

# Comments on the proposed changes to Chapter 9 and Section 11.3 of the Code

29 October 2009

The left column shows the proposed new chapter 9 and section 11.3 with a mark-up of amendments from the current Code as follows:

- Black = Current text
- Red = Deleted text
- Blue = New text

Proposed changes	Comments
<p><b>9. Executive pay (1)</b></p> <p>Footnote 1: For the purposes of this chapter, pay is defined as (i) fixed salary, (ii) variable remuneration, including share and share-price related incentive programmes, (iii) pension schemes, and (iv) other financial benefits. The term executive refers to individuals whose compensation and benefits are to be reported separately by the company according to chapter 5, section 20, paragraphs 1 and 3 of the Annual Accounts Act, (1995:554), i.e. members of the board, the chief executive officer and each member of the company's executive management.</p>	<p>This section deals with remuneration of executives.</p> <p>The proposed definition in the footnote is intended merely to determine the scope of the Code's rules on remuneration, since there is no legal or generally accepted definition of, for example, the term "variable remuneration". The scope of the definition of variable remuneration contained in 2.1 of the EU Commission's recommendation on variable remuneration, (2009/3177/EG) (the "<b>EU Recommendation</b>"), is unclear.</p> <p>The proposed definition of "executives" is aligned with the legal definition contained in the Annual Accounts Act.</p>
<p><i>The company is to have formal and clearly stated processes for deciding on remuneration of members of the board and the executive management.</i></p> <p><i>Remuneration and other terms of employment of executives are to be designed with the aim of ensuring that the company has access to executives with the competence required by the company at a cost appropriate to the company, and that they have the intended effects for the company's operations.</i></p>	<p>A new second paragraph is proposed, which aims to express the overarching principle that should apply to the company's executive pay.</p>
<p>9.1 The board is to establish a remuneration committee, whose main tasks are to</p>	<p>The rule on the tasks of the compensation committee has been broadened, and a clarification that the tasks described are the main tasks of the committee has been added.</p>

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<ul style="list-style-type: none"> <li>• prepare the board's decisions on issues concerning principles for remuneration, remunerations and other terms of employment for the executive management,</li> <li>• monitor and evaluate programmes for variable remuneration, both ongoing and those that have ended during the year, for the executive management, and</li> <li>• monitor and evaluate the application of the guidelines for executive remuneration most recently approved by the shareholders' meeting, as well as the current remuneration structures and levels in the company.</li> </ul>	<p>The first bullet now states clearly that the committee is only to prepare compensation issues decided upon by the board. Further, a requirement that the committee is also to prepare the board's decisions on the compensation principles that are to apply has been added.</p> <p>The second point deals with variable remuneration (which, as indicated in the definition in the footnote to the chapter heading, also includes shares and share-related incentive programmes) to the management of the company. By stating specifically that such programmes are to be monitored and evaluated, the proposal gives shareholders an opportunity to put questions on these issues to the compensation committee or the board at the shareholders' meeting.</p> <p>The proposed third point states that the compensation committee is also to monitor and evaluate the implementation of the guidelines for remuneration to executives approved by the shareholders' meeting, as is also required under 8.1 of the EU recommendation. The third point ends with a requirement that the compensation committee is to monitor and evaluate the company's existing remuneration structures and remuneration levels. This requirement is based on 9.3 of the EU recommendation, which addresses the issue of proportionality of the compensation of executives in relation to the company's other compensation levels.</p>
<p>9.2 The chair of the board may chair the remuneration committee. The other members of the remuneration committee appointed by the shareholders' meeting are to be independent of the company and its executive management. Appropriate knowledge and experience of executive remuneration issues is to exist among the members of the committee.</p> <p>If the board of directors feels it is more appropriate, the entire board may perform the remuneration committee's tasks, on condition that no director who is also a member of the executive management participates in this work.</p>	<p>A clarification that the independence requirement only applies to members elected by the shareholder's meeting has been inserted into the first paragraph. The requirement that necessary knowledge and experience of compensation issues are to be present among the committee members originates from a similar requirement in 7.1 of the EU recommendation. In contrast to the requirements for audit committees stipulated in the Companies Act, there is no requirement that a designated member is to have the required knowledge and skills. The requirement applies to the committee as a whole.</p>
<p>9.3 If the remuneration committee or the board of</p>	<p>9.2 of the EU recommendation contains requirements regarding consultants engaged by</p>

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<p>directors uses the services of an external consultant, it is to ensure that there is no conflict of interest regarding other assignments this consultant may have for the company or its executive management.</p>	<p>compensation committees. The aim of the rules in the recommendation is to avoid conflicts of interest when consultants are involved, and such a requirement has been inserted into the proposed revised Code. However, the Code rule does not prohibit the remuneration committee and, for example, the personnel department from hiring the same consultant, as long as possible conflicts of interest are identified and handled.</p>
<p>9.4 Variable remuneration is to be linked to predetermined and measurable performance criteria (2) and be aimed at promoting the company's long term value creation.</p> <p>Footnote 2: The performance required by the criteria may be of different kinds, including own investment, e.g. through participation in a share savings programme.</p>	<p>The new requirement that variable remuneration, which includes shares and share-related incentive programmes, as stated above, is to be linked to predetermined and measurable performance criteria and promote the company's long-term value creation is based on 3.2 and 4.2 of the EU recommendation. The footnote clarifies that the performance criteria may be of various kinds, both based on the company's earnings or on other achievements, such as a personal investment.</p>
<p>9.5 Variable remuneration paid in cash is to be subject to predetermined limits for the maximum amount to be paid.</p> <p>When designing such compensation programmes, the board is to consider whether payment of a certain proportion of the remuneration is to be dependent on whether the performance on which compensation is based is sustainable over time.</p> <p>The company is to ensure that it is able to reclaim variable components of remuneration that have been paid on the basis of information which proved to be manifestly misstated.</p>	<p>For variable compensation paid in cash, both performance-based payments and cash-settled share-related incentive programmes, such as synthetic option programmes, limits on the maximum outcome are to be determined. A similar provision is contained in 3.1 of the EU recommendation.</p> <p>The second paragraph is derived from 3.3 of the EU recommendation, which stipulates that the payment of a proportion of variable remuneration should be postponed. The Code rule has been given a more general form which instead requires the Board to consider whether payment of part of the compensation is to be made subject to long-term sustainable performance.</p> <p>Finally, the third paragraph of 3.4 of the EU recommendation states that the company is to ensure that it is able to reclaim variable remuneration in certain circumstances. The practical result is likely to be that companies includes the possibility to reclaim remuneration awarded on the basis of data which subsequently proved to be manifestly misstated in the terms and conditions of variable remuneration components.</p>
<p>9.26 The shareholders' meeting is to decide on all share- and share-price-related incentive schemes for the executive management. The decision of the shareholders' meeting is to include all the principle</p>	<p>The rule is unchanged, except that the sentence on board members' participation in incentive programmes for management has been moved to 9.7, see below.</p>

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<p>conditions of the scheme.</p> <p>Background material and documentation pertaining to the proposed scheme is to be made available to shareholders in good time before the shareholders' meeting. The material is to be clear and simple enough to allow shareholders to form an opinion on the reasons for the scheme, the principle conditions of the scheme and any dilution of the share capital that may result from it, as well as the total cost to the company of different conceivable outcomes.</p>	
<p>9.7 Share and share-price related incentive programmes are to be designed with the aim of achieving increased alignment between the interests of the participating executive and the company's shareholders.</p> <p>Programmes that involve acquisition of shares are to be designed so that the accumulation of a personal holding of shares in the company is promoted. The vesting period or the date for final acquisition of shares, share options or other share related instruments in a programme is to be no less than three years.</p> <p>Non-executive members of the board are not to participate in programmes designed for the executive management or other employees. Remuneration of non-executive board members is not to include share options.</p>	<p>The first paragraph of the Code rule stipulates that the purpose of share and share-related incentive programmes is to be to achieve greater alignment between the interests of senior executives and those of the company's shareholders.</p> <p>The requirement in 4.3 of the EU recommendation that senior executives should keep shares acquired through an incentive programme for as long as they hold their position has been redrafted as a requirement that such programmes are to promote the accumulation of a personal shareholding. The vesting period or the time of the final purchase of shares is to be no less than three years, which is in accordance with 4.1 of the EU recommendation.</p> <p>The first sentence in the third paragraph has been moved here from 9.6 above, (9.2 in the current Code). The second sentence regarding stock options to the board corresponds to 4.4 of the EU recommendation.</p>
<p>9.8 Termination packages, including salary during a period of notice, are not to exceed an amount</p>	<p>The proposal regarding termination payments is equivalent to 3.5 of the EU recommendation. As in the EU recommendation, see the definition in 2.2, the Code rule also includes pay during a notice period,</p>

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<p>equivalent to the individual's fixed remuneration for two years.</p>	<p>and an executive's total termination payment and payments under the notice period are not to exceed the fixed remuneration for two years.</p>
<p><b>11. Information on corporate governance</b></p>	
<p>11.3 The company is to have a section of its web site devoted to corporate governance matters, where the company's three most recent corporate governance reports are to be made available, together with that part of the audit report which deals with the corporate governance report or the auditor's written statement on the corporate governance report.(8)</p> <p>The corporate governance section of the web site is to include the company's current articles of association, along with any other information required by the Code. (9)</p> <p>The corporate governance section of the web site is also to include up to date information regarding</p> <ul style="list-style-type: none"> <li>• members of the board, the chief executive officer and the auditor,</li> <li>• a <b>detailed</b> description of the company's system of variable executive remuneration and of each outstanding share and share-price related incentive scheme.</li> </ul> <p>Information that is updated within seven days of any changes made or becoming known to the company is to be regarded as up to date.</p> <p>Footnote 8: The requirement for an auditor review of the corporate governance report if it is included in the</p>	<p>Share and share-related incentive programmes are currently subject to extensive information requirements, while other variable remuneration does not need to be reported in detail by the company, with the exception of the guidelines for remuneration decided upon by the shareholders' meeting. The information requirements contained in the EU recommendation, however, apply to all variable remuneration. The revised Code text therefore includes a requirement that companies are to describe all their variable remuneration systems for executives, not only share and share-related incentive programmes. The requirement that all outstanding share or share-related incentive programmes, both for employees and executives, be described remains.</p> <p>In connection with this change, the requirement that the information is to be detailed has been removed, as the most important thing for shareholders is not the level of detail, but whether the information is easily understandable and informative.</p>

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<p>director's report or of the information that is otherwise found in the company's or group's director's report is stipulated in chapter 9, section 31 of the Companies Act (2005:551). The requirement for auditor review if the corporate governance report is published separately from the annual report is stipulated in chapter 6, section 9 of the Annual Accounts Act (1995:1554).</p> <p>Footnote 9: See Code rules 1.1, 1.7, 2.5 and 2.6.</p>	