

Legal Status of Accounting Standards

– comparative studies (1)

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Chapter 1 Sweden

1 Company law and Bookkeeping Act

Neither the Corporations Act of 6 October 1848 (*Kunglig Förordning om lag om aktiebolag den 6 oktober 1848*, SFS 1848, No 43)¹, which was the first legislation in Nordic countries on companies with limited liability, nor the Corporations Act of 28 June (*Lag om aktiebolag den 28 juni 1895*, SFS 1895, N:r 65)² has provisions governing the recognition and valuation of assets and liabilities³. The reason why the 1895 Act did not have such type of provisions was that such type of regulation in other countries had been ineffective. On the other hand, Article 56 (*Lag den 12 augusti 1910 om aktiebolag*, SFS 1910, N:r 88)⁴ of the Corporations Act of 1910 stipulated that assets should be valued at the lower of cost or real value and the book value of impaired fixed assets must be written down because the

1 The Supreme Court pointed out, in the opinion to the Corporations Bill, that there was no requirement for actual correspondence of the assets in a balance sheet to the value stated and the realizable value could fall below the value stated in the balance sheet. It noted as well that items that should not be assets by right could be stated as assets while on the other hand items that were not liabilities properly could be included among liabilities (Prop. 1847/48:56 *Kongl. Maj:ts nådiga proposition till Riksdagen med förslag till lag om aktiebolag*, s. 16. See Nilsson [1995] p. 225).

2 Prop. 1895 N:o 6 *Kungl. Maj:ts nådiga proposition till Riksdagen med förslag till lag om handelsbolag och enkla bolag*. . . .

3 While the government-sponsored Bill required corporations to publish their balance sheet in the Official Gazette immediately after the General Meeting, considering it appropriate to impose the duty to publish in order to develop sound practices, the Parliament removed that provision because of the fear that publication of a balance sheet give competitors a favorable information and the public a groundless sense of distrust to a corporation.

4 Prop. 1910:54 *Kungl. Maj:ts nådiga proposition till Riksdagen med förslag till lag om aktiebolag och till lag om vissa ändringar i lagen om handelsbolag och enkla bolag den 28 juni 1895*.

legislators believed⁵ it necessary to prohibit overvaluation of assets and dividend from unrealized profits, recognizing that the distributable amount was calculated based on the numbers on balance sheet and that determining the true value of assets is extremely difficult⁶.

On the other hand, Royal Decree of 4 May 1855 on trade books and trade accounts (Kunglig Förordning angående handelsböcker och handelsräkningar den 4 maj 1855, SFS 1855, No 66)⁷ provided that the inventory on the commencement of business must provide accurate information on all the capital, including the value, but did not have provisions on the valuation of assets.

The Bookkeeping Act of 31 May 1929 (Bokföringslag, SFS Nr 1929:117) was the first legislation that had provisions on valuation of assets. Though the provisions on valuation of assets were similar as those in the Corporations Act of 1910 (Article 5, paragraph 3) had initially been proposed (*Förslag till lag om ändrad lydelse i vissa delar av Kungl. Förordningen angående handelsböcker och handelsräkningar den 4 Maj 1855*, 29 januari 1916)⁸, the Bookkeeping Act stipulated that, in preparing inventories and balance sheets, assets should not be measured at the amount above the real value (verkiga värden). On the other hand, assets for permanent use, especially physical facilities, can be valued at their acquisition cost/manufacturing cost even cases where the real value should be below the acquisition cost/manufacturing cost while the amount equivalent to the decreased value of the assets should be credited or recognized as depreciation every year. In addition, uncertain (osäkra) receivables should be recorded at the amount likely to be paid and uncollectible receivables and loans should not be recognized as assets (Article 9)⁹. Moreover, a more general

5 *Förslag till lag om aktiebolag m. m.*, 1908, Motiv, ss. 3–5 (*published by* Isaac Marcus Boktryckeri). This is the report of the Stock Committee (bolagskommitté) of 1905.

6 *For details, see* Glader, Bohman, Boter och Åke [1975] s. 30.

7 The legislative intent was accounting books kept orderly and met the purpose could be a good indicator of insolvency of a merchant.

8 *Förslag till lag om ändrad lydelse i vissa delar av Kungl. Förordningen angående handelsböcker och handelsräkningar den 4 maj 1855 m. m.*, motiver, s. 68–72 (*published by* Isaac Marcus Boktryckeri). According to a proposal to amend the Corporations Act (*Förslag till lag angående ändring i lagen den 12 augusti 1910 om aktiebolag*), Article 56 of the Act would no longer govern the valuation of assets. This report undertook comparative study of Norwegian, Danish, German, Austrian, English, Dutch and French laws.

9 In short, while underestimation of assets was not banned, overvaluation of assets was prohibited. This was because the legislation attached high value to ensuring creditor protection (Hemberg och Sillén [1970] ss. 70–71).

provisions that accounting books should be prepared in accordance with generally accepted bookkeeping principles (*allmänna bokföringsgrunder*) and good business practices (*god köpmannased*) (Article 3) was included (Prop. 1929:189, s. 90).

The Corporations Act of 1944 (Lag den 14 september 1944 om aktiebolag, SFS 1944, Nr 705) had provisions applicable to inventories, balance sheets and income statements of corporations in addition to the provisions in the Bookkeeping Act (Article 100). Firstly, physical facilities should be recorded at the highest acquisition cost or manufacturing cost and be depreciated every year in accords with an appropriate (*lämplig*) depreciation plan. This depreciation plan should be developed based on the economic life of the physical facilities or dwindling value of the physical facilities due to use or similar grounds. It stipulated that the 'real value' of physical facilities shall not exceed the unamortized balance of the assets and an increase of depreciation or devaluation of the book value shall be made in cases where the 'real value' should be significantly lower than the carrying amount is determined by the appropriate depreciation plan and the decline in the value should not be considered as temporary. In addition, Article 100 provided that such depreciation should meet good business practices (*god köpmannased*) as well as generally accepted bookkeeping principles and (*allmänna bokföringsgrunder*), and, therefore, a special depreciation should be recorded as long as depreciation in such a manner was not considered to be sufficient in the light of good business practices and generally accepted bookkeeping principles (*For details see, e. g. Rodhe [1953] ss. 135–148*).

The explanatory statement to the 1944 Proposal for Corporations Act¹⁰ took the position that the purpose of a annual balance sheet is to present the the financial position of a company in a way that enables the determination of the annual income, based on the going concern assumption rather than to show the price of the asset at the time of disposal. However, it was of the opinion that prudent valuation of the assets should be appropriate and it tried to ensure that overvaluation is not performed since the creditors, the employees and the public have interests in the survival of the company. It is recognized that significant underestimation of assets might harm the interests of shareholders in regard with dividend,

10 Prop. 1944:5 *Förslag till lag om aktiebolag*. See also SOU 1941:9 *Lagberedningens förslag till lag om aktiebolag m. m.*, II motiv, s. 374 och SOU 1942:47 *Lagrådets utlände över lagberedningens förslag till lag om aktiebolag m. m.*, s. 40.

but making so-called hidden reserve, due to overvaluation of liabilities or underestimation of assets, was accepted to the extent that is not contrary to good business practices and generally accepted bookkeeping principles¹¹.

Though there were debate on the interpretation of “good business practices” in the meaning of Article 3 of the Bookkeeping Act of 1929 (*See e. g. Tengström [1948]*), *Sillén* interpreted that “practices” referred herein are practices that exist in real world and has already penetrated to some extent, and “generally accepted business practices (allmänt verdetaget köpmannased)” are those performed by most of the businesses (näringsidkare) or in the representative industrial sector(s). In addition, he argued that “good business practices” are sound (sund) practices of the merchants subject to an obligation to maintain accounts under the Bookkeeping Act and that a “sound practice” has the probability of the effectiveness of influence, approval of the legitimacy and possibility of description with reliability. He pointed out that The contents of the “good business practices” might change and develop in the economic trends of the times and that “decisions and evaluation with discretion” by those who engage in practices shall be more important than deductive logic though it is not necessarily rare that excellent law expert opinions affects the contents of the “good business practices” *a priori* (*Sillén [1944]*). In the same way, *Hemberg/Sillén* were of the opinion that “accepted bookkeeping principles” in the meaning of Article 3 should be interpreted in the light of the development of bookkeeping techniques and the sound merchants’ view and that restrictive word-by-word interpretation should be avoided (*Hemberg och Sillén [1970] s. 25*).

In 1967, a committee on an obligation to maintain accounts, set up by the Government, issued a report on new Bookkeeping Act, *Proposal regarding an obligation to maintain accounts: Report* (SOU 1967: 49 *Förslag till lag om skyldighet att föra räkenskaper m. m. : betänkande*)¹², that came under a lot of criticism. Therefore, the Ministry of Justice gave up preparing a Bill based on the Report. New committee was appointed in 1971 and put

11 However, increasing the transparency in relation to the reduction of the hidden reserve was intended.

12 This report noted that “generally accepted bookkeeping principles” and “good business practices” were not clear enough to be useful as guiding principles. It also pointed out that there had been only a few opinions of the Chamber of Commerce on the meaning of these concepts and no judicial precedents of the Supreme Court that were of help in interpreting these concepts as far as they examined the summaries of the Supreme Court Reporter (*Nytt juridiskt arkiv, NJA*) (s. 40).

forward in 1973 a report on new Bookkeeping Act, “Proposal for Bookkeeping Act (SOU 1973: 57 *Förslag till bokföringslag: betänkande av 1971 års utredning om bokföringslagstiftningen*)”¹³. On the other hand, in 1971, the Committee on Stock Exchange brought forth a preliminary report, “Public accounting of larger companies (SOU 1971: 9 *Större företags offentliga redovisning: betänkande av fondbörsutredningen*)” and proposed to create a commission on accounting matters, Business Accounting Council (Näringslivets redovisningsnämnd), with a mission to promote the improvement of the published financial report in response to the comments to the “Proposal regarding an obligation to maintain accounts (SOU 1967: 49)” (s. 112). According to the plan, the Business Accounting Council would comprise of scholars in management science as well as representatives of financial analysts, auditors, the Chamber of Commerce, trade unions, the Federation of Industry and develop recommendations. The Committee was expected to follow up compliance with its recommendations by companies as well and carry out consultation with the companies that were not in compliance with.

2 Good accounting practices

The Bookkeeping Act of 1976 adopted the expression, “good accounting practices (god redovisningssed)” in place of the previous expression, “generally accepted bookkeeping principles and good business practices”, and stipulates that an obligation to maintain accounts should be fulfilled in accordance with good accounting practices (Article 2). This was in line with the proposal in “Proposal regarding an obligation to maintain accounts (SOU 1967: 49)”. The “Proposal regarding an obligation to maintain accounts” used the expression, “good accounting practices”, repeatedly and pointed out that “good business practices” had a margin of underestimation (s. 43). It also recommended to clarify that “good accounting practices” required accrual-basis accounting in order to prevent any misunderstanding about the inconsistencies between cash-basis accounting and “good accounting practices” (s. 44).

While current Bookkeeping Act (Bokföringslag (SFS 1999:1078)) still stipulates that

13 This report resulted in the Bookkeeping Act of 1976 (Bokföringslag (SFS 1976:125)).

the obligation to maintain accounts shall be fulfilled in such a manner in accords with good accounting practices (god redovisningssed) (Chapter 4, Article 2), the Financial Statements Act (Årsredovisningslag (SFS 1995:1554)) provides in the same manner that annual accounts (årsredovisning) shall be prepared in a clear manner and in accordance with good accounting practices (Chapter 2, Article 2)¹⁴.

It is pointed out that the legislature depends upon “good accounting practices” in order to refrain from limiting interpretations and practices by detailed provisions and to allow, at the same time rooms for companies to decide the way how to disclosure (Lönnqvist [2002] s. 25. *See also* Johansson *et al.* [2004] s. 55). Moreover, depending “good accounting practices” makes it possible to fill the gaps of statutes and orders (Artsberg [2003] s. 128, von Bahr [1991] p. 748) in the areas where the legislators could not provide in detail due to the ambiguity of the practices or the fear that the rules in the statutes should fall behind the times because of rapid development (Kellgren [2004] s. 52).

In regard with the meaning of “good accounting practices”, the 1971 Committee for amending the Bookkeeping Act pointed in the report, *Proposal of Bookkeeping Act* (SOU 1973:57 *Förslag till bokföringslag*), that “good accounting practices” are practices adopted in quantitatively representative circles (kvalitativt representativ krets) that owes an obligation to maintain accounts. It also noted that recommendations on accounting issued by those who are knowledgeable in accounting theory and practices are of importance in judging what is “good (god)”¹⁵ and mentioned to the Industry and Commerce Stock Exchange Committee (Näringslivets börskommitté, NBK) and the Institute of Authorised Public Accountants (Föreningen Auktoriserade Revisorer, FAR) (s. 94). The Bill (Prop. 1975:104)¹⁶ took a same view (s. 148) and pointed out that good practices define how the general clause in the law applied to a specific and individual events in practice and, exceptionally, for matters not stipulated in law, provide guidance since the proposal of the Ministry of Justice on Article 2

14 However, it is pointed out that there are drawbacks to regulations that make use of this kind of framework legal provisions (ramlagstiftning) (Johansson *et al.* [2004] ss. 55–56, Kellgren [2004] ss. 52 och 54ff.).

15 However, it has been pointed out that there may arise a problem with this interpretation. This is because there is a possibility to bring the view that once certain accounting practices have been adopted by major Swedish companies, the accounting procedure forms a part of the general principles (Cooke [1988] p. 100).

16 *Regeringens proposition med förslag till ny bokföringslag m. m. .*

was made to leave enough room for practices set forth in more detail with reference to various accounting events in interpreting statutory requirements while it made it clear, however, that it could not be understood that the general clause on good accounting practices recognize practices departed from explicit statutory provisions (s. 205). In other words, it is the idea at the core that practices that play a decisive role in the development of good accounting practices and, therefore, statements and recommendations have been considered as a codification of the good accounting practices.

Thus, Sweden stuck to the concept of good accounting practices while the EC Fourth Company Law Directive, which requires to give a true and fair view, was transposed to Swedish law. For example, the comment on Article 2 of Chapter 2 of the Financial Statements Bill delivered the opinion as follows: Naturally, good accounting practices involve an obligation to follow the law that accounting principles are referred to in. Among other things, the requirement for faithful image (a true and fair view) should be noted. At the same time, the content of good accounting practices is determined in light of the fact that the practices are the practices among quantitatively representative circle subject to an obligation to maintain accounts. Accordingly, special importance of general advices and recommendations of authoritative organs (auktoritativa organ) such as the Accounting Standards Board and the Accounting Council as well as, for financial institutions, the Financial Supervisory Authority should be accepted. For this reason, the reference to good accounting practices impose against the company, the obligation to conform to the practices developed in order to fill the gap of rules and to interpret the rules (Prop. 1995/96: 10, del. II, s. 181).

Based on the previous discussion, it is the prevailing view that “good accounting practices” are the practices that have been established among typical companies subject to an obligation to maintain accounts (*See* Knutsson [1996] p. 74, Norrman och Malmer [1987] p. 261).

In addition, Jönsson undertook a detailed study on the “good accounting practices” (Jönsson [1988] pp. 89–94). He points out, based on the results of interviews, as follows: “practice” is what many do; “practice” is an established pattern that is not in conflict with the given norms; “practice” is a procedure used at a given point of time while there is an impression of a relatively slow change; there must be deviations from “practice”; “practice”

has different meanings for different people; it is through the decisions of many actors that “practice” is established. He notes, on the other hand, that there were a large majority that put main emphasis on good accounting practices having the support of accepted norms and authoritative statements among the respondents (Jönsson [1988] p. 94).

The Bookkeeping Bill of 1999 (Prop. 1998/99: 130 *Ny bokföringslag m. m.*, ss. 185–186) noted as follows: It is not appropriate to accept only approaches and standards embodied in existing practices that are good accounting practices. On the other hand, from the point of Constitution, it is impossible that statements issued by a norm setting organ(normgivande organ) form good accounting practices. It is because such an arrangement leads to the consequence that the standard setting body itself lays down regulations... In our opinion, what constitute good accounting practices should be determined by literal interpretation, based on the traditional interpretation of the statutory rules in this area, the purpose of the rules and the general principles on which the rules depend. In cases where traditional interpretation of the law should be insufficient to find the answer to a specific problem, gap-filling interpretation (utfyllande tolkning) is necessary. It is desirable that the gap-filling interpretation finds its grounds on the ongoing bookkeeping or accounting practices, that is, accounting practices among those who are subject to an obligation to maintain accounts to some extent. As discussed above, according to our opinion, it is not appropriate to rely only on practices taking place in reality. Complementary (kompletterande) norms should be those corresponding to different times and should not be the immobilization of improper practices. It might be difficult to determine what is the practices at the moment. We should recognize it important to include any bookkeeping or accounting practices which are not sufficiently reflected in current practice but are the developments of accounting policy provided in statutes or accepted in practices. However, in defining accounting practices that can be used to supplement the legal rules, the practices should meet some general quality requirements (allmänna kvalitetskrav) provided in statutes. In light of the purpose underlying the legislation, it is necessary to evaluate whether they are proper or not. In this regard, not only the viewpoint of bookkeeping or accounting should be taken into consideration but also views from finance and private law taking into account. Similarly, significance of international development in accounting field-standardization in European Community and through IASC should be referred to here as

important current examples- should be recognized.

In conclusion, it indicated that it is quite easy in some cases to determine how to interpret and supplement the rules and identify what are the good accounting practices based on these general basic considerations while it is necessary to clarify the meaning of rules and to make good use of one or more standard setting bodies that can identify norms to be used in supplement legal rules in many other cases. On the other hand, it pointed out that such a standard setting body is not granted legislative power in the political sense and that the courts ultimately find what are good accounting practices after independent examination. It noted, however, that “in our opinion, it is quite natural to admit very great significance on statements prepared by a qualified (kvalificerat) standard setting body in discussing what are the good accounting practices”.

Based on this understanding, the Bookkeeping Bill defined “good accounting practices” somewhat different from the previous interpretations. That is to say, it noted that the definition of “good accounting practices” has been moving from “the practices that have been adopted among quantitatively representative companies subject to an obligation to maintain accounts”, which is a clear definition, to more complicated definition that accept the great significance statements of a qualified standard setting body. It pointed out at the same time that tax courts, especially the Administrative Supreme Court (Regeringsrätten), would determine ultimately what fall in good accounting practices regarding the matters affecting taxable income¹⁷.

The Accounting Standards Board explains, on its website, that “good accounting practices” are composed of general advices and recommendations issued by norm setting organizations (normgivande organ), including the Accounting Standards Board, and the results of interpretation, applying ordinary method of interpreting laws, of provision in accounting legislation as well as established business practices (företagspraxis) that are

17 Artsberg points out, however, that since there are not necessarily many judicial precedents of the Administrative Supreme Court and very few judicial precedents of the [Civil] Supreme Court (Högsta domstolen) that give guidance on accounting issues, the views of companies and private accounting standard setting bodies have not been overturned by court decisions, and, as a result, larger companies and private accounting standard setting bodies have played a leading role in the formation of good accounting practices (Artsberg [1996] p. 806). See also SOU 1971:9, Artsberg [1992] s. 110.

consistent with statutes and standards and have good quality¹⁸. It also noted that good accounting practices may be different for each category of company and, in an individual case, the answer to what constitute good accounting practices might not necessarily be the same for larger companies and smaller companies¹⁹.

3 Financial Statements Act of 1995

Recognizing of a deviation of accounting principles in practice from the laws governing accounting, the Government has established a committee (*see e. g. Artsberg [2010] p. 204*). The mandate of the Committee was: what should be the objectives of accounting that the accounting law designates; whether there is reasonable need for reconsider the relationship between accounting and taxation; how accounting law consists of; to what extent accounting law should be complemented by standard-setting in other forms; whether accounting law should be a framework law; what is the accounting principles fundamental to professional standards setting; what kind of sanctions should be given in cases where mandatory rules were not observed and so on (Dir 1991:71 Review of Provisions of Accounting Law (*Översyn av redovisningslagstiftningen*))²⁰. However, Sweden decided in 1992 to implement directives of the European Community in accordance with the 1992 Agreement between the European Free Trade Association and the European Community and the Government gave this Committee additional task to study how to adapt Swedish accounting regulation to EC Company Law Directives²¹. As a result, the focus of study in this committee was to be placed in more technical issues than what was assumed in 1992 and “SOU 1994:17 Annual and Group Accounts in accordance with European Community Directives (*Års- och koncernredovisning enligt EG-direktiv: sammanfattning*)” was submitted in 1994. In line with the proposals in this Report, the Government prepared the Bill (Prop. 1995/96:10 *Års- och koncernredovisning*) and the Financial Statements Act

18 <<http://www.bfn.se/fragor/fragor-bokforing.aspx>>.

19 <<http://www.bfn.se/fragor/fragor-bokforing.aspx>>. Dahlin, Lundén och Smittberg [2001] is of the same view (s. 200).

20 *See also e. g. Rundfeld [1992] p. 35*

21 Dir 1992:19 Review of Provisions of Accounting Law—Additional directive (*Översyn av redovisningslagstiftningen – Tilläggsdirektive*).

of 1995 (Årsredovisningslag (SFS 1995:1554)) was enacted.

4 The status of accounting standard setting bodies

(1) Accounting standard setting bodies in Sweden

Though the Institute of Authorised Public Accountants had set accounting standards, the Industry and Commerce Stock Exchange Committee (NBK) played an important role by mid-80's. Moreover, the Bookkeeping Act of 1976 created Accounting Standards Board (Bokföringsnämnden, BFN) that is expected to promote developing good accounting practices²². Furthermore, in 1989, the Accounting Council (Redovisningsrådet, RR) came into being²³ as the accounting standard setting body for listed companies²⁴, which ceased to develop accounting standards in 2005 and the role of which was taken over by the Financial Reporting Board (Rådet för finansiell rapportering) since 2007.

The goal of the recommendations issued by the Institute of Authorised Public Accountants was to promote effective accounting policy, standardizing good commercial accounting practices and interpreting laws and ordinances applied to accounting (Jönsson and Marton [1994] p. 192). The Institute of Authorised Public Accountants created in 1964 the Accounting Committee that published recommendations. A doubt came to be embraced,

22 Meanwhile, the Institute of Authorised Public Accountants considered that the proposals in "Proposal regarding an obligation to maintain accounts (SOU 1967:49)" did not take sufficiently use of computer technology in bookkeeping into consideration bookkeeping. Thus, it set up the Accounting Technical Committee in 1967 and proposed that the composition of the Committee should be similar to that of the Accounting Standards Board to be established later. Moreover, it set up the Accounting Procedures Committee in 1971 and the Bookkeeping Act Reform Committee, which was set up by the government in order to request for improvement of the 1967 Bill. For these reason, it opposed to the creation of the Accounting Standards Board (Jönsson [1991] p. 531).

23 From the point of view that there was a possibility that the role of the Accounting Council and that of the Accounting Standards Board should overlap, whether or not to abolish the Accounting Standards Board has been the subject of study in order to avoid duplication of cost (*See Prop. 1991/92:100 med förslag till statsbudget för budgetåret 1992/93, Bilaga 3 Justitiedepartementet (andra huvudtiteln)*, s. 32, Betänkande 1991/92:LU22 *Anslag till bokföringsnämnden*, m. m. , Dir 1992:19. *See also* Rundfeld [1992] s. 35), but the both survived. The Accounting Standards Board has handled more technical problems of bookkeeping and accounting issues that are not the subject of the Accounting Council as well as problems related to tax. In addition, it has developed accounting standards for non-listed companies, and has given the opinions on request from the courts (*See* Jönsson and Marton [1994] p. 197).

24 *See Prop. 1998/1999:130 Ny bokföringslag*, m. m. , s. 180.

however, on the authority of the Accounting Committee of the Institute of Authorised Public Accountants in 1980's because some companies had adopted the accounting policy that was not necessarily in line with the recommendations of the Institute of Authorised Public Accountants (Jönsson [1991] pp. 531–532). A lot of companies resisted to an exposure drafts that required sale and leaseback transactions as finance transactions with a focus on the economic substance. Finally, the Recommendation, nr. 7 of the Institute of Authorised Public Accountants, “Accounting for rental and leasing of physical facilities (*Redovisning av avtal om förhyrning- och uthyrning av anläggningstillgångar (leasing m. m.)*)” (1967) allowed companies to record the transactions as acquisition to considerably larger extent (see Huldén [1980] ss. 8–10, Rundfelt [2001a] p. 2359). Moreover, some companies depreciated their goodwill in 40 years, as permitted by US-GAAP in order to avoid the disadvantage of competition with US companies, though the Recommendation nr. 11 of the Institute of Authorised Public Accountants, “The problems in implementing group accounting (*Problem vid upprättande av koncernredovisning*)” (1971) and Article 17 of the Bookkeeping Act of 1976 provided that goodwill should be depreciated in 10 years. In this way, the influence of the recommendations of the Institute of Authorised Public Accountants had decreased (Artsberg [1992] ss. 140–143, Artsberg [2003] ss. 390–392, Artsberg [2010] p. 202. See also Fridman och Hanner [1987] s. 40)²⁵. Taking this opportunity, the authority of the Institute of Authorised Public Accountants in accounting standard-setting was examined (See e. g. Fridman och Hanner [1987] s. 36, Jönsson and Marton [1994] pp. 189–190, Jönsson [1996] p. 444, Rundfelt [2001a] pp. 2359–2360) and the Foundation for developing good accounting practices (Stiftelsen för utvecklandet av god redovisningssed) was founded (For details, see e. g. Markland och Damberg [1989]) by the Institute of Authorised Public Accountants, the Federation of Industry and the Accounting Standards Board. Under the umbrella of the Foundation, the Accounting Council was created, began to work on accounting standards setting from 1989 and issued accounting standards since 1991²⁶.

25 However, a survey on the annual accounts of 1985 of listed companies shows the companies amortized their goodwill over periods ranging from 5 to 10 years with a exception of an immediate write-off (Cooke [1989] p. 240). Föreningen Auktoriserade Revisorer [1988], which is a survey on the annual accounts of 1983 and 1986 reports similar results.

26 With the creation of the Accounting Council, (the Accounting Committee of) the Institute of Authorised Public Accountants decided not to develop new accounting standards but to maintain the existing standard until the Accounting Council would finish the review of the accounting standards.

While, initially, the Stockholm Stock Exchange saw off to be the affiliated body of the Accounting Council²⁷, the Stockholm Stock Exchange as well as the Swedish Bankers' Association, the Swedish Securities Dealers' Association and the Association of Swedish Insurers became the affiliated body of the Association for developing good accounting practices (Föreningen för utvecklande av god redovisningssed) though the Accounting Standards Board was no longer a member of the Association when the Accounting Council fell under the umbrella of the Association in 1998.

The Accounting Council specialized in setting accounting standards for group accounts of listed companies²⁸, apparently trying to converge with the IAS as much as possible under the constraints of the Swedish legal system²⁹.

The Financial Reporting Board is created as a branch of the Association for Generally Accepted Principles in the Securities Market (Föreningen för god sed på värdepappersmarknaden)³⁰, composed of the representative of industry and finance, auditors, the Stock Exchange and financial analysts. The Financial Reporting Board has adopted the similar policy as that of the Accounting Council to adapt the IFRS to annual accounts of Swedish listed companies. In other words, the recommendations and statements of the Financial Reporting Board on annual accounts (individual accounts) of companies listed on a regulated market are deemed as those providing guidance on cases where a company may not or need not follow the International Financial Reporting Standards and, in such a case, what rules to be applied instead of the IFRS since Swedish companies cannot apply the IFRS thoroughly due to the provisions of the Financial Statements Act as well as the close relationship between taxation and accounting. In fact, the Financial Reporting Board has

See Föreningen Auktoriserade Revisorer, 1991 Års samlingsvolym, s. 236.

27 This might be due to pressures from industry (cf. Jönsson [1994] p. 343).

28 *Förord till Redovisningsrådet rekommendationer*, 1998, in: *FAR:s samlingsvolym 2002*, ss. 613–614.

29 *Förord till Redovisningsrådet rekommendationer*, 1998, in: *FAR:s samlingsvolym 2002*, s. 614. *See also* Artsberg [2010] p. 203, English Summary, The Panel for Monitoring Financial Reporting <http://www.overnakningspanelen.se/In_English.asp> (accessed on 10 May 2011).

30 Operation expenses of the Association have been raised in the form of a levy on listed companies. It is to be noted that there were concerns about financial resources of the Accounting Council in earlier stage since the contributions from three founders were relatively small and economic burdens for the members of the Council other than the members representing the industry, whose remuneration would be borne by their employees. (Rundfelt [1993] pp. 586 and 590).

assumed the task to revise the Recommendation of the Accounting Council (Redovisningsrådets recommendation, RR) 30 through RR32 and the Statement of the Emerging Issues Group (Uttalande från Redovisningsrådets akutgrupp, URA) 5 through URA7 as well as URA42 through URA47. This arrangement presupposes that the URAs and RRs other than those do not applied to companies that apply IFRS³¹.

The Industry and Commerce Stock Exchange Committee, which was established by the Stockholm Chamber of Commerce and the Federation of Industry (Industriförbundet) in 1966, issued several statements of opinion, including the opinion on the form of financial statements in 1968, given the significance of financial reporting as a basis for investment decisions in securities trading. The Committee no longer issued an opinion on the accounting after companies had showed negative action (*For details, see e. g. Artsberg [1996] pp. 803–804*) to the recommendation on deferred tax assets and liabilities in 1983 (*Rekommendation om ändread resultaträkning, nyckeltalsberäkning m. m.*), which had proposed recognition on comprehensive basis³².

On the other hand, one of the reasons why the Accounting Standards Board has been founded, seems to the fact that it was considered the State is more appropriate to achieve the coordination between the various interested parties than the private body while the Institute of Authorised Public Accountants is composed only of auditors, and, thus, some might perceive it as an organization that promotes private interests (*See Jönsson and Marton [1994] p. 187, Artsberg [2003] s. 128*). In fact, “Published Accounting Report of Larger Companies (SOU 1971: 9)” noted that the Institute of Authorised Public Accountants is a professional body that has the interests of itself and the interests of the Institute does not coincide with the interests of the Commission to consider whether or not meet the information needs of the private sector in the final analysis (s. 112). At the same time, “Published Accounting Report of Larger Companies” pointed out a fact that the Report of the 1963 Committee on Stock Exchanges proposed to impose more stringent duty of financial reporting on

31 Rådet för finansiell rapportering, *Förord till rekommendationer och uttalanden från för finansiell rapportering*.

32 Later, the Industry and Commerce Stock Exchange Committee had fallen under the umbrella of the Association for Generally Accepted Principles in the Securities Market. In May 2010, the task of the Committee was taken over to the Swedish Corporate Governance Board (Kollegiet för svensk bolagsstyrning) and the Committee ceased to exist.

companies that is going to be listed on a stock exchange, against which there was a strong resistance, and, therefore, took a view that the Board of a Stock Exchange is not right organization to develop and promulgate accounting standards and it is difficult to develop a system of sanctions to non-compliance with accounting standards where the Board of a stock exchange should be given such an authority. Furthermore, it pointed out that neither the Industry and Commerce Stock Exchange Committee nor the Swedish Association of Financial Analysts were a candidate of setting body since the former had too limited constituency and the latter had a short history³³. In their opinion, thus, it was appropriate, with participation of various and broad interested parties in industry, to create “Business Accounting Council” as a new organization. The Bookkeeping Bill (Prop. 1975:104) noted as well that they should not delegate the task to determine the meaning of the concept of “good accounting practices” completely to private (enskilda) interested parties and presented a view that a special board on accounting matters should be created in this context since the public (allmänna) with major interests to be protected should have the opportunity to exercise influence over this issue (s. 148). Similarly, the Corporations Bill of 1975 (Prop. 1975:130) argued that the authority to determine what should be deemed as the “good accounting practices” cannot be delegated exclusively to a private body and it is important for the representatives of the public who have significant interests in paying attention in this field to have the opportunity to exercise influence over these matters (s. 152)³⁴.

As the Accounting Standards Board was established in the context of these proposals³⁵,

33 It was established in 1970.

34 The Bill to amend the Bookkeeping Act (Prop. 1998/1999:130), pointed out, however, that the Accounting Standards Board should be allowed to delegate the Accounting Council technical work of developing accounting standards for annual accounts and group accounts, especially those of listed companies (ss. 185–187). Though the Accounting Standards Board had embarked on the development of accounting standards for non-listed companies in 1999, it had developed, in reality, the standards in the way that they made modifications that take into account the company scale, to the recommendations of the Accounting Council. It is pointed out that this lead the Board to face a challenge when the Accounting Council stopped the development of accounting standards in 2004 (Artsberg [2010] p. 207).

35 The Bill proposed that the Board should be a expert organization with sufficient supporting staff, the members should be nominated by the bodies representing audit, commerce, industry and agriculture as well as tax authorities, and the State has a right to appoint four. At this stage, representatives of trade unions were not included in the proposal.

However, when the Accounting Standards Board formally formed, it had no representatives from the bodies representing commerce and agriculture but had members representing trade unions

it is a body consisted of experts and, at the same time, a collegial body composed by those who properly represent the important organizations (*see* Artsberg [2010] p. 201)³⁶. Partly because of this nature, the Accounting Standards Board had adopted a policy not to adopt the recommendations unless all the members were in favor, which lead to, for example, a situation of not being able to put out the recommendations on accounting for foreign currency transactions in 1980s (Jönsson [1988] pp. 195–206; Jönsson and Marton [1994] pp. 189, 210–213; Jönsson [1994]). This is because the business community preferred a prudent accounting treatment that does not recognize translating profits as revenue but recognize translation losses as an expense while the tax authorities argued that a symmetrical accounting treatment should be required.

(2) The meaning of accounting “norm setting organ”

Financial Statements Act (as amended by Law no. 1112 of 1990) stipulates that information regarding deviations and the reasons therefor shall be provided in a note in the event of any deviations from adherence to general advices or recommendations from norm setting organs (Chapter 2, Article 3, paragraph 2). The Bookkeeping Act provides that the Accounting Standards Board is responsible for developing (*ansvarar för utvecklandet*) good accounting practices while the Financial Supervisory Authority (*Finansinspektionen*, FI), that has an authority of regulation and supervision over financial institutions, is responsible about development of accounting standards applicable to financial institutions and insurance companies (Chapter 8, Article 1). Therefore, it is obvious that the former corresponds to a “norm setting organ” while the latter corresponds to the “norm setting organ” for financial institutions and insurance companies. The Bill (Prop. 1995/96:10, del I, s. 182) presupposed that the Accounting Standards Board, the Accounting Council and the Financial Supervisory

(*Landsorganisationen i Sverige* (LO) and *Tjänstemännens centralorganisation* (TCO)). The State appointed members from the National Tax Board (*Riksskatteverket*) (Tax Agency (*Skatteverket*) after the merger with 10 existing regional tax authorities in 2004) and the National Industrial Board (*Statens Industriverk*, SIND), which were responsible for the development of industries. The body representing the industry and nominating members was the Federation of Industry (*Confederation of Swedish Enterprise* [*Svenskt Näringsliv*] after the merger with Swedish Employers Association [*Svenska Arbetsgivareföreningen*]).

36 Jönsson pointed out that the expertise of members gave the Accounting Standards Board its authority and good representatives of the most important organizations would lend legitimacy the statements of the Board (Jönsson [1988] pp. 106–107).

Authority are the major accounting standard setting bodies.

5 Legal status of accounting standards

(1) Presumption of “good accounting practices” in the meaning of private law

While neither the recommendations of the Accounting Standards Board nor those of the Accounting Council and Financial Reporting Board are, strictly speaking, legally binding (Jönsson [1988] p. 108; Artsberg [2010] p. 201)³⁷, those statements are mandatory in cases where they are regarded as good accounting practices³⁸. For the courts or the supervisory authorities that make judgement on what are the “good accounting practices”, both recommendations of the Accounting Standards Board and those of the Accounting Council or Financial Reporting Board have a very important significance (Prop. 1975:104, s. 205; Prop. 1995/96:10, del I, s. 179; Prop. 1998/99:30, s. 180. *e. g.* Heijtz och Rydström [1977] s. 14; Thorell [1996] s. 105; Svensson [2000] s. 42 och 71–72; Lodin, Lindencrona, Melz och Silverberg [2003] s. 253; Bjuvberg [2006] s. 124 ff. ; Norberg och Thorell [2007] s. 115 ff. ; Engström [2007] s. 44, Hultqvist [2009] s. 261). The Bill to amend Bookkeeping Act (Prop. 1998/1999:130) also pointed out that the recommendations of the Accounting Council are not only significant for listed companies but also extremely important in finding what are the “good accounting practices” for the meaning in the Bookkeeping Act and the Financial Statements Act (s. 183). Also, for example, *Bjuvberg* argues that the recommendations of a recognized accounting standard setting body are presumed in fact as good accounting practices (Bjuvberg [2004] s. 40, Bjuvberg [2006] ss. 131–132, Thorell

37 *von Bahr* points out that the weight of views of the Accounting Standards Board and private bodies depends on the authority of the members and the cogency of argument (*von Bahr*[1991] s. 750). In addition, it was thought to be impossible to formulate accounting norms as binding on outsiders at large and no sanctions did exist even in cases where one do not comply with the recommendations of the Accounting Committee as the Institute is an interest group of voluntary participation. It was said that recommendations were developed and promulgated in order to exert influence over companies to comply with good practices (*See Artsberg* [1992] p. 115).

38 It is widely accepted that compliance with accounting standards meets, in normal cases, the requirement to present a true and fair view (Knutsson [1996] s. 81). For example, “RR22 Performing financial reporting (Utformning av finansiella rapporter)” (2001) of the Accounting Council points out that financial reporting gives a true and fair view in all cases in practice (i praktiskt taget alla fall) if the recommendations of the Accounting Council are properly applied and, if required, additional disclosure is provided (paragraph 8).

[2008] ss. 126–128. For the view of the Accounting Standards Board, *see* Hultqvist [2009] P. 261). The requirement of information regarding deviations (Financial Statements Act, Chapter 2, Article 3, paragraph 2) might imply this interpretation.

However, as the concept of “good accounting practices” presupposes the practices actually adopted by companies, the substance of “good accounting practices” might consist not only of the recommendations of the Accounting Standards Board and Financial Reporting Board but also of other development and trend of accounting practices (Heurlin and Peterssohn [2001] p. 1211). *Sandin* raised the possibility that the courts does not necessarily admit a higher value of the recommendations of, for example, the Accounting Council or the Accounting Standards Board than the value of the opinions of other organizations or persons (*Sandin* [1996] s. 30)³⁹.

In addition, the Financial Statements Bill of 1995 noted that a company should depart in individual cases from specific recommendations, general advices and accepted practices in order to give a true and fair view (*rättvisande bild*), where the accounting treatment chosen by the company might be “good accounting practices” (Prop. 1995/96:10, del II, s. 14).

In interpreting “good accounting practices”, it might be problematic that the accounting treatment specified in a recommendation made by an accounting standard setting body sometimes different from those applied actually in practice (*See* Buisman [1998] s. 34; Bjuvberg [2006] ss. 53ff. och ss. 64ff.)⁴⁰. It is because the recommendations may have intended to establish “good accounting practices” while they should reflect, by definition, “good accounting practices” (Thorell [1996] p. 105). Therefore, in relation to the work towards international harmonization of accounting standards, it has been considered recently the expression, “good accounting practices” as improper and the character as “practices” is going to be diluted (*See* Kellgren [2004] s. 52; Prop. 1998/99:130 *Ny bokföringslag m. m.*, s. 187d). Moreover, *von Bahr*, for example, has an opinion that where a view promulgated by the Accounting Standards Board is different from established accounting practices, a company should comply with the former (*von Bahr* [1991] s. 749).

³⁹ *See also* Engström [2007] s. 44.

⁴⁰ *Ingblad/Lundqvist* take the position that general advices of the Accounting Standards Board do not represent good accounting practices now while they represented in the past (*Ingblad och Lundqvist* [2010] ss. 5–6).

Jönsson /Marton argue, however, that an accounting standard cannot be a “good accounting practices” through promulgation by an accounting standard setting body and needs another factor to be a “good accounting practice”. They seem to be of opinion that compliance with the recommendation become practice of companies is the factor (*Jönsson and Marton [1994] p. 198*). *Sandin* noted as well that an accounting standard is deemed automatically as a “good accounting practice” once it is issued by an accounting standard setting body (*Sandin [1996] s. 30*). As just described, it is widely accepted that a recommendation is considered as the “good accounting practice” and legally binding when the persons subject to an obligation to maintain accounts and prepare annual reports accord with the recommendation (*Sandin [1996] s. 28*).

(2) The relationship between good accounting practices for the purpose of tax laws and good accounting practices for the purpose of private law

Most of the pronouncements issued by the Accounting Standards Board are the response to inquiries from administrative agencies etc. and the substance has sometimes force of law by decisions of the courts or the agencies (*Jönsson [1988] p. 108*).

Moreover, Chapter 14, Article 2 of the Income Tax Act (*Inkomstskattelag (SFS 1999:1229)*) stipulates that revenues and expences are recognized on accrual basis while revenues are recognized as gross revenue and expenses as deductible in the accounting period determined in accordance with good accounting practices unless provided otherwise⁴¹.

Certainly, there has been a problem that the interpretation of the tax authorities are sometimes different from the views commercial law (civil law) on the accounting matters, and taxpayers would often follow the view of the tax authorities (*Thorell [1989]*). At the same time, criticism had been made to the policy of the tax authorities not necessarily to pay respect to the logic of private law (*e. g. Tidström och Hesselman [1991]*). Moreover, some pointed out that the Administrative Supreme Court (*Högsta förvaltningsdomstolen*) had seldom sought the opinion of the Accounting Standards Board and less opinion of the Accounting Council and, even the Court had sought, the opinions sometimes had no

41 The concepts for taxable income calculation purpose are defined to match the concepts of private law (*Bergström [1978]; Grosskopf och Grönfors [1990]*).

influence on the Court's decisions (von Bahr [1991] ss. 751–755. *See also* Norberg [1991] ss. 161 ff. ; Thorell [1989] ss. 585–586). For example, in *Garantiserviceavtal* (RÅ 1987 not 533), the Administrative Supreme Court showed exactly the opposite to the view of Accounting Standards Board (BFN U87:1)⁴².

It's not too much to say, however, that we had a lot of decisions of the Administrative Supreme Court that respected the view of the Accounting Standards Board even in the 1980s (von Bahr [1991] s. 752). At least, since 1990, it has been usual for the Administrative Supreme Court to render a judgement, after seeking for an opinion of the Accounting Standards Board and relying upon it, or, based on the opinions of the Accounting Standards Board expressed in the past with respect to similar accounting issues (*Tele2 Sverige AB* (nr 1784–08) <<http://www.hogstaforvaltningsdomstolen.se/Domstolar/regeringsratten/Avg%C3%B6randen/2010/Augusti/1784-08.pdf>>; *Karlshamn hamn AB* (RÅ 2003 not 127); *Key Code Security AB* (RÅ 1999 ref. 32); *Arvika Energi AB* (RÅ 1994 ref. 2). *See e. g.* Jönsson and Marton [1994] pp. 193 and 201; Artsberg [1996] p. 807). Therefore, accounting standards promulgated and views expressed on request by the Accounting Standards Board have decisive influence where they affect calculation of taxable income due to the close relationship between taxation and accounting (Jönsson [1988] p. 108)⁴³.

(3) Accounting Standards Board as an agency

The Accounting Standards Board, an agency (myndighet) under the Ministry of Finance, is subject to the rules for governmental agencies⁴⁴. The Ordinance concerning governmental agencies (Verksförordning (SFS 1995:1322)) required impact assessment by a administrative authority and this applies to the Accounting Standards Board. From 2008, the

42 Other than this decision, *Minkfallet* (RÅ 1986 ref 153[taking a different view from the Circular [Cirkulär]23/3 of the Accounting Standards Board]) is the only decision available for the author that the Administrative Supreme Court upheld the interpretation different from that of the Accounting Standards Board.

43 According to an advice of Ms *Catharina Pramhäll* (11 March 2011).

44 According to the Ordinance concerning the instructions to the Accounting Standards Board (Förordning med instruktion för Bokföringsnämnden (SFS 2007:783)), the Accounting Standards Board is a collegial body (kansli)(Article 5) and consists of no more than 11 members (Article 4). Based on the agreement between the Accounting Standards Board and the Financial Supervisory Authority, the latter provides the former with facilities and offers administrative function for the latter (Article 6).

Regulatory Impact Assessment Ordinance (Förordning om konsekvensutredning vid regelgivning (SFS 2007:1244)) governs impact assessments to be explored by governmental agencies.

An administrative authority shall, as early as possible, before it decides on regulations or general advice, make an assessment of the financial impact and other consequences of the regulations or the general advice to the extent necessary in the individual case, and document this assessment in an impact assessment (Article 4). The contents of impact assessment are specified in Article 6: a description of the problem to be solved, the objectives to be achieved, the alternative solutions, the effects if a proposed regulation is not adopted, information on those who would be affected by the proposed regulation, information on the financial and other consequences regulation entails⁴⁵, and a comparison of the impact on the considered regulatory alternatives, an assessment of whether the regulation complies with or exceeds the obligations of Sweden to the European Union, and an assessment of whether special considerations need to be taken with regard to the effective date and the need for special consideration to put forward the information. In cases where the impacts concern enterprises, a deeper description is required on different aspects (*e. g.* impacts on firms of different size, especially SMEs, competitiveness, action needed by firms, time schedules). The potential administrative costs for businesses of a regulatory proposal should be included.

In addition, government agencies must monitor the consequences of their regulations and general advice, and that if the basic preconditions for a regulation have changed, it must be reviewed and a new impact assessment introduced (Article 8).

By the way, the Bookkeeping Act stipulates that the Accounting Standards Board is responsible for the development of good accounting practices (Chapter 8, Article 1, paragraph 1, sentence 1). The Ordinance concerning the instructions to the Accounting Standards Board provides as well that the Accounting Standards Board is responsible for promoting (*främja*) the development of good accounting practices for bookkeeping and public accounting (*offentliga redovisning*) (Article 1). Article 2 of the Ordinance provides that the Accounting Standards Board formulates general advices (*allmänna råd*) within its

45 Moreover, the “Impact Assessment when regulating – a guidance (*Konsekvensutredning vid regelgivning – en vägledning*)” requests to try to quantify the costs and other impacts.

jurisdiction⁴⁶.

The Code of Statutes Ordinance defines “general advice” as “general recommendations (generella rekommendationer) that specify how man may or must behave in certain situation on the application of laws and ordinances” (Article 1)⁴⁷ and the “Authorities’ Regulation (Ds 1998:43 *Myndigheternas Föreskrifter: Handbok i författningsskrivning*)” defines “general advice” as “general recommendations on how laws and ordinances can or must be applied in various situation” (See also Ds Ju 1982:11 *Större klarhet i fråga om olika reglers rättsliga karaktär och syfte. PM om föreskrifter, anvisningar och råd*, s. 7 and Prop. 1983/84:119, s. 7).

As is apparent from the definition described above, general advices are positioned as those bind neither citizens⁴⁸ and courts nor lower administrative agencies (Ds 1998:43, s. 25. See also Pålsson [1995] s. 44)⁴⁹. In other words, it is understood that man can freely choose different ways to achieve the desirable results irrespective of general advices and at least officially general advices do not bind the intended persons (Ds 1998:43, s. 25).

A view of the Accounting Standards Board, which is generally a general advice in legal

46 The authority to promulgate general advices is understood to be derived from the position of the administrative authority (förvaltningsmyndighet) in the organic law and does not need a legal basis (Prop. 1983/84:119 *om förenkling av myndigheternas föreskrifter, anvisningar och råd*, s. 24. See also Pålsson [1995] s. 42).

47 It is said that general advices consist of those present a pattern of optional and alternative behavior for providing information to the public and those are equivalent to instructions (anvisning) in the past that has the purpose to promote uniform application of laws within administrative department or induce the practices in a direction (Ds 1998:43, s. 25. See also Pålsson [1995] ss. 87–88).

48 An administrative authority has to make general advices available for the public in print or other way where it issues general advices (The Code of Statutes Ordinance, Articles 27 and 28).

49 Instrument of Government (Regeringsformen) stipulates that no administrative authority, including the Riksdag, or decision-making body of any local authority, may determine (bestämma) how an administrative authority shall decide in a particular case relating to the exercise of public authority (myndighetutövning) vis-à-vis an individual or a local authority, or relating to the application of law (Självständighetsprincipen) (Chapter 12, Article 2). An interpretation that this is to effect that any Ministers and officials of Government should not exert influence enough to assume that an administrative authority is straitjacketed in respect to the handling of matters provided in Article 7 of Chapter 11 [present Article 2 of Chapter 12] of the Instrument of Government once presented in a report of a governmental committee (SOU 1985:40 *Regeringen, myndigheterna och myndigheternas ledning*). On the other hand, administrative authorities subordinate to the Government in regard with matters other than those listed in the Instrument of Government and the Government may issue an “instruction” to administrative authorities, which binds administrative authorities (Strömberg [2001] s. 65; Nergelius [2011] p. 85).

sense (*See* Prop. 1998/99:30, s. 180)⁵⁰, is not designated as legally binding⁵¹ because there is room to interpret that business accounting rules must be provided in the form of statutes according to Chapter 8 of the Instrument of Government.

Provisions concerning the personal status or mutual personal and economic relations of individuals shall be adopted by the means of an act of law (Chapter 8, Article 2, paragraph 1, point 1) and the Riksdag may not authorise the Government to adopt provisions concerning the matters provided in Article 2, paragraph 1, points 2 and 3 unless they relate to legal effects of criminal acts other than the imposition of fines (Chapter 8, Article 3, paragraph 1, point 1). Accordingly, business accounting regulation must be stipulated in statutes and the Riksdag may not delegate the rulemaking to the Government or an administrative authority should it be understood that the control over business accounting is a matter belongs to private law (Prop. 1998/99:30, ss. 183–184. *See also* Afsahi och Radic [2010] s. 10).

It is true, however, that the Instrument of Government stipulates that the Government may adopt provisions relating to the implementation of laws (Chapter 8, Article 7, paragraph 1, point 1) and may authorise an authority under the Government or an authority under the Riksdag to adopt provisions in accordance with Article 7 (Article 11). Thus, the rules on bookkeeping and accounting can be set by the Government or the Accounting Standards Board under Chapter 8 of the Instrument of Government so long as they are considered as implementing the provisions in the Bookkeeping Act or the Financial Statements Act. It not so simple, however, to interpret that setting the rules on bookkeeping and accounting can be

50 The Accounting Standards Board also issues guidances (vägledningar) and opinions (uttalanden). The guidances and opinions usually issued on general advices developed by the Accounting Standards Board and have the nature as advice (råd) legally. The comments and illustrative examples in the guidances and opinions are not intended to add to or alter general advices, much more, do not have power to revise the provisions in statutes (*e. g.* Bookkeeping Act) (De allmänna rådens, vägledningarnas och uttalandenas status <<http://www.bfn.se/bfn/normgivning.aspx>>). Until 1999, general advices were issued as recommendations (Rekommendationer) (on more general accounting issues) and opinions (uttalanden). Even today, among these that have not been substituted with a new general advice have the same significance as general advice. In addition, the Accounting Standards Board had published the series circular (cirkulärserie) as responses to inquiries until 1996, which was rescinded in whole on 1 January 2000. *See* Äldre normgivning <<http://www.bfn.se/bfn/normgivning.aspx>>.

51 It is accepted that a view of the Accounting Standards Board cannot be challenged (*See* Jönsson [1988] p. 108) since it has no legal effect (*See* De allmänna rådens, vägledningarnas och uttalandenas status <<http://www.bfn.se/bfn/normgivning.aspx>>).

delegated to the Accounting Standards Board solely on this ground⁵² since it is widely accepted that the statutory provisions should be detailed so that the implementing regulations might not provide novel rules (Prop. 1973:90 *med förslag till ny regeringsform och ny riksdagsordning m. m.*, s. 211).

On the other hand, should it be possible to interpret that regulation over bookkeeping and accounting of business entities is not a private law regulation but a public law regulation, Article 3 of Chapter 8 of the Instrument of Government applies and the Riksdag may authorise the Government to adopt provisions in accordance with Article 2, paragraph 1, points 2 and 3 unless the provisions relate to legal effects of criminal acts other than the imposition of fines, taxes other than customs duties on the importation of goods or bankruptcy or enforcement.

Moreover, the Government may authorise an authority under the Government or an authority under the Riksdag to adopt provisions in accordance with Article 7 (Article 11). Meanwhile if the provisions concerning “relations between individuals and the public institutions which relate to the obligations of individuals, or which otherwise encroach on their personal or economic circumstances” (Article 2, paragraph 1, point 2) should include the provisions requiring the disclosure of personal or economic information, the disclosure of annual accounts is that of economic information and regulation on bookkeeping and accounting of business entities has an aspect of public law regulation. Furthermore, it has been accepted that the authority of the Financial Supervisory Authority to require regulated businesses to submit or disclose information belongs to public law regulation and the Financial Supervisory Authority has regulated bookkeeping and accounting of regulated businesses. In this regard, there might be room for understanding that regulation on bookkeeping and accounting of business entities is public law regulation (Prop. 1998/99:130, ss. 183–184. *See also* Ask, Envall och Olsson [2004] ss. 26–27). Nevertheless, it is ever noted that it might arise constitutional problems if the Financial Supervisory Authority has an authority to lay down binding rules on bookkeeping and accounting of regulated businesses since the delegation of legislative power on private law matters except for implementing regulations is not allowed under the Instrument of Government (Norberg

52 In regard with taxation, for example, *Påhlsson* reaches the similar conclusion (*Påhlsson* [2006] s. 630).

[1991] ss. 149–151. *See also* Bjuvberg [2004] s. 40).

It is correct that recommendations (general advices) of the Accounting Standards Board are legally binding to the extent that they embody good accounting practices⁵³ but they are not binding otherwise. There is a view that all the general advices of the Accounting Standards Board embody good accounting practices and are binding on this ground⁵⁴. It is noted that, in regard with taxation, the social system cannot function well unless the key elements in the general advices of the Accounting Standards Board etc., which are not formally binding, are to be applied as they were binding in practice (SOU 2008: 80, ss. 181–182). In other words, some argue that the reference to good accounting practices is in fact the *de facto* delegation of legislative power to the Accounting Standards Board etc. in light of a fact that good accounting practices are to take the form of explicit rules more and more (SOU 2008: 80, s. 181).

While (static) incorporation (inkorporering/införlivande) of standards to statutes, ordinances and general advices is deemed as lawful in Sweden (Strömholm [1992] s. 232; Strömberg [1989] s. 206. In regard with accounting standards, Prop. 1998/99:130, ss. 184 och 191), it is necessary to provide information where the standard has been published and ensure the availability of such standards in that case. Moreover, the Swedish translation of a standard must be available, in principle, to incorporate the standards formulated in a foreign language (Prop. 1975/76:112 *om kungörande av lagar och andra författningar*, s. 73, Ds 1998:43, s. 207). Accordingly, it is allowed to make reference to (hänvisning) recommendations (legally, general advices) of the Accounting while dynamic reference that incorporates automatically future revisions is not accepted (*See* Pålsson [2006] ss. 631–632).

53 As a matter of course, the general advices of the Accounting Standards Board subordinate to the provisions of the law (*See e. g.* von Bahr [1991] s. 748). Some argues, however, that some recent general advices of the Accounting Standards Board represent a violation of the provisions in the Bookkeeping Act or the Financial Statements Act and, thus, are likely to be unconstitutional (*See* Engström [2009]). On the other hand, *Thorell* argues that those who are assigned a task of supplementary norms setting are granted broad discretion within a framework of the Bookkeeping Act and the Financial Statements Act (Thorell [2006] p. 13), therefore, the statements of the Accounting Standards Board do not conflict with statutory provisions (Thorell [2006] pp. 18–19).

54 *See* Ingblad och Lundqvist [2010] ss. 5–6. To the contrary, *Ingblad /Lundqvist* argue that such an interpretation contradicts with the provision of Chapter 8 of the Instrument of Government and general advices should not use the words “ska”(=must, have to) and “bör”(=should).

(4) Sanctions on deviation from accounting standards

1) Hesitation to introduction of sanctions

In Sweden, for a long time, incompliance with accounting standards had not been sanctioned under civil or commercial laws (Norberg [1991], Artsberg [2010] p. 208). This is due to the national trait that values self regulation (See SOU 2003:22) and both accounting professionals and business community were really hesitant about introducing sanctions on incompliance with accounting standards in creating the Accounting Council (Rundfelt [1993] p. 589).

On the other hand, *Rundfelt* received a mandate from the Accounting Standards Board and the Stockholm Stock Exchange to review annual reports of larger companies in 1986 and, from that year on, has published the findings in *Balans*, the organ of the Institute of Authorised Public Accountants, and books⁵⁵. *Artsberg* assesses that these have a suppression effect to some extent on substandard accounting practices (Artsberg [2010] p. 208).

In addition, it was expected that the fact that the Federation of Industry was one of the founders of the Accounting Council would improve confidence on the standards setting process and reduce the need of sanctions on deviations from accounting standards (Rundfelt [1993] pp. 589–590)⁵⁶.

2) Enforcement by Stock Exchange and others

The Stockholm Stock Exchange has played an important role in ensuring compliance with the accounting standards. The Exchange has treated the Accounting Council as the accounting standard setting body for listed companies and the setting body of fundamental accounting issues. The Annex 1 to the Listing Agreement (Noteringsavtal) (after 1995 revision and before 2001 revision) stipulated that annual reports, earnings briefings and interim reports should be prepared in accordance with applicable laws and good accounting practices for listed companies. It provided as well that any material departure from recommendations of the Accounting Council should be stated under the heading of

55 The titles of the books comprise of “*Tendenser i börsbolagens årsredovisningar*” and surveyed year, e. g. “*Tendenser i börsbolagens årsredovisningar 1987*”.

56 Due to this character of the accounting standard setting body, *Rundfelt*, for example, was of a view in 1993 that deviations from accounting standards of the Accounting Council were not serious concern in spite of the fact that there were several standards on the controversial issues (e. g. depreciation of goodwill and recognition on comprehensive basis in accounting for income tax) among the accounting standards promulgated by the Accounting Council (Rundfelt [1993] p. 590).

“Accounting Principles” and any departure has legitimate grounds (Stockholmsbörsen, *Noteringsavtal 2001-03-01*, s.4)⁵⁷. Moreover, it was common for the information monitoring department of the Stockholm Exchange to refer auditors or the Emerging Issues Group (Akutgrupp) of the Accounting Council without having to spend time themselves in cases where a listed company had made queries on accounting problems (Törnqvist, Lumsden och Marton [2000] s. 27)⁵⁸. The Stockholm Stock Exchange, however, checked over whether annual accounts of listed companies conform with good accounting practices based on the recommendations of the Accounting Council and it was the practice to notify the discovered deficiency, if any, to the issuer⁵⁹. olm Stock

By the way, though the Financial Supervisory Authority seemed to be best suited for the task of enforcement of accounting since it is a member of the CESR, it proposed that it would be the competent authority as a matter of form and leave actual oversight to auditors, the Accounting Council and the Stock Exchange since it had no formal experience to oversee companies other than financial institutions and many parties preferred self regulation. A report of a Government Commission, *Financial Supervision in the Future* (SOU 2003:22 *Framtida finansiell tillsyn*) took a similar position and proposed that enforcing accounting regulation should be a task of the Accounting Standards Board (ss. 107–109), which could further assigned the actual work to another and private body (the Accounting Council and its review panel were given as examples) since the Financial Supervisory Authority was not accustomed to this kind of task (s. 119).

Thanks to these proposals, the Financial Reporting Monitoring Panel was created in April 2003 under the umbrella of the Association for developing good accounting practices

57 The provision on departure was repealed in the 2003 revision to the Listing Agreement (applicable from 1 September 2003)(Nr 2 i Stockholmsbörsens, Stockholmsbörsens skriftserie, *Börsregler 2003/2004, Handledning till noteringsavtal och noteringskrav*, 2003, p. 3[Förord]). Therefore, paragraph 8 of the Annex to the Listing Agreement (as amended) only provides that annual reports, earnings briefings and interim reports should be prepared in accordance with applicable laws and good accounting practices for listed companies (Stockholmsbörsen, *Noteringsavtal 2001-09-01*, s.3). Even after this revision, “Financial Supervision in the Future (SOU 2003:22)”, for example, presupposes, however, that “good accounting practices (god redovisningssed) for listed companies” are recommendations developed and promulgated by the Accounting Council (s. 69).

58 The Stockholm Stock Exchange had a favorable attitude to the efforts of the Accounting Council to adapt IAS to Sweden in the context of high foreign ownership of listed shares (Törnqvist, Lumsden och Marton [2000] s. 27).

59 According to an advice of Mr *Sigvard Heurlin* (11 March 2011).

along with the Accounting Council and, later in November 2005 became under the Association for good practice in securities markets, a self-regulatory body. The Panel shall consist of 10 individuals with experienced and sufficient capacity and had the task to monitor Swedish limited liability companies listed or registered on a Stock Exchange or a recognized market in order to secure the financial reporting of such companies be in compliance with the recommendations of the Accounting Council and applicable statutes and orders. The Panel investigates the problems with inaccuracies that noticed and departures, based on publicly available information in principle, but also on information for clarification and supplementary information obtained from listed companies under the Listing Agreement⁶⁰. The panel will decide what problem it takes up based on the risk and the importance while opportunity of a hearing is given to the company. In cases where the financial reporting of a company is deemed as inappropriate, the report of the Panel will be published⁶¹ and a Stock Exchange or a regulated market might sanction the company based on the report of the Panel and investigation.

At last, however, the Securities Markets Act (Lag om värdepappersmarknaden (SFS 2007:528)) provides that monitoring the financial reporting by the listed companies is conducted by stock exchanges (Chapter 16, Article 13) and stock exchanges should notify the Financial Supervisory Authority in cases where a financial reporting violates the laws and orders unless the issuer discloses rectified information or supplementary information (Chapter 16, Article 14) while the Financial Supervisory Authority will impose sanctions. As a result, the Financial Reporting Monitoring Panel was abolished in 2006.

In 1990s, departure from the recommendations, in regard with consolidated accounts in particular, of the Accounting Council was observed (Törnqvist, Lumsden och Marton [2000] s. 28)⁶². In cases where whether listed companies had violated the recommendations of the

60 *English Summary, The Panel for Monitoring Financial Reporting* <http://www.overnakningspanelen.se/In_English.asp> (accessed on 10 May 2011). On the activities of the Financial Reporting Monitoring Panel, see Annual Report 2005 <<http://www.overnakningspanelen.se/files/arsrapport2005.pdf>> (accessed on 10 May 2011).

61 *Övernakningspanelens utlåtanden* <http://www.overnakningspanelen.se/Panelens_uttalanden.asp> (accessed on 10 May 2011).

62 *Palmstedt*, for example, argues that the regulation of a Stock Exchange should have stricter rules to enforce "good accounting practices" and provide the sanctions on the violation of the rules (Palmstedt [1990]).

Accounting Council was not obvious, the Stock Exchange made an inquiry to the Emerging Issues Group of the Accounting Council, which might gave an opinion (Rundfelt [2001b] s. 10). Violation of the Listing Agreement might lead to delisting, monetary penalties (Maximum 15 times [10 times, formerly] of annual contribution) and reprimand⁶³ and a Stock Exchange takes disciplinary action against a listed company after a deliberation at the Disciplinary Board (Disciplinnämnd)⁶⁴. There seems, however, to have been no cases for a long time⁶⁵ where the Stockholm Stock Exchange had taken disciplinary actions due to incompliance with the recommendation of the Accounting Council⁶⁶.

Monetary penalty was imposed recently since a departure from the International Financial Reporting Standards on impairment of intangible assets recognized in a business combination was made without meeting the criteria for departure (Beslut 2008:

63 For delisting, *see* Lag om börs och clearingverksamhet (SFS 1992: 543), 5. kap. 4 § (Lag om värdepappersmarknaden (SFS 2007:528), 15. kap. 14 §). For monetary penalties and reprimand, *see* Stockholmsbörsen, *Börsregler - Handledning till noteringsavtal och noteringskrav 2001*, s. 95ff. (NASDAQ OMX Stockholm, *Regelverk för emittenter* (1 januari 2011), 5. (s. 42)).

64 Lag om börs och clearingverksamhet (SFS 1992: 543), 4. kap. 8 § (now Lag om värdepappersmarknaden (SFS 2007:528), 13. kap. 14 §).

65 According to the *Interview with Nils Liliedahl*, 2002-05-13 (in: Andersson *et al.* [2002] s. 42), there were no precedents at that time. However, the resolution in *Karolin Machine Tool* case (Beslut 2005:2) <http://www.nasdaqomx.com/digitalAssets/26/26964_2005_2_KMT_AB.pdf> pointed out a violation of accounting standards as one of the grounds of the disciplinary action. In this case, the disclosure on the remuneration of senior management was not in line with the recommendation of the Industry and Commerce Stock Exchange Committee (regler om information om ledande befattningshavares förmåner) and violation of statutory provisions on goodwill as well as three recommendations of the Accounting Council was identified. Moreover, monetary penalty was imposed on grounds that pro-forma information in half-year reports breached good accounting practices and previous half-year reports contained errors (Beslut 2001:1 *Wilhelm Sonesson* <http://www.nasdaqomx.com/digitalAssets/26/26996_2001_1_Wilhelm_Sonesson_AB.PDF>). *Skandia*, an insurance company, was imposed monetary penalty on grounds that non-disclosure of the management remuneration program violated good accounting practices since the practice was not in compliance with the recommendation of the Industry and Commerce Stock Exchange Committee (Beslut 2004:4 <http://www.nasdaqomx.com/digitalAssets/26/26979_2004_4_F_rs_krings_AB_Skandia.pdf>). Furthermore, disciplinary actions have been taken for failure to disclose the revision of earnings estimates timely (*Fastighets Balder/Enlight International*. Beslut 2005:7 <http://www.nasdaqomx.com/digitalAssets/26/26972_2005_7_Fastighets_AB_Balder.pdf>) and failure to disclose of new accounting policy (Beslut 1997:1 <http://www.nasdaqomx.com/digitalAssets/27/27001_1997_1_Frontec_AB.pdf>) (*See* Rundfelt [2001a] p. 2414).

66 Failure to disclose timely or notify to the Stock Exchange has been sanctioned (Olsson [2010] ss. 162-166).

5)⁶⁷. Furthermore, failure to give the notes required under IFRS 3 was held to be subject to monetary penalty (Beslut 2009:1). Moreover, with regard to the NGM (*Nordic Growth Market*)⁶⁸, a market whose main target are startups, its Disciplinary Board has decided not a few disciplinary actions on grounds relating to accounting issues (Olsson [2010] ss. 172–174)⁶⁹.

3) Enforcement by the Supervisory Board of Public Accountants

The Supervisory Board of Public Accountants (Revisorsnämnden), which supervise auditors, has taken disciplinary actions against auditors who expressed an unqualified opinion on annual accounts or group accounts that were not in conformance with good accounting practices (Olsson [2010] ss. 121–132). There are not a few cases in which the grounds for the disciplinary actions are expressing an unqualified opinion on annual accounts or group accounts that did not comply with the provisions in the Bookkeeping Act or the Financial Statements Act, or the recommendations of the Accounting Council or Accounting Standards Board (29 cases from 2002 to 2007). The deviation from good accounting standards were, however, often insignificant with regard to audit failures and violations of the Bookkeeping Act or the Financial Statements Act were identified in most cases. On the other hand, there are only two cases where breach of good accounting practices was identified while neither violations of the Bookkeeping Act or the Financial Statements Act nor the deviation from the recommendation of the Accounting Council or Accounting Standards Board was identified: Dnr 2000–272 (recognizing a receivable before goods are delivered to the customer) and Dnr 2004–323 (held that cash basis accounting is not consistent with good accounting practices) (See SOU 2008:80, Del 1, s. 200). The above seems to imply that the significance of unwritten (non-codified) accounting practices as

67 In *Carnegie*, overvaluation of assets was the issue and, the case was discussed at the Disciplinary Board of the Stock Exchange at first (Beslut 2007:9 <http://www.nasdaqomx.com/digitalAssets/39/39326_2007_9_Carnegie_Stockholm_beslut_2007_SV.pdf>) and, the Financial Supervisory Authority imposed an administrative sanction later (FI Dnr 07–6125 *Carnegie Investment Bank* <http://www.fi.se/upload/20_Publicerat/40_FIsanktioner/2007/carnegie_beslut.pdf>). For the reprimand by the Financial Supervisory Authority in regard with accounting of banks and securities firms, see e. g. Olsson [2010] ss. 138–142.

68 <<http://www.ngm.se>>.

69 The sanction given has been, however, warning in writing, the most moderate sanction, in all cases except for one (2009: 2 *Hebi Health Care AB*) <http://www.ngm.se/doc-archive/NGM-b%C3%B6rsen/Marknads%C3%B6vervakning/Disciplin%C3%A4mnd_beslut/2009%202%20Hebi%20Health%20Care.pdf> in which the sanction was delisting. The misrepresentation in annual accounts etc. was not, however, the only issue in this case.

source of law is diminishing (Olsson [2010] s. 134) .

4) Disclosure of departure in the notes

As described above, while one of the mandates to the 1991 Government Commission was what kind of sanctions should be given in cases where mandatory rules were not complied with (Dir 1991:71 Review of Provisions of Accounting Law), this issue was not sufficiently discussed in SOU 1994:17 Annual and Group Accounts in accordance with European Community Directives. Article 3, paragraph 2 of the Financial Statements Act (after the 1999 amendments) provides, however, that any departure from general advices or recommendations of norm setting organ (normgivande organ) and the reason for the departure should be disclosed in the notes⁷⁰.

(5) Consideration from the principle of legality

In terms of the principle of legality, clarity is indispensable and, in this context, the meaning of “good accounting practices” must be understandable. Accordingly, given the close relationship between taxation and accounting, *Hultqvist* points out the need to distinguish precisely good accounting practices as a standard that are consistent with the provisions in the Bookkeeping Act and the Financial Statements Act and show various possibilities for attaining the goal to present a true and fair view (rättvisande bild) in order to circumvent the effect that the regulatory authority under tax legislations might be delegated unlawfully to the Accounting Standards Board from a viewpoint of the principle of legality from those that are not intended to be embodied in the rule-based (icke föreskriftsbaserade konkretiserande) “norm setting (normgivningen)” by the Accounting Standards Board and that do not exclude other options but are consistent with good accounting practices and best practices (*Hultqvist* [2009] s. 264)⁷¹.

70 *Rundfelt* expected that the moderate sanction on incomppliance that the 1991 Government Committee might propose was to require companies to state whether they adopted an accounting policy conformance to the standards of the Accounting Council and to request the auditors to express an opinion whether the departure is appropriate or not in their audit reports (*Rundfelt* [1993] p. 590).

71 While *Frände* argues that there is room for interpreting “good accounting practices” so as not to raise serious problems with regard to the prohibition of ambiguity in Finland (*Frände* [1989] s. 257), *Asp* points out that Finnish rules have somewhat different structure from that of Swedish rules and that deviation from Swedish good accounting practices might not be precluded from Article 5 (Accounting Crime) of Chapter 11 of the Penal Code (SFS 1962:700) solely on the grounds of the prohibition of ambiguity as a corollary of the principle of legality (*Asp* [1999] ss. 36, 39, 40 och 43).

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In other words, Asp notes that blanket delegation technique (blankettstraffbudsteknik) in Article 5 of Chapter 11 of the Penal Code might apply and the Bookkeeping Act and (further) good accounting practices will be employed in judging the fulfilment of elements of the offence.

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