Equitable treatment of non-Government shareholders

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Finnish Perspectives

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BASIC RULE IN FINNISH LIMITED LIABILITY COMPANIES ACT:

• Part I, Chapter 1, Section 7 – Equal treatment
• “All shares shall carry the same rights in the company, unless it is otherwise provided for in the Articles of Association. The General Meeting, the Board of Directors, the Managing Director or the Supervisory Board shall not make decisions or take other measures that are conducive to conferring an undue benefit to a Shareholder or another person at the expense of the Company or another Shareholder.”
DECISIONMAKING 1.

- Not a challenge with SOE:s in Finland
- Principles of Ownership Steering:
  - The State exercises its power as Shareholder in General Meetings only
  - Most Boardmembers are external experts, independent from Shareholders
    - must, by law, act in the best interest of the Company and all Shareholders
  - Independent Management
DECISIONMAKING 2.

- Corporate Governance Code for Listed Companies
  - also widely used by non-listed Companies with several Shareholders
    - All operational decisions “at arm’s length”
- Public procurements strongly regulated
  - EU directives
  - domestic regulation
- State aid?
- Media control
  - public
  - politicians
INFORMATION 1.

• The Company Law does not require, that all Shareholders would have access to the same, complete information
  • fair but impossible

• Law on Securities Trading and Rules of Stock Exchange
  • All essential information disseminated by listed companies by public press releases through the Stock Exchange
  • Administration of insider information strongly regulated
  • Undue dissemination and misuse of insider information forbidden and criminalised
INFORMATION 2.

• However, big owners often know better
  • In practice it is beneficial, that the Management seeks in advance the opinion of major Shareholders in matters that are finally to be decided at the AGM
  • Messages to the Ownership Steering are to be delivered by the Chairman or the CEO
  • We do not listen to individual Board Members or other members of the Management
  • This rule included in the Government’s Decision in Principle concerning Ownership Steering
  • Insider information, if any, is dealt with in a very formal way strictly abiding to the Law
STRATEGIC INTERESTS

• The Government has declared in public that there is a strategic interest in the State ownership of a group of Companies
  • 16 all in all, 3 listed, 13 non-listed
  • State ownership in most cases > 50 %
  • Energy, basic services, air transport, defence
  • Security of Supply

• Government’s Decision in Principle concerning Ownership Steering:
  • Should the Government impose a special task or any sort of operational or economical burden to any such Company
    • this task or other burden has to be precisely defined,
    • its economical value must be assessed
    • the Company and the Government must agree on the compensation
  • This rule has never been applied in practice
IMPACT OF NON-GOVERNMENT SHAREHOLDERS?

• DO SHAREHOLDERS REALLY MATTER ON
  • PERFORMANCE?
  • CORPORATE GOVERNANCE?
SHAREHOLDERS:

- APPROVE ANNUAL ACCOUNTS
- RELEASE DIRECTORS FROM RESPONSIBILITY
- DECIDE ON DIVIDENDS
- REGULATE BOARD MEMBERS’ REMUNERATION
- APPOINT AUDITORS
- APPOINT BOARD MEMBERS
  - BOARD MEMBERS, THEY DO MATTER
- FROM TIME TO TIME SPEAK TO THE COMPANY
- SUPPORT THE MANAGEMENT
STATE IS ALWAYS A SPECIAL SHAREHOLDER

- BIG
- POWERFUL
- “OMNIPOTENT”
- RESPONSIBLE TO TAXPAYERS
- RESPONSIBLE TO POLITICAL DECISIONMAKERS
- RESPONSIBLE TO MEDIA
- PART OF BUDGET ECONOMY – CANNOT CHANGE POSITION
- NEEDS A REASON TO BE SHAREHOLDER
- MAY HAVE SECONDARY POLICIES/OBJECTIVES
WHICH TYPE IS THE OTHER SHAREHOLDER

- INSTITUTIONAL INVESTOR
- PRIVATE EQUITY
- INDUSTRIAL PARTNER
OBJECTIVES OF THE OTHER SHAREHOLDER

- DIVIDEND YIELD
- VALUE ADDED
- TECHNOLOGICAL DEVELOPMENT
- INDUSTRIAL RESTRUCTURING
- COMMERCIAL BENEFITS
  - CONFLICT OF INTEREST?
- SUCCESSFUL EXIT
DO THE OBJECTIVES OF THE SHAREHOLDERS COINCIDE WELL

SHAREHOLDERS’ AGREEMENT

• COMMON OBJECTIVES – BASIC STRATEGY OF COMPANY
• COMPOSITION OF BOARD
• QUALIFIED MAJORITY
  • AGM
  • BOARD
• DIVIDEND POLICY
• EXIT
• DEAD LOCK SITUATIONS
  • PUT/CALL OPTIONS?
• PRE-EMPTIVE RIGHTS
• TAG ALONG – RIGHTS
• CONFIDENTIALITY
• LOYALTY/NON-COMPETITION
• SETTLEMENT OF DISPUTES
THREE FINNISH CASES

1. PATRIA OYJ
INDUSTRY: DEFENCE MATERIEL
SALES: € 530 mio
PERSONNEL: 2 800
OWNERSHIP: STATE 73.2 %
           EADS N.V. 26.8 %
LISTED: NO
SHAREHOLDERS’ AGREEMENT: YES
BOARD COMPOSITION: 6 = 4 + 2 (FORMERLY 9 = 6 + 3)
EXPERIENCES:

• **Business case:**
  - Technological cooperation both ways
  - Commercial cooperation useful to Patria
    - International credibility
    - Conflict with EADS’s many businesses
    - For EADS gateway to Finnish Defence Forces

• **Board work:**
  - Good cooperation
  - EADS people experts – challenging for State nominees
  - Language
  - Distance
THREE FINNISH CASES

2. VAPO OY

INDUSTRY: ENERGY (ALTERNATIVE FUELS, PEAT, WOOD, ELECTRICITY, HEAT, SAWMILLS)

SALES: € 630 mio
PERSONNEL: 1 800
OWNERSHIP: STATE 50.1 %
METSALIITTO COOPERATIVE 49.9 %

LISTED: NO
SHAREHOLDERS’ AGREEMENT: YES
BOARD COMPOSITION: 6 = 3 + 3
EXPERIENCES:

- **Business case:**
  - Original intention to find competitive advantages to both Metsäliitto and Vapo
  - Resulting in value added also for the State
  - Shareholders Agreement important
  - Advantages not reached + Metsäliitto in to financial problems
  - Metsäliitto will sell its Shares

- **Board work:**
  - Conflict between Owners causes distress in Board work
  - Owners negotiating over and above the Board
THREE FINNISH CASES

3. KEMIRA OYJ

INDUSTRY: CHEMICALS
SALES: € 2 800 mio
PERSONNEL: 9 400
OWNERSHIP: PAASIKIVI FAMILY COMPANIES 18.1 %
            STATE 16.5 %
LISTED: YES
SHAREHOLDERS’ AGREEMENT: NO
BOARD COMPOSITION: 7 = ONE PAASIKIVI, ONE CIVIL SERVANT,
            FIVE PROFESSIONALS
EXPERIENCES:

• **Business case:**
  - Paasikivi a strong industrial/financial investor
  - Strong view on industrial cluster ”Water”
  - Synergies with other investments
  - No conflict of interest
  - Own monies at stake
    - Presently at loss

• **Board work:**
  - Strong input by Chairman
    - Sometimes on operational side
  - Management improvement
  - Active discussions also outside Board Meetings