



17 September 2018

Frequently asked questions on the subject of the Swedish corporate governance model

This summary has been prepared by the Swedish Corporate Governance Board with the aim of providing information about the main features of the Swedish corporate governance model in listed companies. Users are invited to submit comments and provide suggestions for new matters to be included.

The answers provided in this document are intended to provide a general introduction to the issues listed below and do not constitute advice. Other laws and regulations, as well as the circumstances in a particular case, may be of consequence to the legal situation, and users of this document are therefore encouraged to consult advisers before any conclusions are drawn regarding the application of the rules in an individual case.

1. What is the role of the Swedish Corporate Governance Board?

The Swedish Corporate Governance Board is an independent self-regulatory body with the overall task of promoting good corporate governance in Swedish listed companies, primarily by managing the Swedish Corporate Governance Code (the “Code”). The Code is a collection of guidelines for good corporate governance that all stock exchange listed companies are obliged to apply. The Governance Board also promotes good practice in the Swedish stock market by issuing rules and recommendations in certain areas, including the Takeover Code. The Corporate Governance Board is one of three bodies that make up the Association for Generally Accepted Principles in the Securities Market, was formed by a number of business organizations in order to create a single structure for self-regulation in this field.

2. How is corporate governance regulated in Swedish listed companies?

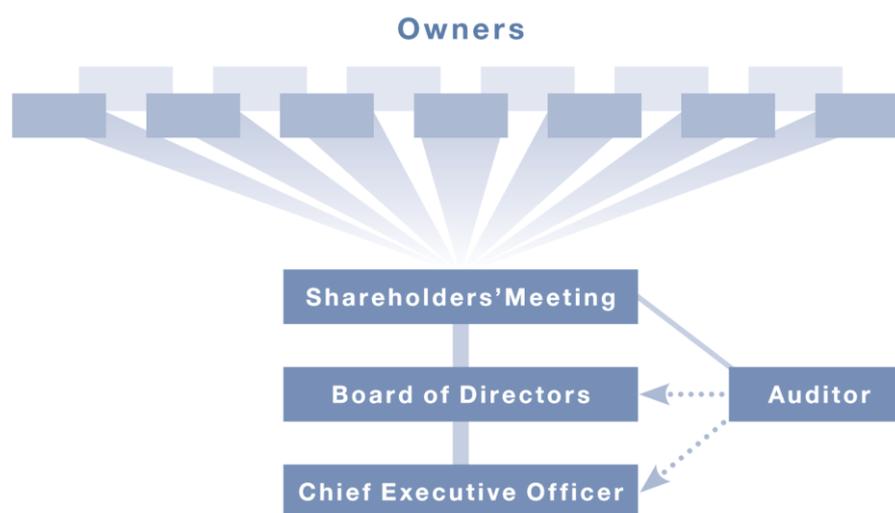
Corporate governance in Swedish listed companies is regulated by a combination of written rules and generally accepted principles. The regulatory framework primarily includes the Companies Act and the Annual Accounts Act, but it also features the Code and the rules that apply to the regulated market on which a company's shares are admitted to trading. In this context, mention should also be made of recommendations and statements issued by the Swedish Financial Reporting Board and the Swedish Securities Council's rulings on good practice in the Swedish stock market. The Companies Act contains basic rules regarding a company's organisation. The Act stipulates which bodies are to be found in a company and the tasks and responsibilities of each body. The Code complements the law by setting higher requirements in some areas, while allowing companies to deviate from these if it is believed that this would lead to better corporate governance in the individual case, (“comply or explain”).

3. What significance has the presence of active owners had for Swedish corporate governance?

The ownership structure on the Swedish stock market differs significantly from that in countries such as the United Kingdom and the United States. While most listed companies in these countries show a strongly divided ownership, ownership in Swedish listed companies, (as in several continental European countries), is usually dominated by one or a small number of major shareholders, who in the case of about half of listed companies further strengthen their control through the holding of shares with greater voting rights. These shareholders often take an active ownership role and take particular responsibility for the company, for example by engagement in the board. The Swedish corporate governance model encourages major shareholders to take particular responsibility for companies by participating actively in the stewardship of them as members of the company board. At the same time, strong ownership must not be misused to the detriment of the company or other shareholders. The Companies Act therefore contains several provisions for the protection of minority shareholders, including requirements for a qualified majority for a number of types of resolution at the shareholders' meeting.

4. What are the main features of the Swedish corporate governance model?

Swedish listed companies must have three decision-making bodies - the shareholders' meeting, the board of directors and the chief executive officer (CEO) – which are in a hierarchical relationship. There is also to be a control body, the auditor, appointed by the shareholders' meeting.



The shareholders' meeting

The shareholders' meeting may decide on any question in the company that does not explicitly fall under the exclusive competence of another corporate body. In other words, the company's board and the chief executive officer are subordinate to the shareholders' meeting. Shareholders who cannot personally attend the shareholders' meeting may exercise

their rights through a proxy. The decisions at a shareholders' meeting are usually taken by simple majority of the votes cast. In line with the general perception in Sweden that the shareholders' meeting should be not only a decision-making forum but also a forum for discussion, the possibility to offer postal votes ahead of a shareholders' meeting has not yet been implemented by any Swedish listed company.

In order to balance the shareholder majority's right to effectively control the company's decision-making and operations, the Swedish corporate governance model contains several rules for the protection of minority shareholders, including the following:

- all shares confer equal rights in the company (unless otherwise stipulated in the articles of association, for example with regard to differences in voting rights);
- corporate bodies may not make decisions which are intended to give undue advantage to a shareholder or to any other party to the detriment of the company or any other shareholder;
- each shareholder has the right to participate in and exercise voting rights for his shares at the shareholders' meeting, as well as the right to ask questions at the meeting and to have them answered by the company's board or the chief executive officer if answers can be given without damaging the company;
- each shareholder has the right, irrespective of the size of their shareholding, to have a matter dealt with at the shareholders' meeting if a request to do so has been submitted to the company board in sufficient time for the matter to be included in the formal invitation to the shareholders' meeting;
- some decisions, e.g. regarding changes to the company's articles of association or certain decisions that may be detrimental to minority shareholders, require a qualified majority;
- certain transactions between a company and its related parties, (including board directors, senior executives and shareholders holding at least ten percent of the shares or votes in the company) must be disclosed if the transaction is not of minor importance for the parties involved, and they must be submitted to the shareholders' meeting for approval of the transaction is not of minor importance to the company.

The board of directors

Subordinate to the shareholders' meeting is a board, consisting entirely or largely of members who are not employed by the company, i.e. non-executive directors. The board is responsible for the organization and stewardship of the company's affairs. The very wide discretionary powers conferred on the board by law are limited in relation to the shareholders' meeting, primarily by the provisions in the legislation which giving the shareholders' meeting exclusive decision-making powers in certain matters, such as amendments to the articles of association, election of the board of directors and auditors and the approval of the balance sheet and income statement. However, the board is obliged to comply with any specific instructions that may have been announced by the shareholders' meeting, provided that the instructions in question do not contravene the Companies Act or the company's articles of association. The

shareholders' meeting may appoint or remove members of the board at any time if it deems it appropriate to do so.

The chief executive officer

Subordinate to the board of directors is an executive management function in the form of a chief executive officer, (CEO), who is responsible for the day-to-day management of the company. Actions which by virtue of their scope and the nature of the company's business are unusual or of great significance are not part of the day-to-day management. The CEO is obliged to prepare and make recommendations to the board regarding any matters that lie outside the scope of day-to-day management. The board is to give written instructions on when and how such information as is required for this assessment is to be collected and presented to the board. The CEO is subordinate to the board of directors, which means that the board instruct the CEO how to act or decide on ongoing management issues. The CEO is obliged to follow such instructions within the framework of the Companies Act and the company's articles of association. The board of directors can also make decisions on matters that are within the scope of day-to-day management. The board can dismiss the CEO and appoint a new one at any time if it deems it appropriate to do so.

The auditor

The company's auditor is appointed by the shareholders' meeting to review the company's annual report and accounts, as well as the work of the board of directors and the CEO. An auditor in a Swedish company receives its assignment from and reports to the shareholders' meeting and may not allow itself to be guided by the work of the board or company management. The auditors' reporting to the shareholders takes place at the annual general meeting through the audit report. The audit report is to contain a statement on whether the annual report has been prepared in accordance with the applicable legislation. This statement is to mention specifically whether the annual report gives a true and fair picture of the company's results and position and whether the director's report is consistent with the other parts of the annual report. If the annual report has not provided information that is required by the applicable legislation, the auditor is to state this and, if possible, provide the required information in the audit report. Another task of the auditor is to recommend whether the annual general meeting should approve the balance sheet and income statement and whether the disposition of the company's profit or loss should be conducted in accordance with the proposal in the director's report. The auditor is also to report if any member of the board or the CEO has taken any action or been guilty of any negligence that may lead to liability for compensation. The same applies if the auditor's review has found that any board member or the CEO in any other way has acted in breach of the Companies Act, the applicable legislation on annual accounts or the company's articles of association.

5. What distinguishes the Swedish corporate governance model from that of other countries?

From a structural perspective, the Nordic corporate governance model differs clearly from both the one-tier model used in countries with an Anglo-Saxon legal tradition and two-tier

model used in Germany and other continental European countries. The main differences compared with both of these other models are:

- The shareholders' meeting has a clearly stated superior position in relation to the company's board and CEO;
- The board of directors, which consists predominantly of members who are not employed by the company, has extensive authority to decide on how the company is to be run. However, the board can be dismissed by the shareholders' meeting at any time and is thus subordinate to shareholder majority;
- The model clearly differentiates between the company's board and its CEO. The CEO is appointed and may be dismissed by the board at any time.

With regard to the independence of company directors, the Code stipulates that the majority of the members elected to the board by the shareholders' meeting are to be independent in relation to the company and its executive management and that no more than one member of the board of directors may be a member of the company's management or the management of one of the company's subsidiaries. The boards of Swedish listed companies thus consist entirely or almost entirely of directors who are not employed by the company. With such a high degree of independence, the establishment of committees within the board is primarily a matter of organising the work of the board efficiently, unlike the situation in other countries, where committees are in many cases appointed to ensure the integrity of the board in matters where there may be conflicting interests. Although the Companies Act stipulates that the board of a listed companies is to have an audit committee and the Code stipulates that the board is to have a remuneration committee, the board of directors may decide under certain circumstances that the tasks normally performed to these committees will instead be carried out by the full board.

With regard to independence in relation to the company's owners, the Code stipulates that at least two of the board members who are independent in relation to the company and the company management are also to be independent in relation to the company's major shareholders. This means that it is possible for major shareholders in Swedish listed companies to appoint a board with a majority of members closely linked to these owners. This is in line with the positive view of an active and responsible ownership role and the expectations from society and other shareholders that major shareholders will take long-term responsibility for companies and participate actively in their stewardship.

Another distinctive feature of Swedish corporate governance is shareholder engagement in the nomination process for the board of directors and the auditor, which occurs through participation in the companies' nomination committees. Unlike the situation in most other countries, the nomination committee of a Swedish listed company is not a committee within the board, but a preparatory body for the shareholders' meeting. It consists of members appointed by the company's shareholders in through a separate procedure decided upon by the shareholders' meeting. This particular structure derives from the belief that a board

should not nominate its own members; this task is considered to be better performed by a body representing the company's owners.

6. Why is it not mandatory for a listed company's nomination committee to present its nomination of members of the board as a number of individual proposals, one for each proposed board member, with the voting at the shareholders' meeting then occurring individually for each proposed candidate?

The Swedish nomination process and the election of board members are unique in many respects. The most important difference compared with other countries is that it is the owners - not the board – who are responsible for the nomination process. The instructions to the nomination committee are determined by the shareholders at the shareholders' meeting, and nomination committees are dominated by representatives of the largest shareholders who wish to participate. The work of nomination committees is usually conducted in such a way that the committee, with the mandate of the shareholders' meeting, submits a well-balanced proposal for a board that can work together as a well-functioning team, as well as meeting various criteria on competence, experience, gender balance, etc. which are contained in both the Corporate Governance Code and the Companies Act. Comments and criticisms regarding individual board members can be channeled via the nomination committee - either by participating in the committee or by submitting comments to it - or expressed at the shareholders' meeting in conjunction with the election of the board.

The normal procedure for board elections is that the shareholders' meeting first decides, within the limits set by the articles of association, on the size of the board. If there is only a single proposal corresponding to the number of board members decided upon by the shareholders' meeting, there is no need from a company law perspective to divide the voting into individual elections per person. If there are further nominations to the board, so that the number of candidates is greater than the number of positions on the board, individual voting is always to be conducted. In this way, the election of a board does not automatically take place through a single vote. The procedure whereby election of the board of directors of listed companies often takes place through a single vote at shareholders' meetings, not per candidate, is linked to the unique Swedish way of preparing these elections in a shareholder-elected nomination committee. If no other proposal of candidates to the board has been submitted to the shareholders' meeting and no request is made for another procedure is made, a vote on the nomination committee's proposal is a natural consequence.

The Code does not stipulate whether the nomination committee's proposal is to be formulated as a single proposal or as a number of individual proposals. It is up to each company and its shareholders to decide how elections to the board are to be conducted at each shareholders' meeting. If a request for individual voting has been presented as a specific proposal to the shareholders' meeting and therefore included in the notice of meeting or if such a proposal is presented at the meeting, the chair may ask the meeting whether an individual vote is to be conducted or not. Decisions on this procedural matter are made by simple majority at the meeting.

7. What does the board being granted discharge from liability by the shareholders' meeting mean?

A feature of the Swedish corporate governance model is the obligation at the annual general meeting each year for shareholders to decide on the matter of discharge from liability for the members of the board and CEO. Discharge from liability is granted unless the meeting's majority or a minority of owners comprising at least one tenth of all shares in the company votes against a proposal for discharge. The shareholders' meeting's decision to grant discharge means that the company can no longer take legal action against the members of the board of directors or the CEO for financial damages to the company related to the accounting period covered by the discharge decision.

The shareholders' meeting's decision on the matter of discharge from liability often follows the auditor's recommendation on whether board members and the CEO should be granted discharge from liability towards the company. In its audit of the company's accounts, the auditor of a Swedish limited company is obliged to review how the company's board and CEO have fulfilled their obligations. The audit report must therefore contain a statement on whether the directors and the CEO should be granted discharge from liability. Additionally, if any member of the board or the CEO has taken any action or been guilty of any negligence that may lead to liability for compensation, this is to be noted in the report.

The effect of the shareholders' meeting's decision to grant discharge is limited in so far as:

- It only affects the company's ability to bring legal action for damages; the decision does not affect the possibility of anyone other than the company to bring such action, (meaning that, for example, an individual shareholder is free to bring legal action against the board or the CEO regardless of whether the meeting has decided to grant discharge from liability);
- An action for damages on behalf of the Company may nevertheless be pursued if substantially incorrect or incomplete information has been provided to the shareholders' meeting in the annual report, in the audit report or elsewhere regarding the decision or action on which the legal action is based;
- decisions on discharge of liability do not cover liability related to any consultancy assignments that a board member or the CEO has in addition to their assignment as board member/CEO in the company;
- claims for damages based on criminal acts can be pursued at any time, regardless of whether discharge from liability has been granted.

References and further reading

Lekvall, Per (ed.). *The Nordic Corporate Governance Model*. SNS Förlag, 2014.

Svernlöv, Carl. *Discharge from Liability in the Swedish Listed Company*. The Swedish Corporate Governance Board, 2007. Available at http://www.corporategovernanceboard.se/UserFiles/Archive/535/discharge_from_liability_in_the_swedish_listed_company_by_carl_svernlöv.pdf.

Unger, Sven. *Special Features of Swedish Corporate Governance*. The Swedish Corporate Governance Board, 2006. Available at http://www.corporategovernanceboard.se/UserFiles/Archive/535/special_features_or_swedish_corporate_governance_av_sven_unger.pdf.

Contact

If you have any questions or comments on this text or if you would like to submit proposals for new questions, please contact

Björn Kristiansson at bjorn.kristiansson@bolagsstyrningskollegiet.se or
Tobias Hultén at tobias.hulten@bolagsstyrningskollegiet.se.

The Swedish Corporate Governance Board
Väpnargatan 8, 6tr.
SE-114 51 Stockholm, Sweden