



Welcome Address

by

**Mr. Bo Svensson,
Supreme Court Justice and Chair Swedish Company Law
Committee.**

Company Law Reform in OECD Countries
A Comparative Outlook of Current Trends

Stockholm, Sweden
7-8 December 2000

Ladies and Gentlemen,

Welcome to Stockholm and this conference on Company Law Reform in OECD Countries!

Speaking on behalf of the Swedish Government, please let me explain why I greatly appreciate this OECD initiative.

Three things make me confident that this will be a successful event.

Firstly, the initiative in itself. Twenty or twenty five years ago company law was considered a rather technical field of law by most people, of little interest to anyone except business lawyers, while as today, company law is looked upon in a totally different perspective.

The importance of the corporation – the limited liability company – for the production of goods and services to meet the demands in society has long been recognized. But the corporation is nothing in itself. It is a creation of the legislator. While the basic characteristics of this creation are the same, the corporation comes in many forms and shapes in different countries and in different periods of time. There is no single model for the corporation – there never was and there never will be.

This is not saying that form and shape don't matter. They do. During the last decades academic scholars in the fields of law and economics have convincingly shown that the structure of company law is of vital importance to the performance of individual companies and industry as a whole, and hence has a decisive impact on our common economic welfare.

That is why Sweden, from the very beginning and without reservation, has supported the OECD work on the Corporate Governance Principles. The Principles might, at first glance, seem to be of little importance to a country with a relatively modern company law and an active stock market as well as an active market for corporate control. This, however, is not the case. In Sweden the Principles have already served as a point of reference for legislative proposals, and – even more noteworthy - have also been extensively referred to in a specific case before the Swedish Securities Council.

Corporate governance is the system by which corporations are directed and controlled. Hence, the corporate governance discussion draws our attention to vital parts of company law, and this conference could be looked upon as merely being a follow-up on the Principles. This, however, is in my mind too narrow a perspective. The corporate governance debate centers on the organizational structure of the corporation - on the duties and responsibilities of the shareholders meeting, the board, the management and the auditors. But company law is much more than that, and I think the time is ripe for broadening the debate. That is why this OECD initiative, as I see it, is not only a follow up of the Principles. It marks the beginning of something new, something broader and something deeper.

This leads me to the second reason for being so confident about the outcome of the conference. That is the conference program, the agenda, which I can only describe as "ambitious". But let me make a few remarks.

Having been involved in legislative work in different capacities most of my life, I consider it a vital prerequisite for the creation of any effective and consistent legislation, that the legislator has a clear idea of the objective of the legislation. This also applies to legislation regulating corporations.

Company law is a field of law where the stakes are high and the cost of being mistaken could be very high indeed. I therefore deemed it to be a responsible measure of the OECD to devote the first session of the conference to the question of the role of company law in modern economies.

Company law is in a state of transition almost everywhere nowadays. An increased appreciation of the importance of a well functioning company law for organizing productive activity, deploying and protecting investment, and allocating risk, is clearly influencing company law reform in one country after another. In many countries a kind of paradigm shift is taking place. During the preparation of this conference, Member States have provided the OECD secretariat with an impressive amount of information on these reforms, thereby laying the ground for the second session of the conference, devoted to Current Reform Initiatives.

The third, fourth and fifth sessions will, as I understand it, deal with what is typically considered corporate governance issues, and these will be dealt with in what seems to be a well-structured way. While the corporate governance debate in general tends to focus on the role of the board, and in doing so forgetting the ultimate decision making body, the general meeting, here we have a program devoting one session to the general meeting and one to the board. And furthermore, a separate session on employee participation. That is, I believe, a serious approach.

In an attempt to characterize the corporation, two of the world's leading scholars in law and economics once wrote, "The corporation is a financial device and is not otherwise distinctive". Personally, I think that is a significant statement, and I often wonder – when shareholder value is on everyone's lips and corporate governance related issues are on the reform agenda worldwide – why so little attention is being paid to the rules on the capital structure of the corporation. I don't have an answer to that, but I suspect that this is an area of company law where path dependency is holding too tight a grip on legislators in many countries – not least in Continental Europe. I very much welcome the separate session devoted to these issues.

Finally, I wish to add a few words concerning the session on ownership and control. At first you might think that this issue is outside company law. To me, it is not, and please allow me to explain why. In a market economy the earnings potential of individual corporations creates an incentive for not only existing but also prospective shareholders to seek out information about the corporation's future opportunities, and to realize the economic value of this information by influencing the company's operation. This incentive is actually the fundamental driving force of the market economy.

Now, if there are differences in opinion as to how the company's resources are best used, only the shareholder who controls the company is guaranteed the opportunity to put his opinion into action and profit by the value of the information he has gathered. Control, therefore, has an economic value, and the role of the stock market is to transfer resources to the one who values them the most, i.e. to facilitate a change in control. Such a change can be carried out through a series of open market purchases, through negotiated block transactions or through an offer to the shareholders to tender their shares - a takeover bid. The role of the company legislator is to ensure, firstly that this process runs its course without unnecessary restrictions, and secondly that control actually can be exercised once the transaction has taken place.

The third reason that makes me confident of success here today and tomorrow is the list of participants. Not only is there a list of keynote speakers and commentators comprised of the world's most prominent experts in the different areas to be covered, but I also see a list of policy makers, civil servants and practitioners from almost each and every OECD Member State. Never before have policymakers in the field of company law from all over the world met to discuss ongoing

work, and never, ever has this been done with the help of academics and other experts. Truly, this conference is unique.

- - -

Finally a few words about the Swedish situation.

The Swedish Companies Act has its historical roots in German legislation. Over the years, however, it has cut the ties and developed into a Nordic and genuinely Swedish product. The present Act entered into force in the mid-1970's.

Ten years ago the Swedish Government appointed a committee to undertake a complete review of the Swedish Companies Act. The Committee included Members of the Parliament, and representatives from the business community, the legal profession, the auditing profession, the stock market and many other fields. Altogether some 25 members. I was appointed Chairman of the Committee and Rolf Skog, who I think most of you know from the negotiations on the OECD Principles, was appointed full time secretary.

The Committee has to-date submitted six interim reports to the Government, of which several have already resulted in legislation. A week ago the Committee signed its final report, comprising a proposal for a totally new Swedish Companies Act.

The Committee has dealt with several of the issues that will be discussed here today and tomorrow. I will not bore you with the details - the report, including an English summary, will be sent to you – but I cannot resist adding a few comments.

Starting from a simple observation of the dynamic shape of industry in a market economy and the fact that the individual corporation is an organization that is able to survive only if it can rapidly adapt to a constantly changing economic environment, the Company Law Committee takes a clear stand on the role of the corporate legislator. The Companies Act, the Committee states, must be designed in such a way that it creates the best conditions possible for companies to quickly and continuously adapt their organizations and businesses to changes in the operating environment. To achieve this, the Act must allow for and promote an active ownership role within companies. By ensuring that shareholders have the final word and are sufficiently informed of major corporate decisions, the legislation can best contribute to efficient resource utilization in individual companies and industry as a whole. Hence, the proposal stresses the importance of a well functioning general meeting, and clarifies the responsibilities of the board and the management as well as the duties of the auditors.

Applying a kind of functional approach, the proposal for the new Act contains more congruent but also more flexible provisions concerning the structure of capital. This applies to different methods of raising capital, but also to different means of returning excess capital to the shareholders, whether it be in the form of dividends, redemption of shares or repurchases of shares.

Last but not least, the proposal stresses the importance of the shares being freely transferable – a necessary prerequisite not only for minority protection but also for a functioning market for corporate control.

- - -

Handing over the proposal for the new Companies Act to the Minister of Justice at eight o'clock in the morning on the 8th of January next year will mark the end of ten years of effort on behalf of the Company Law Committee. But it won't mark the end of company law reform in Sweden. To quote

the Jenkins Report on Company Law Reform in the United Kingdom in 1962, "This is not a field of legislation in which finality is to be expected".

Thank you, and once again warmly welcome.