

Proposed Amendments to the Swedish Corporate Governance Code – Commentary
11 October 2019

Proposed new text is highlighted in yellow. Removed text is highlighted in red. Rules for particular consideration are highlighted in grey.

Proposed amendment	Comment
Foreword	
The foreword is to be updated	
I. The Swedish Corporate Governance Code	
<u>1 Aims</u>	
sustainably	Proposed updated statement on the need for a licence to operate.
II. The Swedish corporate governance model	
The Companies Act states that, unless otherwise stated in the Articles of Association, the purpose of a company is to generate profits for distribution among its shareholders. In order to be successful in the long term, the company needs to conduct its operations in harmony with the values of Swedish society.	Suggestion on how to approach discussions on the subject of for whom or in whose interests a company is to be run – the interests of profits and shareholders or the interests of stakeholders – where the Board supports the profit motive. Against the background of how sustainability issues are to be handled by companies and how they are compatible with a shareholder-focused model, the second sentence provides a clarification.
III. Rules for corporate governance	
<u>1. The shareholders' meeting</u>	
DELETED 1.4: If the ownership structure warrants it, and it is financially feasible given the financial situation of the company, the company is to offer simultaneous interpretation of the shareholders' meeting into other relevant languages than Swedish, as well as translation of all or parts of the meeting documentation. The same applies to the minutes of the meeting.	It is proposed that this rule is removed as it is an unnecessary instruction. It is in the company's own interest to serve its shareholders.
<u>2. The nomination committee</u>	
<i>Preamble:</i> <i>Each member of the nomination committee is to consider carefully whether there is any conflict of interest or other circumstance that makes membership of the nomination committee inappropriate before accepting the assignment.</i>	The additional text is proposed to emphasise the requirement that a seat on the nomination committee may not be used for any purpose that may be damaging to the company, and that any competitor should therefore carefully consider

	<p>refraining from appointing a representative to the nomination committee.</p>
<p>2.2 second paragraph: The shareholders' meeting is to provide written instructions to the nomination committee.⁶ Footnote 6: The instructions may form part of the shareholders' meeting's decision to appoint members or comprise a separate document. The instruction may permit the nomination committee to incur costs for the company for the work of the committee.</p>	<p>Most of the roundtable discussions that were held as part of the process to examine the need for revisions to the Code resulted in calls for guidance regarding nomination committees. The Board does not feel that the work of the committees should be regulated or that example instructions should be provided, but it feels that one step could be to require instructions and that they be published, (which is in fact in principle what all listed companies do today). See also the proposal in section 10.3 that the nomination committee instructions are to be made available on the company's website.</p> <p>During several roundtable discussions, a request for the Code to state that members of the nomination committee should be able to be reimbursed for costs incurred in the course of the work of the committee. The proposed sentence is written neutrally in order to neither prescribe nor prohibit compensation to nomination committee members. Whether compensation can be paid to the nomination committee members without the approval of the shareholders' meeting is a matter for company law (i.e. whether it constitutes a transfer of value to certain shareholders or not), and cannot be determined by the Code.</p>
<p>Footnote 12: The company itself chooses how to define a related party in the light of the purpose of the provision to clarify the board member's influence on and financial exposure to the company.</p>	<p>The Board has received a number of questions about which definition of related party companies are to use when reporting senior executives' holdings in the company. It proposes this clarification, which means that the company can use any of the definitions of related party contained in other regulations or create its own definition, as long as the provision's purpose to create transparency is met.</p>

<p><u>3. The tasks of the board of directors</u></p>	
<p>3.1 second bullet REMOVED: <ul style="list-style-type: none"> • appointing, evaluating and, if necessary, dismissing the chief executive officer, </p>	<p>The bullet regarding the board’s task to appoint the chief executive officer has been removed, as this stipulation is contained in the Swedish Companies Act.</p>
<p>3.1 new second bullet: <ul style="list-style-type: none"> • identifying how sustainability issues impact risks to and business opportunities for the company, </p>	<p>An updated statement on sustainability was requested at every roundtable meeting. The Board therefore proposes this clarification regarding the tasks and responsibilities of company boards.</p>
<p><u>4. The size and composition of the board</u></p>	
<p>4.4 final paragraph: REPLACE: A closely related company is defined in this context as another company in which the company holds, directly or indirectly, at least ten per cent of the shares, ownership interest or votes, or a financial share that confers an entitlement of at least ten per cent of the yield. If the company owns more than 50 per cent of the shares, ownership interest or votes in another company, it is to be regarded as indirectly holding the latter company’s ownership in other companies.</p> <p>WITH: A closely related company is defined in this context as another company which is directly or indirectly a subsidiary or associate of the company.¹⁶</p> <p>Footnote 16: An associated company is a company over which the company has a significant influence. Such influence is normally considered to be held if a party has a shareholding of at least 20 per cent of the votes in the company. See chapter 1, sections 5 and 8 (final paragraph) of the Annual Accounts Act (1995:1554).</p>	<p>The proposed amendment aims to make it easier for companies and to replace the Code's definition with the Annual Accounts Act's definition of related companies so that the companies do not have to take different definitions into consideration. The Annual Accounts Act's definition is found in chapter 1, sections 5 and 8. However, the proposal does not refer to the entire definition of related companies contained in section 8, but only the final paragraph, since the catalogue of related parties is extremely detailed. The proposal means in general that the related party limit is increased from a ten per cent to a twenty per cent holding.</p> <p>Chapter 1, section 5 of the Annual Accounts Act: <i>If a company has an ownership interest in a legal entity and exercises significant influence over its operational and financial management, that legal entity is an associated company to the company. However, this does not apply if the legal entity is a subsidiary or jointly controlled company that the company owns together. If the company holds at least 20 per cent of the votes of all the shares in the legal entity, it is to be regarded as having a significant influence over it, unless otherwise obvious in the circumstances. The same applies if the company's subsidiary or the company together with one or more subsidiaries or</i></p>

	<p><i>several subsidiaries together hold at least 20 per cent of the votes. Act (2015:813).</i></p> <p>Chapter 1, section 8, final paragraph of the Annual Accounts Act: <i>For the purposes of the first subparagraph:</i> - A group is defined as a group of companies controlled by one company or another legal entity that is not a parent company within the meaning of this Act, and - Associated companies are defined as companies that fulfil only the requirement for significant influence as specified in section 5</p>
<p><u>5. The tasks of directors</u></p>	
<p>NEW 5.3: Each director is responsible for committing the time required to carry out the work of the board in the context of the director's other assignments and commitments.</p>	<p>The ability for company board members to set aside sufficient time for the assignment was discussed at several of the roundtable meetings. The Board does not consider it appropriate to impose restrictions on the number of assignments an individual has, but instead places the responsibility on individual directors, together with the nomination committee, to ensure that they take on no more assignments than they can handle.</p>
<p><u>7. Board procedures</u></p>	
<p>7.1 REMOVED: The board is to review the relevance and appropriateness of its statutory Rules of Procedure, Instruction to the Chief Executive Officer and Reporting Instruction at least once a year.</p>	<p>The requirement for annual review of board procedures etc is a detailed provision which the Board regards as unnecessary.</p>
<p>NEW 7.2: If the board has established an audit committee, the majority of the committee's members are to be independent in relation to the company and its executive management. At least one of the members who is independent in relation to the company and its executive management is also to be independent in relation to the company's major shareholders.¹⁸ Footnote 18: Provisions regarding the establishment of an audit committee and the tasks of an audit committee are found</p>	<p>Guidance on the independence of the audit committee has been requested. When the Directive on Auditors and Audits was introduced in 2016, all the rules on audit committees were removed from the Code, but the independence requirement and the relevant definition were not included in the legislation. (The legislators stated that their reason for the legislative text not including anything about independence was that such rules were to be found in the Code.</p> <p>The proposed amendment means that we</p>

<p>in chapter 8, sections 49 a-b of the Companies Act (2005:551). Chapter 8, section 49 a of the Companies Act states that the members of the committee may not be employed by the company, and at least one member must have accounting or auditing skills. For assessment of independence, see 4.4 and 4.5.</p>	<p>reinstate the previous Code rule on the independence of the audit committee.</p>
<p><u>9. Remuneration of the board and executive management</u></p>	
<p>9.4 CONSIDER REMOVING/AMENDING: Variable remuneration is to be linked to predetermined and measurable performance criteria²⁴ aimed at promoting the company's long-term value creation. Footnote 24: The criteria may be of different kinds, including own investment, e.g. through participation in a share savings programme. The term measurable is used to indicate that it should be possible to evaluate to what extent the criteria have been fulfilled.</p>	<p>Code rules 9.4-9.8 derive from the European Commission's remuneration recommendation from 2009. The recommendation contains a number of requirements for the structure of the company's remuneration guidelines. In order to avoid legislation, most of the substantive rules in the recommendation were introduced into the Code in 2010. The recommendation has now been replaced by the new rules on remuneration guidelines and remuneration reports contained in the updated Shareholders' Rights Directive. It should therefore be considered whether rules 9.4-8 of the Code should be retained and, if so, whether any amendments are required.</p> <p>When the updated Shareholders' Rights Directive was implemented, a requirement corresponding with to the Code's rule 9.4 was introduced into the Swedish Companies Act's rules on remuneration guidelines, see chapter 8, section 52, first paragraph and second paragraph, of the Act, (see below). It should be considered whether it is superfluous to double-regulate this or whether rule 9.4 of the Code should be removed. It should be noted that transparency is ensured through the Companies Act's requirement for companies to state in their remuneration reports how the criteria for payment of variable remuneration have been applied. See chapter 8, section 53 a, second paragraph, of the Act, (see below).</p>

	<p>Chapter 8, section 52 of the Companies Act: <i>The guidelines are to explain how they contribute to the company's business strategy, long-term interests and sustainability.</i></p> <p><i>The guidelines are to contain</i> ... <i>3. information on the criteria for the payment of variable remuneration that are to be applied, the method to be used to determine whether the criteria have been fulfilled and how the criteria contribute to the objectives of the first paragraph...,</i></p> <p>Chapter 8, section 53 a of the Companies Act: <i>For each financial year the board of directors is to prepare a report on paid and outstanding remuneration covered by the guidelines.</i></p> <p><i>The report is to state</i> 1.... <i>how the criteria for payment of variable remuneration have been applied...</i></p>
<p>9.5 CONSIDER REMOVING/AMENDING: Variable remuneration paid in cash is to be subject to predetermined limits regarding the total outcome.²¹ Footnote 21: Such limits do not need to be specified as cash amounts, but may also be defined in other ways.</p>	<p>As the shareholders' meeting always has the right to decide on remuneration to the board and executive management - either when the shareholders' meeting decides on a specific incentive program or when the meeting establishes guidelines for all other remuneration to the board and company management - it should be considered whether this Code rule needs to be retained. The Code rule derives from the 2009 European Union recommendation on remuneration, but the requirement in the EU recommendation was not included in the updated Shareholders' Rights Directive.</p>
<p>9.6 CONSIDER REMOVING/AMENDING: 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</p>	<p>Chapter 16 of the Swedish Companies Act (known as the Leo Rules) and rulings by the Swedish Securities Council's require the shareholders' meeting to consider all share- and share price-related incentive</p>

<p>to include all the principle conditions of the scheme.²²</p> <p>Footnote 22: Issues such as decision-making processes and what type of information and documentation is required to make decisions on share and share-price related incentive programmes are also regulated by mandatory rules in Chapter 16 of the Companies Act and by statements from the Swedish Securities Council, primarily Statement AMN 2002:1.</p>	<p>programmes, with the exception of certain cash programmes, known as synthetic options programmes. For such programmes, the requirement for a shareholders' meeting decision in accordance with Swedish Securities Council Ruling 2002:1 applies only if the programme would incur significant costs for the company. The only relevance that the current Code rule has had, therefore, has been to impose a requirement for shareholders' meetings decisions on less expensive synthetic options programmes in cases where they were intended for the company's board members and executive management.</p> <p>The new rules on remuneration guidelines contained in chapter 8, section 52 of the Companies Act require the shareholders' meeting to determine guidelines for all types of remuneration that can be paid to the company's board and executive management, including any synthetic options programmes. Against this background, it should be considered whether this Code rule is still necessary.</p>
<p>9.7 CONSIDER REMOVING/AMENDING:</p> <p>Share and share-price related incentive programmes are to be designed with the aim of achieving increased alignment between the interests of the participating individual and the company's shareholders. The vesting period or the period from the commencement of an agreement to the date for acquisition of shares is to be no less than three years.</p> <p>Programmes that involve acquisition of shares are to be designed so that a personal holding of shares in the company is promoted.</p> <p>Programmes designed for board members are to be devised by the company's owners and to promote long-term ownership of shares.²³</p>	<p>This Code rule is also based on the 2009 EU recommendation on remuneration.</p> <p>The first sentence of the first paragraph may be regarded as an unnecessary detail that can be removed.</p> <p>The three-year vesting period requirement in the second sentence of the first paragraph comes from the 2009 European Union recommendation on remuneration but has not been transferred to the updated Shareholders' Rights Directive. It should be considered whether the requirement is to be retained and, if so, whether it should instead be changed to a specific information requirement in the company's remuneration report. Chapter 8, section 52, second paragraph, bullet 4 of</p>

<p>Footnote 23: That board members who are not also employees of the company are not to participate in programmes designed for the executive management or other employees is a result of Swedish Securities Council Ruling AMN 2002:1.</p>	<p>the Companies Act stipulates that the remuneration guidelines are to contain information on acquisition periods, (which may be regarded as corresponding to the Code's requirement for a vesting period), i.e. the shareholders are obliged to decide which vesting period is to apply:</p> <p><i>4. in respect of share-based remuneration, information on acquisition periods and, where applicable, information on the obligation to hold shares for a certain period after acquisition...</i>,</p> <p>The second and third paragraphs of the rule may be regarded as unnecessary instructions which could be removed.</p>
<p>9.8 CONSIDER REMOVING/AMENDING: Fixed salary during a period of notice and severance pay are together not to exceed an amount equivalent to the individual's fixed salary for two years.</p>	<p>This Code rule is based on the 2009 European Union recommendation on remuneration.</p> <p>The new rules in chapter 8, section 52, second paragraph, bullet 2 of the Companies Act require these compensation guidelines to include the notice period etc:</p> <p><i>2. information on the duration of an agreement on compensation and the period of notice, the main features of the conditions for supplementary pension or early retirement and the conditions for termination and compensation in the event of termination,</i></p> <p>Against this background, it should be considered whether the Code rule is to be retained. One option is to change it to a requirement for information in the company's remuneration report in cases where severance pay exceeds the equivalent of two years' salary.</p>
<p>NEW 9.9: Guidelines regarding remuneration to the board and executive management are also to cover salary and other remuneration to</p>	<p>This rule complements the new legislation on remuneration guidelines that are a result of the implementation of the updated Shareholders' Rights Directive.</p>

<p>other members of the executive management.²⁷</p> <p>Footnote 27: Chapter 8, section 51 of the Swedish Companies Act (2005:551) states that the board of directors is to draw up a proposal to the annual general meeting regarding guidelines for salary and other remuneration to the members of the board of directors, the chief executive officer and the deputy chief executive officer. For other members of the executive management, see footnote 20.</p>	<p>The proposed new Code rule 9.9 states that the remuneration guidelines are also to cover other senior executives, i.e. not only the chief executive officer and the deputy chief executive officer (and any remuneration to company board members in addition to their board fee), which corresponds to what was applicable under the Companies Act before the Directive was implemented. However, this does not mean that the remuneration report required by the Companies Act needs to include information on the rest of the executive management, although certain requirements regarding information in the remuneration report regarding other members of the executive management are contained in proposed Code rules 10.5 and 10.6 below.</p>
<p><u>10. Information on corporate governance, sustainability and remuneration</u></p>	
<p>Preamble, NEW THIRD PARAGRAPH: <i>The remuneration report that is to be presented annually to the annual general meeting for approval is to be made available on the company's website</i></p>	<p>It is proposed that chapter 10 of the Code be supplemented by rules for the remuneration report required by the Companies Act following the implementation of the updated Shareholders' Rights Directive.</p>
<p>10.3 REMOVED second paragraph, second bullet:</p> <ul style="list-style-type: none"> • a description of the company's system of variable remuneration to the board and executive management, and of each outstanding share- and share-price-related incentive scheme. 	<p>It is proposed that the first part of the bullet on variable remuneration systems is proposed be removed in the light of the information required in the remuneration report, and that the second part, regarding incentive programs, be moved to proposed new Code rule 10.6 below.</p>
<p>10.3 NEW second paragraph, second bullet:</p> <ul style="list-style-type: none"> • the company's instructions to the nomination committee.³⁸ <p>Footnote 38: If the instructions to the nomination committee are only to be found in the minutes of the annual general meeting, the information may state this.</p>	<p>The new requirement for instructions to the nomination committee also entails a transparency requirement that is proposed to be introduced in this bullet.</p>
<p>10.3 REMOVED third paragraph: The board is also to publish the results of the evaluation required by points two and</p>	<p>It is proposed that the report on the board's evaluation of remuneration be removed in the light of the requirement regarding</p>

<p>three of Code rule 9.1 in the corporate governance section of the company's website no later than three weeks before the annual general meeting.</p>	<p>information required in the remuneration report, which means that the Code's requirements can be considered superfluous.</p>
<p>NEW 10.5: The remuneration report is to contain a reference to where in the company's annual report the information required by chapter 5, sections 40-44 of the Annual Accounts Act (1995:1554) are to be found. In addition to providing the information required by law regarding the persons who according to the law are covered by the guidelines on remuneration to the board and executives⁴⁰, the remuneration report must also report the following aggregated information regarding other persons in the executive management⁴¹:</p> <ul style="list-style-type: none"> - the relative proportions of fixed and variable remuneration, - how the criteria for the payment of variable remuneration have been applied, - how the total remuneration relates to the company's guidelines on remuneration, - whether an option to claim back variable remuneration has been used, - any deviations that have been made from the decision-making process applicable according to the guidelines for determining the remuneration, and - any deviations that have been made from the guidelines for particular reasons, indicating what those reasons are and which parts of the guidelines have been deviated from. <p>Footnote 40: Chapter 8, section 53 a of the Companies Act (2005:551) stipulates that the remuneration report is to state the individual salary and remuneration of members of the board of directors, deputy members of the board, the chief executive officer and the deputy chief executive officer.</p>	<p>Proposed complement to the content requirements regarding the remuneration report required by the Companies Act:</p> <ul style="list-style-type: none"> - In order for the remuneration report to facilitate access to the company's information on remuneration for interested parties, it is proposed that the report begin with a reference to the remuneration note in the company's annual report. - For other members of the executive management, it is proposed that certain aggregated information for the group as a whole be required in the remuneration report, i.e. not per individual. These reporting requirements correspond to the requirements found in chapter 8. Section 53 a of the Swedish Companies Act

<p>Footnote 41: Regarding other members of the executive management, see footnote 20. The requirement that the aggregated information be reported for the group means that the information does not need to be reported individually for each person.</p>	
<p>NEW 10.6. The remuneration report is to contain a summary description of each outstanding share and share-price related incentive programme and any such programme that was completed during the year. For other members of the executive management, the total number of shares and share options that have been allocated or offered to these executives and the main conditions for exercising the options, including exercise prices and exercise dates, as well as any changes to the conditions, must be stated.</p>	<p>It is proposed that the first paragraph be moved here from Code rule 10.3 above, and that programmes completed during the year should also be included in the report, (the latter as a result of Swedish Securities Council Ruling 2010:40).</p> <p>The second paragraph corresponds to the requirements for reporting allotted shares and options found in chapter 8, section 53 a, second paragraph, bullet 4 of the Companies Act, which according to this proposal is also to be reported as a total for the other members of the executive management as a whole.</p>