HOW TO: FINLAND

BORENIUS

FOREWORD – HOW TO: FINLAND

We at Borenius have been providing high quality services for over a hundred years. As one of the largest and most prominent full-service law firms in Finland, an international network with close ties to other highly regarded law firms in other jurisdictions is key for our capability to advise our clients on cross-border deals and other assignments. This inspired us to create our How to: Finland booklet, which was first published in 2017. This fourth edition has been fully revised and updated to provide a concise introduction to issues that foreign businesses or their domestic legal advisors often deal with when engaging in business activities in Finland.

Since Borenius' inception in 1911, we have been dedicated to assisting our clients in changing the business landscape. As businesses have become increasingly globalised, the demand for higher-calibre legal advice has followed, which has greatly benefited our firm. Today, Borenius employs over 120 lawyers, and we are headquartered in Helsinki with a side office in Tampere and representative offices in London and New York. Half of our revenue in any given year is originated by foreign clients, and the vast majority of our assignments have a cross-border element.

We have invested significantly in our global network of leading international firms to ensure that we can provide the best advice for our foreign clients in their assignments in Finland. Of similar importance for us is that we know the best independent law firms abroad for our Finnish clients when they need solid legal advice abroad. Our representative offices in New York and London are one way in which we foster these relationships in the key financial centres of world. We opened our London representative office in January 2020 encouraged by our long-term success in New York.

Throughout the history of the firm, we have put a great emphasis on professionalism, strategic advice, diversity and inclusion. This is reflected in our current values, which emphasise the importance of a diverse and strategically minded workplace. We believe that a law firm is more than just a business. Our focus on providing clients with multifaceted, strategic solutions that encompass their entire business and our commitment to ensuring that our organisation remains diverse and inclusive make us a vanguard in the Finnish legal services industry. Our long-term success is built on the provision of strategic advice, professional excellence and international experience combined with uncompromised integrity and ethics. Trust in us, our services, and our advice is a fundamental part of what clients expect from us and from our brand.

As a firm, we believe in a strong unified corporate culture where all practices and practitioners share the same values, mission, and strategy. For us, this means a constant focus on building and maintaining capabilities to be able to assist the most demanding clients and advise on the most challenging matters. We want to help our clients change their business landscape, and, in doing that, we want to work closely with firms around the globe that value the same attributes and get retained by high-end clients for the same reasons.

Borenius Partners

HOW TO:

FINLAND

QUICK FACTS

- Population of 5.5 million.
- The official languages in Finland are Finnish and Swedish. Education and services must be provided in both official languages.
- Finland is part of the Nordic geographical and cultural region.
- Currency: Euro (€; EUR)
- Time Zone: Eastern European Time (NYC +7; London +2; Stockholm +1)

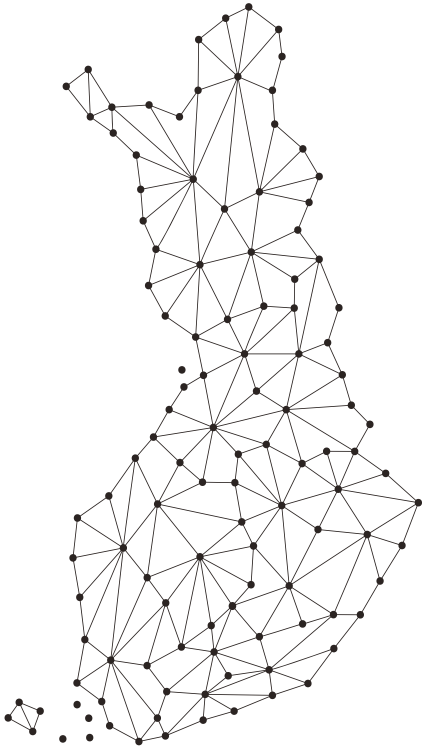
HISTORY

After centuries under the Swedish crown, Sweden ceded Finland to Russia in 1809, and the newly formed Grand Duchy of Finland was granted autonomy within Russia. The Republic of Finland ultimately gained its independence on December 6, 1917.

Finland joined the European Union (EU) in 1995, acceding from the European Free Trade Association, which it joined initially as an associate member in 1961.

GOVERNMENT

Finland is a parliamentary republic within the framework of a representative democracy. The President is the head of state.



The party leaders with the most seats of the 200-member unicameral Parliament (in Finnish, *eduskunta*; in Swedish *riksdagen*) form a cabinet or Council of State (*valtioneuvosto* or *statsrådet*). One of the Council's responsibilities is to elect the Prime Minister, who serves as the head of government. There are currently ten parties represented in Parliament with the current Council consisting of the Social Democratic Party, the Centre Party, the Green League, the Left Alliance and the Swedish People's Party.

ECONOMY

Finland has a highly industrialized, mixed economy. By year-end 2019, as a proportion of gross value added, the largest sector of the economy is services (69.5%) – which continues to grow – followed by manufacturing and industry (27.7%) and agriculture (2.8%). The largest industries are manufacturing (32.1%), wholesale and retail trade and repair (27.4%) and construction (9.2%). Per capita GDP is almost as high as that of Japan and Canada and slightly above that of Iceland and Austria.

LEGAL SYSTEM

The Constitution of Finland (*Suomen perustuslaki* or *Finlands grundlag*) is the supreme source of national law. Its current form came into force on March 1, 2000; in part, a consolidation of the previous four separate statutes, which all had constitutional status.

As a member of the EU, Finland is bound by the laws, regulations and directives of the EU. Regulations are directly applicable to all Member States, while directives must be implemented under a comply or explain principle.

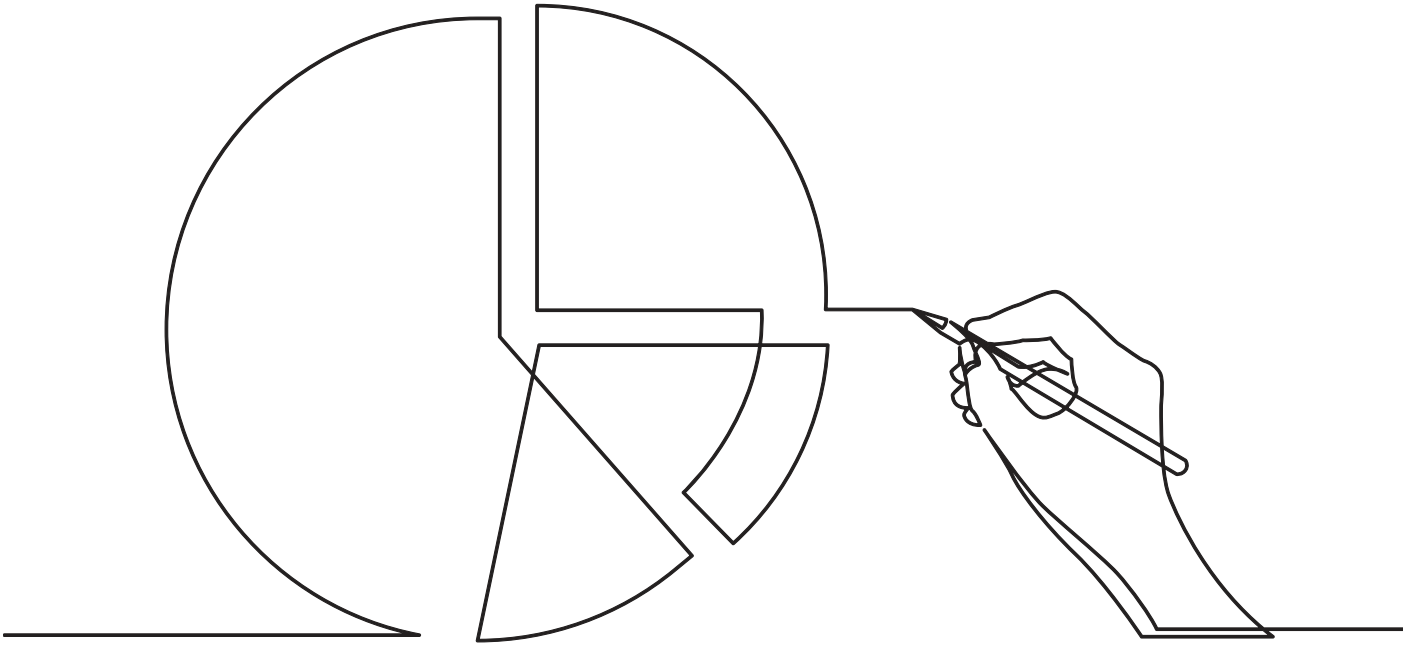
COUNTRY RANKINGS

According to the OECD's most recent Better Life Index, Finland ranks at the top in education and skills and life satisfaction and above average in most of the Index's dimensions: income and wealth, jobs and earnings, health status, civic engagement, environmental quality, safety, community, housing and work-life balance.

According to 2019 reports by the Word Economic Forum, Finland is the safest country in the world with the least organized crime and the most independent judicial system in the world. Finnish banks are also the soundest in the world and Finland's macroeconomy is the most stable in the world. According to a 2020 Transparency International report, Finland has the third least corruption in the world.

Finland has also been ranked as the second in the world for sustainable competitiveness. A 2021 Fund for Peace report ranked Finland as the most stable country in the world.

M&A & PRIVATE EQUITY



GENERAL

Finnish private M&A transactions generally occur either as an acquisition of the shares or assets of a company, or a business combination of two or more companies – such as through a statutory merger or share swap.

The Finnish Sale of Goods Act and the Finnish Companies Act are the primary statutes governing private M&A transactions, whether cross-border or domestic. Notwithstanding this statutory regime, the principles of freedom of contract in Finland allow transactions to be governed by the parties' agreement. While the parties are free to choose the governing law of the transaction, Finnish law is typically used when the target is located in Finland.

Aside from merger control issues, it is not common for supervisory authorities to be involved in private M&A transactions. However, the Ministry of Economic Affairs and Employment monitors foreign corporate acquisitions, and if key national interests are potentially impacted, the Ministry may review the transaction and has the power to restrict transfers of ownership to foreign persons.

Private equity funds have a key role in Finnish M&A, whether as buyouts or exits. Local Finnish funds are very active in transactions up to an enterprise value of approximately EUR 100 million. Larger transactions tend to be dominated by Nordic, UK and US funds. Naturally, strategic M&A between operating companies also take place, and such deals are very often cross-border.

Finland is particularly interesting for investors in the technology, real estate, healthcare and energy sectors.

SHARE & ASSET ACQUISITIONS

Share deals paid for predominantly in cash constitute the clear majority of transactions. Asset deals are more common in connection with carve-outs of particular business units in companies and increasingly in connection with the outsourcing of services previously provided in-house.

Transactions are either carried out through one-to-one negotiations or an auction process. Due to attractive valuations in the Finnish IPO market, a growing trend has seen auctions conducted as part of a dual-track process where the private sale proceeds in parallel with a public listing. While this dual-track process is primarily ran as a private sale, there are compliance issues involved with public listings that need to be observed.

Acquisition agreements in Finnish private M&A do not differ

materially in substance from the UK or US market – seasoned deal practitioners will see familiar concepts. The primary differences are Finnish law specific and the generally less onerous "Nordic-style" documentation and terms. In addition, it is common that the documentation in Finnish private M&A is in English even if all parties are Finnish.

Parties commence M&A discussions usually by signing a non-disclosure agreement and/or a letter of intent. Thereafter, a buyer will conduct due diligence primarily through virtual data rooms hosted by third-party service providers. Buyers' due diligence is very important in Finland due to the Nordic practice of qualifying the seller's warranties by reference to a "fairly disclosed" standard, which to a large extent qualifies sellers' warranties with the virtual data room. Warranty and indemnity insurance has become widely used across industry sectors in Finnish private M&A.

The purchase price is usually based on a pre-agreed enterprise value, which is often subject to post-closing adjustments and can also be subject to earn-out payments. Locked-box structures are common in Finland and preferred in private equity exits. The most common purchase price mechanism in one-to-one deals is the post-closing price adjustment (i.e. completion accounts) structure, where the purchase price is adjusted within a certain period after completion by the closing date's net debt position and normalized net working capital. Prevalent earn-out factors are based on levels of post-completion EBIT/EBITDA, while other determining features, such as gross margin percentage and turnover levels, may also be agreed upon.

W&I insurances are commonly used and can be regarded as the prevalent form of buyer protection especially in competitive auction processes.

Arbitration as a dispute resolution mechanism is customary in Finland and enforceable by local courts. Choice of jurisdiction clauses that select a non-Finnish jurisdiction are also seen.

DUTIES OF THE BOARD & CONTROLLING SHAREHOLDERS

The general director's duty of care during a takeover is to ensure that the company's shareholders receive the best possible price from the acquisition. However, the board of the target company usually has only a limited role in an acquisition of shares in a private company, and negotiations are conducted directly between the buyer and the owner of the target company.

It should be noted that although controlling shareholders do not have

any fiduciary duties created by business combinations, any breach of the Finnish Companies Act or the relevant articles of association as a result of sale of ownership could result in potential liability for damages.

JOHANNES PIHA
Partner
M&A & Private Equity
tel. +358 20 713 3225
johannes.piha@borenius.com

JOHAN ROMAN
Partner
M&A & Private Equity
tel. +358 20 713 3489
johan.roman@borenius.com

JYRKI TÄHTINEN

Senior Partner
M&A & Private Equity, Restructuring & Insolvency, Capital Markets & Public M&A, Corporate Advisory & Compliance, Fund Formation & Investment Management
tel. +358 20 713 3411
jyrki.tahtinen@borenius.com

NELLA ÅSTRÖM

Partner
M&A & Private Equity,
tel. +358 20 713 3570
nella.astrom@borenius.com

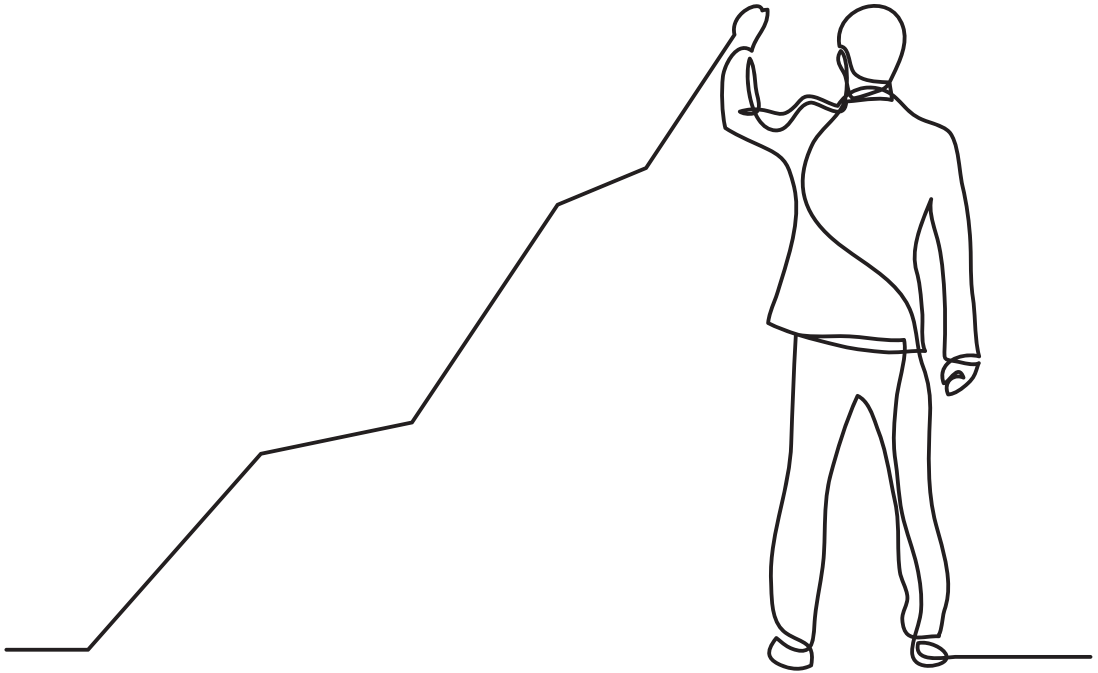
JANKO LINDROS

Partner
M&A & Private Equity
tel. +358 20 713 3403
janko.lindros@borenius.com

RECENT REFERENCES

- Borenius advised West Street Global Infrastructure Partners on its voluntary public cash tender offer for Adapteo Plc
- Borenius advised Freeport-McMoRan on the $160 million sale of Freeport Cobalt to Jervois Mining
- Borenius advised the OP Financial Group on the combination of mobile wallets business
- Borenius advised the owners on the sale of Housemarque
- Borenius advised Augmentum Fintech Plc in Tesseract's Series A funding
- Borenius advised Raisio Plc on the acquisition of Verso Food, a plant-based protein producer
- Borenius advised Corsearch on the acquisition of TrademarkNow
- Borenius advised Gofore Oyj on the acquisition of Qentinel Finland Oy
- Borenius advised Nouryon Chemicals International B.V. on its acquisition of J.M. Huber Corporation's CMC business
- Borenius advised Korona Invest on the sale of Pilke päiväkodit to Læringsverkstedet
- Borenius advised Vaaka Partners on the sale of Kotikatu
- Borenius advised NetNordic Group AS on its acquisition of Suomen Konehuone Oy
- Borenius advised S-Pankki on the acquisition of Fennia Asset Management and Fennia Properties
- Borenius advised Konekesko Oy on the sale of its Baltic subsidiaries
- Borenius advised Harvia on its acquisition of the majority of the German EOS Group
- Borenius advised Aktia Bank Plc on the acquisition of minority interests in Aktia Asset Management Oy

CAPITAL MARKETS & PUBLIC M&A



MARKETS, REGULATION AND ACTORS

The main trading platform for stocks, bonds and derivatives in Finland is the Helsinki Stock Exchange (also known as Nasdaq Helsinki), which operates two markets:

- the EU-regulated official list (the **Main Market**); and
- the First North Growth Market, which is an exchange-regulated multilateral trading facility (the **MTF Market**).

Companies listed on the Main Market are divided into three segments – small, mid-size and large cap – based on market capitalisation thresholds (less than EUR 150 million, EUR 150 million to EUR 1 billion, and more than EUR 1 billion). The Helsinki Stock Exchange does not have significant concentration by market cap segment or industry sector. On 1 October 2022, altogether 142 companies were listed on the Helsinki Stock Exchange with an aggregate market capitalisation of EUR 260.8 billion. Of those companies, 55 were listed on the MTF Market, which has grown significantly in the last three years.

Euroclear Finland is the central securities depository in Finland. Foreign shareholders may also beneficially hold their shares in listed Finnish companies in the name of their fund managers, who often liaise with local Nordic banks acting as account operators at Euroclear Finland. It should be noted that only Nordic banks (including two Finnish banks) have registered as issuer agents, receiving agents, or settlement agents on Euroclear Finland with shares listed in Finland.

The key authority overseeing the Finnish securities market is the Finnish Financial Supervisory Authority (the **FIN-FSA**), which supervises compliance with relevant regulation. As Finland is an EU Member State, EU regulations apply directly, which is also the case for the Finnish securities markets. Finnish market practice also reflects EU-level guidance and interpretations issued by the European Securities and Markets Authority (the **ESMA**).

The key regulations relevant for the Finnish securities markets include the EU Prospectus Regulation with its delegated regulations, the EU Market Abuse Regulation (the **MAR**), and the Finnish Securities Markets Act (the **SMA**). In the field of corporate law, equity issues are also regulated by the Finnish Limited Liability Companies Act (the **Companies Act**). In addition to legislation, there is also significant self-regulation, such as the Corporate Governance Code, which is mandatory for companies listed on the Main Market and voluntary to those on the MTF Market, and the recently reformed Helsinki Takeover Code (see more information below under the heading "**Public to Private Transactions**").

CURRENT TRENDS IN IPOS

Lately, the Finnish IPO market has seen significant changes as IPOs have migrated from the Main Market to the MTF market. In 2020 and 2021, the MTF Market has become a real alternative as a listing venue for sizeable IPOs listed on a Reg S basis. In the latter half of the previous decade, the number of IPOs per year in Finland ranged between 7 to 14, but in 2021, as many as 31 companies were listed (eight on the Main Market and 23 on the MTF Market, including two companies that transferred from the MTF Market to the Main Market). Despite the pandemic, 2021 was also a record year for IPOs on Nasdaq Helsinki. The same year also saw the first two SPAC listings in Finland, and the first Helsinki-listed SPAC has already completed its de-SPAC transaction. In sum, the MTF Market has vastly increased in popularity for companies looking to get publicly listed and raise capital through an IPO. According to data published by Nasdaq, the trading volume in EUR on the MTF Market increased by 117 per cent to EUR 1.68 billion in 2021.

During the period from 2020 until the end of 2021, IPOs in the healthcare sector raised the most proceeds on Nasdaq Helsinki, amounting to approximately USD 1.3 billion. The runner-up was the consumer discretionary sector with IPO proceeds of approximately USD 543 million.

The MTF Market offers access to capital markets with fewer requirements for the company and a lighter IPO process compared to listing on the Main Market. The following Main Market requirements are not imposed on issuers listing on the MTF Market (in parenthesis the MTF Market requirement):

- three years of audited historical financial information (two years);
- IFRS financials (Finnish GAAP is acceptable);
- minimum market value of EUR 1 million (no minimum value);
- compliance with the Finnish Corporate Governance Code; and
- minimum 25% of shares held by the public (10% of shares held by the public).

IPOs on the MTF Market

The IPO process on the MTF Market has become increasingly similar to the process that applies to Main Market listings. The most common reason companies still prefer the MTF Market is that they do not need to convert financials into IFRS from Finnish GAAP, which is a lengthy process and also provides less flexibility going forward.

The MTF Market has traditionally been utilised by growth companies that seek a capital injection to grow their business. However, in 2021 and 2022, Finnish private equity sponsors have also used the MTF Market to list their target companies

with significant secondary offerings, allowing the PE sponsor to do proper sell-downs of its ownership.

For companies that listed on the MTF Market in 2021, the average market capitalisation at the end of the first trading day was EUR 142.5 million, but the upper end was well above EUR 500 million, and the MTF Market currently features some companies with market caps of EUR 500 million to 1 billion.

We see all Nordic banks arrange larger IPOs on the MTF Market, which also reflects the growing popularity of the listing venue, but we have yet to see 144A issuances of MTF Market companies. One reason for this is that auditors have so far only provided SAS72 comfort letters based on IFRS financials and not Finnish GAAP audited financials..

The MTF Market also operates a premier segment in Finland, which has two issuers. The premier segment of the MTF Market requires for issuers to have IFRS financials and to apply the Finnish Corporate Governance Code, which are the same requirements as for the Main Market. This also explains the lack of companies on the MTF Market premier segment.

In 2022 YTD, there have been four technical listings on the Main Market and five MTF Market IPOs. In line with global IPO activity, listings in Finland have decreased significantly due to the Russian attack on Ukraine in February 2022 and the subsequent economic uncertainty. In early 2022, the IPO pipeline was still strong, but since then, most of the planned IPOs have been put on hold or converted into smaller pre-IPO private financing rounds.

Currently, the main focus in Finnish capital markets has shifted to refinancings and restructurings, such as accelerated book-built transactions, debt-to-equity conversions, and rights offerings.

The declining share prices coupled with the strong US dollar are likely to result in increased public takeover activity as explained below under the heading **"Public to Private Transactions"**.

Certain key features of Finnish IPOs

A Main Market IPO in Finland will take approximately six to nine months (four to six months for IPOs in the MTF Market). Since the FIN-FSA's confidential review period for IPOs is limited to 20 banking days, the preliminary work (roughly four to six months) is focused on financial and legal due diligence including pre-marketing by banks and prospectus drafting.

Roadshows and book-building commence after the FIN-FSA approves the prospectus, and they normally last for approximately two weeks. It has become commonplace for Finnish IPOs to have cornerstone investors, which are guaranteed a certain allocation if they undertake

to subscribe before the IPO is announced and agree that their name will appear on the prospectus. The trend in recent years has been for the corner process to begin earlier, and often these investors are already signed up for the ITF release. While such cornerstone investors have not agreed to a lock-up period, they are crucial in the book-building process and have come to play a key role in the success of the IPO.

Finnish IPOs in 2021 were heavily cornered. On average, cornerstone investors provided subscription undertakings for approximately 59.6% of all shares offered in the IPOs in 2021. Furthermore, a significant amount of shares in Finnish IPOs is generally allocated to institutional investors. This feature has also aroused a fair amount of criticism from the retail investor community, which has not been satisfied with its allocation.

In Finland, trading with shares typically begins on the day after the book-building has ended. Stabilisation may take place for up to 30 days after listing. The stabilising bank is not permitted to "refresh the shoe", meaning that the stabilising bank is not allowed to sell any shares it has purchased during the stabilisation period back to the market. Nearly all Finnish IPOs include the ability to stabilise with the exception of the smallest IPOs, which are handled by smaller, purely domestic advisors.

The placing agreements in Finnish IPOs tend to be governed by Finnish law (both Reg S and Rule 144A offerings). No US counsel are usually involved in Reg S IPOs, whereas Rule 144A deals usually feature one to two US counsel depending on the requirements of the underwriters. The UW US counsel usually holds the pen for the placing agreement in Finnish IPOs as they know the form requirements of larger banks.

While the placing agreements are governed by Finnish law in the majority of the offerings, some underwriters (London-based US banks) and PE sponsors may still prefer placing agreements that are governed by English law. However, having Finnish law as the governing law should not be a deterrent to the underwriter, and the dispute resolution forum is usually an arbitration tribunal in Finland as it will provide a confidential and more predictable and faster outcome for the parties in comparison to a public court.

In comparison to some other jurisdictions, there are no issues in forcing indemnities in Finland, whether these are given by the issuer or the selling shareholder(s). The issuer's financial advisor or even the issuer's counsel will often produce heads of terms for the placing agreement, and it has become a typical feature for a PE sponsor type selling shareholder to not provide any indemnities and to provide

only foundational representations and warranties (no representations on prospectus disclosure or the operations of the issuer). Especially in private equity exit IPOs, the liability of the selling shareholder has also been contractually limited to either gross or net proceeds. However, the issuer's indemnity is always uncapped with respect to time and amount.

Peculiarities of Finnish IPOs

One peculiarity to be noted in Finnish deals is the prefunding of the primary portion of the shares, which allows for the new shares to be registered with the Finnish Trade Register immediately after allocation has been concluded. This means that one of the local global coordinators will usually prefund the primary, but all arranging banks are jointly responsible if an institutional buyer is not able to pay for its allocation of the primary shares and where these shares cannot be sold to another buyer.

As retail investors prepay their shares at the time of subscription, primary is usually allocated to retail with the remainder going to well-known investors, such as the cornerstone investors. Usually, the underwriters are not able to deduct their underwriting fee for the primary portion as the auditors require for the payment for the new shares to be received by the issuer in full and for the fee to only be deducted thereafter (this is subject to negotiation). Issuers have sometimes requested that the fees not be deducted from the primary portion because if the deal is terminated by the underwriters, they already have the fee in their hands for the primary shares.

Minority sellers are usually allowed to sell their shares outside of the placing agreement pursuant to separate selling shareholder undertakings. This is done mainly for practical reasons in order to ensure that there are executed undertakings available well in advance of the completion of the deal and that the underwriters do not need to complete a know your client process vis-à-vis all small shareholders as long as a local global coordinator does so.

The separate selling shareholder undertakings contain the fundamental representations and warranties as well as abbreviated representations concerning compliance matters (such as anti-money laundering, sanctions, and anti-bribery) and the lock-up undertakings. The minority selling shareholders also agree that the underwriters may deduct their underwriting fees in full (including an incentive fee) upon closing. The unused portion of the incentive fee will then be returned to the minority selling shareholders after the main shareholder has decided on the amount of the incentive fee.

ACCELERATED BOOK-BUILT DEALS

In recent years, the Finnish market has also seen some accelerated book-buildings (ABB), which can be in the form of a primary (i.e. issuer) offering or a secondary (i.e. shareholder) sale. A primary ABB issue is considered a directed share issue and a deviation from the pre-emptive subscription right of the shareholders. As such, it requires a share issue authorisation from the shareholders of the company and for the issuer's board to conclude that there are weighty financial reasons for deviating from the pre-emptive subscription right of the shareholders.

There are notable differences between primary and secondary book-built offerings:

- A prospectus is only required for a listing of new shares on the Main Market (not on the MTF) and only when a primary offering exceeds 20% of the same class of securities already subject to public trading. Nevertheless, such primary offerings are generally limited to institutional investors or to fewer than 150 "unsophisticated investors" so as not to be treated as a public offering requiring a prospectus.
- Representations and warranties in a primary offering are typically extensive and similar in scope to those given in a rights offering, whereas they are typically limited to ownership and the transferability of shares in a secondary offering.
- Primary offerings typically impose a 180-day lock-up period on the issuer, whereas secondary offerings do not.

Due to the overnight nature of an ABB, market checks are important in ABBs, and wall-crossing typically takes place within 48 hours of the commencement of the ABB.

RIGHTS OFFERINGS

Under the Companies Act, the issuance of shares should primarily be carried out as a rights offering, i.e. on a pro rata basis to existing shareholders. As subscription rights are offered to all shareholders of the company, the decision to issue subscription rights that allow shareholders to subscribe new shares at a discount compared to the market price can be made by a simple majority, and there is no need to provide weighty financial grounds for the rights offering.

Rights offerings require significantly less work and time than IPOs as the company is already in compliance with relevant disclosure regimes, and there is no insider information to begin with. The due diligence process is lighter and prospectus drafting is easier as already disclosed information may be relied upon and the company has already published a description of its strategy,

business, and risks that are relevant to the investors. As the company's share is already admitted to public trading, the review period required by the FIN-FSA is shorter, i.e. 10 banking days compared to 20 for IPOs.

In rights offerings, it is customary to collect subscription undertakings on at least a pro rata basis from the main shareholders as well as undertakings to vote in favour of the board's share issue proposal at the shareholders' meeting. Usually, due to the size of the proposed share issue, an extraordinary shareholders' meeting will need to be convened to authorise the board to carry out the share issue.

Shareholders generally receive one subscription right for each share they hold. The subscription rights may be traded during the subscription period, which allows the shareholders to trade them on the market or use them to subscribe shares. During the subscription period, the holders of subscription rights are issued interim shares, which may be traded on the market and will be combined with the existing shares at the end of the subscription period. Excess shares may also be subscribed without any subscription rights. Such shares are primarily allocated to shareholders that have exercised their subscription rights and secondarily to other investors.

Four smaller rights offerings have taken place in Finland in 2022. Rights offerings are generally carried out on a "best efforts" basis in Finland unless an underwriting component is specifically needed e.g. to finance an acquisition.

PUBLIC TO PRIVATE TRANSACTIONS

The acquisition of a listed company can be achieved by means of a public tender offer or a statutory merger in Finland.

The vast majority of Finnish tender offers are based on a friendly process where the target board and the bidder conclude a combination / transaction agreement setting out the key procedural terms of the tender offer, under which e.g. the target board commits to recommending the bid. The completion of the bid is typically made conditional on achieving 90% of the target, amongst other conditions.

However, the Finnish market has also seen an increasing number of listed company mergers, which has comprised both domestic and EU cross-border mergers. A merger (whether it is a domestic or an EU merger) is a process regulated by the Companies Act where the boards of the merging companies sign a merger plan, which is typically accompanied by a combination agreement. The merger must then be approved by the qualified majority of 2/3 of the shares represented and votes cast at the merging company's general meeting. Normally, the merger is subjected to the general

meeting's decision-making also on the receiving company's side.

A successful tender offer normally has three phases:

- preliminary negotiations;
- an offer period; and
- squeeze-out proceedings (once the bidder has acquired more than 90% of the target shares and votes).

An offer must be publicly disclosed immediately upon the bidder's decision to make an offer, i.e. usually upon the signing of a combination agreement.

The bidder's obligations

The bidder is required to commence the offer period within a reasonable time after the offer has been announced, which typically occurs within one month at the latest when the offer is a cash offer. Finnish regulation allows for the offer period to be open for a period ranging from three to ten weeks. Competing bids or the pending receipt of regulatory approvals may constitute a reason to extend the offer period beyond the maximum of ten weeks.

The bidder is required to secure financing for the offer before it is announced, which means that sufficiently binding commitments from banks or other finance providers are required if the offer is funded with debt. The squeeze-out typically proceeds in two stages. The first step is to establish the offeror's right to all the shares in the target company and to obtain advance title to 100% of the target shares against the placing of a security and delisting. The second step then is to determine the final redemption price (i.e. the fair value of the shares).

Throughout the tender offer process, the bidder must treat all target shareholders equally, and the consideration offered for different classes of shares must be equitable.

The minimum price is determined by the highest price paid by the bidder, or by parties acting in concert with the bidder, during the six months preceding the announcement of the offer. In the absence of such purchases, the bidder may freely determine the offer price. The bidder is subject to a top-up obligation if the bidder purchases the target's shares from any shareholder for a price higher than that offered to other shareholders during the offer period or within a period of nine months thereafter.

An all-share consideration may only be offered in a voluntary bid when the bidder's share is traded on a regulated EEA market and provided that the bidder has not acquired more than 5% of the target votes during a period starting six months before the offer announcement and expiring by the end of the offer period. A cash alternative must be provided otherwise.

A mandatory bid is required if the bidder exceeds 30% or 50% of the voting rights of the target. The minimum price payable in a mandatory bid is determined by the highest price paid during the six months preceding the triggering of the offer obligation, or in the absence of such purchases, by the volume-weighted average price on the regulated market during the preceding three months.

To date, there have been no successful hostile tender offers in Finland other than the successful unrecommended mandatory bid done as a “creeping offer” over Silmäasema Plc in 2019.

The Helsinki Takeover Code supplementing the legislation on takeover bids and mergers has recently been revised. One of the key changes compared to the previous Takeover Code is that MTF Market tender offers and statutory mergers are both now also included within the scope of the Takeover Code.

JUHA KOPONEN
Partner
Capital Markets & Public M&A,
Financial Institutions & Regulation
tel. +358 20 713 3285
juha.koponen@borenius.com

MIA MOKKILA
Partner
Capital Markets & Public M&A,
Corporate Advisory & Compliance
tel. +358 20 713 3182
mia.mokkila@borenius.com

RECENT REFERENCES

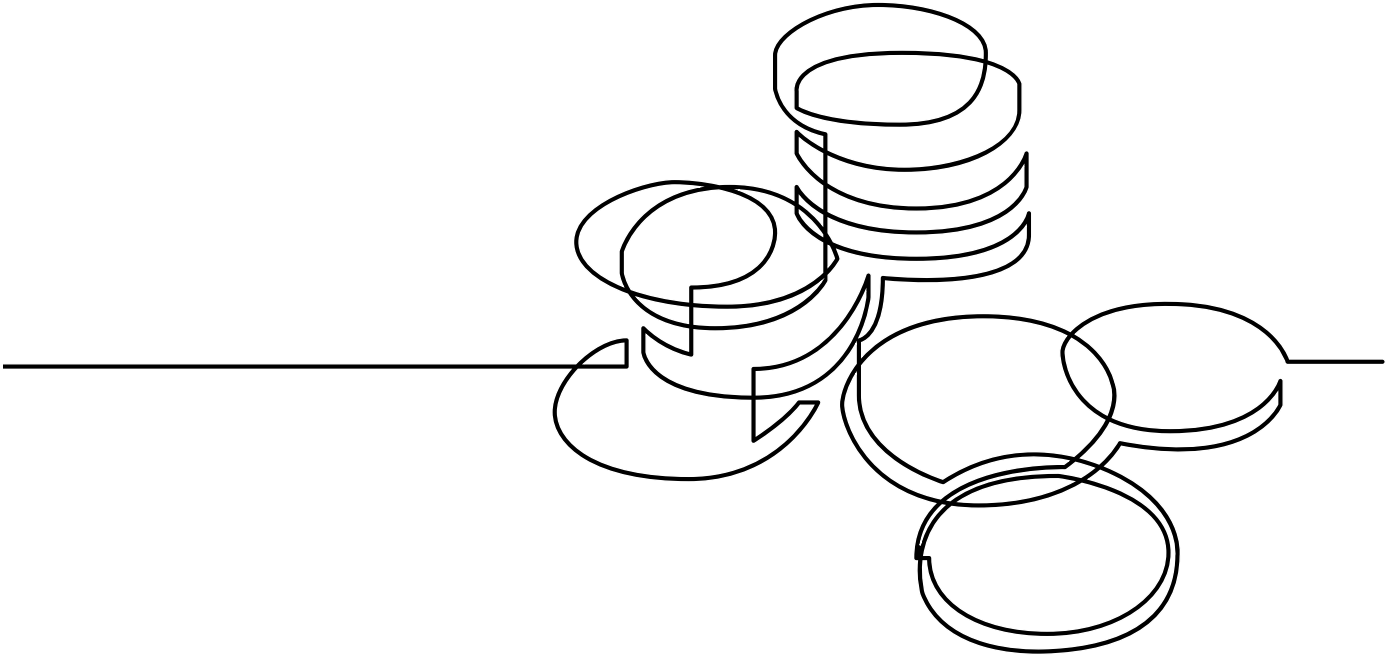
IPOs and rights offerings:

- Advised SRV on the reorganisation of its balance sheet
- Advised Lifeline SPAC I Plc on its Nasdaq Helsinki SPAC IPO
- Advised Modulight Corporation on its Nasdaq First North Growth Market Finland IPO
- Advised Spinnova Plc on its Nasdaq First North Growth Market Finland IPO
- Advised Nightingale Health Plc on its Nasdaq First North Growth Market Finland IPO
- Advised Nanoform Finland Plc on its Nasdaq First North Premier Finland & Sweden IPO
- Advised the joint global coordinators on Musti Group Plc's Nasdaq Helsinki main market IPO

Takeovers:

- Advised Netflix, Inc. on a recommended voluntary public cash tender offer to acquire Next Games Corporation
- Advised West Street Global Infrastructure Partners on its voluntary public cash tender offer for Adapteo Plc
- Advised the Mandated Lead Arrangers on the public takeover of Ahlstrom-Munksjö Oyj

BANKING & FINANCE



BASICS: SECURITY INTEREST & GUARANTEE

Finnish law makes a basic distinction between security interests (in rem) and guarantees. For security interests, the right of the creditor is attached to the assets given as security and the proceeds received from the sale of such assets in enforcement. A guarantee, on the other hand, is not attached to any specific assets and, accordingly, the creditor's right to payment is dependent on the ability of the guarantor to pay the guaranteed obligations when they fall due. The Finnish Act on Guarantees and Third Party Pledges (Act on Guarantees) governs both kinds of security interest given by a third party for the debtor's obligations and guarantees. It must, however, be noted that applying the Act on Guarantees is non-mandatory for commercial contracts and, is typically contracted out.

There are three types of security interests that are commonly used: mortgages over real property, floating charges on the movable assets of a business entity, and pledges on specific movable assets (including contractual rights). These security interests are all governed by different Finnish acts. The general principles of Finnish law permit for any right, property or other asset – whether tangible or intangible, movable or fixed – to act as security, as long as

- it is adequately specified;
- it is transferable; and
- it has economic value.

The establishment and perfection of a security interest requires:

- the existence of an underlying indebtedness or other ground (causa);
- the legal capacity to grant a security interest over the asset in question (including ownership of the asset); and
- the possibility for the perfection of the security interest (publicity effect).

Further, there are generally two different types of guarantees: a guarantee governed by the Act on Guarantees, which is dependent on the guaranteed obligations, and an on-demand guarantee, which is independent from such obligations and not governed by the Act on Guarantees. An on-demand guarantee allows the beneficiary to demand the guarantor to fulfil its obligations regardless of, inter alia, any possible changes in the outstanding amount or the validity of the guaranteed obligations. Guarantees governed by the Act on Guarantees are usually used when lending to businesses and private individuals, whereas on-demand guarantees are more common in international trade.

SECURITY OVER REAL PROPERTY

A security interest over real property is established in the form of a mortgage. The mortgage is registered with the Finnish Register of Land Ownership and Mortgages by the applicable local office of the National Land Survey of Finland upon application by the property owner. A mortgage is evidenced by a so-called electronic mortgage note (i.e. an entry made in the Finnish Register of Land Ownership and Mortgages). To perfect a pledge over real property, the electronic mortgage note will be registered in the name of the creditor. In real estate financing, properties are pledged as security for the borrowers' underlying obligations. Previously, it was also possible to have physical mortgage notes, which are now required to be converted into electronic form before they can be used as security.

A mortgage may only be enforced through judicial enforcement proceedings as set forth in the Finnish Enforcement Code. The creditor may seek a judgment confirming the debtor's obligation to pay, and the bailiff then decides which of the debtor's assets will be subject to the judgment and subsequent auction or other sale of the property. Alternatively, the creditor may request in its petition to the court to have the debt and secured asset confirmed. In the latter case, the bailiff does not need to issue a separate decision. Instead, they only need to organise the auction or other sale of the property.

SECURITY OVER MOVABLE ASSETS

A floating charge may cover either the movable assets of a business entity in general or only certain specific movable business assets of that entity as determined by branch or geographical location, for example.

A pledge on specific movable assets is less flexible than a floating charge because a debtor may e.g. dispose of assets subject to a floating charge in the ordinary course of their business and because a floating charge covers the relevant assets held by the debtor at any given time.

Pursuant to the Finnish Floating Charges Act, the following assets used in the course of business may be subject to a floating charge:

- certain fixed assets, such as buildings, machinery and intellectual property rights;
- current assets, such as materials and products; and
- financial assets, such as cash-in-hand, receivables and securities.

However, a floating charge may not, with certain exceptions, cover any asset over which a mortgage may be granted pursuant to any other applicable Finnish act, such as real property, aircrafts or vessels. Further, a previously established pledge will rank ahead of a subsequently established floating charge. Securities, book-entry securities and

monetary receivables constitute an important exception to this rule as later pledges covering such assets will receive priority over an earlier floating charge.

A floating charge is created by registering the relevant floating charge promissory notes with the Finnish Patent and Registration Office. Perfection requires delivery of the registered floating charge promissory notes to the creditor.

A floating charge is used more commonly in the financing of business operations because operational group companies usually have valuable movable assets that they use in their business operations. In real estate financing, a floating charge is sometimes used with holding companies but not with real estate companies, since the latter predominantly only have immovable assets. In addition, from the lender's perspective, the need for a floating charge may be limited if the relevant movable assets, such as shares, rental income and intragroup loan receivables, are pledged separately.

The perfection of a pledge on specific assets is subject to the following:

- for shares: transferring share certificates to the pledgee or, if there are none, notifying the relevant company of the pledge. If the shares are included in a book-entry system, the pledge must be registered in the pledgor's book-entry securities account;
- for receivables or accounts: a sufficiently descriptive notification, typically in a verifiable manner, of the pledge to the relevant debtor or bank (as applicable);
- for insurance proceeds: notification to the relevant insurance company; and
- for other movable assets: transfer of physical possession to the pledgee or, if the movable asset is in the possession of an independent third party (e.g. oil in an oil tank), a notification to the third party.

Only a pledge on a specific movable asset may be enforced through realisation by the pledgee (i.e. non-judicial enforcement). The Finnish Commercial Code provides for a one-month notice period, but this period may be, and typically is, entirely waived by mutual agreement, except for the residences of individuals. The creditor may either sell such assets or obtain title to them (i.e. redemption). However, such redemption must be completed on an arms-length basis.

A floating charge may only be enforced through judicial enforcement proceedings as described above.

CORPORATE BENEFIT & FINANCIAL ASSISTANCE

The corporate benefit principle states that a limited company must receive sufficient corporate and commercial benefit, whether direct or indirect, in exchange for the obligations assumed as part of a security or guarantee. Deviation from this

principle may render the transaction unenforceable or enforceable only to the extent benefit was received by such company. In group contexts, the benefit must run to the entity assuming the obligations; it is insufficient for the benefit to run to the group as a whole. Management and participating shareholders may incur criminal and civil liability if the transaction does not comply with the above requirements.

A Finnish limited company may not provide a security (or financing) to a third party to enable it to acquire the shares of the said company or those of its parent company. As such, a target company cannot provide a guarantee or grant a security to any third-party lender to the extent that the funds borrowed would be used towards financing the acquisition of the target company or its direct or indirect parent company. A breach of this rule may result in the transaction being deemed null and void in addition to possible criminal and civil liability for the management and participating shareholders. Typically, a security is therefore given subject to limitation language.

There are no whitewash or similar procedures, nor are there any statutory or court-established practices on how long such a financial assistance prohibition remains in effect to avoid its application. Consequently, if a substantial amount of time lapses between the grant of existing financing and new financing, and if these rounds of financing are not connected in some way (for example, the new financing was not already agreed upon at the time the existing financing was granted), the risk that the new financing will be deemed related and thus constitute prohibited financial assistance is usually rather limited.

NIINA NUOTTIMÄKI
Partner
Banking & Finance,
Restructuring & Insolvency
tel. +358 20 713 3506
niina.nuottimaki@borenius.com

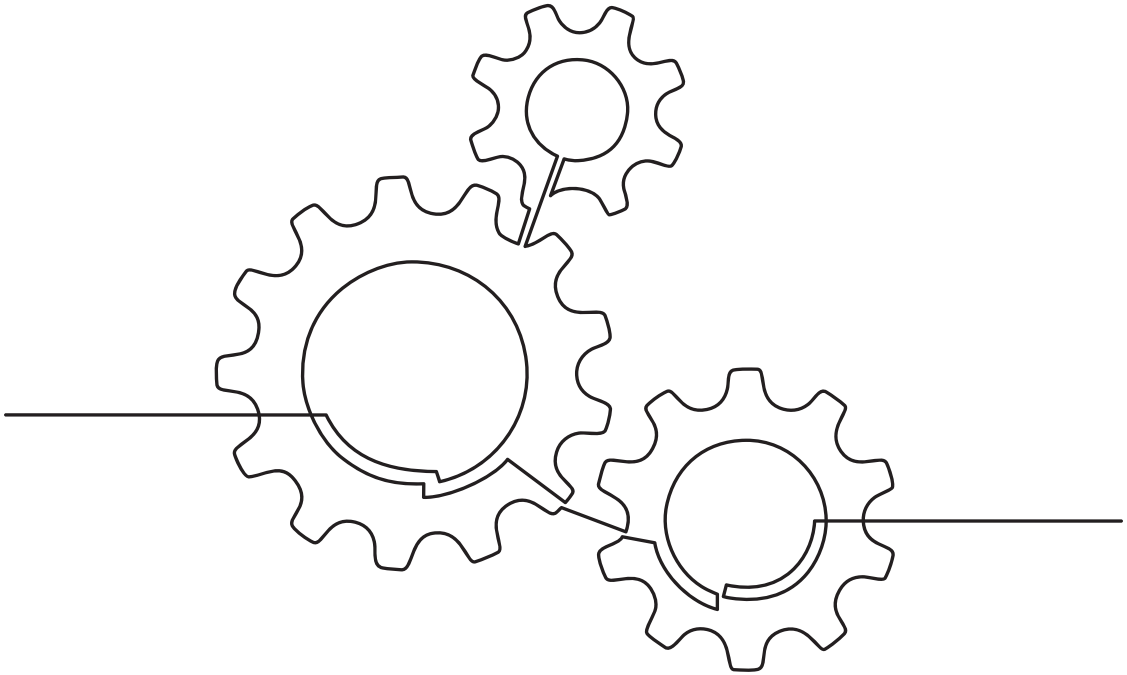
RIIKKA ERONEN

Partner
Banking & Finance
tel. +358 20 713 3278
riikka.eronen@borenius.com

RECENT REFERENCES

- Borenius advised the State of Finland on the 2.35 billion bridge financing for Fortum Plc
- Borenius advised Helsinki-listed SRV on the reorganisation of the company's work-out financing and its balance sheet restructuring in connection with the write-down of the company's Russian and Fennovoima assets totalling EUR 141.2 million
- Borenius advised Danske Bank A/S and OP Corporate Bank plc on their EUR 500 million green term loan for Neste Oyj
- Borenius advised a syndicate of Nordic and international commercial banks in relation to the financing of the construction of Metsä Fibre's bioproduct mill in Kemi, Finland
- Borenius advised PHM Group in connection with the issue of EUR 300 million senior secured fixed rate notes that are due in 2026
- Borenius advised OP Corporate Bank plc and other lenders in connection with Ylva's EUR 205 million syndicated loan facilities
- Borenius advised, together with Milbank LLP, the mandated lead arrangers on the underwritten financing package supporting the recommended public cash tender offer made for Ahlstrom-Munksjö Oyj by a consortium that includes Bain Capital
- Borenius advised Danske Bank A/S, Finland Branch and other lenders in connection with EUR 125 million committed term loan and multicurrency revolving facilities and a EUR 20 million uncommitted acquisition facility for Eltel Group Oy

FINANCIAL INSTITUTIONS & REGULATION AND FINTECH



GENERAL

Finnish financial institution regulation is largely in line with that of other EU Member States due to the high level of harmonisation of the EU financial regulation. The European Securities and Markets Authority (ESMA) strives to promote supervisory convergence in the EU, which requires for the applicable Finnish authority, i.e. the Finnish Financial Supervisory Authority (FIN-FSA), to make every effort to comply with ESMA guidelines (the comply or explain principle).

The Bank of Finland, which is Finland's central bank, oversees the financial and economic system of Finland. It implements the European monetary policy in Finland through its own monetary policy operations and safeguards the domestic financial system's liquidity management.

BANKING AND INVESTMENT FIRMS

Finnish banks and investment firms are subject to local legislation and EU level regulation that apply to all local banks and investment firms.

Banking regulation in Finland is set out in the Finnish Act on Credit Institutions, which regulates the right to conduct credit institution activities. Credit institutions and investment firms are subject to capital requirements pursuant to the EU Capital Requirements Directives IV and V, which are commonly referred to as CRD IV and CRD V and the EU Capital Requirements Regulation, CRR. In addition, specific types of banks may be subject to particular regulation, such as:

- commercial banks (the Finnish Act on Commercial Banks and Other Credit Institutions in the Form of a Limited Company);
- cooperative banks (the Finnish Act on Cooperative Banks and Other Credit Institutions in the Form of a Cooperative). There are two large cooperative bank groups (the OP Financial Group with 143 member co-ops and POP Bank Group with 26) in Finland;
- savings banks (the Finnish Savings Bank Act). In addition to several independently operating savings banks, one savings bank group exists in Finland. It is called the Savings Bank Group, and it consists of ca. 40 savings banks operating in distinct regions as independent legal entities;
- investment banks (the Finnish Investment Services Act); and
- mortgage credit institutions (the Finnish Act on Mortgage Credit Bank Operations).

An entity must have a credit institution license when it receives repayable funds from the public and grants credit or other financing from these funds. The relevant entity must file an application for such a license with the FIN-FSA, which will then

submit a proposal to the European Central Bank (ECB). The FIN-FSA must announce its decision regarding the license within 12 months of receiving the relevant application.

The most relevant act stipulating investment firms is the Act on Investment Firms. Activities that require a licence are

- securities brokerage;
- market-making;
- securities dealing;
- underwriting;
- asset management;
- investment advice;
- operation of an MTF or an OTF;
- emission arrangement.

In addition to the investment services investment firms are allowed to provide ancillary services listed in the Act on Investment Firms. Credit institutions can by virtue of the credit institution licence provide investment services.

A credit institution or an investment firm established in the EU may provide service via a branch or on a cross border basis in Finland and can commence its operations after the FIN-FSA has received a notification from the supervising authority of the relevant entity's home state. A non-EEA financial institution does not have the right to passport its services or its ancillary services to Finland, but it can have a representative office in Finland that promotes the services of the main entity without providing any services locally.

The FIN-FSA is a member of the Single Supervisory Mechanism (SSM) that comprises the ECB and the competent national authorities of the other participating EU countries. The SSM Regulation confers specific tasks to the ECB with regard to the prudential supervision of credit institutions. For example, the ECB directly supervises banks that are regarded as significant, such as the OP Financial Group, Nordea Bank and Municipality Finance Plc.

The most significant Finnish financial institutions are also subject to the EU's Single Resolution Mechanism (SRM), which is a central institution for bank resolution in the EU and one of the pillars of the banking union. The Single Resolution Board (SRB) is a fully independent EU agency acting as the central resolution authority within the banking union. Together with the national resolution authorities of participating countries, it forms the SRM. The Finnish Financial Stability Authority is the national resolution authority in Finland, and it is also responsible for the Finnish deposit guarantee system. The regulations governing resolution are based on the EU's Bank Recovery and Resolution Directive, which has been implemented at the national level by the Act on the Financial Stability Authority and the Act on the Resolution of Credit Institutions and Investment Firms.

Other banking related actors include the Finnish Financial Ombudsman

Bureau (abbreviated as FINE in Finnish), which provides advisory services for individuals and small enterprises free of charge in the fields of banking, insurance and securities; the Finnish Competition and Consumer Agency that monitors laws that protect consumers; and the Finnish Consumer Advisory Service that advises and mediates for consumers when problems arise, including those in the field of banking.

FINANCIAL INSTITUTION REGULATION

Depending on the range of services, the regulations noted below may apply in addition to those noted above:

- The Finnish Act on Investment Services, which implements the EU Directive on Markets in Financial Instruments (as amended, MiFID II), accompanied with the directly applicable EU regulation (MiFIR), which covers, among many other things, the disclosure of investment service costs, additional record-keeping, such as recording customer calls, and requirements for internal risk management and governance.
- The second EU Payment Services Directive (PSD II) is implemented by the Finnish Act on Payment Services and the Finnish Act on Payment Institutions. The acts generally regulate the provision of payment services and e.g. require for payment institutions to apply for an authorisation with the FIN-FSA unless they are eligible for an exception from this rule. The implementation of PSD II established new requirements that primarily relate to the inclusion of surcharge bans on consumer cards and two-factor authentication for customer authorisation (strong authentication). The implementation of PSD II also opened up the financial services market to new players by requiring banks to share payment initiation and bank account information with third party players.
- The Finnish Act on Trading in Financial Instruments, which governs trading in financial instruments on the regulated market, multilateral trading facilities and organised trading facilities (i.e. Nasdaq Helsinki and First North Finland) and the brokers of these trading venues, securities issuers and systematic internalisers.
- The Finnish Act on the Book-Entry System and Clearing Operations and the Finnish Act on Book-Entry Accounts, together with the EU's Central Securities Depository Regulation (CSDR), which cover the operations of Euroclear Finland (Finland's central securities depository) and passporting for foreign central securities depositories, such as securities settlement, maintaining securities accounts and recording securities in a book-entry system, and also applies to central securities

depositories participants and security issuers.

- The Finnish Act on Crowdfunding, which enables smaller-scale capital market financing to a number of operators by allowing for a more affordable crowdfunding license instead of the regulated market or multilateral trading facility licenses and without the need for the companies to provide a full-scale prospectus under the Prospectus Regulation.
- The Finnish Act on Fund Management Companies which covers establishment and operations of a fund management company.
- The Finnish Act on Alternative Investment Fund Managers which covers the management of alternative investment funds.
- The Finnish Act on Preventing Money Laundering and Terrorist Financing, which implements the fifth EU Anti-Money Laundering Directive, particularly in relation to client identification and know-your-client requirements, reporting suspicious transactions to the Financial Intelligence Unit, requiring training of personnel, and regarding rules on transparency and the beneficial owners of legal persons. The Government has proposed amendments to the current Act, which seek to bolster the anti-money laundering framework. The relevant government proposal is currently being reviewed by the Parliament.
- Money laundering has also been criminalized in the Finnish Criminal Code and this criminalization has also been subject to EU directive. Further, there is an ongoing project to implement EU directive relating to law enforcement's access to financial information.
- The Finnish Consumer Protection Act provisions terms and contracts, information obligations and conduct in relation to consumer customer. The Act implements among other things the Mortgage Credit Directive.

Also, several EU regulations are directly applicable legislation in Finland it being a member country of the EU and the most important being:

- Prospectus Regulation covering contents of the disclosure information in relation of issuance and listing of securities
- Market Abuse Regulation covering disclosure obligations and safe harbours protecting against misuse of insider information and market manipulation
- EU Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (EMIR), which covers the clearing of OTC derivative contracts, related reporting requirements, and requirements for central counterparties and trade repositories.
- Regulation on the establishment of a framework to facilitate sustainable investment (Taxonomy Regulation)
- Regulation on sustainability-related disclosures in the financial services sector covering disclosure

obligation for financial institutions relating to sustainable investment products.

Financial institutions that provide insurance products and related services may also become subject to the Finnish Insurance Companies Act that regulates direct insurance and reinsurance business that is not covered by pension insurance. EEA and non-EEA insurance companies operating in Finland are also regulated by the Finnish Act on Foreign Insurance Companies. Additionally, certain insurance sectors have their own regulation, such as the Finnish Act on Pension Insurance Companies, the Finnish Motor Liability Insurance Act, the Finnish Patient Injuries Act, and the Finnish Environmental Impairment Liability Insurance Act.

Furthermore, the Finnish Insurance Contracts Act sets out vital regulations for insurance contracts, such as mandatory provisions protecting the rights of the insured, non-policyholder parties entitled to compensation or benefits under an insurance contract, and policyholders. The Finnish insurance market is well developed and has a limited number of actors. However, digitalisation and technological development have affected, and will continue to exponentially affect, much of the insurance sector.

FINTECH

Fintech companies seek to improve the delivery of financial services or manage financial aspects, and as a result, they may be subject to all or some of the same processes and regulations that govern financial institutions.

Fintech can, for example, cover one or more of the following:

- payment services, electronic and mobile money services;
- the digitalisation of various assets and related processes;
- data-driven financial services, potentially involving the use of cloud computing, big data, artificial intelligence or smart contracts;
- crowdfunding and peer-to-peer funding services;
- the delivery of ancillary products and services, whether relating to loans, investments, insurance or otherwise;
- cryptocurrency or promoting the use of blockchain technology outside cryptocurrencies;
- establishing consortia for broader solutions or market-level utilities, involving potentially utilising distributed ledger technology;
- cyber security;
- RegTech, which seeks to help financial service firms meet compliance rules (cf. the above regulations); and/or
- user interfaces that source a financial institution's data to improve the delivery of certain financial services.

Fintech companies must engage in continuous analysis to determine whether their current or proposed services or business models may subject the company to additional financial services regulation.

ESG

In addition to the ESG regulation applicable to the financial institutions Finland has implemented non-financial information directive and Finnish companies have started preparations to be compliant with the Corporate Sustainability Reporting Directive which will also be implemented in due course and broadens the reporting requirements as well as complements disclosure requirements applicable to the financial institutions

JUHA KOPONEN
Partner
Capital Markets & Public M&A,
Financial Institutions & Regulation
tel. +358 20 713 3285
juha.koponen@borenius.com

PÄIVI KUITUNEN
Counsel
Capital Markets & Public M&A,
Financial Institutions & Regulation
tel. +358 20 713 3160
paivi.kuitunen@borenius.com

RECENT REFERENCES

- Borenius advised Finnish banks (the OP Financial Group, Danske Bank, Aktia Bank, and S-Bank) on an investment in and exit from DIAS Oy, which has developed a platform for executing sales transactions for apartments and real estate. The joint venture was sold to Alma Media Plc
- Borenius is currently advising Fingrid on a project to set up a national data hub for the electricity market. The data hub will serve as a centralised information exchange system for the electricity retail market in Finland
- Borenius advised the sellers on the sale of LVS Brokers (i.e. Omalaina) to the Sambla Group. This was a sale of one of the most sought-after fintechs on the Finnish market in early 2022
- Borenius advised Aktia Bank Plc on the acquisition of minority interests in Aktia Asset Management Oy
- Borenius advised S-Pankki on the acquisition of Fennia Asset Management and Fennia Properties
- Borenius advised a service provider in negotiations with a financial institution seeking to outsource its services to our client
- Borenius advised an investment firm in a collaboration arrangement, which included the outsourcing of certain regulated services
- Borenius advised CapMan on the acquisition of controlling shareholding in JAM Advisors
- Borenius advised Mandatum Life on the acquisition of two investment funds from Fourton

CORPORATE ADVISORY

BUSINESS ENTITIES IN FINLAND

The most prevalent corporate form in Finland by a large margin is the limited liability company (abbreviated as Ltd). An Ltd is a legal person that is distinct from its shareholders, and its shareholders generally have no personal liability for the Ltd's obligations.

An Ltd can be private (abbreviated as Oy in Finnish and as Ab in Swedish) or public (abbreviated as Oyj in Finnish, as Abp in Swedish, and typically as Plc in English), but only public Ltds can have their equity or debt securities publicly traded on Nasdaq Helsinki. Primary regulations affecting Ltds include the Finnish Limited Liability Companies Act, the Finnish Securities Market Act for listed companies, and self-regulation

by the Corporate Governance Code, which applies only to public Ltds with equity listings on Nasdaq Helsinki (not debt listings or Nasdaq First North Growth Market listings).

General partnerships and limited partnerships are also used to some extent. Due to their specific use and contract-based structure, this topic is discussed in further detail under "Fund Formation".

Branches, usually identifiable by the words "Finnish branch" added to their name, are increasingly being used to conduct business in Finland. A branch is a separate tax entity from its foreign company, but it is not a separate legal entity. As such, the applicable foreign company has unlimited liability for the obligations of its branch.

FORMING AN ENTITY

An Ltd is established after it is registered with the Finnish Trade Register by virtue of a written Memorandum of Association, which must include at least

- details of the founders and the number of shares allocated to each founder;
- share subscription price;
- members of the board of directors;
- managing director, if elected;
- auditor and/or audit firm, if elected; and
- the company's Articles of Association.

The company's Articles of Association typically establish e.g. the following:

- company name;
- field of business;
- company's domicile, i.e. a municipality in Finland;
- board composition and representation rights; and
- possible restrictions on the transfer or acquisition of shares, i.e. redemption or consent clauses (in case of private companies).

The founders are the company's first shareholders. The company's annual financial statements must be registered with the Finnish Trade Register, and they are publicly available. Details of the registered board members, managing director and auditor (if appointed) are also public knowledge with respect to Finnish Ltds.

No restrictions are imposed on the residency or nationality of an Ltd's founders or shareholders. Both natural and legal persons can act as the founders and shareholders of an Ltd. However, only natural persons can be appointed to the board of directors, and at least one board member (and a deputy board member, if applicable) must reside within the EEA, unless the Finnish Trade Register grants a residency requirement waiver, as commonly seen for e.g. Switzerland and the US. If such a waiver is granted and the company has no other officers or persons authorised to sign for the company or holders of

procuration that meet the residency requirement, a separate local representative who resides in Finland must be designated as the registered agent for service. This residency requirement functions as a local legal service of process.

The subscription price for initial shares must be paid in full prior to the registration of the Ltd. However, there is no minimum share capital requirement for private Ltds, but a minimum share capital of EUR 80,000 is required for public Ltds. If the company has share capital, it must be held in a bank operating in Finland or a comparable foreign account at the time of registration.

The Finnish Freedom of Enterprise Act ensures that business activities can generally be pursued in Finland. However, certain business activities, such as investment management, banking, third party debt collection and activities related to pharmaceutics and mining activities, are subject to a license. Other business activities, such as healthcare, eldercare, and realtor activities, are subject to an advance notification obligation. EU rules may permit the passporting of certain licenses, especially those used in financial services.

A branch established by a company located within the EEA only requires registration with the Finnish Trade Register similarly to an Ltd. However, if a company outside the EEA establishes a Finnish branch, the branch also requires a waiver from the Finnish Patent and Registration Office. It should be noted that a Finnish branch cannot operate outside the line of business conducted by the foreign company.

CAPITAL STRUCTURE AND EQUITY INSTRUMENTS

The shares of an Ltd do not need to have a par value. Consequently, an Ltd can issue shares without a corresponding increase of its share capital or cancel shares without decreasing the share capital. Similarly, the share capital can be increased or decreased without increasing or decreasing the number of shares (through an issue or cancellation of shares).

A decision to issue new shares shall therefore define whether or to what extent the share subscription price paid for the shares is recorded as an increase of the Ltd's share capital or, alternatively, recorded in the reserve for invested unrestricted equity.

The amounts recorded in the reserve for invested unrestricted equity are distributable funds and may be freely distributed to the shareholders (provided the solvency of the company is not jeopardised and the balance sheet reflects sufficient unrestricted equity).

The Finnish Companies Act contains a presumption rule that the price paid for new shares subscribed is to be credited in full to the share capital as an increase, unless otherwise

stated in the share issue decision. Amounts paid for treasury shares are, however, to be credited as an increase of the reserve for invested unrestricted equity, unless otherwise provided for in the share issue decision.

Ltds may also opt to prescribe a par/nominal value for their shares in the Articles of Association. If the shares in the company have a par/nominal value, the amount to be credited to the share capital for each share at incorporation or in a share issue shall be at least equal to the nominal value. Likewise, in an issue of new shares or when new shares are issued against option rights, the share capital of the company shall be increased by at least the nominal value of the shares thus issued.

A consequence of the shares having no par or nominal value is that the Ltd may issue shares free of charge, i.e. gratuitously. A directed share issue may, however, be a share issue without payment only if there is an especially weighty reason for the same both for the company and regarding the interests of all shareholders in the company. The issue of shares free of charge is a typical way to implement a split of existing shares, and also a means of creating treasury shares for the company.

In addition to issues of shares against or without payment, Finnish Ltds have the option to issue option rights and other special rights entitling their holders to shares. A special right may either confer a right or obligation to subscribe for new shares or treasury shares.

Option rights or special rights entitling their holders to shares may also be issued to a creditor of the company with the condition that the receivable of the creditor is to be set off against the subscription price of the share (convertible loans).

GOVERNANCE IN FINNISH LTDS

An Ltd has two mandatory governing bodies. These are the general meeting, where shareholders exercise their decision-making powers, and the board of directors, which is tasked with overseeing the administration and organisation of the company. In addition, a managing director (i.e. a CEO) can be appointed by the board to see to the daily administration of the company.

The Articles of an Ltd may also prescribe that the general meeting appoints members to a Supervisory Board, tasked with the oversight of the board of directors' and managing director's administration of the company.

The Articles may confer other tasks to the Supervisory Board, but only to the extent such tasks fall within the general competence of the board of directors. The Supervisory Board may not represent (or sign for) the company,

unless the members of the Supervisory Board have been granted individual representation rights.

The Ltd's highest governing body is the shareholders' general meeting, which has the power to decide on e.g. the following matters:

- the remuneration and appointment of board members (and members of the Supervisory Board, if established) and auditors;
- the adoption of annual audited financial statements (within six months from the end of the applicable financial period);
- the distribution of dividend or other assets;
- discharging board members and executives from liability;
- amendments* made to the Articles of Association; and
- decisions relating to the company's shares or share capital, such as directed share issues*, issues of share options*, and mergers* and demergers*.

Generally, only a simple majority of the shareholders' votes will be sufficient for adoption. However, the decisions indicated above with an asterisk (*) require a supermajority (i.e. at least two thirds of all votes cast and shares represented at the general meeting). Certain decisions require the support of all shareholders or that of a majority or supermajority of the holders of shares in each share class. Unanimous shareholders may also adopt decisions without convening a shareholders' meeting, per *capsulam*.

The board of directors has the general competence to make the most important business decisions, such as those relating to mergers and acquisitions (in some situations with shareholder approval), major contracts, investments, financing arrangements, approval of annual accounts (within four months from the end of the fiscal year), remuneration and appointment of the managing director, defining and monitoring the implementation of the company's strategy, and monitoring company financials. As such, the board of an Ltd is engaged in both strategic and operative matters.

Board decisions, whether issued in face-to-face meetings, during teleconference meetings or in the form of written resolutions, are recorded in minutes signed by the chairperson and at least one other member of the board. No decision may be adopted unless all board members have been afforded the possibility to participate in making the decision. Generally, only a simple majority of board members is required for a quorum, and a simple majority vote of the quorum will be sufficient for adoption, unless otherwise provided in the company's Articles of Association.

If an Ltd elects a managing director, the managing director shall see to the executive management of the company in accordance with

the instructions and orders given by the Board of Directors (general competence). In practice, the managing director is responsible for the Ltd's daily operations. Otherwise, these activities are the responsibility of the board of directors. The Managing Director shall see to it that the accounts of the company follow the law and that its financial affairs have been arranged in a reliable manner. The managing director shall supply the Board of Directors and the Members of the Board of Directors with the information necessary for the performance of the duties of the Board of Directors.

The managing director may also serve as a board member or as the chairperson with publicly listed companies being the exception. In such case, the Finnish Governance Code recommends that the same person does not serve as both the managing director and as the chair of the board.

The managing director shall have the right to be present and to speak at the meetings of the Board of Directors even if the managing director is not a Member of the Board of Directors, in so far as the Board of Directors does not otherwise decide.

Since the branch of a foreign company is not a separate legal entity but rather considered a part of the foreign company, there are no separate decision-making bodies or procedures prescribed for a branch. The management of the foreign company makes the decisions concerning the branch.

The general principles guiding the board of directors' and the managing director's duties include

- the duty of care and loyalty (fiduciary duties): requires conduct with due care and promotion of the interests of the company, which is the collective shareholders' interest to generate profits (unless another purpose is provided for in the company's Articles of Association);
- equal treatment: prohibits decisions that confer an undue benefit to one shareholder or another person at the expense of the Ltd or another shareholder; and
- monitoring of legality: the board and board members are prohibited from executing any decisions made by the board or the shareholders that are invalid because they are in breach of the Finnish Limited Liability Companies Act or the company's Articles of Association.

The board has additional obligations with respect to monitoring the company's financial situation, such as registering a notification with the Finnish Trade Register if the Ltd has negative equity. For a public Ltd, the board must prepare interim financial statements and call an extraordinary general meeting if the equity of the company falls to less than half of its share capital.

Board members and the managing director may be held liable towards the company based on a negligent breach of the duty of care. Negligence is assessed similarly to the business judgement rule. An act that appeared diligent at the time will not – or should not – lead to liability even if, in hindsight, the consequences were negative.

As a main rule, the board members are jointly and severally liable for compensating the injured party. The board members' liability is, however, not collective, i.e. liability will ultimately be allocated as is deemed reasonable in view of the fault apparent in each board member. Ltds with material business activities often purchase Directors & Officers (D&O) insurance or are included under a group-wide policy to cover the potential liability of the board members and managing director. The terms and conditions of different D&O insurance policies tend to vary to a significant degree, and management should thus carefully review their terms.

DISTRIBUTING ASSETS

An Ltd's assets and dividends may be distributed only in accordance with the Finnish Limited Liability Companies Act. Any distribution must meet both the balance sheet test (distribution based on the latest adopted and audited financial statements) and the solvency test (distribution prohibited during or if it causes insolvency). A sound business reason must exist for other transactions that reduce the company's assets or increase its liabilities.

The assets of a foreign company's branch office are not considered, in a corporate sense, to be separate from the foreign company, and therefore, there cannot be any separate distribution of assets from the branch.

A company's share capital is only subject to the minimum requirements set for private or public Ltds, and the share capital is not required to be modified because of additional share issuances. However, if the company's shares have been ascribed a par value in the company's Articles of Association, the company's share capital must be increased by that value for each share issued.

In the context of M&A transactions, the Finnish Limited Liability Companies Act prohibits providing loans, assets, or a security for the purposes of enabling a third party to acquire shares in the Ltd or its parent. This prohibition does not apply to financing a third party's acquisition of shares in the Ltd's subsidiary by granting vendor note loans to the acquirer, provided that the general requirement for a sound business reason is met. The prohibition also does not, generally speaking, apply to paying dividends, even if such funds ultimately end up being used

to repay acquisition financing. Therefore, a post-acquisition debt pushdown can be achieved by having the target company distribute funds to the acquiring company. Alternatively, the target company may be combined with the purchaser through a subsidiary merger as it allows the target company's assets to be transferred by general succession to the borrower. Each case should, however, be reviewed and analysed on a case-by-case basis.

CHANGES TO THE FINNISH COMPANIES ACT REPLACE TEMPORARY RULES AND ENABLE COMPANIES TO HOST REMOTE OR HYBRID GENERAL MEETINGS

The AGM season in the spring of 2020 brought with it novel challenges as listed companies preparing for their annual general meetings (AGMs) were forced to consider the impact of the coronavirus pandemic on gatherings of shareholders.

To address the challenges that Finnish companies faced with hosting their AGMs, the Ministry of Justice proposed temporary legislation that would allow companies flexibility to hold their statutory meetings despite the coronavirus epidemic and the related restrictions on gatherings.

Under the temporary legislation, shareholders could be required to exercise their rights at the meeting remotely by mail, telecommunications or by other technical means only. In deviation from the previously applicable rules, remote participation could be offered as the sole alternative and shareholders would not be allowed to participate in person at the meeting venue.

The temporary legislation expired on 30 June 2022 and was replaced by amendments to the Finnish Companies Act introducing a permanent regime to allow remote meetings, provided that the company's shareholders so decide.

AMENDMENTS TO THE FINNISH COMPANIES ACT 2022

Amendments to the Finnish Companies Act ("FCA") enabling shareholders to participate in general meetings remotely entered into force as from 11 July 2022 (similar changes were also introduced for housing companies, co-operatives and associations, but for the purposes of this article, we focus on limited liability companies). Contrary to the temporary legislation governing remote meetings up until then, the amendments have no expiry date and are intended to be in force indefinitely.

The new rules recognize virtual general meetings held without a physical meeting of shareholders or a meeting venue ("Remote Meeting") and general meetings that may be attended either in person

at a traditional meeting venue or remotely by technical means ("Hybrid Meeting"). The prerequisites for holding a general meeting as a Remote Meeting or a Hybrid Meeting differ.

A fundamental difference between the Remote Meeting and the Hybrid Meeting introduced by the 2022 amendments compared to the remote general meetings held under the temporary legislation is that shareholders must be able to exercise their full participation rights (right to speak, right to ask questions and to vote) during a Remote or Hybrid Meeting.

The FCA requires that the participation rights of shareholders can be ascertained in a manner corresponding to procedures in a traditional physical meeting, i.e., meaning that the identity and the representation right of the participant can be sufficiently evidenced. The amendments to the FCA do not, however, regulate in detail how the identity and the right of participation of the shareholders participating remotely should be confirmed, i.e., the amendments do not expressly require the company to identify the participants by strong electronic identification means (e.g., banking identifiers or similar).

Shareholders participating in remote general meetings arranged under the temporary legislation typically exercised their rights in advance (voting and submitting questions and counterproposals in advance of the meeting) under the temporary legislation.

A review by the Finland Central Chamber of Commerce dated 19 August 2022 covering the general meetings of Finnish listed companies in 2022 noted that out of the 130 listed companies reviewed, 109 companies utilized the possibility of requiring shareholder to vote in advance. None of the companies included in the review had arranged their general meetings as Remote Meetings under the amended rules of the FCA.

Going forward, it will not be possible to arrange general meetings under the new amendments to the Finnish Companies Act in this way (i.e., voting and posing questions and counterproposals in advance as a sole means of participating), as the amendments to the FCA require companies to either offer means of participating remotely during the meeting or the option of attending the meeting in person. The possibility of participating in advance by technical means or postal voting can be offered only as an alternative to participating during the general meeting.

Another fundamental difference is that the option of holding Remote and Hybrid Meetings is available to all limited liability companies and is not limited (as were the means

offered by the temporary legislation) to companies listed on the official list of Nasdaq Helsinki or on a multilateral trading marketplace (i.e., Nasdaq First North Growth Market Finland).

Requirements for holding a Hybrid Meeting

As a rule, the Board of Directors decide on whether to arrange a general meeting as a Hybrid Meeting (i.e., offering the shareholders the option to participate remotely or in person). Arranging a Hybrid Meeting does not require an amendment of the Articles of Association of the company, unless the Articles restrict the possibility of offering a remote participation option for the shareholders.

Only the support of a simple majority is required to introduce an amendment of the Articles requiring the Board of Directors to offer the remote participation option for general meetings.

All Finnish Limited Liability Companies may arrange Hybrid Meetings under the amendment rules, unless their Articles of Association restrict the possibility, i.e., Hybrid Meetings are not limited to companies listed on the official list of Nasdaq Helsinki main list or on a multilateral trading marketplace (i.e., Nasdaq First North Growth Market Finland).

A Hybrid Meeting may be set up by the company offering a separate (remote) venue for shareholders and offering remote participation tools at such venue.

Requirements for holding a Remote Meeting

General meetings held without the physical presence of shareholders and without a meeting venue and offering only the option to participate via telecommunication or other technical means are considered "Remote Meetings" in the vocabulary of the 2022 amendments to the FCA.

The Board of Directors decides on arranging a general meeting as a Remote Meeting. However, Remote Meetings are permissible only if the Articles of Association of the company either allow or require that general meetings are arranged as Remote Meetings. Hence an amendment of the Articles of Association may be required to be able to arrange a Remote Meeting.

Introducing provisions in the Articles of Association allowing or requiring the company to arrange Remote Meetings have to be supported by a qualified majority at a general meeting (more than 2/3 of the votes cast and shares represented at the meeting), i.e., the alleviation of the majority requirement for Hybrid Meeting provisions does not apply to Remote Meeting provisions in the Articles of Association.

A transitional provision on introducing a Remote Meeting provision into the Articles of Association

A transitional provision was included in the 2022 amendment of the FCA, enabling companies listed on the main list or First North markets to hold a general meeting for the sole purpose of introducing provisions enabling or requiring Remote Meetings into the Articles of Association by means of advance voting, counter-proposals or questions during 2022. Introducing a Remote Meeting provision during 2022 would enable companies to hold Remote Meetings during the AGM season in the spring of 2023.

As from the beginning of 2023, any resolution to introduce Remote Meeting provisions into the Articles of Association must be taken in a general meeting held by traditional means (i.e., at a physical meeting venue) or by a Hybrid Meeting.

Although the regulation on Remote Meetings applies to and may be utilized by all Finnish Limited Liability Companies, the transitional provision described above only applies to and can be invoked by companies listed on the official list of Nasdaq Helsinki or Nasdaq First North Growth Market Finland

Complementing means of participating in a general meeting

The amendments to the FCA introduce the option for the Board of Directors to offer additional means for participating in a traditional general meeting (with a physical meeting venue), a Hybrid Meeting or a Remote Meeting. Such additional means include mail, telecommunications, or other technical means in advance of or during the general meeting, provided that the Articles of Association of the company do not limit or disallow the offering of such means.

The optional means of participation are available to all Finnish limited liability companies as a complementing means of participation. If the company offers such additional means of participation, the general meeting is not considered to constitute a separate category of a general meeting (akin to Hybrid and Remote Meetings).

In contrast to the temporary legislation, shareholders who have cast their votes in advance may opt to change their vote and re-cast their vote at the general meeting. A decision proposal subject to advance voting is, by default, considered presented to the general meeting in its original form.

OTHER CHANGES INTRODUCED BY THE 2022 AMENDMENTS TO THE FCA

The additional means of participating in general meetings introduced by the 2022 amendments to the

FCA rely on telecommunications or other technical means to connect shareholders with the meeting. Hence, technical malfunctions in the communication solutions may impact the validity of the resolutions of the general meeting or the rights of the shareholders.

The 2022 amendments introduced a right for the chair of the general meeting to decide on adjourning the meeting and continuing it four weeks after the opening of the meeting, provided that the adjournment, new opening date and possible new technical solutions required for participating are communicated in due time to the shareholders eligible to participate in the meeting at the time of adjournment.

GUIDANCE ON BEST PRACTICE FOR APPLYING THE FCA AMENDMENTS

The amendments to the FCA and the new regime governing Remote and Hybrid Meetings and related changes entered into force on 11 July 2022. Some listed Finnish companies seized on the opportunity and summoned extraordinary general meetings in the summer months, enabling them to utilize the alternatives introduced by the amendments during the autumn of 2022. The implementation of the alternatives will be guided by these early movers.

In addition, the Advisory Board of Finnish Listed Companies supports good practices within the securities markets and has, together with the legal committees of Finnish Industries (EK), published template notices and minutes to general meetings convened under the FCA and the temporary legislation. Updated templates and minutes are expected, but as at the time of writing (October 2022), no updates have been made available.

MIA MOKKILA
Partner
Capital Markets & Public M&A, Corporate Advisory & Compliance
tel. +358 20 713 3182
mia.mokkila@borenius.com

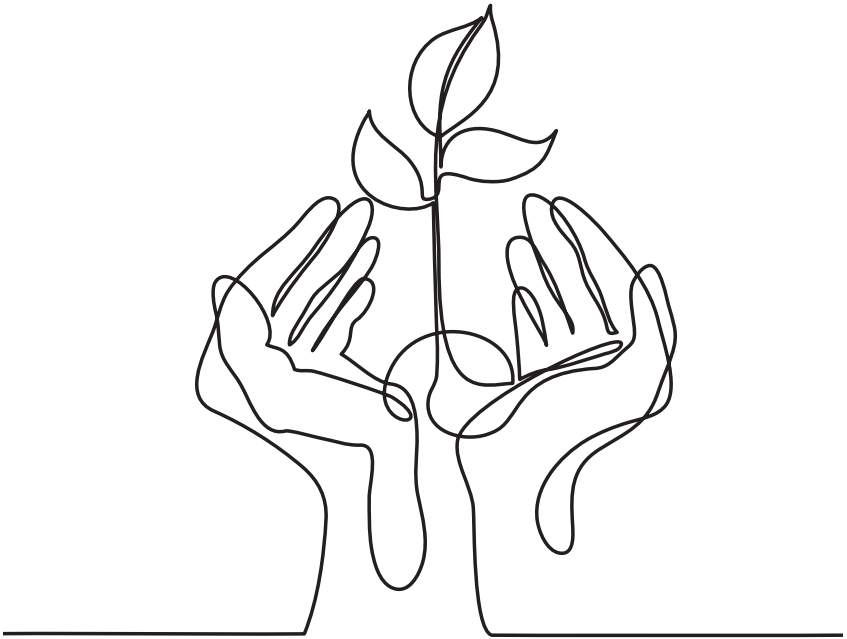
ANDREAS DOEPEL

Counsel, General Counsel
Corporate Advisory & Compliance
tel. +358 20 713 3416
andreas.doepel@borenius.com

RECENT REFERENCES

- Borenius advised the State of Finland on EUR 2.35 billion bridge financing for Fortum
- Borenius represents EAB Group in its merger with Evli Bank Plc
- Borenius advised Componenta on a EUR 9.5 million rights offering
- Borenius advised Harvia Plc on its Nasdaq Helsinki IPO
- Borenius advised listed companies with respect to official restrictions and guidelines issued in response to the coronavirus pandemic and on the temporary legislation allowing companies, cooperatives and associations to hold their statutory meetings despite the pandemic and the related restrictions imposed on public gatherings

FUND FORMATION



REGULATION & MARKET

On a general level, Finnish funds are either open-end evergreen funds open for any investor or closed-end fixed-term funds marketed predominantly to institutional investors. The former typically take the form of Undertakings for Collective Investment in Transferable Securities (UCITS) funds, which are subject to the EU UCITS Directive, and the latter the form of alternative investment funds (AIFs) as defined in the EU AIFM Directive. In practice, there are also funds that cannot be clearly categorised as either open-end or closed-end funds, and nowadays also many AIFs tend to be marketed to a broader group of investors.

Save for UCITS funds, Finnish funds were unregulated prior to the 2013 regulatory changes that resulted from the implementation of the EU AIFM Directive. These changes also subjected the managers of private equity, venture capital and real estate funds (and other types of funds) to new licensing or registration requirements. Managers with larger amounts of assets under their management – i.e. EUR 500 million (closed-end funds without leveraged assets) or EUR 100 million (with leveraged assets) – are subject to a licensing requirement. Managers of smaller portfolios are permitted to apply for a full licence (and accordingly become subject to more stringent requirements), but they are only required to register. Being licensed as opposed to being registered determines, for example, the extent to which these managers are permitted to market their funds in other EU countries.

Finnish venture capital, private equity and real estate funds typically take the form of a Finnish limited partnership, which has a distinct legal personality but is tax-transparent. Finnish limited partnerships are quick to establish, offer parties considerable flexibility, and are not materially different from partnership structures used as fund vehicles in other jurisdictions. Limited partnerships are quite often also used as joint venture or holding structures in the context of, for example, real estate club investments.

The largest Finnish private equity funds formed over the past few years have raised EUR 200–335 million generally with fund terms that are substantially similar to those of private equity funds in the US and the EU. Typical private equity or venture capital would, for example, have a 10+2-year term, a four- or five-year investment period, an 8% hurdle rate and a 20% carried interest. Most Finnish management firms still focus on the Finnish market but also have some room for investments (particularly add-on investments) in other Nordic countries and/or Europe.

The Finnish Venture Capital Association (FVCA), a private equity and venture capital organisation established in 1990 that promotes the interests of its members, currently has 74 full members and 61 associate members. The number of members does not give a full picture of the Finnish private fund players: while most private equity or venture capital firms – as well as some fund investors – are FVCA members, private equity real estate firms are not.

The Finnish investor base is somewhat concentrated. The number of large pension funds is relatively small, making them also relatively large in size and their investments per fund considerable. Finnish pension institutions have been investing in foreign funds for years, but still also play a significant role in Finnish funds.

FOREIGN FUND MARKETING IN FINLAND

While the rules and interpretations relating to the EU AIFM Directive are still evolving (inter alia in respect of what constitutes marketing and "pre-marketing"), the rules relating to the marketing of foreign funds in Finland follow certain principles (the following applies to non-UCITS funds):

- EU-licensed alternative investment fund managers are permitted to market their funds to professional investors based on the AIFM Directive passport;
- EU AIF managers that are only registered (as opposed to licensed) may market their funds to professional investors after submitting certain notices to and obtaining the approval of the Finnish Financial Supervisory Authority;
- non-EU fund managers must go through a notification process, which may take a few months, prior to marketing to professional investors and will be subject to ongoing reporting requirements thereafter; and
- special rules and restrictions apply to marketing to non-professional clients (generally speaking, the manager must have a full AIFM license for these purposes).

In some circumstances, it may also be necessary to consider whether marketing arrangements, such as using placing agents or other intermediaries, are subject to any regulatory restrictions.

TAXATION

Structuring funds is – to a large extent – driven by tax rules that apply to the targeted investors. In this regard, Finnish limited partnership structures have been useful for investors from jurisdictions that have concluded a tax treaty with Finland. Finnish partnership structures are also well suited to investors investing through tax-transparent entities, as long as certain requirements concerning the entities and the underlying investors are satisfied. Provided that these requirements are met, foreign investors are taxed on their share of the Finnish limited partnership's profit as if the income had been received directly from the underlying asset (e.g. interest income and capital gains from the sale of shares by the partnership would generally not be subject to withholding tax in Finland). Investors that do not meet these requirements may need to consider alternative structures.

Other tax-related topics include value added tax (management fees paid by private equity funds are generally exempt from tax), the status of Finnish tax-exempt investors in private funds, and the taxation of carried interest.

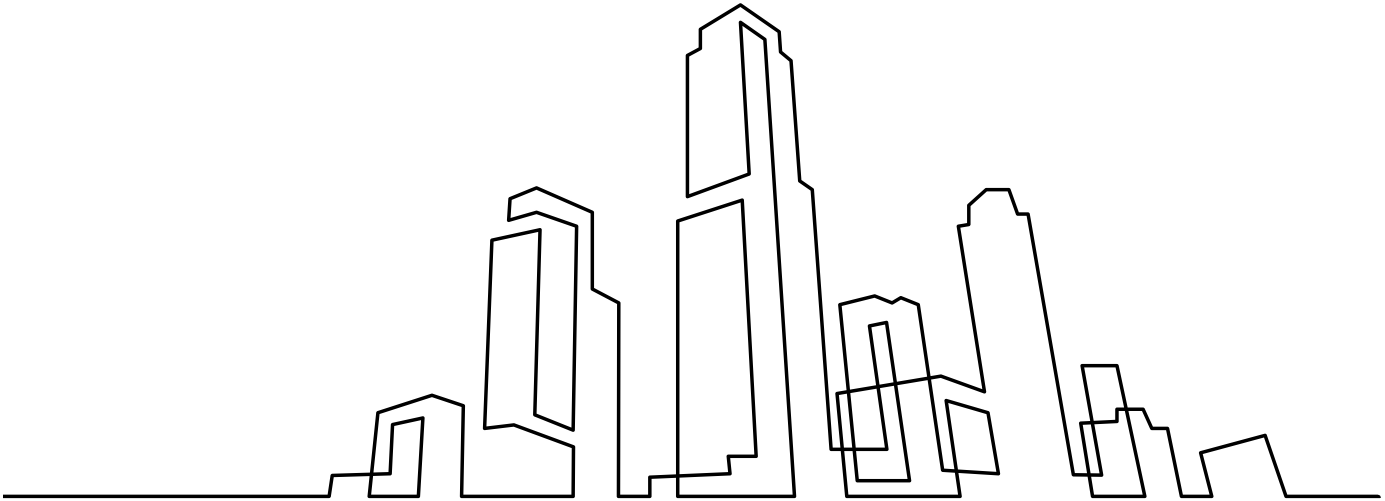
PAULUS HIDÉN

Partner
Fund Formation & Investment Management
tel. +358 20 713 3436
paulus.hiden@borenius.com

RECENT REFERENCES

- Borenius advised Intera Partners on the formation of Intera Fund IV
- Borenius advised Hyperco and NREP on the formation of Hyperco Data Center Strategies I
- Borenius advised Aurora Studios on the formation of Finnish Impact Film Fund
- Borenius advised Armada Credit Partners on the formation of Armada Fund V
- Borenius advised Evli on the formation of an infrastructure fund of funds
- Borenius advised ICECAPITAL in connection with the formation of its sixth housing fund
- Borenius advised Certior Capital on the formation of Certior Special Opportunities Fund
- Borenius advised OpenOcean on the formation of OpenOcean Fund 2020
- Borenius advised Sponsor Capital on the formation of their fifth buyout fund
- Borenius advised CapMan Growth on the formation of their second growth fund

REAL ESTATE



THE FINNISH PROPERTY INVESTMENT MARKET

After a slight reduction in transaction volume and turnover during 2020 caused by the COVID-19 pandemic, the Finnish property investment market has been on a rise ever since due to solid investor demand. Despite current market uncertainties, 2022 has remained busy, however, macro trends, such as inflation, causing rising raw material costs will inevitably also affect some property market sectors such as construction. The Helsinki metropolitan area constitutes the most important market region for real estate investments in Finland.

The main actors in the Finnish property investment market are institutional investors, listed and non-listed property investment companies, real estate funds, and real estate developers. The user ownership of office and retail facilities is generally low since companies normally operate on leased premises. It is also common for investors to design and construct new buildings for a particular tenant's specific use. Logistics and production facilities, on the other hand, and more commonly residential apartments are usually owned directly by their users. In addition to the actual residents, municipalities, non-profit associations, and institutional investors have traditionally owned many residential lease apartments, but over the last few years leased residential properties have become a highly popular asset type among investors in all categories. Also, properties designated for social and welfare services, such as elderly care, have become interesting investment targets.

ACQUIRING REAL ESTATE

Basic legal structures

Owning property in Finland refers to the ownership of land and its buildings. There are two forms of property ownership in Finland: direct ownership and indirect ownership. Property dimensions can be determined not only in the traditional way vertically on a 2D map, but also in terms of elevation angle horizontally. A 3D property can, thus, be located entirely or partly underground or in the air.

A property is also considered to be under direct ownership when the beneficial owner directly owns or holds a long-term lease on a parcel of land and owns the buildings on it.

A property is owned indirectly when the property's ownership is organized through a limited liability company established for the sole purpose of owning the property. The Finnish vehicles in this regard are the mutual real estate company (MREC) and the mutual housing company that are both, in practice, tax-transparent entities. In these legal structures, the MREC or the housing company is the owner of the property and shareholders have physical control

over the property and they occupy a specific apartment in a building or facility located on the property in addition to the normal shareholder rights. This legal structure ensures that the maintenance and financing charges paid to MRECs and mutual housing companies by their shareholders to cover the costs of such companies can be deducted from taxes payable by the shareholders on their rental income. Additionally, the transfer tax levied in connection with the sale of shares in these entities is 2%, as opposed to the 4% levied in connection with the direct sale of property.

The transaction process

Due to the prevalence of indirect ownership, the real estate acquisition process amongst professional real estate investors is similar to a conventional M&A process. The process starts with a marketing and screening phase, which results in the selection of an exclusive single buyer based on a letter of intent or two or more potential buyers in case of a parallel process. After this, a due diligence process will ensue, the scope of which will vary, but it may include legal, commercial, technical, financial, environmental and tax due diligence.

The sale of shares is not subject to many requirements as to the form of documentation, whereas the direct sale of a property must adhere to certain formal requirements set forth in the Finnish Code of Real Estate.

The direct ownership of property and land lease agreements are registered with the Finnish Land Register. As of 1 January 2019, a new electronic register for housing company information maintained by the National Land Survey of Finland was introduced and, hence, the share registers of new housing companies and MRECs as well as information on ownership of and pledges on shares are kept in a digital form in said register. Existing housing companies are obliged to transfer their share registers to the register whereas existing MRECs may opt not to join the register. This reform also enables digital trading of shares in housing companies and MRECs and electronic control of debt securities. Information on share ownership in companies other than housing companies or MRECs are kept in the company's own mandatory share register.

Real estate acquisitions that require a permit

Acquisitions of real estate properties located in Finland (excluding the Åland Islands) performed by non-EU or non-EEA buyers require a permit from the Finnish Ministry of Defense. The permit for the acquisition is required when a person or entity established outside the EU or EEA wishes to acquire a property within the Finnish territory. The permit is also required when the acquirer of the property is established within

the EU or EEA, but another person or entity having its domicile outside the EU or EEA area holds at least 10% of the voting rights or control over the acquirer. The permit for the acquisition must be sought no later than 2 months after notarization at most. No permit is required when purchasing a share of a housing company or a real estate company or when transferring real property between family members or spouses.

As in conventional M&A processes, merger control rules also apply to real estate transactions. A reform of the Finnish merger control rules, which would decrease the applicable turnover thresholds, is being prepared at the time of writing this booklet . It is anticipated that such reform will also increase the number of real estate transactions that require clearance from the FCCA.

Financing

A security is typically required for financing real estate acquisitions, construction contracting, and renovations. For this purpose, a direct real estate mortgage, a pledge of the MREC's or housing company's shares or a pledge of rental income and receivables may be used.

REAL ESTATE DEVELOPMENT & BUILDING PROJECTS

At the time of writing this booklet, the main statute governing real estate development in Finland is the Finnish Land Use and Building Act, which includes regulation on planning and zoning. The zoning-scheme is divided into three levels with the "regional plan" being the most general plan, followed by the "local master plan", and then the most detailed "local detail plan". The local detail plan assigns the property-specific building volume and permissible use, in addition to setting out the number of floors allowed in a building located on the property, and determines where the building is to be placed on the property. The local detail plan is, therefore, the most important for landowners when planning construction projects. A local detail plan also sets out the so-called arrangement fee that landowners pay to the municipality for surrounding infrastructure work. The size of this fee is typically related to the volume of the building permit granted for the property in the local detail plan.

A reform regarding the legislation governing real estate development in Finland is currently under preparation. The main themes in the proposed government bill relate to digitalization and sustainability, imposing ambitious goals in terms of reduction of carbon emissions while focusing on sustainable use and maintenance of buildings during their whole lifecycle. As the amendment will not affect the main principles regarding planning and zoning described above, it will, however, have an impact, for example, on permitting processes and designing and construction of buildings.

The general conditions for building contracts, i.e. the YSE 1998 terms that have been drawn up by the trade associations of contractors and construction clients, are generally used in building contracts for residential, office and infrastructure work. Engineering, procurement and construction management (EPCM) contracts are used in larger-scale industrial projects to which the YSE 1998 general terms do not apply, such as for mills, smelters, power plants and oil refineries. Engineering and construction contracts to which the International Federation of Consulting Engineers general terms may apply are used more rarely.

LEASING

One significant factor behind the growth of the private investors' market share in apartment leasing is the liberalization of the leasing regulations during the 1990s. The new regulations embraced the idea of a broad freedom of contract between the parties with respect to the duration of lease periods and rents. While residential market leases are on a month-to-month basis, the leases of business premises have longer, fixed lease periods of 5–10 years for commercially significant leases in single-user targets or in multi-user targets with one anchor tenant. Longer commercial lease periods are used as well. Both residential and commercial leases are also likely to have rent adjustment mechanisms.

Understanding the tenant's planned use of the premises is important, as only certain leasing activities are subject to value added tax (VAT); for example, banking as well as other financing and health care services are free from VAT liability. A VAT-free tenant will likely pay higher rent rates to meet the same income level provided by VAT-paying tenants to the landlord's shareholders, since shareholders that indirectly own the business premises may deduct VAT from their maintenance and investment costs. The foregoing mark-up practice does not apply to residential leases, since they are not subject to VAT.

CHRISTIAN FOGELHOLM
Partner
Projects & Construction, Real Estate, Energy and Infrastructure
tel. +358 20 713 3519
christian.fogelholm@borenius.com

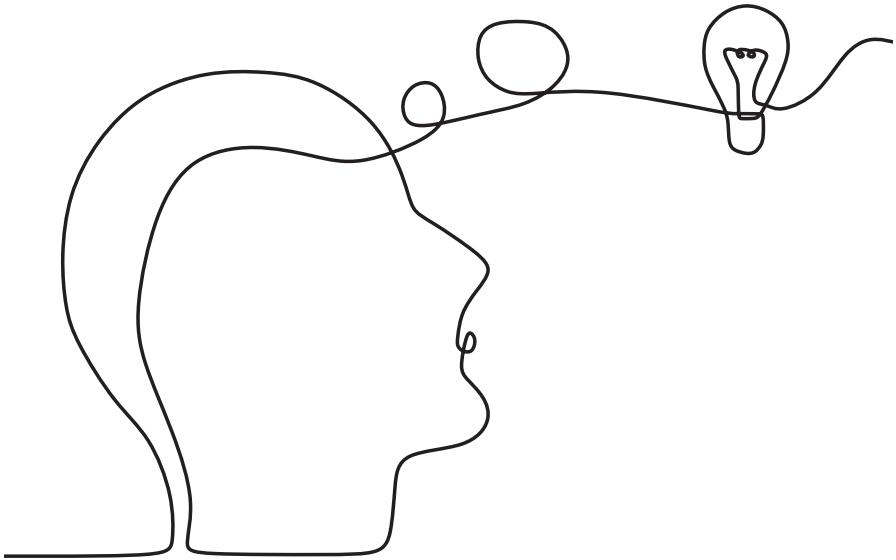
EMMA NIEMISTÖ
Partner
Projects & Construction, Real Estate, Energy and Infrastructure
tel. +358 20 713 3264
emma.niemisto@borenius.com

ARI KAARAKAINEN
Partner
Projects & Construction, Real Estate, Energy and Infrastructure
tel. +358 20 713 3524
ari.kaarakainen@borenius.com

RECENT REFERENCES

- Borenius advised Partners Group on the acquisition of a logistics portfolio
- Borenius advised Morgan Stanley on a major residential portfolio sale
- Borenius advised abrdn on the EUR 75 million acquisition of an office project
- Borenius advised CapMan on the EUR 500 million acquisition of a rental residential property portfolio
- Borenius advised West Street Global Infrastructure Partners on its voluntary public cash tender offer for Adapteo Plc
- Borenius advised Varma on the establishment of a joint venture with YLVA
- Borenius advised NRP on the EUR 86 million sale of a logistics facility to Barings

INTELLECTUAL PROPERTY, TECHNOLOGY AND DATA PRIVACY



GENERAL

In Finland, intellectual property rights are protected by a set of specific national statutes or directly applicable EU level regulations. Finland has also signed most of the international treaties governing intellectual property rights. As a member of the World Trade Organization, Finland has acceded to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement as well. Both criminal and civil liability may apply if intellectual property rights are infringed in Finland.

TRADEMARKS

Under the Finnish Trademarks Act, exclusive protection may be obtained either by means of registration or through the sufficient actual use of the mark within Finland. In addition, Finland is a party to the Madrid Agreement and the Madrid Protocol, which enable the submission of applicable international applications to designate a mark to be protected in Finland.

It takes approximately six months to register a trademark at the Finnish Patent and Registration Office. Unlike in some other jurisdictions, the Office also examines prior registrations and, in addition to other trademarks, a surname or a company name may also be cited as a bar to registration.

Under the Finnish Trademarks Act that came into force on 1 May 2019, the invalidation and revocation of trademarks is possible in administrative proceedings as an alternative to civil proceedings. The new Finnish Trademarks Act also grants the possibility to cite non-use as a defence in opposition, invalidation and revocation proceedings.

A registered trademark will remain in force for a period of 10 years, and it can be renewed indefinitely. A trademark will become vulnerable to invalidation if it has not been used for a period of five years.

PATENTS

Finland is a party to the Paris Convention, the Patent Co-operation Treaty and the European Patent Convention. Finland has also signed the London Agreement, which means that foreign patent applicants can validate their European patents in Finland by submitting a Finnish translation of the claims.

Finland ratified the Agreement on a Unified Patent Court in 2016 and has already implemented the necessary changes to its Patents Act and related legislation to ensure conformity with unitary patent protection and the Unified Patent Court system that are based on the said Agreement. Finland intends to establish a local division of the Unified Patent Court on the premises of the Finnish Market Court in Helsinki.

The national registration process for patents generally takes two to three years. The maximum duration of a patent is usually 20 years from the date of application with no opportunity for renewal.

UTILITY MODELS

A utility model is an exclusive right to an invention similar to a patent but with less stringent examination. In order for an invention to be registered as a utility model, it must be new and innovative. However, novelty is

only examined upon the Patent and Registration Office's request.

The average processing time for utility model applications is three months – compared to the average patent application processing time of about three years. A utility model is often a strategic alternative for a party that must rapidly secure an exclusive right for its invention in Finland.

The registration of a utility model remains in force for four years from the date of application, and it can be renewed twice: first for four years and subsequently for another two years. The registered utility model may then remain in force for a maximum term of 10 years.

DESIGNS

In addition to EU level protection, one can acquire a national design registration. The registration provides an exclusive right to the appearance of a product or part of a product. For successful registration, the design must be new, have individual character and result from creative work.

The registration is initially valid for a period of five years from the application date, and it can be renewed for four further periods of five years, resulting in a maximum term of 25 years.

COMPANY NAMES

Finland provides uniquely strong protection for company names under the Finnish Trade Names Act. Company names and potential auxiliary names become subject to protection upon the initial registration of a company (or subsequent amendments made to the registration).

Finnish company names may prevent the registration of not only other company names but also trademarks as well. Starting from 1 May 2021, it is now possible in Finland to request for a problematic company name to be revoked either in part or in its entirety in a specific administrative process. The key requirement for successful revocation is that the company name has not been used during the past five years and that the company name proprietor can prove no justifiable reason for the non-use.

COPYRIGHT

Finland is a signatory of the Berne Convention and the Universal Copyright Convention and has consequently implemented the related harmonising European legislation. As a result, the Finnish Copyright Act has undergone several extensive revisions.

Copyright is generated automatically when a work is created. No registration is required or indeed even possible to file. Works protected by copyright may be assigned freely,

although certain moral rights remain vested with the original author.

Copyright remains automatically in force for the lifetime of the original author and for 70 years thereafter.

TRADE SECRETS

The new Finnish Trade Secrets Act, which came into force in 2018, modernised and replaced certain provisions regarding the protection of trade secrets set out in the Finnish Unfair Business Practices Act. The new Act provides, among other things, clear definitions of the concepts of trade secrets, the unfair acquisition and use of trade secrets, as well as more potential remedies than were previously available.

UNFAIR BUSINESS PRACTICES

Finland has enacted specific legislation governing various unfair business practices. The Finnish Unfair Business Practices Act encompasses various forms of activities, including unfair comparative advertising and lookalike products. Consumer protections against such practices fall under the auspices of the Finnish Consumer Protection Act. Consumer marketing is actively monitored by the Finnish Consumer Ombudsman.

SPECIAL FINNISH COURT FOR IP-RELATED DISPUTES

Since 2013, all intellectual property matters have been directed to the specialised Finnish Market Court. The Market Court has exclusive jurisdiction and acts as the mandatory first instance, hearing all civil matters concerning intellectual property rights, including patents, trademarks, utility models, trade names, designs and copyrights. In addition, the Market Court acts as an appeals court in administrative proceedings, such as trademark opposition appeals.

In addition to strictly IP-related matters, the Market Court has jurisdiction over unfair competition and public procurement matters. The Market Court similarly handles preliminary injunction cases and has the capacity to order preliminary injunctions ex parte, i.e. without first hearing the respondent. Preliminary injunction cases are handled in expedited proceedings with an initial decision often reached within a couple of months.

Civil decisions handed down by the Market Court may be appealed to the Finnish Supreme Court, provided that the Supreme Court grants leave to appeal. The burdensome leave to appeal mechanism has led to the resolution of most cases in their first instance. Even though it may occasionally lead to questions of legal certainty, a final decision is reached moderately fast, typically within one to two years.

DATA PROTECTION

The European Union's General Data Protection Regulation (GDPR) has applied directly in Finland since May 2018. The GDPR is supplemented with the national Data Protection Act, which sets the general framework for the processing of personal data together with the GDPR. In addition to the general framework, there are various sector-specific requirements for the processing of personal data, such as in the financial sector and healthcare.

The processing of employee personal data is also very strictly regulated in Finland under the Finnish Act on the Protection of Privacy in Working Life, which provides specific requirements e.g. for the opening and retrieval of employee emails and the processing of employees' health data. Privacy in electronic communications is based on the EU-level framework (e-Privacy Directive) and has been implemented in Finland by the Finnish Act on Electronic Communications Services, which regulates e.g. the use of cookies. The EU-level framework is expected to be overhauled in the near future as the proposal for a new E-privacy Regulation is currently going through the final legislative steps in the EU.

Data protection laws are primarily enforced by the Data Protection Ombudsman (DPO) and the Sanctions Board operating under the Office of the DPO. As regards enforcement practice, the DPO generally provides guidance and steering to companies before it takes more extensive action, such as imposing administrative fines. To date, administrative fines have been imposed in eight cases, and the amount of fines imposed by the DPO has ranged between EUR 7,000 and 100,000. Decisions by the DPO can be appealed to an Administrative Court.

INFORMATION TECHNOLOGY

No general legal framework that would govern the procurement of information technology services in the private sector exists in Finland. As such, the supply and procurement of ICT services, tools and other capabilities are dependent on contractual arrangements between the parties. Depending on the sector, certain regulatory and legal requirements will need to be taken into account when contracting for ICT, such as the outsourcing guidelines that apply in the financial sector and the specific requirements for patient data management systems in the healthcare sector.

BEN RAPINOJA

Partner
Intellectual Property
tel. +358 20 713 3424
ben.rapinoja@borenius.com

LASSE LAAKSONEN

Partner
Intellectual Property,
Commercial Contracts
tel. +358 20 713 3521
lasse.laaksonen@borenius.com

SAMULI SIMOJOKI

Partner
Technology, Data & Privacy
tel. +358 20 713 3500
samuli.simojoki@borenius.com

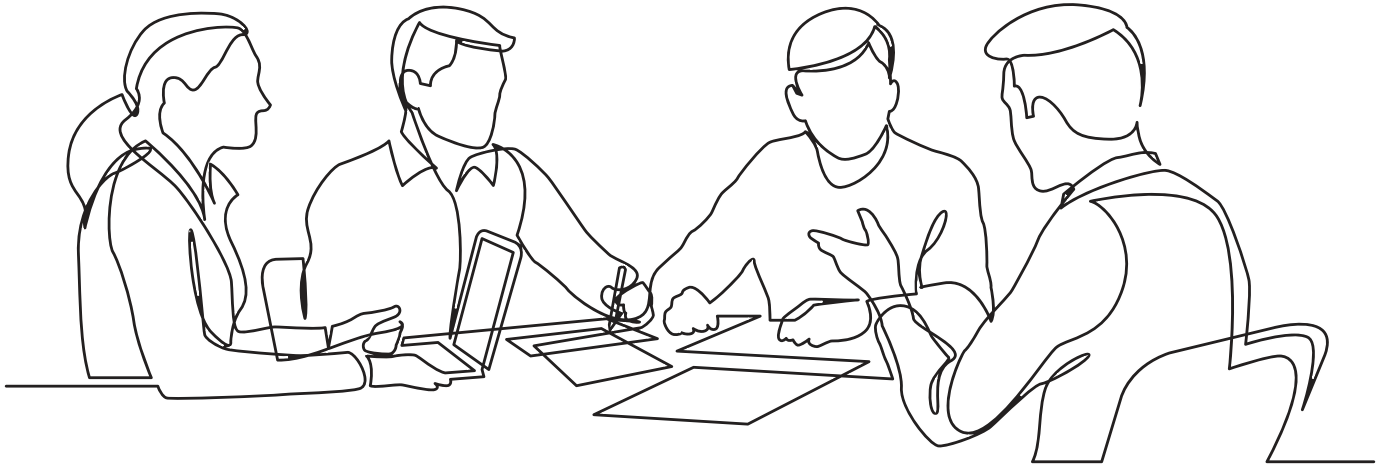
ERKKO KORHONEN

Partner
Technology, Data & Privacy
tel. +358 20 713 3136
erkko.korhonen@borenius.com

RECENT REFERENCES

- Borenius represents SodaStream, a world-famous manufacturer and seller of home carbonation machines, in a trademark infringement dispute that is presently pending at the Supreme Court of Finland, which has referred the case to the Court of Justice of the European Union for a preliminary ruling
- Borenius represented Teva in a patent litigation case against InterMune, Inc., which belongs to the global Roche group. The Market Court's patent revocation proceedings concerned InterMune's three European patents. The case was settled in 2021
- Borenius represented multinational engineering company Sandvik at the Market Court in appeal proceedings against opposition filed by its competitor Epiroc, a global manufacturer of mining and infrastructure equipment
- Borenius continuously advises and represents Oy Karl Fazer Ab in relation to their IP matters, marketing and regulatory matters globally
- Borenius advises Fingrid Plc on setting up a national Datahub for the electricity market in Finland
- Borenius advised a large Finnish municipality, the City of Espoo, on the data protection and security aspects of the procurement of a new regional patient data management system

EMPLOYMENT



GENERAL

The Finnish labour market is relatively employee-friendly and highly regulated by both legislation and through collective bargaining agreements. Unlike in most other countries, Finnish collective labour law includes generally applicable collective bargaining agreements in addition to standard collective bargaining agreements. Employers are obliged to comply with the provisions of the generally applicable collective bargaining agreement of the employer's field of business. This means that an employer may be bound by the provisions of a collective agreement even if its employees are not unionised. Approximately 160 generally applicable collective bargaining agreements currently exist in Finland.

Collective bargaining agreements specify the applicable terms and conditions in more detail than the law and usually favour employees to a greater extent than those provided by law. For example, under several collective bargaining agreements, employees are entitled to their regular salary during their family leave and to sick pay for a longer period of time than provided by law. Additionally, although Finnish law does not impose a minimum wage, these are often set in the respective collective bargaining agreements.

HIRING AN EMPLOYEE

Trial period

The employer and employee may agree to a trial period of up to a maximum of six months starting from the beginning of the employee's employment contract. During the trial period, both parties are entitled to terminate the employee's employment contract with immediate effect without grounds for termination. The duration of the trial period can be extended in certain situations.

Working hours

Generally, a non-exempt employee subject to the Finnish Working Hours Act has an average working time that may not exceed eight hours a day and 40 hours a week, unless they are allocated overtime that must be compensated by up to 50–100% of their hourly wages and can only be allocated with the employee's consent. An individual employee can work a maximum of approximately 48 hours per week in any four-month period. Certain exempt employees, such as directors, managers and some independent experts, fall outside the scope of the Finnish Working Hours Act.

The Finnish Working Hours Act has recently been amended to strengthen the position of those employees

working variable working hours, and to improve the predictability and transparency of conditions of employment. These changes were made partly to accommodate the provisions of the new directive on transparent and predictable working conditions in the EU. The changes were conducted to improve the stability of working hours in variable working hours agreements, which are zero-hours agreements and other agreements where working hours are set to vary between certain hours instead of having a fixed number of working hours.

Annual holidays

An employee is entitled to two or two and a half paid vacation days for each full or partial (pro rata) month of employment. Due to the formula that applies to calculating the number of paid vacation days, which requires the use of an extra day for every workweek (i.e. five days), the maximum duration of an employee's annual holidays is thus 30 working days (five weeks). In addition to paid holidays, the employee will usually receive a holiday bonus, which is typically 50% of the employee's salary for the holiday period. This holiday bonus is not mandatory if there is no applicable collective bargaining agreement.

Employer's contributions

Employers are obligated to pay additional costs on top of the employee's gross salary. These additional costs vary depending on the type of company but are usually around 21% of the salary paid to employees. Employers are obligated to pay the following additional costs: pension insurance premiums, health insurance contributions, occupational accident insurance, employees' group life assurance, and unemployment insurance.

Post-employment restrictions

Pursuant to the Finnish Employment Contracts Act, employees must not compete with their employers during the course of their employment relationship. Restrictions can be imposed on employees for a period of up to 12 months after their employment relationship has ended if so agreed upon in their employment agreement, and if the employer has a particularly weighty reason for imposing such post-employment non-competition restrictions on the employees in question. If the non-competition obligation is six months or less, the employer is obliged to compensate the employees 40% of their salary during the period of time they are bound by the post-employment non-competition obligation, and if the post-employment non-competition obligation exceeds six months, the employer is correspondingly obliged to compensate the employees 60%

of their salary. This is the case if the employment is terminated for a reason deriving from the employee (e.g. the employee resigns). The compensation obligation concerns currently existing agreements' restriction periods after 1 January 2023 and new agreements made after 1 January 2022.

Foreigners working in Finland

Third-country nationals, i.e. persons who are not citizens of the EU or EEA, usually cannot work in Finland without a residence permit. The employer has an obligation to ensure that such employees have obtained all relevant permits and must keep records of their foreign employees working in Finland.

The Finnish Immigration Office just launched a new fast-track service for specialists and entrepreneurs applying for residence permits in Finland, through which those applicants could obtain residence permits in just two weeks.

TERMINATING EMPLOYMENT

Grounds

In Finland, the concept of employment at-will does not exist. Employers must always have a proper and weighty reason to terminate an employment contract. These reasons are generally divided into two categories:

- individual grounds relating to the employee and the employee's conduct and performance; or
- financial or production related grounds (decrease in the amount of work) or grounds arising from the reorganisation of the employer's operations (internal decision that decreases the amount of work available).

As for terminations on individual grounds, an employer must generally provide prior warning. With regard to the other grounds for termination, employers are permitted to make employees redundant (and thus terminable) if the work to be offered has diminished substantially and permanently and if the employees cannot reasonably be transferred to or retrained within the company to fill a vacant position based on their skill set. This obligation persists for the entire duration of the notice period and may extend to the parent company or other group companies that are located in Finland if they exercise control over personnel matters in such a Finnish entity. In addition, certain rehiring obligations persist after the termination of an employee on these grounds.

Employers must observe a notice period before termination, except in the event that the employee

has engaged in gross misconduct. The applicable notice period may vary from two weeks to six months, depending on the duration and type of employment. During the notice period, the employer can release the employee from their obligation to work. However, the employee is entitled to receive their regular salary and fringe benefits during this time. Severance payments are not required, and payment in lieu of notice is not permitted without the consent of the employee.

If the employer is found to have terminated the employee's employment contract without sufficient cause, a court can order the employer to pay compensation to the employee. In general, the maximum amount of compensation that the employer may be obliged to pay to the employee is equal to 24 months of the employee's salary.

Co-operation at the workplace

Employers who regularly employ at least 20 employees have certain additional obligations with respect to co-operation in the workplace. For example, a continuous dialogue must be held between the employer and the employee representative at least once per quarter, or twice a year if the employer employs less than 30 employees, unless the employer and the employee representative agree otherwise.

In the beginning of this year, the old Finnish Act on Co-operation within Undertakings was reformed and the new act on co-operations, the Finnish Co-operation Act, came into force on 1 January 2022. The Act obliges the above-mentioned larger employers to first consult and negotiate with employees or their representatives with regard to the reasoning behind any proposed changes and their effects, as well as viable alternatives, before the employer reaches a decision regarding any matter covered by the co-operation procedure, e.g. redundancies, business transfers or other measures leading to significant changes in the working conditions of employees. Unlike in many other countries, trade unions are not involved in these consultations in Finland.

The consultation obligation has a particular relevance to collective redundancies. For example, negotiations must be conducted over a minimum period of time before the employer can make decisions on redundancies, layoffs or reductions in working time.

The Finnish Co-operation Act also sets out many other continuous obligations, such as the obligation to regularly provide employees with information concerning the company's finances.

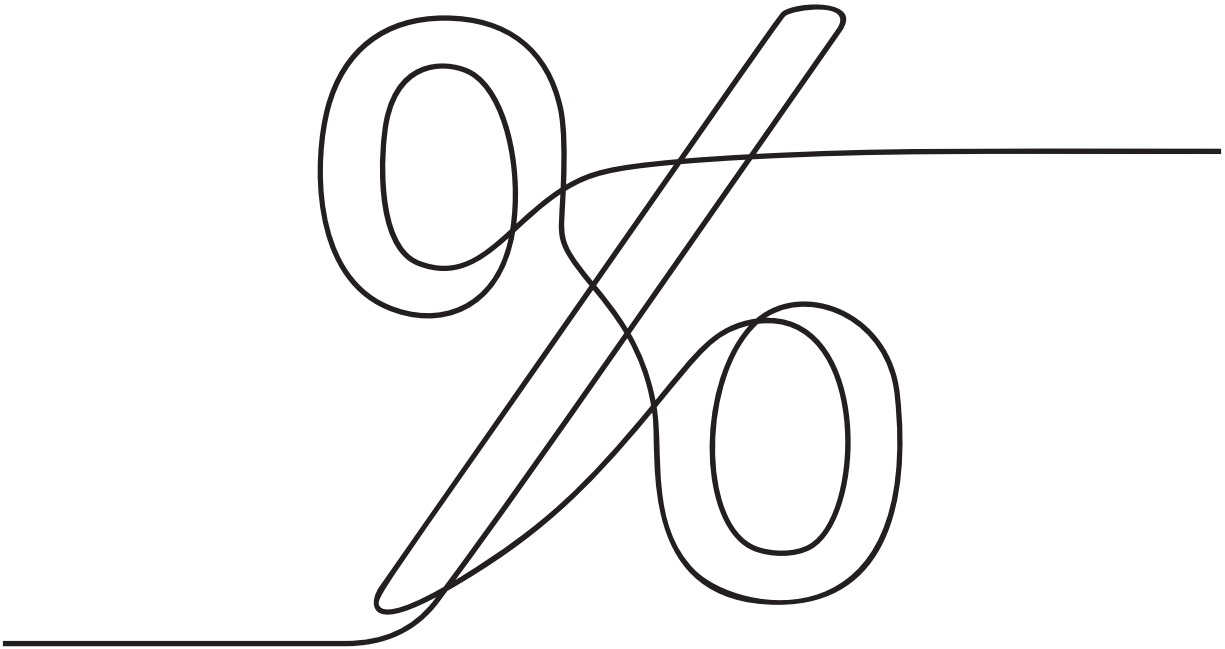
JANI SYRJÄNEN

Partner
Employment
tel. +358 20 713 3565
jani.syrjanen@borenius.com

RECENT REFERENCES

- Borenius advised Netflix on its EUR 65 million voluntary recommended public cash tender offer for Next Games Corporation
- Borenius successfully advised Formica IKI Oy on negotiating a new company specific collective bargaining agreement to all of its employees
- Borenius advised Gofore Oyj on several acquisitions, company specific collective bargaining agreement negotiations and general employment law issues as well as provided whistle blowing guidelines and step lists in preparation for the forthcoming implementation of the Whistleblowing Directive

TAX



TAX IN TRANSACTIONS

Corporations registered in Finland or established under Finnish law, and foreign corporate entities that have their place of effective management in Finland, are considered tax residents in Finland, and hence, these entities are subject to unlimited tax liability in Finland, which means that they are taxed on their worldwide income at a 20% corporate tax rate. The same rate applies to all types of income, such as capital gains or rental income. Taxable income is calculated on the basis of audited Finnish GAAP financial statements, subject to certain adjustments arising from Finnish tax legislation.

Foreign corporations that have no place of effective management in Finland have limited tax liability and are taxed only on their Finnish-sourced income and income allocated to their permanent establishments in Finland.

Corporate restructurings

As an EU Member State, Finland has harmonized its tax legislation concerning tax-neutral corporate restructurings in accordance with the EU Merger Directive. These corporate restructurings include mergers, demergers, transfers of assets and exchanges of shares. In addition to applying to transactions within the EU/EEA, these rules also apply to domestic transactions. Pursuant to Finnish case law, certain provisions may also apply to restructurings concerning non-EU/EEA companies residing in tax treaty states.

Tax-neutral mergers, demergers and transfers of assets are frequently utilised as pre- or post-acquisition measures, while an exchange of shares is commonly used as a means of carrying out the acquisition itself.

In essence, tax neutrality in the context of a reorganisation means that these arrangements do not trigger any income tax consequences for the companies participating in the arrangements nor for their shareholders. Tax neutrality is often subject to the fulfilment of certain conditions. For example, the amount of cash consideration is limited to 10% of the nominal value, or in the absence of a nominal value, of the accounting par value of the newly issued or existing shares given by the recipient company.

These corporate restructurings may also be exempt from Finnish transfer tax (with the exception of the exchange of shares) and value added tax.

Participation exemption

Capital gains from the transfer of shares are exempt from corporate income tax if, among other things, the following conditions are met:

- the transferor is not engaged in private equity or venture capital activities;

- the transferred shares belong to the transferor's fixed assets;
- the transferor has owned at least 10% of the shareholders' equity in the transferred shares' (target) company continuously for at least one year;
- the target company is not a real estate holding company or operating company with mainly real estate activities; and
- the target company is a Finnish limited liability company, a company referred to in the EU Parent-Subsidiary Directive or a company residing in a country with which Finland has an applicable tax treaty.

Transfer tax

A transfer tax of 1.6% of the acquisition price is levied on the transfer of shares and other securities in Finnish companies. A transfer tax of 2% is levied on transfers of shares in real estate and housing companies, and a 4% tax on transfers of real estate. Generally, transfer tax is not applicable to transfers of shares in publicly listed companies. Additionally, transactions between non-residents are in most cases exempt from transfer tax. However, this exemption does not apply to transfers of Finnish real estate or housing companies.

GROUP CONSIDERATIONS

Intercompany dividends

Dividends received by a Finnish resident entity from a Finnish limited liability company or from a company falling under the scope of the EU Parent-Subsidiary Directive are tax exempt. However, if the distributor is a listed company and the receiver is a non-listed company, dividends are tax exempt only if the non-listed receiver directly holds at least 10% of the shareholders' equity of the listed distributor.

Dividends are also tax exempt if the distributor company resides in the EEA and is liable to pay at least a 10% tax on the income from which the dividends are distributed. Additionally, dividends distributed by companies residing in a tax treaty state are often tax exempt based on a common tax treaty provision. Dividends received from the investment assets of banks and insurance companies are generally only partially tax exempt.

Group contributions

The concept of consolidated group taxation is not recognized in Finnish taxation, but the same outcome may be achieved for Finnish business income tax purposes through group contributions.

Eligible contributions between affiliated companies are deducted from the contributing company's taxable profit and added to the recipient company's taxable profit.

In order for the regime to apply, both the contributor and the receiver must be companies residing in Finland to which the Finnish Business Income Tax Act is applied, and there must be a 90% direct or indirect ownership structure between the parties that has continued for the entire fiscal year.

Anti-avoidance rules

Finland has a general substance-over-form anti-avoidance rule that applies to both domestic and cross-border transactions. The Finnish Tax Administration is aggressive in challenging existing structures and arrangements, which obligates these parties to prudently evaluate and document their actions.

Special anti-avoidance rules apply to restructurings and dividend distributions. Additionally, the EU Anti-Avoidance Directive (ATAD I) was implemented into the Finnish legal system in January 2019 and the hybrid mismatch rules under ATAD II were implemented in January 2020. Consequently, Finland's regime targeting controlled foreign companies were aligned with the Directive, but no changes were anticipated to the general anti-abuse rule.

Starting from 1 January 2022, the legislation on the reverse hybrid entities is amended to fully implement the ATAD2 Directive. According to the new legislation, non-resident partners of Finnish partnerships will have to pay tax on the income of a reverse hybrid entity in Finland if the conditions for applying the new rules are met.

Transfer pricing

Finnish legislation includes a transfer pricing adjustment provision, which can be applied to transactions between related parties that do not comply with the arm's length principle. The OECD transfer pricing guidelines have not been implemented in Finland, but they are used to interpret national transfer pricing provisions.

Finnish companies are required to maintain transfer pricing documentation. Certain small and mid-sized enterprises are relieved from this obligation. Additionally, Finnish companies that are a part of certain multi-national companies are subject to country-specific reporting obligations.

The transfer pricing provision was amended and the new provision entered into force on 1 January 2022. The provision added the analysis of whether the actual transaction executed between the associated enterprises complies with the arm's length principle should always include an accurate delineation of the transaction based on the economically relevant characteristics of the transaction.

GENERAL CORPORATE TAXATION IN FINLAND

Interest

Interest expenses that arise from business activities are generally deductible. However, there are EBITDA-based rules with certain safe haven clauses that limit the deductibility of interest payments between affiliated and unaffiliated parties. Followed by the implementation of the EU Anti-Avoidance Directive as of 2019, restrictions also apply to affiliated entities' third-party interest payments and affiliated entities operating in real estate sector. In addition, the deductibility of interest can be limited under general anti-avoidance rules or transfer pricing rules.

Interest expenses paid abroad are typically exempt from withholding tax.

Tax losses

A company's incurred tax losses may be carried forward for 10 subsequent tax years. However, this right is forfeited by non-listed companies if, at any time during the loss year or the 10 subsequent years thereafter, either more than 50% of the company's shares are transferred or there is a 50% change of ownership in a non-listed company that owns at least 20% of the shares in the loss-making company. The Finnish Tax Administration may, upon application and under certain conditions, grant a special permission to utilise losses despite the direct or indirect changes in ownership.

A listed company forfeits its right to carry forward losses if in aggregate more than half of its non-listed shares are transferred during the loss year or the 10 subsequent years thereafter. Changes in the ownership of listed shares generally do not result in the forfeiture of tax losses. Furthermore, changes of ownership in the listed shares of a company do not affect the carry forward losses of the non-listed companies owned by such a listed company.

The transfer of losses in a merger or a demerger is subject to certain conditions, which must be evaluated on a case-by-case basis.

Withholding tax

Dividends distributed to non-resident corporations are subject to a withholding tax of 20%. The withholding tax rate for dividends distributed to non-resident individuals is 30%. Due to the EU Parent-Subsidiary Directive and Finnish tax treaties, dividends in many cases are exempt from withholding tax or, if not fully exempt, a lower tax rate is applied. Finnish-sourced interest income is not subject to any withholding tax.

The concept of beneficial ownership and correct withholding tax percentage is subject to ongoing discussion.

Value added tax and excise tax

The supply of goods and services consumed in Finland is subject to VAT.

The general VAT rate is 24%. A lower 14% VAT rate applies to food and restaurant services and an even lower 10% VAT rate to e.g. books, transport, cultural events and accommodation services. In addition to VAT, certain excise taxes are levied on e.g. alcohol, tobacco and fuel.

Real estate tax

Regardless of their purpose, the majority of interests in real estate located in Finland is subject to real estate tax, unless a particular statutory exemption applies. The owner of a real estate must pay real estate tax annually, which may vary between 0.93% and 6% of the value of the property depending on the municipality and the characteristics of the interest in the property.

Real estate tax is a deductible expense for corporate income tax purposes, provided that the immovable property has been used in acquiring or maintaining income.

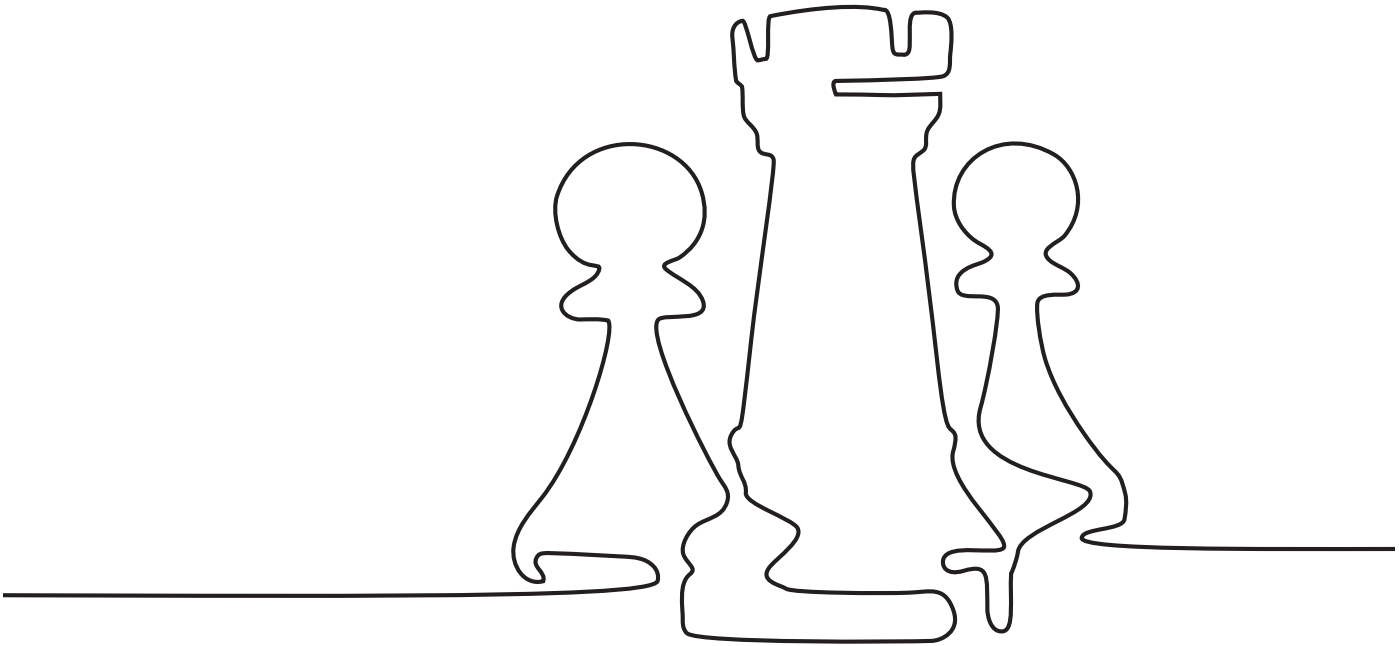
EINARI KARHU
Partner
Tax
tel. +358 20 713 3488
einari.karhu@borenius.com

HEIKKI WAHLROOS
Partner
Tax
tel. +358 20 713 3589
heikki.wahlroos@borenius.com

RECENT REFERENCES

- Borenius advised Keliber in group reorganisation and a landmark ruling on the application of EU Merger Directive to the reorganisation
- Borenius advised PHM Group in connection with the issue of EUR 300 million senior secured fixed rate notes
- Borenius advised Peab and Annehem Fastigheter in connection with the listing of Annehem on Nasdaq Stockholm
- Borenius advised Suzano in connection with its JV arrangement with Spinnova aiming to build a production facility for sustainable fibre for textile industry
- Borenius represented AP6 (the Sixth Swedish National Pension Fund) in Finnish tax proceedings
- Borenius advised Cramo Plc in a landmark intra-group financing related transfer pricing dispute
- Borenius advised US investment funds during proceedings at the Helsinki Administrative Court
- Borenius advised Netflix, Inc. on a recommended voluntary public cash tender offer to acquire Next Games Corporation
- Borenius advised Norvestor on the acquisition of Pinja Group Oy
- Borenius advised SRV on the reorganisation of its balance sheet
- Borenius acted as the counsel for Finland's transmission system operator Fingrid in a tax dispute concerning the real estate taxation of a reserve power plant
- Borenius represented the United Nations' Technology & Innovation Labs regarding the tax treatment of its employees in Finland

ANTITRUST & COMPETITION



MERGER CONTROL

A transaction requires the approval of the Finnish Competition and Consumer Authority (FCCA) if:

- the transaction effects a lasting change in the control over one or several undertakings or businesses, including mergers, acquisitions of a controlling interest, full-function joint ventures and transactions that bring about a change in the quality of control over such a party or business;
- the combined global revenue generated by all parties concerned during the preceding financial year exceeds EUR 350 million; and
- at least two of the parties concerned each generated more than EUR 20 million in revenue in Finland during the preceding financial year.

The notification is normally submitted upon the conclusion of the relevant agreements. The first phase review period is 23 working days, during which the FCCA may clear the transaction as such or with conditions or decide to initiate a second phase review if the transaction raises notable competition concerns. The second phase review period is 69 working days, during which the FCCA can either clear the transaction with or without conditions or request the Market Court to block it. The Market Court can extend the review period by 46 working days, giving the FCCA a maximum of 115 working days for the second phase review.

There is a standstill during the FCCA's review of the notified transaction, and as a result, the relevant transaction cannot be implemented before it has been cleared. If the transaction is completed before the FCCA has issued its clearance, a fine of up to 10% of the total revenue of the relevant party may be imposed. Furthermore, the transaction may be ordered to be dissolved or annulled. The standstill period cannot be terminated early under any condition, but certain implementing measures may, upon request and subject to the FCCA's permission, be taken during the review period. Furthermore, a party that has launched a public bid can purchase the shares offered prior to clearance, but it cannot use its voting rights to direct the competitive behaviour of the target company prior to clearance. This same rule applies to certain transactions where shares are redeemed.

The Finnish merger control rules do not apply if the concentration has an EU dimension, i.e. if it satisfies the thresholds set out in the EU Merger Regulation.

PROHIBITION OF CARTELS

In general, Finnish provisions concerning cartels and other restrictive agreements between competitors are harmonised with the

relevant provisions in EU competition law. The same applies to the Finnish provisions concerning the abuse of a dominant market position. The substantive national provisions are similar in content and interpreted in a uniform manner relative to their EU counterparts.

The cartel provision applies to agreements between business entities, to decisions made by associations of business entities, and to concerted practices by business entities, which all have as their objective the significant prevention, restriction or distortion of competition or which result in the prevention, restriction or distortion of competition.

The cartel provision applies to agreements or practices both between entities that operate on the same production or distribution level (horizontal agreements) and entities at different levels of the production chain (vertical agreements). Types of competitive restraints prohibited by the provision include e.g. price fixing and price recommendations, market or supply sharing, production limiting, collusive tendering, and sharing of commercially sensitive information.

Any such restrictive provisions are unenforceable. However, potentially anti-competitive agreements may be exempted from the scope of the cartel provision if the agreement satisfies a number of cumulative requirements. Specifically, the agreement must be associated with demonstrable efficiency benefits and allow consumers a fair share of these benefits. It also must not impose competitive restrictions that are not indispensable to the attainment of these objectives and it cannot eliminate competition in respect of a substantial part of the products in question.

ABUSE OF A DOMINANT MARKET POSITION

Dominance is defined relative to a company's market power in the relevant product and geographic market. A dominant position may also be jointly held by several companies without any of them holding a dominant position individually (i.e. collective dominance). Market shares customarily play an important role, although not a decisive one, when determining dominance.

Types of abuse covered by the prohibition include several forms of conduct, such as predatory or excessive pricing, margin squeeze, price discrimination, refusal to deal, tying or bundling, anti-competitive rebate schemes, and the imposition of exclusive sales or purchase agreements. The list of potential abuses is effectively open-ended, and it covers both exclusionary and exploitative forms of conduct. However, the FCCA is generally more

inclined to intervene in exclusionary conduct.

As with cartels, an efficiency defence is generally applicable as well, despite the lack of an explicit Finnish law to that effect. Furthermore, EU antitrust practice with respect to market shares as initial indicators of dominance differs from US practice, since the market share threshold for presumed dominance has traditionally been considerably lower within the EU jurisdiction.

SANCTIONS

An administrative fine can be imposed on parties that breach antitrust rules. This fine can be substantial for serious breaches, but it cannot exceed 10% of the revenue generated by the relevant party in the year when the party last breached the rule. Actions (i.e. private enforcement) for follow-on antitrust damages are also possible and often pursued in Finland.

A leniency program that exists under the Finnish antitrust rules allows parties participating in antitrust restraints, especially in cartel cases, to receive either a complete release from or a partial reduction (20–50%) to their respective fines, depending on the extent of their cooperation with the FCCA during its investigation.

The FCCA has the right to propose structural remedies before the Finnish Market Court in the context of cartels and market dominance abuse cases.

INTERNAL MARKET & STATE AID

Companies with an established business in Finland have access to the entire European Single Market and vice versa. As such, any company registered in accordance with Finnish law has the freedom to provide goods and services in any EU Member State as well as the freedom to set up agencies, branches and subsidiaries in other Member States.

The Finnish point of single contact referred to in the Service Directive (EU) 2006/123 is www.suomi.fi. This portal contains comprehensive information on relevant legislation for companies that plan to establish a business in Finland. Moreover, in many cases, procedures and formalities can be completed through the portal.

In addition to the provision of freedoms, EU treaties impose limits on the aid that Member States may grant to undertakings. If a national authority fails to comply with the applicable EU rules on State aid, it is obliged to recover any illegal aid that has already been granted. Therefore, it is also in the best interests of each company to make sure that a national measure or project does not involve illegal aid.

FOREIGN INVESTMENT REGULATION

When the transaction regards certain critical products or services, the

foreign owner may need to seek approval from the Finnish Ministry of Employment and the Economy. The filing is mandatory when the Finnish target company produces or supplies military or dual-use goods or services or critical products or services related to the statutory duties of Finnish authorities essential to the security of society. A foreign owner may voluntarily file the transaction when the target is considered critical, when assessed as a whole, in terms of securing functions that are vital to society based on their field, business or commitments.

Both mandatory and voluntary filings have three separate thresholds. A filing should be done when the foreign buyer gains at least 10%, 1/3 or 50% of the voting rights or corresponding actual influence over the target. In military, dual-use and security sector, the filing obligation is triggered if the buyer is a non-Finnish entity. The voluntary filing applies to non-EU/EEA buyers. A standstill obligation applies to the mandatory filing whereas the voluntary filing does not have a suspensory effect.

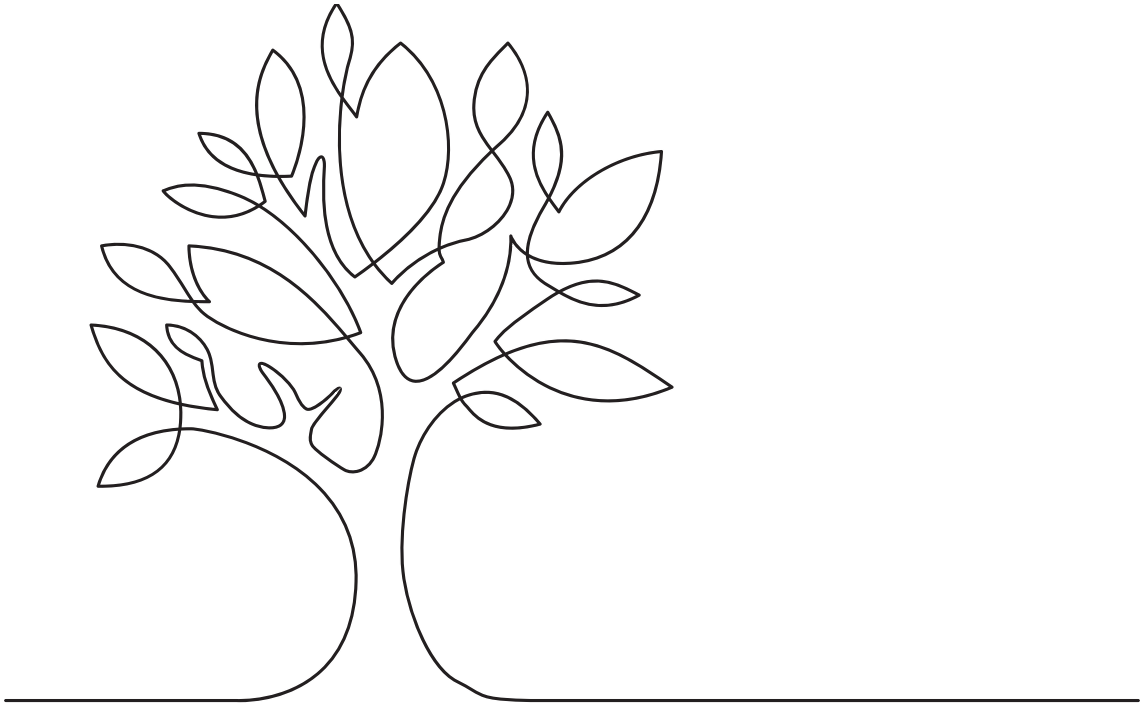
The Ministry has no legal deadline for the handling of mandatory filings. A typical handling time is 6 to 10 weeks. The legal deadlines for handling voluntary filings are 6 weeks (phase 1) and 3 months (phase 2). A positive attitude to foreign investments is the guiding principle of the Finnish foreign investment regulation. The Government can refuse to issue a clearance only if this is necessary due to a key national interest.

ILKKA AALTO-SETÄLÄ
Partner
Antitrust & Competition
tel. +358 20 713 3545
ilkka.aalto-setala@borenius.com

RECENT REFERENCES

- Borenius advised the State of Finland on the EUR 2.35 billion bridge financing for Fortum Corporation, which the State issued in response to turbulence in the Nordic electricity derivatives market
- Borenius provided advice regarding state aid to Finnair on an offering of EUR 500 million issued due to the COVID-19 pandemic
- Borenius provided advice regarding state aid (EUR 350 million) to Finavia due to the COVID-19 pandemic
- Borenius provided advice regarding state aid and public procurement to the Finnish Emergency Supply Agency due to the COVID-19 pandemic
- Borenius advised Matkahuolto and the Finnish Bus and Coach Association on a landmark antitrust dispute before the Finnish Market Court and the Finnish Supreme Administrative Court
- Borenius advised NCC on a landmark antitrust dispute before the Finnish Supreme Court and the EU Court
- Borenius advised the Finnish Social Security Institution on the EUR 200 million innovative public procurement of taxi-transport services
- Borenius secured the legitimacy of EUR 110 million COVID-19 procurements by the Helsinki Hospital District

ENVIRONMENT & NATURAL RESOURCES



GENERAL

The Finnish environmental protection system is divided into authorisation and supervision: environmental permits are mainly granted by the Finnish Regional State Administrative Agencies, whereas the Finnish Centres for Economic Development, Transport and the Environment (together known as the "ELY Centres") supervise subject operators and may impose sanctions for non-compliance. In addition, municipal environmental protection authorities may function both as authorising and supervising authorities in smaller-scale activities that have a more limited environmental impact.

Frequently encountered environmental issues in M&A transactions include:

- liabilities and restrictions arising from environmental permits;
- liabilities related to soil or groundwater contamination; and
- liabilities related to waste management.

The scope and nature of environmental liabilities may vary depending on whether the transaction involves a share purchase or an asset purchase.

ENVIRONMENTAL PERMITS

The underpinning of the Finnish environmental protection system is to prevent harmful environmental effects, such as the pollution of soil, groundwater or bodies of water, by regulating the emissions of industrial activities. The Finnish Environmental Protection Act sets forth a permit-based system of integrated pollution control that reflects the extent to which industrial emissions are tolerated. Tolerable emission levels are defined on a case-by-case basis, depending on e.g. the nature, scale and location of the activity as well as the nature and magnitude of the activity's environmental risk. A permit is required for all activities that pose a threat of environmental pollution, apart from certain activities merely posing a minor threat of environmental pollution based on their nature and location, which are subject to a lighter notification procedure. All environmental effects that are related to a specific activity are taken into consideration in the same permit request regardless of which element of the environment they affect.

Granting an environmental permit is subject to certain general prerequisites related e.g. to the adverse effects on human health, the pollution of soil, groundwater or bodies of water as well as the burden on the adjoining properties. An environmental permit is generally awarded unless there are special circumstances related to e.g. the location or emission levels of the activity. It should be noted that the Finnish Environmental Protection Act must be interpreted in the light of EU

legislation, e.g. the Habitats Directive, the Birds Directive as well as the Water Framework Directive. This means that an environmental permit will not be granted if the project may deteriorate the conservation status of a protected species or habitats, or jeopardise the attainment of good surface water status.

Environmental permits and related obligations often constitute important M&A considerations. Tolerated emission levels and waste amounts are set out in the permit conditions that are legally binding upon the permit holder. Typically, the permit conditions regulate both the overall volume of emissions (e.g. discharge waters) as well as the maximum allowed concentrations of harmful substances. Therefore, if an acquirer would like to increase production volumes, the environmental permit may need to be revised, which is often a time-consuming and expensive process, especially if the revised permit is appealed.

Permits may also impose obligations, such as periodic inspections, since permits are usually granted in perpetuity. Also, the obligations relating to the winding down and termination of permit activities may result in the acquirer becoming liable for the closure and post-remediation responsibilities. Fortunately, as permits are linked to an activity rather than to a company, transfers of environmental permits to a new party, i.e. the acquirer, are not subject to any specific authority approval (typically, an ELY Centre or a Finnish municipal environmental protection authority simply needs to be notified).

LIABILITIES FOR SOIL & GROUNDWATER CONTAMINATION

Liability arising from contaminated soil and/or groundwater is often a threshold issue in M&A transactions due to the various sources of liability and their potentially costly remediation.

Since acquiring the shares of a company results in the acquirer assuming all company liabilities, including environmental liabilities, the acquirer may face liability for the possible contamination of soil or groundwater or for other environmental damage that the prior activities of the company may have caused. As liabilities for soil and groundwater contamination may extend far back in time, the risks related to the acquisition may be substantial, especially with respect to old industrial companies. In addition, potential liabilities arising from the company's former operating sites will follow the company.

The acquisition of assets, on the other hand, may imply a risk of secondary liability for soil or groundwater contamination, as the acquirer may be considered liable as the holder of the contaminated property if the actual polluter cannot be found or has ceased to exist. Moreover, the

acquirer may also face tort liability for environmental damage if the acquirer knew or should have known about the pollution or the risk of pollution at the time of the transfer.

Liability arising from contaminated soil or groundwater is unaffected by contractual agreements between the relevant parties. The environmental authorities impose remediation obligations in accordance with the principles of public law. Agreements regarding the division of environmental liability between the parties are nevertheless binding between the parties, and a party may bring a civil claim against their counterparty.

WASTE

Under the Finnish Waste Act, a waste holder (i.e. the person who is in possession of the waste) is primarily responsible for organising adequate waste management. Environmental permit regulations usually impose obligations on the waste holder regarding waste management and the production of waste. The generated waste amounts are subject to permit conditions that may impose restrictions on e.g. increasing the production volumes of the activity.

In the event that the waste holder neglects this obligation or cannot be found, the responsibility for organising waste management may be imposed on the property holder, provided that the property holder has permitted activities that either generate or deliver waste to the property.

Should a party fail to fulfil its obligations under the Finnish Waste Act, the supervisory authority may order such party to restore the environment to its prior state or to eliminate the harm to the environment caused by the violation.

SANCTIONS

A breach of environmental laws or permits may lead to civil, criminal, or administrative sanctions.

An operator violating permit regulations may be subject to administrative compulsion, which may take the form of a coercive fine, suspension of the activity, or notice of enforced compliance. Moreover, the permit authority may revoke the permit, forcing the operator to close down the activity. In the event of soil or groundwater contamination, the supervisory authority may impose a remediation obligation on the operator.

Additionally, the supervisory authority may initiate a criminal investigation that may result in a corporate fine and/or in the confiscation of the crime's proceeds. Criminal liability for environmental offences may also be allocated to

the person in whose sphere of responsibility the act of negligence belongs. The assessment is made on an overall basis with due account to the factual participation and responsibility of the person in the unlawful activity. Based on recent case law, members of the board of directors can also be held liable if they have not supervised that substantial environmental issues are sufficiently attended to.

Based on the Finnish Act on Compensation for Environmental Damage, tort liability for environmental damage may be allocated to the following parties that are, as a general rule, jointly and severally liable:

- the entity that has carried out the activity causing the environmental damage;
- affiliates of such entity to the extent that the corporate veil is lifted;
- any other party that has proximate responsibility for causing the damage; and
- entities to which the activity that caused the environmental damage has been transferred (e.g. as a result of an asset sale) if the transferee knew or should have known about the pollution or the risk of pollution at the time of the transfer.

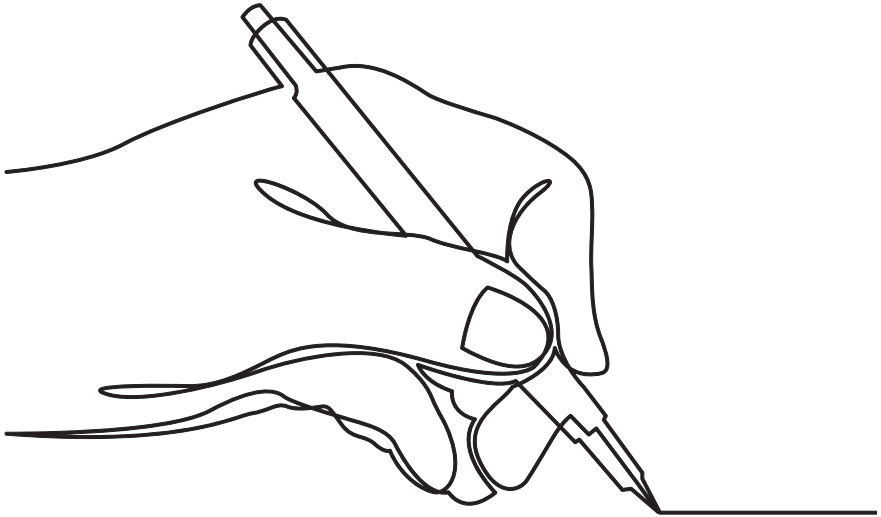
CASPER HERLER

Managing Partner
Environment & Natural Resources, Energy & Infrastructure
tel. +358 20 713 3288
casper.herler@borenius.com

RECENT REFERENCES

- Borenius advised Freeport-McMoRan on the $160 million sale of Freeport Cobalt to Jervois Mining
- Borenius advised Nouryon Chemicals International B.V. on its acquisition of J.M. Huber Corporation's CMC business
- Borenius advised OX2 on the acquisition of a 600 MW wind power development project portfolio
- Borenius advised OX2 on the sale of Metsälamminkangas wind farm
- Borenius advised Neoen on the acquisition of the 250 MW Mutkalampi wind farm and the joint venture regarding the wind farm
- Borenius advised Agnico Eagle in the licencing of the enlargement of Europe's largest gold mine

COMMERCIAL CONTRACTS



CONTRACT LAW IN FINLAND

Unlike many continental jurisdictions, Finland does not have a comprehensive codified civil code. Instead, Finnish contract law has developed over time driven by case law, individual legislative instruments and academic texts. At the core of the contract law framework reside certain key principles and premises including the principles of freedom of contract. The principle of freedom of contract encompasses, for example, the choice of either entering into contracts or refraining from doing so, the form of the contract, and a wide freedom to determine their terms including the choice of law. The freedom of contract is supported by three other principles: contractual loyalty, balance, and protection of the weaker party (especially consumer protection).

Finnish law does not generally require any mandatory form or legal formalities. As a consequence, contracts do not have to be made in writing in order to be binding, unless otherwise provided in specific acts. However, a moderately small number of exceptions do exist in Finnish legislation, including the requirement that any agreements on the transfer of real estate must be concluded in writing and affirmed by a notary in the presence of the signatories in order to be valid. Moreover, any representations made outside of the written contract – such as the exchange of correspondence or related documentation or representations and actions of the parties – can form part of the contract even if they have not been expressly incorporated. Therefore, the use of a properly constructed "entire agreement clause" will increase the likelihood that the parties' intentions will be construed solely based on the written agreement, especially if the negotiating position of the parties is equal.

The Finnish Contracts Act sets out a default framework governing the formation and interpretation of contracts. As a general rule, an offer and the unconditional acceptance of such offer are immediately binding on both parties. This means that if a specified period of acceptance has not been set in the relevant offer, the acceptance is binding on the offeror if it reaches the offeror within a period of time that could have been reasonably contemplated by the offeror at the time of making the offer. The said principles laid down in the Finnish Contracts Act do not apply to standard form contracts or to contracts that require performance in order to become effective.

COVID-19, FORCE MAJEURE SITUATIONS AND CONTRACT ADJUSTMENT

Force majeure refers to a situation where a contractual party is temporarily freed from its contractual obligations without repercussions due to an unexpected and unforeseeable change in circumstances. The impact of such a change must affect the party's ability to fulfil the contract. A significant rise in costs or a lack of demand due to a pandemic does not typically constitute a force majeure event, and the existence of the COVID-19 outbreak alone does not automatically entitle the contracting parties to invoke the force majeure clause in their contracts. There is still no significant case law on the impact of COVID-19 on the interpretation of force majeure clauses, and each event must be assessed on a case-by-case basis.

In Finland, it may also be possible to invoke force majeure in the absence of a specific force majeure clause in the contract. Finnish contract law recognises further the possibility for the courts to adjust or amend an agreement if the terms or its enforcement would otherwise be materially unreasonable. However, the threshold for such adjustment in

commercial contractual relationships between companies is generally high.

CONSUMER CONTRACTS

The Finnish Consumer Protection Act applies to the offering, selling and other marketing of goods and services to consumers by businesses, including activities that range from door-to-door selling to online sales. The said Act implements the various directives enacted by the EU and sets forth a powerful set of mandatory provisions offering a moderately high level of protection to consumers. Compliance with the Act in the marketplace is monitored by the Finnish Competition and Consumer Authority and the Consumer Ombudsman. Finnish law contains no equivalent protective provisions for B2B contracts, which are governed by general contract law.

The majority of the provisions of the Finnish Consumer Protection Act are mandatory to the extent that a contract term differing from the provisions of the Act to the detriment of a consumer is automatically invalid, unless otherwise stipulated in the Finnish Consumer Protection Act.

SALE OF GOODS

The Finnish Sale of Goods Act and the UN Convention on Contracts for the International Sale of Goods (CISG) set out general provisions pertaining to the sale of personal property. These laws are largely identical in terms of content. The Finnish Sale of Goods Act sets out default rules for when Finnish law is applicable to a contract. This Act applies to the sale of the following goods between two or more business entities:

- personal, tangible property, including liquids and animals;
- the material or furnishings and fittings of real estate as personal property;
- securities, such as shares and stock options; and
- industrial property rights, such as trademark rights.

DISTRIBUTION & FRANCHISING

There are no specific acts in Finnish law that specifically regulate distribution or franchise agreements. A number of statutes, however, may provide default provisions in the absence of a certain term or otherwise affect such agreements. For example, distribution and franchise agreements are subject to the general provisions set out in the Finnish Competition Act that prohibit price fixing, abuse of a dominant market position, and other anti-competitive practices. Under the Finnish Contracts Act, a court of law may adjust or completely set aside unfair contract terms or those whose application would lead to an unfair result. In addition, an established business practice in a certain field of business may affect the interpretation of the agreement. It is consequently important to ensure

that the agreements are sufficiently comprehensive.

The Finnish Competition and Consumer Authority applies the principles set out in the EU Block Exemption for Vertical Restraints and the European Commission Guidelines on Vertical Restraints when assessing distribution and franchise agreements. Trademark licensing may also be applicable, and it is regulated under the Finnish Trademarks Act.

Licensees and franchisees are also protected under the general provisions concerning unfair competition set out in the Finnish Unfair Business Practices Act, which offers protection against a franchisor that provides misleading or insufficient information in connection with its recruitment process as well as protection against competitors in the marketplace.

The Finnish Franchising Association has issued a Code of Ethics with which the members of the Association must comply. The Code of Ethics is substantively similar to the European Franchise Federation's Code of Ethics and sets out provisions on the minimum amount of information and the obligations imposed on the franchisor and franchisee that must be included in a franchise contract.

AGENCY

Agency agreements are regulated by the Finnish Act on Commercial Representatives and Salesmen, which is based on the EU Directive concerning self-employed commercial agents.

Most provisions of the said Act are not mandatory, but it is nonetheless important to be aware of them when considering an agency agreement as they are default provisions. For example, an agent may, unless otherwise agreed, be entitled to post-termination commission on transactions that are concluded after the conclusion of the agency agreement to the extent that such transaction can be mainly attributable to the agent's contribution during the term of the agreement.

The Finnish Act on Commercial Representatives and Salesmen contains mandatory termination payment provisions under which the agent is entitled to termination payment, provided that the agent has acquired new customers for the principal or significantly increased the volume of trade with the principal's customers. The amount of compensation is based on an overall assessment of the agent's lost remuneration and other surrounding circumstances, but it must not exceed the average annual remuneration calculated over the preceding five years (or the period the agreement has been in force if less than five years). However, the agent is not entitled to any compensation if the agent terminates the agency

agreement without due cause or if the principal terminates the agency agreement due to the agent's omission or act that would make it unreasonable to require for the contractual relationship to continue.

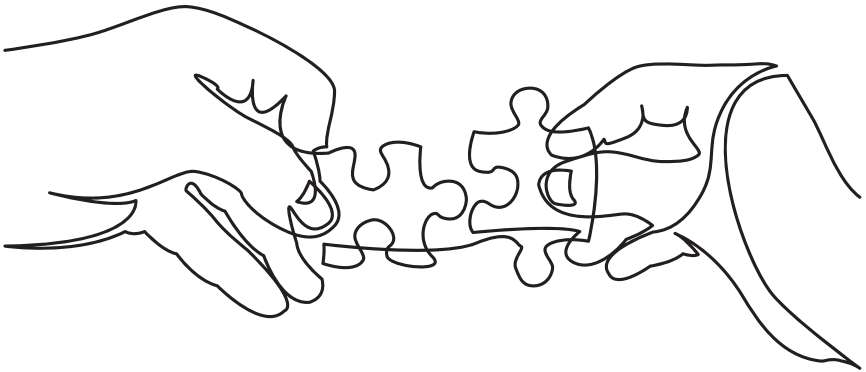
The Finnish Act on Commercial Representatives and Salesmen also contains mandatory minimum termination periods for the protection of agents. In addition, an agent cannot effectively waive their right to compensation before the agency agreement has expired. Further, agreements on del credere liability, i.e. agreements under which an agent sells goods to a principal on credit, as well as agreements that contain post-termination non-compete obligations must be in writing to be valid.

RECENT REFERENCES

- Borenius regularly assists its medium to large sized clients, including Kesko, Harvia, Robit, Aalto University, and Inchcape in drafting and negotiating commercial agreements
- Borenius advises its clients, including Barilla, Danone and Lumene, on any requisite consumer sale, marketing and distribution related issues
- Borenius provides a full complement of dispute resolution services relating to all commercial agreements

LASSE LAAKSONEN
Partner
Intellectual Property, Commercial Contracts
tel. +358 20 713 3521
lasse.laaksonen@borenius.com

DISPUTE RESOLUTION



GENERAL

In Finland, disputes are primarily resolved by general courts. Arbitration is common in business-to-business disputes and is the main dispute resolution mechanism of choice for large businesses. Businesses that are involved in cross-border trade also usually prefer arbitration. Other alternative dispute resolution methods, such as mediation, are not very common in business-related disputes.

LITIGATION

There are three levels of general courts in Finland: District Court, Court of Appeal and Supreme Court. Only a limited number of cases

reach the Supreme Court level as the outcome of the case usually has to have significant precedential value in order to qualify to be heard before the Supreme Court. There are also specialist courts that handle business-related disputes, such as the Finnish Market Court (e.g. IPR and public procurement) and the Finnish Labour Court (applicability of collective bargaining agreements). Judgements issued by the specialist courts are appealable. Depending on the nature of the matter, the court with jurisdiction to handle these appeals is usually the Supreme Court or the Supreme Administrative Court, and generally it requires a leave to appeal to lodge an appeal.

In addition, Finland has a parallel court system for administrative disputes that consists of Administrative Courts and the Supreme Administrative Court, which is the highest court. As with the Supreme Court, leave to appeal is generally required for proceedings at the Supreme Administrative Court. Administrative Courts resolve issues concerning e.g. taxation, land use and customs as well as competition law issues, such as public enforcement of cartel prohibition and merger control. Before a case is heard by the Administrative Court, it is first decided by the relevant authority (usually the authority's board of adjustment) on the basis of a claim for adjustment. As such, both the Administrative Court and the Supreme Administrative Court can be considered appellate courts.

Finnish procedural law is based on the theory of free evidence and the iura novit curia principle. Although not strictly necessary, parties usually invoke the law in addition to the facts affecting their case, especially if their case is complex. Finnish procedural law does not recognise common law concepts, such as juries or pre-trial discovery proceedings. Legal codification is rather extensive, which is the norm in civil law legal systems. There are relatively few legal precedents, which means that precedents are not available in all cases. Prolonged hearings due to deliberation on procedural issues are rather uncommon as deliberate obstruction by advocacy is rare. Most submissions and almost all correspondence with courts can be filed electronically.

A business dispute takes an average of one to two years in the District Court and another one to two years in the Court of Appeal. The coronavirus pandemic is currently causing some delays. In the spring of 2020, courts cancelled hearings in non-urgent matters.

The basic principle in litigation is that the losing party pays the reasonable and necessary costs incurred by the winning party. What is considered reasonable is evaluated on a case-by-case basis. In business-to-business disputes, the

majority of incurred costs are usually recoverable from the losing party.

Domestic judgments are enforced by local executive officers. Finland has ratified the Lugano and Brussels Conventions. By virtue of its membership in the EU, Finland is bound by the Brussels Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. Otherwise, Finland generally does not recognise or enforce foreign judgements, but cases can be re-tried in Finland. Finnish courts can apply a foreign law, but the parties are required to prove the contents of that law (the iura novit curia principle does not apply). Usually, the foreign judgement has a strong evidentiary effect as to the outcome when the case is re-tried in Finland, but the differences e.g. in the rules affecting evidence can have an impact on the outcome.

ARBITRATION

As a general rule, if a civil law case can be settled outside of court, the case is 'arbitrable'. A notable exception is that, under the Finnish Consumer Protection Act, a consumer cannot be bound to arbitration at the time of purchasing consumer goods or services and must agree after the relevant purchase to arbitration if a dispute arises. An arbitral award may not be appealed, but it can be set aside or declared null and void by a court if certain conditions are met. In practice, courts seldom set aside arbitral awards or hold them null and void. However, the number of actions for annulment has been gradually increasing.

The judiciary's attitude towards arbitration is rather positive, and attorneys tend to recommend arbitration in business-to-business disputes.

The main centre for domestic and international arbitration is the Finnish Arbitration Institute of the Finland Chamber of Commerce (the "FAI"). The number of cases filed with the FAI varies from approximately 50 to 80 cases each year. The most recent Arbitration Rules of the FAI entered into force on 1 January 2020. The key objective of these Arbitration Rules is to address issues such as expediency and cost-efficiency, multi-party administration, arbitrator-ordered interim relief, and increased confidentiality.

The Finnish Arbitration Act governs arbitration in Finland, and only minor amendments have been made since its enactment in December 1992. The Act was heavily influenced by the UNCITRAL Model Law of that time but is not directly based on it.

The Finnish Arbitration Act is primarily dispositive and offers only a relatively loose framework for the conduct

of arbitration proceedings. Parties are allowed to derogate from its provisions and tailor the proceedings to suit their needs. Consequently, if the parties have agreed on the applicability of the Arbitration Rules of the FAI, these rules partly replace and partly supplement the legal framework provided by the Finnish Arbitration Act. Failing agreement between the parties, the arbitral tribunal will decide on how the proceedings will be conducted in detail.

The Arbitration Rules of the FAI stipulate a sole arbitrator to be the default number of arbitrators, unless the parties agree otherwise. If the FAI's board considers it appropriate, the number of arbitrators may, however, be three. The challenge and replacement regimes concerning the arbitrators have also been adjusted to conform to the UNCITRAL Rules. In general, the final arbitral award must be made no later than nine months from the date on which the arbitral tribunal received the case file from the FAI.

The enforcement of arbitral awards is decided by state courts. As a rule, state courts apply the *in favorem pro validitate* rule in their deliberation, and the threshold for setting the award aside is relatively high. Most arbitral proceedings take place in Helsinki. Other district courts may not be as familiar with arbitral law.

Finland has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and foreign arbitral awards are therefore enforceable in Finland. Challenges of foreign arbitral awards are seldom accepted by the courts.

INVESTIGATIONS, CORPORATE CRIME & DIRECTORS' LIABILITY

In Finland, legal entities can be ordered to pay a corporate fine. Some of the most significant corporate fines apply to tax, corruption, environmental, and work safety offences as well as offences relating to IPR and the securities market. A corporate fine is imposed as a lump sum. The minimum corporate fine is EUR 850 and the maximum EUR 850,000.

The sentencing of a legal entity requires that an offence was committed in connection with the operation of the legal entity, and that

- a person who is part of its statutory organ or other management, or who exercises actual decision-making authority therein, was an accomplice to the offence or allowed the commission of the offence; or
- the care and diligence necessary for the prevention of the offence was not observed in the operations of the legal entity.

An offence is deemed to have been committed in connection with the operation of the legal entity if the

perpetrator has acted on behalf of or for the benefit of the corporation and such perpetrator belongs to the corporation's management or is in a service or employment relationship with it or has acted on assignment directed by a representative of the legal entity. A corporate fine may be imposed even if the offender cannot be identified or is not otherwise punished.

In addition to corporate criminal liability, Finnish authorities have begun to increasingly intervene in possible offences and other malpractice in business operations over the past few years. This has also lead to clashes between authorities' rather broad investigative powers and corporations' defence rights. In addition, the so-called EU Whistleblowing Directive is to be implemented by the end of 2021 and requires large and mid-size companies among others to provide internal reporting channels and ensure that all reports received are properly followed-up on. All these factors combined underline the need for corporations to have reliable procedures in place for investigating suspected malpractice within the organization and reacting to a governmental investigation or to the threat of it.

Recent case law has also demonstrated that it is increasingly important for corporations to properly document their decision-making and the allocation of responsibilities in their operations as well as to actively and continuously monitor that their organisation retains sufficient resources and expertise in order to perform its operations in compliance with the relevant legislation and public authorities' decisions.

The directors of companies have more frequently been called to account and have been held accountable for damage caused to corporations. For example, claims for damages based on alleged breaches of the directors' general duty of care are not uncommon. Pursuant to the Finnish Limited Liability Companies Act, the statutory management of a company will be held liable for damage caused to the company if the loss has been caused

- in office (i.e. in connection with an issue relating to the company and its operations);
- either deliberately or negligently; and
- through the violation of e.g. the duty of care or the promotion of the company's interests.

Also, a minority shareholder or the company's bankruptcy estate has under certain conditions the right to pursue a claim for damages against the statutory management on behalf of the company.

The statutory management can also be held liable for damage incurred by third parties due to a violation

of the Finnish Limited Liability Companies Act or the Articles of Association of the company in question. Neglecting to promote the company's interests, however, triggers liability towards the company and towards third parties.

Directors can also be sentenced to criminal liability if their actions or negligence in the company can be considered to constitute a criminal offence, such as insider trading or an environmental offence. The person within whose sphere of responsibility the act or negligence falls may be sentenced. With respect to the allocation of liability, due consideration must be given to the position of the subject, the nature and extent of their duties and competence, and their contributions to the origin and continuation of the event that is contrary to law.

In Finland, criminal liability does not always require intent. Liability is determined as an ex-post evaluation of what information a careful director would or should have had when performing the relevant actions or when they failed to fulfil their duty to act. Release from criminal liability does not remove liability for damages.

MARKUS KOKKO
Partner
Dispute Resolution, Investigations
tel. +358 20 713 3482
markus.kokko@borenius.com

KRISTIINA LILJEDAHL
Partner
Dispute Resolution
tel. +358 20 713 3464
kristiina.liljedahl@borenius.com

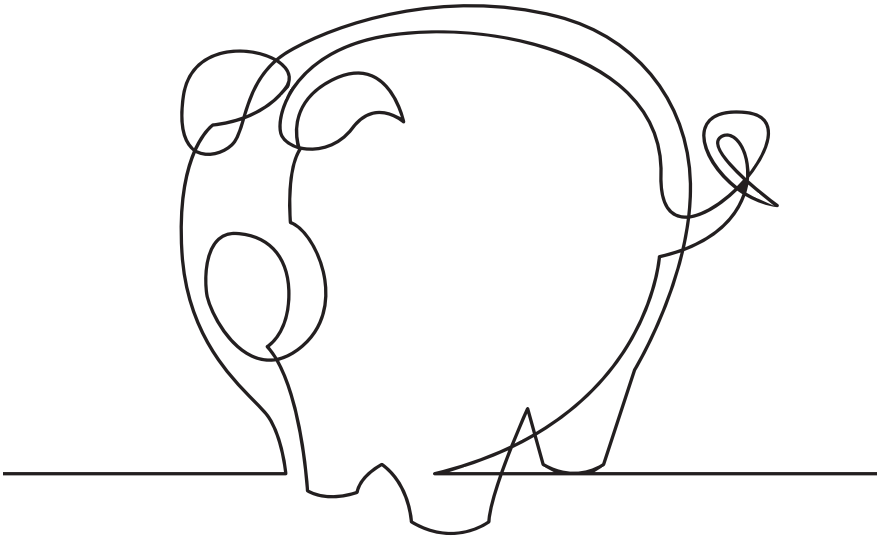
TERO KOVANEN
Partner
Dispute Resolution
tel. +358 20 713 3276
tero.kovanen@borenius.com

JARI GADD
Partner
Dispute Resolution
tel. +358 3 6790 2220
jari.gadd@borenius.com

RECENT REFERENCES

- Borenius represented a large Finnish digital sales and marketing company in FAI arbitration related to the private enforcement of competition law
- Borenius defended top executives in precedent-setting criminal proceedings at the Finnish Supreme Court with regard to suspected aggravated impairment of environment at the Talvivaara mine
- Borenius represented a US subsidiary of a listed Finnish company in ICC arbitration in New York
- Borenius represented a large Finnish energy company in two precedent-setting arbitration proceedings related to the Mankala business model
- Borenius defended board members of a major Finnish company in an extensive criminal investigation and litigation related to the alleged abuse of insider information and a security markets information offence
- Borenius represented a US based global private equity firm in international arbitration over the interpretation of an M&A agreement

INSOLVENCY



OPTIONS FOR FINANCIALLY DISTRESSED COMPANIES

Insolvency legislation in Finland provides two alternative procedures for companies experiencing financial difficulties: restructuring (rehabilitation) or bankruptcy (liquidation). Finnish legislation makes a clear distinction between the two proceedings, and consequently, they are regulated by different legislation and have separate proceedings.

While bankruptcy covers all of the debtor's liabilities and consequently will typically end the operation of the debtor, the purpose of restructuring is to rehabilitate a distressed debtor's viable business, make debt arrangements and provide for the debtor's continued operation. The aim of rehabilitation is for creditors to receive a greater disbursement from

the debtor for their receivables than in a bankruptcy.

The Finnish Act on Ranking of Claims provides for the order of priority in which claims are paid in a bankruptcy liquidation if the debtor does not have sufficient funds to pay all of the outstanding claims. It also provides for a reference in terms of restructuring programs' fairness and adequacy in rehabilitation. While the main principle is the equal right of the creditors, the basic order of priority is the following:

- debts secured by a pledge, mortgage or lien on a specific asset;
- debts secured by a floating charge; and
- other (unsecured) debt.

The priority of secured creditors applies not only to the principal amount of any debt but also to its interest for up to three years. With respect to floating charges, if 50% of the value of the underlying mortgaged assets does not cover the entire debt, the remaining part of the debt is treated as an unsecured debt.

Prior to resorting to official, court driven processes, companies may also pursue voluntary restructurings and pre-packs. These are not subject to any statutory schemes. The term "pre-pack" refers to an arrangement under which the sale of all or part of a company's business or assets is negotiated with a purchaser prior to the appointment of an administrator, and the administrator effects the sale immediately on, or shortly after, their appointment. We have seen an increased number of pre-packs used during the past year.

RESTRUCTURING PROCEEDINGS

Under the Finnish Restructuring of Enterprises Act, restructuring proceedings may be commenced if:

- at least two creditors, whose total claims represent at least one fifth of the debtor's known debts and who are not related to the debtor, file a joint application with the debtor or declare that they support the debtor's application or
- the debtor is insolvent and no other outcome would ensue from the barriers to restructuring.

As of July 1, 2022 alternative restructuring proceedings, preliminary restructuring proceedings, have been introduced to the Finnish Restructuring of Enterprises Act. Under the new Act, only the debtor can apply these proceedings under the precondition that the debtor faces imminent insolvency. The process, and most of the regulation relating to it and to the outcome – i.e. a court approved restructuring programme – in the preliminary restructuring proceedings, is the same as in the ordinary restructuring proceedings. It remains to be seen, however, how many applications for preliminary restructuring proceedings will be filed.

Restructuring proceedings are initiated by a restructuring

application filed by the debtor, the creditor or a probable creditor (e.g. a guarantor). The application may result in an interim interdiction (interim moratorium), which is a temporary prohibition of the payment, collection and execution of debts. The interim interdiction is requested in order to obtain a standstill until the relevant Finnish District Court has decided upon the restructuring application. The District Court will determine whether or not the company's restructuring proceedings will commence in its insolvency order. If such an order will be issued, a moratorium is in force until the restructuring program has been confirmed or the Court gives an order on the termination of the proceedings without the approval of the restructuring program.

The administrator, appointed by the District Court in light of creditor proposals, is primarily responsible for drafting the restructuring program within a set time given by the Court in its order. The restructuring program implements debt restructuring in any of the following ways:

- changing a payment schedule;
- restructuring prior payments made by the debtor to apply first to amortization and then to other debt related costs;
- reducing debt related costs; and
- reducing the amount of the unsecured debt.

The District Court commonly adopts the restructuring program with the approval of the majority of each creditor group. Generally, the majority from each group of creditors requires that the vote, with respect to those participating, exceeds 50% in both the number of creditors and amounts of total claims held by such voting creditors. However, the restructuring program can be certified without having majority support in all creditor groups if certain prerequisites are met. The final phase is the execution of the court-approved restructuring program after the actual restructuring proceedings have ended.

Despite restructuring proceedings, control over business operations remains with the debtor, except for certain decisions that fall outside the scope of the ordinary course of business. To more wide-ranging decisions, the debtor has to secure administrator's consent.

The Finnish Restructuring Act does not stipulate on cross-class cram down or debt-to-equity conversion.

BANKRUPTCY PROCEEDINGS

Bankruptcy is a liquidation procedure where all of the debtor's assets are sold and the proceeds are distributed and allocated to the creditors in accordance with the Finnish Act on Ranking of Claims.

To commence bankruptcy proceedings, a bankruptcy petition must be filed with the relevant Finnish

District Court by the debtor or the creditor when and if the debtor cannot repay their debts as they fall due other than on a temporary basis. The vast majority of the bankruptcies are initiated by creditors. The debtor will be provided with an opportunity to contest the creditor's claims. The District Court will declare the debtor bankrupt without a court hearing if the debtor files the bankruptcy petition.

Before declaring the debtor bankrupt, the court will hear the most significant creditors on who should be appointed as the bankruptcy estate administrator. The court appoints the bankruptcy estate administrator in the bankruptcy order and issues the estate administrator with a certificate of appointment.

Typically, the creditors grant the administrator a general authorization to sell the assets of the bankruptcy estate in the manner and at a price that is deemed most appropriate by the administrator. The creditors usually exercise their authority in creditors' meetings, of which the first will be held within six months from the beginning of the bankruptcy, if a meeting is not deemed unnecessary. However, it is common practice that before the first creditors meeting, the bankruptcy estate administrator seeks the approval of the most significant creditors to the most important decisions.

If, in the beginning of bankruptcy, the debtor has not performed a contract to which it is a party to, the other contracting party may request a declaration of whether the bankruptcy estate commits itself to the contract. If the administrator within a reasonable time declares that the estate commits to the contract, the contract cannot be terminated for cause. If the bankruptcy estate does not commit to the contract and the contracting party terminates the contract, they are entitled to damages as a result thereof.

The duration of full-scale bankruptcy proceedings is approximately two to five years. The duration depends on the particular characteristics of the bankruptcy proceedings, such as the recovery of the debtor's assets into the bankruptcy estate.

FOREIGN CREDITOR CONSIDERATIONS

Under the Finnish Code of Judicial Procedure, documents submitted to the Finnish courts must be in either Finnish or Swedish. The court hearings are also held either in Finnish or Swedish. Foreign creditors are particularly at risk in bankruptcy and restructuring proceedings due to their lack of familiarity with the security enforcement procedure and with making related claims as a creditor in such proceedings, as well as with the ultimate feasibility of any restructuring program. The primary use of Finnish during these proceedings, in both the security documents and proceedings

documentation, also creates difficulties for a foreign creditor.

RECOVERY/CLAW-BACK

Typically, a special audit of the debtor's books and operations will be carried out once the creditors and/or administrator have made the respective decision. This report, which a chartered accountant (CPA) usually prepares, clarifies the debtor's payment transactions over the past three months, or even up to two years in affiliated transactions, prior to the insolvency proceedings. This is called the critical period. As a result of this report, the administrator may, after discussing the matter with major creditors, file claw-backs against a certain creditor or member of the management.

The most common claw-backs faced by a creditor are the recovery of a payment or the recovery of a security. In the recovery of a payment, a payment becomes subject to claw-back if the payment was made by exceptional means or prematurely, or if it is considered significant in relation to the assets of the debtor's estate. In the recovery of a security, a security becomes subject to claw-back if the security was not contemporaneously or without undue delay delivered or perfected with the underlying debt. Any payment or other legal act carried out during the time the debtor was insolvent or which caused the debtor's insolvency is also potentially subject to recovery. Claw-backs are possible in both bankruptcy and restructuring, but they are more common in bankruptcies.

FORMER MANAGEMENT LIABILITY

Under the Finnish Limited Liability Companies Act, a member of the board of directors or the supervisory board and the managing director are liable for the loss that they, in violation of their duty of care or acting against the Limited Liability Companies Act, have deliberately or negligently caused to the company. Over the past five years, insolvency administrators have filed an increasing number of claims for damages against the former board of directors, CEOs and auditors. These claims are usually filed in bankruptcy proceedings.

Typically, the claims that an administrator files against the former management relate to a loss suffered by the company via an unlawful distribution of assets, e.g. intra-group company transactions or other transactions that are commercially questionable and have resulted in significant loss for the company. In several cases, the administrator has filed charges against the former management based on their criminal responsibility.

RECENT REFERENCES

- Borenius advised the State of Finland on its's EUR 2.35 billion bridge financing for Fortum
- Borenius advised SRV on the reorganisation of its balance sheet
- Borenius was selected to represent Stockmann, the famed 160-year-old retailer, in its restructuring
- Borenius acts as the bankruptcy estate administrator of Mash Group companies, Norwegian Air Shuttle's Finnish entities, Kajon Group and countless of other companies

JYRKI TÄHTINEN

Senior Partner
M&A & Private Equity, Restructuring & Insolvency, Capital Markets & Public M&A, Corporate Advisory & Compliance, Fund Formation & Investment Management
tel. +358 20 713 3411
jyrki.tahtinen@borenius.com

ROBERT PELDÁN

Partner
Restructuring & Insolvency
tel. +358 20 713 3448
robert.peldan@borenius.com

BORENIUS' PARTNERS

ILKKA AALTO-SETÄLÄ

Antitrust & Competition
tel. +358 20 713 3545
ilkka.aalto-setala@borenius.com

RIIKKA ERONEN

Banking & Finance
tel. +358 20 713 3278
riikka.eronen@borenius.com

CHRISTIAN FOGELHOLM

Projects & Construction, Real Estate,
Energy and Infrastructure
tel. +358 20 713 3519
christian.fogelholm@borenius.com

JARI GADD

Dispute Resolution
tel. +358 3 6790 2220
jari.gadd@borenius.com

CASPER HERLER

Environment & Natural Resources,
Energy & Infrastructure
tel. +358 20 713 3288
casper.herler@borenius.com

PAULUS HIDÉN

Fund Formation & Investment Management
tel. +358 20 713 3436
paulus.hiden@borenius.com

ARI KAARAKAINEN

Projects & Construction, Real Estate, Energy and Infrastructure
tel. +358 20 713 3524
ari.kaarakainen@borenius.com

EINARI KARHU

Tax
tel. +358 20 713 3488
einari.karhu@borenius.com

MARKUS KOKKO

Dispute Resolution, Investigations
tel. +358 20 713 3482
markus.kokko@borenius.com

JUHA KOPONEN

Capital Markets & Public M&A, Financial Institutions & Regulation
tel. +358 20 713 3285
juha.koponen@borenius.com

ERKKO KORHONEN

Technology, Data & Privacy
tel. +358 20 713 3136
erkko.korhonen@borenius.com

TERO KOVANEN

Dispute Resolution
tel. +358 20 713 3276
tero.kovanen@borenius.com

LASSE LAAKSONEN

Intellectual Property, Commercial Contracts
tel. +358 20 713 3521
lasse.laaksonen@borenius.com

KRISTIINA LILJEDAHL

Dispute Resolution
tel. +358 20 713 3464
kristiina.liljedahl@borenius.com

JANKO LINDROS
M&A & Private Equity
tel. +358 20 713 3403
janko.lindros@borenius.com

MIA MOKKILA
Capital Markets & Public M&A,
Corporate Advisory & Compliance
tel. +358 20 713 3182
mia.mokkila@borenius.com

EMMA NIEMISTÖ
Projects & Construction, Real Estate,
Energy and Infrastructure
tel. +358 20 713 3264
emma.niemisto@borenius.com

NIINA NUOTTIMÄKI
Banking & Finance, Restructuring
& Insolvency
tel. +358 20 713 3506
niina.nuottimaki@borenius.com

ROBERT PELDÁN
Restructuring & Insolvency
tel. +358 20 713 3448
robert.peldan@borenius.com

JOHANNES PIHA
M&A & Private Equity
tel. +358 20 713 3225
johannes.piha@borenius.com

BEN RAPINOJA
Intellectual Property
tel. +358 20 713 3424
ben.rapinoja@borenius.com

JOHAN ROMAN
M&A & Private Equity
tel. +358 20 713 3489
johan.roman@borenius.com

SAMULI SIMOJKI

Technology, Data & Privacy
tel. +358 20 713 3500
samuli.simojoki@borenius.com

JANI SYRJÄNEN

Employment
tel. +358 20 713 3565
jani.syrjanen@borenius.com

JYRKI TÄHTINEN

M&A & Private Equity, Restructuring & Insolvency, Capital Markets & Public M&A,Corporate Advisory & Compliance, Fund Formation & Investment Management
tel. +358 20 713 3411
jyrki.tahtinen@borenius.com

HEIKKI WAHLROOS

Tax
tel. +358 20 713 3589
heikki.wahlroos@borenius.com

NELLA ÅSTRÖM

M&A & Private Equity,
tel. +358 20 713 3570
nella.astrom@borenius.com

CONTACT

BORENIUS ATTORNEYS LTD

HELSINKI (HEADQUARTERS)

Eteläesplanadi 2
00130 Helsinki
FINLAND

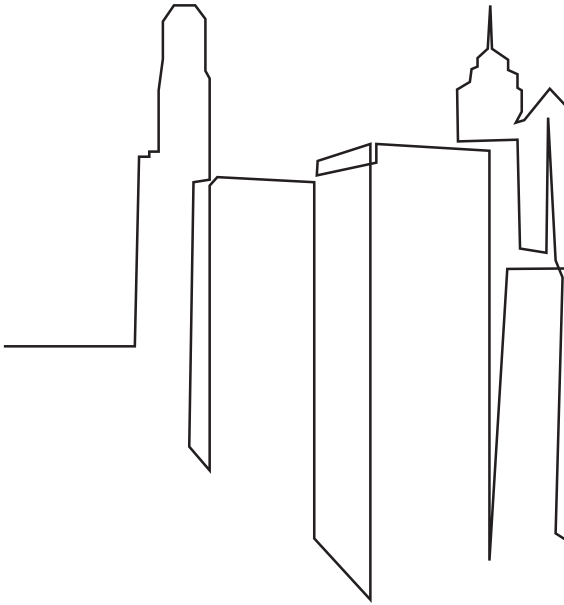
Tel. +358 20 713 33

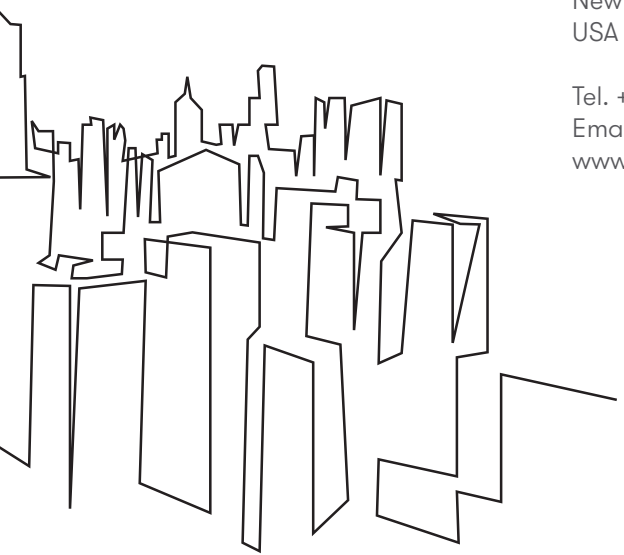
TAMPERE

Hämeenkatu 13 B A
33100 Tampere
FINLAND

Tel. +358 3 214 9111

Email: info@borenius.com
www.borenius.com





BORENIUS ATTORNEYS P.C.

NEW YORK

1270 Ave of the Americas, 7th Floor
New York, NY 10020
USA

Tel. +1 212 535 2556
Email: infonyc@borenius.com
www.borenius.com/newyork

BORENIUS ATTORNEYS LTD

LONDON

Paternoster House, 2nd floor
65 St. Paul's Churchyard
London, EC4M 8AB
United Kingdom

Tel. +44 20 7920 3010
Email: london@borenius.com
www.borenius.com/london

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