

Corporate Finance/M&A - Norway

Amending the financial assistance legislation

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[Financial assistance to shareholders](#)

[Financial assistance in relation to acquisition of shares](#)

[Penalties](#)

A report recently prepared for the Department of Justice has suggested amending several of the rules governing private and public limited companies, including the financial assistance regulations.

Financial assistance to shareholders

According to the existing financial assistance regulations, a Norwegian subsidiary may guarantee or secure the obligations of a shareholder, a party closely related to the shareholder or a shareholder in another company in the same group only within the limits of the assets which the subsidiary may use for the distribution of dividends and only if adequate security is furnished for the repayment or recovery claim.

Such limitation shall not apply to a guarantee or security for the benefit of a parent company or another company in the same group, subject, however, to the qualification that such exception applies to Norwegian parent and group companies, and to a parent company or other group company based in a country which is a part to the European Economic Area (EEA) and which is subject to corresponding or more stringent legislation than the Norwegian financial assistance legislation.

The Norwegian preparatory works state that when comparing the legislation of another EEA member state to the Norwegian company legislation, it should be emphasised whether the foreign legislation protects the motives of the Norwegian rules (eg, a prohibition against weakening the company's capital). However, a lawyer qualified in Norway may not carry out the comparative study which the legislation calls for, and no authoritative comparative study appears to be available.

The report suggests the removal of the existing uncertainty by excluding the comparative law criteria, and thus including all parent companies and group companies based in an EEA country. In addition, it suggests giving the regulators an option to include companies also based outside the EEA.

Financial assistance in relation to acquisition of shares

The existing financial assistance rules prohibit companies from making assets available, granting a loan or putting up security in connection with the acquisition of shares in the company or shares or units in its parent company (including the ultimate parent company).

The report suggests that this prohibition be amended so that a company may make assets available, grant a loan or put up security in connection with the acquisition of shares in the company or shares or units in its parent company (including the ultimate parent company) within the limits of the assets which the company may use for the distribution of dividends and only if adequate security is furnished for the claim for repayment or recovery. The company's financial assistance shall be based on reasonable commercial terms and conditions, and may take place only in relation to fully paid-up shares.

The report also suggests that financial assistance in relation to the acquisition of shares on the terms set out above shall be approved by both the company's board of directors and a shareholder meeting.

Penalties

The consequence of granting credit or security in contravention of the financial

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assistance rules is that the transaction will be invalid. However, if security has been furnished, invalidity may not be invoked against a contracting party which showed due care and acted in good faith when the security was furnished. A financial institution cannot expect to be considered to have acted in good faith if the rules set out above are breached.

In addition, directors who wilfully or negligently approve or enter into an arrangement in breach of the financial assistance regulations may be held economically responsible for any loss suffered by the company, and furthermore may be subject to criminal liability and punishment.

For further information on this topic please contact [Paul Sveinsson](#) or [Kristin Trægde Hauger](#) at [Arntzen de Besche Advokatfirma AS](#) by telephone (+47 23 89 40 00), fax (+47 23 89 40 01) or email (paul.sveinsson@arntzendebesche.no).

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