THE CORPORATE GOVERNANCE REVIEW

EIGHTH EDITION

Editor
Willem J L Calkoen

THE LAWREVIEWS

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PREFACE

I am proud to present this new edition of *The Corporate Governance Review* to you.

In this eighth edition, we can see that corporate governance is becoming a more vital and all-encompassing topic with each year that passes. We all realise that the modern corporation is one of the most ingenious concepts ever devised. Our lives are dominated by corporations. We eat and breathe through them, we travel with them, we are entertained by them, most of us work for them. Most corporations aim to add value to society and they very often do. Some, however, are exploiting, polluting, poisoning and impoverishing us. A lot depends on the commitment, direction and aims of a corporation's founders, shareholders, boards and management and employees. Do they show commitment to all stakeholders and to long-term shareholders, or mainly to short-term shareholders? There are many variations on the structure of corporations and boards within each country and between countries. All will agree that much depends on the personalities and commitment of the persons of influence in the corporation.

We see that everyone wants to be involved in 'better corporate governance': parliaments, governments, the European Commission, the US Securities and Exchange Commission (SEC), the Organisation for Economic Co-operation and Development (OECD), the UN's Ruggie reports, the media, supervising national banks, more and more shareholder activists and other stakeholders. The business world is getting more complex and overregulated, and there are more black swans, while good strategies can quite quickly become outdated. Most directors are working diligently, many with even more diligence. Nevertheless, there have been failures in some sectors, so trust has to be regained. How can directors do all their increasingly complex work and communicate with all the parties mentioned above?

What should executive directors know? What should non-executive directors know? What systems should they set up for better enterprise risk management? How can chairs create a balance against imperial CEOs? Can lead or senior directors create sufficient balance? Should most non-executive directors understand the business? How much time should they spend on their function? How independent must they be? What about diversity? Should their pay be lower? What are the stewardship responsibilities of shareholders? What are the pros and cons of shareholder rights plans?

Governments, the European Commission and the SEC are all pressing for more formal inflexible legislative acts, especially in the area of remuneration. Acts set minimum standards, while codes of best practice set aspirational standards. We see a large influence on 'norms' by codes and influential investor groups.

More international investors, voting advisory associations and shareholder activists want to be involved in dialogue with boards about strategy, succession and income. Indeed, far-sighted boards have 'selected engagements' with stewardship shareholders to create trust.

What more can they do to show all stakeholders that they are improving their enterprises other than through setting a better 'tone from the top'? Should they put big signs on their buildings emphasising integrity, stewardship and respect?

Interest in corporate governance has been increasing since 1992, when shareholder activists forced out the CEO at General Motors and the first corporate governance code – the Cadbury Code – was written. The OECD produced a model code and many countries produced national versions along the lines of the Cadbury 'comply or explain' model. This has generally led to more transparency, accountability, fairness and responsibility. However, there have been instances where CEOs gradually amassed too much power or companies have not developed new strategies and have produced bad results – and sometimes even failure. More are failing since the global financial crisis than previously, hence the increased outside interest in legislation, further supervision and new corporate governance codes for boards, and stewardship codes for shareholders and shareholder activists. The European Commission is developing a regulation for this area as well. Recently, we see that governments want to involve themselves in defending national companies against takeovers by foreign enterprises. We also see a strong movement of 'green' investors, which often is well appreciated by directors.

This all implies that executive and non-executive directors should work harder and more as a team on long-term policy, strategy, entrepreneurship and investment in R&D. More money is lost through lax or poor directorship than through mistakes. On the other hand, corporate risk management is an essential part of directors' responsibilities, as is the tone from the top. How can directors do their important work well without being petrified of attacks from shareholders, regulations and the press?

Each country has its own measures; however, the chapters of this book also show a convergence. The concept underlying the book is of a one-volume text containing a series of reasonably short, but sufficiently detailed, jurisdictional overviews that permit convenient comparisons, where a quick 'first look' at key issues would be helpful to general counsel and their clients.

My aim as editor has been to achieve a high quality of content so that *The Corporate Governance Review* will be seen, in time, as an essential reference work in our field. To meet the all-important content quality objective, it was a condition *sine qua non* to attract as contributors colleagues who are among the recognised leaders in the field of corporate governance law from each jurisdiction.

I thank all the contributors who helped with this project. I hope that this book will give the reader food for thought; you always learn about your own law and best practice by reading about the laws and practices of others. Further editions of this work will obviously benefit from the thoughts and suggestions of our readers. We will be extremely grateful to receive comments and proposals on how we might improve the next edition.

Willem J L Calkoen
NautaDutilh
Rotterdam
January 2018

Chapter 19

NORWAY

Gudmund Knudsen and Erik Langseth[1]

I OVERVIEW OF GOVERNANCE REGIME

i Sources of law and other regulations

Norwegian public limited companies are governed by the Public Companies Act, which is on important areas (e.g., information requirements, investor protection and accounting) supplemented by other mandatory laws such as the Securities Trading Act, the Stock Exchange Act and the Accounting Act. Companies listed in Oslo are also subject to the continuing obligations of listed companies as adopted by Oslo Stock Exchange.

In addition, important guidelines for corporate governance in listed companies have been established in the Norwegian Code of Practice for Corporate Governance (NCCG). The NCCG provides Norwegian listed companies with guidelines for governing the relationship between the shareholders, the board of directors and executive management more comprehensively than applicable legislation. The NCCG consists of 15 recommended principles of corporate governance, each of which is coupled with explanatory commentaries.

Several provisions of the Public Companies Act have been introduced or amended owing to EU regulations, including Directive 2007/36/EC on shareholder rights. This directive was implemented in Norway in 2009 and applies to listed companies only. The purpose of the directive is generally to improve the shareholders' opportunities to exercise influence in listed companies.

ii Enforcement

A shareholder who believes that a resolution by the general meeting violates mandatory law or the company's articles of association, can take legal action to have the resolution rendered void. An illegally adopted resolution or other forms of non-compliance with mandatory laws can also give rise to claims for compensation.

The NCCG is, on the other side, not directly legally binding. Nevertheless, the NCCG has to some extent gained legal anchoring through the Accounting Act, which requires that listed companies account for their principles and practice of corporate governance in their annual directors' report on a 'comply or explain' basis. This requirement is also established in the continuing obligations of listed companies published by the Oslo Stock Exchange. In addition, companies applying for listing on the Oslo Stock Exchange must report on

1 Gudmund Knudsen is a Norwegian-qualified lawyer and Erik Langseth is a partner at Advokatfirmaet BAHR AS.

the company's corporate-governance principles in their listing application. By connecting the NCCG to mandatory legislation and stock exchange regulations, the NCCG has been established as guidelines with which companies are generally expected to comply.

II CORPORATE LEADERSHIP

i Governance regime

The Norwegian governance regime draws a fundamental line between a company's management and its owners. The shareholders exercise the highest authority in the company through the general meeting and may, through the general meeting, decide on any matter provided that it has not expressly been made subject to the exclusive authority of another corporate body (e.g., the board of directors).

A company's management is divided into two corporate bodies: a board of directors (consisting in practice only of non-executive directors) having the overall responsibility for the management of the company and a CEO, who is in charge of day-to-day management.

A special feature of the Norwegian governance model is the obligation to appoint a corporate assembly in companies with more than 200 employees. The principal tasks of the corporate assembly consist of board elections and, following a recommendation from the board of directors, to resolve on matters regarding significant investments in relation to the company's resources, and any rationalisation or alteration of the company's operations that may cause extensive changes or a re-allocation of the company's work force. The Public Companies Act does, however, allow the company to agree with a majority of its employees (or unions representing two-thirds of the employees) that a corporate assembly should not be established in exchange for extended employee representation on the company's board of directors (see below). It is common practice to enter into such agreements.

Another fundamental characteristic of the Norwegian governance regime is the rules in Norwegian companies' legislation that grant company's employees the right to elect members to the board of directors and the corporate assembly. The main rule regarding employee representation is that one-third of the members of the board of directors or one-third of the members of the corporate assembly or both are elected by and among the employees. The employee representatives act as ordinary members of the board or corporate assembly and have the same authority and responsibility as the members elected by the general meeting.

ii Board structure and practices

Size and composition of the board of directors

The board of directors must consist of at least three members (five in companies with a corporate assembly). In practice, the boards of Norwegian listed companies tend to consist of between six and 10 directors, of which one-third is elected by and among the employees.

As regards the composition of the board of directors, at least half of the directors must be resident within the EEA and citizens of an EEA country. Since 2006, Norwegian companies' legislation has also contained requirements relating to gender representation on the board of directors of public limited companies. These rules provide that each gender must, at a minimum, be represented by approximately 40 per cent of the total number of directors elected by the general meeting. According to the Public Companies Act, the CEO cannot be a director.

The Oslo Stock Exchange Listing Rules contains further requirements for listed companies. Pursuant to these rules, at least two of the shareholder-elected directors must be independent of the company's executive management, material business contacts and the company's 'larger' shareholders (meaning shareholders who own more than 10 per cent of the company's voting capital or share capital). No members of executive management may be represented on the board, unless warranted by special circumstances. Finally, all directors must be fit and proper and have satisfactory knowledge of the rules applicable to listed companies on the Oslo Stock Exchange.

Further guidelines and recommendations regarding the composition of the board of directors are set out in the NCCG relating to, *inter alia*, independence and expertise of the directors.

The chair of the board of directors

The chair of the board is the leader of the board of directors and carries a particular responsibility for ensuring that the work of the board is well organised and that it functions effectively. The chair normally has the casting vote in the event of a parity of votes on the board. The chair shall ensure that matters of 'current interest' are presented to the board. This rule indirectly implies that the chair has a duty to keep him or herself continuously up to date on material matters regarding the company.

Responsibilities of the board

The board of directors has the principal responsibility for the management of the company and for supervising the company's day-to-day management and activities in general. This includes ensuring that the company's activities are soundly organised, drawing up plans and budgets for the activities of the company, staying informed of the company's financial position and ensuring that its activities, accounts and asset management are subject to adequate control.

The principal task of the board of directors, as well as of the other managing corporate bodies (i.e., the CEO and the corporate assembly), is to promote the company's commercial interest, facilitate value creation and, as a consequence thereof, safeguard the shareholders' general interest in gains and dividends on the capital invested in the company. However, the managing bodies of a Norwegian company are also entitled – and sometimes obliged – to consider non-shareholder interests (e.g., the interests of the company's employees, creditors and contract parties), as well as the company's obligations towards society and the environment. The common view is that the board of directors of Norwegian companies must to some extent have a broader perspective than the sole economic interest of the shareholders. This particular point is reflected in the NCCG, which recommends that the board of directors 'should define the company's basic corporate values and formulate ethical guidelines and guidelines for corporate social responsibility in accordance with these values'.

The liability of directors is several and not joint, meaning that each individual director may be held responsible for his or her actions or inactions as a director on the board.

Board committees

The Public Companies Act requires that listed companies of a certain size appoint an audit committee (Section III). Apart from this requirement, the Public Companies Act neither requires nor prohibits the establishment of specialised board committees.

The NCCG further recommends that the board of directors of listed companies consider appointing a remuneration committee consisting of independent directors, to help ensure thorough and independent preparation of matters relating to executive compensation. Many listed companies also choose to appoint other specialised board committees dealing with particular matters of interest (e.g., corporate social responsibility and social responsibility, HR and workplace environment issues, and so forth).

However, it should be noted that, to the extent board committees are established, such committees cannot be granted authority that is vested in specified corporate bodies according to law. Thus, the principal responsibility for tasks delegated by the board of directors to a board committee will always remain with the board and its individual directors. The work being carried out by a board committee must therefore only be viewed as preparatory or advisory for the board's discussions.

Remuneration of directors and the CEO

Except in cases where the company has a corporate assembly, the remuneration of the directors shall be determined by the general meeting. The Public Companies Act does not contain rules or guidelines with respect to the size of the remuneration to the directors, but further guidelines are provided in the NCCG, which states that the 'remuneration of the board of directors should reflect the board's responsibility, expertise, time commitment and the complexity of the company's activities' and that the 'remuneration . . . should not be linked to the company's performance'. The NCCG also states that share options should not be granted to directors. The size of the remuneration paid to directors in Norwegian companies varies in practice, but historically has been seen as modest when compared with other industrial countries.

The remuneration of the CEO is determined by the board of directors. The board of directors is obligated to produce an annual statement setting out guidelines for the determination of salaries and other remuneration to the company's executive personnel, including the CEO, for the next financial year. This statement is subject to the consideration of the annual general meeting each year.

iii Directors

Election of directors

The directors are elected by the general meeting, which also determines whether deputy directors shall be elected. In companies with a corporate assembly, this body is responsible for electing the directors. A decision to remove directors may be taken by the same corporate body authorised to elect the directors, which means that removal of directors is normally resolved by the general meeting. A characteristic feature of the Norwegian corporate law is that a majority of the shareholders, acting through the general meeting, may replace one or several directors at any time during his or her term without cause. This grants the majority shareholders authority to determine and alter the composition of the board of directors at any time. 'Staggered boards', where directors cannot be removed until the end of their term, are not permitted according to Norwegian law. An important caveat is that directors who are elected by the employees cannot be removed by the general meeting, but may only be replaced pursuant to a decision by the employees.

The NCCG recommends that the task of proposing eligible candidates for the board of directors, as well as proposing the directors' remuneration, is prepared by a nomination committee. This recommendation is followed by a majority of the Norwegian listed companies, even though there is no legal requirement to appoint a nomination committee. Whether or not a company shall have a nomination committee is usually (but not necessarily) governed by the company's articles of association.

The starting point of the Public Companies Act is that the directors are elected for a period of two years, provided the company's articles of association do not state otherwise. The term cannot, however, exceed four years. The NCCG recommends that directors are not elected for a period of more than two years.

CEO

All Norwegian public limited companies must have one or several CEOs. In practice, Norwegian listed companies have only one CEO. The CEO is normally appointed and dismissed by the board of directors.

The CEO is in charge of the day-to-day operations of the company and responsible for executing the board's resolutions and addressing external relations. The authority of the CEO is generally limited with respect to matters of an unusual nature or major importance to the company. The CEO is subordinate and reports to the board of directors while the board, in turn, has a duty to supervise the CEO. The board of directors may also instruct the CEO on the day-to-day operations of the company.

III DISCLOSURE

i Internal control and financial reporting

The Public Companies Act requires that listed companies of a certain size appoint an audit committee to advice on and prepare certain matters for the board of directors. At least one of the members of the audit committee must be independent of the company's operations and have qualifications from accounting or auditing.

Listed companies are subject to a financial reporting scheme as set out in the Securities Trading Act, Securities Trading Regulation and the Continuing Obligations of the Oslo Stock Exchange. This entails, among other things, that all listed companies must publish semi-annual and annual financial reports to the market within certain deadlines. The financial reports must be prepared in accordance with recognised accounting standards, such as IFRS or US GAAP. The company must ensure that no unauthorised persons gain access to accounting information before any such financial report is published.

ii Reporting on corporate governance

The NCCG is based on a principle of 'comply or explain' and is thus not directly legally binding upon its target companies. However, pursuant to the Accounting Act, listed companies are required to account for their principles and practice of corporate governance in their annual directors' report. This requirement is also established in the continuing obligations of listed companies. In addition, companies applying for listing on the Oslo Stock Exchange must report on the company's corporate-governance principles in their listing application or in an appendix to this.

iii Audit

All public limited companies are required to appoint an authorised auditor. The auditor is elected by the general meeting and serves as auditor until replaced.

The primary task of the auditor is to verify that the company's annual report including its annual accounts is in accordance with applicable legislation. The auditor shall also verify that the company has undertaken satisfactory management of its assets and that proper control mechanisms are in place.

The auditor shall have at least one annual meeting with the board of directors without the CEO being present. In listed companies, the auditor shall liaise with the audit committee, and give the committee a description of the main elements of the audit.

The audit is an important part of the shareholders' monitoring of the board of directors' management of the company. The auditor shall present a report concerning the audit to the general meeting. In the event the auditor finds circumstances that may give rise to liability on the part of a member of the board of directors, a member of the corporate assembly or the CEO, the auditor must make a note of this in the report.

The auditor shall attend any general meeting where the matters to be dealt with are of such a character that the auditor's attendance is deemed necessary. Otherwise, the auditor has, according to law, a right (but no obligation) to be present at the general meeting. However, the NCCG recommends that the auditor attends all general meetings of the company.

IV CORPORATE RESPONSIBILITY

As mentioned above, the Public Companies Act confers the ultimate responsibility for the management of the company on the board of directors. The board shall also keep itself informed on the company's financial position and ensure that the operations, accounts and asset management are subject to adequate control. In performing its duties, the board shall initiate such investigations as it finds necessary, as well as those investigations that may be required by one or more of the directors.

The responsibility of the board of directors is also addressed in the NCCG, which makes it clear that it is also the board's responsibility to define and perform internal controls with respect to the company's corporate values, ethical guidelines and guidelines for corporate social responsibility. It is common for listed companies to appoint a special risk committee to the board of directors to monitor risks and report any issues on an ongoing basis.

V SHAREHOLDERS

i Shareholder rights and powers

Norwegian companies' legislation is based on a majority principle that grants controlling influence to the shareholders controlling the majority of votes at the general meeting. This majority principle provides for a secure and flexible governance system in which an important element is the majority shareholder's control over the company's board of directors. However, an important feature of the Norwegian governance model is the balancing of the majority principle against a set of rules relating to minority protection. These rules limit the majority's authority over individual shareholders (or minority groups of shareholders) and equip the minority shareholders with legal tools to enforce the limitations to the majority's authority.

ii Shareholders' duties and responsibilities

General

The shareholders exercise supreme authority in the company through the general meeting in which they can instruct and control other corporate bodies, including the board of directors and its composition. The general meeting can also, as a main rule, reverse resolutions adopted by other corporate bodies and directly resolve on all company matters to the extent there are no third parties (e.g., contracting parties) who have rights as regards the company that prevent the general meeting from making decisions.

The general meeting is obliged to resolve on matters that are expressly made subject to its authority pursuant to the Public Companies Act, such as adoption of the annual accounts, approval of the board's statement on remuneration to executive personnel and election of directors to the board. Matters concerning the company's capital are also generally subject to the general meeting's authority (i.e., increases and reductions in share capital, mergers, demergers and dividend distributions).

Protection of minority rights

The Public Companies Act has several provisions that balance the majority principle against the interests of the minority shareholders. These minority-protection provisions reflect the fundamental principle of equality in Norwegian company legislation.

The minority-protection rules consists of provisions of various nature, such as general provisions concerning, among other things, abuse of authority, conflict of interests and related-party transactions, as well as provisions regarding majority requirements and procedural requirements for certain resolutions made by the general meeting.

General provision against abuse of authority

The main material limitation on the majority's authority over the other shareholders is set out in the general anti-abuse provisions in sections 5-21 and 6-28 of the Public Companies Act. These provisions prohibit the shareholders, the directors and the CEO from adopting any resolution that may provide certain shareholders or others with an unreasonable advantage at the expense of the other shareholders or the company. Further, these provisions prohibit the board of directors and the CEO from effecting resolutions made by superior corporate bodies that would violate mandatory laws or the company's articles of association.

For listed companies, the anti-abuse provision in the Public Companies Act is supplemented by a provision on equal treatment in the Securities Trading Act and in the Continuing Obligations of the Oslo Stock Exchange.

The anti-abuse provisions are limited in scope to 'unreasonable' abuse of majority power that results in unequal treatment. This implies that unequal treatment *per se* is not prohibited, and that majority shareholders as well as the board and the CEO can pass resolutions that provide for *de facto* unequal treatment as long as there is a good and valid reason for passing such a resolution.

iii Shareholder activism

The Public Companies Act opens up for various methods of exercising shareholder activism in Norwegian companies, such as:

a A right for shareholders holding more than 5 per cent of the share capital of the company to demand that an extraordinary general meeting is held to discuss any specific matter.

b A right to request that the district court initiates an investigation of the company if a proposal to investigate the company's 'establishment, management or certain specified matters regarding the management or the accounts' is supported by at least 10 per cent of the share capital represented at the general meeting.

c A right for shareholders who own at least 5 per cent of the share capital to request that the district court resolves a dividend that is higher than that approved by the general meeting, thus giving minority shareholders a protection against being 'starved out' of the company by a dominant shareholder who is keeping the dividend distributions 'unreasonably low'.

d An unconditional right for all shareholders to be present (either personally or by proxy) at the company's general meetings.

e A right for all shareholders to have specified matters addressed by the general meeting.

The Public Companies Act also provides each shareholder with a right to information, including a right to receive the annual accounts, the board's statement and the auditors' statement and the statement from the corporate assembly. At the general meeting, each shareholder can also demand information regarding circumstances that may be significant for the approval of the annual accounts and the annual report, matters that are presented to the general meeting and information on the company's economic situation. The shareholders' right to information is far-reaching and can only be denied to the extent the information demanded cannot be provided without disproportionate harm to the company.

Proxy advisers

With respect to the actual voting at the general meeting, a practice of using 'proxy advisers' has been increasingly adopted during the past decade, most commonly by institutional shareholders. The proxy advisers are professional analysts who provide advice on how the shareholders should exercise their voting powers at the general meeting. The advice can either be provided based on the shareholders' expressed ownership principles, or be of a more general nature. The proxy advisers help the shareholders stay up to date on their investments by taking on the task of analysing the consequences of the matters that are presented to the general meeting. However, critics are concerned that extensive use of proxy advisers causes unwanted harmonisation of the governance of Norwegian companies, which does not always take into consideration the specific needs of a company's business and operations.

Proxy battles, shareholder campaigns, etc.

Prominent proxy battles and shareholder campaigns in relation to Norwegian companies listed on Oslo Stock Exchange are rarely seen. Occasionally such campaigns and battles ensue in the context of a hostile takeover bid, or more recently in relation to companies in financial distress, where creditors of a distressed company may try to influence shareholders and management to agree to a particular proposal for the financial restructuring of the company.

iv Takeover defences

Takeover defences in the form of 'poison pills' and similar measures are rarely seen in the Norwegian market.

As a starting point, the Securities Trading Act, the NCCG and the Listing Rules of Oslo Stock Exchange builds on a principle that the shares of a listed company should be freely transferable and carry equal rights in the company, and that it should be up to the shareholders – not the board of directors – to consider any bid made for the shares of the company by a third party. Consequently, Section 6-17 of the Securities Trading Act restricts the board's ability to take defensive measures against a third party tender offer for the company's shares, including by issuing new shares, selling or buying significant assets, purchasing own shares and resolving mergers. These prohibitions can, however, be set aside by a vote of the shareholders in a general meeting.

The NCCG goes even further and states, among other things, that the board of directors should publicly announce how it will act in the event of a tender offer for the company's shares, and that the company should not take any measures to prevent such an offer from being made. In the event that the board has been authorised by the shareholders to take defensive measures in such a situation, the NCCG recommends that the authorisation should only be acted on if it has been given after the relevant offer has become publicly known.

Hostile takeovers are rare in the Norwegian market, but there have been examples of such transactions in recent years where the board of the target company has implemented a variety of defensive measures to secure a more competitive offer.

As an alternative to active, defensive measures against tender offers, it is possible to implement 'structural defences' in the form of voting restrictions, multiple share classes and similar means. The Oslo Stock Exchange has historically been reluctant to accept the listing of companies with such structural defence mechanisms, but there have been several examples in recent years of companies with restrictions on voting rights or dual share classes having been accepted for listing. It is difficult to say whether these cases are rare exceptions to the main rule or if they can be seen as precedents and indications of a less restrictive approach being taken by the Oslo Stock Exchange in recent years and going forward.

v Contact with shareholders

Outside the general meeting, the shareholders do not have formal authority to govern the company or to instruct the board of directors or to influence the company affairs. This does not, however, prevent the shareholders and management from having contact outside the general meeting when it comes to matters unrelated to the exercise of the shareholders' legal authority. Oppositely, such contact is rather common in companies with one dominant shareholder and is often also seen in companies with dispersed ownership, as the main shareholder or main shareholders will have a need to be kept informed and up-to-date on important matters related to the company's operations and development. In addition, main shareholders may also wish to give their input regarding the company's operations to management, and management may need to discuss matters with the main shareholder or main shareholders to avoid falling out of step with them on important matters regarding the company. In matters in respect of which the general meeting has the final authority, such as resolutions on share issues, share buy-backs, mergers and demergers, the management will usually have discussed the matter with the main shareholder or main shareholders before a reasoned proposal is presented to all shareholders (which needs to occur at least 21 days before the general meeting is held).

The extent and substance of the contact between management and the shareholders vary to a great extent from one company to another. In any case, it is important that informal contact between management and the company's shareholders is kept within certain limits to make clear that it is the company's management, namely its board of directors and CEO, which has the responsibility and authority to manage the company's operations. Contact with the shareholders should thus principally be of an informative nature and with the company's best interests in mind. To the extent shareholders present comments or proposals to the management outside of the general meeting, such comments or proposals cannot be of an instructive character. It is also important to ensure that the contact between management and the main shareholders does not violate the other shareholders' rights in the company and that the contact is kept within the framework of, among other things, the principle of equal treatment of shareholders. To this end, the board and management must be particularly cautious not to disclose information to the main or dominant shareholders without providing the same to the minority shareholders.

The NCCG recommends that the board of directors of listed companies establish guidelines for the company's contact with shareholders other than through general meetings. Such guidelines will typically specify how the company communicates to its shareholders and stakeholders in the public domain (for instance, by hosting webcasts or telephone conferences in connection with the publication of annual or interim accounts), the frequency of such communications, and the person or persons responsible for the communications (for instance, an investor relations manager).

It is not *per se* unlawful for a listed company to disclose confidential inside information to one or a select few of its shareholders outside of a general meeting. Depending on the circumstances, there may be good and valid reasons for sharing inside information with a major shareholder, for instance in cases of financial distress. It is, however, important to note that, if a shareholder receives inside information, the shareholder will become an 'insider' pursuant to the Securities Trading Act. This means, among other things, that the shareholder will be prohibited from trading in the shares and will be obliged not to disclose the information. A shareholder with inside information must be added to the company's list of insiders, and the company must inform the shareholder of this fact as well as the consequences of receiving inside information.

VI OUTLOOK

The Norwegian corporate governance structure has been rather stable for some time, and legislative amendments that will materially affect the corporate governance regime are not expected.

A general remark is that the Norwegian governance model is broadly drafted and rather flexible and thus caters for many different ownership models. This means that it can be suitable for both companies with a dominant shareholder and companies with dispersed ownership.

In recent years, the actions of directors and management of publicly listed companies in Norway have become subject to increased scrutiny by regulators and the general public, in particular as allegations of corruption and unlawful business practices have been made against several large Norwegian corporations. Statistics also show that director liability lawsuits by aggrieved shareholders and third parties have increased in recent years, prompting an increased focus on directors' responsibilities and potential liability in general.

Appendix 1

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