

The role of the board of directors of a listed company

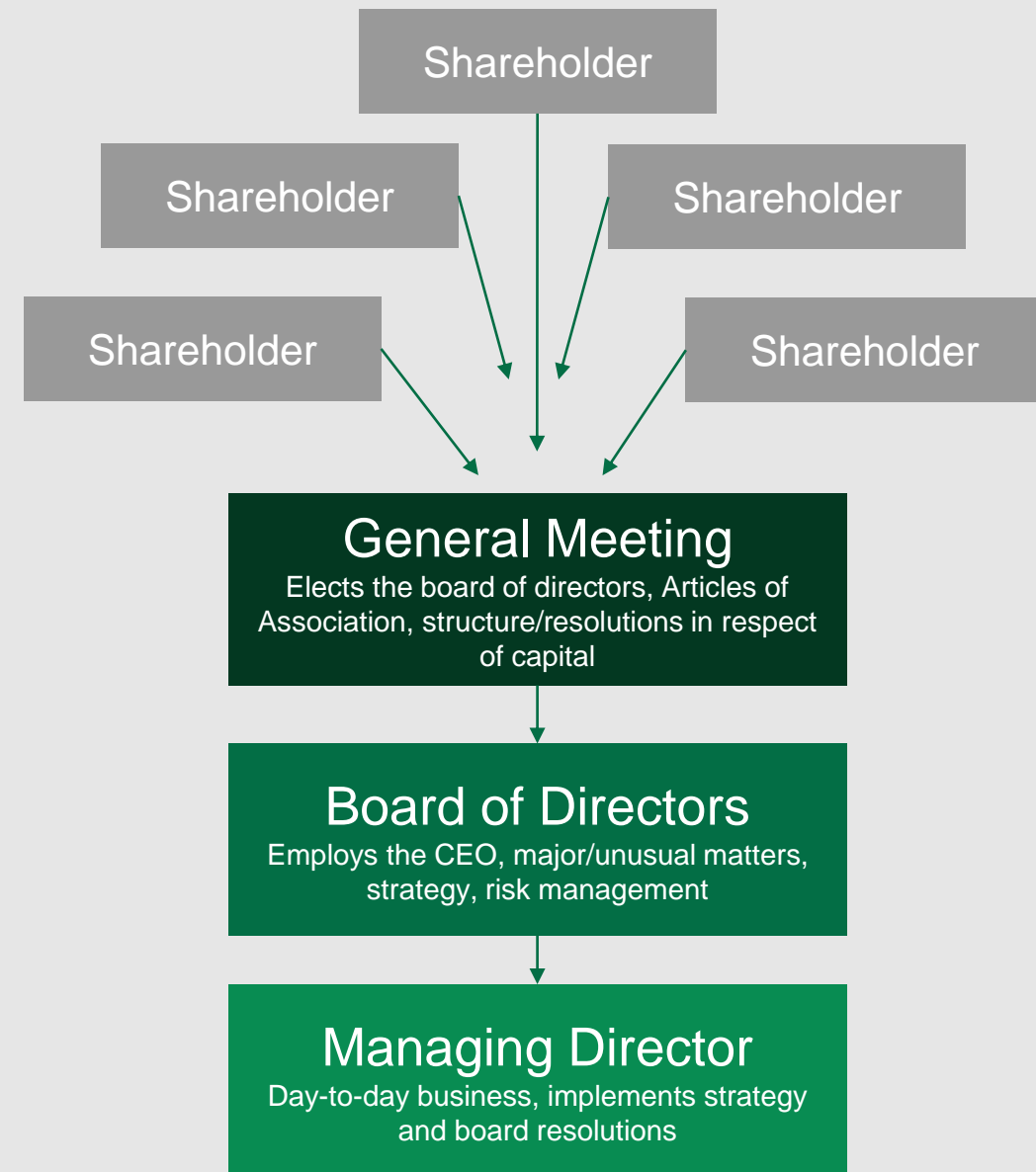
Tone Østensen and Anne Lise Ellingsen Gryte

Oslo, 23 March 2022

Wiersholm

Which interests do the board look after?

- Who is the board or directors?
 - Elected by the shareholders
 - Board member who "represents" a specific shareholder
 - Employee-elected board members
- Stakeholders
 - The company
 - The shareholders
 - Society
 - Potential investors?



The BIG difference

UNLISTED

- One or few known shareholders
- Consistent ownership
- Bilateral agreements on share sales/purchases

VS.

LISTED

- Many (unknown) shareholders
- Continuous ownership changes
- Share sales/purchases based on orders

The majority of the shareholders in listed companies are "more distant" from the board of directors and the company

Scrutiny

Mann dømt for innsidehandel

Oslo tingrett har dømt en 54 år gammel mann fra Strand kommune til ett års fengsel for ulovlig innsidehandel i teknologiselskapet Comrod.

🕒 0 min Publisert: 19.04.16 — 18.36 Oppdatert: 3 år siden

Oslo Børs gir kritikk til selskaper

Børsene mener flere selskaper har brutt løpende forpliktelser.



Tiltalt for innsidehandel: - Jeg har god samvittighet

- Jeg har god samvittighet og tar det med knusende ro, sier en av de tiltalte for ulovlig innsidehandel i det norske oljeselskapet Rocksource.

🕒 1 min Publisert: 09.07.15 — 12.15 Oppdatert: 4 år siden



Økokrim tiltaler tre personer tilknyttet innsidehandel. Illustrasjonsbilde fra Økokrim, Oslo. Foto: Gorm K. Gaare (Foto: GORM K. GAARE)

Sevan Marine får saftig børsbot

Styret ved Oslo Børs har vedtatt å ilegge Sevan Marine et betydelig overtredelsesgebyr for brudd på løpende informasjonsplikt.



Sevan Marine - Foto: selskapet

Artikkel av: Stein Ove Haugen
14. desember 2011 - 16.57

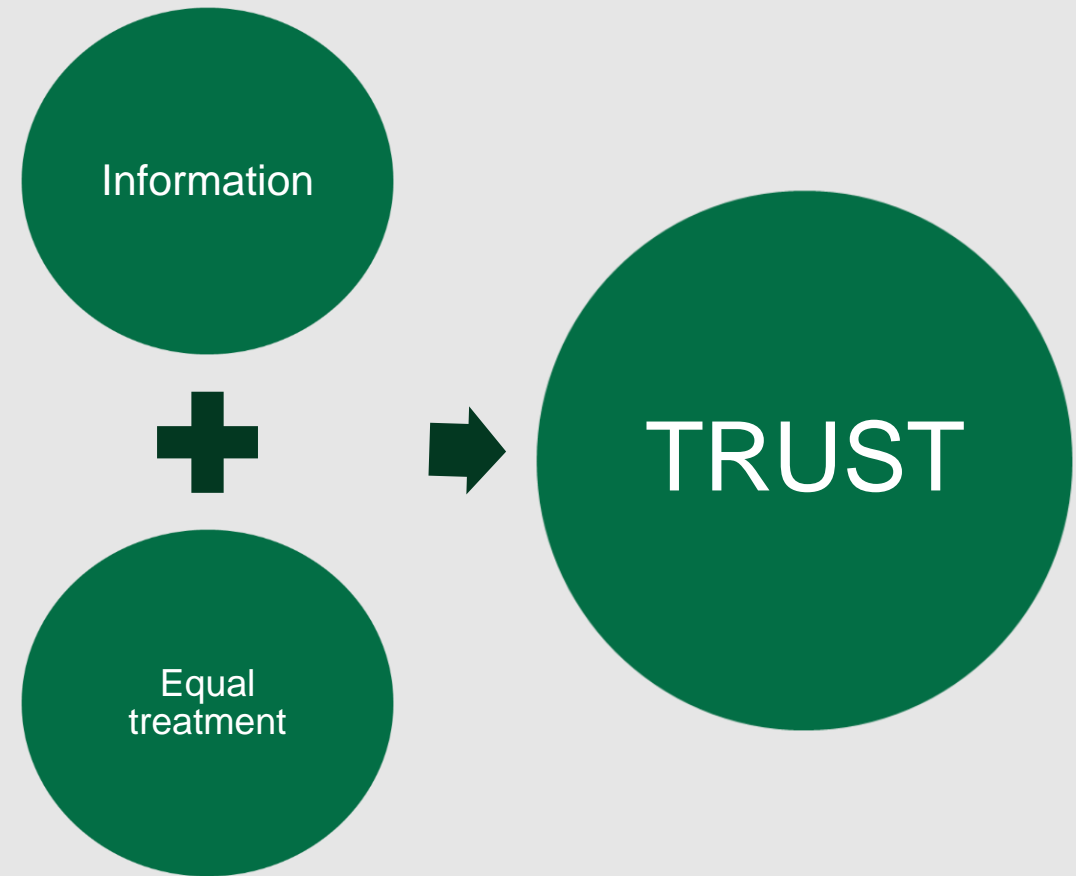
Økokrim ransaket hjem og jobb



Morten Angell i drømmefirmaet Eltek er siktet for innsidehandel.

The board of directors

- Ensure that the company treats its shareholders equally
- Ensure that the company complies with its duty to provide information
- Ensure compliance with the duties referred to the board of directors in certain situations



01 Duty to provide information

The role of the board of directors

- The company's management has the main responsibility for compliance
- The board of directors has a control function
- The activity obligation will depend on the type of company
 - Large companies that have been listed for several years
 - Small companies with a short trading time on Growth/management without stock exchange experience
- Ensure that the company has guidelines on how to handle inside information
 - Guidelines not enough



The role of the board of directors

- Follow up that the management has sufficient competence/awareness
 - Identify matters that typically may affect the price
 - Initiate negotiations/ongoing processes
 - Think through when in the process inside information may arise
- Project lists
 - Precautionary principle
- Insider lists
 - Inform Oslo Stock Exchange directly



The role of the board of directors

- The company provides "guidance" in quarterly reports/stock exchange announcements in respect of:
 - Operating income
 - Result
 - Margins
 - Harvesting volume
 - Other
- Particular challenges
 - Must have a good basis
 - May make deferred disclosure impossible



The role of the board of directors

- Matters that typically may affect the price:
 - Signing of significant contracts
 - Termination of significant contracts
 - Sale/purchase of significant business
 - Significant disputes
 - Award/termination of significant permits/approvals
 - Financial problems/profit warnings
 - Raising capital
 - Primary insiders' sale/purchase of shares
 - Other



02 Equal treatment

Topical issue

Børsbot for Remøys aksjefordeler

Børsstyret mener tidligere hovedaksjonær i Rem Offshore, Åge Remøy, ble behandlet på en annen måte enn de andre aksjonærene i forbindelse med fusjonen med Solstad. Oslo Børs har derfor ilagt REM et overtredelsesgebyr på nesten en halv million kroner.



Generalforsamlingen i Rem den 10. oktober 2016. Rundt bordet sitter fra venstre Åge Remøy, fung.adm.dir. Ola Beinnes Fosse og advokat Martin Olsen Høy.

FOTO: ARNE FLATIN / NRK

Får børsbot for forskjellsbehandling

Styret ved Oslo Børs illegger Sparebank 1 Østfold Akershus et gebyr på 480.000 kroner. Banken klager vedtaket til Børsklagenemnda.

🕒 1 min Publisert: 23.09.15 – 13.34 Oppdatert: 3 år siden



Banksjef Arild Bjørn Hansen Sparebank 1 Østfold Akershus fikk ikke børsens styre med på at banken hadde grunn til forskjellsbehandle eierne. Her er hansen med kunde Ståle Bakke i et arkivfoto. Foto: Hampus Lundgren (Foto: Dagens Næringsliv)

Equal treatment requirement



Børssirkulære nr. 2/2014

Til: Utstedere av finansielle instrumenter notert på Oslo Børs,
Oslo Axess og Nordic ABM

3. september 2014

Vår ref: 929149

<http://www.oslobors.no/Oslo-Boers/Regelverk/Boerssirkulaerer>

Likebehandling

1 Innledning og sammendrag

Verdipapirhandelloven (vphl.) § 5-14 oppstiller et prinsipp om at utstedere av finansielle instrumenter opptatt til handel på norsk regulert marked skal likebehandle innehaverne av deres finansielle instrumenter. Forskjellsbehandling kan etter bestemmelsen likevel aksepteres dersom denne er saklig begrunnet ut fra utsteders og innehavernes felles interesser. Børsen har inntatt en likelydende bestemmelse om likebehandling i Løpende forpliktelser for selskaper med aksjer og egenkapitalbevis notert på Oslo Børs og Oslo Axess punkt 2.1, Obligasjonsreglene punkt 3.1.1 og ABM-reglene punkt 3.1.1.

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The issuer must not expose holders of its financial instruments to differential treatment that lacks a factual basis in the common interest of the issuer and the holders.



In connection with the trading or issuance of financial instruments or rights to such instruments, the issuer's corporate bodies, elected officers or senior employees must not adopt measures which are likely to confer upon themselves, certain holders of financial instruments or third parties an unreasonable advantage at the expense of other holders or the issuer.

What do the provisions entail?

- The main principle for listed companies is equal treatment of shareholders
 - The company and the board of directors must have a justifiable reason to deviate from the principle
- Differential treatment is only allowed if:
 - It is considered to be in the best interest of the company and all the shareholders
 - It is proportionate
 - It does not confer an unreasonable advantage on the management, board of directors, some of the shareholders or third parties

Slik kan de kriserammede rederiene forskjellsbehandle aksjonærene

Ikke bare står aksjonærene sist i køen – av og til står noen aksjonærer lengre bak enn andre. – Selskapene må være oppmerksomme, sier Oslo Børs etter forrige ukes børsbot.



I KRISE: Havila Shipping mener at det er «strengt nødvendig og påkrevd» å forskjellsbehandle.

FOTO: ROGER HARDY / SAMFOTO

The duties of the board of directors

- The duty of the board of directors in situations that will result in differential treatment of the shareholders:
 - Discuss the situation
 - Consider alternatives
 - Consider whether the differential treatment will be in the best interest of the company and all the shareholders there is sufficient basis
 - Document the assessment

Slik kan de kriserammede rederiene forskjellsbehandle aksjonærene

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FOTO: ROGER HARDY / SAMFOTO

Our experience with stock exchange intervention

- Circular 2/2014 – Focus on the issue
- Oslo Stock Exchange stated that it would only intervene in cases where the "*differential treatment clearly lacks a factual basis, is grossly unreasonable or has been carried out without proper consideration of the circumstances*".
- Sanctions
 - Criticism
 - infringement penalties

DNO dropper reparasjonsemisjon

Oljeselskapet DNO har droppet den planlagte reparasjonsemisjonen på 55 millioner kroner. Like greit, siden det ikke er noe å reparere.

1 min Publisert: 27.03.15 – 1113 Oppdatert: 4 år siden



Typical situation

- Differentiated access to information
 - Legitimate need for anchoring
- Transactions with shareholders
 - Detailed rules in the Private and Public Limited Liabilities Companies Act
- Waiver of pre-emptive rights in the event of private placements of shares
 - Most common situation

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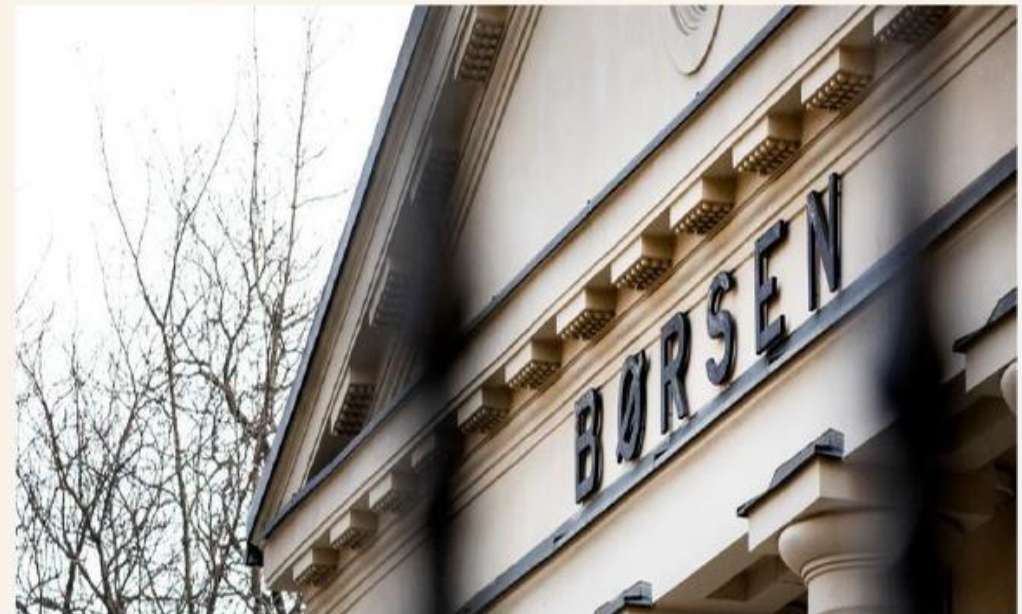
FOTO: ROGER HARDY / SAMFOTO

Equity financing

- Rights issue – the main rule of the Private and Public Limited Liabilities Companies Act
 - Equal treatment of shareholders
 - Pro rata subscription rights
 - Transferable listed subscription rights
- Disadvantage
 - Offering prospectus
 - 3-4 months to complete
 - Underwriters – large discount

Investorene på Oslo Børs forskjellsbehandles oftere

Over syv av ti kroner som hentes gjennom nyutstedelser i det norske aksjemarkedet, hentes fortsatt gjennom rettede emisjoner. Nykommerne trekker opp totalen.

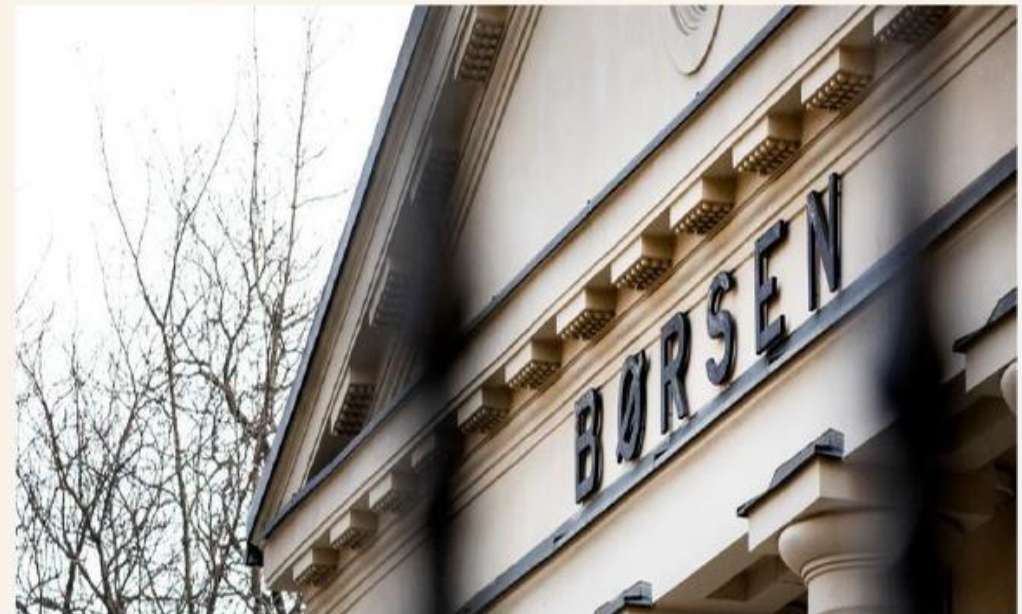


Equity financing

- Equal treatment issues may arise in rights issues also:
 - Only main shareholders are invited to participate in the guarantee consortium
 - Subscription rights are not listed
 - Deviating allocation principles
 - No oversubscription allowed/underwriters are given priority
 - Oversubscription allowed, but underwriters are given priority

Investorene på Oslo Børs forskjellsbehandles oftere

Over syv av ti kroner som hentes gjennom nyutstedelser i det norske aksjemarkedet, hentes fortsatt gjennom rettede emisjoner. Nykommerne trekker opp totalen.



Equity financing

- Private placement are the main rule in the Norwegian market
 - Pre-sounding
 - Announced after the stock exchange closes – set during the evening
 - Price is set through a book building
 - Minimum subscription so as to avoid an offering prospectus
 - Below 20% no listing prospectus
- The board of directors must be able to document that the private placing is in the best interest of the company and the shareholders
 - Quick/safe raising of capital
 - Book building

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Investorene på Oslo Børs forskjellsbehandles oftere

Over syv av ti kroner som hentes gjennom nyutstedelser i det norske aksjemarkedet, hentes fortsatt gjennom rettede emisjoner. Nykommerne trekker opp totalen.



Equity financing

- Need for a repair issue
- The purpose is to offset the benefit received by participating shareholders
- Need will depend on:
 - The extent of participation among existing shareholders
 - The size of the discount
 - The size of the issue
 - Opportunity to trade in the market at similar prices

Investorene på Oslo Børs forskjellsbehandles oftere

Over syv av ti kroner som hentes gjennom nyutstedelser i det norske aksjemarkedet, hentes fortsatt gjennom rettede emisjoner. Nykommerne trekker opp totalen.



05 Our contact persons



Tone Østensen

Partner

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Industries

Fisheries and Aquaculture
Banking and Finance

Practice Areas

Capital Markets
M&A
Corporate Law

Profile

Tone Østensen has extensive experience as an advisor in capital market transactions, including stock exchange listings and public and private placement, and mergers and acquisitions. She also gives general advice on company law and stock exchange and securities law. Chambers and Partners, Legal 500 and IFLR1000 have ranked Tone as one of Norway's most prominent experts on stock exchange and securities law. She is also ranked as one of Norway's leading lawyers on share issues and stock exchange listings in the Norwegian Financial Daily's annual lawyers survey.

Selected experience

- Legal advisor to a number of listed companies in respect of stock exchange and securities law and corporate law
- Assisted a large number of issuers in connection with listings on Oslo Stock Exchange, Euronext Expand and Euronext Growth
- Assisted a large number of managers in connection with listings on Oslo Stock Exchange, Euronext Expand and Euronext Growth

Utdannelse

- Cand. Jur., University of Oslo, 1986

Professional Experience

- Partner, Wiersholm, 2000
- Lawyer, Wiersholm, 1997
- Lawyer, Oslo Stock Exchange, 1993
- Associate, Bugge, Arentz-Hansen & Rasmussen, 1990
- Trainee, Haight Gardner, Poor & Havens, 1989
- Assistant Judge, Indre Follo District Court, 1988
- Associate, Bugge, Arentz-Hansen & Rasmussen, 1987

Tone Østensen is noted for her ECM expertise, with sources highlighting her "wealth of experience in the field." She advises clients on IPOs and private placements.

– Chambers Global, 2021



Anne Lise Ellingsen Gryte

Partner

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Industries

Banking and Finance
Private Equity

Practice Areas

M&A and Corporate Law
Capital Markets

Profile

Anne Lise Ellingsen Gryte practices corporate and securities law with an emphasis on capital market transactions and advice to listed companies and shareholders. Her practice focuses primarily on initial public offerings, equity transactions and public takeovers. Anne Lise advises issuers, managers, boards of directors and shareholders in matters relating to corporate law and securities law.

Anne Lise also has wide M&A experience, and is regularly involved in mergers and acquisitions. In addition, she is the head of several nomination committees in listed companies.

Anne Lise ranked as "Associate to Watch" and "Rising Star", respectively, within capital markets by Chambers Europe and Legal500.

Selected experience

- Assistance to Arctic Fish Holding AS in connection with a private placing and listing on Euronext Growth Oslo
- Assistance to Gevean Trading in connection with a mandatory offer for Axactor SE (2021)
- Assistance to ABG Sundal Collier in connection of a private placing and listing of Sonans Holding AS on Euronext Growth Oslo
- Assistance to Herkules Private Equity and Elektroimportøren AS in connection with a private placing and listing on Euronext Growth Oslo
- Assistance to the Ministry of Trade and Industry in connection with a Covid-19 package of measures to the aviation industry
- Assistance to Schibsted ASA in connection with Adevinata ASA's acquisition of eBay Classifieds
- Assistance to Schibsted ASA and Adevinata ASA in connection with a merger and subsequent listing of Adevinata ASA on Oslo Stock Exchange

Education

- Cand. Jur., Universitetet i Bergen, 2006
- Post-graduate subjects, K.U. Leuven, Belgium, 2006
- Project management, Metier Academy/SKEMA Business School,

Professional Experience

- Partner, Wiersholm, 2021
- Managing Associate, Wiersholm, 2018
- Managing Associate, CLP, 2017
- Managing Associate, Thommessen, 2015
- Senior Associate, Thommessen London, 2011
- Senior Associate/Associate, Thommessen, 2009
- Associate, Haavind, 2006

Anne Lise Gryte is "extremely hard-working and can handle complex projects," according to one client. She assists with IPOs and listings.

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– Chambers Europe, 2021

Wiersholm in brief

We are *value-driven* and *value-creating*

Wiersholm is one of Norway's leading business law firms. Our professional expertise, our understanding of different busienss sectors and our collaborative culture make us well equipped to understand, simplify and improve our clients' everyday lives.

We are accommodating and diverse problem-solvers. We are sharp and alert. We see the small nuances and the big picture, which provides a wider perspective. We also take responsibility and create positive repercussions in the society in which we operate.

In this manner, we create value for our clients and drive business law foward.

Practice Areas

- Anti-Money Laundering
Capital Markets
Competition Law
Construction
Contract Law
Corporate Criminal Law
Data Protection/GDPR
Employment Law
Environmental Law
ESG and Compliance
EU/EEA Law
Financing
Human Rights Law
Insurance
Intellectual Property Law
Investigation
- IT Contracts
Liability
Litigation and Dispute Resolution
M&A and Corporate Law
Maritime and Transportation
Media and Marketing Law
Offshore Wind
Oil and Gas
Pensions
Public Procurement
Real Estate
Regulatory
Renewable Energy
Restructuring and Insolvency
Tax
Telecommunication and Infrastructure
Value-added Tax and excise duties

Industries

- Banking and Finance
Commercial Property
Fintech
Fisheries and Aquaculture Industry
Insurance
Life Sciences
Media and Entertainment
Oil and Gas
Private Equity
Proptech
Public Sector
Renewable Energy
Retail
Shipping og offshore
Sports
Technology and Digitisation
Transport

332	Employees	54%	Women
215	Lawyers	46%	Men
44	Partners	18	Languages
16	Lawyers with right of audience before the Supreme Court	33	Practice Areas
1	Office (in Oslo)	18	Industries

Recognition

- **Kantar Sifo Prospera 2021: On top in the categories** "Overall Performance", "Public procurement", "Data protection & integrity", "Investigations" and "Dispute resolution"
- **Chambers Europe/Global 2021:** Wiersholm is ranked in 18 practice areas, on top in ten of them as "Band 1". In addition, our lawyers have received 47 individual distinctions, including 14 top placements
- **Legal 500 2021:** Wiersholm is ranked as "Tier 1" in 15 of 19 practice areas. 28 lawyers have achieved individual distinctions
- **IFLR1000 2021: Elected** "Norway Law Firm of the Year" and "Banking and Finance Firm of the Year". Ranked on top in all five categories.
- **The Norwegian Financial Daily's lawyers' survey 2021:** Wiersholm obtained the most points overall and most first and podium places. The firm tops the law firm ranking in public procurement, investigation and compliance, employment law and civil procedure.
- **The Lawyer European Awards 2020: Elected** "Nordic Law Firm of the Year" and nominated in the category "European Managing Partner of the Year"

