

KOLLEGIET
FÖR SVENSK BOLAGSSTYRNING

The Swedish Corporate Governance Board

SPECIAL FEATURES OF SWEDISH CORPORATE GOVERNANCE

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This brochure is written exclusively for information purposes and shall not be regarded as legal advice. Other rules and regulations as well as facts and circumstances in the particular case may have an impact on any legal conclusions made. Therefore it is always recommended that the advice of legal counsel is obtained before any action is taken.



Foreword

The share price of any listed company is influenced by an evaluation of the corporate governance standards of the market where the company is listed and the corporate governance practices of the company itself. Inadequate or false information about the company may harm both the company and its investors.

The purpose of this brochure is to facilitate a good understanding among international investors of specific Swedish corporate governance provisions and practices.

The Swedish model of corporate governance is fundamentally the same as its counterparts existing in most industrialised countries. However, there are specific features that mirror a market in which a few major shareholders often assume particular responsibility for a company. This is a legal tradition involving a strict division of powers between the governance bodies and a business climate permeated by a high degree of transparency.

Swedish corporate governance is based on legislation and self-regulation. Some issues covered by corporate governance codes in other markets are governed by statute and are therefore not reiterated in the Swedish Code of Corporate Governance or companies' articles of association.

The essence of Swedish corporate governance is that ultimate power should rest with the shareholders. It is characterised by clear divisions of powers and responsibilities between shareholders voting at shareholders' meetings and working through nomination committees, non-executive boards responsible for companies on behalf of

shareholders, CEOs in charge of operations and auditors reporting to shareholders. Active participation by shareholders at shareholders' meetings is seen as promoting a sound balance of power between the shareholders, the board of directors and senior management.

The Code therefore encourages shareholders with large holdings in listed companies to take an active part in shareholders' meetings and to have a policy on how to exercise their roles as owners of the company. Both large shareholders and those with minority holdings are responsible for ensuring they do not abuse their voting powers or minority rights. Institutional shareholders are recommended to make their ownership policy public to provide information about the principles followed in exercising their voting rights.

This brochure has been written by Sven Unger, a leading expert on Swedish company law and corporate governance practice, who alone is responsible for its content. It is published by the Swedish Corporate Governance Board as a service to international investors wishing to understand Swedish corporate governance so that they can better exercise active ownership of Swedish listed companies.

Stockholm, 15 December 2006

Hans Dalborg

Chairman
Swedish Corporate Governance Board

I. General aspects of Swedish corporate governance

- A. The Swedish Companies Act (2005:551) contains a general provision protecting minority shareholders, under which no decision which is likely to provide an undue advantage to a shareholder or another person to the disadvantage of the company or another shareholder may be adopted at a shareholders' meeting. The board of directors or any other representative of the company may not perform legal acts or any other measures which are likely to provide an undue advantage to a shareholder or another person to the disadvantage of the company or any other shareholder.
- B. By law, the chair of the board and the CEO (Managing Director) of a listed company cannot be the same person.
- C. Under Swedish law, the board of directors has no influence over its own size, nor may it alter its size.
- D. The board of directors can engage its own advisors at the company's expense, and may also authorise a committee of the board to do so. A decision to engage advisors must be taken by the board. Individual directors or fractions of the board may not engage advisors at the company's expense.
- E. The Swedish Companies Act requires that a statutory merger between two companies, i.e. the dissolution of one company and transfer of all its assets and obligations to another company, be approved at a general meeting of shareholders by a certain majority. However, full or part-acquisition of another company or integration of a business does not necessarily require a decision at the general meeting of shareholders.
- F. For elections, the Swedish Companies Act provides that the candidate receiving the largest number of votes is elected. This plurality standard is mandatory under Swedish law. Hence, it is not possible for a company to elect directors by a majority vote.



- G. Sweden has no requirement or recommendation that a director should be required to resign upon changing employment. Under the Listing Agreement and the Code, only one member of company management may be a director. A managing director/CEO who is a director and resigns from office will most probably also resign from the board. The board may convene a general meeting of shareholders to decide on the dismissal (and replacement) of a director. The board must convene a meeting of shareholders for this purpose if so requested by shareholders representing at least ten per cent of the shares in the company.

- H. The Swedish Companies Act requires a minimum two-thirds majority of votes and shares at the general meeting of shareholders to amend the articles of association. This provision is intended to protect minority shareholders.

- I. The Swedish Companies Act requires that a general meeting of shareholders be summoned and held to adopt valid decisions, unless all shareholders agree otherwise (which, in practice, is not possible for listed companies). Shareholders may exercise their rights at a general meeting of shareholders personally or via a representative holding a written and dated proxy. Proxies are only valid for one year from date of issue. Thus, the Swedish Companies Act does not allow other decisions by shareholders in the form of written consent.

II. The annual general meeting of shareholders (“AGM”) of a Swedish company listed on the Stockholm Stock Exchange

A. General

Swedish AGMs are governed by the Swedish Companies Act (2005:551) (“SCA”). Provisions on AGMs are also found in the Listing Agreement between the Stockholm Stock Exchange and listed companies, and in the Swedish Code of Corporate Governance (“the Code”). The term “Listing Agreement” in this memorandum includes the Listing Requirements.

However, SCA, the Listing Agreement and the Code do not govern all technical aspects of an AGM. Where the law and the Listing Agreement and the Code are silent, reliance must be placed on general Swedish procedural practice for meetings. That practice may naturally differ from practices in other countries.

B. The Listing Agreement

The Listing Agreement is posted on the website www.se.omxgroup.com/nordicexchange.

Under the Listing Agreement, the Code applies to companies whose shares are traded on the Stockholm Stock Exchange. However, the Code does not apply to companies with a market capitalisation below SEK 3 billion, unless their shares are officially listed or the company has voluntarily chosen to apply the Code.

A list of the companies applying the Code may be obtained on the above website.

C. The Code

The Swedish Corporate Governance Board (Swedish: *Kollegiet för Svensk Bolagsstyrning*) is responsible for promoting and developing the Code.

The Board’s website is: www.corporategovernanceboard.se. The Code is posted on the website.

The Code is based on the “comply or explain” principle.

Companies applying the Code must attach a special report on corporate governance to their annual report. They must also have a special corporate governance section on their website. That section must give current information on corporate governance at the company, together with other information required by the Code.



D. **Notice convening an AGM**

SCA provides that the board of directors must convene the AGM by publishing a notice in Swedish newspapers no earlier than 6 weeks and no later than 4 weeks before the AGM. The notice must contain a proposed agenda. The AGM may not pass a resolution on an item not set out in the notice. (Exception: If the Articles of Association stipulate that a certain item must be dealt with at the AGM, the AGM may pass a resolution on that item, even if it is not included in the notice.) The main contents of any item on which a proposal has been submitted by the board must be set out in the notice. Other proposals (e.g. by a nomination committee or individual shareholders) must also be set out in the notice to the extent they are known by the company in time for inclusion in the notice.

The Listing Agreement and the Code provide that notices and proposals must be posted on the company's website.

E. **Proposals**

As indicated above, generally speaking the AGM must not pass a resolution on an item not included in the notice. However, (with some exceptions) once an item is set out in the notice, the AGM is not restricted to the proposals in the notice on that item.

Example 1: Under the item “Decision on the number of Directors of the Board to be elected at the AGM”, the only proposal in the notice is a nomination committee proposal that four directors be elected. Under the articles of association, the board must have no fewer than three and no more than seven members. At the AGM, a shareholder proposes that only three directors be elected. The AGM must then vote on whether there should be three or four directors.

Example 2: The AGM has decided that the board should have four members. Under the item “Election of Board of Directors” the only proposal in the notice is a nomination committee proposal to elect persons A – D. At the AGM, a shareholder proposes that persons E – H should instead be elected. Another shareholder nominates person I for election. The AGM must then elect four directors among the persons A – I.

F. Right to attend the AGM

- F.1. Swedish listed companies are registered at VPC AB, a central security depository. Any person listed as a shareholder in the VPC printout of the share register on the fifth business day (Swedish: vardag) before the AGM is entitled to attend the AGM. Saturday is, in this context, a business day. Shareholders who wish to attend the AGM, and whose shares are registered in the name of a nominee, must arrange with their nominee to be temporarily entered in the share register in their own names. This must have been done by the record date. Shareholders must thus instruct their nominees in good time. Information on this is normally given in the notice of the AGM.
- F.2. Swedish listed companies normally require that shareholders give notice of their intention to attend the AGM. Information on this is given in the notice of the AGM.
- F.3. A shareholder may exercise his rights at an AGM personally or via a representative holding a written and dated original proxy. The proxy is only valid for one year from date of issue.

G. Voting and majority rules

- G.1. Three types of vote are possible: Yes (for), no (against) and abstention.
- G.2. On matters other than election, the SCA essentially provides that a resolution must be passed by a simple majority vote (= more than 50% of votes cast) at the AGM.
- Example 3:** The AGM must decide on the number of directors. There are two proposals: 3 and 4. There are 210 votes represented at the AGM. There are 100 votes for Proposal 3 and 90 votes for Proposal 4, with 20 abstentions. The AGM has voted in favour of 3 directors.
- G.3.1. For elections, SCA provides that the candidate receiving the highest number of votes is elected. Thus, election does not require an overall majority of the votes cast.



Example 4: The AGM must elect three directors. There are 210 votes represented at the AGM. There are eight nominees: A – H. Each shareholder may then vote for a maximum of three nominees (but may also vote for fewer than three). The outcome of the vote is as follows: A 99 votes, B 10, C 98, D 97, E 100, F 100, G 40, H 50. A, E and F have thereby been elected.

This plurality standard is mandatory under Swedish law. Thus, it is not possible for a company to elect directors by a majority vote.

G.3.2. Election of directors is not bundled.

Example 5: The AGM has decided there will be three directors. Shareholder A nominates candidates 1 – 3. Shareholder B nominates candidates 4 – 6. The election is not between bundle 1 – 3 and bundle 4 – 6. The shareholders are asked to choose between 1, 2, 3, 4, 5 and 6 and may vote for a maximum of three candidates. The outcome of the election may be that 1 and 3 and 5 are elected.

G.3.3. However, where the number of nominees is the same as the number of seats on the board, it may appear to be a bundle election.

Example 6: The AGM has decided there will be three directors. The nomination committee has nominated candidates 1 – 3. There is no other proposal. The chair of the AGM then asks: “Will the AGM resolve in accordance with the proposal of the nomination committee?” If there is a single vote in favour, candidates 1 – 3 are elected.

In theory, the three directors have been elected individually, because each of them has received the highest number of votes. However, for practical reasons, the chair of the AGM does not ask the shareholders to vote on each of the nominees separately. There would be no point in doing so, since all of the nominees will be elected as long as there is a single vote in favour of the nomination committee’s proposal and there are no other candidates.

This is the most practical approach to a situation where the number of nominees equals the number of seats. But it does give the impression that the board is elected as a bundle. For example, there may be a situation where a shareholder is prepared to vote for candidates 1 and 3, but not for

candidate 2; this may be for any reason, including the very good reason that candidate 2 is unknown to the shareholder, who therefore does not wish to vote for him/her.

The procedural approach at Swedish AGMs may give the shareholder the impression that if he wishes to vote, he must vote for or against the whole bundle 1 – 3. However, the shareholder may ask the chair of the AGM to instruct the shareholders to vote for each candidate individually. Alternatively, the shareholder may say that he is voting for candidates 1 and 3 only, not for 2.

Thus, here too, election of directors may be conducted individually if a shareholder so requests. At present this is very rare in Sweden, but practice may change should there be a demand at AGMs.

- G.4. In some cases, e.g. to amend the articles of association, SCA requires more than an overall majority of the votes cast.

H. **Discharge from liability**

- H.1. Under SCA, one mandatory matter to be dealt with at each AGM is “discharge from liability towards the company of the board of directors and managing director”. This reflects a Swedish tradition among companies and other associations.
- H.2. The auditors must state in their audit report whether they recommend that the AGM discharge the members of the board and the managing director from liability. It is highly unusual for an AGM not to vote in favour of a recommendation to this effect by the auditors. Any shareholder is free to oppose a motion to grant discharge. If so, and if the auditors have recommended discharge, the shareholder should normally explain the reason for his view, although this is not compulsory. It is also possible for a shareholder to vote against discharge, even if he has not expressed any view before the vote.
- H.3. A decision by the AGM to grant discharge only concerns liability towards the company. Liability towards the shareholders and others is not affected.



- H.4. An action for damages in favour of the company may be initiated where a majority, or a minority consisting of owners of not less than one-tenth of all shares of the company, has voted at an AGM against a motion for discharge from liability.
- H.5. Discharge from liability does not always prevent the company from initiating an action for damages. Where a resolution for discharge has been adopted, an action may still be initiated if information that was correct and complete in essential respects concerning the decision or measure on which the action is based was not given in the annual report or the auditor's report or otherwise presented at the AGM. An action for damages based on criminal liability may always be initiated regardless of a resolution to grant discharge from liability.

I. Employee representatives on the board of directors

- I.1. Employees of companies employing an average of at least 25 employees during the preceding financial year may appoint two directors and two alternates. Employees of companies operating in several lines of business and employing an average of at least 1,000 employees during the preceding financial year may appoint three directors and three alternates. The number of employee representatives may not exceed the number of other directors, however.
- I.2. Employee representatives are full members of the board and have the same responsibilities and duties as directors elected at a general meeting or otherwise elected in accordance with the articles of association. Unless otherwise stated, the provisions of SCA governing company directors and alternates apply equally to employee representatives and alternate employee representatives. An alternate employee representative may attend a board meeting even if the main employee representative is also present.
- I.3. One employee representative may attend and take part in discussions when a matter later to be decided on by the board is prepared by members of the board or officers of the company speciality appointed for that purpose.

Employee representatives may not take part in discussions or resolutions on collective bargaining agreements, strikes, lockouts or the like.

J. Standard agenda of an AGM – mandatory items

J.1. Opening of the Meeting

Generally speaking, the AGM must be opened by the chair of the board of directors or any person appointed by the board of directors.

J.2. Election of Chair of the Meeting

The nomination committee must propose a chair of the meeting.

The chair of the board of directors may chair the meeting. In recent years it has become fairly common for a person outside the company to chair the meeting.

J.3. Approval of the voting list

J.3.1. The voting list must be prepared by the chair of the meeting, provided the chair has been elected at the AGM without a vote. In other cases, the voting list must be prepared by the person who opened the meeting.

J.3.2. If a vote is taken on the voting list, the chair of the meeting (or the person who opened the meeting) must decide who is entitled to vote.

J.4. Approval of the agenda

J.4.1. The notice of the meeting must include a proposed agenda. This must be presented to the meeting for approval.

J.4.2. The meeting may decide to change the order of the items to be dealt with according to the proposed agenda, but the numbering of items may not be changed. This means that if a person attending the meeting has been instructed to vote “No” on item number 10, this instruction will still suffice even if the order of items is changed.

J.5. Election of minutes-checkers

J.5.1. The minutes must be attested by the chair of the meeting and at least one



person appointed by the meeting. Under the Code, the minutes-checker must be a shareholder or his/her representative, who is not a member of the board of directors or an employee of the company.

J.5.2. The minutes must be made available to the shareholders at the offices of the company, and posted on the website no later than two weeks after the meeting. A copy must be sent to shareholders on request. The voting list must be appended to the minutes. However, posting the voting list on the website is not compulsory.

J.6. **Determination of whether the Meeting has been duly convened.**

See Section D, “Notice” above.

J.7. **Presentation of the Annual Report and the Auditor’s Report as well as the Consolidated Accounts and the Auditor’s Report on the Consolidated Accounts.**

This item normally includes a presentation of the work of the board and its committees, a presentation by the managing director and a presentation by the auditor.

After the presentations, shareholders are invited to put questions to the board of directors, the managing director and the auditor. This is an opportunity for discussion between the shareholders, the board of directors and the managing director.

J.8. **Adoption of the Profit and Loss Account and Balance Sheet and the Consolidated Profit and Loss Account and Consolidated Balance Sheet.**

J.8.1. These documents are included in the Annual Report, which must be made available at the company’s office and posted on its website at least two weeks before the AGM.

J.8.2. The auditors must state in their audit report whether they recommend the adoption of the profit and loss accounts and balance sheets.

- J.8.3. The adopted documents form the basis for calculation of the amount available for distribution of dividends.
- J.9. **Allocation of the Company's profit/loss**
- J.9.1. The board of directors must propose an allocation of the company's profit/loss. A reasoned statement by the board as to whether a proposed distribution of profits is justifiable in light of certain provisions of SCA must be appended to the proposal. The proposal and the statement must be available at least two weeks before the AGM. Normally, this proposal is included in the notice of the AGM (i.e. no later than four weeks before the AGM).
- J.9.2. The auditors must state in their audit report whether or not they recommend that profit/loss be allocated in accordance with the proposal of the board of directors.
- J.9.3. A shareholder may present an alternative proposal on distribution of profits. If so, the board of directors must present a reasoned statement as to whether this proposal is justifiable. The proposal and statement must also be available at least two weeks before the AGM.
- J.9.4. A shareholder's proposal for a "mini-distribution", aimed at protecting minority shareholders, may be dealt with at the AGM even if it is not presented prior to the AGM.
- J.9.5. The AGM must also decide a record date for entitlement to dividends. This date is normally the third banking day following the AGM.
The AGM may authorise the board of directors to decide the record date.
- J.10. **Discharge from liability towards the Company of the Board of Directors and Managing Director**
See Section H. "Discharge ..." above.



J.11. Determination of the number of Directors and Alternate Directors to be elected at the Meeting

- J.11.1. The articles of association of the company set out the minimum and maximum number of directors and alternates. The SCA provides a minimum of three directors. The Code states that no alternates shall be elected.
- J.11.2. Under Swedish law, the board of directors has no influence over its own size, nor may it alter its size.
- J.11.3. The nomination committee must propose the number of directors and alternates.
- J.11.4. Any shareholder may propose an alternative number at the AGM (without having presented that proposal prior to the AGM).

J.12. Determination of remuneration payable to the Board of Directors

- J.12.1. Under SCA, the AGM must decide on the fees and other remuneration for each director.
- J.12.2. The nomination committee must make remuneration recommendations. Its recommendations must be presented in the notice of the AGM (i.e. at the latest four weeks before the AGM) and on the company's website.
- J.12.3. Any shareholder may submit an alternative proposal at the AGM (without having presented that proposal prior to the AGM).

J.13. Election of the Board of Directors

- J.13.1. The Listing Agreement and the Code contain the following rules on independence of directors. No more than one person from company management may be a director. The majority of directors elected at the AGM must be independent of the company and its management.

At least two of the directors who are independent of the company and its management must also be independent of the company's major shareholders.

“Major shareholders” are shareholders directly or indirectly controlling 10 per cent or more of the shares or votes in the company.

- J.13.2. Under SCA, directors are generally elected for a term lasting from one AGM to the next.
- J.13.3. Under certain conditions, employees may appoint directors. See Section I. “Employee representatives...” above. The articles of association may provide that a body other than the AGM is to appoint a director (provisions of this kind are very rare among listed companies). Apart from these exceptions, directors must be elected at the AGM. Thus, the board of directors may not appoint members of the board. The term of directorships normally expires at the AGM. This means that if the AGM does not elect a director to a seat, that seat will be vacant.
- J.13.4. The nomination committee must nominate the chair and other directors. These recommendations must be presented in the notice of the AGM (i.e. no later than four weeks before the AGM) and on the company’s website.
- J.13.5. The Code states that the chair of the board must be elected at the AGM.
- J.13.6. At the AGM any shareholder may submit alternative nominee directors (without having presented their proposal prior to the AGM).
- J.13.7. Re voting and majority rules; see Section G “Voting...” above.
- J.14. **Election of auditors**
- J.14.1. Under SCA, auditors are appointed for a term of four years (from the end of the AGM year 0 until the end of the AGM year 4). This provision is designed to protect the independence of auditors.
- J.14.2. However, an auditor may be replaced at an AGM before the end of the four-year term. This is very rare among Swedish listed companies.



J.14.3. Where the same auditor is reappointed at the end of a four-year period, the AGM may decide that reappointment will be for only three years. (This is in line with EU regulations on rotation of auditors.)

J.14.4. Recommendations on nominee auditors and on audit fees must be made by the ordinary nomination committee or a nomination committee appointed specifically for that purpose.

The recommendations must be included in the notice of the AGM and posted on the company's website.

J.14.5. Owing to the SCA provision in 14.1 above, election of auditors is normally only an item on the AGM agenda once every four years.

J.15. **Election of Nomination Committee**

J.15.1. There are no provisions governing nomination committees in SCA or the Listing Agreement.

J.15.2. The Code states that the AGM must appoint members of a nomination committee or specify the manner of their appointment.

J.15.3. Under the Code, the nomination committee must represent the shareholders. The majority of nomination committee members must not be directors. Neither the managing director nor other members of company management may be members of the nomination committee. The chair of the board of directors or other director must not chair the nomination committee.

J.15.4. Thus, in contrast to some other jurisdictions, the Code does not allow a nomination committee the majority of whose members are directors.

J.15.5. It is fairly common among Swedish listed companies for the nomination committee to consist of the chair of the board of directors and four or five representatives of the largest (or major) shareholders.

J.15.6. The nomination committee normally submits a proposal under this item.

J.15.7. Any shareholder may submit an alternative proposal at the AGM (without having presented that proposal prior to the AGM).

J.16. **Decision on guidelines for remuneration of company management**

Under SCA, it is the prerogative of the board of directors to appoint (and dismiss) the managing director (MD). This implies that the board of directors must decide on the MD's remuneration and other terms of employment. This is in fact the Swedish practice. In companies applying the Code this matter is prepared by a remuneration committee, which submits a proposal for decision by the board.

Under SCA and the Code, the board of directors must present proposed guidelines for remuneration of the MD and other members of company management to the AGM for its approval. The proposal must be posted on the company's website when the notice of the AGM is published (i.e. no later than four weeks before the AGM).

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