



**european corporate governance institute**

## **Directors' Remuneration in Listed Companies**

### **SWEDEN\***

#### **Contact Details of Person(s) Answering and Reviewing the Questionnaire**

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\* The information and opinions included in this document are not intended to provide legal advice, and should not be relied on or treated as a substitute for specific advice concerning individual situations. The law, regulation and best practices are stated as they stood at 30 June 2003.

# Questionnaire

Answers to this questionnaire should be given from the perspective of provisions included in national laws, regulations and exchange rules, and of best practices as recommended by either official reports or corporate governance codes.

## 1. General

**1.1 Please indicate, as a general reference, the laws, case law, regulations, exchange rules and best practices concerning directors' remuneration in your country with respect to listed companies. Please indicate where these provisions (such as, for example, exchange rules) apply only to domestically-incorporated companies.**

Sweden has a system between the one-tier and the two-tier board system. We have a board of directors, similar to the supervisory board, elected by the shareholders at the general meeting. The board of directors' main duties is to elect one managing director and to decide on his remuneration, to supervise the managing director's running of the company and to take company strategic decisions when necessary. The Companies Act (Aktiebolagslagen, ABL) lays down the decision making process regarding remuneration to the board of directors and the managing director. The Act on Annual Accounts (Årsredovisningslagen, ÅRL) demands some information about directors remuneration. ABL and ÅRL apply to all companies limited by shares.

Listed companies are in addition subject to a wide variety of rules. The listing agreements between the company and the stock exchange/other officially authorized marketplace contain general and specific rules regarding information. A recommendation from the Swedish Industry and Commerce Stock Exchange Committee (Näringslivets Börskommitté, NBK) concerning Information about benefits for senior executives has been incorporated as a binding annex to the listing agreements (available in English at [www.naringslivetsborskommitte.se](http://www.naringslivetsborskommitte.se)). The recommendation gives detailed rules for information about benefits in the annual accounts. Foreign companies listed in Sweden can and often get an exemption from these rules.

Share based compensation has a specific set of rules. Swedish listed companies often use new issues of shares or buy backs of existing shares as a part of an incentive programme. After a company scandal in 1986, we have a special act regulating the decision making and some information aspects (lagen om vissa riktade emissioner, Leo-lagen).

Decisionmaking, information and also the material content of incentive programmes in listed companies are regulated by the Securities Council (Aktiemarknadsnämnden, AMN). AMN is a private self regulatory organ with no sanctions except publicity at its disposal. AMN make statements about listed companies behaviour or planned actions in many respects, not only in relation to incentive programmes. In 2002, AMN made a general statement summing up earlier decisions regarding incentive programmes, AMN 2002:1 (an English version is available at [www.aktiemarknadsnamnden.se](http://www.aktiemarknadsnamnden.se)).

**1.2 As to best practices, please specify whether they are described in either a private (voluntary or non-statutory) code or other official report, and whether a “comply or explain” principle is applicable to compliance with the relevant provisions by listed companies. Where the “comply or explain” principle applies, please indicate, where such evidence is available, whether companies generally comply with best practices.**

There are no best practices set up regarding executive remuneration except for the above mentioned rules.

**1.3 Please describe in summary: the institutional structure for adopting executive remuneration rules or best practice codes; and any major proposals for reform concerning directors' remuneration.**

The information rules introduced in NBK's recommendation 1993 was reformed in 2002 and AMN's revised its earlier statements regarding incentive programmes in 2002. These two entities are comprised of people from the business community – lawyers, institutional owners, auditors etc. and they set their own agenda. There are no proposals of reforming today's remuneration rules.

## **2. Disclosure**

**2.1 Are listed companies required to publish a remuneration report, indicating the details of the compensation paid to the members of the Board of Directors? How often must it be published and where is it retrievable?**

No (see 2.3 below).

**2.2 Must these reports be submitted, or are recommended to be, to a Securities Market Regulator or to a public authority responsible for collecting these documents?**

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**2.3 What information on directors' remuneration, individually and collectively, and on the remuneration committee, must be included, or is recommended to be included as best practice, in the financial reports? Please include in your answer any specific requirements which apply to particular elements of remuneration, such as stock options, bonuses, and termination payments.**

In the annual accounts the collective remuneration to the board decided by the GM must be stated according to ÅRL. NBK's recommendation require listed companies to disclose directors' benefits in the annual report. The recommendation is an annex to the exchange's/officially authorized marketplaces' listing agreements and therefore subject to sanctions if not followed. An excerpt from an English translation of the recommendation follows:

“Recommendation

1. These Recommendations shall be applied by Swedish and foreign companies whose shares or depository receipts are quoted on a Swedish stock exchange or authorized marketplace.

In accordance with these Recommendations, such companies shall provide information concerning remuneration and other benefits which senior executives receive from the company. If the company is part of a group of companies, the benefits received from all companies within the Group shall be included.

Exemption from the information requirements stipulated in these Recommendations may be granted to foreign companies by a stock exchange or authorized marketplace on which the company's shares or depository receipts are quoted.

In these Recommendations, “senior executive” is defined as follows: the chairman of the board, other directors who receive remuneration from the company in addition to the customary director’s fee and who are not employed by the company, the managing director, the group chief executive (where applicable) and, in certain cases, salaried executives in the company’s senior management team. In these Recommendations, the chairman of the board, relevant members of the board, the group chief executive and the managing director are defined as “top management”. The expression “other senior executives” refers to persons who are not members of this group. Normally, this applies to persons employed by the company who constitute the group management team or corresponding unit, which also includes the managing director.

A listed company is often the parent company of a group of companies. In many cases, senior executives in the parent company also have important functions in subsidiaries. Special remuneration may be paid for such assignments. Information about these executives must include remuneration and benefits provided by all group companies, whether Swedish or foreign.

2. The company shall specify the principles for the remuneration of senior executives.

In order to provide background information for reporting in accordance with items 3 and 4, below, the company must explain the principles applied by the company as regards remuneration of its senior executives. This may, for example, involve the principles for fixed and variable remuneration and the proportion of such remuneration.

3. Information shall be provided for each of the following:

- The chairman of the board.
- Board members not employed by the company who receive special remuneration in addition to the fee received for board duties.
- The group chief executive.
- The managing director.

*regarding:*

- The total amount of all remuneration and other benefits.
- All remuneration items which are not of minor importance.
- The fixed and variable components in remuneration, including the main principles applied for the calculation of variable remuneration.
- Holdings of financial instruments and other options or entitlements received during the year in connection with incentive programmes linked to share prices, and the estimated market value on the date of allotment and the acquisition price.
- Holdings of financial instruments and other options or entitlements received during previous years in connection with incentive programmes linked to share prices.
- The most important terms of agreements concerning future pensions.
- The most important terms of agreements concerning severance payments.

In cases in which it is impossible to indicate a specific amount in a meaningful manner, the benefit in question shall be described in greater detail in order to permit assessment of its significance.

Certain officers have a special status – the chairman of the board, other directors who receive remuneration from the company in addition to the customary director’s fee and who are not employed by the company, the managing director and, where applicable, the group chief executive. This is considered to justify the provision of relatively detailed information concerning the benefits received from the company by each of these officers. In these Recommendations, the deputy managing director is not regarded as equivalent to the managing director. Deputy directors are regarded as full members of the board, however.

In addition to the total amount of all remuneration and other benefits, each remuneration item which is not of minor importance must be reported. Benefit items of limited scope may be reported as a lump sum. A guideline for reporting items in this manner is that the total benefits do not exceed 10 per cent of annual salary.

In the case of variable remuneration (bonuses, earnings-related payments and similar remuneration), the total amount is to be stated in the form of information regarding the amount charged against the company's profit for the year, and also the main principles for calculating and determining the variable remuneration.

Financial instruments are defined as instruments covered by the definition in Chapter 1, Section 1, of the Financial Instruments Trading Act (1991:980). In addition to these instruments, the Recommendations also cover other options and entitlements employed within the framework for incentive programmes linked to share prices, "employee stock options" as defined in tax legislation (see Government Bill 1997/98:133) and also "synthetic options".

Other entitlements which are not financial instruments and which may involve costs for the company as a result of the trend for the company's share price are also covered by the Recommendations. On the other hand, the Recommendations do not cover call options, etc. issued by a party other than the company and which do not involve any cost for the company.

Financial instruments and other options or entitlements received during the year pertaining to incentive programmes linked to share prices are to be reported with respect to the holding, the estimated market value at the date of allotment and the acquisition price for the instruments concerned. This information must indicate whether or not the allotment involves a benefit (subsidy) for the individual concerned. If there is no established market value for the instrument in question, a theoretical value should be computed, in accordance with a generally recognized valuation model. In this connection, information must be provided concerning the major assumptions that have been applied.

In the case of financial instruments and other options or entitlements received in previous years pertaining to incentive programmes linked to share prices, the holding must be reported.

As the Recommendations indicate, information must be provided concerning special remuneration to directors in addition to the fee for board duties. The amount of such remuneration and the nature of the duties is to be specified. Distinguishing between what constitutes fees for board duties, per se, and other remuneration paid by the company should not normally present any difficulty. In Sweden, the fee for board duties is determined by the general meeting of shareholders for allocation among members of the board. This fee may be determined in other ways in other countries.

Information is to be provided regarding all remuneration received from the company by board members, including payment for assignments covered by the member's normal professional field of expertise, as a practicing lawyer, scientific expert or consultant, for example. In this connection, it is irrelevant if the remuneration is paid to the board member personally, to a company wholly or partly owned by the board member, or in some other manner. Remuneration from a group company in Sweden and other countries is also covered by this obligation to supply information.

In the case of pension benefits, information is to be provided about the most important terms for future pensions, including the pensionable age and the period during which the pension is to be paid. If bonuses or other variable remuneration are payable in addition to a fixed salary, the extent to which such remuneration constitutes pensionable income is to be stated. In addition, information must be provided as to whether the pension is based on contributions or benefits.

In the case of pension schemes based on contributions, the company must provide information regarding cost for the year in relation to pensionable income.

In the case of pension schemes based on benefits, information must also be provided regarding the cost for the year. This cost may be reported in accordance with IAS 19<sup>2)</sup>. In addition, in the case of schemes based on benefits the company must provide information concerning the pension level in relation to pensionable remuneration. Alternatively – where applicable – such information may be expressed in Swedish kronor. The company must also state whether or not the pension is revocable. An irrevocable pension is not dependent on future employment, but a revocable pension is governed by a clause of this nature.

In the case of severance payments, the main prerequisites and the conditions for a benefit of this nature must be reported for each executive concerned. The extent of this information may be determined from case to case. However, if the executive concerned is entitled to personally require a severance payment, this must be specifically stated, including the basis for such a request.

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5. Information shall be provided concerning the preparatory and decision-making process employed by the company when determining remuneration for top management.

It is important to provide information concerning the preparatory and decision-making process employed in order to establish confidence in companies' handling of issues involving benefits for senior executives.

Such information should include whether or not a compensation committee has been appointed and, if so, its mandate and composition. Even if a compensation committee has been established, it is appropriate that decisions regarding benefits for the managing director and, where applicable, the group chief executive are always taken by the board, and are not delegated to a committee.

6. Information covered by these Recommendations shall be presented in the annual report. If there is a significant change in the benefits received by senior executives in comparison with information supplied previously, this shall be publicly announced in the next interim report.

The information to be provided in accordance with these Recommendations must be published in a manner that ensures access for all shareholders. As a result, such information must be included in the annual report. If the benefits received by senior executives change significantly during the current year, this must be made public. Information of this nature is to be provided in the next interim report".

#### **2.4 Is timely disclosure required with respect to stock options, their vesting, exercise, and the sale of the relevant shares to third parties?**

The listing agreements require disclosure of all material transactions between the company and the directors. If the stock option plan has been decided by the GM or has been made public, no information about vesting, exercise or sale is necessary in relation to the listing agreements.

A specific Act demands directors' to report all trading in the company's shares (lagen om anmälningskyldighet) to a register run by the Swedish Financial Supervisory Authority (Finansinspektionen, FI). Vesting, exercise and sale of the relevant shares shall all be reported by the director. The register is public.

#### **2.5 What are the rules on disclosure of share transactions executed by the company's insiders (such as directors, officers, auditors, etc)?**

See 2.4 above. The general transaction disclosure rules may also demand disclosure to the market if the director passes upwards or downwards a threshold of five percent of the votes or equity of a company (from 5 to 90 percent) – these rules apply for all shareholders in all listed companies.

#### **2.6 What information on directors' remuneration must be included in public offer prospectuses and listing particulars?**

The same information for the last financial year as is necessary in the annual accounts according to NBK's recommendation (see 2.3 above).

### **3. Remuneration of The Board of Directors**

#### **3.1 Who fixes the board of directors' remuneration? What are the relevant procedures? (In two-tier systems, please refer to the supervisory board.)**

The board's remuneration is decided by the AGM with single majority, usually after a proposal from the largest shareholder or a nomination committee (nomination committees in Swedish companies are normally not comprised of members of the board but of the three to five largest owners of the company together with the chairman of the board). Usually a collective sum for the whole board is decided upon by the AGM, the distribution between different board members is a matter for the board. Even if the managing director usually has a place on the board (as the only representative from management), he will not be given special remuneration for this work.

Incentive programmes for board members require GM approval. Board members (except for the managing director if he is a member of the board) may not take part in an incentive programme for the employees – the programme has to be exclusive for the board members. The proposal may not be prepared by the board or management. Usually the largest owners of the company prepare the proposal. If the programme involves a share issue or buy back of shares, a 9/10 majority of the GM is required, otherwise a single majority is sufficient.

#### **3.2 Are there provisions and/or practices as to the amount of the remuneration and its distribution (for example, as to whether distribution should be proportionate) among board members? What types of remuneration are allowed?**

There are no such provisions. Some large institutional owners (not all) have made recommendations that a certain part of the remuneration should be in company shares.

#### **3.3 Are personal loans to the company's directors and officers allowed?**

The Companies Act (ABL) contains a very complicated ban on loans to directors. These rules have their origin in Swedish tax law, but the simple answer is that loans to directors are forbidden.

### **4. Executive Directors' Remuneration**

#### **4.1 Who fixes the executive directors' remuneration? What are the relevant procedures? Are shareholders required to approve directors' remuneration, the remuneration policy, or the remuneration report (see question 2) on an annual or other basis? (In two-tier systems, please refer to the management board.)**

In a Swedish company limited by shares there is only one executive director – the managing director. The managing director's remuneration is proposed and decided by the board of directors – some boards have a compensation/remuneration committee, comprised of a number of board members, even though it is not mandatory. The GM is not involved in the managing director's remuneration.

**4.2 Is the board required, or recommended as best practice, to create a remuneration committee?**

No, but some boards have created remuneration committees anyway. There are no special legal rules for board committees in Swedish company law.

**If yes, please specify:**

- (i) the committee's composition (if independent directors should be appointed to this committee, please give the relevant definition and indicate whether any special procedures apply to the appointment of independent non-executive directors)**
- (ii) the committee's competences and which company body it reports to**
- (iii) how the committee operates**

**4.3 Which types of remuneration are permitted?**

There are no restrictions on different types of remuneration, but the different types may demand different types of decision making, i.e. involving the GM.

**In answering, please consider each of the following:**

- (a) bonuses**  
can be decided by the board;
- (b) stock options, including discounted stock options**  
can be decided by the board, unless it involves a new issue of shares, convertibles or warrants or a buy back of shares, when GM approval with a 9/10 majority is required;
- (c) stock grants**  
GM approval with a 9/10 majority;
- (d) profit sharing**  
can be decided by the board;
- (e) benefits in kind**  
can be decided by the board.

**4.4 Are there specific rules, including shareholder approval requirements, as to these different types of remuneration?**

See 4.3.

**4.5 Are there any restrictions on how payments are made?**

No.

**4.6 Are there any specific requirements for termination payments made on loss of office, whether through dismissal, retirement, on a takeover, or otherwise?**

No. Termination payment deals must be made public, see 2.3 above.



**4.7 Are there any specific requirements concerning directors' service contracts with respect to, for example, their duration and disclosure?**

No. See 2.3 above.

## **5. Non-executive Directors' Remuneration**

**5.1 Are non-executive directors separately paid for their participation in committees of the board of directors? Do any restrictions apply to the payment of non-executive directors' *via* stock options?**

A Swedish company board is usually made up of nothing but non-executive directors, except for the managing director. They are not separately paid for their participation in committees, even though the internal distribution of the annual board remuneration from the GM may take the time spent in to account. A separate stock option programme can be introduced for non executive directors. See 3.1 above.

**5.2 May a company make payments to non-executive directors, additional to their directors' fees, for services, such as legal or brokerage services, outside the usual scope of directors' duties?**

Yes. If the sums are material, they have to be disclosed according to the listing agreements. Also see 2.3 above.