28 May 2015

# Memorandum – Sweden

## Setting the legal landscape

### 1. Briefly explain the broader legal landscape regarding the obligations that a company has to its stakeholders or with regard to its impact on stakeholders, and in particular whether its primary duty is or is not to shareholders over all other stakeholders.

Under Swedish law, there are different types of entities and companies governed by different legal acts and codes. The most important type of company is the limited liability company governed by the Swedish Companies Act (2005:551) (the "**Companies Act**"). A limited liability company may be private or public, the most important difference being that only the shares of the latter may be traded on a regulated market.

Unless stipulated otherwise in the company's articles of association, the purpose of a limited liability company is to generate profit for its shareholders and the company must thus be governed accordingly. The Companies Act imposes duties on the board of directors of a company, including duties of care and loyalty and a requirement to act in the interest of the company to promote the success of the company to the benefit of its shareholders. Company law obligations with a direct regard to other stakeholders than shareholders are unusual, except for provisions and obligations aimed at the protection of the company's creditors. Impacts on other stakeholders would be considered when specifically required under e.g. environmental legislation, labour legislation, anti-corruption legislation and legislation to protect creditors etc. or if this would not conflict with the interest of the company and its shareholders. However, there is a society interest and evolving discussion, pursued by investors, the media and others, that the corporation's growth achievement should be sustainable long-term. Matters involving environment, human rights, social issues and anti-corruption are given an increasing role in corporate governance. There is an expectation that corporations at their own initiative, and in addition to what follows from law, take responsibility for its role in and impact on society.

## Regulatory framework

### 2. To what legal tradition does the jurisdiction belong, i.e. civil/common law, mixed?

Civil law.

## 3. Are corporate/securities laws regulated federally/nationally, provincially or both?

Nationally. Some national laws, however, derive from EU directives, which have been implemented in domestic laws and regulations. In addition, EU regulations are directly applicable in Sweden.

## 4. Who are the government corporate/securities regulators and what are their respective powers (in summary only)?

In Sweden, the government regulator within the finance and securities sector is the Swedish Financial Supervisory Authority. The Swedish Financial Supervisory Authority authorises, supervises and monitors companies operating on Swedish financial markets. The Swedish Financial Supervisory Authority issues regulations regarding financial markets, issuers and securities and financial services companies such as banks, insurance companies and stock exchanges. Also, the Swedish Financial Supervisory Authority supervises compliance with insider legislation, investigates offences and share price manipulations. The Swedish Financial Supervisory Authority also approves and keeps a register over prospectuses.

The government agency for Swedish companies is the Swedish Companies Registration Office. The Companies Registration Office registers new companies, registers changes in existing companies and receives the companies' annual reports.

Other corporate regulators include the Swedish Competition Authority and the Swedish Tax Agency. There is a government agency called the Swedish Economic Crime Authority, which is a multidisciplinary authority with exclusive mandate to investigate and prosecute crimes within the financial sector.

The stock exchanges are responsible for the surveillance of financial reporting by listed companies.

Although not a government regulator, the Association for Generally Accepted Principles in the Securities Market should be mentioned. It is an association with responsibility for monitoring self-regulation of private sector companies on the Swedish securities market. The association consists of three bodies; the Swedish Corporate Governance Board, the Swedish Securities Council and the Swedish Financial Reporting Board. The assignment of the Swedish Corporate Governance Board is to manage and administer the Swedish Corporate Governance Code (the "**Code**") in order to promote good governance of listed companies. The Code is a set of guidelines to good corporate governance that stock exchange listed companies must apply. The Code implements the "comply or explain" model.

## 5. Does the jurisdiction have a stock exchange?

There are two stock exchanges (NASDAQ OMX Stockholm AB, operating the regulated market Nasdaq Stockholm, and Nordic Growth Market NGM AB, operating the regulated markets NGM Equity and NDX) and three multilateral trading facilities (AktieTorget, First North and Nordic MTF) in Sweden.

## Incorporation and listing

### 6. Do the concepts of "limited liability" and "separate legal personality" exist?

The concepts of limited liability and separate legal personality exist under Swedish company law and the concepts apply to all limited liability companies. Under Swedish law, limited liability means that the shareholders' liability to creditors of the company is limited to the capital invested. Hence, a shareholder's personal assets are protected in the event of the company's insolvency, but the shareholder may lose the money invested in the company. The concept of separate legal personality means that the company has the capacity to acquire and hold rights, obligations and assets. A company becomes a legal entity when it is registered with the Swedish Companies Registration Office.

There are a few exceptions to the concept of limited liability in Sweden. If there is reason to believe that a company's equity is less than half of the registered share capital and the board fails to take certain actions, the directors and the company's shareholders may be subject to personal liability for the company's debts. Further, under exceptional circumstances, the "corporate veil" can be "pierced" and a parent company, a shareholder, the CEO or a board member may be liable for the company's debts.

### 7. Did incorporation or listing historically, or does it today, require any recognition by the company or its directors of a duty to society, an obligation to take account of the company's social or environmental impacts, or to respect its stakeholders?

Such recognitions are not required today and have not been required historically. A listing prospectus must include relevant risk factors, which may include matters relating to environmental, employment, or anti-trust compliance etc. Continuing obligations with respect to for instance environmental impacts may exist for companies after incorporation or listing.

### 8. Do any stock exchanges have a responsible investment index and is participation voluntary? (See e.g. FTSE4Good, Dow Jones Sustainability Index, the Johannesburg Stock Exchange's Socially Responsible Investment Index).

Nasdaq Stockholm has launched two sustainability indexes; OMX GES Sustainability Sweden Index and OMX GES Sustainability Nordic Index. The indexes comprise the leading companies in terms of sustainability selected based on how well they meet the criteria for environmental, social and governance issues. Nasdaq Stockholm has also launched OMX Ethical Indexes, which exclude companies that do not comply with the criteria of the analysis model GES Global Ethical Standard and companies with production or sales of weapons, tobacco, alcohol, pornography or gambling covered by the analysis model GES Controversial.

# Directors' Duties

## 9. To whom are directors' duties generally owed?

Under Swedish company law, directors must act in the best interest of the company and its shareholders.

## 10. What are the duties owed by directors – please state briefly. Please indicate if there are express or implied duties to avoid damage to the company's reputation?

Directors hold fiduciary positions and must exercise due care and also act in the best interest of the company. The board members are required to comply with, and also ensure that the company complies with, the Companies Act, the articles of association and other applicable rules and regulations. The "duty of care" also means that the board must not take actions that would damage the company or its reputation.

The board is responsible for the company's organisation and management of its affairs. The board must ensure that the company's organisation is structured so that the accounting, management of funds, and the company's finances are monitored satisfactorily. This includes responsibility for implementing reasonable and adequate procedures, guidelines for the management of the company's funds, an appropriate selection of employees and measures to ensure continuous communication between the employees.

Further, the board must regularly evaluate and assess the company's (and the group's) financial position. This implies a duty to continuously update and develop the board's knowledge of the company's financial position. For this purpose, documented reporting procedures must be implemented and designed to ensure that important information on the operations of the subsidiaries reaches the board of the parent company.

The board may delegate some of its duties to individual board members, a committee or to management. However, the board still holds the overall management responsibility of the company, and must act in line with its duty of care and continuously monitor and evaluate any such delegation. Under the Companies Act, the board of a listed company must appoint an audit committee to inter alia monitor the company's finances and financial reporting. Under the Code, the board must also establish a remuneration committee. An allocation of work within the board may have implications on the board members' individual liability.

The chairman must supervise the board’s work and ensure that the board fulfils its duties. The chairman’s tasks include, among other things, to ensure that meetings are held when necessary (or at the request by a board member or the CEO), that notices are given properly and that the board members receive information on the status of the company and important events.

The directors’ fiduciary duties to the company include acting in compliance with the conflict of interest rules set out in the Companies Act, a duty of care, a duty of loyalty, a duty to act and a duty of confidentiality. There is no express duty to avoid damage to the company’s reputation. Such duty would, however, arguably be implied in the duty of care.

The board of a public company shall annually issue and adopt written rules of procedure for its work. These shall, among other things, establish the board meeting frequency and the allocation of work between the board and its committees and between the board and its members, for example if an individual board member has been assigned certain responsibilities. Further, the board of a public company must appoint the CEO, who is responsible for the day-to-day operations of the company. The board shall issue written instructions for the allocation of work between the board and the CEO (and other bodies established by the board).

The board must also each year propose guidelines for compensation to the CEO and other senior executives to be adopted at the annual general meeting.

## 11. More generally, are directors required or permitted to consider the company’s impacts on non-shareholders, including impacts on the individuals and communities affected by the company’s operations? Is the answer the same where the impacts occur outside the jurisdiction? Can or must directors consider such impact by subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction? (See e.g. s. 172 UK Companies Act 2006, and in particular, ss.(1(4))

As set out in question 1, the purpose of a limited liability company is, unless stipulated otherwise in the company’s articles of association, to generate profit to its shareholders and the company must thus be governed in accordance with that purpose. The Companies Act imposes duties on the board of directors of a company, including duties of care and loyalty and a requirement to act in the interest of the company to promote the success of the company to the benefit of its shareholders. Company law obligations with a direct regard to other stakeholders than shareholders are unusual, except for provisions and obligations aimed at the protection of the company’s creditors. Impacts on other stakeholders would be considered when specifically required under e.g. environmental legislation, labour legislation, anti-corruption legislation and legislation to protect creditors etc. or if taking such interests under consideration would not conflict with the interest of the company and its shareholders. In addition, naturally the board has to consider its contractual obligations in relation to non-shareholders. As discussed there is an expectation from society that corporations and their boards consider impacts on the environment, society and social circumstances to promote a sustainable global economy.

The Code provides that the board is responsible for defining adequate guidelines to govern the company's ethical conduct. The principle tasks of the board of directors also include establishing the overall operational goals and strategy of the company, appointing, evaluating and, if necessary, dismissing the CEO and ensuring that there is an effective system for follow-up and control of the company's operations. Moreover, the tasks include ensuring that there is a satisfactory process for monitoring the company's compliance with laws and other regulations relevant to the company's operations and ensuring that the company's external communications are characterised by openness, and that they are accurate, reliable and relevant.

The EU directive (2014/95/EU) on disclosure of non-financial and diversity information by certain large undertakings and groups (the "**2014 Directive**") was published in November 2014. Under the 2014 Directive, so-called large undertakings, which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year, shall include a non-financial statement, including information necessary to understand the undertaking's development, performance, position and the impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, in the directors' report. The 2014 Directive shall be transposed into national law and will then be applicable as from the financial year 2017. However, the Swedish implementation of the 2014 Directive is proposed to be more extensive than required by the 2014 Directive and will, under the current proposal, be applicable to all large undertakings, all public-interest entities, irrespective of their size, and certain large groups. See further question 16.

## 12. If directors are required or permitted to consider impacts on non-shareholders and to what extent do they have discretion in determining how to balance different factors including such impacts? What additional liabilities, if any, do the board or individual directors assume in exercising such discretion?

As stated above in question 1 and 11, the board of directors would be permitted to consider the company's impacts on non-shareholders where this would also be in the interest of the company.

Under the Companies Act, liability of the board of directors can be divided into liability towards the company (*internal liability*) and liability towards individual shareholders, creditors and third parties (*external liability*). The prerequisites of both internal and external liability are the following: (i) a damage must have occurred, (ii) a damage must have been caused by a board member within his or her assignment as board member, (iii) the board member must have acted intentionally or negligently and (iv) the damage must be a consequence of the board member's negligence (so-called *adequate causality*). In cases of external liability, the damage must be caused by a violation of the Companies Act, the Annual Reports Act or the company's articles of association.

Non-compliance with applicable laws and regulations, the board procedures or instructions from the general meeting of shareholders would generally be considered as acting negligently. A similar assessment is most likely made in case of breaches of other standards governing the company. However, in cases of external liability, for example where shareholders or third parties are seeking damages, the damage must be caused by a violation of the Companies Act, the Swedish Annual Reports Act (1995:1554) (the "**Annual Reports Act**") or the company's articles of association.

Regarding liability, please refer to question 13 below.

## 13. What are the legal consequences for failing to fulfil any duties described above; and who may take action to initiate them? What defences are available? Can these issues give rise to other causes of action or regulatory routes whereby a stakeholder can exert pressure on a company with regard to its action?

*Liability for damages*

Under the Companies Act, the board members can be held liable towards the company (*internal liability*) and liable towards individual shareholders, creditors and third parties (*external liability*). The prerequisites of both internal and external liability are the following: (i) a damage must have occurred, (ii) a damage must have been caused by a board member within his or her assignment as board member, (iii) the board member must have acted intentionally or negligently and (iv) the damage must be a consequence of the board member's negligence (so-called *adequate causality*).

Non-compliance with applicable laws and regulations, the board procedures or instructions from the general meeting would generally be considered as acting negligently. A similar assessment is most likely made in case of breaches of other standards governing the company. However, in cases of external liability, for example shareholders or third parties seeking damages, the damage must be caused by a violation of the Companies Act, the Annual Reports Act or the company's articles of association.

Liability under the Companies Act is personal and individual with respect to each board member, meaning that some board members, but not others, may be held liable in a particular case. For instance, an allocation of work within the board – whether explicitly agreed or not – may result in a board member not being responsible for actions taken by another member of the board, provided that the board member has acted prudently in monitoring such delegation. In order to clarify the allocation of responsibilities in case of a delegation of tasks, it may be appropriate to document the delegation in the rules of procedures.

The Companies Act provides certain procedural requirements and limitation periods for bringing an action for internal liability against members of the board and the CEO.

The company may bring an action for liability if the majority or shareholders of at least one-tenth of all shares in the company have either supported a shareholders' resolution to bring an action, or voted against a shareholders' resolution on discharge from liability. Under the Companies Act, an ultimate period of limitation of five years for claims for damages on behalf of the company applies (unless the claim is based on a criminal act). However, claims from shareholders and creditors are due to the customary statutory limitation period of ten years.

*Personal and criminal liability*

In addition to the liability for damages, board members may in certain cases be held personally liable for the company's debts, for example in case of an omission to take mandatory actions if there is reason to believe that the shareholders' equity has fallen below 50% of the company's registered share capital or if the company fails to pay its taxes. Board members may also face criminal liability under the Swedish Penal Code (1962:700), for example if duties under the Swedish Accounting Act (1999:1078) (the "**Accounting Act**") are neglected, if the board members act negligently in relation to the company's creditors or if there is a breach of anti-corruption rules. Criminal liability may also arise if a board member violates insider rules under the Swedish Market Abuse Act (2005:377). Under the Swedish Reporting Obligations Act (2000:1087), a board member may also be liable for special fees levied by the Swedish Financial Supervisory Authority for failure to meet the reporting obligations.

## 14. Are there any other directors' duties which are relevant to the interests of stakeholders?

The relevant directors' duties are discussed above. Please refer to question 1, 9, 10, 11 and regarding liability, question 13.

## 15. For all of the above, if these exist in your jurisdiction, does the law provide guidance about the role of supervisory boards in cases of two tier board structures. What obligations are owed by senior management who are not board directors? Is this determined by law if no specific contractual provision applies?

The concept of two-tier board structure does not exist in Sweden.

## Reporting

### 16. Are companies required or permitted to disclose the impacts of their operations (including stakeholder impacts) on non-shareholders, as well as any action taken or intended to address those impacts? Is this required as part of financial reporting obligations or pursuant to a separate reporting regime? Please specify for each reporting route whether it is mandatory or voluntary.

There is no general requirement to disclose information on the stakeholder impact of a company's operations under Swedish law. With respect to disclosure requirements in general, these are more extensive for listed companies than for non-listed companies and below, we have outlined some significant disclosure requirements under Swedish law.

*Financial reports, corporate governance reports etc.*

Under the Annual Reports Act, all companies must prepare annual reports that include a balance sheet, an income statement, notes and a directors' report. An annual report of a so-called large undertaking must also include a cash flow statement.

The annual report consists mainly of information on the company's financial position and results. The directors' report shall contain a true and fair overview of the development of the company's operations, financial position and results. Large undertakings must also, as a part of their directors' report, provide such non-financial information that is necessary to understand the undertaking's development, financial position or results and that is relevant for the operations in question, including information regarding environmental and employment issues.

Companies conducting operations which require a licence or entail a reporting duty pursuant to the Swedish Environmental Code (1998:808) (the "**Environmental Code**"), must also provide information on the operations' environmental impact.

Under the Annual Reports Act and the Code, listed companies shall further annually prepare a corporate governance report. The corporate governance report shall include information on e.g. internal control and risk management and any deviations from the principles set out in the Code.

The annual report and, when applicable, the auditor's report and the consolidated accounts, must be submitted to the Swedish Companies Registration Office and once the reports have been received by the authority, they are available for review by the public. This is also true for e.g. amendments of the articles of associations, appointments of board members and other resolutions that must be registered with the Swedish Companies Registration Office. Listed companies must also publish their financial reports and hold the financial reports and the corporate governance reports available on their websites.

Under the Swedish Securities Markets Act (2007:528), a listed company must make public, inter alia, (i) such information regarding its operations and securities which is of significance for the assessment of the price of its securities; and (ii) periodic financial reports. Regulations issued by the Swedish Financial Supervisory Authority as well as the stock exchanges' rule books include more detailed rules in relation to continuing disclosure requirements.

Rules in respect of the notification of major holdings of shares or voting rights are set out in the Swedish Financial Instruments Trading Act (1991:980), while rules regarding disclosure of transactions by persons holding insider positions are included in the Swedish Act on Reporting Duty for Certain Holdings of Financial Instruments (2000:1087).

*Disclosure of price sensitive information etc.*

Under Swedish stock market regulations, all companies listed on a stock exchange or a multilateral trading facility in Sweden must disclose price-sensitive information (i.e. information which is reasonably expected to affect the price of the company's securities) regarding the company and its operations. An obligation to provide information may for example arise due to orders or investment decisions, agreements of major importance or credit or customer losses.

*Notice to shareholders meeting etc.*

Listed companies must disclose notices to shareholders' meetings, information on resolutions adopted by shareholder's meetings, changes in number of shares and votes, etc. The disclosed information must be available on the company's website. The company's website must also contain information on e.g. the time and place for shareholders' meetings, minutes from shareholders' meetings and information on the board members.

*State-owned companies*

The Swedish government has adopted an owner's policy with guidelines for state-owned companies. The policy is aligned with OECD:s Guidelines on Corporate Governance of State-Owned Enterprises as well as the UN Guiding Principles on Business and Human Rights. According to the policy state-owned companies shall prepare sustainability reports in accordance with the international non-binding guidelines of the global organisation Global Reporting Initiative ("**GRI**"). The GRI report shall be published on the companies' websites together with the annual report. The GRI report may either be published as a separate report or be integrated with the annual report.

*Voluntary reporting of sustainability issues*

In addition to disclosures under the above mentioned mandatory requirements, several Swedish listed and non-listed companies voluntarily choose to publish sustainability reports. Such reports may for example be prepared in accordance GRI or the UN Global Compact guidelines and principles. Several large Swedish companies have implemented the UN Guiding Principles on Business and Human Rights throughout their business operations. Also, many institutional investors have agreed to report according to UN Principles for Responsible Investments ("**UNPRI**").

*The 2014 Directive*

In November 2014, the 2014 Directive was adopted (please refer to question 11). The 2014 Directive amends the accounting directive (2013/34/EU) adopted in 2013. The 2014 Directive must be transposed into national law no later than December 2016 and will apply for financial years starting on 1 January 2017 or during the calendar year 2017.

Under the 2014 Directive, large undertakings, which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year, shall include information on inter alia policies, risks and outcomes as regards environmental matters, social and employee matters, respect for human rights, anticorruption and bribery issues in their directors' report. In Sweden, it has been proposed that the rules under the 2014 Directive will apply to all so-called large undertakings, all public-interest entities, irrespective of their size, and certain large groups. The category public-interest entities includes listed companies as well as insurance companies and credit institutions. Thus, the Swedish rules will apply to more companies than the 2014 Directive requires.

The 2014 Directive also requires listed companies that meet the criteria for large undertakings to provide information on their diversity policy, such as age, gender, educational and professional background.

## 17. Please describe any mandatory reporting requirement, major voluntary initiative or trend towards voluntary reporting with regard to transparency (for example, payments to government or state-owned entities, reports on government orders to undertake surveillance or interception, reports on tax payments etc.).

In addition to the mandatory reporting requirements and the trends towards voluntary reporting described under the previous questions, certain companies must comply, or will shortly have to comply, with EU regulations on transparency and reporting. In June 2013, EU adopted directive (2013/36/EU) on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (the "**CRD IV**"), which was transposed into Swedish law in August 2014. Under CRD IV, banks and other financial institutions must publish certain basic information including, inter alia, their name, nature of activities and geographical location, number of employees, turnover and public subsidies received on a consolidated country-by-country basis for each country in which the institution has a subsidiary or branch. In addition, so-called global systemically important institutions (G-SIIs) must submit information on profit or loss before tax, tax on profit and loss and public subsidies received to the Commission on a confidential basis. The relevant information must be audited and shall be published, where possible, as an annex to the annual report or, where applicable, to the consolidated annual report of the institution concerned.

In June 2013, EU also adopted directive (2013/34/EU) on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (the "**Accounting Directive**") and directive (2013/50/EU) amending inter alia 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 (the "**Transparency Directive**"). The Accounting Directive and the Transparency Directive as amended will be applicable as from the financial year 2016. Under these directives, certain undertakings within inter alia the oil, gas, mineral and mining industries and undertakings active in the logging of primary forests must report payments exceeding euro 100,000 to governmental authorities in a special report adjacent to the annual report.

## 18. Do legal reporting obligations extend to such impacts outside the jurisdiction; to the impacts of subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction?

The reporting obligations described above in questions 16 and 17 relate to the activities of a company or a group of companies and include impacts on subsidiaries situated outside the jurisdiction. For example, the impact of subsidiaries must be included in a parent company's group report whether it occurs inside or outside the parent company's home jurisdiction.

Moreover, as stated above, under the 2014 Directive, a company's non-financial statement should include information on due diligence processes involving the company's supply and subcontracting chains.

## 19. Who must verify these reports; who can access reports; and what are the legal or regulatory consequences of failing to report or misrepresentation? Is there a regulator tasked with investigating complaints of misreporting?

*Financial reports, corporate governance reports etc.*

As a main rule, financial reports must be examined by an auditor (the Companies Act provides exemptions for smaller private companies). The auditor's assessment of the company's financial reports results in an auditor's report. In the auditor's report, the auditor must state whether he or she recommends the general meeting to resolve on allocation of the profit and loss in accordance with the board's proposal, adopt the income statement and adopt the balance sheet and whether the general meeting should resolve on discharge from liability of the board of directors and the CEO.

Where relevant, the auditor's report shall also include a statement on whether a corporate governance report has been prepared and a statement on whether the corporate governance report is consistent with the other parts of the annual report. Annual reports and, when applicable, auditor's reports and consolidated accounts are available for review by the public after registration with the Swedish Companies Registration Office. Listed companies must also publish annual reports on their websites.

If a company fails to submit attested copies of the annual report or directors' report, the company shall pay a late filing fee. Each person who is obliged to submit annual reports or auditors' reports may be ordered by the Swedish Companies Registration Office to fulfil such obligation. Decisions regarding late filing fees and conditional fines are taken by the Swedish Companies Registration Office.

The current Swedish accounting supervisory system, that implements the Transparency Directive as amended by directive (2013/50/EU), involves a division of supervisory authority between the Swedish Financial Supervisory Board and the stock exchanges.

Please also note that as described under questions 11 and 16 above, the EU has adopted a directive on disclosure of non-financial and diversity information implying that certain companies in the future will have to include certain non-financial information in their directors' reports. This non-financial report must be reviewed (but not audited) by an auditor. Hence, when these rules have come into force, the auditor's statement shall contain a statement regarding whether a non-financial report has been prepared.

*Disclosure of price sensitive information etc.*

As described under question 16, listed companies must make public periodic financial reports as well as disclose price-sensitive information regarding the company and its operations. If a listed company fails to comply with disclosure requirements under the stock market regulations, the stock exchange may issue fines, or under exceptional circumstances delist the company. The Swedish Financial Supervisory Authority supervises that the stock exchanges fulfil their obligations and that they exercise a sufficient supervision over listed companies. If the exchange fails to comply with the Swedish Financial Supervisory Authority's requirements, the authority may issue conditional fines or withdraw the stock exchange's permission to operate the regulated market.

**Voluntary reporting of sustainability issues**

Companies that have voluntarily chosen to comply with inter alia the GRI or the UN Global Impact guidelines and principles are not obliged to use any external assurance regime even though it is recommended.

## 20. What is the external assurance regime for reporting on a company's impact on stakeholders? Please specify any mandatory requirements and also where reporting is voluntary what the current market practice is as regards third party assurance. Please summarise

### any regulatory guidance on reporting that relates to impacts on non-shareholder stakeholders.

Under the Annual Reports Act, the directors' report shall contain such non-financial information as is necessary to understand the undertaking's development, financial position or results and as is relevant for the operations in question, including information regarding environmental and employment issues. Undertakings conducting operations which require a licence or entail a reporting duty under the Swedish Environmental Code shall always provide information regarding environmental impact of the operations. These reports must be reviewed by an auditor.

Additionally, the reporting requirements set forth in the 2014 Directive may be applicable as from the financial year 2017. As has been mentioned under question 16, certain large undertakings shall include information on inter alia policies, risks and outcomes as regards environmental matters, social and employee matters, respect for human rights, anticorruption and bribery issues in their directors' report. Listed companies that meet the criteria for large undertakings will also be required to provide information on their diversity policy, such as age, gender, educational and professional background. Under the current Swedish proposal, no external assurance regime needs to be done in excess of the auditor's review.

Companies may also voluntarily choose to be examined by a third party in respect of impact on non-shareholders. See further question 16, 19 and 24.

## Stakeholder engagement

### 21. Are there any restrictions on circulating shareholder proposals which deal with impacts on non-shareholders, including stakeholder impacts?

The Companies Act provides that the board of directors must convene the annual general meeting of shareholders at the latest six months after the end of the financial year. The board of directors may convene an extraordinary shareholders meeting when the board of directors considers that there is a reason to hold a shareholders meeting. The board of directors must convene an extraordinary shareholders meeting when requested by shareholders representing at least one tenth of the total number of shares in the company.

A notice to a shareholders meeting must contain a proposed agenda. The shareholders meeting may not pass a resolution on an item that is not included in the notice. Any shareholder may submit an alternative proposal at the shareholders meeting, for an item included in the agenda.

Any shareholder may request a matter to be put on the proposed agenda included in the notice convening a shareholders' meeting, provided the matter concerns something that is subject to the shareholders' meetings decision power. Also impacts on non-shareholders may fall within such decision power.

## 22. Are institutional investors, including pension funds, required or permitted to consider such impacts in their investment decisions? What is the legal duty that pension funds owe with regard to investment decisions in this regard? How does the legal duty of the fund align with term and contractual performance criteria of fund managers – does this facilitate or deter consideration of such impacts?

There is no particular Swedish regulation that applies to institutional investors' investment decisions as regards various ethical or sustainability issues. The most important institutional investors and pension funds and their respective duty to consider non-shareholder impacts are set out below.

*State-owned companies*

According to the owner's policy with guidelines for state-owned companies adopted by the Swedish government state-owned companies shall act exemplary within the area of sustainability. This means, for example, that state-owned companies shall act in a transparent manner with respect to material risks and opportunities and pursue an active dialogue with the companies' stakeholders.

*The AP funds*

The AP funds, which are public pension funds, are to invest with the purpose to generate high long term return at a low risk. Although not a formal legal requirement, the AP funds shall also take into account ethical issues and environmental issues, however, without lowering the overarching goal to generate high return. In their capacity as governmental bodies, they must comply with the international conventions which Sweden has adhered to. Four of the Swedish AP funds have jointly established a board for ethical issues. Through the ethical board, the AP funds intend to coordinate their work to the influence the companies in which they invest to properly manage ethical and sustainability issues, e.g. by way of internal guidelines and appropriate systems for corporate governance and monitoring of such issues.

*Insurance companies*

As for insurance companies, the fact that they belong to Sweden's largest asset managers undeniably allows them to influence the companies they invest in. In this capacity, virtually all major Swedish insurance companies communicate to their customers and the public that they encourage companies to assume a greater responsibility for e.g. the environment and human rights.

This position is the predominant one and it is formally stipulated in the insurance companies' internal guidelines regarding ethical and environmental investment criteria. This corporate governance objective typically manifests itself in the way that the insurance companies vote at shareholding meetings etc. It is also common that insurance companies exclude certain potential investments from their portfolio, for example companies where parts of the sales are generated by e.g. tobacco production or tobacco products.

In addition, the insurance industry seems to target investments that contribute to a long-term sustainable society through research, information, debate and practical initiatives, in order to influence a certain favourable social development. Furthermore, the insurance companies typically do not invest short-term but are long-term investors.

*Pension foundations*

Swedish pension foundations are established by employing companies (or a group of companies) to secure pension benefits for their employees. Under law, the board of directors of a pension foundation shall ensure that the foundation's investments are made in a satisfactory manner and that the investments are made in a way that spreads investment risks. In addition, foundations that secure pension benefits for at least 100 employees, shall establish internal investment guidelines which may contain rules regarding ethical and sustainability issues. In other words, there are no strict rules to which the foundations would have to adhere regarding ethical or sustainable investments.

*Managers of UCITS funds and alternative investment funds*

Swedish fund managers have established a forum for sustainability issues, the Swedish Sustainable Investment Forum (the "**Swesif**"). The purpose of Swesif is to promote sustainable and responsible investments. The work is inspired by the international network for responsible investments, Principles for Responsible Investments (PRI). It was recently resolved that a governmental commission shall propose additional disclosure requirements in relation to sustainability issues for managers of UCITS funds and alternative investment funds. The commission shall also analyse whether such disclosures shall be made subject to independent third party review and regulatory supervision.

*EU proposals*

In April 2014, the European Commission presented a proposal for the revision of directive (2007/36/EC) on the exercise of certain rights of shareholders in listed companies. The proposal addresses corporate governance shortcomings relating to listed companies and their boards, shareholders (institutional investors and asset managers), intermediaries and proxy advisors. Key elements of the proposal include more far-reaching transparency requirements for institutional investors and asset managers on their investments and engagement policies as well as a framework to facilitate the identification of shareholders so that they can exercise their shareholders' rights more easily. Proxy advisors would also have to become more transparent on the methodologies they use to prepare their voting recommendations and on how they manage conflicts of interests.

## 23. Can non-shareholders address companies' annual general meetings? What is the minimum shareholding required for a shareholder to raise a question at a company's AGM?

Under the Companies Act, any shareholder who, on the day of the general meeting is entered in the share register (for CSD companies five weekdays prior to the annual general meeting (the "**AGM**")), has the right to participate in the AGM. Shareholders may participate in the AGM in person or by proxy. A shareholder or a proxy may be accompanied by not more than two advisors at the AGM. Advisors may express themselves at the AGM.

Certain persons may, however, participate in the AGM without being shareholders. For example the chairman of the general meeting may be a non-shareholder. Moreover, the Code states that the chairman of the board, other board members and the CEO (who may be non-shareholders) shall be present at the AGM. In addition, the auditor is entitled to be present at the AGM. He or she is obliged to be present if deemed necessary in the light of the matters to be addressed.

Other non-shareholders are only entitled to be present or otherwise follow the proceedings at the AGM if their presence has been approved by the general meeting and the resolution is, for private companies, supported by all shareholders present at the AGM. As regards public companies, the resolution must be adopted by the general meeting by a simple majority of the votes cast. The articles of association may also prescribe that a person who is not a shareholder shall be entitled to be present or otherwise follow the proceedings at the general meeting notwithstanding that such a resolution has not been adopted by the general meeting. Non-shareholders have no right to speak at the AGM, unless the general meeting has decided otherwise.

There is no minimum shareholding required for raising a question at the AGM and there is no minimum shareholding required for shareholders' right to address matters at the AGM.

## Other issues of corporate governance

### 24. Are there any other laws, policies, codes or guidelines or standards applied in the context of particular contractual relationships (for example project finance) or through adherence to particular sustainability principles (for example the UN Global Compact, the OECD Guidelines for Multinational Enterprises (“OECD Guidelines”) etc.), related to corporate governance that might encourage companies to consider in a structured way their impacts upon and the interests of their wider stakeholders including through a stakeholder engagement process?

In Sweden companies frequently apply the UN Global Compact’s guidelines and principles and the OECD Guidelines for Multinational Enterprises in contractual relationships. Some companies have also implemented the UN Guiding Principles on Business and Human Rights.

With respect to project financing, banks often sign up to the Equator Principles, (a risk management framework for determining, assessing and managing environmental and social risks in projects). Banks may refuse to finance projects which do not follow these principles. Where project finance requirements include compliance with Equator Principles, then reporting of environmental impacts and their impacts on stakeholders will be required contractually.

### 25. Are there any laws requiring representation of particular stakeholder constituencies (i.e. employees, representatives of affected communities) on company boards?

Under the Swedish Board Representation (Private Sector Employees) Act (1987:1245), labour unions that have reached collective agreements with a limited liability company with an average number of at least 25 employees during the last financial year, are entitled to appoint board members. The number of board members the labour unions may appoint depends on the average number of employees during the last financial year in the company and if the company operates in various industries. Board members appointed by labour unions must at all times receive information and have the opportunity to participate in the operations of the board in the same manner as board members appointed by the general meeting.

There are no other laws requiring representation of particular stakeholder constituencies on company boards.

## 26. Are there any laws requiring gender, racial/ethnic, religious or other stakeholder constituencies (i.e. employees, representatives of affected communities) on company boards?

There are no laws requiring any stakeholder constituencies on company boards, except from what has been stated regarding employees representatives in question 25 above.

Under the Code, which is applicable to all Swedish companies whose shares are listed on a stock exchange in Sweden, listed companies have to strive for equal gender balance on the board. Under the Code, the nomination committee must take the obligation to strive for diversity and gender equality under consideration in its assessment of the board evaluation and in the nomination committee's proposals on new board members. The nomination committee must also provide a specific explanation to the committee's proposals with respect to the requirement to strive for gender balance on listed companies' boards. These rules do not imply a rigid quantitative quota obligation. However, the Swedish Government has declared an intention to accelerate the process towards gender balance in listed companies' boards. If a 40 per cent goal on gender balance is not reached by 2016, the Government intends to propose legislative measures concerning quantitative quota obligations regarding listed companies' boards.

In November 2012, the EU Commission published a proposal for a directive on gender balance on the boards of listed companies. The proposal sets a quantitative objective of at least 40% representation of each gender among non-executive directors by 2020 (2018 for State-owned undertakings). The companies concerned must also ensure that their selection procedures are objective and transparent and based on clear and gender-neutral criteria. In case of a challenge to an appointment, the criteria applied must be disclosed. This approach guarantees that qualification and merit remain the key criteria to board appointments. Only where two candidates are equally qualified, priority must be given to the candidate of the under-represented gender.

## 27. In your jurisdiction is there any legal route whereby a parent company can incur liability with regard to the impacts that one of its subsidiaries has had on stakeholder groups? Are there any serious proposals to impose such responsibility?

As mentioned in question 6, a parent company may under exceptional circumstances be liable for damages caused by a subsidiary. This legal route has developed from case law and hence, the prerequisites for such liability are not fully fixed. However, for liability to incur, the plaintiff usually has to prove that the parent company exercised control over the subsidiary, that the subsidiary lacked capital, that the parent company and/or the subsidiary acted inappropriately and that the plaintiff was in good faith.

As far as we are aware, there are no proposals to codify this legal route.

## 28. Are you aware of any incoming law proposals that are relevant to the issues raised in this questionnaire? If so please describe, providing

**an indication of the anticipated date the legislation will come into force or be adopted.**

We believe that all relevant incoming law proposals have been discussed in the document.