to express views. The Managing Director and the Board Chair have an obligation to be present unless this is clearly unnecessary or they are validly excused. In the latter case, a deputy shall be appointed. Norfund's auditor has an obligation to be present in the event that the matters to be dealt with are of such a nature that his/her presence may be regarded as necessary.

### **Section 21. Ordinary General Meeting**

An Ordinary General Meeting shall be held within 6 months of the end of each accounting year. The following matters shall be dealt with and decided at the Ordinary General Meeting:



## *Translation from Norwegian*

1. Adoption of Norfund's financial statements and annual report, including the application of the profit for the year or settlement of the loss.
2. Approval of the group financial statements.
3. Other matters that pursuant to the law or the Statutes are the business of the General Meeting.

The financial statements, annual report and auditor's report shall be appended to the notice of the Ordinary General Meeting.

### **Section 22. Extraordinary general meeting**

An Extraordinary General Meeting shall be held when the Ministry, the Board of Directors or the Auditor deems it necessary.

### **Section 23. Convening of a General Meeting**

The Ministry is responsible for convening both ordinary and extraordinary general meetings and deciding on the manner of convening the meetings. Notice shall be sent one week at the latest before the meeting is to be held, unless shorter notice is absolutely necessary in special cases.

Those who have a right to attend the General Meeting pursuant to S 20, second paragraph, shall be invited to the General Meeting. The Office of the Auditor General shall also be notified.

The notice of the meeting shall specify the items to be dealt with at the meeting. Matters of which those who have a right to be notified pursuant to the second paragraph have not been informed can only be decided by the General Meeting with the unanimous consent of those members of the Board attending the meeting. Should the Managing Director or a member of the Board disagree with the decision reached by the Ministry at the General Meeting, the officer concerned shall require that his or her dissent be recorded in the minutes.

### **Section 24. Chairing of the meeting and taking of minutes**

The General Meeting is chaired by the Board Chair or by the person designated by the Board of Directors.

The meeting chairperson shall ensure that minutes are taken of the General Meeting. Decisions taken by the General Meeting shall be recorded in the minutes. The minutes shall be signed by the meeting chairperson and another person elected by the General Meeting from among those present.

## **Chapter 4. Accounting, audits and supervision**

### **Section 25. Accounts and auditing**

Norfund is required to keep accounts pursuant to the Norwegian Accounting Act.

Norfund shall have a state authorised public accountant who is elected by the General Meeting. The auditor's remuneration shall be approved by the General Meeting.

### **Section 26. Annual report**

Each year, Norfund shall prepare an annual report on its activities which contains financial statements and an annual report for the parent company and group.





### **Section 27. Supervision by the Auditor General**

The Office of the Auditor General supervises the management of the State's interests and may conduct audits etc. of Norfund pursuant to Act no. 21 relating to the Office of the Auditor General and instructions issued by the Storting.

## **Chapter 5. General closing provisions**

### **Section 28. Dissolving and winding up Norfund**

Dissolving of Norfund requires an enactment of law. The King shall appoint a liquidation board and issue further rules concerning the winding up of Norfund.

### **Section 29. Returning Norfund assets to the State**

When Norfund is wound up its remaining assets shall be returned to the Treasury.

The Storting may decide that parts of Norfund's assets shall be returned to the Treasury.

### **Section 30. Amendments to other acts**

The following amendment is to be made to Act No. 8 of 18 August 1911 relating to taxation of income and capital wealth (the Tax Act): ---

### **Section 31. Entry into force**

This Act shall enter into force at the time determined by the King.<sup>1</sup>Section 23 (amendment of Taxation Act Section 26, first paragraph, (e) shall apply from and including income year 1997.

The King may stipulate further transitional rules.

True translation certified:



Date: 4 July 2022

Government authorised translator