SWEDISH
CORPORATE
GOVERNANCE BOARD

Annual Report 2019

Contents

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A word from the Chair of the Board

Sweden has more multinational companies per inhabitant than most countries. Our companies are not only relatively large, they are also very successful, regardless of whether we look at them from a commercial, technological, financial, leadership or sustainability perspective.

A reflection of this can be seen in the broad indices on the Stockholm Stock Exchange. Regardless of which long-term period you choose – 10, 20, 30 or 40 years – the Swedish stock market is one of the world's best performers.

This has also meant that Sweden is one of the world's most export-dependent countries. Or allow me to use the term "favoured" instead of the perhaps negative sounding "dependent". Sweden is one of the world's most export-favoured countries. And this is one of the foundations of the Swedish welfare state and our relatively privileged standard of living. There are obviously also many other reasons why Swedish society has developed so positively over time - our stable democracy, our social safety nets, the opportunities afforded to people to become successful entrepreneurs, our education system - but without a world-class corporate sector, Sweden would not have become what it is today.

Only Sweden has Swedish companies. But also, only Sweden has Swedish self-regulation. (Okay, we share most of our corporate governance model with our Nordic friends…). And this self-regulation has in turn been one of the prerequisites for our flourishing corporate sector. Self-regulation facilitates a speedy regulatory process, effective rules adapted to the market with few side effects and preliminary rulings or prompt retrospective rulings by the market's own "court of law", the Swedish Securities Council.

The flexible framework provided by self-regulation is absolutely vital for a corporate sector fighting in a highly competitive global market to be able to continue to be successful. Flexibility is further enhanced by the ingenious "comply or explain" principle, which means that companies comply with the Swedish Corporate Governance Code just as well if you do not follow it – provided that they state THAT they do not do so, WHY they do not and WHAT they do instead. This in turn provides greater transparency than more formally regulated systems.

That the Swedish corporate governance model works (exceptionally) well is shown by the success of Swedish companies and the long-term growth of the Swedish stock market. Naturally, issues and problems arise over time and these must be dealt with, and it is then the role and responsibility of the Swedish Corporate Governance Board to ensure that this happens. The concept of self-regulation consists not only of the word "self", but also "regulation". The Swedish Corporate Governance Code is an extension of, that is to say a reinforcement of, the laws and regulations that must always form a foundation. But it is important to bear in mind that it addresses individual issues, not structural systemic errors that mean that the whole model needs to be redesigned.

This last point cannot be emphasised to strongly at a time when political interference and general populism also focus on corporate governance. This applies not least to the never-ending regulatory mania within the European Union, which is to the benefit of few but to the detriment of many. Any positive effects for the competitiveness of stock exchange listed companies in the EU are out of the question; on the contrary, additional bureaucracy and costs are being imposed that can only benefit competitors in other parts of the world.

The biggest problem is that the EU seems to believe that its job is to implement the Anglo-Saxon corporate governance model across Europe. It may seem like a minor detail when a specific issue is at risk of being dealt with in a manner that is adapted to one particular corporate governance model and that works well in that context. But it doesn't need more than a few such elements to creep into Swedish corporate governance for the basic principles upon which our model is constructed to be demolished and for us to be given a regulatory framework that is a hotchpotch with no common thread.

Over the years, often in collaboration with industry, politicians and legislators, the Swedish Corporate Governance Board has successfully evaded this type of problem. However, this work is now under threat from the European Commission's recent strategy. The Commission has actually been given the right to issue its own "guidelines" for the application of various laws within EU legislation. Such guidelines are issued without the consultation which takes place in the normal legislative process and which allows for the influence of member states. The background to this is that the Commission has found it increasingly difficult in recent years to achieve the more far-reaching harmonisation of corporate governance in the EU it has been seeking since its 2003 action plan, partly due to strong opposition from the Nordic countries.

The Commission does always affirm that these guidelines are not mandatory, only "advisory" for the companies at which they are aimed. In reality, however, there is a major risk that they will create a generally applicable norm that in practice will govern how companies are expected to apply the underlying regulation. The danger is therefore obvious that such guidelines will be used to push through more far-reaching and detailed regulation than has been achieved in the actual legislation.

Another external development that creates problems in the work of the Corporate Governance Board is the friction that exists between individual companies' and countries' need for flexible regulations and the globalised capital market's pursuit of uniformity in order to facilitate working across borders. This leads to demands for changes in the stewardship of Swedish listed companies, sometimes also as a result of misunderstandings about how our model actually works.

The Board will of course continue its efforts to defend the Swedish and Nordic models. As I wrote in last year's foreword, one of our most important projects is to work with our colleagues in the other Nordic corporate governance bodies to create a framework for a Nordic code. This is a not easy task and a couple of previous attempts have come to nothing. If we succeed, however, we will be a force to reckon with. Together we will be G12 in the G20 group and the fifth largest player within the EU.

For those who would like an in-depth look at the Nordic corporate governance model, I highly recommend Per Lekvall's extraordinarily interesting article contained in this annual report.

For an account of the more operational issues that the Board has worked on during the year, I refer to our Executive Director Björn Kristiansson's foreword. However, I am happy to report that the past year's round table meetings, at which may of the Board's stakeholders participated and gave their views on the Code, as well as on previous occasions in our regular reviews, there has been a clear common conclusion: do not meddle with our well-functioning Code without good reason. Further proof of the power of the Swedish corporate governance model.

Nacka, June 2019

Arne Karlsson
Chair of the Board

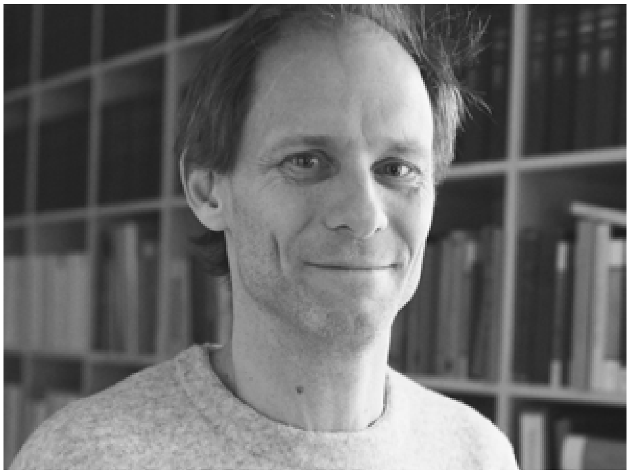
A word from the Executive Director

The work of the Swedish Corporate Governance Board during the past “corporate governance year”, (our name for the period between the annual general meetings of listed companies), has been focused on our regulatory framework, organisational issues and Nordic co-operation.

During the year, we conducted a number of round table meetings as part of our regular review of the Swedish Corporate Governance Code, and we received many valuable comments and suggestions - the most recent revision of the Code was completed in 2016. We will present a proposal of a Revised Code after the summer and circulate it for comment, with the aim of having the new Code come into force at the turn of the year.

We are also working on designing supplementary self-regulation for the legislation following the implementation of the changes to the Shareholder Rights Directive. This includes issues related to “say on pay”, i.e. the shareholders’ meeting’s influence over remuneration guidelines for the executive management and the new remuneration report. This work is intended to result in a recommendation from the Swedish Corporate Governance Board on remuneration, into which we also intend to move the Code’s existing rules on remuneration committees and variable remuneration. Our ambition is to have the recommendation also include the rules on share price related incentive programmes that are a result of the Swedish Securities Council’s rulings. When we are moving these rules, it is natural that we also consider whether the existing rules are appropriate in all respects. Our intention is for us to get better rules while at the same time making it easier to understand the Swedish self-regulation regarding remuneration. Our aim is that this recommendation, subject to a round of referrals, will also be applicable from the turn of the year.

As far as our organisation is concerned, we have initiated a discussion with our parent association about how the Board should work with the regulations outside the Code. In addition to the forthcoming regulations on remuneration described above, the Board is nowadays responsible for the Takeover Rules and rules on private placements in listed companies, and it is not unthinkable that other regulatory frameworks will be added to the Board’s responsibilities. Together with the parent association, we are evaluating the competences that are



needed for working with these more complex regulations and how we can best use the established cooperation we have with the experts in the reference group that assists the Board in its work on the Takeover Rules.

It is of the utmost importance for the Corporate Governance Board that we maintain a continuous dialogue with listed companies and their management teams, boards and owners so that they are as up to date regarding our work and our initiatives as we are regarding the issues that are at the top of these stakeholders’ agendas. This is not only the case when we are conducting reviews of the Code and the round table discussions that are a part of that process. As part of our continuous contact with our stakeholders, we are organising a corporate governance seminar this autumn to look at current corporate governance issues, and we hope this will be a well-attended forum that we can run every year.

Finally, we have resumed cooperation with our Nordic code issuing colleagues, and we are now looking for processes that will enable our unique and successful Nordic corporate governance model to be presented jointly and thus contribute to increased knowledge about the model in the EU and among international institutional investors and voting advisers.

Visby, June 2019

Björn Kristiansson
Executive Director

I. ACTIVITY REPORT

This part of the annual report describes the work of the Swedish Corporate Governance Board during corporate governance year 2018–2019 and discusses current issues regarding the Swedish Corporate Governance Code and Swedish corporate governance in general.

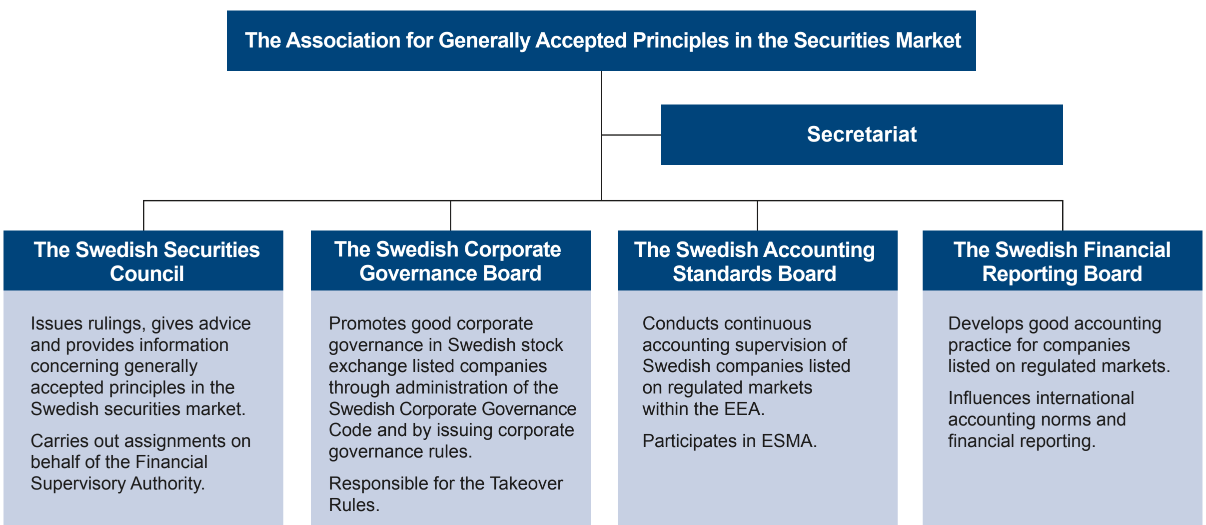
The Mission of the Swedish Corporate Governance Board

The Swedish Corporate Governance Board is one of four bodies that constitute the Association for Generally Accepted Principles in the Securities Market, an association set up in 2005 to oversee Swedish self-regulation within the securities market. The other three bodies in the association are the Swedish Securities Council, the Swedish Financial Reporting Board and the Swedish Accounting Standards Board. The principals of the Association are nine organisations in the private corporate sector. See the illustration below and www.godsedpavpmarknaden.se for more details.

The original and still primary role of the Board is to promote the positive development of Swedish corporate governance, mainly by ensuring that Sweden constantly has a modern, relevant and effective code for corporate governance in stock exchange listed companies.

The Board also works internationally to increase awareness of Swedish corporate governance and the Swedish securities market, and to safeguard and promote Swedish interests within these fields. In May 2010, the role of the Swedish Corporate Governance Board was widened to include responsibility for issues previously handled by Näringslivets Börskommitté, the Swedish Industry and Commerce Stock Exchange Committee, namely to promote generally accepted principles in the Swedish securities market by issuing rules regarding good practice, including rules concerning takeovers and other areas as required. The Board has issued rules on private placements in listed companies and is currently working on a set of rules concerning remuneration.

The role of the Board in promoting Swedish corporate governance is to determine norms for good governance



of listed companies. It does this by ensuring that the Swedish Corporate Governance Code remains appropriate and relevant, not only in the Swedish context, but also with regard to international developments.

The Board is also an active contributor to international forums, including the European Union, promoting Swedish interests in the field of corporate governance. Another area of continued importance for the Board in recent years has been as a referral body on corporate governance issues.

The Board has no supervisory or adjudicative role regarding individual companies' application of the Code. Ensuring that companies apply the Code in accordance with stock exchange regulations and the Annual Accounts Act is the responsibility of the company auditor and the respective exchanges. The responsibility for evaluating and judging companies concerning their compliance or non-compliance with individual rules in the Code, however, lies with the actors in the capital markets. It is the current and future shareholders and their advisers who ultimately decide whether a company's application of the Code inspires confidence or not, and how that affects their view of the company's shares as an investment.

Interpretation of the Code is not a matter for the Board either. This is the responsibility of the Swedish Securities Council, Aktiemarknadsnämnden, which issues rulings on request. This is discussed in detail later in this report.

The Work of the Board during the Year

In 2018, the Board initially consisted of Arne Karlsson (Chair), Eva Hägg (Deputy Chair), Ingrid Bonde, Peter Clemedtson, Göran Espelund, Per Lekvall, Annika Lundius, Marianne Nilsson, Olle Nordström, Lena Olving and Lars Thalén, as well as Executive Director Björn Kristiansson. At the parent organisation's annual meeting in May 2018, Peter Clemedtson, Annika Lundius, Olle Nordström and Lars Thalén left the Board, and Karin Apelman, Louise Lindh and Gun Nilsson were elected. Also, Andreas Gustafsson continued as a co-opted member of the Board. The Board held four formal meetings during the year. Additionally, discussion and consultation took place by e-mail and telephone when required. A number of meetings for sub-committees and working groups also took place.

The Board's work during the year is summarised below.

Strategy 2017–2020

During 2016 and 2017, the Board implemented a major strategic project to discuss and develop the Board's activity plan and priorities for the coming years. The Board has not previously had a comprehensive strategy document. In May 2017, the Board adopted Strategy 2017-2020. The next step was to operationalise this strategy document, and this operationalisation plan has now been integrated into the work of the Board. The Board has continued to assess its role in influencing the issuing of corporate governance norms by the EU and how the Board is to handle the matters previously handled by the Swedish Industry and Commerce Stock Exchange Committee, namely issuing rules on generally good practice in the Swedish stock market where required. This is discussed further under Key issues for 2019 below.

Communication

In spring 2019, the Board began work on updating its communication plan. As a result, the Board's website will be updated to make it easier to navigate and to bring it into line with the graphic profile used by the Association for Generally Accepted Principles in the Securities Market and its other constituent bodies. Additionally, the Board has decided to resume its tradition of annual corporate governance seminars. This is discussed further under Key issues for 2019 below.

Follow up of the Code and Swedish corporate governance

In order to monitor that the Code is working as intended and to ascertain whether any modifications to the Code should be considered, the Board regularly conducts a variety of surveys of how the rules of the Code are applied in practice. The most important of these is its examination of Code companies' corporate governance reports and the corporate governance information on companies' websites, which it has carried out every year since the original version of the Code was introduced in 2005. Since 2015, this annual survey has been conducted on the Board's behalf by SIS Ägarservice. The results of the latest survey are described in Section II of this report.

Revision of the Code

As well as its annual examination of companies' corporate governance information, the Board continuously monitors and analyses how companies apply the Code through dialogue with its users and through structured surveys. It also monitors and analyses the general debate on the subject, changes in legislation and regulations concerning corporate governance, developments in other countries and academic research in the field. Based on this work and other relevant background information, the Board continuously considers the need for limited modifications to the Code or more general reviews of the entire Code.

The most recent major revision of the Code took place in 2015. This resulted in a number of Board Instructions being issued, and a new, revised version of the Code came into force on 1 December 2016. This version of the Code is the one that currently applies.

The Corporate Governance Board initiated a new review of the Code in autumn 2018 to examine whether it is still relevant and up to date. The process has so far resulted in five round table meetings with Swedish and foreign "Code users" to acquire their input. Following these discussions, the work to develop a proposal for a revised and updated Code has now begun. This is described below under Key issues for 2019.

Gender balance on the boards of stock exchange listed companies

Since its introduction, the Swedish Corporate Governance Code has stipulated that listed companies are to strive for equal gender distribution on their boards. In their explanations of their proposals and nominations, nomination committees are to consider the Code's rule on gender balance.

In 2014, the Swedish Corporate Governance Board issued an Instruction which contained several initiatives for achieving improved gender balance on the boards of listed companies, and this came into force on 1 January 2015. The Instruction was then implemented into the Code as part of the 2015 revision.

Additionally, the Board has stated that it would like to see owners increase the pace of change and move towards the total share of the least represented gender on boards of listed companies reaching around 40 per cent by 2020. It also stated that by 2017, major companies should already have reached an average of 35 per cent and smaller companies should be approaching 30 per cent.

The Corporate Governance Board initially conducted an assessment of gender balance on the boards of listed companies twice a year – at the beginning of January, ahead of the annual general meetings season, and in July, when the annual general meetings season is over. The Board has now decided to conduct this assessment once a year, in July. The information acquired from these assessments is available on the Board's website, www.bolagsstyrning.se. The statistics for 2018 refer to the figures as of 10 June that year. The statistics for June 2019 were not yet available at the time of this annual report's publication.

The Board's calculation methods are as follows:

The Corporate Governance Board
The basis of the Board's calculation model is that only Swedish, not foreign, companies whose shares are admitted to trading on a Swedish regulated market (Nasdaq Stockholm and NGM Equity) are to be included, as it is these companies that must comply with Swedish company law. A follow-up of the Board's level of ambition shows the following development between measurements in June 2017 and June 2018.

1. *An approximate proportion of at least 40 per cent for each gender following the AGM season in 2020.* This includes all members of company boards elected by shareholders' meetings, (meaning it includes CEOs who are elected to the board, but it does not include employee representatives), in all Swedish listed companies. On 10 June 2018, the proportion of female board members was 34.3 per cent, compared with 33.2 per cent on 10 June 2017, which is an increase of 1.1 percentage points.
2. *An approximate proportion of at least 35 per cent for each gender in large companies following the AGM season in 2017.* This includes all board members of Swedish Large Cap companies elected by shareholders' meetings. On 10 June 2018, the proportion of female board members was 39.0 per cent, unchanged compared with the percentage on 10 June 2017.
3. *An approximate proportion of at least 35 per cent for each gender in smaller companies following the AGM season in 2017.* This includes all board members of Swedish Mid and Small Cap companies and Swedish companies on the NGM Equity exchange elected by shareholders' meetings. On 10 June 2018, the proportion of female directors was 31.9 per cent, compared with 30.3 per cent on 10 June 2017, which is an increase of 1.6 percentage points.

The European Commission
The Corporate Governance Board has previously also produced statistics using the European Commission's calculation model, meaning that SMEs (SMEs) are excluded, board members who are also members of the executive management are excluded and employee representatives on boards are included. The Corporate Governance Board decided ahead of the AGM season in 2017 to discontinue the production of specific statistics using this calculation method. The proportion of women elected to the boards of Swedish listed companies calculated according to the EU Commission's model would have been higher compared with the statistics produced by the Board.

Employee representatives
The employee organisations appoint the employee representatives. The proportion of women among employee representatives in all Swedish listed companies on 10 June 2018 was 28.9 per cent, compared with 31.0 per cent on 10 June 2017, i.e. a decrease of 2.1 percentage points.

Rules on generally accepted principles in the Swedish securities market

In its role of promoting generally accepted principles in the Swedish securities market, a role it took over from Näringslivets Börskommitté, the Swedish Industry and Commerce Stock Exchange Committee, the Swedish Corporate Governance Board is to:

- monitor the application of rules, including those concerning takeover bids,
- monitor legislation and other regulation, as well as academic research into stock market issues in Sweden and internationally,
- and, based on the above, devise any rules or changes to existing rules that are deemed appropriate and ensure that these have the support and acceptance of the parties concerned.

Takeover Rules
As outlined above, the Board is responsible for proposing changes to the rules governing takeovers on the Nasdaq OMX Stockholm and NGM markets. The Board itself issues equivalent rules for the First North, Nordic MTF and Spotlight Stock Market (formerly AktieTorget) trading platforms.

In February 2017, the Board set up a working group, under the leadership of Professor Rolf Skog, Executive Director of the Swedish Securities Council, assisted by Erik Sjöman, a lawyer, Björn Kristiansson Executive Director of the Board and the Board's legal associate, Tobias Hultén, to conduct a review of the existing Takeover Rules. As in previous work to formulate and revise the Takeover Rules, the process took place in close consultation with a broad reference group. New rules were presented in autumn 2017 and came into force on 1 November 2017.

Some matters, however, were not addressed in time for the launch of the new rules. The working group therefore continued his work together with the reference group at the end of 2017 and the beginning of 2018. A new revised version of the Takeover Rules then came into force on 1 April 2018. This is the version that currently applies. The new rules contain the following new features:

- New procedural rules regarding regulatory approvals – the offeror is to withdraw its offer as soon as possible or apply for a dispensation from the Swedish Securities Council if it becomes evident that the required regulatory approvals will not have been received within the maximum nine-month acceptance period.
- Right to return with a new offer – an offeror that has withdrawn an offer due to the rules governing the maximum acceptance period and that subsequently receives the required regulatory approvals is permitted to return with a renewed offer, without prejudice to the general rule that a new offer may not be submitted within 12 months of the previous offer.

A new review of the Takeover Rules is planned to begin in autumn 2019. This is described in more detail under Key issues for 2019 below.

Rules on private placements in listed companies

The Swedish Corporate Governance Board has issued a recommendation regarding private placements in listed companies. The recommendation is applicable to placements announced on or after January 2015.

The recommendation states that rights issues continue to be the preferred option for cash issues. On condition that it is permissible according to the company law, i.e. it is objectively regarded as in the shareholders' interest to deviate from preferential rights, it is also normally acceptable with regard to generally accepted principles in the stock market that a cash issue deviates from the shareholders' preferential rights. Special attention must be paid, however, to ensure that no unfair advantage to any shareholders occurs that is to the detriment of other shareholders. The recommendation also states that any issue price that is set in a competitive manner is acceptable from the perspective of generally accepted principles in the stock market.

The Board accepts that the recommendation is fairly general in nature. In most cases, however, there should be no doubt about whether a new share issue or private placement is compatible with the recommendation or not, but should any doubts exist, the Board assumes that the matter of whether the share issue contravenes the recommendation will be submitted to the Swedish Securities Council for a ruling. The Board and the Council will monitor developments in this area and the Board is prepared to clarify the recommendation further if necessary.

In its ruling AMN 2016:28, the Council declared that the Board's recommendation expresses what in some respects is good practice in the stock market for cash issues of shares, warrants and convertibles in limited companies whose shares are admitted to trading on a regulated market or traded on the First North, Nordic MTF or AktieTorget trading platforms. The scope of the recommendation coincides with the scope of AMN 2002:02. The Council's ruling AMN 2016:28 confirmed that ruling AMN 2002:02 can now be considered to have been replaced in its entirety by the Board's recommendation. A prerequisite for whether a private placement is to be considered compatible with good practice in the stock market is therefore that the instructions in the recommendation are observed.

During the latter part of 2018, the Board discussed the application of the recommendation with representatives of the marketplaces and a number of market actors. Although no specific need for a revision of the recommendation was identified, the Board wishes to provide the following clarifications regarding its application:

The first clarification concerns the possibility for existing shareholders who will receive allocation in a private placement to be able to vote at a shareholders' meeting that makes a decision on the placement. The recommendation does not prohibit these shareholders from participating in the vote, but the question of whether such owners consider it appropriate for themselves to exercise the right to vote or not should be decided by the owners themselves. Whether a certain majority level has been achieved among other owners can be a factor in some cases, for example when determining whether conditions exist for an exemption from a mandatory bid.

The second clarification concerns the recommendation's requirement that the company inform the shareholders and the stock market clearly and in detail about the reasons for the deviation from the shareholders' preferential rights in the press release on the company board's proposal or decision regarding the issue, as well as explaining how the price was or will be determined and how the board has ensured or will ensure that it has set an appropriate market-rate price. In the view of the Corporate Governance Board, it is of the utmost importance that companies comply with the requirement for detailed and clear information to ensure that trust in the company, and in the longer term the stock market, is not eroded.

Referrals etc.

A key role of the Swedish Corporate Governance Board is as a referral body for legislation and the work of committees of inquiry in the field of corporate governance, concerning both the development of rules in Sweden and various forms of regulatory initiative from the EU.

The referral work of the Board has increased each year, not least with regard to regulations from the EU. This is because the European Commission has been intensifying its work to expand and harmonise regulation of corporate governance within the European Union in the wake of the finance crisis. This has led to a series of recommendations, green papers, action plans and proposed directives on various aspects of corporate governance in different sectors in the past seven years.

In 2018, the Board submitted written comments on the following.

The Board submitted a formal response to proposals on new regulations for accounting supervision. The Board approved the Financial Supervisory Authority's proposal, with the exception of some of the details. As previously reported, the Board supported the Authority's proposal to allow future accounting to fall within the self-regulation system. For those areas that are suitable for self-regulation, this form of regulation brings many advantages, not least through well-established and high-quality regulation and its adaptability and capacity for rapid change. In the view of the Board, experience from the EU countries that have delegated continuous oversight of accounting to self-regulatory bodies shows that accounting supervision is an area that is well suited to such a system.

The Board also submitted a formal response regarding the proposal for the implementation of the directive on increased shareholder engagement into Swedish law. (Ds 2018:15). As reported below, the European Commission's Corporate Governance Action Plan, which began with the Barnier Green Paper in 2011, has now resulted to its final regulatory initiative, the Directive on Amendments to the Shareholders' Rights Directive (European Parliament and Council Directive (EU) 2017/828 of 17 May 2017 amending Directive 2007/36/EC regarding the encouragement of shareholders' long-term commitment). The Directive is to be implemented no later than 10 June 2019. The Board's views on the proposal are presented below under the heading Action Plan on Corporate Governance in Listed Companies and Company Law.

In 2019, the Board has twice submitted comments on the European Commission's proposed guidelines on the format of the remuneration report which companies are required to produce annually in accordance with the rules resulting from the updated Shareholders' Rights Directive. The Board was highly critical of the proposed guidelines, which the Board felt were being used by the Commission to introduce detailed rules that it was not legally mandated to implement in law. Criticism was directed at the guidelines' comprehensive detailed requirements regarding the reporting of different remuneration components, which entail extensive additional work for companies without any corresponding benefit to the company and its investors. The European Commission has since taken on board the extensive criticism that the proposal has faced and has stated that it intends to propose revised guidelines, but not before the end of 2019.

All of the Board's statements and formal comments can be found on the Board's website, www.bolagsstyrning.se.

Action plan on corporate governance in listed companies and company law

As early as January 2011, the Board wrote a position paper in an effort to influence the proposed regulations on corporate governance that Michel Barnier, Commissioner for Internal Market and Services, had announced in late 2010 would be contained in the Commission's green paper on corporate governance in listed companies. On 5 April 2011, the European Commission presented its green paper on a framework for corporate governance in the EU.

The Swedish Ministry of Justice then requested comments on the green paper, and the Board submitted a response to the Ministry on 20 April 2011. In short, the Board's position was that no further need for regulation of corporate governance for listed companies had been shown by the Commission and that the level of detail in the proposed rules, particularly those concerning boards of directors, where existing Swedish rules in principle already regulate the issues the green paper addresses, was far too great. The Board advocated a more principles-based form of regulation instead of the detailed compromise proposals presented by the Commission, which are poorly suited to the circumstances of Sweden and many other European countries. It is the view of the Corporate Governance Board that there is no evidence in the green paper that further regulation is required, not least against the background of the financial costs of new rules for the companies concerned, as well as the reduced competitiveness in relation to companies from non-European countries and companies with other ownership models, such as private equity, that would result from further regulation. The Board therefore opposed the majority of the proposals in the green paper.

The Board then produced a separate formal response to the green paper, based on these opinions, to the European Commission in July 2011. This was followed by intensive lobbying in Brussels.

In light of the extensive criticism of the proposals in the green paper from many member states, the Commission decided not to present any concrete proposed regulation during the autumn of 2011 as it had planned. Instead, it launched an open web-based consultation on company law in the EU at the start of 2012, which the Board duly answered. When the responses to the consultation had been compiled, along with the formal comments received on the green paper, the Commission issued a coordinated report on how it intended to proceed with respect to both corporate governance and company law in general. This took the form of an action plan on corporate governance in listed companies and company law, which was presented by the European Commission in December 2012.

The action plan consists of three main areas:

1. enhancing transparency;
2. engaging shareholders;
3. and improving the framework for cross-border operations of EU companies.

The section on enhancing transparency includes a number of different proposals. The first of these is the introduction of a requirement to report on diversity within the board of directors and on how the company manages non-financial risks. The proposal is to be implemented through amendment of the EU Accounting Directive. The Swedish Corporate Governance Board submitted a formal response to this proposal to the Swedish government in 2013, expressing support for the requirements concerning CSR reports. However, the Board did not believe that the proposal concerning disclosure of diversity policy should be implemented. The amendments to the Directive were implemented by the European Commission in 2014, and in spring 2015, the Swedish government announced a memorandum on companies' reporting on sustainability and diversity policy (Ds 2014:45) with regard to the directive's implementation in Sweden. In its response in March 2015, the Board expressed criticism that the implementation proposal covers a far greater number of companies than the directive requires and was also critical of some of the details in the information requirements. On the matter of the requirement to have a written diversity policy, the Board suggested that companies could use the Code's stipulations regarding the composition of the company's board, Code rule 4.1, as their diversity policy. The proposal was referred to the Council on Legislation on 20 May 2016. The changes to the law came into force on 1 December 2016 and were first applied for the financial year starting immediately after 31 December 2016. As a result, the Board issued Instruction 2016:1, which contained some changes to the Code, and these amendments have now been incorporated into the Revised Code that applies from 1 December 2016.

In early 2014, two further proposals from the Commission's action plan were leaked. The first of these was a draft recommendation on corporate governance, aimed at improving companies' corporate governance reporting, especially with regard to the quality of explanations provided by companies that depart from corporate governance codes. The Board duly submitted its views on the proposals to the Swedish Ministry of Justice.

On 9 April, the Commission presented its recommendation on the quality of corporate governance reporting, ("comply or explain").

It also issued a draft of amendments to the Shareholder Rights Directive. The latter was further negotiated within the European Union. The Executive Director of the Corporate Governance Board participated in the Swedish government's consultation meetings regarding the government's position in these negotiations. In the spring of 2017, the Directive on Changes to the Shareholder Rights Directive (European Parliament and Council Directive 2017/828 of 17 May 2017 amending Directive 2007/36/EC regarding encouragement of shareholders' long-term commitment) was finally presented. The Directive includes provisions for measures to facilitate listed companies to identify their shareholders, requirements for institutional owners' to publish their investment and engagement policies, transparency requirements for proxy advisers, as well as requirements for increased shareholder influence in matters relating to remuneration of company boards and management and with regard to transactions between related parties. The Directive is to be implemented no later than 10 June 2019. The Executive Director of the Board was appointed as an expert in the commission that was asked to propose how it could be implemented into Swedish law. The commission of inquiry was also to consider changes to Chapter 16 of the Companies Act, known as the Leo Rules, and a number of other corporate law issues.

To a large extent, the resulting proposal was for a minimum implementation of the Directive's rules, with some broader elements based on already applicable Swedish regulations, primarily regarding which senior executives would be subject to the requirement for remuneration guidelines and reports. The report proposed that all senior executives should also be covered by this regulation, not just the CEO, the Deputy CEO and members of the company board, (ordinary and deputy members), in respect of remuneration other than board fees. With regard to changes to the Leo Rules, the report proposed that transactions in subsidiaries with a value of less than one per cent of the group's value should be completely exempt from the decision requirements, and that the majority requirement be lowered from a nine-tenths majority of votes and shares present at the meeting to a two-thirds majority. Finally, proposals were made on a number of company law issues, including a restriction on shareholders' rights of initiative at shareholders' meetings, i.e. the right for each and every shareholder to have a matter included on the agenda at the meeting. According to the proposal, this right would be limited to shareholders owning a certain minimum number of shares.

The Board's referral response supported the proposal in its entirety in principle, with the exception of some minor details. The Board's only major areas of disagreement were the proposed amendment to the majority requirement under the Leo Rules and the proposed restriction on the shareholders' initiative rights.

The government has subsequently submitted legislative proposals regarding the parts covered by the Shareholder Rights Directive, while its proposals regarding other amendments to the Companies Act, including the Leo Rules, have not yet been finalised. The government's proposal meant a minimum implementation of the Directive in all its aspects. At the same time, it stated with regard to remuneration guidelines and reports and related party transactions that it expected that the proposed rules would be supplemented by self-regulation. With regard to related party transactions, these are currently regulated by a ruling from the Swedish Securities Council, and it would therefore be natural for the Council to modify its existing ruling and include any necessary self-regulation provisions to supplement the legislation. Self-regulation regarding remuneration issues will be included as part of the recommendation on remuneration that the Corporate Governance Board is currently working on. For more information, see below under the heading Key issues for 2019.

A further proposal contained in the main area Increased Transparency was adopted by the European Commission in April 2016. This proposal amends the Accounting Directive 2013/34/EU and obliges multinational companies to publish annual reports country-by-country on issues such as the company's profits and the taxes that the company pays. Country-by-country reporting was a major issue in the negotiations on the Shareholder Rights Directive.

In accordance with the Action Plan, on 3 December 2015 the Commission adopted a proposal to codify and combine a number of directives in the field of company law. The objective of this proposal is to make company law within the EU more reader-friendly and to reduce the risk of future inconsistency. The proposal does not involve any material changes to the directives.

These proposals should mean that the action plan initiated by Barnier will no longer generate any new legislative proposals from the Commission.

International work

As in previous years, the Board was an active participant in international debate on corporate governance issues in 2018 and 2019, with the aim of promoting Swedish interests and increasing knowledge and understanding of Swedish corporate governance internationally. The Board took part in several consultation meetings with representatives of the European Commission through its membership of the European Corporate Governance Code Network, ECGCN, a network of national corporate governance committees of EU member states. The ECGCN, (www.ecgcn.org), is not a formal cooperation, but the European Commission has granted it the status of a special group to consult on corporate governance issues within the community.

The Board also contributes financially to the EU monitoring work of both StyrelseAkademien, The Swedish Academy of Board Directors, and ecoDa, the European Confederation of Directors Associations. In this way, the Board has access to information about ongoing developments in the EU and is also able to offer opinions on the work of the academy and ecoDa.

During 2018, the Board was also invited to join the Six Chairs Group, which consists of the Chairs of the Board's equivalent organisations in the United Kingdom, France, Germany, Italy and the Netherlands, as well as the Chair of the Swedish Corporate Governance Board. Following a meeting of these code issuers, the group issued a statement on how the companies' sustainability work should be regulated. The statement calls for reflection on the part of the European Commission before introducing sustainability regulation, and that this type of regulation, where required, should be based on self-regulation. The statement can be found on the Board's website, www.bolagsstyrning.se.

The Board also participated in a corporate governance seminar organised by the Moscow Stock Exchange (MOEX) in December 2018 in Moscow.

Nordic work

The Board is also an active member of a Nordic collaboration between the code issuing bodies in Denmark, Sweden, Finland and Iceland. The Nordic code issuers have decided to hold a telephone meeting every two months, and to also meet in person if necessary. In addition to national situation updates, a standing item on the agenda for the meetings is the work to develop a framework in which each country's corporate governance code can be included. The purpose of this is to show the similarities between the Nordic corporate governance models in order to be able to exert greater influence in the EU and towards institutional investors in the stock market. The intention is also to bring the Nordic codes into even greater harmony in the longer term.

Key issues for 2019

Strategy 2017–2020

The Board's Strategy 2017-2020 document contains a number of strategic issues that require further work. One such issue is the role and focus of the Board with regard to exerting influence within the EU, where there is a discussion about how the Board can best ensure that the EU's desire to set norms within the field of corporate governance does not damage the Nordic corporate governance model. Another question is how the Board should handle the matters previously dealt with by the Swedish Industry and Commerce Stock Exchange Committee, namely to issue rules regarding good practice in the stock market in the areas where such a need exists.

The Board has expressed to its parent association, The Association for Generally Accepted Principles in the Securities Market, that the Board was formed to deal with corporate governance issues and the Code, not the more technically complex regulations surrounding takeovers and private placements in listed companies, and its composition reflects this. As more regulations and regulatory frameworks are added to the responsibilities of the Board, e.g. the work on recommendations regarding remuneration, this is becoming more apparent.

The revised Shareholder Rights Directive

As mentioned above, the European Commission's Action Plan on Corporate Governance, which began with Barnier's Green Paper in 2011, has now reached its final regulatory initiative, the Directive on Changes to the Shareholder Rights Directive (European Parliament and Council Directive 2017/828 of 17 May 2017 amending Directive 2007/36/EC regarding encouragement of long-term shareholder commitment). The Directive is to be implemented no later than 10 June 2019, and as outlined above, the Swedish parliament has passed the required implementation legislation. The Bill encourages self-regulation to supplement the minimum implementation contained in the law where appropriate.

The proposals in the part known as "say on pay", i.e. that the shareholders' meeting is to decide on remuneration guidelines for company executives and boards and to approve a remuneration report, will lead to amendments to the Code. One key issue related to the implementation is whether the Corporate Governance Board should focus more broadly on self-regulation issues regarding remuneration and incentive programmes, where the latter is currently mainly regulated by the

Swedish Securities Council's rulings on what constitutes good practice.

The Board has decided to break out parts of the existing self-regulation framework in this area from the Code and the Securities Council's remit and put them into a coherent recommendation issued by the Board. The recommendation will also include provisions on remuneration guidelines and reports to supplement the new legislation. The Board intends to present a proposal after the summer of 2019, with the aim of bringing the new self-regulation provisions into force from 1 January 2020.

Review of the Code

As a number of years have passed since the last major review of the Code, the Board began the work of investigating whether the Code is still relevant and up to date in the autumn of 2018. This work has included five round table meetings with Swedish and foreign "Code users" in order to gather views on these matters. The Board has now begun the task of producing a proposed updated version of the Code for circulation in autumn 2019, with a view to bringing a Revised Code in force from 1 January 2020.

User conference

The Board will revive its tradition of conducting a user conference. The conference is scheduled to take place in central Stockholm on the afternoon of 17 September 2019. The aims are to highlight self-regulation, focus on current issues, stimulate discussion of corporate governance issues in general, and gather users' views on the Code and the Corporate Governance Board's recommendations. The conference will be open to all.

Continued Nordic cooperation and exchange of ideas and knowledge with other European corporate governance code issuers

The Board will continue to cooperate with other European rule issuers through ECGCN, the network of European national corporate governance code issuers, not least as this provides direct access to the EU officials responsible for designing the Commission's proposals on corporate governance matters.

The Board also looks forward to continued cooperation and discussion within the Nordic region through regular meetings.

II. APPLICATION OF THE CODE IN 2018

The Swedish Corporate Governance Board conducts regular surveys and analysis in order to monitor how the Code is applied and to evaluate its functionality and effects on Swedish corporate governance. As in previous years, the Board commissioned a study of each Code company's application of the Code based on information published in annual reports, in corporate governance reports and on company websites. The results are summarised below. Also in this section, there is a presentation of the Swedish Securities Council's and the stock exchange disciplinary committees' approaches to Code issues.

Companies' application of the Code

Executive summary

With the proviso regarding comparability because of the change of survey supplier in 2015, this year's survey shows that companies' reporting on corporate governance issues continues to improve in more or less all aspects. This means a continuation of the curve of steadily improving corporate governance reporting. Companies have shown a high level of ambition when it comes to applying the Code. The shortcomings in the details of how companies report on their corporate governance in their corporate governance reports and on their websites continue to fall in number, but there is still room for improvement, as some companies still fail to provide all the information that is required by the Annual Accounts Act and the Code.

The number of deviations from the Code rose somewhat in 2018. This year's survey shows an increase in the number of reported deviations in a larger number of companies. Such a development can be interpreted both positively and negatively. The development is positive in the light of the Code's aim to make companies reflect and bring transparency to their corporate governance. The comply or explain principle on which the Code is based assumes that corporate governance is something fundamentally individual to each company, and even if the behaviour of companies means that they apply the majority of the rules in the Code, there should exist a large number of individual solutions that are more suitable for those particular companies than the standard methods prescribed in the Code. If companies feel that they must adapt their behaviour in order to comply with the Code, innovation and initiative may be stunted, to the detriment of the individual company and its shareholders. However, the development is negative in the sense that if the rules of the Code are respected, the standard of corporate governance within listed companies should be improved.

The survey continues to place particular emphasis on nomination committees' statements on proposed candidates to positions on the board of directors, not least with regard to the Code's requirement that listed companies strive to achieve gender balance on their boards. Regarding the latter, there is a continued positive trend, and the number of nomination committees that have explained their proposals clearly in relation to the Code requirement on gender balance continues to increase.

Aims and methods

The aims of analysing how companies apply the Code each year are to provide information in order to assess how well the Code works in practice and to see whether there are aspects of the Code that companies find irrelevant, difficult to apply or in some other way unsatisfactory. The results of the annual surveys provide a basis for the continued improvement of the Code.

Since 2011, the survey has also examined companies' application of the rules concerning the reporting of corporate governance and internal controls, as well as auditor review of these reports, which were introduced into the Companies Act and the Annual Accounts Act in 2010. The aim of this part of the survey is to build up a picture of how companies report their corporate governance.

The basis for the study is companies' own descriptions of how they have applied the Code in the corporate governance reports that are required by the Annual Accounts Act, in other parts of their annual reports and in the information on their websites. Since 2011, the survey has also examined whether the corporate governance information on companies' websites fulfils the requirements of the Code and whether corporate governance reports contain all the required formal details. No attempt is made to ascertain whether the information provided by the companies is complete and accurate.

As in previous years, the target group for the study was the companies whose shares or Swedish Depository Receipts, (SDRs), were available for trade on a regulated market and who were obliged to issue a corporate governance report as of 31 December 2018. Stock Exchange rules state that companies whose shares are traded on a regulated market run by the exchange are to adhere to generally accepted principles in the securities market, which includes applying the Swedish Corporate Governance Code.[1] Up to and including 2010, foreign companies were not obliged to apply the Code. Following an Instruction issued by the Swedish Corporate Governance Board which has since been incorporated into the Code, from 1 January 2011, foreign companies whose shares or SDRs are traded on a regulated market in Sweden are required to apply the Swedish Corporate Governance Code, the corporate governance code of the company's domicile country or the code of the country in which the company has its primary stock exchange listing.[2] If the company does not apply the Swedish Code, it is obliged to state which corporate governance code or corporate governance rules it applies and the reasons for so doing, as well as an explanation of in which significant ways the company's actions do not comply with the Swedish Code. This statement is to be included in or issued together with the company's governance report or, if no such report is issued, on the company's website.

On 31 December 2018, there were 332 companies whose shares or SDRs were available for trade on a regulated market in Sweden. Of these, 323 were listed on Nasdaq OMX Stockholm and nine on NGM Equity. Of those listed on Nasdaq OMX Stockholm, 27 were foreign companies, whereas none of the companies listed on NGM Equity were. Of the 27 foreign companies, nine have declared that they apply the Swedish Code, and these nine were therefore included in the survey. The remaining 18 foreign companies were excluded from the survey. This meant that the number of companies actually included in the survey was 314, of which 305 were listed on Nasdaq OMX Stockholm and nine on NGM Equity. See Table 1.

Table 1. Number of surveyed companies

	2018		2017		2016		2015		2014		2013		2012	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
NASDAQ Stockholm	323	97%	312	97%	293	97%	278	97%	265	96%	253	96%	253	95%
NGM Equity	9	3%	9	3%	9	3%	10	3%	10	4%	10	4%	12	5%
Total target group	332	100%	321	100%	302	100%	288	100%	275	100%	263	100%	265	100%
Excluded [*]	18	5%	15	5%	16	5%	16	6%	23	8%	16	6%	18	7%
Total companies surveye	314	95%	306	95%	286	95%	272	94%	252	92%	247	94%	247	98%

[*] Companies excluded due to information not being available, delisting or primary listing being elsewhere.

[1] See Point 5 of Nasdaq Stockholm's Regulations for Issuers and Point 5 of NGM's Stock Exchange Regulations.
[2] See the introduction to Section III of the Swedish Corporate Governance Code, Rules for Corporate Governance.

Companies' reports on corporate governance

The Annual Accounts Act states that all stock exchange listed companies are to produce a corporate governance report.[3] The content of the corporate governance report is governed by both the Annual Accounts Act and the Code.[4] According to the Code, any company that has chosen to deviate from any rules in the Code must report each deviation, along with a presentation of the solution the company has chosen instead and an explanation of the reasons for non-compliance.

As in previous years, all the companies surveyed had submitted a formal corporate governance report, which is mandatory by law. Five companies chose to publish their corporate governance report on their websites only, which was one fewer than the previous year.[5] Of the vast majority of companies which include their corporate governance report in the printed annual report, just under half include it in the directors' report, while the other half published their corporate governance report as a separate part of the annual report. See Table 2.

According the Annual Accounts Act, a corporate governance report is also to contain a description of the key elements of the company's internal controls and risk management concerning financial reporting.[6]

As last year, one company failed to provide an internal controls report this year, while it must be regarded as unclear whether a second company fulfilled the requirement. See Table 3. The Annual Accounts Act makes it a legal requirement for companies to report on their internal controls. The internal controls reports vary in their scope, from short summaries within the corporate governance report to separate reports.

The third paragraph of Code rule 7.3 states that a company which has not set up an internal audit is to explain the company board's position on this issue and its reasons why in the report on internal controls. Of the surveyed companies, 19% conducted an internal audit, showing a small decrease on the 2017 figure of 20 per cent. Of the 81 per cent of companies that chose not to conduct internal audits, the boards of six of these have not provided an explanation for this. See Table 4.

Since 2010, auditor review of corporate governance reports is mandatory according to the Companies Act and the Annual Accounts Act.[7] See Table 5. Seven companies have not reported that their corporate governance reports were reviewed by their auditors, and for one company it is not clear whether such a review took place.

Table 2. How is the corporate governance report presented?

	2018		2017		2016		2015	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
In the directors' report in the annual report	152	48%	140	46%	133	47%	121	44%
A separate report within the annual report	157	50%	160	52%	147	51%	142	52%
Only on the website	5	2%	6	2%	6	2%	9	3%
Unclear	0	0%	0	0%	0	0%	0	0%
Total	314	100%	306	100%	286	100%	272	100%

[3] See chapter 6, section 6 and chapter 7, section 31 of the Annual Accounts Act, (1995:1554).
[4] See chapter 6, section 6 and chapter 7, section 31 of the Annual Accounts Act, (1995:1554) and rule 10.1-2 of the Code.
[5] This does not contravene the Annual Accounts Act or the rules of the Code. The Annual Accounts Act states that companies whose shares are traded on a regulated market are to produce a corporate governance report, either as part of the directors' report or in a document that is not part of the annual report. In the case of the latter, a company may choose to release its report either by submitting it to the Swedish Companies Registration Office together with the annual report or by publishing it only on its website. (The report must in fact always be made available on the company's website.) If the corporate governance report is not contained in the directors' report, the company may choose whether to include it in the printed annual report – this is not regulated by law or by the Code.
[6] See chapter 6, section 6, paragraph 2, point 2 the Annual Accounts Act, (1995:1554) and the third paragraph of rule 7.3 and rule 7.4 of the Code
[7] The requirement for auditor review of a corporate governance report if it is included in the director's report or of the information otherwise published in the company's or group of companies' director's report can be found in chapter 9, section 31 of the Companies Act (2005:551). The requirement for the auditor review of the corporate governance report to be published separately from the annual report can be found in chapter 6, section 9 of the Annual Accounts Act.

Reported non-compliance

Companies that apply the Code are not obliged to comply with every rule. They are free to choose alternative solutions provided each case of non-compliance is clearly described and justified. It is not the aim of the Corporate Governance Board that as many companies as possible comply with every rule in the Code. On the contrary, the Board regards it as a key principle that the Code be applied with the flexibility afforded by the principle of comply or explain. Otherwise, the Code runs the risk of becoming mandatory regulation, thereby losing its role as a set of norms for good corporate governance at a higher level of ambition than the minimums stipulated by legislation. It is the Board's belief that better corporate governance can in certain cases be achieved through other solutions than those specified by the Code.

Diagram 1 shows the number of surveyed companies that have reported instances of non-compliance since 2015. The proportion of companies that reported more than one instance of non-compliance in 2018 was nine per cent, which is one percentage point higher than in the previous year. This means that the remaining 91 per cent of companies reported a maximum of one deviation from the Code rules. The proportion of companies that reported a single deviation from the Code increased from 22 per cent to approximately 25 per cent. Approximately 66 per cent, or 207 companies, reported no deviations at all in 2018, which is a decrease of five percentage points compared with the previous year's figure of 71 per cent.

A total of 146 deviations from 23 different rules were reported in 2017, which gives an average of 1.36 deviations per company reporting at least one deviation. This is in line with last year's average figure of deviations per company.

Table 3. Is there a separate section on internal controls and risk management?

	2018		2017		2016	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes	312	99%	304	99%	284	100%
No	1	0%	1	0%	1	0%
Partly	1	0%	1	0%	1	0%
Total	314	100%	306	100%	286	100%

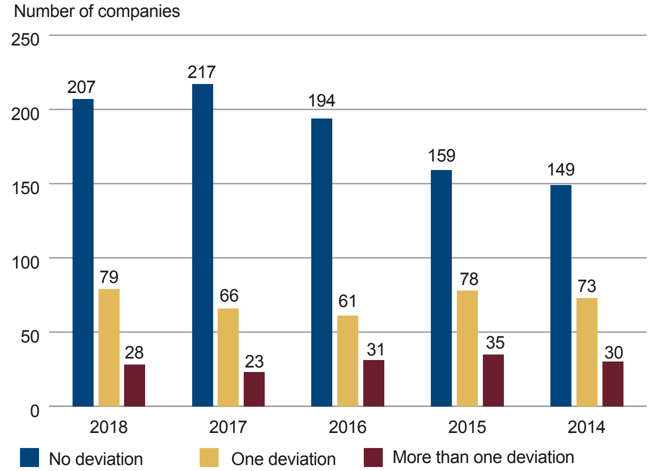
Table 4. If it is clear from the report on internal controls and risk management that no specific auditing function exists, are the board's reasons for this explained in the report?

	2018		2017		2016	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes, reasons presented	246	78%	236	77%	215	75%
No, no reasons presented	6	2%	8	3%	8	3%
Partial explanation	1	0%	0	0%	0	0%
Unclear	0	0%	0	0%	0	0%
Not applicable/ own internal auditor	61	19%	63	20%	63	22%
Total	314	100%	306	100%	286	100%

Table 5. Was the corporate governance report reviewed by the company auditor?

	2018		2017		2016	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes	306	97%	301	98%	280	98%
No	7	2%	3	1%	5	2%
No information/ unclear	1	0%	2	1%	1	0%
Total companies	314	100%	306	100%	286	100%

Diagram 1. Companies per number of instances of non-compliance



2018: 314 companies 2017: 306 companies 2016: 286 companies
2015: 272 companies 2014: 252 companies

A detailed breakdown of reported non-compliance is shown in Table 6.

Which rules do companies not comply with?

Table 7 shows the number of deviations per rule from which deviation has been reported. The four rules for which the most companies report non-compliance, see Diagram 2, are commented on in brief below.

Diagram 2. Instances of non-compliance per Code rule

As in previous years, the rule with by far the most instances of non-compliance was Code rule 2.4. A total of 47 Code companies, or 15 per cent, report some kind of deviation from this rule, which is just over three percentage points higher than last year's figure. Rule 2.4 states that members of the company board may not constitute a majority on the nomination committee and that the chair of the board may not be the chair of the nomination committee. If more than one member of the board is a member of the nomination committee, only one member may have a dependent relationship to major shareholders in the company. The most common form of non-compliance with this rule was that the chair of the board, or in some cases another member of the board, was appointed as chair of the nomination committee. The most common explanation for this was that the person concerned was a major shareholder and/or deemed to be the most competent and therefore considered best suited to lead the work of the committee. In some cases, more than one of several members of the board who were on the committee were not independent of major shareholders, and in a small number of companies, members of the board formed a majority on the nomination committee. Non-compliance with this rule is most common in companies with a strong concentration of ownership, often with the general explanation that it would otherwise be difficult or impossible for a private individual to combine the roles of major shareholder and active owner through participation on the board and on the nomination committee.

The rule with the next-highest frequency of non-compliance was rule 2.3, which concerns the size and composition of nomination committees, primarily with regard to committee members' independence. Twenty companies, (just under six per cent of all surveyed companies), deviated from this rule. In the majority of cases, the non-compliance involves the CEO and/or other members of the company's executive management being members of the nomination committee. The explanation given for this is that they are also major shareholders in the company. In a small number of cases, the nomination committee consisted entirely of representatives of the largest shareholder in terms of voting rights, meaning that the company did not comply with the rule that states that at least one member of the committee is to be independent in relation to the largest shareholder. Some nomination committees did not fulfil the Code requirement that they must comprise at least three members.

Nineteen companies, (just under six per cent of Code companies) also reported non-compliance with rule 9.7, which covers incentive programmes. The majority

Table 6. Reported non-compliance

	2018	2017	2016	2015
Number of companies reporting no deviations	207	217	194	159
Number of companies reporting deviations	107	89	92	113
Companies reporting one deviation	79	66	61	78
Companies reporting more than one deviation	28	23	31	35
Percentage of companies reporting deviations	34%	29%	32%	42%
Total number of companies	314	306	286	272
Number of reported deviations	146	118	133	163
Number of rules for which deviations reported	23	23	25	21
Average number of deviations per rule	6.35	5.13	5.32	7.76
Average number of deviations per company	1.36	1.33	1.45	1.44

of these companies deviate from the provision that the vesting period is to be at least three years.

Thirteen companies, (six per cent of all surveyed companies), chose not to comply with rule 2.1, which obliges companies to have a nomination committee. The most common explanation for this is that these are companies whose major shareholder or shareholders did not deem it necessary to have a nomination committee because of the size of their own holdings in the company, e.g. as the result of a takeover bid where, for one reason or another, delisting of the company has not taken place. There has been some debate about whether it is compatible with generally accepted principles in the securities market to deviate from such a fundamental Code requirement, but with the exception of Chapter 10, the Code does not present any obstacles to companies who wish to deviate from any Code rule they wish, as long as their non-compliance is reported and explained.

There were almost no "new" explanations in 2018, i.e. explanations of non-compliance with rules that have previously had no deviation reported.

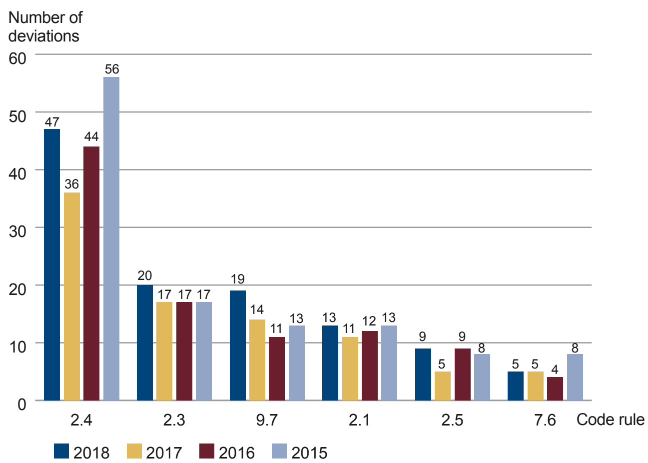
Table 7. Number of deviations from individual Code rules reported in corporate governance reports

Rule	2018	2017	2016
2.4	47	36	44
2.3	20	17	17
9.7	19	14	11
2.1	13	11	12
2.5	9	5	9
7.6	8	4	6
9.2	5	5	4
1.2	3	2	5
1.5	3	2	1
1.4	2	3	1
4.2	2	3	3
4.3	2	2	2
4.4	2	2	2
7.5	2		
9.5	2	1	
10.2	2		1
1.3	1		
8.1	1	1	1
8.2	1	1	1
9.1	1	3	1
9.6	1	1	
1.1			3
2.6			2
4.1		1	1
4.5		1	2
6.1		1	
7.3			2
9.4			1
9.8		1	
10.3		1	1

Explanations of non-compliance

The standard of explanations of non-compliance is crucial to the success of a corporate governance code based on the principle of comply or explain. The definition of what constitutes good quality in such explanations is for the reports' target groups to assess, primarily the companies' owners and other capital market actors. However, in order to be useful as a basis for such evaluation, the explanations must be sufficiently substantive, informative and founded as much as possible in the specific circumstances of the company concerned. Vague arguments and general statements without any real connection to the company's situation have little information value for the market.

Diagram 2. Instances of non-compliance per Code rule



Up until 2014, the information value of the explanations was patchy, with a high proportion of explanations containing poor information.

This seems to be an international problem for this kind of corporate governance code. The primary aim of the European Commission's recommendation on corporate governance is to improve these explanations, not least by introducing the solution that has been in existence in the Swedish Code in 2008, namely that each instance of non-compliance is not only to be explained, but a description of the chosen solution also provided.

Swedish companies' reporting of non-compliance in 2018 continued the positive trend of previous years, and the companies' explanations of non-compliance are generally of a high standard. As last year, all the surveyed companies explained their reasons for any non-compliance.

As in previous years, an attempt has also been made to assess the quality of explanations offered. This necessarily involves a large element of subjectivity. The Corporate Governance Board's analysis has therefore limited itself to identifying companies which provided insufficient explanation of their non-compliance in the view of the survey institute. The change of survey method means that comparisons with previous years' surveys are of limited value.

This year's survey showed the same result as last year. As in 2017, four companies provided explanations of insufficient quality. The hope is that next year we will no longer see any poor explanations, i.e. explanations without any information value.

The content of corporate governance reports

For the eighth consecutive year, the content of companies' corporate governance reports has been examined against the background of the requirements stipulated in the Annual Accounts Act and the Code. The Annual Accounts Act requires, for example, that companies report which corporate governance code they apply. All the companies surveyed this year stated that they applied

Table 8. The detailed content of corporate governance reports

	Yes	No	Partly
Does the report contain information on the nomination committee?			
Composition	298	15	1
Representation	283	31	0
Does the report contain information on board members?			
Age	312	2	0
Educational background	289	11	14
Professional experience	271	33	10
Work performed for the company	314	0	0
Other professional commitments	300	1	13
Shareholding in the company	313	1	0
Independence	311	3	0
Year of election	312	2	0

	Yes	No	Partly
Does the report contain information on the board?			
Allocation of tasks	313	1	0
Number of meetings	314	0	0
Attendance	314	0	0

	Yes	No	Partly	Not applicable
Does the report contain information on board committees?				
Tasks and decision-making authority	265	4	1	44
Number of meetings	253	8	1	52
Attendance	238	24	1	51

	Yes	No
Does the report contain information on the CEO?		
Age	311	3
Educational background	298	16
Professional experience	274	40
Professional commitments outside the company	239	75
Shareholding in the company	313	1
Shareholding in adjacent companies	25	289

the Swedish Corporate Governance Code. A general review of the reports also showed that companies seemed to fulfil all the requirements set out in the Act.

Compliance with the detailed requirements of the Code concerning information[8] still has room for improvement. See Table 8 for details. As in previous years, around 30 companies did not provide information on the professional experience of their board members, around 30 companies did not state who had appointed members of their nomination committees, and 40 companies did not list the previous professional experience of their chief executive officers. Breaches regarding these requirements were pointed out in previous years. The percentage of companies not reporting the previous experience of the members of the board has risen slightly to ten per cent, while the number of companies failing to report the previous experience of the chief executive officer has fallen from 15 per cent to just under 13 per cent. The proportion of companies who report whom members of the nomination committee represent has risen by one percentage point compared with last year.

Table 9. Is corporate governance information easy to find on the company's website?

	2018		2017	
	Number	Percentage	Number	Percentage
Yes	308	98%	298	97%
Acceptable	6	2%	6	2%
No		0%	2	1%
Total	314	100%	286	100%

Another Code requirement is that companies who have been found by the Stock Exchange Disciplinary Committee or the Swedish Securities Council to have committed breaches against the rules of the stock exchange or generally accepted principles in the securities market during the financial year are to report this in their corporate governance reports. One of the two companies to which this rule applied in 2018 provided information about the breach in its report.

Corporate governance information on company websites

For the eighth year, an analysis of corporate governance information on company websites has been carried out.

Rule 10.3 of the Code requires companies to devote a separate section of their websites to corporate governance information. We are happy to report that this requirement was fulfilled by all the companies surveyed. One of the questions in the survey concerns how easy it is to find corporate governance information on company websites. This assessment is subjective, but the hope is that an annual follow-up of this issue based on the same criteria will at least allow an examination of trends. The results of this year's survey of this area can be found in Table 9, which shows that 98 per cent of the companies surveyed have easily accessible corporate governance information, which is a slight improvement on last year's figure, while the standard for the remaining two per cent was acceptable, which is also in line with figures of the past two years.

Table 10. Detailed information on company websites

2018	Yes	No	Partly	Total	Percentage Yes
Current board members	314	0	0	314	100%
Current CEO	314	0	0	314	100%
Current auditor	310	4	0	314	99%

2017	Yes	No	Partly	Total	Percentage Yes
Current board members	306	0	0	306	100%
Current CEO	306	0	0	306	100%
Current auditor	300	6	0	306	98%

[8] Code rule 10.2

Code rule 10.3 also contains a list of information required on the corporate governance sections of websites. As well as the company's ten most recent corporate governance reports and the auditor's written statements on the corporate governance reports, the company's articles of association are also to be posted. At the time of the survey, one company did not fulfil the latter requirement, while the articles of association of the remaining 313 companies were accessible on the company website, which in absolute terms is the same as last year. Additionally, the Code requires companies to post information regarding the current board of directors, the CEO and the auditor. This requirement regarding the auditor was not fulfilled by all companies. See Table 10 for more detailed information.

Nomination committees are also required to fulfil certain information requirements. The Code requires the nomination committee to present information on its candidates to the board on the company website when notice of a shareholders' meeting is issued.[9)] Even if companies fulfil this requirement, their information on candidates is not complete – see Diagram 3. At the same time as it issues the notice of meeting, the nomination committee is also to issue a statement, which is also to be available on the website, with regard to the requirement in rule 4.1, that the proposed composition of the board is appropriate according to the criteria set out in the Code and that the company is to strive for gender balance. Seven per cent of the companies' nomination committees surveyed failed completely or partly to issue such a statement, compared with eight per cent in 2017.

In 2013, 58 per cent of companies' nomination committees failed to make any comment on gender balance, while in 2014 24 per cent of the nomination committees did not comment on gender balance. The corresponding figure for 2015 was 18 per cent, 13 per cent in 2016 and 11 per cent in 2017. This positive development continued this year, when the proportion of nomination committees that did not comment on gender balance was 9 per cent. Against the background of the debate on the composition of boards, especially the issue of gender balance and the question of whether quotas should be introduced, it is not particularly surprising that the number of nomination committees that neglected to comment on gender has fallen in recent years – see Table 11.

One of the aims of the introduction of the relevant Code rule was to avoid the introduction of quotas and instead allow nomination committees to explain how

Diagram 3. Content of the nomination committee's proposal regarding individual candidates to the board

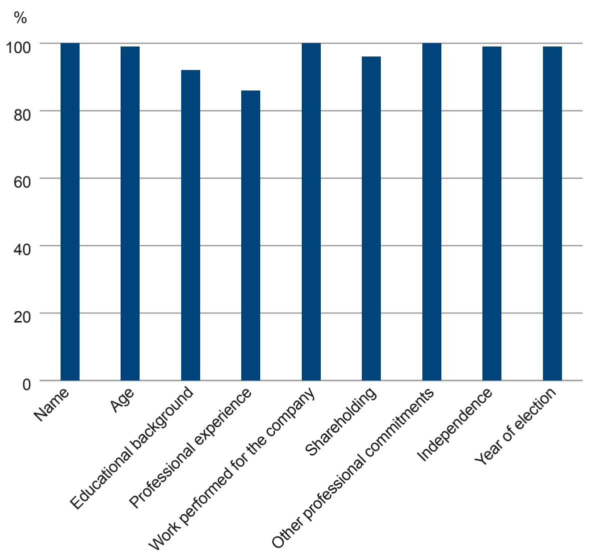


Table 11. Nomination committee statements: Does the statement provide any explanation regarding gender balance on the board

	2018		2017	
	Number	Percentage	Number	Percentage
Partly	0	0%	0	0%
Yes	286	91%	273	89%
No	28	9%	33	11%
Total	314	100%	306	100%

9) See Code rule 2.6, paragraph 2

they had handled the issue of increasing the ratio of women on boards and bring the issue into focus. The Corporate Governance Board will continue to monitor gender balance on the boards of listed companies.

Rule 10.3, paragraph 2 of the Code requires companies to declare all share and share price related incentive programmes for employees, (not just the executive management), and board members. In 2018, 61 per cent of the companies surveyed published no information regarding such programmes on their websites, which was an increase of eight percentage points from the previous year. However, there is still a large number of companies who do not provide this information. Many companies do not have such programmes, but that almost half of the companies surveyed would have no current share or share price related incentive programmes for executives or employees seems a very high proportion.

Since 2010, rule 10.3 also requires companies to publish on their website a description of any ongoing variable remuneration programmes for the board of directors and the executive management, (though there is no requirement to issue information on variable remuneration programmes for other employees). This year, 86 per cent of the companies surveyed published such information on their websites, which is a small increase on last year's figure of 85 per cent.

Finally, company websites are to provide information on the board's evaluation of remuneration within the company no later than three weeks before the annual general meeting.[10)] This evaluation is to cover ongoing variable remuneration programmes for executives and directors and those programmes that have ended during the year; how the company's executive remuneration guidelines have been applied; and the current remuneration structures and remuneration levels within the company. This requirement was introduced in 2010 and the information was included in the survey for the first time in 2011. Table 12 shows that there has been a clear improvement in all three areas since last year and that 85 per cent of the companies surveyed fulfilled this requirement, which is an increase of four percentage points compared with the previous year. It must, however, be regarded as unacceptable that as many as 15 per cent of the companies surveyed do not publish any evaluation or neglect to leave the evaluation in place on their website after the annual general meeting.

Table 12. Information on company websites regarding the board's evaluation of remuneration matters

2018	Yes	No	Partly	Total
Variable remuneration programmes	261	53	0	314
Remuneration policy	266	48	0	314
Remuneration structures and levels	266	48	0	314

2017	Yes	No	Partly	Total
Variable remuneration programmes	246	59	1	306
Remuneration policy	249	56	1	306
Remuneration structures and levels	247	58	1	306

10) See Code rule 10.3, paragraph 3. Code rule 9.1 states that the remuneration committee, (or the board in its entirety if no such committee has been appointed), is to perform this evaluation.

Interpreting the Code

The Swedish Corporate Governance Board is the body that sets norms for self-regulation in the corporate governance of Swedish listed companies, but it does not have a supervisory or adjudicative role when it comes to individual companies' application of the Code. The Board occasionally receives questions on how the Code is to be interpreted. Although it tries as much as possible to help companies understand what the rules mean, it is not the Board's responsibility to interpret how the Code is to be applied in practice. This is the responsibility of the market, after which the Board assesses how the Code has actually been applied and considers any revisions that may be required as a result.

The Swedish Securities Council, whose role is to promote good practice in the Swedish stock market, is however able to advise on how to interpret individual Code rules. This occurs when companies who would like advice on interpretation request that the Council issue a ruling.

The disciplinary committees of the Nasdaq OMX Stockholm AB and Nordic Growth Market NGM AB stock markets can also issue interpretations of the Code.

The Swedish Securities Council issued a ruling in January 2017, (AMN 2017:05, made public in July 2018), on a particular type of incentive programme in subsidiary companies. In May 2018, the Council issued a ruling on good practice with regard to nomination committees, (AMN 2018:19), and in November 2018 it issued a ruling on a share-related incentive programme, (AMN 2018:48) – see below. Over the years, the Council has issued nine rulings in total concerning interpretation of Code rules:

- AMN 2006:31 concerned whether two shareholders were able to pool their shareholdings in order to be eligible for a seat on the nomination committee.
- AMN 2008:48 and 2010:40 dealt with the amount of leeway allowed to a board of directors when setting the conditions of an incentive programme.
- AMN 2010:43 interpreted one of the independence criteria in the Code, which covers board members' independence with regard to clients, suppliers or partners who have significant financial dealings with the listed company.
- AMN 2011:03 examined whether a proposed salary increase for executives conditional on a sustained shareholding in the company needed to be referred to the shareholders' meeting.
- AMN 2015:24 examined whether a variable cash bonus arrangement for an executive of a listed company conditional on a sustained shareholding in the company needed to be referred to the shareholders' meeting.
- AMN 2017:05 concerned the extent to which the Code's rules on remuneration are applicable to an incentive programme in which the remuneration to executives in a subsidiary company are based on the performance of the subsidiary.
- AMN 2018:19 examined whether members of a nomination committee may participate in the preparation of proposals to the board pertaining to themselves and proposals regarding director remuneration to themselves.
- AMN 2018:48 concerned the structure of an incentive programme from a major shareholder.

The disciplinary committees of the Nasdaq OMX Stockholm and Nordic Growth Market NGM stock markets did not issue any interpretations of the Code in 2018, and these two bodies have no tradition of issuing statements regarding interpretation of the Code.

The Corporate Governance Board has also issued takeover rules for the First North, Nordic MTF and AktieTorget trading platforms, and the Swedish Securities Council has issued several rulings on these rules. These rulings, however, correspond to the Council's established position regarding the takeover legislation and the rules issued by the regulated markets, and are therefore not discussed here.

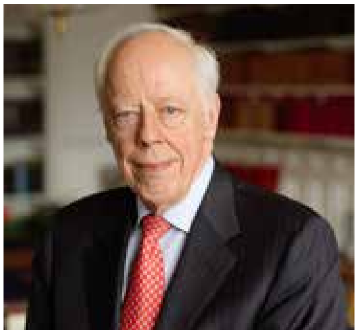
There is not yet any established practice regarding the recommendation issued by the Swedish Corporate Governance Board on 1 January 2015 regarding private placement of shares. The Swedish Securities Council took up a number of issues regarding private placements in rulings AMN 2015:18 and AMN 2016:01, but did not touch on the Board's recommendation. The issue of remuneration to underwriters was covered in ruling 2018:47. The Disciplinary Committee of Nasdaq Stockholm's decisions 2015:5 and 2016:9 also referred to private placements of shares, but no interpretation of the Board's recommendation was made in either decision. As explained above under The Work of the Board During the Year, the Swedish Securities Council ruling AMN 2016:28 states that the Corporate Governance Board's recommendation expresses what in some respects constitutes good practice in the stock market regarding cash issues of shares, warrants and convertibles in limited companies whose shares are admitted to trading on a regulated market or traded on the First North, Nordic MTF or AktieTorget trading platforms.

III. PERSPECTIVES

The Swedish Corporate Governance Board's ambition is that its Annual Report not only describes the work of the Board and how the Code has been applied during the past year, but also provides a forum for discussion and debate on current corporate governance issues, both in Sweden and internationally. The Board therefore invites external contributors to publish articles and opinions within the field of corporate governance that are deemed of general interest. The content of these articles is the responsibility of the respective author, and any opinions or positions expressed are not necessarily shared by the Board.

- The first article is an interview with Anders Ullberg, whose roles include chairing the board of the Swedish mining and smelting company Boliden, on effective board work and the role of the chair.
- The second article was written by Marie Baumgarts, Sustainability Manager at the bank SEB and a member of the European Commission's Technical Expert Group on Sustainable Financing. The article highlights how sustainability has rapidly gone from a set of voluntary commitments to regulation and looks at the work of boards in light of the imminent implementation of a number of initiatives resulting from the European Commission action plan for financing sustainable growth.
- The third article focuses on nordic corporate governance and was written by Per Lekvall, a member of the Swedish Corporate Governance Board. This article was originally published in Nordic Journal of Business.
- The fourth article was written by the Chief General Counsels of three leading Swedish companies: Brian Belanger, Husqvarna AB, Håkan Osvald, Atlas Copco AB, and Annika Bäremo, Saab AB. Entitled "The Role of the Board Secretary", the article answers many practical questions regarding the role of the board secretary, something which all three authors have long and broad experience of from their work at major listed companies. This article was originally published in issue 2/2019 of the magazine Balans, Fördjupning.

An interview with Anders Ullberg


Anders Ullberg

After almost 20 years in the boardroom, Anders Ullberg has a wealth of experience that few in Sweden can match. In a conversation with Helena Nordman-Knutson, Anders Ullberg shared his views on what the most important role of the chairman of the board is, how a board should meet the today's sustainability requirements, the benefits of the Swedish corporate governance model and much more.

"Through his broad expertise, methodical and goal-oriented approach and an unerring ability to distinguish between crucial and less important issues, Anders Ullberg has formed a board that has created genuine value for the company's shareholders, employees and society. He is also a highly-skilled leader of meetings who engages everyone in the boardroom, and his raw but friendly sense of humour creates a positive atmosphere which steers discussions toward clear and well-founded decisions. Anders Ullberg's achievements at Boliden are a prime example of the crucial role that a competent chair with a long-term focus can have on the development of a company."

The above is an extract from the jury's announcement when Anders Ullberg was awarded the Golden Gavel, an annual Swedish award presented for outstanding performance in the role of chair of the board.

In many interviews, debates and discussions you have emphasised the importance of a good atmosphere in the boardroom and that each member of the board should feel validated. In your role as chair of the board, what does the term good leadership mean to you?
I think the methodology that I applied during my years as CEO also works in the boardroom. They are two different types of role, but in many ways the leadership is the same. For me, it is important that each member of the board finds it fun and interesting to be in the boardroom together and that they feel they are contributing. You don't have to be extremely serious every second; you can tell a joke and have fun. I want them to be able to walk away and think "this is stimulating and fun!" It is also my job as chair to balance the discussions by either calming or stimulating participants so that everyone feels that their voice is heard and that they participate in and influence the decisions. I always strive for as open a climate as possible so that I can elicit the most honest opinions because, in my view, that generates the best solutions for the company.

My dream board consists of people who enjoy working together, respect each other and of course understand the business. It is my duty to make this work. A mixture of backgrounds, genders and nationalities is also important. At Boliden, for example, it is important that we have someone with a Finnish background, because a large part of our operations is in Finland.

This also brings us to the issue of competence. As chair of Boliden, you are a member of the nomination committee. How do you ensure that the work of the nomination committee's work is reflected in the composition of the board?
At the beginning of the nomination committee season, I always go through the board and that gives me an idea of what competencies I would like to reinforce or replace. Having said that, not everyone thinks like me, but I always communicate my vision. After the members of the nomination committee have given their opinions, we eventually agree on the profile of the new member we are looking for. The combination of the nomination committee members' networks and my own usually generates fairly good potential candidates. My network is a little narrower and deeper, while theirs are broader but perhaps a little shallower, which usually work well.

With regard to nomination committees and competence, how do you view quotas for women? We do not have many female CEOs in Sweden today, which

narrows to the possibilities in networks. How can competence be identified even if the person in question does not have executive experience?
There is no clear major shareholder in Boliden. The largest has a holding of about six per cent. But the nomination committee has a good network with access to interesting female candidates who in turn provide a pool to select from. Other board environments are also a good forum for networking. However, I think it will be some time before we see a large number of female chairs, because today there are not many women with a CEO background. This background is not an absolute requirement for a chair of the board, but I think it good to have a chair who is used to focusing on making decisions, which is part of the day-to-day work of a CEO.

So are you saying this is a long-term process? Is there anything else that can be done to increase the diversity of boards?
For me, diversity is not just about gender but also about competencies. It may be that an international company based in Sweden recruits non-Swedes to the board to gain a broader perspective. There are so parameters in the concept of diversity. Regarding gender balance on boards, I think that there has been a clear improvement and there are many more women today than there were ten years ago. At Boliden, for example, three of our seven board members are women.

Another competence is sustainability. How do boards ensure they have expertise in sustainability?
If you work in a mining company, sustainability issues are a natural part of the business. It happens almost automatically - if we do not run a sustainable business, we will not survive. At Boliden, we have one board member with a solid sustainability background, which is no accident. I also work with thematic elements on the agenda. Sustainability issues are a standing item at least once a year, when we dig a little deeper.

When it comes to what I consider to be the most important sustainability issues, I'll take Boliden as an example. Safety is obviously very important to us. The handling of waste products from our mines and smelters is another, and of course dam safety. In 1998, before I joined Boliden, we had an accident when the dam at Apirsa's mine, Los Frailes, burst, which caused large quantities of metal-bearing water and tailings sand to flow along the Guadimar River. These are the kind of sustainability issues that we work with.

Coming back to the question of leadership, how do you view the relationship between the chair and the CEO?
Firstly, I think it is important that the relationship between the CEO and the chairman is a clear one where both understand their respective roles. There must be a mutual understanding that the roles are different. A chair must not become operational, but let the CEO manage the business. As I have been a CEO myself, there is always a danger of stepping over that line. But the CEO must not be a cautious person trying to figure out what the chairman thinks and adapting to that. I want a CEO who expresses opinions clearly.

It should also be borne in mind that the role of CEO is a lonely one. An important task for the chair is therefore to be a natural discussion partner for the CEO and to coach the CEO. For me, it is important to be available. The CEO can call me at any time. However, as chair, I should not chase the CEO. It is usually the CEO who calls me. When the CEO recruits members to the executive management team, I want to be able to interview the final candidates to provide a second opinion and to ensure the quality of the process, even if the CEO draws up the shortlist. It is also good for the candidate to get a picture of the company and the intended role from the perspective of the chair. I often have the same opinion as the CEO, but sometimes our perceptions have differed, which has led us to rethink the recruitment process.

The hard part is when the CEO is no longer performing. You can't give a CEO half-hearted support - if the CEO isn't doing a good job, you have to make a change. This consideration is not black or white, it is usually a process. Here, the chair and the board need to be honest with themselves when the process has reached its conclusion and not let the process drag on. When I look back, I have never regretted acting too quickly in this situation.

How important is effective succession planning?
It is vital, and it is important at several levels in the organisation. This is one of the thematic issues we have on the agenda every year. We go through succession planning, not just at group management level, and we can then also get the CEO's view of the executive management team. When the board visits the various parts of the business, we also want to meet some of the talents that have been identified.

Do you have any advice for new chairs?
If I were to give advice to someone about to take on the role of chair for the very first time, I would urge them to get to know the business properly and to establish a relationship with the CEO. The new business is probably quite different from the one she or he came from. You should therefore not just copy what you did in your previous job. It is also important unlearn your CEO behaviour and remember that as chair of the board you are not operationally responsible. Then I would urge the person to implement good order in the board, and to get the board to show what they are made of and bring out the best in them. That is what brings about good solutions. As chair, it is particularly smart to say "I think this, do you think so too?"

What is your thinking with regard to the number of board meetings per year needed to effectively steer the company in the right direction? And where are the board meetings held?
The number of meetings should not be too great, and they should not be too long. Our basic cycle is five meetings per year, as well as the statutory inaugural meeting. For various reasons, we may need more, for example to discuss a major investment or an acquisition. A meeting should be no longer than 4-5 hours. When you've got that far, it feels like all the oxygen has been sucked out of the room. Sometimes you need to have longer meetings if there are complex issues, but I try to make sure that we stay within this time frame. "Of course, I also assume that the members of the board are well prepared. No one who just flicks through board material once can contribute much. You need to give yourself time to reflect on what you have read. When you have reflected, that is the time to go into the boardroom. Then you have a couple of issues that you want input or clarification on.

To understand the business, I think one of the keys is to see it with your own eyes. The board then also has an opportunity to meet people further down in the organisation. As an employee, it is also important to feel that the board cares and is not some strange beast. I think that means a lot. Two or three times a year, we visit some of our business units and we almost always hold our Annual General Meeting at one of our business locations. That way, we also attract local shareholders by being visible in the local context. Before I started at Boliden, I thought rather naively that we had often held our AGM in the mining community of Boliden itself, where it all began 95 years ago. But it turned out that when we held it there in 2012, it was actually the first time. We held the meeting in the town centre. It was a great success. And when I mentioned that one of my previous managers at SSAB - the person who recruited me - was the grandson of the woman who owned the land where the first deposit was found, the local shareholders thought I was a proper Boliden guy!

With your long experience, do you think that the role of chair has changed over time?
I think the shift probably came before my time in the chair. If I compare with the time before my career in industry started, and when was first exposed to a boardroom in the late 70s, the role was different. If I were to describe it in simple terms, you could say that the chair of the board was then the first among equals. Gradually, more responsibility began to be placed on the shoulders of the chairman of the board. And when the Code was published, there was also a specific section on the chair of the board. Not because it is a huge issue, but it shows what the assignment is all about. I think I spend much more time today on my chairship than the average chair of the board did 20-30 years ago. In general, I also feel that both the board and the CEO have a much greater workload. But in my view, that also makes the roles more interesting.

Do you see the Code as a source of support?
"Yes, the Code provides a structure, but you have to bring the business into it too. I've never felt it to be a burden, but I'm also biased because I was a member of the Corporate Governance Board when it was launched. In terms of structure it is good. But you can't only work with structure, as then there will be no value creation, and you have to provide that.

Do you agree that Sweden is at the forefront of corporate governance? If you compare internationally?
I have worked too little in other environments to be able to make a proper comparison, even though I was the chair of a Finnish listed company. But I like the Swedish model and its division between management, board and owners. Compared with the Anglo-Saxon environment, the difference between management and board is much clearer. In my opinion, the distance between the owner and the board has grown smaller. I think it is good to have a three-part division with a clear allocation of tasks, where the CEO and the CEO's organisation run the business while the board has a longer and more strategic perspective, but also ensures that the management functions properly. At the same time, the owners are able to influence the composition of the board. That is not to say that an Anglo-Saxon corporate governance structure does not work well, but personally I like the Swedish model - but I have also grown up in it.

Do you see faceless ownership as a problem or an opportunity?
Obviously there is a difference between being chair of a company with a diversified ownership structure, like Boliden, and a company with a large major shareholder. If you have a representative of the major shareholder on the board, then the owner's intentions naturally form part of the discussion. With a widespread ownership structure, the board must assume the responsibility of interpreting the owners' intentions, which is a little more challenging, but also stimulating. I've tried both models, and I think both work well.

What is your view on short-term, quarterly capitalism?
I am not bothered by it, but I do not allow myself to be controlled by it either. For me, the crucial thing is to pursue the right strategy and manage the company skilfully. Whether we then see the results in the first, second, third or fourth quarter is something I try not to think about - that is not what matters. The important thing is that we do the right things and that we are competent and consistent in our communication with the financial market.

What have been the biggest challenges and the most enjoyable moments for you as chair over the years?
I think I always enjoy it! But if I am forced to choose something specific, it was the investment of around SEK 4 billion to expand the Garpenberg mine. That mine was threatened with closure shortly before I joined Boliden, and it is now one of the most profitable parts of the company. Large investment projects are always a challenge. When I became chair of Boliden, we had not invested in any particularly large projects since the turn of the millennium. To then go from not having done anything for 5 or 6 years to investing in Aitik and then Garpenberg was a risk and a challenge.

If you look 5 or 10 years ahead, do you think there will be changes in the composition of boards?
The issues will change. For a mining company these days, for example, electrification and automation are important issues, whereas seven years ago they were not. In seven, eight years, we will probably face other issues that we cannot foresee now. Apart from the fact that there will certainly be more women on boards than today, I can't see that there will be any radical differences in the composition of boards.

Finally, what is common thread can you see in your work?
Bringing strategic issues to the table. Whether I am successful or not is up to others to judge. The other one is leading a group of people. You must get the maximum output from the expertise and experience that you have in the boardroom.

How sustainability is shifting the business landscape – or – how the business landscape is shifting as a result of sustainability

Marie Baumgarts is Head of Sustainability at SEB and a member of the European Commission's Technical Expert Group on Sustainable Finance.

Marie Baumgarts

From 10 to 100 in two years

Sustainable development was first defined in 1987 as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"[1]. Ever since, the quest for such sustainable development, or in short sustainability, has grown on a voluntary basis subject to stakeholders' needs and expectations. This has changed dramatically in the last two or three years.

If a quote such as "the business of business is business" [Milton Friedman] and the phrase 'providing profit for shareholders', as found in many Articles of Association, still stand strong, so does the need for a renewed "why" as in purpose and license to operate. Since 1987, we have seen the emergence of voluntary initiatives such as the United Nations Global Compact, Principles for Responsible Investments, the Global Reporting Initiative and the Sustainable Development Goals. However, we have now reached a tipping point where the impact, or effects, of a business on climate change must be managed to ensure future generations' ability to meet their own needs.

In recent years, the sustainability journey that started with the UN has now been picked up by the G20 (and its Financial Stability Board, with the creation of the Task Force on Climate-related Financial Disclosures, TCFD[2]) and the European Commission. In the European Commission's Action Plan on Financing Sustainable Growth[3], published in March 2018, there are multiple actions to green the economy which would probably require companies to adapt, update or rethink their 'why'. Securing the 'why' is essential in order to future proof business models and to safeguard them to go beyond meeting the needs of today and short-termism.

With the regulators accelerating the shift towards sustainable development, the business landscape will likely see more of this kind of parental control, as global warming has not [yet] been resolved on a voluntary basis.

Two worlds coming together

The work leading up to the European Commission's Action Plan, with the High Level Expert Group, HLEG[4] report in particular, resulted in multiple recommendations, including the need for:

- a classification system, or 'taxonomy', to provide market clarity on what is 'sustainable',
- improving disclosure by financial institutions and companies on how sustainability is factored into their decision-making.

One year into the action plan, these and other actions, are about to materialize, which might perhaps catch the business landscape by surprise as it has been used to the traditional non-governmental speed of change. On 24 June, the European Commission will host a stakeholder dialogue about reports[5] on the proposed EU Taxonomy, EU Green Bond Standard, Climate Benchmark Index and Non-Binding Guidelines (NBG [6]) for disclosures. With the planned release of three of the reports on 18 June and stakeholder dialogue on the 24th, the current transparency regulation, the 2014 Non-Financial Reporting Directive (NFRD)[7], will be seen in a new light. Large companies, banks and insurance undertakings are to disclose their development, performance, position and impact on sustainability transparently, covering at least four core areas, including climate. With the new proposed toolbox, to be released in June, and with one of the EC action plan's objectives being to reorient capital flows towards sustainable investments, green would become the new 'black gold'. Thus, the previously separate worlds of finance and sustainability would come together, as it would be easier than before to put a price tag on green assets and activities.

Clarification of impact: A double materiality!

When the 2014 NFRD[7)] takes up impact, further guidance is mainly left open. This is to be clarified in the upcoming Non-Binding Guidelines[6)] for 2019, which will accompany the directive. In the proposed NBG, impact is to be read as both the [material] *financial impact on the company of climate change and the [material] impact on climate caused or contributed to by business through products, services and business relationships*[7)]. Since impact on/of climate has not been a main topic on most boards of directors' agendas, it has not been seen as a material item to be incorporated in financial filings. Until now, or until fairly recently, many corporations have treated climate change as a communication and reputational matter and left it in the hands of communication specialists, PR professionals and dedicated sustainability departments.

What is green? The upcoming Taxonomy opens up for a gold rush

The soon-to-be-released report on the EU Taxonomy[5)] will define which economic activities, (as listed in the NACE[8)] classification), are "green", in short, and in line with the Paris Agreement, i.e. activities that significantly contribute to climate change mitigation or adaptation. In practice, this means that any product in the EU market which is claimed to be sustainable will have to either meet the threshold and criteria of the taxonomy for the relevant NACE code activity; or it must be disclosed how the product relates to the taxonomy, once adopted. The effect, when in place, implies that from now on the market will be able to compare apples with apples and pears with pears, instead of having a wide variety of PR claims relating to sustainability. Increased transparency and comparability, with the help of the taxonomy as a threshold tool, will likely accelerate the re-orientation of capital flows in line with the Paris Agreement and a low carbon economy. As a first draft of the taxonomy is publicly available, there are good opportunities to proactively influence navigation on business strategies, investment decisions and new ventures, to mention just a few examples. In this new game of information, it is clear that climate change risks and opportunities for significant business decisions are to be accounted for and calculated.

Demand side and customers

Looking outside the window, with school strikes, science and the IPCC being more explicit than ever and media becoming more engaged, it is reasonable to claim that there is an increased general customer demand for clarity and transparency regarding what is sustainable. And the boom is probably still ahead of us, because transparency, comparability and formalization of what is green, (e.g. trust), has thus far been low. Aggregated low clarity on what is green, what a sustainable branded/labelled product or service actually contains and to what degree it fulfils customer demands and expectations have been almost impossible to understand at scale. Hence the market has naturally been careful up till now.

Board accountability + transparency + disclosures = trust

When approved in 2014, the NFRD required certain large companies with more than 500 employees, (more than 250 in Sweden), banks and insurance companies to report on sustainability matters from financial year 2017, e.g. to include a non-financial statement in the management report. (Management report has been interpreted as being part of the Administration Report in the Annual Report or a free-standing report.) The statement is to contain: *"information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters…"*[7)].

Climate change is naturally included under environment, and to quote the recitals[7)] of the NFRD[7)]: (7) *"that statement should contain, as regards environmental matters, details of the current and foreseeable impacts of the undertaking's operations on the environment…"*. This is followed by a clarification of direct vs indirect impact and accountability: (8) *"The undertakings which* *are subject to this Directive should provide adequate information in relation to matters that stand out as being most likely to bring about the materialisation of principal risks of severe impacts, along with those that have already materialised. The severity of such impacts should be judged by their scale and gravity. The risks of adverse impact may stem from the undertaking's own activities or may be linked to its operations, and, where relevant and proportionate, its products, services and business relationships, including its supply and subcontracting chains…"*[7].

Looking with fresh eyes in the light of climate change statistics, a rapidly shifting regulatory landscape, the presence of transition and physical risks, it would be reasonable for boards of directors to consider a) obtaining a legal opinion on what would be considered their accountability related to current and foreseeable impact; b) the severity of impacts and c) the company's development, performance and position related to climate change risks and opportunities. Once identified, corporate governance and remunerations would naturally follow. For nomination committees, finding the right competence for boards has always been crucial, but they now need to include consideration of competences in sustainability and climate change related matters.

The benefits of being proactive – the early bird catches the worm

With definitions of what is green for activities such as housing, manufacturing, energy production and more, companies with good ratios of activities that meet the thresholds will be likely to attract capital more easily and be viewed as lower risk. Financial institutions would, for example, probably prefer to have a proportion of pension investments defined as green. In general, the race towards meeting the Sustainable Development Goals, striving for sustainable development, has only just begun. What will happen next depends on us.

I would like to end with two quotes as food for thought. The first comes from when the European Commission Action Plan was launched in March 2018. First Vice-President Frans Timmermans said "Moving to a greener and more sustainable economy is good for job creation, good for people, and good for the planet. Today we are making sure that the financial system works towards this goal. Our proposals will allow investors and individual citizens to make a positive choice so that their money is used more responsibly and supports sustainability."

The second is from Rupert Murdoch: "The world is changing very fast. Big will not beat small anymore. It will be the fast beating the slow."

Ultimately, moving forward, climate and sustainability should now be a material matter in current and future Board work. In a rapidly changing business landscape, proactive decision makers are highly likely to enjoy more freedom.

[1] Our Common Future: https://www.encyclopedia.com/environment/energy-government-and-defense-magazines/united-nations-world-commission-environment-and-development-wced-our-common-future-report-1987
[2] The Task Force on Climate-related Financial Disclosures (TCFD). https://www.fsb-tcfd.org/
[3] EC Action Plan on financing sustainable growth. https://ec.europa.eu/info/publications/180308-action-plan-sustainable-growth_en and EU Sustainable Finance https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance_en
[4] The High-Level Expert Group (HLEG) comprised 20 experts, one of which was Magnus Billing, CEO of Alecta. http://europa.eu/rapid/press-release_IP-18-542_en.htm
[5] EC stakeholder dialogue on 24 June on the Technical Expert Group reports: https://ec.europa.eu/info/events/finance-190624-sustainable-finance_en and https://ec.europa.eu/info/publications/sustainable-finance-technical-expert-group_en
[6] The proposed Non-Binding Guidelines 2019 to be released in final version on 24 June. https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/2019-non-financial-reporting-guidelines-consultation-document_en.pdf
[7] The Non-Financial Reporting Directive (NFRD) (incorporated into the Swedish Annual Accounts Act) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&from=EN
[8] NACE. http://ec.europa.eu/competition/mergers/cases/index/nace_all.html

The Nordic Way of Corporate Governance*

Per Lekvall

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This article is based on a pan-Nordic study, showing that the resemblance between the corporate governance frameworks of the four major Nordic countries makes it warranted to talk about a joint Nordic corporate governance model.

A key feature of this model is that it allows strong owners to effectively control and take a long-term responsibility for the company. The inherent risk of such a system, that it allows the control owner to extract undue private benefits from the company, is effectively curbed through a well-developed system of minority protection. The result is a model that encourages strong owners to engage in the governance of the company in order to tend to their investment while at the same time creating long-term value for all shareholders.

The article reviews the findings of the study and extends them to reflections on conceivable sustainability implications of the Nordic model.

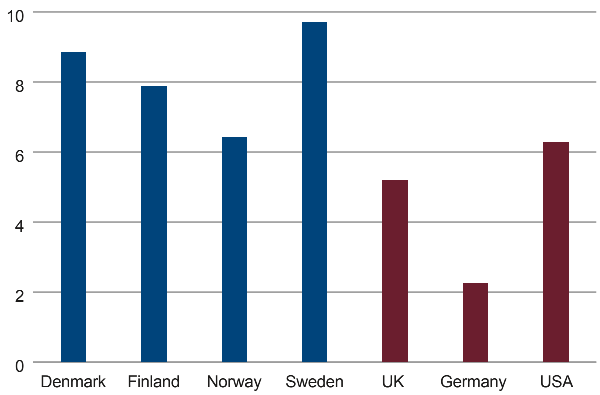

Figure 1: Ratio of each country's share of the world's 2000 largest listed companies to its share of world population.

Sources: Forbes Global 2000 Leading Companies List 2013: www.forbes.com/global2000 World Bank 2013 report: www.worldbank.org.

1. Background and aim of the study

The four major Nordic countries of Denmark, Finland, Norway and Sweden have fostered a remarkable number of world-leading companies, as illustrated in the figure below. The diagram shows the ratio of the share of companies on Forbes' list of the world's 2000 largest listed companies to the share of the world population of the four major Nordic countries, benchmarked against three world-leading industrial economies. The Nordic average ratio significantly exceeds those of all the benchmarking countries, and is about four times that of Germany.

Many factors may certainly underlie this outcome, the further analysis of which is beyond the scope of this article. Nonetheless, it is widely held within the Nordic business communities that the way Nordic companies are governed plays a significant role in their often remarkable performance in the international markets. This notion is underpinned by numerous international rankings in recent years; for example, in the 2013 global ranking of the efficacy of corporate boards by the World Economic Forum, Sweden, Finland and Norway all ranked within the six top positions and Denmark ranked no. 20, just ahead of the UK and Germany.[1)]

However, over the last few decades, the Nordic countries have increasingly been pressured to adapt to what is sometimes referred to as international governance standards, in practice essentially the corporate governance practised in jurisdictions with an Anglo-Saxon common law tradition, primarily the US and the UK. This influence has two main sources:

* This article is an elaborated version of a paper presented at the jubilee conference on the occasion of the 100th anniversary of the Danish Companies Act, University of Copenhagen, 27th of September 2017. I am grateful for comments on earlier versions in different stages of development from Tom Berglund, Jesper Lau Hansen, Robert Strand and two anonymous referees.

1) The World Economic Forum Global Competitiveness Report 2013-2014.

One is the international capital market, which has drastically increased its presence in the Nordic markets during this period. Currently, on average non-domestic owners account for about 40% of the market capitalization of listed companies in the Nordic region. A major portion of this ownership emanates from non-Nordic shareholders, mainly in the form of institutional investors with US or UK origins. As a consequence of this, the Nordic markets have seen a great influx of capital market players such as shareholders and their advisors, investment analysts, and board directors with an Anglo-Saxon corporate governance background. Occasionally this situation has caused frictions when such players are confronted with Nordic governance practices, manifested inter alia as a lack of understanding of Nordic general meeting practices, of major shareholders' role in the governance process, and of prevailing work practices in Nordic boards.

A second source of pressure has been the active corporate governance harmonization agenda pursued by the European Commission since the turn of the century. Remarkably, this agenda has been predominantly based upon the UK governance approach, largely disregarding the great diversity of corporate governance models existing across Europe. This approach has led to regulatory initiatives that have often been poorly adapted to the governance systems of other parts of Europe, including those in the Nordic region, thus causing considerable challenges for regulators, shareholders and companies.[2)]

Against this background, the overarching aim of the study on which this paper is based[3)] was to investigate the extent to which it might be possible to identify a common basic corporate governance model that is valid across all four countries and, if so, to provide an overall description of the key characteristics of this model compared with other corporate governance frameworks. Such a description would be useful for increasing the recognition and understanding of Nordic corporate governance in the international capital market and in the EU administration, thus possibly mitigating the above-mentioned problems.[4)]

Notably, the study had no objective to promote the Nordic model for use on a broader international scale; rather, it was strictly confined to the pedagogical purposes mentioned above. Whether or not the model – as a whole or specific aspects of it – might also be useful outside of the Nordic jurisdictions is another matter.

2. Is there a specific Nordic governance model?

As just explained, the prime purpose of this study was to determine whether formal regulation and real-world practices of corporate governance in the Nordic countries were sufficiently similar to warrant the identification and description of a common Nordic governance model. A key outcome of the study was a clearly affirmative answer to this question.[5)] This conclusion is founded on the following three fundamental aspects of the Nordic institutional framework for the governance of listed companies:

2.1 Closely resembling rules and norms for good governance

The norm systems, largely determining how corporate governance is practised in a jurisdiction, closely resemble one another between the Nordic countries but differ significantly from those of most other parts of the world. Generally, such systems comprise three main components:

(i) ***Statutory regulation***, primarily in the form of national Companies Acts and other kinds of mandatory regulation, for which there is a long history of co-ordination between the Nordic countries. Hence, in the decades following World War II, the lawmakers of these countries (including Iceland) had far-reaching ambitions to develop a common Nordic Companies Act. No such act materialized, but the new national acts inaugurated in all countries concerned during the 1970s closely resembled one another.

Through later amendments and complements, those acts have gradually strayed from each other, and when new national acts were again introduced in the early 2000s, they differed significantly in crucial respects. This statement does not, however, apply to the governance sections of the acts, which still closely resemble one another, sometimes down to the formulation of legal text. Together these acts therefore form a joint judicial framework for corporate governance across the Nordic region.

(ii) ***Self-regulation,*** which traditionally plays an important role in Nordic societies within this field, today mainly in the form of corporate governance codes. The Nordic countries were relatively late to adopt this new form of regulation, but in the period from 2001 (Denmark) to 2005 (Sweden), a national code of corporate governance was introduced in each of the four countries.[6] Although those codes differ significantly in terms of form, structure and scope, with regard to governance substance matter, as well as their institutional setup as part of the business sector self-regulation, they resemble each other closely and are generally in line with current international standards.

Listing rules and other regulation of privately operated stock exchanges may also be seen as part of the self-regulation of the business sector, albeit typically contractually mandatory for the companies concerned. Also in this respect there is a close co-ordination between the Nordic countries, largely due to the fact that the main exchanges of three of the countries (Denmark, Finland and Sweden) are owned and operated by the same privately owned company, Nasdaq Nordic Ltd, a subsidiary of the US-based Nasdaq Group Inc. Although the Norwegian main exchange, owned and operated by Oslo Børs, remains independent of this setup, its operating procedures closely resemble those of the other exchanges. Thus, a far-reaching harmonization of listing rules and other stock exchange regulation exists across the Nordic equity markets.

(iii) Finally, ***non-codified traditions, norms and practices*** also play a significant – but often underestimated – role in determining how corporate governance is pursued within a given jurisdiction. Even in this respect, the Nordic countries display close similarities based inter alia on long-standing common historical roots, largely shared ethnical backgrounds and, in more recent times, similar societal, political and economic structures. Altogether this leads to general norms, values and codes of conduct that are largely shared among the Nordic societies; to a considerable extent, they also disseminate into business communities and influence how companies are governed and managed.

2.2 Similar ownership structures of listed companies
The Nordic countries also share a common overall structure of the capital markets and ownership patterns in listed companies. The latter aspect is particularly important in this context because it largely determines the role that shareholders can play in the governance of companies. Listed companies may roughly be classified into two main categories in this respect: companies with a dispersed ownership pattern, often with no single shareholder controlling more than a fraction of the total capital and/or voting power, and companies with a more concentrated ownership structure where one or a small group of shareholders can have a more or less controlling holding of the company. The first of these patterns is typical of markets with an Anglo-Saxon judicial tradition, primarily the US and the UK, whereas the second pattern dominates in continental Europe as in many other parts of the industrialized world.

This distinction is crucial because it largely determines the extent to which shareholders can and may wish to participate in the governance of their investee companies. In widely held companies, an individual shareholder that holds only a fraction of the total equity may consider it unwarranted to invest time and money in active governance of the company, given that this shareholder will reap only a corresponding fraction of the fruits of these efforts (the so-called free-rider problem). Furthermore, such shareholders are predominantly of the institutional investor type, usually with insufficient financial, organizational or human resources required to pursue strong and active ownership strategies. Instead, these shareholders tend to "vote with the feet", which in turn leads to the lack of shareholder engagement that is a frequent theme in the current international debate in the field.

2) For an in-depth treatment of these and related issues, see Ilmonen (2016).
3) Lekvall (ed., 2014), including stand-alone contributions by Airaksinen, Berglund and von Weymarn (2014), Gilson (2014), Hansen and Lønfeldt (2014), Knudsen and Norvik (2014) and Skog and Sjöman (2014).
4) For a more in-depth and scientifically oriented treatment of the Nordic model, including discussions of its societal and institutional foundation and applicability to other jurisdictions, see Thomsen (2016a) and Thomsen (2016b).
5) As shown by Jonsson (2016), this conclusion largely also holds for Iceland, although this country was not included in this study.
6) For a more comprehensive review of the process through which corporate governance codes were introduced in the Nordic countries, see Hansen (2006).

In contrast, in closely held companies one or a few major shareholders may be in practical control of the company, often with their investment portfolios concentrated in one or a few companies where they engage actively in the governance in order to tend to their investment, typically with its long-term performance in view. Since these shareholders often own a substantial part of the company, they are less affected by the free-rider problem and are hence more motivated to invest considerable amounts of time and effort in governing the company.[7)]

A crucial, common feature of the Nordic equity markets is that their listed companies are predominantly of the latter category, a characteristic in which they differ distinctively from e.g., the UK market, as illustrated in Figure 2. As shown in the diagram (the filled bars), more than six out of ten listed companies in the Nordic region have at least one shareholder in control of more than 20% of the votes of the company, usually sufficient to exert a considerable degree of control over listed companies. Comparing the countries, Norway and Sweden display the highest concentration levels, whereas Denmark and Finland show slightly lower levels. The striped bars instead indicate that one out of five Nordic companies has at least one shareholder in absolute control of the company with more than 50% of the votes. For both control levels, the corresponding numbers for the UK market are significantly lower.

It is also interesting to consider the situation in a broader international context, as indicated in Panel 1 below. For the EU member states, these data are based on a study commissioned by the European Commission from 2007[8)], whereas the US and Norway data stem from the study by La Porta et al. (1999). Although these data are now 10 to 15 years old, it can reasonably be assumed that fundamental institutional features of this kind do not change rapidly and that the numbers displayed are therefore fairly comparable to those in the previous diagram. Notably, the data in this panel are based only on the 20 (approximately; it differs slightly between countries) largest companies in the respective countries, whereas the data in the previous diagram are based on a total survey of all companies listed on the main exchanges of the four Nordic markets.

As shown in the panel, the Nordic countries as a group show the highest degree of ownership concentration at levels largely in line with those reported in Figure 2. However, several of the continental European countries also display concentration levels that can be assumed to often involve a significant degree of control ownership. This finding stands in sharp contrast to particularly the UK market with its considerably more dispersed ownership structure[9)].

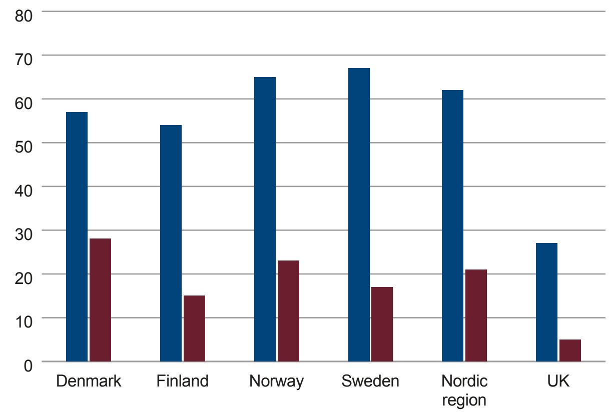

Figure 2: Percentage of listed companies with at least one shareholder in control of more than 20% (filled bars) and 50% (striped bars), respectively, of the votes of the company.

Data for the Nordic market comprise all domestically domiciled companies on the primary stock exchange of the respective countries. The UK data are based on a sample of 116 out of the corresponding population of about 800 companies on the London Stock Exchange Main Market.

Adapted from Lekvall (2014).

2.3 A common governance structure

The third, and arguably most important, factor underlying the similarities of corporate governance frameworks in the Nordic countries is their strictly hierarchical "governance chain of command", closely shared between these countries but distinctively different from most other jurisdictions in Europe and elsewhere. This concordance has its roots in the previously mentioned history of legal co-ordination between the countries concerned, which resulted in the emergence of a specific Nordic governance structure broadly along the following lines.[10)]

Since the early 20th century, the corporate governance frameworks of the Nordic countries have been largely based on the Anglo-Saxon system, with a unitary board accountable to the general meeting. However, already at an early stage, there was a growing recognition of the fundamental difference between the strategic

Nordic countries		European continental countries		UK and USA	
Denmark	74%	France	40%	UK	15%
Finland	60%	Germany	25%	USA	20%
Norway	75%	Italy	65%		
Sweden	65%	Netherlands	48%		
		Spain	46%		

Panel 1: Presence of at least one shareholder controlling more than 20% of votes among the approximately 20 largest listed companies in each country

Sources: EU Member States: European Commission (2007).
The US and Norway: La Porta et al. (1999).

steering and oversight functions of "outside" directors (often the financiers of the business) and the executive functions performed by the directors engaged in the day-to-day management of the company. It was increasingly contended that this separation of roles should be reflected in the legally defined duties and responsibilities of the respective categories of directors. In response to such considerations, in the 1930 revision of their Companies Act, Danish lawmakers decided to distinguish the executive functions from the board and create a new legally defined corporate body separate from but subordinate to the board, and to make this arrangement mandatory for companies exceeding certain size criteria. In Danish practice the executive functions were usually performed by a collective body of senior officers; thus, the new body was defined as an executive board (Danish direktion), headed by what would currently be termed a CEO (Danish administrerende direktør).

In the decades that followed, this practice was adopted in all the other Nordic countries; however, with the difference that in Finland, Norway and Sweden, the new executive body was defined as a one-person function, today known as the CEO. In all four countries, the members of this executive management function, in the form of either a single-person CEO or a Danish direktion, may formally sit on the board but may constitute only a minority of its members. In practice this option is seldom exercised, but most Nordic boards are entirely non-executive. The main exception is Sweden, where the CEO currently is also a board member in slightly less than 40% of all listed companies.

This situation has led to a governance structure that may be schematically illustrated, and compared with the one- and two-tier models largely dominating European corporate governance, as shown in Figure 3. The left-hand side of the figure depicts the two-tier system typically used in jurisdictions with a German civil law tradition but with some variations also prevalent in other parts of Continental Europe. Particularly in its original German version, this system draws a strict line of demarcation between a supervisory board, with primarily oversight and controlling functions, and a management board vested with virtually all executive powers. The decision-making competence of both the general meeting and the supervisory board are basically defined by law, essentially limiting their powers to matters of oversight and control rather than to active participation in the management of the company. The dashed lines in the figure symbolise these limited powers of the superior governance bodies. Instead the model vests strong powers to the management board to run the company largely independently of shareholder influence, which in turn makes the model susceptible to agency problems between the shareholders and both the supervisory and the management boards[11)].

7) For an in-depth discussion of different ownership models and their implications for the governance of companies in the Nordic context, see Sjöstrand et al. (2016).
8) European Commission (2007).
9) A similar conclusion about the US market on the basis of the La Porta et al. results (as those of several other researchers), is cast in doubt by Holderness (2007). Based on a comprehensive analysis of ownership data of exchange-listed companies in the US vs. a number of Western European and East Asian countries he concludes that the median ownership concentration in US public corporations is no less than that of a corresponding sample of non-US companies (ibid., p. 1389). It should be noted, however, that the bulk of Holderness's analysis is based on a 5% cutoff level for "blockholding". This may be appropriate as a general measure of ownership concentration but is not very pertinent as an indication of control ownership, at least not in a Nordic or European Continental context. Nonetheless Holderness also briefly reports similar – although weaker – results for 10% as well as 20% cutoff levels. Furthermore, not least after a number of high-profile technology company IPOs since the turn of the millennium, the US market displays a considerable number of tightly controlled listed companies where the controlling owners use dual-class shares to further leverage their control (Gilson, 2014, pp. 105-106). Hence, pending further research on this issue, it seems appropriate to reserve judgement about the prevalence of control ownership among US listed companies.
10) For a more comprehensive review of this development, see Hansen (2007).
11) For a further comparative analysis of the German vs. Nordic governance models, see Ringe (2016). Although from a conceptual point of view basically affirming the picture outlined here, Ringe contends that in terms of practical application and, to some extent, more recent legal amendments, the two models are in a process of gradual conversion.

The right-hand side of the figure depicts the one-tier-structure predominantly used in jurisdictions based on an Anglo-Saxon common law tradition, primarily the US and the UK. Here, the supervisory/control and executive functions are combined in a unitary board comprising both executive and non-executive directors. This setup entails certain conflict of interest problems between the board and the executive management – problems that underlie some of the key principles of modern corporate governance.

Formally, the general meeting of this model has considerable power to control the board. In practice, however, this power is largely illusory because of the highly dispersed ownership structures typical of markets where this model is predominantly used. As noted above, with no owner holding more than a fraction of the company stock, no single shareholder can be expected to have the incentive and resources necessary to invest the time and money required to exert strong ownership powers. In practice, the result is typically far-reaching delegation of governance powers to the board with only faint shareholder powers remaining to discipline the board to act strictly in the interests of shareholders.

This limited power of shareholders to exert ownership control is symbolised in the figure by a dotted line from the general meeting to the board. Hence, this model also entails significant agency problems. In addition, as a consequence of its composition of a mixture of executive and non-executive directors, the board has an inherent conflict of interest situation vis-à-vis the executive management. This conflict is further exacerbated when, as is often the case in some jurisdictions applying this model, the same person holds the roles of both chair of the board and CEO. Several of the key principles of the US and UK governance approaches are aimed at mitigating these problems (e.g., requirements of independent directors, board committees and lead directors).

The Nordic solution is neither a mixture of nor a compromise between these models. It rather differs distinctly from both in at least three fundamental respects:

- It allocates far-reaching powers to the general meeting to control the governance of the company by placing this body at the top of a hierarchical "chain of command" in which each governance body is strictly subordinate to its next superior body.

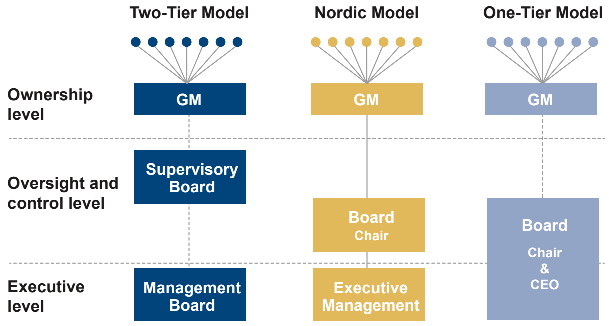

Figure 3: A schematic illustration of the governance structure of the Nordic model compared with the one- and two-tier models, respectively.
Adapted from Lekvall (2014).

- It vests the board with far-reaching powers to manage the company during its term of office. Nonetheless, each individual director, as well as the entire board, may be dismissed by the general meeting at any time and without stated cause, thus ensuring strong subordination and strict accountability of each director and the board as a whole to the shareholders.
- It makes a clear-cut distinction of duties and responsibilities between the mostly altogether non-executive board and the purely executive CEO function[12)], the latter being appointed and dismissed by the board at will at any time and without the need for any stated cause, thus entailing a strict hierarchy that ensures strong accountability.

Hence the solid line throughout the governance chain in the Nordic model, symbolising the strong powers of the general meeting to control the subordinate bodies and enforce its will throughout the governance chain. Another way of expressing this is that the model is less susceptible to agency problems between shareholders and their agents in the form of the board and the executive management than are the two other models discussed. Instead, the Nordic model has other agency problems, primarily those that may occur between the (few) controlling owners and the vast remaining shareholder constituency. We will return to this topic below.

[12)] Or, in Denmark, the executive board.

3. An owner-oriented governance model…

The most distinctive feature of the Nordic governance model is thus that it allows a shareholder majority, in the form of either a single controlling owner or a coalition of smaller shareholders, to effectively control and assume long-term responsibility for the company. The alleged risk of such a system – the potential of strong owners to abuse their powers to extract undue benefits from the company at the expense of other shareholders – is effectively curbed by a well-developed system of minority protection. The result is a governance model that encourages strong owners to invest time and money in long-term engagement in the governance of the company for the purpose of promoting their own interest while simultaneously creating value for the company and all its shareholders.

The underlying philosophy is that shareholders should be in command of their company. The board and executive management are seen as the shareholders' tools for running the company during the mandate period under strict fiduciary accountability to the shareholders for the outcome of their work. This is manifested through a clear and strictly hierarchical governance structure based on four main pillars:

(i) *Supremacy of the general meeting* to decide on any matters that do not expressly fall within the exclusive competence of any other governance body (which applies to very few issues, one being that the general meeting cannot decide on a higher distribution of profits than what is proposed by the board).

The general meeting may in the Nordic system issue written instructions to the board about how the company should be run, and the board would be legally obliged to follow those instructions. In practice, such "ownership instructions" are never used in listed companies, where the underlying assumption is that they are always to be managed with a view of maximizing long-term value creation. However, ownership instructions are occasionally used in state- or local government-owned companies, as well as some non-listed, privately held companies, all typically characterized by more complex goal structures than those of listed companies.

(ii) *A board of directors* appointed by and fully subordinate to the shareholders in the general meeting. As already mentioned, Nordic boards are mostly entirely non-executive, i.e., no member of executive management sits on the board, the main exception being Sweden, where the CEO is a formal board member in a significant (currently 38%) – but slowly decreasing - share of the listed companies. In either case the CEO is legally entitled to participate in board meetings unless the board decides differently on a case-by-case basis (for example when it needs to discuss the performance of the CEO). Furthermore, the positions of chair of the board and CEO may never be held by the same person in Nordic listed companies; in Sweden, this is even prohibited by law.

As also mentioned before, the entire board, as well as any individual director, may be dismissed by the shareholders at any time and without stated cause. If occurring during an on-going mandate period, such dismissal requires the summoning of an extra-ordinary general meeting, which normally can occur within a matter of weeks. Hence, in cases of a change of control of a company (e.g., as a consequence of a hostile takeover or a merger), the entire board can immediately be replaced by the new owners.

In accordance with current international standards, through code provisions, the majority of board members are to be independent of the company and company management; this requirement is usually fulfilled in good measure in Nordic boards as a consequence of their predominantly non-executive nature. However, the codes of all four countries except Denmark make a distinction between independence in relation to the company and its management and independence in relation to major owners, with only two board members required to be independent in the latter sense. This distinction reflects the generally held view that major owners should be allowed to largely control their companies, including the right to fill the board majority with their trustees.[13)]

[13)] For a more elaborate discussion of the concept of independent directors in the Nordic corporate governance framework, see Hansen (2013).

(iii) *An executive management* function appointed by and fully subordinate to the board and subject to dismissal at will by the board at any time and without stated cause.

As discussed in a previous section, in all countries except Denmark, this function is performed by a single-person CEO, whereas in Denmark it is usually (but not always) composed of a group of people under the chairmanship of a CEO. In a strict corporate governance sense, this difference is of limited consequence since the Danish direktion performs the same function, and is appointed by and subordinate to the board in the same way, as the single-person CEO of the other countries. Hence, the Danish setup must not be mistaken for a two-tier structure of the German type but fits well into the overall Nordic structure outlined in Figure 4.

(iv) *A statutory auditor* appointed by and primarily accountable to the shareholders in the general meeting. This appointment is made upon proposal by the board (or its audit committee), except in Sweden, where the shareholder-controlled nomination committee (cf. below) formally proposes the auditor; however, even in this case, the appointment is usually based on preparatory work completed by the board or its audit committee. In either case, the general meeting is never bound by the proposal presented but is perfectly sovereign to make a different decision if it sees fit, although this occurs only rarely in practice.

In the Nordic jurisdictions, the auditor is principally seen as the shareholders' tool for reviewing certain aspects of the work of the board and executive management, primarily the accounts and financial reporting of the company. However, in three of the countries, Norway, Finland and Sweden, the auditor also has the duty to review the administration of the company by the board and executive management. The exact meaning of this duty is subject to some debate, but the general interpretation is that it should not include any assessment of how the company is run from a business perspective but be confined to ensuring that the company complies with its articles of association, applicable law, and other statutory regulation.

In addition to these "main pillars", the Nordic governance model includes some further specific features worth highlighting in this context:

- In all four countries, the strong ownership powers just described may be further enhanced by the use of dual-class shares with different voting rights, but with a maximum difference of 1 to 10. This option is used mainly in Sweden (approximately 50% of listed companies), to a lesser extent in Denmark, even less in Finland and rarely in Norway. Rough estimates indicate that approximately ¼ of Nordic listed companies apply this form of control-enhancing mechanism.
- In Norway and Sweden, the nomination committee is a subcommittee not of the board but of the general meeting. The (code-based) provisions regulating this body differ somewhat between these countries, but common features are that the committee is appointed by the shareholders at the general meeting and that it predominantly comprises representatives of the (usually major) shareholders. The model is gaining increasing ground also in Finland but so far not in Denmark, where the international standard model with nomination committees in the form of a subcommittee of the board dominates.
- In all Nordic countries except Finland, employees have the right – but not an obligation – to be represented on the board. This right is currently used in more or less all Norwegian listed companies, whereas it is exercised in fewer than 40% of Swedish listed companies and even less in Denmark. The reason for the employees of the remaining companies to opt out of this opportunity is typically that they prefer other forms of co-determination.

  Employee-appointed directors have the same formal duties and responsibilities as any other board member. However, they can never constitute a board majority; typically they account for up to about 1/3 of the board. Another important feature is that, unlike some other jurisdictions allowing for employee board representation, the Nordic system requires those representatives to be elected by - and exclusively among - the company's employees, thus shunning the risk of central union political considerations intruding into the board's work.

4. …balanced by strict minority protection

The obvious risk of vesting control-owners with such strong powers is that those will be used to take advantage of the smaller shareholders by extracting undue private benefits from the company. Hence, the risk of *agency costs* in the Nordic model is more associated with the relationship between the controlling owner(s) and the rest of the shareholder constituency than with that between the shareholders and the board and management. To keep such agency costs within acceptable bounds, the other side of the strong ownership orientation of the Nordic model is an elaborate system for the protection of minority shareholder interests. This system operates through a combination of statutory, self-regulatory and general practice provisions, the most important of which are the following:

(i) *The principle of equal treatment of shareholders,* which prohibits the general meeting, the board and executive management to take any action rendering undue favours to certain shareholders at the expense of the company or other shareholders. This provision, which appears in the Companies Acts of all Nordic countries with almost identical wordings, is generally referred to as the *General Clause*.

Although similar stipulations can be found in most well-developed corporate governance jurisdictions, the Nordic rule seems to be held in higher esteem among the relevant actors and is more strictly enforced – not least through close scrutiny by fellow shareholders and the media – than what generally seems to be seen elsewhere. In fact, the considerable reputational risk, especially in the relatively small business communities, of being caught off-guard in breach of this principle, may reasonably be considered to make up key factor underlying the functioning of the Nordic governance model.

(ii) A tradition of strong *individual shareholder rights*, largely pre-empting the provisions of the 2007 EU Shareholders' Rights Directive long before it was introduced.

For example, a single share suffices to have an item included in the general meeting agenda; to participate, speak and vote for this share at the meeting; to file counter-proposals at the meeting to any item on the agenda; and to pose pertinent questions to the board and management and have them duly answered, provided that they can be answered without detriment to the company. A single shareholder can also challenge a general meeting resolution in court on grounds that it is illegal or inconsistent with the company's Articles of Association; in this instance, the court could declare the resolution null and void.

(iii) *Qualified majority vote requirements* for a number of resolutions by the general meeting of particular potential detriment to minority shareholder interests.

The required levels are 67%, 90% and 100% of the votes cast at the meeting or, for certain resolutions, of the total number of votes of the company. For example, in Sweden, an incentive programme involving the issue of shares or share options to beneficiaries, foregoing the pre-emptive right of shareholders to participate, requires a general meeting resolution with 90% majority of the votes cast at the meeting.

(iv) *Minority powers* to force certain resolutions at the general meeting, especially on matters regarding shareholders' economic rights. Thus, minorities of typically 5-10% (depending on the country and type of resolution) may require the summoning of an extra-ordinary general meeting, force a minimum dividend to be distributed and have a "minority auditor" or, under certain circumstances, a "special investigator" (requires 25% in Denmark) appointed by the district court or a public authority.

(v) Long-established, generally endorsed rules and practices for *related-party transactions* based on transparency towards all interested parties and strict market terms, largely pre-empting the provisions of the amended EU Shareholders' Rights Directive[14], currently in the process of implementation in the Member States.

(vi) A generally a high degree of transparency towards shareholders, the capital market and the surrounding society, reflecting a long tradition of transparency in the Nordic societies.

Individually, none of these points may seem very unique in an international perspective, but taken together they make up a comprehensive system, developed and refined through many years of accumulated experience, that appears to largely fulfil its purpose as convincingly proven through both scientific research and more anecdotal, real-world observations.

Perhaps the most manifest research-based evidence is provided by Nenova (2003). In this comprehensive study, encompassing 661 companies from 18 countries with dual-class shares, listed on the world's 30 largest national capital markets, Nenova determined the median percentage "excess value" of control-block shares to total company market capitalization for all companies involved. Averaging these numbers for each country and grouping the countries according to the La Porta (1998) classification of corporate governance legal systems, her key findings may be summarized as follows:

Type of legal system	Average median excess value of control-block shares
French civil law	**23%**
Whereof France 27%, Italy 30%, Mexico 37%	
German civil law	**16%**
Whereof Germany 5%, Switzerland 1.5%	
Anglo-Saxon common law	**1.6%**
Whereof UK 7%, US 0.7%, Canada 0.5%	
Scandinavian civil law	**0.5%**
Whereof Denmark 0.3%, Finland 0.5%, Norway 4%, Sweden 0.4%	

As shown in this panel, whereas the value of control-block shares substantially exceeds that of the company as a whole in French civil law jurisdictions as well as – albeit to a lesser extent – in German civil law jurisdictions, reflecting considerable room for control-owners to extract pecuniary benefits from the companies beyond what is available to shareholders in general, the corresponding numbers for the Anglo-Saxon common law jurisdictions are substantially lower, and for the Nordic civil law jurisdictions close to nil. Nenova attributes these results primarily to the divergent capacities of different legal frameworks to protect minority shareholder value, inter alia through effective law enforcement, strong investor protection and strict takeover regulation.

Another example is the study by Gilson (2005) who, comparing the prevalence of pecuniary private benefits of corporate control in Sweden and the US with that of a number of other countries, including Italy, Mexico and some Southeast Asian countries, found significantly less of such behaviour in Sweden and the US than in the benchmark jurisdictions. Gilson concludes that the relevant dichotomy is not, as has often been asserted, between widely and tightly held shareholder structures but between "good law" and "bad law" jurisdictions, attributing Sweden and the US to the first category. This conclusion may be reasonably generalized to the entire Nordic region.

More practice-based and anecdotal evidence is provided by the observation that it is a wide-spread, and often quite successful, investment strategy among retail shareholders in the Nordic countries to "ride on the back" of major control-owners. The assumption is that those owners will have the incentive, competence and resources to tend meticulously to the prosperity of their companies, thus creating value for all shareholders. One may also point to the strong interest of foreign institutional investors, often critical to control ownership in their home markets, in investing in Nordic control-owned companies.

5. Sustainability aspects of the Nordic model

The concept of sustainability has been subject to intense debate in management theory and practice for several decades. However, the concept still arouses considerable controversy within academia as well as among business practitioners with regard to its purport and implications for corporate governance.

[14] Directive (EC) 2017/282.

One reason for this debate may be found in the ambiguity of the term itself, given that its connotations seem to vary substantially between different contexts. Even within the limited scope of the corporate sector, sustainability in the sense of certain aspects of a company's activities being endurable over time (e.g., a long-lasting product line, business strategy or ownership structure) fundamentally differs from sustainability in the sense of the impact of a company's activities on its social and physical environment to ensure in the eyes of these constituencies (Aras and Crowther, 2008). In the latter meaning, the concept is often referred to as "corporate sustainability", which is also the term used here to distinguish it from the first meaning above.

Based on this distinction, in this section we first discuss the sustainability of Nordic corporate governance in the sense of the prospects of the model per se to prevail over time, and then explore its possible implications for the corporate sustainability performance of Nordic companies.

5.1 Will the model prevail?

As noted earlier in this article, for quite some time the Nordic model has been subject to considerable challenges from mainly two sources: one caused by vastly increased foreign ownership in the Nordic stock markets, mainly in the form of US- and UK-based institutional investors with a predominantly Anglo-Saxon corporate governance background, the other by an active corporate governance harmonization agenda pursued by the European Commission, often resulting in regulatory measures poorly in line with governance rules and practices in the Nordic jurisdictions.

Not least in Sweden, this has led to a vivid debate at least since the turn of the century about a more or less inevitable convergence of the Swedish control ownership model towards the Anglo-Saxon model – an offshoot of the broader international so-called convergence theory, see e.g., Söderström, ed. (2003) and Henrekson and Jakobsson (2003). A strong argument for this convergence, maintained particularly by the latter authors, has been a successively eroding capital base of Swedish control owners in relation to the total stock market capitalization, leading to an increasing deficit of financial capacity to defend their ownership positions on an increasingly globalized market for corporate control. However, in another study about a decade later, the same authors found that no such change had occurred to any decisive extent: although the "old" blockholding owners had decreased their share of control of the Swedish equity market, the dramatic surge of the Swedish stock market in the period 1980-2000 had created a number of new fortunes of significant size, thus broadening the capital base for the Swedish ownership model (Henrekson and Jakobsson, 2012).

In this latter study the authors point at two additional forces that have increasingly challenged the Swedish model, i.e. the increased prevalence of subsidiaries of major foreign companies and the rapidly growing role of private equity ownership in the Swedish market. They further contend that the on-going EU regulation agenda continues to erode the Swedish model by inflicting upon it Anglo-Saxon-based governance principles that tend to undermine the basis for control ownership. Overall, the threats to the survival of the Swedish model are far from over, a conclusion that may be assumed to apply, to a greater or lesser extent, to the entire Nordic region.

Notwithstanding this, thus far the Nordic model seems to have basically endured and remained in reasonably good shape (Thomsen and Conyon, 2012). To what extent this situation will endure henceforth, however, remains to be seen. Gilson (2014), commenting on the Nordic model in an independent chapter of the report underlying this article, provides some interesting observations about this issue. Gilson finds no general evidence supporting the convergence theory, as he points to a number of recent IPOs of major listed companies on the US stock market, especially in the IT sector, where the original entrepreneurs maintain tight control of their companies through dual-class shares and other control-enhancing measures, and to the dramatic increase in institutional ownership in both the US and Nordic markets for a long time. Hence, Gilson speculates, the relevant issue may be whether we will see a convergence of shareholder distribution within markets rather than of ownership distribution between markets, possibly leading to a situation where both ownership models will thrive side by side in the same markets.

5.2 CSR/corporate sustainability[15] implications of the model

Although the concepts of corporate social responsibility (CSR) and corporate sustainability have been subject to extensive academic research for many years, these activities do not appear to have produced an abundance of studies focusing specifically on the relationship between these concepts and corporate governance. However, some notable exceptions are the contributions of Salzmann et al. (2006), Aras and Crowther (2008), and Jamali et al. (2008), as well as, more recently, those of Rahim (2013), Roe and Tilt (2015) and Gelter (2016). Furthermore, Thomson and Croydon (2012), and Strand et al. (2015), add some specifically Nordic aspects to this discussion. Altogether these studies may be said to provide at least an embryo of a theory of the interrelationship between corporate governance and CSR/corporate sustainability. Some key elements of such a theory, with specific relevance in the Nordic context, are the following:

- The concepts of corporate governance and CSR/corporate sustainability are closely interrelated in a two-way manner. There are different ideas about the exact nature of this relationship; however, having analysed various propositions in this respect, Jamali et al. (2008) conclude that corporate governance "is a necessary pillar for a genuine and sustainable CSR orientation" (ibid., p. 257).
- CSR is intrinsically associated with a long-term vision of the company, aimed at ensuring that its business prevails over time (Jamali et al., 2008; Aras and Crowther, 2008). Hence the concept is closely related to the notion of License to Operate, according to which a company is seen as an integral part of the society in which it operates and thus must conform to the norms and values prevailing in this society so as to ensure its legitimacy in the eyes of its various stakeholders (Salzmann et al., 2006; Rao and Tilt, 2015).
- Transparency, along with accountability and honesty, is a crucial source of the vigour of a company's CSR performance (Jamali et al., 2008). Hence, reporting on its activities in this respect (also referred to as corporate social disclosure, CSD) to its pertinent stakeholders is a key element of a company's sustainability performance. It may in fact be seen as an expression of the company's accountability to its stakeholders (Rao and Tilt, 2015).
- Analysing the possible impact of employee board participation on the company's CSR performance, Gelter (2016) distinguishes between internal and external CSR, where the first concept relates to the company's conduct towards stakeholders with which it has a long-term relationship, notably its employees, and the second to various types of externalities produced by its operations. Gelter's overall conclusion is that employee board participation is generally associated with a higher level of internal CSR, whereas its impact on external CSR is unclear and may go in both directions.
- Several researchers also point at the predominantly voluntary nature of CSR behaviour (Jamali et al., 2008; Rahim, 2013; Rao and Tilt, 2015). However, Gelter (2016) notes that this applies primarily to the external aspects of CSR, whereas internal CSR is usually more rule-based (e.g. through legal requirements of employee board representation). Nonetheless, at least with regard to external CSR, self-regulation rather than law or other statutory rule-making is the predominant regime for setting norms and standards within the field (Rahim, 2013).[16]

As should be evident from this article, the abovementioned elements are all salient features of Nordic corporate governance. It therefore seems warranted to assert that this governance framework provides – paraphrasing Jamali et al. (2008) – a solid pillar for a genuine CSR/corporate sustainability orientation among companies: The Nordic ownership model typically entails a long-term vision by major owners of their companies, founded not only on strong incentives to tend meticulously to their investments but also on a general drive to endure as long-term corporate owners, views

[15] There is a certain ambiguity in the literature of the field as to the relationship between the concepts of "Corporate Social Responsibility (CSR)" and "Corporate Sustainability". To avoid risks of misinterpretation, in the ensuing discussion the terminology generally used in each study referred to is also adopted in the discussion of its findings, thus leaving to the reader to assess the degree of alignment or misalignment between the two concepts in this context. Where no clear distinction is made between the two concepts the term "CSR/corporate sustainability" is used.

[16] A notable exception is the EU Directive on Non-Financial Reporting (2014/95/EU), recently implemented in the Member States.

closely reminiscent of the License to Operate notion.[17)] Furthermore, transparency is a long-lasting hallmark of Nordic corporate governance, employee representation on corporate boards is a well-established feature of the Nordic governance framework (except in Finland), and self-regulation plays a prominent role in the corporate governance regulatory regimes of the Nordic countries.

To what extent those ostensibly favourable preconditions have in fact brought forth stronger CSR/sustainability performance among Nordic companies than in their counterparts operating under other governance regimes largely remains to be proven. Yet there are a few studies indicating that this may indeed be the case to some extent. For example, Strand et al. (2015), referring to a variety of international measurements and rankings of CSR and sustainability performance at both company and country levels, as well as to other studies of CSR and sustainability behaviour of Scandinavian companies, conclude that "pretty much any way one measures it, Scandinavian countries and Scandinavian companies lead the world in strong CSR and sustainability performance". Also, Liang and Renneboog (2017), based on data comprising CSR ratings of more than 23,000 companies from 114 countries spanning 123 industries, and applying essentially the same classification of legal systems as the one used in the aforementioned Nenova (2003) study, found that companies from civil law countries generally scored higher on CSR performance than companies from common law countries, with Scandinavian civil law-based companies showing the highest level of CSR.

Notwithstanding this, since the findings of the two studies quoted above appear largely based on ranking lists of arguably debatable methodological stringency, it must be considered still unclear to what extent Nordic companies in general may outperform their counterparts from other parts of the world in terms of CSR/corporate sustainability performance. Hence further research will be needed to answer this question with any reasonable degree of certainty.

17) It is therefore no coincidence that the two primary corporate governance self-regulatory norm systems in Sweden, the Swedish Corporate Governance Code for listed companies, administered by the Swedish Corporate Governance Board, and the Guidelines for Good Board Practice, administered by the Swedish Academy of Board Directors and mainly directed towards non-listed SMEs (only available in Swedish), both refer implicitly or explicitly to this notion in their recommendations regarding CSR/corporate sustainability.

6. Conclusion – the essence of Nordic corporate governance

As should be evident from this article, and the study underlying it, the corporate governance frameworks of the four major Nordic countries resemble one another to an extent that makes it warranted to talk about a joint Nordic corporate governance model. This model is based on three largely shared determinants of how corporate governance is practiced in a jurisdiction:

- Closely resembling social, cultural and regulatory frameworks.
- Similar prevailing ownership structures of listed companies.
- A common governance structure, distinctly different from those of other jurisdictions.

The essence of the model may be summarized as follows:
It is a model designed to allow strong owners to largely control their companies while maintaining an effective system for the protection of minority shareholders rights, the underlying rationale being that such owners, who often have all or major parts of their fortune invested in one or a few companies, generally have strong incentives, high competence, and sufficient resources to engage actively in the governance of their companies, typically with long-term value creation as the prime driving-force, to the benefit of themselves as well as all shareholders – provided possibilities to use their strong powers to extract undue private benefits from the company are effectively curbed.

Although the model has been subject to substantial pressure to converge towards primarily the Anglo-Saxon governance model, it appears thus far to have endured basically intact, continuing to render competitive advantage to Nordic companies in global markets while ostensibly also providing some favourable preconditions for socially responsible corporate behaviour.

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The Role of the Board Secretary – A Short Practical Guide

Nearly every listed company has a Board Secretary. Yet in Sweden, as in many other countries, such role is neither defined nor required by applicable law. Instead, the role is defined by historical practice and custom which must be learned on the job and from shared experience. The authors each serve as Board Secretary for their respective company. In this article, they share some "tribal knowledge" and practical advice for other in-house attorneys who are new to the role of Board Secretary. They also aim to give inspiration to Board Chairs on how they can extract greater value from their Board Secretaries beyond just taking the minutes.

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1. Who normally serves as "Board Secretary" and why?

Although a number of CFO's act as Board Secretaries, this role is typically filled by the Company's General Counsel (herein, the "**GC**"). This is because GC's are typically skilled at synthesizing the complex information/discussions at Board meeting into short, accurate minutes, and to do so with a sound grasp of good corporate governance principles and stock-exchange requirements. The remainder of this article assumes that it is the GC acting as Board Secretary.

2. How is the Board Secretary formally appointed?

There is no statutorily prescribed mechanism, but such appointment can be memorialized in the Board's Rules of Procedures, which are typically adopted annually as part of the statutory Board Meeting. The Board Chair (with input from the CEO) normally makes the decision of "who" acts as Board Secretary. However it is not uncommon that the role is simply inherited from one GC to the next.

3. To whom does the Board Secretary report?

As a functionary of the Board, the Secretary should take direction and instructions primarily from the Board Chair. At the same time, most Board Secretaries are Company employees who report to the CEO. As such, the Secretary must be diligent to ensure alignment with both the CEO and Board Chair (see Question 18, below). Finally, the Secretary should be a resource to the whole Board. Thus, if the Secretary receives questions from individual Board members, such questions should be answered directly and transparently, but (in the absence of a request for confidentiality) should be informed to the Chair.

4. What are the duties of the Board Secretary?

The most fundamental duty of the Board Secretary is, of course, to take accurate minutes of the Board Meetings, and to see that such minutes are timely circulated and approved (See Question 12-15 below). In addition, the Secretary has a number of ancillary "administrative" duties, such as assisting the Chair and CEO with:

- Preparing the annual board plan (i.e., meeting dates and agenda items to be covered),
- Preparing and distributing meeting agendas (to, among other things, ensure that all topics to be covered by the annual Board plan are scheduled),
- Preparing and distributing Board Meeting Books (so-called "Pre-Reads"),
- Onboarding new Board members (e.g., providing background materials and information on how the Board works, as well as information/training regarding regulatory obligations),
- Preparing and organizing "board trips",
- Archiving Board materials (e.g., by using NASDAQ's Directors Desk), and
- Maintaining an "open issues" list (i.e., all action items assigned by the Board to be followed-up on by management).

5. What is not the role of the Board Secretary?

The Board Secretary is not a member of the Board and should not presume to act as one. Thus, unless prompted to do so by the Chair, the Secretary should generally refrain from active participation in Board discussions (other than on matters of law and procedure, or where the Secretary is otherwise responsible for a given presentation). The Board Secretary should also avoid being responsible for purely logistical matters (e.g., room bookings, taxis, phone lines, etc.), but should ensure someone else, such as an administrative assistant, is taking care of those matters.

6. How can the Board Secretary add "value" beyond taking the Minutes?

If constrained to taking the minutes and the other "ancillary" matters discussed above, the role of the Board Secretary is quite limited in nature. However, in the our view, the role should be expanded to include a number of additional duties (as noted in Questions 7-10 below), thereby providing additional value to the Board, and making the role of the Secretary more interesting and meaningful.

7. Should the Secretary act as "Editor" of the Board Materials?

Yes. The Secretary should review and if needed edit all Board Materials (Pre-Reads) before they are sent to the Board. There are two main purposes of such editorial review. First, to make sure that all materials are in a good and consistent format (i.e., have a title that corresponds to the agenda item, are kept to reasonable length, are free from major typographical errors and have an executive summary). Second, and more importantly, to improve the quality of the materials. The truth is that many Board presentations are too long, too detailed, and assume a level of pre-existing knowledge on the subject that is not there. The Secretary is uniquely situated to play the role of a Board member reading the materials for the first time, by asking basic questions such as:

- *Do I understand the purpose and context of this presentation?*
- *What is actually being asked of the Board (is it a decision or for information only)?*
- *Are the key messages transparent?*
- *Do I understand all the acronyms used and charts presented?*

A rigorous editing process may initially be resisted by others in management ("why is the lawyer messing around with my document"?), but in the long-run will be appreciated as helping to make the author look better, as well as saving the Board time and frustration.

8. Is the Board Secretary also the Board's "Lawyer"

In a word, yes (at least if the Secretary is also the GC). It is generally expected that the Board Secretary is well-versed in all laws, regulations and principles that impose any duties on the Board of Directors. This would include the Swedish Companies Act, the Swedish Corporate Governance Code, the Annual Accounts Act, the EU's Market Abuse Regulations (MAR) and applicable Stock Exchange rules. Of course, not all questions can be answered on the spot and an honest "*I don't know the answer to that question, but I will look into it and get* *back with a clear response as soon as possible*" is better than guessing wrong. In addition, the Board Secretary will often report from time to time on legal and compliance matters (e.g., periodic report on major litigation, etc.), in her/his capacity as the functional head for Legal Affairs.

9. Should the Board Secretary give periodic "Training" to the Board?

Yes, but in moderation. Most Board members are seasoned business persons who have long experience with the applicable regulatory framework governing Board work -- but this is not always the case. Periodic training by the Secretary (especially if done on an optional basis, outside the normal Board meetings) is often welcomed by newcomers, and a good refresher for veterans. The Secretary should also provide training in the event of major new legislation, for example, the new duties imposed on "Persons Discharging Managerial Responsibility" that came into effect under MAR in 2016 or the recently enacted Shareholder Rights Directive II. Finally, periodic training on the Company's compliance policies (e.g., Code of Conduct) is a good practice, not least of which to demonstrate an "effective compliance program" for purposes of the U.S. Federal Sentencing Guidelines, which have international reach.

10. What role should the Secretary play relative to "Inside Information".

Under the EU's Market Abuse Regulation (MAR), whenever "inside information" is deemed to exist, the Company must promptly disclose such information or make a determination that the conditions for delaying disclosure of such information are satisfied, including the establishment of a log-book. Board decisions can often create such "inside information" and the Board Secretary should be prepared to flag such occurrences and to assist in the determination of when a disclosure is required and whether a delay of disclosure is permitted. The Secretary should also take the lead role in maintaining any required log-books (in the event of delayed disclosure of inside information) and keeping the Board informed of the same.

11. How can the Secretary support in the Board Evaluation Process?

The Swedish Corporate Governance Code requires that Boards of listed companies annually evaluate their work, 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 reported to the Nomination Committee and are a key input to the Nomination Committee's recommendations as to Board composition at the annual Annual General Meeting (AGM). Such evaluations can be done either using an external service provider or using internal resources. In the latter case, the Secretary can play a key role in facilitating such evaluation by acting as the sole hub/aggregator of all inputs provided by individual board members (typically in response to a written questionnaire). With the Chair's consent, the Secretary may also be asked to give direct input on the Board's work. Of course, the best manner for a Secretary to give feedback to the Chair is to have the level of trust and honesty to do so directly and informally.

12. What should the Board Minutes contain and how detailed should they be?

In our view, Board minutes should be kept as short and objective as possible. In terms of length, minutes might be in the range of 4-5 pages for a full-day meeting. Thus, while the Board minutes should not record everything discussed (other than formal decisions), whatever is recorded must be true. The level of detail might also change depending on whether excerpts of the minutes will need to be provided to an external party (e.g., a to a Bank as part of a financing transaction, or a to counterparty in an M&A deal). The minutes should also clearly distinguish between what is a final decision, vs. a conditional decision vs. a mere "directional support" for a given initiative. The minutes should also list "action items" (i.e., instructions to management to follow-up on a given matter or take a specific action), including "who" is responsible, and the applicable "due date" for such action item. A list of such action items is typically kept in a running "open issues list" maintained by the Secretary.

13. What should the minutes not contain?

In general, Board minutes should not contain all details on the discussions leading up to a given decision (beyond a certain modicum of context necessary to enable Board members to recall the discussion and provide context for the decision or action item). Also, in most cases, it is better to attribute a specific comment to the Board as a whole, i.e., "*the Board raised a concern that ….* ", rather than to a specific member of the Board, i.e., "*Bengt raised a concern that…*". Minutes should ***not*** include matters that were not actually discussed or decided at the meeting (i.e., no retroactive back-dating). They should also generally ***not*** include comments that were clearly speculative or inflammatory in nature – this especially in light of the fact that, on occasion, Board minutes may need to be shared with governmental authorities or potentially adverse parties. (See question 16, below).

14 14. What is the process by which minutes are approved?

There are no firm rules here, but in our experience, the Board Secretary typically creates a first draft of the minutes and, perhaps after getting comments from the CEO, sends it to the Chair and any other Board members appointed as minute checkers (there must be at least one in addition to the Chair). Ideally, this should be done within a few days after the Board meeting when memories are still fresh. After receiving comments, a new version is then prepared and signed by the Board Secretary and then circulated for signatures by the Chair and the other minute checker(s). While it is common for such minutes to be approved by the full Board at the succeeding meeting, this actually has no legal effect (the minutes being deemed final upon their approval by the Chair and minute checkers).

15. Where are the minutes archived?

It is common practice to archive the final minutes (as well as all supporting materials and appendices) on a document management system such as NASDAQ's *Director's Desk*. The actual uploading and management of such system is typically managed by an administrative assistant (i.e., the GC's assistant or the CEO's assistant). It is good practice to archive only those supporting materials that were actually provided to the Board or shown at the meeting. If materials were prepared but never shown to the Board, those should not be included in the formal Board archive (or at least should be archived separately).

16. Who is entitled to see the minutes?

In addition to the Board Members, there are a number of internal and external stakeholders who may have a legitimate need to see the minutes. This would include the Company's external auditors, and internal audit function. Relevant portions of minutes may also need to be shared with third parties in connection with commercial transaction. For example, a third-party bank may need to see the relevant banking resolutions in connection with a structured financing, or a counterparty in an M&A transaction may require to see resolutions approving a specific deal. Finally, the minutes may, in some instances, have to be disclosed to potentially adverse parties such as a counterparty in litigation (e.g., via discovery) or to a governmental regulator. An example of the latter would include merger control authorities who may have the right to review board materials evaluating a given transaction in terms of market share and potential effect on competition (so-called "Item 4(c)" documents, in U.S. terminology). Given the highly sensitive and confidential information of Board Materials, it is important that the Board Secretary act as a gatekeeper to ensure that the minutes are only shared with those parties who are entitled to see them and, even then, only to the extent necessary.

17. How are "non-unanimous" decisions documented?

That is a good question, as none of us has been faced with the situation where there is a non-unanimous decision. Perhaps this is a reflection of Swedish corporate culture, but in our experience, decisions are either supported by the entire Board, or are not taken at all. One way to memorialize this is to add a statement at the end of the minutes to the effect that "It was noted that all decisions were taken unanimously". Despite the foregoing, it should be noted Board members do have the formal right to have their dissenting opinion noted in the minutes.

18. What are common "pitfalls" to avoid as Board Secretary?

The possibilities are endless, but here are some of the most common pitfalls:

- ***Not Being Aligned on the Scope of Role.*** All of the roles described in this article (beyond taking the minutes) are ones that should only be undertaken at with the consent and approval of the Chair and CEO. An alignment on the expectations of the Board Secretary should thus be done early on, and should be periodically checked with the Chair.
- ***Getting cross-wise between the CEO and Chair***. In well-functioning companies, the CEO and Chair are generally aligned, meaning that there is no divergence of expectations. However, it is important for the Secretary to avoid getting caught in the middle of a difference of opinion. The best way to avoid this is constant and transparent communications with both the CEO and Board Chair. At the end of the day, the GC has a duty to represent the shareholders as a whole (who have, in turn, appointed the Chair) so if push comes to show there is where your loyalty must be. But the best practice is to avoid being caught in such any conflict situation – be pro-active!
- ***Sending out the Wrong Material or Sending it out Late.*** Board materials are often dense and long. The Secretary can play a key role in setting firm deadlines internally for the assembly and distribution of materials, to ensure the Board has ample time to review. Sending materials late and/or sending the wrong or multiple versions of the same materials is not the path to a happy Board.
- ***Having Tech-Problems at the Board Meeting.*** Board members are typically busy people who have high expectations and little patience for when the projector screen doesn't work, where the teleconference numbers are wrong, or when there is no Wi-Fi available. Thus, while the Secretary should not be the "IT guy", the Secretary should make sure an "IT guy" is on site.
- ***Being Late with the Minutes.*** Minutes should be prepared and circulated as soon as possible following a given Board meeting, when the meeting is still fresh in everyone's minds. Sending out minutes three weeks after a Board meeting is bad form, and inefficient. Also, by that time, many of the "action items" reflected in the minutes may have become moot.
- ***Not Raising the Red Flag when Needed.*** It should always be remembered that the Board Secretary, as GC, has a fiduciary duty to act in the best interests of the Company's shareholders and must maintain a sufficient degree of independence to do so. In fact, the Chair should demand that the Secretary exercise such independence by raising a red flag any time there is a legitimate concern with a given course of action (or inaction). This protects the Chair, the CEO and the entire Board (as well as the GC).

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