

Beate Sjøfjell and Jukka Mähönen (eds.)

**NORDIC COMPANY LAW  
BROADENING THE HORIZON**



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*Broadening the Horizon*

UNIVERSITETSFORLAGET

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*To Katarina and Anna*





# Contents

<b>List of contributors</b> .....	11
<b>Preface</b> .....	14
<b>Foreword</b> .....	16
<b>INTRODUCTION</b> .....	19
<b>Chapter 1</b>	
<b>Broadening the horizon: Nordic company law in context</b> .....	21
<i>Jukka Mähönen and Beate Sjøfjell</i>	
<b>PART I</b>	
<b>CROSS-JURISDICTIONAL ISSUES</b> .....	47
<b>Chapter 2</b>	
<b>From the outside in: The influence of the welfare state on corporate governance in the Nordic countries</b> .....	49
<i>Guðrún Johnsen and Elín H. Jónsdóttir</i>	
<b>Chapter 3</b>	
<b>Groups of companies as a challenge to Nordic regulators and judiciary</b> .....	70
<i>Karsten Engsig Sørensen</i>	
<b>Chapter 4</b>	
<b>Dimensions of control in private limited companies</b> .....	90
<i>Hanna Almlöf and Marina B. Madsen</i>	

**Chapter 5****How enterprise foundations can sustain sustainability:****The European relevance of a Nordic ownership model . . . . . 110***Rasmus Kristian Feldthusen and Steen Thomsen***Chapter 6****The cooperative movement and cooperative law in the Nordics . . . . 129***Ville Pönkä***Chapter 7****Digital corporate control in the Nordics . . . . . 150***Linn Anker-Sørensen and Emma Coulthard*

## PART II

JURISDICTION-SPECIFIC CHAPTERS . . . . . 171

**Chapter 8****On the road to corporate sustainability in Denmark? . . . . . 173***Hanne Søndergaard Birkemose***Chapter 9****Between shareholder value and corporate purpose:****The evolution of Finnish company law . . . . . 195***Jukka Mähönen***Chapter 10****Iceland: A legal patchwork towards better corporate governance . . . 221***Eyvindur G. Gunnarsson***Chapter 11****Sustainable value creation in the land of oil and honey?****The corporate governance role of the Norwegian state . . . . . 241***Beate Sjøfjell***Chapter 12****Establishing Sámi company law: The case of Sweden . . . . . 267***Kristina Labba*

<b>Chapter 13</b>	
<b>Shareholder power and sustainability in the Swedish corporate governance model</b> .....	286
<i>Niklas Arvidsson and Rolf Dotevall</i>	
CONCLUSION .....	303
<b>Chapter 14</b>	
<b>The future of Nordic company law</b> .....	305
<i>Beate Sjøfjell and Jukka Mähönen</i>	
<b>Appendix: Nordic business forms</b> .....	323
<b>Index</b> .....	340



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# Preface

As Nordic company law scholars, we have worked for most of our academic lives in the Nordics. Over the last decade or so, we have concentrated increasingly on European, comparative and international company law and corporate governance, as well as corporate sustainability. With this volume we bring our home base and its company law into the European and international debates of our time.

In the Nordics, we are fortunate to have a dedicated Nordic Company Law Network.<sup>1</sup> This Network, of which we are long-standing members, was established in the 1990s as a joint forum of Nordic company law scholars and expanded in the 2000s to also include PhD candidates. Over the years we and many of the other authors in this book have enjoyed the academically inspiring and stimulating events of the Nordic Company Law Network, especially the regular conferences and network meetings held at Aarhus University and the annual PhD seminars at the University of Oslo. We are grateful to the members of this Network for their commitment to Nordic company law and to the Nordic company law community. We also thank our joint Research Group Sustainability Law<sup>2</sup> as well as our broader European and international networks, with colleagues across disciplines from whom we have learned so much.

For their excellent analyses, patience and dedication, our warmest thanks to our committed and hard-working authors who have tolerated the editors' endless requests and fulfilled all our demands. We are proud of the final results and of your contributions to Nordic company law and its future.

This book concerns the past, present and the future of Nordic company law. The work with the book is an outcome of the project *Futuring Sustainable Nordic Business Models (Futuring Nordics, 2019–2023)*, funded by the University of Oslo UiO:Nordic.<sup>3</sup> The aim of *Futuring Nordics* is to address the challenges that globalisation, digitalization and sustainability pose to Nordic

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1 Nordic Company Law Network, [www.jus.uio.no/english/research/areas/sustainabilitylaw/networks/nordic-company-law-network](http://www.jus.uio.no/english/research/areas/sustainabilitylaw/networks/nordic-company-law-network).

2 Sustainability Law (2022–2027), Research Group at the Faculty of Law of Oslo, [www.jus.uio.no/sustainabilitylaw](http://www.jus.uio.no/sustainabilitylaw).

3 *Futuring Nordics*, [www.uio.no/english/research/strategic-research-areas/nordic/research/research-groups/futuring-nordics/](http://www.uio.no/english/research/strategic-research-areas/nordic/research/research-groups/futuring-nordics/).



businesses and propose policies for innovating Nordic business models for sustainability. We think our book fits well with these aims.

We thank our wonderful language editor, Sarah Whitehead, whose flair for the English language has brought out the best of our contributions. We also thank our fantastic research assistants, Madeleine Østenstad and Frida Kvål Salberg, for their work with footnote checking and with the appendix, and to Anne Taylor for meticulous copy-editing of the manuscript.

We dedicate this book to our daughters, two strong, intelligent, creative, compassionate and amazing young women, who bring light, happiness and hope into our respective lives.

Oslo, 2 July 2023

*Beate Sjøfjell and Jukka Mähönen*

# Foreword

Nordic company law – what role for it? Within a European concert of voices. Seen from an outside perspective, one, however, with obvious sympathy. Beate Sjøfjell and Jukka Mähönen put together an impressive picture.

European company law can indeed be seen – and in some treatises is seen – in isolation, as the harmonized law of the company law *stricto sensu*, formerly largely exhausted by those EU legal measures on the (enumerated) list of directives from First to Fourteenth (and a few regulations on EU company law forms). It can, however, also be seen as living law (*Eugen Ehrlich*), as an organism with links, patterns of influence and impact all around. This would then include comparative law, for many reasons, not least because European harmonization lives off the vividness of models developed in their Member States, and European company law has made a powerful vow to the freedom of companies to travel (since *Centros* 1999). This would then further include capital market law, because how could a company limited by shares, by far the most important object of company law harmonization, live without capital – constitutive not only as its financial basis, but for the whole governance, the power structure in the company? Moreover, is not the image of those companies typically, and namely for the public at large, condensed into one single signal – stock price? Sustainability – as the key concern of our times – adds another aspect. How to consider it only in the reporting part (itself already rather closely capital market related; see the International Accounting Standards Regulation), without certification and taxonomy, without the supply chains? Finally, this would as well include adjoining disciplines, their teachings, without which legal scholarship on companies remains partly and strangely uninformed.

In such an organism, what role for Nordic company law? From abroad, it gives one image that – like harmonization and the European Union more generally – is an image of combined forces, giving deeper relief to a common thrust. In the European concert, Nordic company law is more powerful than Danish, Finnish, Norwegian, Swedish, Icelandic or Sámi company law alone. It constitutes a whole group of voices combined, thus stronger, like the whole group of string instruments or of wind instruments, with distinct voice and sound. What is its melody – and I wonder whether melodies unheard are really

sweeter, as an outstanding comparatist has once famously put it? The melody of the North – a well-heard melody indeed – has been social, deeply considering modes of societal thinking since (at least) the times of Bergmann’s, perhaps those of Ibsen’s. The social design of company law is, of course, dear as well to such countries as Germany and others that emphasize stakeholder impact and perhaps even some form of workers’ co-determination. However, specific forms are important as well, like the Swedish company with a capital basis pledged to long-termism, the overall attitude and design. This already shows how the North, since one or two decades, proves as well to be a protagonist, sometimes even a forerunner, in matters of long-termism and ecological sustainability. In this way, what the Brundtland Report, ‘Our Common Future’, of 1987 set as a scene seems to be in good part a reality in the Nordic countries – social sustainability and ecological sustainability being nothing but two sides of the same coin, intricately linked to each other. Making this melody heard is an important endeavour.

Indeed, to bring to us this world in one condensed and precise image – this is the scope of this volume. Nuanced and detailed, but also clear and crisp, with the main context. Therefore, history is so important – where do we come from, and how did what we now see come about? Therefore, the deeper insight into governance, the real modes of influence are so important, also with some look on ties and contexts – how are our organisms really working? Finally, therefore, also both the general themes and the deeper look into single jurisdictions, the nuances, are so important. In the end, the future cannot be forecasted, but it is not an option either not to have it at least in mind. This is a deep and colourful work – in the best sense.

Berlin, 30 June 2023

*Stefan Grundmann, Berlin and Florence, Humboldt-Universität and European University Institute*



# Introduction



## Chapter 1

# Broadening the horizon: Nordic company law in context

Jukka Mähönen and Beate Sjøfjell

## 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.<sup>1</sup> 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 *Sámiland*), 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,<sup>2</sup> and the Åland Islands under Finland.<sup>3</sup> 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

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1 J. Lau Hansen, *Nordic Company Law – the Regulation of Public Companies in Denmark, Finland, Iceland, Norway and Sweden* (Copenhagen: Djøf Forlag, 2003).

2 The Danish Act of 24 June 2005 no. 578 on the Transfer of Legislative Powers (Takeover Act) [Lov om de færøske myndigheders overtagelse af sager og sagsområder, LOV nr 578 af 24/06/2005]; The Greenland Self-Government Act of 12 June 2009 no. 473 [Lov om Grønlands Selvstyre, LOV nr 473 af 12/06/2009].

3 The Self-Government Act of Åland of 16 August 1991 no. 1144 [Självstyrelselag för Åland (16.8.1991/1144)].

the Faroe Islands, but may be extended there.<sup>4</sup> Danish law has been extended to Greenland,<sup>5</sup> while the Faroe Islands have issued their own Companies Act.<sup>6</sup> The Sámi, originally having had their own Indigenous business form, the *siida*, have seen their Indigenous form colonised through Finnish, Norwegian and Swedish state company law and its special reindeer husbandry legislation, usually employing the cooperative form.<sup>7</sup> 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 not only organised 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 in cooperatives.<sup>8</sup>

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.<sup>9</sup> Further, the volume contains a chapter on Indigenous company law, presented for the first time in Nordic company law.<sup>10</sup>

Of course, public companies, including listed companies, are also of great significance in the Nordic countries. We discuss regulation of listed companies

4 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.'

5 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)].

6 Act of 31 May 2011 on joint-stock and limited companies [løgtingslóg nr. 73 frá 31. mai 2011 um parta- og smápartafeløg].

7 K. Labba, 'Establishing Sámi company law: The case of Sweden', Ch. 12 in this volume; K. Labba, 'The legal organization of Sami reindeer herding and the role of the Siida' in C. Allard and S.F. Skogvang (eds.) *Indigenous Rights in Scandinavia: Autonomous Sami Law* (London: Routledge, 2015), pp. 141–153.

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.

9 R.K. Feldthusen and S. Thomsen, 'How enterprise foundations can sustain sustainability: The European relevance of a Nordic ownership model', Ch. 5 in this volume; J. Mähönen, 'Between shareholder value and corporate purpose: The evolution of Finnish company law', Ch. 9 of this volume.

10 K. Labba, 'Establishing Sámi company law'.



and how different control structures affect corporate governance within them.<sup>11</sup> We see that in many Nordic companies there is a controlling shareholder, 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.<sup>12</sup>

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 itself, 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.<sup>13</sup>

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

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. Sjøfjell, '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'.

13 See Danish Committee on Corporate Governance, Danish Recommendations on Corporate Governance, 2 December 2020; Securities Market Association, Finnish Corporate Governance Code 2020, available at <https://cgfinland.fi/wp-content/uploads/sites/39/2019/11/corporate-governance-code-2020.pdf>; The Iceland Chamber of Commerce, available at [https://corporategovernance.dk/sites/default/files/media/anbefalinger\\_for\\_god\\_selskabsledelse\\_engelsk.pdf](https://corporategovernance.dk/sites/default/files/media/anbefalinger_for_god_selskabsledelse_engelsk.pdf); Nasdaq Iceland and SA Confederation of Icelandic Enterprise, Guidelines on Corporate Governance, version 6 (2021), available at [https://leidbeiningar.is/wp-content/uploads/2021/04/Stjornarhaettir\\_fyrirtaekja\\_2021\\_A5\\_EN\\_Vefur.pdf](https://leidbeiningar.is/wp-content/uploads/2021/04/Stjornarhaettir_fyrirtaekja_2021_A5_EN_Vefur.pdf); The Norwegian Corporate Governance Board, The Norwegian Code of Practice for Corporate Governance, 14 October 2021, available at <https://nues.no/wp-content/uploads/2021/10/2021-10-14-The-Norwegian-Code-of-Practice-for-Corporate-Governance.pdf>; Swedish Corporate Governance Board, The Swedish Corporate Governance Code (2016), available at [www.corporategovernanceboard.se/UserFiles/Archive/496/The\\_Swedish\\_Corporate\\_Governance\\_Code\\_1\\_December\\_2016.pdf](http://www.corporategovernanceboard.se/UserFiles/Archive/496/The_Swedish_Corporate_Governance_Code_1_December_2016.pdf).

Economic Area (EEA), which brings together the EU, its 27 Member States, and three EFTA members.<sup>14</sup> 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.<sup>15</sup> 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,<sup>16</sup> the Accounting Directive of 2013,<sup>17</sup> including amendments by the Corporate Sustainability Reporting Directive of 2022,<sup>18</sup> the International Accounting Standards Regulation of

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.

15 S. Grundmann and F. Glasgow, *European Company Law: Organization, Finance and Capital Markets*, 2nd edn. (Cambridge: Intersentia, 2012), vol. I; A. Dorresteijn and M. Olaerts, *European Corporate Law*, 4th edn. (Alphen Aan Rijn: Wolters Kluwer, 2022), vol. V.

16 Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification), OJ L 169, 30.6.2017, pp. 46–127, as amended by Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency), PE/93/2018/REV/1, OJ L 172, 26.6.2019, pp. 18–55, Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law, PE/25/2019/REV/1, OJ L 186, 11.7.2019, pp. 80–104, Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions, PE/84/2019/REV/1, OJ L 321, 12.12.2019, pp. 1–44 and Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions, PE/84/2019/REV/1, OJ L 321, 12.12.2019, pp. 1–44.

17 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.6.2013, pp. 19–76, as amended latest by Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, PE/35/2022/REV/1, OJ L 322, 16.12.2022, pp. 15–80.

18 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, PE/35/2022/REV/1, OJ L 322, 16.12.2022, pp. 15–80.

2002,<sup>19</sup> the Audit Directive of 2006<sup>20</sup> and the Audit Regulation of 2014,<sup>21</sup> the Takeover Directive of 2004<sup>22</sup> and the Shareholders' Rights Directive of 2007, reformed in 2017.<sup>23</sup>

### 1.3 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 have 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 was 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, concerning the environment, the local communities, including Indigenous communities, and gender.

19 Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, OJ L 243, 11.9.2002, pp. 1–4.

20 Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, OJ L 157, 9.6.2006, pp. 87–107.

21 Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC, OJ L 158, 27.5.2014, pp. 77–112.

22 Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, OJ L 142, 30.4.2004, pp. 12–23.

23 Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, OJ L 184, 14.7.2007, pp. 17–24.

Sustainability, which we understand as the securing of social foundations for humanity now and for the future, while mitigating pressures on planetary boundaries,<sup>24</sup> 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<sup>25</sup> and the governance of businesses.<sup>26</sup> 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.

#### 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 rules and regulation of value chains.<sup>27</sup> 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.<sup>28</sup> Nor do we use the economic terminology of 'owners' of a business when we

24 J. Rockström, W. Steffen, K. Noone, Å. Persson, F.S.I. Chapin, E. Lambin, T. Lenton, M. Scheffer, C. Folke, H.J. Schellnhuber, B. Nykvist, C. de Wit, T. Hughes, S. van der Leeuw, H. Rodhe, S. Sörlin, P. Snyder, R. Costanza, U. Svedin, M. Falkenmark, L. Karlberg, R. Corell, V. Fabry, J. Hansen, B. Walker, D. Liverman, K. Richardson, P. Crutzen, and J. Foley, 'Planetary boundaries: Exploring the safe operating space for humanity' (2009) 14 *Ecology and Society*; W. Steffen, K. Richardson, J. Rockström, S.E. Cornell, I. Fetzer, E.M. Bennett, R. Biggs, S.R. Carpenter, W. de Vries, C.A. de Wit, C. Folke, D. Gerten, J. Heinke, G.M. Mace, L.M. Persson, V. Ramanathan, B. Reyers, and S. Sörlin, 'Planetary boundaries: Guiding human development on a changing planet' (2015) 347 *Science* 1259855; L. Persson, B.M. Carney Almroth, C.D. Collins, S. Cornell, C.A. de Wit, M.L. Diamond, P. Fantke, M. Hassellöv, M. MacLeod, M.W. Ryberg, P.S. Jørgensen, P. Villarrubia-Gómez, Z. Wang, and M.Z. Hauschild, 'Outside the safe operating space of the planetary boundary for novel entities' (2022) 56 (3) *Environmental Science & Technology*, 1510–1521, available at <https://doi.org/10.1021/acs.est.1c04158>; M. Leach, K. Raworth, and J. Rockström, 'Between social and planetary boundaries: Navigating pathways in the safe and just pathway for humanity' (2013) *World Social Science Report, 2013: Changing Global Environments*, 84–90.

25 European Commission, Sustainable finance, [https://finance.ec.europa.eu/sustainable-finance\\_en](https://finance.ec.europa.eu/sustainable-finance_en).

26 European Commission, Sustainable corporate governance, [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance_en).

27 As European examples the Accounting Directive and its definition of the group and the proposed Corporate Sustainability Due Diligence Directive can be mentioned; see European Commission, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM(2022) 71 final.

28 Unfortunately Anglo-American use of 'directors' has also influenced EU legislation as the proposed Corporate Sustainability Due Diligence Directive, see especially Article 3(o).

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 (such as voting rights in the general meeting) and responsibilities (primarily an obligation to pay for the shares). 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.<sup>29</sup> However, the discussion has, from the 1980s onwards, been dominated by scholarship from the United States.<sup>30</sup> 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 whom the business affects, positively or negatively. We see it as 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).

29 E. Rhenman, *Företagsdemokrati och företagsorganisation [Industrial democracy and industrial management]* (Stockholm: Thule, 1964); E. Rhenman, *Industrial Democracy and Industrial Management* (London: Tavistock, 1968); E. Rhenman, L. Strömberg, and G. Westerlund, *Conflict and Co-operation in Business Organizations* (London: Wiley-Interscience, 1970).

30 R.E. Freeman and D.L. Reed, 'Stockholders and stakeholders: A new perspective on corporate governance' (1983) 25 *California Management Review*, 3, 88–106; R.E. Freeman, 'Strategic management: A stakeholder approach' (1984) 1 *Advances in Strategic Management*, 1, 31–60; R.E. Freeman, *Strategic Management: A Stakeholder Approach* (Boston: Pitman/Ballinger, 1984); R.E. Freeman, R. Phillips and R. Sisodia, 'Tensions in stakeholder theory' (2020) 59 *Business & Society*, 2, 213–231.

## 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 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.<sup>31</sup> 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, the 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-day 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,

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31 T. Günther, H. Malmström, E.M. Svensson, A. Omrak, F. Sánchez-Quinto, G.M. Kılınc, M. Krzewińska, G. Eriksson, M. Fraser, H. Edlund, A.R. Munters, A. Coutinho, L.G. Simões, M. Vicente, A. Sjölander, B.J. Sellevold, R. Jørgensen, P. Claes, M.D. Shriver, C. Valdiosera, M.G. Netea, J. Apel, K. Lidén, B. Skar, J. Storå, A. Götherström and M. Jakobsson, 'Population genomics of Mesolithic Scandinavia: Investigating early postglacial migration routes and high-latitude adaptation' (2018) 16 *PLoS Biology*, 1, e2003703, available at <https://doi.org/10.1371/journal.pbio.2003703>.

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) 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.<sup>32</sup>

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, in terms of production as well as 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.<sup>33</sup>

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.<sup>34</sup> Partnerships, limited partnerships, shipping companies and later trade companies modelled by European companies were followed by

32 K. Tikka, 'The Swedish Tar Company – Balancing between privileges, commerce and foreign politics' in K. Tikka (ed.), *The Development of Commercial Law in Sweden and Finland (Early Modern Period–Nineteenth Century)* (Leiden: Brill, 2020), pp. 92–125.

33 E. Piltz, 'Varangian companies for long distance trade' in E. Piltz (ed.), *Byzantium and Islam in Scandinavia* (Jonsered: Paul Åströms Förlag, 1998), pp. 85–106; R. Hammel-Kiesow, 'The early Hansas', in D.J. Harreld (ed.), *A Companion to the Hanseatic League* (Leiden: Brill, 2015), pp. 15–63 at p. 45; I. Sandór, 'The medieval history and development of company law' (2017) 8 *Journal of European History of Law*, 1, 34–49 at 40–42.

34 Hammel-Kiesow, 'The early Hansas'; Sandór, 'The medieval history and development of company law'.

modern company formations in the nineteenth century. The development of the Nordic business forms was connected to changes in society and 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.<sup>35</sup>

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 among the last countries in the whole of Europe, in 1917 in Denmark, and in 1921 in Iceland.<sup>36</sup> Towards the end of the nineteenth century, the cooperative movement also spread to the Nordics, resulting in the first cooperative acts in Sweden and Finland, in 1895 and 1901, respectively.<sup>37</sup> However, in Denmark, an attempt to enact a Cooperatives Act in 1917 failed,<sup>38</sup> and this remains the case. In Norway, a Cooperatives Act was enacted late, in 2007.<sup>39</sup> 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.<sup>40</sup>

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.<sup>41</sup> The very limited group law that we do have in the Nordics was introduced late,

35 D. De ruysscher, 'Chartered companies in Sweden, the Dutch Republic and England (c.1600–c.1630): Experiments in corporate governance', in K. Tikka (ed.), *The Development of Commercial Law in Sweden and Finland (Early Modern Period–Nineteenth Century)* (Leiden: Brill, 2020), pp. 59–91; Tikka, 'The Swedish Tar Company'.

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 Accounting Review*, 312–18; E.G. Gunnarsson, 'Iceland: A legal patchwork towards better corporate governance', Ch. 10 in this volume.

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 Feldthusen 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.





Nordic company law is deeply integrated in European company law. Yet Nordic company law retains its own essence. This volume discusses core Nordic company law issues of control, purpose and profit in companies ranging from microenterprises to listed companies. The volume goes beyond the traditional scope of Nordic company law by also encompassing enterprise foundations and cooperatives and conceptualising, for the first time, Sámi company law.

This volume speaks to all interested in the topical company law and corporate governance debates. These include: What will digitalisation mean for corporate governance? What role for company law in the transformation to sustainability? Does state control of multinational listed enterprises entail good corporate governance?

The authors are leading Nordic scholars in their fields. Covering all five Nordic countries and the Sápmi, they bring to the reader the state of the art concerning challenges and possibilities for Nordic company law. With its in-depth analysis of pan-Nordic and jurisdiction-specific themes, the volume is an indispensable resource for academics, students, practitioners, policy-makers and journalists interested in Nordic company law and its contributions to the European and international debates of our time.

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