

PER LEKVALL (ED.)

**THE NORDIC  
CORPORATE GOVERNANCE  
MODEL**

WITH COMMENT BY  
RONALD J. GILSON

SNS FÖRLAG

»This is an important and influential book for three reasons. First, Nordic countries are important and currently upheld as a model for good corporate governance around the world. Second, the book is an exceptionally careful and thorough analysis of their governance arrangements. It combines an overview of the common features of Nordic countries'

governance with individual country details of their differences. Third, it provides real insights into the determinants of successful corporate governance. It points to three key components: diversity of ownership patterns including controlling shareholdings, independent boards, and strong protection of minority investor interests. The book deserves to be widely read and carefully studied by anyone interested in the design of corporate governance systems.«

*Colin Mayer, Peter Moores Professor of Management Studies, Saïd Business School, University of Oxford*

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CORPORATE GOVERNANCE  
MODEL



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# **The Nordic Corporate Governance Model**

*with comment by*

RONALD J. GILSON

*and contributions by national experts:*

DENMARK: Jesper Lau Hansen and Carsten Lønfeldt

FINLAND: Manne Airaksinen, Tom Berglund and Tom von Weymarn

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SNS – Centre for Business and Policy Studies –  
is a non-partisan and independent non-profit organisation  
that contributes to decision makers in politics, public administration  
and business being able to make well-informed decisions based  
on science and factual analysis. This is done through  
research, meetings and the publication of books.

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Per Lekvall (ed.)

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TOMAS LINDHOLM

*in memoriam*

Instigator, initiator  
and inspirator of this study



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## FOREWORD

**S**INCE THE TURN of the century, there has been an increasing interest in the corporate governance practices of the Nordic region. This interest has been inspired by the rapid increase in foreign ownership on the Nordic stock exchanges as well as the active corporate governance regulation agenda of the European Union. This new EU-regulation has not always taken the specific features of the governance practices in the Nordic region sufficiently into account, which has created challenges for policymakers, owners and businesses in the region.

This has spurred a debate throughout the region regarding the possibility to define and describe a common Nordic corporate governance model. The first initiative for implementing this idea was taken by the Directors' Institute of Finland through its late chairman, Tomas Lindholm, who was a long-standing, keen proponent of Nordic cooperation within this field.

The idea was picked up by SNS, the Stockholm-based Centre for Business and Policy Studies, which decided to undertake it as a policy roundtable project within SNS. This book is the result of this roundtable.

The project has been made possible by financial support

from the Nordic Council of Ministers and the following companies and organisations in the four countries concerned: Axcel Fund, BA-HR DA Law Firm, Carl Bennet AB, Cevian Capital AB, Confederation of Norwegian Enterprise, Confederation of Swedish Enterprise, Danske Bank, Finnish Foundation for Share Promotion, Government Pension Fund Norway, AB Industrivärden, Investor AB, KPMG Finland, KPMG Sweden, Melker Schörling AB, Nordea Bank, Norwegian Corporate Governance Board, Roschier Attorneys Ltd, Swedish Corporate Governance Board, Solidium Oy, and Varma Mutual Insurance.

A considerable number of individuals from the four countries concerned have contributed to the execution of the project. First and foremost among those are the members of the Working Group, made up of leading experts from each country. Their names are listed in Chapter I of the report. This outstanding group of people has carried out the bulk of the project work and generously shared their profound expertise in the field. It has been a highly rewarding experience to work with this group, both from a professional and personal point of view. I am deeply grateful to all of its members for their strong commitment, outstanding contributions and boundless patience in dealing with the details of this study.

Furthermore, a Reference Group made up of high-level representatives of the business and financial sectors has been organised in each country with the task of acting as advisors to the country experts and reviewers of the consolidated report. These names are also listed in the section mentioned above. Their input has been invaluable to the project work, and I sincerely thank all members of these groups for the considerable amount of time spent on the study and their great willingness to share their views and experiences to the benefit of its quality.

In June 2014, an early version of the report was reviewed at

the 6<sup>th</sup> Annual Workshop of the Nordic Corporate Governance Network, a network of Nordic academics within this field. I sincerely thank the organisers of the event for this opportunity and especially the discussant of our paper, Professor Trond Randøy, University of Agder, Norway, for his very useful remarks.

A crucial contribution to the study has further been provided by SIS Ägarservice through the special study on ownership structures in Nordic listed companies. I wish to thank its founding partner, Mr. Sven-Ivan Sundqvist, and his staff very much for excellent work.

Another contribution of utmost value to the study is provided by Professor Ronald J. Gilson, who as an independent author of Chapter IV of the report has taken an outside look at the Nordic model and reviewed its significance in a broader international context. On behalf of the project and all of us who have participated in the work, I sincerely thank Professor Gilson for his eminent contribution to the report.

I also wish to express my appreciation of the superb work of Mr. John Kokko, Korrelat Legal English AB, as language reviewer and editor of the report. Many thanks for highly stimulating and rewarding work together on these matters.

Finally, I wish to express my great personal gratitude to SNS for having undertaken this very timely study and for the privilege of having been assigned the responsibility as its project manager. I particularly wish to thank my main contact persons at SNS, Ms. Pernilla Klein, deputy CEO, and Ms. Caroline Schmölder, Assistant Project Manager, for their enthusiastic support and never-ending encouragement throughout the project.

There are a number of authors of different parts of this report. The »country reports« in Appendices A–D are written by the respective national expert teams, and Chapter IV, as just

mentioned, is authored by Professor Ronald J. Gilson. These authors are independently responsible for their respective contributions. Although, as explained above, I have had the privilege of unlimited support from an array of highly qualified experts, the ultimate responsibility as the main author and editor of the other parts of the report rests with me alone.

The mandate of SNS is to commission and present fact-based analyses addressing key issues in society. The organisation does not take a position on the issues and topics discussed in this book.

Gothenburg, Sweden, September 2014

PER LEKVALL

# EXECUTIVE SUMMARY

**T**HE KEY OBSERVATION of this book is that the Nordic corporate governance model allows the shareholder majority to effectively control and take long-term responsibility for the company that they own.

The alleged risk of such a system – the potential that a shareholder majority misuses its power for its own benefit at the expense of minority shareholders – is effectively curbed through a well-developed system of minority protection.

The result is a governance model that encourages strong shareholders to engage in the governance of the company in their own interest, while creating value for the company and all its shareholders.

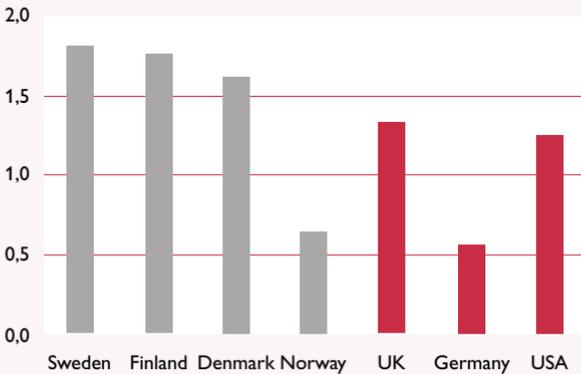
## The Nordic supermodel

In recent years, the Nordic region has attracted considerable positive attention around the world. In a special report about the Nordic region published in February 2013, *The Economist* used the title »The next supermodel«, pointing to the fact that

the Nordic countries cluster at the top of global league tables of everything from economic competitiveness to social health.

The countries also stand out by being home to a notable share of world-leading companies, which by far exceeds the region's share of the world economy. About 60 Nordic companies qualify on the Forbes list of the world's 2000 largest publicly listed companies. This significantly exceeds the number for Germany, although the combined size of the Nordic economies is less than half of that of that country. The chart below shows the number of companies on the Forbes 2000 list in relation to GDP. All the Nordic countries except Norway

**NORDIC COMPANIES OVERREPRESENTED  
AMONG THE WORLD'S LARGEST COMPANIES.**



**SHARE OF** the world's 2 000 largest listed companies in relation to share of global GDP.

**COMMENT:** The size of the oil economy distorts the comparison for Norway. Looking instead at the ratio between companies on the Forbes list in relation to population size, the number for Norway also exceeds those of the UK and the US.

have about three times as many companies on the list in relation to GDP as Germany and distinctly more than both the UK and the US.

Although there may be a variety of factors underlying this outcome, it is reasonable to assume that the way Nordic companies are governed has played a role in creating favourable conditions to build and develop world-leading companies. In a ranking of the efficacy of corporate boards, the World Economic Forum Global Competitiveness Report 2013–2014 ranked three of the Nordic countries among the six highest and the fourth as number 20, just ahead of the UK and Germany.

## What is a ‘governance model’?

The purpose of this book is to identify the common features of the corporate governance systems of the Nordic countries and, on this basis, to define a common Nordic corporate governance model.

By *corporate governance* we mean the framework through which a company is governed in order to ensure that the company is run in the best interest of its owners. A *corporate governance model* is how this framework is set up for a certain type of company, e.g. a listed company, or a geographical region. It is determined mainly through three types of norm systems:

- *Statutory regulation* in the form of company law and other mandatory rules issued by the government or official authorities.
- *Self-regulation* defined and enforced by the business sector itself.
- *Informal norms and practices* that influence how corporate governance is carried out in practice. This type is of particu-

lar interest in the Nordic region due to the relatively strong and homogenous norms and value systems, combined with the high degree of social control typical of small communities that characterise these societies.

## Why a book about Nordic corporate governance?

The book aims at providing a Nordic perspective on two key issues in the current European corporate governance debate:

**LACK OF ACTIVE LONG-TERM OWNERS IN TODAY'S CAPITAL MARKETS.** The perceived short-termism and lack of stewardship of institutional owners has resulted in a quest for policy solutions that would lead to more active owners with a long-term view of the companies they own. We believe that Nordic corporate governance, through its emphasis on tools and incentives for long-term active ownership, can provide a timely contribution to this policy discussion.

**TIDAL WAVE OF EU-LEVEL REGULATION OF CORPORATE GOVERNANCE.** These harmonisation efforts have made visible the considerable diversity of corporate governance systems in place among the EU member states. This book aims at promoting better knowledge and understanding of the Nordic corporate governance model within the EU and on the broader international scene.

## Incentives and tools for shareholders to act as real owners

The fundamental principle of Nordic corporate governance is to provide the shareholder majority with strong powers to control the company while providing minority shareholders with effective protection against abuse of power by the majority. The system thus gives dominating shareholders the motivation and tools to act as engaged owners and take long-term responsibility for the company. The primary means to obtain this is a clear-cut and strictly hierarchical chain of command between the general meeting, the board and the executive management.

**STRONG GENERAL MEETING POWERS.** At the top of this chain is the general meeting, which is the company's highest decision-making body and the main forum for the shareholders to exercise their ownership rights. The Nordic general meeting has far-reaching powers to govern the company. This ensures strict accountability of the board to the shareholders and creates a strong incentive for a regular dialogue between shareholders and the board.

**BOARD INTEGRITY VS. MANAGEMENT.** The board is appointed by and fully subordinate to the general meeting. Except for employee representatives, boards of Nordic listed companies are mostly comprised exclusively of non-executive directors. An important implication of this is a clear-cut division of duties and responsibilities between a monitoring and strategically steering board and a purely executive management function. This division of roles also serves to strengthen the integrity of the board vis-à-vis the executive function.

**SHAREHOLDER-ORIENTED AUDITOR.** The external auditor (mandated by law and company statutes) is appointed by the general meeting. In the Nordic context, the auditor is primarily seen as the shareholders' instrument for reviewing the work of the board and management.

**ENGAGED OWNERS.** Especially in companies with a concentrated ownership structure, major owners generally take active part in the governance of the company, e.g. by taking seats on the board, being involved in the nomination of candidates for board assignments and maintaining ongoing contacts with the board. In Norway and Sweden, shareholder engagement in board nomination is mainly pursued through nomination committees predominantly made up of representatives of the largest owners.

## Effective minority protection

The potential risk associated with a model that gives the shareholder majority far-reaching powers is that this power can be misused to extract private benefits for the controlling owner at the expense of minority shareholders. To provide safeguards against this, the Nordic corporate governance model includes a system of rules and practices that effectively protects the rights of minority shareholders from such abuse by the majority.

The most important of these minority-protection measures are:

1. *The principle of equal treatment of shareholders*, which prohibits the general meeting, the board or the executive management from taking decisions that unduly favour one group of shareholders at the expense of the company or other shareholders.

2. *Extensive individual shareholder rights* to participate actively in general meetings and to take legal action. For example, any shareholder may challenge a decision by the general meeting in a court of law on the grounds that it is illegal or in breach with the articles of association of the company. The court may then decide that the decision has no legally binding force.
3. *Majority vote requirements* of up to total unanimity for general meeting resolutions of particular potential detriment to the interests of minority shareholders. Examples of resolutions that require full consent are changes of the shareholders' obligations towards the company and compulsory redemption of shares.
4. *Minority powers to take action*. In a number of situations, the shareholder minority can force resolutions to be taken by the general meeting (see fact box below).
5. *Strict rules for related-party transactions*, that is business dealings between the company and counterparties related to the company (shareholders, board members, etc.). These types of transactions can be used to unduly extract money from the company. In the Nordic context, safeguards against this type of abuse are primarily based on the requirement that all such transactions must be made strictly on market terms.
6. *A high degree of transparency* towards the shareholders, the capital market and the society at large. Names and credentials of board directors as well as the CEO and other senior executives are to be found on the company's website. The remuneration of board directors as well as the CEO is disclosed in detail on an individual level. Share registers are generally public, which means that anyone can at any time have full insight into the ownership structure of any listed company.

# R I G H T S

## *of minority shareholders to take action*

- Shareholder minorities of 5 % (Denmark and Norway) or 10 % (Finland and Sweden) can require an extraordinary general meeting to be held.
- Except in Denmark, a minority of 10 % (5 % in Norway) of the shareholders can also require a minimum dividend to be paid out.
- A minority of 10 % in Sweden and Denmark (5 % in Norway) of the shareholders can, under certain circumstances, have the district court or a public authority appoint a second auditor.
- If a shareholder minority of typically 10 % (25 % in Denmark) believes that certain circumstances in the company should be subject to an in-depth investigation, it has the right to demand that the district court or a public authority appoint a »special investigator«, paid for by the company, with the duty to specifically examine these circumstances and report its findings to the general meeting.

Although each of these features of Nordic minority protection may not seem unique within a European perspective, together they make up an effective system, developed and refined through many years of accumulated experience, to counter-balance the strong powers that the governance model gives to majority shareholders.

## **Effectiveness of the model – research evidence**

The ability of the Nordic corporate governance model to safeguard against the extraction of private benefits by controlling shareholders has been the subject of a number of academic studies. This body of research indicates that such misuse of power largely appears to have been successfully curbed in the Nordic markets.

For example, World Bank governance expert Tatiana Nenova has analysed the market value of controlling voting rights in 18 countries from around the world. The study showed that, whereas the value of control-block votes in relation to total firm value ranged from 5 % to 30 % in the other European countries studied, representing French, German as well as Anglo-Saxon judicial traditions, it was nearly zero in the Nordic region.

In short, Nenova concluded that in the Nordic markets the problem of controlling owners who misuse their power to extract money from the company at the expense of other shareholders was almost non-existent. Her explanation of this result was that the Nordic markets are characterised by a strict legal environment in the areas of investor protection, high-quality law enforcement and strict takeover regulation.

## **A tradition of self-regulation**

Self-regulation is a long-standing tradition in many aspects of societal life in the Nordic countries. Where applicable, it is often preferred to legislation because of its greater flexibility,

generally better regulatory precision and higher acceptability among the actors subject to the regulation.

Since the early years after the turn of the century, corporate governance codes have been the main form of self-regulation within the field of corporate governance in the Nordic countries. At face value, these codes may appear to differ quite significantly. However, in terms of crucial substance matter they are all founded on common concepts and principles and resemble one another to a great extent.

All the Nordic codes are based on the comply-or-explain principle. This entails a strict requirement to apply the code properly and to provide explanations for any deviations. The general attitude of the bodies responsible for administering the code is to emphasise the importance of transparency towards the market rather than to promote strict compliance with the code. As long as there is transparency, companies are even encouraged to choose solutions other than those prescribed by the code.

## Well-functioning code enforcement

An important aspect of corporate governance self-regulation is how the code is administered and how its implementation is monitored and enforced. The Nordic countries share a well-functioning system in this respect, in short set up as follows:

- *The national corporate governance committee* is the »law-maker« with the duty to administer the code and the authority to decide on its content, typically after consultation with the market.

- *The stock exchanges* supervise the appropriate application of the code by listed companies and have the duty to take action when they detect significant deviations.
- *The market participants*, i.e. the investors and their advisors, are the ultimate judges through their decisions to invest in or divest of companies based on fully transparent information about the governance practices of these companies.

In the Nordics, the corporate governance codes are viewed as tools for on-going improvement of corporate governance practices by setting higher standards than the minimum levels required by law. These standards are to be strived for but not necessarily achieved by all companies all the time. With this approach, there is no point in aiming to achieve 100% compliance with the code provisions. In fact, such an outcome might imply that the code is not challenging enough.

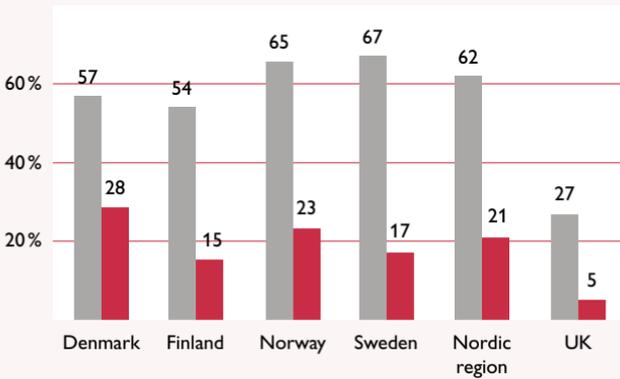
### A model flexible to different ownership structures

The Nordic markets are generally characterised by a high degree of ownership concentration in listed companies. As shown in the chart below, for the region as a whole, close to  $\frac{2}{3}$  of all listed companies have at least one shareholder controlling more than 20% of the total number of votes, and about  $\frac{1}{5}$  are under the absolute control of a single majority shareholder. The numbers vary between the countries, but they are all high in comparison with the UK, the European market most generally associated with highly dispersed ownership of listed companies.

This highly concentrated ownership structure of many listed companies has long prevailed and no doubt constitutes an important factor underlying the shaping of Nordic corporate governance. Yet, far from all Nordic companies have a controlling owner, as is also evident from the chart. On the contrary, there are many listed Nordic companies with as widely held shareholdings as are commonly found in markets generally associated with more dispersed ownership structures. That the model works well also under such circumstances is witnessed by the many successful Nordic companies of this kind.

*MANY – BUT FAR FROM ALL – NORDIC LISTED COMPANIES HAVE A CONTROLLING OWNER*

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**CONTROL OWNERSHIP** in different markets. This graph shows the presence of control ownership in companies on the Nordic and UK primary stock markets in 2014. The bars indicate the share of companies with at least one shareholder controlling more than 20% (grey) and 50% (red), respectively, of the total number of votes.

In fact, the model is highly flexible, providing a generally shareholder-friendly governance framework that works well within a wide range of different ownership structures.

## An ownership model of corporate governance

The book also includes a comment by Ronald J. Gilson, professor of Law and Business at Columbia Law School and Stanford Law School. Gilson's starting point is the classic notion that someone has to watch over management to ensure that it works diligently in the interests of the shareholders. To date, Anglo-American corporate governance has tried to solve this problem through a combination of organisational measures, e.g. by requiring a certain number of independent directors on the board, and external forces involving threats of hostile takeover of underperforming companies by firms with more efficient management. The problem, Gilson notes, is that both approaches have proved to be rather blunt instruments.

Gilson contrasts this with the Nordic model, which he describes as an ownership model of corporate governance, based on the »simple intuition that an active owner will be a more efficient and less costly monitor of management« than the techniques generally associated with dispersed-ownership models.

However, this approach gives rise to other problems by creating incentives for controlling owners to divert profits to themselves rather than sharing them with the other shareholders. Gilson defines three such agency problems of ownership and assesses their prevalence and ramifications in the Nordic context. His conclusion is that Nordic corporate governance

has been able to check these problems quite effectively, thus creating a governance framework that has fostered a remarkable number of globally successful companies. Gilson attributes this to a combination of effectively enforced legal rules and non-legal constraints on the possibility to extract private benefits in closely held companies.

### Convergence of ownership patterns?

Gilson proceeds to examine the much-debated issue whether different national and regional governance systems will converge over time. Citing recent developments in the US as well as the Nordic markets, he sees no general trend towards such a convergence. On the contrary, both dispersed and concentrated ownership appear to be thriving in both market areas. Hence, Gilson argues, the relevant issue is whether we will see a convergence of ownership patterns within markets rather than between markets.

On this point the outcome is as yet unpredictable, with concentrated ownership becoming more common on the US market whereas a trend towards decreased control ownership may be foreseen in the Nordic context. A decisive factor, Gilson speculates, may be the increased importance of institutional owners on both markets and how those shareholders choose to exert their ownership power. For example, what might be the impact on the Nordic markets if minority institutional shareholders are able to join forces to form institutional block-holdings in companies with a controlling shareholder?

## CHAPTER I

# INTRODUCTION

### Background

The quest for active and engaged shareholders with a long-term view of their investee companies has received increased attention in the current European debate on corporate governance. The issue is particularly pertinent in the UK, the EU market most closely associated with widely held, listed companies, but is also subject to considerable concern in many other Member States and in the European Commission.

The corporate governance framework of the Nordic countries provides some timely contributions to this debate. Its most distinctive feature is that it allows a shareholder majority, whether in the form of a single controlling owner or a group of shareholders with a shared interest, to effectively control and take long-term responsibility for the company. The alleged flip side of such a system, which is the potential scope for a shareholder majority to extract undue benefits at the expense of minority shareholders, is effectively curbed through a well-developed system of minority protection. The result is a governance model that, while being flexible to different ownership structures, encourages shareholders to engage in the govern-

ance of the company in their own long-term interest in a way that also benefits the company as a whole.

The model is Nordic in the sense that it is shared among all the Nordic countries,<sup>1</sup> while distinctly different in crucial respects from those of other parts of Europe. To what extent certain aspects of it may be of relevance also in a broader international perspective falls outside the scope of this study. Its key premise is, rather, that the model works well in the Nordic context, having fostered a remarkable number of globally successful companies in relation to the size of the countries, as shown in Table 1.1 below, and that it therefore deserves to be recognised and cherished as a well-functioning governance model for this region.

**TABLE 1.1** Share of the world's largest listed companies in relation to share of global GDP and population.<sup>2</sup>

	<i>Denmark</i>	<i>Finland</i>
Share of global population	0.08 %	0.08 %
Share of global GDP	0.43 %	0.34 %
No. of companies in Forbes' 2000 largest	14	12
Share of companies in Forbes' 2000 largest	0.70 %	0.60 %
Large company share/GDP share	1.63	1.76
Large company share/population share	8.86	7.89

SOURCES: Population and GDP data: World Bank (<http://www.worldbank.org>). Forbes 2000 data: Forbes (<http://www.forbes.com/global2000/>)

1. Generally including also Iceland, although this country is not part of this study.

2. This analysis is contributed by Professor Tom Berglund, member of the Finnish expert team of this study.

The table shows the ratios of the share of companies included in the Forbes 2000 Global Leading Companies list to the share of global GDP and of global population, respectively, for the Nordic countries and Germany, the UK and the US. As is apparent from the table, all the Nordic countries except Norway have about three times as many companies on the Forbes 2000 list in relation to their GDP as Germany, and also distinctly more than the UK and the US. In terms of the second ratio – share of large companies in relation to share of global population – the difference is even greater and includes also Norway.<sup>3</sup> It is further notable that the total number of Nordic companies on the list exceeds that of Germany although the GDP of this country is more than twice that of the combined Nordic countries.

<i>Norway</i>	<i>Sweden</i>	<i>UK</i>	<i>Germany</i>	<i>USA</i>
0.07 %	0.13 %	0.89 %	1.15 %	4.48 %
0.69 %	0.72 %	3.42 %	4.73 %	22.41 %
9	26	92	52	563
0.45 %	1.30 %	4.60 %	2.60 %	28.15 %
0.65	1.81	1.35	0.55	1.26
6.43	9.70	5.19	2.26	6.28

3. The significant difference between the two ratios for Norway is largely due to the exceptionally high GDP per capita of this country compared with the other countries in the table.

## Purpose and scope of the study

Against this backdrop, the principal purpose of this study is to identify the key common features of the corporate governance systems of the Nordic countries and to convey, on this basis, a coherent representation of a pan-Nordic governance model. The underlying aim is to contribute to an increased recognition and better understanding of this model in the international business community, especially among actors with an interest in the Nordic capital market. As hinted at above, it may also contribute to the ongoing debate on shareholder engagement and long-term ownership.

The study comprises the four major Nordic countries of Denmark, Finland, Norway and Sweden. As separate entities, these countries are small and of little economic weight in a broader international context. However, looked upon as a coherent region, in terms of 2013 GDP it made up about  $\frac{2}{3}$  of the size of the UK, exceeded that of Spain, and would have qualified as member no. 12 of the G20 group, shortly ahead of Australia.<sup>4</sup>

A key premise of this study is the aim of corporate governance to reduce agency costs,<sup>5</sup> i.e. to ensure that companies are run as efficiently as possible in the interest of their shareholders. Nordic corporate governance is firmly founded on prevailing institutional, regulatory and general practice preconditions

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4. Source: World Development Indicators database, World Bank, 1 July 2014.

5. This term refers to the so-called Principal-Agent Theory, which suggests in short that there may be discrepancies between the interests of the owners of a company, the *principal*, and its board and management, the *agent*. To the extent that such discrepancies lead to the company not being run in the full interest of the principal, the difference is generally referred to as »agency costs«.

in each of the countries involved. The corporate legislation and other statutory regulation of these countries are the cornerstones, but Nordic corporate governance also builds heavily upon self-regulation, mainly in the form of corporate governance codes, and on generally accepted, non-codified practice and traditions.

The study is purely descriptive, presenting a factual account of the state of the art of Nordic corporate governance in the first half of 2014. It entails no ambitions to promote changes to this framework, either pertaining to individual countries or at the consolidated level, and the model presented should not be interpreted as any kind of pan-Nordic regulatory initiative. Consideration of if and when such a development might be worth pursuing is outside the scope of this study.

The main target groups of the report are thought to be the following:

- (i) *Investors and governance professionals of a non-Nordic background*, active on the Nordic capital markets and therefore in need of a better understanding of the corporate governance framework of these markets.
- (ii) *Politicians, officials and staff of the EU institutions* with a need to grasp the diversity of corporate governance systems prevailing throughout the Union. Naturally, the significance of the individual Nordic Member States is quite limited in this context. By comparison, seen as a coherent region with a well-defined, common corporate governance model, which is distinctively different from other parts of Europe, its weight increases significantly.
- (iii) *Domestic audiences*, e.g. company owners, entrepreneurs, board directors and executives engaged in the practical governance of listed as well as unlisted companies, wanting better knowledge of the corporate governance

systems of their neighbouring countries and/or a deeper understanding of the ideological roots, key characteristics and practical functioning of their domestic system.

## Project organisation

The study has been carried out as a policy roundtable project within SNS, the Centre for Business and Policy Studies, Stockholm, Sweden, under the management of *Per Lekvall*, former Executive Director, currently ordinary member, of the Swedish Corporate Governance Board and member of the Policy Committee of the European Confederation of Directors' Associations (ecoDa).

The main project work has been pursued through a pan-Nordic working group made up of two members from each country, i.e. one legal expert focused on corporate legislation and other formal corporate governance regulation, and one management-oriented expert of corporate governance theory and/or practice. The respective country teams have been comprised of the following members:

DENMARK: *Jesper Lau Hansen*, Professor of Financial Markets Law, University of Copenhagen, and *Carsten Lønfeldt*, business professional with extensive experience as CFO, board director and chair in listed and non-listed Danish companies, and member of the Nasdaq Copenhagen Advisory Board.

FINLAND: *Manne Airaksinen*, partner of Roschier Law Firm, Helsinki, and *Tom Berglund*, Professor of Applied Microeconomics and Theory of the Firm, Hanken School of Economics, and director of the Hanken Centre for Corporate Governance, Helsinki.

NORWAY: *Gudmund Knudsen*, partner of BA-HR DA Law Firm, Oslo, and *Harald Norvik*, business professional with a long career as CEO, board director and chair in major listed Norwegian companies, and co-founder and board member of the Norwegian Institute of Directors.

SWEDEN: *Rolf Skog*, adjunct professor at the Department of Law, University of Gothenburg, and *Erik Sjöman*, partner of Vinge Law Firm, Stockholm.

In addition, *Tom von Weymarn*, member of the Finnish reference group, has been permanently co-opted to the working group as an advisor with particular expertise in Finnish and Swedish corporate governance practice.

In each country, a high-level Reference Group representing various aspects of the business and financial sectors of the country has been organised for the purpose of acting as advisors to the national expert teams and reviewers of subsequent drafts of the study report. These groups have been comprised as follows:

DENMARK: *Sten Scheibye* (chair), chair of Novo Nordisk Foundation and former chair of the Danish Corporate Governance Committee (DCGC); *Frederik Bjørn*, board secretary, Danske Bank Group; *Lars Nørby Johansen*, former chair of the DCGC; *Anne Pindborg*, Chief Legal Counsel, Mærsk Group; and *Bjørn Sibbern*, CEO, Nasdaq Copenhagen and member of the DCGC.

FINLAND: *Stig G. Gustavson* (chair), chair of Konecranes Oy; *Maarit Arni-Sirviö*, Secretary General, Directors' Institute of Finland (DIF); *Gunvor Kronman*, CEO, Hanaholmen/SNS Helsinki; *Leena Linnainmaa*, deputy CEO, Finland Chamber of Commerce; *Sixten Nyman*, member of the DIF Policy Committee and partner and chair, KPMG Finland; *Tapani Varjas*, member of the DIF Policy Committee and General Counsel,

Solidium Oy; and *Tom von Weymarn*, partner of Boardman Oy and chair of Hartwall Capital.

NORWAY: *Ingebjørg Harto* (chair), chair of the Norwegian Corporate Governance Committee and department director, Confederation of Norwegian Enterprise; *Finn Jebsen*, chair of Kongsberg Group; *John Giverholt*, CEO, the single-family office FERD; and *Christina Stray*, General Counsel, The Government Pension Fund Norway.

SWEDEN: *Hans Dalborg* (chair), former chair of Nordea Bank and the Swedish Corporate Governance Board; *Petra Hedengran*, General Counsel, Investor AB; *Annika Lundius*, Executive Vice President, the Confederation of Swedish Enterprise; *Anders Nyrén*, chair of Svenska Handelsbanken AB and CEO, AB Industrivärden; *George Pettersson*, CEO, KPMG Sweden; and *Ulrik Svensson*, CEO, Melker Schörling AB.

The role of the reference groups has been solely advisory. Hence, the views expressed by the respective authors of various parts of this report may not necessarily be shared by individual group members.

## Outline of the report

Following this introductory chapter, Chapter II gives an overview of two crucial aspects of the institutional context in which Nordic corporate governance prevails: its regulatory basis and the structure of the Nordic stock markets. Then Chapter III, as the core compartment of the report, presents the key findings of the study in the form of a coherent account of a joint Nordic corporate governance model, based on the corresponding models of the four countries involved as described in Appendi-

ces A–D. Finally, in Chapter 1v, Professor Ronald J. Gilson of Columbia Law School and Stanford Law School, comments on the model from an international point of view and puts it into the context of a wider discussion of the role of ownership for the efficient governance of companies.

Appendices A to D contain summary accounts of the corporate governance systems of each of the countries involved, following a common structural template. These »country reports« make up the main factual basis for the consolidated model presented in Chapter III.

Appendix E contains a summary report of the ownership concentration study which was carried out within the framework of the main study, as well as a note on the methodology used for this study.

## CHAPTER II

# THE INSTITUTIONAL FRAMEWORK OF NORDIC CORPORATE GOVERNANCE

Nordic corporate governance rests upon a set of cultural, judicial and economic preconditions, which are more or less unique to the region and together make up its institutional basis. This chapter will focus on two such aspects that are of particular pertinence to the discussion in subsequent parts of the report. These are (i) the regulatory framework that defines the rules, norms and practices of corporate governance in the Nordic countries, and (ii) the overall size and structure of the Nordic market for listed-company equity.

### The regulatory framework

The corporate governance system of a jurisdiction is defined by complex sets of written and unwritten rules, norms and practices which are collectively referred to here as the *regulatory framework*. Generally speaking, it is comprised of three main categories:

- (i) *Statutory regulation* in the form of companies acts and other laws and mandatory prescriptions, issued by the government or its subordinate authorities. See Appendices A–D for a review of the relevant legal structure of each of the countries concerned. The aim of this chapter is to supplement these accounts with a short review of the common heritage of the corporate legislation of the Nordic countries that constitutes a fundamental premise of this study.
- (ii) *Self-regulation*, i.e. regulation defined and enforced by the business sector itself, with no or only limited interference by the government. Such regulation can have different forms and be more or less mandatory for the actors subject to the regulation, as will be further discussed below.
- (iii) *Non-codified rules, norms, and customary practice* that largely govern the way real-world governance is pursued.

Although the balance between these norm systems may vary from country to country, they all play a crucial role as determinants of the way corporate governance is carried out in practice.

The third category is of particular interest in the Nordic context due to the relatively strong and homogeneous norms and value systems prevailing in these societies in combination with a high degree of social control which is typical of small communities. Nonetheless, the scope of this report does not permit a deeper discussion of this aspect of the regulatory framework.

*A common heritage of corporate legislation*<sup>1</sup>

The companies acts of the Nordic countries have a long-standing common background. They all stem from a combination of French and German corporate legislation of the 19<sup>th</sup> Century but have also been subject to significant influence from the Anglo-Saxon judicial tradition. Furthermore, for over a century, there have been recurrent efforts to harmonise corporate legislation between the Nordic countries.

Thus, in the decades following World War II, there were far-reaching plans to develop an essentially common companies act for the Nordic countries as part of a general quest for closer Nordic economic integration at that time. Indeed, in the years around 1970, after lengthy and complicated negotiations, almost identical bills of new acts were submitted to the legislators of the five Nordic countries, including Iceland. However, the appetite for Nordic economic co-ordination had substantially weakened by this time. Instead, the co-operation within the then European Economic Community (EEC) appeared more promising, and the formal Nordic harmonisation efforts came to an end. Still, the new companies acts which were introduced in all Nordic countries during the 1970's closely resembled one another.

In the subsequent decades, these acts began drifting apart again as a result of different political agendas and the fact that the countries were members of different economic co-operation frameworks. When new companies acts were again introduced in all Nordic countries during the first decade of the new century, they thus differed significantly in several aspects. It should be noted, though, that the partition process since the

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1. This section draws largely upon a speech delivered by Rolf Skog, member of the Swedish expert team of this study, at a seminar on May 10, 2007, in celebration of the centennial jubilee of Stockholm University.

1970's had mainly concerned aspects of the acts other than how companies are to be governed, thus leaving the highly coordinated regulation of corporate governance matters from the previous acts largely untouched. The result is the far-reaching resemblance of the governance regimes of the Nordic countries appearing from Appendices A–D. This, in turn, constitutes a key precondition of this study.

### *A tradition of self-regulation*

Self-regulation is a long-standing tradition in many aspects of societal life in the Nordic countries. It exists in many different forms, from mandatory membership rules of professional organisations to more loosely defined voluntary codes of conduct in various contexts. Where applicable, it is often preferred to legislation because of its greater flexibility, generally better regulatory precision and higher acceptability among actors subject to the regulation.

Since the early years of the new century, corporate governance codes have been the main form of self-regulation within this field in the Nordic countries. The development began in 2001 when the Nørby Committee<sup>2</sup> presented the first proposal of a Danish national corporate governance code. In the subsequent years, this was followed by similar initiatives in all four countries and, by December 2005, comprehensive corporate governance codes based on the comply-or-explain principle were part of the mandatory listing requirements on all primary

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2. Named after its chair, Mr. Lars Nørby Johansen, who subsequently chaired the first Danish national corporate governance committee and has been a member of the Danish reference group of this study.

Nordic stock exchanges.<sup>3</sup> Although these codes may appear at face value to differ quite significantly, in terms of crucial substance matter they are all based on universally adopted concepts and principles of modern corporate governance and resemble one another to a great extent.

An important aspect of the regulatory impact of corporate governance codes is how they are implemented and set to work in practice, particularly with respect to the comply-or-explain principle. In this regard, Nordic code regulation is true to the original UK-based principle which, in short, imposes a strict requirement on companies to apply the code properly but takes a soft attitude toward their compliance with individual provisions. Thus, companies listed on a Nordic, regulated stock exchange are contractually bound to apply the corporate governance code adopted by the exchange. On the other hand, there is no obligation to comply with individual provisions as long as all non-compliance is duly reported and explained. It is the general attitude of Nordic code-administering bodies<sup>4</sup> that, in individual cases, it may be as good – or occasionally even better – corporate governance to choose a different solution than the one provided by the code.

Rather than as a »soft law« that should be observed to the greatest extent possible, codes are thus viewed in the Nordic context as tools for on-going improvement of corporate governance practices by setting a higher standard than the minimum level required by law, a standard to be strived for but not

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3. A more comprehensive discussion of the origin and regulatory role of the Nordic corporate governance codes can be found in Hansen, J.L.: *Catching up with the crowd, but going where?* International Journal of Disclosure and Governance 213, 2006.

4. The Danish Corporate Governance Committee, [www.corporategovernance.dk](http://www.corporategovernance.dk); the Finnish Securities Market Association, [www.cgfinland.fi/en](http://www.cgfinland.fi/en); the Norwegian Corporate Governance Board, [www.nues.no](http://www.nues.no); and the Swedish Corporate Governance Board, [www.corporategovernanceboard.se](http://www.corporategovernanceboard.se).

necessarily achieved by all companies all the time. With this view, there is no point setting a goal of 100 % compliance with the code provisions. In fact, such an outcome might be seen as implying that the code is not challenging enough rather than as a sign of high corporate governance standards.

Another crucial aspect of code implementation is how the monitoring and enforcement of the code are organised. In this regard, the Nordic countries have developed a well-defined division of duties between the main actors of the system, in short to the effect that:

- the national corporate governance committee is the »law-maker« with the duty to administer the code and the authority to decide on its content, typically after due consultation with the market;
- the relevant stock exchanges supervise the appropriate application of the code by »their« listed companies and have the duty to take action if and when they detect significant deviations from this;
- the market, which is comprised of present and prospective shareholders, their advisors and other actors on the capital market, is the judge as to whether the corporate governance behaviour of a company is confidence-inspiring from an investor's point of view.

The appropriate performance of this system is paramount to the effectiveness of corporate governance codes as self-regulatory instruments.

## The market for publicly traded stock

The Nordic markets for publicly traded company stock are active, versatile and technically up to date. Since the dismantling of the previous monopolies during the 1990's, all exchanges are currently operated by privately owned companies. Individual ownership of listed-company equity is widespread, although today mainly channelled through various forms of institutional investors such as life insurance companies, pension funds and mutual investment funds. Thus, a high percentage of the general public of the Nordic countries has a direct or indirect ownership interest in the stock market, and the development of share prices as well as the governance and performance of stock-listed companies are closely monitored and reported by media.

### *Size and structure of the stock market*

Since the turn of the century, the importance of the public stock market for the supply of risk capital to companies has decreased relative to other sources of capital in the Nordic countries as well as in many other parts of the developed world.<sup>5</sup> Nonetheless it still carries considerable economic weight in the Nordic economies, well comparable to that of other European countries (see Table II.1 below). Although the figures in this table must be interpreted with care,<sup>6</sup> it conveys

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5. Jakobsson, J. & Wiberg, D.: *Vem ska styra de svenska företagen?* [Who is to Control the Swedish Companies?]. Report to the project Entrepreneurial Ownership of the Association of Swedish Enterprise, Stockholm 2014, pp. 16–17 (available only in Swedish).

6. For at least two reasons, one being that the numbers are sensitive to diverging general share price developments between the exchanges, and another

**TABLE II.1** Importance of national primary stock market vs. country economy.

<i>Primary national stock exchange</i>	<i>Country GDP 2013 (b€)</i>	<i>Market Cap end 2013 (b€)</i>	<i>Market Cap / country GDP</i>
Nasdaq Copenhagen	249	221	89 %
Nasdaq Helsinki	193	162	84 %
Nasdaq Stockholm	420	539	128 %
Oslo Stock Exchange	386	233	60 % <sup>7</sup>
<b>Total Nordic area</b>	<b>1,248</b>	<b>1,155</b>	<b>93 %</b>
London Stock Exchange	1,908	2,884	151 %
Deutsche Börse	2,737	1,710	63 %
Euronext Paris	2,060	1,670	81 %
Euronext Amsterdam	603	594	99 %

*SOURCES:* Copenhagen-Helsinki-Stockholm: Nasdaq and Eurostat; Oslo Stock Exchange: Oslo Stock Exchange and national statistics; London Stock Exchange: Eurostat and Euronext; Euronext Paris and Amsterdam: Eurostat and ECB Statistical Data Warehouse.

a »snapshot in time«, indicating that the economic importance of the stock markets in the Nordic countries is well at par with that of some other European countries, generally known for significant stock markets.

er that a significant – and increasing – share of the stock of companies listed on these exchanges is being traded on so called multilateral trading facilities (e.g. Chi-square, Turquoise, etc.).

7. The modest number for Norway in view of its sizable stock market (see Tables II.2 and II.3) is largely due to its significantly higher GDP per capita than all other countries in the comparison. If, instead, the average GDP of Denmark and Finland, both of which are about the size of Norway in terms of population, is applied to Norway, its ratio of Market Cap to GDP increases to 105 %.

**TABLE II.2** Overview of Nordic markets for publicly traded stock as of 2013-12-31. Number of companies listed on the respective trading facilities.

	Denmark	Finland	Norway	Sweden	Nordic area
<b>REGULATED MARKETS</b>					
<i>Primary market</i>	Nasdaq Copenhagen 154	Nasdaq Helsinki 120	Oslo Stock Exchange 186 <sup>8</sup>	Nasdaq Stockholm 251	711
<i>Secondary market</i>	—	—	Oslo Axess 32	NGM Equity 14	46
<i>Total regulated markets</i>	154	120	218	265	757
<b>UNREGULATED MARKETS</b>	42	4	64	~ 240	~ 350
<b>TOTAL PUBLICLY TRADED COMPANIES</b>	196	124	282	~ 500	~ 1,100

The primary stock exchanges of Denmark, Finland and Sweden are currently owned and operated by the privately owned company Nasdaq Nordic Ltd., including the exchanges of the Baltic states and Iceland, which is, in turn, a wholly owned subsidiary of the US-based Nasdaq Group Inc. The primary Norwegian exchange, Oslo Stock Exchange, is owned by Oslo Børs vPC Holding ASA, the result of a merger between

8. Including 15 non-incorporated savings banks which issue a special kind of equity instrument.

Oslo Børs Holding and vps Holding in 2007. In some of the countries there are also secondary stock exchanges as well as a number of unregulated multilateral trading facilities (see Table II.2).

As shown in the table, the primary regulated markets of the Nordic countries comprised in all slightly over 700 companies at the end of 2013. In Norway and Sweden there is also a minor secondary regulated market, increasing the total number of companies listed on a Nordic regulated market to about 750. However, most of the companies on these exchanges are quite small and of little economic significance in the overall picture. For example, the 32 companies of Oslo Axess, which make up 15 % of the total number of companies listed on the Norwegian regulated market, accounted for a mere 0.2 % of the total market capitalisation value of this market.

In addition to this, most of the countries have one or several unregulated stock markets, listing in all about 350 companies, most of which are also quite small. Hence, the total number of publicly traded companies in the Nordic countries amounts to well over a thousand.

Table II.3 shows a size classification of the companies listed on the primary market of each country. For Denmark, Finland and Sweden it is based on numbers obtained from Nasdaq according to their standard size classification as follows:

- Large-cap = companies with a market value exceeding m€ 1,000.
- Mid-cap = companies with a market value of m€ 150–1,000.
- Small-cap = companies with a market value of less than m€ 150.

Since there is no official size classification on the Oslo Stock Exchange, a corresponding break-down has been done »man-

**TABLE 11.3** Size composition of companies listed on the primary Nordic stock exchanges.

<i>Number of companies / Share of market value</i>				
	<i>Large-cap</i>	<i>Mid-cap</i>	<i>Small-cap</i>	<i>Total</i>
Copenhagen	22/89 %	29/9 %	103/2 %	154/100 %
Helsinki	26/87 %	40/11 %	54/2 %	120/100 %
Oslo	32/86 %	66/12 %	88/2 %	186/100 %
Stockholm	58/90 %	71/8 %	122/2 %	251/100 %
Total Nordic	138/88 %	206/10 %	367/2 %	711/100 %

SOURCES: Copenhagen-Helsinki-Stockholm exchanges: Nasdaq Nordic; Oslo Stock Exchange: BA-HR Law Firm, Oslo.

ually « for these companies based on the same size categories.<sup>9</sup>

As appears from the table, the size structure of the companies is extremely uneven. The roughly 15–25 % of the total number of companies classified as large-cap across all exchanges account for almost 90 % of the market value, whereas more than half of the companies classified as small-cap account for a mere 2 %, a pattern that is remarkably consistent across the markets. All companies listed on the secondary regulated and unregulated markets shown in Table 11.2 can also be added to the small-cap category. All in all, this means that, although the Nordic stock market comprises a respectable number of relatively large companies, not least in view of the limited size of the countries (see Table 1.1, p. 28), there is also a long »tail« of quite small, listed companies, especially as seen in a broader international context. Many of these companies are in fact early-stage entrepreneurial projects for which the stock exchange

9. Carried out in-house at the BA-HR Law Firm, Oslo, for this study.

offers access to a broader capital base for their often first steps towards international expansion.

### *Major shareholder categories*

The ownership structure of Nordic publicly traded companies has undergone significant changes over the last half-century and differs today considerably between the countries. Details about these developments are to be found in the respective country reports in Appendices A–D. What follows here is a brief review of the most important trends seen in an overall Nordic perspective.

Direct share ownership by private households has decreased drastically from having dominated stock market ownership in some countries a few decades ago to a share of the total market value of about 15 % in Denmark, Finland and Sweden and a mere 4 % in Norway.

Instead, (domestic) institutional investors in the form of pension funds, life insurance companies, mutual funds, etc., have picked up much of private households' savings in listed shares, thus increasing institutional ownership from virtually nothing 50 years ago to a very significant role in the decades preceding the turn of the century. Their relative share has decreased again since that time, leaving domestic institutional investors to account today for about 10 % in Norway and 35–50 % in the other countries. This development has been offset by a rapid increase of foreign ownership, mainly in the form of UK- and US-based institutional investors, which has increased sharply from insignificant levels 20 years ago to more than 40 % for the region as a whole today. Hence, the total institutional ownership on Nordic markets has remained

largely unchanged since the turn of the century.

Except for Denmark, public ownership, mainly through the State, has traditionally played a significant role on Nordic stock markets. However, particularly in Sweden but increasingly also in Finland, the State has reduced its holdings in recent years and is now down to about 23 % of the total stock market value in Finland and 5 % in Sweden. In Norway, the State remains the largest investor on the stock market and is, in fact, the dominant shareholder in eight of the largest Norwegian companies, together accounting for about one third of the total Oslo Stock Exchange market value.

### *Ownership concentration in listed companies*

The distinction between concentrated versus dispersed ownership in listed companies has been a matter of considerable attention in academic research within the corporate governance field. Still, there is a lack of comprehensive empirical data on the degree of ownership concentration in different jurisdictions to be found in the literature. A notable exception is a book edited by Barca and Becht from 2002<sup>9</sup> containing voting-block analyses for nine European countries and the US. However, the only Nordic country included in this study was Sweden, and the analyses were confined to a 25 % vote control level. Two other sources of ownership control data are a classic study from 1999 by La Porta et al.,<sup>10</sup> covering 27 countries around the world, and an EU study from 2007.<sup>11</sup> Although these stud-

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9. Barca, F. and Becht, M. (eds): *The Control of Corporate Europe*. Oxford University Press, 2002.

10. La Porta, R., Lopez-de-Silanes, F. and Schleifer, A.: *Corporate Ownership around the World*. *Journal of Finance* 54(2) 1999, pp. 471–517.

11. European Commission Study on Proportionality between Ownership

ies had a broader geographical coverage, between them including the four Nordic countries of this study, they were both confined to about the 20 largest listed companies in each country, and both looked only at 20 % of the voting power as the cut-off level for corporate control.

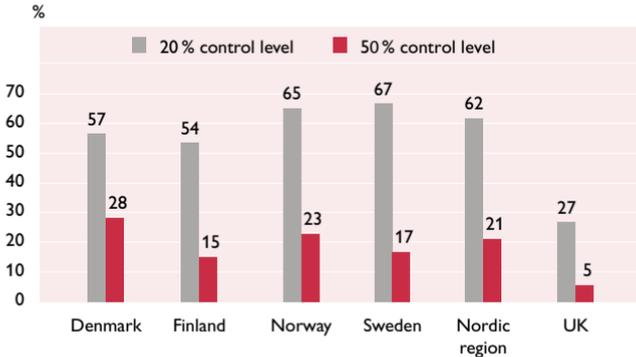
Therefore, and since the prevalence of corporate control among broader circles of listed companies is of crucial importance for this study, a special investigation of this issue among Nordic listed companies, including both a 20 % and a 50 % control level, was carried out within the framework of this study. In order to obtain a broader frame of reference for assessing the Nordic results, a sample of companies on the UK stock market was also included.

The research was commissioned to SIS Ägarservice, a Stockholm-based consultancy specialised in the analysis of ownership and board data for listed companies.<sup>12</sup> For the Nordic countries, the study comprised all domestically domiciled companies listed on the primary national stock exchange of the respective countries during the period April–June 2014. For the UK, a sample of 116 companies was randomly selected from UK-domiciled companies listed on the London Stock Exchange, in all a UK population of 820 companies. In order to obtain some measure of comparability with the two earlier studies mentioned above, but also to facilitate the comparison of various degrees of control ownership, two cut-off levels of corporate control were applied, i.e. at least one shareholder controlling more than 20 % and 50 %, respectively, of the total votes of the company.

Detailed results of the study, as well as a note on the methodology used, are to be found in Appendix E. Below follows an overview of the main results (see Figure 11.1).

and Control, 2007.

12. SIS Ägarservice AB: [www.aktieservice.se](http://www.aktieservice.se).



**FIGURE II.1** Presence of control ownership on the Nordic and UK primary stock markets. Share of companies with at least one shareholder controlling more than 20% and 50%, respectively, of the total number of votes (numbers rounded off to the nearest whole number).

Looking first at the 20% control level, the overall picture is, as expected, one of high degrees of ownership concentration across the Nordic markets. Norway and Sweden lead the way with approximately two thirds of all companies having at least one shareholder in control of more than 20% of the votes. The corresponding numbers for Denmark and Finland are lower, yet more than half of their companies display the same degree of concentration. For the Nordic region as a whole, about six companies out of ten have at least one controlling shareholder at the 20% control level.

The pattern is remarkably different at the 50% control level. Here, Denmark displays the highest degree of concentration with a single shareholder in full control of almost three companies out of ten, whereas especially Finland and Sweden show distinctly lower figures. For the Nordic region as a whole, about one fifth of all companies are under absolute control of a single shareholder.

As expected, the UK benchmark sample displays distinctly lower concentration levels. Still, it may come as a surprise that, in more than a quarter of the UK sample of companies, at least one shareholder controls more than 20 % of the voting power (which equals the share of capital for companies on the LSE Main Market). Perhaps even more surprising is that about 5 % of the companies, corresponding to six individual companies, have a single shareholder in control of more than 50 % of the votes. It is important to keep in mind, however, that these data – in contrast to the Nordic data – are based on a sample survey and are thus subject to statistical sampling error.<sup>13</sup>

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13. For the 20 % control level, this error margin amounts to  $\pm 7.4$  percentage points at the 95 % confidence level. With a slight simplification, this may be interpreted to mean that, with 95 % certainty, the true share lies between about a fifth and a third of all companies (for further details, see Appendix E).

## CHAPTER III

# A CONSOLIDATED NORDIC GOVERNANCE MODEL

### The essence of the model

The key distinctive feature of Nordic corporate governance is the strong powers vested with a shareholder majority to effectively control the company. This forms the basis for dominant owners to engage in, and take long-term responsibility for their company, but it also offers shareholders of more widely held companies the potential to exert genuine ownership powers, e.g. by forming ad hoc coalitions to deal with issues of common interest. In fact, the model is highly flexible, providing a generally shareholder-friendly governance framework that is functional within a wide range of different ownership structures.

The underlying philosophy is that the shareholders should be in command of the company. The board and management are seen as the shareholders' agents for running the company during their mandate period under strict accountability to the shareholders for the outcome of their work. This is manifested through a clear-cut and strictly hierarchical governance structure based on four pillars:

- (i) *Supremacy of the general meeting* to decide on any matters that do not expressly fall within the exclusive competence of another company organ;
- (ii) A *non-executive board of directors* appointed by, and fully subordinate to, the shareholders in general meeting;
- (iii) An *executive management function* appointed by, and fully subordinate to, the board; and
- (iv) A *statutory auditor* appointed by, and reporting back primarily to, the shareholders in general meeting.

The strong ownership powers inherent in this structure may be further enhanced in all four countries through the use of dual-class shares with different voting rights. This option is currently mainly used in Denmark and Sweden, less in Finland and seldom in Norway.

Major owners, especially in companies with a concentrated ownership structure, generally take active part in the governance of the company, e.g. by taking seats on the board, being involved in the nomination of candidates for board assignments and maintaining ongoing contacts with the board, primarily through its chair. In Norway and Sweden, shareholder engagement in board nomination is mainly pursued through the shareholder-led nomination committees generally used in these countries (see page 72), whereas in Denmark it usually takes the form of informal consultations with board-appointed nomination committees of the Anglo-American type, typically through the chair as the main liaison with major shareholders. In Finland, the practice varies with closely held companies increasingly using shareholder-led nomination committees of the Norwegian/Swedish type, whereas more widely held companies generally apply the Anglo-American nomination model.

Another distinctive feature of Nordic corporate governance is the entirely or predominantly non-executive board. This has

several important implications, one being a clear-cut division of duties and responsibilities between a monitoring and strategically steering board and a purely executive management function. Another is the stronger integrity of the board vis-à-vis the executive function than what is generally the case in mixed boards of the one-tier type. This, in turn, has fundamental implications for the rationale in the Nordic context of such board integrity-preserving measures in the one-tier system as director independence and board subcommittees, as will be further discussed later in this chapter.

The far-reaching powers thus vested with a shareholder majority to effectively control the company are balanced by comprehensive measures to protect minority shareholder rights, aimed at preventing controlling owners from extracting private benefits from the company. This is obtained through a set of statutory provisions, the most important of which are the following:

- (i) *The principle of equal treatment at all levels*, which prohibits any company organ from taking any action rendering undue favours to certain shareholders at the expense of the company or other shareholders;
- (ii) Extensive *individual shareholder rights* to actively participate in shareholders' meetings;
- (iii) *Majority-vote requirements* of up to total unanimity for resolutions by general meeting of particular, potential detriment to minority shareholder interests;
- (iv) *Minority powers* to force certain resolutions at the general meeting, especially on matters regarding shareholders' economic rights;
- (v) Prescriptions for handling *related-party transactions* strictly on market terms; and
- (vi) A generally high degree of *transparency* towards the shareholders, the capital market and the society at large.

Although these points may not individually seem very unique within a European perspective, together they make up a comprehensive system which has been developed and refined through many years of accumulated experiences and which counter-balances the strong shareholder powers outlined above. That the system works well in practice is shown by the competitiveness of Nordic companies on international markets (see Table I.1, p. 28), the substantial levels of foreign ownership in Nordic listed companies, and the remarkably few instances of major corporate scandals in the Nordic countries in recent years.

Each of the points highlighted above will be further elaborated below.

\* \* \*

Although this model is generally considered well adapted to prevailing circumstances in the Nordic region, from a governance-efficiency point of view it is sometimes associated with mainly three matters of concern in the international debate.

*The first* is an alleged potential for a controlling shareholder to extract private benefits from the company at the expense of other shareholders, a risk that is often held against controller-oriented governance models in the international debate. However, such behaviour appears largely to have been successfully curbed in the Nordic context. Thus, Nenova (2003)<sup>1</sup> showed in a cross-country study that the median value of control-block votes<sup>2</sup> was 23 % on average among the jurisdictions

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1. Nenova, T.: *The Value of Corporate Voting Rights and Control: A Cross-country Analysis*. Journal of Financial Economics 68 (2003), pp. 325–351.

2. Defined as the total value of control-block votes as a share of firm market value, *ibid.*, p. 332. Shares of 5 % and above are here rounded off to the nearest whole number.

examined originating in French civil law (including France at 27 %, Italy at 30 % and Mexico at 37 %), 16 % in jurisdictions of German civil law origin (including Germany at 5 % and Switzerland at 1.5 %), 1.6 % in Anglo-Saxon common law jurisdictions (including the UK at 7 % and the US at 0.7 %), but a mere 0.5 % across the four Nordic countries. Nenova associates these differences with the relative strictness of the legal environments, in particular with regard to such factors as »general investor protection, higher quality of law enforcement, and stricter takeover laws«.<sup>3</sup>

Gilson (2005)<sup>4</sup> further elaborates on this by comparing the prevalence of pecuniary, private benefits of corporate control in Sweden and the US with that of a number of other countries, including Italy, Mexico and some Southeast Asian countries. He concludes that the appropriate dichotomy is not that between countries with widely held and controlling shareholder structures but, rather, that between functionally »good law« and »bad law« jurisdictions, in respect of which he regards Sweden and the US as qualifying for the first category. It is a reasonable assertion that these conclusions apply to the entire Nordic region.

A *second concern* is that the prevalence of control ownership may tend to counteract an active corporate-control market, thus weakening the »creative-destruction« function of a dynamic stock market.<sup>5</sup> However, the prevalence of controlling shareholders in Nordic listed companies does not generally appear to have restricted takeover activity to any great

3. Ibid., p. 344.

4. Gilson, R. J.: *Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy*. Harvard Law Review Vol. 119 (2005), p. 1641 ff.

5. I.e. the processes by which poorly managed companies are taken over by more efficiently run companies, thus hopefully creating value for the shareholders of both companies.

extent. For example, a 2004 analysis of the takeover market on the Stockholm Stock Exchange compared to that of the London Stock Exchange showed that the annual average share of listed companies subject to successful takeover bids during the period 1990–2002 was significantly higher on the Stockholm market than on the London market, with the latter generally considered to be the most open equity market in Europe.<sup>6</sup> As appears from the country reports in Appendices A–D, there appears to have been no general lack of takeover activity on the Nordic stock exchanges also in the subsequent decade.

A *third point of concern* is a sometimes alleged tendency of controlling shareholders, who typically have asset portfolios with a relatively low degree of risk diversification, to be more risk-averse than the boards and managements of more widely held companies. Considering the recent financial crisis and the cases of excessive risk-taking exposed through it, this might not necessarily have been an entirely bad outcome. Still, there is little empirical evidence in support of such a tendency, especially for the type of controlling owners that dominate the Nordic capital markets: families, foundations, pension funds, etc., managing predominantly long-term capital.

In fact, such owners may in many cases exhibit considerable, but generally well-calculated, risk appetite. The difference is that their risk-taking is typically aimed at creating long-term and sustainable value rather than short-term gains. In support of this view, it is notable that there appears to be no lack of examples of control-owner dominated Nordic companies that have exhibited remarkably bold and successful global expansion strategies, e.g. *A.P. Møller-Mærsk* and *Novo Nordisk* in Denmark, *Kone* and *Wärtsilä* in Finland, *Schibsted* and *Tel-*

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6. Skog, R.: *The European Union's Proposed Takeover Directive, the »Breakthrough« Rule and the Swedish System of Dual Class Common Stock*. Scandinavian Studies in Law, Vol. 45, Jure, Stockholm 2004.

*enor* in Norway (the latter with the State as the controlling owner) and *H&M* and *IKEA* in Sweden. It is also worth noting that, among the approximately 60 Nordic companies on the Forbes 2000 list of the world's largest listed companies, referred to in Table 1.1 (p. 28), well over two thirds have at least one shareholder controlling more than 20% of the company's votes.<sup>7</sup>

## An owner-oriented governance structure

### *Brief historical review*<sup>8</sup>

The corporate governance structure of the Nordic countries originally resembled the Anglo-American system with a unitary board accountable to the general meeting. However, already in the early 20<sup>th</sup> century, there was a growing recognition of the division within the board between the overall strategic decision-making and monitoring function of outside directors and the special role of the executive function, whether in the form of a single managing director or a group of executive directors. Still, this distinction was not explicitly reflected in existing legislation. Therefore, in its new Companies Act of 1930, the Danish legislature decided to transform the existing executive-management function into a legally defined company organ separate from, but subordinate to, the board of directors and make such transformation mandatory for larger companies. Since, in Danish practice, the executive function was usually

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7. Observation based on the special study on ownership concentration, referred to in Section 11.3 above.

8. This and the subsequent subsection owe much to J.L. Hansen, *A Scandinavian Approach to Corporate Governance*, Scandinavian Studies in Law, Vol. 50, Jure, Stockholm 2007.

a collective body of senior officers, it was defined as a *management board*, comprised of one or more executives headed by the *administrative director* or, in today's language, the CEO.

This development was later followed by the other Nordic countries with the difference that, in these countries, the executive body was defined as a single-person CEO function. Still, as in Denmark, the function was defined as a separate company organ with its own legal duties and responsibilities. It was made subordinate to the board with the obligation to comply with any instructions from the board and with its members subject to appointment and dismissal at will by the board. The executive officers could be members of the board but not chair it. In the Danish version, where the executive level might comprise more than one member, it was further provided that they could only make up a minority of the board in order to ensure the board's non-executive character and capability as a monitor of the executive function.

### *A hierarchical chain of command*

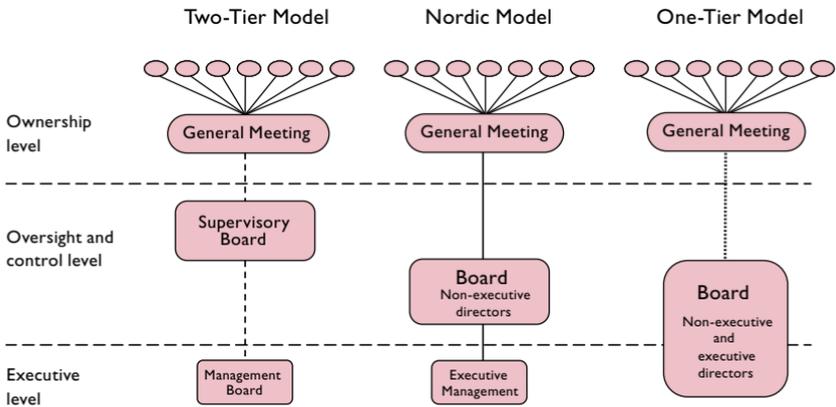
#### *The core model*

This development gave rise to the Nordic governance structure of today, characterised by a hierarchical chain of command from the general meeting through the board to the executive management function, whether in the form of a single-person CEO or a Management Board. The model may be illustrated within the context of the more widely known one- and two-tier systems which are prevalent in countries with an Anglo-Saxon and German judicial tradition, as shown in Figure III.1 below.

The left-hand side of the figure depicts the two-tier system, typically used in countries with a German judicial tradition but with some variations also in several other continental

European countries. This system draws a strict line of separation between a *supervisory board*, with sole oversight and controlling functions, and a *management board* vested with virtually all executive powers. Thus, no individual can serve on both bodies simultaneously. In principle, the powers of the supervisory board to control the executive board are limited to (i) the appointment and dismissal of the executive directors (although the latter only if material reason can be proven), and (ii) the right to veto certain proposals of the executive board (although, in such cases, the executives may bring the matter to the general meeting for final determination).

The decision-making competence of the general meeting is in this model quite constrained, particularly with regard to corporate governance matters, where it primarily pertains to appointing non-employee-representing members of the supervisory board and to adopting the annual accounts of the company. All in all, especially the traditional German version of



**FIGURE III.1** The Nordic vs. the one- and two-tier governance structures.

the two-tier system vests far-reaching powers with the management board, effectively entrenching it against influence from the supervisory board and the general meeting, and the powers of the shareholders to have an impact on the management of the company are quite limited. The dashed lines in Figure III.1 symbolise this limited power of command throughout the governance chain.

This is in stark contrast to the one-tier structure shown on the right-hand side of the figure. Here, the supervisory/control and the executive functions are combined in a single company organ – the board – comprised of both executive and non-executive directors. In the US version of the model, this concentration of power is often further enhanced by combining the positions of Chair and CEO in a single individual. Traditionally, this practice was customary also in the British version, but today the UK Corporate Governance Code advises against this arrangement for listed companies. Still, the »mixed« composition of the one-tier board entails an inherent integrity problem of the board vis-à-vis the executive management, particularly regarding matters of potential conflict of interest for its executive members.

Nonetheless, contrary to the situation in the two-tier model, the general meeting of the one-tier model theoretically has total, superior power over the board. Still, this power is in reality often quite illusory due to the highly dispersed ownership structures typical of jurisdictions where this model is mainly used. With no shareholder owning more than a small fraction of the stock of the company, and particularly if most of the shareholder body is made up of institutional investors, it is often difficult to find any shareholder willing to invest the time and money necessary to exert ownership powers in a comprehensive, well-founded and efficient way. Such shareholders tend rather to act as more or less temporary investors, in effect

largely abdicating any real ownership role. This, in turn, typically leads to a situation where most governance power is delegated to the unitary board with only weak shareholder power to control and discipline it. This is symbolised in Figure III.1 by a dotted line connecting the general meeting and the board. The role of disciplining the executive management, and keeping it »on its toes«, is instead assumed to be performed through a well-functioning market for corporate control, where underperforming companies are constantly subject to takeover threats.

The Nordic solution is distinctly different from both these models. It is neither, as may be inferred by a superficial glance at the figure, a mixture of, nor a compromise between, the two other models. Instead it differs from both in at least three fundamental ways:

- (i) It allocates the ultimate power to the majority of the general meeting by placing this body on top of a hierarchical chain of command in which each company organ is strictly subordinate to the next higher level in the chain. Hence the solid lines in Figure III.1.
- (ii) It vests the board, which is always appointed in listed companies by the general meeting, with far-reaching powers to run the company during its mandate period. Nonetheless the board may be dismissed by the shareholders at any time during this period without stated cause, thus ensuring subordination to the will of the general meeting majority and a clear accountability to the shareholders.
- (iii) It makes a clear distinction between the non-executive board and the executive management function, appointed and dismissed at any time at the sole discretion of the board, again entailing a strict hierarchy that ensures accountability.

This structure grants a controlling shareholder far-reaching powers to control the board and management and to have the company run at his/her discretion.<sup>9</sup> The rationale of this is a widely held view that the presence of a strong, active owner who has incentives and resources to invest time, money and competence into the management of his or her investment often turns out to be a good prerequisite for successful, long-term value creation to the benefit of all shareholders.

On the other hand, as already pointed out, the model works well also for companies with more widely held stock. In this case, the governance structure will resemble the UK system, but with a more clear-cut division of powers and responsibilities between the non-executive and executive functions. In fact, although the Nordic stock markets are dominated by companies with relatively concentrated ownership structures there are, as already mentioned, also many significant and successful companies with as widely held stock as in other jurisdictions. In fact, the clear division of powers, the strong recognition of shareholder rights and the strict accountability of the board and management to the shareholders of the Nordic model offer significant advantages also for this type of companies.

### *Some country-specific variations*

Although the simple and clear-cut structure shown in Figure III.1 represents the core of the governance models across the Nordic region, there are some country-specific variations that need to be mentioned. As already noted, the executive function in *Denmark* often consists of a group of executive officers as opposed to the single-person function of the other countries. This may create the illusion that the Danish model does in fact

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9. How these powers are balanced by extensive minority-protection measures is the topic of the subsequent main section of this chapter.

have a two-tier structure of the German type. However, this is not an adequate interpretation. The Danish executive board (which is referred to in Danish as a »*direktion*«, i.e. a collegiate of executive officers) is a body fully subordinate to the board in the same way as the single-person CEO of the other countries.

In *Finland*, there is an optional model involving a supervisory board between the general meeting and the board. This is a traditional model that is today largely being abandoned and currently used by only five listed companies. It is generally considered unsuited for listed companies in view of modern developments of the Securities Markets Regulation, and the Finnish code advises against the use of it. Hence, the core Nordic structure illustrated in Figure III.1 is presently the overwhelmingly dominant governance model among listed companies in Finland.

In *Norway*, unless the company and the employees agree otherwise, companies with more than 200 employees are required to establish a specific company organ called the Corporate Assembly (*bedriftsforsamling*). Two thirds of the members of this body are to be elected by the general meeting and the remaining third by and among the company's employees.<sup>10</sup> Its main function is to channel employee co-determination on board appointment and certain other decisions of particular significance to the company's workforce. Still, as the general meeting appoints two thirds of the corporate assembly members and those members in turn appoint two thirds of the board, in practice a shareholder majority has essentially the same control of the board majority as in the other countries.

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10. If it is agreed not to establish a corporate assembly, the employees are instead entitled to appoint a certain number of directors to the board.

### *The general meeting*

Annual general meetings (AGMs) of large, Nordic listed companies are often major events with several hundred attendants and extensive media coverage. Company directors and executives sometimes refer to it as their annual »graduation day«, where they are to account for their stewardship of the shareholders' assets during the past mandate period. It is also an appreciated opportunity for individual shareholders to see the people who manage their company in live action.

### *Participation*

Major private shareholders normally participate in person, as do representatives of most domestic institutional investors with an ownership interest in the company along with large numbers of small private shareholders. Foreign shareholders, who today make up more than 40 % of the ownership of companies listed on Nordic regulated markets, have gradually increased their participation in AGMs, and today a significant portion of the foreign ownership is usually represented, most often by proxy. The full board, the executive management and the statutory auditor normally also participate.

In the past, proxies of foreign shareholders have occasionally caused some controversy because their clients, who are mostly large American and British institutional investors, and their advisors have not always fully understood the rules and procedures of Nordic general meetings, a problem that has occasionally led to seemingly irrational voting behaviour. In recent years, this problem has decreased as proxy advisors and their principals have learnt to recognise and understand the specifics of Nordic corporate governance, and companies in turn have learnt to know the voting policies of such sharehold-

ers better than before. To an increasing extent companies have also become more open to communication with shareholders and their proxies prior to general meetings in order to clarify outstanding issues.

It has long been a basic aim of the Nordic corporate lawmaker to make it easy for individual shareholders to take part in, and make well-informed voting decisions at, general meetings. In fact, large parts of the individual shareholder rights introduced by the EU Shareholders' Rights Directive (2007/36/EC) were already in place in the Nordic countries. Thus, a single shareholder who holds a single share is entitled to have an item included in the AGM agenda (provided it is filed in due time before the meeting), to participate at the meeting and make use of all ownership rights adherent to this share, to file counter-proposals at the meeting, to require vote counting on any resolution made, and to pose questions to the board and management and have these duly answered to the extent that the information is available and can be given without compromising the interests of the company. The corporate governance codes of all four countries have further extended these rights, e.g. by underlining the importance of making the notice and supporting documents of general meetings available in such time and form that they facilitate the exercise of ownership rights in an active and well-informed manner, and of facilitating shareholder participation at the meeting by proxy or with the help of modern communications technology.

### *Duties and liabilities*

The general meeting is the company's highest decision-making body and the main forum for the shareholders to exercise their ownership rights. As already mentioned, the Nordic general meeting has far-reaching powers to govern the company in that

it is formally sovereign to decide on any matters that do not expressly fall within the exclusive competence of another company organ (which is the case for very few items).

In principle, this includes the possibility to issue instructions to the board about the management of the company. However, in practice such micro-management makes little sense and never occurs in listed companies,<sup>11</sup> whose shareholders prefer to apply their powers indirectly through the appointment of the board. If the shareholder majority mistrusts the board, the general meeting can immediately replace it. The powers thus available to the general meeting majority ensure strict accountability of the board to the shareholders and give cause for a recurrent dialogue between shareholders and the board.

Furthermore, the fact that legislation requires board members (except those representing the employees) to be appointed by the general meeting provides also minority shareholder with considerable powers to influence the board composition, e.g. by openly challenging the proposal put forth by a controlling shareholder, a mechanism which contributes to making the general meeting relevant even in tightly controlled companies. This is further strengthened by the extensive media coverage of general meetings of major, listed companies, which often leads to costly negative publicity for any attempts to discriminate against minority shareholders.

In practice Nordic general meetings focus primarily on their exclusive duties according to law and/or the company's articles of association, i.e. to adopt the annual accounts, to decide on the allocation of profits or loss and to appoint the board and the statutory auditor. As applicable, such duties also include e.g. to resolve on matters affecting the equity structure of the

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11. It occasionally happens, though, in unlisted companies, especially those controlled by the State or a local government, which often have more complex goal structures than listed companies.

company, such as an increase or a decrease of the share capital, mergers and de-mergers, acquisition of own shares, etc. A specific Nordic phenomenon is the resolution by the AGM on discharge from liability of the board and the executive management to the effect that, in brief, the company refrains from legal action for damages against these parties on grounds of their management of the company during the past financial year. This used to be a tradition in all Nordic countries, but is currently only mandatory in Finland and Sweden whereas voluntary and seldom used in Denmark and Norway.

### *Procedures*

To an external observer, procedures at Nordic general meetings may appear somewhat informal. Many resolutions are adopted without a formal vote, and the entire board is often elected through a single decision. However, this is largely an illusory impression. It only takes an individual shareholder who holds a single share to file counterproposals and to require vote counting on any item, and the seemingly »bundled« board election is formally a set of individual elections made in one decision.

Decisions are generally made by simple majority vote, i.e. a resolution is adopted if supported by a majority of the votes cast. The majority required is generally more votes in favour than against, but there is a number of decisions on particularly intrusive effects on shareholder rights with higher majority requirements. These range from  $\frac{2}{3}$  of the votes cast and shares represented at the meeting up to  $\frac{9}{10}$  of the votes cast and, in some cases, unanimity. These requirements are part of the shareholder minority protection framework of Nordic corporate governance to be further discussed in Section 3 of this chapter.

In contrast to ordinary resolutions, appointments of board directors and auditors are made by relative simple majority, i.e. the candidate supported by the most votes is elected. Hence, if there are no votes against, it only takes a single affirmative vote to appoint the board. The rationale of this is that the company must never be left without a board.

Although not required by law or code, an important feature of many Nordic AGMs, especially in larger listed companies, is an address by the chair and/or the CEO, where he or she comments on the company's strategy and performance during the past year and discusses its prospects and challenges for the future, often followed by a Q & A session. This is a highly appreciated part of the proceedings, not least by retail shareholders, and as pointed out above any shareholder has the right to pose any relevant question to the management and have it duly answered as long as this can be done without compromising the interests of the company.

### *The board*

Although the Nordic board is subordinate to the general meeting in formal terms, it has wide-ranging authority in practice to manage the company's affairs as it considers appropriate. This authority is only limited by the exclusive decision competence assigned to the general meeting by law regarding certain matters as just explained.

### *Duties and liabilities*

The duties of the board are defined in the Nordic companies acts in rather general terms so as to avoid the risk of leaving loopholes in more detailed enumerations of its obligations. In

practice, its duties can be divided into three main categories: (i) to manage the company in the interest of all shareholders, (ii) to appoint, supervise and assess the executive management, and (iii) to inform the shareholders, the capital market and the society at large about the performance of the company. The first category specifically includes determining the company's overall goals and strategy and ensuring that the organisation involves satisfactory monitoring of the accounting and financial management, that the internal control and risk-management function is adequate for the company's needs and that the financial reports are prepared in accordance with legal requirements and applicable accounting standards.

The second category pertains to the board's duty to ensure that the company does at all times have an efficient executive management function in charge of the day-to-day management. In Denmark, this amounts to appointing and, whenever necessary, dismissing the CEO and other members of the management board, whereas in the other Nordic countries these duties apply solely to the single-person CEO function. The board should further ensure that the division of duties and responsibilities between the board and the executive management is clearly defined. It is generally considered good practice to define this in written rules of procedure, subject to at least annual review by the board. This is required in some of the countries by law or prescribed by the corporate governance code.

Formally the board adopts its resolutions by simple majority. However, voting is rare in practice since boards generally aim for unanimity. The underlying philosophy is the notion of the board as a collective decision-making body, where all members will be bound by the decisions made and obliged to promote their efficient execution, even though they are typically preceded by an open and often lively debate among the board members. There is a general right to have a dissenting

opinion recorded in the minutes of the meeting, but it is generally not considered good board practice to make use of this option other than in exceptional cases. Rather, a director who strongly disagrees with a board decision on a matter of significant importance is expected to resign, which can be done at any time and without notice.

Although the board's decisions are made collectively, the fiduciary liability of its members is individual. This liability includes a duty of care and a duty of loyalty to the effect that, in essence, directors are obliged to act in the best interest of the company as agents of all its shareholders. In principle, the liability is shared jointly and severally among the directors. However, the increased use of board subcommittees in recent years may entail risks of blurring this clear-cut division of liabilities. The reason is that it may lead to some directors being more deeply involved in the preparation of certain board resolutions than others, which in the Nordic judicial system normally means that they will carry a heavier legal liability. As board committees are a relatively new phenomenon, there is as yet a general lack of case law to shed further light on this issue.

### *Nomination and appointment*

The great majority of large, Nordic listed companies today use some form of nomination committee for the selection of candidates for board assignments. However, the composition and, to some extent, duties of such committees differ between the countries:

- The Danish code recommends a board subcommittee comprised entirely of board members – the majority of whom are to be independent – which is to be chaired by the board chair, essentially in line with the standard UK/international

model. This is also the procedure chosen by most Danish listed companies.

- In Norway and Sweden, the nomination committee (sometimes referred to as »nomination board«) is instead a body appointed by the shareholders in general meeting and entirely (in Norway) or predominantly (in Sweden) comprised of shareholder representatives and with duties not only to nominate board directors but also to propose their remuneration. In the Swedish version, up to half of the committee may be comprised of board directors, including the board chair, but none of these may chair the committee.<sup>12</sup>
- In Finland, the corporate governance code has traditionally recommended a nomination committee of essentially the UK model, and most Finnish listed companies today use a committee of this type. However, in the latest version of the Finnish code, »nomination boards« of essentially the Swedish type were introduced as an optional solution. This model is currently used by 37 % of companies that have established a nomination committee, primarily those with one or a few dominant owners.<sup>13</sup> Companies with a more fragmented ownership structure still generally prefer board-appointed committees of the UK type, although there is a growing trend towards the shareholder-led model.

Irrespective of how the nomination work is organised, it is important to keep in mind that the decisions on all proposals presented are made by the general meeting and that no shareholders are in any way bound by the recommendations

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12. Dent (2012) discusses the wider international applicability of this concept. See Dent Jr., G. W.: *Corporate Governance: The Swedish Solution*. Case Research Paper Series in Legal Studies, Working Paper 2012-3, Case Western Reserve University, Feb. 2012.

13. Information compiled by PwC Finland for this study.

set forth by the nomination committee, whether having been represented in the committee or not. It should also be pointed out that the differences in nomination procedures between the countries are often not as significant as may be assumed based on the differences outlined above. Especially in companies with highly concentrated ownership structures, it is general practice also for board-appointed nomination committees to consult with major owners in the course of their work.

Unless appointed by the general meeting, the chair of the board is to be elected by the board among its members.<sup>14</sup> It is becoming increasingly common in practice for the chair to be appointed by the shareholders in general meeting. In Norway and Sweden, this is a code recommendation that is broadly followed by the companies, and it is also a growing practice in Denmark and Finland. By law or code, the positions of chair of the board and CEO are always separated in Nordic listed companies.

Except for employee representatives, where applicable (see below), boards of directors in Nordic listed companies are always appointed by the general meeting. Hence, each director has a personal liability towards the company as a whole and its entire shareholder constituency irrespective of how or by whom he or she may have been nominated. In other words, no director may regard himself or herself as representing the interests of a particular shareholder or shareholder group, however dominant. A controlling owner may have decisive influence on the nomination and election of the board but, once appointed, all board directors must regard themselves as agents of the company as a whole and all its shareholders.

The standard mandate period for Nordic boards is one year except for Norway where two-year periods are the rule

14. This body appoints the board chair in Norwegian companies with a corporate assembly.

by tradition. However, there is a growing trend towards one-year periods also in Norwegian listed companies. Naturally the actual service time of directors is not limited to these mandate periods; they only mean that the shareholders are given the opportunity to reconsider the entire board each year (or, in Norway, every second year). The total service time is normally much longer. Also, as has already been mentioned, irrespective of mandate periods, the board may be dismissed by an extraordinary general meeting at any time without stated cause. Hence, there can be no staggered boards in Nordic corporate governance, which means, among other things, that a new controlling owner can immediately replace the entire board.

#### *Board composition and organisation*

There are no legal requirements for the composition of listed company boards except for the Norwegian provision of at least 40% representation of each gender. In Denmark, a softer model has been advanced by legislation, whereby larger companies are required to set targets for a balanced gender distribution and explain their policies to reach that target, but which leaves the target to be decided freely by the company and without sanctions if it is not met. The corporate governance codes of the other countries contain varying degrees of recommendation regarding gender balance as well as on diversity in a broader sense, pertaining to, for example, education, professional background and work experience.

Except for employee representatives, where applicable, the boards of Nordic listed companies are usually comprised exclusively of non-executive directors. Such is the case for all Danish and Norwegian and most Finnish and Swedish companies, although in the latter two countries the CEO is a board member in about 15 and 40%, respectively, of the compa-

nies. Still this is of limited practical consequence since the CEO has the right in all countries to participate in the board meetings, whether or not a formal board member, unless the board decides otherwise on a case-by-case basis. Hence, boards of Nordic listed companies are for all practical purposes functionally non-executive but work in close co-operation with the CEO (in Denmark the management board). This is a reflection of the broadly embraced principle of a clear division of duties and responsibilities between the non-executive board and the executive management while simultaneously allowing for the two functions to work closely together.

The non-executive character of Nordic boards has important implications for the relevance of such key elements of modern corporate governance as directors' independence and board committees. The notion of independence of board directors, as it is generally defined in the international discourse of the field, does not, in fact, fit well into the Nordic governance framework. To see this it is necessary to make a distinction between independence in relation to the company and the company management and independence in relation to major owners of the company. The first aspect is rarely an issue in Nordic boards since few directors normally have ties to the company that might lead to dependence according to generally applied criteria.

The other aspect – independence in relation to major owners – entails a degree of contradiction in kind in Nordic corporate governance. As explained earlier in this chapter, the right of a controlling shareholder to effectively control the composition of the board, including taking seat in person on the board and/or filling its majority with closely related trustees, is fundamental in Nordic corporate governance.

As a consequence of this, the code-developing committees of Finland, Norway and Sweden introduced a distinction between independence in relation to the company and its

management and in relation to major owners, and required a majority of the board to be independent in the first sense but only two directors to be independent in the second sense. The Danish committee, on the other hand, chose to implement the provision as stated in the UK code, prescribing that at least half of the directors must be independent not only of the company and the company management but also of major shareholders.

Another consequence of the Nordic non-executive boards is that the rationale of setting up sub-committees of the board is different from that of their Anglo-American origin. In the latter context, the concept of board committees was originally conceived as a means to deal with the inherent integrity problem of the board vis-à-vis the executive management in the one-tier board structure. Typically, this gave rise to the audit, nomination and remuneration committees, all of which were intended to handle issues where this conflict is particularly evident by ensuring that they are handled by non-executive directors.

However, the Nordic board has no such inherent integrity problem vis-à-vis the executive management. On the contrary, the line of demarcation of duties and responsibilities between these governance bodies is generally strict and well-defined. Under such circumstances the question of setting up subcommittees to deal with certain issues within the board's scope of duties is essentially reduced to a matter of efficient organisation of the board's work which, in turn, is hardly a matter in need of societal regulation. This is even more so as there are also significant drawbacks associated with the breaking up of a board into subgroups, e.g. the risks of creating »A and B teams« on the board and of disrupting the joint-and-several liability structure among its members. It is furthermore important to note that a subcommittee of a Nordic board can only be comprised of board members, that it can only deal with issues within the board's scope of decision competence, and that the

whole board will be accountable for any action taken by a committee. For these reasons, committees of Nordic boards are generally assigned mainly preparatory tasks, leaving all decisions of major importance to be made by the board as a whole.

This is why Nordic legislators and corporate governance code regulators have generally been reluctant to make board committees mandatory, leaving this instead to the discretion of the individual board or allowing the entire board to carry out the corresponding duties, provided that it fulfils all conditions pertaining to this particular committee. Notwithstanding these special circumstances, all three »standard« committees of modern corporate governance are today extensively used by boards of Nordic listed companies,<sup>15</sup> however, rather as means to enhance work efficiency than to preserve the integrity of the board vis-à-vis the executive management. In particular, this is the case for audit committees which are generally seen as indispensable tools for handling the extensive and complex work of financial reporting, internal control and risk management of particularly larger listed companies in an efficient way.

### *Employee board representation*

Employee representation<sup>16</sup> is long-established practice in many Nordic company boards. The exact regulation varies between the countries. However, the employees of companies above certain size limits in Denmark, Norway and Sweden have a statutory right to elect a certain number of directors to the board, although the majority powers always remain with the shareholder-elected directors. In Finland, employee co-deter-

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15. Except for nomination committees in Norway and Sweden, which are bodies appointed and controlled by the shareholder (see p. 72).

16. For details about the relevant regulation in each country, see the respective country report.

mination is instead based on agreement between the employees and the company, where board representation is but one of several options available and rarely used in practice.

Where employee board representation is practiced, it usually means that employee-elected directors make up about one third of the board. It is important to note that those directors have the same legal duties and responsibilities as any director on the board, i.e. they are all obliged to act in the best interest of the company.

In Denmark and Sweden, board representation is a right of the employees but not an obligation. In more than half of the listed companies of these countries the employees have chosen not to exercise this right in exchange of other benefits, e.g. in the form of special co-determination procedures and/or information-sharing committees. In Norway, virtually all listed companies have employee board representation, either channelled through a corporate assembly (see p. 64) or directly appointed by the employees.

An important common feature of employee representation on Nordic boards is that those directors are elected exclusively from the company's employees. Hence, they are not board professionals or politicians appointed by external parties, e.g. central trade unions, who may bring more or less political agendas into the boardroom. On the contrary, Nordic employee-elected directors often bring valuable hands-on knowledge of the company operations into the board work.

### *The executive management*

All Nordic public companies must have an executive management function as a separate company organ with its own legal duties and liabilities. As already mentioned, this is in fact the

innovation of the Danish Companies Act of 1930 that may be said to have largely formed the Nordic corporate governance model. In the Danish version it is normally<sup>17</sup> a collective body, usually comprised of 3–5 members headed by a CEO and generally referred to as the Management Board. In the other countries, it is typically a single-person CEO function, although in these countries as well it is possible to form an executive management function made up of more than one individual.<sup>18</sup>

The CEO, like all members of the Danish management board, is appointed by the board<sup>19</sup>, usually on an until-further-notice contract.<sup>20</sup> Still, any member of the executive management may be dismissed without notice solely on the basis of lack of confidence by the board. Therefore, according to code provisions, Nordic CEOs and other members of the executive management are usually entitled to severance pay or a notice period upon dismissal by the board, at present typically amounting to at most two years' fixed salary (in Norway, generally one year).<sup>21</sup>

The primary duty of the executive management is to account for the day-to-day management of the company

17. But not necessarily; it may also be comprised of a single-person CEO function as in the other Nordic countries.

18. In Norway, this is explicitly stated in the Companies' Act, and in Finland and Sweden it is the implicit consequence if the board chooses also to appoint one or more deputy CEOs.

19. The Norwegian Companies Act leaves the possibility open to have the general meeting or the corporate assembly appointing the CEO. However, the latter option is rarely used in listed companies.

20. A note on terminology may be warranted here: In Nordic parlance, the term »*direktør*«, obviously closely related to the English »director«, does not denote a member of the board but of the executive management as well as to rather loosely defined circles of other top-ranking, executive officers in the company. This sometimes leads to confusion in communication between people with Nordic and non-Nordic professional backgrounds.

21. In Norway, the presence of a severance-pay agreement is required for the board to be able to dismiss the CEO without stated grounds.

under the strategic leadership and supervision of the board. The function is formally subordinate to the board and cannot independently decide on matters that are extraordinary or far-reaching in view of the nature of the company's operation, unless the matter cannot be delayed without serious detriment to the company, in which case the board must be informed of the action taken as soon as possible. As mentioned, what this means in terms of a more precise division of duties between the board and the executive management is often defined in writing within the board's Rules of Procedure.

Within these generally broad bounds, the Nordic executive management, and particularly the CEO, has far-reaching authority to manage the business as it considers to be in the best interest of the company. This includes the right to represent and sign on behalf of the company, to organise its operations and to appoint and dismiss all subordinate executive officers. In fact, the role of the Nordic CEO goes well beyond what is generally understood in daily language as day-to-day management and includes, for example, outlining the company's overall mission, goals and strategy for approval by the board, actively working with its financial structure to optimise capital costs and initiating structural changes within the company and/or in relation to the outside world. Therefore, a top-class executive management is generally seen as the most decisive prerequisite for the success of a company, and ensuring that it at all times has a highly competent, entrepreneurial, dynamic and independent-minded CEO is generally seen as the board's most crucial duty.

As also mentioned in a previous section, the CEO has the right to participate in the board meetings, whether or not he or she is a formal board member, unless the board decides otherwise on a case-by-case basis. An example of the latter situation is when the board feels the need to discuss the performance

of the CEO in his or her absence. It has become increasingly customary in recent years to have a session in the absence of the CEO or other executives as a standing point on the meeting agenda.

The chief role of the CEO in the board work is to prepare the board's resolutions, to ensure that the decided actions are effectively executed, and to keep the board informed about the operations and performance of the company. Not least the last point is crucial for the functioning of the Nordic board, and it is of utmost importance that the CEO is both willing and able to furnish the board with timely, relevant and reliable information to underpin its work. For this reason, many boards define their expectations in these respects in a written »reporting instruction« for the CEO. In addition to this, a board can always require whatever additional information from outside sources that it considers necessary for its work at the cost of the company.

Another way of mitigating the dependence of Nordic boards on the CEO as their main source of information about the company is to invite a broader circle of senior-management staff to attend board meetings, primarily as listeners but also to be available for questions and answers upon request by board members. The use of this practice varies among companies but has become less customary in recent years, particularly in Finland and Sweden. Instead, the relevant managers may be individually invited to the board to present and discuss matters within their respective areas of responsibility, whenever the board so sees fit.

### *The statutory auditor*

All listed Nordic companies must have at least one statutory auditor who must be an authorised public accountant. Formerly, major companies occasionally practiced joint audit. Today, this practice is all but abandoned, both due to higher costs without perceived corresponding benefits and because it tended to blur the accountability of the respective auditors. However, as will be further discussed within the context of minority protection, with the exception of Finland, a shareholder minority of at least 10% of the shares can require the appointment of a special »minority auditor«.

The auditor is appointed by the general meeting. The appointment is based on a proposal by the board or its audit committee, as applicable, except in Sweden where the proposal is formally made by the nomination committee.<sup>22</sup> Even so, the main preparation work of the proposal is normally carried out by the board, usually through its audit committee. In either case, the general meeting is never bound by the proposal presented but is fully sovereign to make a different decision if it so sees fit, although this is rarely done in practice.

In the Nordic context, the auditor is primarily seen as the shareholders' instrument for reviewing the work of the board and management. However, in order to effectively perform this function, the auditor must develop and maintain an in-depth understanding of the nature of the company's business as well as of its accounting, internal control and risk-management systems. Therefore it is customary for the auditor to work closely together with the board, especially its audit committee as the case may be, including to participate on a recurrent basis in board and/or audit committee meetings. While this is an effi-

22. I.e. the Swedish version of shareholder-led nomination committee (see p. 72).

cient *modus operandi* for both parties, it puts great demands on the ability of the auditor to maintain full integrity vis-à-vis not only the executive management but also the board and its audit committee.

As in most European jurisdictions, the main duty of the auditor is to review the accounts of the company and the financial reports in the form of annual accounts and, generally to a more limited extent, quarterly reports. However, in Finland, Norway and Sweden, the auditor has the additional duty to review the administration of the company by the board and the executive management. The exact meaning of this is subject to debate to some extent, but the general interpretation is that it involves no assessment of the management of the company from a business point of view but is confined to ensuring that the company is run in compliance with its articles of association and applicable law and other statutory regulation.

In addition to the duties vis-à-vis the shareholders, the auditor is also seen as a protector of the interests of the creditors of the company and, to an increasing extent as a consequence of recent regulation initiatives of the European Commission, of a broader circle of stakeholders such as the employees, the customers and society at large. The auditor is also obliged to report on certain types of crimes committed by members of the board or the executive management, typically crimes of an economic nature that might cause damage to the company.

Although not universally required, the statutory auditor of Nordic companies is in practice normally present at general meetings, particularly at AGMs. The auditor's role there differs among the countries. In Norway and Sweden, it often includes an oral presentation of the audit report to the shareholders, concluding in the auditor's recommendation as to the meeting's resolutions on the adoption of the annual accounts and the appropriation of the result of the past financial year. In

Denmark and Finland, the audit report is normally only issued in writing within the framework of the Annual Report. In Sweden, the auditor is also required to give a recommendation to the general meeting as to the discharge from liability of the board and CEO (see above, p. 64).

### *Remuneration of board and management*

The philosophy underlying the design of remuneration systems in Nordic listed companies is typically that the compensation should be sufficient to attract and retain the necessary competence to ensure the long-term success of the company, and structured in a way that aligns the interest of the recipient with that of the shareholders, all at the lowest possible cost to the company. Exact formulations, e.g. as expressed in remuneration policies submitted for voting at general meetings, differ between companies but the underlying spirit is largely the same.

### *Procedures*

The key principle for pay decisions in Nordic corporate governance is that all remuneration is to be determined by the company organ which is immediately superior to the body to which it applies. Hence:

- remuneration of (non-executive) *board directors* is determined on an individual basis by the shareholders in general meeting with fees for committee work usually separately assigned;
- remuneration of the *CEO*, including all members of the management board in Denmark, is determined by the board; and

- remuneration of *managers subordinate to the executive management* is determined by the CEO – although it is customary that such decisions are submitted for approval by the board before being executed.

This clear-cut structure has become somewhat blurred in recent years through so-called Say-on-Pay schemes, involving annual resolutions of the AGM on a written policy for the remuneration of the board and management, proposed by the board. Such schemes of slightly varying designs have been introduced in all Nordic countries except Finland.

### *Forms and levels of remuneration*

There are no requirements regarding the levels or forms of remuneration of the board or the executive management in Nordic companies acts. However, the corporate governance codes of all countries have adopted the provisions of the 2009 EU recommendation on directors' remuneration (2009/385/EC), although adapted to national circumstances to the extent deemed necessary.

Board fees are generally paid as a fixed amount per year, adjusted with regard to committee assignments as applicable. It has become increasingly common in recent years to pay part of the fee in the form of shares in the company. Furthermore, stock options, which have been advised against by some of the Nordic corporate governance codes, seem to be enjoying a renaissance, particularly among smaller listed companies in which they are often seen as a cost-effective way to compete for top-class board competence.

In an international perspective, levels of remuneration of boards and executive management are relatively modest in the

Nordic countries. According to a 2009 study,<sup>23</sup> covering 57 major Nordic companies, the average total CEO compensation in these companies for the years 2006–2008, excluding pension costs, was less than half of that of a European sample of 44 companies from eight different countries. The results held true even after allowing for different company sizes between the samples. The variable share of the total remuneration was also significantly lower in the Nordic companies, about 45 % compared to slightly over 70 % in the European sample.

Although these results are not entirely up to date and remuneration levels have undoubtedly risen significantly in the last 5–10 years, there is little reason to believe that the relative levels have changed dramatically. This assumption is supported by a more recent study<sup>24</sup> comparing total CEO remuneration among the 27 largest Swedish listed companies with that of a sample of 44 European companies of about equal average market capitalisation value as those of Swedish sample. The average 2012 remuneration of Swedish CEOs amounted to 57 % of that of their European counterparts, and their share of fixed out of total remuneration was 63 % versus 33 % in the European sample.

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23. *Svenska VD-ersättningar i ett internationellt perspektiv 2006–2008* (Swedish CEO remuneration in an international perspective 2006–2008). Unpublished report of the communications consultancy Hallvarsson & Halvarsson, Stockholm 2009. Available only in Swedish.

24. *Svenska VD-ersättningar i ett europeiskt perspektiv 2011–2012*. (Swedish CEO remuneration in a European perspective 2011–2012). Ersättningsakademien, Stockholm 2013. Available only in Swedish: [www.ersattning-sakademien.se](http://www.ersattning-sakademien.se).

## Shareholder minority protection

As should be evident from the foregoing presentation, Nordic corporate governance vests the shareholder majority with far-reaching powers to ensure that the company is run in accordance with its interests and preferences. Needless to say, such powers may be abused to provide undue advantages to a controlling owner at the expense of the smaller shareholders. To counteract this, and as an overall counterweight to the strong powers bestowed upon the shareholder majority, Nordic corporate governance provides a comprehensive system of minority protection against abuse of power by a controlling shareholder, which is aimed at protecting the economic rights of minority shareholders. As shown in the introductory section of this chapter, empirical evidence suggests that the system has been largely successful in keeping the scope for control-owners to extract private benefits from »their« companies within quite narrow bounds (see p. 56).

The system rests mainly on six mutually complementary pillars as further outlined below.

### *The principle of equal treatment of shareholders*

In the Nordic countries, as in most other European jurisdictions, there is a fundamental principle of equal treatment of all shareholders within a particular class of shares as well as between shareholders of different classes, if any. This finds its most apparent expression in the general clauses prohibiting any company organ from taking any action likely to give any shareholder an undue advantage at the expense of the company or any other shareholder. The companies acts of all

four Nordic countries contain such clauses of almost identical wording, pertaining to each of the three main company organs: the general meeting, the board and the executive management. Indeed, corporate laws of many countries today contain provisions of a similar meaning. What is particularly Nordic is, perhaps, the strong moral norm to observe these provisions in everyday governance practice and the fervour with which this is generally supervised by fellow shareholders, media and the general public. To be caught off guard in breach of these norms is highly dishonourable in Nordic business communities.

These principles are further underscored by a number of provisions in the securities trading acts, the corporate governance codes and the rules of the major stock exchanges in all four countries. Also, the general obligation of the board and executive management to follow instructions from their respective superior company organs, embedded in Nordic corporate governance, is explicitly annulled for any instruction that is in breach of statutory law or the company's articles of association. In Norway this provision applies also to the corporate assembly.

### *Individual shareholder rights*

As mentioned, shareholders of Nordic companies enjoyed far-reaching individual rights long before the 2007 Shareholders' Rights Directive disseminated some of these rights throughout the EU. The most fundamental layer of such rights is every shareholder's *economic* right to a pro rata share of the dividends and other forms of distribution of the company's capital to the shareholders. The second layer is the *procedural* rights at general meetings according to which a single share suffices to have an item included in the meeting agenda (provided that

the request has been filed in due time before the meeting) to participate, speak and vote for one's shares at the meeting and to file instant counter-proposals to any item on the agenda. The third layer is the right of *information*, including not only the right to receive all relevant decision material pertaining to the general meeting but also to pose questions at the meeting and have them duly answered as long as this can be done without detriment to the company.

Furthermore, any shareholder – as any member of the board or the executive management – may challenge a resolution by the general meeting in court on the grounds that it is illegal or in breach with the articles of association of the company, in which case the court may declare the resolution null and void.

### *Qualified majority requirements*

In addition to individual rights, minority groups of shareholders of various sizes are given the right to block certain resolutions at the general meeting that may be particularly detrimental to their interests. This is achieved by setting majority requirements above 50 % of the votes for such resolutions to be adopted. As a further precaution, some resolutions of this kind require the support of the prescribed majority of not only the votes cast but also of the number of shares represented at the meeting, thus in effect disregarding any differential voting rights between share classes and ensuring equal treatment of shareholders irrespective of share classes. In some cases, majority requirements do not apply only to votes or shares represented at the meeting but to the entire share capital of the company.

The first level above simple majority is  $\frac{2}{3}$  of the votes as well as the shares represented at the meeting. This typically

applies to decisions such as amendments of the articles of association, increase and decrease of the share capital, mergers and demergers, and waivers of shareholders' pre-emptive rights to pro rata subscription for shares in share issues.

There are also higher levels of qualified majority requirements, amounting to 9/10 of votes and/or capital represented and full consent, respectively, pertaining to resolutions that are even more intrusive upon individual shareholders' rights. Examples of resolutions that require full consent, either by all shareholders or those affected by the intended action, are changes of the shareholders' obligations towards the company, forced redemption of shares, or amendments of the articles of association to the effect that the purpose of the company shall no longer be to provide for economic profit for the shareholders. The underlying philosophy is that the principle of equal treatment of shareholders requires full consent to any changes that may directly afflict their economic rights.

### *Minority rights to force certain decisions*

The fourth pillar of minority protection is the right to force certain actions to be taken. Thus, shareholder minorities of 5 % (Denmark and Norway) or 10 % (Finland and Sweden) can require an extraordinary general meeting to be held. Except for Denmark, a minority of 10 % (5 % in Norway) of the shareholders can also require a minimum dividend to be paid out.

In Denmark and Sweden a minority of 10 %, and in Norway 5 %, of the shareholders can, under certain circumstances, request that the district court or a public authority appoint a second auditor, generally referred to as a »minority auditor«, whose duty it is to carry out the audit work during the coming year alongside the main auditor.

If a shareholder minority of typically 10% (25% in Denmark) considers that certain circumstances in the company should be subject to an in-depth investigation, it has the additional right to demand that the district court or a public authority appoint a »special investigator«, to be paid for by the company, with the duty of specifically examine such circumstances and report their findings to the general meeting.

Finally, in all countries a shareholder minority of at least 10% has the right to sue members of the board and executive management for damages on behalf of the company. However, since the award in the event of successful litigation will fall to the company, while the cost will be borne by the shareholders in the event of failure, this is in practice a rather blunt weapon and hence rarely used.

### *Related-party transactions*

Business dealings between the company and its shareholders, board members or executives pose a potential threat of undue extraction of private benefits from the company, i.e. ultimately from its (other) shareholders. In particular, such transactions may raise questions about the equal treatment of shareholders and the protection of the interests of minority shareholders. Therefore, measures to ensure that related-party transactions cannot be used to extract private benefits have long been a hallmark of Nordic corporate governance.

The basic principle is that related-party transactions are permitted as long as they are carried out on market terms. The problem is to make sure that this is the case. To do so, the Nordic countries have chosen somewhat different judicial approaches. In Denmark, Norway and Finland, the relevant provisions are to be found in statutory regulation. In Sweden,

the main corresponding provisions are currently part of the self-regulation system on the Swedish securities market (see the Swedish country report in Appendix D).

### *Transparency*

The Nordic countries are renowned for a generally high degree of transparency in most aspects of societal life, including corporate governance of listed companies. The exact rules and practices of disclosure differ between the countries, but the overall standard is high to the benefit of, not least, minority shareholders.

Corporate-control structures are usually fully transparent, making control-owners of listed companies typically well known. This is partly due to the flagging rules of the European market securities regulation, but also to the fact that the principal control-enhancing mechanism of use in Nordic companies is dual-class shares, the existence and structure of which are easily available through open sources (e.g. company websites, their articles of association, and companies registers).

Except for minor holdings in some of the countries, domestic share registers are public in the Nordic countries. Hence, for all practical purposes, and disregarding shares deposited with a foreign custodian agent, anyone can at any time have full insight into the structure of ownership of any listed company.

The governance structure of listed companies is highly transparent with names and credentials of board directors as well as CEOs and other senior executives to be found on the companies' websites and/or annual corporate governance reports along with information on the independence status of all board directors. Also, the composition and terms of reference of any standing board subcommittees is generally dis-

closed. Furthermore, minutes of general meetings for the last few years are generally to be found on company websites.

The Nordic countries were generally early to adopt a high degree of openness on board and management remuneration. Today, the remuneration of board directors as well as the CEO is disclosed in detail on an individual level. For a defined group of senior management staff directly subordinate to the CEO, the corresponding information is supplied collectively.

## CHAPTER IV

# THE NORDIC MODEL IN AN INTERNATIONAL PERSPECTIVE

### *The Role of Ownership*

A comment by Ronald J. Gilson\*

It is commonplace to credit the invention of the public corporation as an important engine of economic growth. The creation of a long-lived vehicle that gave investors both tradable shares and limited liability allowed talented managers to raise capital to fund enterprise. Writing in 1926, the *Economist* magazine heralded this role:

The economic historian of the future may assign to the nameless inventor of the principle of limited liability, as applied to trading corporations, a place of honor with Watt and Stephenson, and other pioneers of the Industrial Revolution. The genius of these men produced the means by which man's command of natural resources has multiplied many times over; the limited liabil-

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ity company the means by which huge aggregations of capital required to give effect to their discoveries were collected, organized and efficiently administered.<sup>1</sup>

During both the industrial revolution of the 19<sup>th</sup> century and the digital revolution of the 21<sup>st</sup>, innovation had to be organized to succeed. The innovation represented by the corporate form was the vehicle for the industrial and technological innovations that define these periods. Nonetheless, this gem of an organizational form had two deep flaws that were apparent from the outset, one of which goes to the misaligned incentives between management and shareholders, and the other goes to the difficulty of aligning them. Adam Smith, in *The Wealth of Nations*, identified the first flaw in the late 18<sup>th</sup> century – what we now call the agency problem:

The directors of such [joint-stock] companies, however, being the managers rather of other people's money than of their own, it cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own ... Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company.<sup>2</sup>

So someone has to watch management to make sure that managers work diligently for the shareholders. But this is hard to do. Two hundred years later, Dr. Seuss – the pen name of Theodor Geisel, who is the most beloved American children's author – captured the second flaw as well as any economist and in a much more amusing manner:

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1. Economist, Dec. 18, 1926.

2. Adam Smith, *The Wealth of Nations: An Inquiry into Nature and Causes of the Wealth of Nations* (1776).

Oh, the jobs people work at! Out west near Hawtch-Hawtch there's a Hawtch-Hawtcher bee watcher, his job is to watch. Is to keep both his eyes on the lazy town bee, a bee that is watched will work harder you see. So he watched and he watched, but in spite of his watch that bee didn't work any harder not mawtch. So then somebody said »Our old bee-watching man just isn't bee watching as hard as he can, he ought to be watched by another Hawtch-Hawtcher! The thing that we need is a bee-watcher-watcher!«. Well, the bee-watcher-watcher watched the bee-watcher. He didn't watch well so another Hawtch-Hawtcher had to come in as a watch-watcher-watcher! And now all the Hawtchers who live in Hawtch-Hawtch are watching on watch watcher watching watch, watch watching the watcher who's watching that bee. You're not a Hawtch-Watcher you're lucky you see!<sup>3</sup>

To date, much of corporate governance scholarship and practice has been, in effect, a search for organizational cold fusion. Can we design a cost-effective monitoring technique, whether internal to the corporation like independent directors or external to the corporation through markets like the market for corporate control, that will cause management to work only in the shareholders' interests and so reduce the divergence between interests to levels low enough that it will not operate as a drag on performance? The difficulty is that incentive-compatible governance techniques are both difficult to design and expensive. For example, paying directors enough to get their full attention may be inconsistent with their independence, a problem that gets worse the more complex the business becomes. Takeovers, in turn, are blunt instruments, and the large premiums associated with them imply a significant level of poor per-

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3. Dr. Seuss (T. Geisel), *Did I Ever Tell You How Lucky You Are?* (1973).

formance before they are triggered.<sup>4</sup> Indeed, there is evidence that those banks whose corporate governance most closely aligned the interests of shareholders and managers fared worst in the recent financial crisis.<sup>5</sup>

But there is another approach to the agency problem that has received less attention in the corporate governance debate – an active *owner*, in contrast to passive shareholders, has the right incentives to either run the corporation well herself, or to monitor carefully the performance of the managers she hires. This brings us to the subject of this volume: Nordic corporate governance, or what I will call an ownership model of corporate governance.

## An ownership model of corporate governance

An ownership model of corporate governance takes as its premise the simple intuition that an active owner will be a more effective and less costly monitor of management than the techniques associated with the governance of public corporations having widely dispersed shareholdings.<sup>6</sup> But the analysis gets more complicated when the owner needs to raise equity capital. Once you add public shareholders to the mix, a different

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4. R. J. Gilson, *Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy*, 119 *Harvard Law Review* 1641 (2006).

5. A. Beltratti and R. M. Stulz, *The Credit Crisis Around the Globe: Why did some Banks Perform Better?*, 105 *Journal of Financial Economics*. 1 (2012).

6. R. J. Gilson and A. Schwartz, *Constraints on Private Benefits of Control: Ex Ante Control Mechanisms versus Ex Post Transaction Review*, 169 *Journal of Institutional and Theoretical Economics* 160 (2013).

form of agency cost arises: the owner's incentive to secure private benefits of control. An owner that holds less than all of the company's equity has an incentive to divert profits to herself, for example through related-party transactions, rather than sharing them with public shareholders either by keeping the profits in the corporation or paying them out in dividends. The potential for diversion of private benefits of control also has allocative and not just distributional consequences. Different kinds of businesses are differentially susceptible to divergence of private benefits; for example, vertical integration creates the potential for large numbers of related transactions that can disproportionately favor the controlling shareholder. Therefore, the optimal form of organization from the perspective of the controlling shareholder may no longer be the most efficient but, instead, the form that maximizes the combination of efficient production and the capacity to divert private benefits.

At this point, the agency problem posed by owners gets complicated. First, if the company must sell equity to finance its growth (because the owner lacks the resources herself), the control that gives the owner the ability to act as an effective, low-cost monitor is diluted, and the combination of success and growth opportunities becomes self-defeating. The obvious solution, common to the Nordic countries as shown in the country reports in this volume, is for the owner to retain control by having the company sell to the public shares with lower voting rights than the stocks held by the owner – the controlling shareholder levers control through dual-class common stock.<sup>7</sup> But the use of leveraged control to solve the first owner-agency problem presented by the addition of public shareholders exacerbates the second. The larger the difference between

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7. The Nordic countries differ somewhat along this dimension. The Norway Report states that although Norwegian law does allow two classes of common stock with different voting rights, it is rarely used.

the owner's share of the vote and her share of the equity, the stronger her incentive to extract private benefits of control.<sup>8</sup> And so one confronts a vicious circle: the more successful the business and the greater its growth opportunities, the more capital that must be raised through a dual stock structure, the bigger the divergence between the controlling shareholder's voting rights and her equity stake, and so the greater her incentive to divert private benefits of control. This leads to the third and potentially most significant owner-agency problem. Since public shareholders will expect that an owner will divert private benefits of control unless the owner can credibly commit not to do so (or can set a credible cap on the amount of diversion), the cost of equity capital will be driven up, with negative consequences for the company's success in its business and its capacity to grow.<sup>9</sup>

### How the Nordic ownership model of corporate governance responds to the agency problems of ownership

The overview study and the country studies of Denmark, Finland, Norway, and Sweden in this volume tell a single, coherent story. First, active owners dominate publicly held Nordic companies. As shown in Figure 11.1 on page 50, 62 % of companies in the region have at least one shareholder that holds more than 20 % of the votes and 21 % have a shareholder that

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8. See, for example, S. Classens, S. Djankov and L.H.P. Lang, *The Separation of Ownership and Control in East Asian Corporations*, 58 *Journal of Financial Economics* 81 (2000).

9. R. J. Gilson and A. Schwartz, *Contracting Over Private Benefits of Control*, available at [www.ssrn.com/abstract=2182781](http://www.ssrn.com/abstract=2182781) (July, 2013).

holds more than 50 % of the votes. Characterizing Nordic corporate governance as an ownership model is plainly correct: public companies are dominated by active owners.<sup>10</sup> Thus, the first governance problem that confronts an ownership model – how the active owner maintains a controlling position while the company grows – seems to have been solved in the Nordic region.

Second, these companies are successful. As shown in Table 1.1 on page 28 the number of Nordic companies among the Forbes 2000 largest global companies exceeds that of Germany, despite the fact that Germany's GDP is twice that of the Nordic region. Thus, the second and third problems that confront an ownership model of corporate governance also seem to have been solved – the divergence of private benefits of control has not risen to levels that affect Nordic companies' cost of equity capital or success – as can be inferred by the fact that large-cap listed companies represent some 88 % of the market value of shares listed on the Nordic exchanges (Table II.3, p. 46).

This section reviews the legal structure that supports the Nordic ownership model. The next section then considers the Nordic ownership model from a comparative perspective, with particular attention to an issue that has figured prominently in the corporate governance literature: whether different national and regional corporate governance systems are converging.

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10. For present purposes, I will ignore a different corporate governance model found in the Nordic region: the »no owner« governance model represented by the Danish industrial foundations. In the foundations, no individual or for-profit company bears the residual risk of the company's performance; voting control is lodged in a non-profit foundation. Here the puzzle is that, despite a governance model that has neither an active owner nor dispersed shareholders, these businesses are on average as profitable as public corporations with more familiar governance models. See H. Hansmann and S. Thomsen, *Firms without Owners: The Governance of Industrial Foundations*, working paper, Feb. 2014.

### *Legal rules*

The legal rules that support the Nordic ownership model of corporate governance in each of the countries are straightforward. Consider first the initial problem that must be solved in an ownership model: companies must be able to raise additional equity capital without so diluting the controlling shareholders' ownership of voting stock that they lose control. This is accomplished in Denmark, Finland and Sweden by the use of dual-class common stock, where the controlling shareholder owns shares with multiple voting rights (typically 10 votes per share) and the public shareholders own shares with only a single vote. Thus, companies can raise substantial amounts of equity without the controlling shareholder losing control.<sup>11</sup>

While the use of dual-class control to maintain control despite equity sales is straightforward, it is not the only way to accomplish that goal. For example, complex webs of circular ownership and related but non-transparent ownership can also allow a controlling shareholder to leverage her voting control. A recent comparison of the ownership structure of the Korean Samsung group and that of the Wallenberg group in Sweden, which is anchored through the family's dual class-based con-

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11. Interestingly, Norway differs in this important respect. As described in the country report for Norway, company law allows the use of different classes of common stock with different voting rights, but only three listed companies have other than a single class of stock: ownership and voting rights coincide rather than diverge. This is something of a puzzle in that the percentage of Norwegian companies with a 20% and 50% shareholder is higher than the average for the Nordic region. No explanation for this different pattern is offered; however, one may speculate that it may be related to the fact that the Norwegian government is the largest investor in listed Norwegian companies, holding approximately 35% of the outstanding stock (spread across only 8 large companies). In that circumstance, the government may be the ultimate arbiter of control.

trol of Investor AB, highlights the differences between circular ownership and dual-class common stock as a means to leverage control.<sup>12</sup> As discussed above, the risk posed by leveraged control is the controlling shareholder's increased incentive to divert private benefits of control. While the Wallenberg group's control relationship based on dual class common stock is transparent, Professor Kim argues that the complex circular ownership linking the units of the Korean Samsung chaebol is opaque and therefore facilitates diversion of private benefits of control. If the solution to the problem of allowing an active owner to maintain control of a growing company is leveraged control, then ownership relationships must be transparent so that related transactions that may serve as vehicles for diverting private benefits of control can be tracked. Professor Kim notes that Korean corporate law prohibits dual-class common stock but allows complex circular ownership, and argues that monitoring private benefits would be improved were the legal status of the two techniques reversed.

That brings us to the second problem that must be addressed in an ownership model of corporate governance: a controlling shareholder's incentive to take private benefits of control increases as her equity stake decreases. An ownership model's success thus depends on limiting private benefits of control. While the details differ somewhat across the four countries, the basic structures of the four Nordic countries' corporate law regimes set out in this volume reveal a common strategy to constrain private benefits of control. Put most simply, the annual general meeting is given plenary power, approval by qualified majorities based on equity ownership rather than voting rights is required for sensitive actions like directed issuances of

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12. Hwa-Jin Kim, *Concentrated Ownership and Corporate Control: Wallenberg Sphere and Samsung Group*, available at <http://ssrn.com/abstract=2463272> (2014).

shares, and the board or AGM is prohibited from taking actions that advantage a controlling shareholder at the expense of the minority.

While these protections are clear enough, their effectiveness depends importantly on the extent to which they can be effectively enforced: do the courts and the four corporate-law regimes give minority shareholders an economically and substantively feasible means to challenge actions they deem unduly favorable to the controlling shareholder? Professors Guido Ferrarini and Paolo Guidici highlight this point with respect to the Italian Parmalat scandal, which involved the diversion of large amounts of private benefits of control through related-party transactions:

[I]talian substantive rules cannot be blamed for what happened. Indeed, we argue ... that the existing Italian substantive rules that were in place during Parmalat's last decade were sufficient and, somewhat surprisingly, were even more severe than those in the US. If Italian gatekeepers were undeterred, do not blame Italian substantive rules, blame enforcement.<sup>13</sup>

Here the concern is not just with substantive legal rules that identify what actions will be found to unduly favor a controlling shareholder, but as well with the civil procedure rules that identify who can challenge those actions and the economics of that process, especially with respect to the ability to share the costs of the litigation across all minority shareholders.

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13. G. Ferrarini and P. Guidici, *Financial Scandals and the Role of Private Enforcement: The Parmalat Case*, in *After Enron 159* (J. Armour and J. McCa-hery, eds. 2006).

### *Non-legal constraints on private benefits of control*

It is obvious that non-legal arrangements are important constraints on the consumption of private benefits of control. Controlling shareholders are commonplace in developing countries where courts cannot be expected to operate effectively to constrain private benefits of control; publicly held minority shares nonetheless sell at a positive if still discounted price.<sup>14</sup> Thus, controlling shareholders must adopt observable strategies that operate to credibly cap the extent of private benefits. These strategies can be grouped in two general categories: reputation-based commitment and structural commitment.<sup>15</sup>

The first category builds on the premise that if a controlling shareholder can be expected to return to the capital market, the company's anticipated cost of capital will reflect the observed level of private benefits. Thus, controlling shareholders with a penchant for self-dealing will face a higher cost of capital and so will bear the cost of self-dealing. Family-controlled conglomerates and broad, state-controlling ownership, both common in countries without effective legal systems, operate to expand the effectiveness of reputation-based enforcement through repeated transactions by extending the number of companies that may come back to the capital market to raise equity.

The second category is comprised of techniques where the structure of the controlled company's business itself impedes a controlling shareholder's diversion of private benefits. For example, a familiar means of private-benefit transactions is through related-party transactions between companies in a

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14. R. J. Gilson, *Controlling Family Shareholders in Developing Countries: Anchoring Relational Exchange*, *Stanford Law Review* 60, 633–634–35 (2007).

15. Gilson and Schwartz, *supra* note 9.

vertically integrated controlled pyramid. If the controlling shareholder has a larger equity stake in the upstream input supplier, transfer prices favorable to the supplier will transfer private benefits of control. The absence of vertical supply arrangements in a controlled conglomerate may then serve as a credible commitment – through industrial organization rather than reputation or the legal system – that private benefits will be limited.

### An ownership-based governance model in a comparative perspective

Comparative corporate governance for some time had a teleological perspective: Anglo-American, widely dispersed shareholdings and the related market-based governance model allowed for specialization of management and of risk-bearing, and so was seen as the most efficient corporate structure; other systems, including those characterized by controlling shareholders, were just less advanced on the development path. The expectation was that, in the end, we would observe convergence on the market-based model. This analysis suffered from serious shortcomings. First, it ignored significant overlaps among the systems. The United States, for example, has a significant number of both public companies with controlling shareholders<sup>16</sup> and companies whose controlling sharehold-

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16. In the United States, approximately 15 % of the S&P 500 companies are family-controlled. R.C. Anderson and D.M. Reeb, *Founding Family Ownership and Firm Performance: Evidence from the S&P 500*, 58 *Journal of Finance*. 1301 (2003),

ers leverage their control through dual-class common stock.<sup>17</sup> At the same time, countries that are characterized as having controlling shareholders systems also had significant numbers of public corporations without a controlling shareholder. As Figure 11.1 in the overview chapter shows, on average almost 40 % of the companies listed on the primary Nordic stock markets do not have a 20 % shareholder.

Second, the convergence analysis ignored the fact that in some countries characterized by dispersed shareholders and those characterized by controlling shareholders, minority shares traded at quite small discounts; there seemed to be little difference among governance systems so long as controlling shareholders had the capacity to credibly commit to limit private benefits of control. One is left with the conclusion that in countries where there can be a credible commitment to limiting private benefits of control, we will observe both dispersed and concentrated ownership. If there is no convergence within a single system, why should we expect it across systems?

The convergence question thus needs to be reformulated. Properly framed, the issue is not whether we will see a convergence of governance systems, but rather whether we will see a convergence of shareholder distribution. Here we observe some indication of a kind of regression to the mean. On the one hand, concentrated shareholdings are becoming more common in the United States, especially in the technology sector. For example, from the beginning of 2010 through the end of March 2011, 20 companies went public with dual-class common stock and other structural features that allowed controlling shareholders to retain control with a less-than-equivalent

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17. As of the early 2000's, approximately 6 % (by number, not value) of US publicly traded corporations had dual-class common stock. P. A. Gompers, J. Ishii and A. Metrick, *Extreme Governance: An Analysis of Dual-Class Firms in the United States*, Review of Financial Studies 23 1051 (2010).

equity stake.<sup>18</sup> Facebook and Google are obvious examples.

Moreover, there is good reason to expect the pattern of some controlling shareholders going public but keeping control through leveraged structures – an ownership-based governance system – to persist. From the perspective of a controlling shareholder going public in a country with a low discount for expected private benefits of control, retaining control through dual-class stock can usefully be thought of as an option. The controlling shareholder buys the right to retain control indefinitely, paying an option price equal to the discount (assumed to be small in a low-discount country) on the stock the controlling shareholder sells plus her pro rata share (based on her equity stake) of stock sold by the company. If the discount grows in the future, the controlling shareholder can exercise her option by causing the unification of the two classes of common stock.

At the same time, one might also expect the number of older controlling share companies in countries with an ownership governance model to decrease over time. Some companies will be the subject of a takeover; in Sweden, for example, Rolf Skog reports that Swedish companies with dual-class common stock are no less likely to be a target of a takeover than companies with dispersed shareholders.<sup>19</sup> Others will be subject to what I have called the »gravity of generations,« which can lead to breaking up large family-controlled businesses as the number of family members, and the divergence of their interests, grow over time and a correspondingly smaller number have direct involvement in the business.<sup>20</sup>

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18. IIRC Institute, *Controlled Companies in the Standard & Poor's 1500: A Ten Year Performance and Risk Review* (2012).

19. R. Skog, *The Takeover Directive, the »Breakthrough« Rule and the Swedish System of Dual Class Common Stock*, *European Business Law Review*, 15, 6 (2004).

20. Gilson, *supra* note 4, at 1668. The percentage of companies dual class shares listed in the Stockholm Stock Exchange declined from 87 % (202 com-

The overall result is unpredictable – the initial distribution of controlling shareholders among countries that can support both concentrated and dispersed shareholder distributions appears to be based on historical conditions with the future likely to be based on the business dynamic in the country. As such, is there any prediction about the distribution of shareholdings that can be made with some confidence?

In fact, there is one quite clear prediction that applies both to the United States and to the Nordic region: the increasing importance of institutional shareholders. Take the United States first. In 1950, the shares of publicly traded corporations were largely held by households; institutional investors, including pension funds, held only some 6.1 % of US equities. By 1980, however, shareholdings had begun to shift from households to institutions. At that time, institutions held 28.4 % of US equities. By 2009, institutional investors held 50.6 % of all US public equities and 73 % of the equity of the 1,000 largest US corporations.<sup>21</sup> Table IV.1 sets out the institutional ownership of different size cohorts of US public corporations in 2009.

Moreover, the institutional holdings were quite concentrated. Table IV.2 sets out the percentage of the outstanding stock held in 2009 by the 25 largest institutions in the 10 largest US corporations in which there was not a controlling owner. One could presumably put around a large boardroom table representatives of institutions that together control some of the largest companies in the United States.

Thus, US shareholdings are hardly widely distributed. At

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panies in 1992) to 49 % (255 companies in 2010). This also suggests that the bulk of new listings did not have dual class shares. M. Henrekson and U. Jakobsson, *The Swedish Corporate Control Model: Convergence, Persistence or Decline?* IFN working paper # 857, Research Institute of Industrial Economics (2011).

21. The Conference Board, 2010 *Institutional Investment Report: Trends in Asset Allocation and Portfolio Composition*, Table 10 (2011).

**TABLE IV.1** Institutional ownership of largest US corporations in 2009.

<i>Corporation Rank by Size</i>	<i>Institutional Ownership (%)</i>
Top 50	63.7
Top 100	66.9
Top 250	69.3
Top 500	72.8
Top 750	73.9
Top 1,000	73.0

SOURCE: The Conference Board, *2010 Institutional Investment Report: Trends in Asset Allocation and Portfolio Composition*, Table 13 (2011).

**TABLE IV.2** Percentage of outstanding stock in 10 largest US corporations without a controlling shareholder held by 25 largest institutions in 2009.

<i>Corporation (in order of size)</i>	<i>Percentage of Stock Held by 25 Largest Institutions (%)</i>
Exxon-Mobil	25.0
Microsoft	31.9
Apple	37.0
GE	24.8
Procter & Gamble	29.1
Bank of America	28.9
JP Morgan Chase	35.8
Johnson & Johnson	29.6
IBM	30.6
Wells Fargo	44.3

SOURCE: The Conference Board, *2010 Institutional Investment Report: Trends in Asset Allocation and Portfolio Composition*, Table 13 (2011).

the level of the record owner institution, as opposed to the institution's beneficiaries, US shareholdings have dramatically reconcentrated. The result is a governance structure that Jeffrey Gordon and I have called »agency capitalism«,<sup>22</sup> with its own distinctive form of agency costs. Here, the institutions' business model comes between the record (institutional) and beneficial owners. The evidence is that with only occasional exceptions, institutional investors exhibit a peculiar form of passivity: not »apathy« but »reticence«. They are unlikely to be proactive in taking advantage of the governance rights associated with their shareholdings, but will vote thoughtfully if the issue is clearly framed for them.

The same shift in shareholdings, from individual to institutional ownership, is also evident in the Nordic region. As described in the chapter on Sweden in this volume, in the early 1950's, individuals held nearly 75 % of the market capitalization (but not necessarily the vote) of the Stockholm Stock Exchange. Family-controlled foundations, closed-end investment companies and holding companies owned the remainder. As Skog and Sjöman put it: »Institutional investors were practically non-existent at the time.«

As in the United States, institutional investor holdings then grew dramatically. By the mid-1980's, individuals owned only 25 % of the market capitalization, and by 2014, individual equity ownership had dropped to 15 %, with institutional investors holding 85 %.

We have thus observed the same shift in ownership pattern in both the United States – widely treated as the quintessential dispersed-shareholder market – and in Sweden, widely viewed as the quintessential controlling-shareholder system.

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22. R. J. Gilson and J. N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 Columbia Law Review. 883 (2013).

What has been the result of this common shift in shareholder distribution in the two different systems?

In the United States, the reconcentration of ownership in institutional investors has given rise to activist investors whose strategy is symbiotic with that of the intermediary institutional investors. The activists identify companies whose performance they believe can be significantly improved, buy a toe-hold stake, and then seek to convince the institutional shareholders of the wisdom of the activist's strategic proposal. If intermediary institutional owners agree, they vote for the activist's position by voting for the activist's board nominees in a proxy contest; if institutions do not think the proposal is sound, it is likewise voted down. The institutions determine the outcome. The activist investor does not itself control sufficient stock to control the election; its pre-disclosure holdings seem to be around 8%.<sup>23</sup> Thus, in the US agency capitalism world, the activist investor proposes, and the institutional investors dispose, a division of labor that takes advantage of each of the participants' competencies.<sup>24</sup>

But what is the impact in Sweden (and presumably the rest of the Nordic region) of the reconcentration of individual holdings into institutional holdings? For those companies that do not have at least a 20% block, the potential is for the US pattern to appear, and perhaps even more powerfully because of shareholders' greater access to the annual general meeting and the greater power of the meeting than in the US. For companies with 20% or more blockholders, a different issue arises: what is the impact of minority institutional blockholders in a corporation with a controlling shareholder? Here, the experi-

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23. L. Bebchuk, A. Brav, R. Jackson and W. Jiang, *Pre-Disclosure Accumulation by Activist Investors: Evidence and Policy*, 39 *Journal of Corporation Law* (2013).

24. Gilson and Gordon, *supra* note 23.

ence of Chile may be relevant. On the one hand, Chilean public corporations typically have a controlling shareholder. On the other hand, the five Chilean private pension funds that arose out of the 1981 pension reform are major shareholders with, collectively, sufficient shares to elect a director in many corporations.<sup>25</sup> Here, the issue is one of strategy. Where exit is limited because of the limited market liquidity in the Chilean market and the size of the pension funds' holdings, can voice have an impact even in the face of a controlling shareholder? What is the impact in Sweden, for example, of the fact that foreign institutional investors hold 40% of the market capitalization?

## Conclusion

The Nordic ownership model of corporate governance is built on facilitating an active owner's retention of control as the company grows through the leverage of dual-class stock, and aggressively protecting minority shareholders from private benefits of control so that the company's cost of equity is not adversely affected by the characteristic control structure. So long as non-control shareholdings were largely held by individuals, a smaller equity stake could support control. The combination of an active owner and protected minority shareholders was a successful alternative to the intellectual hegemony of the Anglo-Saxon, market-based governance model.

Thus, it may be that the character of the shareholding distribution at the heart of the Nordic ownership model has

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25. OECD, *The Role of Institutional Investors in Promoting Good Corporate Governance* 90 (2011). The funds' ability to elect a director is facilitated by cumulative voting and statutory authority to cooperate in the election of directors.

two dimensions, not just one. In addition to the presence of an activist owner, the model may also depend to some extent on the absence of concentrated minority block holders. What happens when minority ownership reconcentrates in institutional investors? What role can institutional investors play? Corporate governance is shaped by the evolution of the capital market and the resulting ownership patterns. Ownership patterns have now changed dramatically. We are then left with the question of how the Nordic ownership model of corporate governance adapts.



## A P P E N D I X A

# CORPORATE GOVERNANCE IN DENMARK

Jesper Lau Hansen & Carsten Lønfeldt\*

### The Context

At the end of 2013, the total number of limited liability companies in Denmark was 237,302. The Danish Companies Act (*Selskabsloven*) divides limited companies into two categories: private companies (*anpartsselskaber* or »ApS«) and public companies (*aktieselskaber* or »A/S«). There are 197,161 private companies and 40,141 public companies. Public companies, but not private companies, may turn to the general public to raise capital and thus only public companies may have their securities admitted to trading on a regulated market.

By the end of 2013, a total of 154 public companies were traded on Nasdaq Copenhagen Stock Exchange, not includ-

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ing 17 companies traded on First North. Nasdaq Copenhagen operates the main regulated market in Denmark as well as the First North, which is not a regulated market. In addition, some 25 Danish companies are traded on the independent GxG Markets (formerly Dansk OTC), which also owns the »OTC-listen« which has been a market place for »over-the-counter trading« in unquoted Danish companies since 1987.

Only companies quoted on Nasdaq Copenhagen are the subject of this report and will be referred to as listed companies.

Of the 154 companies traded on Nasdaq Copenhagen, 22 were defined as large cap, i.e. companies with a market capitalization of more than €1 billion. The total value of all large-cap companies was 1,467 billion DKK or 89 % of the total value of the listed companies in Denmark.

Mid-cap companies have a market capitalization between €1 billion and €150 million and, finally, small-cap companies are below €150 million in market capitalization. The sizes of the three categories – large-cap, mid-cap and small-cap – have been fairly stable over the past few years.

**TABLE A.1** Nasdaq Copenhagen Stock Exchange, 30 December 2013.  
DKK million.

	<i>Market capitalisation</i>	<i>Share (%)</i>	<i>Number</i>
Large cap	1.467.479	89	22
Mid cap	141.582	9	29
Small cap	39.788	2	103
Total	1.648.849	100	154

In a historical perspective, private founders of companies and their heirs have dominated the ownership of Danish listed companies either by direct ownership or by setting up commercial foundations. In the early 1950's, a major share of the market capitalization of the Copenhagen Stock Exchange was directly held by individual investors or foundations established by founders. During the post-war period, the ownership structure has to some extent changed: Institutional investors, both foreign and Danish, including public pension funds have taken a significant share of ownership.

Numbers from the Danish Central Securities Depository (*Værdipapircentralen*) covering all registered shares in listed companies indicate that private investors hold approximately 15 % of the registered shares of listed companies. This number has been significantly higher historically, but quite stable during the period 2010–2014. Danish institutional investors hold 35 % of the registered shares. This number has declined from 43 % at year-end 2009. Foreign investors have increased their shareholdings from 42 % to 51 % over the last 4 years.

The numbers only reflect the allocation of registered shares where the owner has actively decided to register his ownership. It is estimated that approximately 10 % of all Danish shares are not registered by name. These shares may either have foreign or Danish ownership.

The establishment of public pension funds as ATP and LD (quasi-public institutional investors set up as part of industrial-sector agreements on pensions and regulated by acts of Parliament), and other changes in savings, pension and tax legislation have meant that accumulation has been collectivized and increasingly channelled through institutional investors. These institutions, in turn, have invested more of their assets in the stock market. Over a number of years, pension funds, insurance companies, mutual funds and other institutional portfolio

**TABLE A.2** *Nasdaq Copenhagen Stock Exchange. Ownership structure in listed companies. 50 largest by market capitalization.*

	<i>Number of companies</i>	<i>Market capitalisation mDKK</i>
Danish companies with a controlling shareholder <sup>1</sup>	31	1.361.919
Danish companies without a controlling shareholder	16	208.880
Foreign companies quoted on Nasdaq CSE	3	34.386
	50	1.605.185

investors have been buying shares on the market and participated in new share issues.

Despite this institutionalisation of ownership in Denmark, many of the listed Danish companies have one major shareholder – very often a strategic shareholder with permanent interests in the company.

Table A.2 shows the 50 largest (by market capitalisation) listed Danish companies. The total value of these companies is 1,605 billion DKK and constitutes 97 % of the listed market capitalisation on Nasdaq Copenhagen Stock Exchange. The remaining 3 % is shared by 121 companies.

Of the 50 largest companies, 31 (i.e. 62 %) have a controlling shareholder which holds at least 20 % of the shares in the company. In all of these companies, the shareholding is higher than 20 % and often supported by differentiated voting rules.

By market capitalisation, controlling shareholders are rep-

<sup>1</sup>. Danish companies having a major shareholder who holds more than 20 % of the votes.

resented in companies with an accumulated value of 1,362 billion DKK or 82 % of the total market capitalisation of the Danish stock exchange. Of the 12 largest companies by market capitalisation on Nasdaq Copenhagen Stock Exchange, 11 companies have a controlling shareholder.

The controlling shareholder normally plays an active ownership role, has particular responsibility for the governance of the company and will be represented on the board.

The data for Table A.2 is collected from the annual reports and websites of the relevant companies. Companies are obliged to disclose major shareholders (i.e. shareholders holding more than 5 % of the shares or votes), but most companies are transparent in their reporting of shareholder structures.

## The regulatory framework

The regulation of corporate governance in Danish listed companies derives from various sources, with some being found in legislation, while others are of a soft-law nature, notably the national Corporate Governance Code issued by the private institution, the Danish Corporate Governance Committee (DCGC). The latter reflects to some extent best practise. However, some practises are not reflected in this way and are simply observed by practitioners. This survey of Danish corporate governance includes these practises as well.

The main source is the 2009 Companies Act, which applies to both public and private companies. Before the 2009 Reform, Denmark had two separate acts on public and private companies, respectively. This dichotomy was introduced in 1973, when Denmark entered the then EEC as the first Nordic country and introduced the German-inspired distinction between

public and private limited liability companies. At the beginning of 2014, there were 40,141 public companies (*aktieselskaber* or »A/S«) and 197,161 private companies (*anpartsselskaber* or »ApS«).<sup>2</sup> Note that a public company is deemed public by its choice of company form and should not be confused with companies that have securities admitted to trading on a regulated market. The latter are referred to in this report as *listed companies*. Only public companies may solicit investments from the public and, consequently, only public companies may become listed.

As the regulation of public and private companies was increasingly similar and the distinction itself was losing relevance in comparison to the distinction between listed companies and other companies, the 2009 Reform opted to regulate both types of company by the same act. The governing principle of the Reform was to subject both public and private companies to the same regime and to opt for the most flexible regulation allowing the shareholders to settle their affairs in the articles of the company where this could be done without detriment to other stakeholders, notably creditors, but also taking due account of minority protection. In some areas, such as capital maintenance, flexibility was not possible due to the strict regime of the 2<sup>nd</sup> Company Law Directive on Capital which applies to public companies. In these areas, flexibility was available for private companies only. Finally, some regulation was promulgated specifically in respect of listed companies, mostly because of EU legal requirements such as the 2005 Shareholders' Rights Directive. Although most of these provisions were already part of Danish law, which offers extensive rights for shareholders and protection of minorities, it was found necessary to incorporate some provisions specifically

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2. The Danish Business Authority, which also operates the national business register.

dealing with listed companies directly into the Act in order to ensure a correct implementation of the Directive. Consequently, while the Companies Act to a great extent treats all limited liability companies alike, it is possible to observe a division into three categories of listed companies, public companies and private companies, where the regulation is stricter for the former and more flexible and enabling for the latter categories.

Another important source of law is the Accounting Act, which contains some provisions in respect of corporate governance, although it is mainly concerned with the preparation of financial accounts. The Accounting Act should be viewed together with the Auditors Act, which deals specifically with auditors and the audit of financial accounts.

The Danish Business Authority is the national, competent authority on company law and supervises compliance with the Companies Act and the Accounting Act in respect of non-financial enterprises. In addition, it maintains the national business register and other registers required by company law, e.g. the open register of all shareholders in companies covered by the Companies Act.<sup>3</sup> It is customary for Danish legislation to operate on two levels, whereby the legislation passed by Parliament on level 1 authorises the competent authority to issue executive orders to specify various provisions of the legislation on level 2 and, consequently, the Companies Act is supplemented by a number of executive orders issued by the Business Authority.

Corporate governance was formerly governed solely by the company legislation and the main governance structure, and some of the most fundamental rules on governance are still found in the 2009 Companies Act. However, in 2001,

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3. The Ownership Register was introduced as part of the 2009 Reform and is mandated by the Companies Act. However, its introduction has been delayed due to technical problems.

Denmark followed the UK-inspired trend of promulgating a national code on corporate governance issued by a non-elected committee and based on a soft-law approach in the form of a national Corporate Governance Code (hereinafter the »CG Code«) with recommendations applying the »comply-or-explain principle«.<sup>4</sup>

The CG Code is issued by the DCGC and is available in English.<sup>5</sup> The DCGC is independent and its members are appointed by the Minister of Business and Growth upon recommendation by the DCGC itself. The Business Authority serves as the secretariat for the DCGC which, together with the appointment of its members by a government minister, provides it with a quasi-official character.

A listed company is obliged by the Accounting Act to explain in its annual accounts whether it is subject to the CG Code. As the stock exchange in Copenhagen strongly supported the 2001 initiative, it made observance of the CG Code part of its listing conditions, whereby they effectively became mandatory although the principle of comply or explain provides some flexibility. A survey conducted by the DCGC in 2012 of all the largest listed companies together with ten companies picked at random from the mid-cap segment and ten from the small-cap segment showed that the CG Code was observed by 92 %, with a distribution of 86 % compliance and 6 % giving explanations.<sup>6</sup> Non-observance occurred mainly among smaller listed companies.

Another, more special source of corporate governance reg-

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4. Regarding the introduction of CG Codes in the Nordic countries in the first decade of the millenium, see J.L. Hansen, *Catching up with the Crowd, But Going Where?* 3 International Journal of Disclosure and Governance 213 (2006).

5. The home page of the DCGC is [www.corporategovernance.dk](http://www.corporategovernance.dk).

6. Available on the website (see above).

ulation is found in the law particularly applicable to takeovers. Takeovers are governed by Chapter 8 of the Danish Securities Trading Act. Denmark does not have a very active takeover market (see the table below). The regulation of takeovers in Danish law is mostly comprised of provisions implemented from the Takeover Directive, and there is no soft-law regime to supplement the legislation except in a recommendation in the CG Code according to which management should not attempt to frustrate a bid that has been announced. Furthermore, there is no private committee to oversee takeovers, which instead falls within the Danish Financial Supervisory Authority's ordinary responsibilities under the Securities Trading Act. As mentioned above, the Act authorises the Danish FSA to issue executive orders in specified areas, and a notable part of the provisions implementing the Directive is found in the executive order issued pursuant to Chapter 8 of the Act and in a separate guidance to the order issued by the Danish FSA. The Danish FSA's main responsibility is to supervise financial enterprises and, in this capacity, it supervises issues of corporate governance and accounting as well. However, as this report is focused on non-financial listed companies, this will not be explored further.

**TABLE A.3** Danish takeover bids.

	2008	2009	2010	2011	2012	2013
Mandatory bid offers	3	6	5	3	3	2
Voluntary takeover bids	6	2	3	5	2	2
<b>Total</b>	<b>9</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>5</b>	<b>4</b>

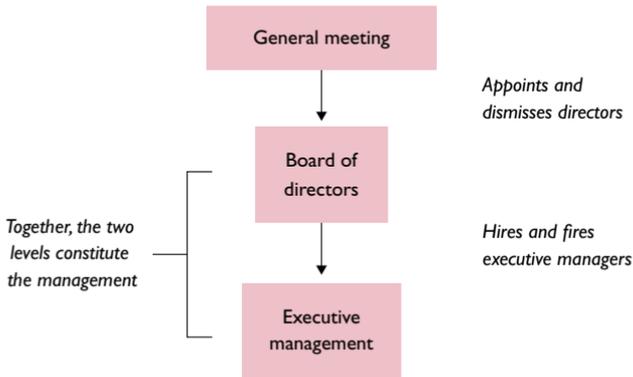
SOURCE: Danish FSA, 2014.

## Basic structure of the governance system

The original governance structure in Danish company law was a single administrative board of directors, similar to that known from UK law. However, in the work leading up to the 1930 Companies Act, it was successfully argued that governance in major companies was effectively divided between the board of directors and daily executive management, and that the latter ought to be covered by company law legislation in order to establish its responsibility for day-to-day management. Consequently, the 1930 Act obliged large companies with a share capital above a certain high level to have a board of directors (*bestyrelse*) and an executive management (*direktion*), whereas smaller companies could continue with a single administrative board. This governance system was adopted by Sweden in its 1944 Companies Act and later by the remaining three Nordic countries and is thus now a common Nordic governance structure. When Denmark introduced a distinction between public and private limited companies in the 1973 Companies Act upon its accession to the then EEC, the dual-executive system became mandatory for all limited companies of the public type and optional for the private type.

This *dual-executive system* may at first glance look like the two-tier governance system known in German company law, yet it is distinctly different. It is closer to the UK one-tier system, especially as it appears post-Cadbury with its distinction between non-executive directors and executive directors. The differences from the UK system are not insubstantial. Notably, it embodies a clear hierarchy between the two levels of management, and it is better viewed as a unique, Nordic governance system in its own right.

In order to fully comprehend the Nordic dual-executive system, it is important to focus on its hierarchical nature. The



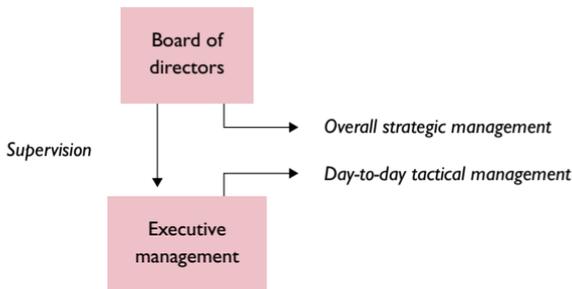
**FIGURE A.1** The Danish dual-executive system.

shareholders are placed firmly on top of the two levels of management – the board of directors and the executive management – and the three levels together form a strict hierarchy in which the upper level may instruct and, if necessary, remove members of the lower level. The obvious risk that shareholders may abuse the limited liability that they are afforded in the company is prevented by detailed legislation aimed at protecting creditors and minority shareholders. Although based on a strict hierarchy, the dual-executive system relies on mutual cooperation among the two levels of management and involvement of dominant shareholders, if any. The system is analysed in more detail in the following parts of the report.

This direct influence of shareholders over directors is intentional and not coincidental. It is believed that shareholders should be the ultimate decision makers for the company and that directors should be accountable to them. Shareholders are allowed to engage with management and determine the governance of the company, which is approvingly known as

»active ownership«. Shareholders are not, however, obliged to engage in this way and many listed companies have a dispersed and mostly passive circle of shareholders. The characteristic feature of Danish business life is nonetheless the prevalence of dominant shareholders who engage in active ownership, which is widespread even among listed companies.

The prevalence of dominant shareholders is probably a historic coincidence, but it is enabled by various features of Danish company law, notably the possibility to issue share classes with different voting rights, known as A- and B-shares (while, in rare cases, there may be more than two share classes). Another characteristic of Danish corporate governance is the prevalence of industrial foundations, which usually own multiple-vote shares bequeathed to them by the founders and their families and with a chartered obligation to remain dominant owners of the company. Examples include high-profile Danish companies such as the Carlsberg brewery and the pharmaceutical company, Novo Nordisk.

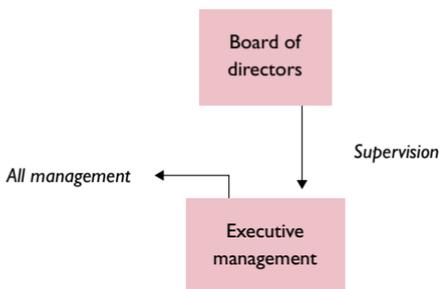


**FIGURE A.2** Comparison of the traditional dual-executive system (left) with the new two-tier system (right).

By means of the 2009 Companies Act, a new two-tier governance structure was introduced. Inspired by German law, the structure rests on two separate bodies: a supervisory board (*tilsynsråd*) and an executive management (*direktion*).

Although German inspired, the Danish model is quite different. This is mostly because the supervisory board in the new two-tier system is part of the same hierarchy that applies to the dual-executive system. Consequently, the shareholders in general meeting appoint and, notably, may dismiss at least the majority of the supervisory board and, where there is no employee representation for  $\frac{1}{3}$  of the seats, may dismiss all of the supervisors. Similarly, the supervisory board hires and may dismiss at will all members of the executive management. This effectively gives the supervisory board a much stronger role than its German counterpart and ensures that the will of the shareholders may permeate down to the level of executive management.

The new, two-tier system has only existed for a few years and has been adopted only by a few companies to date. It is not



expected that it will overtake the traditional, dual-executive system, which is considered more efficient and is preferred by listed companies. The CG Code recommends the dual-executive system and, so far, no listed companies have adopted the two-tier structure. In this paper, which focuses on listed companies, only the traditional, dual-executive system will be described.

## The general meeting

While the Danish Companies Act is silent on many issues about the conduct of management and leaves this to be settled by the CG Code, the Act is quite detailed in its regulation of the general meeting («GM»). In most cases, the requirements of the Act are default rules that can be set aside by provisions in the articles of the company if they offer stronger protection for the shareholders. However, this possibility is highly unusual for listed companies and is mostly ignored in the following presentation. In this presentation of the GM, all references follow from the Act, except when the CG Code is mentioned.

### *Powers of the GM*

In Danish corporate governance, shareholders are viewed as the owners of the company and the ultimate decision makers, yet they are not individually empowered and must convene as a GM. The GM on the other hand is almost *omnipotent* and the few limitations on its powers follow from the doctrine of capital maintenance in order to protect the creditors of the limited liability company. Thus, except for certain decisions regarding dividends and reduction of the paid-in share capital, the share-

holders may decide what they want, including amendments to the articles, and they may by resolution interfere with management and take decisions regarding the governance of the company at will. A typical classroom example illuminating this point is to observe that the GM may decide the colour of the pencils to be used by the company. It is not unusual in many jurisdictions to allow for a similarly powerful GM, but it should be kept in mind that, due to the prevalence of dominant shareholders in many Danish companies, the powers of the GM are more likely to be used. Among large-cap companies, including listed companies comprised by the C-20 large-cap index, controlling shareholders have traditionally abstained from exerting their powers to micromanage, while the mere possession of their formal powers ensures that the board remains accountable to them and keeps them sufficiently informed.

An ordinary GM must be held annually (»AGM«) and is usually convened by the board of directors. However, an extraordinary GM may be convened by the company's auditor or by any shareholders holding more than 5 % of the share capital. The extraordinary GM must be convened no later than two weeks after it has been requested. Where all shareholders agree, an extraordinary GM can be held immediately or the shareholders can decide to waive any defects in the notice to attend the GM. Similarly, many other features intended to protect the shareholders may be waived by them, although this is not practical in listed companies and is not dealt with here.

The powers of the GM are confined to the issues put forward on the agenda of the meeting. Certain items must appear on the agenda. At the AGM, the accounts of the company must be approved and decisions must be taken regarding the disposition of results. Furthermore, the election of directors will normally also be on the agenda, and most directors are normally appointed for a one-year team, which is recommended

by the CG Code although the Act allows for mandates of up to four years. Other items may be included on the agenda by the board of directors in their discretion, and every shareholder has a similar right to submit his or her proposals for inclusion on the agenda, if the submission of the proposal is made to the board within six weeks. If it is made later, the board may include it on the agenda in its discretion. The Act does not contain restrictions on the shareholders' right to have proposals included on the agenda, even though the Shareholder Rights Directive allows for a threshold of up to 5 % of the share capital as a prerequisite for exercising such right. Listed companies are required to announce the date of the AGM in the financial calendar that is published according to the rules of the Nasdaq, and the latest day on which to receive proposals for the agenda, which must be no later than eight weeks before the AGM.

### *Preparation of the GM*

Notice of the GM must be given by a listed company no earlier than five weeks and no later than three weeks before the GM. Communication may be electronic, e.g. by e-mail, if the individual shareholders have agreed to this. The notice must state the time and place for the GM and the agenda and, if the agenda includes proposals for amendment of the articles of the company, the main content of the amendment must be stated and important amendments must be reproduced in full.

Since 2003, Danish companies have been allowed to conduct GMs by use of electronic communication, either as a fully electronic GM at which all shareholders use electronic means to participate, or as a partially electronic GM at which only some shareholders use electronic means to participate while the rest attend in person. A growing number of large-cap companies

make use of electronic means to conduct a GM, notably to enable electronic voting and calculation of votes. While it remains unusual to allow for on-line participation, it is customary for larger listed companies to transmit a GM as a webcast. By law, the press has the right to participate in the GM of a listed company.

Every public company must have a shareholders' register in which they record the identity of their shareholders. It is possible to register under the name of a nominee and in this way preserve anonymity. The register is available only to the board of directors, public authorities and, where the employees are entitled to codetermination but have not exercised such right, to their representatives. Most listed companies use an independent service provider to maintain their shareholder register. Currently, only two major players offer this service: VP Securities and Computershare. These providers also provide the electronic equipment necessary to conduct the GM, whereby shareholders are able to vote electronically. So far, however, most voting is done by paper ballot, and the widespread use of proxies often allows the GM to make decisions without a formal vote. On voting, see further below.

The shareholders' register is supplemented by a register of major shareholders, which records shareholders who directly or indirectly own a substantial amount of the votes or capital issued. Major shareholders are required to inform the company of their shareholdings above thresholds of 5 %, 10 %, 15 %, 20 %, 25 %,  $\frac{1}{3}$ , 50 %,  $\frac{2}{3}$ , 90 % and 100 %. Shares that are de facto controlled by a shareholder but not registered in the shareholder's name are included when calculating these thresholds. It is not possible to use a nominee for registration. The public has access to this register and it is also reproduced in the financial accounts of the company. Where the company is listed, the information must also be filed with the Danish FSA. The register of major shareholders is publicly available, nor-

mally via the company's website. Together, the two registers provide public information about all shareholdings above a mere minimum.

### *At the GM*

The GM is normally conducted in Danish. However, the GM may decide by a simple majority of votes that it shall be conducted in English, Norwegian or Swedish.<sup>7</sup> So far, this is unusual in listed companies, but a more frequent use of English is not inconceivable due to the growing number of foreign investors and foreign directors on Danish boards in listed companies and the generally high proficiency of English among Danes. A company may decide to produce its financial reports only in English and most large-cap companies have opted to do so, but continue to publish a condensed version of the financial reports in Danish. Companies may adopt English as the management language and, consequently, it is likely that one or more listed companies at some point may conduct their GM in English in order to attract a more international circle of investors.

Every shareholder has a right to attend the GM and may address the GM. A person is regarded as a shareholder to the extent that his or her shares are registered by name in the company's shareholder register on the registration date, which is one week before the GM. The company may own its own shares, but such share ownership is ignored for the purposes of the GM given that the company cannot act as a shareholder

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7. The same provision enables the company to conduct its GM in any language other than Danish by simple majority if it provides simultaneous translation. Furthermore, the company may opt to use such other language without translation if this is included in the articles, which requires a qualified majority. Neither of these options are relevant for listed companies with a large, mainly Western investor base.

at the GM, cannot vote its own shares and the shares are not counted as being present at the GM.

Furthermore, every shareholder may present questions to the management about items on the agenda, which includes both items that may have been included on the agenda by the shareholder and other items. However, management is only obliged to respond to the extent possible without compromising the interests of the company and to the extent that information is available to them and, where information must first be retrieved, has a two-week period after the GM to respond to the shareholders. It is very rare that management refuses to answer a question from its shareholders. If this occurs, the shareholders may challenge the decision to do so in court.

Shareholders may appoint a proxy to represent them at the meeting by means of a power of attorney, and a single proxy may represent different shareholders. A shareholder must be able to withdraw any such appointment, which is also done in writing. It is customary for the board of directors to represent shareholders who are unable to participate. It is considered best practise in the CG Code to specify the items on the agenda in the proxy form used by the company and thus avoid a single general power to act discretionarily. There are no limitations on the board's ability to canvas proxies from its shareholders and it is normal that institutional investors provide their proxies to the board, which is always present at the GM.

A shareholder also has a right to vote by letter. A proxy that clearly indicates how the shareholder wants to vote on each issue on the agenda is very similar to a vote by letter. However, a vote by letter can be made at any time before the GM but cannot be revoked once handed over to the company.

The board of directors is expected to be present at the GM, although all members need not be present on the stage. The CEO is normally present, as is the auditor, who has a direct right

and obligation to attend. However, it is highly unusual for the auditor to address the GM unless specific questions regarding the accounts are raised. The chair of the board of directors will open the GM before handing over the floor to the appointed chair of the GM.

The chair of the GM may be appointed by the shareholders at the GM or by the board if this is mandated by the articles. The chair conducts the meeting and possesses sufficiently strong powers under the Act to ensure smooth and fair proceedings, including the power to determine the extent of voting rights, how to proceed with the agenda and to conduct voting on resolutions and elections of directors, the manner in which to structure the debate and when to end it, and the chair may even dismiss a shareholder from the GM if necessary to maintain order. The intended chair is usually an experienced lawyer and is contacted by the board well in advance of the GM and is involved in its planning. Nevertheless, once appointed, the chair of the GM owes his or her loyalty to the company and must act fairly with respect to all participants, and the chair is personally liable for exercising these duties correctly. After the GM, the chair will sign the minutes of the GM, which are filed with the Business Authority and published on the company's website and, where authorised by the GM, the chair may sign documents necessary to implement resolutions adopted by the GM.

At an ordinary AGM, it is customary in listed companies to combine the first items on the agenda, which cover the board's statement on how the company has performed during the last year, adoption of the accounts and the manner of dealing with the result. The three items on the agenda are usually presented by the chair of the board but, in some cases, may be supplemented by the CEO. To the extent that there are comments or questions from the shareholders, these are addressed as part of this combined presentation. This flexibility in the presen-

tation of the company's affairs illustrates the close cooperation among the board of directors and the executive management. Generally, the chair of the board represents the company throughout the AGM, which illustrates the hierarchical difference between the two levels of management, each represented by the chair and the CEO, respectively.

It used to be customary for the articles to include a provision on discharge (*decharge*), whereby the shareholders adopt a resolution not to hold the management liable for accounts adopted by the AGM to the extent that nothing has been concealed. However, this is becoming rare as the discharge is of limited use and is increasingly viewed as unnecessary and increasingly even inappropriate. If the articles still contain such a provision, the resolution regarding discharge is made in combination with the presentation of the accounts.

Directors are normally appointed for one year and must be reappointed. The Act requires a candidate to disclose other directorships, and the chair of the board will normally provide a short presentation of new candidates as part of the presentation of the company's affairs.

### *Voting at the GM*

Resolutions are adopted by the GM by voting. Shareholders must vote their entire holdings and cannot split their votes. A proxy representing different shareholders may vote differently to reflect the positions of the shareholders. Where shareholders own shares together, they must agree in order to vote.

Ordinary resolutions are adopted by a simple majority of votes, i.e. more votes in favour than against, and a draw is not sufficient. If the resolution is not binary (yes/no) but involves a choice among three or more options, e.g. different proposals, a

relative simple majority will be enough, i.e. the option with the most votes is adopted. The chair of the GM will usually use his/her authority to arrange voting in such a way that the available options appear as binary votes.

More important resolutions will require different forms of qualified majority, which may include counting votes and capital separately, because the company may have different classes of shares with different voting rights for the same nominal value (A class and B class shares). For example, if one A-share carries 10 votes for 10 DKK and one B-share carries 1 vote for 10 DKK, the two shares can together count as 11 votes and 20 DKK. The different classes of shares must be stated in the articles, which are publicly available at the Business Authority on-line service and thus the distribution of votes and capital is fully transparent.

The need to count capital and not just votes is considered an important protection for minority shareholders, who often hold low-voting or non-voting classes of shares and are thus put on an even footing with owners of multiple-vote shares when capital is concerned. Equally, the use of a qualified majority to adopt more important or onerous decisions is an important way to protect the minority. Shares without votes were legal until the 1973 Companies Act, which then required a minimum of at least one vote in new issues and limiting any vote differentiation to a ratio of 1–10. However, non-voting shares were again permitted in the 2009 Act, which also revoked the ratio on vote differentiation. A non-voting share will usually not participate in voting at the GM, unless the articles determine that the non-voting share can be counted as capital, in which case the shares are counted if a qualified majority involving capital is called for (see below regarding qualified majority and super majority).

The most important resolutions, such as a change of the

articles, decisions to raise or reduce the share capital, and mergers, require a qualified majority of  $\frac{2}{3}$  of the votes cast and  $\frac{2}{3}$  of the capital represented at the GM. There are no quorum requirements for the GM. Accordingly, if the GM is legally convened, but only one shareholder attends, that shareholder will control 100 % of the votes cast and the capital represented.

Certain highly onerous resolutions, e.g. changes to the articles that will reduce the shareholders' right to dividends, require a super majority of 90 % of votes cast and capital present. Minority shareholders who have voted against such a super majority resolution may demand a sale of their shares to the company at a fair value after the GM.

If the onerous resolution concerns a change to the articles that diminishes the rights of a special class of shares, the resolution will require the qualified majority necessary to adopt a change to the articles and must furthermore be supported by  $\frac{2}{3}$  of the class in question, which is counted as the capital of the class concerned without regard to its voting rights, if any.

If a resolution is detrimental to individual shareholders who do not constitute a particular class of shares, the resolution will require their consent in addition to the ordinary majority required to adopt it. Certain resolutions may be detrimental in a way that requires full consent, even if the resolution may appear to concern a particular class of shares, which would otherwise only require consent from  $\frac{2}{3}$  of the class (see the paragraph above). The distinction depends on whether the detrimental resolution is a mere readjustment of rights between classes of shares or constitutes a severe disadvantage to particular shareholders who happen to form a distinct class.

If a resolution obliges the shareholders to make additional financial contributions to the company contrary to the basic concept of limited liability, the resolution will require unanimous support.

Appointments of directors are considered different from resolutions and are made by a relative simple majority, i.e. the candidate with most votes is elected, and the decision is made by counting only votes and not capital. Only counting votes and not capital ensures that shareholders with multiple-vote shares can effectively dominate the appointment and are offered decisive influence as regards the composition of the board. The GM votes for one candidate at a time and, although cumulative voting is legal if adopted in the articles, this is never used. Consequently, a major shareholder who dominates the GM will be able to fill all vacancies on the board. This is a deliberate policy choice by the Danish legislature to ensure that the board reflects the undiluted will of a controlling shareholder, where such a shareholder is present in the company.

Unlike resolutions in respect of which the reliance on majority may lead to the rejection of a resolution, the appointment of directors must occur given that the company cannot be without directors. Where two candidates have received the same number of votes, the chair of the GM may order a new vote to resolve the problem and, if the tie is not broken, the appointment is made by drawing lots. Where the number of candidates corresponds to the number of vacancies, which is frequently the case in listed companies, no voting is carried out, but appointment is simply recognised.

As mentioned above, the company may not vote its own shares, nor may its subsidiaries vote shares in the parent company. A shareholder may not vote on issues concerning litigation against such shareholder, nor may the shareholder vote on issues concerning the shareholders' liability to the company. This provision regarding a conflict of interest is narrower than the provision applicable to directors and managers because shareholders do not owe a duty of loyalty to the company as do members of management. The prohibition on voting when

faced with a conflict of interest also applies to proxies, both where the shareholder is in a conflict of interest and where the proxy is conflicted.

While most provisions of the Shareholders' Rights Directive were familiar to Danish company law, one provision was new and has caused considerable problems in practise. The provision allows any shareholder to require a full count of any vote taken in respect of a resolution, whereas the provision does not apply to voting in respect of appointments. Traditionally, voting in listed companies has been done by establishing broadly whether there is sufficient support, often relying on proxies from dominant shareholders or major institutional investors. However, a shareholder may now require a full account of all votes cast and, where voting is done by paper ballot among the many hundreds of shareholders present which is still the normal procedure, this can seriously delay the proceedings. Naturally, this does not pose a problem in companies that use electronic voting, where the full account can be computed quickly. In other companies, the chair of the GM may expedite matters by establishing a majority by relying on proxies and then ask the attending shareholders to deliver their paper votes as they leave the GM, in which case the full account will be conducted later and disclosed after the GM.

### *Dividends and remuneration*

The GM adopts the annual accounts of the company, which includes remuneration of management (see page 164). The GM also has the power to decide on the distribution of any profits available in the accounts. However, in order to secure the financial viability of the company, the GM can only vote on a proposal by management. Members of management owe a

duty of loyalty to the company and must safeguard its financial viability. They are personally liable for not abusing the limited liability and, consequently, their proposal for dividends must be expected to be prudent and safe and cannot be exceeded by the shareholders. A similar mechanism is relied upon if the GM is to decide on a reduction of the paid in share capital where the proceeds are to be paid out to the shareholders.

According to Danish company law, there is no right to a minimum dividend as is the case in other Nordic countries. It is acknowledged that a controlling shareholder may withhold dividends to starve out minority shareholders and, if this is proved, it will constitute an abuse of power and may be attacked in court, although it is typically very difficult to prove. However, it is believed to be too dangerous to the financial viability of limited liability companies to mandate in legislation such a compulsory right to dividends which is opposed by a majority of shareholders. It is equally noteworthy that the Danish Companies Act does not presume that the purpose of the company is to pursue a profit, but leaves it to the company to state its purpose in the articles. Such provisions on the purpose of the company in the articles are usually quite open, mostly stating that the company is engaged in enterprise, although it may sometimes be more detailed. However, this is unusual as a more detailed description of the company's purpose can prevent it from pursuing other kinds of enterprise.

### *Matters to be addressed by the GM*

A possible avenue of abuse is to siphon off funds from the company by related-party transactions whereby dominant shareholders may transfer possessions of the company at a discount to themselves. According to the Accounting Act, which imple-

ments the international accounting standards on related-party transactions, the company must disclose in its annual accounts all related-party transactions that are not deemed to constitute normal market transactions. The disclosure must include the costs and the relationship with the related party in order to clarify the financial position of the company. No voting is required to approve the related-party transactions in question, as the transparency will enable a legal challenge in court if it constitutes abuse.

A recent development has been to require certain issues of governance to be put before the GM by legislation making it a mandatory part of the annual accounts. Thus, listed companies are required to explain in their annual accounts their policy on corporate social responsibility or, if they have no policy, this must be so stated.

Further, if the company has a board of directors on which one gender is underrepresented, i.e. such gender is represented by less than 40 % of the total number of GM-appointed directors, the company is obliged to state its policy to improve that gender's part of the total number of executive officers and to set a target for that gender's part of the board. Note, however, that the company is free to decide its policy and the target, and that there are no sanctions for failure.

### *Minority protection*

Shareholders are offered substantial rights and protection against abuse from dominant shareholders and management. The right of every shareholder to put items on the agenda, to meet and to speak at a GM has already been discussed. While the rules applicable to appointment of directors tend to favour dominant shareholders holding multiple-vote shares, ordinary

shareholders with low-vote shares are protected against wide-ranging decisions by the reliance on capital alongside votes in all non-ordinary resolutions, as described above.

A string of other provisions also aims to protect the shareholders. Most importantly, the Act prohibits resolutions by the GM if they obviously serve to offer unfair advantage to certain shareholders or others to the detriment of the other shareholders or the company. This legislative provision is known as a general clause against abuse of power. A similar provision applies to decisions made by management. These general clauses offer the primary protection of minority shareholders. Other protective measures include a right to require the appointment by court of an auditor (known as a minority auditor) in addition to the auditor appointed by the GM if the measure is supported by shareholders with at least 10% of the capital. Any shareholder may demand at the GM that an investigator be appointed and, if the proposal is supported by a simple majority, the shareholders will appoint one or more investigators to investigate the financial affairs of the company and the conduct of the management. If the proposal is not adopted by the majority, but is supported by at least 25% of the capital, a shareholder may request that a court appoint an investigator. The different thresholds, 10% and 25% respectively, probably reflect the fact that the appointment of a minority investigator is more intrusive to the company than the appointment of a minority auditor.

A shareholder or any member of management may challenge a decision of the GM in court on the grounds that the decision was made illegally. The case must normally be brought within three months. However, in certain cases, a delay may be justifiable. The court may nullify the decision, but only if the court can determine what the proper outcome would have been. A court decision is binding on all shareholders, not only the shareholder who brought the action.

The GM may decide that the company shall sue members of management for wrongdoings while in service of the company. If the GM cannot muster a majority in this respect, shareholders representing at least 10% of the capital may sue on behalf of the company. Any award will fall to the company, whereas the shareholders are personally liable for the litigation costs, although they can be refunded out of an award to the company if the litigation proves successful. Not surprisingly, cases of shareholder-initiated litigation are rare. Equally, it is unusual for the company to sue its directors but, if the company is placed into bankruptcy, the court-appointed receiver may sue on behalf of the estate, and most cases concerning directors' liability come about in this way.

## The board of directors

### *Appointment of directors*

Danish corporate governance is strictly hierarchical with shareholders on top and a very powerful GM as described above. As the GM ordinarily only meets once a year and is difficult to convene where there are many shareholders, the normal route for shareholders to exercise their influence is by the appointment of directors to the board. It is important to note here three distinctive features of Danish company law.

First, the majority of directors on the board must be appointed by the shareholders in general meeting (GM). Directors may be appointed by anyone empowered to do so by a special provision in the articles. However, as this is highly unusual, all vacancies on the board are effectively filled by the GM, except where employee representation applies, in which case  $\frac{1}{3}$  of the seats are appointed by the employees. Consequently,

either the full board or at least a  $\frac{2}{3}$  majority will be appointed by the shareholders in general meeting. As elections require a simple majority of the votes cast, any shareholder controlling a majority of the votes present at the GM will be able to fill all the vacancies.

Second, the board of directors makes decisions by simple majority, which means that shareholder-appointed directors effectively control the board.

Third and probably most important, directors may at any time, irrespectively of the period for which they were appointed, be removed by whoever appointed them, which removes the possibility of a staggered board or continued opposition from the board to major shareholders. Consequently, the GM or any dominant shareholder at the GM, as the case may be, may at any time and at its own discretion remove the majority of directors.

Taken together, these three features ensure that effective and direct control of the board of directors is exercised by the shareholders in general meeting, or a shareholder who dominates the general meeting. The threat of removal is usually the best safeguard to ensure that the directors remain accountable to the shareholders and are motivated to safeguard the interests of the company's shareholders.

As mentioned above, it is generally accepted that the directors pay special attention to the interests of the shareholders. In fact, the CG Code on directors' duties opens by observing that directors should take care of the shareholders' interest and merely mentions other stakeholders as incidental to that obligation. It may be politically unpopular to publicly emphasise the importance of shareholders compared to other stakeholders of the company, but the reality is that shareholders do take a special position in the Danish corporate-governance system, especially where one or more dominant shareholders

are present to hold management accountable.

As a consequence of this, it is recognised in Danish corporate governance that the board may relate confidential information to dominant shareholders where this is necessary for them in their role as the ultimate decision makers in respect of the company's governance. This applies even where the confidential information qualifies as inside information according to the 2003 Market Abuse Directive as indicated by the case law of the Supreme Court in the *Vase* case.<sup>8</sup> In this case, the board decided to inform several major shareholders, but not its other shareholders, of a merger offer to obtain guidance on whether they should take up negotiations with the offeror. This was found to be legitimate. In a related Danish case, the European Court of Justice was asked whether it was legitimate for directors to pass on inside information and, although the ECJ contended that such a possibility should be narrowly construed, it did accept that it might be legitimate according to the national corporate governance system.<sup>9</sup> In its subsequent decision in the same case, the Danish Supreme Court acquitted the defendants given that their behaviour was found to be legitimate according to Danish corporate governance.<sup>10</sup>

It should be noted that directors are mainly drawn from two different groups: independent individuals who are chosen because of their personal expertise and business acumen and individuals who are chosen because they are to represent the shareholder or shareholders who appoint them. The former group will normally not feel a need to consult with shareholders except where it is necessary for the boards' work, e.g. as in the *Vase* case whether to go ahead with a merger, whereas the

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8. Reported in Danish in *Ugeskrift for Retsvæsen* 2006.3359.

9. Judgment of 22 November 2005 in case C-384/02, *Grøngaard & Bang*, ECR [2005] I-9939.

10. The case is reported in Danish in *Ugeskrift for Retsvæsen*, 2009.2142.

latter may see their function on the board more as representatives. It is clear from the law that all directors owe their duty to the company and not to particular shareholders, irrespective of whom they represent. However, it is equally clear that the law allows shareholders to exercise considerable influence directly over management by their power to appoint and, if necessary, remove directors and that the right of directors to provide shareholders with the necessary information was upheld by the two Supreme Court decisions mentioned above.

Danish boards are tasked with management, although on a superior level to the executive management, which may explain why they are generally smaller than boards of foreign jurisdictions that are charged with supervision. The board of directors must comprise at least three persons, and the average number of directors appointed by the GM in listed companies is only 5.3.

The CG Code is heavily inspired by the 2005 Commission Recommendation on the role of directors which, in turn, is inspired by the UK approach to corporate governance. The Recommendation calls for some directors to be ‘independent’ in respect of the company and of major shareholders. In traditional Danish corporate governance, there was no requirement of independence, but the same purpose of ensuring the necessary independence was provided by the division of management between the upper level of the board of directors and the lower level of executive management, effectively a distinction similar to the UK distinction between non-executive directors and executive directors. Although it could be argued that all directors are thus non-executives because they are not part of the lower level of management, the Danish CG Code instead recommends that at least half of the directors must be independent of both the company and major shareholders, which goes beyond the requirement of the Recommendation

but reflects the UK approach. As traditional Danish corporate governance seeks to ensure active ownership from dominant shareholders and ensures a direct influence over the composition of the board, the requirement of independence from major shareholders has been construed pragmatically, and only a very narrow relationship with the dominant shareholder will be seen as preventing the director from being regarded as independent. Thus, a majority of listed companies will claim compliance with the CG Code's recommendation on independence even though dominant shareholders may exercise considerable influence.

In recent years, the issue of diversity, especially with respect to gender representation, has become a point of contention. Very few women are appointed as directors in large and listed companies and, in a country such as Denmark with a tradition of gender equality and a very high percentage of women being educated and part of the work force, this is a cause for political concern. Only 15.1 % of GM-appointed directors in listed large-cap companies were women in 2012,<sup>11</sup> although this picture appears to be changing. However, the board is an active part of management according to the Danish dual-executive system, which makes them smaller and more executive than boards vested primarily with supervision. Consequently, Danish directors are to a high degree recruited from among current or former executives of other companies who have executive experience. It is not evident that the low ratio of female directors is different from the level of high-ranking female executives, which would suggest that the problem of a gender imbalance is not necessarily due to sex discrimination but, rather, may reflect a lack of women executives. Thus, legislators have thus far refrained from introducing quotas for women direc-

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11. Information provided by the Gorrissen Federspiel law firm.

tors, but have instead introduced an obligation for listed companies to set a target for the underrepresented gender in respect of GM-appointed directors on their boards and to explain in their annual accounts their policy for enhancing the underrepresented gender on the executive levels of the company, which should help later recruitment. It should be noted that this amounts to an obligation on the part of a listed company in which a gender is underrepresented on the board, i.e. below 40 %, to have a policy and set a target for gender representation and to publish these in its financial accounts. However, it is voluntary in so far as the company may determine which policy to pursue and which target to set. Thus, there is no obligation to reach balanced gender representation or to target such a balance within a certain time.

The CG Code also refrains from quotas, but recommends that the board consider the benefits of diversity in respect of a broader spectre of gender, nationality and qualifications, and that the board should ensure that the recruitment by the company allows diversity in this respect.

### *Co-determination and appointment of directors*

If a company has employed on average 35 persons in the last three years, the employees are entitled to appoint representatives to the board of directors. If the company has a parent company, the employees are entitled to appoint representatives to the parent company's board as well. An employee representative is a director on par with directors appointed by the GM and shares the same rights and duties as other directors.

The employees must decide by ballot if they want to appoint such representatives and at least half of them must vote in favour. If the ballot is affirmative, the employees will appoint

their representatives by direct election among the employees of the company. The unions are not directly involved as the procedure is based on the employees of the company, but they may act as facilitators. The number of employee-appointed directors is half of the remainder of the board, i.e. one third of the total board, though no less than two directors and at least three directors in a parent company.

The GM may decide that employees in subsidiaries in other countries shall also be entitled to employee representation in the same way as Danish employees. However, the Danish employees have a right to appoint at least one of the directors and, if the Danish employees constitute more than 10 % of the total workforce, they can appoint at least two directors.

The Danish workforce is highly unionised and, by virtue of collective agreements, most companies have a separate system of union representation, notably in the form of information and cooperation committees established by unions and the company. These committees operate outside the company-law system and do not influence the composition of the board. This widespread presence of information and cooperation committees may explain why very few companies have employee representation as stipulated by the Companies Act notwithstanding that the employees are entitled to it. The latest survey that was published in 1999 indicated that only 20 % of companies that could have employee representation did in fact have such representation.<sup>12</sup> The number is believed to be even smaller today, although the proportion with representation is substantially higher among listed companies with many employees. Some 73 listed companies (47 %) have employee-appointed

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12. The Danish Ministry of Business and Industry, et al., *Rapport om aktivt ejerskab*, Maj 1999.

directors, whereas 82 (53 %) do not and thus have only shareholder-appointed directors.<sup>13</sup>

The average number of employee-appointed directors in listed companies was 3.89.<sup>14</sup> As this figure should represent one half of the directors appointed by the shareholders, and since this number is only 5.3 on average in all listed companies, it would suggest that, where co-determination is applied, boards tend to be bigger than average, probably to offset the presence of employee-appointed directors.

Employee-appointed directors are considered directors on par with the shareholder-appointed directors with the same duties and responsibilities. Like the other directors, they owe a duty of loyalty to the company and, if prevented by a conflict of interest, they cannot participate in decisions that directly concern their own or their co-workers' interests. Furthermore, the directors must be chosen among the employees in the company and cannot be union-appointed professionals or from outside the company. However, in most financial institutions the majority of employee representatives is comprised of union representatives or even professionals who are technically employees but have no work obligation towards the company. This distinct feature carries an enhanced risk of conflicts of interest and is unknown outside the financial industry.

### *Separation of the two levels of management*

In the dual-executive system, the board of directors is vested with two powers, i.e. to act as the upper-management level and to supervise the executive board. Double mandates are permitted, so a person may serve both as a director and as an execu-

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13. Information provided by Nasdaq Copenhagen.

14. Information provided by Nasdaq Copenhagen.

tive. The Act enforces a certain separation of the two levels of management as it prevents an executive from being appointed chair of the board and further requires that at least the majority of directors cannot be executives.

In practise, it is highly unusual to have double mandates, especially in listed companies. The CG Code of 2001 recommended against it and, although that recommendation was removed after the 2009 company law reform, the general view is still against double mandates. This is no doubt supported by the fact that executive managers have a right by law to participate in the meetings of the board in their own right, which makes double mandates unnecessary and likely to confuse the separation of powers intended by the dual-executive system.

### *Chair, board meetings and decision making*

The board of directors appoints its own chair. The chair is the *primus inter pares*, or »first among equals«, among directors and in practice holds a very important position on the board, although the Companies Act does not specify these tasks as closely as the Swedish Act. In respect of the responsibilities of the chair, the Act only states that the chair convenes the meetings of the board and that the articles may provide the chair with the decisive vote in case of a draw. To ensure the division of powers between the board of directors and the executive management, the chair in a listed company is not allowed by the Act to engage in daily management except for special assignments authorised by the board, which reflects the ban on appointing as chair someone who is also an executive manager. The chair is often perceived as the public face of the company and also fulfils the important function of liaising between the board and major shareholders.

This limited regulation of the chair is probably due to the more recent belief in Danish company law that governance is better regulated by the soft-law CG Code for listed companies. However, even the CG Code is not very elaborate. It is recommended that a chair and vice-chair be appointed and that their responsibilities are stated in the rules of procedure of the board. More specifically, it is recommended that the chair be engaged in securing good relations with the shareholders and more generally that it is the responsibility of the chair to organise and conduct the affairs of the board in an efficient and just manner, and that the chair should ensure that the directors remain qualified by engaging in self-evaluations and continuous consideration of the necessary qualifications.

In practice, the chair is very important for the functioning of the board, notably by determining the issues of its agenda and its meeting schedule. Among the important duties, the chair should see to:

- clear lines of communication with the executive level;
- the utilisation of each director's capabilities;
- a proper tone and atmosphere;
- sufficient training and coaching of directors to develop their skills;
- engagement of the directors in the work of the board and their understanding of the company;
- the necessary debate before decisions are made;
- dialogue with major shareholders and important stakeholders;
- feedback from investor relations and an adequate level of information to shareholders; and
- a reliable and useful self-evaluation of the board.

The chair also serves as the connection to the executive board, and the relationship between the chair and the CEO is of the

utmost importance to the effective cooperation envisaged by the dual-executive system. The hierarchy entailed in the system ensures that the chair is senior to the CEO and it is important that their relationship maintains a professional distance.

It is the responsibility of the chair that board meetings are held in such a way that all directors are able to participate, and a board meeting may be annulled if this is not observed. It is permissible to hold a board meeting even if some directors are unable to attend, but the board must have a quorum of at least half its members present to adopt decisions. Alternate directors, who step in when a director is unable to attend, may be appointed but are not usual in listed companies, where directors are normally expected to be available as necessary to participate actively in the meetings. The number of meetings may vary from company to company and depend on the situation of the company, e.g. financial distress will normally give rise to more meetings. In most companies, meetings are held some 5–8 times a year.

Members of the executive board have a right by law to participate in the meetings of the board of directors, unless the board decides differently ad hoc. Thus, it is customary for the CEO to attend all board meetings and, depending on the items on the agenda, other executives may attend as well. In many large-cap companies the entire executive management board participates in all board meetings. However, part of the meeting is usually reserved for board members only.

This practice involving a joint meeting of the directors and the executives is a very important feature of the dual-executive system because it ensures that, although management is formally divided into two different levels within a hierarchy, both levels cooperate and the Act ensures that communication between the two levels is direct and uncomplicated by providing for common meetings. The existence of a hierarchy, nota-

bly the capacity of the board to fire any executive manager at will, and the availability of face-to-face interaction at the meetings also ensure that the board has access to the information from the executive level which, in systems with a more formal division between supervision and executives, is known to be problematic.

The board adopts its decisions by simple majority. However, it is very unusual for the board to vote. Rather, it is customary for the directors to debate all issues, sometimes intensely, but to make decisions unanimously where possible, whereby a minority view among directors is not necessarily reflected. This preference for unanimity is probably due to the perception of the board as a collective in which all directors feel obliged by the decisions made even where they personally disagree. However, in cases of strong dissent, the Act makes it possible to record a dissenting position in the minutes, although this is highly unusual.

According to the Act, directors are liable in their personal capacity for their actions, and the normal standards of Danish tort law are applied. Thus, every director is assessed in his or her personal capacity for their actions and capabilities even though the board makes decisions as a collective. Thus, it may influence the liability of a director whether the director recorded his or her dissent in the minutes, though in most cases it will not have any effect as it is generally believed that a director must resign from the board to avoid liability for decisions of the board and cannot simply record a personal dissent and then condone the decision of the majority by continuing on the board.

The board meetings may be held in English, Norwegian or Swedish if such a language is adopted in the articles as the company's management language. This also includes papers prepared for the board and also applies where co-determination applies and employee-represented directors are on the board.

Equally, since 2014, an amendment to the Accounting Act makes it possible to draw up the financial accounts in English. These possibilities are increasingly used by Danish listed companies as it becomes more usual to have foreign directors that do not speak Danish. In listed large-cap companies, where directors are usually appointed each year, a third of all GM-appointed directors in 2012 were foreign.<sup>15</sup>

The concept of »independence« in respect of directors has traditionally not been known in Danish company law, but has been introduced by way of the CG Code as inspired by UK law in this area as a way to reduce conflicts of interest. In traditional Danish law, conflicts of interest have not been avoided by requiring the directors to be independent of the company or its major shareholders but, rather, by prohibiting a director ad hoc from making a decision concerning an agreement between the company and themselves or persons close to them, and equally in respect of litigation where such may compromise the interest of the company. If such a conflict of interest arises, directors cannot participate in the decision, but are not otherwise incapacitated and may resume their duties when the decision has been made. It is thus a more flexible approach than trying to ensure beforehand that no potential conflict can arise by establishing criteria for independence. This more inflexible solution is probably better suited to governance systems where supervision is lax. In the Danish system where dominant shareholders most often monitor management, the more flexible ad hoc solution has worked well.

Furthermore, the Act has a general clause to prevent abuse of power according to which no director may participate in a decision which obviously serves to enrich certain shareholders

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15. Information provided by the Gorrissen Federspiel law firm.

or others to the detriment of other shareholders or the company. A director who contravenes this prohibition will be personally liable.

### *Committees*

As Danish boards traditionally are small, it has not been customary to use committees. The first CG Code from 2001 was sceptical of committees. The scepticism is probably founded upon the fact that boards are normally small and decisions are made collectively. If a decision has been prepared by a committee, it is not clear according to Danish law whether the members of the committee will be liable to a greater extent than the other directors who act on the basis of the committee's preparation. They probably are, because they will be liable for the preparation, whereas the other directors will only be liable to the extent that they should have acquired a similar understanding themselves without the benefit of participating in the preparation undertaken by the committee, which would probably apply only to cases where the problem is clearly apparent from the material presented to the full board, but it is not clear how this will play out.

In recent years, this scepticism has subsided due to influence from UK law and especially from the 2005 Commission Recommendation on the role of directors. Committees have become more common and the CG Code of 2013 now generally recommends committees as a way to prepare work for the whole board and recommends the use of at least an audit committee, a nomination committee, and a remuneration committee. Committees are regarded by the CG Code as an organisation of the work of the board, and committees are therefore only comprised of directors serving on the board. It is generally

recommended that the majority of directors on a committee be independent of the company and of major shareholders and that the company lists its committees and the scope of their mandate to ensure transparency.

The *audit committee* is now mandated by the Auditors Act, which also requires that at least one person be independent of the company and has the necessary accounting expertise, as a consequence of which all listed companies have an audit committee. The CG Code recommends that the audit committee be comprised of directors of whom at least the majority are independent of the company and of major shareholders and who jointly possess the necessary qualifications, and that the chair of the committee should not be the chair of the board.

The *nomination committee* is charged with preparing the nomination of candidates for the board and to examine the performance of the board in order to evaluate whether new qualifications are required. In most large-cap companies, the nomination committee also proposes candidates for appointment to the executive management board and is charged with the task of preparing and facilitating executive assessments. The committee is made up of directors of whom a majority should be independent according to the CG Code, and is usually chaired by the chair of the board. Although major shareholders cannot participate in the nomination committee, the committee will normally consider proposals from shareholders. In practise, it is customary for the nomination committee to engage directly with dominant shareholders, if there are any, who usually have considerable influence on the nominations made by the committee in light of the fact that they will eventually have the decisive vote at the GM. Half of all listed large-cap companies have a nomination committee.<sup>16</sup>

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16. Information provided by the Gorrissen Federspiel law firm.

The CG Code recommends that the board of directors evaluate themselves yearly and that external expertise is brought into the process from time to time. Evaluation is conducted by the board and, as such, is one of the issues that the chair will have the responsibility of organising. The yearly evaluation should include the board and its function, including its number, its use of committees and its documents, and the evaluation should entail an anonymous evaluation of the individual directors followed by a discussion between the chair and each director. Obviously, the chair should not evaluate him- or herself. The evaluation should also cover the qualifications of the present board and the need to attract new talent or to provide education for existing directors. Also, the board should evaluate its cooperation with the board and, to the extent that any executive managers are also serving as directors, they should not participate due to their conflict of interest. If material findings are made during the evaluation, they should be reported to the GM in the annual accounts of the company or the website. The CG Code does not say it expressly, but it is customary for the evaluation to be made available for the nomination committee, which is tasked with preparing recruitment of new directors, or the full board. The chair should also provide individual feedback to the board members.

The *remuneration committee* is charged with deciding the remuneration policy, practices and incentive schemes. As part hereof, the committee considers and submits recommendations on directors' fees and the remuneration of the executive management board. The CG Code recommends that the committee be comprised of directors of which a majority are independent of the company and major shareholders, but it does not recommend who should serve as chair. Of listed large-cap companies, some 72.7 % had a remuneration committee.<sup>17</sup>

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17. Ibid.

Listed companies may have other committees. Some 18.2 % of listed large-cap companies have a risk committee and 22.7 % have other committees as well.<sup>18</sup>

### *Powers and responsibilities*

In the Danish dual-executive system, the board of directors is considered to be the central management board (*centrale ledelsesorgan*) and is vested with two functions: to decide on the »overall and strategic« governance of the company and to supervise the executive management which carries out »daily management«, that is, day-to-day tactical governance implementing the strategy decided by the board and taking instructions from them. However, in order to fully comprehend the system, it should be kept in mind that the two levels of management are supposed to work together and the exercise of actual powers is, in practice, less clear cut than black-letter law appears to suggest.

The starting point is of course the internal hierarchy underscored by the capacity of the board of directors to hire and fire at will any member of the executive management. This is crucial to the understanding of the hierarchy intended by the legislation, which is designed to ensure that influence may emanate from the shareholders in general meeting, often from one or a few dominant shareholders, down to the level of executive management.

The Companies Act specifies that it is the responsibility of the board of directors to ensure a satisfactory system of book-keeping, that sufficient procedures for risk management and control are in place, that they receive the necessary reporting

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18. Ibid.

from the executive management regarding its daily management, supervision of the executive management, and to ensure that the funding of the company is responsible and adequate for the business that it conducts including the availability of necessary liquidity.

The board represents the company, e.g. it can accept legal notice on its behalf. In respect of how the company is perceived by the public, the picture is slightly different. In more formal affairs, the company is usually represented by the chair of the board of directors, e.g. it will be the chair who opens the GM and usually also the chair who will address the shareholders on behalf of the company, whereas the day-to-day contact, e.g. with the media, may be handled by the CEO.

The board of directors can commit the company by signing or entering into contracts on its behalf and thus possesses executive powers. These executive powers apply to each director, unless the articles prescribe that signing on behalf of the company can only be carried out by more directors acting together. However, the power of the board of directors as a collective cannot be limited.

The board of directors is responsible for the »overall and strategic« management of the company. It is, however, not unusual that the strategy is drafted by the executive management. As a minimum, the board will indicate the general direction that it would prefer and, in most large-cap companies, the board of directors is heavily involved in setting the strategic direction, in some cases dictating concrete strategic initiatives. But the formulation of the strategy is often left to executive management. The strategy will then be decided by the directors, and the board of directors should engage and challenge the CEO and his team. Thus, strategy is effectively often a joint effort, however, with the board as the decision makers. When the company is in crisis, the board will usually move closer and

increase its involvement in the affairs of the company and may even engage in daily management. Thus, one of the primary benefits of the dual-executive system is its flexibility in arranging the powers among the two levels of management that may vary among different companies and may even vary within a single company at different times.

Directors are personally liable for their exercise of powers and owe a duty of loyalty to the company, not to any particular shareholder or shareholders, irrespective of who appointed them. Consequently, while a director is expected to be accountable to the shareholders and consider their interests, the individual director must put the interest of the company first in the event of a conflict of interest, even if that provokes the risk of dismissal.

The liability of directors will apply to anyone who effectively (de facto) acts as a director, which may include persons who are not formally registered with the Business Authority, e.g. a dominant shareholder. This is known in Danish company law as shadow-director liability.<sup>19</sup> As shareholders are expected to engage with the board of directors and may influence them directly, shadow-director liability will only arise in extreme cases where the shareholder either substitutes the appointed directors or directly instructs them to act in a manner that the shareholder ought to realise would constitute an abuse.

The acceptance of shareholder engagement with management as 'active ownership' should be seen against the background of the personal liability of directors and the doctrine of shadow-director liability given that the corresponding strong

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19. The leading precedent is the judgement in the *Satair* case by the Danish Supreme Court, reported in Danish in *Ugeskrift for Retvæsen* 1997.364. In this case, a parent company was held liable according to the legislative provision on director liability in respect of its wholly owned subsidiary because the parent company had effectively managed the subsidiary.

position offered to shareholders to determine the governance of the company is paired with a matching liability. This is probably also the reason why Danish company law does not have a special regime with respect to groups of companies except to the extent necessary to ensure capital maintenance and group accounts. There is no special regime in respect of the governance of groups in Danish company law because a parent company is regarded as any other shareholder with a right to influence the governance and a corresponding liability if it acts irresponsibly.

## The executive management

The executive management is hired by the board of directors and may be fired by them at will. They will usually have an employment contract that entitles them to severance pay, etc., but their tenure as members of the executive management can be immediately terminated irrespective thereof. Only physical persons can serve as members of the executive management.<sup>20</sup>

According to the Companies Act, the executive management is in charge of »daily management« and must follow the instructions of the board of directors. Extraordinary or far-reaching decisions cannot be made by them but must be brought before the board of directors unless the matter cannot be delayed, in which case the board of directors must be informed as soon as possible. The Act specifies that the responsibilities include ensuring that bookkeeping is carried out according to law and that the finances of the company are handled responsibly. Furthermore, the executive management

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20. There is an old exemption to this requirement for companies engaged in shipping.

must also ensure that the funding of the company is responsible and adequate and that the necessary liquidity is available so the company may honour its obligations. This overlaps with the responsibility of the board of directors (see above), but is understood as being part of the executive management's daily routines.

Other than this provision in the Act, there are almost no other provisions regarding the executive management, which is true also of the CG Code. This is probably because the focus is on the board of directors as the upper level of management and the cooperation between the two levels of management is described in greater detail. This is also because the tasks of an executive manager are very closely related to the specific company and are difficult to generalise. However, some of the legislative provisions applicable to directors are drafted so they also apply to executive managers, notably in respect of their duties and liabilities, their right to represent and sign on behalf of the company, conflicts of interest, and the general clause prohibiting favouring some shareholders or others to the detriment of others or the company. Reference to these issues is made in the section »The board of directors« above.

The Act mandates that the executive management as a company organ should consist of one or more members, and traditionally the executive management is a collective body headed by the CEO (*administrerende direktør* or *adm. direktør*). It should be noted that the Danish title for executive officer used in the Act (*direktør*) may also be used for any other high-ranking executive officer of the company even if they are not members of the executive company organ. Thus, it is necessary to distinguish between officers who are members of the executive management and registered as such by the Business Authority and other company officers who may be part of the management team headed by the CEO. The main difference is

that members of the executive management can only be hired by the board of directors, whereas the other executive officers are usually hired by the CEO. It is not unusual for the management team to include executives from both categories.

## Remuneration

According to the Accounting Act, listed companies must disclose in their financial accounts the combined remuneration and pensions for present and former members of management divided on the two boards and disclose any incentive programmes in operation, including the identity of those persons who are covered by the programmes and the principles.

The CG Code recommends a remuneration committee to prepare the remuneration policy of the company. It is recommended that the remuneration policy adopted by the board disclose in detail the principles and criteria used and that the policy should be submitted to the GM for approval. This is supported by the Act, which makes it mandatory to ensure that incentive programmes are in line with guidelines adopted at the AGM.

As mentioned above, the financial accounts are adopted by the AGM and the remuneration policy is usually presented by the chair of the board. Where share-based remuneration is used, the CG Code recommends a revolving programme which provides a periodic distribution and applies for at least three years after distribution, and that severance payments do not exceed the salary for the preceding two years. It is also recommended that the AGM be informed of the total remuneration paid to each member of the management in respect of both levels of management.

## The auditor

The auditor of a listed company must be appointed by the GM, which is done in the same way as the appointment of directors. Like directors, most auditors are appointed for one year and thus the appointment or reappointment of the auditor is a typical item on the agenda. The GM may dismiss the auditor even when appointed for a term exceeding one year, but dismissal may only take place outside the annual GM if it is supported by qualified circumstances, e.g. a failure to perform by the standards of good behaviour required by law. The subsidiaries of a listed company shall, as far as possible, choose the same auditor as its parent.

The auditor is seen as a representative of the public to ensure trust in the financial accounts of a company and, although they are engaged in a private profession, auditors enjoy a semi-authoritative position which is secured by the special regulation of auditors in the Auditor Act. The fact that the auditor is appointed by the GM signifies that the auditor is its representative as a controller of the accounts drawn up by the two levels of management in unison. In practice, however, the auditor is closely related to the management and works with it on a daily basis, especially the audit committee, and it is usually the board of directors which nominates the auditor for approval by the GM. Where the company has one or more dominant shareholders, their influence over management will usually also extend to the choice of auditor and, for this reason, it is a minority right to request the appointment of an independent auditor to work alongside the GM-appointed auditor if supported by shareholders holding more than 10% of the capital.

Listed companies must publish their annual accounts no later than four months after the end of their financial year and at least eight days before the GM. However, once approved

by the AGM, the annual accounts must be submitted without undue delay to the Business Authority for publication. Half-year reports must be published within two months after the end of the first six months of the company's accounting year. Listed companies may choose to either publish quarterly reports or a financial statement for the same period, however, the CG Code recommends quarterly accounts.

## Minority protection

Due to the prevalence of dominant shareholders, Danish company law has developed extensive protection of minority shareholders. Some additional protection is also afforded by the regime on capital maintenance, which prevents dominant shareholders from taking private benefits to the detriment of the other shareholders or the company, but that regime is mostly regarded as protection of creditors necessitated by the company's status as a limited liability company. Thus, minority protection is usually associated with the following rights.

Before the GM, every shareholder, including any shareholder holding non-voting shares, has a right to put items on the agenda and every shareholder has a right to attend the GM either in person or by a proxy, to speak, and to ask questions of management. These are known as individual shareholder rights.

Some more intrusive rights are only available for shareholders who hold a certain share of the capital and are known as minority rights, e.g. the right to call an extraordinary GM (5%), to request appointment of an extra auditor (10%), or to require an investigation of the company's affairs (25%). Also, a majority of shareholders may require the company to take legal action against members of its management, and share-

holders holding more than 10% may sue in the name of the company where a majority is not available.

Every shareholder with a vote, which may include non-voting shares when they can count as capital in a vote in which capital is counted, has a right to participate in the voting at the GM either in person, by proxy or by letter. Protection of minority shareholders is also afforded by requiring certain, more important or onerous decisions to be supported not just by votes, but also by capital, and by requiring a majority above 50%, e.g.  $\frac{2}{3}$  of votes and capital, 90% of votes and capital, and  $\frac{2}{3}$  of the effected class of shares, or even unanimity which is required where shareholders are called upon to make additional contributions. Changes that affect certain individual shareholders require their consent due to the principle of equality. Note, however, that the principle of equality does not apply to governance which is determined by the principle of majority, as a consequence of which the appointment of directors by the GM is subject to majority rule without particular protection of minority interests. However, the GM cannot adopt resolutions, nor can management make decisions, that unfairly favour certain shareholders or others to the detriment of other shareholders or the company.

A P P E N D I X B

C O R P O R A T E G O V E R N A N C E

I N F I N L A N D

Manne Airaksinen & Tom Berglund\*

The Finnish context  
of corporate governance

There are at present approximately 250,000 limited liability companies in Finland of which slightly more than 200 are public limited liability companies (Source: Finnish Trade Register). The Finnish Companies Act (624/2006, as amended) applies to both types of companies, but there are certain provisions which are limited only to public limited liability companies. Only public limited liability companies may have their securities admitted to public trading in a regulated market. However, other than the aforementioned, concrete differences resulting

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from the Companies Act between a private and a public limited liability company are rather small. Essentially, the purpose of the distinction has been to ease the administrative burden of smaller limited liability companies as there are certain EU requirements which apply solely to public limited liability companies. Securities market regulation naturally results in significant additional requirements for the companies that issue securities for public trading.

Of all the public limited liability companies in Finland, there are currently approximately 125 companies whose shares are traded on the main market of Nasdaq Helsinki (also referred to as the Helsinki Stock Exchange). In addition, there are a few Finnish companies listed on First North Finland which is a multilateral trading facility aimed at growth companies. For the sake of simplicity, however, the term 'listed companies' is used in this report generally to refer to the companies listed on the main market of Nasdaq Helsinki.

The ownership structure in Finnish listed companies varies. In some companies the ownership structure is decentralised, while other companies have shareholders with signifi-

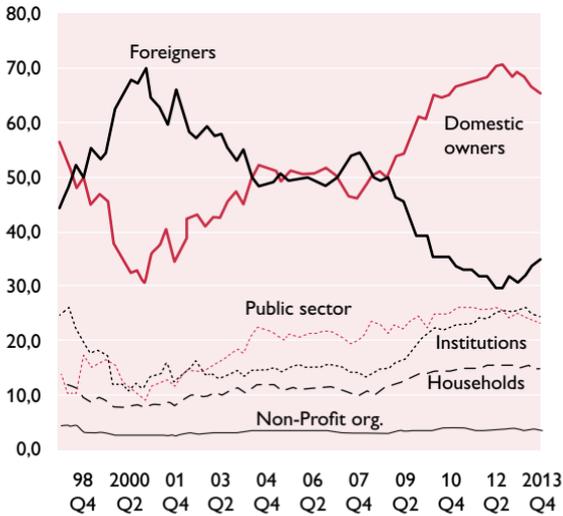
**TABLE B.1** Number of Finnish listed companies (30 December 2013).

<i>List</i>	<i>Number of companies</i>	<i>Percentage of total market capitalisation (%)</i>
Large-cap	26	87
Mid-cap	40	11
Small-cap	54	2
Total	120	100

SOURCE: Nasdaq Nordic.

cant holdings. Dominant shareholders typically play an active ownership role in Finnish listed companies, most importantly through board representation.

Even though there are currently roughly 800,000 retail investors in Finland, institutional investors own the majority of shares in Finnish listed companies. Most of these institutional investors are foreign. In December 2013, approximately 35 % of the total market value of listed companies on the main



**FIGURE B.1** Market value of shares owned by different owner categories as a percentage of the total market value of shares listed on the Helsinki Stock Exchange. Please note that the figure also shows the division of domestic owners into various subcategories while foreign owners are not included in these subcategories.

SOURCE: Statistics Finland.

market of Nasdaq Helsinki was owned by foreign investors. As can be seen in Figure B.1 above, the percentage of the total market value of listed shares owned by foreign investors over the last twenty years in Finland has largely reflected Nokia Corporation's dramatic share price development due to Nokia's large size in total market capitalisation. Foreign ownership in Nokia peaked around 90 % around the turn of the millennium. The proportion of foreign ownership in other companies listed on the Helsinki Stock Exchange has been considerably smaller, with the largest listed companies having 30 %–60 % foreign ownership, and many of the smallest ones a negligible share of foreign owners.

The biggest Finnish institutional investors apart from the Finnish State are pension insurance companies and investment funds. Of these, investment funds investing in listed companies are often interested mainly in return on investment and generally do not actively participate in their target companies' governance. Pension insurance companies, on the other hand, take part more actively and are often represented on, for example, shareholders' nomination boards. Their significant role as owners is mainly due to their relative size compared to the Finnish market. As can be seen in Figure B.1 above, the role of domestic institutional ownership has increased substantially since the turn of the millennium.

The Finnish State is a significant owner in Finnish listed companies. The State has, however, systematically reduced and decentralised its direct and indirect shareholdings in Finnish listed companies since 2007. There are currently four listed companies in which the holdings of the State exceed the 30 % threshold. At the end of 2013, the public sector (State and municipalities) owned directly and indirectly approximately 23 % of the total market capitalisation in Helsinki Stock Exchange. The reason for the upward trend visible in Figure

B.1 above is mainly the better-than-average stock price performance of some of the large holdings by the Finnish state.

As for domestic households, their share of the market value of shares listed on the Helsinki Stock Exchange has increased from a low of less than 10 % at the turn of the millennium to roughly 15 % at the end of 2013. This trend is also visible in the number of shares held by Finnish households (Source: Euroclear Finland Ltd).

The structure of ownership in listed and other companies is in principle fully transparent as all companies must have an up-to-date register of their shares and shareholders. Share registers for all listed companies (and some non-listed) companies are maintained by the central securities depository, Euroclear Finland Ltd. The share registers of both listed and non-listed companies are public, allowing anyone to gain access to ownership information. Registers maintained by Euroclear Finland are not available online, but need to be separately acquired from Euroclear Finland. The information available in the share registers does not include information concerning the beneficial owners of nominee-registered shares. As approximately

**TABLE B.2** Importance of stock market in relation to total country economy (January 2014).

	<i>Annual turnover (bEUR)</i>	<i>GDP (bEUR)</i>	<i>Turnover/ GDP (%)</i>	<i>Market capitalisation (bEUR)</i>	<i>Market capitalisation/ GDP (%)</i>
2013	95.3	193.4	49	162.2	84
2012	98.7	192.4	51	127.0	66

SOURCE: Nasdaq report »Total Equity Trading, January 2014«.

40 % of the total share ownership in Finland is nominee-registered, the information concerning ownership structures in listed companies is not fully transparent in practice.

Takeover activity has been relatively low on the Helsinki Stock Exchange during the most recent years. In 2010, Helsinki Stock Exchange experienced two takeovers, followed by one in 2011, three in 2012, and one in 2013 based on information from Nasdaq Nordic. Over the same period of time, there have been altogether nine new listings in Finland with one in 2010, three in 2012 (one of which on First North Finland), and five in 2013 (one of which on First North Finland) (Source: Nasdaq Nordic).

## The regulatory framework

The fundamental elements of corporate governance in Finnish companies are regulated by the Companies Act. The Companies Act regulates the relationship between the board of directors, managing director and shareholders, as well as their respective rights and obligations, and strongly emphasises the importance of general principles including equal treatment of shareholders. The duties of the company and the board towards the market in listed companies are, in addition to the Companies Act, regulated by the Securities Market Act (746/2012, as amended) and relevant EU legislation.

The articles of association of a limited liability company are binding and can, within certain legal limits, be freely negotiated between the shareholders. Amending the articles of association is subject to a decision by a qualified majority of the general meeting of the company, but stricter requirements may apply if the amendment, for example, affects the rights

of minority shareholders. The legal minimum requirements for the content of the articles of association are few, but in practice the articles of association in Finnish companies include certain, usually fairly standard provisions regarding, for instance, the purpose of the company, election of directors, representation rights and annual general meetings.

Further rules and regulations relating to corporate governance (in a more narrow sense) in Finnish listed companies are issued by the Finnish Financial Supervisory Authority (the »FFSA«) and the Helsinki Stock Exchange. The FFSA issues binding rules and regulations and supervises the Finnish securities market. The rules of the Helsinki Stock Exchange apply to all companies that are listed, or are applying to be listed, on the Helsinki Stock Exchange. The most important governance-related self-regulation consists of the Finnish Corporate Governance Code (the »Code«) issued by the Board of the Finnish Securities Market Association and governed by the Helsinki Stock Exchange. The latest edition of the Code was approved in June 2010. The revised Helsinki Takeover Code entered into force in January 2014.

The Code's recommendations are not mandatory. If public companies do not comply with the Code they should, however, explain the reasons for not doing so (the 'comply-or-explain' principle). The Finnish Securities Market Association has published application guidelines regarding sufficient reasons for deviation from the Code.

The Code harmonises the practices of listed companies and information given to shareholders and other investors, and improves transparency. Compliance with the Code among Finnish listed companies can be considered high – the average number of notified deviations from the Code was less than one per listed company in 2013 (altogether the Code includes 55 recommendations). Small-cap listed companies notify devia-

tions the most. The Code applies only to listed companies, but in practice it has also been applied by a number of larger private companies.

Enforcement of the regulations governing listed companies is carried out by the FFSA (administrative sanctions) or through the disciplinary procedures of the Helsinki Stock Exchange (for example disciplinary fines, warnings and delisting). In addition to market control, the enforcement of corporate law is carried out by individual shareholders, the companies themselves or third parties, through court proceedings or arbitration.

### **Basic structure of the governance system**

Under the Companies Act, the governing bodies of a Finnish limited liability company are the shareholders' general meeting and the board of directors and, if appointed, the managing director (also referred to as the »CEO«) and the supervisory board. It should be noted that it is always at the discretion of a company whether a managing director is elected.

The general meeting is the highest corporate body in the hierarchy. The decisions allocated to the board typically include the election and dismissal of the company's board of directors, decisions concerning the equity structure of the company and decisions concerning the distribution of profits, as well as adopting amendments to the articles of association of the company. Obtaining shareholders' approval is in practice sometimes used as a way for the board of directors to diminish their potential liability towards the shareholders even in decisions which would otherwise fall within the general competence of the board of directors.

The board of directors is a mandatory corporate body elected by the general meeting of shareholders (or by the supervisory board, whose position is described below, if so designated in the company's articles of association). A minority of directors may also be elected by a third party if the articles of association of the company allow this. There is no mandatory employee participation in Finland. The board is responsible for the management and proper organisation of the company's operations and has a central role in determining the strategy of the company and, among other things, how corporate governance is implemented in a company. The chair of the board does not have more extensive powers than the other directors but, in practice, the chair's role is usually significant.

The supervisory board is a voluntary corporate body and will only be elected if required by the articles of association of the company. If elected, the duty of the supervisory board is to oversee the governance practices of the company. It does not have a right to represent the company. In practice, very few companies have supervisory boards, and their popularity in listed companies has further declined in recent years. Thus, even though the Companies Act recognises the role of the supervisory board (and the so-called two-tier governance model), limited liability companies in Finland typically use the one-tier model which includes the general meeting, the board of directors and the managing director as the company's decision-making bodies.

The board often delegates responsibility for the preparation of certain matters, for example, to special committees set up by the board, most often audit, remuneration and nomination committees or the company's executive management, but in general the liability for the decisions within the mandate of the board remains with the whole board even if some tasks have been delegated. The directors thus have the ultimate

responsibility for the management of the company and are primarily accountable to the shareholders.

A managing director is responsible for the day-to-day management of the company and for supervising the accounting and financial matters of the company. The managing director is responsible for the *executive management* of the company in accordance with the instructions and orders given by the board. Further, he or she must take the measures required to ensure that the company's accounts are maintained in accordance with the law and that the management of funds is conducted in a reliable manner. The managing director is in a key position in providing the board with the necessary information for the performance of their duties. The board may, in specific cases or as prescribed in the articles of association of the company, also resolve matters that normally fall within the scope of the duties of the managing director.

The duty to represent the company externally falls primarily on the board and the managing director. The board of directors collectively has the general authority to represent the company. The articles of association of a company usually provide that individual directors or the managing director have the right to represent the company either alone or together with another director or that the board may grant general representation rights to individual persons.

As in many other countries the relations between the shareholders and the board of directors has been extensively discussed in Finland. In this debate, the corporate governance movement has sought to emphasise transparency and to enable shareholders to fairly evaluate the work of the directors.

## General meeting

The shareholders use their right to decide upon company matters at the general meetings to the extent such matters are within their competence in accordance with the Companies Act and the articles of association. All other matters are the responsibility of the board or the managing director. The board may, however, raise a matter that is within its or the managing director's general competence to be decided upon at the general meeting in a particular situation.

In practice large shareholders play a significant role in the decision-making of most listed companies. In most listed companies there are certain dominant shareholders who are able to steer the decision making by communicating with the company's directors and with each other prior to the general meetings. As a counterbalance, and in order to facilitate investments in the companies, the Companies Act is to a large extent aimed at protecting minority shareholders. The current Act, however, seeks to find a balance between protecting minority shareholders and guaranteeing requisite flexibility for the companies to operate efficiently.

### *Convening the meeting and participation*

The board convenes the general meeting. All companies must hold an annual general meeting (AGM) within six months of the end of each financial period. Extraordinary general meetings are convened when the board so decides or when the auditor of the company or a minority of at least 10 % of the shareholders demand that a meeting be held. The Companies Act and the Securities Market Act require that relevant documentation relating to the AGM and the annual and interim reports of the

company are kept available on the company's website prior to the meeting.

Pursuant to the Companies Act, directors of the board, members of the supervisory board and the managing director have the right to be present at a general meeting unless the general meeting decides otherwise in an individual case. In practice, the presence of directors as well as the managing director is necessary in order to guarantee the shareholders' right to ask questions and overall interaction between the shareholders and the directors as well as the executive management. Further, the Code recommends that a person nominated for the first time as a director should participate in the general meeting that decides on his or her election unless there are well-founded reasons for the absence. The general meeting may also permit other persons to participate in the meeting – at least the larger listed companies usually allow, for instance, the media to be present in the meetings.

### *Decision making and voting rights*

As referred to above, the decisions of a general meeting are made by a simple majority or a qualified majority in accordance with the Companies Act and the articles of association. Majority requirements may not be eased in the articles of association with the exception of elections. In practice the articles of association of listed companies seldom include majority provisions deviating from the Companies Act. In some instances, the Companies Act imposes more demanding qualified-majority requirements. For instance, a decision on the amendment of the articles of association to the effect that share classes are combined or the rights of an entire share class are reduced in other

respects. Certain changes to the rights of shareholders require consent from all shareholders whose rights are affected.

All shares carry equal rights in a company (one vote per share at the general meeting) unless otherwise provided in the articles of association. In practice, most listed companies follow the one-share, one-vote principle, but some companies (especially those with concentrated ownership) have more than one share class with different share classes carrying different voting rights. It is also possible for different share classes to carry different financial rights (usually the right to receive dividends), but these rarely exist in listed companies. In many companies both or all share classes are listed, but there are also companies where not all classes are listed. Some companies have voting caps, i.e., limitations in their articles of association concerning the maximum share of votes any shareholder can have in a general meeting.

In practice, voting in general meetings is unusual. Shareholders may want to record their opinion in the minutes rather than require a vote where the outcome is evident in advance.

### *Decisions reserved for shareholders*

Under the Companies Act, certain decisions must be made by the shareholders and are therefore excluded from the general competence of the board. The AGM decides, among other things, on the adoption of the financial statements, the use of the profit shown on the balance sheet and the discharge from liability for the directors and the managing director, amendments to the articles of association or dividend distribution, mergers and demergers, or entering into liquidation. Additionally, certain other decisions such as share issuance and acquisition of own shares are made by the general meeting, or the

general meeting may authorise the board to make the decision. All in all, the decisions reserved for shareholders can be seen as fundamental for the company and/or directly affecting the equity structure of the company.

### *Proxy voting*

Proxy voting is commonly used in Finland by foreign shareholders. Such participation has increased since 2008 when the market reached a consensus regarding eased proxy requirements.

The role of international proxy advisors giving their views on matters raised at general meetings has become more visible in recent years. Currently, the voting practices of proxy advisors do not generally cause problems in Finnish companies' general meetings. On the other hand, the established policies issued by major proxy advisors such as Institutional Shareholder Services (ISS) have also to some extent acknowledged Finnish listed companies' governance practice.

There are no proxy solicitation regulations in Finland that would directly correspond to the rules issued, for example, by the SEC. It is generally held that the board should not engage in soliciting proxies using the company's funds if the proxy would be the board itself or a party related to the board. Proxy solicitation is not a common practice in Finland, but there are some recent examples in companies with a large foreign shareholder base where the board has engaged proxy solicitors abroad.

## The board of directors

### *Duties and responsibilities of the board*

All directors of the board are subject to the same duties and the board makes decisions as a collective. The main responsibility of the board is the governance and seeing to the proper arrangements of the operations of the company as well as the supervision of the company's accounting and financial matters. The actual content of the board's duties is defined by the company's operations and circumstances in which it operates. In practice, the duties of the board are essentially to define the company's strategy and to make decisions in matters that do not fall within the scope of the day-to-day management of the company, such as acquisitions, significant agreements and major financing arrangements.

The fiduciary duties of a director include a duty of care and a duty of loyalty, requiring the directors to act in the best interest of the company. The board is also obliged to treat all shareholders equally and act as agent of all, not just some, shareholders in the governance of the company. A director may not, for example, disclose any information concerning the affairs of the company and obtained in his or her role as a director to the shareholders who »nominated« them or to other interest groups, unless given a permission to do so by the board or unless the information is disclosed to all shareholders on an equal basis.

The board should ensure that the company's organisation is structured in such manner that accounting and financial management are subject to satisfactory monitoring and control so that the board can constantly fulfil its duty to keep itself informed of the company's financial position.

### *Appointment and removal of directors*

The general meeting appoints the directors of the board by election unless the articles of association provide otherwise. According to the Code, the articles of association may provide that the supervisory board elects the directors or that a minority of the directors is appointed by another procedure, but these alternatives require an explanation. As election of directors is one of the most important decisions of the general meeting, it is important that the shareholders have been informed of the candidates well in advance of the meeting. The Code therefore recommends that a proposal by any nomination committee for board composition should be included in the notice of a general meeting. The same applies to a proposal for the composition of the board made by shareholders with at least 10% of the votes carried by the company shares, if such proposal is disclosed to the board in sufficient time to include it in the notice. Candidates proposed later by shareholders with at least 10% of the votes should be disclosed separately.

According to the Code, the directors should be elected for a term of one year. This provides the shareholders with a possibility to evaluate the performance of the directors on a regular basis. The Code further states that it is not necessary to limit the number of director's successive terms of office as the shareholders decide on their election and re-election.

Directors of the board can be dismissed ahead of term by the corporate body which appointed them (usually the general meeting).

### *Size of the board*

According to the Code, the number of directors and the composition of the board should make it possible for the board to carry out its duties in an efficient manner. The Companies Act does not limit the maximum number of directors to be set in the articles of association. The number of directors may thus be adjusted based on the circumstances of each company.

### *Composition of the board*

According to the Code, the composition of the board should take into account the requirements of the company's operations and the development stage of the company. A person to be elected to the board must possess the qualifications required by his or her duties and the possibility to devote a sufficient amount of time to the work. All directors must be natural persons.

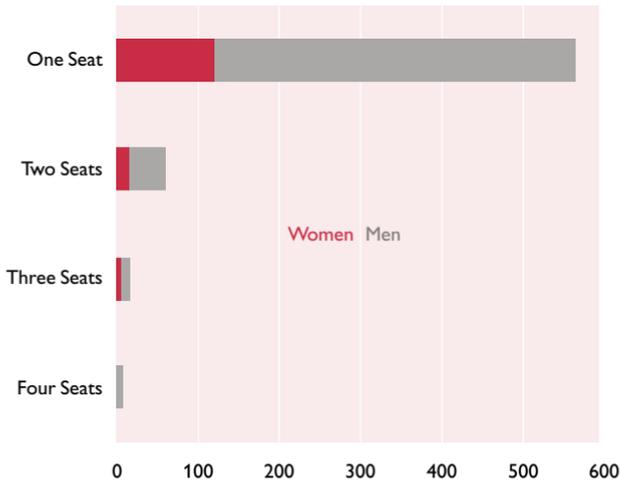
Based on statistics compiled by the Finland Chamber of Commerce, it is not very common in Finland for one person to hold multiple board positions simultaneously (see Figure B.2). Further, the same survey did not find crossing supervi-

**TABLE B.3** Average size of the board in Finnish listed companies (2013).

<i>Year</i>	<i>Large-cap</i>	<i>Mid-cap</i>	<i>Small-cap</i>
2013	7.7	6.9	5.1
2012	7.7	6.8	5.6

SOURCE: The Finland Chamber of Commerce.

**FIGURE B.2** Number of board positions held by one person in Finnish listed companies (2013).



SOURCE: The Finland Chamber of Commerce.

sory relations between directors and managing directors in Finnish listed companies (i.e. situations in which, for example, the managing directors of different companies would sit on the boards of each other's respective companies and thus supervise each other).

### *Employee representatives*

Employees' participation rights in the administration of Finnish companies are governed by a separate act. The act applies to companies employing more than 150 employees and companies subject to the act are free to agree with their employees on the manner of representation. If the company elects not to

enter into a specific agreement, the employees have a statutory right to appoint representatives to the board of directors, supervisory board or management group of the company. The employees thus have no direct statutory right to appoint representatives to the board of directors. However, it is allowed as a way to arrange employee representation. In the relatively few listed companies which have opted to arrange employee representation via the board of directors, there is some variation in whether the employee representatives have full voting rights or participate as observers. Apart from employee representation in administrative bodies, Finnish companies have a legal obligation to consult their employees on various matters, especially in relation to major changes in the company.

### *Independence of directors*

The Code states that a majority of directors should be independent of the company and, additionally, that at least two of the directors representing this majority should be independent of significant shareholders of the company as well. A significant shareholder is someone holding more than 10% of the shares. An independent director is recognised in the Code as someone who, among other things, does not have (and has recently not had) an employment relationship or service contract with the company and is free from any other relationships that could interfere with his or her independence. The boards of listed companies generally consist exclusively of non-executive directors, with the exception of the managing director who is appointed to the board in some listed companies. In 2013, nearly all of the deviations from the Code concerning requirements on the independence of directors were notified by small-cap companies.

**TABLE B.4** Proportion of CEOs as directors in Finnish listed companies (2013).

<i>Director</i>	<i>Large-cap</i>	<i>Mid-cap</i>	<i>Small-cap</i>
CEO on the board of its own company	15 %	8 %	20 %
CEO on the board of another company	52 %	14 %	15 %

SOURCE: The Finland Chamber of Commerce.

### *Managing director on the board*

In 2013, 15 % of listed companies had their managing director appointed to the company's board. This arrangement is most common in small-cap listed companies. If the managing director is appointed to the board of his company, the Code requires that the managing director should not be elected as the chair of the board.

With respect to managing directors serving in the boards of other listed companies, it may be noted that 23 % of large-cap managing directors were appointed to the board of another listed company. Managing directors of large-cap companies are generally viewed as possessing a great deal of relevant experience and skills from the perspective of other listed companies as well.

### *Gender balance*

The Code states that both genders should be represented on the board. The Finland Chamber of Commerce has found, however, that an exception concerning the gender composition of boards is among the most common deviations made by listed companies. In 2013, all deviations from this recom-

mentation were notified by small-cap companies. Overall, the women's share of all board positions was 23 %, and 86 % of all listed companies had women as directors (Source: The Finland Chamber of Commerce).

### *Working procedures*

According to the Code, the board shall draw up a written charter for its work and disclose its essential contents. The charter is one way for the shareholders to evaluate the performance and organisation of the board. The board is fairly free to decide on appropriate working methods to correspond to the unique circumstances of the company. Further, neither the Companies Act nor the Code state how often the board should meet and, thus, the frequency depends on the operations of the company, its growth stage and other relevant circumstances. Based on corporate governance statements published in the spring of 2013, the average number of board meetings held in listed companies was approximately 14 (ranging from minimum 7 to maximum 49 meetings). The frequency varies significantly among companies due to which the average number presented here is likely

**TABLE B.5** Average number of board meetings in Finnish listed companies (2013).

<i>Year</i>	<i>Large-cap</i>	<i>Mid-cap</i>	<i>Small-cap</i>
2013	12	13	15
2012	12	13	15

SOURCE: The Finland Chamber of Commerce.

somewhat higher than the median number of meetings would be. Exceptionally high meeting frequencies are usually associated with major transactions, crisis situations or other exceptional circumstances in the business of the company.

The average attendance of directors in Finnish listed companies can be considered high (95 %) (Source: The Finland Chamber of Commerce). There is no notable variation between companies of different sizes in this regard. It is a fairly common practice to hold some of the meetings as wholly or partially remote sessions (via teleconferences, for instance).

### *Decision making*

In order to make decisions, all directors must have been given the opportunity to participate and the board must form a quorum. The board has a quorum when more than half of the directors are present, unless a larger proportion is required in the articles of association of a company. The opinion of the majority constitutes the decision of the board, unless a qualified majority is required in the articles of association. In the event of a tie, the chair of the board has the casting vote.

### *Board committees*

Board committees are not regulated by law but, according to the Code, the effective discharge of the board's duties may require that board committees be established for specific tasks. The purpose of committees is to assist the board by preparing matters belonging to the competence of the board. They have no autonomous decision-making power. Therefore, the board should make the decisions prepared in committees col-

lectively. The board also remains responsible for the duties assigned to the committees. The importance of delegating the board's duties and day-to-day administration to the committees is emphasized in large companies with extensive business operations.

According to the Code, the board should confirm the central duties and operating principles of a committee in a written charter and the essential contents of the charter should be disclosed to the shareholders. Committees should regularly report on their work to the board including at least a summary of the matters addressed and the measures taken by the committee. The company may internally determine the reporting details and schedule. The company should keep track of the number of committee meetings held during the financial period and the attendance of committee members at the meetings in order to report said information to the shareholders. Reporting allows the shareholders to evaluate how active the committee has been and consequently also the efficiency of board work.

The Code addresses the roles of the audit, nomination and remuneration committees, but other committees may also be established where necessary. When a board committee is established, its members are elected from among the directors. The Code includes certain requirements concerning the independence of committee members and recommends that the company disclose the composition of committees to the shareholders.

#### *Audit Committee*

The Code states that, if the extent of the company's business so requires, an audit committee of at least three members should be established. The audit committee has better possibilities than the board as a whole to review questions pertaining to company finances and control and manage contacts with the

auditors and the internal-audit function. Additionally, the appointment of a committee may improve communication and information exchange between the board and the financial executive management as well as between the board and the auditors.

All members of the audit committee should have sufficient knowledge of accounting practices and preparation of financial statements. The members should be independent of the company and, additionally, at least one member of the committee should be independent of significant shareholders. Further, at least one member should have expertise specifically in accounting or auditing.

The committee's duties are, for instance, to review questions connected with the financial administration and control of the company, ensure that contacts are maintained with the auditors and ensure that internal audits are carried out. In practice all larger listed companies have an audit committee.

### *Nomination Committee*

The board may improve the efficiency of the preparation of proposals for the election of directors by establishing a nomination committee. The establishment of a nomination committee promotes the transparency and systematic function of the election process. According to the Code, the duties of the nomination committee may include, for instance, the preparation of a proposal for the appointment of directors, looking for prospective new candidates as well as the preparation of a proposal on the remuneration of directors.

According to the Code, the nomination committee should consist of directors. However, it is further stated that it may be in the interest of the company and all its shareholders that the nomination committee is aware of the opinion of major share-

holders regarding the planned appointments. In case the general meeting has established a separate nomination committee consisting of shareholders or representatives of shareholders in order to prepare proposals concerning the election and remuneration of directors, the company should disclose the election process, composition and operations of the nomination board.

In recent years such nomination boards have become increasingly popular in Finnish listed companies. Shareholders' nomination boards are in use in practically all companies in which the Finnish State has a significant holding.

#### *Remuneration Committee*

The board may establish a remuneration committee to improve the efficient preparation of matters pertaining to the appointment and remuneration of the managing director and other executives of the company as well as the remuneration schemes of the personnel. The main function of the remuneration committee is thus to prepare and establish appropriate incentives and remuneration schemes that are in the company's best interests considering its business operations and strategy. Additionally, the committee should actively evaluate the remuneration schemes.

According to the Code, the majority of the members of the remuneration committee should be independent from the company. Further, the managing director or other executives of the company should not be appointed to the remuneration committee.

### *Conflicts of interest*

Under the Companies Act, a director is disqualified from the consideration of a matter relating to a contract (or other legal act such as litigation) between himself and the company or between the company and a third party if the director is to derive an essential benefit in the matter and that benefit may be contrary to the interests of the company. The provisions regarding disqualification in the Companies Act are applied only if the director is expected to personally benefit from the decision.

It is considered good governance and directors routinely abstain from decision making in situations where a director is not directly disqualified under the Companies Act, but the circumstances could in practice limit his or her possibilities to consider the matter free from outside influences.

### *Board evaluation*

Under the Code, the board shall conduct an annual evaluation of its operations and working methods. The evaluation may be done as internal self-evaluation or by using an external evaluator. Although the Code does not require companies to disclose the evaluation results, many companies share some information on the topic. However, the descriptions typically entail more details about the evaluation processes than actual conclusions of the results.

### *The role of chair of the board*

The chair of the board is elected by the board unless it has been otherwise decided when the board is appointed or it is otherwise provided in the articles of association. In practice it is quite common to elect the chair at the annual general meeting. According to the Code, the managing director should not be elected chair of the board and there should be a clear division of responsibilities between the two roles. This recommendation is well followed in practice.

The chair has a central role on the board. He or she is responsible for arranging the requisite number of meetings. The chair often acts as the managing director's superior and usually is the first contact on the board for the managing director.

## **Managing director and other executives**

### *Appointment and removal*

The board may appoint a managing director for the day-to-day management of the company and its business. All listed companies in Finland have a managing director. The directors supervise the performance of the managing director and, if needed, they also have the authority to discharge him or her at any time solely based on loss of confidence by the board. The managing director is not considered an employee of the company.

The Code recommends that the terms and conditions of the managing director's service relationship should be specified in writing in a separate agreement approved by the board in order to ensure transparency and enable external control. All financial benefits included in the agreement should be disclosed to

the shareholders. The company should also disclose the biographical details and, for example, information on the holdings of the managing director.

### *Duties and responsibilities*

The managing director has a significant role with regard to the operations and success of the company. He or she typically has, and should have, the most up-to-date and extensive view on the condition of the company. The managing director is responsible for the business operations of the company and, in practice, is also responsible for preparation and presentation of the matters which fall within the competence of the board by, for example, negotiating corporate transactions, major investments and important agreements based on board authorisation. Thus, the managing director acts as a crucial link between the board and the rest of the company, also providing the board with the necessary information required by the board to fulfil its duties.

The independent decision-making competence of the managing director in managing the company's day-to-day operations is determined based on the scope and nature of the company's business as well as the company's established practise. In general, decisions which are unusual or of strategic importance for the company, taking into account, for example, the nature or value of the transaction, should be taken by the board of directors. The board often defines the managing director's decision-making powers in more detail in a separate document or in the board charter.

## Minority protection

One of the most important principles in Finnish company law is the equal treatment of shareholders, which must be observed in all decision making. The general meeting, board and managing director do not have the right to make decisions that could give undue benefit to a shareholder or another person at the expense of the company or another shareholder. Shareholders do, however, have the right to advance their own interests in the general meeting and the rules regarding disqualification of a shareholder at a general meeting are very limited in scope.

In addition to voting at a general meeting, each individual shareholder has the right to propose items for the agenda of the general meeting falling within the competence of the general meeting. At general meetings every shareholder has the right to ask questions and to table proposals relating to the matters on the agenda of the meeting. Further, minority shareholders representing at least 10 % of the total number of shares can also demand an extraordinary general meeting be held to address a specific issue and demand a special audit of the administration and accounts of the company as well as demand that 50 % of the profit of the latest financial year be distributed as dividend (minority dividend).

Shareholders have the right to challenge decisions made at the general meeting in case of a procedural error or if the decision itself is contrary to law. Shareholders can also bring a claim for damages on behalf of the company under certain conditions. In essence, the rights attached to an individual shareholder's shares can usually not be reduced without the shareholder's consent.

The proxy-voting guidelines issued by the ISS include specific recommendations regarding board independence for companies with a controlling shareholder. The voting recommen-

dations of the ISS are in practice often recognised and observed in Finnish companies.

## The statutory auditor

The financial statements of all listed companies must be audited by a qualified auditor. The auditor can be an individual or an auditing firm. In practice, the statutory auditors of listed companies are auditing firms that name a principal auditor.

In essence, the duty of the statutory auditor is to ensure that the financial information disclosed by the company is reliable (especially the financial statements). There has been some discussion in Finland regarding the position of the statutory auditor and its role towards different stakeholders. Traditionally, the statutory auditor has been perceived as a representative of the shareholders. However, the current discussion emphasises that the statutory auditor should, within the scope of its duties, guarantee the appropriate management of a company also in relation to the creditors, employees and the state.

The appointment of auditors takes place at the general meeting by a simple majority of shareholders. The proposal is usually prepared by the audit committee. If several auditors are to be appointed, it may be provided in the articles of association that an auditor or some of the auditors, but not all, shall be appointed in accordance with some other procedure. Pursuant to the Finnish Auditing Act (459/2007), the total duration of consecutive appointments of an auditor shall not exceed seven years in public companies. After reaching the maximum length of consecutive appointments, the auditor cannot be involved in the audit of the company for two years. If an audit firm has been appointed, these restrictions apply only to the individual

auditor with principal responsibility for the engagement. These rules aim at ensuring the independence of auditors.

Under the Code, the proposal concerning the auditor by the audit committee or board should be included in the notice of the general meeting. The same applies to a proposal made by shareholders with at least 10 % of the votes carried by the company shares. Candidates proposed later in corresponding order should be disclosed separately.

Pursuant to the Auditing Act, the auditor shall audit the accounting records for the financial period, the financial statements and the administration of a company. If a company is a parent company in a group, the audit shall also cover the consolidated accounts.

## Internal control and risk management

Under the Companies Act, the directors are responsible for supervising the management and proper organisation of the operations of the company and ensuring the appropriate arrangement of the control of the company's accounts and finances. The Code further requires that the directors ensure that the company has defined the operating principles of internal control procedures and monitors the effectiveness of such control. Additionally, listed companies should describe the criteria according to which risk management is organised within the company and the manner in which the internal-audit function of the company is organised.

The managing director is primarily responsible for ensuring that the accounts of the company comply with the law, whereas the directors are responsible for overseeing the managing director's actions.

As explained above, many listed companies have established audit committees that, among other things, monitor the efficiency of the company's risk-management systems. In addition, some listed companies, especially those in the financial sector, have established specific compliance and risk-management functions in their organisation.

## Remuneration

The Code recognises that appropriate and competitive remuneration is an essential tool for recruiting the best possible management for the company. Another aim of remuneration is to increase the commitment of the board, the managing director and other executives to promote the interests of the company and its shareholders. The level of directors' remuneration in Finnish listed companies, including financial institutions, has been quite moderate regardless of some public criticism.

The general meeting decides the remuneration payable to the directors. Directors who are shareholders can participate in the decision-making regarding remuneration. However, according to standard practice, the remuneration is decided on before the election of directors. The board, on the other hand, decides the remuneration of the managing director, as well as other compensation payable to him or her. As stated above, a remuneration committee consisting of non-executive directors may be established to prepare and supervise the appointment of, and compensation for, the managing director and other executives.

According to the Code, the company must publish on its website a remuneration statement containing a comprehensive description of remuneration within the company. The remu-

neration statement must contain information on the financial benefits of the board, managing director and supervisory board as well as information on the decision-making process and main remuneration principles. In general, remuneration schemes should be drawn up in a way which promotes the competitiveness and long-term financial success of the company. Remuneration schemes should also contribute to the development of shareholder value. Furthermore, remuneration schemes should be based on predetermined and measurable criteria relating to performance and result.

## A P P E N D I X C

# CORPORATE GOVERNANCE IN NORWAY

Gudmund Knudsen & Harald Norvik\*

### The context

In Norway, there are at present (January 2014) 252,455 limited liability companies, of which 251 are public companies.

As of 31 December 2013, there were 218 Norwegian companies the shares of which were traded on a Norwegian regulated market place (the Oslo Stock Exchange and Oslo Axess). Of these companies, 186 companies were quoted on the Oslo Stock Exchange and 32 on the Oslo Axess. Including the number of companies which are quoted on the Oslo Stock Exchange, there are 15 Norwegian savings banks with equity instruments quoted on the Oslo Stock Exchange.

Only public limited companies may list their shares on a

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Norwegian regulated market place. Such companies, which are the subject of this report, are hereinafter referred to as »listed companies«. The aggregate market capitalisation of these listed companies as of 31 December 2013 was approximately NOK 1,968 billion. Almost 70 % of this value was attributable to 17 companies, of which Statoil ASA was by far the largest with a market capitalisation of approximately NOK 469 billion.

The Norwegian Government (the »Government«) is the single largest investor, holding approximately 35 % of the aggregate market capitalisation of listed companies. The Government's ownership of listed shares is distributed among the 8 companies, Statoil ASA, Telenor ASA, DNB ASA, Yara International ASA, Norsk Hydro ASA, Kongsberg Gruppen ASA, Cermaq ASA and SAS AB, of which 5 (Statoil ASA, Telenor ASA, DNB ASA, Yara International ASA and Norsk Hydro ASA) are among the 8 largest companies on the Oslo Stock Exchange). Having an ownership share between 34 % (in DNB ASA) and 67 % (in Statoil ASA), the Government is a dominant shareholder in all of the aforementioned companies. The main purpose of the Government's ownership in listed companies is to maximise the value of its shares and to contribute to the sound and profitable development of the companies. In addition, the Government may also want to maintain the companies' head office in Norway as a motive for the ownership.

A number of the other large listed companies have a single, private, major shareholder, such as Orkla ASA, Marine Harvest ASA, Aker Solutions ASA and Fred. Olsen Energy ASA.

Foreign investors (investors not domiciled in Norway) hold approximately 37 % of the aggregate market capitalisation, with other Norwegian investors (funds, companies, individuals) having the remaining holdings.

Individuals' holdings in listed companies are low and

account for less than 4 % of the companies' market capitalisation. Also, historically, individual ownership has been very low. There is no obvious explanation why this is the case other than a lack of tradition for individuals to invest directly in listed companies. Rather, they would typically invest in funds which, in turn, make investments in listed (and other) companies.

The private, large shareholders typically play an active ownership role, including taking seats on the board. The Government has as a somewhat different policy of not being directly represented on the board of companies in which it has a significant ownership stake. Rather, the Government will typically be represented in the nomination committee for the board. In recent years, the Government has also exercised an increasingly active ownership policy by publicly setting defined expectations for companies with particular focus on, among other things, corporate governance, corporate social responsibility including anti-corruption, and remuneration of senior executives. The Ministry of Trade and Fisheries gives an account of the Government's ownership in a report to the Norwegian Parliament («the ownership report»), which is published at multi-year intervals. In this report, the Ministry, among other things, presents the Government's expectations to the companies.

The structure of ownership in listed companies is, as a main rule, fully transparent. All listed companies must maintain a register of shareholders in a licensed securities registry, the only one being the Norwegian Central Securities Depository (*Verdipapirsentralen*). The register is public in the sense that anyone can, upon request to the company, obtain access to information regarding the ownership of listed companies.

The market for both listing new companies and takeovers of already listed companies has traditionally been very active in Norway. For example, in 2013 there were 12 new listings and, from 2007 to 2013, there was an aggregate of 121 new listings.

During these periods, there were 35 takeover offers in 2013 and a total of 183 takeover offers from 2007 to 2013. It should be noted that, with respect to takeover offers, the same company could be counted more than one time in the previous figures if, during this period, it was subject to both a voluntary offer and a subsequent mandatory offer or squeeze-out. Despite the active market for takeovers, it is generally unlikely that many of the large-cap companies will be subject to takeover offers in the near future, partly due to the significant holding of the Government in many of these companies and partly due to other major shareholders with a long-term investment horizon.

## The regulatory framework

### *Law and other statutory regulation*

Norwegian public companies are governed by the Public Companies Act, which is supplemented in important areas (e.g. information requirements, investor protection and accounting) by other mandatory laws such as the Securities Trading Act, the Stock Exchange Act and the Accounting Act.

The Public Companies Act contains both mandatory and non-mandatory rules, in respect of which the company's articles of association may deviate from the non-mandatory rules.

The current Norwegian Public Companies Act was adopted in 1997, but has roots back to the previous companies legislation of 1976, 1957 and 1910. The 1976 Act was introduced following a Nordic co-operation which led to a Nordic companies legislation which, to a great extent, was based on the same model – both with respect to structure and content. Although subsequent legislation has not been developed through a similar Nordic co-operation, the current Nordic companies laws

do to a large extent, have a similar structure and are based on similar fundamental principles. This especially applies to the regulation of corporate governance issues.

Several provisions of the Public Companies Act have been introduced or amended due to EU-regulations. In the context of corporate governance, the provisions of Directive 2007/36/EC on shareholder rights are of particular interest. This Directive was implemented in Norway through a law of 19 June 2009 no. 77 and applies to listed companies only. The purpose of the Directive is to generally improve the shareholders' opportunities to exercise influence in listed companies. The implementation of the Directive has, among other things, resulted in new provisions, as well as amended provisions, in Chapter 5 of the Public Companies Act (regarding the general meeting of shareholders, convening general meetings, and information to the shareholders in connection with general meetings) which are in accordance with the provisions of the Directive.

### *Self-regulation – systems and practices*

The Norwegian Code of Practice for Corporate Governance (the »NCCG«) establishes important and heavily emphasised guidelines for corporate governance in Norway. The NCCG has been developed by a broadly composed committee of representatives from 9 central organisations with an overall objective of providing Norwegian listed companies with guidelines for governing the relationship between the shareholders, the board of directors and executive management more comprehensively than applicable legislation. The NCCG consists of 15 recommended principles of corporate governance, each of which is coupled with explanatory commentaries.

The NCCG is based on a principle of »comply or explain«

and is thus not directly legally binding upon its target companies. Nevertheless, the NCCG has to some extent gained legal anchoring through the Accounting Act which requires that listed companies account for their principles and practice of corporate governance in their annual directors' report. This requirement is also established in the continuing obligations of listed companies. In addition, companies applying for listing on the Oslo Stock Exchange must report on the company's corporate governance principles in their listing application or in an appendix thereto. By connecting the NCCG to mandatory legislation and stock exchange regulations, the NCCG has been established as guidelines with which companies should certainly comply.

### *The Government's ownership principles*

In addition to the NCCG, some investors have their own guidelines for exercising their ownership. Some of these guidelines are also normative to the corporate governance structure in Norway. Most important in this context are the Norwegian Government's governance principles (the »NGGP«) which apply to all state-owned companies (whether wholly or partially owned). The aim of the NGGP is to contribute to establishing predictable and clear frameworks for the Government's various ownership positions. The NGGP are in line with generally accepted corporate governance principles and concern key aspects of corporate governance such as equal treatment of shareholders, transparency, independence, composition and role of the board, etc. The following 10 principles are set out in the NGGP:

1. All shareholders shall be treated equally.
2. There shall be transparency in the State's ownership of companies.
3. Ownership decisions and resolutions shall be made at the general meeting.
4. The State shall establish result objectives for the companies, where appropriate in cooperation with other shareholders. The board is responsible for realising the objectives.
5. The capital structure of the company shall be consistent with the objective of the ownership and the company's situation.
6. The composition of the board shall be characterised by competence, capacity and diversity and shall reflect the distinctive characteristics of each company.
7. Compensation and incentive schemes shall promote the creation of value within the companies and be generally regarded as reasonable.
8. The board shall exercise independent control over the company's management on behalf of the owners.
9. The board shall adopt a plan for its own work and actively work to develop its own competencies. The board's activities shall be evaluated.
10. The company shall recognise its social responsibility.

## Basic structure of the governance system

### *Generally*

The Norwegian structure of limited companies rests on a principle drawing a fundamental line between a company's management and its owners. A characteristic of the Norwegian

corporate governance structure is that the shareholders exercise the highest authority in the company through the general meeting. Through the general meeting, the shareholders may decide on any matter provided that it has not been expressly made subject to the exclusive authority of another corporate body, e.g. the board of directors. This gives the shareholders (or, more precisely, the majority of the shareholders) superior authority over the board of directors and the managing director (CEO). One of the key domains of the general meeting is to appoint and remove board members and thereby control the composition of the board.

A company's management is divided into two corporate bodies; (i) a board of directors (consisting in practise only of non-executive board members) having the overall responsibility for the management of the company and (ii) a CEO who is in charge of day-to-day management. The general meeting is superior to the board of directors. Some companies also have a corporate assembly (see section 6) but, given that the general meeting appoints two thirds of the members of the corporate assembly, the existence of a corporate assembly does not affect the shareholders' supreme authority in the company through the general meeting.

Norwegian companies legislation is based on a majority principle which grants controlling influence to the shareholder (or group of shareholders) controlling the majority of votes at the general meeting. This majority principle provides for a secure and flexible governance system in which an important element is the majority shareholder's control over the company's board of directors. However, the balancing of the majority principle against a set of rules relating to minority protection which limits the majority's authority over individual shareholders (or minority groups of shareholders) is an important feature in the Norwegian governance model. Such minority-

protection rules also equip the minority shareholder(s) with legal tools to enforce the limitations to the majority's authority.

The Norwegian governance model is broadly drafted and is well-suited for different ownership models. This means that it can be suitable for both companies with a dominant shareholder and companies with dispersed ownership. The Public Companies Act does thus not give preference to one ownership structure over another.

A starting point of the Public Companies Act is that the principal task of the board of directors, as well as the other managing corporate bodies (i.e. the CEO and the corporate assembly), is to ensure the company's interest in value creation and, as a consequence thereof, to promote the shareholders' general interest in gains and dividends on the capital invested in the company. However, an important addition to this is that the managing bodies are also entitled – and sometimes obliged – to consider interests other than the shareholders', e.g. the interests of employees, creditors, the company's contract parties and the company's obligations towards society and the environment. The common view is that the board of directors of Norwegian companies must to some extent have a broader perspective than the sole economic interest of the shareholders. This particular point is reflected in the NCCG which recommends that the board of directors »... *should define the company's basic corporate values and formulate ethical guidelines and guidelines for corporate social responsibility in accordance with these values*«. In addition, the NGGP presupposes that companies have a social responsibility.

### *Employee representation*

Since 1972, there have been rules in Norwegian companies legislation which grant companies' employees the right to elect members to the board of directors and the corporate assembly. Today, such rules are considered to be a fundamental characteristic of the Norwegian governance system.

The main rule regarding employee representation is that one third of the members of the board of directors and/or one third of the members of the corporate assembly are elected by and among the employees. The employee representatives act as ordinary members of the board/corporate assembly and have the same authority and responsibility as the members elected by the general meeting.

The rules regarding employee representation are further described on page 223, *Employee representatives on the board of directors*, and on page 233 with regard to the corporate assembly.

## **The general meeting**

### *Generally*

#### *The general meeting as key forum for the exertion of shareholder influence*

The general meeting is the highest corporate authority in a Norwegian limited company and a forum in which all shareholders, without regard to the size of their shareholding, have an unconditional right to be present (either personally or by proxy) and speak, and to exercise their rights and influence as a shareholder.

An essential premise for the shareholders being able to

exercise their authority in the company is that they are kept informed of the company and its operations. On this basis, and in addition to having a right to be present at the general meeting, the shareholders enjoy extensive rights to obtain information about the company's matters. In this context, a distinction can be made between a shareholder's right to receive information without prior enquiries (e.g. the company's annual accounts, annual report, background information for the matters to be discussed at the general meeting, etc.) and a right to receive information following an active request by the shareholder. An example of the latter is information which can influence the judgement regarding the company's financial position.

### *The authority of the general meeting*

A key element in a corporate governance context is that the shareholders, through the general meeting, exercise supreme authority in the company. Through the general meeting, the shareholders can instruct and control other corporate bodies, including the board of directors and its composition. The general meeting can also, as a main rule, reverse resolutions adopted by other corporate bodies and directly resolve on all company matters to the extent there are no third parties, e.g. contracting parties, who have rights vis-a-vis the company which prevent the general meeting from making such decisions.

The general meeting is obliged to resolve on matters that are expressly made subject to its authority pursuant to the Public Companies Act, such as adoption of the annual accounts and approval of the board's statement on remuneration to executive personnel. Matters concerning the company's capital are also generally subject to the general meeting's authority, i.e. increases and reductions in share capital, mergers, demerg-

ers and dividend distributions. With respect to the latter, the Public Companies Act is coupled with recommendations and guidelines in the NCCG concerning, among other things, dividend policies and capital requirements.

Notwithstanding the elevated authority of the general meeting, it rarely occurs that the general meeting formally instructs the board of directors or reverses its resolutions. Rather, in practice, disagreements between the majority shareholders and the board of directors or an individual board member are resolved by the majority shareholder(s) replacing the board of directors/board member with a new board/board member in whom it has confidence, or by the resignation of board/board member from the board. One reason for this pragmatic approach is probably that, by formally instructing the board of directors on a specific matter, the instructing shareholder(s) can assume personal responsibility for the resolution subject to its instruction. Formal instructions from the shareholder(s) can also form a basis for a court of law to look beyond the limited liability of a company and establish more extensive liability for the company than that provided for by the Public Limited Act (i.e. »piercing the corporate veil«).

*Contact between management and  
shareholders outside the general meeting*

Outside the general meeting, the shareholders do not have formal authority to govern the company or to instruct the board of directors or to influence the company affairs. This does not, however, prevent the shareholders and management from having contact outside the general meeting when it comes to matters unrelated to the exercise by the shareholders of their legal authority. Oppositely, such contact is rather common in companies with one dominant shareholder and is often also

seen in companies with dispersed ownership, as the main shareholder(s) will have a need to be kept informed and up-to-date on important matters related to the company's operations and development. In addition, main shareholder(s) may also wish to give their input regarding the company's operations to management, and management may need to discuss matters with the main shareholder(s) to avoid falling out of step with them on important matters regarding the company. In matters in respect of which the general meeting has the final authority – e.g. in matters regarding increasing and decreasing the company's share capital, granting authority for the company to acquire its own shares, mergers and demergers – the management will usually have discussed the matter with the main shareholder(s) before it is presented to the general meeting. It is, however, important to note that, if a shareholder receives inside information, the shareholder will become an »insider« pursuant to the Securities Trading Act. This means, among other things, that the shareholder will be prohibited from trading in the shares and will be obliged not to disclose the information. A shareholder with inside information must also be added to the company's list of insiders.

The extent and substance of the contact between management and the shareholders vary to a great extent from one company to another. In any case, it is important that informal contact between management and the company's shareholders is kept within certain limits to make clear that it is the company's management, i.e. board of directors and CEO, which has the responsibility and authority to manage the company's operations. Contact with the shareholders should thus principally be of an informative nature and, to the extent that the shareholders present comments or proposals to the management, they cannot be of an instructive character. It is also important to ensure that the contact between management and the main

shareholder(s) does not violate the other shareholders' rights in the company and that the contact is kept within the framework of, among other things, the principle of equal treatment of shareholders. To this end, the board and management must be particularly cautious not to disclose information to the main/dominant shareholder(s) without providing the same to the minority shareholder(s).

### *Voting rights and share classes*

A starting point in the Norwegian companies legislation is that each share shall carry the same economic and organisational rights in the company. This principle is formally anchored in the Public Companies Act and is also reflected in several special provisions of the Act. It is, however, important to note that the Public Limited Act to a large extent allows companies to deviate from the principle of equality by adopting articles of association which establish different share classes and limitations on the shares' voting powers (either connected to persons or share classes).<sup>1</sup>

Notwithstanding that the Public Companies Act is rather open and flexible with respect to adopting share classes and/or limitations on voting powers, there are at present just three Norwegian listed companies which have listed shares without voting power («B shares»). With the exception of these three companies, all of the listed companies act in accordance with the principle that each share carries the same economic and organisational rights. This is probably explained by the fact that the NCCG recommends that the company should only

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1. If the aggregate nominal value of the shares subject to limitations on voting powers exceeds more than 50% of the company's share capital, such provision in the articles of association must be approved by the Department of Trade and Fisheries.

have one share class. In addition, deviations from the principle of equality are subject to other regulations. For example, the Listing Rules for the Oslo Stock Exchange stipulate that listed companies may only disregard votes from shares with limited/non-existing voting power if there are reasonable grounds for such rejection. Listed companies with limitations on the voting powers must also give notice of such limitations in their annual report.

### *Form of the general meeting, notice procedures, etc.*

#### *Convening the general meeting*

The general meeting is, as a rule, convened by the board of directors (however, in companies with a corporate assembly, the articles of association may determine that the general meeting shall be convened by the chair of the corporate assembly). If the board of directors (or the chair of the corporate assembly, where applicable) does not convene a general meeting to be held according to law, the Public Companies Act permits the shareholders to take measures necessary to convene the meeting at the company's expense, including requiring that the general meeting be convened by a district court.

Shareholders representing at least 1/20 of the share capital of the company may require that an extraordinary shareholders' meeting be held to discuss one or more specific matters. In such case, the board of directors shall ensure that an extraordinary shareholders' meeting is held no later than one month following the demand by the auditor or shareholders.

### *Notice of a general meeting*

The Public Companies Act contains special provisions regarding notices and information to be provided to shareholders in listed companies in order to assure shareholder influence. The provisions ensure that all shareholders are made familiar with the general meeting, including the agenda for the meeting, are given an opportunity to prepare for and attend the meeting, and to speak and vote at the general meeting.

The NCCG supplements the above by recommending that the board of directors should »... *take steps to ensure that as many shareholders as possible may exercise their rights by participating in general meetings of the company, and that general meetings are an effective forum for the views of shareholders and the board*«. To that end, the NCCG recommends that the steps taken by the board of directors include, among other things, making the notice for the general meeting and any supporting documents electronically available on the company's website, ensuring that the documents distributed are sufficiently detailed and comprehensive so that they allow the shareholders to form a view on all matters to be considered at the meeting, and setting a deadline for giving notice of participation at the general meeting which is as close as possible to the date of the meeting.

### *Content of the notice of the general meeting*

Both companies and securities legislation set out requirements regarding the content of the notice of the general meeting. According to these provisions, the notice of the general meeting shall, among other things, list the matters to be considered by the meeting, as well as a specific and precise description of

the procedure the shareholders must follow in order to be able to participate and vote at the general meeting.

*Agenda for the general meeting and right  
to propose matters for discussion*

The Public Companies Act affords each shareholder of the company the right to have matters addressed at the general meeting. Notice of such matters must be given to the board of directors at least one week prior to the date of the deadline for convening the general meeting, together with a proposal for a resolution or an explanation for putting the matter on the agenda.

*Meeting procedures*

*Participation, proxies and voting*

As a starting point and main rule of the Public Companies Act, the general meeting adopts resolutions at physical meetings. The Act does, however, allow shareholders to exercise their shareholder rights without being physically present at the general meeting, e.g. by being represented by proxy and by using electronic communications such as real-time video transmissions, which are alternatives that may provide for a simpler and more convenient way for the shareholders to exercise their shareholder rights.

The latter alternative was introduced in the Public Companies Act in 2009 together with a possibility to submit votes in writing (including through electronic communications) prior to the general meeting. These introductions were (among others) a result of the implementation of Directive 2007/36/EC on shareholder rights in Norwegian corporate legislation.

The NCCG recommends that shareholders who cannot attend the meeting in person should be given the opportunity to vote. To this end, the company should (1) provide information regarding the procedures for being represented at the meeting through a proxy, (2) nominate a person who will be available to vote on behalf of shareholders as their proxy and (3) to the extent possible, prepare a form for the appointment of a proxy which allows separate voting instructions to be given for each matter to be considered by the meeting and for each of the candidates nominated for election.

The opportunity to allow shareholders to be present at the general meeting through electronic communications is not applied in practice. This can be said to be partly due to the fact that companies are not interested in taking on the financing and development of secure electronic systems for such participation, and partly due to companies not experiencing an actual need for opening up for this alternative over and above other alternatives, such as being represented by a proxy holder and submitting votes in writing (including through electronic communications) prior to the general meeting. The latter is, to a certain extent, applied in practice (unlike the possibility of being electronically present at general meetings).

### *Proxy advisors*

With respect to the actual voting at the general meeting, a practice of using so-called proxy advisors has been increasingly adopted during the last decade, most commonly by institutional shareholders. The proxy advisors are professional analysts who provide advice on how the shareholders should exercise their voting powers at the general meeting. The advice can either be provided based on the shareholders' expressed ownership principles, or be of a more general nature. The proxy

advisers help the shareholders stay up to date on their investments by taking on the task of analysing the consequences of the matters that are presented to the general meeting. However, critics are concerned that extensive use of proxy advisors causes unwanted harmonisation of the governance of Norwegian companies which does not always take into consideration the specific needs of a company's business and operations.

### *Majority requirements*

See page 240.

## The board of directors

### *Applicable law*

Chapter 6 of the Public Companies Act sets out provisions governing the board of directors, the CEO and the corporate assembly. The board of directors and CEO are mandatory corporate bodies in all Norwegian public limited liability companies.

A corporate assembly is, as a rule, mandatory in companies having more than 200 employees, but agreements not to establish a corporate assembly may be reached between the company and the employees or unions. This option not to establish a corporate assembly by agreement is exercised to a great extent in practice, which means that only a limited number of Norwegian companies actually have a corporate assembly.

In addition to the mandatory requirements to a company's management set out in the Public Companies Act (and related legislation), the NCCG contains various recommendations concerning the board of directors and its work, e.g. on nomina-

tion committees (section 7), composition and independence of the board of directors and corporate assembly (section 8), the work of the board of directors (section 9), risk management and internal control (section 10) and remuneration of the board of directors (section 11).

### *Appointment and removal of board members*

#### *Generally*

The starting point of the Public Companies Act is that the board members are elected for a period of two years, provided that the company's articles of association do not state otherwise. The term cannot, however, exceed four years. The NCCG recommends against electing board members for a period exceeding two years in listed companies. In practice, it is increasingly common to elect board members in listed companies for a period of one year.

The board members are elected by the general meeting, which also determines whether deputy directors shall be elected. In companies with a corporate assembly, this body is responsible for electing the board members. A decision to remove board members may be taken by the same corporate body authorised to elect the board members, which means that removal of board members is normally resolved by the general meeting. A characteristic of the Norwegian structure is that the general meeting (i.e. the major shareholder(s)) may replace a board member at any time during his or her term without cause. This grants the major shareholders authority to at any time determine the composition of majority of the members of the board of directors. Board members who are elected by the employees cannot be removed by the general meeting.

### *Nomination committees*

The NCCG recommends that the task of proposing eligible candidates for the board of directors, as well as proposing the board members' remuneration, be prepared by a nomination committee. This recommendation is followed by a majority of the Norwegian listed companies in practice, even though there is no legal requirement to appoint a nomination committee.

Nomination committees are playing an increasingly important, practical role in the process of finding eligible candidates for a company's board of directors. The increased importance of the work of the nomination committee may be explained by an increased focus on the composition, competence and quality of the board members, as well as the implementation of rules governing gender representation (see page 223) which has added an additional consideration to the process of putting together the board of directors.

Whether or not a company shall have a nomination committee is usually (but not necessarily) governed by the company's articles of association. As the use of nomination committees is not required by law, the NCCG recommends that the appointment of nomination committees should be included in the company's articles of association, and guidelines (which may be separate from the articles of association) for the composition, election and remuneration of the members of the nomination committee.

The nomination committee is elected by – and acts as a supporting committee to – the general meeting. The general meeting also determines the guidelines as to the manner by which the committee shall carry out its work. According to the NCCG, the composition of the nomination committee should reflect the interests of the company's shareholder community. In companies with one dominant shareholder, such a shareholder has, as

a rule, one representative in the nomination committee. Otherwise, each of the company's main shareholders tend to be represented in the committee. In companies in which the Government has a large shareholding, the Government usually requests that a nomination committee be appointed and that one representative in such committee be appointed by the Government.

The NCCG emphasises that the nomination committee must be independent of the company's board of directors and management/administration, and that no more than one member of the committee should be an existing board member in the company. If an existing board member is a member of the nomination committee, such a board member should not run for re-election.

The nomination committee's work in providing justified recommendations regarding candidates for election to the corporate assembly (in companies having a corporate assembly) and the board of directors may be extensive and time-consuming. In carrying out its work, the committee may interview possible candidates and may also seek assistance from the company's administration and/or external advisers (e.g. external recruiting firms). The board's own evaluation of its work and competence (see pages 232–233) is usually made available to the nomination committee and forms part of the basis of the nomination committee's work.

An important part of the nomination committee's work is to agree on eligible candidates with the main shareholder(s). Accordingly, the nomination committee will have contact with the shareholders while preparing its recommendations. The committee will usually also discuss its recommendations with the board of directors or the chair of the board. It is, however, important to note that the general meeting, when appointing new members of the board, is not in any way bound by the recommendations presented by the nomination committee.

## *Size and composition of the board of directors and corporate assembly*

### *Generally*

As a starting point, the board of directors shall consist of at least three members (five in companies with a corporate assembly). There are no corresponding limits on the maximum number of board members a company can have. In practice, the boards of directors in Norwegian listed companies tend to consist of between 6 and 10 members, of which one third is elected by and among the employees.

As regards the composition of the board of directors, at least half of the board members shall be resident within the EEA. Further, since 2006, Norwegian companies legislation has contained requirements relating to gender representation on the board of directors of public limited companies. As a consequence of such requirements, each gender must, at a minimum, be represented by approximately 40% of the total number of board members elected by the general meeting.

For listed companies, further guidelines and recommendations regarding the board's composition are set out in the NCCG as described below. Such guidelines shall ensure the independence and expertise of the board members.

### *Employee representatives on the board of directors*

A fundamental element of Norwegian corporate law is the employees' right to be represented on the board of directors. Such right is established by law through the Public Companies Act and the main rule is that up to one third of the board members shall be elected by and among the employees.

If the company has a corporate assembly, the board mem-

bers shall be elected by the corporate assembly. In such cases, the employees do not elect their members to the board of directors directly but, rather, through the employee representatives of the corporate assembly who have a right to elect one third of the board members.

The rules regarding employee representation are briefly as follows:

The main rule regarding employee representation states that, in companies with more than 200 employees, one third of the members of the corporate assembly (see page 219 and 233) shall be elected by and among the employees. In such companies, the employee representatives in the corporate assembly may require that one third of the company's board members shall be elected among the employees.

In a company with more than 200 employees, in which it has been agreed not to have a corporate assembly (see page 219), the employees shall, in addition to the possibility of electing one third of the board members as described above, either elect a board member (and a deputy board member) or two observers to the board of directors.

In companies with more than 50 but less than 201 employees, the employees may require that one third and at least two of the members of the board of directors shall be elected by and among the employees.

In companies with more than 30 but less than 51 employees, the employees may require that a member of the board of directors and an observer shall be elected by and among the employees.

If a company is part of a group of companies, it may be agreed that the employees in the whole group shall be regarded as employees of the company – in practice, of the parent company – when applying the rules regarding employee representation. If the parties do not enter into such agreement, the

publicly appointed Industrial Democracy Board («*Bedrifts-demokratinemnda*») may decide, at the company's or the employees' request, that the employees of the company group shall be regarded as employees of the company.

The above-mentioned rules imply that employees usually are represented on the board of directors in companies with more than 30 employees, or in company groups with as many employees. In companies with a corporate assembly, the employees are also represented in that corporate body.

Once elected to the board or to the corporate assembly, the employee representatives are fully authorised members of the relevant corporate body and have the same rights, obligations and responsibilities as the other members. In this context, it is important to note that employee representatives, in the same way as other members of the board/corporate assembly, are obliged to consider the company's best interests rather than specific interests of the company's employees.

#### *Requirements of the board members – independence*

The principal task of the board members is to attend to the interests of the company and the shareholders as such. The board members are thus not representatives of individual shareholders (or groups of shareholders). On the contrary, the Public Companies Act requires that the board members, when acting in that capacity, represent the company and the shareholder community, which is also the prevailing opinion in practice. Neither individual board members nor the chair of the board have any individual authority outside the board.

The Public Limited Act does not set out specific requirements for the board of directors, including their independence, other than prohibiting a company's CEO from being a member

of the board of directors. However, the NCCG in general terms recommends that the composition of the board of directors should ensure that it *»...can attend to the common interest of all shareholders and meets the company's need for expertise, capacity and diversity«*, and that attention be given to ensuring that *»...the board can function effectively as a collegiate body«*.

More specific recommendations on the independence of the board members are presented in the subsequent paragraph of the NCCG, in which it is recommended that the *»...composition of the board of directors should ensure that it can operate independently of any special interests«*. To this end, it is recommended that the *»...majority of the shareholder-elected board members should be independent of the company's executive personnel and material business contracts«*, and that *»[at] least two of the members of the board elected by shareholders should be independent of the company's main shareholder(s)«*. With respect to the division between executive and non-executive board members, the NCCG recommends that neither the CEO nor any other person in an executive position should be a member of the board of directors. To the extent the board does include executive personnel, it is recommended that *»...the company should provide an explanation for this and implement consequential adjustments to the organisation of work of the board, including the use of board committees to help ensure more independent preparation of matters for discussion by the board...«*. The Norwegian companies legislation does not separate between executive and non-executive personnel as such. However, the board of directors of Norwegian companies may be regarded as *»non-executive«* in practice.

Further guidelines regarding when a member of the board of directors can be considered independent are provided in the commentaries to the NCCG in which it is explained that a board

member in general may be considered independent when he or she has no business, family or other relationships that might be assumed to affect his or her views and decisions. The commentaries elaborate by setting out the following points that should be considered when evaluating whether a member of the board is independent of the company's executive management or its main business connections.

- The individual has not been employed by the company (or group, where applicable) in a senior position at any time in the last five years;
- The individual does not receive any remuneration from the company other than the regular fee as a board member (does not apply to payments from a company pension);
- The individual does not have, or represent, business relationships with the company;
- The individual does not have any cross-relationships with executive personnel, other members of the board of directors or other shareholder-elected representatives;
- The individual has not at any time in the last three years been a partner or employee of the accounting firm that currently audits the company.

Norwegian listed companies show a high level of compliance and respect for the above recommendations regarding the board's composition and independence.

*The board members' dependency on, and responsibility to, the (main) shareholder(s)*

A fundamental principle is that, outside the general meeting, the shareholders/a majority shareholder is not authorised to instruct board members on matters to be dealt with by the board. It is only through the general meeting that the share-

holders are authorised to give instructions, and an instruction must in such case be directed to the board as a collegiate body and not to individual board members. This applies to the fullest extent also to board members who are appointed by or elected following a proposal from the main shareholder. Contact between the board members and the shareholders which is too close can constitute a violation of the principle of equality and can also expose the shareholders to liability for damages if the shareholders, through contact with the board/board member, contribute to a board resolution which causes the company or a third party to incur a loss.

On this basis, the discussion regarding the board members' responsibility towards the shareholders (and the main shareholder in particular) principally relates to the general meeting's control over the board's management of the company and the general meeting's opportunity to replace a board/board members in which the shareholders no longer have confidence (see page 220, *Generally*).

A more recent »trend« for shareholders to influence the management of a company outside the actual general meeting is to publish its expectations regarding the position of the company related to specified interests, e.g. such as social responsibility. This practice is, among other things, employed by the Norwegian Ministry of Trade, Industry and Fisheries (which publishes its ownership expectations in its annual document on ownership policies) and functions as a transparent and effective way of expressing general ownership expectations outside the formal route of providing specific instructions through the general meeting. This approach is generally viewed as a positive development in ownership behaviour as it appears predictable and transparent for both the board of directors and others. It is, however, important to note that such expressed ownership expectations must be generally presented

in order to distinguish them from actual instructions from the shareholders to the board of directors, which can only be given in the shareholders meeting.

### *Board committees*

The Public Companies Act requires that listed companies of a certain size appoint an audit committee to advise on and prepare certain matters for the board of directors. However, the members of the audit committee are elected by and among the board members so that board members who are in executive positions in the company cannot form part of the audit committee. In addition, it must be ensured that at least one of the members of the audit committee is independent of the company's operations and possesses qualifications from accounting or auditing.

Apart from the requirement of having an audit committee, the Public Companies Act neither requires nor prohibits the establishment of specialised board committees. However, it should be noted that, to the extent board committees are established, such committees cannot be granted authority to resolve upon matters which are to be dealt with by specified corporate bodies according to law. Thus, the principal responsibility for the duties being delegated to a board committee will always remain with the corporate body which, according to law, is responsible for the relevant task(s). Further, the responsibility of each board member, for example, always rests with the individual board member without regard to the fact that the board has structured its work by establishing board committees. The work being carried out by a board committee must therefore only be viewed as controlling or preparatory or advisory for the board's discussions.

The use of committees is recommended by the NCCG to supplement the corporate bodies established by law, e.g. a nomination committee (see NCCG section 7), an audit committee (see NCCG section 9 (4)) and a remuneration committee (see NCCG section 9 (5)).

In practice, there are divided opinions on the use of board committees. While some are of the opinion that the use of board committees is effective, others find it most effective if the full board participates in the discussions of all board matters.

### *Duties and responsibilities, business-judgment rule*

The board of directors has the principal responsibility for the management of the company and for supervising the company's day-to-day management and activities in general. The duties of the board of directors can generally be divided into three main groups; (i) to manage the company, (ii) to control the day-to-day operations of the company, and (iii) to keep the shareholders, creditors, employees, governmental bodies and others informed of the company's day-to-day operations. The CEO is principally in charge of executing the board's resolutions, running the company's operations and addressing external relations. Accordingly, the CEO usually represents the company externally in the media and other relations.

The rules regarding the board of directors' responsibility for the management of the company and its responsibility for supervising the company's activities are set out principally in sections 6-12 and 6-13 of the Public Companies Act. According to the Public Companies Act, companies in which some of the board members are elected by and among the employees, the board of directors shall adopt rules of procedure which lay down rules regarding the work and administrative procedures

of the board of directors. In practice, most Norwegian listed companies have prepared board instructions which lay down such rules of procedure for the board of directors.

The board's responsibility for the management of the company includes ensuring that the company's activities are soundly organised, drawing up plans and budgets for the activities of the company, staying informed of the company's financial position and ensuring that its activities, accounts and asset management are subject to adequate control.

### *The role of the chair of the board*

All Norwegian limited companies must have a chair of the board. The chair of the board is elected among the board members. If the general meeting has not appointed the chair, the board members shall themselves appoint a chair. In companies having a corporate assembly, the corporate assembly shall appoint the chair. The NCCG recommends that the chair be appointed by the general meeting to the extent the Public Companies Act (or other legislation) does not provide for another solution (as it does when it comes to companies with a corporate assembly).

The chair has certain formal duties towards the general meeting, e.g. that he or she is obliged to be present at the general meeting, and is normally in charge of opening the meeting. In connection therewith, the chair shall prepare a list of the shareholders present (or represented by proxy) and how many shares and votes each shareholder represents. It may also be necessary for the chair to resolve difficult questions regarding voting rights at the general meeting. To this end, the chair's list of shareholders and votes represented at the general meeting may have a determining influence for the result of the voting at

the general meeting. On this basis, the Public Companies Act provides for a right for shareholders representing 5 % of the share capital of a company to demand that the District Court appoint an independent person to open the general meeting.

The chair shall ensure that matters of »current interest« are presented to the board. This rule indirectly implies that the chair has a duty to keep himself or herself continuously up to date on material matters regarding the company. To this end, it is important that a good connection is established between the chair and the company's operative management and that routines are in place to ensure that relevant matters are presented to the board.

The Public Companies Act imposes certain formal duties on the chair, but does not grant the chair the authority to act independently of the board. However, in practice, the chair will play an important role as a result of having close contact with the company's management. With respect to this contact, it is important to note that the chair should not become too deeply involved in the day-to-day management of the company or in the preparation of matters for the board. It is important that the chair bases his or her decision on the board's discussions and not on the chair's prior contact with management.

### *Board evaluation*

It is common practice to carry out an annual evaluation of the work of the board of directors and this is also recommended by the NCCG which stipulates that the board of directors should »...evaluate its performance and expertise annually«. The evaluation should include an evaluation of the composition of the board and the manner in which its members function. The commentaries to the NCCG assume that such evaluation will be

more comprehensive if it is not intended for publication. However, the evaluation should be made available to the nomination committee and form part of the basis for the nomination committee's work and evaluations. It is also recommended in the NCCG that the board of directors consider using an external person to facilitate the evaluation of its work. The actual use of external evaluators varies to some extent in practice.

## Corporate assembly

A special feature of the Norwegian governance model is the obligation to appoint a corporate assembly in companies with more than 200 employees. The corporate assembly shall, as a rule, consist of 12 members or a higher number divisible by three, of which two thirds of the members of the corporate assembly shall be elected by the general meeting, while the remaining third is elected by and among the company's employees.

The principal tasks of the corporate assembly consist of board elections and, following a recommendation from the board of directors, to resolve on matters regarding significant investments in relation to the company's resources, and any rationalisation or alteration of the company's operations which may cause extensive changes or a re-allocation of the company's work force.

One could argue that the existence of a corporate assembly with such powers challenges the main principle of the shareholders exercising the highest authority in the company. However, given that two thirds of the corporate assembly is elected by the general meeting, the corporate assembly does not affect the authority of the general meeting as such. The general meet-

ing, i.e. the major shareholder(s), may at any time and without reason replace the elected members of the corporate assembly.

The Public Companies Act allows the company and a majority of the employees or unions comprising two thirds of the employees to enter into agreements to not establish a corporate assembly. It is common practice to enter into such agreements. A consequence of these agreements is that the employees instead have extended rights and obligations to be represented on the board of directors by direct elections.

## The statutory auditor

### *Brief overview: appointment, dismissal, duties and responsibilities*

All public limited companies are required to appoint an auditor who is registered and authorised to act as auditor. The auditor is elected by the general meeting as its trusted representative and serves as auditor until replaced by another auditor.

The primary task of the auditor is broadly to verify that the company's annual report is in accordance with applicable legislation. The auditor shall also ensure that the company has seen to the satisfactory management of its assets and that proper controls are in place.

According to the Auditors Act, the auditor shall have at least one annual meeting with the board of directors without the CEO being present. In listed companies, the auditor shall be in contact with the audit committee and, among other things, give the committee a description of the main elements of the audit.

The audit is an important part of the shareholders' monitoring of the board of directors' management of the company.

The auditor shall present a report concerning the audit to the general meeting. In the event the auditor finds circumstances which may give rise to liability on the part of a member of the board of directors, a member of the corporate assembly or the CEO, this must be noted in the audit report.

The auditor shall attend the general meeting when the matters to be dealt with are of such character that the auditor's attendance is deemed necessary. Otherwise, the auditor has, according to law, a right (but no obligation) to be present at the general meeting. However, it should be noted that the commentaries to the NCCG (regarding general meetings) go beyond the law on this point and recommend that the auditor attend all general meetings of the company.

## The executive management

### *Structure of the executive management: single CEO or management board*

All Norwegian public limited companies must have one or several CEOs. In practice, Norwegian listed companies have only one CEO.

### *Appointment and removal*

The CEO is as a rule appointed by the board of directors. The Public Companies Act allows the general meeting or the corporate assembly to appoint the CEO, but this is not commonly done in listed companies. The trust and close relationship that must exist between the board of directors and the CEO (as a result of the CEO being the trusted subordinate of the board

and in charge of executing its resolutions) make the appointment of the CEO an essential board assignment which is not suitably exercised by other corporate bodies in the company.

With respect to the removal of the CEO, the rule is that the same corporate body which can appoint the CEO (i.e. normally the board of directors) may also remove him or her from the position. It is usual in listed companies to enter into an agreement with the CEO which allows the board to remove the CEO at any time without cause.

### *Duties and responsibilities*

The CEO is in charge of the day-to-day operations of the company. The authority of the CEO is generally limited with respect to cases which, based on the company's situation, or of an unusual nature or major importance. The CEO is subordinate and reports to the board of directors while the board, in turn, has a duty to supervise the CEO. As result of being a superior corporate body, the board of directors may also instruct the CEO on the day-to-day operations of the company.

It is the responsibility of the CEO to appoint other administrative employees, including the company's management. However, in practise, the CEO is likely to discuss management appointments with the board or the chair so that the board can intervene if it disagrees with the appointment.

## Remuneration

### *The board of directors*

Except in cases in which the company has a corporate assembly, the remuneration to the board members shall be determined by the general meeting. The Public Companies Act does not contain rules or guidelines with respect to the size of the remuneration to the board members, but further guidelines are provided in the NCCG which states that the *»...remuneration of the board of directors should reflect the board's responsibility, expertise, time commitment and the complexity of the company's activities«* and that the *»remuneration ... should not be linked to the company's performance«*. The NCCG also states that share options should not be granted to board members. The level of the remuneration paid to board members in Norwegian companies varies in practice, but has historically been generally low compared to other countries.

### *The CEO*

The remuneration to the CEO is determined by the board of directors. To this end, the board of directors produces a statement including guidelines regarding the determination of the salary and other remuneration to the company's executive personnel, including the CEO, for the next financial year. This statement is subject to the consideration of the annual general meeting each year.

The guidelines set out in the statement from the board of directors are, as a rule, not binding upon the company unless this is stated in the company's articles of association. However, as regards the guidelines for remunerations in the form of

shares, subscription rights, options and other forms of remuneration connected to the company or company group's shares or share price, the guidelines must be approved by the general meeting and are then binding upon the board of directors. In practice, this means that the board of directors cannot enter into binding agreements on »share-based« remuneration to executive personnel, including the CEO, before the statement on remuneration to the company's executive personnel has been approved by the company's general meeting.

## Minority protection

### *Generally. Limitations on the majority shareholder's influence*

The Public Companies Act has several provisions which balance the majority principle (i.e. that the shareholder (or group of shareholders) controlling the majority of votes at the general meeting controls the company) against the interests of the minority shareholders. Such provisions are jointly referred to as the minority-protection provisions and constitute an important set of rules which reflect the fundamental principle of equality in Norwegian company legislation.

The minority-protection rules consist of provisions of various nature, such as general provisions concerning, among other things, abuse of authority, conflict of interests and related-party transactions, as well as provisions regarding majority requirements and procedural requirements for certain resolutions made by the general meeting.

### *The general provisions against abuse of authority*

The main material limitation on the majority's authority over the other shareholders is set out in a general anti-abuse provision, i.e. section 5-21 of the Public Companies Act. This provision prohibits the general meeting from adopting any resolution which may provide certain shareholders with an unreasonable advantage at the expense of the other shareholders or the company. The anti-abuse provision is particularly relevant in areas in which the Public Companies Act does not provide specific rules to protect specific interests of the minority shareholders.

For listed companies, the anti-abuse provision in the Public Companies Act is coupled with a provision on equal treatment in the Securities Trading Act and in the Continuing Obligations of the Oslo Stock Exchange. The latter indicates that any material breach can be sanctioned by a fine imposed by the Oslo Stock Exchange or the Stock Exchange Appeal Board.

Section 5-21 of the Public Companies Act, which limits the influence of the majority shareholder, can be viewed in connection with section 6-28 of the Public Companies Act, which prohibits the board of directors, the CEO and others representing the company from misusing their position to give shareholders or others an unreasonable advantage at the company's expense. This provision also prohibits the board of directors and the CEO from effecting resolutions made by other corporate bodies which violate mandatory laws or the company's articles of association. The provision also applies to the corporate assembly.

## *Majority requirements at the general meeting*

### *Simple majority*

A fundamental principle (with important exceptions) is that resolutions adopted by the general meeting are reached by simple majority of the votes cast (i.e. more than 50%). If a proposal receives an equal number of votes, the rule is that the vote of the chair of the general meeting is decisive. However, at elections or hirings, the person who receives most votes is deemed elected. If two candidates receive an equal number of votes, the election shall be determined by drawing lots.

The practical implication of the majority principle is that the majority shareholder or majority shareholders are assured control over the board of directors and thereby the management of the company.

### *Qualified majority*

Exemptions from the rule regarding simple majority are made with respect to certain matters, e.g. in cases regarding amendments to the articles of association. This means that a qualified majority of at least two thirds of both the votes cast and the share capital represented at the shareholders' meeting must vote in favour of the proposed resolution. A minority of a third or more of the shares represented at the shareholders' meeting can thus block a proposal to amend the articles of association of the company. Such qualified majority is also required with respect to resolutions to increase and reduce the share capital, mergers, demergers, dissolution and winding-up of the company, as well as for resolutions to waive the shareholders' preemptive rights to subscribe for shares in a share capital increase (private placements).

Certain amendments to the articles of association require an even greater majority from the general meeting. This applies to proposals to implement a consent requirement for share transfers, pre-emption rights, requirements as to the qualifications of the shareholders of the company and limitations to the shares' economic rights. This entails, among other things, that restrictions on the shares' negotiability must be subject to substantial consensus by the general meeting. The NCCG is stricter than the Public Companies Act in this respect and recommends that the company's articles of association be free from any form of restriction on the negotiability of the shares.

In order to provide the minority shareholders with special protection against certain resolutions, the Public Companies Act expressly requires that the following resolutions be supported by all shareholders or all shareholders who are affected by the resolution:

- Increasing the shareholders' obligations to the company;
- Limitations on the transferability of the company's shares in ways other than by consent requirements, pre-emptive rights or qualification requirements;
- That shares shall be subject to forced redemption;
- That the legal position of previously equal shares is changed;
- That the shareholders' right to dividends or to the company's assets is reduced by a resolution that the company's objective shall not be to achieve economic profit for the shareholders.

### *Quorum requirements*

Unlike the other corporate bodies, the Public Companies Act does not establish »quorum requirements« as such for the general meeting, i.e. rules making the authority of the general

meeting dependent on a certain number of shareholders being present. Such requirements can, however, be established in the company's articles of association, but in practice this is never implemented in Norwegian listed companies.

### *Conflicts of interest and related-party transactions*

#### *Conflicts of interest*

At the general meeting, a shareholder cannot vote in matters concerning legal actions against himself/herself or concerning his or her obligations to the company. A shareholder cannot vote in matters concerning legal actions brought against other parties or such parties' liability to the company if such shareholder has a material interest in the matter which may be in conflict with the interest of the company.

A board member cannot participate in discussing or resolving matters which are of special importance to such board member or any person related to the board member. This applies to the extent the board member is deemed to have a major personal or financial special interest in the matter. This also applies in respect of the CEO.

The provision on conflicts of interests covers, among other things, matters regarding whether the company shall enter into a contract to which a board member is a party and matters regarding compensation for the board member's own work. It also encompasses situations in which a party entering into a potential contract with the company is a company in which a board member has an economic interest.

### *Related-party transactions*

As a starting point, the Public Companies Act does not prevent transactions between the company and its shareholders. However, such transactions raise specific concerns due to the risk of misusing a dominant position to transfer funds from the company to one or more shareholders by disguising the transactions as business agreements. In particular, transactions with related parties raise concerns with respect to preserving the principle of equality and the protection of minority shareholders, given that these transactions open up the possibility of obtaining advantages at the company and minority shareholders' expense. On this basis, the Public Companies Act contains several provisions regarding both material and procedural requirements with respect to certain resolutions and/or agreements with related parties.

A fundamental principle is that agreements between the company and its shareholders should be on market terms («arm's-length principle»). The provision stipulates that transactions between companies in the same group shall be on market terms, and that any material agreement between such parties shall be made in writing. Further, the provision stipulates that costs, losses, income and gains which cannot be attributed to a specific group company must be divided between the group companies in accordance with sound business practice.

On the procedural side, there are several provisions requiring that certain resolutions and/or agreements entered into by the company must be presented to, and approved by, the general meeting in order to be valid and binding upon the company. By establishing such requirements, the shareholders are assured access and influence on specified matters which as such are deemed to be of importance for preserving the interests of the shareholders as a whole. One important procedural provi-

sion is set out in section 3–8 of the Public Companies Act. This provision requires that agreements between the company and its shareholders (as well as board members and CEO) shall be entered into on market terms. By establishing strict procedural requirements for such types of agreements, the legislature has endeavoured to prevent hidden value transfers from the company to its shareholders (and to the majority shareholder in particular), disguised as business agreements.

### *Other minority rights*

#### *Rights of a minority of a certain size*

A shareholder who alone or together with other shareholders reaches a certain ownership level, may enjoy more extensive shareholder rights than those granted to an individual share. One minority right is the right to demand that an extraordinary general meeting be held. This right may be exercised by shareholders holding more than one twentieth of the share capital of the company. There are no requirements as to the nature of the matters to be addressed following such request other than that the demand must specify a »certain matter«.

If a proposal to investigate the company's »establishment, management or certain specified matters regarding the management or the accounts« is supported by at least 10 % of the share capital represented at the general meeting, any shareholder may request that the District Court initiate an investigation of the company.

Shareholders who own at least one twentieth of the share capital may request that the District Court set a dividend which is higher than that set by the general meeting. The Court shall consider whether the dividends that have been resolved are unreasonably low »*taking into consideration the shareholders,*

*the company's liquidity and its affairs in general*«. The minority shareholders can thus object to being »starved out« of the company by a dominant shareholder keeping the dividend distributions »unreasonably low«.

Some guidance as to what may be deemed as »unreasonably low« dividend distributions can be found in section 3 (1) of the NCCG which stipulates that the company should have »... *equity capital at a level appropriate to its objectives, strategy and risk profile*«. According to the commentaries to this provision, an assumption must be made that if a company retains capital which is over and above the amount needed to keep the company's equity at a level appropriate to the company's objectives, strategy and risk profile, there must be a justification why such surplus is not distributed to the shareholders through dividend payments.

### *Individual shareholder rights*

The individual shareholder rights comprise, most importantly, economic rights in the form of a right to a pro rata share of the dividend distributions from the company (to the extent such rights have not been reduced or eliminated in the company's articles of association). In addition, all shares enjoy certain organisational rights that are immune from being reduced or eliminated through the articles of association. For instance, all shareholders have, without regard to the size of their shareholding, an unconditional right to be present (either personally or by proxy) at the company's general meetings. It is thus sufficient to have one share in order to gain access to the general meeting and the information provided to the shareholders in connection therewith. In addition, all shareholders have a right to have specified matters addressed by the general meeting. Such right is exercised by the shareholder(s) sending a notice

to the company's board of directors no later than one week prior to the deadline for convening the general meeting (see page 186, *Agenda for the general meeting and right to propose matters for discussion*).

The Public Companies Act also provides each shareholder with a right to information. To this end, each shareholder has a right to receive the annual accounts, the board's statement and the auditors' statement and the statement from the corporate assembly. At the general meeting, each shareholder can also demand information regarding circumstances that may be significant for the approval of the annual accounts and the annual report, matters which are presented to the general meeting and the company's economic situation. The shareholders' right to information is far-reaching and can only be denied to the extent the information demanded cannot be provided without disproportionate harm to the company. An unconditional right to information about the company and its operations is provided to shareholders representing the majority of the votes at the general meeting.

*Legal proceedings against a resolution  
adopted by the general meeting*

A shareholder who believes that a resolution adopted by the general meeting has been adopted illegally or is not in accordance with mandatory law or the company's articles of association, can take legal action to have the resolution rendered void.

## A P P E N D I X D

# CORPORATE GOVERNANCE IN SWEDEN

Rolf Skog & Erik Sjöman\*

### The context

In Sweden, there are at present some 450,000 limited liability companies (*aktiebolag* or »AB«). The Swedish Companies Act (2005) divides limited companies into two categories: private companies and public companies. There are around 1,000 public companies. Public companies, but not private companies, may turn to the general public to raise capital.

There are at present<sup>1</sup> 265 Swedish public companies whose shares are traded on Swedish regulated markets (i.e., the main markets of Nasdaq Stockholm and Nordic Growth Market NGM). Such companies, which are the subject of this report,

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1. The statistical data in this report typically are as of January 2014 or as close as possible to that date.

are hereinafter referred to as listed companies. Approximately 90 % of the Nasdaq Stockholm companies' total market capitalisation is attributable to less than 60 large-cap companies, whereas the mid-cap and small-cap companies account for the remaining 10 %. There are also some 240 companies, most of them small, whose shares are traded on multilateral trading facilities (MTFs) such as Nasdaq First North, Nordic MTF and AktieTorget. These companies and the listed companies are sometimes jointly referred to as publicly traded companies. This report, however, deals only with the listed companies.

From a historical perspective, private owners have dominated the ownership of Swedish listed companies. In the early 1950s, nearly 75 % of the market capitalisation of the Stockholm Stock Exchange (now Nasdaq Stockholm) was directly held by individual investors. The remaining 25 % or so was owned in part by family-controlled foundations, holding companies and (closed end) investment companies, and in part by listed companies themselves, which had significant holdings in other companies. Institutional portfolio investors were practically non-existent at the time.

Two decades later, in the mid-1970s, direct holdings by individual investors had declined to around 50 % of the market's capitalisation, and by the mid-1980s it had dropped to 25 %. Today, less than 15 % of the total market capitalisation of the Nasdaq Stockholm market is attributable to direct shareholdings by individuals. Institutional investors account for more than 85 %.

The reasons behind the institutionalisation of shareholder structures are well known. Due to, among other things, changes in savings, pension and tax legislation, capital accumulation has been collectivised and increasingly channelled through institutional investors. These institutions, in turn, have invested more of their assets in the stock market. Over a number of

years, pension funds, insurance companies, mutual funds and other institutional portfolio investors have been net buyers of shares, while individuals have been net sellers. Moreover, institutions have been over-represented in new share issues, whereas individuals have been correspondingly underrepresented.

Importantly, despite this institutionalisation of the ownership structure, a majority of the listed companies still have a single or limited number of major shareholders. Recent data show that approximately two thirds of Swedish listed companies had one shareholder holding at least a 20 per cent of the total number of votes in the company. Further, in more than one sixth of the listed companies, the blockholder had a majority holding of at least 50% of the votes. These large shareholders typically play an active ownership role and take particular responsibility for the governance of the company, including, importantly, through taking seats on the board. This, of course, is an entirely different landscape compared to the United Kingdom and the United States. It is also worth noting that Swedish institutional investors are reasonably active in the governance of the companies in which they have significant investments, typically not through taking seats on the boards but through active involvement in nomination committees and participation at general meetings, etc. Swedish institutions are also often actively engaged in rule-making in corporate governance matters. They are, for example, represented on the Swedish Corporate Governance Board as well in the Swedish Securities Council. They also commonly publish ownership policies and similar policy documents.

The structure of ownership is fully transparent. All companies must maintain a register of their shares and shareholders. Share registers are maintained by a central securities depository, the only Swedish one being Euroclear Sweden. The register is public (with the exception only of insignificant holdings), so

that anyone can gain access to information on the ownership structure of a certain company.

The percentage of *foreign* ownership in Swedish listed companies was small up until the mid-1990s, when Sweden joined the EU and abolished all restrictions on acquisitions of shares in Swedish companies. Today more than 40% of the total capitalisation of Swedish listed shares is attributable to foreign ownership. Not surprisingly, the main reason for the increase in foreign ownership of Swedish listed shares is that foreign institutional investors with global portfolios have adjusted their holdings to include Swedish equities. Similarly, due to more liberal investment regulations, Swedish institutions have reduced the portion of Swedish shares in their portfolios during the same period.

Takeover bids for listed companies are common on the Swedish market.

## The regulatory framework

Corporate governance in Swedish listed companies is regulated by a combination of written rules and generally accepted practice. The framework includes the Companies Act (2005), the Swedish Corporate Governance Code (2005, amended in 2010) and the rules of the market places on which shares are admitted to trading, as well as statements by the Swedish Securities Council on best practices in the Swedish securities market. Finally, for companies becoming the object of a takeover bid, key provisions are included in the Takeovers Act (2006) and the Swedish Takeover Code.

The Companies Act applies to both private and public companies, unless otherwise expressly stated in specific provisions.

In some instances, there are certain provisions of the Act that only apply to listed companies. These rules, many of which emanate from EU directives, are typically stricter than those applicable to non-listed companies. The Companies Act contains general rules regarding the governance of the company. The Act specifies which governance bodies must exist in a company, the tasks of each body and the responsibilities of the people in each of these positions.

The Corporate Governance Code covers many issues not covered by the Companies Act. Furthermore, the Code complements the Act by placing more stringent demands on listed companies in certain respects, while simultaneously allowing them to deviate from rules in individual cases; the ‘comply-or-explain’ principle. The Code applies to all Swedish companies with shares traded on a regulated market in Sweden. At present, these markets are the main markets of Nasdaq Stockholm and Nordic Growth Market NGM.

The Corporate Governance Code is administered by the Swedish Corporate Governance Board, one of three self-regulating bodies within the Swedish Association for Best Practices in the Securities Market. This non-profit association, the principals of which are nine major, business-sector associations, organises the self-regulation on the Swedish securities market. The other two self-regulating bodies are the Swedish Securities Council and the Swedish Financial Reporting Board.

The Code has received general acceptance on the Swedish market and the experiences have so far been positive. The listed companies obliged to apply the Code generally do so and demonstrate an ambitious attitude towards complying with it. The majority of companies report none or only minor deviations from the Code.

## Basic structure of the governance system

As described above, the Swedish stock market is historically characterised by long-term engaged controlling shareholders typically willing to invest the time and money necessary to govern their companies for the benefit of themselves as well as of the minority shareholders. The Swedish corporate-governance model generally recognises the importance and value of long-term engaged controlling shareholders and provides a regulatory environment where such shareholders are able to build and maintain their stakes and exercise the corresponding governance rights. At the same time, importantly, the Swedish model is neutral towards the actual ownership structures of the individual companies. The model does not prevent or discourage companies with more dispersed shareholder structures and the model works flexibly and well in such contexts as well. Indeed, as pointed out above, more than 85 % of the total market capitalisation of the Nasdaq Stockholm market is attributable to institutional investors.

The Swedish corporate governance model is based on a clear and simple hierarchical governance structure relying on (i) the supremacy of the shareholders' meeting (the general meeting), (ii) a board of directors nominated and appointed by the shareholders on which the majority of directors may well be, and not uncommonly are, appointees of controlling shareholders, and (iii) a one-person, day-to-day executive management function appointed by the board of directors. The board is made up exclusively of non-executive directors, with the possible exception of one person from the executive management, usually the CEO.

Thus, the Companies Act stipulates that companies must have three decision-making bodies in a strict hierarchical relationship to one another: the general meeting, the board of

directors and the CEO. There must also be a controlling body, the statutory auditor, appointed by the general meeting.

The right of dominant shareholders to actually exercise control over a company is coupled with strong minority protection. The Companies Act is designed to prevent dominant shareholders from unduly extracting private benefits from the company. This is achieved, among other things, through qualified majority requirements for certain types of resolutions and through a strict prohibition on the general meeting and the board taking any action which would give a shareholder or anyone else an undue advantage to the disadvantage of the company or any other shareholder.

As already mentioned, the shareholdings of institutional investors have increased significantly during the last few decades. Since the aim of institutional investors is not to engage in the long-term management of a company in which it holds shares, some critics claim that institutional investors do not exercise their voting rights and do not act in the long-term interests of the company but, rather, focus on short-term share price increases. This notwithstanding, Swedish law does not impose any corporate governance *obligations* on shareholders (institutional or others), thus granting absolute discretion to the shareholders whether to exercise their voting rights or not. The issue of passive shareholding has to some extent been addressed in the Corporate Governance Code, which contains several provisions aimed at creating favourable conditions for active and responsible shareholding. There are, however, no generally applicable rules comparable to the UK Stewardship Code and, as mentioned above, the community of Swedish institutional investors is, in any event, typically more active and engaged in corporate governance matters than in some other markets.

From a structural point of view, corporate governance of

Swedish listed companies can be described as a third alternative to, on the one hand, the so-called unitary-board system (one-tier), predominantly used in the United States and the United Kingdom and other countries with an Anglo-American legal tradition and, on the other hand, the dual-board system (two-tier), used in many Continental European countries. Compared with those, the Swedish Companies Act provides for a unitary-board system but with non-executive boards and the executive duties statutorily delegated to a separate, one-person, CEO function. As already mentioned, the main governance bodies – the general meeting, the board and the CEO – make up a strictly hierarchical chain of command in which each body is fully subordinate to the next higher body.

## The general meeting

As described above, the Swedish corporate governance model is based on a hierarchical structure relying on the supremacy of the general meeting. Thus, the general meeting is the company's highest decision-making body and the key forum for the exertion of shareholder influence. The general meeting may decide on any issue which does not expressly fall within the exclusive competence of another corporate body. In other words, the general meeting has a sovereign role over the board of directors and the CEO.

The general meeting decides, among other things, on the election and dismissal of individual directors of the board as well as on their remuneration. The general meeting also appoints the company's statutory auditor.

The general rule under the Companies Act is that all shares confer the same right in the company. However, the articles of

association may provide that shares of different classes with different rights in the company may be issued. This means that a Swedish company can, for example, issue shares of different classes that are distinguished by their voting power. However, the maximum voting ratio between high vote and low vote shares may not exceed 1:10. The system of dual-class common stock is widely used among Swedish listed companies. In the beginning of the 1990's, around 85 % of these companies had multiple classes of shares carrying different voting rights whereas, today, slightly more than half of the listed companies apply this system. Almost without exception, the voting ratio is 1:10. Shares without voting rights cannot be issued.

Although there is an increasing use of equipment for electronic voting and counting of votes, resolutions at general meetings are still typically adopted through acclamation. A single shareholder may call for vote counting, but even in such situations, unless an electronic voting facility is used, votes are usually only counted to the extent necessary to reach the majority requirement for the resolution concerned, in most cases more than 50 %. This means that, for most resolutions at Swedish general meetings, there is no information about the total number of affirmative, negative and abstained votes cast.

As a general rule, resolutions at general meetings are adopted by simple majority vote and no special quorum requirements apply. However, certain resolutions require a qualified majority. As already discussed, the right of dominant shareholders to actually exercise control, potentially by way of shares with multiple voting rights, is coupled with strong minority-protection rules. The requirement of qualified majority for certain types of important resolutions – where, importantly, shares with multiple voting rights typically are counted without regard for their multiple votes – is an important part of this protection. Such qualified-majority requirements (typi-

cally, two-thirds of the votes cast and the shares represented at the general meeting, but in some instances even more) apply, for example, to amendments to the articles of association or directed issuances of shares or other equity securities. Equally important is the prohibition on the general meeting and the board taking any action which would give a shareholder or anyone else an undue advantage to the disadvantage of the company or any other shareholder.

Due to conflict of interest, a shareholder may not, in person or through a proxy, vote in respect of (i) legal proceedings against him or her, (ii) his or her discharge from liability in damages or other obligations towards the company, or (iii) legal proceedings or a discharge as referred to in points (i) and (ii) in respect of another person, where the shareholder in question possesses a material interest which may conflict with the interests of the company.

Each shareholder has the right to participate in the general meeting and to vote the shares owned. Shareholders who are not able to attend in person may exercise their rights by proxy. As a general rule, proxy solicitation by the company is not permitted. However, a company's articles of association may allow the company to distribute proxy forms to the shareholders, where the shareholder may indicate its voting instructions (Yes/No) regarding the various items on the agenda which are then executed by the proxy stated in the form. However, this possibility is rarely used.

Generally speaking, the rights of the individual shareholder are relatively far-reaching in Sweden. Thus, for example, a single share suffices for the right to have items included in the agenda of general meetings (provided that the request is submitted in due time to be included in the notice of the meeting), to file counter-proposals at the meeting and to pose questions to the board and management, to which they must duly

respond. Most of the provisions of the EU Shareholder Rights Directive (2007) were a part of the Swedish system long before the Directive. In addition, minorities of certain size (typically, 10 % of all shares) are afforded particular rights, such as the right to have a special examiner appointed to review certain aspects of the company's actions.

A company is required to hold one annual general meeting. In addition, extraordinary general meetings may be convened at any time by the board, including (mandatorily) upon written request by the company's statutory auditor or a minority of shareholders together holding at least 10 % of the shares. At the annual general meeting, the shareholders must, among other things, resolve upon the adoption of the annual accounts and the allocation of profits and losses, appoint board members and an auditor, and decide on fees for the board members and the auditor. The meeting must also resolve on any other matter duly included on the agenda. A special Swedish feature is the obligation of the annual general meeting also to resolve upon discharge from liability for the board members and the CEO. Such discharge relates to each person individually to the effect, very briefly, that the management of the company is approved and that no claims for damages, except in certain special circumstances, may be brought against the individual.

In practice, at the annual general meetings of Swedish listed companies typically all major shareholders and most domestic institutional investors participate, while foreign investors are typically represented by proxies.

In addition to agenda items required by law or the company's articles of association, the annual general meetings of listed companies normally include a speech by the CEO, followed by a Q & A session where shareholders can ask questions about the company's affairs. These sessions are used by, for example, private individual shareholders, the Swedish Small Sharehold-

ers Association, and Swedish as well as foreign institutional investors to ask questions and express views on the management of the company, leading sometimes to quite lengthy discussions. Resolutions on executive remuneration, including incentive plans, are also taking up an increasing part of annual general meetings.

## The board of directors

### *Duties and responsibilities*

As already mentioned, the Companies Act stipulates that companies must have three decision-making bodies in a hierarchical relationship to one another: the general meeting, the board of directors and the CEO. The board is responsible for the company's organisation and the management of the company's affairs. The extensive decision-making authority assigned by the law to the board of directors is primarily limited by the legal provisions giving the general meeting exclusive decision-making powers on certain matters – for example, amendments to the articles of association, election of board members and auditors and the adoption of the balance sheet and income statement – and by the board's general obligation to comply with any specific directives passed by the general meeting (provided that they are not illegal). A board member owes his or her duties to the company as a whole (i.e., to all shareholders) and not to any particular shareholder with whom he or she may have close ties.

The board's obligation to ensure that the company's organisation is appropriate entails, among other things, having in place sensible administrative procedures and routines and a good choice of employees. The board's responsibility for the

management of the company's affairs includes a responsibility for, in principle, all duties where the general meeting is not the exclusive decision-maker. This includes, of course, making long-term strategic decisions regarding the company's future policy and focus.

Furthermore, the board must ensure that the company's organisation is structured so that accounting, management of funds and the company's finances in general are monitored in a satisfactory manner. By virtue of this provision, emphasis is placed on the board's responsibility for the company's organisation in light of the economic issues of significance for the company. Depending on the structure of the organisation, the need for control may, however, vary from company to company. Naturally, it is up to the board of directors to ensure that the company's control functions are structured in a manner which meets the needs in the individual case.

Further, the board is required to ensure that the company has adequate internal controls and formalised routines to ensure that approved principles for financial reporting and internal controls are applied, and that the company's financial reports are prepared in accordance with legislation, applicable accounting standards and other requirements for listed companies.

The board must appoint a CEO who will be in charge of the day-to-day management of the company. To maintain a clear hierarchical governance structure, the board is required to clarify the allocation of work between the board and the CEO through written instructions.

The Companies Act does not, in principle, contain any substantive provisions concerning a company's business operations or how the board is to conduct the company's business, except for the obligation to pursue a profit and comply with the provisions of the articles of association. In addition, there

are no specific provisions on corporate social responsibility in Swedish corporate legislation. Nevertheless, specific legislation in other segments together form a comprehensive network for the protection of external stakeholders and society at large – for example, employment law, work environmental law, environmental law, competition law, marketing law, tax law, etc. – with which a company must comply.

### *Appointment and removal; nomination committees*

The principal rule of the Companies Act is that the board of directors is appointed by the general meeting.

Board members are elected by plurality vote, i.e. the person who has received the largest number of votes is elected. There is no requirement that the winner gain an absolute majority of votes.

While the Companies Act explicitly regulates the election of board members, it is silent on the process of nominating the candidates for board positions. This is, on the other hand, probably the most well developed and important aspect of the Corporate Governance Code.

In general terms the Code states that the general meeting's decisions on election and remuneration of the board of directors (and auditor) are to be prepared in a structured, clearly stated process governed by the shareholders, ensuring well-informed decision making. Hence, listed companies are to have a nomination committee, the task of which is to propose candidates for the post of chair and other members of the board, as well as fees and other remuneration to each member of the board. The nomination committee is also required to make proposals on the election and remuneration of the statutory auditor.

The nomination committee must consist of at least three members, one of whom is to be appointed committee chair. The majority of the members of the nomination committee are to be independent of the company and its executive management. Neither the CEO nor other members of the executive management may be members of the nomination committee. Typically, representatives of the 3–5 largest shareholders in the company are appointed members of the committee. However, at least one member of the committee must be independent of the company's largest shareholder or group of shareholders that act in concert in the governance of the company.

Members of the board of directors may be members of the nomination committee but may not constitute a majority thereof. Typically, only one (usually the chair of the board) is a member of the nomination committee. Neither the chair of the board nor any other member of the board may be the chair of the nomination committee.

The nomination committee is required to submit a proposal to the annual general meeting regarding the size of the board and nominates a corresponding number of candidates for election for a one-year term. Any shareholder may (at or prior to the meeting) propose additional candidates for consideration or suggest an alternative board size, but this is rare in practice. Where the board size and the number of candidates are identical, which is usually the case in practice, a single vote in favour is sufficient to elect a candidate to the board. Technically each director is elected individually, although it may in such situations appear to some observers as if the proposal were a bundled resolution.

A board member's term of office is one year, unless otherwise prescribed in the articles of association.

A board member is always entitled to resign early. He or she does so by giving notice of resignation to the board of direc-

tors. No reason needs to be stated for the resignation.

A board member elected by the general meeting may also be removed from his or her appointment at any time by the general meeting. This is due to the fact that an appointment as board member is strongly based on trust. If the shareholders no longer have confidence in one or more board members, an extraordinary general meeting can be held at any time in order to resolve on termination of the appointment of the member concerned. The dismissal can take place immediately and without cause and the dismissed member is not entitled to pursue any claim for compensation. Under Swedish rules, there can be no US-style staggered boards.

Regarding remuneration of directors, see below.

### *Size and composition*

The board of directors of a public company must comprise at least three members. Legal persons may not be board members.

The board may also include employee representatives, either voluntarily through a resolution by the general meeting or pursuant to mandatory provisions contained in the Board Representation (Private Employees) Act.

Among the listed companies, the average number of board members (excluding employee representatives) is 6.5 members. Dividing the companies into different categories according to size shows that there is a positive correlation between size and the number of board members. Among large-, mid- and small-cap companies, the average is 8.3, 6.6 and 5.8 members, respectively.

With the exception of general principles for board composition set out in the Corporate Governance Code and certain formal requirements contained in the Companies Act – for

example, that a legal person, child, undischarged bankrupt or a person who is subject to an injunction against trading must not be a board member – there are no explicit rules in the Companies Act or in the Code governing the composition of the board or the qualifications to be possessed by its members. In line with the hierarchical governance model, the choice of board members is left to the discretion of the shareholders at the general meeting.

According to the Corporate Governance Code, the board must have a size and composition that enables it to manage the company's affairs efficiently and with integrity. The composition must be appropriate to the company's operations, phase of development and other relevant circumstances. According to the Code, the board members elected by the general meeting are collectively to exhibit diversity and breadth of qualifications, experience and background.

During the last couple of years gender distribution on the board has been a recurring theme in the Swedish public debate. Proposals have been put forward for legislation but so far the Government has resisted any form of legislative intervention and left the matter to the business sector to regulate internally. According to the Corporate Governance Code, companies are to 'strive for equal gender distribution on the board'. Currently, women hold around 24 % of all board positions in listed companies. Although this is a substantial increase from about 6 % ten years ago, the development has stagnated in the last few years and the issue is a matter of continued heated debate.

The average age of board members in the listed companies is 57 years, with little differences between companies of different size. 10 % of the board members are 70 years old or more.

The composition of the boards also reflects the continued internationalisation of Swedish business and the increased foreign ownership of Swedish listed shares. Some 15 % of the

board positions are held by foreigners and, in 22 companies, half or more of the board members are foreigners.

As also mentioned elsewhere in this report, an important aspect of the Swedish corporate governance model is a strict division of duties and responsibilities between the board and the executive management. This is manifested in two important ways. The *first* is that according to long-standing practice, today codified in the Corporate Governance Code, not more than one person from the company's executive management may be a board member. To the extent this possibility is used at all, which is the case in about 36 % of the companies, this position is usually taken up by the CEO, who is in any event entitled to participate in board meetings. Hence, for all practical purposes, Swedish boards are non-executive. The *second* is the requirement, as set out in the Companies Act, that the allocation of duties between the board and the CEO is to be clarified through written instructions.

There are no provisions in the Companies Act concerning independence of directors, with the exception that in a public company the CEO may not be chair of the board and a special requirement regarding the composition of audit committees. However, the concept plays an important role in the Corporate Governance Code, although the definition differs from that applied in most countries outside the Nordic region. A distinction is made between, on the one hand, independence in relation to *the company and its executive management* and, on the other hand, independence in relation to *the company's major shareholders* (defined as owners of more than 10 % of the shares or votes of the company). Based on this distinction, the Code prescribes that the majority of board members are to be independent in the first sense, and that at least two of these directors are also to be independent in the second sense. This means that it is possible for major shareholders of Swed-

ish companies to appoint a majority of board members with whom they have close ties. This is in line with the Swedish positive view of active and responsible ownership.

A director's independence is to be determined by a general assessment of all factors that may give cause to question the individual's independence. The Code contains a list of factors that should be considered.

### *Board committees*

Under the Companies Act and/or the Corporate Governance Code, all listed companies must have a nomination committee, a remuneration committee and an audit committee. However, as stated above, the nomination committee in Swedish corporate governance is not a board committee but a committee set up by the shareholders at the annual general meeting.

Furthermore, as to the remuneration committees and the audit committees, the board as a whole may elect to perform the duties of these committees. Hence there is no unconditional obligation for Swedish boards to set up separate sub-committees for these or any other purposes. This reflects the fact that, as pointed out in the previous sub-section, Swedish boards are non-executive, which means that conflicts of interest between the board and the executive management are less of an issue than what is the case, for example, in a mixed executive/non-executive board under a one-tier governance system. Instead, the question of establishing board sub-committees for the purpose of dealing with specific duties becomes primarily a matter of efficient organisation of the board's work, a question that is left to the individual boards to decide.

Swedish board committees may only be comprised of board members. Furthermore, delegation of work from the board

of directors, including the establishment of board committees to prepare its decisions on certain issues, does not relieve the board from the ultimate responsibility for the company's organisation and management or the responsibility to ensure satisfactory control of the company's accounting, funds management and finances. The responsibility remains with the board, which must demonstrate care when assigning a task to another party and must regularly check to ensure that the party who has assumed certain duties is indeed carrying them out in a satisfactory way. Accordingly, most board committees of Swedish companies are given mainly preparatory tasks, leaving the important decisions to the board itself.

### *Employee representatives*

Employment representation on corporate boards is governed by the Board Representation (Private Employees) Act, under which the employees' right to be represented on the board of directors depends on (i) the number of employees of the company in question (or in case the company is the ultimate parent of a group, the number of employees in the whole group) and (ii) whether the company is bound by a collective agreement. If the company, or the group as applicable, has more than 25 employees, two employee representatives may be appointed and, if the company has more than 1,000 employees and is engaged in different lines of businesses, three representatives may be appointed.

It should be noted that employee board representation is an employee right but not an obligation. Accordingly, it is not uncommon for employees to abstain from making use of their rights in this respect, sometimes perhaps in exchange for other benefits. In fact, slightly less than 40 % of listed company

boards today include employee representatives.

The employee representatives are appointed by the trade union to which the company is bound by a collective bargaining agreement. Hence, if the company is not bound by a collective agreement, employee representatives need not be appointed. The number of employee representatives in a board may not exceed the number of other board members. The employee representatives are typically employees of the company but do not have to be.

Pursuant to the Companies Act, the employee representatives on the board of directors are equated with other board members, unless otherwise stated in the Board Representation (Private Employees) Act or the Companies Act. Thus, as a general rule, the employee representatives on the board have the same rights, obligations and responsibilities as any other board member.

### *Conflicts of interest*

According to the Companies Act, a board member or the CEO may not address a question regarding (i) an agreement between the board member or the CEO and the company, (ii) an agreement between the company and a third party where the board member or the CEO in question has a material interest which may conflict with that of the company, or (iii) an agreement between the company and a legal person which the board member or CEO alone or together with a third person may represent.

Point (i) covers, for example, questions regarding the entry into supply contracts or compensation for own work performed. Point (ii) covers situations involving an agreement between, for example, a person closely related to the board

member (or CEO) and the company. Point (iii) entails, for example, that a member of the board of a bank, who is also a member of the board of an industrial company, cannot participate in a decision by the industrial company's board to take up a loan with the bank in question. It is irrelevant whether he or she has had anything to do with the matter in the capacity of member of the board of the bank.

A board member or CEO can also be deemed to have a conflict of interest in situations other than those directly covered by the Companies Act. In situations involving the 'appearance of impropriety', he or she should not participate in the handling of the matter in question.

The purpose of the conflict-of-interest rules is to protect the company's, i.e. ultimately the shareholders', interests. Accordingly, such rules may be set aside if all shareholders agree.

Under special provisions of the Companies Act, certain resolutions regarding issuances and transfers of securities to board members, the CEO, other employees and certain other related parties must be passed by the general meeting and are subject to a 9/10 qualified-majority requirement. Furthermore, outside the scope of these special provisions, according to Statement 2012:05 by the Swedish Securities Council, in the event that a listed company decides to transfer shares in a subsidiary or a business or other assets to an officer of the company – provided the transfer is not insignificant to the company – a resolution concerning the transfer must be adopted or approved by the general meeting.

Before the proposed resolution is presented to the general meeting, the board of directors must obtain a valuation opinion from an independent expert and prepare a report regarding the proposed transfer. The opinion and the report must be made available by the company and posted on the company's website prior to the general meeting that will address the issue.

The opinion and the report must also be presented at the general meeting. The aforementioned will also apply where the company or its subsidiary adopts a resolution to acquire assets from an officer of the company.

Except for the rules described above, there are no rules in the Companies Act or the Corporate Governance Code regarding related-party transactions.

### *Board evaluation*

The Companies Act does not contain any provisions concerning evaluation of the board's performance. Under the Corporate Governance Code, however, the board of directors and the CEO are to be regularly and systematically evaluated. The results of the evaluation are to be made available to the nomination committee.

The chair of the board bears the ultimate responsibility for organising the evaluation and for informing the nomination committee of the results in relevant regards.

### *Role of the chair of the board*

The Companies Act prescribes that the board is to elect a chair from among its members. However, nothing prevents the general meeting, in its capacity as the company's highest decision-making body, from appointing the chair of the board. According to the Corporate Governance Code, the chair is to be elected by the general meeting, which is today also the general practice among listed companies.

The task of the chair is to preside over the work of the board and to ensure that the board performs its duties as prescribed in

the Companies Act and other legislation. Under the Corporate Governance Code, the chair is required to ensure that the work of the board is conducted efficiently and that the board fulfils its obligations. In particular, the chair must (i) organise and lead the work of the board with a view to creating the best possible conditions for the board's activities, (ii) ensure that new board members receive the necessary introductory training, as well as any other training that the chair and the member agree is appropriate, (iii) ensure that the board regularly updates and develops its knowledge of the company and its operations, (iv) be responsible for contacts with the shareholders regarding ownership issues and communicate shareholders' views to the board, (v) ensure that the board receives sufficient information and documentation to enable it to conduct its work, (vi) in consultation with the CEO, draw up proposed agendas for board meetings, (vii) verify that the board's decisions are implemented and (viii) ensure that the work of the board is evaluated annually.

### *Decision making*

The Companies Act does not require a certain minimum number of board meetings to be held each year, but the chair of the board must ensure that meetings are held when needed. The rules of procedure of the board are to state how often meetings are to be held. Any board member and the CEO may, however, request that a board meeting be convened at any time. In practice, most listed-company boards normally meet 5–10 times per year, although in special circumstances, e.g. in crisis situations, the meeting frequency may be considerably higher.

According to the Companies Act, the board is quorate if more than one half of the total number of board members,

including employee representatives, or such higher number as prescribed in the articles of association, are present.

If a board member has a conflict of interest with respect to any issue or issues to be considered at the meeting, such member is deemed to be absent. If this results in the meeting not being quorate with respect to the issue or issues on which the member has a conflict of interest, an alternate member who does not have a conflict of interest can be called to attend the meeting instead. However, according to the Corporate Governance Code, there are to be no alternate board members.

In order for board members to make decisions on different issues, they must have received satisfactory information as a basis for the decision. Such information may include written material as well as an oral presentation. The information must be easy to understand and informative. Everything that is of importance for consideration of the matter must be stated in the material. The chair bears the ultimate responsibility for ensuring that this is the case.

Board resolutions are adopted by a simple majority. Thus, in a board comprising six members, if all members are present a decision must be supported by four members. If not all members are present, at least one third of the entire number of board members must support the resolution in order for the resolution to be valid. In the event of a tied vote, the chair has a casting vote. The articles of association may prescribe either stricter or more lenient majority requirements than stated in the Companies Act. In Swedish board practice, dissenting opinions by board members elected by the general meeting are very rare, i.e. there is a strong preference to reach unanimous decisions.

### *Shareholder protection*

As mentioned above, there is a strict prohibition on the board (and the general meeting) taking any action which would give a shareholder or anyone else an undue advantage to the disadvantage of the company or any other shareholder. As mentioned above, there is a general limitation of the board's general obligation to comply with any specific directives passed by the general meeting, in that the board must not comply with shareholder instructions which are illegal. These restrictions, together with the various other rules discussed herein form the shareholder-protection regime for Swedish companies as far as actions by the board are concerned.

### **The executive management**

The CEO, which is the single-person executive management function of a Swedish company, is responsible for the day-to-day management of the company's affairs. According to the Companies Act, the day-to-day management of the company includes all measures that, taking into consideration the scope and nature of the company's business, are not of an unusual nature or major significance. For example, this may include agreements with customers and suppliers, employment agreements, etc. Any agreements which are uncommon or of major significance for the company, when viewed in light of their content, long-term nature, or the values at stake, do not fall within the scope of day-to-day management. To maintain a clear hierarchical governance structure, the board is required to define the allocation of duties between the

board and the CEO through written general instructions, to be reviewed annually.

The CEO is responsible for the operation of the company and the execution of the board's decisions. Furthermore, he or she must take the measures required to ensure that the company's accounts are maintained in accordance with law and that the management of funds is conducted in a satisfactory manner.

The CEO is subordinate to the board of directors and is appointed and dismissed at the discretion of the board. The Companies Act does not state any specific term of office for the CEO. He or she is normally appointed as an employee until further notice.

The board may instruct the CEO on how day-to-day management issues are to be handled or decided. Within the framework defined by the Companies Act and the company's articles of association, the CEO is obliged to follow instructions given by the board. The board itself may also decide on matters that are part of day-to-day management, although this is normally avoided in practice. In fact, there is a generally embraced norm of conduct of boards to strictly respect the line of demarcation of duties vis-à-vis the CEO.

The CEO may be a member of the board but not its chair. As already mentioned, irrespective of whether the CEO is a member of the board or not, he or she has the right to attend and speak at board meetings provided that the board does not decide otherwise in a particular situation.

## Remuneration

Director and executive remuneration is addressed both in the Companies Act and the Corporate Governance Code. The philosophy underlying Swedish regulation and practice in this respect is that all remuneration should be decided upon by the next higher governance body than that to which the remuneration applies. In other words, no one is to have any decisive influence over one's own remuneration. Furthermore, the Code states that »remuneration and other terms of employment of members of the board and the executive management are to be designed with the aim of ensuring that the company has access to the competence required at a cost appropriate to the company, and so that they have the intended effects for the company's operations«.

### *Remuneration of the board*

Remuneration of the board in a Swedish limited liability company is, and has always been, a matter for the general meeting to decide. Hence, on the basis of the proposal from the nomination committee, it is for the general meeting to decide fees and other compensation in respect of the board duties of each of the board members. It is not permissible for the meeting to determine a lump sum which the board can allocate between its members as it sees fit.

### *Remuneration of the CEO and executive management*

Ten years ago, executive remuneration was largely the exclusive province of the chair and the CEO, with little or no involvement by institutional investors (controlling investors being the exception as they are able to provide input on executive remuneration through their membership on the board). Today, Swedish companies are required to include a binding resolution on the remuneration policy on the agenda of the annual general meeting (a »say-on-pay« resolution).

Under the Corporate Governance Code, the general meeting is to decide on all share and share-price-related incentive plans for the executive management. The decision of the general meeting must include all the principal conditions of the plan. Background material and documentation pertaining to the proposed plan must be made available to shareholders in due time prior to the general meeting. The documentation must be clear and simple enough to allow shareholders to form an opinion on the reasons for the plan, the principal conditions of the plan and any dilution of the share capital that may result from it, as well as the total cost to the company of different conceivable outcomes.

Share and share-price-related incentive plans are to be designed with the aim of achieving increased alignment between the interests of the participating individual and the company's shareholders. Plans involving acquisition of shares should be designed so that a personal holding of shares in the company is promoted. The vesting period or the period from the commencement of an agreement to the date for acquisition of shares must be no less than three years.

Owing to these approval provisions and the increasing use of share-based incentive plans (particularly in large listed companies), it is common for Swedish companies to consult

their largest shareholders on executive remuneration matters in advance of annual general meetings. And, while Swedish boards have always decided the CEO's remuneration package, their involvement in setting overall remuneration policy in listed companies has expanded in recent years. As already mentioned, the board is required to establish a remuneration committee, the main tasks of which are set out in the Code.

### The statutory auditor

With the exception of small private companies according to certain size criteria, all Swedish limited liability companies must have at least one statutory auditor. The articles of association may prescribe that the company is to have more than one auditor, a practice that was previously common among major listed companies but is now generally abandoned. Thus, most Swedish listed companies today have but one auditor.

In listed companies, at least one of the auditors must be a chartered accountant. An audit firm may be appointed auditor, but in such case the audit firm must appoint an individual as auditor-in-charge for the client company.

The company's statutory auditor is appointed by the general meeting. Thus, auditors of Swedish companies are given their assignment by, and are obliged to report to, the shareholders, and they must not allow their work to be governed or influenced by the board or the executive management. This approach must be evaluated in light of the recently adopted EU rules on the reform of the audit sector.

The primary task of the auditor is to examine the company's annual report and accounting practices as well as the management of the board of directors and the CEO. In the case

of a parent company, the auditor will also examine the consolidated accounts.

The auditor will submit an auditor's report to the general meeting following each financial year. Part of the auditor's mandate is to recommend whether the annual general meeting should adopt the balance sheet and the profit and loss account, whether the board members and the CEO should be granted discharge from liability, and whether the company's results should be appropriated in accordance with the board's proposal.

The auditor has the right to be present at general meetings of the company, and upon request by the board he or she is obliged to participate. In practice the auditor is normally present at all general meetings of listed companies, often giving at annual general meetings an oral presentation of the audit work during the year and the resulting audit report.

The auditor constitutes an important part of the shareholders' monitoring of the board and the management of the company. However, the auditor also plays an important role in safeguarding the interests of other stakeholders, primarily creditors. Furthermore, in certain circumstances the auditor may be obliged to report to the police regarding crimes committed by board members or the CEO, typically crimes of an economic nature that might cause damage to the company.

In addition to the statutory auditor, a minority representing at least 10% of all shares in a company or one third of the shares represented at the general meeting may require the appointment of a minority auditor who will participate in the audit together with the other auditor(s).

## Minority protection

As already mentioned, the right of dominant shareholders to actually exercise control over a company, potentially by way of shares with multiple voting rights, is coupled with strong minority-protection rules. Although there is some potential for further improvements, this is a key feature of the Swedish governance model, counterbalancing the rights of dominant shareholders.

The Companies Act is designed to prevent dominant shareholders from unduly extracting private benefits from the company. This is achieved, among other things, through qualified-majority requirements for certain types of resolutions and through a strict prohibition on the general meeting and the board taking any action which would give a shareholder or anyone else an undue advantage to the disadvantage of the company or any other shareholder.

As a general rule, resolutions at general meetings are adopted by simple majority vote and no special quorum requirements apply. However, certain resolutions require a qualified majority. The requirement of qualified majority for certain types of important resolutions – where, importantly, shares with multiple voting rights typically are counted with disregard of their multiple votes – is an important part of this protection. Such qualified majority requirements (typically, two-thirds of the votes cast and the shares represented at the general meeting, but in some instances even more) apply, for example, to amendments to the articles of association or directed issuances of shares or other equity securities.

Equally important is the prohibition on the general meeting taking any action which would give a shareholder or anyone else an undue advantage to the disadvantage of the company or any other shareholder.

Due to conflict of interest, a shareholder may not, in person or through a proxy, vote in respect of (i) legal proceedings against him or her, (ii) his or her discharge from liability in damages or other obligations towards the company, or (iii) legal proceedings or a discharge as referred to in points (i) and (ii) in respect of another person, where the shareholder in question possesses a material interest which may conflict with the interests of the company.

Generally speaking, the rights of the individual shareholder are relatively far-reaching in Sweden and hence most of the provisions of the EU Shareholder Rights Directive (2007) were a part of the Swedish system long before the Directive. In addition, minorities of certain size (typically, 10% of all shares) are afforded certain rights, such as the right to have a special examiner appointed to review certain aspects of the company's actions.

As mentioned above, there is a strict prohibition on the board (as well as on the general meeting as mentioned above) taking any action which would give a shareholder or anyone else an undue advantage to the disadvantage of the company or any other shareholder. As mentioned above, there is a general limitation of the board's general obligation to comply with any specific directives passed by the general meeting in that the board must not comply with shareholder instructions which are illegal. These restrictions, together with the various other rules discussed herein form the shareholder protection regime for Swedish companies as far as actions by the board are concerned.

## A P P E N D I X E

# OWNERSHIP CONCENTRATION ON THE NORDIC STOCK MARKETS

### Background and purpose of the study

The prevalence of control ownership in listed companies is an important characteristic of Nordic corporate governance. However, comprehensive data documenting this is difficult to find. It was therefore decided to carry out a special sub-study aimed at analysing the degree of ownership concentration in companies on the Nordic stock markets using the UK stock markets as a benchmark. The collection of data was commissioned to SIS Ägarservice, a Stockholm-based consultancy specialised in the analysis of ownership and board data for listed companies.<sup>1</sup>

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1. SIS Ägarservice AB: [www.aktieservice.se](http://www.aktieservice.se). The research team was made up of CEO Daniel Fristedt, staff members Svetlana Kesareva and Åsa Larsson, ad hoc employed students Mathilda Alm and Nils Voigt Dahl, and statistical expert Per Sundqvist, under the leadership of SIS founding partner Sven-Ivan Sundqvist.

## Methodology

For the Nordic countries, all domestically domiciled companies listed on the primary national stock exchange of the respective countries during the period May–June 2014 were included in the study. This amounted to 131 companies for Denmark, 119 for Finland, 136 for Norway and 239 for Sweden, totalling 625 companies for the Nordic region as a whole.<sup>2</sup>

For the UK, a sample of 116 companies was randomly selected from all companies listed on the LSE Main Market during June and July 2014, excluding companies with non-UK domicile and companies without ordinary shares, in all a population of 820 companies. Hence, contrary to the Nordic data, the analysis of the UK material is subject to random error, the probable importance of which is indicated below.

The data source for Sweden was SIS Ägarservice's own data base, while home pages and/or latest available annual reports of the companies listed on the respective stock exchanges were used for the other Nordic countries and the UK.

Two »cut-off levels« of control ownership were applied, namely at least one shareholder controlling more than 20% and 50%, respectively, of the total votes of the company. The 20% level was chosen in order to obtain comparability with earlier studies of the same kind,<sup>3</sup> while the 50% level was chosen because it represents absolute majority power of a single shareholder.

A »shareholder« was defined as a physical individual or a specific legal unit, e.g. a company, a foundation, the State, etc. Hence, no consideration was given to the existence of so-called

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2. These numbers deviate slightly from those reported in Table 11.2 (p. 44) due to the exclusion here of companies with foreign domicile and because of new listings and de-listings since the end of 2013.

3. E.g. those referred to in Chapter 11 (p. 48) of the main report.

»ownership spheres« which are fairly common on the Nordic markets, i.e. groups of shareholders with more or less strong mutual ties which tend to act in concert as a single »meta shareholder« of the company. Although consideration of such ownership spheres could be seen as resulting in a more truthful picture of the prevalence of control ownership, it would involve a considerable degree of subjective judgement and has therefore not been deemed a worthwhile pursuit in this study.

For the breakdown of the results based on company size, the size categories used in Table 11.3 (p. 46) have been used. This classification system has also been »manually« applied to the UK sample.

## Results

The first table below shows the number of companies analysed for each country and its breakdown into size categories.

The second table shows the number and share of companies – in total and per size category – having at least one shareholder in control of more than 20 % of the votes of the company. All numbers are rounded off to the nearest whole number.

When comparing the Nordic numbers with those for the UK, it should be kept in mind that the latter are based on a randomly chosen sample and hence subject to statistical error.<sup>4</sup> At a 95 % confidence level, this amounts to  $\pm 7.4$  percentage points for the exact estimate 26.7 % for all UK companies, i.e. the true population percentage can be assumed to lie between

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4. It would be a highly relevant research effort to extend this investigation to a complete survey of the UK as well as selected other European markets. However, due to time and financial constraints, this has not been possible within the framework of this study.

**NUMBER OF** companies analysed per country.

	Denmark	Finland	Norway	Sweden	UK
All companies	131	119	136	236	116
Large-cap	23	25	27	55	29
Mid-cap	23	40	43	73	29
Small-cap	85	54	66	108	58

**SHARE AND** underlying number of companies with at least one shareholder controlling more than 20 % of the votes of the company.

<i>Share (number) of companies</i>	Denmark	Finland	Norway	Sweden	UK
All companies	57 % (74)	54 % (64)	65 % (89)	67 % (158)	27 % (31)
Large-cap	74 % (17)	36 % (9)	82 % (22)	78 % (43)	31 % (9)
Mid-cap	52 % (12)	53 % (21)	65 % (28)	55 % (40)	24 % (7)
Small-cap	53 % (45)	63 % (34)	59 % (39)	69 % (75)	26 % (15)

**SHARE AND** underlying number of companies with at least one shareholder controlling more than 50 % of the votes of the company.

<i>Share (number) of companies</i>	Denmark	Finland	Norway	Sweden	UK
All companies	28 % (37)	15 % (18)	23 % (31)	17 % (40)	5 % (6)
Large-cap	35 % (8)	16 % (4)	33 % (9)	20 % (11)	14 % (4)
Mid-cap	26 % (6)	13 % (5)	19 % (8)	10 % (7)	0 % (0)
Small-cap	26 % (22)	17 % (9)	21 % (14)	20 % (22)	3 % (2)

19.4 % and 34.1 %. For the breakdown categories, the samples are too small to make the calculation of statistical errors meaningful.

The third table shows the corresponding results for the 50 % control level. Here the statistical error margin of the exact UK estimate of 5.2 % is  $\pm 3.7$  percentage points at a 95 % confidence level, which gives an interval of uncertainty of 1.5 % to 8.9 %. This further underscores the desirability of a broader study of the UK market.

PER LEKVALL (ED.)

**The Nordic Corporate Governance Model**

*with comment by Ronald J. Gilson*

*and contributions by national experts:*

*Denmark: Jesper Lau Hansen and Carsten Løfeldt*

*Finland: Manne Airaksinen, Tom Berglund and Tom von Weymarn*

*Norway: Gudmund Knudsen and Harald Norvik*

*Sweden: Rolf Skog and Erik Sjöman*

»This book deserves to be widely read and carefully studied by anyone interested in the design of corporate governance systems.«

*Colin Mayer, Peter Moores Professor of Management Studies, Saïd Business School, University of Oxford*

**IN A UNIQUE** project, a group of leading corporate governance experts from Denmark, Finland, Norway and Sweden have come together to define and explain the Nordic model of corporate governance. This book is a result of this project.

The book provides a timely contribution to the European debate about corporate governance and its current quest for active and engaged shareholders. The essence of the Nordic governance model is to create incentives for shareholders to be engaged and take a long-term approach to the companies that they own.

An international perspective on the Nordic corporate governance model is provided by Stanford professor Ronald J. Gilson.



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