



STOCKHOLM GÖTEBORG BORÅS JÖNKÖPING HELSINGBORG

## GWA ARTICLES

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**Titel:** Revised Swedish Code of Corporate Governance

**Rättområde:** Banking and finance

**Författare:** Lisa Stevander (translator Edward Humphreys)

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**On 1 February 2008, the Swedish Corporate Governance Board published its proposal for a revised Code of Corporate Governance. Responses to the proposal can be made up until 28 March 2008, following which a final version will be presented to take effect from 1 July this year for all companies listed on the OMX Nordic Exchange Stockholm and NGM Equity.**

With effect from 1 July 2005 the Swedish Code of Corporate Governance ('the Code') has applied to all companies listed on the Stockholm Stock Exchange A-List, as well as those on the O-List with a market capitalisation exceeding 3 billion Swedish crowns. This means that the Code presently applies to around 100 companies in Sweden.

The Code is administered by the Swedish Corporate Governance Board, which monitors and analyses how the Code is applied in practice – and when necessary makes changes to it. The changes made to date have principally resulted from new legislation: for example, the introduction of new rules regarding certification statements for annual reports and financial statements has meant that the equivalent provisions of the Code are unnecessary – matters which are governed by law do not need to be regulated under the Code.



The aim of the Code is to improve corporate governance within Swedish companies, principally to meet the shareholders' required return on invested capital, an important aspect of which is considered to be an appropriate balance of power between the owners, the board of directors and the executive management. The Code therefore contains provisions on the organisation, function and inter-relationship of the company's different corporate bodies or 'organs'. Furthermore there are important rules regarding the company's duty to report to its owners and the capital market – since access to information enables shareholders to exercise an active ownership role, and the media and others to draw attention to potential inconsistencies. Again, the overriding aim of the Code is to ensure that companies are managed in the best interests of their shareholders, and thereby increase public and market confidence – which benefits the companies' capital investment.

A key feature of the application of the Code is that it is non-obligatory; instead it is built on the 'comply or explain' principle. This means that companies which are subject to the Code can choose not to apply its provisions in certain circumstances, provided that they explain their reasons for doing so. In only very cases since the Code's introduction just over two years ago have these companies made use of the possibility of avoiding its provisions. The only possible sanctions for breach of the Code are those which are already available to the stock exchange in relation to breaches of the companies' listing agreements. The basic idea is that the Code should be self-regulatory by better allowing for active ownership and increased transparency.

The Board has decided to take a further step towards its goal of having as many diversely-owned companies as possible applying the Code. The Board has therefore revised the Code so as to improve it and adapt it to the circumstances of smaller companies. The Board presented its proposed new wording on 1 February 2008 (an



English version is available at

<http://www.bolagsstyrning.se/files/docs/ProposalrevisedcodeA.pdf>.

Comments and opinions on the proposal can be submitted up to 28 March, and the final version is expected to come into force on 1 July 2008 for all companies listed on the OMX Nordic Exchange Stockholm and NGM Equity.

To a large extent the current proposed changes are of an editorial and linguistic nature, aimed at making the Code easier to understand. In addition, a number of provisions have been removed (the total is down from 69 to 43) – again in order to improve and simplify the Code's structure and to avoid unnecessary overlaps between different applicable regulatory systems. Areas which are already covered by law do not need to be regulated in the Code.

Among the more important changes is a tightening up of the rules regarding the company's nomination committee. The proposal states that the sole task of the nomination committee is to propose decisions to the shareholders' meeting on electoral and remuneration issues. All members of the nomination committee, regardless of how they were appointed, are therefore required to promote the interests of all shareholders. The majority of the members of the nomination committee are to be independent of the company and its executive management, and at least one member should be independent of the company's largest shareholder in terms of votes. Members of the board of directors cannot form a majority of the nomination committee, and no more than one such member is permitted to be connected to a major shareholder in the company.

Other changes to the Code are attributable to ongoing EU legislative developments: for example, it is likely that regulations on the preparation and auditing of the Report of Internal Controls (which the present Code requires to form part of the Corporate



Governance Report) will be brought into Swedish law in conjunction with the implementation of changes to the applicable EU Directive.

Given the ongoing international developments within the field of corporate governance, the likelihood is that even after 1 July the Code will continue to be the subject of discussion and further amendments.

Advokat Lisa Stevander

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