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Chapter 8

FINLAND

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I INTRODUCTION

The development of the Finnish capital markets has proceeded rather in line with the common European trends with the cyclical changes in activity and any regulatory reactions thereto. The financing of companies and industry in Finland has been very bank-centric, described typically as 80 per cent of financing originating from bank-based debt capital and only 20 per cent from the capital markets, meaning public trading. Following the increased regulation of the banking sector and tightening of capital requirements, as well as the bleak economic climate in general, the role of the capital markets as a source of financing in Finland has notably increased. Both the Finnish regulated market NASDAQ OMX Helsinki Ltd (the Helsinki Stock Exchange) and the multilateral trading facility First North Finland have begun to attract new listing candidates and issuers. The Helsinki Stock Exchange has also recently introduced a simplified listing to First North Bond Market, which enables smaller companies to enter into the bond finance market and trading platform for investors, with template terms and expedited listing procedures without requiring an EU-regulated listing prospectus and IFRS financials.

Helsinki Stock Exchange

The Helsinki Stock Exchange is the main trading venue in Finland for stocks, bonds and derivative instruments. Helsinki Stock Exchange is a part of NASDAQ OMX Group, which operates in several markets including other Nordic countries. Although the Nordic

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exchanges are legally separate entities, they are generally referred to as 'NASDAQ OMX Nordic'.

The Helsinki Stock Exchange has one official list, the Main Market, which is divided into three segments based on the market capitalisation of the companies. Additionally, the Helsinki Stock Exchange maintains the multilateral trading facilities First North Finland and First North Bond Market Finland for smaller companies not wishing to be listed on the Main Market. As multilateral trading facilities, First North and First North Bond Market do not have the legal status of an EU-regulated market and are subject to lighter regulation than the Main Market.

The Helsinki Stock Exchange and thereby also First North use the INET Nordic trading system for trading in the securities market. Trading and clearing are carried out in euros, with the smallest possible price change (tick size) being €0.0001. Transactions are cleared bilaterally in Euroclear Finland Ltd's (Euroclear Finland) HEXClear clearing system. Such transactions are carried out on the second business day after the trade date (T+2), unless otherwise agreed upon between the parties.

Book-entry securities system

All companies whose shares or other securities are subject to public trading on the Helsinki Stock Exchange or to multilateral trading on First North must register these securities in the Finnish electronic book-entry securities system. The book-entry securities system is centralised at Euroclear Finland, which provides clearing and registration services for securities in Finland. Euroclear Finland maintains a book-entry securities system for both equity and debt capital securities. Euroclear Finland also maintains company-specific shareholder registers of shareholders of companies that have joined the book-entry securities system, and offers book-entry account services for shareholders who do not wish to use commercial services offered by account operators.

Similarly, all holders of securities in Finland must open a book-entry account directly with Euroclear Finland or with an account operator, for example, a credit institution registered with Euroclear Finland), or register their shares through a nominee registration process in order to have their securities entered in accounts. It should be noted that Finnish persons or entities may not hold equity securities in (omnibus) nominee-registered accounts. In contrast, a non-Finnish shareholder may appoint an account operator to act as a custodial nominee account holder on its behalf. A holder of nominee-registered shares is not entitled to exercise any rights of holders of book-entry securities towards the issuer without first being registered as a shareholder in the shareholder register. However, such registration is not required for using the right to withdraw funds, convert or exchange book-entries or participate in an issue of shares or other book-entry securities.

i Regulation in Finland

Finland has a civil law system that closely resembles the legal frameworks of the other Nordic countries – Sweden, Norway, Denmark and Iceland. In the past few decades the European cooperation and integration have greatly affected Finnish legislation and, as such, the Finnish securities markets regulation is in line with that of the EU capital markets.

Legislation and official regulation

The central regulation concerning the capital markets in Finland is the Securities Markets Act (746/2012, as amended) (SMA), which regulates the issuance of securities, trading, insider information and takeover bids. The SMA is essentially aligned with the relevant EU regulation, however, there is certain national gold-plating relating to, for example, prospectus rules. Where an offering would fall below the minimum level of €5 million of the EU Prospectus Directive (2003/71/EC), the SMA still requires preparing of a 'national prospectus', for offerings of above €1.5 million and below the said €5 million, where the securities offered are not admitted to trading on a regulated market. The content and filing requirements for a national prospectus are very similar to the requirements placed on a prospectus prepared pursuant to the EU Prospectus Directive and, hence, the administrative burden for companies whose securities are not traded on the main list 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 legislation on provision of investment services and on investment funds as well as on clearing and settlement, and on trading in financial instruments, among others. Almost all of these acts, including the SMA, allow for more detailed rules to be issued by the Council of State, the Ministry of Finance or the Finnish Financial Supervisory Authority (FIN-FSA). Pursuant to the SMA, the Ministry of Finance has issued decrees on, for example, prospectuses and takeover documents, and the FIN-FSA has issued regulations and guidelines on, for example, offering and listing of securities, and disclosure obligations.

The FIN-FSA and the operators in the Finnish securities markets are also subject to the guidance issued by the European Securities Markets Agency (ESMA) on the basis of the comply or explain principle. Accordingly, the FIN-FSA typically instructs its supervised entities to comply with the applicable ESMA guidance.

Netting is regulated mainly by two acts: the Act on Certain Provisions in Securities and Foreign Exchange Trading and Settlement System (749/2012), as amended, concerning, for example, netting of payments within the settlement system; and the Financial Collateral Act (11/2004), as amended, 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 credit institution, 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.

Rules of the market places and self-regulation

Listed companies must adhere to specific rules of the Helsinki Stock Exchange, namely the rules of NASDAQ OMX Helsinki Ltd and the rules of the First North trading facility in the First North Rulebook. These rules include provisions on, among others, eligibility to be listed on the market, periodic reporting and insiders.

There is also significant self-regulation by different market participants and relevant associations and similar. For example, the Finnish Securities Markets Association has prepared a Helsinki Takeover Code addressing questions and practices related to the actions of both the bidder and the target company, as well as the management and shareholders of the target company, and it is relevant for all parties involved in a public takeover bid. The obligation to comply with the Takeover Code is based on the provisions of the SMA and the comply or explain principle. Hence, each takeover bidder must state whether it complies with the Code or alternatively give its reasoning on why it has decided to ignore the Code or parts of it.

The association also hosts the Takeover Board, which may issue recommendations providing direction for mergers and acquisitions. An application can be made to the Takeover Board for a statement regarding interpretation of the Helsinki Takeover Code, compliance with good securities markets practice as well as individual company law issues. The Board has not yet issued any particular recommendations supplementing the Code or providing comments on any other M&A-relevant issue in Finland.

The Finnish Securities Market Association published the new Finnish Corporate Governance Code in October 2015 and it will enter into force as of 1 January 2016 replacing the current code from 2010. The new Corporate Governance Code applies to companies listed on the Helsinki Stock Exchange main list, and it applies to these companies based on the 'comply or explain' principle. The new code aims to improve the transparency of corporate governance practices and principles of listed companies and to advance more uniform corporate governance reporting. The new code has been aligned with the European Commission's Recommendation on corporate governance reporting of 2014.

ii Supervision of capital markets

The FIN-FSA is the supervisory authority for Finland's financial and insurance sectors. The FIN-FSA operates in connection with the Bank of Finland but is independent in its decision-making. The entities supervised by the FIN-FSA include credit institutions, investment firms, fund management companies as well as insurance and pension companies, and other companies operating in the insurance sector, and operators of the financial markets infrastructure such as 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. In addition to the FIN-FSA supervision, the Helsinki Stock Exchange supervises compliance with its rules and sanctions non-compliance. These sanctions include reprimands, fines or removal of the securities from trading, where the non-compliant party is a listed company or cancellation of the relevant status in the stock exchange where the non-compliant party is, for example, a certified adviser to a listed company.

The FIN-FSA has a central role in the supervision of the Finnish financial markets. 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, as amended). The most relevant supervisory powers regarding 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 any confidentiality provisions. In addition, regarding offerings, the FIN-FSA has the power to postpone an offer in a situation where the FIN-FSA has reasonable grounds to suspect that the offering to the public violates the SMA or regulations issued under it, to prohibit the continuation or repetition of prohibited marketing, and to impose a conditional fine, the purpose of which is to reinforce the above-mentioned measures.

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. For example, the FIN-FSA has, in a situation where the statutory information had not been provided in connection with the marketing of the offering, 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 conditional fines to reinforce its decisions regarding prohibition and rectification. In addition, the FIN-FSA has the power to impose administrative sanctions such as administrative fines, public warnings and penalty payments.

iii 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, however, in minor disputes, a leave for continued hearing may be required. 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).

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, for example, the FIN-FSA, and the administrative procedure, are processed in these courts. There are also four special courts in which specific types of issues are processed. For example, where an administrative sanction otherwise issued by the FIN-FSA would exceed €1 million, it will need to be issued by the Market Court.

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 such as the principle of oral hearings and the principle of immediacy, meaning all statements and evidence are presented to the same court and judges who ultimately decide the matter, as well as the principle of transparency, meaning the parties have the right to receive information, and the principle of contradiction (*audiatur et altera pars*), meaning the parties to a trial must have the opportunity to present their case in court.

II THE YEAR IN REVIEW

i Developments affecting the capital markets

Over the past 10 years, the number IPOs in Finland has been quite low. However, recent years have experienced somewhat of an upswing compared to zero listings on Helsinki stock exchanges in 2011 to three Main List listings in 2014 and six First North listings. Furthermore, during the first half of 2015 there have been three Main List listings and seven First North listings. The market value of the Helsinki Stock Exchange was around

€168 billion in 2014: a slight increase compared with €117 billion in 2011, however significantly lower compared to 2007 when the market value was €252 billion.

In general, the equity capital markets continued their modest upswing during the start of 2015. To some extent, this may be explained by the lack of adequate returns in other markets, meaning that investments and available funds were directed to the equity market. Furthermore, the global financial crisis of 2008 led to stricter banking regulation, which in turn affected the availability of financing with good terms or at all for many companies. This has led them to seek other financing options outside direct bank financing.

In addition, the continued low interest rates have somewhat increased the interest in IPO transactions, making equity investments more attractive. While equity listings remained few compared to other Nordic countries in 2015, Finland's equity markets' relatively better performance compared to the rest of the developed world could indicate more equity offerings in the future. There is, indeed, an expectation of increase in deal activity for the remainder of the year. Unlike in Sweden where the expectation is that the recent IPO boom will normalise, Finland might still be facing an increase in volume of listings by the end of 2015.

ii The bond market

Following the trend in recent years in the growth and frequency of high-yield bonds, high-yield bond offerings increased in Finland during 2013 and 2014. The increased interest in bonds can be explained through large international investors returning to Europe with an appetite for higher yields, which the high-yield bonds especially may offer. Since there have been relatively few IPOs in Europe and particularly in Finland in past years, bond offerings especially in the industrial, retail and online trade sector gathered attention. Since the prevailing interest rates remain relatively low, issuers' interest for refinancing has also increased. In these attractive market conditions a larger number of bonds have also been issued under Finnish law, although there has been somewhat lesser interest in bonds in the first half of 2015 compared to the recent active years.

Another recent key development in the bond market is that the major bond investors are no longer solely banks and other financial institutions. There has been a similar change in issuers. Previously issuers were mainly investment-grade companies, whereas recently covered bonds and bonds guaranteed by operational group companies have seen light. Up until now, the bond market has also mainly attracted only large companies. The elsewhere successful First North bond market has been launched in Finland by the Helsinki Stock Exchange, creating new opportunities to tap into external financing also for smaller companies and a trading platform for investors in such bond instruments.

The Confederation of Finnish Industries has led the work to develop and enhance the functionality of Finnish bond markets in cooperation with various market participants. This work has resulted, for instance, in the introduction of template bond terms. One of the common features in Finnish bond markets is the absence of agent or trustee representation of investors; investors are still represented through creditors' meetings, which can be compared to general meetings of shareholders. However, work on new legislation concerning agents of bondholders has commenced in the Ministry of Finance and is estimated to be completed in 2016. In addition, there have been indications that further legislative proposals and action may also be introduced in the next few years to further develop the Finnish bond market.

Despite the overall increase in high-yield bond issuances and bond issuances, bank financing still remains the most important source of funding in Finland. However, the continued economic downturn has affected the amount of bank lending available and the terms and willingness of banks to provide financing to Finnish companies due to a depressed outlook, especially in certain commercial areas. Overall, Finland's GDP has been steadily declining since the second half of 2012.

A recent positive sign has been the increase in venture capital funding as well as an increase in private equity transactions and greenfield investments in certain technology sectors. These could both be seen as manifestations of Finland's attractiveness as an investment location.

Following the cautious recovery of the equity markets from 2012 onwards, the range of different types of equity investments and equity market-linked products continued to increase. The positive increase in the equity markets was also demonstrated by the amount of capital in various funds, which has increased rather steadily and was €94.2 billion in August 2015. Following this positive trend it may be that the general increase in funds available as well as the increased interest in stock markets due to largely positive gains could also lead to a further expansion of equity-linked structured products. The sharp fall in the stock prices in China in early autumn 2015 created heightened volatility in the stock markets globally and also affected share prices in Finland creating a level of uncertainty as to the future development of the market.

iii Cases and dispute settlement

There is rather limited legal precedent to guide the interpretation of the Finnish securities markets legislation and actions of the FIN-FSA in its supervisory tasks. However, in the past decade there have been a number of high-profile, alleged, white-collar securities fraud investigations and criminal procedures. Most of the cases in question were, however, extremely contentious with very case-specific details and facts. In many of these cases the first instances often found the defendants guilty, but almost equally as often these decisions were reversed at the appellate levels. As stated, the available precedent is rather limited but there is, indeed, some precedent guidance on insider trading issues as well as on prospectus and disclosure liability.

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. As of the beginning of 2014 the corporate income tax rate was lowered from 24.5 per cent to 20 per cent. After the drop, the Finnish corporate tax rate has been below the EU and European average. However, to compensate for the fall in corporate tax revenues, legislation was introduced restricting deductibility of interest expenses in order to dampen tax planning by Finnish companies financed by intra-group loans from their foreign group companies.

Former Finnish legislation allowed wide deductibility of interest expenses, which could be restricted only by applying the transfer pricing regulation or the general provision for tax avoidance. The limitations restrict the deductibility of the net interest expense (the amount of all interest expenses exceeding all interest income) to 25 per cent of the company's fiscal EBITDA. The limitations are subject to certain safe haven clauses, and interest payments for third-party loans are not 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.

Furthermore, a reform to dividend taxation of private individuals was introduced as of 2014. As a result, taxation of dividends received from listed companies tightened 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 was also 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. Moreover, as of 2014 repatriation of funds from non-restricted equity capital of listed companies is taxed as dividend income. Respectively, repatriations of funds to foreign shareholders may be subject to Finnish dividend withholding tax. 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.

Additionally, taxation of dividends received by companies was renewed as of 2014. The possibility to receive tax-exempt dividends from companies in the EU countries was expanded. On the other hand, dividend distributed by a listed entity is fully taxable in the hands of non-listed companies holding less than 10 per cent of the capital in the distributing company, as earlier only 75 per cent of the same dividend was taxable. The dividend taxation has also been tightened for the part of dividends received from a company tax resident outside the EEC.

Finland has decided not to join EU Member States planning to introduce the European Union financial transaction tax. The bank tax imposed on Finnish banks and their foreign subsidiaries to gather funds in case of future crashes in the financial market, originally intended to be applied during 2013–2015, was cancelled as of 1 January 2015. Owing to the introduction of the EU banking resolution regulation, the bank tax was replaced by the requirement to submit payments to the financial stability fund. Unlike the bank tax, payments to the financial stability fund are deductible.

Recently, the Finnish Supreme Administrative Court released certain capital markets related tax decisions, which have concerned, for example, the application of the new rules on deductibility of interest expenses (KHO 2015:11), taxation of management holding companies (KHO:2014:66), reclassification of hybrid loans (KHO:2014:119), listed warrants (KHO:2013:117), taxation of CSA agreements (KHO:2012:112) and tax treatment of prospectus fees in corporate restructurings (KHO:2013:68).

The 2015 Finnish parliamentary election was held in April 2015. At the end of May the new government reached agreement on the governmental programme, including a new tax policy framework for the following four years. The government's tax policy aims to boost growth, entrepreneurship, work and employment. The current broad tax base policy and measures to combat tax avoidance coupled with low/moderate tax rates will continue. Taxation of earned income will not be increased. Reducing taxation of labour will support employment, economic growth and ensure increased purchasing power. The easing of taxation on labour will be funded by increasing excise duties, such as tobacco and waste tax. Based on the framework, the corporate income tax rate will be also maintained at a competitive level. The Finnish government will publish relevant government bills by the end of 2015, which will include specific tax changes based on the tax policy of the government.

III OUTLOOK AND CONCLUSIONS

The Finnish securities law framework is fully integrated with the mandatory EU laws. The next more significant legislative changes regard the application of the so-called Market Abuse Regulation (MAR) on 3 July 2016 and the implementation the Market Abuse Directive (MAD) by the same date. The MAR and MAD have implications for the SMA as well as for regulations and guidelines issued by the FIN-FSA. The MAR extends its scope from the regulated markets to multilateral trading facilities. The regulation presents minor changes to the prohibition of abuse of insider information and to the timing of disclosure of inside information and to the delay of disclosure. Furthermore, the amendment of the Transparency Directive has introduced a few changes to reporting requirements including the removal of the requirement to publish financial reports from the first and third quarter in respect of Main List companies.

Related to the capital markets, the Ministry of Finance has commenced a review of the need for domestic regulation of crowdfunding in Finland. The work has not yet resulted in a specific proposal for legislation. The Confederation of the Finnish Industries had led to efforts to enhance the Finnish bond market and availability of bond financing to Finnish businesses – small and large. This work is still to continue and the market participants also expect further legislative action in this respect in the future.

Recently, public discourse has been concerned with the diminishing appeal of the Helsinki Stock Exchange as a listing platform. The Finnish government and other interested parties have set up a number of 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. So far, very little has been done in this respect in addition to the many public policy statements. However, as noted above, the Finnish market has quite recently seen increased activity in IPOs, which is expected to continue through the year. Further, the European Commission completed a consultation on the review of the Prospectus Directive and the related regulation in the spring of 2015. A proposal for a revised directive is expected from the Commission later in 2015. Issues such as the administrative burden of the prospectus requirements on small and medium-sized companies and on already listed companies are of especial interest from the Finnish markets point of view.

All in all, interest in listings and offerings in the Helsinki Stock Exchange and the First North markets has continued to be fairly strong in the first half of 2015. Whether this trend will continue will significantly depend on the general economic development in Finland and on the availability of financing from alternative sources, especially the traditionally strong banking sector financing. The new government has declared a number of intended changes to the employment and tax legislation, for example, but the implementation of these changes will not take place until 2016 at the earliest.

Appendix 1

ABOUT THE AUTHORS

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Juha Koponen heads the firm's capital markets team. He is a dual qualified (Finland and New York) transactional lawyer, who focuses his practice on capital markets, M&A and private equity transactions. He has advised issuers and underwriters on public and private offerings of equity and debt securities, including IPOs, high-yield debt offerings, convertible debt issuances and rights offerings. He has also advised bidders and target companies on tender offers.

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