The International Comparative Legal Guide To

Mergers & Acquisitions 2010

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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

Norway is not a member of the European Union ("EU"), but it is a member of the European Free Trade Association ("EFTA") and the European Economic Area ("EEA"). This means that most EU regulations concerning M&A transactions has been and will be implemented in Norwegian law, including MIFID and the Transparency Directive.

In addition to general contract law, M&A involving listed companies in Norway is regulated by the Securities Trading Act of 29 June 2007 ("STA"). The act includes general rules of conducts such as inside information rules, market manipulation prohibitions and reporting obligations; notification requirements, mandatory offer provisions (that to a large extent applies also to voluntary offers), prospectus requirements etc. Further rules are given in regulations to the STA, in particular the Securities Regulation of 29 June 2007. The STA is compliant with both MiFID and the Transparency Directive.

General company law regulations that are also relevant in M&A are given in the Norwegian Public Limited Liability Companies Act of 13 June 1997 ("PLLCA"). This Act contains provisions on transfer of shares, corporate governance, increase and decrease of share capital and share premiums, mergers and de-mergers etc. Tax and accounting are primarily regulated by the Norwegian Income Tax Act of 26 March 1999 with regulations, and the Norwegian Accounting Act of 17 July 1997 with regulations. Anti-trust and other competition law aspects of M&A are regulated by the Norwegian Competition Act of 5 March 2004. M&A transactions with an EU dimension may be subject to the exclusive control and regulation of the EU competition rules and the European Commission. It may be subject to EEA competition rules and regulation by the EFTA Surveillance Authority ("ESA") if it has an EFTA dimension but no EU dimension, but with Iceland, Lichtenstein and Norway being the only remaining EEA states outside the EU, this is highly unlikely. Employment matters are regulated by the Norwegian Working Environment Act of 17 June 2005.

Certain business sectors are subject to special regulation.

1.2 Are there different rules for different types of public company?

Of the different types of Norwegian companies, only public limited liability companies (Norwegian: "*allmennaksjeselskap*" or "ASA") may be listed on a Norwegian regulated market. Rules referred to in this presentation are applicable for such public limited liability companies.

As a main rule, the STA only applies to M&A involving companies listed on a Norwegian regulated market. There are currently two such markets for shares and related securities, the Oslo Stock Exchange (Norwegian: *Oslo Børs*) and Oslo Axess. Both are operated by the Oslo Stock Exchange, with Oslo Axess being a regulated market with less onerous requirements for listing. Some of the provisions of the STA refer only to Norwegian listed companies

Provisions such as those of the Norwegian Income Tax Act, the Norwegian Accounting Act on, the Norwegian Competition Act, and the Norwegian Working Environment Act etc. will generally apply to all transactions (although regulations are stricter in some respects for public companies, typically with regards to accounting).

1.3 Are there special rules for foreign buyers?

There are no general requirements that are special for foreign buyers. However, there are some business sectors that have special requirements, including within the fisheries industry, which is also exempt in most cases from the EEA agreement.

Other business areas have rules and regulations that open up for the exercise of judgment. According to the EEA agreement Norway is to some extent prohibited from taking into account national interests when exercising judgment under the relevant rules and regulations, but it has in some cases been discussed whether this judgment is not some times exercised in a way that benefits Norwegian buyers. This has been the case both for the financial services sector and the energy sector.

1.4 Are there any special sector-related rules?

Several business sectors have sector specific rules, most notably the financial services sector, the fisheries sector and both the oil and gas and other energy sectors.

The sector related rule that has most often been discussed in relation to foreign investments is a discretionary ownership threshold of 10% in financial institutions, financial services companies or insurance companies.

1.5 What are the principal sources of liability?

Lack of compliance with provisions in the STA will be the most common source of liability. Notification and information requirements can sometimes be difficult to fully comply with in time. Norwegian inside information rules are interpreted quite strictly. Non-compliance may lead to sanctions from the Oslo Stock Exchange including substantial administrative fines, criminal

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charges and civil liability.

Liability from misrepresentation in prospectuses and other published information has been less frequent in Norwegian M&A's, but it is expected that disputes and potential liability from this might increase with the securities markets being more volatile than over the last few years.

Another quite frequent source of litigation, and risk of extra costs for an acquirer, has been disputes to determine the fair value of shares acquired from minority shareholders in squeeze-outs following acquisition of more than 90% of the shares and votes in a listed company. However, an amendment of the STA in line with the provisions of the Takeover Directive now states that if the acquirer has acquired more than 90% of shares and votes of the target company, and the squeeze-out takes place no more than three months after the expiry of the offer period, the offer price shall be regarded as a fair price for the minority shares unless "special circumstances" indicate otherwise. This is likely to decrease the number of such disputes, although we do not expect them to go away entirely.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

General

There are several different methods to acquire a company listed on one of the regulated markets in Norway. The methods often used include:

- Stake building with subsequent voluntary or mandatory offer.
- Voluntary or mandatory offer with no previous stake building.
- A merger between at least one listed company and at least one other company.

Stake building

Stake building will include purchasing of shares from individual shareholders in the open market, either on or off the regulated market, usually in combination with a subsequent mandatory or voluntary offer, as described below. A main considerations for stake building is whether the acquirer wants to cross an ownership threshold of 5% (triggers notification requirements) and one third of the shares or votes in the target company (triggers mandatory offer requirement).

Special rules apply to rights to shares and other arrangements. Stake building also raises other questions, see section 5.

Voluntary or mandatory offer

The most usual approach for an acquisition of a company listed on a Norwegian regulated market is a combined voluntary offer and subsequent squeeze-out. This requires that the offeror has not acquired a number of shares in the target company sufficient to trigger mandatory offer requirements. The main purpose of this approach is to allow the offeror to set terms for the acquisition of shares such as due diligence, financing etc (permitted in voluntary offers, not in mandatory offers) and/or to offer other consideration than cash to the shareholders (cash only alternative required in mandatory offers, not required for voluntary offers). A voluntary offer may also be extended and amended on certain terms, so that the offeror may effectively acquire over 90% of the shares and votes in the target company, and therefore move directly into a squeeze-out procedure without a preceding mandatory offer, on certain conditions. The offer period for a voluntary offer must be no less than two and no more than 10 weeks.

It should be noted that although voluntary offers allow the offeror greater flexibility in terms of legal approach, there is a limit to what will be regarded as commercially acceptable and sensible in terms of conditions and consideration.

If the offeror's ownership reaches one third of the voting rights in the company the bidder is obligated to make a bid for the purchase of the remaining shares in the company; i.e. make a mandatory offer. The threshold of one third of the shares was lowered from 40% from 1 January 2008. For shareholders who own shares representing more than one third of the votes of a listed company, the obligation to make an offer to purchase the remaining shares is repeated when passing 40% of the votes in the company, and correspondingly when passing 50%. The mandatory offer obligation also applies for acquisitions by the shareholder's close associates, such as companies in the same group and companies and persons acting in concert with the shareholder in the exercise of the rights as owner of shares or securities in the target.

When a mandatory offer obligation is triggered, the bidder must without delay notify the regulated market and the target company. The notification is public and must state that an offer to buy the remaining shares will be made. The mandatory offer must be made within four weeks after the obligation was triggered, and must be for all shares of the target company, including restricted shares and no voting shares. The obligation to make a mandatory offer may be avoided on certain terms by selling of shares. The offer cannot be made conditional. The offer price must be at least as high as the highest price the offeror has made or agreed in the six months prior to the acquisition triggering the mandatory offer, except if it is clear that the market price at the time of the offer is higher, in which case the offer price must be equal to the market price. Settlement in cash must be offered. The period of the offer can not be shorter than four weeks and not longer than six weeks.

Both the offer and the offer document require approval by the Oslo Stock Exchange before the offer is launched. In December 2008 a proposal was published in which the authority to approve offer documents and prospectuses was suggested moved to the Financial Supervisory Authority of Norway.

If a shareholder owns more than 90% of the shares and the voting rights in a subsidiary, the majority shareholder may decide to take over the remaining shares in the subsidiary through a squeeze-out of the minority shareholders. Each remaining shareholder in the subsidiary is also entitled to require that the majority shareholder acquires such shareholder's shares in the target. The majority shareholder must offer the shareholders a redemption price and the offer shall be publicly announced. If the price offered for the shares is not accepted by all shareholders, an independent valuation may be required, at the offeror's expense. As mentioned above, the majority shareholder may on certain conditions proceed with the forced transfer without first making a mandatory offer. If a squeeze-out is carried out as an integral part of a public offer the offer price shall also be applicable for the squeeze-out unless compelling reasons indicates a different price.

Merger

Norwegian companies may merge in what is referred to as a statutory merger, which means that the entire business of one or more companies is transferred to an acquiring company in exchange for shares in the acquiring company or a parent company of the acquiring company. The main benefits of this approach is a two thirds majority requirement unless otherwise regulated, the business transfer being tax free on certain conditions, and that the business transfer may also as a main rule take place without third party consents. On certain terms, a cash element may also be included without rendering the shares for business element of the merger a taxable event.

From December 2007, the same principles also apply for cross-border mergers, following the implementation of the Directive on Cross-Border Mergers of Limited Liability Companies. In respect of company law regulations, the principles regarding cross-border

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mergers are generally corresponding to mergers between Norwegian companies, although some adjustments have been made to adapt to the legislation of the foreign entity's home state.

A merger between all Norwegian companies will give tax advantages, corresponding tax regulations however, are not implemented in regards to cross-border mergers. The taxation of mergers subject to the Mergers Directive is not comprised by the EEA agreement and with that, not implied by Norwegian regulations. At present there are no tax advantages in relation to cross-border mergers, but the problem is addressed to the Norwegian Ministry of Finance and is currently under review.

2.2 What advisers do the parties need?

Most acquirers will employ financial and legal advisors in connection with an M&A transaction involving a listed company. The target company will also enlist the services of legal advisors and usually also financial advisors in order to prepare independent advice on the contemplated transaction. In case of an offer for the shares of a listed company, the board must issue a statement about its position in relation to the offer, and most boards will in this respect require the issue of a fairness statement or other independent advice from a financial advisor.

2.3 How long does it take?

This depends on the structuring of the proposed transaction, and also the competition or regulatory law implications. If the transaction is subject to complete filing in the EU or under the Norwegian competition law, this will significantly affect the timing.

Assuming competition law is not a significant timing issue; a merger can be assumed to generally take longer than a regular offer for shares. A merger will include the registration of the merger plan in the Norwegian Register of Business Enterprises no later than one month before the shareholders' meeting that decides on the proposed merger. After the merger has been approved by the shareholders' meeting, a creditor notice period of two months from the publication of the merger applies. A merger will therefore take a minimum of three and a half months to complete, depending on how long negotiations and formalities take.

The offer period for a voluntary offer must be no less than two and no more than 10 weeks. The period for a mandatory offer can not be shorter than four weeks and not longer than six weeks. Total timing for a regular share purchase will therefore often be shorter than a merger. In reality, the process of preparing the required documentation, preparing for stake building etc will often require extensive planning before the proposed transaction is announced.

2.4 What are the main hurdles?

Assuming there are no competition law issues or special business sector approvals that require special attention, the main hurdle will usually be to acquire the sufficient portion of shares in the target company to do a squeeze-out of the remaining minority shareholders (90%). The main thresholds to be aware of in a share offer are:

- Notification requirements (5%, 10%, 15%, 20%, 25%, one third, 50% two thirds and 90%).
- The right not to be squeezed out (10%).
- Negative control, mandatory offer requirement (more than one third).
- Avoid accounting consolidation as main rule (less than 50%).
- Actual, legal control over the target company (more than 50%).
- Positive control over the target company, the position to issue and revoke shares, determine mergers and de-mergers, amend the articles etc. (two thirds).
- Tax consolidation as main rule and right to squeeze-out minority (more than 90%).

For a merger the main hurdle is usually to obtain the two thirds majority required to approve the merger (unless the articles of a participating company requires a higher majority).

2.5 How much flexibility is there over deal terms and price?

There is a great deal of flexibility over deal terms and price because the option is available to an offeror of doing a voluntary offer where the offeror can make the offer conditional and offer a wide range of terms and price alternatives.

For a mandatory offer, the offer cannot be made conditional, and the offer price must be at least as high as the highest price the target has made or agreed in the six months prior to the acquisition triggering the mandatory offer, except if it is clear that the market price at the time of the offer is higher, in which case the offer price must be equal to the market price. Settlement in cash must be offered.

The offeror must treat shareholders equally if it acquires or offers to acquire the shares from all shareholders in the target company. This does not necessarily mean that all shareholders must receive exactly the same offer in all instances. The exact assessment of how the offeror may differentiate between shareholders may be difficult under Norwegian law, and requires tailored advice.

2.6 What differences are there between offering cash and other consideration?

In a mandatory offer the settlement under the terms of the offer must be offered as a cash only alternative, but an offer may give the shareholders the right to accept an alternative to cash.

While the offer of a cash only consideration only requires the preparation of an offer document, the offer of other forms of consideration also requires documentation on the value of the consideration. If the offeror offers transferable securities as consideration, a prospectus or a prospectus equivalent must be made available to the target company's shareholders. Information requirements are considerable, and further terms apply.

2.7 Do the same terms have to be offered to all shareholders?

Yes, in principle all shareholders must be treated equally. See the answer to question 2.5.

2.8 Are there any limits on agreeing terms with employees?

In principle there are no restrictions on agreeing terms with employees as such, although disclosure may be required. However, if the employee is also a shareholder, the requirement for equal treatment of shareholders must be complied with.

If it is determined that the price paid to the employee for a share is in fact higher than that offered as part of a mandatory offer, the offeror would risk having its offer price for all shares adjusted to this higher amount.

There are restrictions on employees' and directors' right to accept remuneration from anyone outside of the company in connection with a legal disposition on behalf of the company.

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2.9 What documentation is needed?

An offer process will require (i) notification of the offeror's decision to make an offer, (ii) publication of this notification by the Oslo Stock Exchange, (iii) an offer document containing information on the offeror, type and terms of the offer and acceptance mechanics, (iv) a statement on the offer by the board and (v) a statement by the offeror on the outcome of the offer. Consideration by other means than cash will require further documentation. Dependent on the offeror and the conditions of the offer, notifications of large holdings may also have to be issued.

A statutory merger will require (i) a notification of the merger process to the Oslo Stock Exchange in accordance with the inside information rules, (ii) a merger plan/agreement to be presented to the boards and shareholders' meetings of the participating companies, and to be registered in the Norwegian Register of Business Enterprises, (iii) expert reports to the shareholders' meetings of each participating company on the terms of the merger, (iv) summoning of shareholders' meetings to approve the merger plan and related documentation, (v) creditor notice issued by the Norwegian Register of Business Enterprises after registration of the merger, starting a two-month creditor notice period, and (vi) a prospectus describing the merger and the parties.

2.10 Are there any special disclosure requirements?

The target company is subject to strict disclosure requirements as a listed entity, and shall in principle disclose any inside information pertaining to the company immediately. Consequently target should as a starting point disclose any concise knowledge of a potential offer once received. To the extent target finds it in the best interest of the company to postpone disclosure, such postponement is possible to the extent disclosure will be detrimental to the company, strict confidentiality can be upheld, and the exchange is notified of the postponement. Usually one will find that these conditions are present in a take over, so this is the normal and advisable route. Notification to the Oslo Stock Exchange will result in the relevant and related securities to be put on special watch by the Oslo Stock Exchange. Note however that the Oslo Stock Exchange may discretionary require disclosure if leaks are considered likely or actual.

Offerors will normally just have to disclose the offer and the result of the offer. offerors reaching the mandatory offer threshold will have to disclose this fact and when the mandatory offer will be made. If the offeror is a primary insider in target he may have to disclose the number of acceptances regularly if the bid is not conditional upon factors outside his control (as all acceptances will then be deemed as "options").

2.11 What are the key costs?

Key costs will usually be financial advisors, and also legal and other costs associated with the offer made. Costs related to financing may also be significant, subject to the type of deal and financing. Certain minor fees are payable to the Oslo Stock Exchange for documentation control etc.

2.12 What consents are needed?

Offeror may need business sector specific approvals, approval by the EU Commission or the Norwegian Competition Authority and/or shareholder approval.

2.13 What levels of approval or acceptance are needed?

See question 2.4.

In most transactions getting to 90% of the shares and votes in the company in order to squeeze out the minority is the main target. There is no minimum acceptance threshold, although the offeror may set such a threshold in a voluntary offer.

2.14 When does cash consideration need to be available?

In a voluntary offer this may to some extent be decided by the offeror, but in practice it should be as soon as possible and no later than 14 days after the expiry of the offer period. In a mandatory offer settlement must be as soon as possible and no later than 14 days after the expiry of the offer period.

3 Friendly or Hostile

3.1 Is there a choice?

Both friendly and hostile offers are accepted in Norwegian law. Friendly offers are most common, but both approaches occur and succeed from time to time.

3.2 How relevant is the target board?

The board must issue a statement and recommendation to the shareholders about both voluntary and mandatory offers, including how they themselves as) shareholders, if relevant, intend to respond to the offer.

In practice, the board is important in most takeover attempts. Offerors will attempt to convince the board to recommend the proposed offer, and will also try to get irrevocable undertakings from any board members being shareholders. The board is also instrumental in the offeror's discussions with target about access to due diligence, timing etc. If the board is authorised by the shareholders' meeting to take defensive action against an attempted offer, the board may be in a position to influence whether the offer is able to succeed or not.

In order to get a statutory merger presented to the shareholders' meeting for approval it must be proposed to the shareholders' meeting by the board.

3.3 Does the choice affect process?

See question 3.2. A hostile offeror will usually not be given access to conduct due diligence. A hostile offeror may also want to prepare through stake building and also launch a public offer in order to avoid any defensive measures from the target company.

A statutory merger can not be launched through a hostile offer as the merger will need to be recommended to the shareholders' meeting of the transferring company by the board. An offeror will therefore need to have the board replaced before it can proceed with a merger proposal not supported by the board of the transferring company.

4 Information

4.1 What information is available to a buyer?

A listed company must disclose all information that is regarded as inside information, i.e. information that is likely to influence the

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price of the financial instruments notably. If the company does not disclose such information this may be in violation of the company's disclosure obligations. The target company is not obliged to provide an offeror access to information that is not publicly available, or to provide access to due diligence etc. The company has an obligation to treat offerors fairly, but may to some extent allow certain offerors access to information it does not give to others, if it regards that those other offerors have little or no chance of succeeding with their offers (i.a. where one offeror has acquired over 50% of the shares in the company and another offeror makes a competing bid).

4.2 Is negotiation confidential and is access restricted?

In principle, the fact that a takeover or merger is being discussed, and the contents of such negotiations, is information that the target company is required to disclose to the extent it is regarded as inside information under the STA. At what stage such "discussions" becomes of a nature that they are to be regarded as inside information is often difficult to determine, and needs to be considered on a case by case basis. Although the wording of what is to be regarded as inside information in the STA is quite similar to that of several other European jurisdictions, it is our experience that this will often be interpreted stricter in Norway than elsewhere.

The companies may delay disclosure in order not to harm its own legitimate interests. This requires that the delay does not mislead the public, that the information is managed confidentially and that the Oslo Stock Exchange is informed of the company's decision to delay disclosure. This is the normal route.

Once it is informed about the company's decision, the Oslo Stock Exchange will put the relevant securities on special watch, and it may later require that the company discloses the information. If there is suspicion of any insider trading or other market abuse, such disclosure orders are likely to be given. If no disclosure is provided, the Oslo Stock Exchange may suspend the securities from listing until the disclosure requirements are met.

Access to the target company is not restricted as such. It is up to the board's discretion to engage in discussions with a potential offeror and to divulge information as discussed above under question 4.1.

4.3 What will become public?

See question 4.2.

4.4 What if the information is wrong or changes?

An offeror will have little way of recourse after an acquisition has been completed. To some extent an offeror may seek recourse against the board of the target company or advisors that has provided information on which it has been relied. The thresholds for such liability have traditionally been high.

There is little market practice or other with regards to wrong or changed information in Norwegian public M&A. Representations and warranties may in theory be agreed with major shareholders, but this is very rare. Target has very limited ability to issue representations and warranties, and they are obviously worthless after the acquisition (dependent on the acceptance grade). Break fees may however to some degree be agreed (see question 6.1 below), and can be tailored to serve as some protection up until the offer closes.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

The offeror may acquire shares outside of the offer process, subject to disclosure obligations (question 5.2) and the obligation to make a mandatory offer for all shares in the target company (questions 2.1, 2.5 and 5.3). Purchases made outside of the offer process may also influence on the price the offeror has to pay for shares as part of the offer, as the offer price must match any price paid or agreed over the last six months. Certain requirements apply with regards to equal treatment of shareholders. Also, higher prices paid during a voluntary offer may jeopardise the voluntary offer as investors will wait for the mandatory offer.

5.2 What are the disclosure triggers?

A person, entity or group acting in concert that enters into agreement for the purchase of shares or rights to shares of a listed company that results in aggregate direct or indirect ownership exceeding 5%, 10%, 15%, 20%, 25%, one third, 50%, two thirds or 90% of the total number of shares issued by the company must notify the regulated market immediately.

5.3 What are the limitations and implications?

Assuming there are no special business sector requirements such as the 10% ownership threshold in financial institutions, the main limitation and implication, (except for the disclosure requirements set out above), will be the triggering of the mandatory offer requirement at (more than) one third of the shares or votes issued by the company, repeated at 40 and 50%.

6 Deal Protection

6.1 Are break fees available?

Break fees are restricted under Norwegian law if they apply to the target company. Market practice seems to accept a certain level of cost recovery based on up-front agreement, but the scope and terms of such arrangements are debated.

6.2 Can the target agree not to shop the company or its assets?

This will normally be a commercial decision for the board of directors of the target company, based on what is deemed to be in the best interest of the target company.

6.3 Can the target agree to issue shares or sell assets?

The target may not agree to issue shares or sell material assets if such transactions would conflict with its obligations in the offer period (see questions 3.2 and 8.2).

6.4 What commitments are available to tie up a deal?

Apart from break up fees as discussed above under question 6.1, irrevocable undertakings are commonly used in the Norwegian market, although they are most often quite soft. Arrangements in

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which the shareholder pays a proportion of any higher offer to the initial offeror as a payment for initiating a transaction are uncommon. Agreements with the board securing their up front approval and recommendation are not uncommon. Agreements to tie up management and board after the offer have been seen. Such arrangements may be questionable as management and board may not receive compensation from other than the company in relation to transactions involving the company, and such arrangements may also raise questions with regards to the real price on shares bought from management or board directors which again could affect the highest price offeror is deemed to have paid during the last six months in relation to a subsequent mandatory offer.

7 Bidder Protection

7.1 What deal conditions are permitted?

Mandatory offers must be unconditional. Voluntary offers, on the other hand, may contain a wide range of conditions. Mergers may also be made conditional, but such conditionality can only be maintained until the merger has been registered as completed in the Norwegian Register of Business Enterprises.

7.2 What control does the bidder have over the target during the process?

Except for the rules set out in question 8.2 below; the offeror will in principle have limited control over the target during the process, although for a merger it may be agreed that the acquiring company should take control over the transferring company. However, if the offeror has acquired more than one third of the shares in target and thus triggered a mandatory offer requirement, this level of ownership will often give a substantial actual influence in companies with no clear majority shareholder(s). Also, general good practise rules in Norway will lead to a very limited ability for the board to make controversial decisions in the interim period without the risk of being held liable for damages.

7.3 When does control pass to the bidder?

Legal control will be obtained when the offeror takes delivery of shares in a target that represents more than 50% of the shares and votes in the company, unless the articles of target set stricter majority requirements. In reality, actual control over the company may be acquired at an earlier stage, in particular in companies with a highly diversified ownership structure. This was the rationale behind the change of the threshold for triggering mandatory offers from 40% to one third of shares and votes in the STA in 2007.

In a merger, the offeror, being the acquiring company, may take control over the transferring company when the merger is registered as completed, or earlier if agreed between the parties on certain terms.

7.4 How can the bidder get 100% control?

The bidder can get 100% control through acquiring at least 90% of the shares and votes of target, and then squeeze-out the minority shareholders, see question 2.13, or by the way of a statutory merger as discussed above.

8 Target Defences

8.1 Does the board of the target have to tell its shareholders if it gets an offer?

See the answer to question 4.2.

8.2 What can the target do to resist change of control?

When a public offer has been made for the shares of a company, or the target has been informed that an offer will be made and until the offer period has expired and the result of the offer is clear, the board of the target is restricted in terms of which defence mechanisms it has access to unless it has been explicitly authorised to take such action by the shareholders' meeting of the company.

If no offer has been made or the company is not informed about a coming offer, the target will have a wide range of defence strategies available to the extent such actions can be regarded as in the best interest of the company and its shareholders. This would include authorisations to the board, the issue of shares or other securities, mergers or de-mergers, asset sales or purchases, sale or purchase of own shares, poison pill agreements, etc. Rules on good corporate governance discourage the use of such arrangements.

The shareholders' meeting may also take actions intended to defend the company against an offer after the offer has been made, but must not take actions that only benefit some shareholders at the cost of others. The shareholders' meeting may, for instance resolve to approve rules as set out in the Takeover Directive articles 9(2) and (3) on prior authorisation by the shareholders' meeting of board actions which may result in frustration of the offer. Similar rules apply for the breakthrough rules according to article 11.

8.3 Is it a fair fight?

Both the STA and the PLLCA contain provisions that require the board to play fair. However, important issues such as offeror's access to due diligence etc are not regulated, and may have a significant effect on the actual ability of an offeror to complete its offer. In general, however, most Norwegian companies and boards can be expected to be fair and make rational decisions to the benefit of their shareholders, and very few cases have surfaced were accusations of unfair play have been made.

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

Assuming there are no special regulatory requirements, the main influence will be the acquirer's ability to show to the current shareholders that the proposed deal is commercially attractive. Although surprise bids happen and succeed from time to time, stake building and/or obtaining irrevocable undertakings from board member shareholders and other major shareholders will often be important to achieve this. Shareholders will normally expect a premium, and a fairly clean exit. Anything that reduces liquidity with regards to the consideration paid and/or predictability with regards to other terms will often be regarded as less desirable.

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9.2 What happens if it fails?

Provided all requirements have been complied with in connection with the attempted takeover, there are no particular consequences of a failed acquisition apart from the sunk cost.

10 Updates

10.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in M&A Law in Norway.

The main development over the last year has been the persistence of the credit crisis in relation to the availability of purchase financing. This has lead to difficulties in getting deals financed, which again has lead to several attempted deals failing. Some industry deals have happened. Quite recently a few cross border acquisitions were completed, and it is expected that the deal flow will return to normal once financing is available. Another issue has been an apparent discrepancy between shareholders' and offerors' price expectations.

On the legal side, the last year has seen clarifications on important questions with regards to delisting of companies not fully owned by one party, and also new guidance published on several issues concerning information and notification requirements. Certain amendments were made in Norwegian corporate law as Directive 2007/36/EC on shareholder rights in listed companies was implemented in Norwegian law.

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Working as a lawyer since the beginning of 1996, Odd Erik Johansen leads the firm's company law group. He specialises in M&A involving listed and private companies, working for a variety of private equity houses, other financial investors, trade buyers and international law firms requiring assistance on Norwegian matters; as well as corporate and commercial work.

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Education:

1989-92 University of Oslo, Cand Jur., Work experience

2000- Partner Advokatfirmaet Steenstrup Stordrange DA. (Head of Corporate 2000 - 2005 and 2008-)

1994-00 Senior associate; law firm BAHR (Finance department). Admitted to the bar 1995.

1993-94 Assistant to JAG (Judge Advocate General) and HQ Defence Command Norway (military service).

Directorships: Sveen serves on approximately 20 boards as board member or Chairman.

Steenstrup Stordrange is a leading Norwegian full service law firm focusing on all aspects of business law. The last few years has seen a special focus on corporate and M&A work, both in respect of listed companies and larger and mid-size private companies. We assist local and international private equity houses, foreign law firms, banks and other investors with M&A work of all types. Steenstrup Stordrange's other areas of work include Financing, Corporate and Commercial, Financial Regulation, Tax, Competition, Intellectual Property and Information Technology, Technology, Media and Telecoms, Commercial Real Estate, Environment, Dispute Resolution, and Pensions and Employment.

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