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Recent development in Norwegian corporate finance legislation

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The legal framework governing corporate finance activity in Norway includes the Securities Trading Act, the Stock Exchange Act and the Stock Exchange Regulations, the Companies Act, the Finance Activity and Financial Institutions Act, and a number of secondary regulations. Rather than providing a summary of the provisions included in these statutes, we will below focus on some of the more recent regulatory developments.

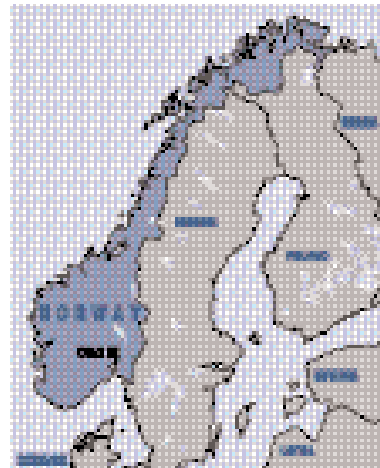
Abolition of ownership restrictions

Statutory limitations on the foreign ownership of Norwegian businesses were abolished when Norway joined the European Economic Area (EEA). Also, the all-encompassing Norwegian Business Acquisition Act, covering most industries, was abolished with effect from July 1 2002. Apart from the general disclosure requirements under the Securities Trading Act, some industry-specific requirements for certain sectors and certain real property investments, there are no longer any general notification requirements for the acquisition of shares in Norwegian companies.

The ban on any one legal entity having more than a 10% stake in a financial institution has been amended with effect from January 1 2004. The amendments stipulate that an acquisition of more than 10%, and thereafter 20%, 25%, 33% and 50%, in a Norwegian financial institution may only take place subject to a licence from the Norwegian government. The issues to be considered by the Ministry of Finance when deciding whether a licence should be granted have been restricted by law.

Insider trading

Pursuant to the Securities Trading Act, trading (subscription, purchase, sale or exchange) of listed securities must not be undertaken by anyone who has information about the securities, the issuer thereof, or other factors that are likely to have an effect on the price of the securities and that is not publicly available or generally known in the market. The prohibition on insider trading only applies if the insider information is misused. With effect from July 1 2001, the insider trading rules were tightened. The level of the information that brings a person into an insider position was reduced from "precise and confidential information" to "information that is not publicly available or commonly known in the market," and the assumed effect on the market price of the financial instrument in question due to the information was reduced from "significant influence" to "influence" on the market price on the financial instrument (which makes the Norwegian rules more stringent



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specialising in M&A, capital markets and securities law, banking,
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than the EU legislation). The supervisory and prosecuting authorities have an increased focus on enforcing the insider trading and market abuse legislation generally, which has resulted in some high-profile court cases.

Notification of significant ownership, mandatory offers, compulsory acquisition

Shareholdings in companies listed on the Oslo Børs, regardless of how they have been acquired, will have to be disclosed once they pass certain thresholds (5% (from January 1 2002), 10%, 20%, one-third, 50%, two-thirds and 90%). Obtaining control of more than 40% of the votes in a listed company triggers the launch of a mandatory offer for all remaining shares in the company. On the other hand, both private and public takeovers are facilitated by a provision allowing an owner with more than a 90% majority stake to trigger an automatic squeeze-out of all remaining minority interests. There have recently been several important court cases pertaining to the valuation of the minority stake in the event of a squeeze-out.

Share buybacks

The restrictions on share buybacks by Norwegian companies were softened with effect from 1999, and share buybacks have since been increasingly used – at least by public companies. A share buyback in a Norwegian company is resolved by the board under an authority granted in a shareholders' meeting with two-thirds majority and that includes how the shares can be bought back (and resold), the maximum aggregate nominal value of shares and also the minimum and maximum price per share. The aggregate nominal value of the shares cannot exceed 10% of the nominal value of the share capital (including shares owned by subsidiaries) and the aggregate purchase price must not exceed the company's unrestricted equity, according to the latest annual audited accounts.

The company is not required to issue a prospectus, nor to make a tender offer to all shareholders. The company will however be subject to the general provisions on equal treatment of shareholders, and also to the general prohibition on giving unreasonable, unfounded advantages to certain shareholders at the expense of the other shareholders. Share buybacks that are directed to one specific shareholder are normally not recommended.

The general rules in the Norwegian Securities Trading Act on insider dealing and the prohibition against manipulation of the share price also apply to listed companies. For those companies, the listing rules further require that a board resolution to buy back shares must be reported to the Oslo Børs if the resolution itself is considered to have an effect on the price, and any share buybacks that are made must in any case be immediately reported to the Oslo Børs. In practice, most share buybacks are reported immediately after they have been effected, a practice that generally seems to be accepted by the Oslo Børs.

Notification of mergers and acquisitions under the new Competition Act

The new Norwegian Competition Act, which came into force on May 1 2004, will introduce a general notification requirement for mergers and acquisitions. Under the former legislation there is

no duty to notify mergers and acquisitions in Norway as long as a notification is not triggered according to the thresholds of the EU Merger Regulation. The Norwegian Ministry of Labour and Government Administration is in the process of setting the threshold for the notification requirement, and has proposed that it will be triggered if the parties' aggregate turnover exceeds Nkr20 million (\$2.9 million) in Norway (which is a lower threshold than in most other European jurisdictions). The criteria for assessing mergers and acquisitions will still be whether the concentration would create or strengthen a significant restriction of competition.

Banking

Recommended firms

Bugge Arentz-Hansen & Rasmussen

Thommessen

Wiersholm Mellbye & Bech

Wikborg Rein

Advokatfirmaet Schjødt

Advokatfirmaet Selmer

Simonsen Føyen

Arntzen de Besche

Gram Hambro & Garman

Kluge Advokatfirma

Advokatfirmaet Steenstrup Stordrange

Bugge Arentz-Hansen & Rasmussen

Bugge Arentz-Hansen & Rasmussen is regarded as excellent for commercial work in general, and also has considerable banking prowess. Partner Terje Sommer is seen by many contemporaries as an excellent and reliable lawyer, and the firm also benefits from a series of close links to international law firms. This serves to win the firm business from finance houses involved in large and complex transactions.

Recent deals the firm has acted on include advising pharmaceuticals company Nycomed on a €430 million (\$519.3 million) acquisition financing, Statkraft on a \$525 million syndicated loan and a series of domestic saving institutions and banks on securities issues.

Key contact partner

Terje Sommer

Leading lawyer

Terje Sommer

Thommessen

Voted *IFLR*'s Norwegian law firm of the year at the recent awards ceremony, Thommessen is another top firm for banking advice, and one that has fought off accusations of a decline by engaging in some excellent banking work. One such deal involved acting alongside Freshfields to advise the engineering group ABB, which required a \$1.5 billion credit facility. The firm also advised a syndicate of banks on a €1.25 billion (\$1.41 billion) credit facility to Elkem, the metals and industrial materials company.

The firm represents a large number of other banks, including Den Norske Bank, Swedbank, Föreningspare-banken and Sparebanken Møre.

Key contact partners

Even Bratsberg
Hans Haugstad
Berit Stokke

Wiersholm Mellbye & Bech

A firm with an extensive portfolio, Wiersholm Mellbye & Bech is one of the oldest and most established firms in Norway, with an impressive deal history and a strong assortment of individuals. Recent deals include refinancing the fish farming company Fjord, and providing advice to the Royal Bank of Scotland in connection with the sale of PSL Norway Holdings, in a deal valued at Nkr115 million (\$16.5 million).

Leading lawyers

Erling Lind
Erik Ramm

Advokatfirmaet Schjødt

With offices in Oslo, Bergen, Trondheim, Stavanger and Ålesund, Advokatfirmaet Schjødt offers a strong domestic base to clients. The firm is well versed in setting up financial institutions in Norway and caters for both international and domestic entities, advising on such matters as loan structuring and credit facilitation.

The firm benefits from the presence of Wilhelm Damm and Einar Irgens, both of whom are highly respected.

Leading lawyers

Wilhelm Damm
Einar Irgens

Advokatfirmaet Selmer

Headed by Lars Weyer-Larsen, Selmer's banking capacity is made up of five partners and six associates. An excellent firm, Selmer has recently been acting for Nordea Bank concerning an acquisition by Ramirent – the borrower – the financing of which was valued at €230 million

(\$277.94 million). The deal was closed in early 2004, and was overseen by Selmer lawyer Einar Grette.

The firm also recently advised Nordea concerning a financing deal involving Dyno Nobel Holding and Dyno Nobel as borrowers. At the time of writing, the firm was also advising Bank 1 Oslo in connection with a comprehensive rejigging of Finance Credit's financial situation, including a restructuring and liquidation of some of its subsidiaries.

Key contact partners

Knut Endre
Einar Grette
Lars Weyer-Larsen

Simonsen Føyen

One of Norway's largest firms, Simonsen Føyen continues to derive benefit from the influx of lawyers from PricewaterhouseCoopers (PwC). It has a total of 120 lawyers, 30 of which came from PwC's Norwegian legal arm. This has meant a shift from the firm's traditional focus on ship finance, and it is now also considered one to watch for banking.

Capital markets

Recommended firms

Bugge Arentz-Hansen & Rasmussen

Thommessen

Wiersholm Mellbye & Bech

Wikborg Rein

Advokatfirmaet Schjødt

Advokatfirmaet Selmer

Bugge Arentz-Hansen & Rasmussen

Capital markets work has been slow in Norway over the past 12 months, yet Bugge Arentz-Hansen & Rasmussen (BAHR) manages to retain a reputation for excellent work in the capital markets and derivatives sector. The firm also boasts some excellent lawyers, for example Knut Brundtland, Terje Sommer, and Finn Myhre, who was formerly in-house counsel at Den norske Creditbank.

A recent highlight for BAHR was acting on the \$50 million privatization of Verdipsporsentralen, the Norwegian electronic securities register. The firm has also acted on a string of IT industry private placements.

Leading lawyers

Knut Brundtland
Finn Myhre
Terje Sommer

Thommessen

With seven partners and 18 associates, Thommessen's fine reputation for equity work earns the firm a place in most of Norway's capital markets transactions. The firm has offices in Oslo, Bergen, London and Brussels and, among other deals, has advised the Union Bank of Norway on its Nkr21 billion (\$3 billion) listing, as well as Sensoror in connection with its Nkr90 million rights offering. Other equity highlights included representing the managers on the initial public offering of Norwegian Air Shuttle, and acting for Fondsinans, as the manager, on the privatization of the Norwegian Central Securities Depository, VPS Holding.

Debt work has seen the firm advise the Union Bank of Norway on a €350 million (\$422.36 million) offering of hybrid securities, and represent Alfred Berg, ABN AMRO and Fondsinans on offshore oil and gas contractor DSND's refinancing, involving a Nkr300 million convertible bond rights issue.

Key contact partner

Kim Dobrowen

Wiersholm Mellbye & Bech

Partner Erik Thyness is seen as the firm's capital markets maestro, adding to an excellent reputation that has in the past secured the firm clients such as Goldman Sachs, DnB Markets, and Statoil. The firm recently advised DSND – a long-time client – on its refinancing, which included a Nkr300 million (\$42.9 million) convertible bond issue followed by a secondary offering of Nkr370 million.

Leading lawyer

Erik Thyness

Wikborg Rein

Firm chairman Arne Didrik Kjørnaes and partner Einar Greve are seen as good for capital markets work at a firm traditionally strong in energy deals. Offshore drilling company Frontier Drilling came to the firm for advice, as did Petroleum Geo-Services concerning its refinancing. This transaction involved the renegotiation of \$2.5 billion-worth of debt.

Key contact partner

Arne Didrik Kjørnaes

Leading lawyers

Arne Didrik Kjørnaes
Einar Greve

Mergers and acquisitions**Recommended firms**

Bugge Arentz-Hansen & Rasmussen

Thommessen

Wiersholm Mellbye & Bech

Wikborg Rein

Advokatfirmaet Schjødt

Advokatfirmaet Selmer

Arntzen de Besche

Gram Hambro & Garman

Kluge Advokatfirma

Simonsen Føyen

Bugge Arentz-Hansen & Rasmussen

Bugge Arentz-Hansen & Rasmussen (BAHR) is usually seen acting on deals involving the consolidation of the shipping industry. In the words of one market observer, the firm "will always be top for M&A."

An example of the firm's capacity to handle prestige deals was its involvement in World Nordic's acquisition of 44.3% of shipping company Bergesen, in a deal valued at Nkr10.3 billion (\$1.47 billion). The firm also advised Statoil as it sold Teekay to Navion for \$800 million, and acted for Den norske Bank during its merger with Bank Gjensidige, a deal that saw the creation of a Nkr44 billion entity. Knut Brundtland led the team overseeing the deal.

Leading lawyer

Knut Brundtland

Thommessen

Thommessen's Kim Dobrowen is singled out as an excellent individual talent, and comes highly recommended for his M&A skill. Carl Erik Krefting and Kai Thogersen are also recommended.

The firm advised Den norske Bank on its acquisition of Nordlandsbanken for Nkr1.1 billion (\$157 million), and then, in one of Norway's largest ever deals, Thommessen advised Gjensidige NOR, the parent company of the Union Bank of Norway, on its \$4.8 billion merger with Den norske Bank. The firm also advised as Telenor acquired Utfor, worked on Teekay's \$800 million acquisition of Statoil-owned Navion, and represented Norske Hydro, Norway's second largest company and the world's largest supplier of fertilizer, on the separation of its agri business.

Meanwhile, in the restructuring sector, Thommessen served as counsel to the bondholders and the creditor's committee on the groundbreaking US Chapter 11 proceedings of bankrupt company Petroleum Gas Services, the first time a Norwegian company has been restructured under Chapter 11. The firm also advised on the high-profile restructuring of fish farming company Pan Fish.

Leading lawyer

Kim Dobrowen

Wiersholm Mellbye & Bech

Erik Thyness is a big draw for clients at Wiersholm, not least because of his M&A expertise. In construction, the firm advised Finnish-owned rental company Roschier, as it acquired Bautas from the construction company Veidekka for €120 million (\$144.75 million). As well as this, the firm has advised mobile services company iTouch as it acquired the Iberian SMS provider Movilsto in a deal worth €60 million.

Leading lawyer

Erik Thyness

Wikborg Rein

Wikborg Rein has acted for a series of target companies during big banking M&A deals. Among recent highlights, the firm acted for Bergesen on its Nkr10.3 billion (\$1.47 billion) acquisition by World Nordic, as well as for Nordlandsbanken when it was acquired for Nkr1.1 billion by Den norske Bank.

Key contact partners

Einar Greve

Arne Didrik Kjørnaes

Advokatfirmaet Selmer

With offices in Oslo and Trondheim, Selmer's M&A practice continues to receive its fair share of work, and is considered a solid choice for advice in this area. The practice's leading lawyers include Sverre Tysland, Thomas Michelet and Christian Selmer, and the team recently saw its head count grow to 11 partners and 16 associates – one of those associates is US-qualified.

Selmer recently advised Norsk Hydro on a €1.2 billion (\$1.45 billion) demerger and initial public offering (IPO) of Norsk Hydro's agri business arm, which was renamed Yara International. The firm also advised Jøtul as it was sold to the Riverside Company for €49 million. Selmer also acted on behalf of the Renewable Energy Corporation, and for Oslo-listed Troms Fylkes Dampskipsselskap during a delisting and IPO valued at Nkr1.1 billion (\$157.3 million).

Leading lawyer

Thomas Michelet

Christian Selmer

Sverre Tysland

Project finance

Recommended firms

Bugge Arentz-Hansen & Rasmussen

Thommessen

Wiersholm Mellbye & Bech

Wikborg Rein

Arntzen de Besche

Advokatfirmaet Schjødt

Advokatfirmaet Selmer