SWEDISH
CORPORATE
GOVERNANCE BOARD

Annual Report 2020

Contents

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A word from the Chair of the Board

As I write this foreword, the world is going through one of the worst crises of modern times, a crisis in which two viruses, one biological and one economic, are sweeping the world. What long-term effects the crisis will have on politics, the economy, companies and individuals, will remains to be seen – at present it is all about dealing with the ongoing emergency.

This uncertainty about long-term consequences obviously also applies to the field of corporate governance. Our belief and our hope is that there will be little need for profound changes. However, the Swedish Corporate Governance Board has participated in consultation processes initiated by the Swedish Council on Legislation and issued implementation regulations to support this year's AGM season as a result of Covid-19. It remains to be seen whether some of the changes that the companies are now making in terms of the organisation of shareholders' meetings will be made permanent.

The biggest and most important issue in the corporate governance debate in 2019, both in Sweden and internationally was the role and management of sustainability issues and, partly linked to that, the Swedish Companies Act's definition of the purpose of profit. These issues also became politically explosive, not least due to the European Commission's continued detailed and dubious actions, which fail to take into account the (extremely) different corporate governance models that exist within the European Union. For a deeper discussion of this issue, please refer to the Chair's comments in the Corporate Governance Board's 2018 annual report. The issue is still highly topical and is also subject to further discussion in this annual report – see Rolf Skog's article Corporate Governance for Sustainability in the Perspectives section.

The issues themselves are of course of great importance to both society and companies, and they require and deserve serious attention and debate. The Corporate Governance Board has therefore decided to devote a major part of its 2021 Corporate Governance Seminar to these topics. As a starting point for a constructive debate, the Board will produce a white paper, with concrete proposals on what the European Commission's role in

corporate governance should be, as well as looking at sustainability issues and the profit motive. A couple of international corporate governance experts have been invited to the panel that will discuss the White Paper, as well as representatives of the Commission. The issues will also be commented on by Jim Hagemann Snabe (Chair of the Board of Siemens and Maersk among others) and Leif Johansson (Chair of the Board of AstraZeneca among others). Hagemann and Johansson will also discuss differences between different corporate governance systems and different cultures in board work.

The Board decided to revive its annual corporate governance seminar in 2019, after it had been dormant for a few years. We were unsure whether there would be much interest among our stakeholders - I must admit that I called the office the week before the seminar and asked if we had enough enrolments to go ahead. To our great joy, however, it turned out that there was a great

need. The seminar was fully booked, and we also had a long waiting list. For the next seminar, which due to the ongoing pandemic situation has been postponed until 18 May 2021, we have therefore secured a larger room.

Developments in 2019 illustrated the continued need to defend the Nordic corporate governance model. Work on what is perhaps the most important project in this respect, the creation of a framework for a Nordic corporate governance code, made further progress. As I have previously stated, this is not a simple job and a couple of previous attempts have run out of steam. The prospects of success are good, however, as the different Nordic models are largely similar or identical. If we succeed, we will be a force to be reckoned with. Together, we will be G12 in the G20 group and the fourth largest player within the EU. That it is possible to succeed can be seen in the Nordic auditing bodies, which co-operated constructively for many years and has even meant that the Nordic voice and influence is much greater than the countries' size justifies.

Internally within the Corporate Governance Board and the self-regulation system, a discussion was initiated in 2019 regarding the organisation of the tasks previously handled by NBK, the Swedish Industry and Commerce Stock Exchange Committee, which were taken over by the Board in 2010. These tasks require deep specialist knowledge and are different from the job of ensuring that Sweden has a relevant, effective and well-functioning code for corporate governance in listed companies. As the issues in the area have grown in both number and importance over the years, the organisation needs to develop further.

As I wrote last year, the roundtable discussions we led in 2018/19, in which a large number of the Corporate Governance Board's stakeholders participated and submitted their views on the Code, showed just as in previous corresponding reviews that the clearest common conclusion is: do not change a well-functioning Code unnecessarily. The most important thing is stable regulations and thus the avoidance of a constant need to learn new rules, change multi-year overviews etc. This is something that the Board of course strives to take on board, at the same time as we keep a close eye on developments, both in Sweden and internationally, in order to be able to make the changes that a relevant and living Code needs.

And finally: do not forget the Code's comply-or-explain principle - this ingenious flexibility rule that eliminates all regulatory "one size fits all" problems, without opening up for hidden deviations. On the contrary, companies have to explain clearly why they deviate from the rules and what they do instead.

Nacka, August 2020

Arne Karlsson
Chair of the Board

A word from the Executive Director

This annual report was published later than usual due to the ongoing pandemic, mainly because many listed companies had to postpone their annual general meetings. Among other things, this meant that the collection of statistics for the report from corporate governance reports, annual general meetings etc. was delayed. The Board's work has also been affected in other respects. For example, we have postponed the revision of the takeover rules and the Board's annual corporate governance seminar, which was to be held in October, has been moved to next spring.

The new temporary rules for annual general meetings that until the turn of the year allow various forms of general meetings with limited or no shareholder presence have been a welcome addition to limit the spread of infection. In order for the companies to be able to apply these forms of meeting permanently, amendments to their articles of association are required, but careful considered is needed regarding whether the efficiency benefits that can be achieved in some cases outweigh the importance of the meeting between management and shareholders, which has been a defining characteristic of Nordic and Swedish annual general meetings.

In addition to responding to the attacks on our Nordic corporate governance model, as commented on by the Chair of the Board in his foreword to this annual report, we have devoted a great deal of time and effort trying to create a new set of rules regarding remuneration to replace the patchwork of different rules that apply today. The hope is that our combined efforts will achieve this before the end of the year. This goes hand in hand with the work of the Board and our parent association to find more efficient working methods for the handling of the matters previously handled by NBK, the Swedish Industry and Commerce Stock Exchange Committee, i.e. the rules concerning good practice in the Swedish stock market rather than the corporate governance code. We hope to get that work over the line this year too.

It is of the utmost importance for the Board that we have a continuous dialogue with the listed companies and their executive managements, boards and owners so that they are as up-to-date on our work and our initiatives as we are on the issues at the top of these stakeholders' agendas. This does not only apply in connection with code revisions, the round table discussions we run and our corporate governance seminar on current corporate governance issues. Especially at a time like this, when face-to-face meetings have more or less stopped taking place, we need to examine new ways to receive relevant views from Code users. We therefore encourage you to contact us by email or telephone so that we can ensure that our work is conducted in the best possible way.

Visby, August 2020

Björn Kristiansson
Executive Director

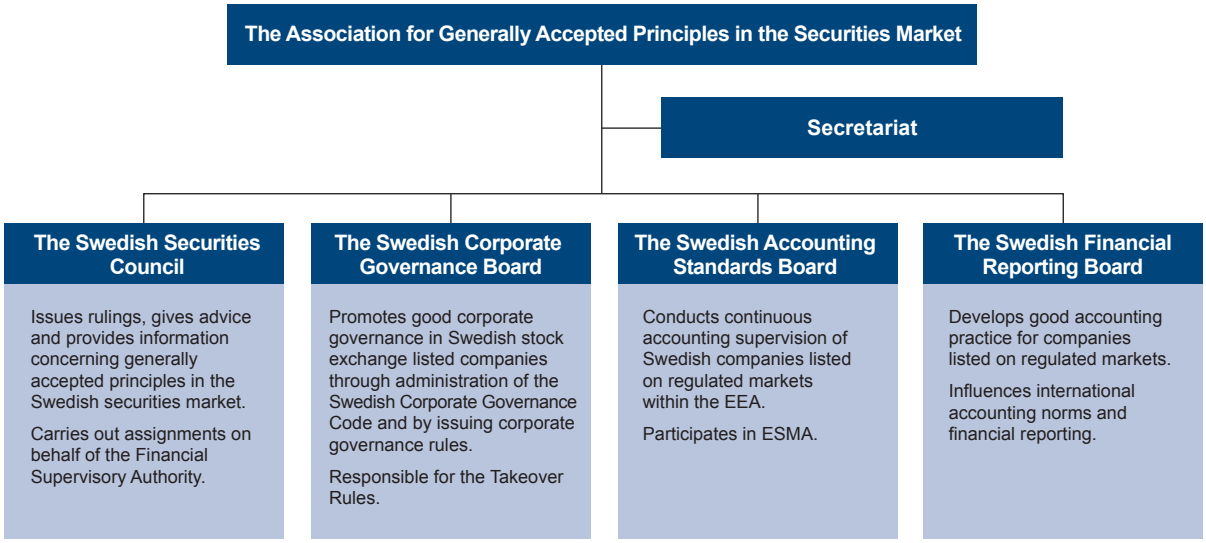
I. ACTIVITY REPORT

This part of the annual report describes the work of the Swedish Corporate Governance Board during corporate governance year 2019–2020 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 is our role 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 2019, the Board initially consisted of Arne Karlsson (Chair), Eva Hägg (Deputy Chair), Karin Apelman, Ingrid Bonde, Göran Espelund, Per Lekvall, Louise Lindh, Gun Nilsson, Marianne Nilsson, Olle and Lena Olving, as well as Executive Director Björn Kristiansson. At the parent organisation's annual meeting in May 2019, Per Lekvall and Lena Olving left the Board and Håkan Broman was elected. Additionally, Andreas Gustafsson continued as a co-opted member of the Board. Outgoing Board member Per Lekvall was also co-opted to the meetings of the Board. The Board held four ordinary meetings during the year, as well as an extra meeting to discuss the revision of the Code. Discussion and consultation also took place by e-mail and telephone when required, and a number of meetings for sub-committees and working groups 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 below.

Communication

In 2019, the Board adopted an updated communication plan, which included improvements to the Board's website to give it a more modern appearance and make it easier to navigate. Additionally, the Board resumed its tradition of annual corporate governance seminars, and the first in this series of seminars was held in Stockholm on 17 September 2019. The seminar was well attended, and the Board is currently working on preparations for the next one. For more information, see Key issues 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.

A major revision of the Code took place in 2019 and the updated Code came into force on 1 January 2020. This version of the Code is the one that currently applies.

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 meeting season, and in July, when the annual general meeting season is over. Since 2016, Board has conducted this assessment just once a year, in early July. The information acquired from these assessments is available on the Board's website, www.bolagsstyrning.se. The statistics for the past year refer to the figures as of 10 June 2019 and 30 June 2020. The statistics for June 2019 were not yet available at the time of this annual report's publication. The latest results are available on the Board's website.

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 SME (formerly Nordic MTF) and Spotlight Stock Market (formerly AktieTorget) trading platforms.

In 2019, the Board set up a working group to conduct a review of the existing Takeover Rules, under the leadership of Professor Rolf Skog, Executive Director of the Swedish Securities Council. The other members of the working group are Erik Sjöman, a lawyer, Björn Kristiansson, Executive Director of the Board, Tobias Hultén, the Board's legal associate, and Erik Lidman. As in previous work to formulate and revise the Takeover Rules, the work is being conducted in close consultation with a broad reference group.

The group began its work in the spring of 2020, but it has largely on hold during the ongoing Covid-19 pandemic. The work is expected to resume during autumn 2020, and is described in more detail under Key issues below.

Rules on private placements in listed companies

The Swedish Corporate Governance Board has issued one 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 arise, 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 SME (formerly Nordic MTF) or Spotlight Stock Market (formerly 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 financial 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 2019, the Board submitted written comments on matters such as the European Commission's discussion paper regarding guidelines on the presentation of the remuneration report and the Commission's study on directors' duties and sustainable corporate governance.

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 was implemented in 2019. The Executive Director of the Board was included 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, apart from the proposed amendment to the majority requirement under the Leo Rules and the proposed restriction on the shareholders' initiative rights.

The final implementation was 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 were previously regulated by a ruling from the Swedish Securities Council, and it was therefore natural for the Council to modify its previous ruling to supplement the legislation. Self-regulation regarding remuneration was covered in the revised Code which came into force on 1 January 2020, which meant that the category "other members of the executive management" is now included in the remuneration guidelines requirement. 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 2019 and 2020, 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.

Since 2018, the Board has been an active member of 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 group calls for reflection on the part of the European Commission before introducing detailed sustainability regulation and for this type of regulation, where required, to be based on self-regulation. The full statement can be found on the Board's website, www.bolagsstyrning.se.

Nordic work

The Board is also an active member of a Nordic collaboration between the countries' code issuing bodies. The Nordic code issuers 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 work on Nordic principles for corporate governance. 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.

Key issues

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.

Recommendation on remuneration of company executives

In June 2019, new rules in the Swedish Companies Act came into force which entailed requirements for listed companies to produce and decide on remuneration guidelines and remuneration reports for certain senior executives. According to the Act, the category of executives to be covered is limited to the chief executive officer, the deputy chief executive officer and board directors and their deputies. According to the amendment to rule 9.9 of the Corporate Governance Code which came into force on 1 January 2020, the Act's provisions on remuneration guidelines are also to be applied to other members of the company's executive management. However, no corresponding extension was made for remuneration reports.

One issue that has come into focus in connection with the implementation of the updated Shareholders' Rights Directive and the latest code revision is whether the Corporate Governance Board should take a comprehensive approach to self-regulation with regard to remuneration and incentive programmes, where the latter is currently regulated primarily by the Swedish Securities Council's

rulings on what constitutes good practice. The Board is currently working on breaking out parts of the existing self-regulation framework in this area from the Code and the Securities Council's remit to put them into a comprehensive recommendation issued by the Board. As the Board announced on 27 April 2020, it does not now intend to expand the group of executives to be included in listed companies' remuneration reports.

Review of the Takeover Rules

The Swedish Takeover Rules were revised in two steps in the autumn of 2017 and the spring of 2018. The current rules came into force on 1 April 2018. At the end of 2019, the Board, in collaboration with a broad-based reference group, began work to assess whether the current regulatory framework for takeovers is still relevant and appropriate, and in particular see if the updated prospectus rules give rise to a need for changes in the regulations. The work has been postponed due to the impact of Covid-19 but will continue during the autumn.

User conference

The Board's annual corporate governance seminar, which was originally scheduled for 5 October 2020, has been postponed until 18 May 2021 due to the current pandemic situation. The seminar aims 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 2019

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 trend 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 fell somewhat in 2019. This year's survey shows a decrease in the number of reported deviations in a smaller number of companies. Such a development can be interpreted both positively and negatively. The development is negative 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 positive 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 2019. 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 2019, there were 336 companies whose shares or SDRs were available for trade on a regulated market in Sweden. Of these, 328 were listed on Nasdaq OMX Stockholm and eight on NGM Main Regulated Equity. Of those listed on Nasdaq OMX Stockholm, 20 have declared that they apply another code than the Swedish Corporate Governance Code, and these 20 were therefore not included in the survey. This meant that the number of companies actually included in the survey was 316, of which 308 were listed on Nasdaq OMX Stockholm and eight on NGM Main Regulated Equity. See Table 1.

Table 1. Number of surveyed companies

	2019		2018		2017	
	Number	Percentage	Number	Percentage	Number	Percentage
NASDAQ Stockholm	328	98%	323	97%	312	97%
NGM Main Regulated	8	2%	9	3%	9	3%
Total target group	336	100%	332	100%	321	100%
Excluded *)	20	6%	18	5%	15	5%
Total companies surveyed	316	94%	314	95%	306	95%

*) 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 Swedish 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. Three companies chose to publish their corporate governance report on their websites only, which was two 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]

Two companies failed to provide an internal controls report this year. 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, 20 per cent had conducted an internal audit, showing a small increase on the 2018 figure of 19 per cent. Of the 80 per cent of companies that chose not to conduct internal audits, the boards of four 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. Four companies had not reported that their corporate governance reports were reviewed by their auditors, and for one other company it is not clear whether such a review took place.

Table 2. How is the corporate governance report presented?

	2019		2018		2017	
	Number	Percentage	Number	Percentage	Number	Percentage
In the directors' report in the annual report	150	47%	152	48%	140	46%
A separate report within the annual report	163	52%	157	50%	160	52%
Only on the website	3	1%	5	2%	6	2%
Unclear	0	0%	0	0%	0	0%
Total	316	100%	314	100%	306	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 some 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 2019 was five per cent, which is four percentage points lower than in the previous year. This means that the remaining 95 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 25 per cent to approximately 28 per cent. Approximately 68 per cent, or 214 companies, reported no deviations at all in 2019, which is an increase of two percentage points compared with the previous year's figure of 66 per cent.

A total of 119 deviations from 21 different rules were reported in 2017, which gives an average of 1.17 deviations per company reporting at least one deviation,

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

	2019		2018		2017	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes	314	99%	312	99%	304	99%
No	2	1%	1	0%	1	0%
Partly	0	0%	1	0%	1	0%
Total	316	100%	314	100%	306	100%

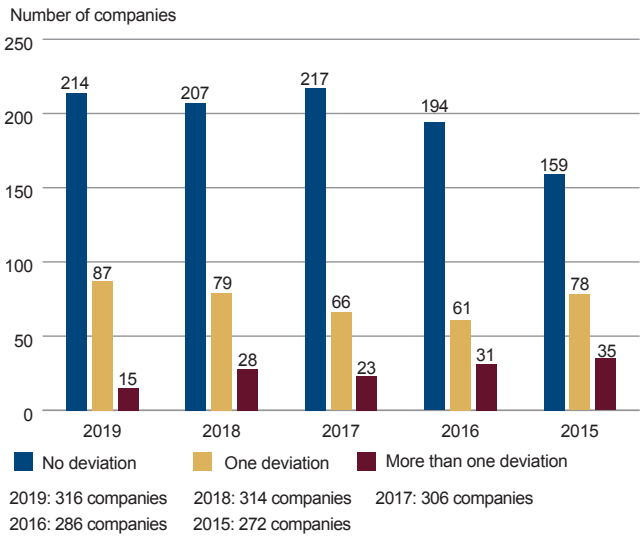
Table 4. If it is clear from the report on internal controls and risk management that no specific auditing function exists, are the board's reasons for this explained in the report?

	2019		2018		2017	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes, reasons presented	248	78%	246	78%	236	77%
No, no reasons presented	4	1%	6	2%	8	3%
Partial explanation	0	0%	1	0%	0	0%
Unclear	0	0%	0	0%	0	0%
Not applicable/ own internal auditor	64	20%	61	19%	63	20%
Total	316	100%	314	100%	306	100%

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

	2019		2018		2017	
	Number	Percentage	Number	Percentage	Number	Percentage
Yes	311	98%	306	97%	301	98%
No	4	1%	7	2%	3	1%
No information/ unclear	1	0%	1	0%	2	1%
Total companies	316	100%	314	100%	306	100%

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



which is lower than last year's average figure of deviations per company.

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 42 Code companies, or 13 per cent, report some kind of deviation from this rule, which is just over one percentage point lower 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 2.1, which obliges companies to have a nomination committee. This rule was deviated from by 14 companies, which is just over four per cent of all Code companies. 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 choose, as long as their non-compliance is reported and explained.

Table 6. Reported non-compliance

	2019	2018	2017	2016
Number of companies reporting no deviations	214	207	217	194
Number of companies reporting deviations	102	107	89	92
Companies reporting one deviation	87	79	66	61
Companies reporting more than one deviation	15	28	23	31
Percentage of companies reporting deviations	32%	34%	29%	32%
Total number of companies	316	314	306	286
Number of reported deviations	119	146	118	133
Number of rules for which deviations reported	21	23	23	25
Average number of deviations per rule	5.17	6.35	5.13	5.32
Average number of deviations per company	1.17	1.36	1.33	1.45

Rule 2.3 concerns the size and composition of nomination committees, primarily with regard to committee members' independence. Fourteen 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.

Fourteen companies, (just over four per cent), also reported non-compliance with rule 9.7, which covers incentive programmes. The majority of these companies deviate from the provision that the vesting period is to be at least three years.

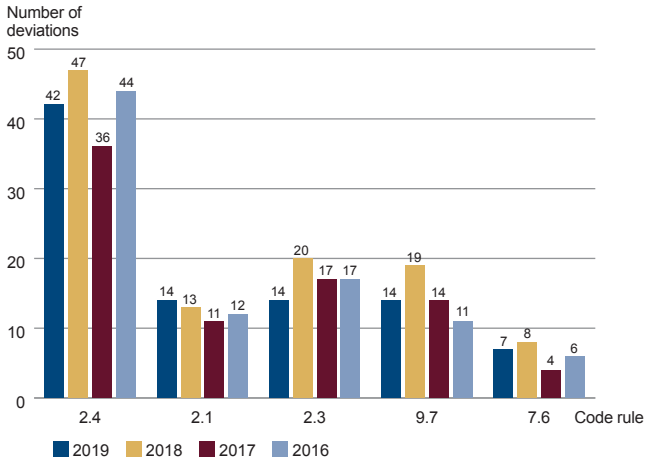
Table 7. Number of deviations from individual Code rules reported in corporate governance reports

Rule	2019	2018	2017	2016
2.4	42	47	36	44
2.1	14	13	11	12
2.3	14	20	17	17
9.7	14	19	14	11
7.6	7	8	4	6
2.5	5	9	5	9
2.6	3			2
9.2	3	5	5	4
1.4	2	2	3	1
1.5	2	3	2	1
4.2	2	2	3	3
9.5	2	2	1	
1.1	1			3
1.2	1	3	2	5
1.3	1	1		
4.1	1		1	1
4.3	1	2	2	2
4.5	1		1	2
6.1	1		1	
7.2	1			
10.3	1		1	1
4.4	0	2	2	2
7.3	0			2
7.5	0	2		
8.1	0	1	1	1
8.2	0	1	1	1
9.1	0	1	3	1
9.4	0			1
9.6	0	1	1	
9.8	0		1	
10.2	0	2		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 of non-compliance 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 2019 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.

This year's survey showed the same result as last year. As in 2018, 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 ninth 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 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.

Although the positive trend from previous years has continued, compliance with the detailed requirements of

Table 8. The detailed content of corporate governance reports

	Yes	No	Partly
Does the report contain information on the nomination committee?			
Composition	301	15	0
Representation	286	30	0
Does the report contain information on board members?			
Age	312	4	0
Educational background	300	7	9
Professional experience	281	25	10
Work performed for the company	316	0	0
Other professional commitments	303	1	12
Shareholding in the company	316	0	0
Independence	314	2	0
Year of election	314	2	0

	Yes	No	Partly
Does the report contain information on the board?			
Allocation of tasks	315	1	0
Number of meetings	316	0	0
Attendance	316	0	0

	Yes	No	Partly	Not applicable
Does the report contain information on board committees?				
Tasks and decision-making authority	279	2	0	35
Number of meetings	267	7	1	41
Attendance	249	23	3	41

	Yes	No
Does the report contain information on the CEO?		
Age	311	5
Educational background	300	16
Professional experience	277	39
Professional commitments outside the company	251	65
Shareholding in the company	315	1
Shareholding in adjacent companies	25	291

the Code concerning information[8] still shows room for improvement. See Table 8 for details. Almost 30 companies did not provide information on the professional experience of their board members, 30 companies did not state who had appointed members of their nomination committees, and almost 40 companies did not list the previous professional experience of their chief executive officers. Shortcomings 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 fallen slightly to eight per cent, while the number of companies failing to report the previous experience of the chief executive officer has fallen slightly from 13 per cent to just over 12 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.

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 three companies to which this rule applied in 2019 provided information about the breach in its report.

Corporate governance information on company websites

For the ninth year, an analysis of the corporate governance information on company websites has been conducted.

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 once again 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

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

	2019		2018	
	Number	Percentage	Number	Percentage
Yes	312	99%	308	98%
Acceptable	4	1%	6	2%
No	0	0%	0	0%
Total	316	100%	314	100%

Table 10. Detailed information on company websites

2019	Yes	No	Partly	Total	Percentage Yes
Current board members	316	0	0	316	100%
Current CEO	316	0	0	316	100%
Current auditor	312	4	0	316	99%

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%

[8] Code rule 10.2.

found in Table 9, which shows that almost 99 per cent of the companies surveyed have easily accessible corporate governance information, while the standard for the remainder was acceptable.

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, two companies did not fulfil the latter requirement, while the articles of association of the remaining 314 companies were accessible on the company website. 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.

As in the previous year, seven per cent of the companies' nomination committees surveyed failed completely or partly to issue such a statement. 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, 11 per cent in 2017 and nine per cent in 2018. This positive development continued this year, when the proportion of nomination committees that did not comment on gender balance was seven 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

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

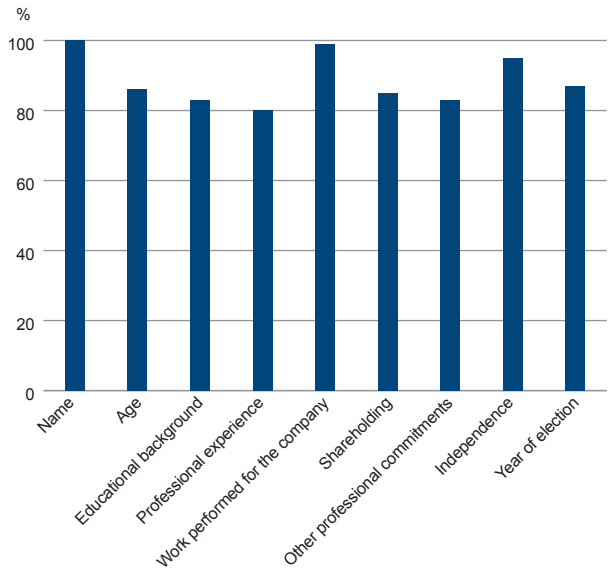


Table 11. Nomination committee statements: Does the statement provide any explanation regarding gender balance on the board?

	2019		2018	
	Number	Percentage	Number	Percentage
Yes	294	93%	286	91%
Partly	0	0%	0	0%
No	22	7%	28	9%
Total	316	100%	314	100%

[9] See Code rule 2.6, paragraph 2.

allow nomination committees to explain how 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, (a transitional rule which is to be applied until 31 December 2020), requires companies to declare all share and share price related incentive programmes for employees, (not just the executive management), and board members. In 2019, 63 per cent of the companies surveyed published information regarding such programmes on their websites, which was an increase of two percentage points from the previous year. This means that there is still a large number of companies that 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, 90 per cent of the companies surveyed published such information on their websites, which is an improvement on last year's figure of 86 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 87 per cent of the companies surveyed fulfilled this requirement, which is an increase of two percentage points compared with the previous year.

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

2019	Yes	No	Partly	Total
Variable remuneration programmes	269	47	0	316
Remuneration policy	276	40	0	316
Remuneration structures and levels	275	41	0	316

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

[10] See transitional provision for 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.

Over the years, Swedish Securities 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 2019, 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 SME and Spotlight Stock market trading platforms, and the Swedish Securities Council has issued several rulings on these. 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 it 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 SME (previously Nordic MTF) or Spotlight Stock Market (previously 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.

This year's annual report includes a contribution written by Rolf Skog, Professor of Corporate and Stock Exchange Law at the University of Gothenburg and Director of the Swedish Securities Council. The article discusses the topical issue of the relationship between the companies' sustainability work and the profit motive according to the Swedish Companies Act.

Corporate Governance for Sustainability

Rolf Skog

A recurring theme in the public debate in Sweden and a number of other countries is the responsibility of the business community for what is nowadays often summed up in the term "sustainability". Many people believe that companies should assume greater responsibility for the environment, as well as human rights, gender equality and working conditions in the product chain and more. In order for this to happen, some commentators claim that the traditional strategy of government regulation establishing the framework within which companies are to act is inadequate, and that the legislature should also prescribe that companies have another purpose than the one they have today. It is a most far-reaching idea and leads us to reflect on the reasons why current legislation is formulated as it is and to consider the leeway legislation already affords companies to act "sustainably".

The limited liability company – a superior company form

Business activities may be conducted in various legal forms, including in the form of companies. The limited company is the only form of Swedish company in which no owner bears personal liability for the obligations of the company. The limited company is thus normally superior to other company forms as regards the absorption of the risk with which all business enterprises are associated.

The role of the limited company in the development of the Swedish economy from the onset of industrialism until the present day is well documented and can scarcely be over-estimated. The advantages of the limited company are reflected in the number of registered limited companies relative to the number of other types of companies. In Sweden, there are currently more than 600,000 limited companies, while just under ten per cent as many, 60,000 companies, are operated as general partnerships or limited partnerships. The number of limited companies grows constantly while the numbers of general partnerships and limited partnerships do not.

Essentially, a limited company may be used for any type of business, from the simplest possible – local, small-scale manufacturing, service or sales firms – to complex multinationals. The Swedish Companies Act requires that a limited company's articles of association present one or more objects but imposes no limitations on the objects which may be stated. In addition, certain types of businesses, e.g. within the financial sector, require government authorisation in order to operate as a consequence of other regulations.

The company's objects should not be confused with its purpose. The objects are the means by which the purpose is achieved.

The purpose of the business

In most cases, a business operation - whether its objects are to manufacture products, to provide services or something entirely different - is conducted for the purpose of generating a profit. Since the infancy of limited company legislation, this has also been the point of departure for the Swedish Companies Act. According to the Act, unless otherwise stated in the articles of association, the purpose of the business is to generate a profit for distribution to its shareholders.

Provisions in the articles by which a business is to have a wholly or partly different purpose are extremely uncommon. Such provisions are principally employed by public enterprises, e.g. municipally owned companies.

For just over a decade, the Swedish Companies Act has also contained rules regarding a special corporate

form in which the business is to be conducted with the purpose of generating a profit but in which the Act limits profit distribution. These rules were implemented in response to the prevailing debate around the beginning of the 2000's as to whether schools, hospitals and other companies in the "public welfare sector" should be allowed to conduct operations with the purpose of generating a profit. In practice, this company form is not used.

The profit purpose – a condition for the acquisition of risk capital

The fact that the Swedish Companies Act rests on the assumption that a business is conducted with the purpose of generating a profit is to be viewed in light of the essential function of the profit purpose in a limited company.

A limited company may be described as a nexus of contracts between various stakeholders, such as shareholders, creditors, suppliers, employees and others. Most of these contracts are what economists refer to as "closed" – that is to say they entitle the contracting party to fixed compensation in the form of interest, wages or something else. One of the contracts, however, is different – namely the shareholders' contract. When it comes to the right to compensation, the shareholders' contract is "open". Shareholders contribute capital to the company without any right to fixed compensation. The right of the shareholders to compensation is limited to a portion of the surplus that may remain after all the other stakeholders have been paid their fixed compensation. As is often said, the shareholders are the residual claimants of the company, the result of which is that the capital contributed by the shareholders is frequently referred to as "risk capital".

It is obvious that those who are offered the opportunity to invest in a business and whose only compensation is in the form of a share of the company's profit will want a guarantee that the business is being managed in a way that generates the biggest surplus possible. The assumption in the Act that a limited liability company is profit driven creates a basic guarantee of this sort. Without the guarantee, potential investors would normally require such a high return on their risk that the company's ability to procure equity would be severely impaired.

The limited company's purpose serves as a ground rule for its managing organs. In a company that follows the profit motive rule in the Act and has not prescribed otherwise in its articles of association, the board or CEO may not – except where permitted by a unanimous decision of the shareholders –take decisions or pursue other actions that are inconsistent with the premise that the purpose of the company's activities is to generate a profit. Thus, for example, a board of directors cannot resolve that the company will sell assets at a price below their fair market value or buy assets above their fair market value unless the transaction is part of an larger transaction which the board believes will generate a profit.

The "interest of the company" is no different to that of the shareholders

The profit purpose is for the benefit of the shareholder collective. If all the shareholders of a company agree on the matter, the profit purpose may be set aside. This is particularly clear in a limited company with only one shareholder. A sole owner can decide that the company will conduct business on terms which differ entirely from those of the market and may also resolve, for example, to donate all or a part of the company's disposable funds to any cause it chooses. While the same is true for a company with several shareholders, all of them must agree on the matter.

To give a complete picture, it should be mentioned that the Act contains an exception which allows the general meeting - or the board of directors if the matter is of minor significance in light of the company's financial position - to approve a donation by the company for charitable or similar purposes if it is considered "reasonable in light of the nature of the purpose, the company's financial position and the circumstances in general". While the rule renders it possible for a company to contribute, for example, to the decoration of public spaces, this has no real bearing on the current discussion.

It is sometimes asserted in the legal literature that there is some sort of "interest of the company" which in some way has precedence over the interest of the shareholders and, accordingly, has primacy over of the profit purpose – an "interest" which the board of directors or even company management would be able to invoke in order, for example, to be able to avoid implementing a resolution adopted by the shareholders. Can this really be the case?

The Swedish Companies Act mentions "the interest of the company" in several places. The expression is derived from German ideas which also made an impression on Swedish legislative efforts at the close of the 1930's and beginning of the 1940's. Yet, the current Swedish Act contains nothing that suggests that the meaning of "the interests of the company" is different from the interest of the shareholder collective. And, on further reflection, it is clear that it could not be otherwise. Who should determine the meaning of this concept?

If there was an "interest of the company" which had precedence over the interest of the collective of shareholders, this would by necessity be the case in all companies, not only listed companies with many shareholders. If this was the case, this type of "interest" would also exist companies with very few or just one owner. Furthermore, as mentioned above, if the concept is to have any practical meaning, it could be exploited by the company's board of directors (or CEO) in order to refuse to implement a resolution adopted by the shareholders if the board believed that the decision ran contrary to the "interests of the company", even if the decision was unanimously adopted by the shareholders of the company. It is not difficult to illustrate the unreasonableness of such a regime.

Assume, for example, that the shareholders unanimously resolve to wind up the company's operations, dispose of the assets, pay off all liabilities and distribute any remaining capital. In short, to liquidate the company. If there was an "interest of the company" which was "greater" than the interest of the shareholders to which the board could refer, this would entail by necessity the possibility that the board could prevent the shareholders from closing down the business in this way if the board was of the opinion that it was in the "interest of the company" to continue operations. It should be patently clear to everyone that this is not - and should not be - the case in a properly functioning business environment.

A limited company has no "interest" other than the interest of the shareholder collective. The fact that the shareholders may have divergent views amongst themselves on different company issues does not alter this fact. Such conflicts are addressed by the rules of the Act which govern decision-making at general meetings.

Have other countries abandoned the profit purpose?

In the public debate, it is sometimes claimed that the profit purpose has been abandoned in the company legislation of some other countries and that the Swedish legislature should follow suit. The country most often raised in this context is the UK, where the Companies Act is sometimes purported to oblige companies to act in the interests of all "stakeholders" and where the interests of the shareholders enjoy no special position. Yet, this is not the case. The UK Companies Act was the subject of an extensive revision in the beginning of the 2000's. During that process, there was much debate about the purpose of a company. Some commentators encouraged the legislature to abandon the shareholder-oriented perspective and require companies to have a more stakeholder-oriented purpose. In keeping with this, a proposal was made regarding a "pluralistic approach" in which boards of directors would be obliged to weigh various interests against each other in all decision processes and to give no interest any predetermined precedence over any other. The proposal, which had obvious similarities to the "stakeholder model" which was taught in business studies in the 1970's, was wholeheartedly rejected by the bodies to which the proposed legislation was referred for comments. The UK legislature instead chose what came to be called "the enlightened shareholder value approach", which obliges the board of a limited company to act in the interests of the shareholder collective but to have regard for the company's other stakeholders.

In recent years, France has also been mentioned in these contexts. This is explained by President Macron's reforms aimed at ensuring that the French business community abandons what the president describes as an "ultra-liberal and financial capitalism" and transitions to a corporate governance model in which greater consideration is given to social and environmental concerns. One of the many elements of this transformation is the modification implemented in 2019 by the provisions in the French legislation regarding the purpose of a company. All companies, not just limited companies, are now to be operated in the "interests of the company, but with consideration of social and environmental concerns". Originally, the ambition in France was to achieve a more radical change but, just as in the UK, the final result was quite modest. The legislators have not issued any

statements about what the new regulations entail – e.g. whether it goes further than the British regulation. This has been left to the French courts to determine.

The fact is that the countries with which Sweden normally compares itself provide no examples of situations in which the company law provision that businesses are ultimately operated with the purpose of making a profit except where otherwise stated in the articles has been replaced by a true stakeholder-oriented provision. In light of the function of the profit purpose in reducing a company's cost of capital, this is not at all surprising.

The significance of the profit purpose for economic growth and welfare

On a more overarching plane, it may be noted that one of the most well-established economic relationships is the link between capital formation, productivity and economic growth. History has taught us that the ability of companies and industry to continuously invest in new and better production methods is critical to the possibility of improving the living conditions of citizens, and the capital markets are central to this process. It is there, in the market for venture and loan capital supplied to the business community, that capital is steered to the most promising, and accordingly most valued, investment projects. However, this presupposes that companies are striving to maximise the value of invested capital or, to use the terminology of the Swedish Companies Act, that the business is run to make a profit. In short, without a profit purpose, the capital market could not perform its allocative function.

Does this mean that society should not insist that limited companies and other undertakings act in a manner which accords with the demands and values of society relating to matters such as sustainability? No, it does not. By means of the political democratic system, laws and, by extension, other regulations are created regarding the environment, consumer protection and much more. In a political democracy, this is how citizens weigh various interests against each other and establish the framework for the activities of companies. It is through the political system that various interests are weighed in such a manner that the final result reflects the preferences of the citizens and not the preferences of the shareholder majority, board members or the management of individual companies at any given time.

Legislation through which, for example, the board of a limited company is obliged to weigh the various interests which, for reasons of resource scarcity, must always be carried out in the economy, would in reality push aside the political, democratic decision-making process and bear features of corporatism. It would also suffer from another crucial weakness – it would render it impossible to evaluate how the board carries out its work. The unambiguous overall set of norms that the profit motive provides would then be usurped by a multi-dimensional purpose which, in practice, would render it impossible to gauge how the business is run, because the board could always claim that poor performance relative to certain targets was due to the fact that the board had prioritised one or more of the other goals. In practice, this would make the board of directors, and thereby the executive management, responsible to no one. This flies in the face of the corporate governance model characterised by an active ownership function, which has long been fundamental to the Swedish Companies Act and the Swedish Corporate Governance Code.

It is in this light that we can understand why society's insistence on good working conditions, product safety, limited environmental impact and so on are not multiple goals for companies but are instead articulated in the form of objectively verifiable limitations on companies´ activities. Provided that these requirements are met, society allows businesses to be operated in such a manner as serves the most efficient possible use of contributed capital. In this way, conditions are also created whereby investors can evaluate the business, and companies can finance their activities on normal terms and conditions.

What does the profit purpose require and what does it allow?

What does it mean that the company's activities are to serve the profit purpose? From the point of view of corporate finance, it is difficult to ascribe to this norm any practically meaningful content other than that the company's various bodies must strive in their actions to maximise the value of the company, i.e. make invest-

ments which have a positive net present value, and not make any other investments.

Does this mean that the board of directors and CEO cannot or should not act with other interests in mind, e.g. the interests of the employees of having a good work environment, the interests of the surrounding community in a quiet environment or the global interest in maintaining low pollution levels in the air we breathe or the water we drink? No, not at all. By way of example, Sweden has extensive environmental legislation. Naturally, these and other compulsory implemented by means of political decision-making rules to protect employees, consumers and citizens in general must be respected. They are, so to speak, automatically part of the investment calculation.

Yet, there is also nothing to prevent a company – within the framework of the profit purpose – from going further than the requirements of the law and other compulsory regulations in various areas. For example, it is not uncommon, particularly for large companies, to institute and comply with international codes of conduct concerning environmental impact, employment conditions, etc, in countries in which they operate. It also happens that an individual company will go even further on its own initiative and – within the framework of the profit purpose – for example, offer its employees employment terms and conditions which are better than those required by law and other mandatory rules or regulations.

All of this is permissible so long as it is compatible with the company's profit purpose. In reality, the requirements in the law to act in accordance with the profit purpose mean that the board of directors and management have a duty to consider and ensure that the company invests in every conceivable "interest" as long as the investment contributes to enhancing the value of the company. With this in mind it is difficult to understand, for example, the attention garnered by the US Business Round Table in 2019 when it declared that a number of large American companies would no longer act solely in the interests of the shareholders but also, among other things, would "deliver value to customers", "invest in employees" and "deal fairly and ethically with suppliers". In the Swedish context, this is neither new nor controversial. As long as these and other measures contribute to increasing the value of the company, the profit purpose demands that they be implemented. In the event such measures are not regarded as raising the value of the company but are nonetheless essential from a societal perspective, they should instead be implemented by means of customary regulations which establish additional frameworks for the activities of companies - not by obliging companies to do what the politicians are supposed to do.

In summary, to borrow from the preparatory works for the British Companies Act: "the ultimate objective of companies — to generate maximum value for shareholders — is in principle the best means of also securing overall prosperity and welfare".

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