



INTERNATIONAL ASSOCIATION  
OF YOUNG LAWYERS

# **Who is not afraid of being a company director?**

**Organising Commission(s)**

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**National Report of Sweden**

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## **1. The legal position/status of a director and/or managing director in the different jurisdictions**

In Sweden there may only be one person appointed to the position as managing director (*Sw. verkställande direktör*). Only listed companies must have a registered managing director. It is the board of directors that appoints the managing director. The managing director is – as a main rule – exempted from employment protection under mandatory law. However, in all other aspects the managing director is regarded as an “employee” of the employing entity. As the managing director, the employee will be subject to certain rules under the Companies’ Act.

The board of directors may appoint a deputy managing director, which will – upon the absence of the managing director – be able to act as the managing director of the company.

### **1.1 How to define the mandate of a director / managing director from a legal perspective?**

It is the board of directors of the employing entity that in its instructions to the managing director defines the mandate of a managing director. Third parties may however trust that the managing director manages the day-to-day business and is authorized to sign for the company in matters which may be regarded as falling within the company’s ordinary course of business.

**Distinctive factors between the mandate of director and the mandate of managing director;**

### **1.2 Terminology: difference between managing director and CEO.**

From a Swedish perspective there is no difference between the managing director and the CEO of a company in the meaning of the person holding the executive post of the company (excluding the board of directors).

### **1.3 Distinction between aspects of employment law and aspects of company law:**

#### **1.3.1 What is the contractual relation with the Company?**

The company may at all times remove the managing director from the registered appointment as the managing director. However, an employment agreement should also have been drafted between the managing director and the company. In connection with deregistering the managing director, the employment agreement must also be terminated, normally with notice. The employment agreement regulates the terms and conditions during the employment as well as the notice period, possible severance pay and applicable restrictive covenants. Further, from a company law perspective, the board of directors should draft an instruction to the managing director. The instruction will set the frames for the corporate assignment and the competence of the managing director’s authority. Such instruction could further draw up other limitations and/or expansions of the

assignment. Breaches against the agreement or the managing director instruction, could be regarded as a breach of the employment agreement and be a ground for immediate dismissal of the employment.

- 1.3.2 Under what status does a director/managing director carry out his/her tasks: can a director and/or managing director carry out his/her duties as an employee?

A director/managing director is regarded as an employee in Sweden. As such, the director/managing director benefits from entitlements/protection in e.g. the Annual Leave Act, the Anti-Discrimination Act and the Parental Leave Act.

- 1.3.3 Are there typical rights/obligations related to the mandate of director/managing director?

Yes, as said above, the managing director is typically entitled to independently manage the day-to-day business of the company as well as sign for the company. The obligations are to act in the best interest of the company and follow the instructions from the board of directors, the Companies' Act as well as Swedish legislation in general.

- 1.3.4 What are the rights in the event of termination/dismissal?

The managing director, i.e. an employee in a managerial position (in large companies (more than 500 employees) one or two employees may be regarded as managers in managerial position in addition to the managing director) does not benefit from employment protection. Swedish case law thus prescribes that a managing director who is exempted from employment protection should be paid compensation corresponding to six months' salary (notice period and/or severance pay) in connection with termination of the employment.

- 2. What is the impact of corporate governance legislation or soft-law (such as corporate governance codes) for the position of a director / managing director?**

The Swedish Corporate Governance Code (the "Code"), which is incorporated in the listing rules issued by the Swedish stock exchanges, applies to listed companies, but can also be applied by other types of companies with a spread ownership or of general interest. Non-Swedish issuers do not need to adhere to the Code. The Code is based on the principle of "comply or explain", meaning that not all rules in the Code need to be complied with, but can be ignored, provided that the company accounts or the rules ignored, giving its reasons and the alternative solution chosen. This statement is to be presented in a special report and attached to the annual report. There are no sanctions in place for poor explanations.

- 2.1 Distinction between listed and not listed companies**

Not applicable

### **3. Liability of a company director / managing director?**

#### **3.1 Civil liability:**

##### **3.1.1 Contractual liability and liability on the basis of “tort”;**

A personal liability for damage of property for a director will only arise if a crime has been committed. This is regulated by the law of torts.

For breaches of a contract there may be a liability for damages based on the damages incurred by the company or based on a clause for liquidated damages.

##### **3.1.2 Liability towards the company and liability towards third parties;**

According to Swedish company law, the powers of the company vests with the board of directors elected by the shareholders and the managing director being responsible for the day-to-day management of the company. The fundamental rule regarding directors' liability under Swedish company law is that a director (including managing director) must compensate the company for any loss or damage that it has suffered as a result of the director's wilful or negligent actions. In principle, a director's fiduciary duties are derived from the rule regarding directors' liability. The scope of these fiduciary duties is the same as in most other countries. The directors have a duty of loyalty and a duty of care to the company and any breach of such duty is judged by reference to the normal principles of negligence.

Further, a director may be liable for incompliance with the Annual Accounts Act (e.g. for not drafting an Annual Report) and the Companies' Act (e.g. for not having any articles of association or not reporting a lack of equity capital).

#### **3.2 Criminal liability**

The Swedish anti-bribery legislation was amended in 2012 reflecting the international trend and entails more stringent requirements on companies' management (including the managing director). The said legislation entails criminal liability for companies' managing director (and members of the board of director) in the event of bribery committed by individuals within the company or by agents, consultants and other third party representatives of companies, in case the managing director (or board of director) has not taken adequate measures to prevent bribery.

Directors and/or the managing director may further be liable for unpaid taxes in the company.

As a company cannot be responsible for the work environment in the company, the managing director has the ultimate responsibility towards all other employees. The duties for the work environment can be delegated, but not the ultimate responsibility. The consequences for breaches against the Work Environment Act may be damages, fines or imprisonment.

**3.3 Noteworthy specific liabilities?**

Not applicable.

**3.4 Are there in your jurisdiction over the last few years more court cases involving company directors or managing directors?**

Not that we are aware of.

**4. Are there any recent changes in remuneration legislation / policies for company directors / managing directors?**

Within the Code's regulations, the remuneration committee that should be appointed by the board of directors has gotten increased responsibility, and it is made more clear what type of remuneration that is covered. It is stipulated that variable remuneration should be capped and be linked to predetermined and measurable targets to encourage long term value for the shareholders.

Fixed pay during the notice period and severance payments should as a total not exceed the amount corresponding to two annual fixed salaries.

**5. Has it occurred in your jurisdiction that management decisions were revised after being challenged by stakeholders (e.g. consumers)?**

Not that we are aware of.

**6. Has your jurisdiction issued specific legislation on female presence in the board of directors?**

No

**6.1 If no, was this (n)ever a political topic?**

It is an ongoing debate in Sweden. Depending on the outcome of the general election this September a new government might put forward such suggestion.

**7. Is there in your jurisdiction an obligation to have a minimum of independent and/or non-executive directors in the board?**

It is the owners of a company that appoints the board of directors under Swedish law. The number of board members shall be decided and laid out in the articles of association which will be public information. The trade unions may appoint board members in addition to the said board members provided that the company or the subsidiary to a company is bound by a collective labor agreement.

**7.1 Does this depend on the type of company?**

No

**7.2 Does this depend on whether the company is listed or not?**

No

**8. Are there in your jurisdiction certain obligations that are different for private and for publicly owned companies and which are not yet covered by the above topics?**

**8.1 Composition of Board of Directors?**

Yes, a listed company must have at least three board members. In listed companies, the chairman of the board of directors may not be the managing director of the company.

**8.2 Compensation for Directors?**

The Code contains rules in respect of the remuneration for the management team of the company, on the board of director's evaluation of the managing director and the distribution of work between the board of directors and the managing director.

**8.3 Obligation to have certain stakeholders represented in the Board ?**

Not applicable.

**9. Position of directors/managing directors in the event of disposal and/or merger of the company?**

In the event of a disposal of the shares of a company, the managing director's position or employment is not affected by the share disposal. However, new owners will likely appoint new board members of the board of directors and it is not unusual that the managing director is exchanged.

In the event of an asset transfer the managing director is not entitled to automatically transfer with the assets to a new employer, as the other employees are under the Swedish rules for transfer of undertaking. Hence, if all assets are transferred the managing director's employment will normally be terminated.

In the event of a merger, there can only be one managing director, hence, one of the two managing directors employed in the two different companies before the merger must be terminated.

**9.1 Is it typical to have wording on the position of the management in transfer agreements? If yes, which topics would usually be covered?**

It is typical to include a provision where the seller shall have taken all such measures requested by the buyer in order for the buyer to hold necessary shareholder's meetings and board meetings on the day of closing of the transaction, allowing the buyer to inter alia appoint new directors and deputy directors.

The transfer agreement may also contain a provision stating that the seller shall ensure, upon notification of the buyer that all managing directors and board members shall retire from their respective offices. Such managing directors and board members that resign shall acknowledge in writing that he or she has resigned as a director of the company and that he or she has no claims against the company or the buyer.

**9.2 Is it common to have wording on discharge for the services performed prior to the disposal/merger?**

A wording can be included where the buyer undertakes to grant those board members and managing directors who retire in connection with the transaction discharge from liability for their administration until the closing date of the transaction.

**9.3 Is it common to have contractual limitations of liability towards the acquirer?**

Limitation of the seller's liability towards the acquirer can be made in the share purchase agreement. It is common to restrict the seller's indemnity obligations in time and to a certain amount.

**9.4 Is it common for the sale agreement to provide restrictive covenants on the part of directors / managing directors? If yes, what type of restrictive covenants?**

It is common to include in the share purchase agreement restrictive covenants stating that the seller (or certain directors/employees) may not a certain time after closing solicit the services of or endeavor to entice away from the company any of its directors, managers or employees or to employ any such person during a certain period of time.

**10. Are there in your jurisdiction minimum requirements to become a company director?**

The person must be aged 18, and may not be bankrupt, have a guardian or be banned on trade activities. Board members cannot be passive board members meaning that someone is appointed without intentions to participate in the work of the board of directors. Further, only physical persons may be appointed.

Half of the board of directors should be resident within the EEA.

The managing director must be resident in the EEA.

**10.1 Does a director need to prove certain knowledge on company business?**

No

**10.2 Does the director need to have certain degrees?**

No

**11. Does a company director have specific obligations with regard to:**

**11.1 Non-compete obligations**

All employees and directors in Sweden are covered by a non-competition obligation during the employment/assignment; employees under the duty of fidelity and directors under the Companies' Act since they may not act in ways that risk damaging the company.

**11.2 The obligation to reveal so-called “corporate opportunities” towards the company**

Yes, managing directors and other employees may be said to have an obligation to reveal corporate opportunities towards the company. They should act in the best interest of the company at all times.