ICLG

The International Comparative Legal Guide to:

Mergers & Acquisitions 2012

A practical cross-border insight into mergers and acquisitions

Published by Global Legal Group, with contributions from:

Albuquerque & Associados
Ali Budiardjo, Nugroho, Reksodiputro
Andreas Neocleous & Co LLC
Arzinger
Bech-Bruun
Cárdenas & Cárdenas Abogados
Covington & Burling LLP
Cravath, Swaine & Moore LLP
Dittmar & Indrenius
Elvinger, Hoss & Prussen
Gide Loyrette Nouel
Goltsblat BLP
Hengeler Mueller
Herbert Smith LLP
J & A Garrigues, SLP
Karanovic & Nikolic
Koep & Partners
Lee and Li, Attorneys-at-Law
Lenz & Staehelin
Lorenz
Mannheimer Swartling Advokatbyrå AB
Nishimura & Asahi
Pachiu & Associates
Santa Maria Studio Legale Associato
Schoenherr
Skadden, Arps, Slate, Meagher & Flom LLP
Slaughter and May
SNR Denton & Co
Steenstrup Stordrange
Stikeman Elliott LLP
Tonucci & Partners
Wachtell, Lipton, Rosen & Katz
Webber Wentzel
Yigal Arnon & Co.
Zhong Lun Law Firm
Žurić i Partneri d.o.o., law firm

GLG
Global Legal Group

GLG
Global Legal Group

Contributing Editor
Michael Hatchard, Skadden, Arps, Slate, Meagher & Flom (UK) LLP

Account Managers
Dror Levy, Maria Lopez, Florjan Osmani, Oliver Smith, Rory Smith, Toni Wyatt

Sub Editors
Suzie Kidd
Jodie Mablin

Senior Editor
Penny Smale

Managing Editor
Alan Falach

Group Publisher
Richard Firth

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
istockphoto

Printed by
Ashford Colour Press Ltd.
February 2012

ISBN 978-1-908070-21-0
ISSN 1752-3362

Strategic Partners

AEJE ECLA

MIX Paper from responsible sources FSC® C011748

General Chapters:

Country Question and Answer Chapters:

Continued Overleaf

GLG
Global Legal Group

Country Question and Answer Chapters:

EDITORIAL

Welcome to the sixth edition of *The International Comparative Legal Guide to: Mergers & Acquisitions*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of mergers and acquisitions.

It is divided into two main sections:

Six general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting mergers and acquisitions, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in mergers and acquisitions in 40 jurisdictions.

All chapters are written by leading M&A lawyers and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Michael Hatchard of Skadden, Arps, Slate, Meagher & Flom (UK) LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk

Alan Falach LL.M
Managing Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Chapter 39

Sweden

Thomas Wallinder

Mannheimer Swartling Advokatbyrå AB

Nina Svensson

1 Relevant Authorities and Legislation

1.1 What regulates M&A?

One of the two main sources of regulation in Sweden is the Takeover Act (2006:451) implemented in 2007 (the "Takeover Act"). The other main source is the takeover rules, the current version of which were adopted by the Swedish stock exchanges in 2009 (the "Takeover Rules") in compliance with the Takeover Directive. Similar rules exist for certain alternative markets (NASDAQ OMX First North, Nordic MTF and Aktietorget).

The NASDAQ OMX Nordic Exchange Stockholm's Rule Book for Issuers contains disclosure requirements and certain other provisions relevant to takeovers.

The Companies Act (2005:551) (the "Companies Act") does not specifically address public offers, but contains other relevant provisions, for example relating to compulsory acquisition of minority shareholdings.

The Financial Instruments Trading Act (1991:981) (the "Trading Act") contains rules on shareholding disclosure requirements and offer documents/prospectuses.

The Market Abuse Penalties Act (2005:377) (the "Market Abuse Act") contains insider dealing provisions and prohibits market manipulation. The Act on Notification Obligations for Certain Holdings of Financial Instruments (2000:1087) (the "Notification Act") requires disclosure of certain securities holdings to the Financial Supervisory Authority (the "FSA").

The FSA supervises public offers, enforces compliance with the Takeover Act and is the competent authority for purposes of the Swedish prospectus regime.

The Securities Council is a private body supervising good practice on the Swedish securities market. It grants dispensations and issues statements and rulings on points of interpretation of the Takeover Rules, the mandatory bid rules and the rules on frustrating actions.

1.2 Are there different rules for different types of company?

When determining whether or not the Takeover Act and the Takeover Rules apply, it is the nature of the target and not the nature of the offeror which is relevant. The value of the offer and the number of target shareholders are also irrelevant. The Takeover Act applies to all takeover offers where the target is domiciled in Sweden and traded on a Swedish regulated market. Furthermore, the Takeover Act provides for shared jurisdiction between Sweden and other relevant jurisdictions where the shares of a non-Swedish target are publicly traded on a Swedish regulated market but not in the jurisdiction where the company is domiciled, or, where a target domiciled in Sweden is admitted to trading on a non-Swedish regulated market but not in Sweden. There are no takeover rules applicable to acquisitions of companies with a wide shareholder base, but whose shares are not traded (however, where securities are offered as compensation, such offer may be subject to prospectus requirements).

1.3 Are there special rules for foreign buyers?

No, all offerors, regardless of nationality, must undertake to comply with the Takeover Rules and the Securities Council's statements and rulings. There are no limitations on the exercise of shareholder rights due to the shareholders' nationality.

1.4 Are there any special sector-related rules?

Sector-related rules, for example ownership and management restrictions, may apply to offerors acquiring Swedish companies in certain sectors, such as companies operating under the supervision of the FSA (for example, companies licensed to conduct banking or finance business).

1.5 Does protectionism operate in favour of local owners?

Neither the regulatory, nor the political environment in Sweden is characterised by protectionism and a significant number of public takeovers has been made in the Swedish market by non-Swedish offerors. Recent examples include Barclays PLC's acquisition of Tricorona, Galderma Pharma S.A.'s acquisition of Q-MED, A.P Møller-Mærsk A/S's acquisition of Broström and IBM Corporation's acquisition of Telelogic.

1.6 What are the principal sources of liability?

Shareholder litigation relating to public takeovers is extremely unusual in Sweden, even though non-compliance with the Takeover Rules (including the Securities Council's statements and rulings) could expose the offeror to liability for damages to the target shareholders. Furthermore, an offeror would risk fines of up to SEK 100,000,000 for failure to comply with the Takeover Rules and for non-compliance with these rules. The FSA may in such case prohibit the offer, suspend voting rights attached to target shares held by the offeror or not approve the offer document.

Failure by the offeror board to comply with the requirements relating to offer documents may result in liability for damages.

Inaccuracies in the offer document may, in addition thereto, result in imposition of fines.

Non-compliance with the Takeover Rules and actions that do not comply with good market practice may be criticised by the Securities Council, which often attracts attention from the media and results in considerable bad-will.

Non-compliance with the Trading Act or the Notification Act may result in the imposition of fines. A breach of the Market Abuse Act, including insider trading and market manipulation, is a criminal offence.

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

In structural terms, a takeover can be carried out either by a public offer, or by a statutory merger under the Companies Act. As opposed to a public offer, where the target shareholders are asked to accept an offer made to them by the offeror, in a statutory merger the target shareholders and, almost invariably, the offeror shareholders are asked to vote on a merger plan prepared by the board of the offeror and the target. Under the Companies Act, the merger consideration may consist of shares or a combination of shares and cash. There is also a statutory limit requiring more than 50% of the total value of the merger consideration to consist of shares. Mergers are occasionally used for a 'merger of equals' (where the consideration consists solely of shares and either company could potentially act as the acquirer), but so far there have been very few statutory mergers involving Swedish publicly listed companies. One reason is probably the inherent uncertainties related to the risk that a shareholders' resolution approving a merger plan could be challenged in court.

2.2 What advisers do the parties need?

Except for the accounting firms' review of the offer document and the fairness opinion to be obtained in a management buy-out situation, there is no formal requirement to engage advisers. However, normally, the offeror and the target each engages a legal adviser and a financial adviser. Where the financial adviser is not a Swedish bank, the offeror also engages a receiving agent to receive the shareholder acceptances.

2.3 How long does it take?

The offer must be announced by means of a press release immediately after the offeror has made a firm decision to make an offer. Within four weeks of the announcement, the offer document shall be filed with the FSA. The FSA usually approves the offer document within 10 business days. As soon as the approved offer document is published, the acceptance period can start. The initial acceptance period must be three to ten weeks, but can be extended up to three months, or, where regulatory approvals are not obtained, up to nine months.

In general, provided that there are no delays in the regulatory approval process, that no competing offer is launched and that there are no other special circumstances having an impact on the overall timetable, the offeror can get title to the target shares acquired in the offer within approximately two months from the announcement of the offer. Thereafter, the squeeze-out procedure generally takes 15-24 months.

2.4 What are the main hurdles?

One of the main hurdles is to obtain a sufficient level of shareholder acceptances. It is crucial to obtain competition clearance as soon as possible, given that shareholders rarely accept an offer that is still subject to a regulatory condition. Major shareholders may also be reluctant to irrevocably undertake to accept the offer, at least where such undertakings do not cease to apply in the event of a higher offer.

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

Unless the offer price is at some premium to the market price of the target's shares, the offer is unlikely to be successful. Due to the principle of shareholder equality, all holders of shares of the same class must be offered identical consideration per share (see further question 2.7 below).

The offer price must not be less than the highest price paid by the offeror for target shares within six months prior to the announcement of the offer. If the offeror, during the course of the offer, or for a period of six months from the settlement in the offer, acquires shares in the target at a higher price than the offer price, the offeror will be obliged to pay additional consideration to the shareholders who accepted the offer.

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

The consideration invariably consists of cash, securities, or a combination of the two. If the offeror has acquired more than 10% of all shares in the target for either cash or securities within six months prior to the announcement of the offer, the offeror will be obliged to offer the same form of consideration (cash or securities, as the case may be) as the consideration in the offer. A compulsory bid must always include a cash alternative.

Where securities are offered as consideration, the offeror must obtain the necessary corporate resolutions to issue the securities. The offer document must contain information equivalent to that of a prospectus. Furthermore, an exchange offer may require registration statements and other filings in foreign jurisdictions.

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

Holders of shares of the same class must be offered the same terms.

The terms offered to holders of shares of different classes with different economical rights cannot differ in an unreasonable way. The terms offered to holders of shares of different classes with different voting rights can differ only where all share classes are publicly traded, the quoted price accurately reflects a difference in market value and the Securities Council has given its approval.

2.8 Are there obligations to purchase other classes of target securities?

A public offer, whether voluntary or compulsory, must normally be made available to all holders of listed and unlisted shares, as well as other financial instruments issued by the target, if the price for such instruments may be materially affected by a de-listing of the target shares. However, the Securities Council may grant the offeror an exemption from the requirement to include certain instruments in the public offer, provided that the holders thereof receive reasonable compensation in another form.

2.9 Are there any limits on agreeing terms with employees?

Due to the principle of equal treatment of the shareholders, benefits to target employees must be based solely on their employment and must not be related to their potential shareholdings. Still, consideration offered for financial instruments held by employees under an incentive scheme will normally not have any impact on the offer price.

2.10 What role do employees play?

Where the offeror is bound by a collective bargaining agreement with trade union(s), the offeror may be required to consult with the relevant union(s) before making an offer, where the intended acquisition would entail "a significant change" to the business of the offeror.

2.11 What documentation is needed?

The key documents necessarily involved in a public takeover bid are the following: the offeror's undertaking to comply with the Takeover Rules; the offeror's announcement of the offer by a press release (containing amongst other things the main terms of the offer and the offer conditions); the offer document/prospectus; the acceptance form; the target board response statement; and the offeror's announcement of the result of the offer.

In addition, the following additional documents may be relevant: a confidentiality agreement between the parties; a fairness opinion; documentation relating to the financing; shareholder acceptance undertakings; an information brochure to make the contents of the offer document/prospectus more readily accessible; and documentation relating to a general meeting of shareholders. Additional press announcements and supplements to the offer document/prospectus may be required, for example where the offer consideration is increased.

2.12 Are there any special disclosure requirements?

Certain financial information about the parties must be included in the offer document. Furthermore, the offer document must contain confirmations by the auditors of both the bidder and the target that the offer document has been reviewed pursuant to applicable rules and practice (cash offer documents need to contain such confirmation by the target auditors only). It is customary for the target board to obtain a fairness opinion regarding the value of the offer, in which case disclosure thereof is required.

2.13 What are the key costs?

No stamp duty is levied upon the acquisition of shares in the target. The main costs are the fees of the advisers, the costs of printing the offer document and any costs related to the financing of the offer.

2.14 What consents are needed?

The FSA must approve and register the offer document/prospectus. A bid may also have to be notified to the relevant competition authorities where certain turnover thresholds are met.

2.15 What levels of approval or acceptance are needed?

The offeror may acquire minority shareholdings on a compulsory basis if it owns more than 90% of the shares in the target. It is therefore common practice to make voluntary offers conditional on a 90% acceptance level.

2.16 When does cash consideration need to be committed and available?

Cash consideration does not have to be specifically guaranteed or independently confirmed, even though the Takeover Rules provide that a public offer must only be made after the offeror has ensured that it can meet any cash consideration in full. Where the offer will be subject to regulatory approvals, the offeror must for example ensure that any approved credit facility is available throughout the extended offer period.

The consideration is typically settled within three to five business days after the offer is declared unconditional. The offeror must, at least one business day prior to the settlement, make the necessary funds available in a bank account (with a right for the receiving agent to draw the necessary amount from such bank account).

3 Friendly or Hostile

3.1 Is there a choice?

There are no legal or regulatory impediments to hostile offers. Even though most offers are recommended by the target board, hostile offers are not uncommon in Sweden.

3.2 Are there rules about an approach to the target?

There are no specific rules relating to the offeror's approach to the target. The offeror could approach either the board or the majority shareholders of the target, depending on what is appropriate considering the target's shareholder structure. It should be noted that the contacts are to be made on a confidential basis and that the Takeover Rules do not generally permit the offeror to make a pre-announcement about a mere intention to make an offer (unless the offeror suspects that information about the potential offer has been, or may be, leaked to the market).

3.3 How relevant is the target board?

The target board has a key role and shall act in the best interest of all shareholders. The target board's view on the offer – and on the offer price – is very important. The target board is important also prior to the announcement of a friendly offer, when the offeror's initial price indication and access to due diligence information are negotiated.

3.4 Does the choice affect process?

Making a hostile offer may require more strategic planning than making a recommended offer, for example regarding how to justify the offer price. Furthermore, in a hostile offer, the due diligence exercise is normally limited to a review of publicly available information, since the target board in practice would agree to a due diligence exercise only where it is prepared to recommend the discussed offer price.

4 Information

4.1 What information is available to a buyer?

Pre-takeover due diligence is normally limited in scope. The board of the target should limit the due diligence exercise in time and to factors relevant to making and implementing the offer. The target board must take into consideration the risk of harming the company by providing the requested information or by any subsequent disclosure requirement.

4.2 Is negotiation confidential and is access restricted?

The target is required to inform the stock exchange on a confidential basis of a potential bid, if it can be expected that the bid will be made. The offeror has a corresponding obligation where the offeror has made preparations that are likely to result in an offer. Public disclosure can be postponed, as long as confidentiality can be ensured and there is no risk of misleading the market.

It is possible to provide information about a contemplated offer selectively to key shareholders, to the extent necessary and on a confidential basis, which allows an offeror to seek acceptance undertakings from target shareholders before making the offer.

4.3 What will become public?

If the target gives the offeror non-public, price-sensitive information, the target must disclose this information to the market. Agreements entered into on account of the offer must be disclosed in the offer document. Arrangements with target employees, such as bonus arrangements to retain key employees, must also be disclosed.

4.4 What if the information is wrong or changes?

Every new factor, material mistake or inaccuracy relating to the information in the offer document that may affect the assessment of the offer consideration must be addressed in a supplement to the offer document.

Furthermore, the bidder may have included offer conditions relating to incorrect information or a material adverse change.

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

An offeror can build a stake in the target through off-market or on-market purchases before or during the offer. The insider trading provisions do not prevent the offeror from acquiring shares in the target where the inside information relates only to the offeror's intention to make an offer. However, if the offeror receives non-public price-sensitive information from the target, the offeror must not make any dealings in the target shares until this information has been made public.

5.2 What are the disclosure triggers?

The FSA and the relevant issuer must be notified of any acquisitions (or disposals) of shares and certain other securities in the issuer if, as a result thereof, the holdings of the relevant shareholder reaches, exceeds or falls below 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66.67% or 90% of the total number of shares or voting rights in the relevant issuer. These disclosure requirements apply regardless of whether or not the issuer is subject to a takeover.

Directors, certain officers and major shareholders (holding at least 10% of the shares or voting rights) have to notify their holdings of shares and certain other securities, as well as any changes in their holdings, to the FSA.

5.3 What are the limitations and implications?

The Takeover Act requires a person who acquires shares in a publicly listed company, and as a result thereof controls 30% or more of the voting rights, to make a public offer for the remaining shares, unless the shareholding is reduced below the 30% mark within four weeks.

Share acquisitions before or during the course of an offer could potentially have an effect on the offer consideration (see further questions 2.5 and 2.6 above) and on the consideration to be paid in a squeeze-out procedure (see further question 7.4 below).

A confidentiality agreement between the offeror and the target may include "standstill" provisions preventing the offeror from acquiring shares in the target without the target's consent for a specified period.

Arrangements aiming at taking control of the target without acquiring shares (for example by the use of equity derivatives resulting in a financial exposure at or above the mandatory bid threshold) may be seen as contradictory to good market practice.

6 Deal Protection

6.1 Are break fees available?

Break fees, whereby the target undertakes to pay a fee to an offeror if the transaction is not completed, have been agreed in some public offers. The Takeover Rules require that such agreements be in the best interest of all shareholders and in compliance with applicable law. There are no court precedents, Securities Council rulings or clear consensus among practitioners on break fees. Arguably there are limitations on the target's agreeing to break fees and any analysis thereof must take into account: the type of offer, particularly if the offer is a "merger of equals"; any qualifications to the break fee, such as "fiduciary outs"; the "payment triggers"; the size of the break-fee; and whether the break-fee is a genuine pre-estimate of loss.

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

Exclusivity agreements, whereby the target agrees not to negotiate with other potential offerors, are not common in Sweden. Arguably, there are limitations on the target's agreeing to exclusivity. An analysis of exclusivity agreements must take into account the type of offer (particularly if the offer is a "merger of equals") and any qualifications to the exclusivity (such as "fiduciary outs").

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

Issuing shares on a non-pre-emptive basis or acquiring or disposing of material assets in a takeover situation will generally be considered as frustrating actions (see further question 8.2 below).

6.4 What commitments are available to tie up a deal?

It is for the target shareholders to decide on the merits of an offer. The target board cannot assist a preferred bidder, but may express its positive views on the offer in its response statement (see further question 8.1 below).

7 Bidder Protection

7.1 What deal conditions are permitted?

The conditions of a voluntary offer will depend on the circumstances, but many offers are conditional upon, amongst other things: obtaining a minimum shareholder acceptance level; obtaining regulatory approvals; the information about the target not being materially inaccurate or misleading; the target not taking frustrating actions; and the absence of a higher competing offer. It has become increasingly common to make the offer conditional on the non-occurrence of a material adverse change to the target's financial position, results or sales. It is normally not permitted to make the offer conditional on the receipt, non-withdrawal or absence of adverse modification of the target board's recommendation of the offer (except in certain circumstances, such as where the bidder otherwise would run the risk of violating its own limited partnership agreement, or in a merger of equals).

It must be possible to determine objectively whether or not a condition has been satisfied. The offeror must not have a decisive influence over its fulfilment. The offeror may withdraw the offer only where the non-satisfaction of a condition is of material importance to the acquisition (except as regards the shareholder acceptance level and certain other conditions). In practice, the offeror would in most cases need to consult the Securities Council before terminating the offer.

Compulsory bids cannot be made subject to conditions, other than a condition relating to necessary regulatory approvals.

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

It is not common practice in Sweden for representations and warranties to be made in the context of a public offer, except in "mergers of equals". Due diligence is therefore in general the offeror's only means of identifying potential problems before the offer is made. The offeror may, however, make the offer subject to conditions relating to incorrect information or a material adverse change.

7.3 When does control pass to the bidder?

Title to the shares acquired in the offer passes to the offeror at settlement. Thereafter (assuming the offeror has title to at least 10% of the target shares) the offeror is entitled to request an extraordinary shareholders' meeting to be convened to elect new board members. While the target still has minority shareholders, it must be acknowledged that the target exists as a separate entity and must be able to justify transactions from a corporate benefit perspective. Therefore, the general principle on all shares having equal rights in the target must be considered, as well as the restrictions on providing undue advantages to a shareholder or a third party, to the disadvantage of the target or any other shareholder.

7.4 How can the bidder get 100% control?

The Companies Act allows the offeror to acquire minority shareholdings on a compulsory basis if it owns more than 90% of the shares in the target. The squeeze-out procedure is settled by arbitration and is generally completed within 15-24 months. In the meantime, the offeror is entitled to request advance title to the minority shareholdings, which is typically granted (against sufficient security) within 6-9 months from initiation of the squeeze-out procedure. The procedure thereafter concerns only the price for the shares.

8 Target Defences

8.1 Does the board of the target have to publicise discussions?

When approached by a potential offeror, the target board has an obligation to act in the best interests of the shareholders. There is no obligation for the target board to publicly disclose any discussions with a potential offeror. Once the target has been informed that a potential offer is likely to be made the target is required to inform the stock exchange thereof. Moreover, information that is required to be published by the offeror must as soon as possible thereafter be made available also on the target's website. The target board is also required to issue its response statement in relation to the offer no later than two weeks before the expiry of the acceptance period.

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

Taking actions with a view to frustrating a potential bid may constitute a breach of the directors' duties to act in the interests of all shareholders and the company as a whole. Actions that would be liable to frustrate the making or the successful outcome of an offer are subject to approval by the general meeting of shareholders. Frustrating actions will generally include far-reaching actions of material significance such as issuing shares on a non-pre-emptive basis; acquiring or disposing of material assets; carrying out share buybacks; or making a bid for the offeror or another company.

The target board would generally be permitted to: argue against accepting the offer; seek a white knight; explore other alternatives; and announce financial information and forecasts not previously disclosed. In an exchange offer, the target board may question the value of the offer by focusing on the offeror's financial position or operational performance.

8.3 Is it a fair fight?

There are a number of rules intended to ensure fairness in the takeover process. A competing offeror may make a bid at any time, whereby target shareholders who have accepted the original offer are free to withdraw their acceptances (provided that the original offer has not been declared unconditional). The original offeror and the competing offeror are also free to increase their offers. The target board must treat all offerors equally, unless there are objective grounds justifying unequal treatment, and shall disclose the same information to all competing offerors if the circumstances are similar. Furthermore, frustrating actions are subject to shareholder approval.

9 Other Useful Facts

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

The most decisive factor for a successful acquisition is the value of the offer. An offer could fail for various reasons, often related to the value (majority shareholders refusing to accept the offered price; a competing offer at a higher price; or the poor development of the offeror's share price in an exchange offer) or to the competition authorities changing the prerequisites of the takeover.

9.2 What happens if it fails?

If the bid is not completed, the offeror is prevented for twelve months thereafter from making another offer or acquiring target shares to such extent that the mandatory bid requirement is triggered. However, if the bid is unsuccessful insofar as the offer is completed but the offeror waives its acceptance level condition, share acquisitions thereafter are permitted but could have an effect on the offer consideration paid (see further question 2.5 above).

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in Sweden

In May 2011, the Swedish Corporate Governance Board announced that it had decided to undertake a limited review of Takeover Rules, including the rules for transaction agreements between bidders and target companies. One reason for such review is the UK Takeover Panel's review of parts of the UK's City Code on Takeovers and Mergers, based on which the Swedish Takeover Rules are modelled. The Swedish review will pay close attention to the developments in the United Kingdom.

The review also covers the applicability of the rules when a target company is not Swedish. Furthermore, it includes a review of the rules regarding the period for acceptance of an offer and regarding what price can be offered if a mandatory bid is triggered by a directed share issue. Additional items that are to be considered are whether offerors may contradict previous statements (for example that the offer price will not be increased), whether offerors can be obliged in certain cases to extend acceptance deadlines or to offer a right of withdrawal after the final closing date and whether the rules concerning pre-, side- and post-dealings should be applied to cash settled options or other financial arrangements, or to subscriptions in directed share issues. The review is expected to be completed during 2012.

In October 2009 The Swedish Industry and Commerce Stock Exchange Committee submitted a proposal to the Swedish Ministry of Justice regarding amendments of the Takeover Act, for the purpose of introducing an additional mandatory bid threshold. According to the proposal, a person would be required to make an offer for the remaining shares in a publicly listed company, not only when obtaining control of 30% or more of the voting rights, but also when obtaining control of 50% or more of the voting rights. At the time of writing it is not clear if and when the proposal can be expected to become effective.

Certain changes to the Swedish disclosure rules may be necessary as a result of the European Commission proposal of 20 October 2011 to extend the scope of the Transparency Obligations Directive. According to the proposal, interests in certain instruments with an economical effect similar to shareholdings shall be disclosed, while, for example, most contracts for differences (CFDs) do not trigger disclosure under the Swedish rules currently in force.

Thomas Wallinder

Mannheimer Swartling Advokatbyrå AB
Box 1711
SE-111 87 Stockholm
Sweden

Tel: +46 8 595 064 13
Fax: +46 8 595 060 01
Email: twa@msa.se
URL: www.mannheimerswartling.com

Thomas Wallinder is a partner based at Mannheimer Swartling's Stockholm office. Mr. Wallinder mainly works within the practice areas Corporate Law; Securities Law; Mergers and Acquisitions (M&A); and Financial Institutions and has extensive experience in public takeovers; initial public offerings and other capital markets transactions; corporate governance; incentive programmes; and compliance counselling. Thomas Wallinder is a member of the Swedish Bar association, the New York State Bar Association, the International Bar Association, an officer of the Securities law Committee of the IBA, and a member of the company and securities law department of the Stockholm Centre of Commercial Law. Mr. Wallinder graduated from the University of Stockholm (LL.M., 1990) and from Duke University (LL.M., 1991) and joined Mannheimer Swartling in 1991.

Nina Svensson

Mannheimer Swartling Advokatbyrå AB
Box 1711
SE-111 87 Stockholm
Sweden

Tel: +46 8 595 064 71
Fax: +46 8 595 060 01
Email: nsv@msa.se
URL: www.mannheimerswartling.com

Nina Svensson is a partner based at Mannheimer Swartling's Stockholm office. Ms. Svensson mainly works within the practice areas Corporate Law; Securities Law; and Mergers and Acquisitions (M&A), and has experience in public takeovers; initial public offerings; rights offerings and other capital markets transactions; corporate governance; incentive programmes; compliance counselling; and compulsory acquisition of minority shares. Ms. Svensson graduated from University of Lund, (LL.M., 2000) and joined Mannheimer Swartling in 2001.

MANNHEIMER SWARTLING

Mannheimer Swartling is the leading business law firm in the Nordic region with approximately 400 lawyers. Mannheimer Swartling is a full service firm with an extensive international practice. By combining cutting edge legal expertise with solid industry experience, we offer our clients professional legal advice with added value.

Our public M&A and equity capital markets practitioners are widely recognised for their high level of expertise and extensive experience. We advise bidders, targets and financial advisers on all aspects of public M&A deals. Our work covers the full range of equity capital market transactions, including IPOs, rights issues, issuances of convertibles and exchangeable securities and other forms of placings. We advise a broad range of market participants, including issuers, investors and underwriters. We also advise leading corporations on governance, regulatory compliance and market practice.

The firm has its base in Sweden, with four offices in Stockholm, Gothenburg, Malmö and Helsingborg. Mannheimer Swartling also has eight offices in other countries, in New York, Frankfurt, Berlin, St. Petersburg, Moscow, Brussels, Shanghai and Hong Kong. For more information about the breadth and depth of our experience in public M&A and equity capital markets, please contact us or visit our website www.mannheimerswartling.se

Other titles in the ICLG series include:

- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Commodities and Trade Law
- Competition Litigation
- Corporate Governance
- Corporate Recovery & Insolvency
- Corporate Tax
- Dominance
- Employment & Labour Law
- Enforcement of Competition Law
- Environment & Climate Change Law
- Gas Regulation
- Insurance & Reinsurance
- International Arbitration
- Litigation & Dispute Resolution
- Merger Control
- Patents
- PFI / PPP Projects
- Pharmaceutical Advertising
- Private Client
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Telecommunication Laws and Regulations
- Trade Marks

GLG
Global Legal Group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk