Practical Law

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EMPLOYEE SHARE PLANS

Employee share plans in Finland: regulatory overview

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EMPLOYEE PARTICIPATION

1. Is it common for employees to be offered participation in an employee share plan?

Employee share plans are an established part of the remuneration packages offered to Finnish companies' employees. Employee share plans can be offered to all employees or selectively (for example, to senior executives and executive directors) provided that the selection is not discriminatory.

Private companies, particularly those owned by foreign-listed companies, also use employee share plans, but less frequently.

2. Can employees be offered a share plan where the shares to be acquired are in a foreign parent company?

Offering employees share plans over shares in a foreign parent company is relatively common. However, the foreign parent company may have to comply with prospectus requirements (*see Question 29 to 31* and *Question 33*).

SHARE OPTION PLANS

3. What types of share option plan are operated in your jurisdiction?

An employee share option is an employment right to receive or acquire shares in the employer company at a predetermined price, usually for less than their fair market value (*Finnish Income Tax Act 1992*).

Employee share options include:

- Standard share option plans.
- Convertible bonds.
- Option loans (that is, loans with attached option rights).
- Other comparable arrangements, for example share awards, restricted share awards and restricted share units.

There are no specific rules that differentiate between the different types of share option plans, so the following answers basically apply to all employee share option arrangements. However, the tax treatment of different arrangements is case-specific and dependent on the terms of each arrangement.

Main characteristics

A standard share option plan gives employees the right to receive or acquire a specific number of either new or existing company shares at a fixed price, within a certain period of time, provided that any conditions set out in the share option plan are met.

Companies can customise share option plans according to their specific aims and needs, and foreign parent companies can usually implement their own share option plans in their Finnish subsidiaries without major modifications.

The shareholders' general meeting can grant option rights by resolution or, by a qualified majority, can give authority to the board of directors to do so.

Types of company

Any type of company can operate a share option plan.

Finnish limited liability companies require significant financial reason for issuing special rights to receive the company's shares (*Finnish Limited Liability Companies Act 2006*).

Popularity

Share option plans are popular among Finnish listed companies as well as international companies' Finnish subsidiaries.

Grant

4. What rules apply to the grant of employee share options?

Share option plan

Discretionary/all-employee. In principle, share option plans are discretionary. However, employers must treat their employees equally, including when any employee benefits (such as share option plans) are implemented. This does not prohibit the employer from applying different approaches to employees in different positions where the difference in treatment is justified. Therefore, employers can offer share options exclusively to certain classes of employees (for example, employees in managerial positions).

Non-employee participation. Options can be granted to non-employee directors and, under certain conditions, to consultants.

Maximum value of shares. There is no statutory limit to the value of shares that can be held.

Market value. Share options can be granted at above or below market value. Options are normally granted at below market value.

5. What are the tax and social security implications of the grant of the option?

Share option plan

Tax or social security charges are not payable on grant.

Vesting

6. Can the company specify that the options are only exercisable if certain performance or time-based vesting conditions are met?

Share option plan

The company is relatively free to modify the share option plans' conditions (for example, it can specify that the options are exercisable only if certain time-based vesting conditions are met). Performance-based conditions are also possible, although time-based vesting conditions are more common.

7. What are the tax and social security implications when the performance or time-based vesting conditions are met?

Share option plan

Tax or social security charges are not payable when vesting conditions are met.

Exercise

8. What are the tax and social security implications of the exercise of the option?

Share option plan

The employee is taxed on the spread when options are exercised. The taxable benefit arising from share options is determined at the time of exercise. The benefit amount is the difference between:

- The shares' fair market value (normally, the average share price on the stock exchange on the date of exercise).
- The exercise price and any price paid for the shares (if any).

If shares are not quoted on the stock exchange, the market value is determined based on the guidelines of the Finnish Tax Administration. If the employee sells all the shares immediately after exercise (cashless exercise), the actual sale price of the shares is used as the fair market value when calculating the taxable benefit.

The spread at exercise is treated as additional salary and is included in the employee's overall income at the employee's progressive income tax rate.

The company must withhold income tax, remit applicable social security contributions and report option income in connection with the spread on exercise. Employees must report the option income in their annual tax returns.

Generally, unemployment premiums, employment pension premiums and employer's social insurance contributions are not due on the spread at exercise. Only the larger part of the employee's health insurance premium (which is included in the general withholding percentage) is paid on the benefit.

Sale

9. What are the tax and social security implications when shares acquired on exercise of the option are sold?

Share option plan

An employee is subject to tax on the gain on the sale of shares acquired under a share option plan. Capital gains are taxed at a flat rate (30% in 2017, 34% for amounts exceeding EUR30,000) and are calculated as the difference between the sales price and the acquisition cost of the shares. The taxable capital gain is the shares' sales price, less either:

- The fair market value of the shares on the date of exercise plus the costs incurred by the seller in connection with the gain.
- A deemed acquisition cost of 20% of the sales price. However, if the shares have been held for at least ten years, a deemed acquisition cost of 40% of the sales price is applied instead.

If the latter calculation method is used, no other costs relating to acquiring or selling the shares are deducted. If the shares are sold at a loss, capital losses can be deducted only from other capital gains in the year the loss occurred or, at the latest, during the next five years.

Employees can decide which of these tax methods they find the most tax effective.

Accounting for tax/social security. The employer has no withholding or reporting obligations regarding a selling of shares acquired on exercise of the option. Employees are liable to pay tax to the Finnish Tax Administration and to report the option income in their annual tax returns.

How liability is recovered from employee. Employees must pay capital gains tax on the sale of shares.

SHARE ACQUISITION OR PURCHASE PLANS

10. What types of share acquisition or share purchase plan are operated in your jurisdiction?

There is no statutory definition for share acquisition or purchase plans. Apart from employee stock options, the tax legislation only defines directed share issues to employees (see below, *Share acquisition and purchase plan: Main characteristics* for a definition of "directed share issues").

Generally, share acquisition and purchase plans are arrangements under which eligible employees are given an option to purchase the company's shares at a discounted price at the end of an offering period.

As there are no specific rules covering different types of share acquisition or purchase plans, the following answers basically apply to all arrangements covered by the general definition.

Share acquisition and purchase plan

Main characteristics. Employees can subscribe to or purchase the company's shares (or shares of another company in the same group), usually at a discounted price, if conditions in the share acquisition and purchase plan are met.

Shares offered under share acquisition and purchase plans can be either new or treasury shares. If new shares are offered and the offering is made to a majority of employees (known as directed share issues), the employees are likely to be subject to tax on the discount only to the extent that it exceeds 10% of the shares' market value.

The shareholders' general meeting must pass a resolution to authorise share acquisition and purchase plans, or can by a qualified majority authorise the board of directors to do so.

Types of company. There are no statutory restrictions on the types of companies that can establish share acquisition or purchase plans.

Limited liability companies need a significant financial reason to issue special rights to receive the company's shares (such as for directed share issues) (*Finnish Limited Liability Companies Act*).

Popularity. Share acquisition and purchase plans are becoming more popular among Finnish listed companies.

Acquisition or purchase

11. What rules apply to the initial acquisition or purchase of shares?

Share acquisition and purchase plan

As there are no specific rules covering different types of share acquisition or purchase plans, the following answers apply to all arrangements covered by the general definition.

Discretionary/all-employee. Entitlement to acquire shares can be awarded on a discretionary basis, although the selection of eligible employees cannot be discriminatory (*see Question 4*).

Non-employee participation. Shares can be offered to non-employee directors and, under certain conditions, to consultants.

Maximum value of shares. There is no statutory maximum value of shares that can be awarded under share acquisition or purchase plans.

Payment for shares and price. It is possible to award shares for free. However, limited liability companies require a significant reason for free share issues.

12. What are the tax and social security implications of the acquisition or purchase of shares?

No tax or social security charges are usually payable when the shares are awarded. Generally, employees are subject to tax on the discount on the date of purchase. The discount is taxed as additional salary at the normal marginal rate.

The discount is the difference between:

- The shares' fair market value. The fair market value of a listed share is the average share price calculated during the month preceding the share issue decision. If the average price of the month following the first quotation of the share is less than the price referred to above, the taxability and value of the benefit will be calculated based on the lower amount.
- The purchase price.

However, if new shares are offered and the offering is made to a majority of the employees, the employees are likely to be subject to tax on the discount only to the extent that it exceeds 10% of the shares' market value.

Typically, unemployment premiums, employment pension premiums and employer's social insurance contributions are not due on the discount at purchase. Only the larger part of the employee's health insurance premium (which is included in the general withholding percentage) is paid. However, the newly issued shares offered to a majority of the Finnish employees and the value of the benefit must be linked to the appreciation in value of the shares.

The employer must withhold income tax, remit applicable social security contributions and report the taxable income in connection with the purchase. Employees must report the income in their annual tax returns.

Vesting

13. Can the company award the shares subject to performance or time-based vesting conditions?

Share acquisition and purchase plan

Typically, employees only become entitled to the shares once certain conditions are met. It is also possible for restrictions to continue after employees acquire the shares.

14. What are the tax and social security implications when any performance or time-based vesting conditions are met?

Share acquisition and purchase plan

Typically, employees are subject to tax on the discount on the date of purchase.

Sale

15. What are the tax and social security implications when the shares are sold?

Share acquisition and purchase plan

An employee is subject to tax on the gain on the sale of shares acquired under a share acquisition or a purchase plan. Capital gains are taxed at a flat rate (30% in 2017, 34% for amounts exceeding EUR30,000). The calculation of capital gains for employee share acquisition and purchase plans depends on whether the employee paid tax on the discount at purchase, because of the 10% rule applying to directed share issues (*see Question 10*).

If the employee does not pay tax on the discount at purchase because newly issued shares were used and the discount did not exceed 10% of the fair market value of the shares, capital gains tax is due on the difference between:

- The shares' sale price.
- The price the employee paid for the shares at purchase.

This means that the employee pays capital gains tax on the entire gain derived from purchasing the shares through the plan.

If the employee pays tax on the discount at purchase, capital gains tax are calculated on the difference between:

- The shares' sale price.
- 90% of the fair market value of the shares at the time of purchase.

Consequently, the employee pays capital gains tax on the profit from the sale, as well as on the amount on which he or she did not pay income tax.

When determining the taxable capital gain, the employee can deduct from the shares' sales price either:

- The acquisition cost of the shares, plus the costs incurred by the seller in connection with the gain.
- A deemed acquisition cost of 20% of the sales price. If the shares have been held for at least ten years, a deemed acquisition cost of 40% of the sales price is used instead.

If the second calculation method is used, no other costs relating to acquiring or selling the shares can be deducted. If the shares are sold at a loss, the losses can be deducted from other capital gains only in the year of loss or, at the latest, during the next five years.

Employees can decide which of these tax methods they find the most tax effective.

PHANTOM OR CASH-SETTLED SHARE PLANS

16. What types of phantom or cash-settled share plan are operated in your jurisdiction?

Share-based incentive plan

There is no statutory definition of share-based incentive plans. Generally, these are arrangements under which the eligible employees receive a monetary benefit based on the appreciation of the employer company stock, but paid in cash.

There are no specific rules covering different types of share-based incentive plans. Therefore, the following answers basically apply to all arrangements covered by the general definition.

Grant

17. What rules apply to the grant of phantom or cash-settled awards?

Share-based incentive plan

Discretionary/all-employee. Share-based incentive plans are arrangements under which eligible employees receive a monetary benefit based on the appreciation of the company shares but paid in cash. Therefore, they do not contain any share subscription rights even if the value of the award depends on share appreciation. The employer can freely decide the precise terms and conditions of these arrangements.

The most popular forms of share-based incentive plans are:

- **Synthetic share option plan.** In these, the employee receives a certain number of virtual shares and the accrued benefit is paid in cash.
- **Share-based bonus plan.** In these, the bonus amount depends on share appreciation. An employee may be entitled to, for example, a bonus equivalent to the share price appreciation over a certain period.

Share-based incentive plans do not include share subscription rights. Therefore, any payment under the arrangement is a cash bonus paid by the employer rather than an employee share option award within the meaning of the Finnish Limited Liability Companies Act and the Finnish tax statutes. Synthetic option plans constitute earned income and are treated as salary paid by the employer.

Unlike the establishment of a regular share option plan, the board of directors is entitled to decide on the establishment of a share-based incentive plan.

Non-employee participation. Participation in a share-based incentive plan can be offered to non-employee directors and, under certain conditions, to consultants.

Maximum value of awards. There is no statutory maximum value of the award that can be granted under a share-based incentive plan.

Types of company. There are no statutory restrictions on the types of companies that can establish share-based incentive plans. In practice, many of these plans are offered by Finnish subsidiaries of international companies and the plans are usually based on foreign models.

Popularity. Share-based incentive plans are not commonly used in Finland, but arrangements under which the employee can choose to receive bonuses in cash instead of share subscription rights are becoming more popular.

18. What are the tax and social security implications when the award is made?

Share-based incentive plan

Making the award does not usually trigger any tax or social security liabilities.

Vesting

19. Can phantom or cash-settled awards be made to vest only where performance or time-based vesting conditions are met?

Share-based incentive plan

The company is relatively free to modify share-based incentive plans' conditions. Usually, employees only become entitled to the awards when certain conditions are met.

20. What are the tax and social security implications when performance or time-based vesting conditions are met?

Share-based incentive plan

No tax or social security contributions are due before the payment of the award.

Payment

21. What are the tax and social security implications when the phantom or cash-settled award is paid out?

Share-based incentive plan

An award under a share-based incentive plan is taxed on payment. It is treated as salary and it is subject to income tax at the employee's progressive income tax rate. If the share-based incentive is transferable and transferred during the vesting period, the transfer price is a taxable earned income of the employee.

The rules outlined in *Question 9*relating to tax withholding and social security payments apply to income arising under a share-based incentive plan. However, an employer must contribute to all social security, pension insurance and unemployment insurance contributions due on the award, unless the award accrual is directly linked to the appreciation of the company shares. Synthetic option plans do not constitute salary for the purpose of calculating pensions and are not subject to employees' pension or insurance contributions. The employer's social security contributions or daily allowance contributions are not used to pay synthetic options.

The award is not linked to the appreciation of company shares, for example, when:

- The award value depends on the company operating income instead of its shares' price.
- The award accrual is tied to share appreciation but the award accrues despite share depreciation.

However, the larger part of the employee's health insurance premium (which is included in the general withholding percentage) is paid.

CORPORATE GOVERNANCE GUIDELINES, MARKET OR OTHER GUIDELINES

22. Are there any corporate governance guidelines, market rules or other guidelines that apply to any employee share plan?

There are no specific rules on share or share-based incentive plans, and only the general provisions of the Finnish Limited Liability Companies Act 2006, Employment Contracts Act 2001, Securities Market Act 2012 and Income Tax Act 1992 apply. These provisions relate to the procedure for establishing these schemes, their taxation and their status in terms of labour law. The company rules and regulations also contain provisions on the use of employee incentive plans.

The Rules of the Finnish Stock Exchange established by NASDAQ OMX Helsinki contain provisions regulating share and share-based incentive plans. Listed companies must publish the establishment and main terms and conditions of these plans.

Listed companies generally comply with the recommendations of the Securities Market Association. The Corporate Governance Recommendations administered by the Securities Market Association include recommendations on the content and publication of management incentive plans.

Under the Finnish Financial Supervisory Authority's (FFSA) statement on remuneration, banks, insurance companies and other companies in the financial sector having a salary and reward policy must have the policy approved by the board. The policy should also provide the supervised entities an opportunity to abstain from paying variable remunerations if its financial state has weakened significantly. For a listed supervised entity, it is recommended that a substantial part of variable remunerations be paid in shares or otherwise tied to the entity's share price.

The statement on remuneration was updated following the implementation of Directive 2010/76/EU on capital requirement in Finland on 31 December 2010. The updates have been implemented into Finnish legislation through Decree No. 1372/2010 on Credit Institutions' and Investment Firms' Remuneration Schemes (Decree No. 1372/2010). Based on their individual circumstances, entities and institutions can still decide whether it is justifiable to pay variable remuneration in forms other than money and to impose a retention period. However, since the possibility of receiving variable remuneration may influence the professional activities and risk behaviour of senior employees, the FFSA recommends (under the proportionality principle) that the supervised entity can waive the regulations of Decree No. 1372/2010 in relation to employees whose variable remuneration does not exceed EUR50,000 over a one-year period. More than 50% of the variable remuneration must be granted in one of the following (*Decree No. 1372/2010*):

- Shares.
- Equivalent ownership interests.
- Share-linked instruments.
- Long-term financial instruments whose value reflects changes in the equity or credit rating of the supervised entity or an undertaking of the same group (in the case of a non-listed supervised entity or a non-listed undertaking of the same group).

The FFSA recommends that when calculating the amount of shares or equivalent instruments in the variable remuneration vested, the tax to be paid in advance for the transfer of shares or equivalent instruments and withheld by the employer can also be included in the amount of shares and equivalent instruments. The supervised entity must also keep an up-to-date list of members of staff and of remunerations paid to them.

EMPLOYMENT LAW

23. Is consultation or agreement with, or notification to, employee representative bodies required before an employee share plan can be launched?

No consultation or agreement with, or notification to, employee representative bodies is generally required before an employee share plan is launched.

24. Do participants in employee share plans have rights to compensation for loss of options or awards on termination of employment?

Participants do not usually have rights to compensation for the loss of options or awards on termination of employment. However, it is possible for the benefits under share plans to be viewed as a part of the employee's salary when considering the compensation for an unjustified termination of the employment contract.

EXCHANGE CONTROL

25. How do exchange control regulations affect employees sending money from your jurisdiction to another to purchase shares under an employee share plan?

There are no general currency restrictions in force in Finland.

26. Do exchange control regulations permit or require employees to repatriate proceeds derived from selling shares in another jurisdiction?

See *Question 25*.

INTERNATIONALLY MOBILE EMPLOYEES

27. What is the tax position when an employee who is tax resident in your jurisdiction at the time of grant of a share option or award leaves your jurisdiction before any taxable event affecting the option or award takes place?

Resident employee

The tax treatment of an employee transferring in or out of Finland depends on his or her tax residency. A person is considered to be resident in Finland if:

- He or she has his/her actual residence and home in Finland.
- He or she has his/her actual home and residence abroad, but stays in Finland for more than six months on a continuous basis.

A temporary absence from Finland does not prevent the individual from being treated as a Finnish resident. A Finnish citizen who leaves Finland to work temporarily in another country is taxed as a Finnish resident.

Finnish citizens are tax residents unless they leave Finland permanently. A Finnish citizen can request to be taxed as a non-resident if they:

- Move permanently out of Finland.
- Provide the authority with evidence that they do not maintain substantial ties with Finland.

If a Finnish citizen does not make the request or produce evidence that he or she is moving permanently out of Finland, he or she is taxed for three years as a resident and thereafter as a non-resident (unless the tax authority finds evidence of the maintenance of substantial ties to Finland).

Finnish tax residents have unlimited tax liability in Finland and are taxed on their entire income whether derived from Finland or abroad. Therefore, Finnish citizens and tax residents working abroad are subject to tax in Finland on share plans awarded while working abroad, unless all of the following apply:

- There is a double taxation treaty between Finland and the country where the employee works.
- The award is taxed as salary income in the country where the employee works.
- The taxpayer presents the Finnish tax authorities with sufficient evidence that the tax authorities in the country where the taxpayer works have been notified of the award.
- The employee works for a continuous period of at least six months abroad for the foreign employer that offered the award (or a member of the same group).

If the employee works both in Finland and abroad during the vesting period, the value of the award is determined by the employment periods in each country. Part of the award may be taxable in Finland and the remainder in the other country of employment.

Non-resident employee

A non-resident foreign person (that is, a person who works occasionally in Finland) is taxed on Finnish-source income only. The taxation of a foreign individual depends on how long a foreign individual stays in Finland and on any tax treaty between Finland and a domicile state of the individual. Foreign individuals who work in Finland for more than six months in any calendar year without interruption are considered residents for tax purposes. Employees who move out of Finland are no longer subject to tax in Finland and the three-year principle for Finnish citizens does not apply.

As the tax consequences of share plan awards in an employee transfer situation can vary from one country to another, the employee should seek advice from local tax advisers in relation to the tax consequences of transfer both in Finland and the country to which the employee is transferring.

28. What is the tax position when an employee becomes tax resident in your jurisdiction while holding share options or awards granted abroad and a taxable event occurs?

Finnish tax residents are taxed on their entire income, whether derived from Finland or abroad. Therefore, Finnish citizens and tax residents working abroad are subject to tax in Finland on share plans awarded while working abroad, unless all of the following apply:

- There is a double taxation treaty between Finland and the country where the employee works.
- The award is taxed as salary income in the country where the employee works.
- The taxpayer presents the Finnish tax authorities with sufficient evidence that the tax authorities in the country where the taxpayer works have been notified of the award.
- The employee works for a continuous period of at least six months abroad for the foreign employer that offered the award (or a member of the same group).

If the employee works both in Finland and abroad during the vesting period, the value of the award is determined by the employment periods in each country. Part of the award may be taxable in Finland and the remainder in the other country of employment.

As non-resident foreign employees are taxed on Finnish-source income only, they are not subject to tax on awards granted abroad when the taxable event occurs in Finland.

SECURITIES LAWS

29. What are the requirements under securities laws or regulations for the offer shares under, and participation in, an employee share plan?

Companies offering securities must comply with the Securities Market Act 2012 and Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (Prospectus Directive). The Ministry of Finance has issued a decree governing prospectuses, the Decree on the Prospectuses Referred to in Chapters 3-5 of the Securities Markets Act 2012/1019.

A company must publish a prospectus if the offering is a public offering (that is, the offering is made to 150 or more people). To obtain approval of the Finnish Financial Supervisory Authority, a prospectus must contain sufficient information on:

- The assets, liabilities, financial position, results and future outlook of the issuer and the possible guarantor.
- The rights attached to the securities.
- Other factors with a material effect on the value of the securities.
- Risks that may materially affect the activity or financial position of the prospectus issuer or guarantor (if any) or the value of the securities.
- The persons responsible for the content of the prospectus and the authenticity of the information provided in it.
- The members of the company's administrative bodies and auditors.

A prospectus is valid for 12 months.

30. Are there any exemptions from securities laws or regulations for employee share plans? If so, what are the conditions for the exemption(s) to apply?

The issuer is generally exempt from the obligation to publish a prospectus if an employer undertaking or an affiliated undertaking offers securities to existing or former directors or employees of the employer undertaking. This is provided that the corporate-law registered office of the offeror is in an European Economic Area (EEA) member state and that the offeror makes available a document containing information on the number and class of the securities to be offered, as well as on the reasons for, and terms of, the offer.

Additionally, a prospectus does not need to be published where the securities are offered to fewer than 150 investors who are not registered as experienced investors (as defined in the Securities Market Act). An exemption from publication of a prospectus can also be granted by the Finnish Financial Supervisory Authority (FFSA) under certain other conditions.

An exemption from the FFSA can either be a complete release of the obligation to publish a prospectus or permission to publish a simplified prospectus. An exhaustive list of situations where a company can be granted exemption is included in the Securities

Market Act. If a prospectus is required, it must be in either Finnish or Swedish.

If a prospectus is not required, the issuer must still comply with the Securities Market Act's disclosure requirements and provide the employees with accurate and sufficient information on the underlying shares.

Conditions for exemptions

The FFSA can grant a complete or partial exemption from the requirement to release a prospectus if one of the following applies:

- Securities are offered as an exchange offer in connection with an acquisition, and the offeror is obliged to publish a document containing information corresponding to the information of the prospectus (based on certain sections of the Securities Market Act) due to a public purchase offer or a mandatory purchase offer or on other grounds; and this document has been published.
- Securities are offered as compensation in connection with a merger, demerger or change of company form, and the offeror has published a document containing information corresponding to the information contained in a prospectus.
- Securities are offered to fund a generally beneficial, non-profit activity.
- Securities (or equivalent offerings in another EEA member state) are requested for public offering or offered to the public and meet the conditions laid down in the Decree on Public-offer Prospectuses 2005.

The FFSA can also grant a complete or partial exemption from the requirement to release a prospectus if the securities sought to be admitted to trading on a regulated market have already been admitted to trading on another regulated market, provided that all the following apply:

- The securities or securities of the same class have been subject to trading on the other regulated market for more than 18 months.
- A prospectus referred to in the Securities Market Act and in Regulation (EC) 809/2004 implementing Directive 2003/71/EC as regards prospectuses and dissemination of advertisements has been published on the securities (or, prior to the entry into force of the Act, listing particulars referred to in Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities have been published on the securities, or a prospectus has been drawn up in accordance with the Directive's requirements).
- The issuer of the securities has complied with its disclosure obligations as a pre-condition for admission to trading of the securities on the foreign regulated market.
- The party applying for the admission of securities to trading publishes a summary document referred to in the Securities Market Act.
- The provisions of Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading are met.
- Information on where the prospectus has last been published, on the issuer, the security and the financial information published by the issuer of the security under continuous disclosure obligations are all available.

Consents or filings

The FFSA decides on the approval of a prospectus within ten business days from submission of the completed application. However, the processing time is 20 business days if the issuer's securities have not previously been:

- Offered to the public.
- Admitted to public trading.

The FFSA's processing fee is currently EUR3,700.

OTHER REGULATORY CONSENTS OR FILINGS

31. Are there any other regulatory consents and filing requirements and/or other administrative obligations for an offer of shares under, and participation in, an employee share plan?

No other consents or filings are required.

32. Are there any data protection requirements or obligations for an offer of shares under, and participation in, an employee share plan?

Employers can process employees' personal data in connection with the offering of, and participation in, an employee share plan, provided that they comply with the strict general prerequisites for processing of personal data set out in the Finnish Personal Data Act 1999 and the Act on Protection of Privacy in Working Life 2004.

Employers can only process employees' personal data that is directly necessary for the employment relationship (for example, processing that is necessary to provide employee benefits arising from the special nature of the work). This necessity requirement is strict and cannot be deviated from, even with the employee's consent. The processing of sensitive data is generally prohibited (that is, data relating to the employee's race, ethnic origin, health, sexuality, and so on).

On collection of personal data, the employee must be informed of:

- The identity of the data controller.
- The purpose of the processing.
- The identity and location of potential data recipients.

The employer must collect the personal data on the employee directly from the employee. To collect information from other sources, the employee's consent must be obtained.

Transfers of personal data to third parties must comply with data protection legislation and require the data subject's unambiguous and voluntary consent. Additional requirements, such as a need to protect an interest of vital importance, apply to the transfer of sensitive data. Employees' personal data can only be transferred to countries that provide an adequate level of data protection. The adequacy is measured on a case-by-case basis in light of the:

- Nature of the data.
- Purpose and duration of the intended processing.
- Country of origin.
- Country of final destination.

In addition, the legal provisions, codes of conduct and security measures of the country must also be evaluated.

FORMALITIES

33. What are the applicable legal formalities?

Translation requirements

There is no legal requirement to translate plan documentation. However, if a prospectus is required, the Finnish Financial

Supervisory Authority can require translation of the prospectus summary into Finnish or Swedish.

E-mail or online agreements

Employees can electronically enter into binding agreements under share plans (for example, by using online application forms or e-mail agreements). Electronic acceptance is permissible, provided that the identification method meets the requirements of the Act on Strong Electronic Identification and Electronic Trust Services 2009.

Witnesses/notarisation requirements

Legal agreements do not need to be witnessed or notarised to be binding.

Employee consent

Information recorded in the employee's personal data file can only be transferred abroad without the consent/permission of the employee and Finnish Data Protection Board if the personal data protection legislation of the recipient country corresponds to the regulations of the Finnish Personal Data Act (*see Question 32*).

Personal data can be transferred outside the EU or the European Economic Area (EEA) if the relevant country can guarantee an adequate level of data protection. The adequacy of the level of data protection must be evaluated with regards to the (*Finnish Personal Data Act*):

- Nature of the data.
- Purpose and duration of the intended processing.
- Country of origin.
- Country of final destination.
- General and sectoral legal provisions, codes of conduct and security measures applied in that country.

Written consent for the transfer of personal data outside the EEA is recommended.

DEVELOPMENTS AND REFORM

34. Are there any current trends, developments and reform proposals that have or will affect the operation of employee share plans?

Trends and developments

Taxation of share-option rights. The Finnish Supreme Administrative Court has ruled on the tax treatment of employee share option rights granted while working abroad, in its decision of May 2013 (KHO 2013:93). In international working situations, income is considered derived from the work state if the employee moves from the work state after the option has vested. However, if the employee moves from the work state between grant and vesting, the income is shared in proportion to the time that the employee worked in the new state as against the length of employment from which the share option was derived.

Conditional share plans. A number of Finnish-listed companies have started moving from share option plans to more conditional share plans. Although conditional share plans are more popular, share option plans are still an important part of share schemes operated by Finnish companies.

In addition, the use of pension schemes and employee funds is on the rise, particularly among medium to large-sized companies.

In its decision of November 2011 (KHO 2011:91), the Finnish Supreme Administrative Court ruled that the amount of taxable benefit received by the employee under a share incentive plan was to be determined based on the market value of the shares at the time of receipt, even if shares were subject to transfer restrictions and the value of the shares had materially decreased during the restriction period. This ruling confirms the approach that any restrictions or changes in share value during the restriction periods do not affect the taxable amount of share reward benefits. It was questionable until the ruling whether or not significant reductions of value during the notification period could reduce the amount of tax payable on the taxable incentive benefit.

Reform proposals

There are no impending legislative reforms concerning employee share plans.

ONLINE RESOURCES

Finlex

W *www.finlex.fi/en/*

Description. Finlex is a free public internet service that gives access to legislative information. It is a bilingual website in Finnish and Swedish, the two official languages of Finland. The home page is also available in English and unofficial full-text translations of Finnish Acts of Parliament (mostly in English) can be consulted. Finlex is maintained by the Ministry of Justice of Finland together with Edita publishing, a private company. Only the Finnish and Swedish-language versions are binding.

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Areas of practice. Employment; benefits and pensions; dispute resolution.

Non-professional qualifications. Specialist qualification in Management, Management Institute of Finland MIF

Recent transactions

- Providing day-to-day employment law advice to (among others) GlaxoSmithKline, Capgemini, Santen Pharmaceuticals, Finnair, Rexel, Finnish state railways, Thermo Fisher Scientific, Apple and Qualcomm.
- Advising and assisting Finnair in many precedent-setting court cases concerning, among others, the use of precautionary measures to prohibit illegal strikes and related damage claims.
- Representing major Finnish Technology Industry and Forest Industry companies in precedent-setting criminal and damage claim cases regarding labour unions' liabilities in illegal strikes.

Languages. Finnish, Swedish, English

Professional associations/memberships. Member of the International Bar and Finnish Bar Associations; European Employment Lawyers Association; Industrial Lawyers Association.

Publications. Regular author and co-author of several international publications on employment and pensions law, such as:

- *Practical Law Global Guides.*
- *Global Legal Group legal guides.*
- *Getting the Deal Through legal guides.*
- *Employment Law in Europe editions of Tottel Publishing.*
- *EU and International Employment Law guides of Jordans.*

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