The Corporate Governance Review

Ninth Edition

Editor
Willem J L Calkoen

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THE CORPORATE GOVERNANCE REVIEW

NINTH EDITION

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PREFACE

I am proud to present this new edition of *The Corporate Governance Review* to you.

In this ninth edition, we can see that corporate governance is becoming a more vital and all-encompassing topic with each year that passes. We all realise that the modern corporation is one of the most ingenious concepts ever devised. Our lives are dominated by corporations. We eat and breathe through them, we travel with them, we are entertained by them, most of us work for them. Most corporations aim to add value to society, and they very often do. Some, however, are exploiting, polluting, poisoning and impoverishing us. A lot depends on the commitment, direction and aims of a corporation's founders, shareholders, boards and management, and employees. Do they show commitment to all stakeholders and to long-term shareholders, or mainly to short-term shareholders? There are many variations on the structure of corporations and boards within each country and between countries. All will agree that much depends on the personalities and commitment of the persons of influence in the corporation.

We see that everyone wants to be involved in better corporate governance: parliaments, governments, the European Commission, the US Securities and Exchange Commission (SEC), the Organisation for Economic Co-operation and Development (OECD), the UN's Ruggie reports, the media, supervising national banks, more and more shareholder activists and other stakeholders. The business world is getting more complex and overregulated, and there are more black swans, while good strategies can quite quickly become outdated. Most directors are working diligently, many with even more diligence. Nevertheless, there have been failures in some sectors, so trust has to be regained. How can directors do all their increasingly complex work and communicate with all the parties mentioned above?

What should executive directors know? What should non-executive directors know? What systems should they set up for better enterprise risk management? How can chairs create a balance against imperial CEOs? Can lead or senior directors create sufficient balance? Should most non-executive directors understand the business? How much time should they spend on their function? How independent must they be? What about diversity? Should their pay be lower? What are the stewardship responsibilities of shareholders? What are the pros and cons of shareholder rights plans and takeover defences?

Governments, the European Commission and the SEC are all pressing for more formal inflexible legislative acts, especially in the area of remuneration. Acts set minimum standards, while codes of best practice set aspirational standards. We see a large influence on norms by codes and influential investor groups.

More international investors, voting advisory associations and shareholder activists want to be involved in dialogue with boards about strategy, succession and income. Indeed, far-sighted boards have 'selected engagements' with stewardship shareholders to create trust.

What more can they do to show all stakeholders that they are improving their enterprises other than through setting a better tone from the top? Should they put big signs on their buildings emphasising integrity, stewardship and respect?

Interest in corporate governance has been increasing since 1992, when shareholder activists forced out the CEO at General Motors and the first corporate governance code – the Cadbury Code – was written. The OECD produced a model code, and many countries produced national versions along the lines of the Cadbury comply or explain model. This has generally led to more transparency, accountability, fairness and responsibility. However, there have been instances where CEOs have gradually amassed too much power, or companies have not developed new strategies and have produced bad results – and sometimes even failure. More are failing since the global financial crisis than previously, hence the increased outside interest in legislation, further supervision and new corporate governance codes for boards, and stewardship codes for shareholders and shareholder activists. The European Commission is developing a regulation for this area as well. Recently, we see that governments want to involve themselves in defending national companies against takeovers by foreign enterprises. We also see a strong movement of green investors, which often is well appreciated by directors. There is a move to corporate citizenship.

This all implies that executive and non-executive directors should work harder and more as a team on long-term policy, strategy, entrepreneurship and investment in R&D. More money is lost through lax or poor directorship than through mistakes. On the other hand, corporate risk management with new risks entering such as a digitalised world and cybercrime is an essential part of directors' responsibilities, as is the tone from the top. How can directors do their important work well without being petrified of attacks from shareholders, regulations and the press?

Each country has its own measures; however, the chapters of this book also show a convergence. Understanding differences leads to harmony. The concept underlying the book is of a one-volume text containing a series of reasonably short, but sufficiently detailed, jurisdictional overviews that permit convenient comparisons, where a quick first look at key issues would be helpful to general counsel and their clients.

My aim as editor has been to achieve a high quality of content so that *The Corporate Governance Review* will be seen as an essential reference work in our field. To meet the all-important content quality objective, it was a condition *sine qua non* to attract as contributors colleagues who are among the recognised leaders in the field of corporate governance law from each jurisdiction.

I thank all the contributors who helped with this project. I hope that this book will give the reader food for thought; you always learn about your own law and best practice by reading about the laws and practices of others. Further editions of this work will obviously benefit from the thoughts and suggestions of our readers. We will be extremely grateful to receive comments and proposals on how we might improve the next edition.

Willem J L Calkoen
NautaDutilh
Rotterdam
March 2019

Chapter 6

FINLAND

Klaus Ilmonen, Antti Kuha, Anniina Järvinen and Lauri Marjamäki[1]

I OVERVIEW OF GOVERNANCE REGIME

Finnish corporate governance is based primarily on the Finnish Companies Act.[2] The Companies Act regulates the governance of companies, such as the role of the board of directors, the managing director and the shareholders, as well as their duties and responsibilities. The Finnish Securities Markets Act[3] also plays an important role, governing for example disclosure and transparency issues of listed companies. Listed companies must also comply with the rules of Nasdaq Helsinki Ltd (the Helsinki Stock Exchange) as well as with the regulations and guidelines issued by the Finnish Financial Supervisory Authority (FIN-FSA). In addition to national laws, directly applicable EU legislation has an increasingly important role in regulating the governance of listed companies. The European Securities and Markets Authority (ESMA) also issues guidelines and technical standards for listed entities.

In addition, self-regulation is central to Finnish corporate governance. The Finnish Corporate Governance Code of 2015 (Code), issued by the Finnish Securities Market Association and applicable as of 1 January 2016, is the main regulation in this respect, together with the Helsinki Takeover Code (applicable as of 1 January 2014). Both codes are applied on a comply or explain basis.

Enforcement of regulations applicable to listed companies may be carried out by the FIN-FSA or the Helsinki Stock Exchange through disciplinary procedures. In addition, the law may be enforced through actions in local courts.

II CORPORATE LEADERSHIP

i Board structure and practices

Structure alternatives

A company can choose between having both a board of directors and a supervisory board, or just a board of directors. If the company has a supervisory board, this organ supervises the administration of the company, which in turn is the responsibility of the board of directors and the managing director. In early 2019, less than 4 per cent of Finnish listed companies featured supervisory boards. Boards of listed companies typically consist of five to 10 members.

1 Klaus Ilmonen is a partner, Antti Kuha and Anniina Järvinen are managing associates and Lauri Marjamäki is an associate at Hannes Snellman Attorneys Ltd.

2 Finnish Companies Act (624/2006, as amended).

3 Finnish Securities Markets Act (746/2012, as amended).

Legal responsibilities of the board

The board is responsible for the overall management of a company's affairs and the appropriate organisation of its operations. The board is also responsible for ensuring adequate surveillance of the company's accounts and finances, as well as for several administrative decisions specified in the Companies Act. A key task of the board is the appointment and dismissal of the managing director (the chief executive), who in turn is responsible for the executive management of the day-to-day operations and financial matters. Board members and the managing director have a general duty to act with due care and in the interest of the company in all matters.

The chair of the board is responsible for convening the board, but does not otherwise have specific statutory duties beyond those of ordinary board members.

Decision-making and representation

The board shall take all the major decisions affecting the company. The specific limits of the board's general competence in relation to the authority of the managing director can depend on the size of the company and its established governance practices. In addition, the board has certain administrative responsibilities that cannot be delegated, such as in relation to the registration of new shares.

In individual cases, the board may make a decision in a matter falling under the competence of the managing director. The board may also submit a matter falling under its general competence to the general meeting to decide. In listed companies, the latter option has at times been used when approving significant acquisitions or divestments.

The board takes all its decisions as a whole, and its decision-making power may not be delegated to the managing director or board subcommittees. The board can, however, authorise the executive management or another party to, for example, negotiate, finalise and execute within set parameters the final decision concerning a particular matter. Typically, such authorisations are in force only for a limited period.

A distinction is made in the Companies Act between decision-making authority and the right to represent a company. By law, the board as a whole is entitled to represent the company in all matters. In practice, the articles typically provide that, for example, the managing director or the chair, each alone, as well as two board members or other designated representatives together, can represent the company.

Board committees

Efficient organisation of the board's work may require the establishment of board committees to handle certain matters. The Code includes a description and division of tasks for audit, compensation and nomination committees. Following the implementation of the Audit Directive and Regulation,[4] the Companies Act explicitly recognises the preparatory role of the audit committee in listed companies. However, the board as a whole is responsible for the eventual decisions even when the board has delegated preparatory responsibilities to committees.

The board of a listed company is required to monitor the company's financial reporting process as well as the effectiveness of its internal control, audit and risk management systems.

4 Directive 2014/56/EU of 16 April 2014 amending Directive 2006/43/EC and Regulation (EU) No. 537/2014 of 16 April 2014, respectively.

The board is also responsible for the proposal of the selection of a statutory auditor and adequate rotation of audit firms and responsible auditors. In addition, the board must review and monitor the independence of the auditor and, particularly, the provision of non-audit services to the audited entity. The preparatory work for discharging these responsibilities can be delegated to the board's audit committee. The Companies Act requires that the audit committee of a listed company consists of non-executive board members, and that at least one member of the audit committee has competence in accounting or auditing. Another board committee may be tasked with the aforementioned duties provided that its composition meets the qualification requirements set for the audit committee.

Remuneration of directors and executive management

The remuneration of board members and the basis for its determination are set by the annual general meeting. The Code recommends that non-executive directors should not participate in share-based incentive schemes. The remuneration for the executive management is set by the board. The board may establish a remuneration committee to prepare matters pertaining to management and employee remuneration.

According to the Code, a company shall issue on its website a regularly updated remuneration statement containing a description of remuneration within the company. The statement describes the financial benefits granted to the board and the managing director, and contains information on the decision-making process and key principles for determining remuneration.

Board and company practice in takeovers (takeover defences, share issuance and repurchase, etc.)

As in all other matters, the board has a general duty in takeover situations to act with due care in the interest of the shareholders. According to the Securities Markets Act, a listed company must directly or indirectly belong to a body that has issued a recommendation on takeover situations. For this purpose, the Finnish Securities Market Association has issued the Helsinki Takeover Code, which is based on the comply or explain principle and contains recommendations on the actions of the target board and the bidder. With regard to defensive measures adopted in relation to a proposed takeover, the Securities Markets Act requires that a share issue or any other measure by the target company that may prevent or materially hamper the completion of the bid must, as a general rule, be resolved upon by the general meeting.

The articles of association of some listed Finnish companies feature provisions that may act as *a priori* takeover defences, such as differentiated shares classes or vote cutters that limit the number of votes that any one shareholder can cast. Some listed companies also feature in their articles a Finnish version of a poison pill, which provides for a mandatory redemption by the bidder of the other shares upon exceeding a set threshold (typically one-third or half of all shares or votes) at a price determined as specified in the articles.

ii Directors

Appointment, nomination and term of office

The annual general meeting typically elects all the directors. However, fewer than half of the board members can be appointed in some other manner if so specified in the articles. In listed companies, the term of a director generally ends with the conclusion of the next annual general meeting following appointment. The party eligible to appoint a director also has the power to dismiss that director during his or her term of office. The prevailing practice, as recommended by the Code, is to have all board seats up for election each year. The number of a director's terms has not been limited by legislation or in the Code.

The nomination of director candidates is often handled by the board, with the board's nomination committee undertaking the preparatory work. However, in recent years the establishment of an external nomination board has become more commonplace. A nomination board typically consists of representatives of the largest shareholders and often includes the chair of the board as an expert member. In early 2019, around 37 per cent of listed companies had established a nomination board.

In addition to the above-mentioned formalised nomination procedures, any shareholder can present a competing proposal on director nomination in the general meeting.

Competency and diversity

The Companies Act provides the minimum requirements that all board members must fulfil: a director must be an adult natural person who is not bankrupt or under guardianship and whose legal competency has not been restricted. The Code recommends that a majority of the directors shall be independent of the company, and that out of this majority at least two directors shall be independent of significant shareholders. The Code recommends that the managing director should not be elected the chair of the board. There is no statutory duty to include employee representatives in the board, and such representatives are very rare in listed companies.

The Code recommends that both genders should be represented on the board. According to a survey published in 2018, 98 per cent of the boards of Finnish listed companies featured both genders, with women constituting 29 per cent of all directors.

Legal duties and right to information

The boards of Finnish listed companies are typically composed of non-executive directors. In some companies the managing director is also a board member, but other executive directors are rare. Finnish corporate law does not generally make a distinction between executive and non-executive directors in terms of their rights, duties or liability.

According to the Code, the company shall provide the board with sufficient information for the board to discharge its duties. The board has generally broad authority to require executive management to compile and prepare information to form a basis for the board's decision-making and the discharging of its supervisory duties. Executive and non-executive directors have the same right to information. It is considered good practice to ensure that in particular the chair of the board is always kept well informed of any new developments, as the chair is responsible for convening the board when necessary.

Although the board has the authority to request information from the management and employees in relation to its supervisory role, it is considered good practice to organise such information gathering in a formalised and coordinated fashion.

Conflicts of interest

The Companies Act prohibits a director from participating in the consideration pertaining to a contract, a transaction or legal proceedings between that director and the company. Such participation is also prohibited in a matter between the company and a third party if the director is to derive a material benefit therefrom that may be contrary to the interests of the company. The fact that a director may derive benefit from a decision as a shareholder of the company does not, by itself, result in a conflict of interest.

Each director must in all matters independently evaluate whether a conflict of interests is at hand. Directors should also provide the board with the relevant information to assess the situation if the director in question ultimately deems himself or herself as not conflicted despite factors that can generally indicate a possible conflict of interest. In practice, directors sometimes excuse themselves from participating in relation to matters where an outside influence or interest could be perceived to exist regardless of whether it would meet the statutory definition of a conflict.

Liability

The Companies Act provides for remedies when a board member has failed to fulfil his or her duties or tasks, including the general duty of care. A director is liable for damages for any loss that he or she has negligently caused to a company in violation of the general duty of care. A director is also liable to a company, a shareholder or a third party for damage caused either deliberately or negligently in violation of the provisions of the Companies Act (other than just the duty of care) or the company's articles of association.

Generally, the burden of proof lies on the person claiming a breach and loss. However, there is a presumption of negligence in cases of a violation of a detailed provision of the Companies Act (i.e., other than the general principles) or of the articles of association, as well as in relation to an act to the benefit of a related party, in which case the director in question must prove that he or she acted with due care.

The provision of directors and officers (D&O) insurance paid by a company to cover non-criminal liability of board members or executive officers is allowed. D&O insurance is commonly used in listed companies.

The Companies Act also provides criminal sanctions for the violation of certain of its provisions, such as concerning the distribution of funds and with regard to voting limitations. Actions of directors in this capacity may also result in criminal liability under, for example, the Finnish Penal Code.[5]

III DISCLOSURE

i General

The EU Market Abuse Regulation (MAR)[6] sets out the principal rules for issuers' disclosure requirements, administration of inside information and managers' transactions, among other things.

The MAR requires issuers to publicly disclose inside information concerning them as soon as possible. Under the MAR, information is deemed to be inside information if it is of a precise nature and has not been made public; it relates, directly or indirectly, to one

5 Finnish Penal Code (39/1889).

6 Regulation (EU) No. 596/2014 of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

or more issuers or to one or more financial instruments; and were it to be made public, the information would be likely to have a significant effect on the prices of those financial instruments, or on the price of related derivative instruments.

Information is precise in nature if it is specific enough to enable a conclusion as to the possible effect of the event or circumstance on the price of the relevant financial instrument. In a lengthy process such as negotiations or corporate investments, information concerning intermediate steps in the process, such as the stage of negotiations, may also be deemed precise information and constitute inside information.

The MAR allows issuers to delay the disclosure of inside information if immediate disclosure is likely to prejudice the legitimate interests of the company, the delay is not likely to mislead the public and the company is able to ensure the confidentiality of the information. Issuers are required to record reasons for delaying the disclosure and, upon the disclosure of the inside information, to notify the FIN-FSA that the disclosure was delayed.

The Securities Markets Act and related government decrees set out requirements for listed companies' disclosure obligations in relation to regular financial reporting and the disclosure of non-financial information. To promote consistency in disclosures, listed companies are recommended to prepare a written disclosure policy, specifying the company's guidelines and procedures applied in communicating with the capital markets and investors. Further regulations related to disclosure obligations are set forth in the rules of the Helsinki Stock Exchange and the regulations and guidelines of the FIN-FSA and ESMA.

Pursuant to the MAR, listed companies have an obligation to maintain insider registers of persons having access to inside information. Unlawful disclosure of inside information is prohibited. Engaging or attempting to engage in insider dealing, recommending that another person engage in insider dealing, and inducing another person to engage in insider dealing, are also prohibited. Unlawful disclosure of inside information (such as tipping) is criminalised in the Penal Code and may result in imprisonment for up to two years. The Helsinki Stock Exchange has issued guidelines regarding the management of insider issues, as well as the procedures regarding disclosure requirements applicable to insiders and the trading of securities by insiders.

The MAR requires transactions by issuer's managers and persons closely associated with them to be notified promptly (and no later than three business days after the date of the transaction) to the issuer and the FIN-FSA. The issuer shall then make the information public. The threshold for the notification is €5,000 within a calendar year for each person. Once the threshold has been reached, all further transactions in the issuer's financial instruments must be notified and published.

The Securities Markets Act requires that listed companies disclose a yearly corporate governance statement in which the company shall present information on its governance framework and corporate bodies, and state its compliance with the Code. If the company chooses to deviate from a certain provision of the Code, it must state its reasons for doing so (the comply or explain principle). Moreover, the company shall keep available a remuneration statement with full disclosure at the individual level of the remuneration of the board members and the managing director. With regard to other executives, disclosure of the main principles for remuneration and the related decision-making process is sufficient.

Both the Companies Act and the Securities Markets Act require that certain disclosed information is kept available on a company's website. The Code also includes more detailed guidance on publishing the information in an easy-to-find, investor-friendly manner. All information published under the regulatory disclosure requirements shall be disseminated to the media and the release storage of the stock exchange, and kept available on the company's website for at least five years. However, the financial statements, half-yearly financial reports and corporate governance statements shall be kept available on the website for at least 10 years.

ii Financial reporting and accountability

Listed companies shall prepare annual financial statements and reports by the board of directors as well as an interim report for the first six months of the financial year. The consolidated financial statements shall be prepared in compliance with international financial reporting standards (IFRS). Pursuant to the amended Transparency Directive,[7] implemented in Finnish legislation in November 2015, listed companies are not required to publish quarterly financial information for the first three and nine months of the financial year. However, most listed companies have continued publishing financial information on a quarterly basis.

Financial statements must be published within four months of the end of the financial year and at the latest three weeks before the annual general meeting. In addition, a financial statement release, as required by the rules of the Helsinki Stock Exchange, must be published within three months of the end of the financial year. The financial statement release shall contain the material contents of the financial statements.

Listed companies are required to publish their future prospects in a report by the board of directors once a year. However, most Finnish listed companies have also chosen to include their future prospects in the interim reports and the financial statement release. The FIN-FSA has emphasised that future prospects should be presented together with relevant analysis and linked to risks and uncertainties that may prevent these prospects from being realised. The description of risks and uncertainties should cover company-specific issues associated in particular with a company's business, industry and operating environment. If it becomes likely that a company's financial performance will differ materially from its previously disclosed future prospects, a profit warning shall be issued without undue delay.

According to the Securities Markets Act, the FIN-FSA may impose a penalty payment for any failure to comply with the ongoing disclosure obligation, disclosure of periodic information and publication and storage of regulated information. A breach of the disclosure obligations set forth in the Securities Markets Act may also result in criminal sanctions under the Penal Code.

iii Auditors

Listed companies must appoint at least one auditor or an audit firm approved by the Finnish Patent and Registration Office. The length of an engagement of a particular auditor or audit firm may not exceed 10 years. As an exception, the engagement may last longer provided a public tender process for the statutory audit is conducted in compliance with the Audit Regulation.[8] In addition to the auditor's report, an auditor of a listed company shall submit annually to the company's audit committee an additional report including confirmation of his or her independence and a notification regarding engagements other than the statutory audit performed for the company. The additional report shall also include detailed information on the audit process and measures applied.

7 Directive 2013/50/EU of 22 October 2013 amending Directive 2004/109/EC.

8 Regulation (EU) No. 537/2014 of 16 April 2014.

Provision of non-audit services for listed companies by their auditors and audit firms is restricted; for example, the provision of services that involve the management or decision-making body of the audited entity, or bookkeeping and the preparation of accounting records and financial statements for the audited entity, are prohibited. Furthermore, the total fees for non-audit services by the auditor or the audit firm are limited to no more than 70 per cent of the average of the fees paid for the statutory audits of the audited entity in the most recent three consecutive financial years. According to the Code, the company shall disclose the fees paid to the auditor during the financial year, separating fees paid for non-audit services.

IV CORPORATE RESPONSIBILITY

The Code sets out the main responsibilities of the board of directors relating to internal control and risk management. According to the Code, the board shall ensure that the company defines the operating principles of internal control and shall monitor the functioning of that control. The Code further provides that the company shall disclose the major risks and uncertainties that the board is aware of and the principles along which the risk management of the company is organised. The company shall also disclose the manner in which the internal audit function of the company is organised.

In addition to audit committees, it is also becoming more common to have separate compliance functions in listed companies. In recent years, some listed companies have also established responsibility and ethics committees.

Corporate social responsibility reporting is relatively common, and many Finnish companies use report formats such as those of the Global Reporting Initiative, an international independent standards organisation. Pursuant to the EU Directive on non-financial reporting,[9] large listed companies are required to disclose their policies, risks and actions with regard to, for example, environmental matters, social and employee-related aspects, human rights matters, and anticorruption and bribery issues. The corporate governance statement of a listed company must include a description of the applicable policies regarding diversity, including gender balance and the educational background of board members.

Furthermore, the MAR requires that listed companies set up appropriate whistle-blowing procedures in line with existing rules applicable to financial institutions.

V SHAREHOLDERS

i Shareholder rights and powers

Shareholders exercise their decision-making powers and participate in the supervision and control of the company through general meetings. The most significant share-related rights include the right to vote in a general meeting, the right to submit a matter to the general meeting and the right to ask questions at a general meeting.

9 Directive 2014/95/EU of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

Usually, the general meeting convenes once a year in the annual general meeting. An extraordinary general meeting may be convened if the board of directors deems it necessary, if shareholders with at least 10 per cent of the shares so demand in writing, or if this is otherwise required by law.

Finnish law does not provide for special rights for long-term shareholders, such as extra votes or extra dividend rights.

The transposition of the Second Shareholders' Rights Directive (SHRD II)[10] into national law will bring about major amendments to the existing corporate law regime regarding shareholders' rights. The legislative changes relating to SHRD II are pending in the Finnish Parliament as of February 2019, and the final form of the national rules is still uncertain.

Matters to be brought to the general meeting

The general meeting decides on matters falling within its competence pursuant to the Companies Act and the company's articles of association. Unanimous shareholders may also make decisions on matters falling within the competence of the board of directors or the managing director of the company unless otherwise explicitly specified in the Companies Act.

Matters that, according to the applicable law, shall be decided upon by the general meeting include the election of board members and determining their compensation, the election of the auditor of the company and the amendment of the company's articles of association. In addition, all decisions relating to the shares or share capital of the company shall be approved by the general meeting, including share repurchases, share issues and issues of rights entitling the holder to shares. However, the general meeting may authorise the board of directors to decide on a share issue, a repurchase of the company's own shares or an issue of special rights entitling the holder to shares. Such an authorisation must specify the maximum number of shares that may be issued and, in the case of share repurchases, the price range for the repurchase. The board of directors may be authorised to decide upon all the other conditions. Dividend distributions shall also be decided upon by the general meeting, the dividend distribution being limited to the proposal made by the board of directors. However, shareholders holding at least 10 per cent of the shares in the company may request the payment of a minimum dividend corresponding to half of the profits of the financial year but not more than 8 per cent of the equity of the company. The general meeting shall also resolve upon certain corporate restructurings, such as mergers and demergers as well as the dissolution of the company.

Decision-making at the general meeting

Each shareholder has the right to participate in a general meeting and to cast votes at the meeting provided they have complied with the applicable prior registration proceedings as instructed in the meeting notice. Shares with multiple voting rights or differing dividend rights are permitted, as are shares that do not have any voting rights. Some Finnish listed companies have share classes with multiple voting rights.

10 Directive (EU) 2017/828 of the European Parliament and of the Council of amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

Resolutions by a general meeting usually require a majority of the votes cast. However, certain resolutions require a qualified majority of at least two thirds of votes cast and shares represented at the meeting.

Decisions requiring a qualified majority in a listed company include:

a amendment of the articles of association;
b directed share issues;
c issuing option rights and other special rights entitling to shares;
d acquisition and redemption of own shares;
e mergers and demergers; and
f a decision to enter into liquidation or terminate a liquidation procedure.

Foreign shareholders commonly use proxy voting to participate in general meetings of Finnish listed companies, and the recommendations given by proxy advisers have during recent years become more relevant for listed companies with a large number of foreign shareholders.

Dissenting shareholders

Dissenting shareholders may require that a vote be passed on a matter under consideration by the general meeting. The key rights of a shareholder include the right to have matters submitted to the general meeting and the right to ask questions at the general meeting.

Objecting to a decision by the general meeting

Shareholders may object to a decision by the general meeting by bringing an action against the company if a procedural provision of the Companies Act or the articles of association has been breached. Furthermore, the breach would need to have had an effect on the contents of the decision or the rights of a shareholder, or otherwise be contrary to the Companies Act or the articles of association. An action based on the breach must be brought within three months of the decision.

In addition, a decision by the general meeting may be deemed void irrespective of time limits if there has been a grave breach of the law. Examples include situations where provisions regarding the notice to a general meeting have been materially breached or where adopted decisions are clearly in breach of the principle of equal treatment of shareholders.

Board decisions are not subject to shareholder approval. However, the board may transfer matters in its decision-making power for resolution by the general meeting. A shareholder cannot contest a board decision unless the decision is based on an authorisation by the general meeting, such as with regard to a share issue.

ii Shareholders' duties and responsibilities

Protection of minority rights

The principle of equal treatment prohibits any corporate body, including the general meeting, from making decisions giving an undue advantage to some shareholders or other persons at the expense of other shareholders or the company. The minority may also force certain decisions, such as requiring the distribution of a minimum dividend out of the company's recorded profits.

Controlling shareholders and institutional investors

Traditionally, neither Finnish legislation nor self-regulation specifically regulate controlling shareholders or institutional investors, or establish any particular duties for them. However, there is a general obligation to launch a takeover bid when a shareholder's ownership exceeds certain levels (30 or 50 per cent of the voting rights in the company). There is also an obligation to redeem all the minority shares when a shareholder holds more than 90 per cent of all the shares and voting rights in the company. SHRD II introduces certain transparency requirements for institutional investors and asset managers regarding, for example, their investment strategies and engagement policies. The transposition of SHRD II is currently under preparation in Finland, and will have to be completed by June 2019.

A shareholder of a Finnish company is liable for damages only if he or she has through a wilful or negligent act or omission violated the Companies Act or the articles of association.

Say on pay

The general meeting decides on the remuneration payable for the board and committee work as well as on the basis for its determination. The board of directors decides on the remuneration and other compensation payable to the managing director.

SHRD II will introduce a say-on-pay framework consisting of two principal elements: the remuneration policy and the remuneration report. The remuneration policy will describe the general remuneration principles regarding directors and officers, provide details of the different forms of remuneration and explain how the policy contributes to the company's strategy. The remuneration policy will be subject to a shareholder vote (either binding or advisory, as adopted by each Member State) regarding any material amendment and, in any case, at least every four years. The remuneration policy will be binding except in unusual circumstances, provided the remuneration policy specifies the limits and procedures for any deviation therefrom. The remuneration report will provide information on remuneration during the most recently ended financial year, and will also be subject to a shareholder vote (either binding or advisory, as adopted by each Member State).

iii Shareholder activism

Shareholder activism has been fairly moderate in Finland. However, there is a growing tendency, especially among institutional investors, to take a more active role. SHRD II will require institutional investors to publish their engagement policies and report on their implementation, as well as to publish the main elements of their equity investment strategies.

Except for the statutory provisions relating to shareholder liability, shareholders are not *per se* governed by any code or other corresponding regulation.

iv Takeover defences

Shareholder and voting rights plans

In Finland, a company may have different share classes that may grant different voting rights in the general meeting. The general meeting of the company may resolve to amend the company's articles of association and set up dual-class stock. However, such resolutions are usually made before the admission of the company's shares to public trading because of applicable qualified majority requirements.

White-knight defence[11]

The board has a general duty to act in the best interest of the company and its shareholders. According to the preparatory works of the Companies Act, in a takeover bid situation, seeking the best possible outcome for the shareholders means that the board shall undertake the measures needed to achieve as good a bid as possible.

Pursuant to the Helsinki Takeover Code, if the board of a target company is contacted with the purpose of proposing a takeover bid and the board considers the contact serious, the board shall evaluate which measures may be required to secure the interests of the shareholders.

The board of the target company may also seek competing bids, and this may, in certain situations, reflect required prudence in a takeover situation. There is, however, no specific obligation to seek a competing bid. If a potential alternative offeror is known to the board, it would, for example, be justified for the board to consider whether it would be in the interest of the shareholders to approach that other party.

Staggered boards

In a Finnish listed company, the term of a board member usually ends with the conclusion of the next annual general meeting following his or her appointment. The general meeting may also dismiss board members elected by the shareholders at any time during their term of office.

Staggered boards are generally deemed to have limited use in Finland. Pursuant to the Companies Act, it is possible to stipulate in a company's articles of association that board members have longer terms than are set forth in the default rule under the Companies Act. The Code recommends that the board shall be elected annually at the annual general meeting.

v Contact with shareholders

As described in Section III, Finnish listed companies are subject to, among others, MAR's disclosure requirements. Shareholders also receive information on all matters proposed to be decided upon by the general meeting. The notice to a general meeting shall include information on the decisions proposed to be taken. Shareholders also have the right to ask questions at the general meeting, and in practice often do so.

The company may generally contact individual shareholders as long as the contact is in the interest of the company and in accordance with the principle of equal treatment. Such situations may include planned share issues or other corporate restructurings. In such instances, the company would have to have adequate confidentiality arrangements and market sounding practices in place.

Large shareholders acting together will have to observe the rules relating to acting in concert that may trigger an obligation to launch a public takeover bid if the joint holding of shareholders acting in concert would exceed 30 or 50 per cent of all votes.

11 The white-knight defence relates to a situation where a third party (the white knight) acquires a target company that is being taken over by a party deemed hostile by the target company management.

VI OUTLOOK

There is an increasing focus on corporate governance in Finland and an interest in complying with best practices. Efforts have been made to develop uniform corporate governance practices for listed companies through self-regulation. The Code, which is being reviewed in 2019 for various reasons, including the transposition of SHRD II, and the Helsinki Takeover Code also provide a framework for best practices in corporate governance in general.

The ownership structure of many Finnish listed companies remains relatively concentrated. The transposition of SHRD II in 2019 will introduce additional requirements regarding corporate decisions on related-party transactions. While the implementation is not expected to alter the current allocation of corporate powers between the general meeting and the board of directors, additional rules to control conflicts of interests in decision-making will be introduced for listed companies.

Appendix 1

ABOUT THE AUTHORS

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Klaus Ilmonen is a partner at Hannes Snellman working with transactions involving public corporations. He has considerable experience in public takeovers, as well as in equity capital markets transactions. Klaus also works with governance and regulatory matters of public corporations.

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