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The International Comparative Legal Guide to:

Corporate Governance 2008

A practical insight to cross-border corporate governance

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1 Setting the Scene - Sources and Overview

1.1 What are the main corporate entities to be discussed?

The companies covered in the answers given below are public limited liability companies admitted to trading on a regulated market in Sweden; at present being only the OMX Nordic Exchange Stockholm (the "**OMX Exchange**") and Nordic Growth Market ("**NGM**") ("**stock-market companies**"). Companies quoted on a multilateral trading facility ("**MTF**") (Swedish MTFs include First North and Aktietorget), which are not specifically covered in the answers below, are more lightly regulated and are not subject to the Swedish Corporate Governance Code, although they are required to adhere to the rules of the relevant MTF.

1.2 What are the main legislative, regulatory and other corporate governance sources?

The law is as stated at 1 January 2008.

The main source of corporate legislation covering all limited liability companies is the Swedish Companies Act. The Companies Act has been overhauled in recent years and a new, modernised Companies Act came into force on 1 January 2006 (the "**Companies Act**"). All Swedish limited companies, whether public or private and whether stock-market companies or not, are subject to the Companies Act. However, certain rules contained in the Companies Act apply only to public companies or only to stock-market companies.

All companies have articles of association, which must be consulted, containing overarching rules for the company, including, amongst other things, the objects of the company, how notice convening shareholder meetings must be given, the minimum and maximum number of shares and amount of share capital of the company, the differences between classes of shares and the minimum and maximum number of the board members and alternate board members (if any).

In addition to the Companies Act and the articles of association, a number of different laws and regulations set out corporate governance provisions including the following:

- the Swedish Corporate Governance Code (the "**Code**") applies to companies admitted to trading on the OMX Exchange and whose market capitalisation is at least SEK 3 billion. Its provisions are not mandatory but companies must give reasons for non-compliance with any of the requirements of the Code ("comply or explain");
- the listing agreements with OMX Exchange and NGM set out, amongst other things, continuous disclosure obligations. The listing requirements of the OMX Exchange set out, amongst other things, criteria for ensuring the independence of the board of directors;
- the Swedish Securities Market Act (the "**Securities Market Act**") regulates, amongst other things, the control and disclosure of price-sensitive information and the circumstances in which disclosure may be delayed. The Securities Market Act also contains periodic disclosure requirements. Regulations issued by the Swedish Financial Supervisory Authority (the "**SFSA**") set out more detailed rules on, amongst other things, continuous disclosure requirements as well as the manner in which announcements must be made;
- the Act on Notification Obligations for Certain Holdings of Financial Instruments (the "**Notification Obligations Act**") contains shareholding notification provisions applicable to directors, officers and major shareholders of stock-market companies. It also prevents board members and the managing director of stock-market companies from dealing in their company's securities during certain periods in the relevant company's announcements' calendar. This act also sets out the requirement for stock-market companies to maintain and regularly update a list of persons with access to inside information;
- the Trading in Financial Instruments Act (the "**Trading Act**") implements the EU Prospectus Directive. It also sets out the Swedish shareholding disclosure regime, including a requirement for stock-market companies to announce the total number of voting rights and capital in respect of each of its classes of shares at the end of each calendar month in which a change occurs; and
- statements and rulings by the Swedish Securities Council, a private body that oversees compliance with good practice on the Swedish securities market, offer guidance on specific corporate governance issues.

1.3 What are the current topical issues and trends in corporate governance?

The Code is currently undergoing a thorough review and is expected to become applicable to all stock-market companies from mid-2008. The intention of the revision is further to simplify the Code, without lowering the standard for good corporate governance, and to take into account a forthcoming Nordic reconciliation of corporate governance codes. The "comply or explain" principle is intended to remain.

2 Shareholders

2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

While the management and operation of the company are matters for the board, certain powers are reserved to the shareholders through a requirement that certain issues be decided by the passing of resolutions at shareholder meetings. The shareholders' rights and powers are therefore generally exercised at shareholder meetings. The Companies Act sets out a number of issues that cannot be addressed other than by appropriate shareholder approval. These issues include the composition of the board of directors, the appointment of auditors, alterations to the articles of association, share capital increases or decreases, distributions to shareholders, the approval of statutory mergers and the dissolution of the company. The Code also sets out certain matters that are reserved to be decided at shareholder meetings, including the appointment of the chairman of the board, the adoption of equity referenced incentive schemes for the management and the establishment of nomination committees or the method through which such committees are established. Furthermore, under the listing agreements certain related party transactions require shareholder approval. While there is no express requirement that material transactions must be put to the shareholder meeting for approval, it is debated whether substantial transactions by their nature and size would require shareholder approval.

2.2 Do indirect shareholders (e.g. beneficial shareholders who hold through nominees), have direct rights in relation to the corporate entity/entities?

Owners whose shares are held through a nominee have the same rights as direct shareholders in relation to the company. However, in order to exercise those rights at shareholder meetings, the relevant shareholder must ensure that the shares are temporarily registered in his or her own name in due time prior to the relevant shareholder meeting.

2.3 Are there any limitations on, and disclosures required, in relation to interests in securities by shareholders?

There are no statutory limitations on the number of securities a shareholder can hold, or the speed with which he or she can build a stake in a company. (However, takeover rules, which are beyond the scope of this publication, must be considered as non-compliance with these rules may have material consequences.)

Very briefly, the Swedish shareholding disclosure regime set out in the Trading Act requires a person to notify the SFSA and the relevant issuer if (i) that person acquires or disposes of shares in the issuer (including through a holding of qualifying financial instruments), and (ii) as a result of that acquisition or disposal, the percentage which he holds reaches, exceeds or falls below 5%, 10%, 15%, 20%, 25%, 30%, 50%, 66 2/3% or 90% of the total number of shares or voting rights in the relevant issuer. In determining what percentage a person "holds", the Trading Act requires a number of indirect interests to be aggregated. In order to facilitate the necessary percentage threshold calculations, stock-market companies must announce the total number of voting rights and capital of the company at the end of each month in which a change occurs.

2.4 What shareholder meetings are commonly held?

All limited liability companies must hold an annual general meeting (AGM) within six months of the expiry of the financial year. Other shareholder meetings (EGMs) are held by companies as and when they need to (e.g. to approve specific corporate actions).

The issues that are commonly addressed at AGMs include the adoption of the profit and loss account and the balance sheet, the allocation of profits or losses and the discharge from liability for board members and the managing director, the appointment of board members, the appointment of auditors (the auditors' term of office is generally four years), fees for the board members and the auditors, the appointment of a nomination committee and the adoption of guidelines for management remuneration.

In order for a resolution to be passed at a shareholder meeting, a simple majority is generally required. However, the Companies Act requires certain resolutions to be passed by a qualified majority of two-thirds, including alterations to the articles of association, issues on a non-pre-emptive basis and reductions of the share capital. Furthermore, the Companies Act requires certain resolutions to be passed by a higher super-qualified majority, including issues or transfers of shares or other securities to the board of directors, management or employees, the approval of statutory mergers where the merger consideration consists in whole or in part of cash and certain alterations to the articles of association.

2.5 Can shareholders call shareholder meetings or put resolutions?

Holders of 10% of the share capital can require a shareholder meeting to address a specified matter, in which case the board of directors must give notice convening the meeting within two weeks of receipt of the relevant request. A shareholder can require a resolution to be put to a shareholder meeting if the request is submitted to the board of directors in due time for the matter to be included in the notice convening the shareholder meeting.

2.6 Is electronic communication to or by shareholders possible?

The Companies Act permits electronic communication to and by shareholders in most instances. There are, however, certain limited circumstances in which the company must communicate with the shareholders by post. The Companies Act recently introduced rules for stock-market companies to facilitate electronic communication to the shareholders also in these limited circumstances. It is, therefore, now possible for stock-market companies, subject to pre-approval by the shareholders, to formally ask shareholders about the method they wish to receive communications and to use electronic communication for all shareholders who either agree to receipt of communication in this way, or who fail to respond to the request. It is open to shareholders to respond to this request and say they wish to continue to receive paper communication and it is also possible at any point thereafter for them to change their mind and request paper copies.

2.7 Can shareholders be liable for acts or omissions of the corporate entity/entities?

The corporate veil can only be lifted in exceptional situations and the shareholders of a limited liability company are generally not liable for acts or omissions of the company. A shareholder may, however, be liable for damages if he or she intentionally or through

gross negligence participates in a violation of the Companies Act, applicable annual reports legislation or the company's articles of association.

2.8 Can shareholders be disenfranchised?

Shareholders cannot be disenfranchised except in very limited circumstances. For example, the Companies Act allows a shareholder to acquire minority shareholdings on a compulsory basis if (alone or together with any subsidiary) the shareholder owns more than 90% of the shares in a limited liability company. A further example where a shareholder can be disenfranchised is where a person does not comply with the obligation to make a mandatory bid, in which case the SFSA has the power to suspend voting rights that attach to target shares held by that person.

2.9 Can shareholders seek enforcement action against members of the management body?

A shareholder can start an action against board members for breach of their duties, although this is generally difficult to do as the proper claimant is in most cases the company. However, holders of at least 10% of the share capital can bring an action in their own name concerning damages to the company if such an action has been addressed at a shareholder meeting. Furthermore, holders of at least 10% of the share capital may prevent a resolution to discharge the board of directors and the managing director from liability.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

All companies are managed by a single, one-tier board of directors. All public companies must also have a managing director appointed by the board. The board of directors is responsible for the company's organisation and management of the company's affairs. It is the managing director's duty to attend to the day-to-day management of the company.

The Companies Act provides that the board of public companies must have at least three members, but does not provide for a maximum, whereas the company's articles of association must set out either fixed number of board members or, as is more common, a minimum and maximum number of board members.

The listing requirements of the OMX Exchange and the Code set out criteria for ensuring the independence of the board of directors. Very briefly, these criteria provide that no more than one person from the company management may be a board member. The majority of the board members must be independent of the company and its management. At least two of the board members 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% or more of the shares or votes in the company.

The board of directors is headed by a chairman who, under the Code, is appointed by the shareholder meeting. The Companies Act provides that the roles of the chairman and the managing director must not be combined in public companies.

Under the Code, the board of directors is expected to establish a remuneration committee and an audit committee. The remuneration committee is responsible for recommendations on remuneration strategy and guidelines for management. The audit committee is responsible for, amongst other things, ensuring that the board of directors is able to monitor the integrity of the company's financial statements, regularly meeting with the auditors to identify the focus and scope of the auditing and to discuss the coordination of the internal and external auditing as well as the risks facing the company. The audit committee is also responsible for appraising the quality of the auditing.

3.2 How are members of the management body appointed and removed?

The shareholders control the composition of the board. For elections, the Companies Act provides that the candidate receiving the largest number of votes is elected. This plurality standard is mandatory under Swedish law. As a result, it is not possible for a company to elect directors by a majority vote. The appointment, re-appointment or removal of board members is generally made at the AGM on the recommendation of the nomination committee. The board members are generally appointed for a term that lasts from one AGM to the next. There are no nationality restrictions, although at least half of the board members must generally be resident within the EEA according to the Companies Act. The managing director is appointed by the board, typically until further notice. As set out in question 4.2 below, employees of companies of a certain size are entitled to employee participation and therefore have a right to appoint board members and alternate board members.

3.3 What are the main legislative, regulatory and other sources impacting on directors' contracts and remuneration?

Under the Companies Act the shareholder meeting determines the remuneration of each member of the board. Under the Code it is the nomination committee's responsibility to put proposals for the remuneration of each board member to the shareholder meeting. Service contracts with individual board members in respect of consulting or similar services do not generally require pre-approval by the shareholders.

The remuneration of the managing director is determined by the board. In stock-market companies however the determination of management remuneration, including the remuneration of the managing director, must be made in accordance with the management remuneration guidelines adopted by the AGM on the recommendation of the board of directors.

The adoption of management and employee equity incentive schemes generally requires shareholder approval (by not less than 90% of both the shares voted and of the shares represented at the relevant shareholder meeting). The Securities Council has issued a statement that sets out additional requirements for incentive programmes, including disclosure obligations.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body?

Members of the board and management can own shares in the company and there is generally no restriction on the size of their holdings. However, they must not deal in shares 30 days prior to the announcement of quarterly reports including the date of publication. Dealings by board members and management (and their connected persons) are also subject to notification requirements under the Notification Obligation Act. This act requires board members and management to notify their holdings and changes to these holdings and their connected persons' holdings

of equity securities to the SFSA. The SFSA maintains a public register of these notifications.

3.5 What is the process for meetings of members of the management body?

The board has a wide discretion to regulate its own affairs, typically through the rules of procedure that the board is required to adopt each year. The board has the discretion to decide the appropriate method for calling board meetings. However, it is a requirement under the Companies Act that board resolutions must generally only be taken where the board members have received sufficient information to allow them to make an informed decision about the relevant resolution and all board members (where possible) have been given the opportunity to participate in the meeting. The Companies Act does not impose any minimum number of board meetings to be held each year. However, the board's rules of procedure must set out the frequency of board meetings and it is the chairman's responsibility to ensure that board meetings are held as necessary. In addition, each board member and the managing director can require a board meeting.

3.6 What are the principal general legal duties and liabilities of members of the management body?

The board of directors and the managing director hold fiduciary positions and must therefore exercise due care and act in what they consider to be the interests of the company. They are obviously required to comply with the articles of association, the Companies Act and other applicable rules and regulations and must not take actions that would harm the company. Furthermore, under the Companies Act they must not take actions that are likely to result in an undue advantage to a shareholder or any other person, to the disadvantage of the company or another shareholder. The Companies Act also sets out a number of situations where board members and the managing director are conflicted out by their personal interest in the matter. Very briefly, the Companies Act does not permit board members or the managing director to contract with or to have interests in contracts with the company. If a board member or the managing director intentionally or negligently causes the company damage, he or she may be liable for damages. Board members and the managing director may also be liable to third parties, including individual shareholders, creditors and employees, if the relevant board member or the managing director intentionally or negligently breaches the Companies Act, certain other regulations or the articles of association.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body?

Under the Code the board of directors is required to, amongst other things:

- establish the overall objectives of the company and the strategy to achieve these objectives;
- regularly appraise the company's management;
- ensure that there is an effective system to enable the board to monitor the company's business and financial position in relation to the established objectives;
- ensure that there is an appropriate system to monitor the company's compliance with laws and regulations;
- ensure that the company's disclosure of information is transparent and objective; and
- ensure that appropriate ethical guidelines are adopted.

Under the Code the board is also required to draw up a corporate governance report as well as a report on the system of internal controls concerning financial reporting each year.

3.8 What public disclosures concerning management body practices are required?

Under the Code the board is required to publish an annual corporate governance report that sets out information on, amongst other things:

- the procedure for nominating board members and auditors;
- the composition of the nomination committee;
- the age, education, significant professional commitments, the holdings of shares and other financial instruments in the company of each board member and the managing director;
- the distribution of work within the board and how the work of the board has been conducted during the recent financial year, including the number of board meetings and the attendance of individual board members; and
- outstanding equity or equity referenced incentive schemes for the board and the managing director.

3.9 What limitations are there on members of the management body having dealings with their companies?

Company loans to board members or the managing director are generally prohibited. Furthermore, certain dealings with the company require shareholder approval, including issues on a non-pre-emptive basis or transfers of securities to the board of directors or the managing director (which require shareholder approval by not less than 90% of both the shares voted and of the shares represented at the relevant shareholder meeting). Moreover, under the listing agreements the acquisition or transfer of company businesses by board members or the managing director is subject to disclosure requirements and requires shareholder approval by simple majority, unless the relevant transaction is immaterial to the company. Under the Companies Act, board members and the managing director are conflicted out by their personal interest where they contract with or have interests in contracts with the company.

3.10 Are indemnities, or insurance, permitted in relation to members of the management body and others?

It is generally not possible to restrict or limit the board of directors' liability to the company. Companies are, however, permitted to maintain insurance in respect of a director's liability to the company and to third parties.

4 Corporate Social Responsibility

4.1 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Under the Code the board of directors is expected to ensure that appropriate ethical guidelines concerning the company's business are adopted. In practice, many of the bigger stock-market companies have been both acting and reporting on corporate social responsibility issues for some time.

4.2 What, if any, is the role of employees in corporate governance?

Employees of companies with on average at least 25 employees during the past financial year are entitled to appoint two board members and two alternate board members. Employees of companies with on average at least 1,000 employees during the past financial year may appoint three board members and three alternates if the relevant company has different lines of business. The number of employee directors may not exceed the total number of non-employee directors. The employee directors are appointed by the local unions that are bound by a collective bargaining agreement with the relevant company. Employee directors generally have the same powers and duties as non-employee directors, subject to certain additional conflict of interest rules.

5 Transparency

5.1 Who is responsible for disclosure and transparency?

The foundation of corporate governance is transparency and disclosure, allowing shareholders access to relevant information so that they can assess whether or not they are satisfied with the way that their company's affairs are being conducted. The board of directors is responsible for disclosure and transparency. In order to properly discharge this responsibility and to be able to satisfy the company's continuous disclosure obligations, it is common practice for the board of directors to adopt a continuous disclosure policy that sets out the relevant company's procedures to ensure compliance with its disclosure obligations.

5.2 What corporate governance related disclosures are required?

Under the Code the board is expected to publish a corporate governance report each year. The main content requirements for the corporate governance report are set out in question 3.8 above. Companies that are subject to the Code are also expected to publish a report on the system of internal controls concerning financial reporting. In addition to these reporting obligations, the Code requires certain information to be made available on the company's website (please see question 5.4 below).

5.3 What is the role of audit and auditors in such disclosures?

Under the Code either the half-yearly report or the report concerning the third quarter should be subject to a high-level review by the auditors. Furthermore, the Code requires that the corporate governance report and the report on the system of internal controls state whether they have been reviewed by the auditors.

5.4 What corporate governance information should be published on websites?

Stock-market companies are required by the Code and the listing agreements with the OMX Exchange to have a specific corporate governance section on their websites that sets out, amongst other things:

- whether the company complies with any corporate governance code (and if so, which code);
- the composition of the board of directors, for how long each board member has served, other significant commitments of each board member;
- information about the managing director and auditors;
- a report on all outstanding incentive schemes;
- the articles of association;
- a report on the work of the board of directors during the past financial year;
- updated information that addresses the contents requirements for the corporate governance report that is drawn up under the Code;
- the identity of the nomination committee members, the shareholders' right to put resolutions to the shareholder meeting;
- the proposals of the nomination committee;
- the board's proposal for guidelines concerning management remuneration; and
- the minutes of the last AGM and any subsequent EGM.

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