

Advokatfirmaet Schjødt AS
Att: Viggo Bang-Hansen

Sent by e-mail to vbh@schjodt.no

Your ref:

Our ref:

Date: 2 July 2015

Interoil Exploration and Production ASA - Exemption from mandatory bid obligation

1 Background

Reference is made to the letter from Schjødt dated 15 April 2015, the subsequent e-mail from Schjødt dated 22 June 2015 (together the “**Letter**”) and follow-up communication, where Schjødt, on behalf of Andes Energia Plc (“**Andes**”) applies for an exemption from the mandatory bid obligation, cf. the Norwegian Securities Trading Act section 6-2 (3), in connection with a contemplated transfer of shares in Interoil Exploration and Production ASA (“**Interoil**” or “**IOX**”).

Based on the description set out in the Letter, Andes currently holds 330,042,176 shares in Interoil (the “**IOX Shares**”), representing approximately 51.02% of the outstanding shares and votes in the company. Andes is in the process of considering how to structurally optimize its shareholding in Interoil. The IOX Shares are currently held by the listed UK topco of the Andes group, but Andes is considering whether tax, corporate and strategic considerations may indicate that a more efficient ownership structure could be established by transferring the IOX Shares to a subsidiary of Andes (the “**Newco**”).

Upon establishment and transfer of the IOX Shares to Newco, Oslo Børs understands that Newco will be owned solely by Andes, but that Andes is in the process of discussing certain strategic options with respect to Interoil, one of which includes partnering with another public oil & gas company. If such avenue is pursued and any transaction completed, Oslo Børs has been informed that this could involve such partner taking an up to 49% ownership interest in Newco.

Oslo Børs understands that Andes’ shareholding shall not be reduced below 51% in Newco and that Andes shall retain control in Newco.

2 Exemption for the mandatory bid obligation

The transfer of the IOX Shares from Andes to Newco will trigger the obligation to launch a mandatory offer pursuant to section 6-1 (1) of the Norwegian Securities Trading Act (2007) (the “**STA**”), cf. section 6-1 (6). However, in accordance with the STA section 6-2 (3), Oslo Børs may in “special cases” (Nw. “*særlige tilfeller*”) grant an exemption from the mandatory bid obligation if the shares are acquired by someone with whom the acquirer is consolidated pursuant to the STA section 6-5, cf. section 6-1 (6). Pursuant to the preparatory works for the STA, NOU 2005:17 and Odelsting Proposition (white paper)

No. 34 (2006-2007), the main assessment regarding whether or not an exemption from the mandatory bid obligation should be granted is whether the transfer represents a change of control or is part of a chain of transactions that may lead to a change of control.

Exemption from the mandatory bid obligations in accordance with the Securities Trading Act 1997

The Securities Trading Act of 2007 introduced an authority to Oslo Børs, in its capacity as take-over authority, to grant exemptions from the mandatory bid obligation (with effect from 1 January 2008). Under the terms of the Securities Trading Act of 1997, intra group acquisitions were exempted based on a restrictive interpretation of the rules regarding the mandatory bid obligation. Exemptions were mainly accepted in connection with transfers to wholly owned subsidiaries established for this purpose, but in certain cases, exemptions were also accepted *inter alia* in the event of transfers between companies held by the same person. Furthermore, Oslo Børs has previously stated that no exemptions should be accepted based on a restrictive interpretation of the STA 1997 in connection with transfers to partly owned subsidiaries; see *Decisions and Statements 2007 - item 6.2.10 (Solstad Offshore ASA)*.

In a decision included in *Decisions and Statements 2007 - item 6.2.15*, Oslo Børs accepted exemption from the mandatory bid obligation where the listed shares were transferred to a wholly owned subsidiary in which the ownership was reduced to 60% following the share transfer. In this specific case, Oslo Børs found that the majority owner would retain significant influence through its 60%-ownership and thus the transaction did not trigger a change of control in the listed company.

Exemption from the mandatory bid obligation based on an application pursuant to the STA 2007

Instead of continuing the restrictive interpretation of the statutory law, the STA 2007 introduced an authority for the take-over authority to grant exemptions from the mandatory bid obligation in certain cases, cf. the STA section 6-2 (3). The preparatory works discuss the basis for such authority and provides some guidance on which cases that may be considered as “special cases”, cf. NOU 2005:17 p. 26 et seq. (*office translation*):

“The Committee underlines that the rules regarding the mandatory bid obligation should not prevent practical restructuring within corporations. On the other hand, the Committee expresses concern that exemptions may undermine the mandatory bid obligation in connection with an isolated transaction or a chain of transactions that in fact leads to a change of control.

With regard to intra-group transfers, the Committee is of the opinion that the mandatory bid obligation should not be triggered in connection with transfer of shares to a wholly owned subsidiary established for this purpose. There may also be other transfers within a consolidated group pursuant to the STA (1997) section 1-4 no. 3 and 4, that could allow exemptions from the mandatory bid obligation. Firstly, it is a question of whether transfers to a wholly owned subsidiary whose principal activity is different from holding the listed shares and transfers to subsidiaries that is owned by less than 100% would be in line with the statement made by Oslo Børs included above”.

The Stock Exchange Appeal Committee has in a prior case, included in *Decisions and Statements 2010 page 79 (Rieber & Søn)*, provided a statement regarding the significance of the practice and decisions made pursuant to the STA 1997:

“Prior practice has relevance explaining the background for the implementation of the statutory exemption, but it is the application of the new regulation and the exercise of the discretion specified in the preparatory works that will be decisive.”

Oslo Børs is of the opinion that the STA section 6-2 (3) and the preparatory works allow an exemption from the mandatory bid obligation in the event of a transfer of listed shares to a partly owned subsidiary in certain cases, provided that the transaction does not represent a change of control or is part of a chain of transactions that may lead to a change of control.

3 Oslo Børs’ consideration regarding an exemption from the mandatory bid obligation for Andes

Change of control

In accordance with the preparatory works and previous statements by Oslo Børs, Oslo Børs is of the opinion that the transfer of the IOX Shares to Newco as a wholly owned subsidiary of Andes will be eligible for an exemption under the STA section 6-2 (3).

When determining whether an exemption may also be granted based on the potential subsequent transfer of 49% of the shares in Newco to a third party it must be considered whether Andes will retain sufficient control in Newco through its ownership.

Based on the information provided in the Letter and the follow-up communication with Schjødt, it is expected that Andes will enter into a shareholders’ agreement with the new minority shareholder. Oslo Børs has been informed that the shareholders’ agreement will contain customary provisions with respect to Newco, such as governance, drag- and tag-along rights, board representation etc. The shareholders’ agreement will however not entail any shift in the economic or organizational control of the IOX Shares. As a 51% shareholder in Newco, Andes will retain 51% of the voting rights in Newco and will appoint the majority of directors in Newco. The minority shareholder will be entitled to board representation and certain decisions relating to capital expenditures and liabilities of Newco will require approval from the minority shareholder. Oslo Børs understands that these rights will not extend to Interoil, i.e. that the minority shareholder will not be entitled to Board representation in Interoil.

Based on the above, Oslo Børs is of the opinion that the transfer of the IOX Shares to Newco and a subsequent reduction of the share ownership in Newco to 51% does not represent a change of control or is part of a chain of transactions that may lead to a change of control in Interoil.

Conditional resolution to grant an exemption from the mandatory bid obligation

The preparatory works state that the take-over authority may include conditions when granting exemptions from the mandatory bid obligation, including that later occasions may trigger the mandatory bid obligations, cf. NOU 2005:17 p. 27 (*office translation*):

“The take-over authority may in accordance with customary principles of administrative law make conditions for exemptions, inter alia that the mandatory bid obligations will be triggered by a subsequent transfer of the shares in the intermediate company or by a subsequent transaction that represents a change of control.”

On this basis, Oslo Børs will make an exemption conditional upon Newco having as its sole purpose to hold the IOX Shares.

4 Subsequent acquisitions

A shareholder who has triggered a mandatory bid threshold as mentioned in the STA section 6-1 or section 6-6 (1) in such a way as not to trigger the mandatory bid obligation, and has therefore not made a mandatory offer, is obliged to make an offer to buy the remaining shares in the company in the case of each subsequent acquisition that increases his proportion of the voting rights, cf. the STA section 6-6 (2).

Andes triggered the mandatory bid obligation in January 2015 when Andes acquired 51% of the share capital in InterOil. In accordance with the STA chapter 6, Andes subsequently made a mandatory offer for the remaining shares in InterOil, published in February 2015.

Shareholders that have previously made a mandatory offer will not be affected by the rules in the STA section 6-6 (2). However, Newco, that is expected to receive the IOX Shares in the contemplated transaction, is a newly established company and has not previously made any mandatory offer to the shareholders in InterOil. Oslo Børs has previously stated that the authority to grant exemptions in the event of intra-group transfers is based on a principle of continuity and that the new owner of the listed shares will undertake the position of the transferring party with regard to the offer obligation for subsequent acquisitions, see *Decisions and Statements 2011 p. 176 (Aker Floating Production)*.

The consequence of the principle of continuity described above, is that Newco following the transfer of the IOX Shares, will be in the same position as Andes was prior to such share transfer. Newco will therefore undertake the position that Andes has today, hereunder the effect of the mandatory offer made by Andes in 2015.

Oslo Børs' considerations regarding the a bid obligation in connection with subsequent acquisitions is not part of Oslo Børs' authority to grant exemptions, and should therefore only be regarded as a statement on the statutory interpretation.

5 Decision

Oslo Børs, in its capacity as take-over authority, has on this basis made the following decision:

An exemption from the mandatory bid obligation will be granted to Andes Energia Plc. pursuant to the STA section 6-2 (3) in connection with the transfer of 330,042,176 shares in InterOil Exploration and Production ASA to a wholly owned subsidiary of Andes, including the potential subsequent transfer of up to 49% of the shares in Newco to a third party, provided that no change of control will occur.

The exemption will be granted on the condition that as from the date of the transfer of the IOX Shares from Andes to Newco and going forward, the sole purpose of Newco will be to hold the IOX Shares.

This decision will be made public on the website of Oslo Børs when Andes has notified Oslo Børs of the transaction. A stock exchange notification describing the transactions and the exemption granted herein shall be issued no later than at closing of the transfer of the IOX Shares from Andes to Newco.

For the sake of good order Oslo Børs informs that this decision may be appealed by persons having a legal interest in an appeal (*Nw: rettslig klageinteresse*).

Yours sincerely
OSLO BØRS ASA

Øivind Amundsen
Executive Vice President
Primary Market & Legal Affairs