



# **Principal Differences Between Swedish Corporate Laws and Rules Applicable to SEMAFO in Canada**

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**SEMAFO INC**

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*The following is a summary of the rights of shareholders in SEMAFO based upon current Québec legislation and the Corporation's current Articles of Incorporation and by-laws. It also sets out certain differences between Québec corporate law and Canadian corporate governance principles compared to Swedish corporate law and the Swedish Code of Corporate Governance (the "Swedish Code"), with the aim to highlight some of the material differences in shareholders' rights. As a foreign issuer with a secondary listing of shares on the NASDAQ OMX Stockholm, SEMAFO is not required to comply with the corporate governance rules of the Swedish Companies Act or of the Swedish Code. The below descriptions of shareholder rights in Sweden are of a general nature and are included only for comparative purposes. The summary does not claim to give an exhaustive account of the corporate documents mentioned above, nor of all potentially relevant differences between Québec and Swedish law or corporate governance requirements.*

## Rights Benefits and Limitations Attached to the Shares

### Voting Rights

#### Canada

A shareholder may vote all the shares owned or represented by him, unless otherwise prescribed in the Corporation's Articles, by-laws. Holders of the Shares are entitled to one vote for each common share held at all meetings of shareholders of the Corporation. Holders of Class "A" and Class "B" preferred shares are not entitled to vote their shares.

#### Sweden

Under the Swedish Companies Act, different classes of shares may have different voting rights. No share may however have a voting right which exceeds the voting rights of any other share by more than ten times.

### Shareholder Meetings

#### Canada

An annual meeting of the shareholders must be held within six months from the end of the Corporation's fiscal year. The purpose of an annual shareholder meeting is, among other things, to elect the members of the Board, examine the audited Financial Statements and the auditor's report for the last completed fiscal year, appoint the shareholders' auditors and authorize the Board of Directors to fix their compensation as well as any other matters which must be addressed by the shareholders pursuant to the various corporate laws and regulations applicable to the Corporation.

Special meetings may, according to the Corporation's by-laws, be called at any time by the Chairman of the Board, the President, the Secretary or by two directors. In addition, pursuant to the Corporation's by-laws, a shareholder holding 10 percent or more of the value of the Shares may request the Board of Directors to call a special meeting of shareholders.

Unless all shareholders agree or the Corporation's Articles provide otherwise (which is not the case), shareholder meetings are to take place in Québec. There are no obligations according to law for the Corporation's Directors or Chief Executive Officer to attend shareholder meetings. Shareholders' meetings are chaired by the Chairman of the Board of Directors.

### **Sweden**

Under the Swedish Companies Act, shareholder meetings shall be held in the city where the Board of Directors holds its office. Moreover, the Swedish Code stipulates that the Chairman of the Board of Directors together with a quorum of directors, as well as the Chief Executive Officer, shall attend shareholders' meetings. The Chairman of the shareholders' meeting shall be nominated by the nomination committee and elected by the shareholders' meeting. The minutes of a shareholders' meeting shall be available on the company's website no later than two weeks after the meeting.

### **Notices**

#### **Canada**

Notice of the time and place of a shareholders' meeting shall be given by mail not less than 21 days and not more than 60 days before the meeting to each shareholder who at the close of business on the record date (as further described below) for such meeting is entered in the securities register as shareholder. To ensure timely voting of proxies, proxy circulars shall be distributed within the same period of time. The notice of meeting must specify the time and place of the meeting of shareholders as well as the business to be transacted. It must also specify a time preceding the meeting by not more than 48 hours (excluding Saturdays and holidays) before which the Corporation must receive the proxies of the shareholders who wish to be represented by proxy. The notice of meeting must state the business on the agenda in sufficient detail to permit the shareholders to form a reasoned judgment on it, and contain the text of any special resolution that requires approval by at least two thirds of the votes cast at a shareholders' meeting by the shareholders entitled to vote on the resolution.

#### **Sweden**

Under the Swedish Companies Act, a general meeting of shareholders must be preceded by a notice. The notice of the annual general meeting of shareholders must be issued no sooner than six weeks and no later than four weeks before the date of an annual general meeting. In general, notice of other extraordinary general meetings must be issued no sooner than six weeks and no later than three weeks before the meeting. Public limited companies must always notify shareholders of a general meeting by advertisement in the Swedish Official Gazette and on the company's website. Subject to its Articles of Association, the company must either publish the full notice in a daily newspaper with nationwide circulation or a short form message containing information regarding the notice and where it can be found. The notice shall include an agenda listing each item that the meeting is to resolve upon. Pursuant to the Swedish Code, a company shall, as soon as the time and venue of a shareholders' meeting have been decided, and no later than in conjunction with the third quarter report, post such information on the company's website.

### **Record Date**

#### **Canada**

The right to receive notice of and vote at a shareholders' meeting will vest in any person who is a shareholder at the record date for notice of the meeting, which is a date set by the Board of Directors between 21 to 60 days before the date of the meeting.

Canadian securities laws also permit the Corporation to set a record date for voting, which is typically the same date as the record date for notice. Notice of record date shall be given not less than 25 days prior such record date, by newspaper advertisements in Québec and to all depositories, securities regulatory authorities and exchanges on which its securities are listed.

#### **Sweden**

Under the Swedish Companies Act, in order for a shareholder in a company to participate in a shareholders' meeting, the holder must have his shares registered in his own name in the shareholders' register kept by the CSD on the fifth business day prior to the date of the shareholders' meeting. Shareholders must also, if provided for in the Articles of Association, give notice of their intention to attend the shareholders' meeting.

### **Voting at Shareholder Meetings**

#### **Canada**

Shareholders' can vote their Shares by mail, telephone, internet, in person at the meeting or by appointing somebody as proxyholder to attend the meeting and vote the shares on behalf of the shareholder. Shareholders with nominee held shares

must contact their nominee to find out how the shareholder can attend the meeting in person and if the nominee has any voting instructions for the appointment of proxyholders. A proxy must be in writing executed by the shareholder and must conform with other applicable securities rules. The Board of Directors may specify in the notice calling the shareholders' meeting preceding the meeting by not more than 48 hours (excluding Saturdays and holidays) before which the Corporation must receive the proxies of the shareholders who wish to be represented by proxy. A proxyholder may hold the proxies of several shareholders. A proxy shall be valid only at the meeting in respect of which it was given or any adjournment thereof.

### *Sweden*

Under the Swedish Companies Act, shareholders of record as of the record date are entitled to vote at a general meeting (in person or by appointing a proxyholder). Shareholders who have their shares registered through a nominee and wish to exercise their voting rights at a general meeting must request to be temporary registered as a shareholder of record at the record date.

## **Issue of Shares**

### *Canada*

Under the Québec Business Corporations Act (the "QBCA"), shares may be issued at such times and to such persons and consideration as the Board may determine, provided that there are no pre-emption rights in the company's articles of association or by-laws (which is not the case in the Corporation's Articles, see below). However, the TSX requires shareholder approval for the listing of newly issued shares representing more than 25% of the then issued and outstanding common shares.

### *Sweden*

Under the Swedish Companies Act, resolutions on new share issues are passed by the shareholders' meeting. A shareholders' meeting may also authorize the Board of Directors to issue new shares, provided that the authorization is within the limits of the number of shares and share capital set out in the company's Articles of Association. Further, the Board of Directors may resolve to issue new shares without such authorization, provided that the resolution is conditioned upon the shareholders' approval and within the limits of the number of shares and share capital set out in the company's Articles of Association.

## **Pre-emption rights**

### *Canada*

Shareholders do not have pre-emption rights to newly issued Shares, unless otherwise provided in the Articles or by-laws. The Articles and by-laws of the Corporation do not contain any such provision and the Board of Directors may issue Shares at such times, on such terms and conditions, to such persons and for such consideration as the Board sees fit. Irrespective of any such provisions in the Articles, no pre-emptive rights exist in respect of shares issued for consideration other than money, as a share dividend or pursuant to the exercise of conversion privileges, options or rights previously granted by the corporation.

### *Sweden*

Under the Swedish Companies Act, shareholders of any class of shares have a pre-emption right (Sw. företrädesrätt) to subscribe for shares issued of any class in proportion to their shareholdings. Pre-emption right to subscribe does not apply in respect of shares issued for consideration other than cash or of shares issued pursuant to convertible debentures or warrants previously granted by the company. The pre-emption right to subscribe for new shares may also be set aside by a resolution passed by two thirds of the votes cast and shares represented at the shareholders' meeting resolving upon the issue.

## **Dividends**

### *Canada*

Under the QBCA, dividends are paid if, as and when declared by the Board of Directors. It is common practice in Canada for dividends, if any, to be declared and paid on a quarterly basis. There are hence no fixed dates for dividends and the profits may instead be accumulated and used for the purposes of the Corporation. Under the laws applicable to the Corporation, the payment of dividends is prohibited if there are reasonable grounds for believing that the Corporation is, or would after the payment be, unable to pay its liabilities as they become due. The gold mining industry is capital intensive and the

Corporation's profits may need to be accumulated and used for the purposes of the Corporation's operations. Hence, there can be no assurance that the Corporation will pay any dividends to its shareholders in the future.

Any decision to pay dividends on the Shares may be dependent upon obtaining any required consents from the Corporation's lenders, the financial requirements of the Corporation to finance future growth, the financial condition of the Corporation and other factors which the Board of Directors of the Corporation may consider appropriate in the circumstances.

### **Sweden**

Under the Swedish Companies Act, only a shareholders' meeting may authorize the payment of dividends. A resolution to pay dividends may, with some exceptions, not exceed the amount recommended by the Board of Directors. Dividends may only be made if, after the payment of the dividend, there is sufficient coverage for the company's restricted equity and the payment of dividends are justified, taking into consideration the equity required for the type of operations, the company's need for consolidation and liquidity as well as the company's financial position in general. Each person who is listed as a shareholder in the printout of the entire share register as of the record date for the dividend (usually the third business day following the shareholders' meeting) will be entitled to receive the dividend distribution. Dividends are normally distributed to the shareholders through Euroclear Sweden.

### **Restrictions on Changes of Control**

#### **Canada**

Under Canadian law, the Board of Directors may adopt a shareholder rights plan (known as poison pills, a mechanism allowing the Board of Directors to have sufficient time to seek alternatives in the event of an unsolicited takeover bid), which may have an effect of delaying, deferring or preventing a change of control of the Corporation. Furthermore, the acquisition by non-Canadians of the control of a Canadian business may be subject to review pursuant to the Investment Canada Act.

A shareholder rights plan has been adopted by the Board of SEMAFO effective as from March 15, 2011. For an outline of the plan refer to SEMAFO's Management Proxy Circular.

#### **Sweden**

Not applicable

### **Amendments to the Articles or By-Laws**

#### **Canada**

The rights of the shareholders can be changed by way of amending or repealing the Articles and/or by-laws of the Corporation. Under the QBCA, an amendment to the Articles of a company generally requires approval by special resolution by the shareholders. A special resolution is a resolution passed by a majority of not less than two-thirds of the votes cast by the shareholders who voted in respect of that resolution. However, pursuant to the Articles of the Corporation, any amendments of the Articles must be approved by at least 75% in value of the outstanding Shares. The Board of Directors may amend or repeal the by-laws of the Corporation effective at the date of the Board's resolution. In such case, the Board of Directors is normally required under the QBCA to submit the amendment or repeal to the shareholders at the next meeting of shareholders, and the shareholders may confirm, reject or amend the amendment or repeal by an ordinary resolution. An ordinary resolution is a resolution passed by a majority of the votes cast by shareholders entitled to vote on the resolution. A resolution would cease to be effective at the close of the shareholders' meeting if it is rejected or not submitted to the shareholders. However, by-law amendments relating to procedural matters with respect to shareholders' meetings take effect only once they have received shareholder approval.

#### **Sweden**

Under the Swedish Companies Act, an alteration of the Articles of Association requires a resolution passed at a shareholders meeting. The number of votes required for a valid resolution depends on the type of alteration, however, not less than two-thirds of the votes cast and of the shares represented at the meeting. The Board of Directors is not allowed to make amendments to the Articles of Association.

## Directors and the Board of Directors

### Number of Directors

#### *Canada*

Under the laws applicable to the Corporation, a public company must have no fewer than three Board members, at least two of whom are not officers or employees of the corporation or its affiliates. According to the Articles, the Corporation shall have a minimum of one Director and a maximum of 15 Directors. Within that range, the number of Directors is fixed by resolution of the Board of Directors from time to time. There are currently seven Directors. There are no restrictions as to Directors also being members of the executive management of the Corporation. According to Canadian corporate governance principles, more than half of the directors should be independent of the Corporation.

#### *Sweden*

Under the Swedish Companies Act, a public company shall have a Board of Directors consisting of at least three Board members. More than half of the directors shall be resident within the European Economic Area (unless otherwise approved by the Swedish Companies Registration Office). The actual number of Board members shall be determined by a shareholders' meeting, within the limits set out in the company's Articles of Association. Under the Swedish Code, not more than one Director may also be a senior executive of the relevant company or a subsidiary. The Swedish Code includes certain independence requirements for the Directors, according to which more than 50 % of the Directors shall be independent of the company and two out of these shall also be independent of major shareholders.

### Nomination, Appointment and removal of Directors

#### *Canada*

The Human Resources and Corporate Governance Committee (the "HRCGC") is responsible for proposing to the Board nominees to the position of Director. The directors are then nominated by the Board of Directors and elected at the shareholder meeting.

Election of Directors takes place on shareholders' meetings by ordinary resolution. Pursuant to the Corporation's majority voting policy adopted by the Board of Directors, a nominated director will be considered not to have received the support of the shareholders where he or she receives more "withheld" than "for" votes at the shareholders' meeting, even though duly elected as a matter of corporate law. Such nominee shall forthwith submit to the Board of Directors his or her resignation. The HRCGC will then assess all circumstances relating to this situation and, as the case may be, recommend to the Board of Directors whether to accept the resignation of the nominee.

Shareholders may also remove any Director, by way of an ordinary resolution at a special meeting of shareholders called for such purpose. The vacancy created by such removal may under certain circumstances be filled at the same meeting or, if not, by the Board. The Chairman of the Board of Directors is appointed by the Board of Directors.

#### *Sweden*

Under Swedish law, the Board of Directors shall, except for any employee representatives, be elected by the annual general meeting of shareholders, unless the Articles of Association provide otherwise. The members of the Board of Directors are usually elected for the period until the end of the next annual general meeting of shareholders, unless a longer term of up to four financial years is set out in the Articles. It is possible for a Board member to be re-elected for a new term of office.

Companies to which the Swedish Code applies shall have a nomination committee. In addition to nominating Directors, the nomination committee shall nominate the Chairman of the Board of Directors and the auditors and shall also propose fees to each Director and to the auditors. The nomination committee's proposals are to be presented in the notice of the shareholders' meeting and on the company's website. At the same time, the nomination committee is to issue a statement on the company's website explaining its proposals and providing more information about the candidates proposed for election or re-election.

Under the Swedish Code, the annual general meeting of shareholders shall either appoint the members of a nomination committee or pass a resolution specifying how the members are to be appointed. The nomination committee shall have at least three members, the majority of which shall be independent of the company. One of the independent members shall also be independent of the major shareholders. The Chief Executive Officer and other senior executives may not be members of the nomination committee.

## Powers of the Board of Directors and Delegation of the Board of Directors' Powers

### Canada

The Board of Directors is responsible for the stewardship of the Corporation and for supervising the management of its business and affairs. The Board of Directors may from time to time delegate to a committee all or any of the powers conferred on the Board of Directors. Further, the Board of Directors may appoint a Chief Executive Officer.

### Sweden

Under the Swedish Companies Act, the Board of Directors in a public company shall appoint a Managing Director and may also appoint one or more Deputy Managing Directors. The Managing Director is responsible for the day-to-day management of the company in accordance with law, which normally includes appointing the other senior executives. The Managing Director shall be resident within the European Economic Area (unless otherwise approved by the Swedish Companies Registration Office).

## Remuneration

### Canada

The Corporation has an obligation to disclose the process for determination of compensation to the directors and officers. There are no requirements to the effect that the shareholders' meeting shall determine guidelines for director fees or executive compensation, nor are there any guidance or requirements stipulated by legislation as regards variable executive compensation. However, the Board of Directors has in its mandate to the HRCGC instructed the committee to review and recommend to the Board of Directors for approval (i) the adequacy and form of compensation of Board members and (ii) the overall compensation strategy and annual compensation of the executive management. For information regarding remuneration of the Corporation's Board of Directors and Named Executive Officers refer to SEMAFO's Management Proxy Circular.

### Sweden

Under the Swedish Companies Act, the remuneration to the Board of Directors shall be determined by the annual general meeting of shareholders, specifying the amount for each Director. For companies complying with the Swedish Code, the nomination committee's proposal to the annual general meeting of shareholders shall include a proposal regarding the remuneration to each member of the Board.

In addition, companies shall pursuant to the Swedish Code have a remuneration committee. The remuneration committee shall prepare the Board of Directors' resolutions regarding executive compensation and shall also monitor and evaluate the company's principles and levels of remuneration to the executive management, including programs for variable compensation. The Chairman of the Board of Directors may chair the remuneration committee, while other committee members shall be independent of the company. The Swedish Code also stipulates that variable compensation paid in cash to the executive management shall be subject to predetermined limits regarding the total outcome. The Board of Directors shall consider (i) to make payment conditional on the performance proving to be sustainable over time and (ii) to introduce the right to reclaim remuneration that has been paid on the basis of information which later proves to be manifestly misstated. Furthermore, all share and share-price related incentive schemes for the executive management shall be approved by a shareholders' meeting.

## Financial Statements, Auditor's reports, Auditors and Audit Committee

### Canada

Under Québec legislation, the members of the Board of Directors of a company must place before the shareholders at each annual meeting comparative financial statements for the most recently completed financial period and the report of the auditors' thereon. The financial statements must include, at a minimum, a balance sheet, a statement of changes in equity, an income statement, a comprehensive income statement, and a statement of cash flows. The Directors of a company must approve the financial statements. A company must send a copy of the comparative financial statements and the auditor's

report thereon, if any, to each shareholder, except a shareholder who has informed the company in writing that he does not want them, at least 21 days before each annual meeting of shareholders.

The Corporation also has an obligation under law to publish interim reports for each of the first three calendar quarters each year, which reports do not have to be audited or reviewed by the auditors.

The auditors are nominated by the Board of Directors after recommendation by the audit committee, and are normally appointed as part of the regular business transacted at the annual shareholders' meeting. The by-laws stipulate that the auditor shall be independent of the Corporation and of its directors and officers. Independence is a question of fact in each case except, however, that there is, in certain circumstances, a deemed lack of independence pursuant to the by-laws.

## Sweden

Under the Swedish Companies Act, the annual general meeting shall adopt the balance sheet and the profit and loss statement. Further, it makes decisions in respect of the disposition of the company's profit or loss (such as payment of dividends). The annual report must be prepared not later than five months after the end of the financial year and then be passed to the auditor. The annual report, together with the auditors' report, must be presented at a shareholders annual meeting held within six months after the end of the financial year. A copy of the annual report and the auditors' report must be made available to the shareholders not less than three weeks before the meeting. Pursuant to the Swedish Code, the Board of Directors shall ensure that the company's six- or nine-month report is reviewed by the company's auditor.

Auditors are appointed by a general meeting of shareholders, whereby a registered accounting firm may be appointed auditor. The Swedish Code requires that the Board of Directors shall at least once annually meet the company's auditor without any member of the executive management present.

Companies whose shares are listed on a regulated market must have an audit committee, unless the assignments of such committee are carried out by the Board of Directors. The audit committee shall (i) monitor the company's financial reporting; (ii) monitor the efficiency of the company's internal control, internal audit and risk management; (iii) keep itself informed regarding the audit of the annual report and consolidated financial statements; (iv) review and monitor the auditor's impartiality and independence, paying particular attention to whether the auditor provides the company with services other than auditing services; and (v) assist in the preparation of a proposal to the general meeting for a resolution regarding the election of auditors.

The members of the audit committee must not be employed by the company and at least one member of the committee must be independent and have accounting or auditing skills. Pursuant to the additional requirements of the Swedish Code, the audit committee shall consist of at least three Board members. The majority of the members of the audit committee are to be independent of the company and its executive management. At least one independent member must also be independent of the company's major shareholders.

## Corporate Governance reports and Website

### Canada

Companies listed on the TSX must provide corporate governance information in the Management Information Circular (usually referred to as a proxy circular). The circular is distributed together with the Corporation's notice of annual shareholders' meeting. There is no requirement to post the Management Information Circular on the Corporation's website, nor to have the Management Information Circular reviewed by the Corporation's auditors. The contents of the Management Information Circular is regulated by Canadian securities laws, according to which the circular must, among other things, include a discussion of the Corporation's practices of the Canadian corporate governance principles. There are no legal requirements as regards information on the Corporation's website.

### Sweden

Swedish companies whose shares are subject to trading on a regulated market shall according to law prepare an annual corporate governance report, with information about, among other things, the key elements of the internal control systems, information about major shareholders, information about the Board of Directors and its committees and any mandates for the Board of Directors to issue new shares or acquire treasury shares.

In addition to the requirements as to the content of such report stipulated by legislation, the Swedish Code requires that the company in the report states which rules of the Swedish Code it has not complied with, explains the reasons for each case of non-compliance and describes the solution it has adopted instead. Moreover, the corporate governance report shall include

certain information regarding the division of work among the Directors and its committees, certain information about the Directors and the Chief Executive Officer (such as age, principal education, work experience and shareholdings in the company) and details on any infringement of the stock exchange rules or good practice on the securities market during the past year.

The company must also have a section on its website devoted to corporate governance matters, where the company's three most recent corporate governance reports are to be posted, together with, among other things, the articles of association, information about the nomination committee, information about upcoming shareholders' meetings, the minutes of shareholders' meetings held during the past three years, information about the Directors, the Chief Executive Officer and the auditor and a description of the company's system of variable remuneration to the Board of Directors and the executive management, as well as of each outstanding share and share price related incentive scheme.

### **Distribution of Information to the Canadian and Swedish Markets**

The Corporation is subject to the information and reporting requirements of the Canadian securities laws and the rules, policies and guidelines of the TSX. The Corporation files periodic reports and other information with securities regulatory authorities in Canada and the TSX relating to its business, financial condition and other matters. The Corporation is required to disclose in such reports certain information, as of particular dates, concerning the Corporation's Directors and officers, their compensation, stock options granted to them, the principal holders of the Corporation's securities and any material interest of such persons in transactions with the Corporation.

Following the Shares being listed on NASDAQ OMX Stockholm, SEMAFO will also be subject to the rules on disclosure of the NASDAQ OMX Stockholm Rulebook for Issuers. Financial reports and press releases will be published on the Corporation's website at [www.semafo.com](http://www.semafo.com) and by its news distributors, with separate news distributors for the Canadian and Swedish markets. According to a decision by the SFSA, information may be disclosed in English only.