

Kontrolläggande och uppköpsreglering

Likabehandling vid offentliga
uppköpserbjudanden och effekterna i
bolagsstyrningen



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Abstract

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A question of growing importance in the corporate governance debate is shareholder engagement in listed companies, and in a legal context, what regulatory interventions that can be made to increase shareholder engagement. This thesis examines this question in relation to the regulation of takeovers, with the purpose of analysing how the takeover-rules affect the conditions for shareholder engagement in listed companies.

The author first analyses the functions of the shareholders in corporate governance, as intended by the rulemaker. Six functions are identified: voting on the general meeting, general monitoring of the board, monitoring management remuneration, overseeing related party transaction, engaging in dialogue with the board and, when applicable, adapting governance to the required level of entrepreneurialism. The author then identifies five antecedents for shareholders to exercise these functions: sufficiently large holdings in individual companies, sufficient large holdings in relation to the shareholders' equity portfolios, adequate knowledge for shareholder engagement as well as an organisation that allows engagement, that shareholders can acquire compensation for the costs of engagement, and that there is a sufficiently well-functioning market for corporate control. Based on these antecedents, an analysis of whether the takeover-rules have a negative impact on shareholder engagement is presented. The conclusion is that the mandatory bid rule and the restrictive rules on premiums for superior voting shares can be assumed to have a negative impact on shareholder engagement.

The mandatory bid rule and the rules on premiums for superior voting shares are then analysed from a contractarian perspective. The conclusion of this analysis is that while the rules on mandatory bids as well as restrictions on voting premiums seem to be in line with the principles of company law, and therefore from a contractarian perspective are in line with the protection that shareholders in a company can reasonably expect to receive, there is room to soften the rules to facilitate shareholder engagement without risking to undermine the purpose of the capital market regulation by increasing the threshold for the mandatory bid rule to 40 percent, and by allowing limited premiums for superior voting shares.

Keywords: shareholder engagement, controlling shareholders, takeovers, corporate governance, law and economics, mandatory bids, equal treatment of shareholders

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