

**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
<b>Foreword</b>	
The foreword has been updated	In order to address the discussion about in whose or what interests the company's operations should be run – in the interests of profit/shareholders or with a stakeholder perspective - where the Swedish Corporate Governance Board continues to support the profit motive, the foreword also includes a description of the purpose of a company's operations. Against the background of the ongoing discussion about how sustainability issues should be handled by companies and how they fit into an owner-oriented model, the foreword includes a clarification about the need for a "license to operate "from the society in which it operates.
<b>I. The Swedish Corporate Governance Code</b>	
5 The structure and content of the Code	
<p>Code rule 10.3 is to be applied from 1 January 2020 until 31 December 2020 as follows:</p> <p>10.3. The company is to have a section of its website devoted to corporate governance matters, where the company's ten most recent corporate governance reports are to be posted, together with that part of the audit report which deals with the corporate governance report or the auditor's written statement on the corporate governance report.</p> <p>The corporate governance section of the website is to include the company's current articles of association, along with any other information required by the Code. It is also to include information regarding:</p> <ul style="list-style-type: none"> <li>• members of the board, the chief executive officer and the company auditor,</li> <li>• the company's instructions to the nomination committee, and</li> <li>• a description of the company's system for variable remuneration to senior executives and for any and all outstanding share and share price related incentive programmes.</li> </ul> <p>The corporate governance section of the</p>	<p>Transitional provisions due to the fact that companies do not need to produce remuneration reports until the annual general meeting held in 2021. The existing requirement of a report to be published on the company's website, which the revised Code prescribes should instead be included in the remuneration report - the report on programmes for variable remuneration to the company management and incentive programmes (10.3, second paragraph, second bullet) and the Board 's evaluation of remuneration (10.3 third paragraph), is therefore retained for the whole of 2020.</p>

<p>website is also to include a report on the results of the evaluation carried out in accordance with the second and third bullets in rule 9.1. This is to be posted on the website no later than three weeks before the annual general meeting.</p> <p>Code rules 10.5 and 10.6 are applicable from the date of the company's first annual general meeting held after 31 December 2020.</p>	
<p><b>III. Rules for corporate governance</b></p>	
<p><b>1. The shareholders' meeting</b></p>	
<p>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.</p>	<p>This rule has been removed as it is an unnecessary instruction. It is in the company's own interest to serve its shareholders.</p>
<p><b>2. The nomination committee</b></p>	
<p><i>Preamble:</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.</p>	<p>The additional text is intended 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 whether it is appropriate to appoint a representative to the nomination committee.</p>
<p>2.2 second paragraph:  The shareholders' meeting is to provide written instructions to the nomination committee.<sup>6</sup>  Footnote 6: The instructions, which do not need to be approved annually, 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>The Swedish Corporate Governance 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 that all listed companies follow today). Consequently, an amendment has been made to section 10.3, so that the nomination committee instructions are to be made available on the company's website.</p> <p>The footnote clarifies that the instruction does not need to be approved annually and 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, and cannot be determined by the Code.</p>
<p>Footnote 12:</p>	<p>The Board has received a number of questions about which definition of related party</p>

<p>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>companies are to use when reporting senior executives' holdings in the company. It proposes this clarification 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 the necessary transparency is met.</p>
<p><u>3. The tasks of the board of directors</u></p>	
<p><u>Preamble:</u>  <i>The board of directors is to manage the company's affairs in the interests of the company and all its shareholders and to ensure and promote a good company culture.</i></p>	<p>The question of a board's responsibility for the company culture has been hotly debated internationally under the heading "Tone from the Top". The preamble therefore mentions this responsibility.</p>
<p>3.1 second bullet NO CHANGE:  <ul style="list-style-type: none"> <li>• appointing, evaluating and, if necessary, dismissing the chief executive officer.</li> </ul></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 third bullet:  <ul style="list-style-type: none"> <li>• identifying how sustainability issues impact risks to and business opportunities for the company,</li> </ul></p>	<p>An updated statement on sustainability in the Code was widely requested. The Board has therefore introduced this clarification regarding the tasks and responsibilities of company boards.</p>
<p><u>3.1 seventh bullet: NO CHANGE.</u>  <ul style="list-style-type: none"> <li>• ensuring that the company's external communications are characterised by openness, and that they are accurate, reliable and relevant.</li> </ul></p>	<p>The bullet point on the board's responsibility with regard to the company's communications is deemed so fundamental that it should not be removed.</p>
<p><u>4. The size and composition of the board</u></p>	
<p>4.4 third 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.<sup>16</sup></p> <p>Footnote 16: An associated company is a company over which the company has a significant influence. Such influence is normally</p>	<p>The 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 full 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.</i></p>

<p>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><i>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 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><b>NEW 5.3:</b>  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, and it is also an issue that has been debated internationally. 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><b>7.1 REMOVED:</b>  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><b>NEW 7.2:</b>  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.<sup>18</sup>  Footnote 18: Provisions regarding the establishment of an audit committee and the tasks of an audit committee are found 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</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>Against this background, the Corporate Governance Board is of the opinion that there is cause to reintroduce the previous Code rule on the independence of the audit committee.</p>

<p>accounting or auditing skills. For assessment of independence, see 4.4 and 4.5.</p>	
<p><u>9. Remuneration of the board and executive management</u></p>	
<p>9.4-8 NO CHANGE: .</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 was replaced by the new rules on remuneration guidelines and remuneration reports contained in the updated Shareholders' Rights Directive on 11 June 2019. These were implemented in Chapter 8, Sections 51-54 of the Swedish Companies Act. .</p> <p><i>After careful consideration, the Board has decided to retain Code rules 9.4-9.8 without change, as the Board has initiated a project to create a new recommendation on remuneration. All the rules that currently apply to remuneration, e.g. those in the Code, are to be gathered together, and that work will determine whether Code rules 9.4-9.8 should be revised in full, in part or not at all and, if changes are made, how the transferred rules are to be formulated. The recommendation is expected to be finalised by the end of 2020, with appropriate provisions on when it should be applicable so that companies are able to adjust to the new rules.</i></p>
<p><b>NEW 9.9:</b> Guidelines regarding remuneration to the board and executive management are also to cover salary and other remuneration to other members of the executive management.<sup>26</sup> Footnote 26: 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.</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>The new Code rule 9.9 states that the remuneration guidelines, in the same way as applied before, 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). This Code rule means that the scope of the regulation corresponds to the general practice that has developed based on the previous wording of the Companies Act d. However, the new Code rule 9.9 does not mean that the remuneration report required by the Companies</p>

	Act needs to include information on the rest of the executive management.
<u>10. Information on corporate governance, sustainability and remuneration</u>	
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>	Chapter 10 of the Code is supplemented by rules for the remuneration report required by the Companies Act following the implementation of the updated Shareholders' Rights Directive.
10.3 REMOVED second paragraph, second bullet: <ul style="list-style-type: none"> <li>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.</li> </ul>	The first part of the bullet on website information regarding variable remuneration systems for the board and executive management has been removed, as the equivalent information is to be included in the remuneration report with regard to the chief executive officer and the deputy chief executive officer. The second part, regarding website information on incentive programs has been moved to Code rule 10.6. As a new transitional rule in the Companies Act does not require remuneration reports to be produced before the 2021 annual general meeting, the Code amendment is not applicable until 2021, as stated in the transitional Code rules above.
10.3 NEW second paragraph, second bullet: <ul style="list-style-type: none"> <li>the company's instructions to the nomination committee.<sup>37</sup></li> </ul> Footnote 37: 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.	The new requirement in the second paragraph of rule 2.2 for instructions to the nomination committee also entails a transparency requirement for the company website, which has been introduced in this bullet.
10.3 REMOVED third paragraph: The board is also to publish the results of the evaluation required by points two and 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.	that the requirement of a report on the board's evaluation of remuneration has been removed in the light of the requirement regarding information required in the remuneration report, which means that the Code's requirements can be considered superfluous. However, the transitional Code rules mean that the previous requirement applies until the end of 2020, when the amendment comes into force.
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) is to be found.	This new rule supplements the content requirements regarding the remuneration report required by the Companies Act:  - In order for the remuneration report to facilitate access to the company's information on remuneration for interested parties, the report is to contain a reference to the remuneration note in the company's annual report. Through a transitional rule, this amendment comes into force in 2021.

	<p>The proposals on additional requirements regarding information in the remuneration report on remuneration to the board and executive management that were submitted to open referral have not been introduced. This is an issue that will be considered in the Board's work on the new recommendation on remuneration.</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.</p>	<p>The content of this rule has been moved here from Code rule 10.3, as stated above, with the addition that programmes completed during the year are also to be included in the report, (the latter as a result of Swedish Securities Council Ruling 2010:40). This rule does not come into force until 2021.</p> <p>Following the open referral process, the proposed second paragraph has not been introduced. This is an issue that will be considered in the Board's work on the new recommendation on remuneration.</p>