

# The Swedish Corporate Governance Code



*Applicable from 1 February 2010*

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The English language version of the Swedish Corporate Governance Code is a translation of the original Swedish text. Where possible differences in interpretation or errors in translation exist, the Swedish text is to take precedence.

# Foreword

This revised Swedish Corporate Governance Code is applicable from 1 February 2010. Transitional rules have been introduced in some areas to the effect that some of the changes do not need to be applied until a later date.

The Board found it necessary to undertake a comprehensive review of the Code, despite the fact that the revised version of the Code which was introduced on July 1, 2008 had only been in force for a little over one year. The review was prompted by material changes in legislation and other regulations in the corporate governance area which emerged in 2009, mainly:

- the EU Commission's recommendation regarding remuneration of directors in listed companies (2009/3177/EG),
- new legislation to implement changes to the Fourth and Seventh Company Law Directives (Chapter 6, Section 6-9 of the Annual Accounts Act (1995:1554) and Chapter 9, Section 31, third paragraph of the Companies Act (2005:551)),
- new legislation regarding the implementation of the new Eighth Company Law Directive (Chapter 8, Section 49 a and b of the Companies Act (2005:551)),
- NASDAQ OMX Stockholm's removal of its requirements regarding board member independence etc. in its Rule Book For Issuers.

A draft revised Code was published on 27 October 2009 for open consultation until 20 November, and about fifteen responses were submitted. The Board has thereafter compiled and analysed the responses and, on this basis, adopted the revised Code, which was published on the Board's website on 22 December 2009. The comments and proposals received were of great help in this work.

On behalf of the Board, I would like to thank everyone who has contributed to the content of the revised Code.

Stockholm, January 2010

Hans Dalborg  
Chair, The Swedish Corporate Governance Board



# I. The Swedish Code on Corporate Governance

## 1 Aims

Good corporate governance is a question of ensuring that companies are run as efficiently as possible on behalf of their shareholders. The confidence of existing and potential shareholders that such is the case is crucial to their interest in investing in companies, thus securing corporate Sweden's supply of risk capital.

The aim of the Swedish Corporate Governance Code is to improve confidence in Swedish listed companies by promoting positive development of corporate governance in these companies. The Code acts as a complement to legislation and other regulations by specifying a norm for good corporate governance at a higher level of ambition than the statutory regulation. However, this norm is not mandatory. Companies may deviate from individual rules, providing they report each deviation, describe their own solution and explain why. In this way, the actors in the market can form their own opinions on the solution the company has chosen.

Another aim of the Code is to provide an alternative to legislation. The Swedish Corporate Governance Board feels that self-regulation is often preferable to legislation and sees the Code as the primary instrument for this.

## 2 Target group

The target group for the Code is Swedish companies whose shares are listed on a regulated market in Sweden. At present, there are two regulated markets in Sweden, NASDAQ OMX Stockholm and NGM Equity.

The companies listed on these markets are of varying size and complexity, ranging from large, globally active companies to small entrepreneur-run companies. The Code is applicable to the full spectrum of these companies. This places great demands on the Code to allow flexibility when applying individual rules in practice, but also on companies to dare to choose solutions other than those specified in the Code and to explain these deviations when they feel they are justified.

### 3 Guiding principles

The Board's mission is to ensure that the Swedish Corporate Governance Code fulfils the aims set out above. In concrete terms, this means that the Code should

- provide a clear norm for good corporate governance in Swedish listed companies based on established and accepted principles,
- be sufficiently ambitious to provide an alternative to legislation on issues where self-regulation is preferable, and
- be applicable to all stock exchange listed companies without causing unnecessary administration or unjustifiable expense.

A further mission is to ensure that the Code does not provide obstacles to increased harmonisation of corporate governance in the Nordic countries.

When the Code was originally developed, the Code Group, the body that developed the Code, defined a number of guiding principles for its work. The Corporate Governance Board shares the values expressed by these principles, which result in a Code that aims to

- create good conditions for active and responsible ownership,
- establish a clear and well-balanced division of roles and responsibilities between owners, boards and executive management,
- ensure that the principle of equal treatment outlined in the Swedish Companies Act is applied in practice, and
- create a maximum of transparency towards shareholders, the capital markets and society in general.

### 4 The role of the Corporate Governance Board in Swedish self-regulation

The Corporate Governance Board's mission is to promote good corporate governance in Swedish listed companies, primarily through managing and administering the Code. This means that the Board monitors and analyses the practical application of the Code and makes any changes deemed required on this basis. The Board is one of the four bodies that constitute the Association for Generally Accepted Principles in the Securities Market, a non-profit association charged with the mission to administer the private business sector's self-regulation within the securities market.

The Board's task in self-regulation is to set norms for good corporate governance in stock exchange listed companies. The Board does not, however, have a supervisory or adjudicatory role regarding how individual companies apply the Code. The Swedish Securities Council, whose role is to promote good practice on the securities market, may on request issue statements on how the Code should be interpreted. The task of ensuring that companies apply the Code adequately falls to the stock exchanges on which their shares are traded, while judgements on companies' decisions to comply with or deviate from the rules of the Code are made by the actors in the capital markets.



## 5 The structure and content of the Code

The Code deals with the decision-making system through which shareholders directly or indirectly govern the company. The main emphasis is on company boards in their role as central players in corporate governance.

As regards shareholders, the line is drawn at shareholders' meetings. Issues such as the interplay between owners and the rules and workings of the stock market are not covered, nor are issues regarding companies' relationships with other "stakeholders", which are felt to be beyond the framework of a strictly owner-orientated view of corporate governance.

The Code forms part of corporate Sweden's self-regulation. Further corporate governance rules are set out in the Companies Act, the Annual Accounts Act, the stock exchanges' regulations and statements issued by the Swedish Securities Council.

The Code defines a norm for good corporate governance at a more ambitious level than the minimums specified in the Companies Act and other statutory regulation. The key to this is the comply or explain mechanism. This means that companies are not obliged to comply with every rule in the Code, but are allowed the freedom to choose alternative solutions which they feel are better in their particular circumstances, providing they report every deviation, describe the alternative solution and explain the reasons why. In this way, the Code specifies what is often, but not necessarily always, regarded as good corporate governance practice. For individual companies, however, alternative solutions to those contained in the Code may well result in better corporate governance.

Most of the rules in the Code are formulated so as to allow non-compliance to be identified objectively and explained. For pedagogical reasons, the Code also contains certain rules for which compliance cannot be verified objectively and any non-compliance is therefore unlikely to be reported. Similarly, it contains some rules which to a greater or lesser extent can be considered to be logical consequences of legal or regulatory requirements. Obviously this does not mean that companies can choose to ignore mandatory provisions of legislation or stock exchange regulations by referring to the Code's comply or explain mechanism.

The Code consists of a set of numbered rules. It is with these rules that companies applying the Code must comply or explain. To avoid uncertainty about the requirements, the phrases "is to" and "may" are used throughout. Some sections of the Code have a short introductory text in italics. The aim of these introductory texts is to explain the principles or legislation behind the rules; they are not part of the actual rules and there is therefore no requirement to comply with them or to report non-compliance. In addition, some of the rules are accompanied by footnotes. Similarly, the comments in these footnotes are not part of the rule text and hence also not subject to the comply or explain mechanism.

## 6 Which companies are to apply the Code?

It is considered good stock exchange practice for Swedish companies whose shares are admitted to trading on a regulated market to apply the Code.

Companies whose shares are admitted to trading on a regulated market are to apply the Code as soon as possible and no later than the date of the first annual general meeting held after the stock exchange flotation. In the first corporate governance report the company does not need to report and explain non-compliance with rules that have not yet been relevant. The Code is thus to be applied fully from the date of the first annual general meeting held the year after the stock exchange flotation.

The revised Code came into force on 1 February 2010 and, apart from the exceptions listed below, it is to be applied by the companies concerned from that date.

- The Code rules that have been changed or removed following implementation of changes to the European Community's Fourth and Seventh Company Law Directives, i.e. the rules concerning
  - production of a report on internal controls in the second paragraph of rule 7.4, (previously 10.5),
  - the requirement to explain a lack of internal audit, (removed, previously 10.6),
  - production of a corporate governance report in rule 10.1, (previously 11.1),
  - the content of the corporate governance report in rule 10.2, (previously 11.2), and
  - corporate governance information on the company's website in the first paragraph of rule 10.3, (previously the first paragraph of 11.3),are to be applied according to the existing Code for financial years commencing before 1 March 2009. The new Code rules are to be applied for the first time for years commencing on or after 28 February 2009. For companies whose financial year corresponds to the calendar year, this means that any non-compliance with the new Code rules need not be reported until the corporate governance report for the financial year 2010.
- If during 2009 a company deviated from Code rules that were changed or removed as a result of the implementation of the European Community's Eighth Company Law Directive, i.e. rules on the appointment and composition of audit committees in rule 7.3, (previously 10.1), and rules on the tasks of audit committees, (previously 10.2, now removed), the company does not need to report such non-compliance in its corporate governance report.
- The Code rules that have been changed as a result of NASDAQ OMX Stockholm's removal of its requirements regarding board member independence, i.e. rules concerning



- justification of candidate independence contained in the third paragraph, fourth bullet of rule 2.6,
- members of the executive management on the board in the footnote to rule 4.3,
- directors' independence of the company and its executive management in rule 4.4, and
- directors' independence of major shareholders in new rule 4.5,

are to be applied according to the modified Code with regard to individuals elected or re-elected after 1 July 2010 to boards of Swedish companies listed on NASDAQ OMX Stockholm. For individuals appointed to boards of such companies before that date, the existing Code text and the Board's Instruction 1-2009 apply. Swedish companies that are listed on NGM Equity are to apply the existing Code rules in these areas.

- The Code rules that have been changed as a result of the EU recommendation regarding remuneration of directors in listed companies, i.e. rules on
  - the tasks and composition of remuneration committees in rules 9.1 and 9.2, (previously 9.1),
  - the use of external consultants in new rule 9.3,
  - variable remuneration in new rules 9.4, 9.5 and 9.6,
  - share and share-price related incentive programmes in rules 9.7 and 9.8, (previously 9.7),
  - termination packages in new rule 9.9, and
  - information on the company's website in the second and third paragraphs of rule 10.3, (previously the second and third paragraphs of 11.3),are to be applied according to the modified Code from no later than 1 July 2010.

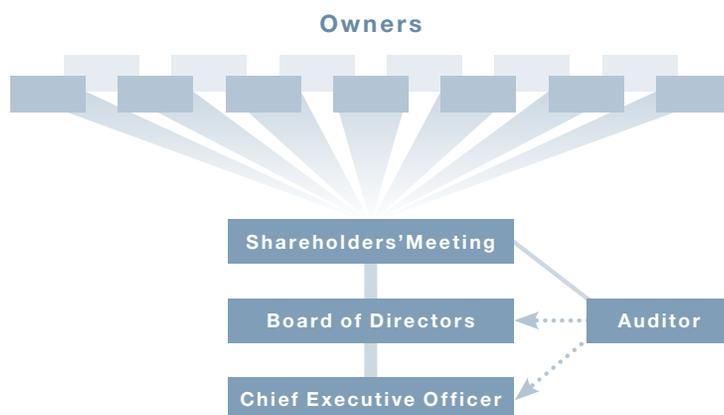
The rule changes in chapter 9 of the Code do not mean that companies need to renegotiate remuneration agreements signed before 1 July 2010. The same applies to variable remuneration programmes approved by the company before that date. Companies do not therefore need to report non-compliance with these rules if the non-compliance is due to agreements signed or programmes approved before 1 July 2010 or any previous date from which the company has decided to apply the new Code rules.

## II. The Swedish Corporate Governance model

Corporate governance in Swedish stock exchange listed companies is regulated by a combination of written rules and generally accepted practices. The framework includes the Swedish Companies Act and the Swedish Annual Accounts Act, supported by the Swedish Code of Corporate Governance and the rules of the regulated markets on which shares are admitted to trading, as well as statements by the Swedish Securities Council on what constitutes good practice in the Swedish securities market.

The Companies Act contains general regulations about the governance of the company. The Act specifies which governance bodies must exist in a company, the tasks of each body and the responsibilities of the people in each of these positions. The Code complements the Act by placing higher demands on companies on certain issues, while simultaneously allowing them to deviate from rules in individual cases if it is deemed that this will lead to better corporate governance, ("comply or explain").

The Companies Act stipulates that companies must have three decision-making bodies in a hierarchical relationship to one another: the shareholders' meeting, the board of directors and the chief executive officer. There must also be a controlling body, the statutory auditor, which is appointed by the shareholders' meeting.





## 1 The ownership role

The preparatory documents to the Swedish Companies Act emphasise the importance of active ownership. Shareholders provide the business sector with risk capital, but they also contribute to the efficiency and dynamism of individual companies and the business sector in general by buying and selling shares, as well as by participating in and exercising influence at shareholders' meetings. Active shareholder participation promotes a healthy balance of power between owners, the board and the executive management.

Ownership structure on the Swedish stock market differs significantly from that in countries such as the United Kingdom or the United States. While the majority of listed companies in those countries have a very diverse ownership structure, ownership in Sweden is often concentrated to single or small numbers of major shareholders, as is the case in many continental European countries. These shareholders often play an active ownership role and take particular responsibility for the company, for example by sitting on the board of directors.

Swedish society takes a positive view of major shareholders taking particular responsibility for companies by using seats on boards of directors to actively influence governance. At the same time, major holdings in companies must not be misused to the detriment of the company or the other shareholders. The Companies Act therefore contains a number of provisions which offer protection to minority shareholders, such as requiring qualified majorities for a range of decisions at shareholders' meetings.

## 2 The shareholders' meeting

The shareholders' meeting is a limited company's highest decision-making body and a forum for shareholders to exercise influence. The Swedish shareholders' meeting can decide on any company issue which does not expressly fall within the exclusive competence of another corporate body. In other words, the shareholders' meeting has a sovereign role over the board of directors and the chief executive officer.

Each shareholder has the right to participate in the shareholders' meeting and to vote according to the number of shares owned. Shareholders who are not able to attend in person may exercise their rights by proxy. Each shareholder also has the right to have items included in the agenda of the meeting, regardless of the number of shares held, providing a request has been submitted to the board of directors in due time for the item to be included in the notice of meeting.

The annual general meeting<sup>1</sup> must be held within six months of the end of the financial year in order to decide on whether to adopt the income statement and balance sheet and decide on the appropriation of profits or losses. The meeting also decides on dis-

<sup>1</sup> The annual general meeting is the ordinary general meeting where the annual accounts are to be presented.

charge of liability for members of the board and the chief executive officer, as well as other issues on which it is obliged by law or its articles of association to decide, such as the election of members of the board and auditor. Board and auditor fees are also decided by the shareholders' meeting.

The board may call an extraordinary general meeting if a shareholder minority representing at least ten per cent of the company's shares so requests. The same applies if the statutory auditor requests an extraordinary shareholders' meeting. The board may also call an extraordinary shareholders' meeting on its own initiative.

Decisions at shareholders' meetings are taken by simple majority vote. Certain decisions, however, such as changes to the articles of association, require a qualified majority. Each share carries one vote, unless otherwise stated in the articles of association. If the articles of association stipulate that shares have differentiated voting rights, no share may carry voting rights that are more than ten times that of any other share.

A shareholders' meeting may not make any decision that aims to give undue advantage to one shareholder or individual to the disadvantage of the company or any other shareholder.

### **3 The board of directors**

The board is responsible for the company's organisation and the management of the company's business. The extensive decision-making authority assigned by the law to the board of directors is primarily limited by the legal provisions giving the shareholders' meeting exclusive decision-making powers on certain matters, e.g. changes to the articles of association, election of board members and auditor and adoption of the balance sheet and income statement.

The board is obliged to follow any specific directives passed by the shareholders' meeting, providing these do not contravene the Swedish Companies Act or the company's articles of association.

The board may delegate tasks to individual members or non-members of the board, but may not disclaim liability for the company's organisation and management or its obligation to ensure satisfactory control of the company's financial position. When delegating, the board has an obligation to act responsibly and to monitor that such delegation can be maintained.

The board must specify its ways of working in written Rules of Procedure. If there is a division of tasks and responsibilities between the members of the board, e.g. if the board has a committee to prepare certain issues, such as an audit committee, this must be described in its rules of procedure. The board may also delegate decision making to such a committee, but it may not disclaim responsibility for decisions made on this basis.



The board must consist of no fewer than three members, one of which is to be appointed chair. The chair has particular responsibility for leading the work of the board and ensuring that it fulfils its legal obligations.

The Code stipulates that no more than one of the directors elected by the shareholders' meeting may be on the executive management team of the company or one of its subsidiaries. Normally, this place is taken by the chief executive officer. However, it is also common that no member of the executive management is a member of the board.

Hence boards of Swedish listed companies are composed entirely or predominantly of non-executive directors. The Code also states that a majority of the members of the board are to be independent of the company and its management. At least two members must also be independent of the company's major shareholders,<sup>2</sup> which means that it is possible for major shareholders of Swedish companies to appoint a majority of members with whom they have close ties. This is in line with the positive view of active and responsible ownership expressed in the preparatory documents to the Swedish Companies Act.

#### **4 The chief executive officer**

The chief executive officer is responsible for the company's day-to-day management. Matters of an unusual nature or of exceptional importance due to their scope and the nature of the company's business are not considered part of the day-to-day management.

The chief executive officer must prepare and present issues that are outside the scope of day-to-day management to the board of directors. The board is to provide written instructions on when and how the required information is to be collected and reported to the board.

The chief executive officer is subordinate to the board of directors. The board may instruct the chief executive officer on how day-to-day management issues are to be handled or decided. Within the framework defined by the Swedish Companies Act and the company's articles of association, the chief executive officer is obliged to follow the instructions given by the board. The board itself may also decide on matters that are a part of day-to-day management.

The chief executive officer may be a member of the board but not its chair. Irrespective of whether the chief executive officer is a member of the board, he or she has the right to attend and speak at board meetings providing that the board does not decide otherwise in a particular circumstance.

<sup>2</sup> Major shareholders are defined as those controlling ten per cent or more of the shares or votes in the company.

## 5 The statutory auditor

The company's statutory auditor is appointed by the shareholders' meeting to examine the company's annual accounts and accounting practices and to review the board's and the chief executive officer's management of the company. In the case of parent companies, the auditor is also to examine the consolidated accounts. Auditors of Swedish companies are therefore given their assignment by, and are obliged to report to, the owners, and they must not allow their work to be governed or influenced by the board or the executive management.

Auditors present their reports to the owners at the annual general meeting in the annual audit report. The audit report must contain a statement on whether the annual report has been compiled in accordance with the relevant legislation. The statement is to specify whether the annual report provides an accurate picture of the company's results and position and whether the director's report is consistent with the rest of the annual report. If the annual report does not include items that are required by the relevant legislation, the auditor must state this and, if possible, provide the necessary information in the audit report. Part of the auditor's assignment is to recommend whether the annual shareholders' meeting should adopt the balance sheet and income statement and whether the company's profit or loss should be appropriated in accordance with the proposals in the director's report.

The auditor is also obliged to report if any member of the board or the chief executive officer has carried out any action or committed any oversight that may result in liability for damages. The same applies if the auditor has found that any member of the board or the chief executive officer has acted in any other way that is in breach of the Companies Act, the relevant legislation on annual accounts or the company's articles of association.



# III. Rules for Corporate Governance

## 1 The shareholders' meeting

*Shareholders' influence in the company is exercised at the shareholders' meeting, which is the company's highest decision-making body. The planning and running of the shareholders' meeting is to create conditions in which shareholders can exercise their ownership role in an active, well-informed manner.*

- 1.1 As soon as the time and venue of the shareholders' meeting have been decided, and no later than in conjunction with the third quarter report, the information is to be posted on the company's website. This information is also to include the closing date for issues to be submitted by shareholders for inclusion in the notice of meeting.
- 1.2 The notice of meeting and other documents relevant to the shareholders' meeting are to be available in such time and in such a form that they provide shareholders with sufficient opportunity to form a well-founded opinion on the issues raised.
- 1.3 The company chair and as many members of the board as are required for a quorum are to be present at shareholders' meetings. The chief executive officer is to attend.

At least one member of the company's nomination committee, at least one of the company's auditors and, if possible, each member of the board are to be present at the annual general meeting.

- 1.4 The company's nomination committee is to propose a chair for the annual general meeting. The proposal is to be presented in the notice of the meeting.
- 1.5 The shareholders' meeting is to be conducted in Swedish and the material presented is to be available in Swedish. If the ownership structure warrants it, and it is financially feasible, the company is to offer simultaneous interpretation into other relevant languages, as well as translation of all or parts of the meeting documentation.

- 1.6 A shareholder, or a representative of a shareholder, who is neither a member of the board nor an employee of the company is to be appointed to verify the minutes of the shareholders' meeting.
- 1.7 The minutes of the latest annual general meeting and any subsequent extraordinary shareholders' meetings are to be posted on the company's website. It is not necessary to publish the register of voters from the meeting or any attachments containing such information. The minutes are also to be translated from Swedish into any other language warranted by the ownership structure, providing this is financially feasible.

## **2 Appointment and remuneration of the board and statutory auditor**

*The shareholder's meeting's decisions on election and remuneration of the board of directors and auditor are to be prepared in a structured, clearly stated process governed by the shareholders that provides conditions for well-informed decision-making.*

*The sole task of the nomination committee is to propose decisions to the shareholders' meeting on electoral and remuneration issues and, where applicable, procedural issues for the appointment of the following year's nomination committee. Regardless of how they are appointed, members of the nomination committee are to promote the interests of all shareholders. Members are not to reveal the content and details of nominations discussions unduly.*

- 2.1 The company is to have a nomination committee.

The nomination committee is to propose candidates for the post of chair and other members of the board, as well as fees and other remuneration to each member of the board.

The nomination committee is also to make proposals on the election and remuneration of the statutory auditor.
- 2.2 The shareholders' meeting is to appoint members of the nomination committee or to specify how they are to be appointed.

This decision is to include procedures for replacing members of the nomination committee who leave before its work is concluded.



- 2.3 The nomination committee is to have at least three members, one of whom is to be appointed committee chair.

The majority of the members of the nomination committee are to be independent of the company and its executive management.<sup>1</sup> Neither the chief executive officer nor other members of the executive management are to be members of the nomination committee.

At least one member of the nomination committee is to be independent of the company's largest shareholder in terms of votes or any group of shareholders that act in concert in the governance of the company.

- 2.4 Members of the board of directors may be members of the nomination committee but may not constitute a majority thereof. Neither the company chair nor any other member of the board may chair the nomination committee.

If more than one member of the board is on the nomination committee, no more than one of these may be dependent of a major shareholder in the company.<sup>2</sup>

- 2.5 The company is to announce the names of members of the nomination committee on its website no later than six months before the annual general meeting. If any member has been appointed by a particular owner, that owner's name is to be stated. If any member leaves the committee, this information is to be published. If a new member is appointed to the nomination committee, the corresponding information about the new member is to be provided.

The website is also to provide information on how shareholders may submit recommendations to the nomination committee.

- 2.6 The nomination committee's proposals are to be presented in the notice of a shareholders' meeting where the election of board members or auditor is to be held and on the company's website.

When the notice of the shareholders' meeting is issued, the nomination committee is to issue a statement on the company's website explaining its proposals regarding the board of directors with regard to the requirements concerning the composition of the board contained in Code rule 4.1. If the outgoing chief executive officer is nominated for the post of chair, reasons for this proposal are also to be fully explained.

<sup>1</sup> For criteria for assessing independence, see 4.4.

<sup>2</sup> For criteria for assessing independence, see 4.5.

The following information on candidates nominated for election or re-election to the board is to be posted on the company's website:

- The candidate's age, principal education and work experience,
- any work performed for the company and other significant professional commitments,
- any holdings of shares and other financial instruments in the company and any such holdings owned by the candidate or the candidate's related natural or legal persons,
- whether the nomination committee, in accordance with Code rules 4.4 and 4.5, deems the candidate to be independent of the company and its senior management, as well as of major shareholders in the company. Where circumstances listed respectively in paragraph 2, bullets 1 to 7 of 4.4 and the first sentence in paragraph 2 of 4.5 exist, the nomination committee is to justify its position regarding candidates' independence,
- in the case of re-election, the year that the person was first elected to the board.

2.7 At a shareholders' meeting where the election of board members or auditor is to be held, the nomination committee is to give an account of how it has conducted its work and explain its proposals.

### **3 The tasks of the board of directors**

*The board of directors is to manage the company's affairs in the interests of the company and all shareholders.*

- 3.1 The principle tasks of the board of directors include
- establishing the overall operational goals and strategy of the company,
  - appointing, evaluating and, if necessary, dismissing the chief executive officer,
  - ensuring that there is an effective system for follow-up and control of the company's operations,
  - ensuring that there is a satisfactory process for monitoring the company's compliance with laws and other regulations relevant to the company's operations,
  - defining necessary guidelines to govern the company's ethical conduct,
  - ensuring that the company's external communications are characterised by openness, and that they are accurate, reliable and relevant.
- 3.2 The board is to approve any significant assignments the chief executive officer has outside the company.



## 4 The size and composition of the board

*The board is to have a size and composition that enables it to manage the company's affairs efficiently and with integrity.*

- 4.1 The board is to have a composition appropriate to the company's operations, phase of development and other relevant circumstances. The board members elected by the shareholders' meeting are collectively to exhibit diversity and breadth of qualifications, experience and background. The company is to strive for equal gender distribution on the board.
- 4.2 Deputies for directors elected by the shareholders' meeting are not to be appointed.
- 4.3 No more than one member of the board may be a member of the executive management of the company or a subsidiary.<sup>3</sup>
- 4.4 The majority of the directors elected by the shareholders' meeting are to be independent of the company and its executive management.  
A director's independence is to be determined by a general assessment of all factors that may give cause to question the individual's independence of the company or its executive management. Factors that should be considered include<sup>4</sup>
- whether the individual is the chief executive officer or has been the chief executive officer of the company or a closely related company within the last five years,
  - whether the individual is employed or has been employed by the company or a closely related company within the last three years,
  - whether the individual receives a not insignificant remuneration for advice or other services beyond the remit of the board position from the company, a closely related company or a person in the executive management of the company,
  - whether the individual has or has within the last year had a significant business relationship or other significant financial dealings with the company or a closely related company as a client, supplier or partner, either individually or as a mem-

<sup>3</sup> The chief executive officer and an executive chair of the board may thus not both be members of the board if the latter is also a member of the company's executive management. A member of the board may, however, be employed and receive remuneration from the company, e.g. a member of the board who is honorary chair of the board or who acts as an "ambassador" for the company or similar.

<sup>4</sup> The results of the nomination committee's deliberations are to be reported in accordance with the fourth bullet of the third paragraph in 2.6.

- ber of the executive management, a member of the board or a major shareholder in a company with such a business relationship with the company,<sup>5</sup>
- whether the individual is or has within the last three years been a partner at, or has as an employee participated in an audit of the company conducted by, the company's or a closely related company's current or then auditor,
  - whether the individual is a member of the executive management of another company if a member of the board of that company is a member of the executive management of the company, or
  - whether the individual has a close family relationship with a person in the executive management or with another person named in the points above if that person's direct or indirect business with the company is of such magnitude or significance as to justify the opinion that the board member is not to be regarded as independent.

A closely related company is defined in this context as another company in which the company holds, directly or indirectly, at least ten per cent of the shares, ownership interest or votes, or a financial share that confers an entitlement of at least ten per cent of the yield. If the company owns more than 50 per cent of the shares, ownership interest or votes in another company, it is to be regarded as indirectly holding the latter company's ownership in other companies.

- 4.5 At least two of the members of the board who are independent of the company and its executive management are also to be independent in relation to the company's major shareholders.

In order to determine a board member's independence, the extent of the member's direct and indirect relationships with major shareholders is to be taken into consideration<sup>6</sup>. A member of the board who is employed by or is a board member of a company which is a major shareholder is not to be regarded as independent.

In this context, a major shareholder is defined as controlling, directly or indirectly, at least ten per cent of the shares or votes in the company. If a company owns more than 50 per cent of the shares, ownership interest or votes in another company, the former is regarded as having indirect control of the latter company's ownership in other companies.

- 4.6 Nominees are to provide the nomination committee with sufficient information to enable an assessment of the candidate's independence as defined in 4.4 and 4.5.

<sup>5</sup> This point is not to be regarded as applicable to a normal business relationship as a customer of a bank.

<sup>6</sup> The results of the nomination committee's deliberations are to be reported in accordance with the fourth bullet of the third paragraph in 2.6.



- 4.7 Members of the board are to be appointed for a period extending no longer than to the end of the next annual general meeting.

## 5 The tasks of directors

*Directors are to devote the necessary time and care, and to ensure they have the competence required, to effectively protect and promote the interests of the company and its owners. To enable it to make well-founded decisions, the chief executive officer is to provide the board with the necessary background information and documentation for its work, both before and between board meetings.*

- 5.1 Each director is to form an independent opinion on each matter considered by the board and to request whatever information he or she believes necessary for the board to make well-founded decisions.
- 5.2 Each director is obliged to acquire the knowledge of the company's operations, organisation, markets etc., required for the assignment.

## 6 The chair of the board

*The chair has a particular responsibility to ensure that the work of the board is well organised and conducted efficiently.*

- 6.1 The chair of the board is to be elected by the shareholders' meeting. If the chair relinquishes the position during the mandate period, the board is to elect a chair from among its members to serve until the end of the next annual general meeting.
- 6.2 If the chair of the board is an employee of the company or has duties assigned by the company in addition to his or her responsibilities as chair, the division of work and responsibilities between the chair and the chief executive officer is to be clearly stated in the board's statutory Rules of Procedure and its Instruction to the chief executive officer.
- 6.3 The chair is to ensure that the work of the board is conducted efficiently and that the board fulfils its obligations. In particular, the chair is to
- organise and lead the work of the board, creating the best possible conditions for the board's activities,
  - ensure that new board members receive the necessary introductory training, as well as any other training that the chair and member agree is appropriate,
  - ensure that the board regularly updates and develops its knowledge of the company and its operations,

- be responsible for contacts with the shareholders regarding ownership issues and communicate shareholders' views to the board,
- ensure that the board receives sufficient information and documentation to enable it to conduct its work,
- in consultation with the chief executive officer, draw up proposed agendas for the board's meetings,
- verify that the board's decisions are implemented, and
- ensure that the work of the board is evaluated annually.

## 7 Board procedures

*The formal procedures for the work of the board of directors are to be stipulated by the board. These procedures are to be clear and well documented.*

- 7.1 The board is to review the relevance and appropriateness of its statutory Rules of Procedure, Instruction to the chief executive officer and Reporting instruction at least once a year.
- 7.2 If the board establishes special committees to prepare its decisions on specific issues, its Rules of Procedure are to specify the duties and decision-making powers that the board has delegated to these committees and how the committees are to report to the board. Committees are to keep minutes of their meetings and the minutes are to be made available to the board.
- 7.3 An audit committee<sup>7</sup> is to comprise no fewer than three board members. The majority of the members of the committee are to be independent of the company and its executive management. At least one of the committee members who are independent of the company and its executive management is also to be independent of the company's major shareholders<sup>8</sup>.
- 7.4 The board is to ensure that the company has adequate internal controls and formalised routines to ensure that approved principles for financial reporting and

<sup>7</sup> Stipulations on the appointment of an audit committee and the tasks of the committee are to be found in chapter 8, sections 49 a-b of the Swedish Companies Act (2006:551). Chapter 8, section 49a, paragraph 2 states that the entire board may perform the tasks of the audit committee.

<sup>8</sup> Chapter 8, section 49a, paragraph 1 of the Swedish Companies Act (2006:551) states that members of the committee may not be employees of the company, and that at least one committee member is to be independent of the company and its executive management, as well as the company's major shareholders. This member must also have auditing or accounting competence. For criteria for assessing independence, see 4.4 and 4.5.



internal controls are applied, and that the company's financial reports are produced in accordance with legislation, applicable accounting standards and other requirements for listed companies.

For companies that do not have a separate internal audit function, the board of directors is to evaluate the need for such a function annually and to justify its decision in its report on internal controls in the company's corporate governance report.<sup>9</sup>

- 7.5 At least once a year, the board is to meet the company's statutory auditor without the chief executive officer or any other member of the executive management present.
- 7.6 The board of directors is to ensure that the company's six- or nine-month report is reviewed by the statutory auditor.
- 7.7 The minutes of the board are to provide a clear representation of the matters discussed, the material supporting each item and the substance of the decisions taken. The minutes are to be sent to each member of the board as soon as possible following the board meeting.

## **8 Evaluation of the board of directors and the chief executive officer**

*Regular and systematic evaluation forms the basis for assessment of the performance of the board and the chief executive officer and for the continuous development of their work.*

- 8.1 The board of directors is to evaluate its work annually, using a systematic and structured process, with the aim of developing the board's working methods and efficiency. The results of this evaluation are to be made available to the nomination committee where relevant.
- 8.2 The board is to continuously evaluate the work of the chief executive officer. The board is to examine this issue formally at least once a year, and no member of the executive management is to be present during this formal evaluation process.

<sup>9</sup> The inclusion of a report on internal controls and risk management in the company's corporate governance report is a requirement stipulated in chapter 6, section 6, paragraph 2, bullet 2 of the Annual Accounts Act (1995:1554).

## 9 Remuneration<sup>10</sup> of the board and executive management<sup>11</sup>

*The company is to have formal and openly stated processes for deciding on remuneration of members of the board and the executive management.*

*Remuneration and other terms of employment of members of the board and the executive management are to be designed with the aim of ensuring that the company has access to the competence required at a cost appropriate to the company, and so that they have the intended effects for the company's operations.*

- 9.1 The board is to establish a remuneration committee, whose main tasks are to
- prepare the board's decisions on issues concerning principles for remuneration, remunerations and other terms of employment for the executive management,
  - monitor and evaluate programmes for variable remuneration, both ongoing and those that have ended during the year, for the executive management, and
  - monitor and evaluate the application of the guidelines for remuneration that the annual general meeting is legally obliged to establish<sup>12</sup>, as well as the current remuneration structures and levels in the company.
- 9.2 The chair of the board may chair the remuneration committee. The other shareholders' meeting-elected members of the committee are to be independent of the company and its executive management.<sup>13</sup> Appropriate knowledge and experience of executive remuneration issues is to exist among the members of the committee.

If the board considers it is more appropriate, the entire board may perform the remuneration committee's tasks, on condition that no board member who is also a member of the executive management participates in this work.

<sup>10</sup> For the purposes of this chapter, pay is defined as (i) fixed salary or fee, (ii) variable remuneration, including share- and share-price-related incentive programmes, (iii) pension schemes, and (iv) other financial benefits.

<sup>11</sup> The term "board and the executive management" refers to individuals whose compensation and benefits are to be reported separately by the company according to chapter 5, section 20, paragraphs 1 and 3 of the Annual Accounts Act, (1995:1554), i.e. members of the board, the chief executive officer and each member of the company's executive management. The term executive management refers to this same group of people with the exception of members of the board.

<sup>12</sup> The stipulation that the annual general meeting is to establish guidelines for executive remuneration is to be found in chapter 7, section 61 of the Swedish Companies Act (2005:551). The guidelines are to contain the criteria stated in chapter 8, section 51, paragraph 1 and section 52, paragraph 1 of the Act. The Act specifically states that the guidelines are not to cover fees and other remuneration for board work.

<sup>13</sup> For criteria for assessing independence, see 4.4.



- 9.3 If the remuneration committee or the board uses the services of an external consultant, it is to ensure that there is no conflict of interest regarding other assignments this consultant may have for the company or its executive management.
- 9.4 Variable remuneration is to be linked to predetermined and measurable performance criteria<sup>14</sup> aimed at promoting the company's long term value creation.
- 9.5 Variable remuneration paid in cash is to be subject to predetermined limits regarding the total outcome.<sup>15</sup>
- 9.6 When designing systems for variable remuneration of the executive management that is to be paid in cash, the board is to consider imposing restrictions
- which make payment of a certain proportion of the remuneration conditional on whether the performance on which compensation is based proves to be sustainable over time, and
  - which allow the company to reclaim components of remuneration that have been paid on the basis of information which later proves to be manifestly misstated.
- 9.7 The shareholders' meeting is to decide on all share and share-price related incentive schemes for the executive management. The decision of the shareholders' meeting is to include all the principle conditions of the scheme.
- Background material and documentation pertaining to the proposed scheme is to be made available to shareholders in good time before the shareholders' meeting. The material is to be clear and simple enough to allow shareholders to form an opinion on the reasons for the scheme, the principle conditions of the scheme and any dilution of the share capital that may result from it, as well as the total cost to the company of different conceivable outcomes.
- 9.8 Share- and share-price-related incentive programmes are to be designed with the aim of achieving increased alignment between the interests of the participating individual and the company's shareholders.

<sup>14</sup> The criteria may be of different kinds, including own investment, e.g. through participation in a share savings programme. The term measurable is used to indicate that it should be possible to evaluate to what extent the criteria have been fulfilled.

<sup>15</sup> Such limits do not need to be specified as cash amounts, but may also be defined in other ways.

Programmes that involve acquisition of shares are to be designed so that a personal holding of shares in the company is promoted. The vesting period or the period from the commencement of an agreement to the date for acquisition of shares is to be no less than three years.

Non-executive members of the board are not to participate in programmes designed for the executive management or other employees. Remuneration of non-executive board members is not to include share options.

- 9.9 Fixed salary during a period of notice and severance pay are together not to exceed an amount equivalent to the individual's fixed salary for two years.

## 10 Information on corporate governance

*The board of directors is to inform shareholders and the capital market annually regarding corporate governance functions in the company and how the company applies the Swedish Corporate Governance Code. This information is to be published in a corporate governance report<sup>16</sup> and on the company's website.*

- 10.1 In its corporate governance report, the company is to state clearly which Code rules it has not complied with, explain the reasons for each case of non-compliance and describe the solution it has adopted instead.
- 10.2 As well as the items stipulated by legislation<sup>17</sup>, the following information is to be included in the corporate governance report if it is not presented in the annual report:
- the composition of the company's nomination committee. If any member of the committee has been appointed by a particular owner, the name of this owner is also to be stated,
  - the information on each member of the board that is required by Code rule 2.6,
  - the division of work among members of the board and how the work of the board was conducted during the most recent financial year, including the number of board meetings held and each member's attendance at board meetings,
  - the composition, tasks and decision-making authority of any board committees, and each member's attendance at the respective committee's meetings,

<sup>16</sup> The requirement to produce a corporate governance report is stipulated in chapter 6, sections 8 and 9 of the Annual Accounts Act (1995:1554).

<sup>17</sup> The information to be included in the corporate governance report is stipulated in chapter 6, section 6 of the Annual Accounts Act (1995:1554).

- for the chief executive officer:
  - age, principal education and work experience,
  - significant professional commitments outside the company, and
  - holdings of shares and other financial instruments in the company or similar holdings by related natural or legal persons, as well as shareholdings and part ownership in enterprises with which the company has significant business relations,
- any infringement of the stock exchange rules applicable to the company, or any breach of good practice on the securities market reported by the relevant exchange's disciplinary committee or the Swedish Securities Council during the most recent financial year.

10.3 The company is to have a section of its website devoted to corporate governance matters, where the company's three most recent corporate governance reports are to be posted, together with that part of the audit report which deals with the corporate governance report or the auditor's written statement on the corporate governance report<sup>18</sup>.

The corporate governance section of the website is to include the company's current articles of association, along with any other information required by the Code.<sup>19</sup> It is also to include up to date<sup>20</sup> information regarding

- members of the board, the chief executive officer and the statutory auditor,
- a description of the company's system of variable remuneration to the board and executive management, and of each outstanding share- and share-price-related incentive scheme.

No later than two weeks before the annual general meeting, the board is also to report the results of the evaluation required by bullets two and three of Code rule 9.1 on the company's website.

<sup>18</sup> The requirement for an auditor review of the corporate governance report if it is included in the director's report or of the information that is otherwise found in the company's or group's director's report is stipulated in chapter 9, section 31 of the Companies Act (2005:551). The requirement for auditor review if the corporate governance report is published separately from the annual report is stipulated in chapter 6, section 9 of the Annual Accounts Act (1995:1554).

<sup>19</sup> See 1.1, 1.7, 2.5 and 2.6.

<sup>20</sup> The term up to date is to be interpreted as meaning that the information is to be updated within seven days of any changes made or becoming known to the company.

SWEDISH  
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