

Company law developments and discussions in Denmark

Agenda

- The revised Danish Corporate Governance Code
 - Company purpose
 - Dialogue and interaction between the company and its stakeholders
- The role of the general meeting
 - Engagement
 - Response by the board of directors

The revised Danish Corporate Governance Code

- The Code was first published in 2001
 - Updated 10 times since then
- Latest update in December 2020
 - Entered into force as of the financial year starting 1 January 2021 or thereafter
 - First reporting in connection with the annual financial reporting in 2022
- The Danish Committee on Corporate Governance
- Part of Nasdaq's rules for issuers (the so-called Main Market Rulebook) and is reflected in section 107 b of the Danish Financial Statements Act

Major revisions

- New section with definitions and explanations
- Recommendation on the format of the AGM
 - Digital transmission, e.g. webcast
- CSR policy recommendation, including social responsibility and sustainability
- Tax policy recommendation
- Recommendation on company purpose
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- Remuneration (reduction in number due to SRD II)

Company purpose (I)

2.1. Overall tasks and responsibilities

2.1.1. The Committee recommends that the board of directors in support of the company's statutory objects according to its articles of association and the long-term value creation considers the company's purpose and ensures and promotes a good culture and sound values in the company. The company should provide an account thereof in the management commentary and/or on the company's website.

Company purpose (II)

- Definition - The company's purpose:
- “”Purpose” is a new term in the recommendations. A company's purpose is the company's overall aim for long-term value creation, which the company delivers to its shareholders, other stakeholders and society. In order to support the company's statutory objects pursuant to its articles of association, the company's board of directors should consider the company's purpose. Many companies already have a purpose, which they use actively in the company's strategy, for instance, under the designations “mission” or “vision”.
- The Committee considers the company's purpose to be a considerable driving force in the company's strategy and decision-making processes.”

Company purpose (III)

- Understanding?
 - It is the company's overall aim for long-term value creation, which the company delivers to its shareholders, other stakeholders and society
 - Support of the company's statutory objects according to its articles of association
 - Pursued on a daily basis through the company's culture and values
 - Purpose = "mission" or "vision"
- Legal vs. strategic purpose?
- The international debate?

Interaction with shareholders and stakeholders (I)

1.2. The general meeting

1.2.1. The Committee recommends that the board of directors organises the company's general meeting in a manner that allows shareholders, who are unable to attend the meeting in person or are represented by proxy at the general meeting, to vote and raise questions to the management prior to or at the general meeting. The Committee recommends that the board of directors ensures that shareholders can observe the general meeting via webcast or other digital transmission.

Interaction with shareholders and stakeholders (II)

1.1. Communication with the company's shareholders, investors and other stakeholders

- 1.1.1. The Committee recommends that the management through ongoing dialogue and interaction ensures that shareholders, investors and other stakeholders gain the relevant insight into the company's affairs, and that the board of directors obtains the possibility of hearing and including their views in its work.

The role of the general meeting - recommendations

- The Corporate Governance Recommendations:
 - Aimed at the Board of Directors
 - Responsible for an appropriate organisation of the GM
 - Responsible for dialogue with shareholders and other stakeholders
- The Danish Stewardship Code
 - 1 January 2017 til ??
 - Taken over by SRD IIs provision on shareholder engagement
 - Transparency on engagement policy and actual engagement



SRD II and engagement (II)

How will the transition from the Stewardship Code to the SRD II affect shareholder engagement in Denmark – if at all?

SRD II and engagement (I)

- Article 3 g
- Institutional investors and asset managers shall develop and publicly disclose an engagement policy that describes how they integrate shareholder engagement in their investment strategy
 - Normative in relation to the content of the policy
 - Monitoring, dialogue, exercise voting rights, cooperation, communication
- Institutional investors and asset managers shall, on an annual basis, publicly disclose how their engagement policy has been implemented
- They shall publicly disclose how they have cast votes in the general meetings of companies in which they hold shares
- Comply or explain principle

Shareholder activity at AGMs 2018-2019

	Questions asked	Percentage of companies	Addresses to the board of directors	Percentage of companies
Large cap (36)	55 (11)	30.6%	96 (15)	41.7%
Mid cap (23)	35 (7)	30.4%	21 (5)	21.7%
Small cap (67)	37 (9)	13.4%	27 (7)	10.4%
In total	127 (27)	21.4%	144 (27)	21.4%

We found shareholder proposals in the AGMs of 17 of the 126 companies considered (13%)(26% if only large cap). The total number of shareholder proposals was 47. However, 19 were proposed in one company (Danske Bank A/S).

Shareholder activity at AGMs 2020-2021

- Only companies in the C25 index

Questions asked	Percentage of companies	Addresses to the board of directors	Percentage of companies	Issues on the agenda	Percentage of companies
64 (14)	74%	34 (12)	63%	9	30.6%

Missing data from 6 companies

Linking the CG recommendations and engagement? (I)

- The Danish Stewardship was a corporate governance mechanism
 - Focus of the value creation in investee companies
 - Not the obligations toward beneficiaries
- Seemingly same focus in the transposition of the SRD II
- Separation of the duties of the board of directors and of the institutional investors and asset managers
- Will an approximation of the duties of the boards and of institutional investors and asset managers strengthen shareholder engagement?

Linking the CG recommendations and engagement? (II)

- Inspiration from Belgium, the Netherlands, and the UK
 - The board of directors must be active in encouraging and facilitating active ownership
 - The board of directors has a duty to seek and understand the motivation behind the votes cast at the general meeting when a significant number of shareholders voted against a resolution
- Or will greater accountability towards the shareholders lead to short term profit maximation?

COVID as a catalyst for engagement (I)

- General lockdown from mid-March 2020
 - The congregation of more than ten persons should be avoided
- Regulatory intervention
 - Companies were allowed to submit their annual accounts eight weeks after the ban was lifted, and it became possible again to conduct a general meeting
 - Listed companies whose financial year ended between 31.10.2019 and 30.04.2020 were allowed to hand in their annual accounts seven months after the financial year-end
 - Relaxed some of the usual requirements for general meetings
 - Allowed companies to ignore any date or time slot in their AoA for holding the AGM
 - Relaxed the deadline applicable for submitting shareholder proposals, if the boards were convinced that shareholders had sufficient time to submit proposals
 - Permitted boards to decide to hold a general meeting as a fully electronic meeting, even if their companies' AoA do not allow for it

COVID as a catalyst for engagement (II)

- Beginning of July 2020, we conducted a survey of 37 Danish large cap companies
- 26 were affected by the lockdown
 - Of which seven were able to conduct their 2020 AGM as usual
- Of the remaining 19
 - Seven chose to postpone their AGM
 - Seventeen companies chose to conduct a physical AGM with certain precautions in place
 - Encouraging shareholders not to attend the meeting but instead vote in advance or give a proxy to the board (+ webcast)
 - Explicitly announcing in the AGM notice that no refreshments would be served
 - One company converted the AGM in to a fully electronically meeting + change of AoA to allow such meetings in the future
 - Shareholder proposal in another – rejected by a 99.49 per cent majority vote

COVID as a catalyst for engagement (III)

- AGM season 2020-2021
 - 21 of the companies in the C25 index have amended their AoA
 - The board is given the authority to decide that the GM should be held as a fully electronically meeting, or
 - has a choice between a fully or a partly electronically meeting
 - Some times motivated in a restrictive manner
- Interesting because the CG Recommendations only includes webcast or similar
- Implications or shareholder engagement?

Concluding remarks

- Interesting developments in the COVID aftermath
 - Effect?
- Potential for increased engagement and dialogue between companies and shareholders in the CG recommendations
- The effect of a company's purpose?