

SOE Network for Southern Africa

Maputo
Mozambique
June 2009

**Equitable treatment of non-
Government shareholders**

Arto Honkaniemi
Prime Minister's Office, Finland



SOE Network for Southern Africa Maputo Mozambique, 27-28. May 2009

Equitable Treatment of Non-Government Shareholders Finnish Perspectives



Arto Honkaniemi
Senior Financial Counsellor
Ownership Steering Department
Prime Minister's Office
Government of Finland



OWNERSHIP STEERING
GOVERNMENT OFFICE

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

The logo for Patria, featuring the word "Patria" in a bold, blue, sans-serif font.

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:

The logo for Patria, featuring the word "Patria" in a bold, blue, sans-serif font. The logo is contained within a white rectangular box with a grey border.

- **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
→ conflict
 - 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

The logo for Kemira, featuring the word "kemira" in a blue, lowercase, sans-serif font. The logo is positioned on a white rectangular background that has a grey drop shadow effect, making it appear to float above the light blue background of the slide.

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:

The logo for Kemira, featuring the word "kemira" in a blue, lowercase, sans-serif font. The logo is positioned inside a white rectangular box with a grey border.

- **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

