



BALTIC INSTITUTE
OF CORPORATE
GOVERNANCE

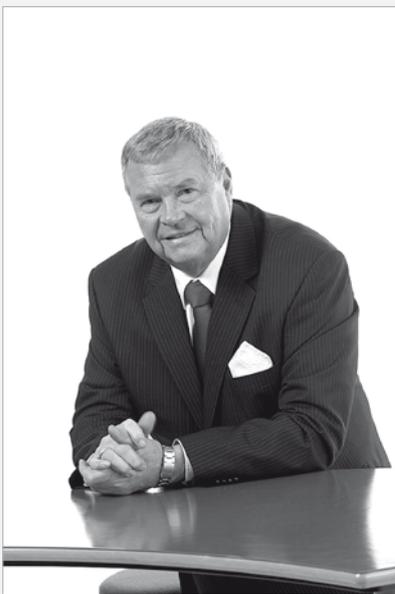
Corporate Governance in Swenglish

A combination of International
Corporate Governance Discipline
and Swedish Cases

Raoul Hasselgren



Preface



The “Baltic Institute of Corporate Governance” has arranged Executive Education for Professional Board Members in the Baltic countries. “Raw material” for the education has been Global Corporate Governance Forum (The Forum), Corporate Governance Board Leadership Toolkit (*), documentation from the Swedish Education for diplomaed Board Members by the Stockholm Chamber of Commerce and the Handbook – Board Work, written by me, being the tutor and teacher both in the Baltic countries and in Sweden. The context follows the Baltic program, but gives examples and cases from Sweden in particular, thus the title of this booklet – Corporate Governance in Swenglish. I give thanks to Kristian Kaas Mortensen, Carl Berneheim and Torbjörn Lindhe for their assistance and comments to the manuscript. The word Swenglish could also be an excuse for some home-made words in the text. I apologize for that.

Stockholm, autumn 2010

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P.S. Do observe that local national laws, regulations and codes must be regarded and followed. The examples and cases in this booklet are mainly based on Swedish legislation and code of corporate governance, as examples and illustrations.

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(*) The Global Corporate Governance Forum is an IFC multi-donor trust fund facility located within IFC Advisory services. The Forum sponsors regional and local initiatives. This booklet is based on their documentation and my own Swedish handbooks and booklets about Corporate Governance

Introduction

Inspired by the Global Corporate Governance Forum the Baltic Institute of Corporate Governance started in 2009 the Executive Education for Professional Board Members. Experienced Baltic and Scandinavian Board Members, Auditors and Lawyers were teachers and speakers.

The education was based on documentation from the Global Corporate Governance Forum plus material used by the external guest speakers and local specialists in auditing, legal matters and stock market management. In a similar education in Sweden more than 700 Board Members have been educated by the Stockholm Chamber of Commerce in the last five years. The documentation has been a Handbook in Board Work. That was the idea behind this booklet. By combining text from power point slides and documentation from the Global Corporate Governance Forum this is a booklet for future education in the Baltic and other countries. The disposition is based on the educational program of the BICG.

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Chapter 1

What is Corporate Governance

By reading this chapter you should improve your understanding of corporate governance and board director's responsibilities. You should be able to develop your competence required to implement responsible corporate governance practices in your company.

"Sound Corporate Governance practices inspire investors and lenders confidence, spur domestic and foreign investment and improve corporate competitiveness. Key to this is well-informed boards and directors fully aware of their responsibilities and functions". (Philip Armstrong, Head Global Corporate Governance forum)

There are five elements of Corporate Governance

- Good board practices
- Transparent disclosure
- Effective control processes
- Well defined shareowner rights
- Board commitment

There are four Pillars of Corporate Governance. Let us describe what we mean by that. First **Accountability**. Make sure that management is accountable to the Board and ensure that the Board is accountable to shareholder/shareowners. Secondly we have **Fairness** meaning that we protect the shareowners' rights and that we treat all owners including minorities equitably and provide effective readiness for violations. The third pillar is **Transparency** which means that we should ensure timely, accurate disclosure on all material, matters including the financial situation, performance, ownership and corporate governance. The fourth and final pillar is **Responsibility**. Recognize shareholders rights and encourage cooperation between the company and stakeholders in creating wealth, jobs and economic sustainability.

OECD has formulated their principles in a similar way. Ensuring the basis for an effective corporate governance framework. Rights of shareowners and key ownership functions. Equitable treatment of share owners. Role of stakeholders in corporate governance. Disclosure and transparency. Board responsibilities.

There are, however, competing tensions between shareowners vs. directors, shareowners vs. managers and directors of the Board vs. managers. Dividend vs. directors' remuneration, mergers and acquisitions vs. director's entrenchment and Management perks vs. dividends. Directors' duty to promote overall company performance vs. managers' obligation to their functional activity and staff could also be a conflict. Tensions may also arise between controlling/blockholding shareowners and minority shareholders. When legitimate interests of other stakeholders like employees, creditors, clients, general public are ignored by the shareowners, conflicts may emerge. These competing tensions give rise to key governance problems which are dealt with by Corporate Governance.

In Sweden we have had for many years a Company Act which regulates the responsibility for the Boards, the Managing Director and the Auditor on behalf of the shareowners. In our small country of 9 million inhabitants we have 900 000 companies, of which 330 000 are private limited companies, having 570 000 Board members. 60 000 of those private limited companies have active Boards of directors, in total 250 000 persons. On the stock markets we have only 400 public limited and listed companies with approximately 3 200 directors of the Boards. 100 % of public companies must have a managing director/CEO, while private companies are not forced. Anyhow 25 % of those have a CEO nevertheless.

The big difference between the 600 000 private firms and the 330 000 limited companies is the responsibility for the owners. They only risk the share capital while the private ones risk everything as owners. The Swedish Company Act regulates the limited companies and forces them to obey the law for the benefit of the share owners, very much in line with the Corporate Governance philosophy.

Share Capital for public limited companies in Sweden according to the law is minimum 50 000 EURO and for private limited company only 5 000 EURO (minimum). The founders must publish Articles of Association – By-laws with information about Company Name, Place, Business, Share Capital, Number of shares, Board members, Shareholder meeting and Business year = Fiscal year. Another compulsory document is the Shareholder book with information about the shareholders' rights and ownership. This book must always be available so that shareholders and stakeholders can read it. It must be kept 10 years after liquidation of the company.

Public companies, planning to list on stock markets must publish information about the limited company's history, profitability, board of directors, management, owners and company value in a prospectus. It can take 3-6 months to be registered and the Board and the Auditor must sign the document.

After approval by the stock market and registration they must keep the shareholders informed about anything that can affect the stock price and the market value of the company. For instance – acquisitions, divestments, new business, new investments, price- and currency changes, customer losses, quarterly reports, shareholders meeting and changes of the Board and top management.

In addition to the Swedish Company Act there are some 40 other laws affecting the companies, the Board and the management, regarding taxes, environment, employees, competition and responsibility to stakeholders etc. In addition to legislation there are self-regulation. The Swedish Code of Corporate Governance applies to companies whose shares are traded on the Stockholm Stock Exchange Nasdaq/OMX and follow the principle “comply or explain”.

The essence of Swedish Corporate Governance is that ultimate power should rest with the shareholders. The four bodies regulating a limited company are the shareholders, the Board of directors, the CEO or Managing director and the Auditor.

Case. From private to public

A Swedish private company X with one owner is selling production equipment to Food Industry and provides service and maintenance of the machinery. Their total turnover and sales amount to 200 000 EURO per year with a steady profit around 20 000 EURO after salary to the owner. The bank has mortgage in the owner's private house and since it is a private company and not a limited company, the owner is fully responsible with the whole family's private economy. One of the biggest customers goes bankrupt and at the same time one of the co-suppliers starts a competing production of machinery and employs some key people from the private company X.

Great problems for the owner of the company. The family house, private cars, private bank accounts are at risk for the security, provided by the owner to the benefit of the bank.

The owner of company X is, however, quite able and he succeeds in getting new orders from other customers with bank guarantees from them and after some time the problem is solved. But the owner has realised how dangerous it can be to run a private company and he decides together with the bank that he should form a private limited company with share capital 5 000 EURO instead of his private company. Despite the low minimum equity at risk the bank agrees but they still demands a mortgage in the private house and company mortgage for the security of the loans. Anyhow it is better for the owner than the whole private economy at risk.

The business is booming and the owner decides to change the private limited company to a public limited company and invites some business friends to become shareholders, although only on a limited level. The founder wants to keep more than 70 % of the share value. New company by-laws are written and a new shareholder book is issued. Share capital in equity is increased from 5 000 EURO to 50 000 EURO. The owner has some vague plans for the future to go public and list the company, if it will continue to grow, in order to obtain more risk capital. His bank advisor suggests to consider A and B-shares with different voting power after a listing. But that still remains to be done in the future.

The owner appoints two independent external Board directors, one with bank and financial experience and the other one with knowledge from Food manufacturing business. But the owner remains as chairman of the Board, while his son takes over more and more and is appointed managing director with special responsibilities for production of machinery. The bank releases the founder and major owner from the mortgage in his private house, but keeps company mortgage for the loans.

Chapter 2

Board's Role in Governing Strategy

"The Board should fulfil certain key functions, including: reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans, setting performance objectives ..."

OECD

In the old days the most important and sometimes only task for a Board was to find and appoint the CEO. That is still important, but since the Corporate Governance philosophy has extended over the world other important elements have become more and more essential; steering, directing and advising has grown in importance. An article in the Harvard Business Review in 1990 established that it was time for the Boards to engage in strategic issues as being the most important task. Based on Marketing Plans one could say that Analysis, Strategy, Tactics and Activities are the four steps. Analysis by management, but Strategy is the Board's responsibility. The CEO presents and the Board decides. The word comes from the old Greek word "Strategos". Tactics and Activities lie in the hands of management.

Strategy can be a Plan – an intended direction or course of action. Ploy, meaning a manoeuvre to outwit a competitor. Pattern, a consistent pattern of past behaviour. Position means how to position brands, products or the company. Perspective being the determination by the Board. Those five P's can help you to remember.

The Board should ask questions in the Board room about assortment, pricing, markets, making envision and formulating the strategy. There are many models for the Strategic Planning Process but one should avoid making 10 years' plan. Too much happens in the world and the economy. Ask questions about the advantages vs. competitors' products, prices, service, quality etc. Discuss in the Board where we are, where we should go and how we should reach our target. Spend a full day or even one day incl. evening to discuss these important issues. The benefits of developing a strategy are the following ...

- **provides direction, focus and motivation**
- **improves inter-functional relations through shared goals and clear objectives**
- **disseminates information throughout the company**
- **allocates resources on a rational basis, for sound commercial reasons**
- **encourages the Board to accept the need for change and to better prepare for it**
- **helps the Board to anticipate, monitor, react or pre-empt developments**
- **influence the pace and direction of changes in the business environment to the company's advantage**

Johnson & Johnson operate in more than 150 countries and their Credo is well known since General Johnson wrote it as early as in the 40's. And it is still prevailing. It defines the purpose of the company and forms a basis for company's vision and company's strategy. Every affiliate presents every year a strategic plan on two pages only, based on some head lines, how they are going to take the daughter company from where it is now to where they want to be.

Our Credo (Johnson & Johnson)

- **First responsibility to our customers**
- **Second responsibility to those who work with us**
- **Third responsibility to our management**
- **Fourth responsibility to the communities**
- **Fifth responsibility to our stockholders**
- **(abstracts from the original Credo)**

The strategic plan can be the most valuable document in the Company if it is well done and accomplished. Four head lines can be of value. The Vision, Values, Goals and the Objectives. Let us see what sub lines we could use as helpers ...

The Vision

- What do we want the company to look like in the future?
- How big will we be?
- How many customers?
- What products/services will we provide?
- What locations will we operate in?
- What benefits shall we provide to our shareowners?

The Values

- Honesty
- Transparency
- Integrity
- Openness
- Trustworthy
- Respect
- Truthfulness
- Responsibility

The Goals

Targets for attaining the vision

- Market standing
- Innovation
- Productivity
- Physical financial resources
- Profitability
- Management performance
- Staff performance, attitude
- Corporate responsibility

The Objectives

- Objectives are measurable targets tied to achieving the strategy.

In the Swedish handbook we say that the Strategic plan should answer basic questions about financial and management resources. Capacity. Solidity. Liquidity. Action standards should contain targets about market share, productivity index, key performing units, value based management, economic value added, shareholder value, pay back, activity based costing, return on investment etc.

The Board must understand the nature, risks, behaviour and competition within its chosen markets. This should of course be provided by the CEO and the management team, sufficient to understand oversight and challenge. The chairman is responsible to make sure that the whole Board understands. There are many tools and techniques for management, such as PESTLE Analysis, SWOT-Analyses and other Strategic headlines. It is not enough to receive information for the Board. Not until decisions are reached in the Board room of what it should lead to, has the Board fulfilled its mission.

PESTLE Analysis stands for Political, Economic, Social, Technological, Legal and Environmental factors. Cover these factors with Action standards – i.e. what do we want to achieve? The SWOT-Analysis which nowadays even junior managers can exercise is not sufficient until Strengths are utilised, Weakness compensated or eliminated, Opportunities exploited and Threats removed. The Board should exercise this with the Management. What are the highest priorities in terms of impact upon the company's activities and how are strengths and weaknesses assessed against relative competitiveness?

Strategic Formulation is in other words based on Analysis and Discussions in the Board. We all know the Boston model and the Ansoff Matrix is a development where Product and Market form the two possibilities – to develop new markets or develop new products or combine the two which sometimes can be difficult due to lack of resources. Balanced Scorecard with questions and perspective give the Board a distinct method for follow up. How do we look to our customers, what must we excel at, how do we look to share owners and can we continue to improve and create value? In perspective of Customer, Internal, Financial, Innovation and Learning.

Competitive Positioning is based on Cost Leadership. Those who have lower cost and economies of scale are in a good position. Differentiation with higher quality, special technical features, superior customer service and/or design of special brand image are also beneficial. Not to forget focus on particular products or geographic areas.

Scenario Planning

- **A scenario is a coherent story about the business environment with the contemporary situation as the starting point**
- **With carefully chosen scenarios, a range of alternative lines of development can be described and considered.**
- **The focus is to identify which components are likely to change and with what impact.**

In chapter 7 we shall continue with Strategic acquisitions, for instance if organic growth is not enough and risk management matters.

Case. Risk became crisis

The importance of a credo and risk management as a component in Governing Strategy can be illustrated by a case early in the 80's The global conglomerate Johnson & Johnson, most known by the general public for baby products and Band Aid wound plasters, but by the professionals for products like Ethicon sutures and pharmaceutical products from daughter companies Cilag and Jansen Pharma. One of their biggest successes was Tylenol, a paracetamol based "pain killer" which was the most sold product of its type in the world.

Something terrible happened in Chicago. Seven persons died after having taken Tylenol capsules, which later was found containing cyanide and not paracetamol, which somebody had mixed on purpose. A risk became a crisis and the Board was heavily involved with the chairman as the spokesman. All Tylenol capsules in the US were taken back by J&J. The share price and stock value dropped dramatically as well as the profit. But the chairman declared that the first responsibility according to J&J Credo was to the customers and consumers. They found one capsule with cyanide on the shelves. How much is a human being's life worth?

A year later J&J stock value was above previous all time high as well as the profit. The chairman declared that every manager in J&J world wide would have acted in the same way thanks to the impact of the Credo.



Chapter 3

The Board's composition

Now we know what the primary task for a Board of Directors is. We also know that it is the shareholders who decide what Board they want, normally in the AGM Annual General Meeting of shareholders. It is important that the shareholders choose a Board size that will enable the directors to have productive and constructive discussions. The Board must make prompt and rational decisions. In some cases committees should be established, but never should that relieve the Board from full responsibility.

In Sweden the Companies Act stipulates that a Board must have one or more members. The lowest and highest number must be declared in the company by-laws. If the Board consists of less than three, they must have a deputy. The law is strict regarding the Board's responsibility for the companies organisation, operation and affair.

Board size is critical. Too big Boards create a tendency of lack in conscious of responsibility and difficulties for the chairman to organise the discussions. In countries with a mixture of executive and non-executive directors which is the case in public companies in the UK and USA there should be a balance between the two. In other countries like the Scandinavian, Boards normally consist of only independent directors in public listed companies. In private limited companies the normal Board is a combination of members of the family owners who work in the company plus a few independent directors from outside. Regardless of this, the Board must have appropriate skills, experience and attributes. In the Swedish handbook we claim that the Board must consist of members with different characters and different behaviour. Important factors are positive thinking, creative, business minded, ability to communicate and negotiate and ability to understand new cultures and create a team-feeling.

When we have executive directors in the Board, these members often hold an operational position as CEO, COO and/or CFO. They are the most knowledgeable directors, being best informed about the company's business and its challenges as they make decisions daily about the company's operations. They are also responsible for the company's operating result. The non-executive directors do not hold an executive position and they are normally independent but can be dependent due to ownership of more than 10 % of the shares, for instance. Other reasons for dependency could be a recent material business relationship with the company or receiving additional remuneration from the company. Some Codes stipulate that a Board member who has served on the Board for more than so and so many years should also be regarded as dependent.

Some Swedish professional organisations for Board management demand that a director must be active, careful and responsible. Must have good judgement, experience and a network, meeting the need of the company and having no conflict of interests. Important criteria are experience, competence, respect, influence and being representative, winning, enthusiastic and knowledgeable.

In the International Finance Corporation's documentation for good Corporate Governance they demand directors' skills, experience and attributes as follows...

- **Financial expertise**
- **Relevant industry experience**
- **Legal expertise**
- **Representatives of key stakeholders**
- **Experience of operating internationally**
- **Honesty and integrity**
- **Gender distribution**
- **Age distribution**

Very important is that the Board member acts honestly and in "good faith" (bonafide), and exercises his powers for a proper purpose.

The Board member should not compromise in exercising his powers unless company consents and where his interests and duties are in conflict with the company.

In 30 Swedish Board Performance Evaluations we found a strong correlation between a good chairman and good Board performance.

There are many different ways and means to find outside, independent Board members. The most common way is to use the personal network or the old man's club. But head-hunters are both eager and competent to assist. Costs are normally one year's Board fee. In the same way as recruiting CEO, COO, CFO or other managers the work must start with making a job profile for the Board vacancy. In many cases in private companies the Board members, the big shareowners, the Managing Director have a son or a daughter or other relatives they suggest. In that case, ask a head-hunter to perform a "second opinion". In public listed companies there are according to Codes a Nomination committee who has the responsibility to suggest to the shareholders in the AGM new Board members. Hopefully their recommendation is based on "Board evaluation" showing what we are missing in the Board.

Regardless of methods some basic questions must be raised ...

- What situation is the company in?
- What board resources do we need?
- What capacity should we ask for?

If the Board has done the strategic work as presented in Chapter 2 and 7 the first part of the answer is there. Is the company in a consolidation phase? Should the company go international? Are we planning to acquire other companies? Do we have plans for franchising? Are we going to outsource something of our non core business units? All of these situations demand different capacities in the Board, which also relates to what expertise there is in the Management of the company.

Another essential role for the AGM is for the shareholders to decide on Board remuneration. Normal procedure is that they decide on a total fee for the whole of the Board, suggested by the Nomination Committee or by the major shareholders. That fee should then be split between the members of the Board. Normally the chairman receives twice as much as the other Board members. If there are employees in the Board, such as CEO and other executives who are paid salaries by the company, they should not receive any fees for Board work. Every country has different levels of compensation. In Sweden it is normal to give the chairman 20 % of the CEO's salary and half of that to each of the other Board members. Public listed companies in Sweden have a big difference in remuneration, ranging from 10 000 to 300 000 EUROS per year. Anyhow it is nowadays normal to relate the fee to the time devoted to Board assignments and the CEO's salary.

The responsibility for the Chairman is essential for the Board's composition. As mentioned above there is a high correlation between a good chairman and a professional and effective Board. Therefore we should mention the tasks for a chairman in short...

- **Is leading the Board**
- **Ensures decisions are affected**
- **Board meetings are kept**
- **Call for extra Board meetings**
- **Has the additional voice in voting**
- **Prepares Board meeting with the CEO**
- **Follows up on decisions**
- **Contacts with major shareholders**

(More of this in Chapter 4)

Finally a few words about Boards in subsidiaries. There are three main alternatives and of course also some combinations.

- Mother company CEO = Chairman + Management team
- External independent chairman + Internal and external Board members
- Pro-forma Boards – no meetings

There are pros and cons for each of these alternatives of Board's composition, depending on what situation the companies are in and what the Strategic Plan indicates.

Case. Board evaluation creates a new Board

A Swedish public (not listed) company is dominated by a family as Board members. The chairman and founder of the company is the biggest owner with 51 % of the votes, in A-shares mostly. The rest of the family have additional 20 % and some external owners the rest, i.e. almost 30 % of the votes with B-shares with only one vote per share, while A-shares have 10 votes each. The founder and chairman runs both the company and the Board in his way, although they have an outside recruited CEO. The Board consists of nine directors – five owners and family members and four independent directors with only limited number of shares.

The four independent Board directors demand a Board evaluation. They are “sick and tired” of the old man = chairman running over the rest of the Board and also dictating what the CEO should do and not do.

The old man accepts reluctantly the idea, but he would like to do the evaluation himself. The independent directors state however that it would be difficult for the chairman to objectively review and evaluate the Board and say that the members cannot be fully open in such a procedure. An external, experienced consultant is asked to make the evaluation and assessment of the way the Board works. Headlines such as best practice, objectivity and transparency are proven methods with tools from his previous experience. So he gets the assignment to do the evaluation.

The Board evaluation shows that the Board needs dramatic changes both in composition and in actual work. The result is presented to the whole Board. The major owner was regarded as being too strong headed and communication and relationship with the Board and the CEO was inferior. The Board had not spent time on strategic issues and decisions about investments and budget. Control, policies and follow up of the business had been weak. The five family members always said yes to the chairman's proposals and the climate in the Board room was not open, transparent, trust worthy and focused.

The four external independent Board members decided to leave the Board if things did not change. The major owner realised facts and was convinced by the consultant that he should leave the Board and instead function as a major owner, giving clear targets to the Board. After the General Shareholder Meeting only two family members remained in the Board plus four independent directors and a new independent chairman was elected. The Board consisted of right people - a mix of Board competence and motivated directors. The competence reflected the company's major strategic challenges for the coming years and the personalities were different enough for difficult questions and good discussions.

It was later proven that the new independent chairman was well functioning and had full trust from the Board and the owners. The CEO got full support from the Board and could flourish. Obviously, this was a good succession planning with a well functioning Board.



Chapter 4

Board Practices

In this chapter we are going to describe how the Board works and how the Directors work in the Board. Often do I hear “What Board do you sit in?” My somewhat arrogant answer is “I do not sit – I work in the Boards”. Board assignments mean today hard work based on good knowledge, ability, preparation and a sense of urgency. It is important that the chairman creates an atmosphere forming a good basis for discussions and decisions. The Board room is the stage where everything happens. The role play is important with the chairman as the conductor and the CEO being the one who normally presents ideas and suggestions as a base for decisions. These two must function together. The chairman should listen to everybody and ask around the table.

Red flags and questions to raise

- **Does the Board have an appropriate mix of**
 - Executive and non-executive directors?
 - Independent directors?
 - Skills, experience and attributes?
- **Does the Board regularly review its composition and structure?**
- **Does the Board size allow appropriate**
 - Productive, constructive discussions?
 - Prompt and rational decisions?
- **Are the Board committees efficiently organized?**
- **Are the director selection and appointment procedures aligned with best corporate governance practices?**

In the Swedish Board Cooperation we have our own “red flags”.

- Meetings are rare and irregular
- Meetings are cancelled with short notice
- No contacts between the meetings
- Only standard questions are dealt with
- No plans for the future
- No documentation in advance
- Too short minutes from the meetings
- Only the chairman and the CEO are active

It makes sense to make your own notes as a follow up. The minutes should arrive early and compare with your own notes. Minutes from a Board meeting often show what is important to follow up. It is wise to add to the minute’s previous decisions from earlier meetings. Otherwise they might be forgotten. For the CEO and the executive directors action ideas could be a good idea.

I plan to take the following actions upon my return to the daily work ...

Obstacles that may prevent me from implementing these actions are ...

Actions to overcome anticipated problems are ...

In Sweden the first Board meeting after the Annual Shareholder Meeting is a statutory meeting with the following topics.

- Elect a chairman for the fiscal year
- Decide who are allowed to sign for the company
- Give some authority for managers to sign bank accounts, checks etc
- Split the fee between the Board members
- Agree on documents such as Working order for the Board, Instructions to the CEO and Report instructions. In these documents the Board sets the principal agenda for the meetings, contents

and the annual calendar with meeting frequency. It is important that the management's reports are demanded in the CEO instructions. If a new Board member is appointed a director induction and introduction should be planned for.

In the following Board meetings it is key to set the agenda, its content and key questions and other factors. There should be a balance between the reviews of past performance and discussion on forward-looking issues. Plan for ample time for debate and do not spend too much time on routine or administrative matters. In one Swedish company they changed the order of the agenda – important issues first when the Board members are alert and in the end they took formalities. Here follows an example of a standard Board agenda ...

- **Approval of minutes of last meeting**
- **Formal approval of matters requiring limited discussions**
- **Executive's reports – company performance**
- **CEO financial performance**
- **CFO unbudgeted capital expenditure, approval**
- **Audit committee report**
- **Report from external auditor**
- **Remuneration report**
- **Business plan review**

According to the working order for the Board, the year should be phased with different topics. In Sweden very often the first meeting in February deals with year-end result, salaries for the management, organisation etc. In April it is time for the Annual report, prognosis for the rest of the fiscal year, meeting with the external auditor and the statutory meeting (as above). In July first half year result Q2 and prognosis for the next half year. In September a full day meeting dealing with the strategic plan. In October Business and Marketing plan with a top-down budget indication from the Board to the management + Q3 report. And finally in December Budget proposal from the CEO to the Board – Bottom up. Meetings with the auditor and final prognosis for the year.

Regular Board meetings are normally 6-7 per year, for banks 10-12, but if a company is in a turn-around situation 12-24 meetings per year could be necessary. When there are changes of the CEO extra Board meetings may also be necessary. In the European countries the average in 2007 was 8.7 with Italy leading with 12 meetings and Germany only with 4.4 i.e. one per quarter.

Board briefing papers should be sent out not later than a week before the meeting with management reports being concise, focused and action-oriented. In the meeting it is important that the CEO does not repeat everything that has been sent out. Just highlights and the CEO's recommendation. Time should be used for questions, discussions, debate and decision. It is important for the chairman to allow everybody in the Board to participate in the discussion. Particularly new Board members should be involved and if a fair induction package with briefing papers, internal visits and introductions have passed the newcomer should have a fair chance to be active.

Conducting Board Meetings

- **Appropriate Board meeting duration**
- **Balance of decision-making, ratification, informing**
- **Chairman's role in managing discussions, dissent, voting**
- **Information requirements, including presentations from management and Board committees**
- **Delegation to Board committees**
- **Monitoring performance**

It is common in Sweden to have a meeting in the morning, ending with a business lunch or an afternoon meeting, ending with or starting with a sandwich – time to compare notes. In the UK most Board meetings are between 2-4 hours. But when the strategic plan is dealt with, spend a full day plus an evening.

Board Leadership, procedures

- **Create a climate of trust**
- **Foster constructive dissent**
- **Constructively evaluate strategic options**
- **Ensure individual accountability**

Requirements for a good Board meeting are ...

- An agenda
- Minutes from last meeting
- Management accounts
- Papers relating to the specific agenda items

The minutes can be a legal document in a lawsuit if responsibility for the Board turns up as a legal act with prosecution. Also important to note if there are conflicts of interest among the Board members. Minutes should be signed by the chairman plus another elected person who checks the minutes. The minutes should have date, running number and location. Names of the persons who participated in the meeting and those absent. Principal points arising during the discussion and of course the most important – the Board decisions and if so any reservations from Board members.

The company Board secretary could be the company legal director or the CFO. The role of a corporate secretary can be to communicate with the directors, make sure there is a compliance with the Board procedure, take the minutes of the Board, prepare Board papers, explain requirements of laws and resolve organisational matters for Board meetings etc.

Red flags for Boards

- **Do the meetings finish on time?**
- **Are directors rarely absent?**
- **Are the meetings thorough in duration?**
- **Are you presented with strong analysis and thorough reports?**
- **Does the Board receive effective, concise presentations?**
- **Are the directors sufficiently provided with needed information?**
- **Are you presented with sufficient time before the Board meeting to prepare?**
- **Are you only told what the executive wants you to be told?**
- **Is the information kept confidential within the Boardroom?**

Case. Board decision against the law

A medium sized Swedish real estate company is public and listed on OMX. There are two major owners – A Cyprus based real estate investor and a Swedish Commercial Association for farmers. They hold together some 80 % of the shares and the remaining 20 % are small investors, private and funds. In the Annual Shareholder Meeting the Nomination committee proposed six Board members – two Swedes from the Cyprus-based holding company, two from the Commercial Association, the CEO as a Board member and one independent outside real estate specialist. They were elected by the Annual Shareholder Meeting.

According to Swedish law = Company Act three compulsory documents were issued – Working order for the Board, Instructions for the CEO and Report Instructions. They were approved by the Board in the statutory Board meeting. The documents were rather standardized, written by a lawyer. No specific rules about what happened half a year later.

In a regular Board meeting the agenda had been prepared by the chairman and the CEO and was very much a standard agenda with no specific issues. But during the meeting the two Cyprus-directors asked the CEO to leave the room since they wanted to discuss a subject with conflict of interest. The chairman, who came from the Association, was fully unaware of what should happen. The Cyprus-directors demanded that the Board should decide to “fire” the CEO immediately, without any clarification. The Board has legally the full right to do so without any reasons if they reach such an agreement. But in this case it was like a “bolt from the blue”. The chairman and his peer from the Association were flabbergasted and asked for voting in the Board. The two from the Association were against the proposal, the Cyprus-directors voted for it and the independent specialist also voted for it. Since the sixth Board member, the CEO had left the room as he had conflict of interest he could not vote. So decision was reached – three to two – the CEO was dismissed immediately.

The auditors who prepared the Auditors report for the Annual Shareholder Meeting did not approve the decision. The Swedish Company Act 8:21 states that a decision must not be taken if not all Board members have received satisfactory basis for decision in order to determine the question. The auditors are according to law committed to report to the Annual Shareholder Meeting if a Board member has been guilty to any negligence and declare that they do not recommend discharge from liability, In this case the legal paragraph in Company Act also contains a criminal sanction. The report was given to the shareholders meeting with a suggestion that the three directors who voted for dismissing the CEO should not be granted discharge from liability.



Chapter 5

Board Committees

Swedish Corporate Governance is based on legislation and self-regulation. Some issues are only covered by the Swedish Code of Corporate Governance. The Swedish Companies Act does not contain an obligation of Board Committees. For public listed companies election of a nomination committee by the shareholders in the AGM and formation of a remuneration committee and an audit committee are regulated in the Swedish Code.

In general the audit committee recommends the approval of the external auditors and oversees their relationship with the company. They monitor the effectiveness of and receive regular reports from the internal audit function. They also review financial procedures and systems of internal control over financial reporting. The audit committee also reviews arrangements for compliance with the requirements of regulations and receives report on the operation of the company's whistleblower arrangements. Another task could be to review the company's risk management framework.

The remuneration committee's role is to consider matters relating to executive remuneration. It approves changes to incentive and benefits plans applicable to senior managers. They may be involved with remuneration decisions for the entire company. The decision lies, however, with the whole Board who must decide on remuneration and other terms of employment.

For public listed companies in Sweden the remuneration of the CEO and other members of company management must be proposed to the Annual General Meeting for its approval. The proposal must be posted on the company's website when notice of the AGM is published.

The nomination committee considers matters relating to Corporate Governance, including the composition of the Board and suggestions to appoint new Board members. The committee should also oversee the annual performance evaluation of the Board, its committees and the individual directors. (see Chapter 9 below). Another task is to review strategic human resource and succession plans for the chairman and other key Board positions.

In Sweden the election of Nomination Committee according to the Code is appointed by the AGM. Either by names or specified manner of the appointment. The nomination committee must represent the shareholders but the majority of nomination committee member must not be directors of the Board. Neither the CEO nor other members of company management may be members of the nomination committee. The chairman of the Board of directors or other Board members must not chair the nomination committee. It is fairly common among Swedish listed companies for the nomination committee to consist of the chair of the Board of directors and three or four representatives of the largest or major shareholders.

In many companies the Chairman of the Board and the CEO form an executive committee. Sometimes also the vice chairman and the deputy CEO/COO or CFO are members of this committee. They are elected by the whole Board. Their mission should be to prepare the Board meetings and material for decisions in the Board. Sometimes they are given specific responsibility for exercising powers and authority of the Board during intervals between Board meetings, but final decisions should be made by the full Board. A warning should be that there is a risk that this executive committee could be a picked troop or corps d'élite of the formal Board.

Non-executive remuneration should be decided by the AGM regarding fees and other conditions for directors of the Board. The nomination committee should make recommendations in the notice to the AGM. The decision takes place by the shareholders in the AGM as a total amount. The statutory Board meeting decides of the split among the directors. Normally twice as much for the chairman. The annual fee could either be a monthly, quarterly, half yearly, yearly payment or a fee per meeting or a combination of these. Committee members receive a special fee. All out of pocket expenses are normally paid by the company.

In Sweden the fees could be based on the salary to the CEO. 20 % of that amount to the chairman and 10 % to the other directors of the Board. But it varies in Public listed companies from 10 000 EUROS to 300 000 EUROS for the chairman and half of that to other directors

Case. A Board delegates responsibility to a Committee

The huge and leading pension fund in Sweden, AMF, has a vast Board of Directors, among others the chairman of the Swedish labour union LO. AMF's CEO has been very successful in his position, but he is close to pension and his period goes to an end. The Board has been very pleased with his performance. Since they had no succession plan ready when he was supposed to leave with pension, they convinced him to prolong his period as CEO with a few years additional service to AMF. The Board delegated terms of financial conditions and an additional pension plan to the Remuneration Committee. They reached an agreement, which later on proved to be extremely costly for the company.

After the additional years of service the CEO left the company and a very well known and professional female CEO took up the position in AMF. So far so good. But evening press and TV found out that the additional agreement and pension plan for the retired CEO was shockingly high. Something like more than eight years of additional salary. Headlines gave echo in the whole media world. Criticism in particular to the chairman of the labour union was like a tornado. How could she, who should look after the union members' pensions approve such a level of pension to one person, the former CEO of AMF? She denied knowledge of it and declared that it was the Remuneration Committee who had decided. The former CEO declared in press and TV that the Board was fully aware of the conditions in the additional contract and further more it was fully disclosed in the Annual Report, signed by all Board members. It was the committee who had suggested the level of remuneration in payment and additional pension plus other terms in order to keep the CEO for a few years more, but the Board had agreed and signed the Annual Report.

Media continued to publish information and interviews and the debate became dramatic towards the Board members who had delegated the issue to the remuneration committee but approved and signed in the Annual Report. By definition the Board has full responsibility for decisions which cannot be delegated as such. Criticism towards the chairman of the labour union was even worse. Media found out that she was a member in some 15 Boards. How could a person with a fulltime job as top chairman of the labour union hold so many outside Board positions? She left the Board of AMF together with a few others. The CEO who was considered by media to be extremely greedy was, however, in his full right to dispose of the agreed money. Nevertheless he felt unhappy with all the publicity and he agreed to give back a decent amount of millions of Swedish crowns to AMF.



Chapter 6

Shareholders

Who are the most important stakeholders in Corporate Governance? Most Board members and CEOs will no doubt say the shareholders. As we saw in Chapter 2 Johnson & Johnson have the customers as the most important. We shall deal with other stakeholders in Chapter 11, but under this headline we shall deal with the shareholders. Due to difference in ownership structures, legal and regulatory frameworks the specific provisions of corporate governance will vary – from one country to another. But the basic principles are the same ...

- **Fairness** to all shareholders, whose rights must be respected
- **Accountability** by the Board and management
- **Transparency** = timely, accurate and comprehensive financial and nonfinancial reporting
- **Responsibility** for the interests of minority shareholders and other stakeholders and for abiding by the letter and spirit of the law.

In Sweden legislation (Swedish Company Act) deals with four “bodies” with rules about each of them ...

- The Shareholder
- The Board of Directors
- The Managing Director
- The Auditor

For the shareholders the most important event is the Annual Shareholder Meeting or other General Shareholder Meetings. You can have several Shareholder’s meetings and extra meetings, if something must be presented, like change of the Company’s by-laws or decision about issue of new shares etc. The Annual report, report from the auditor, voting for Board members and of course questions to the Board and the CEO are traditional issues in the AGM. A specific Swedish tradition is “discharge from liability” for the Board and the CEO. In reality it does not mean full discharge from everybody – only discharge from liability towards the company of the Board of directors and managing director. Other stakeholders such as creditors (banks or suppliers) can raise an action for damages, if they have a case, despite the discharge.

The standard agenda of a Swedish AGM could be as follows ...

- Opening of the meeting
- Election of chair of the Meeting
- Approval of the voting list
- Approval of the agenda
- Election of minutes-checkers
- Determination of whether the Meeting has been duly convened
- Presentation of the Annual Report and the Auditor’s Report
- Adoption of P&L and Balance sheet
- Allocation of the Company’s profit/loss
- Discharge from liability
- Determination of the number of Directors
- Determination of remuneration to the Board of Directors
- Election of Board of Directors
- Election of auditors (including fees)
- Election of Nomination committee
- Decisions on guidelines for remuneration of company management
- Other preannounced questions
- Closing of the meeting

The other “bodies” – **The Board** works on behalf of the shareholders as a kind of “commissioner” with legal responsibilities. **The auditors’** prime role is to act on behalf of firstly the shareholders and secondly the Board of Directors. **The CEO** is responsible towards the Board according to the CEO instruction and also with legal responsibilities. The main task for the Board and CEO as mentioned is to keep the shareholders informed with timely, accurate and comprehensive financial and nonfinancial reporting ...

Why Disclose?

- **Helps investors make informed decisions to buy or sell a company's shares**
- **Holds company accountable through greater transparency**
- **Builds trust, confidence**
- **Required by laws, regulations, contracts etc.**
- **Stakeholder demands**

There are many drivers for greater transparency

- Increased access to external financing
- A reduction in capital costs
- Higher firm valuation and share performance
- Reduced risk of corporate crisis and scandals

Key words are of course information and communication. Have you ever heard anybody complaining about lack of information? It happens every day in the whole of the world. Information is a shortage. But if the Board and the CEO are good in communication it builds trust and goodwill with shareholders, potential investors and stakeholders. But not only that, transparency can reduce risk of fraud, theft, deceit etc. In public listed companies good communication can facilitate the work of investment analysts and thereby raise the company profile by gaining exposure in investment banks' and stockbrokers' reports.

Annual reports are getting bigger and bigger. Legislation, such as IFRS (International Financial Reporting Standards) and the Codes of Corporate Governance with reporting "comply or explain" have created legal and other demands for full reporting. Even if it can take time to digest the annual reports, they are no doubt the most valuable document for the share owners to find out what the company looks like.

Annual report

- **Cover page**
- **Overview**
- **Chairman's report and/or CEO report**
- **Information about the company**
- **Management's discussion and analysis**
- **Market share, sales and marketing**
- **Securities and equity**
- **Corporate Governance structures, principles, risk analysis**
- **Environment, social, economic sustainability**
- **Financial statements, notes, comments**

As mentioned above the General Shareholders Meeting is the most important event for the shareholders. The Swedish example above about the agenda deals only with the Annual Shareholders Meeting. If the shareholders or the auditor ask for an extra Shareholders' meeting some special requisites must prevail ...

- 10 % of shareholders demanding it
- The auditor demands it
- If change of company by-laws
- If change of fiscal year
- If half of the share capital is spent
- If the company should be liquidated

The Board needs shareholders support at all times but particularly when ...

- **It wishes to increase its shares**
- **Company is producing disappointing short-term results**
- **Management performance is disappointing**
- **There is a need to change the strategic direction**
- **There is a concern about the company's governance**
- **Defensive measures need to be taken during an aggressive unwanted takeover**
- **A crisis - change of CEO or other key executives for instance**

In addition to this and the rules of the national Stock markets there are specific claims about the rights of shareholders, roles of international investors and other stock market rules and agreements that vary from stock market to stock market and from country to country. Everything to the benefit of the share owners.

Case. Shareholders voting rights in the AGM

In public listed companies but also in other public, unlisted companies the Annual Shareholder Meeting can be a big show with hundreds of participants. In the US and in Germany these events can be a full day meeting. Three cases could illustrate the problems, but also the opportunities – one case from the US, one from Germany and one from Sweden.

The US case first. A public company could have more than thousand of shareholders in the Annual Meeting. They must reserve big halls plus also arrange TV-communication in other cities. The chairman and the CEO in this company with affiliated companies globally send letters to the CEOs of the daughter companies asking if local shareholders are suspected to raise any difficult questions in the AGM. After that the two executives, Chairman and CEO take a full week off for preparation work with answers to all expected questions. It happens very often that those issues come up in the annual meeting and one could be impressed of how well they are prepared with relevant answers. In the minutes one can read that Mr/ Mrs X raised a question and wanted that to be written in the protocol (with number of votes = shares).

In a German public listed company with Aufsichtsrat (Supervisory Board) and Vorstand (Management Board) the stage in front of the hall with shareholders is loaded with persons. The supervisory Board with 10 members, the management Board with 8 members, assistants and secretaries sitting behind with computers and documentation. Every shareholder has the right to ask questions. It can take hours. All questions are registered and the staff sitting on the stage provides answers while other shareholders are presenting their questions, observations and often critical issues. When all questions have been registered the chairman of the Annual General Meeting repeats the questions and asks the Board members to answer them. Minutes contain reservations from shareholders with number of votes = shares.

In a Swedish public, listed company one rather big shareholder is critical about one of the 8 Board members. He suggests that the meeting should vote against discharge from liability for this Board member. He wants other shareholders to join him and if possible to get 10 % of the votes in order to have a minority auditor to investigate this Board member's performance. But in the shareholders meeting the majority of investors have a real big share of the present votes so he did not succeed to get 10 % of the votes for his proposal. Anyhow the criticized Board member was disappointed that the chairman of the AGM and the Board did not at once defend the Board member. His reason for not doing so was that he felt he was nominated by all shareholders and that he therefore was obliged to be neutral. If the shareholders had elected as chairman of AGM an outside person instead, for instance a professional lawyer, the chairman of the Board could have defended his peer from the Board.



Chapter 7

Board's role in strategic planning

Already in Chapter 2 – Board's role in Governing Strategy – we underlined the importance for the Board to engage in strategic issues, being the most important task. We ended that chapter with reference to this chapter with strategic matters, for instance acquisition if organic growth is not enough.

First question as strategic options for the Board and the CEO is if the company should grow organically or acquire and merge with other companies. The Board needs knowledge, experience and understanding if the answer is acquisitions. Some published research goes as far as three out of four merges are failures. Some of them probably due to lack of knowledge and experience in the Board. This is of course the reason why the Board must involve in governance of strategy, regardless of organic growth or acquisition.

The Board should contribute to the process by providing insights in understanding the outside environment and the company's business. The Board members should devote enough time to discuss the proposed strategy with management and question the assumption and forecasts. They have to clearly set key performance indicators and set standards for achievement. In turn the Board gets increased commitment by deeper understanding. The Board should improve the quality of decisions and build a better and more collaborative relationship with management.

In many companies the Board decides to form a strategy committee of selected and experienced non-executive directors plus some selected executive directors, senior management and also external consultants in order to improve the basis and support for Board decision. Hopefully they arrive at a vision, acceptable to all parties for presentation and recommendation to the Board. Problem may arise. The Strategy committee knows more than the other Board members which may create passiveness from the other directors. In any case the directors of the Board should raise the following questions ...

- **Strategic direction – Where should the company be in the long-term?**
- **Market and scope – Which markets should it compete in and what kinds of products and services should it provide?**
- **Competitive advantage – How can the business perform better than competition?**
- **Resources – What skills, assets, finance, relationship, competence, facilities are required**
- **Environment – What external factors affect the company's ability to compete?**
- **Stakeholders – What are the values and expectations of those with influence on the company?**

Not only acquisitions have a tendency to fail, even the core business can be a failure if the Board does not understand the customers, follows the plan, manages to change if necessary and has an inability to predict reaction from the business environment. In other words it is time to change and update the strategy. Particularly if the strategy is unclear and not aligned to the objectives. Sometimes the external factors are not prompting internal responses. Strategic risks have not been identified and functional business does not align with corporate strategies. Small companies with limited resources – financial and personnel may believe in the strategy but lack the resources to fulfil the plans.

Reverting to the basic questions of mergers and acquisition which have formed a new discipline – M&A. There are different tools and models for mergers ...

- **Holding company + many subsidiaries (daughter companies)**
- **One big company taking over a small one**
- **Two big ones making a new company**
- **Many small ones making a big new company**

It can make sense for a Board to form an acquisition committee if the main road is to acquire in order to grow. A combination of executives and Board members could be a professional team. But be careful. Problems can arise with an expert committee who dominates over a full Board who has the full responsibility of the decisions. As done by Private Equity Companies it makes sense to “Kick the tyre” before going too deep into the decision. Do we believe in the business concept of the company we investigate? Do they have a “champion” who can run the business? Does the company earn money? Is the exit to merge the company totally into our company or do we have other plans?

Many other questions should be raised such as ...

- **Synergy?**
- **Local experts?**
- **Financial strengths?**
- **Bank support?**
- **Contingency plan?**
- **Environment etc**

Before the final decision is reached by the Board and before “the letter of intent” is written, Due Diligence should be performed. It is not enough, however very important, to have company lawyers to go through all legal documents of the target company. The auditors should make a thorough analysis of the annual reports and all book-keeping issues. If the company has real estate, experts should analyse not only the numbers but also the quality and standard of the building. Market analysis is important. An outside consultant could highlight problems and opportunities – perhaps forming a basis for future market plans. Environment experts should analyse if the company has done what is expected from a sustainability point of view. Finally, analyze the personnel in the company. Are they motivated to continue or against the merger? Are they professional or not? This could hamper the acquisition or create great difficulties after the merger.

Another important strategic issue for the Board is risk analysis. When a risk turns out to be a crisis it goes directly to the Board room. The Board should in advance raise the following questions ...

- Has the company made analyses of risk?
- Does the company have a risk policy?
- Is there a plan if it happens?
- Who is responsible to take actions?

Once a year the Board should make a risk analysis as part of the strategic plan with the following module content ...

Module Content

- **The nature of risk**
- **Board risk management**
- **Identification of risks**
- **Risk assessment mapping**
- **Risk response and monitoring**
- **Disaster- recovery and business-continuity planning**
- **Communicating risk-management policies**

Discuss how to avoid crisis. Make plans about what to do if things happen. Discuss with an insurance company and outside auditors. Make a plan of who should do what. Do not forget media. They have ability to find weak sides and people to blame. “It is only when the tide goes out that you can see who was swimming naked”, somebody said.

Risk Management

- **Process or identifying and assessing potential risks facing the organization**
 - **Integrates...**
 - **recognition of risk**
 - **risk assessment**
 - **development of strategies to manage and mitigate risks**
- (Many risks are controlled through a system of internal controls)**

The Board who has prepared for crisis ...

- Thinks the unthinkable
- Has a plan of action
- Has built competence
- Watches the circumstances
- Trains a spokesman

Example – which is better?

Project A – Firm value will increase by \$5 million or decrease by \$3 million with equal probabilities

Project B – Firm value will increase by \$1 million with a probability of 100 %.

The Board should know about and evaluate the ...

- Most significant risks facing the company
- Possible effects on shareholders
- Company's management of a crisis
- Importance of stakeholder confidence in the organization
- Communications with the investment community

The Board should ensure that ...

- Sufficient time is devoted to discuss risk strategy
- Appropriate levels of awareness exist throughout the organization
- Risk management process work effectively
- A clear risk-management policy is published

Benefits of Risk management deals with operational performance, financial matters and decision-making.

Risk-management process

- **Risk identification**
- **Risk assessment**
- **Deciding on appropriate action**
- **Risk monitors**

Identified risks can be strategic, people, marketplace, ethical, supplier, financial, legal, environmental and political matters and issues.

Case. Strategic planning from nil to perfect

A public Swedish company with some heavy owners, although not listed, performed a Board evaluation, which gave very low scores for strategic work. A new outside independent chairman of the Board who took over from one of the big owners who had been chairman for too many years, realised the necessity of strategic work. From his previous experience from another public company he had good experience of that kind of work in the Board of directors.

He proposed a model where the owners should give directions of where the company should be in 6-7 years; markets, sales, profit etc. Should it grow or should it consolidate and improve liquidity and solidity? The Board should after that discuss how these targets should be reached in a new strategic plan in a time perspective of some 3 years. Based on that plan the CEO should make a Business plan for next year which should be presented and approved by the Board, followed by a budget. This model was approved by the Board. The dominating owners had however, some difficulties to formulate the owner's direction. So a consultant was engaged to assist the major owners in a separate "big owners meeting".

After some discussions, illustrations of effects in a proforma P&L and Balance sheet, the owners reached an agreement and presented it to the chairman of the Board. He in his turn discussed the owner's directions in the Board and with the CEO and they thought the owner's plans were realistic, although on a high level. The Board spent a full day plus an evening together with the management team and discussed analyses and potential strategy. It was difficult for some elderly Board members to avoid talking about tactics and activities, but the chairman was able to go back to basics – strategy is the responsibility of the Board, while the CEO and the management team takes care of tactics and activities. The meeting resulted in a strategic plan with scorecards for growth, sales, profit and other key performing indicators. In the next Board meeting the plan was approved with smaller alterations and amendments.

The CEO started the work in his team working out a Business plan which was presented in a later Board meeting. The Board could approve it since it was in line with the strategic plan. But they were also interested to hear what numbers they could expect in a budget for next year. They gave some indicators of 10 % increased sales, i.e. 100 mill. SEK vs. 90 this year and a profit before tax of 10 mill. SEK (9 mill. SEK). The CEO brought these "top down" instructions to his team and organisation.

In next Board meeting the CEO came back with a bottom up budget only reaching 95 mill. SEK and a profit of 9.5 mill. The Board disagreed since the owners direction was 10 % growth per year the next 6-7 years. So they forced the CEO to present in a few weeks time how he should fill up the gap with profit improvement programs, cost reduction program or new product introductions.



Chapter 8

Disclosure and reporting

The managing director shall ensure that the Board continuously receives reports regarding the development of the Company's business. The development of the results, status and liquidity of the Company and information regarding important events, such as the occurrence of significant disputes. Cancellation of agreements important to the Company, suspension of payments or the occurrence of insolvency of an important customer of the Company. When necessary between board meetings, report directly to the chairman of the Board. The reporting shall be of such quality that the Board can make a well-founded judgment.

In Sweden the Company Act forces every limited company to formulate Instructions regarding financial reporting to the Board. Above is an example of how it can be written.

Many companies world wide have an Internal Audit where an Independent (from management) function reports to the Board or Audit Committee. They use risk and control concepts, independently from what the organisation uses. They provide assurance on Effectiveness of risk management process. The External Audit examines the financial statements and gives the auditors' opinion in one or two pages.

Many national codes stipulate that the company should form an Audit Committee, who should monitor the financial reporting process and monitor the effectiveness of the company's internal control, internal audit and risk management systems. The committee should also review the independence of the audit firm and in particular the provision of additional services to the audited entity. Audit Committee partners could be financial management and other members of management, the internal and external auditor. The Board and Audit Committee considerations should be questions as follows.

- **Is the company's performance sustainable?**
- **Are the risks sufficiently communicated and effectively managed by the company?**
- **What are the risks?**
- **Are we allowing sufficient time to address them?**
- **Is the internal control system effective?**
- **Is the outside reporting accurate?**
- **Is the internal audit performing to high expectations?**
- **Are they providing value?**
- **Is the external auditor a quality provider adding to the confidence in the company?**

In every Board meeting and in the monthly reports the managing director has the responsibility for the presentation of economic and financial reports. These reports shall comprise ...

- Volume of sales
- Results
- Investments
- Outcome of investments
- Total amount of outstanding loans and guarantees
- Orders received
- Stock in hand
- The sum of outstanding guarantees and other liabilities
- Balance sheet
- Key ratios

And the Board should inform the shareholders according to stock market rules in contracts for listed companies or other agreements with the share holders.

- Financial and operating results
- Company objectives
- Major share ownership/voting rights
- Remuneration policy for the Board and CEO
- Related party transactions
- Foreseeable risk factors
- Issues regarding employees/stakeholders
- Governance structures and policies
- Annual audit report

The frequency of these reports differs from company to company, from stock market to stock market and from country to country. Annual reports are by all means compulsory in most countries, but nowadays half year and quarterly reports are common in public listed companies.

The members of the Board should annually at the first meeting of the year deal with the auditor's preliminary report. From the report it shall be evident, whether the organisation of the Company is such that the accounting records, the funds management and the economic conditions of the Company in other respects are controlled in a safe and satisfactory manner.

Case. A decline in profit should be reported

A small public company, listed on Stockholm OMX has done a very good job and increased sales from 700 mill. SEK to 1.8 billion SEK in seven years. Most of it due to growth via acquisitions and mergers with smaller companies. In the same period profit before goodwill depreciations had increased by 173 %, even that due to the acquired companies.

Acquisitions had been "the name of the game" and the 5 000 shareholders were pleased with the development and price per share had gone up from SEK 60 to 110 in the period. Since late 90s seven companies had been bought and all were successful. New plans to buy three companies with somewhat different business concepts, but still in line with the strategic plan, were prepared by the acquisition committee. The committee consisted of two experienced Board members, the CEO and the development manager.

They proposed that the company should buy the three companies. The Board accepted the proposal. So far the acquisition committee had been right in their proposals. Each of the three companies, owned by individual entrepreneurs showed a decent profit around 8-10 % ROS (return on sales). But after the "take over" the entrepreneurs left the companies and the public company had difficulties. It was "another cup of tea" and the ability in management was not up to standard in this area of business which was different from the other acquisitions.

Instead of profit all three companies had losses and the goodwill value in the books could be questioned. The CEO and the Board had hopes that things should be improved and gave no profit warnings in the Q1, Q2 and Q3 reports to the stock market. But in November after discussions with the auditors it was evident that the estimated year end result should decline dramatically. The Board and the CEO decided to send out a profit warning to the market. The share price went down by more than 30 % in a few days time. The Board members asked themselves if they should have informed the shareholders and OMX earlier about the shortfall of the operating results. Even OMX questioned if this was in line with the contract with them.



Chapter 9

Board Evaluation

In Sweden only public, listed companies are obliged according to the Swedish Code of Corporate Governance to perform Board evaluation. But more and more other public and private companies do it anyhow. Also state owned companies follow this rule. No doubt there is a direct link between a well functioning Board and the result of the company. The International standards of Board Evaluation can be summarised according to the UK combined Code...

“The Board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.”

Evaluation can be done with external assistance by consultants such as head-hunters or experienced Board Members with experience from other companies (not competing). It should be stated in the work programme for the Board of directors and the instruction regarding the distribution of work between the Board and the managing director. Here follows an example ...

“The Board should conduct an annual evaluation of its performance and that of its key committees.”

“Evaluation criteria linked to Board and committee responsibilities and goals should be set forth in the charter and governance policies.”

“The Board should consider other ways to strengthen director performance, including individual director evaluations.”

The Board as a whole, the individual director's performance, the CEO and in particular the Board chairman should be evaluated. It is normally not a big problem to evaluate a Board and the directors. The problem can arise when the result is explicitly announced in the Board room, with information about individual directors' performance. Consequently some companies refrain from doing so. Otherwise evaluation can raise conflicts within the Board and between the members.

One can wonder why evaluation of the Board **must** be demanded in the Codes. Management appraisals are very common in the whole business world with colour coding and other types of grading and marking. Of course the Board being the prime body responsible towards the shareholders should be evaluated. So why are not all Boards evaluated?

Consider the basis and reasons carefully:

- **Is the Board clear on its function and responsibilities?**
- **Is each director clear on the role?**
- **Do the committees understand their roles?**
- **What performance metrics will be used?**
- **Who will collect the information?**
- **How will the information be collected?**

It can as mentioned above be done with external assistance or with self declaration. If you use an outsider it will be a neutral, unbiased and impartial evaluation where the external consultant assists with experience, sound knowledge and focused resources. But the responsibility to evaluate lies with the chairman of the Board. The typical evaluation can be described as follows ...

- **Led by chairman, assisted by outside advisor**
- **Formulate evaluation instrument**
- **Presentation to Board and briefing of process**
- **Completed privately by directors**
- **Collated and analyzed**
- **Presentation and Board discussion**

Based on the Swedish Code the chairman is responsible. The Nomination committee is an important receiver of the information, since they are going to consider if changes of the Board should take place and if so with what kind of profile and competence. Costs in Sweden for a Board evaluation vary from 3 000 EUROS to 50 000 EUROS for external consultants.

If you use self-declaration with or without assistance from an outsider it can be discussed if it should be done in plenary sitting or individually at home. Some directors prefer to do it anonymously, but that will make it less valuable for the Nomination committee if they want to find out who does not perform

as a professional director. On the other hand this is the reason why the evaluation can create internal conflicts between the Board members. It is a delicate task for the chairman to handle this issue.

An example of an evaluation tool and template can be found in the Appendix. The first questions relates to General view, company strategies, business prerequisites and operational matters with 10 questions scored from 1-5. The second part relates to the Board as a whole. Also 10 questions about how the Board functions. The third part deals with the individual board member – ability, relationship, knowledge and confidence etc. Five alternative answers to some 20 questions. It ends up with an average of scores.

Here follows quotations from 30 evaluations of Board of Directors made in Sweden...

- **Good Minutes with follow ups**
- **Good presence, members well prepared. Nice and important**
- **Not nice to receive 120 pages three days before Board Meeting**
- **We have an open, active and interesting positive climate. The chairman runs the meeting in a very professional and good way**
- **Despite the fact that our company has performed below average the CEO has received full bonus – The connection between appraisal and reward does not work**
- **It is difficult to have a meeting with 17 persons in the room**
- **We need more young boldness and less old over-wisdom**
- **We work in a business area with big technical changes. Despite that the Board members are old aged and no member has a Technical background**
- **We have a stressed agenda and in order to make it, we are forced to postpone important questions about long-term strategic choices**
- **The Board does not work at all with HR-questions. Should our CEO disappear we have not discussed his natural successor**
- **The only guidance about the world around, we get from consultants**
- **Our meetings are more of reporting than discussing important strategic questions**
- **We can talk for hours about tiny questions but we have not the faintest idea where the company should be within ten years**
- **There are clear targets about what our Board is supposed to make**
- **We have really succeeded in putting up clear financial targets and we steer towards them**
- **We have a lot of key objectives, but it is difficult to find some of them that cover the whole of the company – They are either too insignificant or too focused on only one business area**
- **We have good financial key numbers and we follow them. But we are missing soft key numbers**
- **The Board is too operative and devote time to management questions, undermining the CEO's role**
- **Good that the Board questions the CEO and the management. This is a much more active Board than I am accustomed to which I really appreciate**
- **The chairman runs over the CEO too often**

Conclusion:

There is a clear relationship between the competence of the chairman and a well functioning Board

In many cases the Boards refrain from evaluating the CEO which is strange. The managing director being the most important body in the company, reporting to the Board of directors. Here are some good reasons why it should be done.

- **The Board must always make sure that the CEO performs according to his/her responsibility**
- **Make sure that the organisation is working – check the numbers, follow the report instruction and the CEO instruction**
- **Look up for early warnings**
- **The CEO accelerates and the Board brakes**
- **The chairman should have an annual meeting with the CEO, discussions about strong and weak sides (as to Code of conduct)**
- **Give early warnings if the CEO does not meet expectations and plan of action**
- **The CEO should have a sense of urgency**
- **The CEO's most important issue is to run the company with the subordinates and the whole organisation**

It is important that the chairman performs the evaluation in a dialogue with the CEO. Review the Instructions to the CEO, Plan of Action and other documents such as key numbers, score cards, strategic and market plans. Discuss soft criteria and evaluate the CEO's performance in aspects as ...

- Strong leadership
- Strategic ability
- Operational skills
- Internal reliability
- Business minded
- Motivation
- Sense of urgency
- Being humble
- Showing respect
- Other personal values/properties

Discuss how the work goes in the Management Team and find out if the CEO succeeds in leading it. End up with general questions about the requirement of a CEO such as ...

- Like solving complex problems
- Able to act directly, if necessary
- Follow through and implement good ideas
- Help the organisation to become more effective
- Build a strong and sustainable company
- Identify and coach future leaders
- Make sure that staff and co-workers are satisfied and produce
- Other requirements

The chairman should make notes and compare with notes made by the CEO.

In summary we have some experience from evaluation of CEO:s.

- **Key words for a CEO – authority, responsibility, delegation, coachman ship and management by objectives**
- **Collaboration between the chairman of the Board and the CEO is vital. If it does not function in the long run, one of them must leave**
- **CEO:s in several companies complained about – Board's engagement and work, spending too little time with organisation, not fully prepared and not making the right priorities**
- **A CEO can be the right person for the company in one period, but wrong in another phase of the same company**
- **The chairman sums up the evaluation of CEO in the Board (one chairman does it after each meeting)**

Case. Evaluation of the Board resulted in discord

A Swedish listed company X had a chairman with experience from Board evaluation before the Code of Corporate Governance was prevailing in Sweden. The company had a nomination committee, consisting of the three biggest shareholders plus the chairman of the Board. The biggest share owner took the chair in the committee.

One of the issues for the nomination committee was to evaluate the present Board and the members. They did that by phoning the individual Board members, asking them what they thought of each other. The "verdict" was very positive and the chairman of the Board could inform his peers that the nomination committee had only positive comments about each of the Board members plus the whole of the Board.

The Swedish Code of Corporate Governance was introduced and OMX took it into their contracts with public listed companies. The company X thought that they should improve the evaluation and asked a consultant to perform the evaluation. It was a head hunter who got the assignment, but it was his first Board evaluation. He did it in a very professional way. First he asked all members of the Board to fill in an evaluation form individually, but with names on. Then he interviewed all of them and asked what they thought of their peers, particularly the chairman. He made a graphic illustration, like a sociogram, for each of the Board members. The result was published in the Board room and those of the Board members who got low scores were very disappointed. They declared openly that they thought this could have been discussed previously in the Board room without a consultant disclosing it.

Two of the three with low scores announced that they were not willing to be elected for another period. The nomination committee got the same presentation by the consultant and they decided to suggest two new Board members to the Annual Shareholder meeting. That was accepted by the shareholders.



Chapter 10

Removal of Board Directors and CEO

There are different rules and laws in countries about how long a Board member should remain as a director in the same Board. It depends on what system of Boards there are – Supervisory Boards (Aufsichtsrat) and Management Boards (Vorstand) in Germany and Holland for instance, the “Anglo-system” with combined Boards of executive and non-executive directors in the UK and USA or the Nordic system with the four “bodies” Shareholders, Board of directors, CEO and Auditors, where in public, listed companies, only non-executive directors are allowed, except the CEO according to the Code. But not only that – the length of service, the system of nomination, the procedure for election do vary from country to country. In Sweden, for instance, the legal document Company Act which is due for every limited company – private as well as public – stipulates that the shareholders in AGM can only elect Board members for one year, unless other rules in the Company’s by-laws. In some rules, such as Codes, age can be a discriminating factor (70+) and many codes are keen on if the director is dependent or independent. Shareholders with more than 10 % of the votes are considered to be dependent as Board directors and also the length of service in the Board can be a factor for dependence. The only way to keep record of all these rules is to ask local legal experts or auditors.

The most important factor is of course not the single Board member, but the question of how the full Board works, how effective the Board is and how successful the decisions prove to be. In Chapter 4 about Board practices and Chapter 9 about Board evaluation these factors are highlighted. But to repeat, here are some characteristics of dysfunctional Boards ...

- **Poorly structured**
- **Insufficient range of expertise**
- **Inadequate information**
- **Inadequate debates**
- **Decisions made by small inner groups**
- **Poor oversight to see if the decisions were correct**
- **Failure to identify risks, review company finances**

An adequate debate in the Board with different opinions and disagreements is more characteristic of an active Board than of a dysfunctional one. Disagreements can be essential, such as lack of facts. In Sweden the Company Act stipulates (§ 8:21) that the Board must have adequate information on hand before decisions are made. Disagreements should be fully discussed in the Board. Here the chairman has a special responsibility. Reservations from the final decisions must be made in the minutes and of course also the level of support. “Has the Board a quorum”, i.e. number of members of the Board duly assembled and legally competent to make the decision? This is in many minutes of Board meetings a standard first paragraph. A majority decision sometimes with the chairman’s additional vote, is still a decision. If a director makes too many reservations, he/she should perhaps resign. Call for a new Board meeting, if the Board does not make a decision, due to no-majority. In difficult situations, perhaps an extra shareholders meeting is necessary to form a new Board.

Director Departure – Possible Criteria

- **Resigns due to personal reasons**
- **Vacates office because of a Board resolution passed by a specific majority of votes**
- **Absent from Board meetings for a specified period without permission**
- **Prohibited from holding a director’s position by law**
- **Reached a specified age**
- **Removed by a resolution of the General assembly**

In the system where the Board consists of both executive and non-executive directors, it can be more difficult to remove an executive director, who is also working in the top management of the company. If the executive has a written contract of employment, notice may be stipulated. If he/she is dismissed without notice, the company will probably be liable for remuneration and/or severance payment. If the contract is not clearly written, the amount of remuneration will be subject to negotiation. Factors could be non-performance, losses caused by the director, misuse of company property, shares to sell, avoiding publicity, agreement to avoid working for a competitor etc. Quite often, these questions must be solved with external solicitors and even go to court with barristers on each side. It may be a very costly operation. In many cases the court pronounces judgement to the benefit of the individual vs. the company. The moral is, do write professional contracts with assistance of legal experts.

In Chapter 2 we stated that the most important task for a Board used to be to find and appoint the CEO. Needless to say that starts with removing the old one. The Board must raise some key questions ...

- **Consistent achievement of corporate goals?**
- **Consistent internal culture and policies?**
- **Developed, motivated and retained strong senior management team?**
- **Company's capital resources – sufficient and properly allocated?**
- **Positive internal and external leadership**

If the answers are yes – it looks like the Board is lacking a good reason for removal of the CEO. If the answers are no – the chairman has after the decision in the Board the delicate mission to talk with the CEO and give notice and remove the CEO. Go back to Chapter 9 and read carefully how the Board and chairman should evaluate and discuss the performance regularly in a dialogue with the CEO. If rightly done, this should not come as a “flash from a clear sky” as we say in Sweden or “like a bolt from the blue”. Normally a Board can remove the CEO anyhow without any reasons what so ever.

Removing a chairman is strangely enough not as difficult unless the chairman is an executive with contract and other agreements. In Sweden the task and duty is often shareholders' and AGM responsibility. In case of dishonesty, illness or even death the Board can take immediate actions. It is of course a key Board duty to ensure that it has effective leadership. Is there already a deputy chairman, he/she could take over immediately without an extra shareholders meeting. Do not forget that both removing a CEO and a chairman must be published at once if the company is public and listed. If not heavy fines may be the case. Some more advice, based on international experience ...

- **Governance process relies on non-executive directors to resolve problems which may arise over the chairman's conduct and performance.**
- **Often, discussions (and ultimately the decision) to remove the chairman will be made by the non-executive directors at one of their regular executive sessions.**
- **Prior to the chairman's removal, the non-executive directors should consider the succession process.**
- **Contacts with bigger shareholders could make things easier.**

Finally all directors have a duty not to disclose any confidential information unless required to do so by law. Confidential information must not be used for personal benefit.

If a director intends to disclose to third parties information which may be confidential, he must inform the chairman of the intent and the identity of the person who is to receive the information. A chairman should stress the need for maintaining confidentiality of meeting procedures. A chairman, a CEO, an executive or non executive director who trespasses against these rules must leave.

Case. Bank's losses result in removal of Chairman and CEO

A public Swedish bank with well-known owners, HQ Bank is dealing with trading of shares. On the 15th of April 2010 they published a loss for Q 1 of 25 mill. SEK. On the 26th of May they informed the market that they were closing down their trading and a new issue of shares of 559 mill. SEK was supposed to cover the losses. The deputy CEO was removed on the 25th of May. The CEO was removed from the bank on the 31st of May. On the 29th of June the total costs for closing down the trading was expected to be 1.2 billion SEK. The chairman and the rest of the Board announced that they were not available for re-election in the coming extra share holders' meeting. The share price went down dramatically.

In the debate in business magazines the question of the Board's role was discussed. In times of great turmoil and crisis in the aftermath of the shakeout in the financial sector the Boards should be able to avoid the disasters that subsequently hit corporations like H&Q. Should the Board have been much more proactive at an earlier stage and lead the company into more sustainable strategic avenues and business models?

The criticism was that the Board of Directors had simply not performed to its full potential. The Board of HQ consisted of very prominent and experienced members, but only the deputy CEO knew the specific trading business. Did the Board focus on wrong things, i.e. regulatory and legal issues and too little on value creation and did they not challenge the CEO and his goals and performance?

A new chairman and a new acting CEO were appointed. They are considering a legal act against the former management team. A legal advisor was appointed and is supposed to give the shareholders a report in an extra shareholders meeting in September 2010. Even the Swedish authority Finance Inspection has started an investigation where all Board members are interviewed. In the end of the summer they are supposed to present possible sanctions.

The founder and chairman has confessed that he never fully understood the trading business which is very complicated. But even the CEO seems to be as bad in knowledge. It was only the deputy CEO who really understood the trading business. But he showed lack of responsibility and took too big risks. The biggest owner says in an interview that the company has not been managed in a proper way. The responsibility, he says, lies in the Board and in the management. The Board has lost the owners' confidence and trust and should not be re-elected, in particular since they have announced that they are not available for re-election.

On the 27th of August the Finance Inspection announced that the bank must be liquidated. The whole Board and the CEO are dismissed and the liquidator takes over



Chapter 11

Stakeholders and Corporate Social Responsibility

As mentioned above in many chapters it is not only the shareholders who have prime interest in the company's corporate governance. The Board and the CEO and others in the management team are responsible for developing the value of the company; value being a combination of the shares and company's value and the return, such as yearly dividends. But in order to achieve that, other stakeholders must be involved and also be satisfied, such as customers, suppliers, employees, banks etc. Do not forget indirect stakeholders – trade unions, authorities, communities, governments and last but not least the general public and media – sometimes the most difficult stakeholders to deal with.

In the Swedish Company Act the Board has an explicit responsibility for the company's organisation, administration and government services. Implicit this means that the Board must improve the result and the value of the company to the benefit of the owners, but of course within the frames of legal rights and ethical performance.

Corporate Social Responsibility (CSR) has become "name of the game" in only the last few years. Strangely enough since companies in the US, such as the Bell Telephone Company, Western Electric, Johnson & Johnson and many others not to mention, very early in the 40s and 50s, declared the wisdom of having a good relationship with a vast range of different stakeholders. Anyhow, now CSR is back on a global arena, where every successful company sees great possibilities.

One of the driving forces has been media. The impact of media must not be underestimated. Consider the power of public scrutiny. Who would like to invest in a company, which makes headlines because its majority shareholders sacrifice the interests of the minority shareholders for their own gain? Who would like to buy products from a company who does not adopt sustainable and/or socially responsible policies within the framework of ethical value. What banks would lend money to a company who permits managers to abuse positions of entrusted power for personal gain? And finally what supplier would be pleased to make business with a company who is black listed by media for corruption and non-ethical behaviour?

Stakeholders

- General public
- Share holders/share owners
- Customers/consumers
- Employees/Managers
- Trade Unions
- Financial Institutes
- Banks
- Suppliers
- Media
- Trade Associations
- Authorities
- Communities
- Governments etc

Social responsibility includes a range of issues from establishing honest relationship, providing fair wages and healthy, safe working conditions through respect for human rights and a commitment to community development. These factors do not only deal with your own personnel but also with the suppliers' and agents' people and those who work for them in different countries and cultures.

The Global compacts principles

1. **Human rights = Business should support and respect the protection of internationally proclaimed human rights and make sure that they are not complicit in human rights abuses.**
2. **Labour Standards = Business should uphold the freedom of association and effective recognition of the right to collective bargaining, the elimination of all forms of forced and compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation.**

Sustainability and environment may very well be the factor that has given a push into the great global concern about Corporate Social Responsibility. The Global Reporting Initiative (GRI) published the Sustainability Reporting Guidelines (www.globalreporting.org) which now are available in sixteen languages. It started more than 10 years ago and was first published 1999. Today most public listed companies publish their policies and practice about sustainability and environment in their Annual reporting, sometimes as separate bindings. Even so not all companies can report the effect of the work. It will take some time before one can relate the activities to a financial result, which company investors and finance institutes are asking for i.e. company and shareholder value.

Advice for the reports

- **The Board must back it up**
- **A management team with all functions should be involved**
- **Involve as many as possible in the work**
- **Experts should write the copy**
- **Write it understandable**
- **The report should be published**
- **Use it in contacts with the stakeholders**
- **Make a presentation kit**
- **Distribute it to all employees**
- **Ask experts to comment upon the report**
- **Use GRI as a tool**

The **environmental** agenda is very broad. We have only covered a small part of it in this summary. CSR – issues tend to centre around environmental protection including air, land and water quality, eco-efficiency, biodiversity and sustainability. “Business should support a precautionary approach to environmental challenges and undertake initiatives to promote greater environmental responsibility and encourage the development and diffusion of environmentally friendly technologies” (Global Compacts Principles).

Governance of Ethics is very important element in CSR. The primary ethical challenge for companies is to create an honest and transparent business environment between and among competitors, suppliers, partners, customers and the society. Ethical breaches by management or employees caused 37 % of high-profile business failures in Europe, based on a study of 60 European cases of formal bankruptcy or stock price free fall. In a large number of these cases, a dominant share holder or manager with big ambitions was acting unethically. Corporate Governance codes of ethics can help guard against unethical behaviour in companies. A performance review by the Board can help root out ethical problems before they lead to business failures.

Swedish example of Code of Conduct - Business Ethics

Corruption, bribes and illegal competition – restricting practices distort the market and hinder economic, social and democratic progress. The company never accepts or employs such methods. In order to uphold our business ethics the company shall:

- **Never act in violation of the applicable antitrust or competition laws for example through abuse of a dominant position**
- **Not engage in illegal industry, collaboration such as cartel formations**
- **Not allow offering of requests for or acceptance of bribes**
- **Comply with the applicable rules regarding the maximum value of gifts**
- **Encourage our employees to avoid situations in which their loyalties to the company may conflict with personal interests**

Board should as in this example initiate and approve code of ethics as part of the company code of conduct. Headlines could be supply-chain codes, buyer codes, agent codes, factory certification schemes and ethical trading.

As mentioned above the Global Reporting Initiative was published as early as 1999. You can search for full information on their website.

Global Reporting Initiative

- Sustainability Reporting Guidelines
- Stakeholder council
- Technical Advisory Committee
- Global Reporting Guidelines

Finally an example from the Wallenbergs – one of the leading Swedish financial conglomerates – code of conduct headlines.

- Dedication/code of conduct
- Exemplary personnel policies
- Public service – government/nongovernment organisations
- Good relations to external centres of power
- Management of contact networks

Case. Corporate Social Responsibility in five generations

In the business world of large multinational corporations Sweden stands out being overrepresented by its number of companies on the Fortune 500 lists. The Wallenberg sphere is one of them, having influence in companies accounting for some 50 % of the value of Stockholm OMX stock exchange. The Wallenberg's are admired widely for their achievements as owners of leading Swedish corporations.

The key levers of the Wallenberg sphere in exercising management include ...

- finding the best CEO to fit the specific situation
- the chairman and the CEO should have an intensive dialogue
- a cadre of very competent and loyal management supporting the CEO
- strong belief of the individual initiative and entrepreneurship
- strict code of conduct regarding personal behaviour
- well looked after personnel and at layoffs quite generous severance pay
- promoting good practice and high ethics both in Sweden and internationally
- involvement and engagement in government and non-government organisations
- a trend setter as regards international orientation as well as work of ethics

All of that can be summarized in a widely known expression from the Wallenberg's. "Esse non videri", which emphasises the significance of what one achieves rather than the quest for public notability or conspicuous consumption

Behind that are the core competence elements in the active owner value creation, success formula of the Wallenberg sphere with headlines like – The ownership idea/overriding values, Business risk competence and Meta-management competence. Some extracts from the legitimisation imperative are – dedication to code of conduct, exemplary personnel policies, social concern and good citizen, public service, good relations to external centres of power, management of contact networks.



Appendix

Evaluation of Board Members

Scores 5 = Yes absolutely
 Scores 4 = Yes in principle
 Scores 3 = Neutral/do not know
 Scores 1 = Absolutely not

1. General view, company strategies, business prerequisites and operational matters

1.1.	Has the Board a clear picture of the owners' targets and purpose of their ownership in the Company?	
1.2.	Has the Board a clear comprehension about the Company's business, targets, means and the Board's role and tasks?	
1.3.	Is the Board conscious of the policies of the Company and is there a sense of understanding in questions about ethics, moral and set of values?	
1.4.	Has the Board knowledge about the brands, assortment and positioning of the Company.	
1.5.	Has the Board knowledge about the market and customer structure?	
1.6.	Has the Board the knowledge about necessary legal responsibility, rules, code of conduct and self regulations?	
1.7.	Have the Board qualifications, knowledge and experience in order to make priorities and develop a strategic plan for the company?	
1.8.	Has the Board general experience and knowledge about Board-man ship?	
1.9.	Is the Board active and effective, i.e. engaged during the meeting, well prepared and able, constructive in discussions, decisions and focusing on matters of urgency?	
1.10.	Does the collaboration between the Board and the CEO function in a constructive way?	

Summing up scores of above ...

Scores	divided by 10

Scores 5 = Yes absolutely
 Scores 4 = Yes in principle
 Scores 3 = Neutral/do not know
 Scores 1 = Absolutely not

2. Interview of the group – “The board as a whole”

2.1.	Does the Board function over all, i.e. is there efficiency in the Board work?	
2.2.	Is there a good working climate in the Board, i.e. sensitiveness of hearing, showing consideration, respect of persons and interaction between the members?	
2.3.	Does the Chairman act professionally as team leader in the meeting?	
2.4.	Does the documentation enable participants to discuss and decide in an adequate way?	
2.5.	Do the routines function with notice, agenda, time and place for the meetings?	
2.6.	Has the Board control of the organisation and key people in the Company?	
2.7.	Has the Board adequate control of the financial reports?	
2.8.	Has the Board examined and scrutinized the risks and discussed how to avoid crisis?	
2.9.	Is the Board a driving force in strategic matters and has the Board ability drawing up assumptions for the strategic planning?	
2.10.	How is the quality of the minutes and the follow up of open questions?	

Summing up scores of above ...

Scores	divided by 10

Scores 5 = Yes absolutely
 Scores 4 = Yes in principle
 Scores 3 = Neutral/do not know
 Scores 1 = Absolutely not

3. Interview - the individual board member

3.1.	Have you as a Board member of this company ...	
	Competence and qualifications for the assignment?	
	Experience and knowledge to judge the company business?	
	Close relationship with the reality of the company and the market?	
	Time enough to make wise decisions?	
	Knowledge about the strengths of the company so that you can support and protect them?	
	Knowledge enough about strategic work?	
3.2.	Do you think that you have ...	
	Knowledge about laws and regulations for work in the Board?	
	Information needed for Board meetings?	
	Confidence and faith in the documentations and presentations made by the CEO?	
	Got the introduction needed to understand the Company and the business?	
	Confidence in the preparations and recommendations made by committees for board meetings?	
	Understanding of key numbers, P&L and Balance sheet?	
3.3.	Do you have the strengths and ability which you need for work in the Board ...	
	Experience, understanding and keen interest in the work?	
	Commitment, driving force and ability?	
	Independence and personal integrity?	
	Motivation, strength and calmness?	
	Sensitiveness of hearing and co-operative ability?	
	Knowledge about business?	
	Courage and power to declare your opinion?	
	Time to prepare yourself?	

Summing up scores of above ...

Scores	divided by 20
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Corporate Governance Glossary

AGM (Annual General Meeting)

A company gathering, usually held at the end of each financial year, at which shareholders and management discuss the previous year and the outlook for the future, directors are elected and other shareholder concerns are addressed.

Board of Directors (Supervisory Board or Council)

The collective group of individuals elected by the shareholders of a company to oversee the management of the corporation on their behalf.

CEO

The chief executive officer or CEO is the highest ranking officer of the company

Chairman of the Board

Highest-ranking director in a corporation's Board of Directors. (Supervisory Board or Council)

Code of best practice

Guiding principles for ensuring good corporate governance to which all publicly listed companies should aim to follow.

Conflict of interest

When someone is in a position of trust which requires them to exercise judgment on behalf of others and also has interests of the sort that might interfere with the exercise of their judgment, and which the person is ethically required to either eschew or openly attest.

Corporate governance

The term corporate governance refers to the rules and incentives by which the management of a company is directed and controlled so as to maximize the profitability and long-term value of the firm for its shareholders while into account the interests of other legitimate stakeholders.

Director or Supervisory Board member or Council member

A person elected by shareholders to serve on the company's Board of Directors or Supervisory Board or Council.

Executive director

A member of a company's Board of Directors who is also an employee of the company.

Independent director/Independent supervisory board member or independent council member

A director who is not connected with the listed company or its promoters or directors on the basis of family relationship and who does not have any other relationship whether pecuniary or otherwise with the company, its associated companies, directors, executives or related parties.

Shareholder

A person or entity that owns shares of stock in a company.

Stakeholder

Any group, individual or institution that has an interest in a company.



“Corporate Governance in Swenglish” is a fact book with cases based on the Executive Education Program for present and future Board members. The Baltic Institute of Corporate Governance has a mission to help and create better governed public and private companies. Inspired by the Swedish education for Board members arranged by Stockholm Chamber of Commerce with Raoul Hasselgren as tutor and teacher this booklet is a combination of international Corporate Governance philosophy and practice blended with Swedish experience.