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## THE NEW FINNISH TAKEOVER REGIME

### Implementation of Takeover Directive

The provisions of the Finnish Securities Markets Act (495/1989) (the "SMA") concerning public tender offers are currently under revision. The proposed amendments to the SMA implement the Directive 2004/25/EC of the European Parliament and of the Council on Takeover Bids (the "Directive").

A Governmental bill was submitted to the Parliament on the amendments of the Securities Markets Act, the Act on Chambers of Commerce and the Act on the Financial Supervision Authority (HE 6/2006 vp) on 17 February 2006 (the "Bill").

The deadline for the implementation of the Directive by the EU Member States was 20 May 2006. However, the Finnish Parliament has not been able to meet this deadline - the Bill is currently under debate in the Finnish Parliament - and the new legislation on takeover bids is expected to enter into force in early July or in September (simultaneously with the proposed new Companies Act).

### Mandatory Bid Obligation

Pursuant to the Bill, a shareholder whose holding in a listed company exceeds 3/10 of the total voting rights attached to the shares of the company after the commencement of a public quotation of such shares, must make a public tender offer to purchase the remaining shares and other securities entitling holders thereof to shares in the company (the "Mandatory Bid"). A Mandatory Bid shall also be made when the shareholder's proportion of the voting rights attached to the shares in a company (resulting from other circumstances than a mandatory bid) exceeds 5/10 after the commencement of a public quotation.

The mandatory offer price is required to be the highest price paid by the bidder during the six (6) month period preceding the obligation to make the mandatory offer. If no such purchases have been made, the offer price shall be no less than the weighted average market price of the share in question during the three (3) month period preceding the obligation to make the mandatory offer.

The Bill also contains detailed provisions on whose shares shall be included when calculating the proportion of the voting rights. In addition to the shares held by the

relevant shareholder in organisations and foundations controlled by such shareholder, the proportion also includes, *inter alia*, the shares held by such third parties that act in concert with the relevant shareholder in order to exercise control over the target company.

### **Statutory Exemptions to Mandatory Bid Obligation**

The proposed new takeover regime stipulates that where the above voting rights thresholds are exceeded in connection with a voluntary bid, it would no longer be necessary to launch a subsequent mandatory bid. This revision to the takeover regime facilitates a faster transaction procedure by reducing the number of successive bids.

The Bill also includes an exemption to the obligation to make a mandatory bid set out in the transitional provisions which relate to the entering into force of the new regime.

According to the Bill, an obligation to make a mandatory bid does not occur for a shareholder if: (a) the above mentioned 3/10 or 5/10 thresholds concerning the voting rights attached to the shares of a company have been exceeded before the new regime has entered into force; *and* (b) the proportion of voting rights falls below the threshold(s) within three (3) years of the entering into force of the new regime. If both thresholds (i.e. 3/10 and 5/10) are exceeded simultaneously, then the ownership has to decrease to the extent that the voting rights attached to shares fall under both of these thresholds within the three (3) year period.

If the mentioned threshold(s) are exceeded e.g. in connection with a directed share issue in connection with a corporate acquisition, this implicates that, in order to fall within the scope of this exemption, the issued new shares have to be registered with the Finnish Trade Register before the proposed amendments in the SMA enter into force.

As regards the decrease of ownership during the said three (3) year transition period it is noteworthy that such decrease may also take place by virtue of general dilution of ownership and no active measures such as conveyance of shares are required.

Nevertheless, a shareholder whose portion of the voting rights attached to shares, at the time the proposed amendments enter into force, is over 5/10 (but under 2/3) is obliged to make a mandatory bid if such shareholder's proportion of the voting rights during this three (3) year transition period exceeds 2/3.

The obligation to launch a mandatory bid is triggered only by the shareholder's own actions. In other words, the obligation does not come about if the proportion of voting rights increases purely due to the company's or other shareholders' actions (e.g. through the acquisition or redemption of own shares by the company).

### **Exemption by Financial Supervision Authority**

The new regime will also authorise the Finnish Financial Supervision Authority (the "FSA") to grant an exemption from the obligations set forth in the SMA (including

the obligation to make a mandatory bid) if “specific grounds” for such exemption are present.

The existence of specific grounds needs to be brought out in an application for the exemption. With regard to mandatory bids, specific grounds may be at hand e.g. in situations where the ownership arrangements are related to generational ownership changes.

Specific grounds may also be present if the threshold triggering the mandatory bid obligation has been exceeded as a result of a share subscription where a third party shareholder has not subscribed for the allocated shares. This latter situation is comparable to other situations where the bid thresholds are exceeded by virtue of actions taken by some other party than the shareholder in question.

### **New Self-regulatory Body**

The Bill proposes further a special panel addressing questions related to public takeovers is established by the Finnish Central Chamber of Commerce. This panel would give non-binding recommendations primarily regarding to company law issues that arise in connection with public takeover situations. These issues relate mainly to: (i) duties of the board of the target company, and (ii) the so-called “breakthrough rules” (i.e. restrictions on the transfer of securities provided for in contractual arrangements between the target company and its shareholders as well as holders of other securities, such as option rights).

Notwithstanding the above, however, it would be expressly regulated under the new regime that the board of the target company is required to issue a statement regarding the offer. Under the current regime, there is no such obligation although the FSA has also previously recommended the board of the target companies to issue such statement.

By virtue of the above self-regulatory system, Finland has chosen not to implement Articles 9 (“Obligations of the Board of the Offeree Company”) and 11 (“Breakthrough”) of the Directive as such, but to regulate these matters through non-binding self-regulation, an option allowed by the Directive. The new panel would be required to request a statement from the FSA regarding the matter at hand before making a recommendation.

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