Chapter XX

FINLAND

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I INTRODUCTION

Finland has a civil law system that closely resembles the legal frameworks of the other Nordic countries – Sweden, Norway, Denmark and Iceland. In particular, the Finnish legal system has been greatly influenced by Swedish law, reflecting the fact that Finland was under Swedish rule from the 12th to the 19th century. Naturally within the past decades, European cooperation and integration have greatly affected Finnish legislation. Finland became a member of the European Union in 1995, and in 2002 it replaced its cash currency, the Finnish markka, with the euro. EU membership did not require any major legal reform or overhaul in Finland, and the application and implementation of EU laws and regulations was realised smoothly over several years as part of the normal legislative process.

i Regulation in Finland

In recent years, the financial crisis and the changes that followed in the EU's financial markets legislation have had an impact on Finnish legislation. As a consequence, a working group to propose changes to the Finnish securities market legislation was set up in February 2009. Its main objectives were to improve the clarity and comprehensibility of securities markets legislation, and, *inter alia*, boost its competitiveness. In February 2011, the working group presented its proposal in the form of a government bill. The parliament passed the proposed acts in December 2012 and they entered into force at the beginning of 2013. The main structural change was the division of the previous Securities Markets Act into six separate acts, which improved the intelligibility and clarity of the financial markets legislation.

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The main regulation in the capital markets in Finland is the new Securities Markets Act (746/2012) (SMA). The SMA is divided into several chapters based on each regulated topic (e.g., prospectus, takeover bids and market abuse). The main difference in the SMA compared with the EU regulation relates to prospectus rules. The SMA requires a prospectus, a 'national prospectus', for offerings of between 1.5 million euros and five million euros. Hence, the administrative burden for non-listed companies is only slightly reduced. However, one should bear in mind that a large number of Finnish listed companies fall under the EU Prospectus Directive's definition of small and medium-sized enterprises or companies with reduced market capitalisation, and thus can choose to prepare a prospectus using a proportionate disclosure regime.

In addition to the SMA, the financial market regulation includes acts on investment services and investment funds as well as clearing and settlement, trading on financial instruments, etc. Almost all of these acts, as well as the SMA, contain decrees whereby the power to impose more detailed rules is given either to the Ministry of Finance or the Finnish Financial Supervisory Authority (FIN-FSA). The Ministry of Finance has issued regulations on, for example, prospectuses and takeover documents, and the FIN-FSA regulations and guidelines on, for example, offering and listing of securities and disclosure obligations.

The FIN-FSA is the supervision authority for Finland's financial and insurance sectors. The entities supervised by the FIN-FSA include banks, insurance and pension companies, as well as other companies operating in the insurance sector, investment firms, fund management companies and the Helsinki Stock Exchange. In addition, the FIN-FSA supervises and scrutinises Finnish listed companies' disclosure obligations, prospectus issues, takeover bids as well as market abuse situations. The FIN-FSA operates in connection with the Bank of Finland but is independent in its decision-making.

ii Structure of the courts in Finland

The Finnish court system consists of three types of courts: general courts of law, administrative courts and special courts. Civil, criminal and petitionary matters are processed in the general courts of law, which include local district courts as the first instance, courts of appeal as the second instance and the Supreme Court as the final instance. Decisions of the district courts can be appealed in the courts of appeal if leave for continued hearing is granted. The decisions of courts of appeal can again be appealed in the Supreme Court, provided that a leave to appeal is granted (only approximately 9 per cent of appeals are granted leave).

The Supreme Court decides appeals on decisions of land courts (special institutions within district courts that decide on land usage issues) as well as certain decisions of the Insurance Court and the Market Court. The Supreme Court provides judicial precedents and decides on annulment of final decisions of lower courts as well as restoration of appeal periods after their expiration.

Administrative courts include the administrative courts as the first instance and the Supreme Administrative Court as the last instance. Matters of administrative law, such as the activities of the authorities and the administrative procedure, are processed in these courts. There are also four special courts in which specific types of issues are

processed: the Market Court, the Labour Court, the Insurance Court and the High Court of Impeachment.

First, the Market Court decides on issues concerning securities market law, antitrust and marketing law, public procurement and unfair competition. Depending on whether the case at hand is administrative or a civil matter, the decisions of the Market Court can be appealed in the Supreme Administrative Court or the Supreme Court. Second, the Labour Court handles legal disputes arising out of collective agreements or collective civil servants' agreements, usually between trade unions. Third, the Insurance Court deals with social security matters, such as pension, unemployment benefit, wage security, housing allowance, financial aid for students and disability benefits. Finally, the High Court of Impeachment decides on charges brought against, for example, members of the government. However, it has only convened four times in Finland's history.

The Finnish court procedure is centralised, ensuring that the judgment is based on facts presented to the court immediately before deciding the issue. There is also a preparatory session held before the actual trial. Furthermore, the court process is governed by certain other key principles. Under the principle of oral hearings, which mainly applies to civil and criminal matters, hearings are held with parties present at court, witness examinations are oral and no written statements are allowed in the hearings. According to the principle of immediacy, all statements and evidence are presented to the same court and judges that ultimately decide the matter. In the event that any of the judges change, the main hearing must be held again. The principle of transparency, concerning the right to receive information from courts, is observed in the publication of trial information, documents and notices. However, it is possible for trial documents or proceedings to be declared confidential if necessary to guarantee a fair trial or, for example, to protect privacy, national safety, business secrets or victims of crime. Finally, under the principle of contradiction (*audiatur et altera pars*), the parties of a trial must have the opportunity to present their case in court, including presenting their claims, answering questions presented by the opposing party, and commenting on documents and evidence as well as examining the witnesses.

iii FIN-FSA supervisory powers

In addition to the court procedures, the FIN-FSA has as an important role in the supervision of the Finnish financial markets and issuing administrative sanctions. Provisions on the FIN-FSA's supervisory powers are for the most part laid down in the Act on the Financial Supervisory Authority (878/2008) (FSA Act). In the FSA Act, the most important supervisory powers for the securities markets concern the right to obtain and inspect information, which includes, *inter alia*, the right to obtain information from the board of directors of a listed company notwithstanding confidentiality provisions.

In addition to the powers stipulated in the FSA Act, the SMA includes two special supervisory powers. In accordance with Chapter 17 of the SMA, the FIN-FSA has the power to postpone offers, to prohibit the continuation or repetition of marketing, and to impose a conditional a fine, the purpose of which is to reinforce the above-mentioned measures. The postponement of an offer refers to a situation where the FIN-FSA has reasonable grounds to suspect that an offering to the public violates the SMA or provisions issued under it.

The FIN-FSA may prohibit the continuation or repetition of a procedure in a situation where the actions relating to the offering, marketing and trade or exchange of securities and other financial instruments or to the duty to disclose are in violation of the SMA. If evident harm has been caused to investors, the FIN-FSA may order the entity on which it has imposed the prohibition to amend or remedy its actions.

Under the previous SMA, in a situation where the statutory information had not been provided in connection with the marketing of the offering, the FIN-FSA, for instance, prohibited the continuation of the marketing and required that the statutory information and the option to cancel previous commitments be provided to the investors. Additionally, the FIN-FSA has previously imposed a conditional fine to reinforce its decisions regarding prohibition and rectification.

Provisions on the FIN-FSA's powers to impose administrative sanctions are issued in Chapter 4 of the FSA Act. According to the FSA Act, administrative sanctions include an administrative fine, public warning and penalty payment. A public warning may be issued if an entity operating on the financial markets intentionally or through negligence violates provisions other than those for which an administrative fine or penalty payment may be imposed. Chapter 15 of the SMA includes a list of those provisions on the basis of which the FIN-FSA shall impose an administrative fine or a penalty payment on market actors for a failure to comply with or violation against the provisions of the SMA.

An administrative fine is imposed for a failure to comply with or violation of the following provisions of the SMA: (1) failure to provide marketing materials, (2) failure to notify of transactions on own shares, (3) violation of disclosure requirements, (4) failure to perform the obligation to disclose holdings or to publish the target company's disclosure notification, or (5) failure to maintain available statutory information. In practice, failure means a delay in the performance of the above-mentioned obligations. The administrative fine payable by a legal person is €5,000 to €100,000 and by a natural person €500 to €10,000. The FIN-FSA has published a table of administrative fines that functions as a guide on the amount of payments.

According to the SMA, a penalty payment is imposed for violation of the prohibition on providing untrue or misleading information or for breach of the obligation to maintain sufficient information available equally for all parties. In addition, a penalty payment is imposed for breaching provisions regarding the publication of certain prospectuses and other information, public takeover bids and the obligation to launch a bid, and the company-specific insider register and market abuse. The condition for imposing a penalty payment is that the matter, assessed as a whole, does not warrant more severe action.

The amount of the penalty payment is based on the comprehensive assessment. When assessing the amount of the penalty, the type, extent and duration of the actions and the financial situation of the entity being fined must be taken into consideration. The maximum amount of the payment shall be 10 per cent of the legal person's turnover in the financial year preceding the imposition of the penalty payment but not more than €10 million. If the financial statement has not been completed at the time of the imposition of the penalty payment, the payment shall be based on the turnover stated in the previous year's financial statement.

If a legal person has only recently begun business operations and no financial statements are available, the turnover may be estimated on the basis of another account.

The maximum penalty payment payable by a natural person shall be 10 per cent of the natural person's income as per the latest tax assessment but not more than €100,000.

The FIN-FSA imposes penalty payments not exceeding €1 million, otherwise the penalty is imposed by the Finnish Market Court based on a proposal by the FIN-FSA. The administrative fines and penalty payments imposed are payable to the State.

During recent years, FIN-FSA administrative sanctions have been far more commonly used than criminal ones. For example, in 2012, FIN-FSA imposed three public admonitions (no longer possible), three public warnings and 14 administrative fines as well as making five requests for police investigations. The new SMA has increased the monetary value of penalty payments that FIN-FSA can impose.

II THE YEAR IN REVIEW

i Developments affecting debt and equity offerings

One of the recent trends in the Finnish financial markets is the increased value of corporate bond issuances. In 2012 the number of corporate bond transactions was 37, including the first domestic high-yield bond and first domestic secured bond. Traditionally the main non-equity financing in Finland consists of bank loans, although in 2012 there was a peak in the bond market when, in addition to new issuances, a number of previous bank loans were transferred to bonds. Although there was a clear increase in 2012 in the bond market, the traditional non-equity financing by bank loans was, and is, by amount the largest source of funding.

Another recent key development in the bond market is that the major bond investors are no longer banks, whereas until 2007 one-third of corporate bonds lay in the banks' own portfolios. Furthermore, there has also been a change in issuers. Previously issuers were mainly investment grade companies, whereas recently covered bonds and bonds guaranteed by the operational group company have seen the light. One of the common features in Finnish bond markets is the absence of agent or trustee representation of investors; investors are represented through creditors' meetings, which can be compared to the general meetings of shareholders. Despite the growth in corporate bond issues, the Finnish state and municipalities continue to account for the majority of the emission value: during the first two quarters of 2013, overall bond issues were €9,035 million, with the Finnish state and municipalities accounting for over €6,500 million of this amount according to the statistics of the Bank of Finland, the Finnish central bank.

Generally, financing conditions still display signs of the European-wide financial uncertainty. While the Finnish banking and financing sector survived the crisis relatively well, curbs on bank lending and tightened financing conditions limited the amount of funding available to companies and transactions. Funding was offered mainly to 'core' clients (i.e., large and established companies), which limited the funding available for smaller and medium-sized enterprises.

Because of economic conditions, equity offerings have also been quite rare in recent years. For example, in 2012, only three new companies were listed on the Helsinki Stock Exchange, while during 2013, the stock exchange experienced a demerger of a listed company, with the carved-out entity listed on the exchange. Overall, equity

markets in Finland enjoyed a nervous and mild upswing during the end of 2012 and the start of 2013, from the low in the beginning of 2012.

Steps have been taken to reinvigorate the markets by means of, for example, tax incentives. However, there is some controversy over whether the challenges relate more to over-regulation than to taxation, thereby complicating efforts made to revitalise the equity markets.

ii Developments affecting derivatives, securitisations and other structured products

During 2012 and 2013, possibly in conjunction with the cautiously recovering equity markets, the range of different types of equity investments and equity market-linked products also increased. For example, the Finnish securities lending market revived from its relative stillness at the start of the millennium with investment alternatives even for retail investors.

Real estate and housing funds have also been a high-level trend in Finland lately, whereby retail investors invest in funds organised as partnerships for Finnish tax purposes. These partnerships subsequently acquire property and real estate, which they then lend out. Effectively, such structures pool investments from various retail investors into a single fund. The rationale of these structures is both to provide diversification and to decrease the amount of initial capital required for investments in real estate and housing funds. The first of these real estate equity funds was established in 2006 for institutional investors and the following year for retail investors; however, in 2012 and 2013, several new funds, including one set up by a Finnish bank, were established.

In Finland, netting is regulated mainly by two acts: the Act on Certain Provisions in Securities and Foreign Exchange Trading and Settlement System (1084/1999), concerning, for example, netting of payments within the settlement system; and the Financial Collateral Act (11/2004), regulating the use of collateral rights (e.g., when securities are used as collateral and the party providing the collateral is an institution, such as a bank, as stipulated in the Act). Netting clauses in Finnish contracts are generally fairly standardised and compactly formulated. Most legal concerns relate to cross-border transactions, where the enforceability of a contractual netting clause may remain an unresolved issue. Secondly, clearer guidance on the applicability of the Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings has been called for, in questions relating to netting, among legal and other market professionals.

iii Cases and dispute settlement

In the past decade the Finnish securities markets were characterised by several high-profile, alleged, white-collar securities fraud investigations and criminal procedures. The most prominent of these cases are in the process of being decided by appellate courts with final legal force. Prior to this recent tide of cases we had very few legal precedents. In that sense the Finnish market is now more developed, although most of these cases were extremely contentious with very case-specific details and facts. In these cases the lower courts often found the defendants guilty, but almost equally as often these decisions were completely reversed at the appellate levels. These reversals notwithstanding, there now exists some precedent guidance on insider trading issues as well as on prospectus

and disclosure liability. Following the latest legislative amendments, the FIN-FSA now has even wider investigative and punitive powers, but it still remains to be seen how the authority will apply these.

iv Relevant tax and insolvency law

Recent changes in the Finnish tax regime mirror the increasing competition for tax revenues and the economic downturn. The concern over losing tax revenues has driven Finland to safeguard its tax base more diligently. For example, to dampen tax planning by Finnish companies financed by intra-group loans from their foreign group companies, the government has introduced new legislation restricting deductibility of interest expenses. However, Finland decided not to join EU Member States planning to introduce the European Union financial transaction tax.

The government has imposed a new temporary tax on Finnish banks to gather funds in case of future crashes in the financial market. The bank tax is being levied on Finnish deposit banks and their foreign subsidiaries for the period 2013–2015, with risk-weighted assets held by the banks being taxed at the rate of 0.125 per cent. The introduction of this bank tax is considered to have increased the cost of debt capital. Typically, the conditions of Finnish corporate loans allow banks to pass on public charges and fees directly to the borrowers. As a result of this, some Finnish banks have, in effect, included bank tax as a separate item on their invoices. All in all, the introduction of Finnish bank tax has been considered problematic because of the hasty implementation schedule and potential infringements of EU law.

Current Finnish legislation allows wide deductibility of interest expenses, which can be restricted only by applying the transfer pricing regulation or the general provision for tax avoidance. With effect from the beginning of 2014, the deductibility of interest expenses arising from related party loans will be restricted. The limitations will restrict the deductibility of the net interest expense (the amount of all interest expenses exceeding all interest income) to 30 per cent of the company's fiscal EBITDA. The limitations are subject to certain safe haven clauses, and interest payments for third-party loans will not be affected. However, third party loans may be deemed as intra-group loans in situations such as back-to-back arrangements or when a related party has secured a third-party loan with collateral. The interest limitation rules have to be considered when arranging financing structures of Finnish entities.

To conclude Finland's central government spending cuts for the period 2014–2017, the government decided to cut the corporate tax rate from 24.5 per cent to 20 per cent as of the beginning of 2014. This means a significant change in the level of Finnish corporate taxation. After the drop, the Finnish corporate tax rate will clearly be below the EU and European average rates. The lower corporate tax rate is intended to boost Finland's international competitiveness and to revive the stagnant economy. However, to compensate for the fall in corporate tax revenues, the lowering of the tax rate will be paired with extensions to the corporate tax base and cuts to subsidies.

Furthermore, the Finnish government is introducing a reform to dividend taxation of private individuals as of 2014. As a result, taxation of dividends received from listed companies will tighten slightly, but the overall tax burden on dividend income will remain practically unchanged considering the lowered corporate tax rate. Taxation of

dividends from unlisted companies is also to be amended, but, overall, the tax treatment of dividends distributed by unlisted companies still remains significantly more favourable than the tax treatment of dividends from listed companies. Therefore, the reform entails no incentives to new Finnish IPOs, even though the considerable differences in the tax treatment of dividends has evidently influenced companies' willingness to go public in recent years.

Recently, the Finnish Supreme Administrative Court (SAC) released certain capital markets related tax decisions, which have concerned, for example, taxation of listed warrants (KHO:2013:117), taxation of CSA agreements (KHO:2012:112) and tax treatment of prospectus fees in corporate restructurings (KHO:2013:68).

v Role of exchanges, central counterparties (CCPs) and rating agencies

NASDAQ OMX Helsinki (Helsinki Exchange) is the main trading place in Finland for stocks, bonds and derivative instruments. Helsinki Exchange is a part of NASDAQ OMX Group, which operates in several markets including other Nordic countries. Although the Nordic exchanges are legally separate entities, they are generally referred to as 'NASDAQ OMX Nordic'.

Helsinki Exchange has one official list, the Main Market, which is divided into three segments, Large Cap, Medium Cap and Small Cap, based on the market capitalisation of the companies. Other lists on the Helsinki Exchange are the Pre List, where shares can be listed (e.g., if they are planned to be listed on the Main Market later), and the Other Securities list, which includes equity rights. Additionally, the Helsinki Exchange maintains the First North Finland market for smaller companies unwilling to be listed on the Main Market. First North is a multilateral trading facility and thus does not have the legal status of an EU-regulated market and is subject to lighter regulation than the Main Market.

Since 1990, the trading of securities in Finland has been conducted through electronic trading systems, which replaced the daily call auction practice. At the beginning of 2011, the Nordic exchanges switched to the Inet system, which is supposed to be more efficient and faster than their previous trading system. During 2009, central counterparty clearing began at the Helsinki Exchange and the tick sizes became smaller.

Since the introduction of CCP clearing, trades in shares belonging to Helsinki Large and Mid Cap, as well as exchange-traded funds (ETFs), have been CCP cleared. Trades in shares belonging to Small Cap, Pre List and Other Securities were gross settled. NASDAQ OMX Helsinki extended the CCP clearing to shares that were previously gross settled to be included in the central counterparty clearing serviced by the European Multilateral Clearing Facility (EMCF) in June 2012. Currently, EMCF is the only central counterparty accepted in the Helsinki Stock Exchange.

III OUTLOOK AND CONCLUSIONS

The Finnish securities law framework is fully integrated with the mandatory EU laws. A major pending, and controversial, amendment relates to beneficial ownership of listed securities. Currently only foreign shareholders have the right to hold shares under a nominee holder. The government has proposed an amendment whereby this

right would also be granted to all domestic shareholders. Certain left-wing parties and politicians, and also the tax authority, have strongly lobbied against the amendment and the fate of this bill is currently open. The advocates of the bill have cited projected savings in overall transaction and settlement costs, and the fact that nominee holding has been widely adopted and accepted internationally.

Most recently, public discourse has been concerned with the diminishing appeal of the NASDAQ OMX Helsinki exchange as a listing platform. Many more companies have gone private by way of a takeover than there have been new listings and IPOs. Specifically, the private equity sector consistently favours secondary buyouts or trade sales as an exit option over IPOs. The government and other interested parties have set up numerous working groups to propose various reforms in the tax, general securities markets and listing regimes to increase the attractiveness of the regulated market as well as private sector and consumer interest in listed securities as a savings and investment alternative, but so far little has been done in this respect.

Following the adoption of the new securities market laws, as explained above, the Helsinki Takeover Code is currently also under review. The former Panel on Takeovers and Mergers hosted by the Central Chamber of Commerce of Finland was abolished under the new SMA. The Finnish Securities Markets Association, which has also issued the Finnish Corporate Governance Code, has emerged as the new governing body, drafting improving and maintaining recommendations to support good markets practice. It has drafted a renewed and slightly amended Takeover Code, which was submitted for comments earlier this year. However, to date the 2006 Takeover Code is still applicable to takeovers and public tender offers, and no major overhaul of it is expected.

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