Private Mergers and Acquisitions in Finland: Overview

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Q&A guide to private mergers and acquisitions law in Finland.

The Q&A gives a high-level overview of key issues including corporate entities and acquisition methods, preliminary agreements, due diligence, acquisition agreements and main documents, warranties and indemnities, acquisition financing, signing and closing, tax, employees, pensions, regulatory approvals, and environmental issues.

Corporate Entities

1. What are the main corporate entities commonly involved in private acquisitions?

The main corporate entity commonly involved in private acquisitions is the limited liability company. A limited liability company can be either:

- A private company (*yksityinen osakeyhtiö*).
- A public company (*julkinen osakeyhtiö*).

A public company can offer shares to the public and have its shares listed on a stock exchange. The minimum share capital requirement is EUR80,000 for public companies. There is no minimum share capital requirement for private companies.

Ways to Acquire a Private Company

2. How are private acquisitions commonly structured and what factors apply to the choice of structure?

Private companies are typically acquired through a share purchase agreement.

Alternatively, all or part of a company's assets may be purchased through an asset purchase agreement.

Share transactions are more common than assets deals. A sale by auction, or a structured sale process, is common practice in Finland but negotiated sales are also common.

Generally, there are no material differences between the terms and conditions between a privately negotiated transaction and an auction sale, although warranties are usually less extensive in auction sale compared to privately negotiated transactions. The use of warranty and indemnity insurance has levelled out the differences between negotiated transactions and auction sales, as the warranties offered in insured transactions are fairly extensive. Warranty and indemnity insurance is common in auction processes but less common in negotiated deals.

The structure of a transaction is typically influenced by tax considerations, although private equity buyers are commonly structured through one or more SPVs, with these being either foreign or domestic limited liability companies.

See also *Practice Note, Acquisition Structures: Overview (International)*.

Share Purchases and Asset Purchases

3. What are the main advantages and disadvantages of a share purchase (compared to an asset purchase)?

Transfer of Assets/Liabilities

Share purchases. In share purchases, the target and its business remain intact, and agreements and other legal relationships continue (unless there are change of control clauses). All assets (including liabilities and obligations) of the target automatically transfer (indirectly) to the buyer on completion of the acquisition agreement. All prior liabilities of the target automatically transfer (indirectly) to the buyer, including unidentified and historical liabilities and obligations. Carving out unwanted assets, obligations or liability is therefore more difficult.

Asset purchases. In asset purchases, only the identified liabilities and obligations transfer with the assets. It is therefore possible to agree on the specific assets to be transferred and it is straightforward to carve out assets and obligations the buyer does not want to assume or that the seller needs for its remaining business. However, the continuation of agreements and other legal relationships will require third-party consents at the outset, unless stated otherwise in the relevant agreements.

In an asset sale where the target is a going concern business, the buyer must provide continued employment to employees working for the transferred business. Consequently, employees are automatically transferred to the buyer as part of the purchased business.

In certain situations, environmental liabilities can transfer to the buyer (see *Question 34*).

There is also a risk that a municipality will redeem real estate covered by the purchase.

Tax liabilities remain with the transferor and cannot be assigned to the transferee (in relation to the tax authorities).

Complexity of the Transaction

Share purchases. In share purchases, the scope of the transaction is simple if all shares are acquired using cash consideration. The buyer can assume that the assets of the company are sufficient for the operations, unless intra-group services are provided to the target by group companies that are not part of the transaction.

Asset Purchases. In asset purchases, the scope of the transaction usually requires more attention.

Tax Considerations

Share purchases. Usually, a seller prefers a sale of shares, as there is generally only one charge to tax (on the sale of the shares), if at all. Corporate sellers in particular may benefit from the participation exemption on capital gains. A sale of shares may also be beneficial to the buyer if real property constitutes a large part of the value of the transaction, as the transfer tax rate on the acquisition of shares in a real estate company is subject to a lower transfer tax compared to the direct sale of real property. Transfer tax is payable by the buyer on a sale of shares.

Asset purchases. Assets, other than real property (and shares), are not subject to transfer tax. Transfer tax is payable by the buyer on any real estate transferred as part of the assets.

A major tax advantage in an asset sale is that the buyer obtains a step-up in the tax depreciation base. Historical tax liabilities relating to the assets and business concerned remain with the seller in an asset sale, unless otherwise agreed.

Auctions

> 4. Are sales of companies by auction common? What is the typical procedure and what regulations (if any) apply?

Sale by auction, or a structured sale process, is a common practice in Finland for the sale of companies. The procedure follows the same pattern as in international deals. There are no specific Finnish regulations on the auction procedure, and it can be executed either as a limited auction or as a broad auction. In a limited auction, only a limited number of bidders are invited to bid on the target. A broad auction allows several bidders to bid on the target.

A typical auction procedure generally includes the following steps:

- The corporate finance adviser approaches potential buyers with a "teaser" document containing limited information on the target.
- The entry into non-disclosure agreements with buyer candidates who wish to receive more information on the target.

- An information memorandum regarding the target is delivered to the buyer candidates.
- The submission of initial bids by the buyer candidates, after which it is decided with whom the process will continue.
- Due diligence performed by those buyer candidates remaining in the process.
- The submission of the final bids by the buyer candidates.
- Final negotiations and conclusion of the relevant transaction documents.
- Closing of the transaction.

For an international overview of the auction sale process for a share or asset sale, see *Practice Note, Auction Sales: Overview (International)*.

Foreign Ownership Restrictions

5. Are there any restrictions on acquisitions by foreign buyers?

Under the Act on the Monitoring of Foreign Corporate Acquisitions in Finland (*172/2012, as last amended in October 2020*) (*Investment Control Act*), a foreign buyer must apply for prior approval from the Ministry of Economic Affairs and Employment (MEAE) for an acquisition resulting in the buyer holding at least one-tenth, one-third, or one-half of the voting power (or corresponding influence) of a Finnish defence or security company.

A foreign buyer can submit a notification to the MEAE in relation to an acquisition resulting in the buyer holding at least one-tenth, one-third, or one-half of the voting power (or corresponding influence) of a company or business holding a key position with respect to maintaining vital functions of Finnish society.

When considering an application, the MEAE must transfer the matter to the Council of State if the acquisition could jeopardise important national interests.

A foreign buyer is defined as a person, entity or trust that does not have a place of residence within the EU or the European Free Trade Association (EFTA). The Investment Control Act also applies to an entity or trust that has a place of residence within the EU or EFTA and in which a foreign buyer (as defined above) holds either:

- At least one-tenth of the voting power, in the case of a limited liability company.
- Corresponding influence, in the case of another entity or business.

The MEAE will approve acquisitions resulting in the control of these companies unless the acquisition endangers important national interests. Such interests include:

- National defence.
- Internal security and protecting the critical infrastructure.
- The prevention of serious or permanent economic, social, or environmental impacts.
- Citizens' general health and safety.
- The MEAE can impose conditions on an acquisition in its approval decision if it is necessary to safeguard important national interests.

Acquisitions endangering important national interests are reviewed by the Council of State. The Council of State can only refuse to confirm an acquisition if the refusal is necessary due to important national interests.

No approval by the MEAE is required where:

- The foreign buyer subscribes for shares in a company in connection with an increase of the share capital of that company in the same proportion as its current shareholding.
- The foreign buyer acquires the shares through inheritance or a will or by matrimonial right.
- Another foreign owner has already acquired dominant control of the company under the Investment Control Act (not applicable to defence or security companies).
- The company is acquired from another foreign enterprise that has already become the owner of the company under the Investment Control Act (not applicable to defence or security companies).

If approval is not granted, the buyer must decrease its ownership to less than one-tenth (or less than one-third or less than half) of the shares in the company and can only exercise the corresponding voting power at any general meeting of the company's shareholders or other relevant corporate body.

Preliminary Agreements

6. What preliminary agreements are commonly made between the buyer and the seller before negotiating or executing the primary acquisition documents?

Letters of Intent

A letter of intent is generally drafted as a non-binding document. Therefore, where some of its terms and conditions are intended to be legally binding, this should be clearly stated in the letter of intent. The purpose of the letter of intent is, at the outset, to reflect the intention of the relevant parties to agree on the proposed transaction.

Typically, the letter of intent includes provisions on, for example:

- The indicative purchase price and the principles underlying the price.
- The structure and scope of the purchase (shares or assets).
- Exclusivity of the buyer candidate.
- Timing of the process in general (including due diligence and access to a data room).
- General terms of the transaction.

Sometimes the parties seek to agree on the key terms of the transaction in the letter of intent to speed up the negotiation of the definitive agreement or to avoid spending resources unless key terms have been agreed on.

Other preliminary agreements of a similar non-binding nature include term sheets and memoranda of understanding.

Exclusivity Agreements

By entering into an exclusivity agreement with the relevant buyer candidate, the seller agrees not to enter into any purchase agreement or negotiate with any third party regarding the target for a limited period. Usually, the relevant buyer candidate requires an exclusivity agreement to be entered into with the seller before the start of the due diligence. An exclusivity agreement is generally legally binding among the parties. The content of the exclusivity agreement, such as the remedies for breach of the agreement, can be freely negotiated by the parties.

Non-Disclosure Agreements

A non-disclosure agreement entered into by the seller and the buyer candidate usually relates to the initial phase of the transaction negotiations before more sensitive information regarding the target is disclosed by the seller. By entering into a non-disclosure agreement, the buyer candidate undertakes not to disclose certain confidential information regarding the target received from the seller in connection with the transaction negotiations. While non-disclosure agreements are often one-sided in protecting only the seller's information, in auctions in particular, it is often in the buyer's interest for the buyer's identity, its interest in the target and the terms of its offer to remain confidential.

A non-disclosure agreement is legally binding on the parties. The content of the non-disclosure agreement, such as remedies for breach of the agreement, can be freely negotiated by the parties.

See also *Practice Note, Preliminary Agreements (Private Company Acquisitions): Overview (International): Confidentiality Agreements*.

Due Diligence

7. How is due diligence typically carried out and what main areas does it usually cover?

In practice, legal due diligence review is typically conducted as a combination of document review (with documentation being almost always uploaded into a virtual data room) and Q&A sessions with the target's management group. In addition to the information available in data room, publicly accessible databases will include information about the target (such as trade register information).

Legal due diligence is typically conducted on an issues-only/red-flag basis. Detailed reports are seldom requested, even in transactions involving a warranty and indemnity insurance policy. The applicable materiality threshold and scope of the due diligence depend on, among other matters, industry-specific aspects and the size of the target, as well as whether the transaction is insured. The emphasis areas in due diligence are usually separately agreed between the buyer and the legal adviser, and typically cover the following areas:

- Corporate and financing documentation.
- Key agreements (both customer and supplier documentation).
- Tax (unless there is a separate tax advisor).
- Employment and pensions.
- Disputes.
- Regulatory aspects.
- Real estate and environment.
- Data protection and privacy.
- Intellectual property.

See also *Due Diligence in M&A Transactions and Joint Ventures Toolkit (International*).

Consents and Approvals

8. What are the main consents and approvals typically required for an acquisition?

Corporate Approvals

Board resolutions will be required from both the seller and the buyer on, among other things, approval of the acquisition and acquisition documents, as well as authorising specific persons to sign the acquisition documents on behalf of the seller and buyer. It is also customary for shareholder resolutions approving these board resolutions and waiving any transfer restrictions (only in case of seller and to the extent such restrictions apply) to be required from both the seller and the buyer.

Shareholder Approval

The shares in a private limited liability company can be freely transferred, unless otherwise set out in the articles of association or a shareholders' agreement.

If any transfer restrictions apply, waivers are typically given in the acquisition documents or in a separate shareholder resolution.

If (unusually) buyer issues new shares as consideration for the acquisition (as a directed share issue derogating from the shareholders' pre-emptive rights to subscribe to shares in a share issue), a shareholder resolution with a two-thirds majority is required.

Contractual Consents

There is no general requirement to notify creditors under Finnish law. However, such requirements may exist under pledges and other agreements concluded by the target.

In an asset sale, the continuation of agreements and other legal relationships will require third-party consents at the outset, unless stated otherwise in the relevant agreements.

Regulatory Approval

Generally, no regulatory approval is required for private M&A transactions other than competition approval (see *Question 33*) and foreign ownership approval (see *Question 5*).

Main Documents

9. What are the main documents in an acquisition and who generally prepares the first draft?

In a share purchase, the main document is the share purchase agreement. In an asset purchase, the main document is the asset purchase agreement. The first draft is commonly prepared by the seller, in particular in asset purchases or where the seller runs an auction or a structured sales process. Otherwise, the party with the stronger negotiation position generally prepares the first draft.

There are also several other documents that are usually prepared in addition to the relevant purchase agreement, such as:

- Transitional service agreements, where the target company or business will be dependent on services provided by the seller group after closing.
- Shareholders' agreements, where the seller will remain a shareholder in the target, or if there are multiple buyers or certain other financing agreements.
- Commercial agreements or intellectual property licences between the seller and the target and the buyer, which can form part of the deal documentation where such relationships continue after closing. If so, the agreements are often negotiated or re-negotiated in connection with the deal.

The main difference in a share and asset deal is how the scope of the acquisition is defined in the documentation. In share deals, the scope is simple to define. However, the assets to be purchased in an asset deal must each be sufficiently identified.

See also *Practice Note, Share Acquisition Documents: Overview (International)*.

Acquisition Agreements

10. What are the main substantive clauses in an acquisition agreement?

The following substantive clauses are generally included in a share purchase agreement:

- Purchase price and adjustment mechanisms.
- Closing mechanics, conditions precedent and covenants.

- Warranties.
- Indemnities.
- Limitations of liability.
- Non-compete and non-solicitation undertakings.
- Specific undertakings.
- Governing law.
- Dispute resolution.

In addition to the above, an asset purchase agreement will contain a detailed list of the relevant assets to be transferred to the buyer identifying, for example, the fixed assets, inventory, intellectual property (including know-how) and contracts to be transferred.

Warranties and Indemnities

11. Are seller warranties/indemnities typically included in acquisition agreements and what main areas do they cover?

A purchase agreement usually includes specific language regarding seller warranties/indemnities. The type and detail of the warranties included in a purchase agreement depend on, among other things, the size of the transaction and whether or not the relevant transaction is negotiated with only one buyer candidate. Consequently, the warranties tend to be less extensive in an auction than when negotiating only with one buyer candidate.

Typically, the warranties in the purchase agreement cover the following main areas:

- The capacity and authority of the seller.
- The seller's lawful ownership and transferable title to the shares, or in an asset sale, the assets of the target.
- The shares of the target having been lawfully issued and the share capital fully paid (if relevant).
- The shares and the assets of the target being free from any encumbrances.

- The correctness of the accounts of the target.
- The material agreements of the target being valid and in force, and the target not being in breach of the material agreements.
- There being no pending or threatened litigation regarding the target.
- The target being in compliance with laws and relevant permits.
- The target being the lawful owner of its intellectual property rights.
- There being no unlawful terminations of employees of the target.
- The seller having disclosed all relevant information and liabilities of the target.
- There being sufficient insurance coverage of the target.
- The real estate of the target being in good condition and other environmental matters.
- The target having paid all its taxes that have become due.

Generally, specific indemnities are rather limited and restricted to specific risks that have been identified during the due diligence.

12. What are the main limitations on warranties?

Limitations on Warranties

It is fairly common for the seller to seek to limit warranties other than the fundamental warranties (such as ownership of shares in a share sale), or at least a portion of the warranties, by making them subject to the seller's actual knowledge of the relevant circumstance. If that kind of limitation is included in the purchase agreement, the buyer usually seeks to negotiate the language of the definition "seller's knowledge" to be as broad as possible, and to cover both actual and deemed knowledge of the seller.

Warranties are also sometimes given subject to a material adverse change qualification, so that the warranty is not triggered by breaches of the warranty that do not cause a material adverse change.

Warranties (other than fundamental warranties) are usually qualified by disclosure, sometimes with reference to the relevant due diligence material/information and a separate disclosure letter. Under Finnish law, there are no formal requirements for a disclosure letter.

13. What are the remedies for breach of a warranty? What are the time limits for bringing claims under warranties?

Remedies

Typically, the purchase agreement states that the seller will compensate any losses the buyer might suffer due to a breach of the warranties. However, this liability is often limited to reasonably foreseeable losses and by monetary caps. The amount compensated or indemnified is often construed as a reduction of the purchase price.

Other possible remedies offered under Finnish law, such as the right of the buyer to rescind the agreement, are normally excluded in the purchase agreement.

Time Limits for Claims Under Warranties

At the outset, the time limits for claims under warranties can be freely agreed by the parties. Therefore, the parties can also agree on the commencement date of the relevant time limit, which can start, for example, from the signing date, closing date or another date.

The minimum time limit for bringing fundamental warranty claims is typically five years and there is no maximum.

The general time limits for bringing general business warranty claims range from 12 to 24 months from closing, and for tax and environmental warranty claims between five and seven years or the date when any applicable statute of limitations has expired, with some exceptions.

Signing and Closing

Conditions Precedent

14. What common conditions precedent are typically included in a private acquisition agreement?

Conditions precedent typically included in a share sale may include:

- The receipt of any relevant approvals, such as from the competition authorities.

- Consents from the counterparties of material agreements that contain change of control clauses.
- No material breach of key warranties (or sometimes all warranties) before closing.
- No material adverse change in the target between signing and closing.
- No action, suit or proceeding pending or threatened before any court.

Main Steps at Signing and Closing

15. What are the main steps at signing and closing in a private share sale and asset sale? What main documents are commonly produced and executed?

Signing

The following documents are commonly produced and executed at signing:

- Corporate resolutions by the seller and the buyer to approve and enter into the relevant share/asset transfer and any related agreements.
- The agreement (share purchase agreement/asset purchase agreement) between the seller and the buyer regarding the transfer of the relevant shares/assets.
- A transitional service agreement, if applicable (often executed at closing).
- A shareholders' agreement (in a share sale where there are multiple buyers or the seller remains as a shareholder in the target).
- Relevant financing agreements.

The delay between signing and closing is typically covered by contractual protection in the purchase agreement in the form of (for example) covenants undertaken by the seller regarding the conduct of the target’s business.

Closing

Closing typically includes the following:

- Payment of the (initial) purchase price payable on closing and production of a receipt for this.
- Payment of asset transfer tax in connection with a share deal, if applicable.
- Transfer of duly endorsed share certificates from the seller to the buyer, if the target company in a share transaction has issued physical share certificates.
- A closing memorandum.
- Release of relevant security/guarantees and repayment of existing indebtedness.
- Relevant corporate resolutions regarding, for example, the change of board of directors, signatory rights and the articles of association of the target (in a share sale).
- Resignation letters of resigning directors of the target (in a share sale).
- An escrow agreement, if a portion of the purchase price is put in escrow.
- Relevant supply or other ancillary agreements.
- Depending on how the acquisition is financed, a security over the target shares (in a share sale).
- Board resolutions of the target regarding the update of the shareholder register of the target (in a share sale).

For an overview of the mechanics of signing and closing and key provisions of opinion letters in cross-border acquisitions, see *Practice Note: Signing, Closing, and Opinions: Overview (International)*.

Execution of Documents

16. How are documents executed by companies in your jurisdiction? Are there specific formalities to execute certain types of documents?

As a general rule, there are no formal legal requirements, such as notarisation, for the execution of documents under Finnish law. As a general rule, documents can be executed in wet ink or electronically. However, there are certain types of documents to which formalities apply, such as agreements on the sale and purchase of real estate, which must be entered into in writing between the parties in the presence of a notary public.

There are no general formalities for the execution of documents by foreign companies under Finnish law. Proof of authorisations are generally not required unless one of the parties requests these.

Apart from legal opinions issued in connection with financing transactions, legal opinions are seldom issued in connection with share or asset deals.

Transferring Title to Shares

17. What formalities are required to transfer title to shares in a private company?

The following formalities are required to transfer title to shares in a private limited liability company under Finnish law:

- Corporate resolutions by the seller and the buyer to approve and enter into the relevant share transfer and the related agreements.
- Agreement (share purchase agreement/share transfer agreement) between the seller and the buyer regarding the transfer of the shares in the target.
- If share certificates have been issued regarding the shares of the target, the share certificates must be physically transferred (duly endorsed) into the possession of the buyer to perfect the relevant share transfer.
- If the target shares have been issued in book-entry form, specific rules apply to the transfer of title. For example, the shares must be transferred to the buyer's book-entry account.
- Update of the target's shareholder register, following payment of transfer tax (see *Question 25*).

Apart from updating the shareholder register of the target, no registrations are needed to transfer title to shares in a private limited liability company under Finnish law.

Seller's Title and Liability

18. Are there any terms implied by law as to the seller's title to the shares in a share sale? Is any specific wording necessary and do buyers normally impose a higher standard than is implied by law?

There is no formal requirement under Finnish law regarding the wording of the seller's title to the shares. However, the seller usually warrants in the purchase agreement that:

- The seller lawfully owns and has transferable title to the shares.
- The shares are free from any encumbrances.

In addition, it is advisable for the purchase agreement to clearly state, among other things, whether any share certificates have been issued regarding the shares. If share certificates have been issued, they must be physically transferred to the buyer and duly endorsed. For the buyer to use the rights pertaining to the shares, the buyer must be entered as the lawful owner of the shares in the company's shareholder register. The buyer can only be entered into the shareholder register after the transfer tax has been paid.

19. Can a seller and its advisers be liable for pre-contractual misrepresentation, misleading statements, or similar matters?

Seller

A seller can be liable for pre-contractual misrepresentation, misleading statements or similar matters under the principle of *culpa in contrahendo* (duty to negotiate a contract in good faith). In Finland, this usually refers to liability for the interruption of agreement negotiations at a very late stage or the invalidity of an agreement due to negligence.

A party's liability for damage under *culpa in contrahendo* is usually connected to negative contract interest. If the seller is held liable based on *culpa in contrahendo*, the buyer is compensated so that its financial position equals what it would have been if no agreement negotiations had taken place with the seller. Therefore, the buyer can only be compensated for financial loss caused by the seller's negligent pre-contractual misrepresentation or misleading statements.

In practice, the parties can enter into a separate agreement regarding the pre-contractual relationship and liability for, for example, related transaction costs during the negotiation phase. Preliminary agreements usually set out that each party is responsible for its own costs and expenses.

Advisers

Advisers are not liable for pre-contractual misrepresentation, unless they operate beyond their mandate.

Governing Law and Arbitration

20. Can a share purchase agreement provide for a foreign governing law? Is an arbitration provision usually included in private M&A documents?

Choice of Law

The parties can agree that the share purchase agreement is governed by foreign law. However, local law is more usually chosen as the governing law of the acquisition documents than foreign law. If the acquisition document is governed by foreign law, certain statutory Finnish laws apply in any event in relation to, for example:

- Tax law.
- Competition law.
- Employment law.
- The legal transfer of ownership.

Arbitration

It is standard market practice for the M&A documents to refer to disputes being settled through arbitration. However, disputes are usually settled before such arbitration proceedings begin.

Arbitration clauses are generally enforceable. Finland ratified the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (*New York Convention*) in 1962. Finnish local courts respect choice of jurisdiction in arbitration clauses.

Forms of Consideration

21. What forms of consideration are commonly offered in a share sale?

Forms of Consideration

Cash consideration is the most common form of consideration in share sales. It is usually funded by retained earnings, or debt or equity financing. Shares in the buyer are also offered as consideration, or even a mix of cash and shares. Pure share deals or other forms of exclusive non-cash consideration, such as loan notes issued by the buyer, are rarely seen (with notable exceptions, such as the acquisition by DoorDash Inc of Finnish Wolt Enterprises Oy, where the consideration was exclusively in the form of shares in DoorDash).

Factors in Choice of Consideration

One factor considered relevant for the seller regarding the choice of consideration is whether it is looking to:

- Receive cash and make an entire exit from the target.
- Maintain an interest in the target after the share sale (or where the buyer wishes the seller to maintain interest in the target).

If the seller wishes to maintain an interest in the target to some extent after the closing of the transaction, the buyer may, for example, offer shares as consideration to the seller or buy only a portion of the shares in the target. If the buyer is a publicly listed company and the company considers its share price to be high, it can be beneficial for the buyer to use shares as consideration.

For an overview of the main issues to consider when structuring consideration and finance (debt and or equity or a combination of the two) for a cross-border acquisition, see *Practice Note, Consideration and Acquisition Finance: Overview (International)*.

Price Adjustments and Deferred Consideration

22. How is the price typically assessed and agreed? Is the price commonly adjusted?

Both closing accounts and locked-box consideration structures are used in Finland, depending on the type of transaction and the parties involved. Usually, the seller prefers the locked-box structure instead of closing accounts. Closing accounts are usually more popular on the buyer side, especially in transactions that do not involve private equity investors. Notably, locked-box structures appear to be more frequently used than they have been in the past, although the recent economic slowdown in the Finnish transaction market has led to buyers opting for a closing accounts structure more often.

To compensate the seller for the target's anticipated cashflow during the period between the locked-box date and completion, it is common for the locked-box price to be subject to an interest mechanism, which is calculated from the relevant locked-box date until completion.

The use of earn-out structures is less frequent, and they tend to be used particularly in smaller transactions to bridge a potential gap in the seller's and buyer's valuations.

For an overview of certain key features of earn-outs, locked box pricing mechanisms, and purchase price retention arrangements to be considered in a cross-border private company acquisition, see *Practice Note, Earn-Out, Locked Box, and Retention: Overview (International)*.

23. Do buyers typically pay the price in full on closing, or is deferred consideration common?

The standard market practice is for the buyer to pay the purchase price in full on closing. However, deferred or additional purchase price mechanisms are sometimes used and are often structured to be conditional on the occurrence of a pre-agreed future event. Escrow arrangements are seldom used, and such arrangements have been increasingly replaced by the use of warranty and indemnity insurance.

Financial Assistance

24. Can a company give financial assistance to a potential buyer of shares in that company?

Restrictions

As a rule, a Finnish limited liability company cannot grant a loan or provide other assets or guarantees for the recipient to use to acquire shares in the company or its parent company.

Exemptions

This restriction does not apply to measures that are taken within the limits of the distributable assets of the limited liability company for the purpose of funding relevant shares for its own employees or the employees of a company that is considered a related party (as defined in the *Finnish Companies Act*). If such an arrangement leads to the subscription of shares of the limited liability company, this must be clearly identified in the company's annual accounts.

Tax

Transfer Tax

25. What transfer taxes are payable on a share sale and an asset sale?

Share Sale

Transfers of shares are subject to transfer tax payable by the buyer on the purchase price of the shares. The transfer tax base also includes debt or liabilities of the acquired entity (towards the seller or a third party) assumed by the buyer based on the transfer agreement, provided that the assumption of the debt or liabilities accrues to the benefit of the seller.

Additionally, effective from 1 January 2024, an amendment to the *Finnish Transfer Tax Act* has expanded the scope of securities to encompass loan receivables associated with share transactions, provided the transaction benefits the seller and forms part of a coherent transaction ensemble. This adjustment clarifies that loan receivables transferred in connection with or related to share transactions are considered securities, thus potentially affecting the transfer tax base.

In addition, the acquisition of shares in real estate companies and mutual real estate companies are subject to specific rules for determination of the transfer tax base, which must include certain loans that can be held (under the law, corporate resolutions or articles of association) to be directly allocated and connected to the shares in these companies.

A transfer of shares in ordinary Finnish limited liability companies or in real estate companies, housing companies and real estate holdings are subject to transfer tax.

Asset Sale

Assets, other than real property (and shares), are not subject to transfer tax. The sale of real property, including land plots and building(s) located on them, is subject to transfer tax on the purchase price payable by the buyer.

26. What are the main transfer tax exemptions and reliefs in a share sale and an asset sale? Are there any common ways used to mitigate transfer tax liability?

Share Sale

If both the seller and the buyer are non-Finnish tax residents, the sale is exempt from transfer tax. However, this exemption does not apply to the transfer of shares in real estate companies, housing companies or real estate holding companies. The sale of shares listed on a qualifying stock exchange is generally exempt from transfer tax.

Asset Sale

There are no specific exemptions for an asset sale, and the transfer of Finnish real property is always subject to transfer tax unless the buyer is a municipality.

Corporate Taxes

27. What corporate taxes are payable on a share sale and an asset sale?

Share Sale

Income received from the disposal of shares constitutes part of a Finnish limited liability company's business income, which is taxable at the rate of 20%, unless the participation exemption applies (see *Question 28*). The purchase price and any sales-related expenses are generally deductible for tax purposes on disposal. Any loss on disposal of the shares is deductible from the taxable business income, unless the participation exemption applies to the sale.

Non-residents are generally not subject to any tax in Finland on capital gains arising from the sale of shares in Finnish companies.

Asset Sale

Income received from the disposal of assets constitutes part of a limited liability company's business income, which is taxable The purchase price and any sales-related expenses are generally deductible for tax purposes on disposal. Any loss on disposal of the assets is therefore in practice deductible from taxable business income.

28. What are the main corporate tax exemptions and reliefs in a share sale and an asset sale? Are there any common ways used to mitigate corporate tax liability?

Share Sale

Finnish limited liability companies' capital gains on the sale of shares forming part of their business income is exempt from tax under the participation exemption regime if the following requirements are met:

- The shares that are sold are part of the fixed assets of the selling company.
- The selling company has owned the shares continuously for at least one year.
- The selling company has owned at least 10% of the share capital in the company whose shares are sold.
- The company whose shares are sold is:
    - a Finnish company;
    - a company resident in the EU (as specified in Directive 90/435/EEC on the taxation of parent companies and subsidiaries); or

- resident in a country with which Finland has concluded a tax treaty.

- The company whose shares are sold does not qualify as a real estate or housing company, or a company whose activities mainly consist of owning or managing real property.

The participation exemption regime does not apply to:

- Private equity companies (Finnish companies whose main activity consists of venture capital investments).
- Certain financial institutions (such as savings banks and mutual insurance companies).

Asset Sale

There are no tax exemptions with respect to an asset sale.

Other Taxes

29. Are other taxes potentially payable on a share sale and an asset sale?

VAT can be payable on an asset sale if the transfer is not considered to be a transfer of a going concern.

For an overview of key tax issues relating to the structure and tax costs after closing of a cross-border acquisition, see *Practice Note, Tax (Private Company Acquisitions): Overview (International)*.

Employees

Information and Consultation

30. Are there obligations to inform or consult employees or their representatives or obtain employee consent to a share sale or asset sale?

Asset Sale

It is not necessary to obtain the employees' consents for an asset sale.

If the seller or the buyer have 20 or more employees in Finland, they ust inform the employees or their representatives of the asset sale and certain related topics. The seller must fulfil its obligation to inform the employees in good time before closing, and the buyer no later than in a week from closing.

Share Sale

The employees do not need to consent to a share sale.

No information or consultation obligation applies in connection with a share sale.

See also *Practice Note, Employees (Private Company Acquisitions): Overview (International)*.

Transfer in a Business Sale and Other Protections

> 31. Are employees automatically transferred to the buyer in a business sale? What other protection do employees have against dismissal in the context of a share sale or asset sale?

Asset sale

The seller or the buyer cannot terminate an employee's employment due to an asset sale, but the employees do not enjoy any special protection after the sale.

Share sale

Employees do not enjoy any special protection in the context of a share sale.

Business sale

The seller or the buyer cannot terminate an employee's employment due to a business sale, but the employees do not enjoy any special protection after the sale.

Transfer on a Business Sale

Employees are automatically transferred to the buyer on purchase of a business and retain their existing terms of employment.

Other Protections

In an asset sale, the employees retain their existing terms of employment and their employment cannot be terminated as a result to the asset sale. Further, under the *Finnish Employment Contracts Act* (55/2022 as amended), the seller and the buyer are jointly and severally liable for the employees' pay and other claims deriving from the employment that have fallen due before the transfer of a business.

For an overview of key employment law issues to consider in any acquisition between two parties in a cross-border context, see *Practice Note, Employees (Private Company Acquisitions): Overview (International)*.

Pensions

> 32.Do employees commonly participate in private pension schemes established by their employer? If an employee is transferred as part of a business acquisition, is the transferee obliged to honour existing pension rights or provide equivalent rights?

Private Pension Schemes

All employees participate in statutory pension schemes, and some employers also arrange supplementary pension provisions for key employees. Pension schemes are typically arranged through a pension insurance company, and the employer is only liable to pay the pension insurance contribution to the relevant pension insurance company. The payment of the pension to retired employees is the liability of the relevant pension insurance company to which the pension contributions have been paid by the employer.

Pensions on a Business Transfer

If an employee is transferred as a part of a business transfer, the transferee must arrange equivalent pension benefits for the employees.

Competition/Anti-Trust Issues

> 33. Do private acquisitions have to be notified to a competition law regulator in certain circumstances?

Notification and Regulatory Authorities

It is mandatory to notify concentrations that meet the turnover criteria of the Competition Act, except for those that fall within the exclusive jurisdiction of Regulation (EC) 139/2004 on the control of concentrations between undertakings (Merger Regulation). The notification must be submitted to the Finnish Competition and Consumer Authority (FCCA):

- After entering into a binding acquisition agreement, acquiring control of an undertaking or announcing a public bid.
- Before the implementation of the concentration.

However, the notification can also be submitted before the entry into a binding acquisition agreement, if it is sufficiently certain that the parties will enter into an agreement or arrangement giving rise to the notification obligation.

Generally, the concentration cannot be implemented before competition clearance has been received. The FCCA can clear the concentration either unconditionally or conditionally, or ask the Market Court to prohibit it.

The Market Court hears first appeals from decisions of the FCCA. The Supreme Administrative Court is the highest appellate court in competition cases.

Substantive Test

The relevant test is the "significant impediment of effective competition" test. This means that a concentration is prohibited if it significantly impedes effective competition in the Finnish market, or a substantial part of the Finnish market, particularly as a result of the creation or strengthening of a dominant market position.

See also *Merger Control Finland*.

Environment

> 34. Who is liable for clean-up of contaminated land? In what circumstances can a buyer inherit and a seller retain liability in an asset sale and a share sale?

In Finland, environmental liability is determined on the basis of the "polluter pays" principle. A party whose activity has caused contamination in the soil and groundwater is primarily liable for remediation, as further defined in the *Environmental Protection Act* (*527/2014*, as amended). Where that party cannot be identified or is not capable of fulfilling its relevant remediation obligations, the party that possesses the contaminated area can become liable, subject to certain reasonability criteria, if the relevant possessor:

- Knew or should have known, at the time of the purchase, about the relevant contamination.
- Consented to the contamination.

In addition, under the *Act on Compensation for Environmental Damage* (*737/1994*,as amended), a party that has purchased a business or company that caused environmental damage/loss can be held liable for the damage/loss if the relevant buyer knew or should have known, at the time of the assignment, about the damage/loss or the threat of it.

Under Finnish law, the liability for environmental damage is strict and unlimited, and does not depend on whether damage has been caused negligently or intentionally.

In addition to the Environmental Protection Act and the Act on Compensation of Environmental Damage, the main Finnish environmental legislation includes the:

- Environmental Damage Insurance Act (*81/1998*, as amended*;* in force until 31 December 2024).
- Act on the Environmental Damage Fund (1262/2022, as amended; in force from 1 January 2025 onwards).
- Act on the Remediation of Certain Environmental Damage (*383/2009*, as amended).
- Land Use Planning Act (132/1999, as amended; as of 1 January 2025, the Land Use Planning Act).
- Mining Act (*621/2011*, as amended).
- Act on Environmental Impact Assessment Procedure (*252/2017*, as amended).
- Nature Protection Act (*9/2023*, as amended).
- Land Extraction Act (555/1981, as amended).
- Water Act (587/2011, as amended).
- Waste Act (646/2011, as amended).
- Chemicals Act (599/2013, as amended),

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