THE CORPORATE GOVERNANCE REVIEW

Eleventh Edition

Editor
Willem J L Calkoen

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PREFACE

I am proud to present this new edition of *The Corporate Governance Review* to you.

In this 11th edition, we can see that corporate governance is becoming a more vital and all-encompassing topic, especially this year with covid-19 as well as climate issues, political instability, technological change, environmental, social and corporate governance (a stakeholder model to which many countries are moving), green finance and the demand from both employees and customers for a sound reputation for the best personal health and moral responsibility. We all realise that the modern corporation is one of the most ingenious concepts ever devised. Our lives are dominated by corporations. We eat and breathe through them, we travel with them, we are entertained by them, and most of us work for them. Most corporations aim to add value to society, and they very often do. There is increasing emphasis on this. Some, however, are exploiting, polluting, poisoning and impoverishing us, which can create a depressed reputation for business. A lot depends on the commitment, direction and aims of a corporation's founders, shareholders, boards, management and employees. Do they show commitment to all stakeholders and to long-term shareholders, or mainly to short-term shareholders? There are many variations on the structure of corporations and boards within each country and between countries. All will agree that much depends on the personalities and commitment of the persons of influence in the corporation.

We see that everyone wants to be involved in better corporate governance: parliaments, governments, European Commission, US Securities and Exchange Commission (SEC), Organisation for Economic Co-operation and Development (OECD), the UN's Ruggie reports and 17 social development goals, the media, supervising national banks, more and more shareholder activists, proxy advisory firms, the Business Roundtable and all stakeholders. The business world is getting more complex and overregulated, and there are more black swans, while good strategies can quite quickly become outdated. Most directors are working very diligently. Nevertheless, there have been failures in some sectors and trust must be regained.

How can directors do all their increasingly complex work and communicate with all the parties mentioned above? What should executive directors know? What should non-executive directors know? What systems should be set up for better enterprise risk management? How can chairs create a balance against imperial chief executive officers (CEOs)? Can lead or senior directors create sufficient balance? Should most non-executive directors understand the business? How much time should they spend on their function? How independent must they be? Is diversity and inclusion actively being pursued? Is the remuneration policy fair? What are the stewardship responsibilities of shareholders? What are the pros and cons of shareholder rights plans and takeover defences?

Governments, the European Commission and the SEC are all pressing for more formal, inflexible legislative acts, especially in the area of remuneration. Acts set minimum standards,

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while codes of best practice set aspirational standards. We see a large influence on norms by codes and influential investor groups.

More international investors, Business Roundtable, voting advisory associations and shareholder activists want to be involved in dialogue with boards about strategy, succession and income. Indeed, far-sighted boards have 'selected engagements' with stewardship shareholders to create trust: one-on-ones. What more can they do to show all stakeholders that they are improving their enterprises other than through setting a better tone from the top and work at complying with demands and trends for a better society?

Interest in corporate governance has been increasing since 1992, when shareholder activists forced out the CEO at General Motors and the first corporate governance code – the Cadbury Code – was written. The OECD produced a model code, and many countries produced national versions along the lines of the Cadbury comply or explain model. This has generally led to more transparency, accountability, fairness and responsibility. However, there have been instances when CEOs have gradually amassed too much power, or companies have not developed new strategies and have incurred bad results – and sometimes even failure. More are failing since the global financial crisis than before, hence the increased outside interest in legislation, further supervision and new corporate governance codes for boards, stewardship codes for shareholders and shareholder activists, and requirements for reporting on non-financial issues. The European Commission has developed regulation for these areas as well. We see governments wanting to involve themselves in defending national companies against takeovers by foreign enterprises. We also see a strong movement of green investors, which often is well appreciated by directors. There is a move to corporate citizenship. Business Roundtable, with about 180 signatories, has embraced stakeholder corporate governance.

This all implies that executive and non-executive directors should work harder and more as a team on long-term policy, strategy, entrepreneurship and investment in research and development. More money is lost through lax or poor directorship than through mistakes. On the other hand, corporate risk management, with new risks entering, such as the increasingly digitalised world and cybercrime, is an essential part of directors' responsibilities, as is the tone from the top.

Each country has its own laws, codes and measures; however, the chapters in this Review also show a convergence. Understanding differences leads to harmony. The concept underlying the book is that of a one-volume text containing a series of reasonably short, but sufficiently detailed, jurisdictional overviews that permit convenient comparisons, when a quick first look at key issues would be helpful to general counsel and their clients.

My aim as editor has been to achieve a high quality of content so that this Review will be seen as an essential reference work in our field. To meet the all-important content quality objective, it was a condition *sine qua non* to attract as contributors colleagues who are among the recognised leaders in the field of corporate governance law from each jurisdiction.

I thank all the contributors who have helped with this project. I hope this book will give you food for thought; you always learn about your own law and best practice by reading about the laws and practices of others. Further editions of this work will obviously benefit from the thoughts and suggestions of its readers. We will be extremely grateful to receive comments and proposals on how we might improve the next edition.

Willem J L Calkoen
NautaDutilh
Rotterdam
March 2021

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Chapter 21

SWEDEN

Christoffer Saidac, Mattias Friberg and Khaled Talayhan[1]

I OVERVIEW OF GOVERNANCE REGIME

Corporate governance in Swedish companies whose shares are admitted to trading on a regulated market (listed companies) is regulated by a combination of statutory laws and regulations and self-regulation-based generally accepted practices. The framework includes the Swedish Companies Act and the Swedish Annual Accounts Act, supported by the Swedish Corporate Governance Code (the Code) and the rules of the regulated markets on which shares are admitted to trading, as well as recommendations and statements from the Swedish Financial Reporting Board, statements by the Swedish Securities Council on what constitutes good practice in the Swedish securities market, and the Council for Swedish Financial Reporting Supervision's review of financial reports of Swedish listed companies.

Enforcement of regulations applicable to listed companies – the Swedish Stock Exchange's Issuer Rules, the Code (under the comply or explain regime), and statements from the Swedish Financial Reporting Board, the Council for Swedish Financial Reporting Supervision and the Swedish Securities Council – may be carried out by the Stock Exchange through disciplinary procedures. In addition, the law may be enforced through actions by the Swedish Financial Supervisory Authority and in local courts.

Ownership structure on the Swedish stock market differs from the structure in countries such as the United Kingdom and the United States. Although the majority of listed companies in those countries have a very diverse ownership structure, ownership in Sweden is often concentrated in a single or small numbers of major shareholders, as is the case in many other continental European countries. In around one-third of the listed companies, these shareholders strengthen their positions further through holdings of shares with greater voting rights. They often perform an active ownership role and take particular responsibility for the company, for example by sitting on the board of directors. A particular characteristic of Swedish corporate governance is the engagement of shareholders in the nomination process for boards of directors and auditors, which they exercise through their participation in companies' nomination committees. Nomination committees are not regulated by the Companies Act but by the Code. A Swedish nomination committee is not a subcommittee of the board, but a body of the general meeting of shareholders typically made up of members who are appointed by the company's larger shareholders.

Swedish society takes a positive view of major shareholders taking particular responsibility for companies by using seats on boards of directors to actively influence

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governance. At the same time, major holdings in companies must not be misused to the detriment of the company or the other shareholders. The Companies Act therefore contains a number of provisions that offer protection to minority shareholders, such as requiring qualified majorities for a range of decisions at general meetings of shareholders.

International institutional investors have requested individual voting on boards of directors, even though such a procedure is normally superfluous and time-consuming in a Swedish setting with the Swedish nomination committee system.

II CORPORATE LEADERSHIP

i Board structure and practices

Structure

A Swedish limited liability company is organised as a unitary structure in line with the Anglo-Saxon one-tier model. The general meeting of shareholders, acting as the company's supreme decision-making body, *inter alia*, elects a board that appoints a managing director. The general meeting, the board, the managing director and the auditors comprise the four corporate bodies recognised by the Companies Act and the first three are, in descending order, subordinated in relation to each other. The auditors, however, whose main responsibility is to audit the accounts, are independent in relation to the others. Thus, under the Swedish corporate governance structure, there is no two-tier model with a supervisory board overseeing the administration of the company as traditionally can be found in continental Europe.

Composition of the board

In general, the board in Swedish listed companies includes five to 10 members and primarily consists of non-executive directors. According to the Code, a majority of the directors of the board elected by the general meeting must be independent from the company and its executive management. A minimum of two of these directors must also be independent from the company's major shareholders. In addition to this, the Code stipulates that no more than one board member elected by the general meeting may be part of the executive management of the company or of a subsidiary to the company. Thus, boards of listed companies normally consist of non-executive directors only. The managing director of the company may not be the chair of the board; however, he or she may be a board member.

Recurrently, the low percentage of female board members has come under review, and within the public debate there are those who argue that legislation is required to balance the gender ratio between female and male board directors. Under the Code, the board shall have a composition appropriate to the company's operations, its phase of development and other relevant circumstances. The board members elected by the general meeting shall collectively exhibit diversity and breadth of qualifications, experience and background. Moreover, the company must also strive for gender balance on the board.

In 2006, the Ministry of Justice introduced a proposal for a provision under which at least 40 per cent of boards of listed companies would be required to comprise female directors, and in 2015, the Minister stated that Parliament may be required to amend the law to reach the goal of more gender-balanced boards. It was further stated by the Ministry Secretary that a bill would be presented to Parliament within a year in the event that companies did not have at least 40 per cent female representation before that point in time, and in 2016,

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the government presented a legislative proposal to this effect. However, the proposal did not have sufficient support in Parliament, and no new proposal has been put forward since. Thus, there is currently no legal requirement as regards female representation on boards of directors.

Representation

In general, under the Companies Act, the right to represent and sign on behalf of the company in all matters is vested in the board as a whole. If a managing director has been appointed,[2] he or she has the right to sign on behalf of the company as regards the day-to-day operations. In addition, the board may authorise a board member, the managing director or any other person to represent the company by way of special company signature, and typically such representation rights are granted to at least two such persons jointly.

Legal responsibilities of the board and chair of the board

According to the Companies Act, the principal duties of the board comprise the responsibility for the organisation of the company and the management of the company's affairs. Furthermore, the board should ensure that the company's organisation is structured in such a manner that accounting, management of funds and the company's finances in general are monitored in a satisfactory manner. In addition, board members and the managing director have an overall duty in all matters to act in accordance with the interests of the company. The chair of the board has no specific duties or powers other than a responsibility for convening the board and leading the work of the board.

Another key task of the board is to appoint and dismiss the managing director. Whereas the board is responsible for the overall management of the company's affairs, the managing director shall attend to the management of the day-to-day operations pursuant to guidelines and instructions issued by the board.

Thus, boards in Swedish companies have an extensive decision-making authority, but also their limitations, primarily by way of the legal provisions giving the general meeting exclusive powers as regards specific matters (e.g., share issues, amendments to the articles of association, material closely related party transactions in listed companies, and the election of board members and auditors).

Remuneration of directors and compensation from shareholders

The board's remuneration is resolved by the annual general meeting, and the board decides the remuneration for the executive management. All share and share price-related incentive schemes for the directors of the board and for the executive management, however, shall be resolved by the general meeting. Pursuant to the Companies Act, listed Swedish companies are required to have guidelines for executive remuneration adopted by the general meeting and required to prepare a remuneration report for each financial year, outlining how the remuneration guidelines are applied in practice, and submit the report to the annual general meeting. According to the Code, the remuneration and other terms of employment are to be designed with the aim of ensuring that the company has access to the competencies required at a cost appropriate to the company, and that they have the intended effects for the company's operation.

2 However, pursuant to the Companies Act, listed Swedish companies must at all times have a managing director appointed.

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The basic rule is that directors receive their remuneration from the company concerned. However, there are no rules directly prohibiting a director from also accepting compensation from a shareholder who has nominated him or her. In practice, the director may be employed by the nominating shareholder, for example. In some cases, a director being employed by the nominating shareholder waives his or her remuneration from the company. These types of arrangements should be factored in when determining whether the rules regarding disqualification of a director to decide on specific matters involving such a nominating shareholder are applicable. If a board member receives compensation from a shareholder, he or she is not deemed independent from that shareholder.

ii Directors

Legal duties

Board members have a fiduciary duty to act in good faith and in the best interests of the company, which entails a duty to act in the interest of all shareholders. For that reason, the board may, for instance, not consider an activist proposal under any different standard of care compared to other board decisions, and individual shareholders may not be given an unfair advantage compared to the other shareholders in the company. However, the board may cooperate with an activist as long as the board does not breach the duty of equal treatment of all shareholders.

Provided that it is not in conflict with the Companies Act or the applicable articles of association, the board is also obliged to follow any specific instruction decided by the general meeting.

Liability of directors

According to the Companies Act, a board member as well as a managing director may be liable for damages to the company, the shareholders or third parties (e.g., creditors). If, in the performance of his or her duties, he or she intentionally or negligently causes damage to the company, he or she shall compensate the damage. Liability towards a shareholder or a third party may arise, however, only when damage is caused as a consequence of a violation of the Companies Act, the applicable annual reports legislation, the articles of association, or if the company has prepared a prospectus or certain other documents pursuant to the Prospectus Regulation[3] or an offer document according to Chapter 2a of the Swedish Financial Instruments Trading Act, in line with certain provisions in that Regulation or Act, respectively. The board may delegate specific tasks to individual members or other employees, but is not able to avoid liability for the company's organisation or the duty to ensure satisfactory control of the finances of the company.

Further, members of the board and the managing director may also be held liable under general principles on tort and, if applicable, the Swedish Tort Liability Act. As for the board, there is no collective liability *per se*, and an *in casu* judgement must be made as regards each claim and each director. Moreover, a Swedish company is not itself capable of committing a crime, hence it is the natural person who commits the crime who ultimately will be held responsible.

3 Regulation (EU) No. 2017/1129 of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.

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Appointment, nomination and term of office

Under the Companies Act, the board is elected by the general meeting. In listed companies, director nomination is done by the nomination committee, which in Sweden is not a board committee but rather a committee set up by the general meeting that typically includes representatives of the largest shareholders. The Code stipulates that a company shall have a nomination committee that, *inter alia*, shall nominate candidates to the board and that the general meeting shall adopt written instructions to the nomination committee. The general meeting elects the members of the nomination committee or adopts a process for the establishment of the nomination committee, and thus large shareholders generally have great influence over the composition of the committee. However, at least one of the members shall be independent in relation to either the company's largest shareholder or group of shareholders that cooperate regarding the management of the company.

However, any shareholder may nominate directors for election to the board and have the nomination included in the notice to attend the general meeting, as long as the proposal is presented to the board within the time frame stipulated in the Companies Act and otherwise complies with the applicable provisions in the Companies Act. Furthermore, if the matter of election of members of the board is already on the agenda of the general meeting, a shareholder has the right to propose a candidate as late as during the meeting itself.

The nomination committee shall safeguard the interest of all shareholders in its nomination of candidates. The nomination committee's proposal is normally presented in the notice to attend the general meeting. The board is elected by a majority vote, unless the articles of association stipulate otherwise. Market practice in Sweden has been to elect the members of the board by a single vote. However, this is not required by law and some international investors in Sweden have shown tendencies to start raising demands on listed companies to switch to separate voting for each member of the board. Large international institutional investors have been campaigning for individual board election and transparency of voting at general meetings.

Staggered boards are non-existent (each board member is elected annually, and there is no way of preventing a new majority shareholder from replacing the board immediately).

III DISCLOSURE

The primary rules relating to communications made by listed companies concern disclosure duties and equal treatment of shareholders. Transparency and disclosure are key aspects of Swedish corporate governance in listed companies. The EU Market Abuse Regulation (MAR), the Swedish Securities Markets Act and the Stock Exchange's Rule Book for Issuers of Shares (the Rule Book) set forth the basis for listed companies' disclosure obligations. Under MAR, listed companies are obliged to publish, as soon as possible, all information of a precise nature that has not been made public, relating, directly or indirectly, to the issuer's financial instruments and that, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments (i.e., inside information). Additionally, and in accordance with the Securities Markets Act and the Rule Book, listed companies are obliged to disclose information concerning financial reports, issues of securities, changes in the board, management and auditors, share-based incentive programmes, liquidity enhancement arrangements, and material business acquisitions and divestitures, irrespective of whether the information constitutes inside information. The purpose of the disclosure obligations

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is to provide sufficiently comprehensive, relevant, clear and non-misleading information to the market. To promote proper disclosures, it is recommended that listed companies prepare a written disclosure policy in which the guidelines and procedures applied in a company's communications with the capital markets and investors are specified.

As a general rule, inside information shall be disclosed as soon as possible although companies, provided that certain conditions are fulfilled, may delay the disclosure. To be allowed to delay the disclosure of inside information to the public, the following conditions must be met according to MAR:

a immediate disclosure is likely to prejudice the legitimate interests of the company;
b the delay of disclosure is not likely to mislead the public; and
c the company is able to ensure the confidentiality of that information.

When this information is subsequently publicly disclosed, the company must notify the Swedish Financial Supervisory Authority (SFSA) that the disclosed information was delayed and, upon request by the SFSA, explain how the aforementioned conditions were met.

Generally, selective disclosure of inside information constitutes a violation of MAR, which may result in sanctions for the company. Disclosure may also constitute a criminal offence for the person making the disclosure. However, in certain special situations – for example, ahead of a rights issue when a company wants to secure commitments from its largest shareholders – selective disclosure may be permitted if disclosure is made in the normal exercise of an employment, a profession or duties and, in the case of contemplated securities offerings, pursuant to the special market-sounding rules of MAR. When delaying disclosure of inside information, listed companies are under the obligation to maintain insider lists of directors, employees and other persons with access to inside information and who work or perform tasks for the company.

MAR contains a requirement that all disclosed inside information is made public on a company's website and stored there for at least five years. The same applies, according to the Rule Book, to all information communicated by a company to the market. There are no other rules governing the media platform to be used as distribution channels; however, social media platforms are rarely used for shareholder-related matters. In addition, since the purpose of the disclosure duties is to make sure that the information is disclosed to the market simultaneously on a non-discriminatory basis, in practice, companies must use an information distributor for this purpose.

In accordance with the Annual Accounts Act and the Code, listed companies shall disclose an annual corporate governance report in which they shall present information on their corporate governance functions and state their compliance with the Code. If a company chooses to deviate from a certain provision of the Code, it must state its reasons for doing so (the comply or explain principle). Moreover, a corporate governance report shall include a description of internal controls and risk management regarding the financial reporting, and how the annual evaluation of the board has been conducted and reported.

Further, all Swedish companies, associations and other legal entities are obliged to register their ultimate beneficial owner, or owners, with the Swedish Companies Registration Office. There are a few exceptions to this obligation, including government bodies and listed companies. The ultimate beneficial owner is the natural person, or persons, who ultimately owns or controls a legal entity. A natural person is presumed to exercise this control if he or she, directly or indirectly, holds or controls more than 25 per cent of the votes, or holds or controls the right to appoint or remove a majority of the members of the board of directors.

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Moreover, a legal entity may not have any beneficial owner or may, under certain conditions, be relieved from the obligation to report its beneficial owner owing to complex ownership structures as investigation obligations are limited.

Financial reporting and accountability

Listed companies shall prepare annual financial statements and, as a general rule, interim financial reports for the first three, six and nine months of the financial year. The consolidated financial statements shall be prepared in compliance with International Financial Reporting Standards, and the interim financial reports for the six months of the financial year and the year-end report shall be prepared in accordance with IAS[4] 34 'Interim financial reporting'. Companies are entitled to disclose a lighter-form interim management statement instead of an interim financial report for the first three and nine months of the financial year. According to the amended Transparency Directive,[5] listed companies are no longer obliged to publish quarterly financial information. However, Member States may require greater disclosure on certain conditions, and in Sweden the obligation to publish quarterly financial information remains. The Stock Exchange has set out guidance for preparing interim management statements. However, a company may deviate from the guidance completely or on certain points if it discloses the reporting or statement format that it has chosen instead, and its reasons for doing so, on its website.

Annual financial statements shall be published within four months of the end of the financial year and no later than three weeks before the annual general meeting. Quarterly financial reports or interim management statements shall be published within two months of the end of the reporting period.

According to the Securities Markets Act and the Rule Book, the SFSA may impose a penalty payment, independently of the Stock Exchange, for any failure to comply with the continuing disclosure obligation, the obligation to disclose periodic information, and the obligation to publish and store regulated information. All financial reports shall be made available on the company's website for a minimum of 10 years.

Auditors

Listed companies must appoint at least one authorised auditor or audit firm. Listed companies may not appoint the same main responsible auditor for more than seven consecutive years or the same audit firm for more than 10 consecutive years. However, provided that a renewal process in accordance with the EU Audit Regulation[6] takes place, listed non-financial companies may appoint the same audit firm for another 10 years (i.e., for a total of 20 years). The company's statutory auditor is appointed by the general meeting to examine the company's annual accounts and accounting practices, and to review the board's and the managing director's management of the company. Auditors of Swedish companies, therefore, are given their assignment by, and are obliged to report to, the owners, and they must not

4 International Accounting Standards.

5 Directive 2013/50/EU of 22 October 2013 amending Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

6 Regulation (EU) No. 537/2014 of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities.

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allow their work to be governed or influenced by the board or the executive management. Auditors present their reports to the owners at the annual general meeting in the annual audit report.

Furthermore, the Companies Act sets out that companies, as a rule, shall establish an audit committee, which shall, without affecting the responsibilities of the board:

a monitor the financial reporting of the company;

b monitor the efficiency of the company's internal controls, internal auditing and risk management;

c keep abreast of the audit of the annual accounts and consolidated accounts;

d review and monitor the impartiality and independence of the auditor;

e pay close attention if the auditor provides the company with services other than auditing services; and

f assist in the preparation of proposals for the decision of the general meeting on the election of auditors.

IV CORPORATE RESPONSIBILITY

Under the Code, which outlines the main responsibilities of the board in relation to internal control and risk management, one of the principal tasks of the board is to ensure that there is an appropriate system for follow-up and control of the company's operation and the risks to the company that are associated with its operations. The Code further stipulates that the board is also to ensure that there is a satisfactory process for monitoring the company's compliance with laws and other regulations relevant to the company's operations, as well as the application of internal guidelines.

Following numerous corporate scandals in Sweden and abroad in recent years, the media, as well as the public and authorities are, to an increasing extent, scrutinising corporations, their management and directors. In particular, different incentive programmes for senior executives, bonuses, other benefits and so forth, but also questionable risk management, have been subject to increased focus, which has led to public debate. In recent years, there have been a few high-profile criminal proceedings against company officials. Most of them have been brought against the executive management but there are a few examples of cases where members of a board of directors also have been charged.

In December 2016, amendments were made to the Annual Accounts Act, as a result of the implementation in Sweden of the EU Directive on non-financial reporting.[7] The amendments entail that certain larger companies, companies that are of public interest and parent companies of large groups draw up a sustainability report that includes the information necessary to understand the company's development, performance and position and the consequences of its business, including information concerning the environment, social matters, staff, respect for human rights and work counteracting corruption. These companies must also report on the diversity policy that applies to the composition of the board of directors.

7 Directive 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

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V SHAREHOLDERS

i Shareholder rights and powers

Shareholders exercise their rights and powers by participating in general meetings. The most significant of these include voting rights in general meetings, the right to have a matter dealt with by a general meeting and the right to ask questions at a general meeting.

The annual general meeting convenes once a year, within six months of the end of the financial year. In between the annual general meetings, extraordinary general meetings may be convened either by the board, if deemed necessary, or by shareholders holding at least 10 per cent of the outstanding shares in the company. Under Swedish law, there are no special facilities for long-term shareholders.

Matters to be brought by the general meeting

Any shareholder who wishes to have a matter addressed at a general meeting may submit a written request thereof to the board. The matter must be addressed at the general meeting if the request from the shareholder is received by the board no later than seven weeks prior to the general meeting, or at a later date if the request is submitted in due time for the matter to be included in the notice to attend the general meeting. The proposed matter must concern an issue relevant to the company that falls within the competence of the general meeting.

There are certain matters that fall under the exclusive competence of the general meeting. The Companies Act and companies' articles of association regulate this. Matters falling within the competence of the board or the managing director of a company may be decided by the general meeting if the shareholders unanimously support the matter and the Companies Act does not prescribe otherwise.

Matters that fall under the exclusive competence of the general meeting include the election of board members and determining their remuneration, the election of the auditor of the company and any amendments to the company's articles of association, and decisions concerning material closely related to party transactions, the shares or share capital of the company and certain corporate restructuring matters, such as mergers and demergers. Share repurchases or share issues shall be brought about by the general meeting; however, the general meeting may authorise the board to decide on a repurchase of the company's own shares or share issue. The authorisation regarding share repurchases must specify the price range for a repurchase and, with regard to a share issue, the maximum number of shares to be issued. Decisions regarding dividend distributions are also reserved for shareholders; however, the dividend distribution may not exceed the proposal made by the board, except when such an obligation exists in accordance with the articles of association or when the distribution was approved by resolution at the request of a minority holding at least 10 per cent of the shares in a company. Shareholders holding at least 10 per cent of the shares in a company are always entitled to request the payment of a dividend corresponding to half of the profits of the financial year, although not more than 5 per cent of the equity of the company.

Decision-making at the general meeting

Each shareholder has the right to participate in a general meeting. The articles of association may prescribe that, to participate at a general meeting, a shareholder must notify the company thereof not later than the date specified in the notice to attend the general meeting. The main rule is that all shares carry equal rights; however, the articles of association may prescribe otherwise.

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Resolutions at a general meeting usually require a simple majority to be passed. However, there are certain matters that require a qualified majority of the votes cast and shares represented at the general meeting. A majority is purported as qualified if it is supported by at least two-thirds of the votes cast and shares represented at the meeting.

The following is an enumeration of certain matters that require a qualified majority vote:

a amendment of the articles of association;
b directed share issue;
c directed issue of warrants or convertibles;
d acquisition and redemption of own shares;
e directed acquisitions or sales of own shares; and
f mergers and demergers.

It is possible for listed Swedish companies to apply postal voting but this option, under normal circumstances, is rarely used in practice. Instead, votes are normally cast at the general meeting either by the shareholder in person or by anyone with a written power of attorney. However, in view of the covid-19 pandemic, Parliament has enacted temporary legislation, which entered into force on 15 April 2020 and will be in effect at least until 31 December 2021, to facilitate the holding of general meetings. Pursuant to this legislation, a company may apply postal voting and collection of proxy forms even though the company's articles of association do not provide for this, which is required under normal circumstances. Furthermore, it is possible under the temporary legislation to carry out a general meeting virtually, without the physical presence of the shareholders or other participants. In these circumstances, the general meeting does not need to be carried out at any particular venue. During 2020, these rules have been used quite extensively in practice.

Objection to a decision by the general meeting

In the event that a resolution of a general meeting has not been adopted in due order or otherwise contravenes the Companies Act, the applicable annual reports legislation or the articles of association, a shareholder, the board, a member of the board or the managing director may bring proceedings against a company before a court of general jurisdiction to set aside or amend the resolution. These proceedings may also be brought by a person whom the board has unduly refused to enter as a shareholder in the share register.

An action to have a general meeting's resolution declared void must be commenced within three months of the date of the resolution, otherwise the right to commence proceedings shall be forfeited. Proceedings may commence at a later time provided that the resolution is such that it cannot be adopted without the unanimous consent of all shareholders, consent to the resolution is required of all or certain shareholders and no such consent has been granted, or notice to attend the general meeting has not been given or significant parts of the provisions governing notice to attend the general meeting have not been complied with.

ii Shareholder duties and responsibilities

Protection of minority rights

An important protection mechanism for the minority shareholders of a company is the principle of equal treatment. The principle is established in the Companies Act and, therefore, is applicable to both listed and unlisted companies. The principle entails that shares of the same class have the same rights, unless otherwise specified in the articles of association. A dividend that results in a difference in the payout per share, therefore, is in conflict with

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the principle of equal treatment. The same would apply to any other asset transfers that differentiate between shareholders of the same class of shares. If a minority shareholder is unfairly treated in relation to a majority shareholder (e.g., if the company enters into an unfavourable agreement with a majority shareholder), the minority shareholder will not be able to rely on the principle of equal treatment to invalidate the transaction, because in that situation all shareholders are affected equally. However, in these circumstances, minority shareholders are protected by other provisions of the Companies Act. For example, the Companies Act states that the general meeting may not adopt any resolution that is likely to provide an undue advantage to a shareholder or another person to the disadvantage of the company or another shareholder. The board, or any other representative of the company, is also prohibited from performing any legal acts or other measures that are likely to provide an undue advantage to a shareholder or another person to the disadvantage of the company or any other shareholder. If a minority shareholder manages to show that it has been unfairly treated, the transaction may be invalidated and the minority shareholder may receive damages. The transaction will typically not be regarded as unfair should the majority shareholder be able to show that the transaction was entered into in the normal course of business.

Some important minority shareholders' rights include the possibility for shareholders holding not less than 10 per cent of all shares in the company (owned by one shareholder alone or by a number of shareholders in conjunction) to demand in writing that the company's board convenes an extraordinary general meeting to address a specified matter. If the request is correctly made, the board is obliged to convene the meeting and must issue a notice to attend the meeting within two weeks of receipt of the demand. A specified matter is an issue relevant to the company that can be decided at the extraordinary general meeting. For that reason, it is not possible for minority shareholders to demand that an extraordinary general meeting is convened just for the opportunity to ask questions of the members of the board or the management. However, a minority that needs to ask questions of the board could initiate its right to appoint an extra auditor or a special examiner and demand that an extraordinary general meeting is held to decide on that matter. During the general meeting, the right to ask questions can be used as a first step to meet the information requests of the minority. If the board satisfies the minority's needs in this regard, the need to appoint an extra auditor or special examiner may no longer be necessary.

A minority shareholder may propose that an extra auditor appointed by the Swedish Companies Registration Office shall participate in the audit of the company with the company's ordinary auditors. The proposal shall be submitted to a general meeting at which the election of auditors is to take place or at which a proposal set forth in the notice to attend the general meeting is to be addressed. If the proposal is supported by owners of at least 10 per cent of all shares in the company or at least one-third of the shares represented at the meeting, and a shareholder then submits a request to the Companies Registration Office, the Companies Registration Office shall appoint an extra auditor. However, the Companies Registration Office may appoint an extra auditor even if the matter has not been addressed at a general meeting, provided that owners of at least 10 per cent of all shares in the company so request. As a general rule, it is the person whom the minority has proposed as an extra auditor who shall be appointed.

The extra auditor has the same privileges and obligations as the company's ordinary auditor and shall participate in the auditing of the company with the ordinary auditor. Thus, the extra auditor shall examine the company's annual report and bookkeeping, as well as

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the board's and the managing director's management of the company. Both the ordinary auditor and the extra auditor shall perform their function independently of the company and its management.

It should be noted that the ordinary auditor, as well as the extra auditor, have a duty of confidentiality and may not, without due authorisation, disclose to an individual shareholder or any third party any information concerning the company's affairs learned by the auditor in the performance of his or her duties, if the disclosure could damage the company. It is therefore mainly through the disclosure of the auditor's report and other accounting documents in close proximity to the annual general meeting that the minority shareholders of the company receive information concerning the company's financial situation. The auditor's report shall be presented to the company's board no later than three weeks prior to the annual general meeting. In listed companies, accounting documents and the auditor's report shall then be made available for the shareholders during a period of not less than three weeks immediately prior to the annual general meeting.

Further, a minority shareholder may submit a proposal for an examination through a special examiner. A special examiner's assignment is to review the company's management and accounts during a specific period in the past or certain measures or circumstances within the company. A proposal for an examination through a special examiner shall be submitted at an ordinary general meeting or at the general meeting at which the matter is to be addressed. If the proposal is supported by shareholders holding at least 10 per cent of all shares in the company or at least one-third of the shares represented at the general meeting, the Companies Registration Office shall, at the request of a shareholder, appoint one or more special examiners. However, in similarity with the rules regarding extra auditors, the Companies Registration Office may appoint a special examiner even if the matter has not been addressed at a general meeting, provided that owners of at least 10 per cent of all shares in the company so request. The special examiner shall submit a report regarding his or her examination. The report shall be made available and sent to the shareholders as well as be presented at a general meeting.

Controlling shareholders and institutional investors

In many Swedish listed companies, there is a controlling shareholder (or shareholders) who has often retained control through shares with greater voting power, such as certain family or privately controlled investment companies. Together, Swedish institutional shareholders have large stakes in many Swedish listed companies. In specific cases, they try to team up and exert influence.

There are no particular duties for controlling shareholders or institutional investors in Swedish legislation and self-regulation, except for the general obligation to launch a takeover bid when a shareholder's ownership exceeds a certain level (30 per cent of the voting rights in the company) and the right and obligation, if requested, to redeem the remaining outstanding shares when the shareholding exceeds 90 per cent of all the shares in the company.

A shareholder does not owe the same fiduciary duties towards the company as the board and is not required to act positively in the interests of the company. However, a shareholder should compensate for damage that he or she causes to the company, a shareholder or another person as a consequence of participating intentionally, or though gross negligence, in any violation of the Companies Act, the applicable annual reports legislation or the company's articles of association.

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iii Shareholder activism

Shareholder activism has been fairly moderate in Sweden. However, in the past few years, it has increased in companies that have been subject to a takeover offer, wherein the activist is calling for a higher price to be paid by the bidder after an offer is completed. This is done by the bidder taking a stake in the target during the offer period and thereafter taking advantage of the strong minority protection contained in the Companies Act. There is also a growing tendency, especially among institutional investors, to take a more active role. Swedish institutional shareholders perform an important role in Swedish listed companies. Together, they have large stakes in many Swedish listed companies. In specific cases, they try to team up and then exert influence. In their daily activism, they try to exert influence through direct dialogue with the board and by taking part in nomination committees, but also indirectly by making statements in news media.

Activist shareholders normally gain a position through the acquisition of a corner in a company, in some cases with Swedish or non-Swedish institutional investors.

Say on pay

The Code stipulates that a company shall have a nomination committee that, *inter alia*, shall nominate candidates to the board and propose the remuneration payable to the board and committee work. The proposal shall be put forth at the annual general meeting. In addition, the Companies Act requires the annual general meeting to approve by resolution the principles for remuneration to management, to which the board must adhere when setting the remuneration for the chief executive officer and other management staff.

Derivative action

Derivative actions on behalf of the company may be brought where a minority of owners of not less than 10 per cent of all shares in the company have, at a general meeting, supported a resolution to bring such a claim or, with respect to a member of the board or the managing director, have voted against a resolution regarding discharge from liability. If shareholders holding at least 10 per cent of the shares in the company vote against a resolution regarding discharge of liability, a claim of damages may be brought against the board and the managing director despite the fact that the rest of the shareholders have voted for discharge.

If the general meeting has adopted a resolution to grant discharge from liability or not to commence an action for damages (without 10 per cent of the shareholders having voted against the resolution), or the period for the commencement of an action has expired, an action may nevertheless be brought where, in the annual report or the auditor's report, or otherwise from a material aspect, correct and complete information was not provided to the general meeting regarding the resolution or the measure on which the proceedings were based.

iv Takeover defences

The Swedish corporate governance framework is significantly guided by the principle of equal treatment and a strong requirement for the board always to act in the best interests of the company and its shareholders. The board may not promote shareholders' initiatives that conflict with these rules and principles. For that reason, unless the general meeting of shareholders has adopted a resolution on it, target boards are prevented from taking defensive measures and, thus, the Swedish takeover rules are rather takeover-friendly in that sense. However, the board may at all times seek alternative bids (i.e., white knights).

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Staggered boards do not exist (each board member is elected annually, and there is no way of preventing a new owner from making an immediate board replacement). Poison pills and stitching, etcetera, are not allowed under Swedish law.

v Contact with shareholders

As set out in Section III, Swedish listed companies have a duty to disclose all inside information as soon as possible. Shareholders also receive information about all matters proposed to be decided by the general meeting. The notice to a general meeting shall be published and made available to the shareholders no later than three or four weeks (depending on the type of general meeting) prior to the general meeting and shall include information about the decisions proposed to be taken. Shareholders also have the right to ask questions at the general meeting, and in practice often do so in connection with the managing director's presentation of the financial statements of the company.

The company may generally contact individual shareholders as long as the contact is in the interests of the company and in accordance with the principle of the equal treatment of all shareholders (i.e., the contact may not be aimed at giving one shareholder undue benefit at the expense of other shareholders or the company). However, if inside information should be disclosed, MAR requires that the disclosure is made in the normal exercise of an employment, a profession or duties. Certain situations in which a company engages in discussions with a major shareholder typically meet these criteria, which may include, for example, planned share issues or other corporate restructurings. In the case of contemplated securities offerings, the rules regarding market soundings in the MAR may be applicable, and the company would have to comply with certain additional requirements in the MAR.

Large shareholders acting together will have to observe the rules in respect of acting in concert, which may trigger an obligation to launch a mandatory takeover bid if the joint holding of shareholders acting in concert were to exceed 30 per cent of the votes in the company.

VI OUTLOOK

The updated EU Shareholders Rights Directive[8] has necessitated changes to legislation and the Code, but these changes have not had any major impact on the Swedish corporate governance system as a whole. Among other things, the implementation of the Directive has restricted listed companies' flexibility in relation to remuneration to the executive management and entails stricter transparency requirements in this regard, as listed Swedish companies, as from 2021, are required to draw up a remuneration report for each financial year and submit the report to the general meeting. The temporary legislation, allowing companies to hold general meetings virtually as well as changing the preconditions for using postal voting and collecting proxy forms, may result in a change of practices in Swedish corporate governance entailing a move towards acceptance of remote or postal participation in general meetings. However, it remains to be seen whether the temporary legislation will be made permanent by the Swedish legislature or not.

8 Directive 2017/828 of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

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Appendix 1

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