KOLLEGIET
FÖR SVENSK BOLAGSSTYRNING

Justitiedepartementet
Enheten för fastighetsrätt och associationsrätt
ju.remissvar@regeringskansliet.se

Ju2018/03135/L1

Comments regarding the proposals for implementation into Swedish law of the directive on increased shareholder engagement (Ds 2018:15)

The Swedish Corporate Governance Board ("the Board") was invited to comment on the Ministry of Justice draft proposal on implementation of the directive on increased shareholder engagement into Swedish legislation.

With the exception of the particular comments below, the Board has no objections to the proposed amendments to the legislation. In several of the proposed rules, not least with regard to remuneration guidelines, remuneration reports and adjacent party transactions, the new rules lead to some relaxation of the requirements found in the existing regulations. The Board has not provided any suggestions at this stage of this consultation process, but intends to offer some self-regulation proposals to supplement the legislation in relevant parts at a later date.

Identifying shareholders etc., as well as the disclosure of institutional investors and asset managers
The Board has no comments on the proposals regarding identification of shareholders and disclosure of institutional investors and asset managers.

Disclosure of voting advisers
The definition of a voting adviser in the proposed new law on voting advisers contains a delineation of "legal persons". The Board believes that the term "companies" should be used instead, as the rules should also cover matters such as voting advice conducted in a private company.

Shareholders' influence on remuneration
With regard to the proposed legislation on remuneration policies, it is the opinion of the Board that it should be made clear that remuneration decided upon directly by the shareholders' meeting falls outside the scope of the guidelines. Furthermore, the draft legislative text on the content of the guidelines stipulates that "varying" criteria are to be applied to variable remuneration. In the view of the Board, the term "varying", as taken from the text of the directive, should be removed because according to the preamble, it does not fulfil any purpose. Further guidance should be given regarding the intended meaning of "deferment periods", as neither the legislative text nor the preamble text states or explains what is meant by the term. Furthermore, the proposal requires the guidelines to state "details of ... where applicable, retention of shares after acquisition". In order for the legislative

text to be understood, the term “requirement" should be added, i.e. “details of ... where applicable, requirement of retention of shares after acquisition”.

Regarding the frequency of the shareholders’ meeting's adoption of guidelines for remuneration to senior executives, it is the opinion of the Board that the minimum requirement of every four years, as stated in the directive, is sufficient in order to avoid burdening the administration of the company unnecessarily.

Regarding the proposed legislation on the separate remuneration report that is to be produced, it should be noted at the outset that the Board feels that it would be appropriate if the remuneration note in the annual report could be accepted as constituting a remuneration report or that the remuneration report could form part of the annual report, and the Board therefore would therefore like this issue to be given specific consideration in the continued work with the proposed legislation. Furthermore, the draft legislative text concerning the content of the report stipulates that “information on how the performance criteria have been applied" is to be provided. In the opinion of the Board, the term “performance criteria" should be replaced by “the criteria for variable remuneration.

The proposed new Chapter 7. Section 62a of the Companies Act states that the documents are to be provided “free of charge" on the company's website. In the opinion of the Board, the words “free of charge" should be deleted in order to avoid the risk of misunderstanding. (Compare with the other provisions in the Act regarding shareholders’ meeting documentation to be provided by the company, where no reference to charges is made.)

Significant transactions with adjacent parties
The rules that apply to a wholly owned Swedish subsidiary conducting a transaction with a sister company are unclear. Even though a sister company is an adjacent party, the exemption in the final paragraph of Section 2 of the Companies Act applies only to transactions between the listed company and its subsidiaries. It should be made clear that a transaction between sister companies is covered by the exemption. Apart from this, the Board has no comments on the proposal regarding transactions between adjacent parties.

The “Leo rules”
The Board supports the proposed amendments to the “Leo Rules”, with the exception of the proposed change to the majority requirement from nine tenths to two thirds of the shares and votes represented at the shareholders’ meeting. Although the Board largely agrees with the arguments put forward for a change to the majority requirement, there are risks associated with such a change which it is felt give even greater weight to the argument to move in another direction. A change to the strong minority protection provided by the “Leo Rules” could jeopardise the legitimacy of our corporate governance model, where strong ownership influence is balanced by the robust protection of minority shareholders. The Board has therefore opted not to support the proposal to amend the majority requirement, while supporting the other parts of the proposal.

Other corporate law issues
The Board has no comments regarding what is stated on the subjects of notification of changes to the board of directors of a company, confirmation of payment, incorrect address details in the company register, the CEO's signature rights and the rules on reconciliation dates. It supports the proposals and arguments that are presented in the memorandum.

Although the Board understands the problems that many listed companies have suffered as a result of abuse of the right of initiative, the Board does not support the proposal to restrict shareholders' initiative rights. Although the proposed amendment cannot be regarded as a major intervention in the protection of minority shareholders - for an individual shareholder, the right to raise questions at the shareholders' meeting is the core right and is not affected by the proposal - the right of initiative is part of the traditionally strong Swedish protection of minority shareholders. Furthermore, a corresponding right for an individual shareholder to have an issue included on the agenda of the shareholders' meeting exists in the other Nordic countries, and the Board believes that the common Nordic corporate governance model should not be abandoned without compelling reasons. Instead, it would be preferable if the preamble could emphasise the company's right not to include on the agenda matters upon which the shareholders' meeting cannot decide, as well as the right of the chair of the meeting to limit the scope of the proposer's supporting arguments for the proposal at the meeting when it comes to unjustified proposals that cannot be expected to receive any support at the meeting.

Stockholm, 31 August 2018

THE SWEDISH CORPORATE GOVERNANCE BOARD

Arne Karlsson	Björn Kristiansson
Chair of the Board	Executive Director