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Contents

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1. Market

1.1 Major Lender-side Players

The most active players in the Finnish leveraged and acquisition finance scene have traditionally been, and continue to be, Nordic banks. This is particularly the case in the small and mid-sized space. In the case of large inbound transactions, the creditor group often comprises or includes leading international and European banks. The market share of debt funds continues to be small.

1.2 Corporates and LBOs

The level of M&A activity has been, for more than a decade, surprisingly high given the size of Finland's economy. The bulk of acquisition financings in Finland in recent years have been made up of transactions instigated by either large listed companies or Finnish and Nordic private equity (PE) firms. Local transactions, apart from a very few exceptions, have not been large enough to attract the attention of the larger global PE firms.

Typically, Finnish PE acquisitions have been financed by Nordic banks, either on a bilateral or a "club" basis. Local law is generally selected as the governing law of the documentation, which is typically drafted based on a tailored (and slightly simplified) version of the relevant Loan Market Association (LMA) facility-agreement template. This being, in the case of a PE deal, the leveraged template and, in the case of a corporate deal, the investment grade template. It has been typical in the local market that the banks take a clear "relationship-bank" approach. The banks have generally held loans until maturity and provided reasonable support in difficult times as long as the sponsors have also continued to support the company.

Local house banks of corporate buyers have traditionally provided support when planning acquisitions. The banks have generally taken an active role in arranging the financing itself as well as participated in it. Furthermore, the local house banks have provided bridge and working-capital facilities where these have been relevant.

Alternative funding products of the kind that have emerged with force in Europe during recent years have been adopted slowly in the Finnish market, compared to neighbouring Sweden for example. The reasons behind the slow embrace of such products include, inter alia, the relatively small size of the market, the absence of a tradition, and dependency on a strong but very narrow and omnipresent local investor base. Additionally, the competitiveness of strong local banks, which are typically deeply involved with, and remain close to, their customer throughout the loan term, has further contributed to the slow emergence of alternative funding products in the local market.

2. Documentation

2.1 Governing Law

The governing law of the facility agreement in club deals between Nordic banks and a Finnish borrower is predominantly Finnish law. Other applicable laws may be considered in cases where a lender has a specific requirement to apply the laws of their jurisdiction, or where the scale of the transaction requires contacting lenders on the London market, in which case English law would usually be selected. The governing law of any ancillary documentation, such as the inter-creditor agreement, is typically chosen in the same manner as the governing law of the facility agreement with local law as the predominant choice. Security documentation will typically follow the laws of the jurisdiction where the security is located, and with respect to the pledge of shares, the jurisdiction of incorporation of the company in which the relevant shares are pledged.

2.2 Use of LMA or Other Standard Loans

In Finnish acquisition finance transactions the facility agreement is based on a tailored (and slightly simplified) version of the relevant Loan Market Association (LMA) facility-agreement template, being, in the case of a PE deal, the leveraged template and, in the case of a corporate deal, the investment grade template. For smaller transactions simpler loan agreement templates are sometimes used and the Nordic banks can also offer financing on their own template documents.

If the financing comprises external junior debt in addition to senior debt, the junior facility agreement is often drafted using the previously negotiated senior facility agreement as the starting point.

With respect to bond documentation, the model terms of the Confederation of Finnish Industries (Elinkeinoelämän keskusliitto (EK)), which were launched in 2013, are widely used. Finnish bond documentation is, compared to English law trust deeds or New York law indentures for example, more concise.

2.3 Language

Documentation in connection with acquisition financing transactions is most commonly prepared in English and there are no specific requirements as to the language used in loan documentation. However, it should be noted that in connection with court proceedings, if so requested by the court, an adequate translation of the documentation into Finnish or Swedish must be prepared by the parties in order for the court to rule on the issues brought before it. Finnish is sometimes used as the language of the documentation in smaller cases, especially if the bank's own template documentation is used. More typically however, even in connection with smaller transactions, the documentation is prepared in English.

2.4 Opinions

The use of legal opinions in Finnish acquisition finance transactions is similar to other European jurisdictions. The legal counsel to the agent will typically issue a legal opinion covering the capacity as well as the validity and enforceability of the documents rather than a separate capacity opinion being issued by the borrower's counsel. Legal opinions typically cover corporate existence, due authorisation, due execution as well as the validity and enforceability of the transaction documents. Generally, there is a common view on the contents and limitations of legal opinions in financing transactions in Finland.

3. Structures

3.1 Senior Loans

Typically, in Finnish acquisition finance transactions, a club of Nordic banks, or one bank on a bilateral basis depending on the size of the transaction, provides secured bank loans to the borrower with these secured loans being the main debt instrument in acquisition financing. Depending on the financing needs of the borrower and the target group, the senior debt package may comprise amortising and non-amortising term facilities for the purposes of financing the acquisition and the refinancing of existing debt together with working capital facilities. It is not uncommon for, in addition to banks, term facilities to be provided by institutional investors, in particular Finnish pension insurance companies.

3.2 Mezzanine/PIK Loans

In addition to senior bank debt, junior debt can be used in Finnish acquisition financing transactions. Junior debt, in the form of second lien or mezzanine debt, has been used in Finnish acquisition financing transactions, but in more recent years this has not been as common as previously. In the Finnish market, junior debt has typically been offered by large institutional investors, such as pension insurance companies, or debt funds (often managed by private equity houses).

Mezzanine loans are contractually or structurally subordinated to be second ranking to the senior bank loans and are typically secured by a second-ranking security package. The scope of the security package will be limited by financial-assistance and corporate-benefit restrictions. Commonly, the security package consists of a second-ranking pledge over the shares in the target company of the acquisition. Junior debt is typically non-amortising with a mixture of cash-pay and payment-in-kind (PIK) interest. Mezzanine debt is sometimes accompanied by a so-called "equity kicker" in the form of warrants granted to the mezzanine lender.

3.3 Bridge Loans

Bridge loans are common in large acquisition financings such as public takeovers and mergers, and are often bridges to bond financings. Typical features of these instruments include a short maturity, one or two extension options and a margin step-up. As an alternative to bridge loans, we sometimes see interim facilities which are used to attain certainty of funding but are not intended to be drawn on.

3.4 Bonds/HYB

Finland has a local bond market. While the size of issuances is normally small, certain investment grade issuers have reached the issue size of EUR500 million. Trading in the domestic bond market is sporadic and the market as a whole can be regarded as fairly illiquid.

The market for Finnish high-yield bonds has emerged within the last seven years. So far, only in exceptional cases, have bonds been used as the principal debt instrument in acquisition financings.

3.5 Private Placements/Loan Notes

There is no active market for private placements or loan notes in Finland. The closest equivalent to these instruments are non-listed high yield bonds and hybrid instruments, both of which are relatively common in the Finnish debt capital markets.

4. Intercreditor Agreements

4.1 Typical Elements

Intercreditor agreements are typically entered into in connection with larger Finnish acquisition financing transactions. If the financing consists of more than one layer of external debt (senior and mezzanine or second lien), the form of the intercreditor agreement is more extensive in comparison with simpler subordination agreements entered into if there is only shareholder or investor debt in addition to senior bank debt. As discussed in **2.1 Governing Law** above, the governing law of the intercreditor agreement is that of the facility agreement (ie, typically Finnish law). Although the LMA-recommended form of intercreditor agreement is not widely used in Finland, the local intercreditor agreements, although lighter than the LMA-recommended form, have taken certain influences from the LMA intercreditor agreement.

Payment of Principal

The parties will, in the intercreditor agreement, agree on the order of priority of the different layers of debt. A mezzanine creditor will typically not be allowed to receive payments of principal until the senior debt has been fully repaid and discharged. Likewise, it is generally not permitted to repay the principal of shareholder or investor debt. To enable movement of cash, intra-group debtors are typically permitted to repay intra-group loans until an event of default under the senior debt occurs.

Interest
Generally, interest on shareholder debt can be paid only if dividend payments to shareholders are also allowed. Cash interest can typically be paid on mezzanine debt, where such junior debt has been granted, until an event of default with respect to the senior debt occurs.

Security Agent
Typically, the intercreditor agreement contains provisions on the appointment of the security agent. Alternatively, the security-agent provisions may be included in the facility agreement, especially if an intercreditor agreement is not prepared in connection with a specific transaction. Under Finnish-law-financing arrangements (or with respect to security granted under Finnish-law-security documents, where the governing law of the other finance documents is not Finnish law and the concept of trust is otherwise used) the security agent shall hold the security as agent and representative on behalf of the secured creditors as the concept of trust is not recognised in Finnish law.

Sharing Arrangements
If the same security assets are to secure more than one layer of creditors, the creditors can agree on the sharing of the security package in the intercreditor agreement. Alternatively, the junior lenders can be granted a second-ranking security. In the latter case, the intercreditor agreement would regulate the subordinated security position in more detail. The intercreditor agreement will also contain provisions (so-called "waterfall provisions") on the sharing of proceeds received by the security agent on enforcement.

4.2 Bank/Bond Deals
A typical structure in connection with deals combining bank and bond financing in the Finnish market in the past five years has been the combination of a super-senior revolving credit facility and a senior bond where the bondholders and the senior lenders have shared a common security package. An intercreditor agreement is executed in connection with these arrangements and the super-senior status of the revolving credit facility is regulated by a waterfall clause included therein. The intercreditor agreements used in these arrangements have typically been tailored for the purpose from templates used in the local market.

4.3 Role of Hedge Counterparties
There are no specific Finnish legal requirements as to the role of hedge counterparties in intercreditor agreements.

5. Security

5.1 Types of Security Commonly Used
In traditional Finnish acquisition financing transactions, the security package covers, to the extent feasible from a cost-benefit point of view, all revenues and assets of the target group, regularly comprising assets such as shares, real property, intellectual property rights, bank accounts and various types of receivables. As discussed below, security over movable assets such as trade receivables and inventory, is typically granted in the form of a business mortgage, enabling the pledgors to continue their business operations uninterrupted. For the same reason (ie, the continuation of business operations without interruption) security over certain assets, such as operative bank accounts and intra-group receivables, will typically be in the form of a pledge that is agreed to be perfected only later upon the occurrence of a trigger event. It should be noted that having the perfection of a security interest occur only in the event of default results in a claw-back risk (see also **7.2 Claw-Back Risk**). Generally, in connection with Finnish acquisition financing transactions, security over a Finnish company's shares, real property, patents or trademarks are preferred as they do not cause a negative impact on the borrower's and the obligor group's business.

Shares
The security package in Finnish acquisition finance transactions often includes shares of each of the companies within the obligor group or, alternatively, the shares in material companies within the obligor group. For the purpose of creating a security interest over shares in a Finnish company, the pledgor and the pledgee (or the security agent as agent and attorney for and on behalf of and for the benefit of the finance parties under the relevant facility agreement) enter into a security agreement. Depending on whether share certificates representing the pledged shares have been issued, the pledge is perfected either by handing over the share certificates (or any interim certificates if these have been issued) duly endorsed in blank by the owner of the shares to the pledgee (or security agent, if relevant) or by notifying the respective companies of the share pledge if share certificates have not been issued. In cases of dematerialised shares (primarily issued by listed companies), a share pledge is perfected by pledging the relevant book-entry account.

Typically, the parties come to terms in the security agreement on the use of shareholder rights and the receipt of dividends. Dividends, as well as any new shares issued by the company, will be included in the scope of the pledge and the pledgor will, in accordance with the terms of the security agreement, be able to exercise shareholder rights and receive dividends until the occurrence of an event of default under the facility agreement.

Intellectual Property Rights
If the borrower and relevant borrowing-group companies hold material intellectual property rights, particularly patents and trademarks, these are typically required to be included in the security package. A pledge over intellectual property rights is created by the parties entering into a pledge agreement and perfected by registering the pledge with the

relevant authority, which in the case of Finnish patents and trademarks, is the Finnish Patent and Registration Office.

Real Property
Real property or leaseholds owned by the borrower, or other members of the obligor group, will often be included in the security package. In accordance with the Finnish Land Code, a leasehold registered in the title-and-mortgage register held by the National Land Survey of Finland may be used as security, if the leasehold may be transferred to a third party without the consent of the owner of the real property and if buildings owned by the lessee exist or may be built on the property. If a leasehold encumbers the real property, it should be noted that a mortgage over that leasehold, rather than a mortgage over the real property, comprises buildings and improvements (as well as fixtures and appurtenances) owned by the lessee.

In order to create a mortgage over a real estate or a leasehold, the owner of the property (or the lessee in case of a leasehold) files an application for the registration of mortgages over the property with the National Land Survey of Finland. The mortgage is evidenced by a real estate mortgage note (or notes, if so requested) issued by National Land Survey in the requested amount. Mortgage notes have previously been physical in form, but currently all new real estate mortgages are evidenced by electronic mortgage notes. The existing physical mortgage notes are, however, valid and may be used until the end of 2019 for the purpose of creating a new security interest. As of the beginning of 2020, existing physical mortgage notes must be converted into the electronic form for the purposes of creating a new security interest. It should be noted that the amount of a mortgage note establishes the maximum amount of debt that can be effectively secured by the pledging of that note, it is not an indication of the actual value of the asset or of the amount of the debt secured.

The security interest is perfected, in the case of electronic mortgage notes, by registering the pledgee as the holder of the electronic mortgage note in the title-and-mortgage register or, in the case of physical mortgage notes, by delivering the mortgage notes into the exclusive physical possession of the pledgee. A mortgage is effective until its annulment and mortgage notes evidencing a particular mortgage may be released and repledged without loss of priority, which is determined by the date of application of that relevant mortgage.

Bank Accounts
A security interest over the balances standing to the credit of a bank account is perfected by notifying the bank that holds the account of the security interest. A duly perfected pledge requires that the pledgor does not have the right to dispose of, or withdraw funds from, the bank account. As discussed above, if a pledge over bank accounts is not perfected without undue delay after the parties entering into the security agreement and the pledgor retains the right to use such bank accounts in its business operations, the security is susceptible to claw-back if perfection takes place during the suspect period.

Receivables
The security package in connection with an acquisition financing transaction typically contains various types of receivables, such as receivables under the acquisition documentation, receivables under insurances and intragroup loan receivables. The method for perfecting a security interest over a receivable is the delivery of a pledge notice to the underlying debtor. A duly perfected pledge over a receivable requires that payments with respect to the debt should be made only to the pledgee (or a blocked bank account pledged to the same pledgee). Typically, security over certain types of receivables, such as intra-group receivables important for the movement of cash within the group, are not perfected at the time of entering into the relevant security agreement leaving the lenders with a (knowingly taken) risk of claw-back as discussed above.

Inventory and Movable Assets.
The typical way of creating a security interest over movable assets in Finland is by way of a business mortgage. Machinery, equipment or inventory, which are not considered fixtures to real property (as they may be done under Finnish law), are considered movable property and may be pledged as such. A pledge over movable assets is perfected by transferring the pledged property to the pledgee's possession (or, if such property is held by a third party, by notifying such party of the pledge) which is problematic in connection with movable property used in the business operations of the pledgor. A business mortgage, on the other hand, covers the movable assets of a pledgor to the extent that they are not separately pledged at the time of registration of the business mortgage. A security interest over such movable assets is typically granted in the form of a business mortgage by pledging business mortgage note(s) evidencing the registered business mortgage. A Finnish-law business mortgage typically covers, among other things, raw materials, stocks of finished and semi-finished products, machinery, industrial and intellectual property rights (unless separately pledged before registration of the business mortgage), trade receivables (unless separately pledged) and rights of use under lease or other long term agreements. Assets not covered by a Finnish-law business mortgage include immovable assets, aircraft, vessels and certain vehicles that may be subject to a registered mortgage, tax refunds, receivables, shares and other securities (if they are separately pledged before or after the registration of the business mortgage). It should be noted that the position of the holder of a business mortgage is weaker in the case of a pledgor's insolvency compared to that of other secured creditors (see **5.6 General Principles of Enforcement** below for a more detailed discussion).

5.2 Form Requirements
There are no requirements under Finnish law as to the form of the security documents; even an oral agreement is valid (assuming it can be evidenced).

5.3 Restrictions on Upstream Security
Rules on prohibited financial assistance and distribution of funds included in Finnish company law restrict the ability of Finnish limited liability companies to grant upstream security. Cross-stream security can also be held to be granted in the interest of a common shareholder and thus considered as upstream security. In accordance with the Finnish Companies Act (624/2006, as amended) a company cannot provide a loan or assets or grant security for the purpose of a third party acquiring shares in the company or its parent company. This applies both to the financing of the purchase price and to the financing of related transaction costs. Upstream security for acquisition financing facilities would therefore constitute prohibited financial assistance in accordance with the Finnish Companies Act, at least to the extent that the acquisition and related costs are financed by such facilities.

Furthermore, a company can only distribute its assets in ways specified in the Companies Act. Other transactions that reduce the assets of the company or increase its liabilities without a sound business reason constitute unlawful distribution of assets. Therefore, each pledgor, when assessed on a company level and on a stand-alone basis, without regard to any group benefit, must derive adequate corporate benefit from the financing transaction in order that the granting of security not constitute an unlawful distribution of assets. The corporate benefit obtained by each company from a specific transaction is to be considered on a case-by-case basis by the board of that company. The decision by the management whether or not to grant security or guarantees should be based on a good-faith best-effort assessment of all relevant circumstances, including the credit and other risks involved and the benefits of the transaction to the specific company. Synergies within the group and the like can be taken into account to the extent they create direct benefits, such as cost savings, to the pledgor. Typically, if the proceeds of a loan are on-lent to the security provider, it could be assessed that the security provider has received a corporate benefit of at least up to the amount of the funds lent to it, possibly even higher depending on the case in question. Acting carelessly or against better judgment as regards the existence of sufficient corporate benefit could result in a breach by the company management of their fiduciary duties and result in the personal liability of the management. If an arrangement is held to qualify as unlawful distribution of assets, it may also result in criminal liability. Furthermore, any security granted in violation of the Companies Act is generally held invalid, especially if the beneficiary knew, or should have known, about the violation.

It should be noted that the above-described restrictions apply also to upstream guarantees and other forms of joint and several undertakings among borrowers. The subordination of existing intra-group receivables typically included in inter-creditor arrangements, for example, is also generally treated as equivalent to the granting of security over those receivables and as such is subject to the same restrictions.

It is standard market practice in Finland to include specific limitation language in relevant finance documents, pursuant to which the scope of security granted by limited liability companies incorporated in Finland is contractually limited so as to not be in conflict with the above-described restrictions.

For further discussion on the restriction and corporate benefit assessment, see **6.2 Restrictions**.

5.4 Financial Assistance
As discussed above, in **5.3 Restrictions on Upstream Security**, in accordance with the Finnish Companies Act, a Finnish limited liability company may not, among other things, grant a guarantee or security for debt used for the financing of the acquisition of its own shares or shares in its parent company. The financial-assistance prohibition is applicable to both public and private limited liability companies incorporated in Finland. However, due to the narrow construction of the term "parent company" in Finnish company and accounting law, the financial-assistance restriction is generally considered to be limited to the acquisition of shares only as long as they are Finnish entities. In all cases, however, any granted guarantees or security must fulfil the corporate-benefit requirement discussed above in **5.3 Restrictions on Upstream Security**.

Although the financial-assistance prohibition included in the Finnish Companies Act does not address the refinancing of acquisition debt, some Finnish legal literature has suggested that, in certain situations, the granting of guarantees or security to secure such subsequent refinancing of acquisition debt could be considered to constitute prohibited financial assistance. The restrictions imposed by the financial-assistance prohibition may therefore also be relevant when granting guarantees or security for refinancing debt.

5.5 Other Restrictions
See **5.3 Restrictions on Upstream Security** above.

Additionally, the requirement of equal treatment of shareholders included in the Companies Act may prevent a subsidiary, which is not wholly-owned, from granting guarantees or security if this would indirectly benefit some but not all of its shareholders.

Also the Finnish Act on Guarantees and Collateral for Third Party Debt (361/1999, as amended) imposes limitations on,

for example, the scope, validity, enforceability and terms of the arrangement of guarantees and security securing third-party liabilities. In the case of a private person granting a guarantee or security to a professional lender, a number of the provisions included in the act are mandatory. However, where the security provider or guarantor is a legal entity, these protections are typically contracted out.

5.6 General Principles of Enforcement

As outlined below briefly, the principles of enforcement vary somewhat depending on the type of security involved. Additionally, the procedure of enforcement may be different if the pledgor is undergoing insolvency proceedings at the time of the enforcement.

Movable Assets

The enforcement of a pledge over most types of movable assets may be carried out either in a judicial or an extra-judicial procedure. A court judgment or the involvement of an enforcement official is not necessary for the enforcement of most movable assets, such as shares and receivables. If the value of the pledged assets, however, is not sufficient to fully discharge the debt, the secured creditor will have to obtain a judgment in order to receive payment out of the other assets of the debtor. Furthermore, with respect to certain types of security over movable assets (such as a business mortgage and security over aircraft and vessels), the creditor must obtain a judgment or arbitral award ordering the particular secured obligations to be satisfied (for example, for a debt to be paid) prior to enforcement. Once a judgment or arbitral award has been obtained, the actual enforcement is carried out by a bailiff in a procedure regulated by the Finnish Execution Code (705/2007, as amended).

The Finnish Commercial Code (3/1734, as amended) stipulates a default method for the enforcement of a pledge of movable assets such as receivables (including bank accounts) and shares in a Finnish company. The default process is mandatory if the pledged assets consist of shares entitling the possession of the primary residence of the pledgor and must be complied with unless the pledgor and the pledgee have agreed otherwise or unless the compliance would result in a material loss due to the value of the pledged asset being decreased. In accordance with the Commercial Code, if a secured claim has become due and payable, the pledgee must notify the pledgor (after the secured claim has become due and payable) that the pledged asset will be sold upon the expiry of a certain period that is not shorter than one month (or two months, if the pledged assets consist of shares entitling possession of the primary residence of the pledgor), if the secured claim is not paid within such period. Once this period has expired, and if the secured claim is still outstanding, the pledgee may sell the pledged asset or otherwise enforce the pledge and apply the proceeds of the enforcement to satisfy its claim secured by the pledge. It is, however, common that parties contract out of most parts of the process.

The method of liquidation of a pledged asset is typically agreed to be at the pledgee's discretion and enforcement allowed immediately upon a default by the debtor. It should be noted that the parties' discretion with regard to the enforcement methods is limited by the statutory invalidity of a contractual provision providing that title to the pledged asset shall, upon default, automatically transfer to the pledgee. It is possible under Finnish law, however, for the parties to effectively agree, after the pledgee has become entitled to enforce the security, that an obligation is discharged partly or in full by the pledgee assuming ownership of the pledged asset. Furthermore, the pledgee always has a duty to ascertain that the interests of the pledgor and other creditors of the pledgor are not unduly jeopardised due to the actions taken by the pledgee in connection with liquidation (eg, the asset may not be sold at a price clearly less than its market value and enforcement may be restricted if the amount of secured debt to be satisfied out of the enforcement proceeds is very small in comparison to the total amount of the secured debt and/or to the value of the pledged object). Any proceeds in excess of the creditor's receivable shall be returned to the pledgor (or to another party that is entitled to such excess proceeds – eg, a second-priority pledgee).

Typically a pledge of shares is enforced by private sale, a pledge of a bank account is enforced by the creditor withdrawing the funds from the account and applying such funds towards the satisfaction of the secured obligations and a pledge of receivables is typically enforced by the secured creditor selling the receivable or collecting payment of the same.

As referred to above, in **5.1 Types of Security Commonly Used**, enforcement of a business mortgage outside bankruptcy proceedings is carried out by a bailiff by way of a public enforcement procedure set forth in the Execution Code. In practice, though possible under Finnish law, the enforcement of a business mortgage through a separate enforcement procedure outside bankruptcy proceedings is very uncommon. This is primarily due to the fact that the inability of the debtor to service a debt secured by a business mortgage, and leading to enforcement measures by the creditor, will become public and will therefore, normally, lead very quickly to the bankruptcy of the debtor. It should be noted that in the enforcement procedure the priority of the holder of a business mortgage over the unsecured debtors is up to the full net realisation value of the mortgaged property, whereas in bankruptcy proceedings the priority is limited to 50%. If this is not sufficient to cover the entire debt secured by the business mortgage, the remaining amount would be treated as an unsecured debt.

Real Property
Enforcement of real estate mortgages (as well as other mortgages created by registration, such as mortgages over vessels, aircraft and vehicles) always requires a judgment (or arbitral award). As with business mortgages, the enforcement is then carried out by an official bailiff in a public enforcement procedure. Such enforcement can be, in accordance with the more specific conditions set out in the Execution Code, in the form of public auction or, for example, by means of a private sale.

Post-insolvency Enforcement
The initiation of a bankruptcy procedure in Finland does not impose a moratorium on the enforcement of a pledge over a movable asset or over real property, and the secured creditor may enforce the security, in accordance with the processes referred to above, to the extent not otherwise provided for in the relevant security agreement. However, the bankruptcy estate may decide to redeem the pledged asset at a price equal to the amount of the secured claim, including interest accruing until the time of redemption, or the administrator may impose a moratorium of up to two months on enforcement of security. These restrictions do not apply to the realisation of security over publicly traded securities.

The secured creditor must notify the estate administrator of its claim and also inform of its intention to sell the pledged asset in reasonable time prior to the intended time of sale. When conducting the sale, the interests of the bankruptcy estate must be taken into consideration. In practical terms this means, inter alia, that a sale at undervalue is prohibited.

If the secured creditor prefers not to conduct the sale by itself, the bankruptcy estate may arrange the sale on behalf of that creditor but it is required in such cases that the sales price is sufficient to cover the entire secured debt (unless the secured creditor consents to a lower sales price). The court may also grant the bankruptcy estate a permission to sell the pledged asset belonging to the estate – without the secured creditor's consent – if an offer for the purchase of the asset has been made to the estate, that offer exceeds the likely auction price of the said asset and the secured creditor does not establish the probability that a better result for the sale of the pledged asset can be achieved by other means.

The position of a creditor holding a business mortgage is significantly weaker in bankruptcy when compared to the other secured creditors. Creditors holding a business mortgage are not entitled to initiate private enforcement in bankruptcy but instead the business mortgage is enforced only as part of the general bankruptcy enforcement. The business-mortgage holders are entitled to receive proceeds from the bankruptcy estate only at the same time and through the same process as unsecured creditors, although in relation to the mortgaged assets they enjoy a higher priority which is, however, limited to 50% of the net enforcement proceeds received from the realisation of the mortgaged assets.

In comparison to bankruptcy, the commencement of reorganisation proceedings imposes a moratorium on most legal proceedings and other enforcement actions against the debtor. The moratorium, as a main rule, prohibits the enforcement and granting of security, the repayment and enforcement of debts that have fallen due before the commencement of the reorganisation programme (although debts arising after the filing of the company reorganisation application can be repaid and enforced) and the seizure of assets. The suspensions are in force until the company reorganisation programme has been confirmed by the District Court or the proceedings have been dismissed due to the lack of funds of the company under the reorganisation programme or due to a violation of the programme by the debtor.

6. Guarantees

6.1 Types of Guarantees
The guarantees in Finnish acquisition finance transactions are commonly based on the guarantee provisions included in the relevant Loan Market Association (LMA) facility-agreement template, these being, in the case of a PE deal, the leveraged template and, in the case of a corporate deal, the investment grade template. As a matter of Finnish law, the guarantee is given as for the guarantor's own debt *(omavelkainen takaus*) meaning that a claim under the guarantee may be made against the guarantor at the same time as a claim can be made against the underlying obligor. The guarantor protections provided for in the Finnish Act on Guarantees and Collateral for Third Party Debt (361/1999, as amended) are typically waived by the guarantor, or the applicability of the act contracted out entirely.

6.2 Restrictions
As discussed above in **5. Security**, in acquisition finance transactions, the financial-assistance prohibition included in Finnish corporate law limits the ability of Finnish limited liability companies in the target group to grant security. The same restriction applies to guarantees, and the assessment to be made by the board of the target entity, or its subsidiaries, corresponds to the assessment to be made with respect to the granting of security.

In addition to financial-assistance prohibition, and despite its relevance in a specific financing transaction, the granting of a guarantee, similarly to the granting of security, must be in the best commercial interest of the Finnish entity. The assessment is to be made on a stand-alone basis and without regard to group benefit. If the Finnish entity will be able to use the facilities itself, sufficient corporate benefit may exist, provided that the company is as likely to use the facilities as any other member of the group. All borrowers should also

be equally financially sound and provide security in an equal manner. Furthermore, if, for example, proceeds under a loan are on-lent to the Finnish entity, corporate benefit may exist in relation to such loans.

It is standard market practice in Finland to include limitation language in relevant finance documents, pursuant to which the scope of guarantees and security granted by limited liability companies incorporated in Finland is contractually limited so as to not be in conflict with the relevant statutory limitations. In practice, so called generic limitation language (as opposed to specific exclusions) is often used.

6.3 Requirement for Guarantee Fees
There are no requirements under Finnish law for guarantee fees.

7. Lender Liability

7.1 Equitable Subordination Rules
No equitable subordination rules exist in Finland.

7.2 Claw-back Risk
Finnish claw-back rules are governed by the Finnish Act on Recovery to a Bankruptcy Estate (758/1991, as amended). Pursuant to this, a transaction can, subject to certain prerequisites (which vary depending on the type of transaction and the parties thereto), be revoked if the transaction was concluded within a certain period of time before the application for bankruptcy, reorganisation or execution was filed with the competent court.

As discussed above in **5. Security**, in financing transactions, claw-back risks relate to, among other things, security which is not perfected in connection with the granting of such security but only upon the occurrence of an event of default. In accordance with the Act on Recovery to a Bankruptcy Estate, a security interest can be recovered in bankruptcy, reorganisation or execution proceedings if that security interest was perfected later than three months prior to the application for bankruptcy, reorganisation or execution being filed with the competent court if such security interest was not agreed on at the time the debt came into existence or the security interest was not perfected without undue delay after the origination of the debt.

Further pursuant to the Act on Recovery to a Bankruptcy Estate, a payment of debt received by a creditor through an execution action can be recovered against the debtor's assets if that execution action was performed later than three months prior to the application for bankruptcy, reorganisation or execution being filed with the competent court and provided that the payment was made by unordinary means or prematurely or in an amount that must be considered substantial in consideration of the debtor's assets (unless the payment can be considered ordinary taking into account the circumstances). Similarly, an exercise by a creditor of its set-off right against a debtor may be recovered if the creditor would not be entitled to exercise the set-off right in bankruptcy proceedings initiated against the debtor.

8. Debt Buy-back

8.1 Conducting a Debt Buy-back
Finnish law does not contain limitations on debt buybacks. Such restrictions may, however, be included in the finance documentation.

9. Tax Issues

9.1 Stamp Taxes
No stamp taxes are levied in Finland. However, a transfer tax is payable on the transfer of Finnish securities (1.6%) and on the transfer of securities in a Finnish housing or real estate company or a foreign real estate company holding Finnish real estate (2%). The tax base for the transfer tax includes both:

- any payment that the purchaser makes that is a prerequisite for the transfer of the securities;
- any liability that the purchaser assumes that the seller benefits from, in addition to the purchase price for the securities; and
- moreover, for real estate companies (primarily mutual real estate companies), the company debt allocated to the transferred shares will be added to the tax base, provided the seller has the right or obligation to repay the debt to the real estate company – it is somewhat unclear whether an external bank loan can be considered as a company loan allocable to shares in a mutual real estate company and therefore subject to transfer tax.

Transfer of securities is tax exempt if either:

- the securities are listed on a qualifying stock exchange or subject to multilateral trading, provided that the securities are transferred against fixed cash consideration through a securities intermediary and that certain other qualifications are fulfilled; or
- both parties are non-residents, unless the securities are in a Finnish housing or real estate company, in which case the transfer is always subject to transfer tax.

Transfer tax on securities must be paid and the transfer tax return filed within two months following the transaction.

9.2 Withholding Tax/Qualifying Lender Concepts
Interest income is not subject to a withholding tax.

9.3 Thin Capitalisation Rules

The Finnish interest barrier rules have been revised and the new rules have been applicable as of January 2019. The rules apply to domestic and cross-border situations alike and to all types of activities – ie, not only to business income but also to real estate companies and companies taxed under the Income Tax Act. However, the financial, insurance and pension industries are excluded from the scope of applicability of the interest barrier rules. The interest barrier rules also include an exemption on long-term public infrastructure projects relating to social housing construction. A broader exemption for infrastructure projects is being evaluated, together with the EU Commission, to assess compliance with EU state aid rules.

Interest expenses (including internal and external loans) are fully deductible to the extent that they do not exceed the amount of interest income. Net interest expenses are fully deductible up to EUR500,000 per year. If the net interest expenses of a company exceed EUR500,000, net interest expenses should be deductible only up to 25% of Tax-EBITD (ie, taxable income + interest expenses + tax depreciation +/- group contribution). When calculating the deductible amount, interest payable to both related and unrelated parties should be taken into account meaning that, in the case of loans from both related and unrelated parties, tax deductibility of the interest payable to related parties is normally subject to the Tax-EBITD test. In addition to formal interest, the interest barrier rules apply to interest expenses on all forms of debt and expense incurred in connection with the raising of finance as defined in Finnish law.

Notwithstanding the above, net interest expenses on third party loans should be fully tax deductible up to EUR3 million annually per company (internal interest income is taken into account when determining the net amount).

Any non-deductible interest can be carried forward and deducted in the following years within the limits of the above-mentioned rules without any time cap.

The scope of applicability of the interest barrier rules is further limited by a so-called group ratio test. If the equity/asset ratio of the debtor is equal to or higher than the corresponding ratio at the consolidated group level, the interest-barrier rules are, with some further qualifications, inapplicable.

10. Takeover Finance

10.1 Regulated Targets

Specific aspects have to be taken into consideration in the acquisition of Finnish regulated targets. The Finnish Financial Supervisory Authority (the FFSA) supervises the most common regulated industries in Finland, including investment services businesses, banking and finance businesses, payment services businesses, investment fund management businesses and insurance services businesses.

The acquisition of a "qualified holding" in a regulated target (depending on the type of the target) may require the prior consent of the FFSA (or another competent Finnish authority) or a prior or a subsequent notification of the FFSA (or another competent Finnish authority). Generally, a holding is qualified if it represents 10% or more of the shares or votes in a regulated target. Additionally, an increase in an existing qualified holding in a regulated target above certain thresholds may require the consent or notification of the FFSA or another competent Finnish authority. Companies operating in industries that are considered essential in terms of national-emergency supply or national security, on the other hand, are subject to the provisions of the Finnish Act on Monitoring of Foreign Corporate Acquisitions (172/2012, as amended). Corporate acquisitions, in the defence sector particularly, are subject to advance confirmation by the Finnish Ministry of Employment and the Economy.

The above conditionality in respect of regulatory consent and/or notification has to be taken into account in the structuring of the financing for acquisitions of regulated targets and also in the security documents with respect to the enforcement of any security over shares in regulated targets.

10.2 Listed Targets

The acquisition of entities listed in Finland, and financing arrangements relating thereto, require careful planning. Inter alia, the Finnish Securities Market Act (746/2012, as amended) governs public takeovers in Finland, covering both voluntary and mandatory takeover bids. Furthermore, the Helsinki Takeover Code issued by the Takeover Board of the Finnish Securities Market Association, is in practice followed in most bids although this is not mandatory. The Finnish takeover rules enable the offeror to stipulate conditions for the completion of the offer. A public offer is typically conditional on:

- the bidder getting acceptance for the offer from holders of more than 90% of the shares in the target company;
- regulatory approval; and
- the absence of a material adverse change.

If the 90% threshold is exceeded, the offeror will be able to initiate a squeeze-out proceeding to redeem the remaining minority shareholders' shares.

A voluntary-public-cash-takeover bid or exchange offer followed by a squeeze-out of the minority shareholders is the most commonly used method for an acquisition of a Finnish listed target. A merger is also an option that has been used, but this is time-consuming and requires careful consideration prior to launch. The latter acquisition method also includes a cross-border merger with an EEA-based entity.

The offeror is required to ensure, prior to announcing a takeover bid, that it can meet any cash-consideration requirements and take all reasonable measures to secure the provision of any other type of consideration. However, the amount of money corresponding to the cash consideration does not have to be in possession of the offeror when the takeover bid is announced.

In addition to the typical conditions for a public offer listed above, if external financing is used for the acquisition, the offer can be conditional on the availability of such financing on agreed terms. A decision regarding the availability of the financing made with the financing providers together with the amount of financing and the main terms and conditions having been agreed on are generally considered sufficient. A unilateral letter of interest on behalf of an individual finance provider alone would typically not constitute sufficient proof of the availability of financing for Finnish purposes. A formal cash confirmation from financial advisors is not required in Finland. The offeror must disclose any material terms, as well as uncertainties, related to the financing in connection with the publication of the bid, if the takeover bid includes a financing condition. The financing, on the other hand, can be conditional on the bid being completed in accordance with its terms and can include other customary conditions such as no material adverse change in the financing markets or in the target company.

A squeeze-out procedure is normally used after a successful public takeover bid to squeeze out minority shareholders. The Finnish squeeze-out procedure is governed by the Companies Act. In accordance with the Finnish Companies Act a shareholder with more than 90% of all the shares and votes in a company has the right to redeem the shares of the other shareholders at a fair price. In a squeeze-out that follows a successful takeover bid the fair price is generally deemed to be the price paid in the takeover, but it may also be more (but in practice not less) if there are special grounds to value the shares differently. Furthermore, in accordance with the Companies Act, a shareholder whose shares may be redeemed will have the corresponding right to demand that they are redeemed. It typically takes approximately twelve months to complete the squeeze-out process in Finland.

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