Finland

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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

The main corporate entities to be discussed are the private limited liability company (private company, in Finnish an Yksityinen Osakeyhtiö, or commonly simply Osakeyhtiö, abbreviated Oy, and in Swedish a Privat Aktiebolag, or commonly simply an Aktiebolag, abbreviated Ab) and the public limited liability company (public company, in Finnish a Julkinen Osakeyhtiö, abbreviated Oyj, and in Swedish an Publikt Aktiebolag, abbreviated Abp). This overview will focus on public companies.

1.2 What are the main legislative, regulatory and other corporate governance sources?

The central legislation governing limited companies in Finland are the Companies Act (statute 624/2006, as amended, the "FCA") and the Securities Markets Act (statute 746/2012, as amended, the "New SMA").

According to Chapter 11, Section 28 of the New SMA, a listed company must directly or indirectly belong to an independent organ established in Finland that has issued a recommendation on the actions of the management of the target company in a takeover bid, in order to promote good securities market practice.

The Securities Market Association (www.cgifinland.fi/eng) is a cooperation organ established in December 2006 by the Confederation of Finnish Industries EK, NASDAQ OMX Helsinki Ltd (the Exchange) and Finland Chamber of Commerce. The Securities Market Association administers the recommendation concerning public bids, the Helsinki Takeover Code.

The Finnish Corporate Governance Code of 2010, as well as The Helsinki Takeover Code, set out non-binding, but recommended regulations in relation to corporate governance (links to the Codes are available at http://cgfinland.fi/en/recommendations/about-self-regulation/).

The Helsinki CG Code is aimed at companies listed on the Helsinki Stock exchange (NASDAQ OMX Helsinki), provided that the recommendations are not in conflict with compulsory regulation applicable in the domicile of the company. The Helsinki CG Code is based on the "Comply or Explain" principle, i.e. companies shall, as a rule, comply with all recommendations or disclose and explain any departures from the recommendations.

Listed companies further have to comply with the Rules of the Stock Exchange of NASDAQ OMX Helsinki (latest edition 31.1.2013 available at:

http://www.nasdaqomx.com/digitalAssets/83/83924_rulesofthestockexchange31january2013.pdf). Under the Rules of the Stock Exchange, all listed companies shall notify their compliance with the corporate governance in the jurisdiction where they are incorporated, meaning that the Helsinki CG Code is *de facto* mandatory for listed companies.

The Finnish Financial Supervision Authority ("FFSA") has compiled standards consisting of both legally binding rules and recommended provisions, to be applied when e.g. listing securities or placing public takeover bids or mandatory offers. Both the FFSA and the Helsinki Stock Exchange have the option to impose certain sanctions for non-compliance with the rules or regulations.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

The revisions to the regulation of the Finnish securities market in the form of the New SMA entered into force on 1 January 2013, replacing the previous Securities Market Act (Statute 495/1989, as amended) in its entirety.

Initially scheduled to enter into force on 1 July 2012, the New SMA aims, *inter alia*, to make the sanctions correspond better to sanctions of other EU Member States, taking into account current and upcoming EU-legislation. The FFSA supervises the compliance of provisions issued by and under the New SMA.

Gender issues, particularly related to members of Board of Directors of public companies, remain topical. The issue of mandatory quotas for female board members in listed companies has been a topic of discussion in Finland lately.

In 2013 the Central Chamber of Commerce ("CCC") expects that the quota of female board members will rise to 30% in large cap companies (up from 28% in 2012), but in mid-cap companies the percentage is expected to remain at 2012 levels (i.e. 23%). The results of surveys made by the CCC were interpreted to imply that the soft law self-governance imposed by Helsinki CG Code would be sufficient to ensure equal gender representation on the boards of Finnish listed companies.

Considerable attention has, in addition, been paid the quality of communication concerning reward systems (remuneration statements).

2 Shareholders

2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

According to the FCA, shareholders exercise their power of decision making (and other powers) at the General Meeting. Shareholders have an extensive right to make proposals to the General Meeting and ask questions regarding management at the General Meeting. Outside of the General Meeting, shareholders, as a rule, have no special rights and powers in the operation and management of the corporate identity.

Certain shareholders' rights, such as equal treatment of shareholders, are protected through the general principles of company law. In addition, the FCA includes certain provisions regarding rights of minority shareholders, representing at least 10 per cent of the shares of the company.

2.2 What responsibilities, if any, do shareholders have as regards the corporate governance of their corporate entity/entities?

The primary responsibility to implement the CG Code and oversee the corporate governance of a Finnish limited company rests with the Board of Directors of the Company. As a rule, shareholders have rights, not obligations imposed on them under the CG code.

However, the FCA contains the requirement for the equal treatment of shareholders i.e. all shares carry equal rights in a company, unless otherwise provided in the articles of association. The general meeting, board of directors and managing director do not have the right to make a decision that could give undue benefit to a shareholder or another person at the expense of the company or another shareholder. The purpose of the principle of equal treatment is primarily to protect minority shareholders. The principle does not prevent the use of majority rule, but it prevents favouring majority shareholders at the expense of other shareholders.

2.3 What shareholder meetings are commonly held and what rights do shareholders have as regards them?

The shareholder meetings commonly held are the Ordinary General Meeting and Extraordinary General Meeting.

The Ordinary General Meeting is compulsory and shall be held within six months of the end of the financial period. The decisions that are to be made at the Ordinary General Meeting are:

1) adoption of the financial statements, which in a parent company means also the adoption of the consolidated financial statements;
2) the use of the profit shown on the balance sheet;
3) the discharge of the members of the Board of Directors, the members of the supervisory board and the Managing Director from liability;
4) the appointment of the members of the Board of Directors and the members of the supervisory board, unless it is otherwise provided in the FCA or in the Articles of Association on their term or appointment; and
5) the other matters that according to the Articles of Association are to be decided by the Ordinary General Meeting.

An Extraordinary General Meeting shall be held if an auditor or shareholders with a total of 1/10 of all shares, or a smaller proportion as provided in the Articles of Association, so demand in writing in order for a given matter to be dealt with. An Extraordinary General Meeting shall, in addition, be held if it is so provided in the Articles of Association, or the Board of Directors considers it necessary.

Each individual shareholder has the right to propose a matter falling within the competence of the General Meeting to be dealt with by the General Meeting, provided the proposal is notified to the board of the company in time to be included in the summons. Based on a separate rule in the FCA, a proposal shall be deemed to have been submitted in time if the proposal has been notified at least four weeks prior to publishing the summons to the General Meeting.

Every shareholder of the company has a right to participate in a General Meeting. A shareholder may also exercise the rights of a shareholder at a General Meeting by way of proxy representation. Shareholders in listed companies may also appoint several proxy representatives, representing the shareholder's shares on different book-entry accounts.

Shareholders are also entitled to have an assistant (e.g. legal counsel) accompanying the shareholder at the General Meeting.

Shareholders further have an extensive right to put forward questions to management at the General Meeting. Under the FCA, on the request of a shareholder, the Board of Directors and the Managing Director shall provide detailed information on circumstances that may affect the evaluation of a matter dealt with by the meeting. If the meeting deals with the financial statements, the right to put forward questions also applies to more general information on the financial position of the company, including the relationship of the company with another corporation or foundation in the same group. Management may decline to provide information if this would cause essential harm to the company. If the question of a shareholder can only be answered on the basis of information not available at the meeting, the answer shall be provided in writing within two weeks.

As a general rule, resolutions of the General Meeting are made by a simple majority of votes cast. Certain resolutions may, however, require a qualified majority.

2.4 Can shareholders be liable for acts or omissions of the corporate entity/entities?

The general rule is that a shareholder cannot be liable for acts or omissions of the corporate entity. A company is a legal person distinct from its shareholders and the principle of setting aside this limited liability, i.e. piercing the corporate veil, has generally been rejected in Finnish jurisprudence. Hence shareholders' liability could be realised only under exceptional circumstances, e.g. when the shareholder himself/herself would, via the company, have engaged in illegitimate actions.

A shareholder can, however, be held liable and obligated to pay damages for a possible loss that he/she has caused to either the company, another shareholder or a third party, by violating the FCA or the Articles of Association of the company.

2.5 Can shareholders be disenfranchised?

According to the FCA, all shares shall carry the same rights in the company, unless otherwise provided in the Articles of Association.

Any rights attached to the shares cannot be reduced without the consent of the shareholder. Reducing the shareholders' rights is thus possible only by amending the Articles of Association, the action that shall require the resolution of the general meeting, supported

by at least 2/3 of the shares and 1/2 of the shareholders of each class of shares of the company, representing the shareholders whose rights are to be reduced.

It is to be noted that a shareholder with more than 9/10 of all shares and votes in the company (redeemer) shall have a right to redeem the shares of the other shareholders at the fair price (right of squeeze-out). Correspondingly, the shareholder(s) holding less than 1/10 of all shares have the right to demand that their shares be redeemed (right of sell-out).

2.6 Can shareholders seek enforcement action against members of the management body?

It is possible for an individual shareholder or shareholders to pursue a claim against a director of the company, on behalf of the company and with respect to damages caused by director's negligence.

A prerequisite for allowing the shareholder to pursue claims against management is that the shareholder demonstrates that it is likely that the company itself would not bring a claim for damages. Further, the claimant(s) must own at least 1/10 of all shares and be able to demonstrate that the failure of the company to pursue the claim would be contrary to the principle of equality.

It is in addition possible for a single shareholder to pursue a claim against a director of the company for any direct damages caused to the shareholder through a deliberate or negligent violation of the FCA or the Articles of Association.

A shareholder is not, as a general rule, entitled to receive damages from a loss caused to the company.

2.7 Are there any limitations on, and disclosures required, in relation to interests in securities held by shareholders in the corporate entity/entities?

Pursuant to certain provisions of the Securities Market Act, as well as the standards of The Finnish Financial Supervision Authority, a shareholder of a public company is required to give a notification in the event the shareholder's holdings reach, exceed or fall below determined levels of all shares of the company. The current levels in question are 5, 10, 15, 20, 25, 30, 50 and 90 per cent of all shares or voting rights, or 2/3 of all shares or voting rights of the company.

In the event a shareholder's holding in a public company exceeds 30 or 50 per cent of the voting rights, a shareholder is obliged to offer to purchase all the remaining shares of the company at the fair price. In the event the threshold of 90 per cent of all shares and votes is reached, the minor shareholders shall, in addition, have a right to require their shares to be redeemed at the fair price.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

The company is primarily managed by the Board of Directors. The Board of Directors shall see to the administration of the company and the appropriate organisation of its operations, as well as to be responsible for the appropriate arrangement of the control of the company accounts and finances. There shall be between one and five regular Members of the Board of Directors, unless it is otherwise provided in the Articles of Association. If there are fewer than three Members, there shall be at least one Deputy Member of the Board of Directors. If there are several Members of the Board of Directors, a Chairperson of the Board of Directors shall be elected. The Board of Directors shall elect the Chairperson, unless it has been otherwise decided when the Board is appointed or unless it is otherwise provided in the Articles of Association.

Having the Board of Directors is obligatory. A limited company may also have a Managing Director, nominated by the Board of Directors, and/or a supervisory board as well.

The Managing Director shall see to the executive management of the company in accordance with the instructions and orders given by the Board of Directors. The Managing Director shall, in addition, see to it that the accounts of the company are in compliance with the law, and, that its financial affairs have been arranged in a reliable manner.

The supervisory board supervises the administration of the company, which is the responsibility of the Board of Directors and the Managing Director.

3.2 How are members of the management body appointed and removed?

The Board of Directors is appointed by the General Meeting. It may, however, be provided in the Articles of Association, that the Board of Directors shall be appointed by the supervisory board, or, that a minority of the Board of Directors is to be appointed according to some other procedure.

In a public company, the term of a member of the Board of Directors shall end with the conclusion of the Ordinary General Meeting following the appointment of the member, unless otherwise provided in the Articles of Association. In a private company, the term of a Member of the Board of Directors can be indefinite. Other provisions on the term may be included in the Articles of Association.

A member of the Board of Directors may be dismissed ahead of term by the party who appointed the member. However, a member appointed by someone other than the General Meeting may be dismissed by the General Meeting if the Articles of Association have been amended so that the special right of appointment no longer applies.

A member of the Board of Directors may as well resign before the end of his/her term.

3.3 What are the main legislative, regulatory and other sources impacting on contracts and remuneration of members of the management body?

The remunerations of the members of the Board of Directors are generally determined by the General Meeting, whereas the Service Contract for the Managing Director, including e.g. terms regarding remuneration, shall generally be approved by the Board of Directors.

There are no specific legislative restrictions regarding remunerations; nevertheless, there are some general principles, e.g. in the Helsinki CG Code, that direct the decision making regarding the issues in question. According to the Helsinki CG Code, remuneration schemes should be drawn up in such a manner that they promote the competitiveness and long-term financial success of the company and contribute to the favourable development of shareholder value. Remuneration schemes shall be based on predetermined and measurable performance and result criteria.

The Helsinki CG Code places emphasis on transparency in relation to the remuneration schemes. The company shall disclose the remuneration and other financial benefits of each director for board and committee work, as well as other duties, if any, for the financial period. If the chairman of the board or a director has an employment

relationship or service contract with the company (executive chairman; executive director) or acts as advisor of the company, the company shall disclose the salaries and fees, as well as other financial benefits paid for this duty during the financial period.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

The Helsinki CG Code allows for company shares to be used as a form of remuneration for board or committee work, noting that shareholdings of the directors in the company promote good corporate governance.

However, the independence requirement for the board as a whole shall be met. Hence, directors' shareholdings should not compromise their independence in relation to the company.

When holding the shares of the company, the directors have no exemptions from the disclosure requirements included in the Securities Market Act (see question 2.5). In addition, some additional obligations to disclosure shareholdings may apply.

3.5 What is the process for meetings of members of the management body?

The Chairperson of the Board of Directors shall see to it that the board meets when necessary. In addition, a meeting shall be convened if a member of the Board of Directors or the Managing Director so requests. In the event that, despite the request, the Chairperson does not call the meeting, the meeting may be called by the Managing Director, or by a member, if at least one half of the members approve of the call.

The Board of Directors shall have a quorum when more than half of the Members of the Board of Directors are present, unless a larger proportion is required in the Articles of Association. The proportion shall be calculated on the basis of the number of members who have been appointed and no decision may be made unless all members have been reserved the chance to participate in the consideration of the matter. If a member is unavailable, the deputy member, if one has been elected, shall be provided the opportunity to take part in the meeting.

The opinion of the majority shall constitute the decision, unless a qualified majority is required in the Articles of Association. In the event of a tie, the Chairperson of the Board of Directors shall have the casting vote. A member of the Board of Directors shall be disqualified from the consideration of a matter pertaining to a contract between the member and the company, as well as from the consideration of a matter pertaining to a contract between the company and a third party, if the member is to derive an essential benefit in the matter and that benefit may be contrary to the interests of the company.

Minutes shall be kept of the meetings. The minutes are to be signed by the person chairing the meeting and, if there are several members of the Board of Directors, at least by one member designated by the board. A member and the Managing Director shall have the right to have a dissent entered into the minutes.

3.6 What are the principal general legal duties and liabilities of members of the management body?

According to FCA, the general purpose of a company is to generate profits for the shareholders. The management of the company shall act with due care and promote the interests of the company.

A member of the Board of Directors, a member of the supervisory board and the Managing Director shall be liable in damages for the loss that he/she, in violation of the duty of care has, in office, deliberately or negligently caused to the company. A member of the Board of Directors, a member of the supervisory board and the Managing Director shall also be liable in damages for the loss that he/she, in violation of other provisions of the FCA or the Articles of Association, has in office deliberately or negligently caused, either to the company, a shareholder or a third party. In the event a provision that is denoted as punishable has been breached, criminal liability may also occur.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body?

The Board of Directors shall see to the administration of the company and the appropriate organisation of its operations. The Board of Directors is further responsible for the appropriate arrangement of the control of the company accounts and finances.

The Managing Director's duty is to take care of the day-to-day management of the company. The Managing Director shall see to the executive management of the company in accordance with the instructions and orders given by the Board of Directors, and, to see to it that the accounts of the company are in compliance with the law. The Managing Director shall further see that the company's financial affairs have been arranged in a reliable manner.

3.8 What public disclosures concerning management body practices are required?

The Finnish Corporate Governance Code suggests that certain information regarding the operations of the management bodies, as well as regarding the operations of the Managing Director should be disclosed in the Corporate Governance Statement.

The information disclosed should describe, *inter alia*, the composition and operations of the board and committees, the internal control and risk management systems, as well as the auditing.

3.9 Are indemnities, or insurance, permitted in relation to members of the management body and others?

The companies may, and commonly do, purchase insurances on behalf of their directors.

The discharge of the Members of the Board of Directors, the Members of the Supervisory Board and the Managing Director from liability is one of the mandatory issues to be put before the Ordinary General Meeting. By the decision, the company unilaterally waives its right to claim damages from management. It should be noted, however, that the waiver only extends to such actions or decisions that have been sufficiently disclosed to the General Meeting and hence the practical effect of the waiver is in many cases limited.

4 Transparency and Reporting

4.1 Who is responsible for disclosure and transparency?

Responsible for fulfilling the disclosure and transparency requirements lies with the company. The Helsinki CG Code, e.g. states that the "company" shall disclose information. In practice, the

ultimate responsibility for complying with the requirements rests with the Board of Directors and the Managing Director of the company.

4.2 What corporate governance related disclosures are required?

According to Finnish legislation, all financial statements are public and shall be registered with the Finnish Trade Register within two months of the adoption.

In addition, public companies are obliged to prepare and publish their interim reports, as well as annual financial statements and reports and make them available through the company website.

All information that may have an effect on the share price shall be made public without any undue delay.

4.3 What is the role of audit and auditors in such disclosures?

All financial statements are to be audited and the auditor's report to be issued. A failure to comply with the statutory duties may result in liability.

4.4 What corporate governance information should be published on websites?

According to the FCA, the company is obliged to publish the board proposals, financial statements, annual/interim reports and auditor's reports on the company website prior to the General Meeting. After the General Meeting the minutes shall be kept available on the website of the company.

According to Securities Market Act, the interim reports, interim board reports, financial statements and annual reports are to be kept available through the company website for at least 5 years.

According to the Helsinki CG Code, the company shall issue a separate Corporate Governance Statement, detailing, *inter alia* compliance with the Code and details on internal control and risk management, as well as organisation of the management. The statement, together with a separate remuneration statement shall, together with other information, be presented on the company's website as investor information.

5 Corporate Social Responsibility

5.1 What, if any, is the law, regulation and practice concerning corporate social responsibility?

The guidelines on the Management Report published by the Accounting Board of the Ministry of Employment recommend that companies address personnel and environmental responsibility issues in their annual reports. Companies may also elect to publish a separate corporate social responsibility report.

The guidelines do not require that all limited companies publish a full scope account of personnel and environmental responsibility issues, but the practise is, however, recommended.

5.2 What, if any, is the role of employees in corporate governance?

Employees have no statutory right to be represented on the board. A company may however, agree with its employees to arrange some employee representation in the company governance, and, in the event nothing is agreed regarding the representation, the employees may have a right to have some representatives appointed in the management groups or similar bodies of the company.

The employees should, in addition, be consulted regarding certain major issues, e.g. major changes in the company.

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