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Broadening the Horizon: Nordic company law in context

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1. Setting the scene

1.1. Purpose and scope

The purpose of this volume is to deepen the understanding and broaden the conceptualisation of Nordic company law. We are inspired by Jesper Lau Hansen’s efforts to bring Nordic company law into the European and international discourse with his 2003 book on Nordic public limited liability companies, the first volume on the topic to appear in English.¹ Twenty years later, we are now expanding on his approach, encompassing the wide variety of Nordic business forms, their history, as well as their future.

This wide variety encompasses the business forms we have today in Denmark, Finland, Iceland, Norway, and Sweden, as well as among the Indigenous peoples of the Inuit and the Sámi, populating Kalaallit Nunaat (the ‘land of the Kalaallit’), and the Sápmi (the Sápmiland), respectively. Although all five Nordic sovereign countries are unitary states with centralised power, Greenland and the Faroe Islands have their own autonomous governments under Denmark,² and the Åland Islands under Finland.³ The Sámi do not have a similar political and territorial autonomy in either Finland, Norway or Sweden. The Sámi parliaments have only an advisory role with the administration of the Sápmi being under that of the three states.

There are no unique Indigenous Greenlandic and Faroese company forms. The Danish Companies Act does not, however, directly apply in Greenland and the Faroe Islands, but may be extended there.⁴ Danish law has been extended to Greenland,⁵ while the Faroe Islands have issued their own Companies Act.⁶ The Sámi, originally having had their own Indigenous business form, the siida, have seen their

¹ J. Lau Hansen, Nordic Company Law – the Regulation of Public Companies in Denmark, Finland, Iceland, Norway and Sweden (Copenhagen: Djøf Forlag, 2003)
³ According to the Danish Act of 23 July 2019 no. 763 on companies [selskabsloven] section 375, the ‘Act does not apply in Greenland and the Faroe Islands, but may by Royal Decree be extended to Greenland subject to such modifications as may be required by special local conditions.’
⁴ Arrangement of 18 May 2018 no. 486 for Greenland on the entry into force of the Act on joint-stock and limited liability companies (the Companies Act) [Anordning for Grønland om ikrafttræden af lov om aktie- og anpartsselskaber (selskabsloven)]
⁵ Act of 31 May 2011 on joint-stock and limited companies [løgtingslóg nr. 73 frá 31. mai 2011 um parta- og småpartafelög]
Indigenous form colonised through Finnish, Norwegian and Swedish state company law and its special reindeer husbandry legislation, usually employing the cooperative form. They all form a part of the picture that has given us such a colourful array of Nordic businesses.

As illustrated already by the example of Sámi business forms, we go beyond the typical limitation to limited liability companies and, even more narrowly, listed companies. Important as they are, they only represent a small fraction of the businesses in the Nordics. In this, the Nordic jurisdictions resemble the other European jurisdictions. We recognise the importance of small and medium-sized enterprises (SMEs) for the Nordic economy and society and how they are organised, not only as companies, but also run by the entrepreneurs in their name alone, or else in cooperation with others, either in partnerships and limited partnerships, or else in cooperatives.

However dominant the limited liability company form is in both financial and non-financial businesses, the role of partnerships, limited partnerships, and cooperatives is important in all the Nordic countries, as are savings banks and cooperative banks in the financial sector, and mutual insurance companies in the insurance sector. Additionally, we discuss in this volume country-specific business forms, such as Danish and Norwegian industrial foundations and Finnish housing companies. Further, the volume contains a chapter on Indigenous company law, presented for the first time in Nordic company law.

Of course, public companies, including listed companies, are also of great significance in the Nordic countries. We discuss regulation of listed companies and how different control structures affect corporate governance within them. We see that in many Nordic companies there is a controlling shareholder, being either a foundation, as is frequently the case in Denmark and Sweden, the state, as seen in Norway, a family as seen in all Nordic countries, or else a cooperative, as seen in Finland. We discuss separately the importance of foundations and cooperatives in the Nordic company law regime.

Further, we broaden the scope of our analysis, in terms of what we find interesting concerning the functioning of business. We position our volume within the overarching challenges of our time, including that of ensuring the contribution of business to a more sustainable present and a sustainable future. We also engage therefore with the rudimentary expressions of such broader societal issues in company law.

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8 The appendix to this volume gives an overview of the rich array of different business forms in the Nordics, including their numbers and the legislation governing them; see Appendix: Nordic business forms.


10 K. Labba, ‘Establishing Sámi company law’.

11 G. Johnsen and E. Jónsdóttir, ‘From the Outside In: The Influence of the Welfare State on Corporate Governance in the Nordic countries’, Ch. 2 in this volume.

12 B. Sjåfjell, ‘Sustainable value creation in the land of oil and honey? The corporate governance role of the Norwegian state’, Ch. 11 in this volume; Mähönen, ‘Between shareholder value and corporate purpose’; V. Pönkä, ‘The cooperative movement and cooperative law in the Nordics’, Ch 6 in this volume; Feldthusen and Thomsen, ‘How enterprise foundations can sustain sustainability’.
itself, such as the inclusion of gender and labour issues, the increase of sustainability reporting requirements, and the reawakening of the interest in corporate purpose.

1.2 Regulating Nordic businesses

Our broad approach to Nordic company law means that we do not limit our analyses to the Nordic Companies Acts regulating companies, but rather we also draw on regulation of other business forms and other sources, including self-regulation, such as the Nordic corporate governance codes for listed companies.\(^\text{13}\)

Much of modern Nordic company law, including financial accounting and sustainability reporting, is based on European Union (EU) law. Three of the five Nordic countries, Denmark, Finland and Sweden, are EU members. Iceland and Norway are (together with Liechtenstein) members of the European Free Trade Association (EFTA) that have joined the Agreement on the European Economic Area (EEA), which brings together the EU, its 27 Member States, and the three EFTA members.\(^\text{14}\) While the EEA Agreement does not cover all areas of EU laws and policies (it excludes, for example, tax), it does encompass core areas within our context: company law, financial market law, and accounting law.

The EU regulation of companies is not fully harmonised.\(^\text{15}\) However, there is an evolving EU regulatory framework, within which Nordic company law is developing. This encompasses EU primary law as developed in case law, notably Treaty rules on free movement of capital and freedom of establishment, and the increasing secondary legislation, mainly concentrating on limited liability companies, especially public companies. These include, amongst the most important, the Company Law Directive of 2017.\(^\text{16}\)

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\(^{14}\) Agreement on the European Economic Area, OJ No L 1, 3.1.1994, p. 3 and the EFTA States’ official gazettes, as amended. The fourth EFTA member, Switzerland, has chosen to remain outside of both the EU and the EEA, relying instead on a complex set of other agreements with the EU.


the Accounting Directive of 2013\textsuperscript{17} including amendments by the Corporate Sustainability Reporting Directive of 2022,\textsuperscript{18} the International Accounting Standards Regulation of 2002,\textsuperscript{19} the Audit Directive of 2006\textsuperscript{20} and the Audit Regulation of 2014,\textsuperscript{21} the Takeover Directive of 2004,\textsuperscript{22} and the Shareholders’ Rights Directive of 2007, reformed in 2017.\textsuperscript{23}

1.3 \textit{Globalisation, digitalisation and sustainability}

Global economic integration also affects Nordic countries. A great many Nordic businesses operate within the European internal market. To a smaller or greater extent, all Nordic businesses are also globalised, in the sense that they are connected to, and in some cases govern, global value chains. As the COVID-19 pandemic and later, to even a larger extent, the Ukrainian war has demonstrated, Nordic businesses are also vulnerable to changes in the external environment, reflecting how business is inextricably interconnected with society and the environment. During the pandemic, within which period this volume has been shaped, the increase in digitalisation has affected business reality and the regulation of business. The Ukrainian war has affected radically all value chains, and especially those of energy, agriculture, and manufacturing of sensitive mineral commodities. And yet, this is just the beginning of what can be expected in terms of major changes to the control and governance of business


through digital means. All these are issues that a modern approach to company law should engage with – and which this volume does.

This volume does not look only to the present and to the past; it also looks towards the future. Businesses have both local and global impacts, through the value chains they control or are a part of, on both the environment and on societies, of which they are inextricably interconnected elements. Company law can and does create incentives for unsustainable behaviour, but it also can and tries to be a driver for more sustainable business. An element of sustainability is resilience against socio-ecological shocks, such as those that COVID-19 has demonstrated, and to which company law ex post has tried to respond. Integration of sustainability is a leading theme in this volume, both concerning the environment, the local communities, including Indigenous communities, and gender.

Sustainability, which we understand as being the securing of social foundations for humanity now and for the future, while mitigating pressures on planetary boundaries, is an especially important aspect of the challenges to which regulation of business must respond. This concerns, as we see reflected in EU laws and policies, both the financing of businesses, as well as the governance of businesses. Relevant themes here include natural resources, such as energy, minerals, agriculture, aquaculture and forestry, as well as the Nordic Indigenous peoples’ (Sámi) industries, notably reindeer herding and fishing, and the governance of global value chains of Nordic businesses.

3.2 1.4 Taking Nordic company law seriously

This volume concentrates on Nordic company law in the broadened sense as introduced above. Our interest is in the role of law in regulating business. For us it is therefore important to separate the legal structure of business and its economic expressions, although law increasingly tries to overcome the boundaries of formal corporate structures, seeking to regulate the economic substance by means of the accounting and regulation of value chains. There is, however, still a fundamental tension between legal approaches to the company and economic perspectives on the firm.


Since this volume is on Nordic company law, we use Nordic legal terms, not Anglo-American economic vocabulary. We do not talk of ‘directors’, since they do not exist as a company law concept in the Nordics, except in Denmark. Nor do we use the economic terminology of ‘owners’ of a business when we are referring to shareholders, members, or partners. A sole entrepreneur owns their business, but in the same way, a business with legal personality owns their own business. A shareholder in a company, a member in a cooperative or a partner in a partnership does not own the business; a shareholder owns shares that give them rights (as voting rights in the general meeting) and responsibilities (an obligation to pay for the shares and possible obligations to pay fees to cover the business expenses). A member in a cooperative has members’ rights and responsibilities (such as voting rights in a general meeting, or the right to elect representatives in a representatives’ meeting, and possibly an obligation to pay fees). Albeit the partner is personally liable for the debts of the partnership, they do not own the assets of the partnership.

With our emphasis on Nordic company law, we have also chosen not to position our discussions within the Anglo-American shareholder vs stakeholder debate. This is a paradox, of course, as a stakeholder perspective on business is a concept of Nordic origin, dating from the 1960s. However, the discussion has, from the 1980s onwards, been dominated by scholarship from the United States. We therefore generally do not speak of stakeholders and when our authors exceptionally do refer to stakeholders, they explain what they mean in the context that the term is used. We emphasise corporate purpose in our analyses, as seen in the law and business-specific articles of association. The relationship between the shareholders or members of the business and the business themselves is organised through law and the articles of the specific business. The businesses have contractual and non-contractual relationships with others, including members of the business’s value chain (suppliers, customers, employees) and those to whom the business has caused harm. We see it unnecessary and too vague to call all of these ‘stakeholders’.

This chapter proceeds with a historical overview of the Nordics and Nordic company law (Section 2) and an introduction to the colourful array of Nordic business forms and modes of control (Section 3). Against that backdrop, we outline the contributions to our volume (Section 4), and conclude with reflections about the future of Nordic company law (Section 5).

28 Unfortunately Anglo-American use of ‘directors’ have also influenced EU legislation as the proposed Corporate Sustainability Due Diligence Directive, see especially Article 3(o).
2. A historical perspective on the Nordics and Nordic company law

2.1. Formation of Nordic company law

In this section, we give a short review of the history of the Nordics and of the history of Nordic company law, as background for both the cross-cutting chapters and for the jurisdiction-specific chapters, where selected issues of the company laws of each Nordic country are discussed and Sámi company law is conceptualised. The reader will find that in certain aspects the cross-cutting and jurisdiction-specific chapters deepen the historical perspective.

The Nordics (‘Norden’) today consist of five countries and seven peoples. The Fennoscandian area of the present Denmark, Finland, Norway, and Sweden was populated by Indo-European Scandinavian and Finno-Ugric peoples during the last millennia BCE, becoming the present Danish, Norwegian, Swedish, Sámi, and Finnish peoples. The Scandinavians also populated the present Iceland and Faroe Islands during the first millennium CE. Greenland was first populated by the Inuit during the third millennium BCE. From the end of the first millennium CE, Greenland was settled by Icelanders and Norwegians. The Norse settlements disappeared in the fifteenth century. The Danish returned to Greenland during the seventeenth century, staying from then to the present day. The Nordics now consist of this whole area, including the autonomous areas of Faroe and Åland Islands, populated by Scandinavian peoples.

During the first millennium CE, Danish, the Norwegian and the Swedish peoples started to form larger societies that can be recognised as small states. However, the Norwegian state was short-lived and the Finnish and Sámi people never formed states. Finland was invaded by Swedish and Russian states and the Sápmi by Norwegians, Swedes and Russians. During the second millennium, two empires were formed, Denmark, including Greenland, the Faroe Islands, Iceland and Norway, and Sweden, including most of the present Finland and Åland Islands, with the eastern parts belonging to the Russian states. These empires also colonised the Sámi in the northern parts of Fennoscandia. Being for a while one state, the empires separated again in the sixteenth century and were divided by the end of the second millennium into the present five states, with the Sámi struggling for their Indigenous rights with Finland, Norway, Sweden and Russia. Sweden lost the whole of Finland to Russia in 1809. This did not, however, entail a Russification of the Finnish legal system, which remained Swedish. Denmark lost Norway to Sweden in 1814; however, the legal system remained Danish. Iceland remained part of Denmark. It was only in 1905 that Norway gained its independence, followed by Finland in 1917, and lastly Iceland in 1944. The collapse of the feudal system in the eighteenth and nineteenth centuries, the periods of enlightenment, the Industrial Revolution, and finally the destruction of the Nordic empires, led to the democratisation of governments, firstly in Sweden, Norway, and Denmark, and lastly in Finland, still part of the Russian empire.

The present Nordic legal systems still derive from the law of the two empires. The first modern codifications (the Danish Code of 1683, the Norwegian Code of 1687 and the Swedish Civil Code of 1734)

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appear in the seventeenth and eighteenth centuries, recognising partnerships as a company form. Based on Continental examples, trade companies were also established based on royal privileges – an example of this was the Swedish Tar Company, receiving its privilege in 1648.32

However, organised trade started far before the days of the great trade companies. The evolving state structures have not been the only force affecting Nordic businesses and business regulation. The present area of the Nordics has been part of larger economic chains and networks from the last millennia BCE, both in terms of production, and also export and import. The pre-modern trade routes, Viking expansion, the Baltic Sea Hansa system, the Russian (Novgorod) merchant republic trade system, and finally the modern trade routes from the seventeenth century, also affected company forms.33

The first company forms during the Middle Ages were based partially on Scandinavian (‘Viking’) models, and partially on Continental European influences, while the Sámi business form was the Indigenous siida. Continental legal influences were brought to the North through trade to the Continent and the influence of the Hanseatic League, of which several Nordic towns were members.34 Partnerships, limited partnerships, shipping companies, and later trade companies modelled by European companies, were followed by modern company formations in the nineteenth century. The development of the Nordic business forms was connected to changes both in society and also in the economy and the legal systems. Pure legal transplants from abroad were not sufficient; there was a domestic need for them. Although local trade in the Nordics and the nearby areas in Western, Central and Eastern Europe had been organised through partnerships and limited partnerships for millennia, the organisation of use of natural resources, such as mining, forestry and large-scale global trade, required new business forms, such as chartered companies modelled on Dutch and English examples.35

The Nordic connection to global business was intensified during the industrial revolution. As in most of the world, new business forms were required for large scale production. The limited liability company form was introduced in the mid-nineteenth century, resulting in the first modern Companies Acts in the Nordics, in 1895 in Sweden and Finland, in 1910 in Norway, and lastly, and as one of last countries in whole of Europe, in 1917 in Denmark, and in 1921 in Iceland.36 Towards the end of the nineteenth

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36 Swedish Companies Act, 1895; Finnish Companies Act, 1895; Norwegian Companies Act, 1910; Danish Companies Act, 1917; Icelandic Companies Act of 1921; see M. Christiansen, ‘Denmark’ (1993) 2 European
century, the cooperative movement also spread to the Nordics, resulting in the first cooperative acts in Sweden and Finland, in 1895 and 1901, respectively.\(^{37}\) However, in Denmark, an attempt to enact a Cooperatives Act in 1917 failed,\(^ {38}\) and this remains the case. In Norway, a Cooperatives Act was enacted late, in 2007.\(^ {39}\) The introduction of limited liability companies and cooperatives did not however mean that partnerships, limited partnerships, and shipping companies were abandoned. In addition, the development of foundations added to the variety of business forms.\(^ {40}\)

The creation of a limited liability company, as well as the possibility for one company to own shares in another, made it possible to form groups with a parent and subsidiaries, both domestically and cross-border. This gave rise to a need for group law, the extent of which remains a challenge until this day.\(^ {41}\) The very limited group law that we do have in the Nordics was introduced late, firstly in Sweden in 1944, because of the Kreuger Crash in the early 1930s,\(^ {42}\) followed by Norway in 1957.\(^ {43}\)

2.2. Nordic company law and attempts to harmonise Nordic company law

The Nordic legal cooperation that began in 1872 in the Nordic lawyers’ meetings only touched indirectly on company law. One goal of the legal cooperation was to harmonise Nordic law. This was partially achieved through pan-Nordic contract and trade legislation. There was also a serious attempt at harmonising Nordic Companies Acts during the twentieth century. The only visible success was the introduction of equality between shareholders and, in particular, both the ‘golden rule’, as well as the general clause, banning abuse of majority powers, both of which were coined in the Nordic laws from the 1930s.\(^ {44}\) The 1960s saw the last failed attempt to harmonise Nordic company law in the 1960s, based on the Danish and Swedish models. Once Denmark had joined the European Economic Community (EEC) in 1973, the Nordic legal harmonisation was in practice over. With its EEC membership, Denmark was part of the early years of the European company law harmonisation, which began in 1968. However, the Nordic harmonisation attempts in the 1960 were not fruitless. Based on the joint work that had been undertaken, very similar group law provisions were enacted in the Nordic company laws during the 1970s.\(^ {45}\) Due to this cooperation, the Nordic Companies Acts shared many

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37 Swedish Cooperatives Act, 1895; Finnish Cooperatives Act, 1901; see V. Pönkä, ‘The cooperative movement and cooperative law in the Nordics, Ch. 6 in this volume.

38 Christiansen, ‘Denmark’.

39 Norwegian Cooperatives Act, 2007; See Pönkä, ‘The cooperative movement’.

40 See Feldthuene and Thomsen, ‘How Enterprise Foundations Can Sustain Sustainability’.

41 See K. Engsig Sørensen, ‘Groups of companies as a challenge to Nordic regulators and judiciary’, Ch. 3 in this volume.


43 Swedish Companies Act, 1944; Norwegian Companies Act, 1957; see further about the state of law in the Nordics, Engsig Sørensen, ‘Groups of companies’.

44 Engsig Sørensen, ‘Groups of companies’; J. Mähönen, ‘Between shareholder value and corporate purpose’.

45 See Engsig Sørensen, ‘Groups of companies’.
similarities, albeit no formal harmonisation was concretised. There were no comparable attempts of harmonisation for other business forms, such as partnerships, cooperatives, and foundations. Harmonisation of Nordic company law mostly took place indirectly. The other four Nordic countries (except Denmark, already an EEC member), entered the EEA together with the other EFTA members in 1994. Except Switzerland, which has consistently declined all forms of European membership.

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board in Finnish cooperative and company law, which bring those companies that use the corporate assembly and the supervisory board, respectively, closer to the German system. Additionally, in Finnish cooperatives there can be an organ called the council of representatives, elected by the members of the cooperative. Although rarely used, that means that in a large Finnish cooperative there may be four tiers of governing bodies: the council of representatives, the supervisory board, the board, and the general manager.

The governance systems were partially influenced by demands for industrial democracy after World War II, in the spirit of Mitbestimmung in Germany. This trend was partially encouraged by the growing importance of state control in enterprises, especially in Norway and Finland, notably in the utilities, transportation, and energy sectors. However, the impact of co-determination demands was not a drastic one. In Norway, specific corporate assemblies were introduced (for companies with more than 200 employees), as well as worker participation in boards (for companies with more than 30 employees). Similarly, in both Denmark and Sweden employees have the right to elect a portion of the boards of larger or publicly traded companies. More importance was given to co-determination in pension funds and mutual pension insurance companies, including those based in Finland and Iceland.

These developments in Nordic company law also affected the Sámi. Due to the colonisation of the Sápmi from the seventeenth century, Norwegian, Swedish and later Finnish state law also replaced Sámi Indigenous law to a large extent in relation to corporate matters. The Indigenous siida system was replaced by state cooperative law of reindeer herding districts, Sámi villages and reindeer herding cooperatives in Finland. Over recent decades, however, the Norwegian law has once again recognised siida. However, tension remains between Indigenous customary law and state law from the three jurisdictions.

3. The colourful array of Nordic businesses and modes of control

3.1. Beyond limited liability companies

The basic business forms in the Nordic countries are the sole entrepreneur, the partnership, the limited partnership, the private limited liability company, the public company, the cooperative, the mutual company, and the savings bank. For mutual companies, the typical industries are insurance (mutual insurance companies) and real estate. Banks are organised mainly as companies, but both savings banks and cooperative banks are also important bank forms.

The European business forms, European Economic Interest Grouping, European Company and European Cooperative Society, have been introduced in Denmark, Finland and Sweden through EU legislation, and in Iceland and Norway via the EEA Agreement. Additionally, albeit above all for non-profit purposes, associations and foundations are used for business purposes, especially in Denmark and Norway.

These business forms both resemble each other in the various Nordic countries as well as those in other parts of Europe. Besides those, there are jurisdiction-specific business forms in each Nordic country, such as housing associations in Sweden, housing cooperatives in Norway, and housing companies in

55 See K. Labba, 'Establishing Sámi company law'.

56 Labba, 'The Legal Organization of Sami Reindeer Herding and the Role of the Siida'.

57 See Labba, ‘Establishing Sámi company law’. 
Finland for housing and mutual earnings-based pension insurance companies, the last mentioned fulfilling the same purpose as pension funds in other countries.58

Listed companies are only a small fraction of Nordic businesses. As across the whole of Europe, where 99 per cent of all businesses are SMEs, most Nordic businesses are sole entrepreneurs and private companies with only one or a few shareholders, with either no, or else relatively few, employees.59 The one or small number of shareholders also act as the board members, the senior executive management – and often as the only or main employees of the business.60 The number of enterprises has increased during the last decade, at the same time as the average number of employees remains low and has actually decreased.61 This shows how employment has been replaced by entrepreneurship, either voluntarily or through corporate pressure.62 This also shows that the role of the sole entrepreneur cannot be underestimated in the economy. Often the sole entrepreneur channels his/her business activities through a company he/she controls, either alone or with co-entrepreneurs. Especially in agriculture, the entrepreneurs have formed cooperatives for production and sale of agricultural products. The role of SMEs is crucial to the Nordic economy. Through various forms of cooperation, small entrepreneurs can together have a big impact, as can be seen from the agrifood and retail giant cooperatives of small entrepreneurs and consumers.

Against this backdrop, we give special attention to SMEs in this volume.63 Their nature as a closed, shareholder, partner or member-controlled business, is not unique to the Nordics, since it is often seen in international literature, but the main rule relating to dispersed share ownership is unique to the Nordics. We discuss the different ways in which control is held in a closed business, by using both formal, law-based mechanisms, contracts as shareholders contracts, and also informal mechanisms through personal contacts.64 We also discuss how digitalisation has changed corporate decision-making and control, not only in traditional corporate forms, but also in new company-like structures, such as Decentralised Autonomous Companies (DACs) and Decentralised Autonomous Organisations (DAOs).65

A specific type of cooperation is seen in a cooperative, where control is used by members with equal rights. As the starting point, the one member one vote principle is found in cooperatives, with the effect that concentration of power by gathering voting rights is either impossible or difficult. Although there

58 See the overview in the appendix to this volume, Nordic business forms.
60 See H. Almlöf and M.B. Madsen, ‘Dimensions of control in private limited companies’, Ch. 4 in this volume.
64 Almlöf and Madsen, ‘Dimensions of control in private companies’.
65 L. Anker-Sørensen and E. Coulthard, ‘Digital corporate control in the Nordics’.
are large cooperatives, a major part of cooperatives are SMEs. We discuss cooperativism in all the Nordic countries in detail.66

A specific type of SME cooperative enterprises are the reindeer herding cooperatives in Finland, Norway, and Sweden. The traditional Sámi business form is siida.67 Siidas have gained more importance over recent decades, as Nordic state reindeer herding cooperative legislation has become closer to the traditional Indigenous models.68 Reindeer herding is organised differently in each country based on their national legislation, which is not connected to the traditional reindeer herding enterprises, the siida. However, over recent decades, the reindeer cooperatives, especially those in Norway, have rekindled the siida culture and thinking.69

3.3 Shareholder and member control and board composition

Most Nordic enterprises are closely held, an expression we use for a governance mode where the members of the undertaking, being either a sole entrepreneur, partners in a partnership, shareholders in a company, or members in some form of cooperation (including but not limited to the cooperative form), personally participate in the corporate decision-making as board members and/or executives.70

Under Nordic company law, it is not only sole entrepreneurs and partners, but also shareholders and members, who can hold the power, instead of the board and the general manager, since the general meeting of a company and a cooperative is regarded to a great extent as being omnipotent.71 As a rule, the general meeting can make resolutions on any business matter, appoint the board, and give instructions to it. In closed businesses, the omnipotence of shareholders and members is strengthened by the use of shareholder agreements, often containing very detailed provisions on division of control and shareholders’ rights and responsibilities. The Finnish Companies Act even goes to the extent of providing that unanimous shareholders may make decisions on matters falling within the competence of the board and of the general manager.72 On the other hand, the competence of boards is broad in all business matters, and Nordic company law (with the exception of Finland) contains rules on exclusive competence for the board on some matters, as well as a company law principle of division of labour between general meeting and board. For this reason, the governance of companies is based on cooperation and interaction, between the shareholders gathered in general meetings, and the boards functioning on a daily basis.

Control is important, not only for closed companies with only one or a few shareholders, but also for listed businesses. Nordic listed companies have traditionally been controlled by families, often through banks where the families also had a stake, and later through foundations in which they have channelled their wealth, both historically and until today. The states have become important control holders since

66 Pönkä, ‘The cooperative movement’.
68 See Labba, ‘Establishing Sámi company law’.
69 See Labba, ‘Establishing Sámi company law’.
70 See H. Almlöf and M.B. Madsen, ‘Dimensions of control in private limited companies’.
71 See Almlöf and Madsen, ‘Dimensions of control in private companies’.
72 Finnish Companies Act, 2006 § 5:2.2.
World War II, especially in Norway and Finland. From the 1980s onwards, and especially following the establishment of the EEA, foreign investors have also increased their investments in the Nordic countries, both as institutional investors in listed firms and also as parent companies through Nordic subsidiaries.

Control is therefore important, both in large, listed firms and in small and medium-sized closed firms. However, the control structures are different. In listed firms, usually public companies, the firm typically has a controlling shareholder, being either a private person, a family, a family-originated foundation, the state, or even a cooperative. As there are many institutional and non-institutional minority shareholders, and boards in the Nordic countries typically also have members independent of the controlling shareholders, the control is exerted through the general meetings, as well as in the more subtle way of a ‘dialogue’ between the shareholder and the board.

In small-scale firms the use of control is more straightforward. In partnerships, closed companies and cooperatives, the partners, shareholders and members normally also participate actively in the decision-making, both through boards and through employment, as executives. As there is typically no separation between membership and decision-making, the shareholders directly use their control powers through the board. In partnerships it is even more straightforward, since the partners usually participate personally in the decision-making of the business, without separate board structures. In a limited partnership, there are already two types of members, the active partners, and the passive limited partners. When the number of shareholders and members grows, the connection between them and the everyday business becomes more selective, with some shareholders being more active and some more passive. A separate decision-making structure is required, with more emphasis to be given to the composition of boards and the executive management led by the chief executive officer. There is a tendency towards separation of control and decision-making in Nordic listed companies by using independent members of the board and, to some extent, also in larger cooperatives, especially if they are involved with the securities markets (as can be seen, for example, in Finnish cooperatives controlling listed companies).

The importance of control in Nordic businesses cannot be overstated across the full range of companies, from the small, closely-held companies, to the controlling shareholders in listed mega-companies. Across this range, we see shareholder control exerted in ways that deviate from company law, with a tension between shareholder power and the legislative purpose with the business form. In the small, closely-held companies, the shareholder purpose with control is often one of value creation for the firm itself and for the local community. In the listed companies, the Anglo-American, law-and-economics

73 See B. Sjåfjell, ‘Sustainable Value Creation in the Land of Oil and Honey?’.
74 See Johnsen and Jónsdóttir, ‘From the Outside In’ of listed firms and Almlöf and Madsen, ‘Dimensions of control in private companies’ of closed firms.
75 J. Mähönen, and G. Johnsen, ‘Law, Culture and Sustainability: Corporate Governance in the Nordic Countries’ in B. Sjåfjell and C.M. Bruner (eds), Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability (Cambridge University Press: Cambridge, 2019), Chapter 16.
76 Almlöf and Madsen, ‘Dimensions of control in private companies’.
77 Sjåfjell, ‘Sustainable Value Creation in the land of Oil and Honey?’.
78 Almlöf and Madsen, ‘Dimensions of control in private companies’.

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inspired shareholder primacy drive also tends to dominate in the Nordics, with the aim of shareholder control being maximisation of returns to investors.\textsuperscript{79}

The role of the boards, with their core company law position, is thereby especially important. With its emphasis on independent board members and senior executive management in listed companies, the focus in relation to corporate governance has shifted from concentrating on control holders in the boards, to also encompassing various forms of board diversity. Norway has been a front-runner in gender diversity, through its adoption of compulsory gender quotas on boards of public companies in 2003 (expanded in 2023 to include private companies as well), followed by Iceland in 2010.\textsuperscript{80} Gender has also been an important issue in other Nordic countries, albeit no mandatory legislation on board composition has been imposed so far. A change shall come however with the recent Directive on improving gender balance in boards of listed companies.\textsuperscript{81}

Board diversity is not, however, only a question of gender, it also concerns how the board composition reflects the overall complexity of the socio-economic reality of which the businesses are part. Another important aspect, one of several, is whether workers (employees, self-employed contractual parties and workers across global value chains) have a role in the businesses’ decision-making, and whether this role is extended to workers in subsidiaries and contractual parties in the value chains globally. Here we see two different paths for worker participation in the Nordic countries: in Denmark, Norway and Sweden employees have the right to elect a portion of the boards of larger or publicly traded companies, in Finland and Iceland, not.\textsuperscript{82} In none of the countries are self-employed contractors or workers across global value chains included in the corporate decision-making.

4. Overview of the volume
The volume consists of two main parts. In Part I, we discuss six cross-cutting themes: the Nordic corporate governance model, groups of companies, control in companies, foundations, cooperatives, and digitalisation. In Part II we undertake a jurisdiction-specific analysis, with six chapters, one chapter for each of the five state jurisdictions (Denmark, Finland, Iceland, Norway, and Sweden) and one chapter seeking to conceptualise Sámi company law.

4.1. Cross-cutting themes in Part I
The trademark of the Nordic model is the Nordic welfare state which developed from the end of the nineteenth century and then with speed after World War II. In \textit{Chapter 2}, Guðrún Johnsen and Elin


\textsuperscript{80} Johnsen and Jónsdóttir, ‘From the Outside In’.


\textsuperscript{82} See Johnsen and Jónsdóttir, ‘From the Outside In’.
Jónsdóttir discuss the influence of the Nordic welfare state on the Nordic corporate governance model. With their roots in the mediaeval empires of Denmark and Sweden, the Nordic countries started to build a welfare state after World War I, by establishing a legal framework supporting macroeconomic management, coined the ‘Scandinavian model’, emphasising aspects of workers’ and social rights built on labour-employer co-operation. Since the height of the welfare state, in the early 1980’s, the Nordics have become more influenced by European co-operation, and in tandem, so has its corporate governance. This chapter explores the historic context of the Nordic corporate governance model, which social and economic aspects have made their marks on it over time, and how it is likely to evolve, going forward.

Groups have been the dominating means of organising businesses, both domestically and internationally, from the end of the nineteenth century onwards. In Chapter 3, Karsten Engsig Sørensen discusses the role of groups in Nordic business regulation. After outlining the potentials and problems posed by such groups, the rest of the chapter will turn to how the Nordic legislature and judiciary address the issues raised. The focus will be on the principal common features that we see in the Nordic countries. There are also many differences between the current regulations, but even so, there are approaches that have a distinctly Nordic ‘flavour’.

SMEs are the backbone of Nordic society and its economy. In Chapter 4, Hanna Almlöf and Marina B Madsen discuss the control of private companies in the Nordics. The aim of the Chapter is to broaden our understanding of control in private companies. The first step is to give an overview of such private companies, to understand their principal characteristics. The second step is to undertake a comparative overview of the Nordic Companies Acts, to examine how ownership and control are linked. Thereafter, legal dimensions of control are discussed, including the power of the general meeting, the definition of parent undertakings, and control through contract. In addition, the discussion is complemented by the dimension of informal control, including aspects of psychological ownership and how it is interrelated to control. Furthermore, practical dimensions of control are discussed, by describing typical events that many private limited companies encounter. The company needs capital or competences, and the owner(s) will, therefore, face situations where their control of the company is challenged. The authors also discuss the possible situation of still being in control, despite no longer owning shares in the company.

Foundations are important institutional investors in the Nordics. In Chapter 5, Rasmus Kristian Feldthhusen and Steen Thomsen discuss how foundations can contribute to sustainability. The authors argue that the foundations have a huge untapped potential to contribute to addressing the great social challenges of our time. Foundations are, in effect, private providers of public goods and therefore combine private sector initiative with social purpose. However, realising this potential requires freeing foundations from some of the canonical limitations of contemporary foundation law, in particular the strict separation between philanthropy and business, which authorities in many countries zealously enforce. Allowing Danish type enterprise foundations (foundation ownership of business companies) will enable foundations to exercise benevolent long-term ownership of business companies, while

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83 Johnsen and Jónsdóttir, ‘From the Outside In’.
84 Engsig Sørensen, ‘Groups of companies’.
85 Almlöf and Madsen, ‘Dimensions of control in private companies’.
86 Feldthhusen and Thomsen, ‘How enterprise foundations can sustaina sustainability’.
contributing a steady source of funding to sustainable development, through donations and operating philanthropy. The authors outline the regulation necessary to make the structure work, including a central foundation regulator operating at arm’s length distance to the political system, full disclosure of philanthropy and ownership ties, audited accounts, and good governance, including independent boards.

Cooperatives have traditionally been important in agriculture, retail and banking. Recently their role has increased in work, platforms, and governance of both data and also social and health services. In Chapter 6, Ville Pönkä discusses cooperatives and the cooperative movement in the Nordics. The purpose of the chapter is to discuss the role of cooperatives in the Nordic region, how the cooperative business model has evolved and what the challenges are that Nordic cooperatives are facing today. In addition, special attention is paid to the development and status of Nordic cooperative laws. The analysis has an emphasis on legal issues, since the law provides the cooperative with its identity and structure. Hence, the underlying objective of this chapter is to study the relationship between Nordic law and society from the perspective of the international cooperative movement. The analysis covers all Nordic countries, including Iceland, although cooperatives are no longer a significant business form in that country.

Digitalisation has caused fundamental changes to the Nordic societies and businesses over the recent decades. In Chapter 7, Linn Anker-Sørensen and Emma Coulthard discuss digitalisation in company law. They introduce the reader to new technologies, such as distributed ledger technology, and to decentralised autonomous organisations, and their significance for corporate governance in the Nordics, focusing on the role of advanced control technologies, such as governance tokens, smart contracts, and digital consensus mechanisms, such as automatic decision-making. This new technology has enabled new ways of exercising influence and control over companies, in addition to introducing inventive structures that transcend traditional corporate forms. The chapter discusses how these technologies fit into the Nordic corporate governance landscape, considering the internal aspect of corporate governance (board and shareholder decision-making) and the external aspect (transparency and disclosure requirements). According to Anker-Sørensen and Coulthard, these technologies do not simply mimic or facilitate already existing corporate control practices, but instead create true alternative governance structures and modes of operation for businesses.

4.2. Jurisdiction-specific analysis in Part II

The second part of the volume discusses specifics of company law in the five Nordic countries and tests the possibilities for Sámi company law.

In Chapter 8, Hanne Birkmose concentrates on developments in Danish corporate governance, in her analysis of Danish company law. She examines the development of the Danish corporate governance codes and how they have started to recognize the role of corporate governance for sustainability. Birkmose discusses critically the effects of the introduction of the terms ‘sustainability’ and ‘company purpose’ into the Danish 2020 Corporate Governance Code. She concludes that the revision of the Corporate Governance Code is not a significant game changer, and that its effect on business practices

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87 Pönkä, ‘The cooperative movement.
88 Anker-Sørensen and Coulthard, ‘Digital corporate control in the Nordics’.
89 H.S. Birkmose, ‘On the road to corporate sustainability in Denmark?’, Ch. 8 in this volume.
may be limited. While the recommendation on sustainability is primarily a recommendation on Corporate Social Responsibility (CSR), and, as such, does not deviate greatly from the previous recommendation on CSR, nonetheless, ‘company purpose’, being an innovation in the Danish CG code, could act as a catalyst for a more sustainable corporate governance framework. However, the recommendation on company purpose does not give a clear normative direction to companies, and the statement that many companies already have a purpose, although under the designations ‘mission’ or ‘vision’, suggests that this development will not steer companies away from ‘business as usual’ or encourage them to set out on a more sustainable direction.

In Chapter 9, Jukka Mähönen analyses Finnish company law. Finnish business forms are historically connected to their Scandinavian counterparts, following Continental European models. The private company is, together with the cooperative, the dominant business form. The number of public companies is relatively small, reflecting the nature of Finland as a country of small and medium-sized enterprises. Due to the dominance of the private company, the most important regulatory framework for businesses is the Companies Act of 2006, regulating both private and public companies. The Act is a hybrid, building on Nordic traditions but with Anglo-American features, especially in the definition of board duties and the emphasis on freedom of contract. Strong shareholder rights, placed together with a board with a broad competence to run the business, create a tension that is resolved both through active shareholder participation in the boards of private companies and through control holders in listed companies, in which both the state, private persons, and families have an important role as control holders, alongside domestic pension companies, non-profit foundations and foreign institutional investors.

In Chapter 10, Eivindur G. Gunnarsson discusses the Icelandic corporate governance system, through the lens of the G20/OECD Principles of Corporate Governance, which he sees as representing sound principles of good corporate governance. The backdrop is the 2007-2008 financial crisis, which hit Iceland hard, first and foremost because of the spill-over effects of its banking failure, when all of its three major banks collapsed. Legislative measures were taken to sharpen corporate governance, taking into consideration shareholders’ rights and minority protection, as well as strengthening the composition of the companies’ boards of directors. Moreover, gender representation quotas were implemented to boost gender equality and to expand the breadth of company boards, and thorough rules were adopted regarding the eligibility of board members. According to Gunnarsson, the many small recent amendments to Icelandic law, scattered across legislation, but based on well-known governance models, such as the G20/OECD Principles of Corporate Governance and Nordic company law, have together created a legal patchwork of corporate governance, which benefits the Icelandic market.

In Chapter 11, Beate Sjåfjell delves into Norwegian company law and corporate governance. The Norwegian state is one of the largest shareholders on the Oslo stock exchange, second in size if all foreign investors are grouped together, and controls important multinational companies. Norway also has, with its Norwegian Government Pension Global, one of the world’s largest Sovereign Wealth Funds, invested in around 9000 companies globally. Because of the Norwegian state’s significant role, Sjåfjell concentrates on the Norwegian state influence on corporate governance in the companies it controls.

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90 Mähönen, ‘Between shareholder value and corporate purpose’.
91 Gunnarsson, ‘Iceland’.
92 Sjåfjell, ‘Sustainable value creation in the land of oil and honey?’. 
directly, the possible knock-on effect this has on corporate governance in Norway more generally, and the significance of the Norwegian-controlled oil fund for the development of corporate governance globally. The aim of this analysis is to investigate whether, in these capacities, the Norwegian state is promoting or hindering the transition of business towards sustainability, in Norway and through its global influence, as well as internationally.

In Chapter 12, Kristina Labba discusses Indigenous Sámi business forms and the launching of Sámi company law. Labba describes Sámi herding practices and how reindeer herding is regulated by two parallel systems: the state law, and a system of unwritten traditional Sámi norms. ‘Sámi company law’ does not exist either as an established concept in research, or in practice. However, Labba presents an argument for how the rules and the norms in the two norm systems, the Sámi siida system, and the Swedish Reindeer Husbandry Act, together establish Sámi company law. In light of the challenges that the traditional livelihoods of Indigenous peoples face and the significance that they have for a sustainable management of nature, Labba also discusses the question of whether the Swedish Reindeer Husbandry Act promotes a sustainable Sámi reindeer herding and husbandry.

In Chapter 13, Niklas Arvidsson and Rolf Dotevall engage with Swedish company law, which according to the authors, affirms a strong shareholder model within its corporate governance framework. The authors explore this model and discuss to what extent it allows or even requires a Swedish company to take public interests into account in its internal decision-making activities. According to the model, the shareholders have extensive powers. In addition, the model contains a default purpose implying a profit maximising rule as the basic governance rule in Swedish companies. Since the purpose of the corporate governance framework is to promote general public interests, the model is built upon the assumption that the public benefits caused by it will, on balance, outweigh its public negative consequences. As regards shareholder power, the authors share this assumption. However, they argue that the Swedish model ought to abandon its default purpose in favour of requiring the governing purpose to be explicitly stated in the articles of association.

5. Reflecting on the future of Nordic company law
We conclude the volume with our editorial chapter on the future of Nordic company law.95

Nordic businesses have been an integral part of Nordic societies for a millennium. They have contributed to Nordic welfare, by offering means for production and trade, innovation, and employment. The modern Nordic corporate governance model, based on egalitarian societies and collaborative welfare systems, has been vital in ensuring the relative prosperity and peaceful co-existence of peoples over the last hundred years. Yet, the future path for the Nordics cannot be mapped out by drawing on the historical relative success. We face a convergence of environmental, social, economic and governance

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93 Labba, 'Establishing Sámi company law'.
94 N. Arvidsson and R. Dotevall, 'Shareholder power and sustainability in the Swedish corporate governance model', Ch. 13 in this volume.
crises,\textsuperscript{96} which the Nordics must contribute to mitigating, or else see the gradual demise of the Nordic model.

The success story of Nordic businesses and the Nordic corporate governance model is also one of environmental destruction, both in the Nordics and increasingly, through outsourced environmental harm, as part of a globalised system of overproduction and overconsumption.\textsuperscript{97} The story is also one of exploitation of people, both historically and notably the Sámi people, and currently, in the exploitation of both immigrants in the Nordics and also Indigenous peoples and other local communities, as well as invisibilised workers across global value chains.\textsuperscript{98}

Nonetheless, businesses can also be major actors in the path towards sustainability. With the EU’s sustainable finance and sustainable corporate governance initiatives, we see a new drive for regulating businesses and their investors to facilitate sustainable business. The emerging recognition of the financial and business risks of continued unsustainability entails that businesses themselves are increasingly realising that the path towards business profits and societal prosperity lies through transformation of business.\textsuperscript{99}

In our concluding chapter, we draw on the insights from the 12 chapters across the two main parts of this volume, to discuss the future of Nordic company law. We seek to outline how Nordic company law, in the broad sense that we use the concept of company law in this volume, can provide the regulatory

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\textsuperscript{97} We return to this in Sjåfjell and Mähönen, ‘The Future of Nordic company law’.


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infrastructure for successful Nordic businesses that are a part of the fundamental transformation to sustainability. We are inspired by the historical example of the Nordic harmonisation project. We see a potential for rekindling Nordic collaboration for Nordic company law, that encompasses the wide array of business forms we have, from sole entrepreneurs to partnerships, cooperative enterprises and all the other kinds of companies, and that rich and collaborative past and present, sets Nordic businesses on the path to sustainability.