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Sweden
Shareholder Activism

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This country-specific Q&A provides an overview of shareholder activism laws and regulations applicable in Sweden.

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Sweden: Shareholder Activism

1. What are the principal sources of laws and regulations relating to shareholder rights and activism? Do insider trading and/or market abuse rules apply to activist activity?

Shareholder rights are primarily governed by statutory law, mainly the Swedish Companies Act (the "**SCA**"). Besides the fundamental right to attend and vote at general meetings, other key shareholder rights of the SCA include the right to have a matter addressed at a general meeting, the right to request certain information from the company and speak at a general meeting, and the right to bring court proceedings to challenge resolutions of a general meeting. The SCA also provides strong protection for minority shareholders, including by allowing shareholders holding at least one-tenth of the shares in the company to deny discharge of liability for the board members or the chief executive officer. Moreover, an important overarching principle of the SCA is the principle of equal treatment entailing that shares of the same class shall have the same rights, unless otherwise set forth in the articles of association.

Additional shareholder rights follow from the self-regulation rules of the Swedish Corporate Governance Code (the "**Code**"). It is considered good stock exchange practice for Swedish companies whose shares are admitted to trading on a Swedish regulated market to apply the Code, which operates on a "comply or explain" basis, allowing companies to deviate from its provisions as long as any deviation, the reasons therefore and the alternative solution are explained. Notable provisions of the Code strengthening shareholder rights include the obligation for companies to establish a nomination committee to, e.g., prepare election of directors, and to provide extensive disclosure on corporate governance matters.

Another example of self-regulation providing minority shareholder protection is the Swedish takeover rules, which are founded on key principles such as the equal treatment of all holders of the same class of shares and the requirement that shareholders shall be given sufficient time and information to reach a well-informed decision regarding a takeover offer.

In Sweden, there are no laws or regulations specifically targeting or governing shareholder activism. However, pursuant to a recent addition to the description of the ownership role in the Swedish corporate governance model, the Code addresses an example of shareholder activism that has recently been subject to public debate in Sweden. The addition emphasizes that the strong protection of minority shareholders in Swedish listed companies must not be abused in order to be maintained. An example of such abuse of minority protection rights is denying discharge of liability for board members or the chief executive officer based on reasons unrelated to the performance of their duties—for instance, by citing the existence of differential voting rights as stipulated in the company's articles of association.

Activist activity is subject to the insider trading and market abuse rules under the Market Abuse Regulation ("**MAR**") insofar that activists in possession of inside information, just like other investors, are restricted from trading based on inside information and to unlawfully disclose the information. However, it should be noted that the mere fact that a person is acting based on its own plans and strategies for trading is not considered to constitute insider trading under MAR.

Further, activist activities may under certain circumstances constitute market manipulation pursuant to MAR, for instance in the case of spreading of false or misleading information.

2. How is shareholder activism viewed in your jurisdiction by regulators, shareholders (both institutional and retail) and the media?

The Swedish corporate governance model is characterized by active ownership, including participation in nomination committee work as well as engagement in other corporate governance related matters. Institutional investors and controlling families, in particular, play an important role in shaping corporate governance practices, and the Swedish corporate governance model has partly been developed through self-regulation (as described under question 1.a. above). Regulators, while pursuing initiatives to enhance minority shareholder rights and protection, do not take an active role in relation to shareholder activism as such. In media, shareholder activism is in many cases regarded as a legitimate and constructive element of corporate governance.

3. How common are activist campaigns and what forms do they take? Is activism more prevalent in certain industries? If so why?

Shareholder activism has historically been fairly limited in Sweden which partly can be explained by the fact that the controlling ownership in Swedish listed companies is relatively concentrated to one or a few shareholders. However, so called short-selling activism, where short-sellers publish a negative research report on a company with the intention of driving down its share price, emerged in Sweden in 2021 and sparked considerable debate as to what extent such reports were allowed or constituted market manipulation under MAR (see question 1 above). Thus far, Swedish authorities have not announced an official position on short-selling activism, nor have they clarified under what circumstances the publication of a short-seller report qualifies as market manipulation, and no sanctions have been imposed for the publication of such reports concerning companies listed in Sweden.

In recent years, short-selling activism has been accompanied by a general increase of ESG-related activism, primarily focused on corporate governance matters, but also addressing environmental and social concerns. An example of the latter is the strategic exercise of voting rights at a general meeting as a way to shed light on a specific environmental or social issue within the company, for instance by voting against the re-election of the chair of the board to signal dissatisfaction with alleged insufficient disclosure regarding the company's management of its carbon footprint.

Shareholder activism is not notably more prevalent in specific industries. However, consistent with trends in other jurisdictions, activist attacks in a broader sense are more likely to occur and be effective in companies with dispersed ownership structures and the lack of a controlling shareholder. Other relevant factors may include, for example, corporate governance issues, operational underperformance and underwhelming share price development.

4. How common is it for shareholders to bring litigation against a company and/or its directors and what form does this take?

The SCA does not regulate claims for damages against a company. Instead, liability for pecuniary loss is typically established under tort law, generally requiring a criminal offence, or under general principles of contract law in case of breach of contract. As a result, damage claims arising from non-contractual obligations are uncommon, particularly against listed companies.

On the other hand, under the SCA, a board member or chief executive officer is liable for any damage caused to the company through intentional or negligent conduct in the performance of its duties. The same applies to damage caused to a shareholder or a third party as a result of a breach of the SCA, the Annual Accounts Act, the articles of association, or, in certain cases, the Prospectus Regulation.

A company may bring an action for damages against a board member or the chief executive officer following a resolution by the general meeting passed with a simple majority vote, or if shareholders representing at least one-tenth of the shares in the company vote against granting discharge of liability against the company. On the other hand, if the general meeting grants discharge of liability without opposition from shareholders holding at least one-tenth of the shares, this generally precludes the company from pursuing an action for damages against the representatives. However, claims for damages against representatives which are brought by shareholders or third parties do not require a resolution by the general meeting and are not limited by the representatives being granted discharge of liability.

Although such proceedings against representatives of listed companies remain relatively rare, a few notable cases have been initiated in recent years by both companies and individual shareholders.

5. What rights do shareholders/activists have to access the register of members?

In listed companies, a print-out or other representation of the share register shall be available at the company's office and provided to whoever requests it, hence not only to shareholders. Such public share register shall not be older than three months and only include shareholders holding more than 500 shares in the company.

In Sweden, a shareholding is registered either directly in the name of the owner (owner-registration) or in the name of a nominee such as a bank, in place of the actual owner (nominee-registration). Only shareholders whose shares are owner-registered, and the name of the nominees are listed in the public share register.

Nominees maintain a register of the shareholders whose shares are nominee-registered. The nominee register shall be provided to the company and the central securities depository, Euroclear Sweden, upon request,

but is not available for shareholders or other stakeholders.

6. What rights do shareholders have to requisition a shareholder meeting and to table a resolution at the meeting?

The board of directors is required to convene an extraordinary general meeting if requested in writing by shareholders holding at least ten per cent of the total number of shares in the company, specifying the matter to be addressed. The right to make such a request is only granted to shareholders whose holdings are owner-registered.

A duly made request cannot be disregarded by the board, for instance, on the grounds that the board of directors is certain that the shareholder's proposal will be rejected by the general meeting. The notice to attend the extraordinary general meeting shall be issued within two weeks of the shareholder request.

If the company does not comply with the request, the Swedish Companies Registration Office shall, following a notification from the shareholders, convene the extraordinary general meeting.

It should be noted that while the board of directors is generally not prohibited from cancelling an extraordinary general meeting up until it has been declared open, there is some uncertainty from a company law perspective as to what extent that principle also applies in relation to a meeting convened at the request of shareholders. However, the Swedish Securities Council has stated that cancelling such a general meeting – particularly at a late stage – may constitute a violation of good practice in the Swedish stock market.

Shareholders controlling a majority of the votes represented at a general meeting may always request that the meeting be adjourned and resumed at a later date. In respect of certain matters, including resolution on discharge from liability, the meeting shall be adjourned also if holders of at least one-tenth of the shares in the company so request. In the latter case, the continued general meeting shall be held no less than four weeks and not more than eight weeks thereafter.

7. Where a shareholder requisitions a meeting, who is responsible for the costs of calling and holding the meeting?

The company is responsible for the costs of a general meeting convened following a shareholder request.

8. Are there any rights to circulate statements to shareholders?

Shareholders have the right to speak at a general meeting and may also request that a specific matter be addressed at a general meeting. The request must be submitted to the board of directors no later than one week before the earliest date on which notice to attend the general meeting may be issued under the SCA, or if submitted after such date, in due time for the matter to be included in the notice.

This initiative right extends only to company related matters that may be subject to a decision by the general meeting, for instance an amendment to the articles of association or the election of a new board member. Accordingly, a shareholder may not request that an item be included on the agenda solely to make a general statement at the meeting. However, shareholders are generally given the opportunity to present their proposals at the meeting, and if the initial request includes a proposal for resolution, the main content of such proposal shall be included in the notice convening the general meeting.

The right also applies in listed companies and is not subject to any minimum shareholding requirement. Historically, the right has been exercised fairly frequently, particularly in larger companies with a broad shareholder base.

9. Who is entitled to attend and speak at a shareholders' meeting?

In listed companies, the right to attend a general meeting is vested with the shareholders that are listed in the share register concerning the circumstances on the record date falling on the sixth banking day before the day of the general meeting. Shareholders may participate in the general meeting either in person or through one or more proxies.

A shareholder whose shares are nominee-registered must register its shares in its own name to be listed in the share register as of the record date.

If stipulated in the articles of association, shareholders are also required to give notice of their attendance to the company by the date specified in the notice to the general meeting, which day may not fall earlier than the fifth weekday prior to the general meeting.

Any shareholder or proxy who is entitled to attend the general meeting may also vote for the shareholder's shares and speak at the meeting. A shareholder or proxy may be accompanied by no more than two assistants at a general meeting, who are also entitled to speak at the meeting. This enables shareholders to have expert advisors present at the meeting.

The right to attend a general meeting is also extended to individuals who have an official role in the proceedings, such as the chair of the meeting and members of the board of directors. The Code further stipulates that at least a quorate board, including its chair, as well as the chief executive officer shall be present at a general meeting. In case of an annual general meeting, at least one member of the nomination committee, at least one of the company's auditors and, if possible, each member of the board of directors shall be present.

10. What percentage of share capital is needed to appoint or remove a director? What is the process?

In Sweden, the directors of a company are appointed and removed by the shareholders at general meetings. A resolution to appoint a director requires the support of a relative majority, meaning that the candidates that receive the most votes are elected. A resolution to remove a director requires the support by a majority of the votes cast at the general meeting to be valid (simple majority).

Companies that apply the Code are required to establish a nomination committee – typically composed of one representative from each of the three or four largest shareholders in terms of voting rights, along with the chair of the board. The nomination committee is to prepare and present proposals on matters such as the election of board members. In practice, this means that it is already established in advance that the proposals for election of board members have support from the largest shareholders – support that is usually enough to secure sufficient majority at the general meeting.

Individual shareholders also have the right to propose board candidates, either as counterproposals at an already convened general meeting or, if they represent at least ten per cent of the shares in the company, by requesting that an extraordinary general meeting be convened to address board elections (see question 6 above). Nevertheless, it is often challenging for such initiatives to succeed.

11. What percentage of share capital is needed to block a shareholder resolution?

The percentage of share capital required to block a resolution at a general meeting varies depending on the matter in question. Under the SCA, the general rule is that resolutions – apart from elections which require a relative majority – are passed with simple majority (i.e. more than fifty per cent of the votes cast). Matters that require simple majority includes resolutions on dividends and adoption of the income statement and balance sheet.

Note that in Sweden it is possible for a company to have a dual class share structure with differentiated voting rights where the voting rights of one share class may be up to ten times greater than those of the share class with the lowest voting rights. As the mentioned majority requirements relate solely to the number of votes, control of a majority of the shares in a company may not necessarily be sufficient to block a resolution.

Another type of majority requirement – qualified majority – shall be observed for several important matters such as new issues of shares with deviation from the shareholders' preferential rights and amendments to the articles of association. Qualified majority typically requires that at least two-thirds of both the *votes* cast at the general meeting and the *shares* represented at the general meeting support the resolution. However, even higher thresholds apply under the SCA in matters of particular sensitivity, such as amendments to the articles of association that alter the legal relationship between existing shares, providing important minority protection for holders of shares carrying reduced voting rights.

12. Do holders of other instruments (e.g. options, warrants, contracts for difference, swaps, cash-settled derivatives) have any of the above rights?

In these aspects, holders of other instruments than shares have the same rights as any other non-shareholders, i.e. only a right to receive the public share register (see question 5 above).

13. Is stamp duty payable on share acquisitions? Can this be avoided/mitigated (e.g. through use of derivatives)?

Stamp duty is not payable on share acquisitions in Sweden.

14. To what level can you acquire shares without having to publicly (or privately) disclose your position?

Shareholders are required to submit notifications of significant changes to their holdings in companies whose shares are admitted to trading on a regulated market.

The first notification threshold is five per cent of the shares or voting rights in the company, and the subsequent thresholds are 10, 15, 20, 25, 30, 50, 66 (2/3) and 90 per cent of the voting rights. The notification shall be made to both the company and the Swedish Financial Supervisory Authority (the "**SFSA**") within three trading days following the day the notification obligation arose, and the information is subsequently published by the SFSA in a public register.

If the shareholder is a person discharging managerial responsibilities under MAR, or is closely related to such person, a separate obligation to report transactions to the company and the SFSA applies for any transactions exceeding a total value of EUR 20,000 on a calendar year-basis. The information is subsequently published by the SFSA in a public register. The reporting obligation also applies to transactions with financial instruments in companies whose shares are traded on multilateral trading facility.

15. Is the disclosure threshold different if the issuer is subject to a takeover offer?

The disclosure threshold remains unchanged if the issuer is subject to a takeover offer. However, it may be noted that under applicable takeover rules, the offeror is obliged to disclose the outcome of the offering following the expiry of the acceptance period, stating inter alia the number of shares tendered in the offering and the number of shares in the issuer acquired by the offeror outside the offer.

16. Are there any rules which restrict the speed at which you can build a position?

Not except for the fact that the obligation to publicly disclose positions (see 14 above) and the mandatory bid rule (see below 17 below) may discourage stake building exceeding relevant thresholds.

17. Are there circumstances in which a mandatory takeover is required?

Any person who, alone or together with certain closely related parties, obtains a shareholding representing at least three-tenths of the voting rights in a company is required to immediately announce the size of the holding and, within four weeks of the announcement, submit a takeover offer for the remaining shares or reduce its holdings to less than three-tenths of the voting rights. The Swedish Securities Council may, depending on the specific circumstances, grant an exemption from the mandatory bid requirement.

18. Does collective shareholder action or 'acting in concert' have any consequences in your jurisdiction (e.g for disclosure purposes or the rules on mandatory offers)?

Certain agreements between shareholders concerning the coordinated exercise of voting rights in the company result in an aggregation of their shareholdings that may trigger a notification obligation (see 14 above) and/or an obligation to launch a mandatory takeover offer (see below 17 above).

19. Do the same rules and thresholds apply to other instruments (e.g. options, warrants, short positions, contracts for difference, swaps, cash-settled derivatives)?

Both depository receipts carrying voting rights and certain other instruments, such as equity instruments that entitle the holder to acquire existing shares in the company, shall be included in the shareholder's holdings when calculating whether a threshold for the notification obligation is reached.

Significantly lower thresholds apply in relation to short positions. Any person holding a net short position in a company must notify the SFSA when the position reaches 0.1 per cent of the share capital.

20. If an activist makes a takeover offer, what impact might any prior share purchases have on the minimum offer price or the form of consideration that must be offered?

If the activist has acquired shares in the target company in the six months preceding the announcement of the offer other than through a previous takeover offer, the terms and conditions of the takeover offer may not, with certain exceptions, be less favourable than those of the prior transaction. This means that the offer price must be

adjusted to reflect the price paid in the pre-transaction and, provided that the pre-transaction involves the purchase of more than ten per cent of all shares in the target, whether by cash consideration or issuance of securities, the form of consideration in the takeover offer must also be aligned with that of the pre-transaction.

21. What measures are available to companies to protect against an activist campaign?

Companies can adopt several proactive measures to protect against activist campaigns. One key measure is to establish effective internal procedures to both identify and address any legal, financial or operational vulnerabilities that may attract activist attention, such as short-selling activism. Maintaining a strong investor relations function is also essential. This includes ensuring adequate disclosure to the market, as well as understanding the expectations and concerns of major shareholders and other key stakeholders. Keeping up with trends is also beneficial as it enables companies to take corrective measures, such as improved disclosure on certain ESG matters, as a way of mitigating the risk of becoming subject to an activist campaign.

22. What duties do directors owe to a company and its shareholders? Highlight any that are particularly relevant in the context of an activist campaign.

Within the context of an activist campaign, the duty for directors to act in good faith and in the best interests of both the company and all its shareholders is of particular significance.

23. What rights does a company have to require parties to disclose details of their interests (direct and indirect) in the company's share capital?

A company may not require more detailed disclosure than what is prescribed by law (see question 14 above). However, companies have access to complete ownership information through the share register and the nominee register (see question 5 above).

24. Are there restrictions on companies selectively disclosing inside information to activists?

Under MAR, selective disclosure of inside information is prohibited, with the exception of disclosures made in the normal exercise of employment, profession or duties. Engaging in selective dialogue between the board and major shareholders ahead of certain material business decisions or transactions, such as a potential share issue, may often be regarded as an example of permissible selective disclosure under MAR. In addition to ensuring compliance with MAR, the principle of equal treatment of shareholders must be observed when inside information is selectively disclosed to certain shareholders.

25. Are settlement agreements between a company and an activist permitted in your jurisdiction? How common is it for activist campaigns to be resolved in this way?

Settlement agreements between a company and an activist, however uncommon, are permitted as such but must comply with, inter alia, the principle of equal treatment of shareholders as well as good stock exchange practice, including the Code, and may require disclosure under MAR and/or applicable accounting regulation.

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