



Welcome Address

by

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

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Justice Svensson, Ladies and Gentlemen;

It is a true pleasure for me to see so many distinguished conference participants here in Stockholm - all of you with first hand experience of company law reform work in your respective countries. In addition to senior representatives from the judiciary, from academia, the business community and labour organisations, it is an honour to welcome government representatives from 26 different OECD countries, and the European Commission. I believe that your joint presence here today, clearly demonstrates that company law is establishing itself as an increasingly important policy area. And the reasons for that are obvious and very practical.

As policy-makers are seeking to reinforce our economies' growth potential, they have more and more come to pay attention to how the legal and regulatory framework influences the functioning of our economies. And since the business-corporation is one of the most important and omnipresent vehicles that we have for creating economic value, company law or -- more accurately perhaps -- the economic implications of company law, is a very natural target for such policy attention.

The importance of having a well functioning and adapted legal framework for business can hardly be overstated. When the concept of a limited liability corporation first emerged, it was in itself an institutional innovation. It was an adaptation to evolving economic and social circumstances, which over the centuries came to play an extremely important role for commerce and industrial activity. In fact, many scholars today claim that the invention of functional legal business forms played a very important role for economic progress, comparable with more common explanations, such as technological innovations and trade liberalization.

In addition to stating the status of the company as an independent legal person, company law also defines a multitude of relationships between the various participants in the company, such as shareholders, creditors, board-members, executives and, sometimes, the employees - relationships that in turn will influence incentives and actions that are of central importance to business life and economic activity. These may include such diverse issues as the willingness to assume risk, the readiness to participate in shareholders' meetings, the incentives to gather information about company prospects or, the diligence with which board members carry out their duties.

By defining the procedural requirements for legal redress and the means available to enforce compliance, the quality of company law is also of central importance to the development of efficient capital markets, as it empowers outside capital providers and shores up confidence in market-based finance.

While the exact scope and priorities of national company law reviews obviously differ, they typically seem to include two interrelated sets of questions. One set of questions is concerned with how improvements in the design and content of company law can facilitate the accomplishment of certain policy objectives more effectively. For example,

- How can company law be improved in order to contribute to lower capital costs and a more efficient use of capital?
- How can company law help to improve the decision-making process in companies so that businesses can respond more effectively to changes in competitive circumstances?
- How can company law improve corporate access to human and financial capital through more effective means of contracting with key resource providers? And,
- How should company law be designed in order to facilitate enterprise creation, the growth of small companies and the transition between different stages of the company's life cycle?

The second and related set of questions is concerned with how well the company law is adapted to new circumstances. The work by many candidate countries to align part of their national company law to EU directives is an obvious example of this. But the last decades have also seen dramatic changes in the global economic landscape with possible implications for company law. Those reviewing company law need to consider the consequences of such developments as:

- An increased internationalisation of product and capital markets, with more and more companies operating in multiple jurisdictions and having owners, creditors and employees of various nationalities.
- Rapid development in financial markets, characterised by constant innovation and global dissemination of new financial instruments and corporate finance techniques.
- The emergence of new industries, sometimes characterised by asset structures that are quite distinct from what we find in the traditional smokestack corporation.

- The increased use of new information and communication technology as a means to disseminate corporate information and to communicate among shareholders.

In order to formulate informed responses to these two principal sets of questions, we need to address both fairly fundamental and very technical issues. Regardless of our point of departure and judicial system, we need to ask ourselves what basic functions we want our regulations to perform and then to try to formulate statutes that we believe will serve these objectives.

All of this is of course easier said than done. Justice Svensson just told us that the Swedish Company Law Committee has been working for a decade. In reality, company law reform is a very delicate task. The work requires highly qualified expertise that can combine rigorous legal analysis with the imagination and practical insight that is needed to arrive at workable solutions. Trade-offs have to be made and balances have to be struck among competing but equally legitimate interests. In addition to the intellectual and political challenges that any company law reform faces, we also know that enormous economic values are at stake. And as Professor Gilson reminded us in one of his articles, “the costs of being wrong can be high indeed”.

The ambition of OECD’s policy-related analysis in this area is to assist our Member countries to at least minimise the risk of being wrong. At the very heart of this work is information gathering and information dissemination. And that is exactly what this conference is all about. It is organised with the aim to provide you with an opportunity to get access to an international overview, to take stock of developments in other jurisdictions and most importantly, to provide you with a forum where you can discuss these developments and share experiences with your peers from other countries. Company law is a very complex matter and the OECD’s work in this field is not aiming at any collective efforts of streamlining or harmonisation. Our role is to facilitate an exchange of information and thereby serve as a resource in national efforts. This should also contribute to a better understanding of the possible economic implications of different approaches.

We know that while perspectives, legal traditions and priorities may differ, corporations and legislators are facing similar challenges and opportunities all over the world, and, therefore, have a common need for information. I believe that this is what has triggered the demand for OECD work in the area of company law, and I believe that this is why we see so many countries around the table today.

This conference is the result of preparations in which you have all been active participants. Following our first round of discussions during the preparatory meeting in June, we have successively refined the agenda for this conference in order to distil those topics to which Member countries wanted to give priority. During the summer we also circulated a questionnaire. The Secretariat is truly impressed by the quality of your responses and grateful for the effort you have made. In a first round, the responses have served as background material to the comparative report that will be presented by Professor Eddy Wymeersch later this morning. In a next step it might be worthwhile to consider making the responses available to Member countries also in a more direct form.

On behalf of the OECD Secretariat I would like to thank all Member country representatives for your contribution to this work and involvement in the preparation of this conference. Without you it would not have been possible.

I would also like to thank our distinguished experts, who have taken time out of very hectic schedules to share their expertise with us. They have also prepared papers that following the conference will form part of a special conference volume. Most, if not all, of our experts, have - in addition to their distinguished academic merits - practical experience with company law reform work. I believe this experience will prove to be particularly useful at an event like this.

Last but certainly not least, I would like to extend a special thanks to our co-hosts and sponsors of this meeting: the Swedish Ministry of Industry, Employment and Communications, the Finnish Ministry of Trade and Industry, and the Swedish Corporate Governance Forum. They have all been of invaluable help to us in the preparations of this event. I am personally glad that the Swedes offered to have the conference here in Stockholm, which I am visiting for the first time.

And, while our discussion over the next two days certainly will take us considerably further in our understanding of current international trends in company law, I am convinced that this conference will mark the beginning rather than the end of our work in the increasingly important field of company law.

I am looking forward to the discussions with great interest. Thank you very much.