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FINANCE & CAPITAL MARKETS

> IMPLEMENTATION OF THE TRANSPARENCY DIRECTIVE IN FINLAND

by Anders Carlberg and Mika J. Lehtimäki

The Directive relies on home country regulation

The EU Transparency Directive (2004/109/EC) will most likely be implemented in Finland by the implementation deadline, *i.e.*, 20 January 2007. The Directive relies on home country regulation. Consequently, periodic disclosure and flagging obligations are determined according to the country of incorporation of the company in question and in some special cases according to the home country chosen by the issuer of the particular class of securities. The host state (country of listing) cannot, therefore, impose stricter obligations.

As the Finnish rules on periodic disclosure and flagging are already rather strict, the Directive does not result in significantly more burdensome obligations for Finnish listed companies. Pursuant to a working group report that contains a draft Bill for amendment of the Finnish Securities Markets Act (the "SMA"), certain new disclosure obligations will, however, be imposed. In connection with the amendment of the SMA, the Ministry of Finance is to issue a Decree providing for more detailed rules. A draft of the Decree does not yet exist.

The main amendments include a duty to prepare interim reports in accordance with IAS 34 requirements, clarification of flagging obligations, various content requirements and certain publication deadlines. In the following, changes concerning interim reports and the flagging duty are briefly discussed.

PERIODIC DISCLOSURE OBLIGATIONS

New reporting requirements

The content requirements of the half-yearly reports will change. Such reports are in the future to be prepared in accordance with the IAS 34 standard and shall comprise a condensed set of financial statements and an interim management report. As the SMA requires Finnish listed companies to prepare quarterly reports as well, the same IAS 34 requirements will apply to those reports. However, the issuer can present tabular data in summary form for the first three and nine months as further to be specified in a future Decree of the Ministry of Finance.

The requirement to prepare reports for the first three and nine months does not apply to debt securities. Wholesale debt securities are wholly outside the scope of the interim reports requirements.

Under certain conditions Finnish listed companies could replace the three and nine months reports with interim management statements. The conditions for this opt-out possibility relate to the size and the field of the

Clarification of flagging obligations

business of the listed company and will be further determined by the Decree. Most issuers are not expected to use the opt-out possibility.

One practically important requirement is that the annual and interim reports must be available to the public on the issuer's website for at least five years.

CHANGES IN SHAREHOLDINGS

The flagging thresholds will not be amended as a result of the Transparency Directive. Flagging rules will, however, be clarified by a Decree with respect to such matter as the notification duty, calculation of thresholds, information to be disclosed and exceptions to the flagging obligations. This will lead to more detailed and precise rules as compared to the current regulations.

Market transparency for major shareholdings will be enhanced by the requirement that listed companies publish the total number of votes and shares at the end of each month during which changes have occurred.

FINANCE AND CAPITAL MARKETS

> FSA SUSPENDS LARGEST SHAREHOLDER'S VOTING RIGHTS IN FIM GROUP

by Juha-Pekka Mutanen

Major shareholder convicted of money laundering

Shareholder's actions jeopardized public confidence in the financial markets

In an unprecedented decision of 19 September 2006, the Finnish Financial Supervision Authority (the "FSA") suspended, for a period of one year, the voting rights of Mr. Seppo Sairanen in FIM Group Oyj, a listed investment firm offering, *inter alia*, investment services and mutual funds.

In June 2006, the Helsinki District Court convicted Mr. Sairanen, the largest shareholder with approximately 32% of the shares in FIM Group, of an aggravated receiving offence, *i.e.*, money laundering, to over two years' imprisonment. The Court found that Mr. Sairanen had in 1998 helped Mr. Kari Uoti, a businessman declared bankrupt in 1997 and since convicted of numerous economic crimes, to conceal assets from the bankruptcy estate, while knowing that Mr. Uoti was no longer entitled to dispose of his assets. The Court's decision was reached after a 4-2 vote where four lay judges voted in favour of the conviction and two professional judges against. The two dissenting judges considered that Mr. Uoti was in this particular case, under the privilege against self-incrimination, not required to report to the bankruptcy estate certain assets which were subject to criminal proceedings. Since there was no underlying crime in respect of those assets, the dissenting judges considered that Mr. Sairanen could not be convicted.

Despite the fact that the District Court's judgment is subject to appeal, the FSA decided to suspend Mr. Sairanen's voting rights in FIM Group. According to the Investment Funds Act and the Act on Investment Firms, the FSA may decide on a temporary suspension of voting rights where the relevant shareholding "seriously endangers the sound and prudent business practices" of an investment firm or the management company of an investment fund.

The FSA considered that the acts for which Mr. Sairanen was convicted demonstrated such lack of respect for the provisions of the law as to jeopardize public confidence in the functioning of the financial markets and the operations of FIM Group. According to the FSA, it was therefore imperative for the FSA to avail itself of the powers it had been vested with and suspend Mr. Sairanen's voting rights despite the fact that the judgment was not final.

FINANCE AND CAPITAL MARKETS

> PROPOSED LEGISLATION TO PROMOTE COLLECTIVE INVESTMENT IN REAL ESTATE

by Juha-Pekka Mutanen

In August 2006, the Government presented to Parliament a Bill proposing legislative changes to create new legal structures for joint investment in real estate. The proposal relates to the Government's attempt to increase the attractiveness of real estate investment.

Tax considerations are a key driver in selecting the legal form for real estate investment. For investors it is often desirable that income from real estate investments is taxed only at the investor level and not at the level of an intermediary investment vehicle. The purpose of the Bill is to facilitate securitization of real estate by allowing real estate investments through certain regulated forms of collective investment where taxation takes place at the investor level and no economic double taxation occurs.

The Bill proposes two major changes to the current regulation of investment funds.

First, the Act on Real Estate Investment Funds will be amended to allow the use of limited partnerships whose shares are offered to the public. Previously it has been possible to offer to the public shares in limited partnerships investing in real estate. However, such entities have not been subject to the provisions of the Act on Real Estate Investment Funds which has applied only to listed public companies investing in real estate.

The Act on Real Estate Investment Funds will apply to limited partnerships

In the future, the Act would be applicable also to limited partnerships which invest primarily in real estate and whose shares are offered to the public, provided that the shares are freely transferable. Unlike public limited companies subject to the Act, a limited partnership would not have an obligation to apply for its shares to be admitted to public trading. Limited partnerships are not subject to tax but taxation takes place at the investor level.

New special investment fund

Second, the Bill proposes rules allowing collective investment in real estate through a special investment fund regulated by the Investment Funds Act, *i.e.*, a fund not subject to the UCITS (Undertakings for Collective Investment in Transferable Securities) Directive. The current rules of the Investment Funds Act concerning special investment funds generally require funds to be open-ended, *i.e.*, funds which are continuously open for new subscriptions and where units can be redeemed at any time. This requirement has made the special investment funds impracticable for real estate investment. The Bill proposes certain changes in this respect. According to the Bill, it will be sufficient that the value of the units of the fund is calculated once a month and that units are redeemed within six

months from the request for redemption. Like other investment funds, the new special investment funds investing in real estate would not be subject to tax on their income.

The proposed changes are expected to enter into force during 2006.

CORPORATE & COMMERCIAL

> NEW FINNISH COMPANIES ACT EFFECTIVE AS OF 1 SEPTEMBER 2006

by Juha Koponen

Increased flexibility

The new Finnish Companies Act (the "Act") entered into force on 1 September 2006. It applies to both private and public companies, and the aim of the legislator has been to enhance the readability, clarity and flexibility of limited liability company regulation.

The operating freedom of companies will increase with the removal of different restrictions and formal requirements and the introduction of new operating methods. Also, protection of creditors and minority shareholders will be enhanced.

Special attention has been paid to the position of small limited companies. The clarification of the regulation will make it easier for them to apply the Act.

Changes brought about by the Act include the following:

- the minimum share capital for private companies is lowered from EUR 8,000 to EUR 2,500;
- the minimum contents of the articles of association are limited to provisions on the trade name, domicile and objects of the company as other matters are presumed under the Act unless otherwise stipulated in the articles of association;
- the general meeting of the shareholders can be held outside Finland and certain provisions relating to notices to convene the meetings are simplified;
- par value of shares is abolished and, as a consequence, share capital can be increased without issuing shares and shares can be issued without increasing the share capital;
- investments into unrestricted equity are now possible; they will be recorded in a separate fund, thus ensuring transparency;
- provisions on the distribution of profits and other funds have been supplemented by a solvency test, which means that the distribution of funds is not permitted when, at the time of the decision, it is known or should have been known that the company was insolvent or that it would become insolvent due to the distribution;
- detailed provisions permitting in certain situations loans to group companies or other related parties have been abolished, and such transactions will be judged on the basis of the corporate benefit principle;

- merger procedure is facilitated by reducing the time for the merger process from six months to four months;
- tri partite mergers, in which a party other than the acquiring company pays the merger consideration, are permitted under the Act, but are not yet feasible in practice since corresponding tax legislation has not been enacted;
- the Act presumes negligence in cases where damage has been caused by action which is contrary to the Act or the articles of association or by an act favouring a related party; in such cases, a board member or a managing director needs to prove that he or she has acted with care to avoid liability;
- the statute of limitations is five years in actions for damages stipulated in the Act;
- handling of civil disputes concerning the Act will be concentrated to eight larger district courts.

The Act contains no requirement for immediate amendment of the articles of association. However, by amending the articles of association companies may seek to take advantage of some of the new features of the Act.

CORPORATE & COMMERCIAL

> COMMITTEE PROPOSES CHANGES TO RULES ON CONSULTATION OF EMPLOYEES

by Seppo Havia

In June 2006, the Cooperation Act Committee appointed by the Ministry of Labour issued its report proposing significant changes to the Act on Cooperation within Undertakings (the "Cooperation Act").

New size requirement

According to the proposal, the Act would apply to undertakings that employ regularly at least 20 employees, instead of the current limit of 30 employees.

Outside subcontractors

In addition, the employer would be obliged annually to give employee representatives, upon their request, a clarification on the use of outside subcontractors. Should the use of outside labour affect the regular personnel, such effects should be dealt with in the cooperation procedure. The employer would also be obliged to give employee representatives on a quarterly basis information on fixed-term and part-time employees.

Personnel plan and training targets

Further, an undertaking would be obliged to prepare a personnel plan and training targets every year. The plan and the targets should be dealt with in the cooperation procedure.

The minimum negotiation time regarding redundancies and lay-offs would be extended from 7 to 14 days. However, the current six-week negotiation time would continue to apply where the planned redundancies and lay-offs concern at least ten employees.

The principles for determining compensation for an employee who has been made redundant without following the provisions of the Cooperation Act would generally remain unchanged. However, the maximum amount of compensation would be limited to EUR 30,000.

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