

GUIDELINES FOR DEALING WITH SUSPICION OF FINANCIAL IRREGULARITIES

As of 18 March 2011

(Replaces the previous guidelines of 2 December 2009)

1. INTRODUCTION

Zero tolerance for corruption is to be practised for all funds under the Ministry of Foreign Affairs budget, see the budget proposal for 2011 (Prop. 1 S (2010–2011)). More details of the Ministry's zero-tolerance policy are to be found in the memo of 9 June 2010 on zero tolerance of corruption:

http://www.regjeringen.no/upload/UD/Vedlegg/varsling_null_e.pdf

All funds are to be administered in accordance with the guidelines set out in the Storting's budget resolution, and in accordance with sound management practices, the rules for administering grants and operating funds and relevant legislation, see Appendix 1.

The guidelines apply to the Foreign Service (Ministry of Foreign Affairs and diplomatic and consular missions) and are designed to ensure that correct procedures are followed when dealing with cases involving suspicion of financial irregularities. They apply to all funds administered by the Foreign Service, **both operating funds and grant funds**.

The Foreign Service is to ensure that all cases relating to financial irregularities are followed up in a satisfactory way, including cases where the administration of funds has been delegated to other actors. If the follow up carried out by a cooperation partner is not considered to be satisfactory, the Ministry is to follow up the matter itself in accordance with these guidelines.

The Foreign Service is to play a proactive role in efforts to ensure that multilateral organisations, global funds and programmes, the Financial Mechanism Office and public-private partnerships establish and document satisfactory systems for the prevention, detection and follow up of financial irregularities. The Foreign Service Control Unit is to be kept informed of the process. Cases of financial irregularities involving Norwegian public funds are to be reported in the usual way, see section 3. The Foreign Service Control Unit is also to be informed of any other cases of financial irregularities being dealt with in cooperation partners' systems.

These guidelines do not apply to preventive measures. They apply from the point at which an irregularity is detected and up to the point at which the case is closed. The process can be divided into five steps:

- Irregularity is detected or suspicion arises
- Reporting
- Examination and assessment
- Reaction
- The case is closed.

2. IRREGULARITY DETECTED/SUSPICION ARISES

Irregularities are generally detected in connection with ordinary administrative procedures. Typical examples are conflicting information and details that are incomprehensible or left out. Irregularities can also be detected in connection with control activities initiated by the Foreign Service or externally, e.g. by a cooperation partner or auditor. The Foreign Service Control Unit also receives reports of irregularities in connection with the use of ministry funds from both internal and external sources.

The nature and gravity of these irregularities vary and can be described in general as involving an action/omission in violation of current legislation/agreements. If the irregularity is related to a specific agreement, the agreement will be a useful tool in assessing whether an irregularity has taken place. Examples of factors that may be indications of an irregularity are provided in Appendix 2.

The entity in question has an obligation to investigate any irregularities that are detected.¹ A written assessment of the matter must be made and recorded together with other documents in the case, and followed up in an adequate manner. If there is doubt as to whether the case involves financial irregularities linked with Norwegian public funds or whether it is to be reported to the Foreign Service Control Unit, the Control Unit should be consulted.

WHISTLEBLOWING

Everyone has the right to report any irregularities or unacceptable circumstances. As an employee you have a duty to notify the employer of any circumstances that could cause loss or injury to the employer, employees or the surroundings. All whistleblowers may choose to remain anonymous. See the whistleblowing poster for the procedure to be followed when reporting such cases (Appendix 3).

The Foreign Ministry has established an external whistleblowing channel that can be used by both employees and external actors, see link:
<http://www.regjeringen.no/nb/dep/ud/tema/Folkerett/Antikorrupsjon/varslingsstjenesten.html?id=495009>

3. REPORTING

Any suspicion of financial irregularities is to be reported without undue delay to the Foreign Service Control Unit. The report should be in writing, preferably using the standard reporting form, in which any circumstances that may be of significant in the assessment of the case are to be specified, see Appendix 4.

The Foreign Service Control Unit will confirm receipt of the report and register the case as a whistleblowing case in a separate overview of such cases. The Unit is to give the case a

¹ For the purpose of these guidelines, "entity" refers to a diplomatic or consular mission, or a department or section in the Ministry of Foreign Affairs.

chronological reference number and register it in Public 360. The case will be given a Public 360 number by the archives personnel. Both case numbers are to be reported to the entity concerned. Reference is to be made to these case numbers in all further correspondence. In order to ensure that all correspondence in the case is duly registered in the archives, the missions are requested to use the email template in Appendix 5.

4. INVESTIGATION AND ASSESSMENT

After receiving the report, the Foreign Service Control Unit will assess the case and give advice as to how it should be dealt with. In cases where the Control Unit finds that the case should be followed up as a whistleblowing case, it will as a general rule instruct the entity(ies) concerned to freeze all funds intended for the agreement/project in question until the case has been resolved.

In most cases it is necessary to further investigate a suspicion of financial irregularities. The Foreign Service Control Unit decides whether to initiate an investigation in consultation with the entity(ies) concerned.

The investigation must not be carried out in such a way as to increase the risk that the evidence will be tampered with. Nor must the investigation take too much time. The investigation of the case must be completed within the period of limitation² and before the time limit for submitting an application for public prosecution expires.³ The time limits that apply should be decided at an early stage. They will vary according to the legislation of the various countries concerned. If a specific suspicion of financial irregularities affects other donors or contract parties, an effort should be made to cooperate with them during the investigation phase.

The purpose of the investigation phase is to document the facts in the case so any suspicion of financial irregularities can be confirmed or dispelled. During this phase, the focus will therefore often be on obtaining documents (reports, accounts, auditing reports – including “management letters”, minutes of meetings, etc.). Sometimes a field visit may be advisable. It will often be necessary to engage an independent, internationally recognised auditing firm to carry out a forensic audit in order to dispel/confirm a suspicion that financial irregularities have occurred.

- The specifications for a forensic audit must be tailored to the case in question in consultation with the Foreign Service Control Unit.
- Auditing firms are to be engaged in accordance with the general rules on public procurement.
- Who is to cover the expenses of such an audit is to be decided before the contract is awarded.

Once all available and necessary documentation has been obtained, the Foreign Service Control Unit is to submit a memo containing its assessment of the facts in the case and the form of reaction recommended. The memo is to be submitted to the entities concerned for approval, and in some cases to the Legal Affairs Department.

² Under Norwegian law, the time limit for submitting an application for public prosecution is six months after the Foreign Service has acquired knowledge of the criminal act and who has committed it, cf. section 80 of the Penal Code of 1902.

³ The general period of limitation is three years from the date on which the breach of contract commenced, see Appendix 7.

5. REACTIONS

As a general rule, the Foreign Service shall react to financial irregularities. The following reactions are appropriate depending on the case concerned:

- Freezing planned disbursement until the case has been resolved, cf. section 4 above.
- Reimbursement. See Appendix 6 for the rules on reimbursement.
- Civil action
- Cancellation of claims
- Claim compensation
- Criminal proceedings
- Disciplinary measures
- Risk-reducing measures, action plans for improving financial management and control
- Discontinuing cooperation. Termination of agreement/contract.
- In the case of commercial contracts, any specific commercial reactions will be governed by agreement.

It will always be necessary to assess implementing more than one of these reactions in each individual case. The procedure is that the Foreign Service Control Unit decides, in consultation with the entity concerned, which reactions should be implemented. The Personnel Section is responsible for deciding any disciplinary measures to be taken against Foreign Service employees. This is a step-by-step process, depending on the nature of the case, and the various reactions may therefore be implemented at various stages in the process. It may also be necessary to take measures to safeguard claims or evidence during the process.

In cases where there is agreement on claims for reimbursement of funds, the entity is to register information about this in PTA as well as when the funds have been reimbursed.

6. CLOSING THE CASE

In closing the case, the Foreign Service Control Unit is to prepare a brief memo summing up the case, if appropriate in consultation with the entity concerned, which is to be registered as the last document in the whistleblowing case in Public 360.

7. HANDLING INFORMATION

All archive-worthy documents in whistleblowing cases are to be registered in the archives using Public 360. Any confidential information will be exempted from public disclosure. Whistle-blowing cases are also to be registered in chronological order in a separate overview administered by the Foreign Service Control Unit. Caution should be exercised in distributing documents relating to a case of suspected financial irregularities. As a general rule, access to information concerning cases involving suspicion of financial irregularities should be restricted to the employees in the entity concerned, management, the diplomatic or consular mission concerned and the Foreign Service Control Unit. Documents relating to the case are to be properly stored in accordance with the current rules.

The Foreign Service Control Unit deals with requests for access to documents in whistleblowing cases. The entities concerned are informed of the request. The Foreign Service Control Unit is responsible for informing the Secretary General and other affected entities, including

entities that deal with enquiries from the media, about the request. The affected entities are also to prepare contingency responses in consultation with the Foreign Service Control Unit. The Communication Unit and the Minister of the Environment and International Development's secretariat can provide assistance in dealing with external information. The Ministry's general rules for handling information are to be followed.

Appendix 1 Legislation

Penal Code of 1902:

Section 12. Jurisdiction

Section 80. Time-limit for submitting an application for public prosecution

Section 276 a-c. Corruption

Sections 275, 276. Breach of trust

Sections 255, 256. Embezzlement

Sections 270, 271. Fraud

Sections 257, 258. Theft

Civil Service Act:

Section 14. Disciplinary measures

Section 15. Dismissal

Section 16. Suspension

Section 20 Gifts, etc.

Damages Act:

Section 1-6 Individual liability for damage caused by corruption

Section 2-1 The employer's strict liability for damages

Working Environment Act:

Sections 2-4 and 2-5 Provisions concerning notification

Public Administration Act:

Public Procurement Act and appurtenant regulations:

Act relating to the limitation period for claims:

Other rules and regulations:

Regulations on Financial Management in Central Government

Provisions on Financial Management in Central Government

Main Instructions for Financial Management in the Foreign Service

Financial Management and Accounting Instructions for the Missions

Foreign Ministry grant management rules and manuals

Ethical guidelines for the civil service of 7 September 2005

Norwegian Civil Service Handbook (NCSH), section 10.19: Guidelines for dealing with cases of embezzlement, corruption, theft, fraud and breach of trust in the civil service

PM 1995-17 Prosecution of financial irregularities (embezzlement, etc.) in the civil service (Circular issued in 1995 by the Ministry of Planning and Coordination)

Memo from the Office of the Attorney General for Civil Affairs concerning the acceptance of gifts and hospitality by politicians and civil servants of 14 December 2006

Guidelines issued by the Ministry of Labour and Social Inclusion on whistleblowing or notification of unacceptable circumstances at the work place

Guidelines for the private co-financing of activities abroad under the auspices of the Foreign Service (external contributions/sponsoring)

Guidelines issued by the Ministry of Modernisation in 2005 on quarantine and a prohibition against dealing with specific matters for senior officials and civil servants who transfer to a new post

Appendix 2 Warning signs

One or more of the following, but the list is not exhaustive:

REPORTS/MEETINGS:

- Failure to comply with agreed requirements for reporting/meetings
- Failure to submit reports/inadequate reports/delayed or incomprehensible reports, including audit reports
- Failure to hold meetings
- Comments in audit reports/management letters

PROCUREMENT:

- Failure to comply with procurement rules
- Suspicious invoices
- Payments that are not properly explained or documented
- Procurement of overpriced goods and services
- Payments to agents and intermediaries
- Use of shell companies
- Inexplicably high costs
- Enterprises involved wish to work without a contract and are unwilling to commit themselves to complying with anti-corruption requirements
- Payments to or engagement of enterprises in tax havens
- Cash payments
- Unusual enquiries from local project managers concerning payments, including requests for antedated invoices, use of bank accounts in another country, etc.

ASSESSMENT OF PRACTICES/REPORTS:

- Slow progression in the implementation of projects
- Peculiarities in the accounts
- Unexplained change of auditor
- Dubious management system/control, no internal auditor
- One person is authorised to debit accounts on his or her own (preferably the approval of three persons should be required)
- No separate account for projects, making it impossible to identify contributions
- Lack of correspondence between the amount budgeted for a particular purpose and the amount entered in the accounts
- Discrepancy between the annual accounts and the audited accounts
- Discrepancy between the salaries paid, particularly to management, and amount budgeted for this purpose
- The annual accounts have not been signed by the board

OTHER MATTERS THAT MAY BE OF SIGNIFICANCE

- Information from an anonymous source
- Media reports
- Employees do not want to take normal holiday (“don’t have time for it”)
- Positions are filled with people close to the management without advertising a vacancy/inviting tenders

Appendix 3

The Foreign Service's whistleblowing poster

Guidelines for Notification of Unacceptable Circumstances in the Foreign Service, cf. section 2-4 of the Working Environment Act

What is whistleblowing?	Whistleblowing is reporting unacceptable circumstances in the organisation.
What are unacceptable circumstances?	Unacceptable circumstances are circumstances involving a breach of legislation, internal guidelines or ethical norms, e.g. bullying, sexual harassment, discrimination, drug abuse, a poor working environment, circumstances that endanger employees' lives or health, hazardous products, embezzlement, theft, fraud, corruption, breach of trust, etc.
Who can whistleblow?	<p>The guidelines apply to all employees in the Foreign Service, including local employees and honorary consuls. They also apply to secondees, trainees and consultants.</p> <p>External persons who have no connection with the Foreign Service may also report any circumstances they find unacceptable. In such cases these guidelines apply insofar as they are appropriate.</p>
How do I whistleblow?	You can whistleblow in writing or orally, e.g. by telephone, email or letter, or in person.
To whom should I whistleblow?	<p>As a general rule, you should contact your immediate superior or a more senior line manager. You may also whistleblow indirectly through an employee representative, health and safety representative, colleague, lawyer or other adviser.</p> <p>If you are not employed in the Foreign Service, or if you are a Foreign Service employee but prefer to notify through a channel other than your line management, you may report incidents directly to the Foreign Service Control Unit or the Foreign Service's external reporting channel, the law firm Kluge Advokatfirma DA, in one of the following ways:</p> <ul style="list-style-type: none">• Sentral kontrollenhet (Foreign Service Control Unit): email: s-kontrollenhet@mfa.no; telephone: +47-23951166, +47-23951172, +47-23951167, +4723951173; Utenriksdepartementet, Postboks 8114 Dep., 0032 Oslo; or office address: Kronprinsensgate 9, 0251 Oslo.• Kluge Advokatfirma DA: email: ud@alertus.no; Telephone: +47 46 54 84 79; postal address: Kluge Advokatfirma DA «Varsel», Postboks 1548 Vika, 0177 Oslo; or office address: Støperigata 1, 0250 Oslo. <p>In addition, you always have the right to whistleblow to a supervisory body or other public authority (for example the Norwegian Labour Inspection Authority, the Data Inspectorate or the Police).</p>
Do I have the right to whistleblow?	As an employee you have the right to report unacceptable circumstances in the organisation.
Duty to report! What do I have a duty to report, and to whom?	<ul style="list-style-type: none">○ You have a duty to immediately notify the employer, the health and safety representative and, insofar as necessary, other employees of any defects or hazards that could pose a threat to life or health unless you are able to remedy the situation yourself.○ You have a duty to notify the employer or the health and safety representative of any harassment, bullying or discrimination at the workplace.○ You have a duty to notify the employer if an employee is injured at the workplace or contracts an illness you believe is due to his/her work or circumstances at the workplace.○ You have a duty to notify the employer of any circumstances that could cause loss or injury to the employer, employees or the local environment, see the ethical guidelines for the civil service.
As health and safety representative, do I have a special duty to report?	Health and safety representatives have a special duty to report under the Working Environment Act. If a health and safety representative learns of circumstances that could result in accidents or health hazards, he/she is to immediately notify the

	employees at the location. If the report is not followed up within a reasonable space of time, the health and safety representative is to notify the working environment committee or the Norwegian Labour Inspection Authority.
What should the report include?	<p>The report should include:</p> <ul style="list-style-type: none"> • Your full name (but you can choose to remain anonymous) • Your place of service (this may be omitted if you wish to remain anonymous) • Date of your report • The period, and date and time if applicable, of the circumstances concerned • Exactly what you have observed • The place where the incident occurred • Other witnesses • Any known previous incidents involving the same person(s).
What is required of the whistleblower?	<p>You must proceed in a responsible manner. What is deemed to be a responsible manner depends on an overall assessment of the situation. This includes considering whether your criticism is well founded and whether you have given due consideration to the employer's legitimate interests in the way you proceed.</p> <p>In any event, you always have the right to report in accordance with your duty to report or the organisation's whistleblowing routines; see section 2–4, subsection 2, second sentence, of the Working Environment Act.</p> <p>In addition, you always have the right to whistleblow to a supervisory body or other public authority (for example the Norwegian Labour Inspection Authority, the Data Inspectorate or the Police).</p>
Can I go to the media? (public whistleblowing)	<p>According to Article 100 of the Constitution, which concerns freedom of expression, you are entitled to speak your mind in the general public debate, including criticising circumstances related to your place of work. However, the non-statutory duty of loyalty dictates that you may not harm your employer's interests or activities by speaking negatively of them in public unless this is justified. The requirement that you must proceed in a responsible manner generally means that whistleblowing should be carried out through the organisation's internal channels and to public supervisory bodies. This requirement is more stringent with regard to public whistleblowing, i.e. via the media, blogs, websites, emails to multiple recipients outside the organisation and other communication channels that reach a large and open group of recipients.</p>
What principles apply when dealing with such cases?	<ul style="list-style-type: none"> • All reports are to be taken seriously • All reports are to be dealt with immediately • The whistleblower may choose to remain anonymous • Anonymous sources can be as valuable as open ones • The various methods of whistleblowing are to be given equal weight • Reports are to be dealt with confidentially • It must be possible to use the whistleblowing system without fear of the consequences • The whistleblower should be given feedback within reasonable time (unless he or she has chosen to be anonymous)
Who deals with the report? What is the procedure?	<p>The employer decides who is to be involved in dealing with the case and what measures should be taken, according to the type of case and who it involves.</p> <p>All documents relating to the case are to be registered and filed, and otherwise dealt with in accordance with the organisation's rules.</p>
Will I get any feedback?	<p>The whistleblower will, if possible, receive confirmation that his or her report has been received. Any questions concerning access to information regarding the case are governed by the provisions of the Freedom of Information Act, the Public Administration Act, the Personal Data Act and other relevant legislation.</p>
Are there any restrictions with regard to whistleblowing?	<p>The provisions concerning the duty of secrecy, defamation, etc., apply notwithstanding the right to notify pursuant to the Working Environment Act.</p>
Will I put myself at risk?	<p>Retaliation against an employee who whistleblows is prohibited.</p>
Consideration for the	<p>In cases where the employer decides to pursue the matter further, the person who</p>

**person who has been
reported**

has been reported should, as a general rule, be made aware of the report and the information it contains. This gives the person concerned the opportunity to present his or her version of the matter. When the case has been concluded, the person who has been reported is to be informed immediately, regardless of the outcome.

Appendix 4

Form for reporting suspicions of financial irregularities

1. The entity making the report

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2. The activity or agreement that the report relates to. Specify any reference number to an agreement in PTA. Attach copy of relevant agreement.

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3. “Heading” (a one-line description of the case)

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4. When and where did the incident(s) described in the report occur?

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5. Description of the misconduct

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6. What has been done to clarify the circumstances of the case?

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7. Any relevant political and local factors that could be of significance in assessing the case.

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8. Information about any donor cooperation that is relevant for the case

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9. Other relevant information, including the total cost of the agreement, how much has already been disbursed and an overview of planned disbursements

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10. Any proposals for measures that can be taken to prevent or counteract the misconduct described in the report

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- 11. List of documents that substantiate the facts of the case, both enclosed documents and others (documents that are not enclosed may be forwarded at a later date)**

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- 12. Do you wish to remain anonymous?**

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- 13. Place, date and name**

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Appendix 5 Email template for diplomatic and consular missions' correspondence with the Foreign Service Control Unit

ROYAL NORWEGIAN EMBASSY<name of the mission>

Responsible officer: <name>

To: The Foreign Service Control Unit

Priority: Exempted from public disclosure, cf. Freedom of Information Act § 24.2

MFA reference number: xx/XXXXX

Mission's reference number:

Access category: Whistleblowing cases

Responsible entity:

Heading: Whistleblowing case no. <Foreign Service Control Unit's reference number >/country

8. GENERAL

These routines are to be followed for all reimbursements of grant funds, i.e. unused funds and funds that are reimbursed in cases involving financial irregularities. The routines supplement the description of how unused funds are to be reimbursed to the Ministry of Foreign Affairs under the heading **Receive reimbursement of unused funds** in the Ministry's grant management manuals, cf. A19 in the manual "Management of Grants by the Ministry of Foreign Affairs, subordinate agencies and embassies" and A49 in the manual "Managing Delegated Grant Schemes". (Note that the rules for interest reimbursement are to be found in A62).

9. CONDITIONS

Information and guidelines concerning reimbursement of unused funds to the Ministry are to be included in the agreement between the Ministry of Foreign Affairs and the grant recipient. The agreement must be registered in PTA. Current agreements that are not registered in PTA are subject to the routines set out in R99. See also the activity description set out in A19/A49.

10. ADMINISTRATIVE TASKS

10.1 Registration in PTA

As a general rule, a deposit is planned and carried out as an ordinary disbursement preceded by a minus sign in PTA under the chapter/item over which the disbursement was originally debited. If all the disbursements under a particular agreement have been carried out, the agreement is to be set at phase C when the deposit is registered.

- If the agreement is set at phase D, contact tfe-helpdesk@mfa.no to have it set back to phase C.
- If you do not have access to the applicable chapter/item, cost location or recipient under the agreement, contact tfe-helpdesk@mfa.no.
- Funds that are reimbursed later than two years after the date on which the final disbursement is made under the agreement shall be returned to the state treasury, and registered in PTA for the agreement concerned, but with a separate chapter/item for this: *Miscellaneous income, 53092900*.

Routine R99, Registration of current agreements for sections that began to use PTA in 2009 (concerns reimbursement of unused funds under agreements that are not previously registered in PTA:

- *Reimbursement of unused funds within two years of the date on which the final disbursement was made:*

If the agreement is not already registered in PTA, it is not necessary to register it as a separate agreement solely for the purpose of reimbursement. A separate agreement may be established for the section concerned in PTA in which all such reimbursements are registered. Take care to select the right chapter/item when generating the front page of the voucher.

- *Reimbursement of unused funds later than two years after the date on which the final disbursement was made:*

If the agreement is not already registered in PTA, it is not necessary to register such reimbursements in PTA.

10.2 Use of reimbursed funds

Funds that are reimbursed more than two years after the date on which the final disbursement was made are to be returned to the state treasury via the Ministry of Foreign Affairs.

Reimbursed funds under budget lines that are not marked “may be transferred” in the annual budget proposal are to be returned to the state treasury regardless of the date on which they were reimbursed. This applies to chapter 116, item 70 (Grants to international organisations, mandatory contributions and membership fees) and chapter 170, items 70–72 and 74–75 (UN organisations).

If the final disbursement of funds to the grant recipient was made during the current year, the section or the embassy may use any funds reimbursed before the end of the year. The funds must be used for purposes that are consistent with the purpose of the original grant.

Funds that are reimbursed later than during the current year, but earlier than two years after the date on which the final payment accrues to the Ministry. The use of such funds must be approved by the entity that has made the funds available. The entity concerned will consider the request and decide who may use the funds. It will also specify the cost location under which the funds are to be recorded as income. Embassies are requested to contact the Section for Management of Subsidiary Agencies and Development Funds.

Appendix 7 LIMITATION PERIODS

In Norway, the provisions on limitation periods are set out in the Act relating to the limitation period for claims (Limitation Act) of 1979.

The legislation on this subject in other countries may specify different time limits and conditions. It is therefore important to take account of national legislation when dealing with various matters concerning limitation periods for claims.

The creditor loses his right to payment on the expiry of the limitation period.

The general limitation period in Norwegian legislation is three years, cf. section 2 of the Limitation Act.

For claims arising from breach of contract, the limitation period runs from the date on which the said breach commences, cf. section 3, subsection 2, of the Limitation Act.

Section 3, subsection 2, of the Limitation Act may also be relevant in cases involving financial irregularities. It reads as follows: “If an agreement can or shall be considered terminated before the time for performance is due or a claim considered accrued before the date otherwise prescribed, on account of the debtor’s breach of contract or some other occurrence, the limitation period in respect of claims based on such occurrence shall only commence to run from the date on which the creditor serves notice on the debtor that he will invoke the grounds for terminating the contract or the grounds on account of which the claim has accrued. If such notice is not served, the limitation period shall run from the date otherwise prescribed for the accrual of the claim.”

The Limitation Act contains provisions on a number of specific limitation periods; see the text of the Act for further information.