



The Firm and the Corporation (Comparative Corporate Governance)

Klaus Ilmonen, LL.D., LL.M. | 2020



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The background of the slide is a collage of office-related images. In the top left, a person is seated at a white conference table, wearing a floral patterned cardigan over a grey top. In the bottom left, a close-up shows a person's hand writing on a document, with a laptop, a remote control, and a smartphone nearby on the desk. On the right side, another person is seen writing on a notepad. The central text is overlaid on a white, angular shape that points towards the right.

The “Firm” and the “Corporation”

The "firm" and the "corporation"

- > The firm as a "nexus of contracts"
 - Agency theory and contracting
 - Jensen & Meckling
- > The "corporation"
 - Kraakman et al. (Legally defined)
 - Legal personality
 - Limited liability
 - Transferable shares
 - Delegated management / board structure
 - Investor ownership



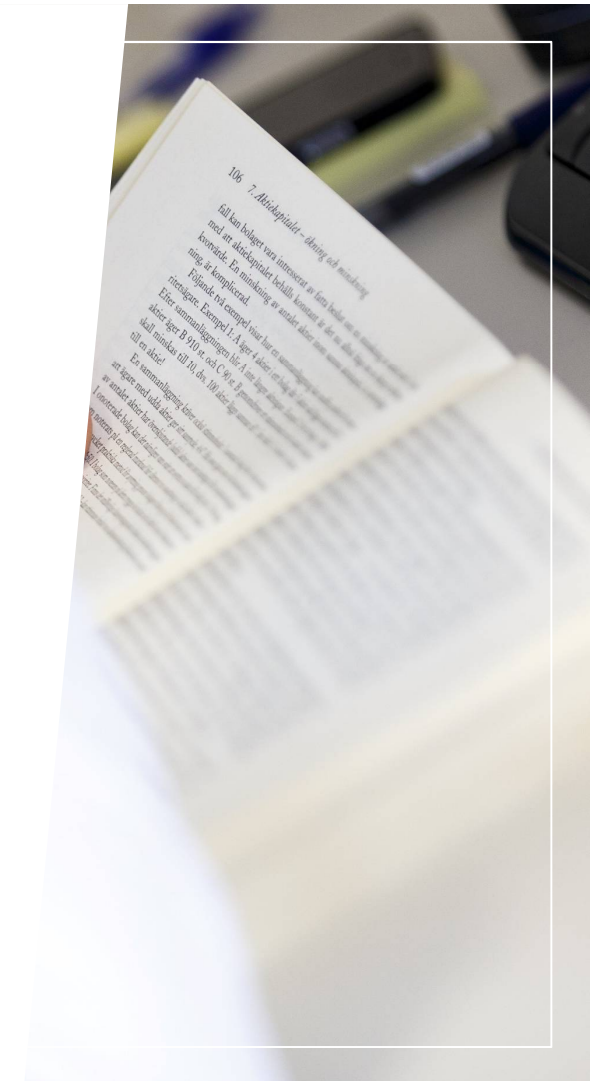
Corporate Governance

Finnish corporate law

- > Developed during the 20th century
- > Based on Nordic models
- > Traditionally "bank-friendly" / "owner-friendly"
 - Insolvency law
 - Creditor rights
 - Taxation of dividends
 - large shareholder power
 - GM and bd election process
 - A/B shares and taxation
- > "Recent" developments
 - Financial crisis (labour nothing to lose => increase of min. rights)
 - International investors => (Anglo-Saxon "CG forms" introduced)
 - EU => (stronger impact on small countries)

Legal Framework

- > Mandatory laws and regulations
 - Companies Act
 - Securities Markets Act
 - Accounting Act and Auditing Act
 - EU regulation and international recommendations (such as ESMA)
 - Decrees by the Ministry of Finance
 - FIN-FSA's regulations and guidelines
- > Other regulations
 - Rules of the Stock Exchange
 - Guidelines for Insiders
 - The Finnish Corporate Governance Code (2015)
 - The Helsinki Takeover Code (2014)
 - Company specific rules and regulations



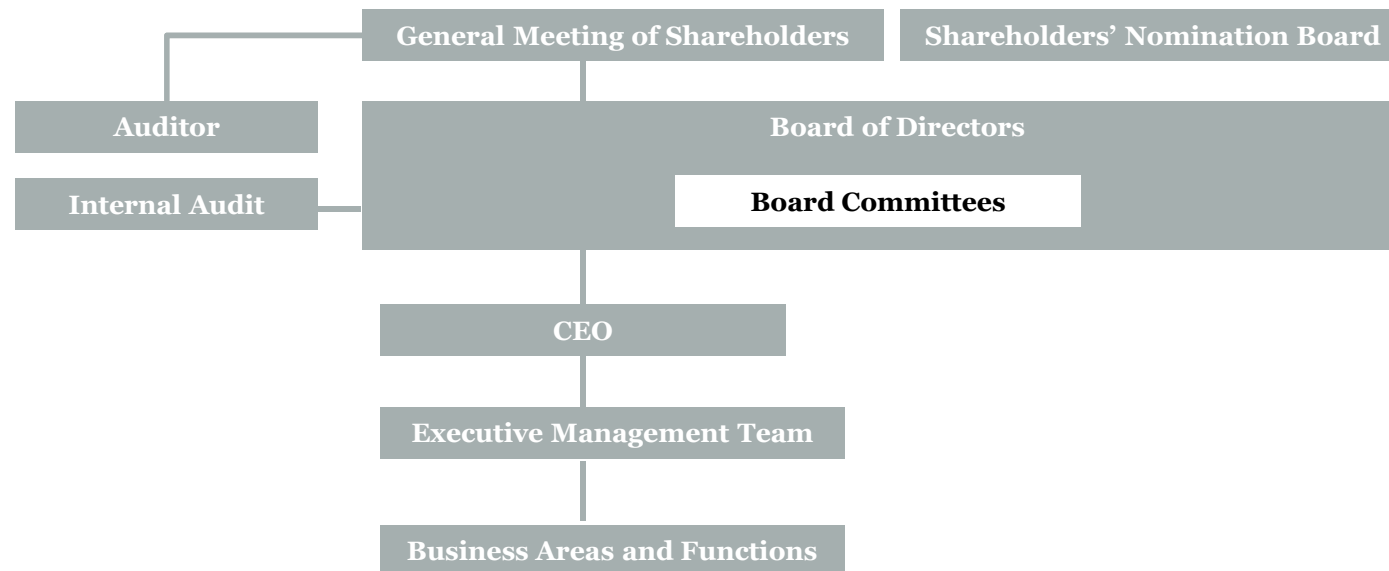
Key areas of corporate law for CG

- > Financial Structure and shareholder rights
 - Equity, debt, hybrids
- > Minority shareholder protection
 - Control rights vs. cash-flow rights
 - Related party transactions
- > Significant Corporate Changes
 - Articles
 - New shares
- > Change of Control
 - Takeovers
 - Mergers

Governance Structure

EXTERNAL STEERING INSTRUMENTS

Finnish Companies
Act, Accounting Act,
Securities Markets
Act and other
relevant legislation,
Stock Exchange
Rules and
Regulations



INTERNAL STEERING INSTRUMENTS

Articles of Association, Rules of Procedure of the Board of Directors, Committee Charters, Group policies such as Approval Policy, Disclosure Policy, Risk Management Policy, Code of Ethics, etc.

The background image is a composite of two photographs. The top photograph shows a bright window in a room, looking out onto a cityscape with various buildings. The bottom photograph shows a close-up of a library's bookshelves, filled with books. Some book spines are visible, including one with a blue and white architectural illustration and another with a dark cover featuring the text 'BORKUM RIFF'.

Shareholders

The general meeting of shareholders

- > Voting based on shareholdings
 - Share classes and vote cutters
- > Majority rules
 - Simple majority; qualified majority; consent
 - Basis for specific majority levels?
- > Matters decided
 - Election of the board
 - Changing articles of association
 - Dividends
 - Mergers and demergers
 - Liquidation

Position of Shareholders

- > Equal treatment principle can affect types of transactions possible
 - Pricing of securities offerings
 - Procedures for related party transactions (Finnish CG Code)
- > Conflicts of interest
 - Conflict rules apply only in relation to release of liability of board members and legal disputes
 - SHRD II restricts voting in certain (limited) related party transactions
- > Shareholder participation in general meetings
 - No minimum quorum requirements
 - Generally majority votes
 - Qualified majority in key corporate decisions
 - Change of articles, mergers and demergers, deviation from pre-emptive rights

A black and white photograph of a meeting table. In the upper half, a person's hand is visible, wearing a watch and resting on the table. In the lower half, a pen and some papers are visible on the table. The text "The Board of Directors" is overlaid in the center in a red serif font.

The Board of Directors

Duty of Care and duty of loyalty

- > General Principles of Finnish company law (CA Chapters 1 and 6)
 - Equal treatment of shareholders
 - Purpose of the corporation
 - Board duties
- > Duty of Care:
 - Board of directors to act carefully and skillfully
 - Special skills (e.g. financial, legal) can be taken into account
 - Directors must have informed themselves prior to making a business decision, of all material information reasonably available to them and relevant to their decision

Duty of Care and duty of loyalty

> Duty of Loyalty

- Duty to act in the best interests of the company and all of its shareholders
- Duty to act in accordance with the purpose of the company
 - Presumption is to generate profits for the shareholders
- General obligation of confidentiality (not limited to term)
 - No disclosure of confidential corporate matters
 - Criminal sanctions may apply

Conflicts of Interest

> Board members

- Cannot participate in matters directly involving the board member ("contract") or where personal interest is involved that conflicts with the interests of the company (CA 6:4)
 - Scope of strict conflict rule relatively narrow
- Avoid participation if there are "material connections" that could affect impartiality
 - Opinions and contracts of "related entity"
 - Typically arise in takeover situations

The CG Code (2015)

The Corporate Governance Code

- > 28 Recommendations for
 - General meetings
 - Board composition and administration
 - Committees
 - Management
 - Remuneration
 - Governance (internal control, risk management etc.)
- > Applied on a “comply-or-explain” basis
- > Reporting Requirements
 - CG Statement
 - Remuneration Policy

Key Board Related Governance Issues

- > The Composition of the Board of Directors (Recommendation 8 and 9)
 - Board to have sufficient size and competences
 - Board diversity to be considered
- > Evaluation of independence (Recommendation 10)
 - Independence of the Company
 - Independence of Major Shareholders
 - Overall evaluation
- > Right of Board of Directors to Receive Information (Recommendation 12)
 - Distribution of sufficient information on operations, operating environment, financial position; new Board members to be properly introduced to the operations
- > Performance Evaluation of the Board of Directors (Recommendation 13)
 - Annual evaluation of operations and working methods

Establishment of Committees (Recommendations 14 and 15)

- > Board to decide on the committee structure and composition (members and chairman)
- > Board to decide the main duties and operating principles of the committees in a written charter
- > Committees to report to the Board

Audit Committee (Recommendation 16)

- > Non-mandatory (if the statutory duties have been taken care of by other governing body)
- > Majority of the members to be independent from the Company and at least one member to be independent from Company's significant shareholders
- > No operative management
- > Expertise in accounting, bookkeeping or auditing
- > N.B. changes to Companies Act -> Audit Committee role and competence requirements accentuated

Other Committees

- > Remuneration Committee (Recommendation 17)
 - Prepare matters relating to:
 - Remuneration of the CEO and other executives
 - Remuneration principles
- > Nomination Committee (Recommendation 18a)
 - Preparation of appointment and remuneration of Board of Directors / management
- > Shareholders' Nomination Board (Recommendation 18b)
 - Alternative way to prepare the appointment and remuneration of the Board



Management

Management

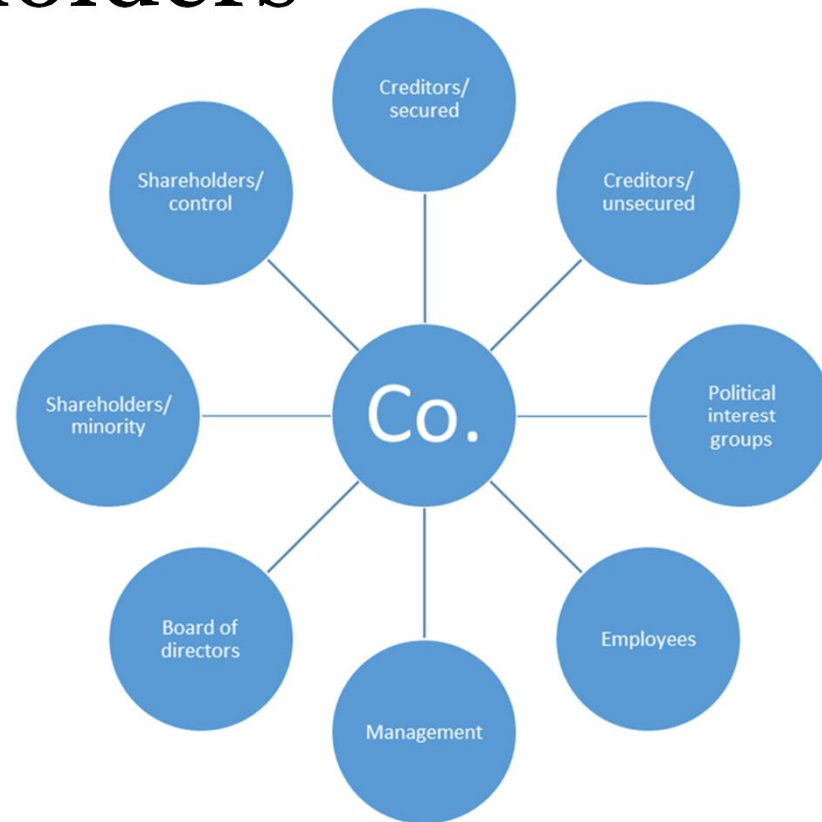
- > Management = CEO
 - CEO is a corporate organ for legal purposes
- > Manages day to day operations
- > Leads the management team
- > Typically appoints and dismisses key personnel
- > Reports to the board
- > Authority based on position and board authorization
 - Typically authorization matrix used



Corporate Stakeholders

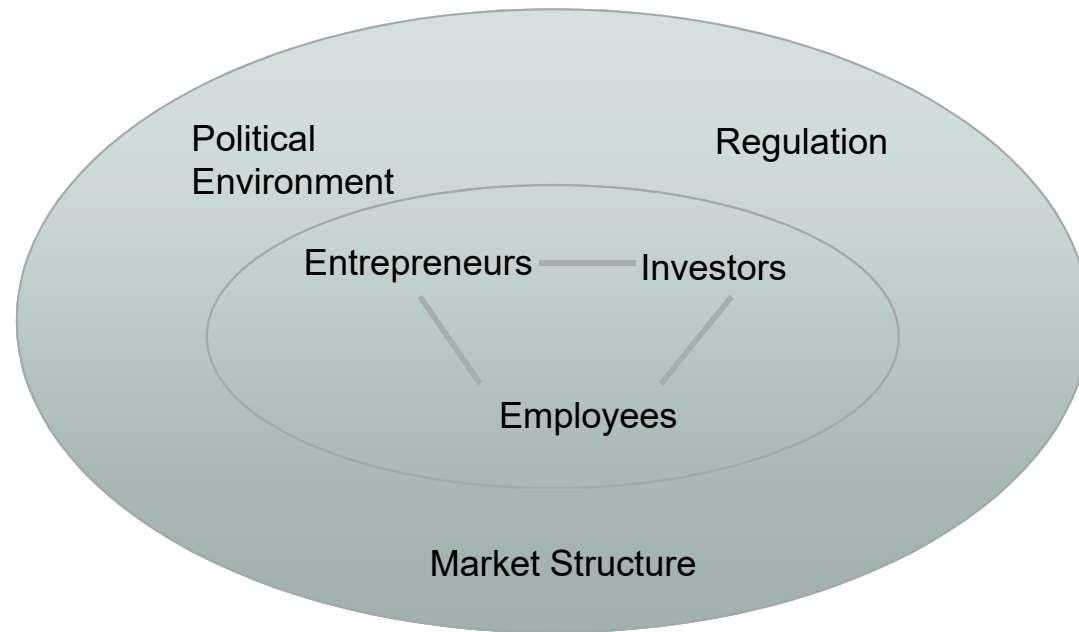
Corporate Stakeholders

- > Traditional:
 - Shareholders
 - Board and Top Management
 - Employees
- > Business:
 - Creditors
 - Suppliers
 - Customers
- > Politics:
 - Interest groups
 - Larger pol. constituencies
 - Pol. entrepreneurs



Approach to CG:

”Result of bargaining in a given institutional environment”



Thank you for your interest

Klaus Ilmonen

Doctor of Laws (U. of Helsinki)

LL.M. (Columbia Law School)

Visiting Researcher (HLS)

HANNES SNELLMAN