

News

New rules on takeover bids

As of 1 July 2014, new, more stringent and detailed rules on takeover bids in listed companies will come into force. The rules are the result of the Danish Financial Supervisory Authority's revision of the rules in this area.

Since the summer of 2012, the Financial Supervisory Authority has been working on a revision of the rules governing takeover bids in listed companies.

This has led to an amendment of the Danish Securities Trading, etc. Act (værdipapirhandelsloven) and a revision and amendment of the Executive Order on Takeover Bids.

The most important changes to the Securities Trading Act and the new Executive Order on Takeover Bids are outlined below.

The guideline to the Executive Order on Takeover Bids is also being revised. When the revision of the guideline is complete, the significance of the changes will be described in

detail at bechbruun.com as well as in a newsletter.

Transitional rules

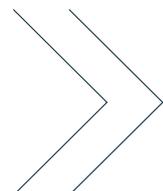
For shareholders who - either alone or together with any other person with whom the shareholder is acting in concert - hold at least one third of the votes and who do not have control according to the current rules, the coming into force of the new rules will not result in an obligation to make a mandatory bid.

If an announcement of a mandatory or a voluntary bid has been published prior to 1 July 2014, such bid will be treated in accordance with the current rules even if the offer document is not published until after 1 July 2014 or the offer period ends after 1 July 2014.

Links

The amendment of the Danish Securities Trading, etc. Act (værdipapirhandelsloven)
<https://www.retsinformation.dk/Forms/R0710.aspx?id=162797>

The new executive order on takeover bids
<https://www.retsinformation.dk/Forms/R0710.aspx?id=163431>



Main points of the new rules

The current rules	Amendment
<p><i>The obligation to make a mandatory bid</i> When, upon an acquisition of shares, a shareholder holds between one third and half of the voting rights - depending on, among other things, the attendance at general meetings and the distribution of shares between shareholders in the company.</p> <p>Acquisition by way of inheritance, gift or through debt enforcement, intragroup transfer or the like is not subject to the obligation to make a general offer.</p>	<p><i>New fixed threshold</i> When, upon an acquisition of shares, a shareholder holds at least one third of the votes.</p> <p><i>Tightening</i> The exception for gift or “the like” is repealed.</p>
<p><i>Exemption from the obligation to make a mandatory bid following a voluntary bid</i> A shareholder who has obtained control following a voluntary bid in accordance with the rules of the Executive Order on Takeover Bids is exempt from the obligation to make a mandatory bid.</p>	<p><i>Tightening</i> New condition to the effect that in order to avoid having to make a mandatory bid after a voluntary bid has been made, the shareholder must have obtained at least half of the voting rights as a result of the voluntary bid.</p>
<p><i>Equal treatment of shareholders</i> If, during the offer period, an offeror makes an agreement for the purchase or sale of shares on terms that are more favourable than the terms stated in the offer, the offeror must offer the same favourable terms (increase the offer) to the other shareholders comprised by the offer. After the end of the offer period, the offeror is free to buy and sell shares in the market.</p>	<p><i>Tightening</i> Equal treatment of shareholders in connection with the purchase and sale of shares also applies for a period of six months after the end of the offer period. This means that if, in the period following the offer period, an offeror buys or sells shares on terms that are more favourable than the terms stated in the offer, any shareholders who have accepted the offer during the offer period must receive compensation in cash.</p>
<p><i>Duration of the offer period</i> The offer period may be up to 12 weeks, including any extensions or improvements (unless a competing bid is made).</p> <p>In connection with obtaining the approval of the competition authority, the offer period may be extended up to a total duration of four months.</p>	<p><i>Tightening</i> The offer period, including any extensions or improvements, cannot exceed 10 weeks (unless a competing bid is made).</p> <p><i>Extension</i> The offer period may be extended up to a total duration of nine months for the purpose of obtaining any authority approval.</p>
<p><i>Reduction and waiver of conditions</i> Any reduction or waiver of conditions in a voluntary bid, including a condition of obtaining acceptances for 90% of the capital and voting rights, must be published by way of an addendum to the offer document prior to the expiry of the acceptance period. In practice, this has meant that in case of doubt as to the fulfilment of the conditions, the offeror has had to make an addendum to the offer document (and often several alternatives) and to have such addendum approved in advance by the Financial Supervisory Authority and published prior to the end of the time limit for acceptance, with a resulting automatic extension of the offer period by two weeks.</p> <p>A waiver or reduction of conditions in a voluntary bid can be made only if this means an improvement of the offer.</p>	<p><i>Relaxation</i> The offeror now has 18 hours in which to make a decision on whether to extend or complete the offer (see below), including whether to waive or reduce any conditions.</p> <p>The current practice established by the Financial Supervisory Authority will be maintained, i.e. that if an offeror intends to waive or reduce a condition, for instance the condition of obtaining acceptances for 90% of the capital and voting rights, this requires the publication of an addendum to the offer document, with a resulting automatic extension of the offer period by two weeks. Consequently, with the new maximum offer period of 10 weeks, the offeror cannot waive or reduce conditions after week 8.</p> <p><i>Possible relaxation</i> Conditions in a voluntary bid can be waived or reduced without having to assess whether this means an improvement of the offer.</p>

The current rules	Amendment
<p>Notification of the result The final result must be published within three days of the end of the offer.</p>	<p>New provision Within 18 hours of the end of the offer period, the offeror must publish an announcement about whether the offer will be extended or ended. The announcement must state the preliminary result. The final result must still be announced within three days of the end of the offer.</p>
<p>Competing bids The offeror must state in the offer document whether acceptance of the offer is binding in the event of a competing bid.</p>	<p>Tightening Any shareholders who have accepted the offer have three days in which to withdraw their acceptance after the publication of the competing offer document. The offeror is thus prevented from retaining acceptances received by matching the competing bid - typically within a short period.</p>

Contact

Bech-Bruun is one of Denmark's leading full-service law firms. From our offices in Copenhagen, Aarhus and Shanghai, we provide advice on all aspects of corporate and commercial law to Danish and international companies, organisations and public authorities.

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