

A NEWSLETTER FROM
MANNHEIMER SWARTLING

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Swedish Takeovers – Legal Update



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Revised Swedish takeover rules

INTRODUCTION

The Swedish Corporate Governance Board has recently published revised Takeover Rules. It is expected that the revised rules will enter into force on 1 November 2017. This alert summarises certain proposed key changes.

CALCULATION OF MINIMUM PRICE FOLLOWING AN INDIRECT ACQUISITION OF TARGET SHARES

The new rules introduce changes to the minimum price that must be offered as a result of an indirect acquisition of target shares. These changes have been made in response to the debate generated by HNA Tourism Group's mandatory offer for Rezidor triggered by the indirect change of control of Rezidor that HNA Tourism Group's acquisition of Carlson Hotels resulted in. The changes are particularly relevant to mandatory offers triggered by an indirect change of control.

An indirect acquisition that triggers a mandatory bid occurs where a bidder acquires shares in one company (Company A) and Company A itself already holds shares in the target company (Company B). Where the acquisition of shares in Company A results in the bidder becoming the parent company of Company A, their shareholdings in Company B are aggregated and, if the total shareholding reaches or exceeds the 30% mark, the bidder is required to make a mandatory bid for Company B. Under the current rules, the



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price in the mandatory bid must in such case not normally be less than the average stock market price of the target shares during a period of 20 trading days prior to the announcement of the indirect acquisition (the 20 day average price).

In response to the debate generated by HNA Tourism Group's mandatory offer for Rezidor, the new rules introduce new requirements in respect of the minimum price to be offered as a result of indirect acquisitions of target shares. Under the revised rules, the price in the mandatory bid must not be less than the higher of (1) the 20 day average price and (2) a price per Company B share on the basis of the portion of the purchase price for Company A that the bidder has allocated to the shares in Company B (i.e. on the basis of the bidder's categorization of the purchase price for Company A into Company A's stake in Company B and the other assets of Company A). The new rules require the bidder to disclose how it has categorized the total purchase price for Company A into Company A's stake in Company B and the rest of the assets of Company A and the basis for such categorization.

NEW REQUIREMENTS ON EQUAL TREATMENT WHERE A SECURITIES ALTERNATIVE IS REQUIRED

As with the current rules, the new rules require a bidder to provide a securities alternative to the target shareholders, where, during six months prior to the offer or during the course of the offer, the bidder and/or its concert parties have acquired more than 10% of the target shares in exchange for securities. However, unlike the current rules that require the securities alternative to be provided on the same value basis, the new rules require such securities to be offered on the basis of the same number of securities per target share. Furthermore, where a securities offer is required as a result of pre-offer acquisitions of target shares in exchange for securities, the new rules introduce an obligation to provide a cash alternative on the basis of the same value, unless the vendor is required (under a lock-up undertaking or similar) to hold the securities received until either the offer has been terminated or the offer consideration has been paid to accepting shareholders.

REGULATORY APPROVAL TO ENABLE PROMPT PAYMENT OF THE OFFER CONSIDERATION

The new rules set out stricter requirements in respect of the receipt of regulatory approvals for the transfer of funds to enable payment of the offer consideration. In response to the debate generated by HNA Tourism Group's mandatory offer for Rezidor where the Securities Council permitted HNA Tourism Group to delay payment of the consideration for several months pending receipt of final approval by the State Administration of Foreign Exchange (SAFE) of the People's Republic of China, the new rules require the bidder to ensure that it already at the time of the offer announcement either has received or will receive all necessary regulatory approvals for the transfer of funds to enable payment of the offer consideration as soon as possible following completion of the offer. This also means that the completion of an offer may not be made subject to a condition relating to the receipt of regulatory approvals for the transfer of funds to enable payment of the offer consideration.

SUPER-EQUIVALENT REQUIREMENTS FOR AUDITOR REVIEW AND PRO-FORMA FINANCIALS ABOLISHED

In the case of a securities exchange offer, the current takeover rules set out requirements for an auditor review of the offer document and the preparation of pro-forma financials that are additional to the requirements of the EU prospectus regime. The new rules abolish these super-equivalent requirements, aligning the takeover rules with the standards of the EU prospectus regime.

HIGHER LEVEL OF FINES FOR TAKEOVER RULE BREACHES

The new rules introduce higher maximum fines that may be imposed on a bidder for non-compliance with the rules. Under the new rules the maximum fine is SEK 500,000,000, five times the maximum fine under the current rules. The factors for determining the level of financial penalty include the impact of the breach on the integrity of the securities market, the deal value, the harm caused by the breach and the benefits obtained from the breach.

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