

Company law developments and discussions in Sweden

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Special examinations

Recent amendments in the protection of minority shareholders

Work in progress by Hanna Almlöf and Jessica Östberg

Background: special examination (särskild granskning)

- Auditor – **minority auditor** – general examiner – **special examiner (särskild granskare)**
- Part of minority shareholder protection
- An independent special examiner can be appointed by The Swedish Companies Registration Office upon application by minority shareholder(s)
- Task: To investigate and report on management and accounts during a specific period of time in the past and certain measures or circumstances within the company or a subsidiary.

New rules on special examination, 1st of January 2021.

Section 22

- **An application pursuant to section 21 may be made by owners of not fewer than one-tenth of all shares in the company**

Clarification on

- The independence and qualification of the special examiner
- The examination may include subsidiaries
- Remuneration to the special examiner

Chapter 10, Section 28

- In the event any part of the special examination was **clearly unnecessary** and a shareholder who applied to the Swedish Companies Registration Office for the appointment of a special examiner **knew or should have known** of such, such shareholder shall **compensate** the company for its costs in respect of such part. Where several shareholders are liable for payment, they shall be jointly and severally liable for the costs.
- Where the special examiner determines that one or more shareholders is liable for payment, the special examiner shall comment on this in their statement.
- The provisions of this section shall not apply in respect of public companies.

Abuse of right?

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Duty of
loyalty?

Theory: Abuse of rights (rättsmissbruk)

- Roman law - *exceptio doli*
- *Bona fides, bonne foi, abus de droit, Treu und Glauben, Chikaneverbot*
- Prohibition to abuse rights that are given to you
- General legal doctrine (or principle) that can be applied as a legal norm itself, or used for interpretation or application of other legal norms.
- Can be used for any rights, not only statutory rights, but also contractual rights.

Is there a duty of loyalty for shareholders?

- Majority shareholders vs minority shareholders
- Rules in the Companies Act
- Contractual loyalty
- Conclusion: this duty is less articulated in Swedish company law, than in other countries

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Is there a **general principle** that can be applied to other minority protection rules than special examination?

Kontakt

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