



Comments regarding the Ministry of Justice paper on auditor liability (SOU 2016:34)

The Swedish Corporate Governance Board ("the Board") was invited to submit comments to the Swedish Ministry of Justice on its paper entitled Auditor Liability, SOU 2016:34.

Summary

The Board rejects the proposal and recommends that a new committee be set up to carry out a broader and deeper analysis of corporate bodies' liabilities and to make proposals regarding alternative grounds that liability may be required of them.

General comments

The issue of the division of responsibilities in a limited liability company has recently been raised by a number of legal disputes involving large damages claims against auditors. As a result of these disputes, questions have been raised about whether tort law contains a fundamental problem in terms of the division of responsibility between different corporate bodies. For example, there has been a clear shift in responsibility from senior management to the auditor. Another issue is the structure of the liability system, e.g. association law includes no liability for a company's CFO/finance director, despite this individual having the deepest understanding of the company's annual report.

The proposals contained in this paper should therefore be considered more as a treatment for certain symptoms than a thorough analysis of the fundamental question of liability. This is very understandable considering the time that was at the inquiry's disposal, but it means that its proposals can hardly be the basis for legislation. A more thorough review of the responsibilities that the various corporate bodies have and should have and the alternative grounds on which that responsibility should be required of them is required in order to bring about more sustainable legislation. A review of the liability structure in association law is important from the perspective of society and to maintain public confidence in the corporate sector.

In light of the above, the Board rejects the proposal and instead advocates that a new commission of inquiry with a broader mission be set up. This mission should include a review of the liability system within association law, and the inquiry should be given sufficient time to complete its assignment.

Stockholm, 29 September 2016

THE SWEDISH CORPORATE GOVERNANCE BOARD

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