The Mergers & Acquisitions Review

Tenth Edition

Editor
Mark Zerdin

Law Business Research

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EDITOR'S PREFACE

The past year has seen a boom in dealmaking, with many markets reaching post-crisis peaks and some recording all-time highs. Mega-deals have been at the heart of the expanding market, with companies tapping into cash piles and cheap debt to fund transformational deals. Looking behind the headline figures, however, a number of factors suggest dealmaking may not continue to grow as rapidly as it has done recently.

In Europe, the European Central Bank was forced to start a programme of quantitative easing in the wake of consistently low growth, a full seven years after the Bank of England and the Federal Reserve undertook their programmes. US interest rates have also tightened for the first time since the financial crisis, contributing, according to some commentators, to the wobbly US markets that marked the start of 2016. Yet this uncertainty has now seemingly passed, and the Federal Reserve is contemplating raising rates further. Meanwhile, eurozone and UK interest rates look likely to remain low for some time to come due to continued slow growth and low inflation in the region. How the markets react to this bifurcation of monetary policy across the Atlantic will shape dealmaking in the year to come.

Elsewhere, there have been some concerns that falling commodities prices (particularly that of oil) have been driven by a fall in market confidence. However, it seems that this view is somewhat simplistic. It is more likely that prices have fallen due to excess capacity that built up to service Chinese industrialisation and somewhat weak growth figures. The recent uptick in prices should be seen as an indicator that perhaps the market overreacted and fundamentals remain strong.

Perhaps one of the biggest factors that poses a threat to dealmaking in 2016 is the political uncertainty affecting much of the world. In the UK, the first half of the year was clouded by the referendum on the UK's continued membership of the EU, and in the US, the presidential election result is likely to have a considerable impact on markets. It is hoped that the resolution of this uncertainty in the second half of the year will foster an environment in which markets can thrive.

I would like to thank the contributors for their support in producing the 10th edition of *The Mergers & Acquisitions Review*. I hope that the commentary in the following chapters will provide a richer understanding of the shape of the global markets, together with the challenges and opportunities facing market participants.

Mark Zerdin
Slaughter and May
London
August 2016

Chapter 20

FINLAND

Jan Ollila, Wilhelm Eklund and Jasper Kuhlefelt[1]

I OVERVIEW OF M&A ACTIVITY

After a fairly strong performance in 2014, activity in Finnish M&A remained relatively stable in 2015 in terms of the number of deals. The second half of 2015, with 66 announced deals according to data compiled by Mergermarket, showed a slight decrease compared to the 72 deals announced in the second half of 2014. The aggregate disclosed deal value for announced acquisitions of Finnish targets increased to approximately €5.7 billion in the second half of 2015, compared to €5.1 billion in the second half of 2014.

In general, the dealmaking environment remained less favourable than it was before the 2008 financial crisis, with uncertainty being fuelled by the challenging outlook of the Finnish economy. The availability of financing remained relatively good.

The first half of 2016 has been in line with 2015. In terms of the number of announced deals, the activity in 2016 has remained roughly on the level of 2015, with 61 deals announced during the first half of the year, whereas the aggregate disclosed deal value for announced acquisitions of Finnish targets increased from approximately €1 billion to approximately €3 billion. The activity on the market is expected to continue despite a number of uncertainties. Most deals are still being prepared and negotiated quite extensively, and the number of failed or significantly delayed structured sales processes has remained relatively high.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The Finnish legal system derives from the Nordic legal tradition, which itself is based on the German civil law tradition. Historically, agreements have been relatively brief, leaving room

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for interpretation in accordance with contract law principles and market practice. However, over the past few decades, agreements (and in particular acquisition agreements) have become more detailed and have started to resemble Anglo-American acquisition agreements.

The manner of carrying out a takeover of a Finnish company depends primarily on its ownership structure and whether the company's shares are listed or unlisted.

The ownership of most Finnish private companies is concentrated. Even in many listed companies, the majority of shares are held by a relatively small group of shareholders. Therefore, negotiations with the majority shareholders are often important in both public and private takeovers, and irrevocable undertakings from major shareholders may be decisive for the success of a public offer.

The legal framework applicable to public takeovers varies considerably from the regulation of private transactions. Contrary to private deals, takeovers of listed companies are subject to fairly detailed rules.

Regulation of Finnish public takeovers essentially consists of the rules applicable to public takeovers included in Chapter 11 of the Securities Markets Act (SMA), regulations and guidelines 9/2013 on takeover bids and the obligation to launch a bid (Regulation 9/2013) issued by the Finnish Financial Supervision Authority (FSA), which entered into force on 1 July 2013 and replaced the old FSA Standard 5.2c, as well as the revised Helsinki Takeover Code issued by the Takeover Board of the Securities Market Association, which entered into force on 1 January 2014 and replaced the old Takeover Code of 2006. The current SMA entered into force at the beginning of 2013.

Chapter 11 of the SMA sets out, *inter alia*, the general requirement to treat holders of each class of securities subject to the offer equally, the general structure of the offer procedures, rules on publication of the offer and disclosure obligations, the requirement to make a mandatory offer, pricing of offers and rules on competing offers.

There is a dual mandatory offer threshold, which is exceeded when the bidder, together with its affiliated parties, obtains over 30 or over 50 per cent of the voting rights in the target. No mandatory offer will be required if the relevant thresholds are exceeded as a result of a voluntary offer that is made for all shares and securities entitling to shares in the target.

Public offers are monitored by the FSA, which is authorised to interpret the relevant statutory provisions and issue regulations and guidelines. Regulation 9/2013 supplements the statutory rules and sets forth the FSA's interpretation of the relevant provisions of the SMA. Regulation 9/2013 contains more detailed rules on matters such as the takeover procedure, disclosure obligations and pricing.

Furthermore, the rules and regulations of the Nasdaq OMX Helsinki regulate, *inter alia*, the trading in securities in connection with public transactions.

Where the consideration consists of securities, the rules of the SMA relating to public offerings and the listing of securities may also become applicable. Under the EU prospectus regime, an EU listing prospectus may be used in exchange offers in Finland where the consideration consists of securities listed in Finland or in another EU Member State. In such cases, the offer document will also have to comply with the EU Prospectus Regime.

Another source of law is the Companies Act, which sets out general principles of company law, and provides the regulatory framework for corporate reorganisations and squeeze-outs.

Under the Companies Act, a squeeze-out procedure can be initiated by a shareholder holding, either directly or indirectly through a group company, more than 90 per cent of the shares and votes of a company. A shareholder whose shares can be redeemed also has a right to require that the majority shareholder redeem that shareholder's shares.

The redemption price in a squeeze-out is the fair price. Where the 90 per cent threshold is exceeded as a result of a voluntary or mandatory public offer, the offer price is regarded as the fair price unless there are special reasons for deviation from that price. Where the bidder intends to exercise the squeeze-out right upon reaching the legal threshold through a tender offer, that intention should be disclosed in the offer document. The squeeze-out is effected through arbitration proceedings, which are usually initiated by the majority shareholder against all other shareholders.

Whereas the takeover of a listed company follows a rather rigid statutory procedure, the acquisition of a private company can be structured more freely.

With regard to private transactions in particular, there are few processes involving notaries and government officials. As a result, few formal requirements exist concerning documentation governing the transfer of a business regardless of whether it is transferred through an asset or a share deal.

With regard to defensive action, the board of the target company has a general obligation under Finnish company law to act in the interests of the target company, with particular regard to the interests of the shareholders. In line with this general obligation, Chapter 11 of the SMA provides that the board is generally obliged to seek shareholder approval for defensive action that may frustrate a tender offer.

Finland has resolved to opt out of the breakthrough rule contained in Article 11 of the Takeover Directive. Breakthrough rules may, however, be voluntarily adopted by listed companies in their articles of association. Currently, such provisions have not been adopted by any listed company.

Finnish law severely restricts financial assistance. Under the Companies Act, a Finnish limited liability company may not grant any loan, grant any security for a loan, give any guarantee or assume any other liability the purpose of which is to finance an acquisition of the shares in the company or the shares in its parent company. A breach of the financial assistance rule may lead to, *inter alia*, personal liability for the members of the board of directors. In practice, alternative structures, such as merging the target company into the acquirer after the initial transaction, are used to facilitate intragroup financing arrangements in connection with acquisitions.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

The current SMA entered into force at the beginning of 2013. It includes certain new rules applicable to public offers for securities.

First, a definition of persons acting in concert has been included in the law, mirroring that included in the Takeover Directive. Accordingly, natural or legal persons are regarded as acting in concert where they, on the basis of an agreement or otherwise, cooperate with a shareholder, the bidder or the target company with a view to exercising or acquiring significant influence in the company or frustrating a public offer. In addition, related parties, such as group companies, are regarded as persons acting in concert.

Second, the bidder's obligation to promote the fulfilment of a public offer is expressly stated in the SMA. This rule, which is based on the general principles of the Takeover Directive, means that the bidder may not prevent or substantially hamper the fulfilment of the bid or its conditions.

The legislation also grants the FSA the right to impose on a potential bidder a deadline for launching a public offer ('put up or shut up'). Such a deadline can be imposed on the target company's application in a situation where a potential bidder has in public stated that it is considering launching a public offer. In cases where the potential bidder does not launch a bid, it can be prevented from doing so during the following six months.

To ensure sufficient protection of target shareholders, shareholders have the right to withdraw their acceptance until the bidder has announced that all the conditions of the bid have been fulfilled or waived. With regard to unconditional bids, the acceptance can be withdrawn if the bid has been valid for 10 weeks and the purchase transactions have not been effected.

The reformed SMA introduced two new exceptions from the obligation to launch a tender offer for all shares in the company. First, significant shareholders are permitted to launch a conditional consortium bid: if the mandatory bid obligation is triggered merely as a result of shareholders acting in concert in launching a voluntary offer, the shareholders are exempted from the mandatory bid obligation, provided that their acting in concert is limited to the voluntary bid. Secondly, no mandatory bid obligation will arise if a shareholder, or a party acting in concert, disposes of the number of voting rights exceeding the mandatory bid threshold within one month after the mandatory bid obligation arose.

Furthermore, following an amendment to the SMA implementing the EU resolution and recovery regime, no mandatory bid obligation will arise if the threshold for a mandatory bid obligation is exceeded due to the Financial Stability Authority having exercised its resolution implementation authority.

The SMA requires all listed companies to be members of a common organisation, the purpose of which is to develop good securities market practice.

In connection with the entry into force of the SMA, the former Takeover Panel was closed down, and as of January 2013 the renewed Securities Market Association has taken care of issuing recommendations and opinions to promote compliance with good securities market practice. The Association has also established the Takeover Board to promote good securities market practice in connection with takeover bids. Furthermore, an application can now be made to the Takeover Board for a statement regarding the interpretation of the Helsinki Takeover Code, compliance with good securities markets practice and individual company law issues.

In December 2013, the Takeover Board issued the new revised Helsinki Takeover Code, which entered into force on 1 January 2014 and replaced the old Takeover Code of 2006. Compliance with the new Takeover Code is based on a 'comply or explain' principle; in a tender offer, both the target company and the bidder have an obligation to confirm whether they comply with the Takeover Code, and to publicly explain if they are not committed to complying with the Takeover Code or some of its individual recommendations. The substance of the recommendations in the new Takeover Code is to a large extent similar to the old Takeover Code, taking into account the provisions of the new SMA and certain developments in market practice since 2006.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

The Finnish private M&A market is an integrated part of the Nordic and international private M&A market. This is reflected in the Finnish market practice and the procedures followed in Finnish private transactions. Even purely Finnish transactions are often prepared, negotiated, drafted and executed in ways that are similar to those in the international marketplace.

A large number of Finnish transactions have a cross-border element, as foreign ownership of Finnish businesses continues to increase. The financial crisis significantly decreased the use of structured sales and auctions in the Finnish market, but in recent years structured sales and auctions have made a strong comeback.

As the Finnish market is relatively small, Finnish companies frequently engage in M&A transactions abroad, both as sellers and buyers. Foreign buyers are, on the other hand, frequently involved on the Finnish market on the buy side.

Similar to other Nordic countries, the legal advisory market concentrates on domestic firms. The same goes for domestic or Nordic banks, which handle a large share of the financial advisory mandates. However, the largest transactions frequently involve large international investment banks, complemented by local Finnish players.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

i Finnish activity abroad

Nokia's €15.6 billion acquisition of France-based Alcatel-Lucent, the largest-ever transaction involving a Finnish company, was announced in April 2015 and approved by Nokia's extraordinary general meeting in December 2015. After a lengthy process, the deal closed in the first quarter of 2016.

August 2015 saw the announcement of a major transaction involving a Finnish company, when Konecranes announced its intended all-share acquisition of Terex Corporation, a US-based and listed lifting and material handling solutions company. The transaction was delayed following an unsolicited all-cash rival offer from China-based Zoomlion Heavy Industry Science and Technology Co in January 2016. In May 2016, Konecranes and Terex announced the sale of Terex's material handling and port solutions business, valued at €1.1 billion, to Konecranes in a cash and share deal. Following the transaction, which is expected to close in early 2017, Terex will own approximately 25 per cent of Konecranes.

Apart from the *Nokia/Alcatel-Lucent* and *Konecranes/Terex* transactions, acquisition activity abroad by Finnish companies remained relatively low during the 2015–2016 period. There are, however, certain sectors, in particular computer software and services as well as industrial products and services, in which Finland-based companies have actively been seeking international growth, mainly through smaller acquisitions.

ii Private equity (PE)

PE investors remained relatively active during 2015, and activity remains high in 2016. In 2015, the amount of PE and venture capital (VC) investment into Finnish companies reached its highest level since 2007, totalling over €1 billion in the aggregate according to data from the Finnish Venture Capital Association. According to data compiled by Invest Europe, the amount of VC investment into Finnish companies was the highest in Europe in relation to the GDP.

Notable PE transactions included EQT's acquisition of Touhula, an operator of Finnish child day-care centres, from Coronaria, a Finnish healthcare services provider; Finnish PE firm Sponsor Capital's acquisition of Orthex, a Finland-based manufacturer of household plastic products, from Intera Partners, a Finnish PE firm; and Sweden-based PE firm Altor's acquisition of Realia Group, a Finland-based provider of real estate management and brokerage services, from Nordea, Varma Mutual Pension Insurance Company and Sponsor Capital. Notable PE exits included Triton's €60 million sale of Suomen Lähikauppa, a Finnish retail stores operator, to Kesko, a Finnish listed retailing and logistics group.

Many PE investors are expected to come under increased pressure to dispose of portfolio companies already held beyond the planned investment horizon and to invest committed capital. In sales processes, the trend continued to move towards a higher level of differentiation in terms of structure, with the popularity of large-scale controlled auctions decreasing, and the focus remaining on more concentrated efforts with a limited number of bidders.

iii Public-to-private activity

The first half of 2016 saw two voluntary public tender offers. Acorda Therapeutics, a US-based biopharmaceutical company, made a €295 million offer for BioTie Therapies, a Finland-based biopharmaceutical company listed in Finland and the United States, while the China-based National Silicon Industry Group made a €161 million offer for Okmetic, a Finnish manufacturer and processor of silicon wafers.

No hostile offers have been seen on the Finnish market since Nordic Capital's unsuccessful €1.1 billion offer for TietoEnator in 2008.

iv Sector-specific trends

Activity in the life sciences and healthcare sector has remained strong, and the expected growth in future spending in the public health and social services sector, together with the government's planned social and healthcare reform, has resulted in numerous deals and a strong pipeline. However, uncertainty in the market has increased due to repeated delays to the social and healthcare reform, mainly due to disagreements between the political parties represented in the current government. Notable transactions during 2015 and 2016 have included the acquisition of Esperi Care, a Finnish provider of health services to elderly people and people with mental health and intellectual disabilities, by the listed, UK-based Intermediate Capital Group and Finland-based Etera Mutual Pension Insurance Company from CapMan Plc, a listed, Finland-based PE firm; and the €32 million acquisition of Arjessa, a Finland-based psychiatric and psychosocial treatment provider, by listed, Sweden-based Humana. In addition, there were a number of smaller transactions.

Deal activity in the information technology sector has been high during 2015 and 2016. Apart from the *Nokia/Alcatel-Lucent* transaction, the largest deal in the sector with Finnish involvement was Nokia's €2.8 billion sale of HERE, a provider of location intelligence and location-based services, to BMW, Audi and Daimler. Other notable transactions in the sector included the announced €107 million acquisition of the telecom business of Anvia, a Finland-based provider of communication, IT and security solutions, by Elisa, a Finnish listed telecom operator, following a long takeover battle that included a number of unsolicited tender offers by Elisa for the shares in Anvia; and the acquisition of Holvi, a Finland-based provider of online budgeting, group banking and financial management services, by the Spanish bank BBVA for an estimated €91 million.

Activity also remained strong in the energy and infrastructure sector. Significant transactions included the acquisition by Australia-based PE firm AMP Capital Investors and UK-based PE firm Infracapital Partners of Adven, a Finland-based provider of sustainable and business critical energy infrastructure, from EQT; and the government's €251 million acquisition of the remaining 25 per cent stake in Finnish natural gas company Gasum from Russian Gazprom.

Transaction activity in the Finnish real estate sector remained fairly high during the 2015–2016 period, with roughly similar levels of activity as seen in 2014–2015. Highlight transactions included:

a the acquisition by the Blackstone Group of 57.5 per cent of the shares in Certeum, a Finland-based real estate company, from Finland-based real estate company Sponda and Varma Mutual Pension Insurance Company for approximately €288 million;

b the acquisition of 22.9 per cent of the shares in Sato, a Finland-based company engaged in developing and renting residential apartments, from Varma Mutual Pension Insurance Company for an estimated €1.9 billion;

c the acquisition of several business premises comprising a large shopping centre in downtown Helsinki by Sponda for approximately €576 million from Forum Fastighets Kb and Konstsamfundet; and

d the establishment of real estate company Antilooppi by Finnish pension insurance company Ilmarinen and its Swedish counterpart AMF, and, in connection with Antilooppi's establishment, the acquisition of a portfolio of office premises valued at €400 million.

In May 2016, the government announced its renewed ownership steering strategy, the main objective of which is to use invested capital to increase growth through, *inter alia*, the disposal of all or part of the government's stake in certain wholly or majority owned companies. The revised strategy is expected to have a positive impact on the Finnish M&A market in the future. Some effects of the government's new strategy have already been seen during the first half of 2016, when the government sold a 49.9 per cent minority stake in Patria, a Finland-based provider of defence, security and aviation services, to Norwegian Kongsberg for €272 million, while Fortum, a listed energy group, announced its acquisition of Ekokem, a Finland-based recycling and waste management provider partly owned by the government, in a €700 million transaction.

The retailing and logistics sector also witnessed strong activity in response to an increasingly competitive market environment. The most active player was Kesko, a Finnish listed retailing and logistics group, which, in addition to its €60 million acquisition of Suomen Lähikauppa, a Finnish retail stores operator, from Triton, also acquired Onninen, a Finland-based provider of material solutions and services, for €369 million.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

Domestic and Nordic banks have traditionally provided acquisition finance for Finnish transactions. However, large international banks are regularly involved in larger deals, and have returned to the Finnish market, although not yet to the extent seen before the financial crisis. While Nordic banks may face lending constraints in the future because of increased bank regulation, the current market sentiment seems to be that they have a fair amount of capacity to finance transactions and that there is actually too little demand for financing.

The 2015–2016 period indicates that Nordic banks continue to be willing to provide financing, at least for mid-sized transactions, in particular for deals in 'hot' industries. In terms of covenants, however, the Finnish market has not to date witnessed a proliferation of 'covenant-lite' loans without maintenance-based financial covenants.

High-yield and other corporate bonds have increased in importance as a financing source for larger companies, and recently also for PE-owned companies. For example, in June 2015, Func Food Group, a Finland-based producer of functional beverages and food, issued a €38 million secured high-yield bond to finance the acquisition of People's Choice, a Swedish sports and energy drink company; and in July 2015, Solteq, a Finnish listed software service provider, issued a €40 million unsecured high-yield bond in connection with its acquisition of Descom, a Finland-based marketing and technology provider. In the future, more PE sponsors are expected to tap the high-yield bond market, particularly as a source of refinancing existing portfolio company debt. The absence of maintenance-based financial covenants is often cited by PE sponsors as a key benefit of high-yield bonds, although it should be noted that, with the exception of a few bonds issued by PE-backed companies, Nordic high-yield bonds' terms tend to contain maintenance-based financial covenants.

Finally, there is a trend towards an increasing number of non-bank loan investors in the leveraged buyout market, including assets managers, hedge funds and collateralised loan obligations. The majority of those investors are from outside the Nordic countries.

VII EMPLOYMENT LAW

A transfer of business under the Finnish Employment Contracts Act corresponds to the transfer under the Acquired Rights Directive (2001/23/EC). The basic requirement for a transaction or arrangement to constitute a transfer of business is that the subject of the transfer is an economic entity (i.e., an organised grouping of resources that has the objective of pursuing an economic activity), and that it retains these characteristics also after the transfer. Supplementary operations may also be subject to a labour law business transfer.

The transfer is mandatory and automatic. It does not require the entry into new employment contracts or other agreements with the transferring personnel, and they cannot effectively object to the transfer.

The employees transferring to the transferee are those at the service of the business concerned at the time of the transfer.

According to the Finnish Cooperation Act, which applies to companies regularly employing at least 20 employees, the transferor and the transferee have a joint obligation to provide the employee representatives concerned with information regarding the timing of the transfer, the grounds for the transfer, the legal, financial and social consequences of the transfer to employees, and the planned measures concerning the employees. The information shall be provided well in advance of the transfer of business; generally, one to two weeks before the transfer is deemed sufficient, depending on the size of the transaction and its impact on the personnel.

After the transfer, the transferee needs to make sure that the transferred personnel have been provided with such information within a week of the transfer. It should also be determined whether the transfer has effects on the personnel that should be handled in full-scale cooperation consultations. If there are no such effects, the transferee has no further transfer-related consultation obligations towards the personnel.

The procedure is the same irrespective of how many employees will transfer.

VIII TAX LAW

The main driver for choosing the form of transaction is taxation. Finland has implemented the provisions of the Merger Directive (90/434/EEC) and, accordingly, certain transactions such as share-for-share acquisitions can be carried out without triggering capital gains taxation.

An asset deal is typically preferable from the buyer's perspective, since the buyer may obtain a step-up in tax basis and depreciate the acquired assets (including goodwill). However, losses cannot be transferred in an asset deal. The sellers typically prefer share deals, as a capital gain is often tax-exempt in a share deal. An asset deal may be preferred by a seller with carry-forward tax losses, or if the sale resulted in a loss. A buyer cannot depreciate the acquisition cost (including goodwill) in a share deal. The tax loss carry-forwards of the target may be lost in a share deal.

Transfers of shares and other securities in Finnish companies are subject to a transfer tax of 1.6 per cent (2 per cent for transfers of securities in a real estate company) of the sale price. The sale price is deemed to include any payments made, or obligations assumed, by the transferee to or for the benefit of the transferor. Transfers of securities between non-residents are generally exempted from the transfer tax unless the securities are issued by a Finnish real estate company. In addition, transfers of securities in a foreign real estate holding company are subject to the transfer tax if the assets of the foreign company mainly comprise real property (directly or indirectly) located in Finland, and either the transferor or transferee is Finnish. In addition to securities, a transfer tax at a rate of 4 per cent is levied on the transfer of real property. Where the consideration consists of securities, other than newly issued shares, the transfer tax is levied on the transferred assets and the consideration. Certain corporate restructurings, such as a transfer of a business against share consideration, are exempt from the transfer tax. Certain transfers of listed shares on the stock exchange are also exempted from the transfer tax.

An asset deal is not subject to VAT if it is treated as a transfer of a business as a going concern, the transfer is made to the buyer and the buyer starts using the assets in a business subject to VAT. No VAT is payable upon a transfer of shares in a share deal.

Acquisitions are typically carried out through a local, newly established and leveraged acquisition vehicle (a limited liability company or a branch). As of tax year 2014, specific interest limitation rules limit the deductibility of net interest expenses on intragroup loans to the extent that the total net interest expenses (including third-party interest expenses) exceed 25 per cent of the borrower's fiscal EBITDA. The limitation does not apply if total net interest expenses for the year do not exceed €500,000 (also including third-party interest expenses) or the company's equity ratio is at the level of or higher than the equity ratio of the group. The Finnish Supreme Administrative Court (SAC) has confirmed in a ruling that a comparison is to be made regarding the consolidated financial statements of the foreign parent company as opposed to the Finnish subgroup parent company even if the foreign parent company is not obliged to prepare consolidated financial statements pursuant to an exception under local law. Financial institutions and certain other companies are outside the scope of the interest limitation rule.

The SAC has recently issued two rulings in which the right to deduct interest costs within a group of companies was limited pursuant to the general anti-avoidance rule. In both cases, the Finnish branch of an international group was not able to deduct interest costs on a loan related to an intragroup share acquisition paid by the branch to a foreign group entity. The rulings are expected to have an impact at least on the interpretation of branch structures used in intragroup share acquisitions. Otherwise, arm's-length interest expenses on acquisition debt are generally tax-deductible. There is generally no withholding tax on interest payments made to non-residents.

When certain conditions are satisfied, one group member can transfer profits to another member by way of a tax-deductible group contribution, which constitutes taxable income for the recipient. The preconditions include a minimum ownership by the (common) parent of 90 per cent of the share capital in the subsidiary (subsidiaries) that has lasted the entire fiscal year, the fiscal years ending simultaneously as well as both parties carrying out business activities. Group contributions to foreign group members are not deductible.

Capital gains are generally taxable for resident individuals at 30 per cent, or 34 per cent for taxable capital income exceeding €30,000. In the case of corporations, capital gains are generally included in the taxable income. The general corporate income tax rate is 20 per cent. Capital gains from transfers of shares classified as fixed assets are as a general rule tax-exempt for corporate shareholders, provided that the shares represent at least 10 per cent of the share capital of the target and have been held for at least 12 months. However, PE investors have been excluded from the scope of the capital gains tax exemption. Capital gains realised by non-resident shareholders are generally not taxable in Finland under domestic rules, unless the shareholding relates to a business carried out in Finland, for example, through a permanent establishment, or if the shares are shares in a real estate company.

Dividends received by corporate shareholders are generally tax-exempt. The tax exemption applies to domestic dividends; dividends from other EU country residents that are referred to in Article 2 of the EU Parent–Subsidiary Directive (2013/13/EU); and dividends from other EEA resident companies, provided that the EEA tax-resident company is subject to a minimum of 10 per cent tax on its income. Specific rules apply to financial, insurance and pension institutions. Furthermore, dividends received by an unlisted company from a listed company are fully taxable at 20 per cent, unless the unlisted recipient company directly holds minimum of 10 per cent of the capital of the distributing listed company. Dividend income is fully taxable at 20 per cent in other cases than the above if no exemption is provided under a tax treaty. However, dividend income is fully taxable if the dividend has been deductible for tax purposes for the distributing company, or it relates to arrangements that are not genuine and that have been put in place for the purpose of obtaining a tax advantage.

Dividend income received by resident individual shareholders from domestic listed companies is partly taxable (85 per cent) and partly exempt (15 per cent). The taxable dividend income is taxed as capital income at 30 per cent, or at 34 per cent when taxable capital income exceeds €30,000. The taxation of dividend income received by resident individual shareholders from domestic unlisted companies is determined based on an annual return of 8 per cent of the net value of the shares. As a general rule, within the 8 per cent annual return, dividend income is partly taxable (85 per cent) as capital income and partly tax-exempt (15 per cent). However, up to an amount of €150,000, only 25 per cent of the dividend income is taxable as capital income. To the extent that the dividend income exceeds the 8 per cent annual return, 75 per cent of the dividend income is taxable as earned income at progressive rates, and 25 per cent is tax-exempt.

Foreign corporate shareholders are generally subject to a withholding tax at a rate of 20 per cent on dividends. However, dividends are not subject to withholding tax if paid to a corporate recipient covered by Article 2 of the Parent–Subsidiary Directive (2013/13/EU) that holds more than 10 per cent of the distributing company's share capital; or an EEA-resident corporate recipient that cannot obtain a credit for the withholding tax, and the dividend, if paid to a Finnish-resident corporate recipient, had been tax-exempt. Further, the level of withholding tax is generally reduced to between zero and 15 per cent under Finland's tax treaties.

As a general rule, losses can be carried forward and utilised during 10 years after the year in which they arose. However, losses incurred by a company are not carried forward if a change of over 50 per cent in the ownership occurs. The rule also applies in the case of an indirect ownership change. An exemption may be granted by the tax authorities.

IX COMPETITION LAW

Finnish merger control rules are set out in the Finnish Competition Act, which entered into force in November 2011. If the EU Merger Regulation does not apply, a transaction must be notified to the Finnish Competition and Consumer Authority (FCCA) where the aggregate worldwide turnover of the parties (i.e., usually the acquirer and the target) exceeds €350 million, and each of at least two of the parties has a Finnish turnover of at least €20 million. Finnish turnover means sales to customers located in Finland irrespective of whether the seller has any physical presence in Finland. Notification must be submitted after entering into a concentration agreement, acquisition of control or an announcement of a public offer, and in any event before closing the transaction. It is also possible to notify the transaction as soon as the parties have, with a sufficient degree of certainty and sufficiently specific terms, proven their intention to conclude the transaction, for instance, with a signed letter of intent. A notified transaction may not be implemented before clearance unless the FCCA grants an exemption.

The FCCA applies the significant impediment to effective competition test in line with the EU Merger Regulation. The Market Court may, upon the FCCA's proposal, prohibit a transaction, order it to be cancelled or impose conditions if the concentration would significantly impede effective competition in Finland or in a substantial part thereof, particularly as a result of the creation or strengthening of a dominant position.

The FCCA will decide within one month of the submission of the notification to either approve the transaction or begin an in-depth investigation. The in-depth investigation may last for three months (but may be extended by two months). The FCCA can extend the investigation period if the parties to the transaction do not submit the required information to the authority, or if the information is significantly incomplete or inaccurate. If the FCCA wishes to prohibit the transaction, it is required to make a proposal to that effect to the Market Court, which will decide on the issue. The Market Court's decision can be appealed to the SAC. The notifying party, however, is not entitled to appeal a conditional approval decision of the FCCA to the Market Court.

X OUTLOOK

The general short to medium-term outlook is positive, although there continue to be significant elements of uncertainty. The expectation is, however, that M&A activity will continue to pick up, both for larger structural deals and for small and mid-cap transactions.

Financial sponsors have been more active in the markets than at any time since the financial crisis, and are expected to remain active. The amount of funds already raised but not yet invested continues to be significant. On the other hand, financial sponsors are likely to be under increased pressure to dispose of portfolio companies already held beyond the planned investment horizon, even in the face of lower valuations. Many potential industrial buyers continue to have strong financial positions and seek investment targets.

The UK's vote to leave the EU at the end of June 2016 will likely also have a negative impact on the dealmaking environment in Finland. The effects are difficult to predict, but likely consequences include increased market uncertainty and new regulatory elements to consider in the structuring and preparation of deals with UK involvement.

After remaining quiet for several years, the Finnish initial public offering (IPO) market has seen an upswing in the past couple of years, with 2015 being the most active year in terms of IPOs since the financial crisis. The second half of 2015 saw the listing of Kotipizza Group, a Finland-based fast food restaurant operator, Evli Bank, a Finland-based investment bank, and Consti Group, a Finnish renovation and maintenance company. The first half of 2016 saw the listing of, *inter alia*, Taaleri, a Finnish provider of wealth management and financial services, Lehto Group, a construction and real estate company, and Tokmanni Group, a Finland-based discount store chain. Listing activity on the Nasdaq OMX Helsinki's less-regulated First North marketplace, decreased somewhat compared to 2014–2015, but the marketplace retained its popularity with several smaller listings during 2015–2016, including FIT Biotech, a Finnish biopharmaceutical company, and Suomen Hoivatilat, a Finnish social and healthcare services provider.

As 2016 has already seen a number of announced IPOs, investor confidence seems to have remained at a good level, and stock market valuation levels remain attractive. The share prices of Finnish companies listed on the Nasdaq OMX Helsinki have been fairly volatile since the second half of 2015; however, the overall development has been only slightly negative.

Appendix 1

ABOUT THE AUTHORS

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Jan Ollila is senior partner at Dittmar & Indrenius and head of the firm's M&A and private equity practice, advising international and domestic public and private corporate clients, private equity houses and financial institutions on a wide range of matters, with a particular emphasis on public and private M&A, financing arrangements and related dispute resolution. Mr Ollila joined Dittmar & Indrenius in 1992, became a partner in 2000, managing partner in 2007 and senior partner in 2015.

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