

## **Board Representation (Private Sector Employees) Act (1987:1245)**

Amendments: up to and including SFS 2006:479

### **Introductory provisions**

**Section 1** The purpose of this Act is to afford employees information about and influence over the company's activities through representation on the board of directors.

**Section 1 a** This Act shall not apply to a company that has been formed in accordance with the Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company. (SFS 2004:560)

**Section 1 b** This Act shall apply to European cooperatives formed in accordance with the Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) subject to the precondition that

a) the European cooperative has only been formed by natural persons or by a legal person and natural persons, and

b) the European cooperative, its subsidiaries and branches at the time that the European cooperative was registered, had less than in total 50 employees, or employees only in an EEA State.

However, the Act shall not apply to European cooperatives under the first paragraph in those cases were

a) at least one third of the employees in the European cooperative, its subsidiaries and branches in at least two EEA States have requested that employee influence under the Employee Influence in European Cooperatives Act (2006:477) shall apply, or

b) the workforce of the European cooperative, its subsidiaries and branches numbers or has numbered in total at least 50 employees in at least two EEA States. (SFS 2006:479)

**Section 2** The term 'company' means, for the purposes of this Act, joint stock companies, banks, mortgage institutions, insurance companies, economic associations and also European cooperatives to which the Act applies under Section 1 b.

The term 'group' means, for the purposes of this Act, Swedish legal entities that, according to the provisions of Chapter 1, Sections 11 and 12 of the Companies Act (2005:551), Chapter 1, Section 2 of the Savings Bank Act (1987:619), Chapter 1, Section 5 of the Members' Bankers' Act (1995:1570), Chapter 1, Section 9 of the Insurance Business Act (1982:713) or Chapter 1, Section 4 of the Co-operative Societies' Act (1987:667), are defined as parent companies or subsidiaries in relation to one another or companies that according to Sections 9 - 12 of the European Works Council Act (1996:359) exercise a decisive influence over another company and the companies over which this influence is exercised. (SFS 2006:479)

**Section 3** An employee of a principal or parent company, who is permanently engaged in an agent or subsidiary, without being employed there, shall also, in the application of this Act, be treated as an employee of the agent or subsidiary.

In the application of this Act, a collective bargaining agreement between a local employees' organisation and a principal or parent company shall also be treated as a collective bargaining agreement in relation to the agent or subsidiary.

### **The entitlement to board representation**

**Section 4** The employees of a company that, in the most recent financial year, in Sweden, has employed an average of not less than 25 employees, shall be entitled to two representatives on the board of directors (board representatives) and one alternate for each such member. If the company conducts business in different branches and if it has, in the most recent financial year, in Sweden, employed an average of at least 1,000 employees, the employees shall be entitled to three representatives on the board of directors (board representation) and one alternate for each such member.

The employees' entitlement to board representation under the first paragraph may not, however, result in the number of employee representatives exceeding the number of other board representatives.

If the company is a parent company, the provisions of the first and second paragraphs relating to companies shall relate to the group in its entirety and the right to board representation shall accrue in favour of all employees in the group.

**Section 4 a** If a European cooperative moves its registered office to Sweden and the rights of the employees to have influence are not covered by the Employee Influence in European Cooperatives Act (2006:477), at least the same rights to employee influence shall apply as before the European cooperative moved its registered office. (SFS 2006:479)

**Section 5** Once the employee members have been appointed, the employees' right to board representation during the period of the mandate shall remain unchanged, notwithstanding any decrease in the number of employees or the number of other board members.

### **Appointment of board representatives**

**Section 6** The decision to appoint employees' board representatives shall be taken by a local employee organisation that is bound by a collective bargaining agreement with the company.

If the decision relates to a parent company, the decision shall be taken by a local employees' organisation that is bound by a collective bargaining agreement with one of the companies in the group.

The company's board of directors shall be informed in writing of the decision to appoint employees' board representatives. Section 10, second paragraph, contains provisions

concerning the time at which employee members or their alternates (employees' representatives) may take up their appointment.

**Section 7** The employees' representatives shall be appointed by the local employees' organisations that are bound by collective bargaining agreements with the company or, in parent companies, by the local employees' organisations that are bound by collective bargaining agreements with a company within the group.

**Section 8** Unless the organisations otherwise agree, the following system shall apply for appointment of the employees' representatives.

If more than four-fifths of the employees bound by the collective bargaining agreement at a company or group belong to the same local employees' organisation, that organisation may appoint all of the employees' representatives. However, if another such organisation represents at least one-twentieth of the employees bound by a collective bargaining agreement, that organisation may appoint one of the alternates.

If there is no organisation that represents more than four-fifths of the employees bound by a collective bargaining agreement with the company or group, the two local employees' organisations that represent the largest number of such employees each appoint one member and one alternate. If the employees are entitled to three members and three alternates, the larger of the two organisations may appoint two members and two alternates.

If, under the provisions of Section 4, second paragraph, only one employees' representative and one alternate are to be appointed, this will be done by the local employees' organisation that represents the greatest number of employees bound by a collective bargaining agreement with the company or the group.

In applying the provisions of this Section, local employees' organisations that belong to the same central organisation shall be deemed to be one organisation.

**Section 9** The employees' representatives should be appointed from the employees at the company or, so far as a parent company is concerned, within the group.

A person who is an employees' representative on the board of one company may not, except with the special permission of the Board Representation Tribunal, be appointed as employees' representative of another company. However, the aforementioned shall not apply if the companies agree otherwise or if the companies form part of the same group.

**Section 10** The term of an employees' representative's appointment shall be fixed by the party appointing him. However, the mandate may not exceed four financial years. The term of the appointment shall be fixed so that it concludes at the close of an annual general meeting at which the board of directors is elected.

The party appointing the employees' representative shall determine when the representative may take up her or his appointment. However, unless the company's board indicates otherwise, the representative may not take up her or his appointment until at least three months after the board of directors received notice under Section 6, third paragraph.

The second paragraph of Section 18 provides that a different time of commencement may apply.

### **Duties of the employees' representative, etc.**

**Section 11** Unless this Act provides to the contrary, the provisions of other acts or legislative instruments concerning members of the board of directors and alternate members of a company's board of directors shall apply to employee members and alternates for such members.

**Section 12** An alternate for an employee member of the board of directors is entitled to be present and express her or his view at meetings of the board of directors and at the company's general meetings, notwithstanding that the members are present.

**Section 13** One of the employees' representatives may be present and participate in deliberations when a matter, which is later to be dealt with by the board of directors, is prepared by members of the board of directors or officers of the company specifically appointed for that purpose.

If, by virtue of a decision under Chapter 3, Section 6, second paragraph of the Savings Bank Act (1987:619) or Chapter 6, Section 6, second paragraph of the Members' Bankers' Act (1995:1570), an assignment is given to a regional board or a similar organ in a region, the employees within the region are entitled to determine that one representative for them and one alternate shall be a part of the assignment. Such a representative shall have the same rights as are referred to in the first paragraph.

If a joint stock banking company has established a regional board or a similar organ in a region, the employees within the region are entitled to determine that one representative for them and one alternate shall be a part of the assignment. Such a representative shall have the same rights as are referred to in the first paragraph.

If the employees' organisations do not otherwise agree, the representative referred to in the first – third paragraphs shall be appointed by the organisation that represents the largest number of employees bound by a collective bargaining agreement with the company or, with respect to a parent company, within the group. (SFS 1998:1502)

**Section 14** Employees' representatives may not participate in dealing with issues that relate to the collective bargaining agreement or industrial action or other issues where a union organisation at the workplace has a material interest that may conflict with the interests of the company.

If the business of a company is of such a nature or has such an aim as is referred to in Section 2 of the Employment (Co-Determination in the Workplace) Act (1976:580), the employees' representatives are not entitled to participate in a decision that concerns the aims or focus of the business.

### **Damages, etc.**

**Section 15** An employer or an employees' organisation that breaches this Act, shall pay compensation for any loss that is incurred. The damages shall cover both compensation for any loss that is incurred and compensation for the infringement of rights that the breach of the Act entails. If it is reasonable, the damages may be reduced in whole or in part.

An employees' organisation may not, on the basis of this Act, claim damages from another employees' organisation.

**Section 16** Any person wishing to claim damages under this Act shall give notice to the other party of her or his claim within four months from the time the loss arose. If, during that period, negotiations have been requested with respect to the claim under the Employment (Co-Determination in the Workplace) Act (1976:580), or on the basis of a collective bargaining agreement, proceedings shall be commenced within four months after the negotiations have been concluded. In other circumstances, proceedings shall be commenced within eight months from the time the loss arose.

If notice is not given or if proceedings are not commenced within the time indicated in the first paragraph, the party's right shall lapse.

### **Miscellaneous provisions**

**Section 17** An exemption may be granted from this Act if employees' board representation would result in material inconvenience for a company because:

1. the composition of the board of directors is dependent upon relative political strength or on the relationship between different interests or interest groups, as indicated by the articles of association, the constitutive documents, agreements or other circumstances; or
2. the articles of association or other equivalent provisions prescribe a qualified majority vote for the adoption of decisions by the board of directors.

An exemption under the first paragraph may only be granted if the inconvenience cannot otherwise be avoided. The exemption shall be combined with conditions concerning measures that in some other manner satisfy the employees' interests in information about and influence over, the business of the company.

**Section 18** The Board Representation Tribunal shall determine issues concerning permission under Section 9, second paragraph, or exemptions under Section 17.

The Tribunal may, until such time as a final determination is reached, decide that an employees' representative may not take up an appointment as board member or alternate.

No appeal shall lie from decisions of the Tribunal.

**Section 19** In other respects, the provisions of the Labour Disputes (Judicial Procedure) Act (1974:371) shall apply with respect to proceedings concerning the application of this Act, to the extent the dispute relates to the relationship between the company and the employees.

Transitional provisions

SFS 1987:1245

1. This Act enters into force on 1 January 1998, at which time the Board Representation (Joint Stock Companies and Cooperative Societies Employees) Act (1986:351) and the Board Representation (Bank Institution and Insurance Companies Employees) Act (1976:355) shall cease to apply.

2. Decisions that have been made under an older Act to establish board representation for those employees and also the appointment of employees' representatives on boards of directors shall continue to apply. The corresponding applies to decisions relating to exemptions as referred to in Section 17.