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MERGERS & ACQUISITIONS

> NEW COMPANIES ACT

by Raija-Leena Ojanen and Anders Carlberg

***Increased flexibility for
investments and M&A
transactions***

On 2 September 2005 the Finnish Government presented to Parliament its proposal for a new Companies Act. The new Act is planned to enter into force on 1 September 2006.

The new Act has been completely rewritten with the aim of increasing flexibility and competitiveness within the European operating environment.

The Act introduces a non par value system for shares whereby the link between a company's shares and its share capital is abolished. Furthermore, share capital may be raised without issuing new shares and, correspondingly, shares may be issued without raising the share capital. Consequently, the new rules will allow for share issues without consideration.

The new Act provides more flexibility when it comes to various investment structures in companies and the return of funds to investors. Equity investments made in a company may be placed in separate unrestricted equity funds. Such equity may be distributed back to shareholders at the discretion of the shareholders' meeting subject to a procedure similar to the payment of dividends.

The current detailed rules on transactions with parties belonging to the inner circle of a company are abolished and the role of the corporate benefit principle emphasised. A solvency test is applied in connection with the distribution of funds.

MERGERS & ACQUISITIONS

> SUPREME ADMINISTRATIVE COURT RULES ON AMENDMENT OF MERGER CONDITIONS

by Hanna Laurila and Juha-Pekka Mutanen

Merger conditions may be amended if circumstances have changed

In a recent ruling, the Finnish Supreme Administrative Court held that, in order to assess whether a condition attached to a merger clearance can be removed or amended due to a change in circumstances, it must be examined whether the condition is still necessary to avoid the creation or strengthening of a dominant position.

According to the Act on Competition Restrictions, the Finnish Competition Authority ("FCA") may, upon application, lift a condition attached to the implementation of a concentration or mitigate it, due to a significant change in market conditions or another substantial cause.

In January 2001, the FCA conditionally approved a transaction whereby Carlsberg, the parent company of Finnish beer and soft drinks producer Sinebrychoff, acquired control over Pripps Ringnes. Pripps Ringnes and Hartwall, another major Finnish supplier of beer and soft drinks, were 50/50 owners of the joint venture company Baltic Beverages Holding (BBH), which operates in Russia, Ukraine and the Baltic states.

The FCA found in its 2001 decision that without conditions the transaction would have led to the creation of a joint dominant position between Sinebrychoff and Hartwall. In its decision, the FCA considered, *inter alia*, that BBH was, in relative terms, more important to Hartwall than to Carlsberg/Sinebrychoff. According to the FCA, this provided Carlsberg/Sinebrychoff with an opportunity to pressure Hartwall, through BBH, to refrain from vigorous competition against Carlsberg/Sinebrychoff in Finland. In order to make the use of BBH as leverage more difficult and to reduce the practical possibilities for coordination, Carlsberg was required not to appoint the same persons as its representatives in the management of Sinebrychoff and BBH.

In April 2002, Carlsberg requested the removal of that condition stating that the condition was no longer relevant because, in the meantime, Hartwall had been acquired by Scottish & Newcastle (S&N), a large international brewer, and there was consequently no longer any disparity relating to the relative importance of BBH to Carlsberg/Sinebrychoff and S&N/Hartwall. The FCA refused to change the condition and Carlsberg appealed to the Market Court.

Authorities and courts must examine whether a condition continues to be necessary to avoid creation or strengthening of a dominant position

Without undertaking an investigation into whether a joint dominant position could still arise in the current market conditions, the Market Court found that the changes in the market conditions had not altered the reasons why the FCA had attached the condition to the approval and as a result dismissed the appeal.

Carlsberg appealed to the Supreme Administrative Court arguing that it is not possible to assess the effect of the changes in the market conditions without evaluating whether a joint dominant position could exist in the current market conditions. In its judgement, the Supreme Administrative Court agreed with Carlsberg. It found that in order to assess the relevance of the changes in the market conditions, it is necessary to examine whether the condition at issue is still necessary to avoid the creation or strengthening of a joint dominant position. The case was remitted to the Market Court.

FINANCE & CAPITAL MARKETS

> RECENT AMENDMENTS TO INSIDER RULES

by Marjukka Sippola and Juha-Pekka Mutanen

Amendments to the insider rules of the Securities Market Act ("SMA") implementing the EU's Market Abuse Directive came into force on 1 July 2005. The new legislation introduces, *inter alia*, amended definitions of inside information and insiders. Furthermore, obligations concerning insider registers have been tightened.

Adjusted definition of inside information

The definition of inside information is adjusted in accordance with the Market Abuse Directive; the requirements concerning the *precise nature* and *significant price sensitivity* of inside information are now included in the SMA. The significance of the information is determined on the basis of an assessment by a reasonable investor.

The new SMA explicitly prohibits all undue disclosure and use of inside information. Under the new rules, a person possessing inside information is prohibited from using the information by acquiring or disposing of, for his own account or for the account of a third party, financial instruments to which the information relates. It is also prohibited to use inside information when directly or indirectly advising others in trading with financial instruments. Under the new rules, the use of inside information is prohibited even if there is no intention to obtain financial or other benefit.

Public insider register

The new SMA also includes more specific rules relating to insider registers. Managers of listed companies who continuously receive inside information and possess decision-making power are now considered as insiders. An insider's holdings as well as the holdings of the insider's inner circle, including his/her spouse, children and other family members who have lived in the same household for at least a year, must be notified to the issuer and recorded in a public insider register kept by the issuer. The register must contain information on securities held by insiders and trades by insiders in the issuer's securities. The public insider register must be in compliance with the new rules from 1 January 2006 and must be published on the issuer's website from 1 July 2006.

New non-public insider register

According to a new rule not previously contained in the SMA, listed companies are also obliged to maintain a non-public company-specific insider register of employees and members of corporate bodies as well as other persons working for the company who receive inside information on a regular basis. Also, entities operating on behalf of or for the account of a listed company are required to maintain a company-specific insider register. The register may, for example, be divided into sub-registers on the basis of specific projects. Company-specific insider registers must be in compliance with the new rules from 1 January 2006.

DISPUTE RESOLUTION

> JUDGE-MANAGED MEDIATION

*by Petteri Uoti****New Act separates mediation from trial***

According to the Finnish Procedural Code, courts have, since the major reform of the Code in 1993, an obligation to promote a settlement between disputing parties. However, settlement discussions have often been considered as a mere formality. Judges have also applied the provisions in various ways ranging from vigorous attempts to push the parties towards a settlement to making virtually no effort at all to reach an amicable solution. Today about 20-30% of civil cases in District Courts are settled during the process.

The new Act on the Settlement of Disputes in Courts will enter into force on 1 January 2006. According to the Act, mediation is separated from the trial to a process of its own. Mediation can be initiated where no trial is scheduled or during the court process itself – in which case the trial is stayed during the settlement process. Even though mediation can be established on the basis of one party's application, it can only be started when both parties have consented to it. If a party so wishes, consent can be withdrawn and the mediation process will come to an end.

Judges act as mediators and may use assistants, but only with the consent of both parties. If no settlement is reached, the judge acting as mediator is disqualified from acting as the judge in the case when it goes to trial.

The mediating judge is mainly expected to assist the parties in finding a settlement. The mediator may also suggest a settlement, but only with the parties' consent. The mediator may base his proposal on what he finds reasonable – the proposal is not limited by what the mediator considers to be the legally correct outcome of the case.

Confidentiality of mediation not guaranteed

The mediating judge may discuss the issue with the parties individually. However, the confidentiality of the judge-managed mediation process may prove problematic in practice, as it is basically governed by the same wide publicity rules as standard court proceedings.

A settlement can be affirmed by a judgment whereby the outcome of the mediation becomes enforceable.

If no settlement is reached, neither party is allowed to refer in subsequent proceedings to whatever the other party has disclosed in mediation without that party's consent.

The Finnish Bar Association also provides mediation services. According to the Bar Association's Mediation Rules, the mediator must be a member of the Finnish Bar Association who has been trained in mediation and is on the register kept by the Mediation Board. The mediator is selected by the parties.

DISPUTE RESOLUTION

> CLASS ACTION IN FINLAND – A PAPER TIGER?

*by Petteri Uoti****Narrow scope for planned class actions***

The Finnish Ministry of Justice has appointed a working group to draft a suggestion for a new Class Action Act. It continues the work of the previous working group which studied the feasibility of different class action models in Finland.

The starting points for the new working group are:

- class actions would be used in consumer disputes only;
- the Consumer Ombudsman would always be the claimant in a class action; and
- inclusion in the claimant group would require registration by each aggrieved consumer.

These starting points make it clear that the planned introduction of class actions does not bring much new to the Finnish litigation scene. The Consumer Ombudsman may already collect powers of attorney from consumers and initiate a process on their behalf. The planned class action structure merely provides the Consumer Ombudsman with a clearer legal framework to start such proceedings. However, it may also provide protection to consumers joining the class action against liability for legal costs thereby making it easier for consumers to assert their rights.

One long-term effect of the planned Class Action Act may be that if class actions work well in consumer disputes, their scope may subsequently be widened. Environmental disputes have already been mentioned in this regard.

The working group is expected to present a draft for a Class Action Act by the end of January 2006.

CORPORATE & COMMERCIAL

> AMENDMENTS TO FINNISH DOMAIN NAMES

by Sakari Halonen

Native language characters allowed in domain names

Since 1 September 2005 it has been possible to apply for fi-domain names containing the letters "å", "ä" and "ö" (also called Internationalised Domain Names, or IDNs). Pursuant to the Finnish Communications Regulatory Authority's regulation on the technical configurations and permitted characters for Finnish domain names, these native language characters were introduced in the country code top-level domain .fi.

However, due to certain technical restrictions, it is not recommended that an IDN is used as a primary or sole domain name. All browser and e-mail programs do not yet support domain names that contain the aforementioned letters. Certain browser and e-mail programs may require a separate plug-in to be installed, and not all foreign keyboards necessarily have these letters.

No automatic entitlement

The introduction of IDNs does not affect the former fi-domain names or their functionalities (e.g. e-mail addresses). Any previously registered fi-domain name (without the letters å, ä or ö) does not automatically give the domain name holder the right to the corresponding domain name using the letters å, ä or ö. The amended regulation does not require any activity from the holders of registered domain names, unless there is a need for a corresponding IDN. The application procedure and formalities concerning IDNs are the same as before.

As with the former fi-domain names, the new IDNs are granted on a first come first served basis. As before, it is not possible to apply for an IDN which is based on a protected name or trademark owned by another party.

CORPORATE & COMMERCIAL

> CHANGE SECURITY IN DISMISSALS ON COLLECTIVE GROUNDS

by Seppo Havia

Information requirements and action plan

New legislation concerning change security in connection with dismissals on collective grounds entered into force on 1 July 2005. The reform brings about amendments to a number of employment laws including the Employment Contracts Act and the Act on Co-operation within Undertakings.


An employer who is obliged to follow the Act on Co-operation Within Undertakings is required to notify the employment office of possible reductions to its workforce at the beginning of co-operation negotiations. If an employer intends to terminate the employment of at least ten employees, the employer must prepare an action plan for the promotion of re-employment at the beginning of the co-operation negotiations. The employer is also required to identify the public labour services which support the re-employment of the employees to be given notice.

An employer who intends to terminate the employment of less than ten employees is required to present to the relevant employees, during the co-operation procedure, the principles according to which employees are supported in seeking other employment or training through public employment services.

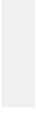
According to the amended Employment Contracts Act, an employer who is not obliged to follow the Act on Co-operation Within Undertakings must, at the earliest opportunity before the termination of employment, explain to the relevant employees the grounds for and alternatives to the termination of their employment and the employment services available at the employment office.

Employment leave

Employees have the right to employment leave with full pay during the period of notice in order to participate in, *inter alia*, the drawing up of an employment programme, labour market training and job interviews. The duration of employment leave varies between five and twenty working days according to the length of the period of notice of the employee in question.



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