SWEDISH
CORPORATE
GOVERNANCE BOARD

Comments regarding Ministry of Justice Memorandum Ds 2011:21 on certain changes in legislation on directed share issues.

The Swedish Corporate Governance Board was invited to comment on this report and would like to express the following opinions.

The Memorandum proposes a reduction of the majority requirement stated in Chapter 16, Section 8 of the Swedish Companies Act, (1995:551), from nine tenths to two thirds. A number of reasons for the proposed change are presented, not least the fact that Swedish regulation in this area differs from that of other countries. However, not all of these arguments are convincing. It should be borne in mind that the present majority requirement has probably contributed to relatively modest incentive programmes in Sweden compared with those of other countries. Furthermore, it is not easy to assess the likely consequences of such a reduction. The Board is therefore of the opinion that there should be no reduction of the majority requirement.

The Board is in favour of the proposal to exempt the transfer of shares, convertible bonds or warrants in smaller group companies from the rules covered by Chapter 16 of the Companies Act. The Board is unable to judge, however, whether the proposed model for the demarcation of smaller companies is the most appropriate. One alternative might be to state in the legislation that "Sections 4 and 5 are not applicable to transfers of shares, convertible bonds or warrants in a company of limited size in relation to the group of companies to which it belongs", and to state in the preamble that a certain percentage of the total assets of the group defines this ratio. It should be noted that the size of the subsidiary company's total assets is also to include the total assets of its own subsidiaries where applicable, which is not stated in the proposed legislation. Consideration should also be given to whether it should be stipulated that the figures are to be based on the ratio on the date of the transfer in order to be able to include transactions after the balance sheet date. This would, however, be at the expense of the predictability contained in the memorandum's proposal.

The Board notes that Chapter 16 of the Companies Act concerns groups whose parent companies are public limited companies, which is a deviation from the "Leo Act", which was a predecessor to the rules in Chapter 16 of the Companies Act. The "Leo Act" was aimed at

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groups whose parent company is a listed company, but as the Companies Act did not contain any particular regulation for listed companies at the time the Leo rules were integrated into it, Chapter 16 of the Companies Act came to be applicable to groups whose parent is a public limited company. Following the implementation of the directive on the rights of shareholders, the Companies Act now contains rules for public limited companies whose shares are traded on regulated markets or equivalent markets outside the European Economic Area. There may therefore be reason to adjust the sphere of application of Chapter 16 accordingly, possibly by adding that the rules are also to be applicable to public limited companies whose shares are traded on a trading platform or an equivalent market outside the European Economic Area. The Board is not aware that any reasons for the shareholders' meeting of an unlisted public company to make decisions with the stated majority have been presented.

The aim of the "Leo Act" was that shareholders in listed companies would always be given the opportunity to take a position regarding private placements and transfers covered by the law, regardless of whether the decision was made by the listed company or a subsidiary. If a listed public limited company is a subsidiary of an unlisted public limited company, the current regulations in the Companies Act mean that a private placement in a subsidiary to a listed public limited company does not need to be approved by the shareholders' meeting of the listed public limited company. This only needs to take place at the shareholders' meeting of the unlisted public parent company. This process could constitute a breach of generally accepted practice on the securities market, but the invalidity sanction in the Companies Act could not be invoked against such a placement or transfer.

Finally, the Board questions more generally whether there is a trend in the debate on corporate governance and in ongoing reforms towards weakening or removing the legal preferential rights of shareholders to acquire new shares, something which is stated in section 4.3 on page 16 of the memorandum.

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THE SWEDISH CORPORATE GOVERNANCE BOARD

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