

MEMORANDUM

To: Law Europe M&A Group
From: Anders Strid and Vilhelm Nyström
Date: 2005-05-06
Subject: Law Europe - Legal Survey

Share Capital

a)

Decisions regarding the issue of shares shall be made through resolutions adopted at a shareholders' meeting. Besides, the shareholders meeting may authorise the board of directors to adopt resolutions regarding new issues of shares and, subject to approval by the general meeting of the shareholders, the board of directors may also resolve to carry out a new issue of shares.

Where a new issue of shares is to be made shareholders shall have pre-emption rights to the new shares in proportion to the number of shares each shareholder owned prior to the issue, unless otherwise provided by the articles of association or the terms and conditions of the issue. Resolutions adopted at a shareholders' meeting to not adhere to shareholders' pre-emption rights shall be valid only where supported by shareholders holding two-thirds of the shares voted as well as two-thirds of all shares present or represented at the meeting.

Proposals for resolutions regarding new issues of shares shall be made available to shareholders for a period of not less than one week prior to the shareholders' meeting to which the proposed resolution is to be submitted. Where such proposal would result in a deviation from the pre-emption rights of shareholders, the reason for such deviation as well as the grounds for the share issue price shall be set forth in the proposal or in documentation submitted with the proposal. If the proposal is to be submitted at an extraordinary general meeting of the shareholders, a copy of the most recent annual report, a report signed by the board of directors regarding matters of material significance to the company which have taken place following publication of the annual report and a statement issued by the auditors regarding the aforementioned report, shall be made available and presented at the shareholders' meeting.

Notices of meetings of the shareholders shall contain information regarding pre-emption rights to subscribe for shares which, according to the proposal, shareholders or other persons are entitled to exercise or information regarding which persons may otherwise subscribe for shares. Furthermore, notices of meetings of the shareholders shall set forth the

principle contents of any proposals under which shareholders shall not have pre-emption rights to subscribe for shares in proportion to the number of shares owned prior to the issue or according to the provisions contained in the articles of association.

Subscription for new shares shall be made on a subscription list which shall contain the resolution regarding the share issue. A copy of the articles of association together with a copy of the most recent annual report, a report signed by the board of directors regarding matters of material significance to the company which have taken place following publication of the annual report and a statement issued by the auditors regarding the aforementioned report shall be attached to the subscription list or shall be made available to shareholders at a location set forth in the subscription list.

Following the completion of subscription for shares, the board of directors shall adopt a resolution with respect to the distribution of new shares to the shareholders. Furthermore, the board of directors shall immediately cause the shares to be recorded in the share register.

b)

Resolutions regarding new issues of shares shall be submitted for registration within six months from the date of the resolution. Registration may not be made unless:

1. according to the register, full payment has been made for all shares included in the previously registered share capital;
2. the aggregate nominal value of shares subscribed for and allotted is equal to the specific amount, or minimum amount, that has been determined for the increase in the share capital;
3. one-half of the sum which is to be paid in cash for the shares included in the registered increase in the share capital has been paid;
4. a statement has been obtained from a chartered accountant indicating that sub-section 3 above has been complied with. The statement may, in respect of VPC companies, be replaced by a statement by the central securities depository that such has occurred.

With respect to share issues for cash by companies whose restricted shareholders' equity prior to the share issue is less than one million kronor, in lieu of the provisions of sub-section 3 above, the entire sum which is to be paid for the shares shall be paid through deposit in a bank account which the company has opened with a Swedish banking institution, and certification by the bank that such payment has been made shall be submitted for registration.

Reporting of an increase in share capital for registration must be accompanied by quite extensive documentation. The share capital shall be deemed to have been increased upon registration.

c)

In accordance with proposals for resolutions regarding cash issues, a report by the board of directors and an auditor's statement shall be made available to shareholders for a period of not less than one week prior to the shareholders' meeting to which the proposed resolution is to be submitted.

The board of directors shall submit a report regarding any circumstance which may be of significance in appraising the value of the property in kind. The report shall contain the following information:

1. the name and domicile of the person subject to the provisions;
2. the value of the payment in kind which is expected to be reported in the balance sheet and the number of shares or any other consideration which is to be provided in exchange for the payment in kind;
3. the maximum estimated amount of any costs associated with the incorporation of the company as set forth in the above-stated provisions.

The board of directors' report shall be examined by one or more auditors. The auditors shall issue a written statement regarding the examination. The statement shall state that property which is to be transferred to the company has not been ascribed a higher value in the report than the actual value of such report to the company and that the property which is the subject of the payment in kind is, or can be assumed to become, capable of being utilised in the company's business operations.

Resolutions regarding new issues of shares with payment in kind shall set forth that no pre-emption rights will vest in shareholders since payment will be made in kind.

In accordance with cash issues, resolutions regarding new issues of shares when payment in kind shall be submitted for registration within six months from the date of the resolution. Registration may not be made unless (and besides what is said regarding cash issue above):

1. all payments in kind pursuant to the resolution regarding the share issue have been made to the company;
2. a statement has been obtained from a chartered accountant or an approved accountant indicating that all payments in kind pursuant to the resolution regarding the share issue have been made to the company, that payments in kind to the company have not been ascribed a value higher than the actual value of such property and that the property is, or may be assumed to become capable of being utilised in the company's operations.

In comparison with is said regarding cash issue above, the documentation required for registration is even more extensive.

Corporate Governance

a)

Corporate Governance issues have so far been self regulated and only to some extent regulated by law, e.g. by the Swedish Companies Act. Sweden has recently adopted the Swedish Code of Corporate Governance. The code is intended to form part of self-regulation in the business sector. Its general aim is to help improve the governance of Swedish companies. This, in turn, will promote public confidence in the functioning of the business sector. A second important aim is to enhance the understanding and confidence of foreign investors and other actors in the international capital markets in Swedish corporate governance and thus promote the Swedish business sector's access to foreign risk capital.

The code is written primarily for Swedish companies listed on the Stockholm Stock Exchange or an authorised market place. However, for the most part it should also be relevant to other types of companies with a diverse ownership or public interest, such as co-operatives and state- and municipally owned companies, as well as many larger privately owned companies. The extent to which such companies are to apply the code is a matter for their owners to decide.

A company that follows the code may deviate from individual rules, but then this deviation must be warranted under the principle "comply or explain". The code directs companies following the code to attach a separate corporate governance report to their annual report and to post the corresponding information to their web site. In the corporate governance report, the company is to declare that it is applying the code and briefly describe how this is done. If the company deviates from individual rules it is to state this, and the reasons for each deviation must be clearly explained. For companies listed on the stock market, the market will decide if the reasons for any deviation are acceptable or not. If they appear well-founded and reasonable, the deviation will probably not have any detrimental consequences for the company. If not, the company could suffer from negative publicity as well as a loss of confidence on the capital market.

The code deals with rules regarding the Shareholders' Meeting, appointing the Board and the Auditor, the Board of Directors, Senior Management, Auditors and Corporate Governance Report. Some of the rules in the code are expressed in terms precise enough to make it possible to establish with reasonable certainty the extent to which they are observed. Other rules have more the character of guidelines and good intentions. They lack the precision required to be able to follow up on them exactly. Such rules may serve as a source of inspiration and a lode star for companies to improve their corporate governance.

The code is to be managed by the College for Corporate Governance. The College, who will consist of nine members, is not supposed to interpret the code nor judge on how it is applied.

b)

The Swedish Code of Corporate Governance is found on www.sou.gov.se/fortroende.

Financial Assistance

A company may not lend funds for the purpose of facilitating the purchase of shares in the company or another company within the same group by the borrower, or a natural person or legal person associated with him.

In order to be a prohibited loan as described above it is required that the loan is given with the purpose of facilitating the purchase of shares. If the loan has been given for another reason, but the borrower uses it for the purchase of shares, no prohibited loan is at hand. There is no prohibition for the company to lend funds to a purchaser of shares after the purchase is done. However, a condition for this is that the seller has not secured a loan from the company before the sale.

A situation that is not uncommon is that the seller has debts to the company which the purchaser takes over. Such a procedure is normally hit by the prohibition of lending funds for the purpose of facilitating the purchase of shares.

Where the borrower is employed by the company or another company within the same group, the prohibition against loans mentioned above shall not apply if the loan is restricted to a certain amount, the loan offer is directed to not less than one-half of the employees of the company and repayment of the loan is to be made through regular payments over a period of not more than five years and the loan is not prohibited by any other reason.

With respect to loans or security for the acquisition of shares in the company or another company within the same group, the Swedish Tax Agency may, where required by special circumstances, grant an exemption from the prohibition mentioned above. Upon the acquisition of shares in the company which provides the loan or security, such exemption may, however, only be granted where the company is a private company. Exemptions for companies under the supervision of the Financial Supervisory Authority shall be determined by the Financial Supervisory Authority.