GUIDE TO
Private Equity & Venture Capital in the Nordics

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In working with private equity clients, our lawyers take full advantage of the firm’s international experience, including unrivalled knowledge of fund structures across the globe, as well as significant experience with private equity portfolio investments and other minority investments characteristic of funds. This combination of in-depth knowledge and broad-based experience in the many different regions in which we operate enables Debevoise to provide “one-stop shopping” for fund structuring and formation, mergers and acquisitions, buy-side investments, financing, exits (either strategic sale or IPO) and all other investment considerations for our private equity clients.

With the experience of over 200 dedicated lawyers worldwide, our private equity practice has successfully developed a global market leading position.
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Introduction

Welcome to the BVCA *Guide to Private Equity in the Nordics*, the latest in a series of publications produced by the BVCA designed to act as an introduction to international markets and business sectors.

The private equity market in the Nordics – which for the purposes of this edition includes Denmark, Finland, Norway and Sweden – is one of the most successful and active in Europe. Home to some of the leading businesses in the world combined with a strong and stable economy and world-class education system, investment, both foreign and domestic, has rarely been in short supply.

Whilst it has much in common with other developed private equity markets, there are certain details of which any potential investor needs to be aware. This guide will provide an overview of the technical aspects as well as outlining some of the key issues – particularly in regards to regulation and public perception – shaping contemporary trends in the Nordic region.

The BVCA would like to thank bothDebevoise & Plimpton and Andulf Advokat for their help in producing this guide.

*Tim Hames*
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Foreword

Private equity is widely recognised as an important component of the economies of the Nordic region, with a large number of prominent and well-known companies backed by both international and domestic private equity houses alongside an increasing deal flow.

That is not to say it is without its challenges. As in other markets funds are pressed to deliver sustainable healthy returns to investors by adding value to their portfolio companies during challenging economic times. There are also a number of pressure points specific to the Nordics that the private equity industry is faced with, some of which we will address in the forthcoming pages.

This guide aims to serve as an introduction to some of the unique characteristics of the Nordic private equity market, covering fundraising and deal structuring, public perception, corporate governance and how the market is reacting as it transitions from a regulation-light model to new and significant regulation emerging from the European Union.

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Deal activity and structuring

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International private equity investment activity in the Nordic region has increased in the wake of the financial crisis, both in terms of deal volume and amount. It has been estimated that such activity represents slightly more than half of all international investment into the region. Indeed, two of the five largest buyout deals in 2012 were made by international private equity funds.

Trade sales and secondary transactions account for about two-thirds of the exits in the Nordic region, whilst initial public offerings (IPOs) remain low. By sector, ICT, industrial, consumer and life science continue to attract the most interest among private equity funds in the Nordic region. Although the Nordic countries share common features in terms of cultural heritage, the businesses underpinning their economies have different characteristics. Finland and Sweden have strong telecom and industrial sectors, whereas Norway, for example, relies heavily upon offshore and energy related businesses. Denmark, meanwhile, seems to attract particular interest in relation to the consumer and services sectors.

Deal structuring

The international nature of the Nordic economies means that there are rarely any significant hurdles attributable to specific local circumstances in structuring a private equity transaction. The patterns for transactions seem to follow internationally well-recognised approaches in most cases, although careful attention is required in particular to tax matters.

The Nordic economies are relatively transparent, with a significant amount of important information publicly available, with the majority obtainable on-line or easily accessible. Matters such as litigation (including labour disputes), tax debts, intellectual property and general corporate information are good examples. An initial view of a potential target company can be formed without the involvement of the relevant company. However, as public information is not always up to date or completely accurate, it is of course advisable to confirm all information obtained from public sources with the target company as part of an in-depth due diligence.

Nordic companies, including family-owned and other privately held businesses, tend to engage external auditors and often have a structured approach to internal documentation. Minutes from board meetings, shareholders’ registers and similar information are therefore often readily available. While this information does not replace deep diligence of management and stakeholders to analyse a deal opportunity, they are facilitating features of the Nordic deal landscape.

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Fundraising

Nordic institutions have a long-history of investing in private equity funds, both globally and domestically. Among the most active Nordic investors are various state-owned pension funds, insurance companies and banks.

Although these investors operate with certain constraints - such as limitations on exposure to private equity as an asset class, limitations on how much can be invested outside the home country of the state pension funds, and limitations stemming from EU banking regulations - they rarely raise significant structural issues outside of those commonly accommodated by fund managers in response to requests from the broader investor universe.

While some of the investors are opportunistically driven, others rely heavily on asset allocation programs to give them a diversified exposure to various asset classes, geographies and segments of the market at specific times. A number of them also use third party investment advisers in evaluating and ultimately making investments.

To date we have mostly seen Nordic fund investors participate in co-mingled funds. However, as the market for bespoke fund products (so called ‘separate accounts’) continues to expand, we expect that the appetite and demand for such products among Nordic fund investors will increase.

Although many of the Nordic fund investors express an interest in participating in co-invest opportunities alongside private equity funds, we have yet to see consistent and large co-investments from them.

Nordic fund structuring
Historically, funds targeting the Nordic region have been structured as limited partnerships located in Guernsey, Jersey or jurisdictions that provide for structures with similar tax transparent characteristics. However, in the recent past, the market has experienced significant developments. Many Nordic fund managers have sought, or are in the process of seeking, alternative onshore structuring solutions, and looking to base funds in the UK, Luxemburg, Denmark or Sweden.
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Political pressure and public sentiment, as well as tax and regulatory developments, are among the reasons behind this emerging trend. Since many Nordic fund managers have operations in a number of countries, including, in some cases, outside the Nordic region itself, their internal structures are becoming increasingly complex, given the need to address tax, regulatory and other issues in a number of jurisdictions (including transfer pricing issues which are an increasing area of focus from tax authorities).

The Nordic private equity industry has faced a lot of political scrutiny in recent years, including a public debate over the lack of transparency for indirect stakeholders such as pensioners, and the general public. Offshore structures, despite being implemented to achieve tax transparency demanded by various investors, have not been well-received in the media. Fund managers with domestic or other onshore structures have consequently been able to use them as a selling point in attracting certain publicly exposed fund investors and also as an argument to convince owners, labour unions and other stakeholders in potential target companies that they are an attractive buyer.

Although the appropriate structure for funds with a Nordic focus will depend on the investment strategy and the investors targeted, generally speaking there is no significant distinction between the main fund structures appropriate for the individual Nordic countries. So what works in Sweden, for example, will often also work in Denmark, Norway and Finland.

A local presence and substance in the jurisdiction of the fund vehicle, robust and efficient governance infrastructure as well as separate investment advisory structures are key aspects of Nordic fund structuring. Structures for individual portfolio investments in the region tend to use similar techniques used elsewhere (including debt ‘push-downs’), which typically involve corporate structures established in Luxembourg or other jurisdictions. It is important to establish the investment approach at an early stage, including the intended capital structures of acquisition vehicles, given the number of tax considerations to be addressed. Nordic institutional investors will generally pay careful attention to such considerations in evaluating an investment opportunity.
In general the Nordic countries can fairly be described as welcoming towards foreign investors. There are few restrictions on foreign investors owning Nordic businesses and, to date, there are none that are specifically imposed on private equity funds.

Protectionism is almost never an issue and, absent of special circumstances, you rarely see any governmental involvement in foreign transactions. In fact, there have been a number of transactions where Nordic governments have acted as sellers of companies to foreign investors.

However, there are of course situations where regulatory authorisations are required. In such cases it is advisable to use experienced local advisers to manage the authorisation process as effectively as possible. Foreign investors are at times uncomfortable with the amount of information which has to be provided to regulators and other governmental institutions, a particular issue in light of acts like the Swedish freedom of information act where the fundamental principle is that all governmental information is made publicly available.

**AIFM Directive**

Looking more broadly, the regulatory landscape of the Nordic countries has also been a friendly environment for private equity firms to operate in. Prior to the Alternative Investment Fund Managers Directive (AIFMD), which covers certain fundamental aspects of private equity such as fund marketing, the Nordic countries did not really have any particular regulation aimed at private equity. The implementation of the AIFMD has, perhaps partly due to the prior largely unregulated space, raised quite a few challenges. Regulators have been faced with well-publicised general difficulties in implementing the AIFMD, while for the first time getting their arms around the concepts, structures and drivers of the private equity industry.

Although all the Nordic countries have, in broad terms, implemented the AIFMD in accordance with its requirements, the local regulators are not quite in agreement on certain fundamental issues. To give one important example, there are discrepancies in how the ‘marketing’ of a private equity fund is defined. This aspect requires careful navigation in each Nordic jurisdiction, but it also provides opportunity for some pragmatic solutions. A fund manager that seeks to market a private equity fund in any of the Nordic countries without a so-called ‘AIFMD passport’ is therefore well-advised to seek counsel on these matters far in advance of actually approaching any potential Nordic investors. Engaging in pre-marketing activities without seeking legal counsel can exclude any opportunities to benefit from certain pragmatic marketing solutions which may be available.

We are hopeful that with time the interpretation of the local laws transposing the AIFMD will become coherent, smoothing out the friction that the industry is experiencing today. At this point some fund managers that otherwise might have chosen one of the Nordic countries as its home jurisdiction for AIFMD purposes are actively looking to be regulated in jurisdictions where the relevant regulators have more experience of private equity funds.

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Operational and tax issues

Government-funded businesses
Private equity fund ownership of certain government-funded businesses (such as elder care facilities and schools) has attracted significant media attention in the Nordic countries, and so far that industry has struggled to convey its message of the benefits of private equity involvement in such sectors. In Sweden, a number of challenging ownership situations have most likely been a significant contributor to the election campaigns of a number of political parties which have made explicit reference to restricting private equity ownership in such businesses or imposing profit limitations thereon. As a result, the private equity community may be retracting from government-funded activities and it can reasonably be expected that the political instability will lead to fewer investments in this area.

Anti-bribery measures
Instances of bribery and other corruption in the Nordic markets are low and they are not seen as high-risk jurisdictions. However, major Nordic corporations operating in less developed markets have been accused of bribery and other corruption and we expect that Nordic private equity funds will pay close attention to these matters, both when conducting due diligence and as owners. Implementing anti-bribery policies that are enforced is becoming an everyday reality for private equity firms, including those located in the Nordics as fund investors have made this a priority item.

ESG factors
Increasingly we see private equity firms with a number of Nordic firms at the forefront focusing on the environmental, social and governance practices both within the firm and at the portfolio company level. These factors are also being discussed by investors, regulators and the public. Emerging is a reasonably uniform set of best practices for the private equity industry and a means of evaluating more generally the global economic and societal profile of private equity firms and fund portfolio companies.

Taxation
Taxation of carried interest has been a hot button issue in Nordic private equity over the last few years. In Sweden, which is the largest economy in the region and also houses some of the biggest names in Nordic private equity, the tax authorities are claiming that carried interest should be treated as business income. The position of the Swedish private equity industry is that carried interest is a commercially agreed division of capital gains between a fund’s general partner and the other fund investors. There are several ongoing court cases, although one firm recently prevailed in the Swedish administrative court of appeal. This was a move in the industry’s favour but it is too early to tell what the ultimate outcome of these disputes will be.
Nordic corporate governance structures closely resemble those found in most of the industrial world and are of the highest international standard. They are generally based on national legislation, with EU regulation and self-regulation also playing a role. Following are some of the key features:

Shareholder powers
The general meeting is the highest decision-making body of a company. At the general meeting shareholders exercise their governance rights over a company. There are a number of issues that a board of a company cannot resolve upon at all, or only with the prior authorisation of the general meeting.

Shares with multiple voting rights
Shares in Nordic companies can have different voting rights, both in terms of the number of votes and votes in relation to particular issues. This flexibility can be used by a small group of shareholders to maintain control over a company.

Minority protection rights
Nordic companies are required to treat all shareholders fairly and equally. Minority protection rules prohibit the general meeting from making decisions that favour one shareholder over another. In addition, the passing of certain decisions requires a qualified majority of shareholders to vote in favour and certain other decisions can be made by a minority holding as little as 10% of the equity.

Individual shareholder rights
Even individual shareholders are afforded specific rights, such as the right to participate at a general meeting, get due notice of such meeting and ability to raise matters for consideration at a general meeting. Consequently, even when a private equity fund holds the vast majority of the equity, it needs to pay careful attention also to the smallest shareholders in managing the company.

Non-executive boards
The board’s responsibility is the overall management of the company, including strategy, organisation, capitalisation and oversight over internal controls. The only limitation on the board’s decision-making power is that certain matters fall within the exclusive competence of the general meeting. However, the day-to-day management responsibility rests with the CEO.

Active governance role of major shareholders
A significant number of Nordic listed companies have one or a few controlling shareholders who are often heavily involved in the business of the company. The expectation of major private shareholders to be actively involved in the management of a company is an important factor to bear in mind when looking at a potential transaction.

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Debevoise & Plimpton LLP

Debevoise & Plimpton LLP is a leading international law firm, with 8 offices around the world. The firm has been a pioneer in private equity for over 25 years and is a recognised as a leader in both fund formation and private equity transactional work. With over 200 lawyers serving private equity in the US, Europe and Asia, Debevoise is among a handful of firms with a truly global private equity practice.

Andulf Advokat

Andulf Advokat, founded in 2004, is a Nordic law firm specialising in private equity. The firm’s lawyers have advised on private equity related matters for many years, in some instances over twenty years. Its clients are, among others, private equity funds with varying size and investment focus, Swedish and foreign asset managers investing globally, and entrepreneurs with a new idea seeking capital.