The Acquisition and Leveraged Finance Review

Sixth Edition

Editor
Marc Hanrahan

The LawReviews

The Acquisition and Leveraged Finance Review

Sixth Edition

Reproduced with permission from Law Business Research Ltd
This article was first published in December 2019
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Marc Hanrahan

The Law Reviews

PUBLISHER
Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

BUSINESS DEVELOPMENT MANAGER
Joel Woods

SENIOR ACCOUNT MANAGERS
Pere Aspinall, Jack Bagnall

ACCOUNT MANAGERS
Olivia Budd, Katie Hodgetts, Reece Whelan

PRODUCT MARKETING EXECUTIVE
Rebecca Mogridge

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Tommy Lawson

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Martin Roach

SUBEDITOR
Keely Shannon

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd, London
Meridian House, 34-35 Farringdon Street, London, EC4A 4HL, UK

www.TheLawReviews.co.uk

ISBN 978-1-83862-077-6

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ADVOKATFIRMAET BAHR AS

A&L GOODBODY

ANDERSON MŌRI & TOMOTSUNE

BECCAR VARELA

FELLNER WRATZFELD & PARTNERS

GILBERT + TOBIN

GOODMANS LLP

HANNES SNELLMAN ATTORNEYS LTD

HEUSSEN

KOLCUOĞLU DEMİRKAN KOÇAKLI ATTORNEYS AT LAW

MAGNUSSON DENMARK

MILBANK LLP

NASSIRY LAW

PINHEIRO NETO ADVOGADOS

TIAN YUAN LAW FIRM

URÍA MENÉNDEZ ABOGADOS, SLP

WALDER WYSS LTD

WOLF THEISS FALUDI ERŐS ATTORNEYS AT LAW

CONTENTS

PREFACE

Leveraged finance, particularly with respect to acquisition financing, has been an expanding asset class for many years. As of the fourth to quarter of 2018, leveraged loans outstanding totalled US$1,147 billion and high-yield bonds outstanding totalled US$1,256 billion. The average annual growth rate for leveraged loans outstanding (2000–2018) equalled 15.8 per cent and for high-yield bonds (1997–2018) equalled 6.5 per cent.[1] In 2018, leveraged finance loan totals for acquisition finance surpassed the previous records set in 2007.[2]

The leveraged finance markets and these markets' participants grow deeper and more sophisticated year over year. The playing field for acquisition finance, particularly for private equity deals, remains in large part an issuer-controlled game with an increasing number of new financing sources clamouring to become involved. As has been noted by many, credit controls (covenants and collateral coverage) remain soft and continue to weaken in some cases. That said, default rates are at the low end of the historical range and new piles of capital continue to be accumulated to support acquisition financing. As discussed in the Introduction that follows, regulators are indicating concern about the leveraged loan market in the case of an economic downturn but, to date, that does not seem to have stifled the appetite for new deals and associated financings.

For lawyers, this is a great area of practice. There is lots of activity given the size of the asset class; everything from new issuance, to refinancings, to work outs and insolvency proceedings. But to be an effective practitioner in the area, more is required than occasionally dabbling in leveraged finance transactions. Most lawyers who successfully practice in leveraged finance do it full time. Knowing 'market terms' is considered to be very helpful, if not critical, to success in this area.

This volume is intended to introduce the newcomer to the legal basics involved in leveraged finance, particularly acquisition finance, so that he or she is grounded in the underpinnings of the practice area. It is also intended to be a helpful update for the more seasoned practitioner with respect to what is new and what is being talked about in leveraged finance deals.

1 Source: Financial Stability Report of the Board of Governors of the Federal Reserve System, May 2019.

2 2018: U.S. Primary Loan Market Review, LSTA 3 January 2018.

Thanks to my partners Casey Fleck and Doug Landy, and my associates Chris Hahm, James Kong and George Miller, for their help in editing the volume and preparing the Introduction that follows.

Marc Hanrahan
Milbank LLP
New York, NY
September 2019

Chapter 14

NORWAY

Markus Nilssen, Magnus Tønseth and Audun Nedrelid[1]

I OVERVIEW

Bank lending remains the main source of debt capital in the Norwegian acquisition financing market, although the introduction of more rigid capital adequacy rules in recent years have limited the growth in bank lending of Norwegian banks during the past few years. Lending is, however, a strictly regulated activity in Norway, meaning that debt funds and other specialist financing providers are not as active in Norway as in many other jurisdictions. Any shortfall in bank lending has primarily been covered by tapping into Norway's very active high yield bond market where the internationally oriented business areas such as shipping and offshore service suppliers in particular have been able to raise asset-secured debt capital. The high yield bond market has, in addition to traditional corporate financing, to a certain extent also been used as a source for financing of acquisitions, and this is a trend that must be expected to continue in the years to come. For the time being, bank financing is, however, by far the largest source of debt capital financing, also due to the fact that the largest M&A transactions have involved players in the field where the Norwegian and Scandinavian banks have traditionally been substantial players also on an international basis. The largest M&A transactions in value during 2018 were seen within the energy, mining and utilities sector with a total deal value of US$3.7 billion in 2018 according to Mergermarket. There are no immediate signs that this trend will not continue at least into 2020.

II REGULATORY AND TAX MATTERS

Norway currently has strict financial assistance rules in force, which means that a Norwegian company may only grant guarantees or security, or advance funds in connection with an acquisition of the shares in the Norwegian entity or the parent company of such entity, with very strict limitations. The consequence of these limitations is that guarantees and security granted by a Norwegian target company and its subsidiaries will typically only extend to the amount of debt already incurred by Norwegian entities and refinanced as part of the acquisition. There is an exemption for acquisition of single-purpose entities owning real estate, which may nevertheless mortgage their properties in connection with the purchase of the shares in the single-purpose owner (thereby aligning the rules whether the property itself is sold or only the shares in a single-purpose entity with the sole purpose of owning

1 Markus Nilssen, Magnus Tønseth and Audun Nedrelid are partners at Advokatfirmaet BAHR AS.

the property). The consequence of the above exemption for real property is that acquisition financing involving real property special purpose vehicles can often obtain favourable pricing compared with other acquisitions that do not obtain a similarly strong security package.

It has been suggested that the strict Norwegian financial assistance prohibitions should be softened so that also Norwegian target companies and their subsidiaries should be able to grant guarantees and security in favour of a lender to the purchaser of its shares, and it is expected that a relaxation of these rules will be adopted some time during 2020. However, for the time being there is no clarity as to how the new rules will look, and updated advice should be sought before structuring a financing of a Norwegian target company.

The way the financial assistance prohibition is typically dealt with under the current rules is nevertheless to obtain the usual security package consisting of guarantees and security documents from the target company and its subsidiaries (as obtaining security is not costly in Norway), but adding appropriate limitation language ensuring that the security and the guarantee obligations incurred will only extend to the amount allowed under the law from time to time. In this way, it will be a factual matter how strong the security that is obtained from the target group turns out to be under the specific acquisition financing in question.

As a result of the above financial assistance restrictions as currently in force, lenders must rely to a larger extent on negative pledge clauses and prohibitions against additional financial indebtedness in the target group in order to get the same level of comfort. It is, therefore, our impression that Norwegian acquisition financings have generally had less flexibility for the borrower and its subsidiaries under Norwegian law.

The prohibition that a Norwegian target entity may not advance funds to the benefit of a purchaser of shares in the company will not prohibit the Norwegian target from distributing ordinary dividends to the purchaser.

Lending is a strictly regulated activity in Norway, and a licence or a passport as a bank or other credit institution is needed to conduct lending activities. Norway is not a member of the EU, but through the European Economic Area (EEA) Agreement it is committed to implementing the relevant directives for the finance industry. This means that the free establishment rule applies for EEA banks wishing to provide lending products and services in Norway, and for Norwegian banks wishing to provide similar products and services in the EEA.

The EU's banking prudential requirements (CRDIV/CRR) will soon be fully implemented in Norway, thus levelling the regulatory playing field between Norwegian banks and foreign banks operating in the Norwegian market through branches or cross-border passports. Further, a legislative proposal for implementation of the EU's securitisation regulation in Norwegian law was launched in the second quarter of 2019 and will be followed up in the second half of 2019 and into 2020. While these legislative acts will require certain amendments to current Norwegian banking law, we do not expect any radical changes to the current legislative environment for banking activities in Norway.

Over the next few years, the new prudential requirements to be introduced by the EU's 'Risk Reduction Package' (which includes CRD V, CRR 2 and BRRD 2) will continue to have an impact on the activities of Norwegian banks. The BRRD was implemented in Norway with effect from 1 January 2019, and it remains to be seen how the Norwegian FSA will approach the 'bail-in' regime under BRRD in relation to Norwegian banks, including in particular the requirement for in-scope banks to hold a sufficient amount of 'bail-in' capital. Some instruments may have to be refinanced or renegotiated to qualify, and banks continue to use a substantial part of their profits to strengthen equity.

The upcoming amendments to Norwegian law and the EEA Agreement are expected to result in less 'gold plating' and special Norwegian rules for banks and other financial market participants in the future. Norwegian authorities will need to pay increased attention to EEA-relevant financial markets legislation coming out of the EU, and will have less freedom to implement bespoke domestic solutions.

Norwegian borrowers are currently not subject to withholding taxes on payments to lenders. Legislative committees have suggested that Norway should also implement withholding taxes on payments on (inter alia) interest payments; however, no specific suggestion for changing the law has been proposed and it is therefore currently uncertain as to what form such withholding tax on interest on payments would take, if ever even suggested. It should be noted that Norway has a large number of double tax treaties with other jurisdictions where the right to charge withholding taxes to parties in the other jurisdiction is waived by Norway, and as such it is, therefore, likely that even if Norwegian authorities decide to implement withholding taxes in Norway, it will probably take some time before the legal basis for claiming withholding tax becomes effective towards lenders in a large number of jurisdictions.

To prevent tax base erosion and profit shifting out of Norway, there are limitations on the level of interest costs that are allowed for tax deduction in Norway (basically calculated as a formula on taxable EBITDA of the Norwegian entities). Both interest paid to related and non-related lenders (i.e., banks and bondholders) can at the outset be subject to a limitation of tax deduction such that tax deduction of interest costs will be allowed for a Norwegian borrower in a corporate group if the equity ratio of the company or the Norwegian part of the corporate group is at least as high as the equity ratio of the corporate group as a whole (implying that corporate groups with only Norwegian entities will be allowed full tax deduction on interest costs). Note, however, that interest costs paid by a Norwegian borrower to related lenders outside a corporate group can still be subject to limitation of tax deduction, and Norwegian tax advice should be obtained early when setting up a holding structuring for acquiring a Norwegian company from abroad.

The standard LMA FATCA riders are customarily included in loan agreements made under Norwegian law. Norway and the United States have entered into an agreement of automatic exchange of tax-relevant information, thereby limiting the risk of any FATCA liabilities for Norwegian lenders. No Norwegian stamp or documentary taxes are applicable in connection with the establishment, trading or enforcement of a loan under Norwegian law. Perfection or registration costs for security and court fees for enforcement procedures are nominal only and unrelated to the amount of the loan or security in question.

III SECURITY AND GUARANTEES

Granting of guarantees and uptake of security from the target company and its (material) subsidiaries is common in Norwegian acquisition financings. Obtaining security is straightforward in Norway, and there are only nominal registration fees involved in the uptake of security. Norway currently has strict financial assistance rules in force, which means that a Norwegian company may only grant guarantees or security, or advance funds in connection with an acquisition of the shares in the Norwegian entity or the parent company of such entity, within very strict limitations. The consequence of these limitations is that guarantees and security granted by a Norwegian target company and its subsidiaries will typically only extend to the amount of debt already incurred by Norwegian entities and refinanced as part of the acquisition. There is an exemption for acquisition of single-purpose entities owning real estate, which may nevertheless mortgage their properties in connection with the purchase of the shares in the single-purpose owner (thereby aligning the rules whether the property itself is sold or only the shares in a single-purpose entity with the sole purpose of owning the property). The consequence of the above exemption for real property is that acquisition financing involving real property special purpose vehicles can often obtain favourable pricing compared with other acquisitions that do not obtain a similarly strong security package. It has been suggested that the strict Norwegian financial assistance prohibitions should be softened so that Norwegian target companies and their subsidiaries should also be able to grant guarantees and security in favour of a lender to the purchaser of its shares, and it is expected that a relaxation of these rules will be adopted some time towards the end of 2019 with possible implementation from early 2020. There is for the time being, however, no clarity as to what the new rules will look like, and updated advice should be sought before structuring a financing of a Norwegian target company.

The common security package in acquisition financing consists of a charge over the target shares and its (material) subsidiaries, and such share charges are perfected by way of a notice to the company whose shares have been charged. As Norway has implemented the Financial Collateral Directive (Directive 2002/47/EC) obtaining share security under Norwegian law follows a similar approach to that in the EU, and pre-agreed enforcement procedures are commonly included to ensure swift enforcement of shares either by way of appropriation or a pre-agreed sales process.

Mortgages over real registered asset classes are also easily obtained in Norway by filing simple standard forms with the relevant Norwegian registry. Mortgage over real estate is obtained by filing the mortgage form with the Norwegian Land Registry, mortgages over vessels are obtained by filing the mortgage form with the Norwegian Ship Registry and mortgages over aircraft and certain equipment related to aircraft (in accordance with the Cape Town Convention) are obtained by filing a mortgage form with the Norwegian Civil Aircraft Registry.

Generally under Norwegian law, agreeing to a floating charge over all assets owned by a debtor from time to time is not allowed. Much of the same effect can however be achieved, as floating charges over specific asset classes are allowed. This covers floating charges over a debtor's trade receivables outstanding from time to time, its inventory and its operating assets as well as motor vehicles and construction machines. These floating charges are obtained and perfected by way of filing standard forms with the Norwegian Registry of Movable Property. The floating charge over operating assets also comprises all intellectual property used by an entity in its operating business. It is also possible to take out a separate security over patents (and applications for patents), and this security will particularly cover patents that are not used by the debtor in its own operations, but rather developed for sale or licensing to third parties.

Assignment of specific monetary claims is possible and customary under Norwegian law; however, a Norwegian company can only assign as security any future monetary claim for payment in a specifically mentioned legal relationship, and further with the limitation that the contractual position as such cannot be assigned, only the monetary claim itself. In acquisition financing, assignment over specific monetary claims will typically be granted for potential claims against the vendor under the share purchase agreement, alternatively against the insurance company which has issued the M&A insurance policy. Assignments of monetary claims are perfected by notification to the debtor of the claim.

Charges over bank accounts will be possible in the form of an assignment of the monetary claim against the bank for amounts deposited to the account. These charges are usually obtained in leveraged financing, and will cover the amounts standing to the credit of the operating bank accounts of the target and its (material) subsidiaries from time to time.

The way the financial assistance prohibition is typically dealt with under the current rules is nevertheless to obtain the usual security package over the target and its subsidiaries (as obtaining security is not costly in Norway), but adding appropriate limitation language ensuring that the security and the guarantee obligations incurred will only extend to the amount allowed possible under the law from time to time. In this way, it will be a factual matter how strong the security that is obtained from the target group turns out to be under the specific acquisition financing in question. As a result of the above, financial assistance restrictions as currently in force, lenders must rely to a larger extent on negative pledge clauses and prohibitions against additional financial indebtedness in the target group in order to get the same level of comfort. It is, therefore, our impression that Norwegian acquisition financings have generally had less flexibility for the borrower and its subsidiaries under Norwegian law. We expect a trend towards more flexibility for the bidco and the target group with the expected changes to the financial assistance rules from 2020.

Norwegian law does not recognise the concept of 'trust' as known in English law, but it is possible for one entity to hold a security interest on behalf of itself and others. As such, the transaction security in a Norwegian acquisition financing is typically held by a security agent appointed to act on behalf of all of the finance parties. The security agent can be one of the banks party to the transaction or an independent entity. Under Norwegian law, only creditors to a claim may have standing before the courts of Norway. In practice this only has procedural implications, but may entail that all the secured creditors having an interest in the security may participate as joint plaintiffs in a court case involving the security interest in Norway, as the court may decide that the true beneficiaries of the security interest should act as the true party to the case and not through a security agent as its representative.

Generally, under Norwegian law, hardening periods may arise for security granted for debt already incurred. Due to the financial assistance rules that generally limit the value of security and guarantees obtained from the target group, it is nevertheless common to have a clean-up period for 30 to 90 days after the closing of an acquisition in order to bring the security from the target group in place.

The prohibition that a Norwegian target entity may not advance funds to the benefit of a purchaser of shares in the company will in any event not prohibit the Norwegian target company from distributing ordinary dividends to the purchaser.

Norwegian entities (and their boards of directors) will generally have an obligation to act in the best interests of the company, and ensure that there is sufficient corporate benefit when undertaking a transaction. This will as a general rule also apply to the granting of guarantees to related parties. Calculating the actual arm's-length consideration for a guarantee or security interest under Norwegian law can be complicated, but lenders should make sure that arrangements are in place ensuring that arm's-length provisions are paid to protect their security position as this will typically be an assumption under the relevant legal opinions granted in favour of the lenders. It is expected that this will be an even more important issue with the new financial assistance rules from 2020.

IV PRIORITY OF CLAIMS

Pursuant to the Norwegian Mortgage of Act of 1980 No. 2, the bankruptcy estate of any bankrupt party that has encumbered any of its assets as security for obligations owed, has a statutory lien over any such encumbered assets as well as over assets that a third party has encumbered as security for the obligations of the bankrupt party, except for assets that are charged as security in accordance with the Norwegian Financial Collateral Act of 2004 No. 17. The statutory bankruptcy lien, however, will not apply to share charges. Other than for this exception, the statutory lien has priority over all other liens or security interests in the relevant asset, regardless of whether the other liens or security interests have been created voluntarily or involuntarily.

The statutory lien for the bankruptcy estate is limited to 5 per cent of the value of, or sales proceeds for, the encumbered asset. The statutory lien is limited to a maximum amount equal to 700 times the court fee (which at present means a maximum amount of 805,000 kroner) in respect of each mortgage over real estate and for mortgages over other assets registered in registries which are designating property rights by the specific asset, such as for vessels, aircraft and similar. The bankruptcy estate may only apply proceeds from the statutory lien to pay for necessary expenses.

Municipal real estate taxes will also have a preferred standing compared to other liens in bankruptcy, as will salvage claims and certain other customary maritime liens. Ordinary tax claims, such as for income tax or unpaid VAT, will not get a preferred standing in a Norwegian bankruptcy.

Other than the above, no statutory claims will prime a non-voidable security interest. Norwegian law provides detailed regulations as to the order of payments made with proceeds from the unsecured assets of a debtor during the bankruptcy proceedings.

Contractual subordination is recognised and customary under Norwegian law, and may generally take two different forms. The first possibility is to agree to grant a fully subordinated loan (labelled as such), which under Norwegian law is recognised as a separate class of loan that ranks behind all *pari passu* debt (whether secured or unsecured), but ahead of equity claims from shareholders. In the event of a bankruptcy of the borrower of the subordinated loan, the creditor of a fully subordinated loan will not be able to claim any dividend on the fully subordinated loan unless all the *pari passu* debt (as well as the prioritised claims, e.g., necessary expenses of the bankruptcy estate) have been paid. The second possibility is to agree to a contractual subordination and turnover in favour of another creditor (typically a bank) of claims of an ordinary *pari passu* claim against the borrower. In the event of a bankruptcy involving the borrower in such a scenario, the holder of the loan will claim against the borrower in the bankruptcy as normal, but any dividend received from the bankruptcy estate will, in accordance with the subordination and turnover agreement, be turned over to the other party (typically the bank), in accordance with the contractually agreed terms and without involvement of the bankruptcy estate.

Intercreditor agreements regulating security sharing are also customary and its content will vary depending on the structure and type of financing in question. The traditional security structure under Norwegian asset financings has been that of first and second priority security in the same asset, typically with a bank having first priority security in the asset and the junior creditors such as, for example, bondholders having second priority security. The intercreditor arrangements in such a setting would customarily revolve around enforcement rights, standstill periods and cash distribution waterfall, sometimes also with a purchase option for second priority security holders to purchase the first priority collateral position.

V JURISDICTION

Norwegian entities are as a general rule free to enter into contracts governed by foreign law and subject to the jurisdictions of non-Norwegian courts, however, with a caveat that a Norwegian company will usually not be able to circumvent statutory provisions under Norwegian law by way of choosing foreign law as the governing law of the contract.

For contracts governed by the laws of a state that is party to the Lugano Convention of 2007 concerning the recognition and enforcement of judgment in civil cases, a final and conclusive judgment obtained in the courts of the jurisdiction would be enforced by the courts of Norway without re-examination of the merits of the case, all subject to the terms of the Norwegian Dispute Act of 2005 No. 90.

A judgment of a foreign court or tribunal of a state that is not party to the Lugano Convention will also be directly enforceable in Norway under the following circumstances. The judgment is enforceable if it satisfies the requirements for enforceability under any applicable convention for enforcement of foreign judgments to which Norway and the country where the judgment had been passed are parties, and further so that a judgment by a foreign court or tribunal will be recognised and enforced by the courts of Norway if (1) the respective parties thereto have submitted in writing to the jurisdiction of an agreed court or tribunal in respect of the matter in dispute; (2) there is no other mandatory venue for the dispute; (3) the judgment obtained is final and enforceable in and pursuant to the laws of the country where it has been passed; and (4) the acceptance and enforcement of the judgment shall not be in conflict with decency or Norwegian mandatory law or public policy.

Norwegian courts may, in certain circumstances, demand upon application from a defendant, that a plaintiff from a state which is not party to the European Economic Area provides security for costs in connection with the court case.

With regard to liability for damages that arise outside of contract, Norway has not implemented Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II). Norwegian courts would in this event determine that the correct legal venue for resolving legal disputes relating to claims that arise outside of contract will be the jurisdiction that has the closest connection to the dispute based on an overall assessment.

VI ACQUISITIONS OF PUBLIC COMPANIES

The acquisition of companies, Norwegian and foreign (with a few exceptions), listed in Norway is subject to special regulations partly based on Directive 2004/25/EC on takeover bids (the Takeover Directive), which has been adopted by Norway. The Takeover Directive includes:

a notification requirements;
b insider trading and inside information restrictions;
c shareholder disclosure requirements; and
d various requirements for voluntary and mandatory offers.

Shareholding disclosure requirements are triggered when a party acquires the following amounts of share capital or votes in the listed target company or reduces its holdings below these levels, requiring the holder to announce its holdings to the market:

a 5 per cent of share capital or votes;
b 10 per cent of share capital or votes;

c 15 per cent of share capital or votes;
d 20 per cent of share capital or votes;
e 25 per cent of share capital or votes;
f one-third of share capital or votes;
g 50 per cent of share capital or votes;
h two-thirds of share capital or votes; and
i 90 per cent of share capital or votes.

This includes options and other rights to shares held by a company or its close associates. The reference to voting will mean that share charges may fall within the notification rules if there are agreed procedures or proxies, or both, for voting under the share charges, and legal advice should, therefore, be obtained before charging shares in a listed entity as security in favour of lenders.

A requirement to make a mandatory offer for the shares in the target is triggered when the buyer acquires more than one-third of the voting rights in the target (with repeat triggers at 40 per cent or more and 50 per cent or more of the ownership of the shares or voting rights of the listed company). It is possible to avoid the mandatory offer obligation by selling down below the threshold within four weeks of acquiring the shares that triggered the mandatory offer obligation.

Voluntary and mandatory offers must be notified to, and published by, the Oslo Stock Exchange. An offer document must be prepared in connection with an offer and must be approved by the Oslo Stock Exchange in advance. The offer document must be distributed to all shareholders of the target and made known to all its employees.

A mandatory offer must offer a pure cash alternative, but may also offer alternative forms of consideration. Further, a mandatory offer must be unconditional whereas a voluntary offer can be made conditional (for example, on receipt of 90 per cent acceptance or approval from relevant authorities). The buyer must treat all shareholders equally, although different classes of shares can be treated differently.

Settlement of a mandatory offer must be backed by a bank guarantee from a bank authorised to carry out business in Norway.

It is important to be aware that several industries in Norway are regulated to varying degrees, implying that acquisitions of controlling or large stakes in companies operating in these industries will be subject to approval from the relevant authorities (including listed entities). This includes banks and financial institutions, insurance companies, acquaculture business and companies involved in petroleum exploration and production as well as pipeline transportation.

If the purchaser holds 90 per cent or more of the shares of the target and a corresponding proportion of the votes that can be cast at general meetings of the target, the buyer has the right to acquire minority shareholdings on a compulsory (squeeze-out) basis (and minority shareholders have a right to demand that the bidder makes a compulsory acquisition).

VII THE YEAR IN REVIEW

In July 2018, Nordea announced its acquisition of Gjensidige Bank from Gjensidige Forsikring ASA. Following regulatory approval, the deal was completed in March 2019, and the acquisition will strengthen Nordea's presence as the second largest bank in the Norwegian market second only to DNB Bank ASA.

VIII OUTLOOK

Norway has an open and internationally oriented economy, heavily influenced by the developments in the oil and offshore sectors. As such, fluctuations in the price of oil and gas will evidently affect activity in the Norwegian economy and thereby also M&A activity (both directly, through acquisitions in the oil and oil services sectors when the oil price is high, and indirectly through a stronger economic sentiment with higher oil prices). Given a steady state in the international financial markets going forward, and stable oil prices, we expect that economic activity in Norway will retain its positive momentum for the next few years.

M&A activity within the oil sector, which has been high over the last couple of years, is expected to continue as a main driving force for high value transactions. The oil service and shipping sectors have been struggling for some time, and there are no immediate signs of an upturn for most segments. We would expect consolidations of smaller players to be part of a long term solution in order for these industries to bring the supply back to balance during the next couple of years.

Further, it is expected that the development of new technological solutions within the banking sector will lead to changes in the way banks operate, not only with regard to payment services but also when it comes to credit decisions and lending. As such, it is expected that fintech and digitalisation in time will increase competition generally in the Norwegian banking sector. New market participants (e.g., Google, Amazon and Facebook) and new techniques (e.g., fintech) for providing financial services will challenge the current market participants and practices. New techniques also bring the need for updated regulations. We expect that fintech will have a more dominant role in the banking sector in 2020 and onwards.

Directly related to the acquisition financing market, new legislation as to whether there will be an easing of the strict financial assistance rules for Norwegian companies must be considered to have a significant impact on the market if and when implemented as expected – probably from some time in 2020.

Appendix 1

ABOUT THE AUTHORS

MARKUS NILSSEN

Advokatfirmaet BAHR AS

Markus Nilssen is a partner of the bank and financing group at BAHR, specialising in capital markets and financial regulations. In addition to being a regulatory expert, he also has a broad experience from advising on various types of corporate and financial arrangements and transactions, including securitisation and other structured finance transactions, factoring, public M&A and general corporate finance work.

MAGNUS TØNSETH

Advokatfirmaet BAHR AS

Magnus Tønseth is a partner of the bank and financing group at BAHR and advises bank lenders and arrangers, investment banks and borrowers on bank and bond financings and financial restructurings. He has particularly extensive experience within the energy, shipping and offshore sectors, often involving complex legal structures and high value assets across multiple jurisdictions, and has also worked widely with private equity acquisition financing.

AUDUN NEDRELID

Advokatfirmaet BAHR AS

Audun Nedrelid is a partner of the bank and financing group at BAHR, and he specialises in debt capital markets both within the bank and bond market. He has extensive experience with negotiating syndicated loan agreements especially within the areas of corporate financing, acquisition and project financing, as well as bond agreements and combined bank and bond structures with appurtenant intercreditor issues. He advises borrowers, bank lenders and arrangers and investment banks.

ADVOKATFIRMAET BAHR AS
Tjuvholmen allé 16
Oslo
Norway
marni@bahr.no
magto@bahr.no
aun@bahr.no
Tel: +47 21 00 00 50
www.bahr.no

an **LBR** business

ISBN 978-1-83862-077-6