



Ju2015/4144/L1

## **Comments regarding the Ministry of Justice memorandum on effective protection of minority shareholders (Ds 2015:25)**

The Swedish Corporate Governance Board ("the Board") was invited to submit comments to the Swedish Ministry of Justice on its memorandum entitled "Effective Protection of Minorities", (Ds 2015:25). Strong protection of the interests of minority shareholders is one of the pillars of the Swedish, as well as of the Nordic, corporate governance model, which means the Board generally favours appropriate regulation in this regard.

The Board endorses the proposed changes regarding scrutiny of institutions and a minority auditor contained in the memorandum. A particular flaw in minority shareholder protection, however, is the possibility of manipulation of the share register. A majority shareholder who controls the share register can very easily ensure that minority shareholder protection is denied by refusing entry or changes to the share register. The remedies that are available to shareholders in this regard - for example, by bringing legal action for damages against the board - are likely to be toothless because the minority shareholders lack access to information about what has happened in the company, which is the kind of insight that scrutiny and minority auditors are designed to guarantee. Obtaining a final declaratory judgment on entry into the share register can take several years. Nor is relying on legal sanctions, with the evidentiary requirements that requires, sufficient. In the opinion of the Board, the reasons stated in the memorandum for not giving the Swedish Companies Registration Office (Bolagsverket) the option to consider whether a shareholder has been wrongly denied entry to or been removed from the share register are not of sufficient strength, and therefore the Companies Registration Office should be given this possibility.

The rules on compulsory redemption of minority shares are also a component of minority shareholder protection. The changes in this area proposed in the memorandum can be regarded as well balanced, with one exception. That majority shareholders are to bear the cost of remuneration of the trustee even in cases where it is the trustee who is bringing legal action against an arbitration award or a judgment on redemption risks making redemption disputes more costly and protracted without any real benefit to minority shareholders, but at significant cost to the acquiring party. Such a system provides the trustee with a personal incentive to push the process further after a redemption ruling in arbitration, regardless of whether he or she harbours any hopes of a different decision in the higher court. Moreover, it would be very difficult for a trustee to say no if minority shareholders who did not participate in the process requested a continuation of the process. The Board therefore rejects a change in the rules concerning cost allocation in legal action against an arbitration award or judgment on redemption.

Stockholm, 23 September 2015

THE SWEDISH CORPORATE GOVERNANCE BOARD

Arne Karlsson  
Chair of the Board

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