

# Corporate Governance in Concentrated Ownership and Family-controlled Structures



Leena Linnainmaa  
Deputy Chief Executive  
Finland Chamber of Commerce

**FINNCHAM**

# Dispersed or concentrated ownership?

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- Different traditions in different countries
  - Differences are reflected in the CG Codes of different countries
- CG discussion often focuses on dispersed ownership structures
- Until now the role of active shareholders may have been undervalued

# Different views to shareholders' role

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- **COMMISSION RECOMMENDATION of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (2005/162/EC)**

## 13. Independence

13.1. A director should be considered to be independent only if he is free of any business, family or other relationship, with the company, its controlling shareholder or the management of either, that creates a conflict of interest such as to impair his judgement.

# Another view to shareholders' role

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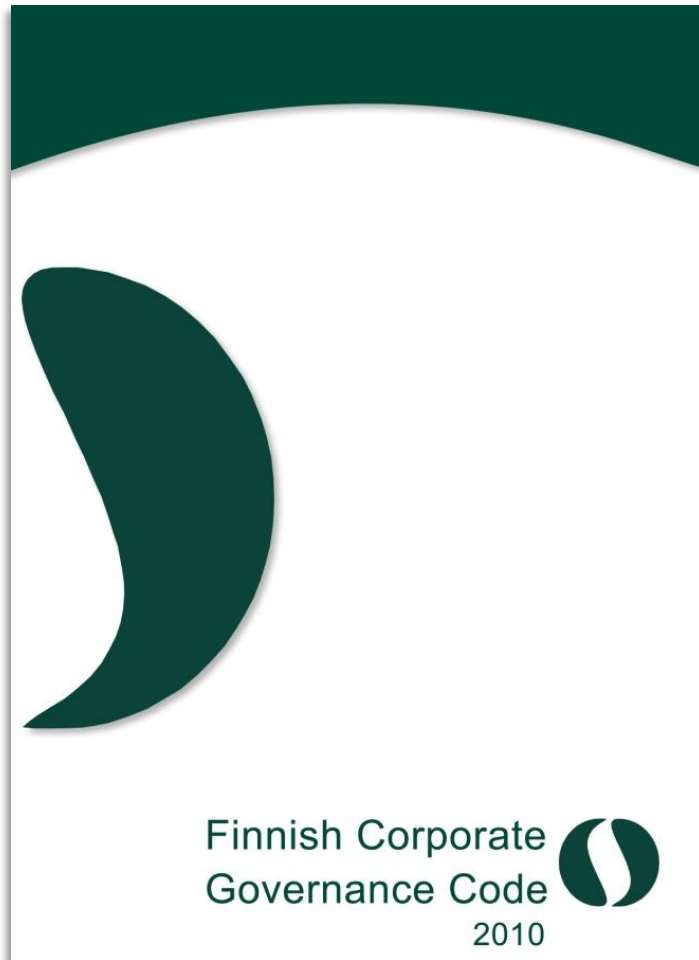
*"It is strangely naïve to believe that a director without any special incentive other than an urge to do good should be better at monitoring than a shareholder for whom it has some actual economic consequences."*

Professor Jesper Lau Hansen:  
A Scandinavian Approach to Corporate Governance

# Independence of directors in the Finnish CG Code

## ***Recommendation 14: Number of independent directors***

***The majority of the directors shall be independent of the company. In addition, at least two of directors representing this majority shall be independent of significant shareholders of the company.***



# **Report of the Reflection Group On the Future of EU Company Law**

- Evaluation of the institution of the independent director?
  - Less focus on independence from shareholders?
    - Differences in Member States

# Changing attitudes to shareholders' role

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- European Commission's Roadmap: Revision of the shareholders' rights Directive (02/2013)

*"perceived lack of shareholder interest in holding management accountable for their decisions and actions"*

*"many shareholders appear to hold their shares for only a short period of time"*

*"need to encourage shareholders to engage more in corporate governance"*

*"a limited number of obligations should be imposed on institutional investors, asset managers and proxy advisors to bring about effective engagement"*

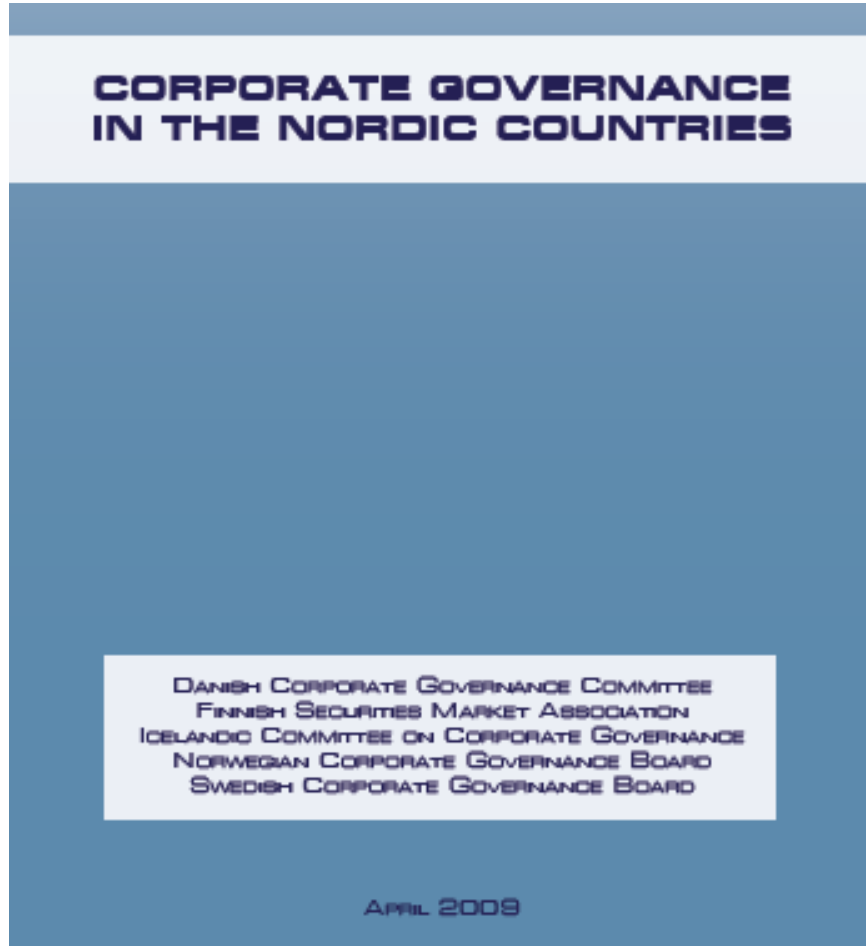
# Shareholders role in nominating director candidates

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- Nomination committee – different models
  - The traditional model: members are directors
  - Shareholder model: nomination committee/council consisting of shareholder representatives
    - Sweden:
      - AGM appoints the members or defines how the members are selected
      - The largest shareholders have representatives in the committee
      - At least one member who does not represent the largest owner
    - Finland:
      - State-owned companies have shareholders' nomination council



# Nordic countries: presence of major shareholders in most listed companies



## Key features of CG in the Nordic Countries:

1. Strong General Meeting Powers
2. Shares with Multiple Voting Rights
3. Strong Minority Protection
4. Effective Individual Shareholder Rights
5. Non-Executive Boards
6. Use of Board Committees
7. Auditors Appointed by and Accountable to the Shareholders
8. Active Governance Role of Major Shareholders
9. Transparency

# Major owners - checks and balances are needed

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- Especially when CEMs are used
- Strong minority protection
- Individual shareholders rights
  - Right to ask questions at AGM without prior notice
  - Right to table resolutions at AGM without prior notice
- Liability of directors and shareholders
  - Ban of private benefits
  - Conflicts of interest

# Special characteristics of family enterprises



- Long-term investment
  - Owners committed to continuity of the company and long-term development
- Ownership with a face
- *"A quarter in a family enterprise means 25 years"*
  - Compare with 3 months in a listed company

# Special characteristics of family enterprises



- Challenges

- Exclusion and secrecy

- Some family members or shareholders are kept out of conversation and information
    - Alliance between some owners, others excluded

- Favourites

- Hiring family members who do not deserve jobs
    - Paying some family members too much
    - Company assets suffer

- Things may become more difficult when ownership gets more dispersed to different branches of the family

# Family enterprises need

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- Communication between family members
- Commitment to ownership
- Transition of the family ownership tradition through generations
- Maintaining the unity of the family as owners
- Planning for change-of-generation
  - Early transit of tacit knowledge
  - Educating the new generation
  - Family and legal issues

# Role of a family assembly or council



- Common in family enterprises
  - Often from 3rd generation
  - Discussion forum for the unity of the family as owners
  - Information to the family owners
- Family assembly
  - To bring together the family members annually to learn about and discuss the family business
- Family council
  - To set policy for the family ownership
  - E.g. policy about family employment in the company
  - For effective functioning: no more than 10 members
- When the company grows, these structures need to be updated
- **BOARD SETS POLICY FOR THE BUSINESS OPERATIONS**

# Board composition of a family enterprise



- Diverse composition of non-executive members with high expertise
- Representatives of the family
  - Major owner
  - New generation

# Example of a board of a family enterprise - a large company

KONE Corporation, [www.kone.com](http://www.kone.com)

- Elevators, escalators; 2013 net sales EUR 6.9 billion, 43000 employees
- Large cap listed company (NASDAQ OMX Helsinki)
- Mr A Herlin, chair, owner with controlling power (ca 62 % of votes)
- Mr J Herlin, vice-chair (son of A Herlin)
- Mr S Akiba, CEO of Toshiba
- Ms S Hämäläinen-Lindfors, former Governor of the Bank of Finland
- Mr M Alahuhta, CEO of Kone
- Ms A Brunila, Professor, Board Professional (top-level private and public sector experience)
- Mr R Kant, Vice-Chairman, Tata Motors
- Mr J Kaskeala, Admiral, retired Commander of the Defence Forces
- Ms S Pietikäinen, MEP
- Ms I Herlin, (b. 1989, daughter of A Herlin) - Deputy director

## **Audit committee**

J Herlin (Chairman), A Herlin, S Hämäläinen-Lindfors and A Brunila.

## **Nomination and Compensation Committee**

A Herlin (Chairman), J Herlin and J Kaskeala



# Thank you!

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