COUNTRY COMPARATIVE GUIDES 2024

The Legal 500 Country Comparative Guides

Norway

MERGERS & ACQUISITIONS

Contributor

Aabø-Evensen & Co Advokatfirma

Ole K. Aabø-Evensen

Founding Partner | oka@aaboevensen.com

This country-specific Q&A provides an overview of mergers & acquisitions laws and regulations applicable in Norway.

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NORWAY
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1. What are the key rules/laws relevant to M&A and who are the key regulatory authorities?

The key corporate specific legislation governing M&A in the Norwegian market is primarily the Private Limited Liability Companies Act (1997) (the "LLCA"), the Public Limited Liability Companies Act (1997) (the "PLLCA") and the Partnership Act (1985). Further, public companies whose securities are listed on the Oslo Stock Exchange or another regulated market in Norway are also subject to the Securities Trading Act (2007) (the "STA"), the Securities Trading Regulation (2007). These rules also implement and are supplemented by a set of EU specific rules and regulations applicable to publicly listed companies, including, inter alia, the Prospectus Regulation, the Takeover Directive, the Transparency Directive, Directive 2014/65/EU on markets in financial instruments ("MiFID II"), the Market in Financial Instruments Regulation ("MiFIR") and the Market Abuse Regulation. These rules regulate prospectus requirements, information requirements, and establish a regime to prevent market abuse and insider dealing, and set out more detailed regulations with respect to tender offers involving listed stocks under Norwegian law. These rules are supplemented by inter alia, guidelines and recommendations issued by the OSE and the rules and regulations of the OSE. Mergers and takeovers of private companies and unlisted public companies have no equivalent regulations.

In addition to the above-mentioned corporate framework, business transactions will on a case by case basis be supplemented by various and more general provisions found in, inter alia, the Contract Act (1918) (which applies to almost any contract), the Sales of Goods Act (1988), the Income Tax Act (1999) and the Accounting Act (1998) (both pertaining to transactional tax considerations) and the Working Environment Act (2005). Further, the Competition Act (2004) provides regulations on, and the procedure to intervene against, anti-competitive concentrations. Companies that are active in the Norwegian market (generally in larger transactions) must also consider and abide by the merger control provisions set out in the EEA Agreement.

The primary regulators governing the M&A activity in Norway are the Financial Supervisory Authority (Finanstilsynet) (FSAN), the Norwegian Competition Authority (the "NCA"), the Ministry of Finance, the Ministry of Justice and the Ministry of Trade, Industry and Fishery. Also note that the National Security Act grants the government powers to intervene and stop acquisitions of shares in a company holding investments in sectors considered vital from a Norwegian national security perspective. As from 1 July 2023, the Government has been given extended competence to decide that the provisions of the National Security Act shall apply to more businesses than previously. In addition, the threshold for subjecting businesses to the provision of ownership control under the National Security Act has now been lowered.

2. What is the current state of the market?

in number of M&A transactions, the FY2023 Norway market was down 2.2 per cent compared with FY2023. Having said that in FY2023, the reported deal values increased from €33.356 billion for FY2022 to €37.585 billion for FY2023, while the average reported deal size also increased from €169 million for FY2022 to €189 million for FY2023.

Despite a challenging high interest rate environment, the Nordic corporate bond market (NO, SE, FI, and DK ISINs) saw a 31 per cent increase in new issue volumes in 2023 compared to 2022. Note however, that compared to the record-breaking year of 2021, new issuance levels were down by 43 per cent.

The previous years' public-to-private- (P2P) trend continued, with several major deals being announced, of which a significant number were carried out with participation of private equity sponsors.

Even if private equity funds continue to be loaded with dry powder sitting ready to be used, these funds continued to face grater pressure to generate returns due to increasing interest rates and inflation throughout 2023. The activity for these funds in 2023, therefore remained below the previous two years activity (33% below average). Many sponsors therefore continued to focus on strengthening their portfolio companies through add-on acquisitions, or by becoming engaged in smaller, minority and growth opportunities that did not require the same access to credit markets. Market players continues to be concerned about inflation and that increased interest rates will continue putting a downward pressure the deal-multiples. However, the financing markets seems to have improved even if financing large deals continues to be more challenging than prior to Covid as well as prior to the Ukraine-crisis, and there also seems to be a bit more optimism around in the market. The 2024 M&A market has started at a bit slower phase than earlier years, but we see signs of uptick in the activity based on the number of virtual data rooms (VDRs) preparing to open during 1H 2024.

3. Which market sectors have been particularly active recently?

Entering 2024, TMT, industrial, and the business services sectors have all shown the strongest momentum in the Norwegian M&A market, followed by the consumer, construction, and the energy sector.

4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

The three most significant factors driving deal making activity in the Norwegian market during the next 2 years, will most likely be (i) international energy and commodity prices (oil and gas), which currently continues to be heavily influenced by Russia's war in Ukraine and the international sanctions regime implemented against Russia; (ii) global megatrends; and (iii) board confidence in the global capital markets. Examples of global megatrends that may drive deal activity is digital technology facilitating changes in customer behaviors; boosting eCommerce sales, again accelerating innovation typically within artificial intelligence, automation, robotization and high tech. Improved oil and gas prices will lead to increased deal activity in Norway. However, the current unrest in Ukraine as well as continuing inflation and interest-rates is expected to continue having a negative impact also on Norwegian deal-making activity at least during 1H 2024.

5. What are the key means of effecting the acquisition of a publicly traded company?

The three key methods to acquire all shares in a Norwegian listed company are (i) stake-building with an ensuing voluntary or mandatory tender offer; (ii) voluntary or mandatory tender offer (with or without a preceding stake-building); and (iii) statutory mergers. It is also, possible to structure a takeover as an asset transaction by which the purchaser acquires the business assets of the target instead of the shares in the target.

Stake-building is the process of gradually purchasing shares in a publicly traded company in order to gain leverage and thereby increase the chances of a successful subsequent bid for the entire company (i.e. the remaining outstanding shares). It is possible (and fairly common) in a stake-building process to seek irrevocable undertakings (pre-acceptances) from key shareholders prior to announcing a subsequent voluntary bid. Such irrevocable undertakings are often collected in preparations for voluntary offers.

The most common approach when acquiring a company listed on a Norwegian regulated market is through a voluntary tender offer with a subsequent squeeze-out of minority shareholders. There are no statutory limitations as to what conditions a voluntary offer may contain, which affords the bidder a great deal of flexibility with regards to terms and conditions – such as price, type of consideration (cash, in-kind, share-swap, or a combination) and conditions precedent such as satisfactory due diligence, no material adverse change, governmental approvals, and minimum acceptance requirements (typically acceptance from 90% or two-thirds of the shares and votes).

If a voluntary offer entails that the mandatory bid obligation is triggered (i.e. more than one-third of the voting rights) if the bid is accepted by those able to make use of it, a voluntary offer in accordance with the rules on voluntary offers shall be made. In this case, certain requirements related to mandatory offers (e.g. offer document, equal treatment of shareholders) will likewise apply for the voluntary offer. If a voluntary offer leads to the exceedance of the mandatory offer threshold, the bidder will also be required to make a subsequent mandatory offer (unless the voluntary offer was made in accordance with the rules on mandatory bids).

A bidder that directly, indirectly or through consolidation of ownership has acquired more than one-third of the votes in a Norwegian target company listed on a Norwegian regulated market (or in a foreign company listed in Norway but not in its home country), must make a mandatory offer for the remaining outstanding shares. Certain exceptions do apply, the most practical being when shares are acquired as consideration in mergers and demergers. After passing the initial one-third threshold, the bidder's obligation to make a mandatory offer for the remaining shares is repeated when he passes (first) 40% and (then) 50% of the voting rights (consolidation rules apply). Certain derivative arrangements (e.g. total return swaps) may be considered as controlling votes in relation to the mandatory offer rules. A mandatory offer must be unconditional, and must be for all shares in the company.

Norwegian limited liability companies may, subject to approval by two-thirds of the shares and votes represented at the general meeting (unless the articles of association require a higher majority), resolve to carry out a statutory merger in which the surviving company acquires all assets, rights and obligations of one or more surrendering companies. The shareholders of the surrendering company can be compensated with shares in the surviving company, or alternatively by a combination of shares and cash (provided that the cash portion does not exceed 20% of the aggregate compensation). If the surviving company is part of a group that in aggregate holds more than 90% of its shares and voting powers, compensation to the shareholders of the surrendering company may consist of shares in the surviving company's parent or another group company in which the group in aggregate holds more than 90% of the shares and voting powers. It is also possible to carry out a merger by combining two or more companies into a new company established in connection with the merger (statutory consolidation). In such cases, all surrendering companies are dissolved upon completion of the merger.

6. What information relating to a target company will be publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

Corporate formation documents, articles of association and other related documents can be retrieved or requested from the NRBE. Further, the NRBE offers an online search web base in which general information of a target company may be found, including register of directors, chief executive officers, auditors, announcements of authorisation to issue shares or acquire treasury shares granted to the board of directors as well as transcripts of the latest annual accounts and information on agreements with shareholders (above certain minimum thresholds). Information on bond loans, including the full set of the bond documentation, for any bond raised in the Norwegian/Nordic bond market may be available from Nordic Trustee. Information on any real estate owned (not leased) by the target in Norway, together with a complete list of registered mortgages on such real estate will be searchable on several forums. Charges registered over the target's inventory and fixed assets may also be requested from the NRBE. A list of major shareholders will be available in the notes to the target's annual accounts, and will often also be available on such company's web pages. A complete list of shareholders may also be requested from the target itself, and the target will be obliged to hand out such information to anyone requesting a transcript.

For target companies listed on a Norwegian market, the STA sets out several disclosure provisions, which entails that publicly available information may be quite extensive. Information memorandums and prospectuses used in share offerings or following a major transaction will be available, and may set out considerable information on the target company. Further, audited annual accounts and related directors' and auditors' reports as well as half-yearly interim reports are made available to potential investors. Note that many listed companies also continue to publish quarterly interim reports to potential investors even if these companies under Norwegian law no longer have a strict obligation to issue such reports. Various announcement by the target company through the Oslo Stock Exchange is also publicly available and searchable through the exchange's online search motor "newsweb".

As a point of basis, a target company is not obliged to grant a potential acquirer any form of due diligence access. Also note that providing one potential acquirer with the opportunity to conduct due diligence does not automatically oblige the target to grant the same opportunity to other parties. Notwithstanding the foregoing, the board of directors of a target company will have a fiduciary duty to act in the best interest of the company. To what extent the target has such an obligation to grant a potential acquirer due diligence access will depend on whether it is considered to be in the best interest of the target and its shareholders to facilitate such due diligence.

7. To what level of detail is due diligence customarily undertaken?

The level of detail of a due diligence in the Norwegian market is normally transaction specific and, thus, may vary substantially depending on a number of factors. Such factors include (i) whether the deal involves a listed or non-listed company, (ii) the nature of the company's business, (iii) the bidder's familiarity with the target company, (iv) the relative bargaining strengths of the parties involved in the transactions, (v) the nature and size of the consideration, (vi) the nature and size of the consideration and (viii) the involvement of the competing bidders in the process and (vii) whether it is an acquisition of shares, business or assets.

Due to the above mentioned factors, it is difficult to provide a general statement applicable for all transactions. We have however seen that since the 2008 financial downturn, buyers in general have had an increased focus on a target's operational, financial, tax and legal position. A bidder's desire to conduct a wide range due diligence investigation will normally include a comprehensive financial due diligence, focusing on margin development, assessment of the business' underlying profitability, net debt, working capital, cash flow and investment requirements, budget assumptions, transactions with related parties, accounting principles and quality of financial information. Also the tax due diligence will typically be fairly detailed looking at pending tax issues with the authorities, dividends and group contributions, reorganisations, foreign exchange gains/losses, deferred tax positions, R&D costs, transfer pricing and other related parties issues, transaction bonuses, earn-outs, VAT etc. The legal due diligence may, however, have a more limited scope, but will typically focus on corporate governance, change of control issues, material contracts, real estate issues and potential environmental liability, separation issues and related parties, licenses, permits, need for public approval, employees and pension law issues, IPR, disputes, competition law issues etc.

A private equity buyer will normally also retain specialist consultants to carry out a detailed commercial due diligence which frequently includes a review of the market (trends threatening the target's position etc.).

Depending on the transaction's scale and the nature of the target business, it has also become fairly common to request specialist environmental due diligence reviews, specialist insurance due diligences reviews, specialist IT due diligences etc. Lately, so-called environment, social and governance due diligences have also become increasingly popular among private equity buyers. Often such buyers may further desire to carry out a more specific anti-bribery /anti-corruption due diligence.

8. What are the key decision-making organs of a target company and what approval rights do shareholders have?

The key decision-making organs of a target company is in most situations, the chief executive officer (CEO)/the management team, the board of directors, and the shareholders meeting (the general meeting). Some Norwegian companies may also have appointed a corporate assembly. Such corporate assembly must be appointed in private (AS) and public (ASA) companies with more than 200-employees unless the company has entered into an agreement with the majority of employees or the trade unions agreeing otherwise.

The board of directors of both AS-companies and ASA-companies has an overall management function and a supervisory function over the company and the CEO. The board is, unless otherwise provided in the articles of association, or if the company is obliged to have a corporate assembly, elected by the company's shareholders (please note however, that in companies with more than 30 employees there are rules of employees' appointment of board members). If a corporate assembly is required (see above), the board must instead be elected by such corporate assembly, while the majority of the corporate assembly is elected by the shareholders.

The shareholders execute their shareholding rights through the general meeting. A merger will be subject to approval from the general meeting. However, note that statutory mergers cannot be carried out without the board's consent, as it is the board's responsibility to prepare the merger and present it for the shareholders' approval at the general meeting.

If an acquisition is effected using a voluntary tender offer, the approval rights of the shareholders will normally depend exclusively on the level of required acceptances set out by the bidder. A bidder seeking to obtain control over the target's board will, require more than 50 per cent of the votes on the target's general assembly. To amend a target's articles of association requires at least two-thirds of the votes and the capital. To effect a squeeze-out requires more than 90 % of the votes and share capital on the target's general meeting. Most takeover offers will include an acceptance condition of more than 90 per cent of the shares, a condition that can be waived by the bidder.

The articles of association and a shareholders' agreement may also contain provisions that give existing shareholders approval rights over a planned acquisition of shares or assets in the target company. A sale of the shares in a Norwegian target company, may under certain circumstances require the consent from more than 2/3rd of the shareholders in such target's parent company, if such parent has no other activity and/or holds no other assets than the shares in the target company. Asset transactions, especially if a substantial part of the target company's business is disposed of, may also require the approval of the general meeting of the target company.

9. What are the duties of the directors and controlling shareholders of a target company?

The board of directors of a Norwegian target company have a fiduciary duty to act in the best interest of the company. In general, such fiduciary duty is interpreted to mean that directors shall act in the joint interest of all stakeholders and ensure that shareholders are treated equally. Furthermore, the fiduciary duty may be interpreted to include both a duty of care and a duty of loyalty.

The duty of care entails that the directors shall ensure to be informed with all material information that is reasonably available before making a business decision. Consequently, the directors must evaluate a proposed business combination in the light of risks and benefits of the proposed transaction, compared to other alternatives available. It is however not clear under Norwegian law to what extent the duty of care implies that the directors must inform themselves of other potential offerors or actively seeks alternative bidders.

The duty of loyalty requires that any decision by the board must be made on a "disinterested" basis. The directors may not take into consideration any personal benefit from a potential business combination. It is also assumed that the duty of loyalty requires that the best interest of the company and its shareholders take precedence over the interest of any director or any particular group of the company's shareholders that is not shared by the shareholders in general.

It is further assumed that the fiduciary duty of the directors implies an obligation to consider the interest of other stakeholders, for example employees and creditors of the company. Also, the board may have to take into consideration the joint interest of all stakeholders. With that being said, there are often specific legislation protection such other stakeholders that the directors have a general obligation to observe. The directors are further under an explicit duty set out in the company legislation not to undertake an act or measure that is likely to cause unjust enrichment to a shareholder or a third person at the cost of the company.

If a Norwegian listed company becomes the subject of a public takeover offer, the board of directors is obliged to evaluate the terms of the offer and issue a statement to its shareholders describing the board's view on the advantages and disadvantages of the offer. Should the board consider itself unable to make a recommendation to the shareholders on whether they should or should not accept the bid, the board shall therefore account for the reasons.

In some situations, the directors may have increased duties when it comes to decisions on business combinations. The Code of Practice for Corporate Governance requires that in cases where the members of a target company's board or management have been in contact with the bidder in advance of an offer, the directors must exercise particular care to comply with the requirement of equal treatment of shareholders. Moreover, the board must ensure that it achieves the best possible bid terms for the shareholders. As a point of basis, the Code is only applicable to Norwegian companies listed on a regulated market, however, private company's may decide to comply with the Code, most often seen in companies with a dispersed group of shareholders and where shares are regularly traded.

As for controlling shareholders of a target company, there are no specific duties towards neither the minority shareholders nor the company just by the virtue of being controlling shareholders. Such shareholder will therefore in general be free to act in his, her or its own best interest. However, shareholders may not use their controlling influence in a manner that is suited to cause unjust enrichment to a shareholder or a third party at the cost of the company or another shareholder. The protection against such abuse is applicable for both private and public companies and will limit the decision making authority of all shareholders, not only those in control.

10. Do employees/other stakeholders have any specific approval, consultation or other rights?

As a point of basis, share acquisitions will not trigger any statutory approval or consultation rights for neither employees nor other stakeholders. A share acquisition in itself will normally not affect an employment contract and therefore not trigger any duties on the new shareholder(s). However, if the target is listed on a Norwegian regulated market, the STA imposes additional obligations to inform the employee in connection with a public bid for shares in the company. In addition, if the target company is bound by a collective bargaining agreement with a trade union, it may be obliged to notify the employees if a shareholder's (buyer's) ownership percentage exceeds certain thresholds. The collective bargaining agreement may also impose the target to contribute to the buyer informing the target's employee's on its plans. A target company may also have specific contractual obligations towards creditors or other stakeholders that requires consultation or approval.

With respect to statutory mergers, the merger must be notified to the NRBE after which a six weeks creditor notice period follows. During such period, creditors of the merging companies may claim their rights, and, as a point of basis, the merger will not be effectuated before the claim is settled. In addition, the merger plan and the board statement on the merger's anticipated effect on employees must be made available to the employees. For a statutory merger, the board of the merging companies must prepare a detailed statement covering the merger and its anticipated effects on employees. The employee representatives (both in listed and non-listed) merging companies will have a statutory right to receive all information and related reports and statements, and to discuss the merger with the board.

Special notification rules apply for alternative investment funds (AIFs), which (individually or jointly) acquires control of a target that fulfils certain criteria. Under these rules, the investment manager must notify and disclose the fund's intentions with regard to the target's future business and the likely repercussions on employees etc.

In business combinations structured as a transfer of an undertaking, both future and current employer will have certain duties to notify and consult with employees and their representatives. However, there are no requirement to obtain consent from the employees to carry out an asset sale, but pursuant to the Norwegian Working Environment Act (2005), the employee's elected representative and the employees shall, as early as possible, be presented with information concerning the transfer.

Moreover, in transfers of undertakings, the rights and obligations of the former employer ensuing the employment contract or relationship in force at the date of the transfer, shall be transferred to the new employer. The transfer in itself do not give just cause for a termination of the employment contract for the new employer. Meanwhile, an employee has the right to object a transfer of the employment to the new employer, often referred to as the right of reservation.

11. To what degree is conditionality an accepted market feature on acquisitions?

When acquiring shares or assets in a non-listed Norwegian company, the parties are in general free to contract on whatever terms they agree and such transactions, are quite frequent being made conditional upon a set of various conditions being fulfilled.

If on the other side, the target is listed on a Norwegian regulated market, and if a shareholder acquires shares triggering the mandatory offer thresholds, such mandatory offer must be unconditional, must embrace all of the target's issued shares, and the offered settlement needs to be in cash. In a voluntary tender offer or an exchange offer for a listed company, there is however, no general limitation under Norwegian law as to which conditions such an offer may contain. It is for example quite usual that a voluntary offer document requires a certain minimum number of acceptances etc.

It is also possible to make a merger conditional, even mergers involving listed companies.

12. What steps can an acquirer of a target company take to secure deal exclusivity?

Exclusivity agreements (no-shop) are the most common deal protection measure used by acquirers in connection with acquisitions of non-listed companies in Norway. The exclusivity agreement will normally be entered into between the shareholders of the target and the potential buyer. Such agreements are legally binding under Norwegian law, even if they do not provide for payment of any consideration.

Measures commonly used to obtain exclusivity in connection with acquisitions of listed companies include:

- Signed support agreement (transaction agreement) between the target and the potential bidder under which the target's board agrees to support the potential bidder's bid for the target's issued shares.
- Lock-up (pre-acceptance) agreements with principal shareholders.
- Exclusivity or non-solicitation provisions between the target and the bidder.

Note that a bidder's influence over the target in a public tender process is quite restricted under Norwegian law. The STA and the Norwegian Code of Practice (which all Oslo Stock Exchange listed companies must comply) imposes strict limitations on a target's board to make controversial decisions preventing other bidders from entering the scene without the risk of being held liable for damages. No-shop / no-talk provisions will generally take the form of covenants from the target not to solicit or encourage other offers, not to provide information to competing bidders; and not to enter into discussion or negotiations with any other bidder. The Code of Practice now includes a provision recommending that no-shop arrangements should only be entered into by the target if they are clearly in the common interests of the target and its shareholders.

13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

Other deal protection measures most frequently used in connection with acquisitions of listed companies include:

- Matching rights
- Break fees, inducement fees, termination fees and reimbursement of expenses.

A matching right, is normally included into a transaction agreement between the bidder and the target, and provides the bidder a right to amend its offer within a short period of time and announce a revised offer to match any alternative and superior offer, which the target is open to accept. This is one of the most commonly used deal protection mechanism used in the Norwegian market. The purpose of such clause is however, mainly to keep an initial bidder in the game, but it will not prevent a determined competitor from potentially winning a bidding competition.

As such, there is currently no general prohibition under Norwegian law against agreeing, break fees. Break-up fees have, however, generally been less common in Norwegian M&A-transactions compared with other jurisdictions, but for a period; such fees gained increasing popularity also on Norwegian public transactions. The enforceability of a break-up fee arrangement under which it is the target itself that undertakes to pay such fees is however to some extent unclear.

The Norwegian Code of Practise now unconditionally recommends that the board must not hinder or obstruct any takeover bids. The Code of Practise also recommends that the target company should not undertake to pay compensation to the bidder if the bid does not complete (break-up fee) unless it is self-evident that such compensation is in the common interest of the target company and its stockholders. According to these recommendations any agreement for financial compensation (break-up fee) to be paid to the bidder should be limited to compensation for the costs incurred by the bidder in making a bid.

Asset lock-ups (crown jewel), buyer share options, sign-and-consent deals and limited window shops may occur, but are rather unusual in the Norwegian market. Some of these arrangements may, depending on how structured, also be in conflict with the latest version of the Code of Practise.

14. Which forms of consideration are most commonly used?

Cash is most commonly used consideration in connection with acquisitions of both non-listed and listed companies in the Norwegian market. Shareholders normally prefer to be paid in cash. The reason being that it is often difficult to evaluate the future value of other forms of consideration in a volatile macro-economic environment, at least compared with the certainty of receiving cash. In addition, it is far more complex for a bidder to offer settlement in shares, due to the amount of information that is required to be published and the process for finalising the bid documentation.

In a mandatory takeover offer situation, the STA also prescribes that the consideration must be in cash. However, it is possible to offer alternative forms of consideration (namely stocks in the bidder), provided that an option to receive the total offer price in cash is made available and that this option is at least as favourable as the alternative settlement.

There are no statutory limitations under Norwegian law as to what type of consideration that can be offered to shareholders in a voluntary offer.

Sometimes, the buyer proposes to settle the purchase price (or, maybe more often, parts of it) through deferred consideration (vendor notes), or by issuing consideration shares in the buyer or in the buyer's parent. Consideration shares as consideration is often combined with cash. In situations where the buyer and seller do not agree on the value of the target, it is not uncommon that the buyer seeks to bridge the gap by offering the seller an earn-out.

15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

In business combinations including non-listed companies, there are no specific disclosure requirements for large shareholders. Even so, for AS-companies, the LLCA requires any person who acquires an interest in shares of a target to immediately notify the company of such acquisition. For ASA-companies, the PLCA requires any member of the board, accountant, general manager and other key employees of the company to immediately inform the company's board of any purchase or sale of shares or other financial instruments of the company, including any such transaction conducted by persons from affiliated parties.

Note that special disclosure requirements apply for certain private equity, hedge or venture funds which, subject to certain exemptions must notify the FSAN as soon as possible and in no event later than 10 business days after such funds has acquired control (more than 50 per cent of the votes) over a target. This notification obligation is as a main rule conditional upon the target being listed on a regulated market. The same notification obligation is also triggered if such funds acquire of control over a non-listed company, provided such target employs 250 or more employees, and either has annual revenues exceeding €50 million or a balance sheet exceeding €43 million. If such funds acquire shares in such a non-listed company, and the fund's portion of shares reaches, exceeds or falls below 10 per cent, 20 per cent, 30 per cent, 50 per cent or 75 per cent of the votes, the fund's manager will also have to inform the FSAN about the transaction.

For companies listed on a Norwegian regulated market, the STA sets out detailed disclosure provisions for acquisition of significant shareholdings. If an investor's (buyer's) shareholdings exceeds specific thresholds related to percentage of shareholdings, the investor is obligated to immediately notify the company and Oslo Stock Exchange on behalf of FSAN. As soon as an agreement on acquisition or disposal has been entered into that entails that a proportion of an investor's shares, right to shares or corresponding proportion of votes (if different) will exceed or fall below 5%, 10%, 15%, 20%, 25%, 1/3, 50%, 2/3 or 90 %, the investor must issue such disclosure notification. Shares held by various related parties are, for the purpose of the above calculation, deemed to be included in the shareholdings of the disclosing party. Note however, that as from 1 September 2022, the consolidation rules in the Transparency Directive are now included into a separate provision of the STA, and the previous reference to the related party provision was deleted. Thus, holdings belonging to personal relatives such as spouses and minor children are under Norwegian law no longer to be included in the calculation of the disclosure obligation. Certain other amendments have also been made to the provision of consolidation.

As from 1 September 2022, the previous Norwegian rule on mandatory disclosure obligations for warrants and convertible bonds not linked to any issued (existing) shares has lapsed.

At the same time, the materiality thresholds and disclosure requirements that apply for acquisition of shares in listed companies now also apply for derivatives with shares as an underlying instrument, irrespective of such equity derivatives being cash-settled or settled by physical delivery of the underlying securities (i.e. financially settled options, futures etc.). Note that for such derivative agreements, the holder must first disclose the conclusion of the derivative agreement itself and then also the acquisition of the underlying shares, if a disclosure limit is still reached or crossed upon such acquisition. The rationale for this is that such financial instruments can be used to make shares unavailable to other players without this becoming known to the market, since the counterparty will often acquire the underlying shares. The rules now require the aggregation of holdings of financial instruments linked to the same issuer, so that derivatives must also be aggregated with other holdings. In the case of derivatives with financial settlement, however, only long positions shall be taken into account in the calculation. Long positions (positions that increase in value if the underlying value increases) must therefore not be settled against short positions (positions that decrease in value if the underlying value increases) linked to the same underlying issuer. For instruments that exclusively give the right to financial settlement, the nominal number of the underlying shares must be multiplied by the delta value of the instrument for the purpose of calculating the disclosure obligation. The disclosure obligation must be calculated based on both the investor's share of the share capital and share of the votes, and consequently ownership of non-voting shares could thus indirectly trigger the disclosure obligation. For companies listed at Euronext Growth Oslo (former Merkur Markets), there are no reporting requirements for investors in relation to acquisition of significant shareholdings, but the company must disclose when informed that an investor has acquired 50% or 90% of the votes.

In addition, merger talks or acquisition discussions involving a listed company will at some point constitute inside information between the parties (i.e. information that is likely to affect the price of a specific financial instrument and that is not publicly known), and must accordingly be disclosed to the market by the prospected target. Note that Oslo Stock Exchange's Appeals Committee has previously ruled that confidential negotiations between a potential bidder and a target's board could trigger disclosure requirements even before it is highly probable that a takeover offer will be launched insofar as such conversations "must be assumed not to have an immaterial impact on the target's share price". However, to avoid prejudice or cause harm to legitimate business interests during a negotiation and planning phase, such prospected listed target may decide to delay disclosure; provided, that: postponement does not mislead the public; the inside information is kept in strict confidence between the parties; and Oslo Stock Exchange is informed about the target's decision to delay disclosure after the relevant information has been disclosed. If so, the target is required to keep a list of all persons in possession of the information (with date and time entries), of which a copy must be furnished to the takeover supervisory authority (currently still Oslo Stock Exchange) upon request. In this regard note that the former obligation to inform the takeover supervisory authority about the target's decision to delay disclosure at the time such decision was resolved has been abolished, so that the issuer now only has to notify the stock exchange about such delay after the relevant information has been disclosed. This amendment came into force as from 1 March 2021, when the amendment of the law, implementing the Market Abuse Regulation (MAR) into Norwegian law, came into effect. Any leakage of the intention to launch a bid, typically evidenced by share price movements or rumours and speculations in the market, will force the bidder to publish its intention to launch an offer.

16. At what stage of negotiation is public disclosure required or customary?

Under Norwegian law, the fact that a listed company is discussing a potential takeover or a merger will at some point constitute insider information that must be disclosed to the market. Oslo Stock Exchange (OSE)'s Appeals Committee has previously ruled that confidential negotiations between a potential bidder and the target's board could trigger disclosure requirements even before it is highly probable that a takeover offer will be launched. Therefore, a bidder and the target's board must be prepared for situations where OSE, and the National Authority for Investigation and Prosecution of Economic and Environmental Crime in Norway (Økokrim), take the position that the disclosure requirement is triggered at a very early stage. This could be from when the target enters into a non-disclosure agreement that allows potential bidders due diligence access. However, if a target is approached regarding a potential intention to launch a bid, this will not by itself trigger any disclosure requirements for the target. A listed target is not obliged to comment on rumours, but accurate rumours about a potential bid can indicate that the target is unable to ensure confidentiality, which may require an announcement. These rules apply to all listed companies, whether they are bidders or targets. Following MAR entering into force in March 2021, a prospective target's decision to delay disclosure of inside information has, however, now been amended, so that the target (issuer) only has to notify the takeover supervisory authority about such delay after the relevant information has been disclosed to the market., cf. question 15 above.

For non-listed companies, there are no statutory provisions that require a non-listed company disclose in public that it is negotiating a takeover of shares or the business activities in another company. If, however, the undertakings concerned on the acquirer and the target side exceeds certain turnover thresholds, competition clearance will be necessary after the parties having executed the final sale and purchase agreement, but prior to such transaction being closed. However, note that the Norwegian Act on Alternative Investment Fund Managers (AIFM), under certain circumstances imposes a set of disclosure obligations on Alternative Investment Fund's (AIF) manager in relation to such funds' acquisitions of companies or businesses in Norway. This disclosure obligation is triggered when an AIF acquires control (more than 50% of the votes) of a target company, that either: (i) has its shares admitted to trading on a stock exchange or another regulated market (irrespective of that listed target company's number of employees, revenues or balance sheet); or (ii) is a non-listed private or non-listed public company, but employs 250 or more, and either has annual revenues exceeding €50m or a balance sheet exceeding €43m.

17. Is there any maximum time period for negotiations or due diligence?

No.

18. Are there any circumstances where a minimum price may be set for the shares in a target company?

Under Norwegian law, there are no statutory provisions requiring a minimum price to be set in connection with acquisitions of shares in non-listed companies. The same apply for voluntary offers for shares in companies listed on a Norwegian regulated market and the bidder is free to offer whatever price it wishes.

However, in a mandatory offer for shares in a company listed on a Norwegian regulated market (see question 25 below), the share price offered cannot be lower than the highest price paid, or agreed to be paid, by the bidder for the shares (or right to the shares) in the company during the last six months. Notwithstanding, if it is clear that the market price for such shares at the time the mandatory offer obligation was triggered exceeds the price offered, the STA provides that the Oslo Stock Exchange can demand that market price must be paid for such shares. This rule has typically been invoked in situation where the general rule has been abused, for example, where a bidder has exercised options with a low subscription price prior to exceeding the mandatory bid threshold. The STA does not provide adequate guidance on how this market price is to be calculated, and an EFTA-court ruling from 2010 found this rule to be non-compliant with the EU takeover rules. In April 2020, the Parliament adopted a rule under which a regulation can be issued setting out rules for calculating the offer price in cases where there is a need for an exception from the above main rule or where it is not possible or reasonable to use the main rule for calculating the offer price. At the same time, it resolved to repeal the "market-pricing" alternative with a more balanced rule set out in a separate regulation. However, the repeal of the "market-pricing" alternative has not yet entered into force. Due to the COVID-19 pandemic, a temporary regulation for calculating the offer price was implemented with effect from 20 May 2020. This temporary regulation has been prolonged until 1 January 2025.

19. Is it possible for target companies to provide financial assistance?

In an asset purchase situation where the business assets are bought from a target company and where such target is offering to finance the deal, there are no major obstacles in respect of such financing assistance.

In case of a share purchase transaction, a target company, both private and public, is as a main rule prohibited from providing upstream financial assistance in connection with the acquisition of shares in the target company (or its parent company). In 2013, the parliament introduced a type of 'whitewash' procedure allowing a target, subject to certain conditions being fulfilled to provide financial assistance to a potential buyer of shares in the target (or its parent company), provided such financial assistance not exceeding the funds available for distribution of dividend. Such financial assistance had to be granted on normal commercial terms and policies, and the buyer also had to deposit adequate security for his obligation to repay any financial assistance received from the target. Note that the requirement for depositing adequate security would in most situations mean that it was impractical to borrow funds from a target company at least in a typical leveraged buyout transaction. This due to the fact that banks normally request extensive collateral packages in such leveraged transactions, which in practice entails that there for all practical purposed would be no "adequate security" available from the buying company for securing financial assistance from the target group. With effect from 1 January 2020 the above situation has now changed.

First, as from 1 January 2020, the Parliament has, subject to the target company being a Norwegian AS-Company, adopted an exemption from the dividend limitation rule. This exemption rule will, however, only apply if the bidder (as borrower) being domiciled within the EEA-area and is part of, or after an acquisition of shares, will form part of a group with the target company. In such latter situations, the financial assistance may now also exceed the target company's funds available for distribution of dividend. This group-exemption will, however, not apply it the target company is a Norwegian ASA-Company.

Second, from the same date, the requirement for the buyer (as borrower) to provide "adequate security" for its repayment obligation will no longer be an absolute condition for obtaining such financial assistance from the target company. Having said that, due to the requirement that such financial assistance has to be granted on normal commercial terms and policies, it cannot be completely ruled out that a bidder also in the future still may have to provide some sort of "security" for being allowed to obtain financial assistance from a Norwegian target company. Nevertheless, as long as it can be argued the acquisition being in the target company's best interest and such financial assistance can be justified in absence of any security, after 1 January 2020 it will now be possible for a target company to grant financial assistance to a bidder without such security.

Still, any financial assistance must be approved by the general meeting, resolved by at least two-thirds of the aggregate vote cast and the share capital represented at the meeting (unless otherwise required by the target company's articles of association). In addition, the board must ensure that a credit rating report of the party receiving the financial assistance is obtained, and also that the general meeting's approval is obtained prior to any financial assistance being actually granted by the board. The board shall also prepare and execute a statement, which must include (i) information on the background for the proposal of financial assistance, (ii) conditions for completing the transaction, (iii) the price payable by the buyer for the shares (or any rights to the shares) in the target, (iv) an evaluation about to what extent it will be in the target's best interest to complete such transaction; and (iv) an assessment of the effect on the target's liquidity and solvency.

20. Which governing law is customarily used on acquisitions?

M&A transactions involving assets located in Norway, or shares in Norwegian target companies, are customarily and predominantly governed by Norwegian law. Parties may occasionally agree that foreign law shall apply to share purchase agreements, however this is not common unless both seller and buyer are based outside Norway. Even though none of the contracting parties are domiciled in Norway, it is not uncommon to make Norwegian law applicable for the transaction, save for instances where both buyer and seller are domiciled in the same jurisdiction, in which case they then often prefer agreeing that the laws of their home state jurisdiction shall apply.

Norwegian law is based on the principle of freedom of contract, subject only to limited restrictions. Still, certain mandatory rules of Norwegian law would automatically apply on M&A transactions involving a Norwegian target (e.g. matters pertaining to securities trading, employment protection and legal protection of rights etc.). Consequently, foreign parties involved in a transaction in the Norwegian market will normally have to obtain Norwegian legal advice to determine their contractual rights and obligations. If several such mandatory Norwegian rules applies on a transaction, it may be in all parties' interest to agree upon Norwegian law in order to avoid having to spend extra time and costs, at a later stage, on determining what rules of law that may apply on a specific contractual issue.

Typically, merger plans between Norwegian companies will more or less, with no exemption be governed by Norwegian law. Tender offers for shares listed on a Norwegian regulated market are effected through an offer document drafted in accordance with the Norwegian STA and will for all practical purposes also be governed by Norwegian law.

21. What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?

The key public-facing documentation that is necessary for a buyer to produce in connection with the acquisition of a listed company are as follows:

- Notification of the buyer's decision to make an offer, which is published by the Oslo Stock Exchange.
- An offer document (or a prospectus or equivalent document if applicable).
- An acceptance form.
- The buyer's announcement of the result of the offer.

The offer document must be prepared and distributed to all shareholders in accordance with the provisions of the STA. In all material respects, the offer document will be the same irrespective of a bid being recommended or hostile, mandatory or voluntary. The offer document must inter alia include a description of the offer together with correct and complete information and a description on matters of significance for evaluating the offer.

The board of directors of the target company must also provide a statement on their response to the offer. In a recommended offer, it is not unusual that a buyer will prepare an initial draft board statement. Such draft statement will then be submitted to the target's board exhibited to a draft transaction agreement. Note that depending on its terms, such transaction agreement between the target and a bidder regarding a potential takeover could trigger a disclosure obligation for the target. There are currently no explicit statutory provisions under Norwegian law requiring a buyer or a target to disclose the full details of such a transaction agreement. Nevertheless, the Code of Practice now recommends that in order for the market to evaluate the bid, the company should provide relevant information on the content of any such transaction agreements to the market at the earliest possible time. The decision to disclose such transaction agreements is still discretionary. Even so, it is recommended that the Buyer and the target seek to agree in advance if and when such disclosure should take place.

Note that in a mandatory offer (see question 25 below), a buyer must also obtain a bank guarantee confirming its ability to settle the consideration offered in full.

If the buyer is issuing a share-for-share offer, the buyer must also comply with the provisions set out in chapter 7 of the STA, which again refers to the EU Prospectus Regulation. Under the Prospectus Regulation, the requirements of a prospectus or equivalent document no longer apply to securities offered in connection with a takeover by means of an exchange offer, merger or a division, provided such document is made available that contains information describing the transaction and its impact on the issuer. The latter requirement means that the buyer must prepare an offer document containing some of the equivalent information as a prospectus with extensive disclosures being required.

Additional press announcements and supplements to the offer document will often be required, for example if the buyer wants to increase the consideration offered. In hostile bid situations, it is not uncommon that a great variety of revised offers, announcements or circulars could be issued.

22. What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?

A share sale agreement could in principle be executed without observing any particular form under Norwegian law. A buyer is not liable to pay stamp duty or any type of transfer taxes on the acquisition of shares in a Norwegian target company, neither public (ASA) nor private (AS).

In an AS-company, the LLCA provides that the buyer must notify the target about a share transfer. Unless otherwise provided in the target's articles of association, acquisition of shares is subject to the target company's consent, by resolution of the board of directors. Such decision shall be made as soon as possible after the acquisition is notified to the target and the buyer shall be notified without delay. Consent may only be denied on reasonable grounds and, if not granted, the buyer shall be provided with the reasons for denial and information on any action necessary to remedy the situation. If the buyer is not notified that consent is not given within two months following notification to the target, consent is deemed granted. When notification from target is received and consent from target is granted, the target must register the buyer in the target's shareholder's register without undue delay. The registration of ownership to the shares in the register formally transfer the title to the shares acquired, and legally protects the buyer from any action from the seller's creditors or competing third party buyers.

Transfer of shares in an ASA-company is, as a general rule, neither subject to notification from the buyer nor subject to approval from the target company, however the articles of association of the target company may describe otherwise.

Even though transfer of shares in ASA-companies are generally not subject to approval, the buyer may only exercise its shareholders rights when the transfer is registered in a shareholder register kept with a securities register (required under the PLLCA), or the transfer is notified and verified without being prevented by restrictions such as consent or pre-emption rights. Note that as from 1 July 2023, all owners of shares in Norwegian ASA-companies, as well as owners of shares in AS-companies (but only provided such AS-companies' issued shares is registered in a central securities depositary), there is now a requirement that the owners must have their shareholdings (or transfer of shares) registered in the securities depositary no later than five business days in advance of the general meeting, if a owner wants to attend and vote at the general meeting for the relevant number of shares.

As from 1 July 2023, owners of shares in Norwegian ASA-companies, as well as owners of shares in AS-companies (but only provided such AS-companies' issued shares is registered in a central securities depositary), held on a nominee account must in addition notify the companies two business days in advance of such general meetings if such owners want to attend and vote at the general meeting. The articles of association of an ASA-company may now also provide that the right to attend and vote at the general meeting (irrespective of the shares are held on a nominee-account or not) can only be exercised if the owner of the shares has notified such ASA-company two business days in advance of such general meetings. . An acquirer of shares in an ASA-company can only exercise its rights as shareholders (except for the right to dividend, other disbursements and the right to participate and subscribe for new shares in capital increases) after having the ownership registered in the shareholders register, or that the transfer has been notified and documented without being limited by, inter alia, any board-consent requirements, pre-emption rights etc. set out in the relevant company's articles of associations. The previous owner of the shares is obligated to ensure that the transfer is reported to the securities registry immediately following the share transfer. Note that for ASA-companies, it is assumed that a seller (unless otherwise agreed with the buyer) loses its rights to vote on the general meeting from the date he enters into a binding agreement to sell the shares, and that the buyer cannot exercise this right until he is entered into the register of shareholders.

23. Are hostile acquisitions a common feature?

Most acquisitions occurring in the Norwegian markets are friendly, i.e. that they are recommended by the targets' boards. However, hostile bids occur relatively frequently, In 2013, about 32% of the offers launched in the Norwegian capital markets could be characterised as hostile, in 2014, only 12% of the bids were hostile. For 2015, 42 % of the bids were not recommended by the targets' board of directors, and could strictly speaking be characterised as hostile and in 2016, 37 % of the bids were hostile. In 2017, 20% of the bids were not recommended by the target company's board, in 2018, 42% of the offers launched could be characterised as hostile, and in 2019, about 25 % of the offers launched were hostile.

24. What protections do directors of a target company have against a hostile approach?

There are restrictions on the target board taking defensive actions that might frustrate the willingness or otherwise of a buyer to make a bid or complete a bid that has already been made.

Prior to a prospective target being informed that a bid will be made or the offer is issued, there are few restrictions on the implementation of defensive measures against a possible future hostile approach. Nevertheless, the board of directors must always act in compliance with their fiduciary duty towards the company and its shareholders, as further described under question 9. Still, a prospective target's board may, seek to introduce various pre-bid defences, e.g. seeking to amend the target's articles of association by including special voting rules, lower mandatory bid levels and set out special criteria that shareholders must fulfil in order to own shares in the company, introducing different classes of shares, for example non-voting preference shares. In addition, change of control provisions in the company's commercial contracts can provide protection from hostile takeovers. More advanced US-style shareholders' rights plans or other poison pills are currently not common in the Norwegian market. Also note that Oslo Stock Exchange will monitor and may restrict such resolutions/measures if found not consistent with the criteria for listing.

For Norwegian companies listed on a regulate market, the STA substantially reduces the possibility of the target's board to adopt active measures to defend against a takeover bid after the target has been informed that a voluntary or mandatory offer will be made. Under such circumstances, and until the offer period is expired, the board may not resolve on issuance of shares or other financial instruments, merger of the target or subsidiaries, sale or purchase of substantial business areas or other disposals of material significance to the nature and scope of the target's operations; or purchase or sale of the target's own shares. With that being said, the restrictions do not apply to disposals that are a part of the target company's normal business operations, or where a shareholders' meeting authorises the board to take such actions with takeover situations in mind. As a result, a fairly large number of Norwegian listed companies have adopted defensive measures aimed at preventing a successful hostile bid. Further, the board still have the possibility to try to persuade the shareholders to reject the bid or making dividend payments. The board will further, be entitled to seek white knights or white squires, exploring other alternatives, communicate the target's potential by announcing financial forecasts not previously disclosed, initiating PAC-Man defences and resisting due diligence access. The board could also question the value of any consideration offered by the bidder, and as part of this question the bidder's operational performance or financial position.

The restrictions in the STA on the board's actions in a post-bid situation is not applicable for companies not listed on a regulated market.

Finally note that situations where a target's board seeks to frustrate a takeover process through such measures have rarely been tested by Norwegian courts.

25. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

Pursuant to the STA, any person or legal entity, that directly, indirectly, or through consolidation of ownership (following one or more voluntary offers), acquires shares representing more than one-third of the voting rights of a Norwegian company listed on a regulated market, is required to make an unconditional offer of the remaining shares in such company. This obligation to issue such mandatory offer is repeated when the shareholdings exceeds 40% of the voting rights and 50 % of the voting rights, however, such repeated offer is not mandatory when the thresholds are passed in connection with the original mandatory offer. The same rules will apply to acquisitions of the relevant number of shares in a foreign domiciled company listed in Norway but not in its home country. Certain exceptions apply, and the most practical being when shares are acquired as consideration in mergers or demergers.

Some derivative arrangements (total return swaps) may also be considered as controlling votes in relation to the mandatory offer rules, and could under certain circumstances trigger a mandatory offer obligation, even though the bidder owns less than one third of the shares. Acquisitions of more than 50% of the voting rights in a company owning more than 1/3rd of the shares in a company whose shares are listed on a Norwegian regulated market, could also trigger an obligation to issue a mandatory offer, if such owner company's principal business consists of holding shares in such listed company.

A shareholder exceeding the above-mentioned thresholds may sell a portion of its shares to avoid the obligation of a mandatory offer. Such sale must be made within four weeks after the mandatory offer obligation was triggered, and must include all shares exceeding one-third of the shares, or thresholds in the repeated offer.

In addition to the above-mentioned rules for companies listed on a regulated market, there are rules on compulsory acquisition for limited liability companies in general. A shareholder who becomes the owner of 90% or more of the total number of issued shares in Norwegian limited company, as well as 90% or more of the total voting rights, is obliged to acquire the remaining shares in the company if a minority shareholder so requests. Please see question 27 for further information of the statutory rules in this respect.

26. If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?

Shareholders have certain statutory minority protections through a detailed set of rules set out in the LLCA and the PLLCA. Such rights comprise inter alia a right to attend and speak at general meetings, certain disclosure rights, rights to bring legal actions to void a corporate resolution on the basis of it being unlawfully adopted or otherwise in conflict with statute or the company's articles, etc. Some of these rights are granted to each individual shareholder irrespective of voting rights, and the LLCA and PLLCA provides specific rights to minority shareholders representing a certain percentage of the share capital and/or votes.

Several corporate resolutions require consent from the general meeting by a qualified vote. Increase or decrease of the share capital of a company must be resolved by at least two thirds of the aggregate share capital represented at the general meeting as well as two thirds of the aggregate casted votes. The same qualified vote is required for decisions on mergers and de-mergers as well as dissolution of the company. Consequently, minority shareholder representing 33.34% of the share capital and votes in the target will have a "veto right" in numerous situations.

Moreover, decisions that entails that the shareholders' right to dividend or the company's assets are reduced, requires a vote from 90% of the aggregate share capital represented at a general meeting as well as two thirds of the aggregate votes cast. For companies that do not have applicable provisions on company approval for transfer of shares or pre-emption rights for existing shareholders, the resolution on such procedures is subject to the same qualified vote. Some decisions even require the support of all holders of issued shares.

In addition to the rules on qualified votes, the companies' legislation set out various provisions that, both directly and indirectly, protects the rights of the minority of the shareholders of a company. For example, any shareholder has the right to propose an investigation of a company's incorporation or management as well as specific matters related to the management or accounts. If such proposal is resolved by at least 10% of the shareholders, any shareholder may petition the court to have an investigation initiated. Further, shareholders who hold at least 10% of the share capital may petition the court to determine a higher amount of dividend than resolved by the general meeting.

Note that a majority shareholder cannot exercise its powers in a Norwegian company at board or management level, in a manner that is likely to cause unjust enrichment to a shareholder or a third party at the cost of the company or another shareholder – see question 9.

Finally, provided the conditions for a squeeze-out are met (see question 27), it will be a straightforward process to have a listed target delisted from Oslo Stock Exchange. However, if these conditions are not met, this could be substantially more challenging.

27. Is a mechanism available to compulsorily acquire minority stakes?

Minority shareholders may under Norwegian law be subject to a squeeze-out. A majority shareholder or bidder that, directly or through subsidiaries, acquires shares in a company (both private (AS) and public (ASA)) that represent 90% or more of the total number of shares and votes can adopt a resolution by its own board of directors resolving to squeeze-out the remaining minority shareholders by a forced purchase at a redemption price. Each of the minority shareholders (holding less than 10%) has a corresponding right to demand that such majority shareholder (holding more than 90%) to acquire their minority shares. The rules and procedures for such compulsory acquisition procedure is set out in chapter 4 of the LLCA and the PLLCA.

Contributors

Ole K. Aabø-Evensen
Founding Partner

oka@aaboevensen.com