

European Corporate Governance Network

A Survey on Estonian Corporate Governance Rules, Statistics and Institutions.¹

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1 Introduction

This survey on the Estonian corporate governance issues and company statistics follows the European Corporate Governance Survey guidelines. The survey is divided into two sections, a qualitative survey of legal regulations and a quantitative analysis of board structures and ownership and control.

First, the different company types and their main characteristics are presented in a table. Data pertaining to the legal definitions of groups are presented. After that additional information on different legal issues related to corporate governance and ownership disclosure rules (company law, accounting and competition rules, transparency directive, stock market regulations, etc.) are presented.

After the legal part, the quantitative analysis begins. First the total population of companies are presented in various tables. After that the sample used for analysing ownership and control is presented. Follows does a section which briefly looks at the board structures in our sample. The data on management board and supervisory board members is quite limited. The databases of the Commercial Register are insufficient due to insufficient reporting by the companies. It is, for example, not possible to distinguish between external or internal board members. Finally statistics on ownership stakes of a sample of Estonian companies is presented. The companies in the sample include all listed companies as of Dec 31, 1999 and all the companies who had at that time their shares registered at the Central Depository of Securities and thus are at least theoretically tradable on the OTC market (the issue will be discussed below together with the statistics). Taking these companies and crossing the ownership information with total assets 1999 as the size basis gives the total sample of 74 companies. In all cases only data on direct ownership were available.

The survey ends with a brief discussion relating to the availability of data.

2 Qualitative survey: rules and regulations

2.1 Company types: main features

Sole proprietor	General partnership	Limited partnership	Private limited liability company	Public limited liability company	Commercial association
Names of the legal form					
Fuusilisest isikust ettevotja	Täisuhing	Usaldusuhing	Osauhing	Aktsiaselts	Tulundusühistu ²
Limited vers unlimited liability					
Unlimited liability	Unlimited Liability	General partner-unlimited liability; limited partner-liability limited to his contribution	Limited liability	Limited liability	Limited liability
Minimum capital					
None	No minimum. ³ The amount of the contributions is agreed upon in the partnership agreement	No minimum. The amount of the contributions is agreed upon in the partnership agreement	40000 EEK	400000EEK	No minimum. The amount of the contributions is agreed upon in the memorandum of association
Minimum number of owners					
n.a.	Two or more partners	Two or more partners	One or more persons	One or more persons	Three or more persons
Minimum number of managers					
n.a.	Min one, if set out so in the partnership agreement, otherwise all partners	Min one (general partner)	One or more persons ⁴	One or more persons in the management board, three persons in the supervisory board (can have more by the statutes)	One or more persons in the management board ⁵
General comment					
General partnerships and limited partnerships are legal forms not used very often, they are included in the Commercial Code mainly due to historical reasons. Commercial association are established for providing services for the members of the association. Members are expected to be actively involved in buying and using these services. In that sense they are different from private and public limited liability companies where the main aim is to earn profit for the owners and the owners are often not active in the everyday management of the company.					

² Commercial associations are regulated by the Law on Associations

³ Since at least one partner has unlimited liability, no requirement for minimum capital is set.

⁴ A private limited company must have a supervisory board if the share capital is more than 400,000 EEK and the management board has less than three members, or if prescribed by the statutes.

⁵ A commercial association must appoint a supervisory board with three or more persons by the statutes, if the share capital is over 400,000 EEK.

2.2 Legal definitions of groups

What is the legal definition of the group, as set out in company law?

The basic definition for the group comes from the *Commercial Code* (§ 3). The group is defined as formed by the *parent company* and its *subsidiaries*. A subsidiary is a company:

1. of which the other company (parent company) is a partner or shareholder and owns a majority voting interest, or
2. in which another subsidiary or subsidiaries, with or without the parent company, have a majority voting interest, or
3. in which another company (parent company) has control as a partner as shareholder, on the basis of an agreement or without an agreement.

What is the definition of group according to the rules on drawing up consolidated accounts (transposition of Directive 83/349/EEC)?

According to the *accounting law* (§ 3) and the requirements for consolidation of accounts (equity method), a group is defined as the parent company, its subsidiaries and associated companies. The parent company owns either directly or indirectly over 50% of the shares of the subsidiary. The associated company is a company in whose share capital the parent company participates with a long-term interest and for whose business activities that of the associated company is important. The parent company owns 20-50% of the voting shares of the associated company.

What is the definition of group applied by the competition authorities?

Definition applied by the *competition authorities*. For the purposes of the Competition Act (§2) undertakings which belong to the same group of companies or other undertakings which are connected through control are to be treated as one company. Control is defined as:

- 1) control of a parent company over a subsidiary;
- 2) a situation where an undertaking has the right to appoint or remove a majority of the members of the directing bodies of another undertaking; or
- 3) a situation where an undertaking, by agreement and together with some of its stockholders or shareholders, has a majority of votes in another undertaking.

General comments

Data on groups is generally not available, due to the lack of respective legal reporting requirements. It is only possible to look at each of the listed companies' annual reports and find the number of subsidiary and associated companies (not always explicitly reported). Going through the annual reports of the listed companies, the following general conclusions can be drawn. There is rarely more than 10 subsidiaries (companies where more than 50% of shares are owned) and affiliated companies (companies with 20-50% ownership) and sometimes none at all.

The companies in a group usually undertake similar or supporting activities, e.g. in case of a manufacturing company it might involve the production of supporting or related products, in case of a bank usually related services are provided through subsidiaries. A number of companies have their real estate maintenance and development taken care of by a subsidiary.

There has also been a tendency over recent years to focus on the core activities and to sell off the companies with diverse activities not related in some relevant way to the main functions of the company.

2.3 Ownership disclosure rules

2.3.1 Company law (all types)

Sole proprietor	General partnership	Limited partnership	Private limited liability company	Public limited liability company	Commercial association
Register when the company is founded					
Registered at the Commercial Register at his/her request, after being registered with the Tax Board. ⁶	Commercial Register (Ärireger)	Commercial Register	Commercial Register	Commercial Register	Commercial Register
Documents that the company has to deposit when the company is founded					
Petition with info. about business name, area of activity of the undertaking, seat and address, dates for the financial year; name, personal code, residence of the person as well as his/her specimen signature and telecommunications numbers	List of partners	List of partners	Memorandum of association, statutes	Memorandum of association, statutes	Statutes, minutes of the foundation meeting

⁶ A sole proprietor who is not entered in the Commercial Register may operate only under his/her given name and surname, those registered can have a business name.

Sole proprietor	General partnership	Limited partnership	Private limited liability company	Public limited liability company	Commercial association
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What is the legal procedure for transferring shares? (e.g. Anonymous, registered shares can be transferred with consent of the company, company has a register which is/is not public)

			Shares freely transferable, other shareholders have a right of pre-emption (the seller must inform the management board who informs other shareholders). (Can prescribe a different procedure in the statutes). After the transfer, notification given to the board who will amend the list of shareholders (the share is deemed to be transferred as of this amendment). A copy of the contract of transfer sent by the board to the registrar of the Commercial Register.	Currently, both registered and bearer shares are freely transferable. ⁷ Registered shares- can prescribe in the statutes a pre-emptive right for other shareholders. The seller of such shares must inform the management board who will notify other shareholders. The share shall be deemed to be transferred as of entry of the transferee in the share register	Can transfer the shares to a person who meets the requirements for the member of association as set out in the law and the statutes. The rights and obligations will be considered transferred as of the day the management board has made the respective decision.
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Limits on the Directors to hold ownership certificates in the company					
			None	None	None

Is the list of owners deposited?

n.a.	Yes	Yes	The list of founders is included in the memorandum of association, after that a list of shareholders with more than 10% of voting rights attached to the shares (as at the approval of the annual report) is submitted to the Commercial Register together with the annual report	The list of founders is included in the memorandum of association, after that a list of shareholders with more than 10% of voting rights attached to the shares (as at the approval of the annual report) is submitted to the Commercial Register together with the annual report	Yes
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⁷ The new Law on the Central Depository of Securities that will enter into force from Jan 1, 2001 abolishes the issue of bearer shares. The companies have to change these shares into registered shares and apply to the Commercial Register for the respective change in the statutes by Dec 31, 2001 at the latest.

Sole proprietor	General partnership	Limited partnership	Private limited liability company	Public limited liability company	Commercial association
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What information about the owners does the list contain?					
If registered, the name, personal code and residence	Names, personal identification codes or registry codes, residences or seats	Names, personal identification codes or registry codes, residences or seats	Memorandum of association: names and residences or seats of the founders. List of shareholders: names, addresses, personal codes (or data of birth), legal persons: registry code of the shareholders, nominal value of their shares ⁸	Memorandum of association: names and residences or seats of the founders. List of holders of registered shares who own more than 10 % of the votes determined by the shares as at the date of the general meeting which approves the annual report: names, addresses, personal codes or registry codes	Names , addresses, personal or registry code, the amount of contribution ⁹
General comment					
<p>The company does not have to notify the Commercial Register when it acquires or holds a stake in another company.</p> <p>The Commercial Register data is centralised. One can get the information on companies from the Commercial Register for a fee, in paper format, or electronic format (data on a disk, or through an online connection). The quality of the information depends on the quality of the reporting of the companies.</p>					

⁸ Each 100 EEK of a share grants one vote unless the statutes prescribe otherwise.

⁹ According to the Law on Associations, each owner has one vote at the general meeting regardless of the amount of contribution. The amount of contribution shows the amount of the liability of the owner with respect to the association. It may but does not have to be the basis for sharing the earnings (profit could be shared in proportion to the annual turnover of the members, for example).

2.3.2 Company law (private & public ltd. liability)

Private limited liability company	Public limited liability company
Are the directors/the company allowed to purchase ownership certificates in the <u>name of the company</u> and if yes up to what percentage of nominal capital ?	
In general, not allowed, and even if acquired, the shares shall not grant the company any rights of a shareholder. Acquisition of own shares only permitted if: 1) it occurs within one year after adoption of a resolution of the shareholders; and 2) the shares are paid for from assets exceeding the share capital, reserve capital and premiums	In general, not allowed, and even if acquired, the shares shall not grant the company any rights of a shareholder. Acquisition of own shares only permitted if: 1) it occurs within one year after adoption of a resolution of the general meeting; and 2) the sum of the nominal value of the shares held does not exceed 1/10 of the share capital; and 3) the shares are paid for from assets exceeding the share capital, reserve capital and premiums. May acquire shares by a resolution of the supervisory board (without that of the general meeting), if the acquisition is necessary to prevent significant damage to the company. ¹⁰
Does the company have to notify the company register (or similar) when it acquires or holds a stake in another company? What are the thresholds for such notifications?	
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Is the information from the company register (or similar) only available on paper or in computer readable form as well?	
n.a.	n.a.
If the information is available from databases, is the information from the different sources consistent (the official notifications being the benchmark) ?	
n.a.	n.a.

2.3.3 Accounting rules (public ltd. liability)

What ownership information do these companies have to report in the annex of their annual reports (Fourth Company Law Directive, 78/660/EEC of 25 July 1978 covering all limited liability companies; Seventh Company Law Directive 83/349/EEC of 13 July 1983 on consolidated accounts) ?
None by the Accounting Law. The requirement comes from the Commercial Code.
Which national law transposed the accounting standards directives ? (4th Directive 78/660/EEC and 7th Directive 83/349/EEC)
4th Directive- Law on Accounting. 7th Directive- the draft on the law is planned to be taken to the parliament by the end of year 2000.
Has the country imposed additional requirements via its national accounting standards (e.g. as a result of the activities of the International Accounting Standards Committee or rival standards)?
No.
Is the information from this source only available on paper (the printed annual report) or in computer readable form
The relevant parts of annual reports are entered into the Commercial Register databases. Both the paper and the computer readable format is available
If the information is available from databases, is the information from the different sources consistent (the printed annual report being the benchmark) ?
Yes. This view is based on studying the main financial data of the sample companies. The numbers from the Commercial Register, the webpage of the Stock Exchange and the printed annual reports (those that were available—mostly listed companies) normally coincided.

¹⁰ According to the Commercial Code, § 283 (5), a public limited companies own shares shall not grant the public limited company **any** rights of a shareholder.

2.3.4 Competition rules (public ltd. liability)

Are there any competition (anti-trust) rules on ownership stake notifications that apply to this type of company ?
Only concerning mergers. The Competition Board must be notified of a merger in advance if the aggregate annual turnover of the merging parties exceeds 100 million EEK or if the merging parties separately or jointly have control over more than 40% of the market. A merger may not be implemented earlier than within one month after the submission of all information. After getting a confirmation from the Competition Board of receipt of all necessary information, the companies can submit a petition to the Commercial Register.
Whom do the companies have to notify and where is this data published ?
To the Competition Board (in the above cases). The merging companies have to publish two notices concerning the merger resolution with at least a fifteen day interval in a national newspaper. The petition to the Commercial Register (see above) cannot be submitted earlier than three months after publication of the second merger notice.

2.3.5 Large Holdings Directive (88/627/EEC)

The Transparency Directive has not yet been transposed in the securities market law, however, it has been partly transposed in the Rules and Regulations of the Stock Exchange. The new securities market act which is being drawn up currently is expected to be fully compliant with all the relevant EU directives. The draft available to us (as of end of August 2000) is not specific in setting any reporting requirements, the law rather establishes the basis for secondary acts. It states the responsibility of the operator of the regulated market to develop a set of rules and regulations for the functioning of the regulated market, including the basis, conditions and procedure for issuers and investors to provide various information (specified in the rules and regulations) to the operator of the regulated market.

It is important to emphasize that the Rules and regulations of the Stock Exchange serve as an agreement between the issuer and the exchange, thus no obligation for reporting ownership changes is put on the investors.

When was the Transparency Directive transposed, and in what law/regulation?
Not yet transposed; will be partially transposed with the eventual adoption of the new Securities Markets Act in 2001.
When did the legislation become effective? (or, when is it estimated to become effective?)
Maybe January 2002
Which are the "competent authorities or authorities" referred to in Article 13?
Securities Market Commission and/or the Stock Exchange
The Transparency Directive left the Member States a considerable degree of freedom in implementing the individual articles (see text of directive in Appendix). Indeed, Article 3 allows the Member States to tighten up the transposition at will, converting the provisions of the directive into common minimum standards – has this been done?
n.a.
Is the first time notification threshold referred to in Article 5 10% or lower?
N.A./unknown

Do natural persons or legal entities have to notify why they notified (i.e. which of the possibilities in Article 7 apply)?
No.
Do natural persons or legal entities have to notify how they control an undertaking (a, b or c in Article 8)?
No.
How much time may pass between crossing a threshold and reporting to the company (and the competent authority/authorities)?
“immediately”
How much time may pass between the notification of the company (and the competent authority/authorities) and the notification of the public; Art. 10(1)?
9 days
Who notifies the public; Art. 10(1)?
The Stock Exchange/operator of the regulated market
Does the national law prescribe that "a company must also be informed in respect of the proportion of the capital held by a natural person or legal entity"; Art. 4(1)(3)?
No.
By what means are the company and the competent authority/authorities notified; Art. 4(2)? How does the competent authority store the notifications (paper, computer)?
Not decided yet (left for the Ministry of Finance to decide in more detailed rules)
In addition to the immediate distribution mentioned in the directive (unless the company is responsible) does the competent authority distribute the notifications cumulatively (e.g. on floppy disk upon request)?
Not decided.
Does the competent authority/authorities have to declare how often it has applied the waiver rule set out in Article 11 (and for which natural person, legal entity)?
No (not in the current reading of the draft) – a waiver rule is included though.
What are the sanctions mentioned in Article 15? How are these sanctions applied (or, what powers are conferred upon the competent authority/authorities for the performance of their duties; Art. 12(2))?
Not specified.
Apart from the transposition of the transparency directive, are there any other regulatory rules that impose additional ownership data reporting requirements (distinguish between different markets if country has more than one)? If yes, is the ownership data available and from where?
n.a.
Apart from the transposition of the transparency directive and any other rules imposed on the stock markets and its participants, does the stock exchange itself impose additional ownership data reporting requirements (distinguish between different markets if country has more than one)? If yes, is the ownership data available and from where?
n.a.
What companies are subject to the Transparency Directive, and how many are actually reporting?
All public companies
Is there a noticeable difference between the data reported according to the directive and data available on direct stakes?
n.a.
What are the thresholds chosen?
5%, 10%, 20%, 33%, 50% and 66%
General comments
No data; definitions of concerted action not in line with the directive.

2.4 Inside supervision

2.4.1 Boards

What are the legally available board structures (one or two-tier board)?
<ul style="list-style-type: none"> • Public limited companies- always two-tier, private limited companies, commercial associations- two-tier if share capital over 400,000 EEK or if prescribed so by the statutes • Management board- “juhatus” • Supervisory board- “nõukogu”
Are there different categories of directors and/or of managers? What are their titles (in the original language)?
No.
What are their functions (tightly controlled agents of the directors, fairly independent day to day running of the company, supervision of management on behalf of the shareholders)?
Supervisory board- give orders and supervise the management board, esp. beyond the scope of everyday economic activities, the functions can be limited or extended by the statutes within the limits of the law. Management board- represents and directs the PLC, follows the orders of and reports to the supervisory board, organise the accounting of the PLC.
What are their powers (directors hire and fire the senior management, managers hire and fire middle managers)?
Supervisory board- hire and fire the members of the management board. ¹¹
Does the chairman of the board of directors have veto power or a “golden vote”?
No. But the chairman of the supervisory board can have the deciding vote in case of equal division of votes, if prescribed so by the statutes.
By whom are directors/managers nominated, appointed (and for how long), re-appointed, promoted, removed, remunerated? How are these decisions taken (majority voting, unanimity)? Does anybody have veto power?
Supervisory board- elected, and removed by the general meeting, can prescribe different procedure for not more than half of the members by law or statute. ¹² Term of five years, or shorter time by the statutes. Remuneration determined by the resolution of the general meeting or memorandum of association (if PLC founded without a foundation meeting). Management board- elected and removed by the supervisory board. Term of three years, or shorter time by the statutes. Both SB and MB can in principle be removed anytime, regardless of the term elected for. In cases where the removal is not adequately justified the members can demand compensation for the time they should have stayed in their office. Majority voting if vote for specific candidates. If several candidates for one position, then the person elected is the candidate who receives more votes than the others. If equal votes, lots are drawn unless the statutes prescribe otherwise Nobody has veto power.
Are the nomination and appointment rules set out in company law, the company statute, imposed by the stock exchange?
Some rules in the company law, allows for modifications in the company statutes, Stock Exchange rules set out some additional criteria for companies in the main list. ¹³

¹¹ The Commercial Code is quite abstract in setting out the rights and obligations of the Board. Such issues should be defined more precisely in the statutes of the company as well as the employment contracts signed with the board members. Thus, if there is a majority shareholder whose votes will determine either directly or indirectly the content and approval of the statutes as well as the members of the supervisory board, then the law does not leave too much ground for the protection of minor shareholders’ interest.

¹² For example, the company might set out in the statutes that only certain shareholders’ votes are needed for appointment of maximum half of the members of the supervisory board. Before the amendment of 10/07/98, all members of the supervisory board could be appointed by other than the resolution of the general meeting, now it has been limited to half of the members.

¹³ In case of the share capital of the issuer applying for listing the shares on the main list of the Exchange some shareholder has more than 30% of the votes fixed with the shares, the membership of the Supervisory Board of the issuer should be such that at least two members of the Supervisory Board are not connected with such a shareholder.

Is it possible to obtain a list with the names of the persons who sit on the board and in the various committees for each company?
The list and all the changes are reported to the Enterprise Register.
Is it possible to find out how much the individual directors and managers earn (pay, bonuses, stock options)?
Not individually. According to the accounting rules, the annual report has to include the data on the total amount received collectively
Do directors have to declare how many shares in their own company they possess and when they buy and sell?
Requirements apply only to listed companies by the Rules and Regulations of the Stock Exchange
Is it possible for a shareholder/a member of the public to obtain a copy of the managers employment contract/the directors employment contracts?
No.

2.4.2 Manager independence

For which business decision must the managers seek approval by the shareholder meeting and/or the board and/or worker representatives?
Mergers, divisions or transformations, increase and reduction of share capital, issue of convertible bonds-resolved by the general meeting. Acquisition and termination of holdings in other companies or acquisition or transfer of an enterprise, or the termination of its activities, over the prescribed size investments, loans, guarantees of debt obligations. May limit or extend the rights of the management board by the statutes.
In particular, do these decision include financing decisions (IPOs, new equity issues, bond issues, bank loans, use of derivative products)?
Generally yes.
Is approval granted by majority voting?
Generally yes.
Is the catalogue of decisions that the managers cannot take independently set out in the company statute, laid down by company law, stock exchange or other regulation?
Some requirements are set out in the company law, however, the company can extend their decision-making rights by the statutes.
Are managers allowed to buy shares in the company in the name of the company?
Only after a resolution of the general meeting (under a whole set of conditions- see the table on company law), or by a resolution of the supervisory board if the acquisition of the shares is necessary to prevent significant damage to the PLC.
Is the management allowed to vote these shares?
No.
Is the management allowed to vote shares in the company that belong to third parties that have signed over the voting rights to them?

2.4.3 Shareholder meeting

Who has the right to attend the General Shareholders Meeting (GSM)?
All shareholders or their representatives (with proxy voting right) or both (in which case the person with the proxy voting right does the actual voting), members of the Supervisory and Management Board, auditors, if invited by either Board, any other person whose presence is considered relevant by either Board.
Is it possible to delegate (or transfer) voting rights to third parties? If so, how?
Yes, through proxy voting
What percentage of the equity capital has to be present at the meeting to take binding decisions?

What majority is required to change the company statute (Articles of Association)?
At least 2/3 of the votes represented at the general meeting, or a higher threshold if set out in the statute. If the company has shares of different classes (share with different nominal value), 2/3 of the votes represented at the general meeting of each class of shares. ¹⁴
Can this required majority be increased or decreased in the company statute?
Can be increased only.
Is it possible to obtain a copy of the attendance list of the shareholder meeting as a shareholder/as a member of the public?
Yes, as a shareholder. ¹⁵
Is it possible to obtain the minutes of the annual meeting with the results of the votes for each item on the agenda?
Yes, as a shareholder.
What other information do the minutes contain?
The list of the attendees or their proxies, the agenda, most important statements in the discussion, decisions and voting results. On the demand of a shareholder who maintains a dissenting opinion with regard to a resolution of the meeting, the content of the shareholder's dissenting opinion.
Can the shareholder ask the management to disclose whether the company holds stakes in other companies?
Generally yes, but the management has no obligation to disclose such information, especially if that might cause damage to the interests of the PLC
Can a shareholder ask the management to disclose whether the company is participated by other companies – if the management is aware of such holdings?

How many shares (voting rights) does the shareholder need to own to make such a request? (see above)
Even a shareholder having one share can make such a request. ¹⁶
Is there a mandatory one-share one-vote rule?

2.5 Outside supervision

2.5.1 Stock markets

What are the main stock markets and who is in charge of supervising them?
Tallinn Stock Exchange (TSE), supervised by the Securities Market Commission under the Ministry of Finance. Two continuous trading models- the quote-driven dealer market system (main) and the order-driven public order book (for less liquid securities).
Who owns the main stock markets ?
The TSE is owned by commercial banks, brokerage firms and state actors.

¹⁴ This could be viewed as some protection of minor shareholders' interest on the assumption that they would be the ones holding shares with smaller nominal value.

¹⁵ However, if one follows § 304 of the Commercial Code word by word, then technically it does not have to be the case. Subsection (2) states that the list of shareholders participating in the meeting is appended to the minutes. Subsection (3) states that the minutes (no word about its appendices) will be made available to the shareholders after seven days after the end of the general meeting.

¹⁶ A number of shareholders actually might acquire a few shares to have access to information concerning the activities of the company rather than to exercise any decision making or voting power, and that might be the reason for the management to be reluctant disclosing such information.

2.5.2 Public offerings

What are the listing requirements on the main, second and third tier markets?
See the table below.
What are the insider trading rules associated with a public offering?
All potential investors should have equal access to information?
What are the information diffusion policies before a public offering?
After registration of the public issue at the SMC, the issuer must publish a prospectus, available to all interested natural and legal persons. All significant information on the issuer and the securities that appears after the publication of the prospectus will be published in a national newspaper, through the Stock Exchange or Central Depository.

2.5.3 Insider trading

What are the insider trading rules that apply for the different markets?
Czech Republic
Who is in charge of enforcing them?
Czech Republic
What are the possible penalties?
Czech Republic
Have there been cases where the insider trading law was applied?
Czech Republic

2.5.4 Takeover rules

Are there any takeover rules?
Yes, passed and added to the Securities Market Act 18/01/00, entered into force 25/02/00.
What are the main ingredients of these rules? (expand this section)
Equal treatment of all shareholders in regard to offer conditions and information availability. A person obtaining a controlling interest in the issuer has an obligation to make a take-over bid to all other shareholders.

2.5.5 Auditors

Which documents that the companies publish are previously checked by auditors?
Annual report (balance sheet, profit and loss account). Final balance in case of dissolution of the PLC, in the cases provided by the law, the merger agreement and the division agreement.
What legal responsibilities, for example liability, do the auditors assume?
The liability of the auditors is set out in the Law on Auditing. Control by professional association.
Have there been any well known cases where auditors have been brought to court by shareholders or directors?
No, at least not in connection with the listed companies.

2.5.6 Listing requirements

Indicator	Main list	Secondary list	Free market
Basic	Freely transferable, registered with the SMC and the Central Depository, minimum 25% of the same type of	Freely transferable, registered with the SMC and the Central Depository, minimum 25% of the same type of	Freely transferable, registered with the SMC and the Central Depository, minimum 25% of the same type of

	shares traded publicly	shares traded publicly	shares traded publicly
Disclosure of financial reports	Min 3 years audited results	Min 2 years audited results	The Exchange has the right to ask audited results for the last financial year
Foreseeable market capitalisation or the issuer's equity capital	Min 300 mln EEK	Min 10 mln EEK	-
Distribution of shares	Min 300 investors each holding shares in total value of 10,000 EEK, or 1,000 investors	Min 100 investors	Min 100 investors

2.6 Market transfers

The rules on take-overs were added to the securities market act only at the beginning of year 2000 (entered into force Febr 25, 2000). Since that there have been seven take-over bids for listed companies to minority shareholders. In most cases the aim is to gain 100 percent control, exercising the strategic plan for growth. As the company after take-over becomes a fully-owned subsidiary and the corporate policies do not foresee the listing of a subsidiary, the majority owners have also applied for delisting from the stock exchange.

3 Quantitative analysis

3.1 Basic population statistics

Available population statistics include:

- the total number of active companies (those reporting their annual financial data regularly) for each legal form during the period of 1995-1999
- distribution by sector of activity for each legal form, data from end of year 1999 (all companies, not just the active ones)

The source of data is the Commercial Register. The National Statistical Office publishes the data also from that source.

Data on distribution of all companies by total assets or total sales, or the total number of employees for each standardised legal form was not available and would have meant a lot of costly programming effort at the Commercial Register. Since they served also as the provider of information regarding shareholders, and board members, such a task would have been not only very costly but also time-consuming.

3.1.1 Active companies by legal form

Indicator	01.01.1995	01.01.1996	01.01.1997	01.01.1998	01.01.1999
Sole proprietor	0	14	559	903	1344
Commercial association	1024	1023	942	853	736
General partnership	32	49	103	120	124
Limited partnership	41	41	61	79	76
Private limited liability company	831	282	5884	13743	20286
Public limited liability company	20058	25921	20096	13217	8174
Others	2586	2492	1476	681	184
Total	24572	30822	29121	29596	30924

Source: Ettevõtlus arvudes (Emterprising in Figures) 1994-1999, Commercial Register, Tallinn 1999

3.1.2 Entrepreneurs by legal form and by economic activity, end of 1999

Sector of activity	Sole proprietors	General partnerships	Limited partnerships	Private limited companies	Public limited companies	Commercial associations	Branches of foreign companies	Total
Agriculture, forestry, hunting	8001	8	16	1754	295	231	1	10306
Fishing	826	7	1	174	50	19	0	1077
Mining	4	0	0	37	39	0	0	80
Manufacturing	426	28	21	3668	1487	113	19	5762
Electricity, gas, steam and water supply	6	0	1	178	116	6	0	307
Construction	134	8	9	1944	697	67	7	2866
Wholesale and retail sales, repairs	1919	106	56	16475	2637	212	95	21500
Hotels and restaurants	294	25	4	1406	209	31	0	1969
Transport, storage and communications	340	4	3	2318	791	31	32	3519
Financial intermediation	6	0	1	315	298	13	7	640
Real estate, renting and business activities	540	43	19	6573	1263	100	91	8629
Public administration and defence, compulsory social sec.	0	0	0	0	0	0	0	0
Education	61	3	4	380	35	8	3	494
Health and social care	183	9	2	417	65	5	1	682
Other community, social and personal service activities	215	13	10	1015	183	39	2	1477
Private households with employed persons	0	0	0	6	0	0	0	6
The main sector of activity not specified	878	6	4	1051	45	7	7	1998
TOTAL	13833	260	151	37711	8210	882	265	61312

Source: Statistical Yearbook 2000, Statistical Office of Estonia, data from the Commercial Register

3.1.3 Fees of the Commercial Register (in EEK, VAT excluded)

Number of inquiries	General info	General info & info on natural persons	General info & info on commercial pledge	General info & info on natural persons and commercial pledge	Info on financial reports
up to 50	10	20	20	30	25
51-500	7	16	16	24	20
501-1000	6	14	14	20	17
1001-5000	5	12	12	16	14
5001-20000	4	10	10	14	12
> 20000	3	8	8	12	10

Notes: Both simple and detailed inquiries can be made from the Commercial Register database by Internet. Simple inquiry (e.g. company name, registry code) is free of charge for everybody. For detailed inquiry a contract should be made. Other online services include modem and permanent connection, each having their own price list. The data in the database is updated once a week.

Online service allows the customer to use registry data on the screen of the personal computer according to the contract and make a name control.

3.2 The sample used for the analysis

Even though the sample is very small we have divided it into six percentile classes by total assets 1999. Total assets are used as a size basis, since it is difficult to establish market values for the non-listed companies. It is important to note that getting data on total assets was not easy, since by the end of August 2000, a number of companies had yet not reported their 1999 annual results to the Commercial Register, also in a number of cases data were missing in Register's databases so search by individual companies through paper files kept at the Register was sometimes carried out.

3.2.1 Number of companies by sector of activity in the final data set

Sector	No. of companies included
Agriculture, forestry and hunting	2
Fishing	1
Mining and quarrying	1
Manufacturing	29
Electricity, gas and water supply	1
Construction	5
Wholesale and retail trade	17
Hotels and restaurants	4
Transport, storage and communication	4
Financial intermediation	5
Real estate, renting and business activities	13
Health and social work	1
Public, social and personal services	1
Total	74

3.2.2 Number of companies by size classes (total assets 1999, local currency)

Size classes	In EEK	Percentile	Number
Smallest	<10261781	10%	7
Small	10261781-20627853	10-25%	11
Medium-low	20627853-85632391	25-50%	19
Medium-high	85632391-218187906	50-75%	18
Large	218187906-501443600	75-90%	12
Largest	>501443600	90%	7
Total			74

As pointed out above, only information on direct stakes was available, since this is currently the only information that companies have to report. Statistics on ownership structure of the 74 companies in the sample follows.

3.3 Boards structures: a quantitative analysis

The data on management board members includes the average number of members as of end year 1999, the data on supervisory board members is as of end July 2000, since the Commercial Register databases where the data comes from did not include in the majority of cases in our sample the past membership dates, only the “current members” (as of the time data was extracted from the database) could be established. There is no data available to distinguish between internal and external board members.

3.3.1 Average management board size by the sector of activity

Sector of activity	Average number	Number of companies
Agriculture, forestry and hunting	5.00	2
Fishing	1.00	1
Mining and quarrying	4.00	1
Manufacturing	2.86	28
Electricity, gas and water supply	3.00	1
Construction	3.60	5
Wholesale and retail trade	3.71	7
Hotels and restaurants	3.00	4
Transport, storage and communication	2.25	4
Financial intermediation	5.8	5
Real estate, renting and business activities	2.50	12
Health and social work	1.00	1
Public, social and personal services	1.00	1
Undefined	3.00	2
Total	3.11	72

3.3.2 Average management board size by company size

Company size	Average number	Number of companies
Smallest	2.14	7
Small	2.36	11
Medium-low	2.63	19
Medium-high	3.00	17
Large	4.00	12
Largest	5.67	6
Total	3.11	72

3.3.3 Average supervisory board size by the sector of activity

Sector of activity	Average number	Number of companies
Agriculture, forestry and hunting	6.00	1
Fishing	3.00	1
Mining and quarrying	3.00	1
Manufacturing	4.17	29
Electricity, gas and water supply	7.00	1
Construction	4.80	5
Wholesale and retail trade	4.57	7
Hotels and restaurants	4.00	4
Transport, storage and communication	4.75	4
Financial intermediation	7.60	5
Real estate, renting and business activities	4.23	13
Health and social work	5.00	1
Public, social and personal services	3.00	1
Undefined	5.00	2
Total	4.55	73

3.3.4 Average supervisory board size by company size

Company size	Average number	Number of companies
Smallest	3.50	6
Small	3.36	11
Medium-low	4.47	19
Medium-high	4.17	18
Large	5.42	12
Largest	7.00	7
Total	4.55	73

3.4 Ownership and control of companies

As pointed out in the introduction, the sample for analysis is quite small. There were only 23 listed companies at the Tallinn Stock Exchange as of end 1999. Besides these, a little above 100 companies have registered their shares at the Central Depository of Securities. In most cases the reason has been to have the Depository keep their stock books rather than willing to be publicly tradable. Some trading takes place over the OTC market but it is not very active. However, at least theoretically, all these share issues registered at the Central Depository could be treated as publicly tradable.

Crossing the ownership data with the size criterion, total assets 1999, gives the sample of 74 companies, including both listed and registered companies- 23 listed and 51 non-listed. Total assets 1999 were in the case of non-listed companies taken from the Commercial Register

databases, where it is not specified whether and how the figures are consolidated (e.g. if the figures refer to the mother company only, are consolidated by using the equity principle or line by line), for the listed companies consolidated accounts have been used.

The ownership data is also limited in terms of identifying the owner’s activity. Information collected allowed to distinguish between four categories of investors: domestic physical, domestic legal, foreign physical and foreign legal. A more detailed classification was attempted by looking at the owner’s name- in such a way individuals, banks (including clients’ accounts), insurance companies, investment funds, state and municipalities as investors could be identified. However, it left more than half of the cases undefined, so the data should be taken with very careful consideration.

Finally, there is no distinction between percentage of shares owned and the percentage of voting rights held, since according to the Commercial Code, there is a 1:1 proportional relationship between the two. Only preferential shares should be treated separately, but these do not appear in our dataset.

3.4.1 Ownership structure. Average percentage of direct shares owned by the largest investor for investor type and size

Size class	Insurance		Bank		Investment fund		Individual		Other	
	% owned	No.	% owned	No.	% owned	No.	% owned	No.	% owned	No.
Smallest							74.1	3	63.5	4
Small	100	1					33.9	3	70.7	8
Medium-low			60.9	2			34.0	4	59.7	11
Medium-high			54.0	2	42.2	2	63.0	2	55.9	12
Large			38.0	4					73.4	7
Largest			45.7	2					56.1	3

3.4.2 Ownership structure. Average percentage of direct shares owned by the 1st, 2nd, 3rd and 4-10th largest investor by company size.

Size class	Owner 1		Owner 2		Owner 3		Owners 4-10	
	Per cent owned	No. of companies	Per cent owned	No. of companies	Per cent owned	No. of companies	Per cent owned	No. of companies
Smallest	68.02	7	19.26	5	10.53	2	19.67	1
Small	60.69	11	21.46	10	7.10	4	20.43	2
Medium-low	56.02	19	21.58	15	10.91	10	12.56	8
Medium-high	54.95	18	22.20	14	12.29	10	18.15	6
Large	60.75	12	12.88	8	7.34	7	10.66	3
Largest	49.29	7	17.61	7	12.53	5	11.22	3
Total	57.72	74	19.86	59	10.41	38	14.59	23

3.4.3 Ownership structure. Average percentage of direct shares owned by the 1st, 2nd, 3rd and 4-10th largest investor by sector of activity

Sector	Owner 1		Owner 2		Owner 3		Owner 4-10	
	%	No.	%	No.	%	No.	%	No.
Agriculture, forestry and hunting	58.28	2	8.02	2	9.17	1	.	0
Fishing	61.26	1	19.94	1	.	0	.	0
Mining and quarrying	75.16	1	15.86	1	.	0	.	0
Manufacturing	53.05	29	17.51	24	9.14	17	13.59	10
Electricity, gas and water supply	32.91	1	25.14	1	24.49	1	.	0
Construction	47.03	5	17.16	5	8.69	3	23.51	2
Wholesale and retail trade	65.72	7	17.44	5	11.85	4	12.92	3
Hotels and restaurants	63.70	4	22.92	3	11.21	2	5.24	1
Transport, storage & communicat.	81.39	4	19.04	2	14.50	1	.	0
Financial intermediation	66.85	5	13.90	4	6.75	3	5.08	2
Real estate, renting & business act.	55.44	13	29.78	9	14.10	5	19.69	5
Health and social work	50.00	1	49.46	1	.	0	.	0
Public, social and personal services	66.18	1	21.64	1	5.29	1	.	0
Undefined	77.13	2	6.49	1	.	0	.	0
Total	57.72	74	19.86	59	10.41	38	14.59	23

3.4.4 Ownership structure. Average percentage of direct shares owned by the 1st, 2nd, 3rd and 4-10th largest investor by company size and investor type

Company size	Domestic physical				Domestic legal				Foreign physical				Foreign legal			
	1	2	3	4-10	1	2	3	4-10	1	2	3	4-10	1	2	3	4-10
Smallest	63.93	8.20	6.56	19.67	63.46	22.03	14.50	-	94.42	-	-	-	-	-	-	-
Small	33.92	18.23	7.47	23.60	73.83	23.03	5.29	-	-	-	-	-	49.00	21.71	8.18	17.26
Medium-low	33.98	24.74	10.65	21.18	65.43	27.08	12.61	8.50	-	-	-	-	54.83	12.44	7.04	5.74
Medium-high	63.00	24.00	17.00	27.00	46.80	23.48	13.21	16.38	-	-	-	-	69.65	17.34	6.71	-
Large	-	-	-	-	75.42	15.43	8.15	13.38	-	-	-	-	46.08	11.36	7.02	5.21
Largest	-	-	-	-	42.58	22.95	12.12	23.50	-	-	-	-	51.97	15.47	12.80	5.08

3.4.5 Ownership structure. Average percentage of direct shares owned by the 1st, 2nd, 3rd and 4-10th largest investor by sector of activity and investor type

Sector of activity	Domestic physical				Domestic legal				Foreign physical				Foreign legal			
	1	2	3	4-10	1	2	3	4-10	1	2	3	4-10	1	2	3	4-10
Agriculture, forestry and hunting	-	-	-	-	75.15	5.59	-	-	-	-	-	-	41.40	10.46	9.17	-
Fishing	-	-	-	-	61.26	19.94	-	-	-	-	-	-	-	-	-	-
Mining and quarrying	-	-	-	-	75.16	15.86	-	-	-	-	-	-	-	-	-	-
Manufacturing	25.58	11.29	6.47	16.31	57.18	23.42	12.74	14.78	94.42	-	-	-	54.41	13.05	6.47	9.30
Electricity, gas and water supply	-	-	-	-	-	-	-	-	-	-	-	-	32.91	25.14	24.49	-
Construction	24.84	21.87	9.67	23.60	57.17	16.74	9.17	23.42	-	-	-	-	38.79	13.71	7.24	-
Wholesale and retail trade	-	-	-	-	61.67	19.30	11.85	12.92	-	-	-	-	90.00	10.00	-	-
Hotels and restaurants	84.85	26.14	-	-	36.85	30.18	15.03	5.24	-	-	-	-	48.25	12.43	7.39	-
Transport, storage and communication	-	-	-	-	81.39	19.04	14.50	-	-	-	-	-	-	-	-	-
Financial intermediation	100.00	-	-	-	57.88	20.40	6.36	-	-	-	-	-	58.79	11.73	6.95	5.08
Real estate, renting and business activities	31.56	30.89	17.46	30.64	63.49	32.40	14.44	15.56	-	-	-	-	60.54	22.85	6.72	6.03
Health and social work	-	-	-	-	50.00	49.46	-	-	-	-	-	-	-	-	-	-
Public, social and personal services	-	-	-	-	66.18	21.64	5.29	-	-	-	-	-	-	-	-	-
Undefined	100.00	-	-	-	-	-	-	-	-	-	-	-	54.26	6.49	-	-

3.4.6 Listed companies- direct shares owned by the 1st, 2nd, 3rd and 4-10th largest investor by investor type

Type of investor	Owner 1	Owner 2	Owner 3	Owner 4	Owner 5	Owner 6
Domestic physical	33.74	13.82	7.39	5.21	-	-
Domestic legal	46.84	15.95	8.76	7.60	7.49	5.89
Foreign legal	53.58	14.51	8.28	6.93	11.75	-

3.4.7 Listed companies (main list) investor type and direct shares owned by the largest investors for each company

MAIN LIST		Owner 1		Owner 2		Owner 3		Owner 4		Owner 5	
Issuer	Profile	Type	%	Type	%	Type	%	Type	%	Type	%
Eesti Telekom	tele-communications	Domestic legal	27.29	Foreign legal	25.50	Foreign legal	17.89	Foreign legal	11.75	Foreign legal	11.75
Eesti Ühispank	banking	Foreign legal	41.46	Foreign legal	16.28	Foreign legal	6.80	Foreign legal	5.09		
Hansapank	banking	Foreign legal	49.99	Foreign legal	9.71	Foreign legal	7.10	Foreign legal	5.08		
Merko Ehitus	construction	Domestic legal	74.03	Foreign legal	9.66						
Norma	vehicle components	Foreign legal	49.50	Foreign legal	12.17	Domestic legal	6.07				
Optiva Pank	banking	Domestic legal	57.88	Domestic legal	20.40	Foreign legal	6.36				
Tallinna Kaubamaja	retailer	Domestic legal	52.38	Foreign legal	13.03	Domestic legal	6.00	Domestic legal	5.81		

3.4.8 Listed companies (secondary list) investor type and direct shares owned by the largest investors for each company

SECONDARY LIST		Owner 1		Owner 2		Owner 3		Owner 4		Owner 5		Owner 6	
Issuer	Profile	Type	%	Type	%	Type	%	Type	%	Type	%	Type	%
Baltika	textiles	Foreign legal	23.51	Domestic physical	8.01	Domestic physical	5.24	Foreign legal	5.21				
EMV	construction	Foreign legal	38.79	Foreign legal	13.71	Foreign legal	7.23						
Estiko	retailer, diversified industrial	Domestic legal	16.27	Domestic legal	13.53	Domestic legal	10.99	Foreign legal	7.63				
Fakto	automotive dealer	Domestic legal	46.30	Domestic physical	26.78	Domestic legal	11.52						
Harju Elekter	electrical equipment	Domestic legal	31.41	Domestic physical	6.67	Domestic physical	5.41						
Kalev	food & grocery products	Domestic legal	30.46	Domestic legal	23.60	Domestic legal	10.29	Domestic legal	7.57	Domestic legal	7.49	Foreign legal	5.04
Klementi	textiles	Foreign legal	54.26	Foreign legal	6.49								
Leks Kindlustus	insurance	Domestic legal	68.71	Domestic legal	20.71								
Pro Kapital	real estate development	Foreign legal	55.59	Foreign legal	19.38								
Rakvere Lihakombinaat	food & grocery products	Foreign legal	79.92	Foreign legal	6.84								
Reval Hotelligrupp	hotel management	Foreign legal	48.25	Domestic legal	12.43	Domestic legal	7.39						
Saku Õlletehas	beverages-beer	Foreign legal	75.01										
Tallinna Farmaatsiatehas	pharmaceuticals	Foreign legal	54.96	Foreign legal	14.78	Foreign legal	5.15						
Tallinna Kulmhoone	food & grocery products	Foreign legal	86.60										
Viisnurk	wood processing	Foreign legal	59.47	Domestic legal	5.01								
XXL.EE	information technology	Domestic legal	50.00	Foreign legal	25.75	Foreign legal	8.97						

4 Final remarks

In conclusion, there exist quite advanced electronic databases on companies and a lot of relevant data is available for the last 4-5 years at the Central Depository of Securities and the Commercial Register. The overall problem is that very few companies out of the total amount are actually public in the sense that their shares are publicly tradable either at the stock exchange or on the OTC market. Hopefully, the situation will change with the enforcement of the new law on the Central Depository (from Jan 1, 2001) which makes it obligatory for all public limited companies to register their shares at the depository within the coming two years.

Despite the advanced technical standards, there is still a lot of room for improvement when it comes to data quality. This is especially so for the non-listed companies. One important reason for this is the poor quality of reporting by the companies themselves: e.g. delays in submitting the annual reports, missing membership dates for the supervisory board.

Another major drawback in the corporate governance area is the lack of new up-to-date securities market law. The rules and regulations of the stock exchange compensate a bit for this lack and transpose at least some aspects of the transparency directive concerning the reporting requirements but they serve only as an agreement between the exchange and the issuers, not the investors themselves. Also, these rules cannot substitute for a law when it comes to the power of enforcement.