

CORPORATE GOVERNANCE IN THE NORDIC COUNTRIES

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PREFACE

This presentation has been prepared with the co-operation of the self-regulatory corporate governance bodies of the five Nordic countries Denmark, Finland, Iceland, Norway and Sweden. Its aim is to inform international investors and other market participants of key elements of Nordic corporate governance, and thereby to increase knowledge of and confidence in the Nordic corporate governance models. It may also serve as a basis for any future discussions about the possibilities of further alignment of corporate governance regulation and practices between the Nordic countries.

The work has been carried out through a working group made up of Mr Haraldur Ingi Birgisson, the Icelandic Committee on Corporate Governance, Mr Per Lekvall, the Swedish Corporate Governance Board, Ms Anne Leppälä-Nilsson, the Corporate Governance Working Group of the Finnish Securities Market Association, Ms Annette Norup Würthner, the Danish Commerce and Companies Agency, serving as secretariat for the Danish Corporate Governance Committee, and Mr Halvor E. Sigurdson, the Norwegian Corporate Governance Board. Mr Björn Kristiansson, legal advisor to the Swedish Corporate Governance Board and Ms Pii Vuoti, secretary of the Finnish Securities Market Association, have assisted in various phases of the project. The end product was approved by representatives of the undersigned bodies.

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INTRODUCTION

The corporate governance of the Nordic countries closely resembles that of most of the industrialised world and meets with the highest international standards. At the same time, owing to company legislation, corporate governance traditions and some specific preconditions regarding the ownership structure on the stock market, Nordic corporate governance differs in some respects from the Anglo-Saxon and European Continental models. The aim of this presentation is to highlight the most important and distinctive features characterizing the Nordic corporate governance model.

The Nordic countries are advanced market economies with well developed and international capital markets. Foreign ownership of stock-listed companies has increased significantly over the last few decades and is now over one third in the region as a whole. With regard to their size, the Nordic countries host a remarkable number of world-leading companies, which in many cases have attracted even larger foreign ownership. Still, the majority of stock-listed companies are relatively small in an international perspective with predominantly domestic ownership. The total market capitalisation of the Nordic regulated stock market is about half of that of the London Stock Exchange Main Market.

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During the last decade, the Nordic capital markets have become increasingly integrated. A number of cross-border mergers have taken place, creating large pan-Nordic companies, in several cases with listings on more than one of the Nordic stock exchanges. In the last few years these exchanges have undergone a rapid consolidation, and they are today, except the Oslo Stock Exchange, wholly owned by Nasdaq OMX. As an outcome of this they are currently in the process of harmonizing listing rules and requirements, a development which will further enhance the competitiveness of the combined Nordic capital market.

The corporate governance of the Nordic countries is based on national legislation, primarily each country's companies act, but also the respective accounting acts and acts governing the securities market and securities trading, as well as relevant EU regulation, stock exchange rules and corporate governance codes. The Nordic companies acts share a heritage of strong harmonization efforts from the mid-20th century. This development came to an end in the beginning of the 1970's when Denmark entered the EC, followed by Finland and Sweden in 1995. Iceland and Norway are members of the EEA and thereby also implement all EC legislation, relevant to the EEA agreement. Still it resulted in far-reaching similarities between the new companies acts, introduced in all Nordic countries later in that decade. Even though the companies acts of the Nordic countries have from that point in time developed along different paths and today show significant differences in details, they still resemble each other in fundamental corporate governance aspects.

Furthermore, the Nordic companies acts are all highly up-to-date and include several aspects of modern corporate governance that, in other countries, are regulated through codes on a comply or explain basis. Other such aspects are covered by stock exchange rules, which listed companies are contractually obliged to comply with. Hence, significant parts of modern corporate governance are, in the Nordic countries, regulated through binding regulations.

Self-regulation is well established in the Nordic countries and plays an essential regulatory role in corporate governance as well as in other areas. Hence, the Nordic corporate governance codes, introduced during the last ten years, were developed within the self-regulatory framework of each respective country, and they have since then been administered by independent corporate governance committees. Although the codes, too, differ in details between the countries, they are all based on the general international development and common Nordic approach within this field and thus show a fundamental resemblance to one another.

The following is a summary description of some key features of Nordic corporate governance based on relevant legislation, stock-market rules, self-regulation codes and, where relevant, generally accepted market practice. The description does not claim to be exhaustive, nor to reflect the exact situation in each country, but gives an overview at a relatively high level of aggregation of some common aspects of corporate governance in listed companies in the Nordic countries.

1. STRONG GENERAL MEETING POWERS

The Nordic companies acts provide for strong shareholder powers through the General Meeting as the highest decision-making body of the company. At the General Meeting the shareholders participate in the supervision and control of the company.

An Annual General Meeting (AGM) must be held within a certain time period after the end of the financial year. The AGM approves the company's annual accounts, including any distribution of profits. The AGM decides on election and dismissal of individual directors of the Board. The remuneration to the directors of the Board is to be approved by the AGM, which also appoints the company's statutory auditors.

A decision by the General Meeting is also required regarding, i.a. mergers and demergers of the company, amendments of the company's Articles of Association and alterations of the company's share capital. Some decisions may also be taken by the Board if authorised by the General Meeting, for example, issues of new shares, convertibles or warrants and buy-back of own shares. In some of the countries, incentive programs for the management must be approved by the General Meeting.

2. SHARES WITH MULTIPLE VOTING RIGHTS

Shares with multiple voting rights are permitted, within clearly defined limits set in the companies acts. This is the most frequently used ownership control enhancing mechanism (CEM) primarily in Sweden but to some degree also in Denmark and Finland. Other forms of CEMs are not commonly used in Nordic listed companies, except for ceilings on voting rights or ownership in Denmark.

The freedom of contract is balanced by strict disclosure requirements and minority rights. The use of shares with multiple voting rights and other CEMs has to be fully disclosed to the shareholders and the market.

3. STRONG MINORITY PROTECTION

To balance the power of major shareholders, the Nordic companies acts allow for substantial protection of minority shareholders. Nordic companies are under a strict obligation to treat all shareholders equally. Consequently, the minority protection rule prescribes that the General Meeting - or the Board or any other governance body - may not make a decision that might give an undue advantage to some shareholders or other persons at the expense of the company or other shareholders. All shares provide equal rights, unless the Articles of Association allows shares with different rights.

Furthermore, there are a number of rules limiting the majority decision principle on specific matters at the General Meeting. Hence, although the general rule is that the General Meeting decides with a simple majority, a number of decisions require various degrees of qualified majority of both shares and votes to be valid. Examples of such decisions are amendments of the Articles of Association, share capital alterations and mergers or demergers. There are also rules granting a certain minority, rights to force certain decisions, such as to summon a General Meeting and in some countries to distribute a minimum dividend out of the company's profit.

4. EFFECTIVE INDIVIDUAL SHAREHOLDER RIGHTS

Additional minority shareholder protection is obtained by the relatively far-reaching rights of the individual shareholder. Hence, most of the provisions of the EU Shareholders' Rights Directive (2007/36/EC) have for a long time been part of the Nordic companies acts.

Each shareholder, irrespective of the number or class of shares held, has the right to participate in the General Meeting and to vote on his or her shares.¹ Shareholders who are not able to attend in person may exercise their rights by proxy. Each shareholder has the right to table resolutions and to ask questions on topics within the scope of the agenda of the General Meeting.

1. In Denmark it was possible to issue shares without voting rights until 1. January 1974. These shares are still valid.

Each shareholder also has the right to have issues falling within the competence of the General Meeting, included in the meeting agenda, providing a request has been submitted to the Board in adequate time for the issue to be included in the notice calling the meeting. The General Meeting may not make any resolutions on items unless they have been included in the agenda for the meeting.

Generally, companies are encouraged to facilitate shareholder attendance and voting at General Meetings, and no shares may be blocked. There are also strict limits on how early cut-off dates for the right to vote at General Meetings may be set.

5. NON-EXECUTIVE BOARDS

The Nordic corporate governance structure lies between the Anglo-Saxon one-tier and the continental European two-tier model. The Board is responsible for the overall management of the company's affairs, including the strategy, organisation, financial structure of the company and oversight of risk management and internal controls, whereas the day-to-day management is delegated to the CEO. The extensive decision-making authority thus assigned to the Board is limited primarily by the decision-making powers of the General Meeting in certain matters.

In line with generally accepted international standards, the codes or the listing rules of all Nordic countries stipulate that at least half, or a majority, of the Board members to be elected by the shareholders have to be independent of the company.² Further, a separation between the Board and Executive Management is required. The same person cannot be CEO and chairman of the Board. Hence, the great majority of the Nordic listed companies have entirely or predominantly non-executive boards.

2. In Denmark, Norway and Sweden the employees have the right to appoint a limited number of Board members.

6. USE OF BOARD COMMITTEES

With entirely or predominantly non-executive directors on Nordic companies' Boards, the establishment of Board committees becomes more a question of efficient organisation of the Board's work rather than of the integrity of the Board vis-à-vis the company management.

Therefore, in general, the Nordic corporate governance codes recommend that Boards consider the establishment of subcommittees for handling matters of this nature, but leave it to each Board to decide whether this is warranted or not in each particular case. Major Nordic listed companies have established audit committees,³ and in most countries compensation committees as well. Nomination committees are, in Norway and Sweden, appointed by the shareholders at the AGM, whereas in the other countries these are predominantly subcommittees of the Board.

It should furthermore be noted that, as a consequence of the Nordic countries' companies acts, a Nordic Board subcommittee can only be assigned tasks within the framework of the entire Board's duties, and that the full responsibility for any decision delegated to a Board subcommittee stays with the Board as a whole.

7. AUDITORS APPOINTED BY AND ACCOUNTABLE TO THE SHAREHOLDERS

The statutory auditors of a Nordic company are appointed by the General Meeting to audit the company's annual accounts. In Finland and Sweden, they also have the duty to review the Board's and the CEO's management of the company. Auditors of Nordic companies are therefore 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.

Auditors present their reports to the shareholders at the AGM in their annual audit report. In most of the countries part of their assignment is to recommend whether the General Meeting should adopt the financial statements and whether the company's profit or loss should be appropriated in accordance with the Board's proposal.

3. In Finland, an audit committee has to be established in large companies, where required by the extent of the business operations.

In most of the countries, the auditors are furthermore obliged to report if any member of the Board or the CEO has carried out any action or committed any oversight that may result in liability for damages or has contravened the relevant companies act, the relevant legislation on annual accounts, or the company's Articles of Association.

8. ACTIVE GOVERNANCE ROLE OF MAJOR SHAREHOLDERS

Many large companies in the Nordic area have a dispersed ownership structure with a clear separation between the ownership and management roles. However, a relatively large portion of the listed companies in the Nordic area, in particular in the small and mid-cap categories, have one or a few controlling shareholders, who often play an active role in the governance of the company. This has important repercussions for the view of the ownership role, and major private shareholders in such companies are generally expected to exert their ownership rights actively and take long-term responsibility for the company.

In line with this, major private shareholders normally not only take part in General Meeting proceedings but also often involve themselves in the company affairs by serving on the Board. Still, in all countries there should be at least two Board members independent from major shareholders (in Denmark at least half). In Norway and Sweden shareholders are also expected to assume special responsibility for the Board nomination procedure by appointing, and sometimes also serving as members of, the Nomination Committee.

Hence, there is a generally positive view of ownership involvement in the company affairs in the Nordic region. At the same time, there are strong legal provisions against misuse of such powers to the detriment of the company or the other shareholders and for each Board director's strict duty to work in the best interest of the company and all shareholders.

9. TRANSPARENCY

Nordic listed companies have in general been early to adopt high standards of transparency towards their shareholders, the capital market and the surrounding society as a key aspect of modern corporate governance. Hence, in a study by the European Commission, the Nordic member states ranked among the top countries in all aspects of disclosure of information analysed.⁴

In particular regarding remuneration to the Board and management, a high degree of transparency has, for many years, been standard procedure in Nordic corporate governance. Thus, full disclosure at the individual level of the remuneration to the directors of the Board and the CEO is required. In addition, with some variations between the countries, in Denmark, Iceland, Norway and Sweden the company's remuneration policy has to be presented, and submitted for approval in full or part, at the AGM. In Finland the principles for remuneration to the executive management have to be published on the company's website.

Also, disclosure of the company's internal control and risk management principles is generally required by the Nordic corporate governance rules.

4. Report on the Proportionality Principle in the European Union. External Study Commissioned by the European Commission: http://ec.europa.eu/internal_market/company/docs/shareholders/study/final_report_en.pdf.

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The working group of the self-regulatory corporate
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