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D&I Quarterly 2007

FINANCE & CAPITAL MARKETS

- » Revised Standard on Securities Offerings and Listings
- » First Verdict on Misuse of Insider Information Rendered by the Finnish Supreme Court

DISPUTE RESOLUTION

- » Report Proposes Changes to System for Appeal

CORPORATE & COMMERCIAL

- » New Act on Labour Hire Customer Liability
- » New Accounting Bill

FINANCE AND CAPITAL MARKETS

> REVISED STANDARD ON SECURITIES OFFERINGS AND LISTINGS

by Tytti Laajanen

The Finnish Financial Supervision Authority's (the "FSA") revised standard on offering and listing securities (Standard 5.2a) entered into force on 1 February 2007. It presents the essential recommendations and interpretations of the FSA on offering and issuance of securities and their admission to public trading in Finland.

Home country rule

The standard is applicable also where the issuance takes place in another EEA country but the issuer's home state is Finland.

The standard covers, among other things, questions related to duty of disclosure as well as the structure, contents, approval and publication of different prospectuses.

The revised standard takes into account the amendments the Finnish securities legislation due to the Prospectus Directive (2003/71/EC). Although the revised standard did not bring about major changes, some interpretations included in the standard differ from the FSA's earlier views.

Pursuant to the revised standard, CESR's (The Committee of European Securities Regulators) recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses no 809/2004 should be complied with in prospectuses meeting the criteria set in the Prospectus Directive.

In the future, the FSA will publish more detailed interpretations relating to securities offerings and listings in a so-called interpretation register. Such register has not yet been introduced.

Certain specific recommendations and interpretations included in the revised standard are discussed below.

CONVERTIBLE NOTES AND OPTION RIGHTS

Share subscriptions based on convertible notes and option rights are not addressed in the Prospectus Directive. The FSA has taken the view that if the subscription of shares on account of convertible notes or option rights is based on an earlier offer, there is no liability to prepare a prospectus irrespective of whether a prospectus had been published for such earlier offer. For example, a company is not liable to publish a prospectus when shares are subscribed based on incentive options granted to personnel. This view is consistent with that of CESR.

DECLARATION BY ISSUER

Under the revised standard, it is sufficient that the issuer company gives a declaration that the information contained in the prospectus is in accordance with that facts and that the prospectus makes no omission likely to affect its import. Thus, declaration by natural persons belonging to the administrative bodies of the issuer company is no longer required.

PROSPECTUS SUPPLEMENTS

Non-material faults

The revised standard clarifies the interpretation of Chapter 2, Section 3 b of the Finnish Securities Markets Act relating to prospectus supplements and investors' right to withdraw their decision to subscribe or purchase securities. Among other things, the standard now entitles an issuer to correct faults or omissions in the prospectus which are not of material importance to the investors by publishing a separate announcement without supplementing the prospectus and hence without triggering the investors' withdrawal right.

Supplement to base prospectus

The FSA has changed its view on the investors' right to withdraw subscriptions for securities in situations where a supplement to a base prospectus for an offering programme is published during a subscription period or before trading on a stock exchange begins. According to the revised standard, the investors who have already subscribed or agreed to subscribe for the securities under the offering programme must always be given a possibility to withdraw their subscription in such cases. Previously the FSA considered that a base prospectus may be supplemented by, for example, an interim report in respect of a new issue without giving a right of withdrawal to the investors of the earlier issues.

MARKETING MATERIAL

Even though marketing material related to a prospectus must be submitted to the FSA, the FSA will, as a rule, no longer comment on it other than in respect of initial public offerings and such issuers which offer securities for the first time. This new policy emphasizes the issuers' responsibility for compliance with the legal rules on marketing securities. However, the FSA may at request give opinions on matters related to marketing of securities.

FINANCE AND CAPITAL MARKETS

> FIRST VERDICT ON MISUSE OF INSIDER INFORMATION RENDERED BY THE FINNISH SUPREME COURT

by Juha Koponen

The Supreme Court found on 29 December 2006 the former CEO of a Finnish publicly traded insurance company, Sampo Group, guilty of insider trading. This was the first time that a securities litigation verdict has been rendered by the Supreme Court.

In the spring of 1999, Sampo Group had initiated discussions with another life insurance company, Suomi, about cooperation making an offer by Sampo Group to purchase 40% of the shares in Pohjola Group (another major Finnish publicly listed insurance company held by Suomi). This would have led to Sampo Group having a significant, if not practically controlling, interest in Pohjola Group.

The CEO of Sampo Group had been involved in the process of preparing the offer for the Pohjola shares to Suomi. These plans were further evidenced by various memoranda as well as minutes from the management and board of directors of Sampo Group. The CEO had bought shares of Pohjola Group in the name of his under-aged daughter and an investment company under his control.

The question that the Supreme Court decided upon dealt with whether the CEO had actual inside information that had not yet been disseminated to the markets and whether his misuse of the information could be seen as having caused with gross negligence.

Insider information is defined in Chapter 5, Section 1 of the Finnish Securities Markets Act, which states, *inter alia*, as follows:

"Inside information shall mean information of a precise nature relating to a security subject to public trade [...] which has not been made public or which otherwise has not been available in the markets and which is likely to have a material effect on the value of the said security."

Information has to relate to the securities

Based on the internal meetings and memoranda of Sampo Group, the Supreme Court deemed that it was obvious that Sampo Group had analysed the possibility of acquiring the block of Pohjola shares held by Suomi. Therefore it was deemed that the information related to the shares of Pohjola Group.

Precise nature of information

Inside information has to be precise by nature, which means precise information concerning a future event is such that objectively viewed an event can be expected to occur with a reasonable likelihood. The Supreme Court held that Sampo Group's offer to Suomi for the Pohjola Group shares was precise enough information of a planned future event.

Undisclosed information

Insider information by definition deals with undisclosed information. Before the former CEO began buying the Pohjola Group shares:

- i. Sampo Group issued a generic press release stating that it had initiated negotiations concerning business cooperation with Suomi; and
- ii. The president of a wholly-owned subsidiary of Sampo Group mentioned in a newspaper interview that should the Pohjola Group shares held by Suomi be offered for sale, Sampo Group would be interested in them.

However, neither the press release nor the interview revealed that Sampo Group had already made an offer to Suomi for the Pohjola Group shares. The Supreme Court therefore held that the former CEO was trading on undisclosed information as he knew that Sampo Group was planning on acquiring the in Pohjola Group shares held by Suomi.

Material effect on the price

For information to be considered inside information, it should be likely to have a material effect on the value of the said security. The possibility of causing a material effect on the price is deemed enough and no actual effect is required. The Supreme Court held that it would have been probable that Sampo Group would have paid a premium to Suomi for the Pohjola Group shares in order to acquire a significant share in Pohjola Group and that the price of the Pohjola Group shares would have gone up significantly.

Economic benefit and gross negligence

The relevant criminal statute concerning inside information stipulates that there shall also be economic benefit involved and causation either wilfully or with gross negligence. The Supreme Court held that the former CEO had sought economical benefit and had acted with gross negligence as he should have realised that he was trading on inside information. The factors that were taken into account in determining gross negligence were that he was the CEO of a large publicly listed insurance company, experienced in the securities markets and educated as a lawyer.

DISPUTE RESOLUTION

> REPORT PROPOSES CHANGES TO SYSTEM FOR APPEAL

by Eva Storskrubb

Current Screening Procedure

The Finnish court structure for civil and criminal proceedings is three tiered and includes 58 district courts, six appeal courts and the Supreme Court. The right to appeal to the appeal courts has traditionally not been limited. However, leave has to be granted for appeal to the Supreme Court.

The caseload of the appeal courts has been a recurring subject of debate. In 2003 a reform of the appeal court procedure entered into force with the aim to add efficiency to the system. A significant measure introduced was a novel screening procedure. It allows the appeal courts to decide to close the proceedings for certain cases without a trial. The appeal court as a quorum of three judges must upon reviewing the appeal documents unanimously find that the matter should not be dealt with further since:

The appeal does not concern reviewing new oral evidence or the assessment of evidence by the lower court which obliges the appeal court to hold an oral hearing;

There has been no error in the lower court proceedings or in the substantive judgment of the lower court; and

There is no other compelling reason to deal with the case taking into account the parties' guarantee of due process and the circumstances of the case.

Evaluation and Reform Proposals

In January 2007 an expert appointed by the ministry of justice published his evaluation report on the reform. His independent assessment is that the screening procedure has not been successful in achieving its goals and that the screening criteria are not coherent with the appeal system as a whole.

The expert proposes instead that a leave to appeal system should be introduced for criminal matters where the defendant has been sentenced to a maximum of one month in prison or fined as well as for civil matters where the pecuniary interest is a maximum of EUR 5,000. It is proposed that leave to appeal would be granted by one appeal court judge if there is reason to doubt the legality of the lower court's judgment. A negative decision refusing to grant leave would have to be given by two unanimous judges.

Next Steps

In order to better streamline and tailor appeal court proceedings two further reforms are proposed by the expert. First, that an oral main hearing would only be held for cases concerning the assessment of evidence by the lower court when the appeal court considers that it would be likely to overturn the lower court's judgment. Secondly, that a more compact oral hearing format could be introduced where only hearing of the parties would take place excluding oral presentation of all other evidence.

The findings of the expert are now being considered by a committee appointed by the Ministry of Justice with the mandate to produce a legislative proposal before March 2008.

CORPORATE & COMMERCIAL

> **NEW ACT ON LABOUR HIRE CUSTOMER LIABILITY***by Seppo Havia*

A new Act on a customer company's duty to gather information and liability when using external labour (1233/2006) (the "Act") entered into force on 1 January 2007. The stated purpose of the Act is to promote fair competition between companies and compliance with employment rules by ensuring that enterprises which engage in labour hire and subcontracting meet their statutory obligations as employers and contract parties.

SCOPE OF APPLICATION

The Act is applicable in case the hired employees work in Finland for more than ten days, or if the value of the subcontracting agreement exceeds EUR 7,500. This refers to the whole value of the contract and not merely the share of labour.

CUSTOMER LIABILITIES

According to the Act, the customer is required to request and the service provider is liable to provide the following concerning the service provider:

- clarification that the service provider is entered in the Withholding Tax, Employer and VAT Registers;
- extract from the Trade Register;
- a certificate of payment of taxes, a tax liability certificate or information on the existence of a payment plan for outstanding tax liabilities;
- certificates concerning pension insurance and payment of pension payments; and
- information on the applicable collective agreement or central employment conditions.

Corresponding information must also be obtained concerning foreign service providers. The information may not be older than three months.

As an exception, the customer is not required to request the information if there are justified reasons to rely on the contracting party meeting its statutory obligations. Such reasons are deemed to exist if

- the contracting party is, e.g., a government or municipal entity, a public company, or a corresponding foreign company;
- the contracting party's operations have continued for a minimum of three years;
- the contractual relationship can be regarded as established; or
- there is another comparable reason for reliance.

PENALTY

In the case the customer omits to obtain the required information, the customer may be ordered to pay a penalty of up to EUR 15,000. The specific amount is determined on the basis of the severity of the infringement and the value of the contract. Should the offence be deemed minor, no penalty is imposed.

A penalty can also be imposed if the customer has concluded a contract with a party who has been banned from engaging in business operations or where the customer should have known that the contract party intends to neglect its statutory obligations as an employer.

INFORMATION FOR PERSONNEL REPRESENTATIVES

The customer is required to inform, on request, the shop steward and the occupational safety and health representative of an agreement to use external labour force. The information shall include the size of the outside workforce, the name of the contracting party, the site, tasks, duration of the contract and the collective agreement or central employment conditions to be applied.

The labour protection authorities are in charge of supervising compliance with the Act.

CORPORATE & COMMERCIAL

> NEW ACCOUNTING BILL

by Anders Carlberg and Tove Johansson

INDEPENDENCE OF AUDITORS

Finnish Accounting rules will be amended with a new Accounting Act ("the Act") which is expected to enter into force on 1 July 2007. The Act will implement the European Community Directive 2006/43/EC that aims at high-level harmonisation of statutory audit requirements.

The Act emphasises the independence of auditors from the audited entity and aims at improving the credibility and reliability of auditing. The statutory auditors or audit firm should not, on any level, be involved in the internal decision process of the audited entity. Neither should there be a direct or indirect financial connection, employment related connection or other connection, such as e.g. the provision of additional non-audit services, between the auditor and the audited entity which could risk the independence of the auditor.

QUALITY ASSURANCE

According to the Act, statutory auditors and audit firms are subject to a system for quality assurance. Auditors are required to undergo quality inspection every six years. Auditors of listed companies are required to undergo inspection every three years. The Finnish Central Chamber of Commerce supervises the inspections. In order to reinforce the independence of auditors of listed companies, the key audit partner is only entitled to conduct the audit for seven years in a row.

In accordance with the directive, the International Standards of Auditing (ISA) drawn up by the International Federation of Accountants (IFAC) have been included in the Act and are mandatory when conducting an audit in accordance with the new Accounting Act. The Act also regulates auditors' competence requirements and the maintenance and development of auditors' professional skills. The ISA and the International Accounting Standards (IAS) have been included in the examination qualifications of professional competence of auditors

STATUTORY AUDITORS ONLY

The possibility of electing a layman/non-practitioner (*maallikkotilintarkastus*) as an auditor is abolished. Instead of a layman, every company or association that is required to conduct a statutory audit under the new Act is obliged to use a statutory auditor (*KHT-/HTM-tilintarkastaja*) or an audit firm.

Small companies are no longer required to conduct a statutory audit. The company exemption applies to entities that do not fulfil more than one of the following three criteria: (i) a balance sheet exceeding a total of EUR 100,000, (ii) an annual turnover exceeding EUR 200,000, and (iii) more than three employees on average during the year.

Although small companies are exempt from the obligation to elect an auditor, the company is entitled to elect one who then conducts the audit according to the Act. Should the company elect not to have an auditor it would have to be reflected in the articles of association of the company.

The auditing requirements for associations remain unchanged. Associations are required to conduct an audit, and they may rely on a layman who conducts the audit in accordance with the old Accounting Act. If a statutory auditor conducts the audit, this should, however, be done in accordance with the new Accounting Act.

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