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PART V

Application in each Member State

National Reports for the EU Member States

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19
Finland

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I Introduction

1. The Cross-border Merger Directive was implemented in Finland on 31 December 2007 by acts amending the Companies Act, the Act on Cooperatives and the Act on Commercial Banks and Other Credit Institutions in the Form of a Limited Company.

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II Scope of the new rules

2. The rules apply to private and public limited companies and cooperatives as well as credit institutions in the form of a limited company, a cooperative or a savings bank and such mutual real estate limited companies to which the Finnish Housing Companies Act is applied.

3. A Finnish limited liability company may participate only in a cross-border merger where the surviving company or the disappearing company qualifies as a limited liability company, as defined in the Cross-border Merger Directive. However, in the event of a parent-subsidiary merger, a Finnish limited liability company may merge into a foreign legal entity registered in another Member State and to which the laws of the said Member State are applied, if the foreign legal entity is comparable to a Finnish cooperative, cooperative bank, savings bank or mutual insurance company. A prerequisite is that the foreign legal entity owns all shares of its Finnish subsidiary.

III Cash payment

4. With regard to the merger consideration, the Companies Act is based on the assumption that the consideration is shares or securities giving an entitlement to shares issued by the receiving company. The Companies Act does not, however, limit the type of merger consideration, which may be cash or other assets. The provisions regarding equal treatment of shareholders shall be taken into consideration, if assets other than shares of the receiving company are given as merger consideration.

IV Legal consequences and enforceability of a cross-border merger

5. As a result of a cross-border merger all assets and liabilities of the disappearing companies will be considered transferred without the liquidation of the disappearing company to the receiving company upon the entry into force of the cross-border merger, i.e. with the following legal effects:

(i) the merging company will cease to exist;
(ii) the assets and liabilities, including all the rights and obligations, will be transferred to the surviving company;
(iii) the shareholders of the merging companies will become shareholders of the surviving company;
(iv) at the moment of registration of the implementation of the merger, the shareholders of the merging company and the holders of option rights and other special rights entitling to shares will become entitled to the merger consideration in accordance with the draft terms of merger. The new shares to be issued as merger consideration will carry shareholder rights as of the moment of registration; and
(v) the final settlement of accounts takes place in the merging company.

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6. The transfer of all rights and obligations shall be applied also to contractual relationships in force, including but not limited to the employment contracts and employment relations existing on the date of the enforcement of the cross-border merger.

V Procedure

1 Draft terms of cross-border merger

7. The management or administrative organ of each participating company (in case of a Finnish limited liability company, the board of directors) must prepare the common draft terms of cross-border merger. The said document shall be sent to the registration authorities for registration within one month of its signing.

8. The draft terms should include the information described in Chapter 1, no. 19 of this book (i.e. the requirements under Article 5 of the Cross-border Merger Directive (see Volume I)). In addition, also the following information should be included:

(i) information on the corporate form of the companies participating in the merger and of the possible provider of merger consideration, as well as a proposal for the corporate form of a company to be established by a combination merger;
(ii) information on the registers where the foreign companies participating in the merger have been registered, and the contact details of the said registers;
(iii) an account of the reasons for the merger;
(iv) a proposal for the amendment of the articles of association, if necessary;
(v) a proposal, where appropriate, for the number of shares given as consideration broken down by share class, as well as whether new shares or treasury shares are to be issued;
(vi) a proposal for any other possible consideration and, if the consideration consists of options or other special rights entitling to shares, their terms;
(vii) a proposal for the allocation of the consideration, date of distribution and any other terms and conditions related to the distribution, as well as an account of their grounds;
(viii) an account of or a proposal for the rights of the merging company's option-holders, and the holders of any other special rights entitling to shares in the merging company, in the merger;
(ix) a proposal, where appropriate, for the increase of the share capital of the surviving company;
(x) an account of the merging company's assets, liabilities and equity and the matters influencing their valuation, the intended effect of the merger

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on the balance sheet of the surviving company, and the accounting methods applicable to the merger;

(xi) a proposal for the right of the companies participating in the merger to decide on arrangements, other than those related to their normal business activities, which may affect the amount of their equity or the number of outstanding shares;

(xii) an account of any capital loans whose debtors can oppose the merger;

(xiii) an account of the number of shares of the surviving company and its parent company held by the merging company or its subsidiaries, and of the number of shares of the merging company held by companies participating in the merger;

(xiv) an account of the corporate mortgages pertaining to the assets of the companies participating in the merger;

(xv) an account of or a proposal for the special rights and benefits conferred to the supervisory board members, board members, managing directors and auditors of the companies participating in the merger, as well as to the auditor issuing the statement regarding the merger plan;

(xvi) a proposal regarding the planned date of registration of the implementation of the merger; and

(xvii) a proposal for any other possible terms of the merger.

In addition, the draft terms of merger of a credit institution shall contain an account of the commitments comparable to the capital note as well as other commitments whose creditors may object to the merger, as explained in detail in section VII of this chapter.

2 Management report

9. The management body of each merging company must prepare a written report regarding the implications of the cross-border merger for shareholders, creditors and employees.

10. The report shall be made available to shareholders and the employee representatives or, in the absence thereof, the employees directly no later than one month before the date of the general meeting scheduled to approve the merger.

11. In the event the employee representatives issue an opinion in accordance with national law, this opinion must be appended to the report.

3 Auditor's report

12. The boards of directors of the companies participating in the merger must appoint one or several chartered public accountants to issue a statement on the draft terms of merger. The statement contains an analysis of whether the merger plan includes correct and sufficient information regarding the grounds for

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determining the consideration, and the distribution of the consideration. The statement to be issued to the acquiring company shall also indicate whether the merger is conducive to compromising the repayment of the company's debts.

13. If all shareholders of the companies participating in the merger agree, or if the matter is of a subsidiary merger, it is sufficient to issue a statement on whether the merger endangers the payment of the surviving company's debts.

14. The auditor's report shall be available for the shareholders at least one month before the general meeting called to approve the draft terms of the merger.

4 General meeting of shareholders

A Information for shareholders

15. The draft terms of the merger as well as the financial statements, the annual reports and auditor's reports of each participating company for the past three completed financial periods shall be kept available to the shareholders at the head office or website of each participating company for at least one month before the general meeting. If more than six months have passed from the end of the financial period of a public company to the signing of the draft terms of merger, the financial statements, the annual report and the auditor's report of the company dated no earlier than three months before the signing of the draft terms of merger shall be kept available at the general meeting.

16. Where appropriate, the decisions made by each company involved in the merger after the end of the latest financial period regarding the distribution of assets shall also be kept available for the shareholders. Further, the interim reports given by each company involved in the merger since the end of the latest financial period as well as a report by the board of directors on the events with an essential effect on the state of the company that have occurred after the financial statements or interim report and the auditor's statement on the draft terms of merger shall be kept available for the shareholders.

17. The above-mentioned documents shall be sent without delay to the shareholders upon their request as well as kept available at the general meeting.

18. The notice of the general meeting that is to decide on the merger shall not be delivered before the draft terms of merger have been registered. The notice shall be delivered not earlier than two months and, unless a longer period has been provided in the articles of association, no later than one month before the general meeting. In addition to the provisions of the articles of association on the notice of the general meeting, the notice shall be sent in writing to all shareholders in the merging company. The notice shall mention the shareholders' rights to demand redemption, as explained in no. 28 of this chapter. If the addresses of all rights holders with the right of redemption are not known to

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the company, the notice of the right of redemption shall also be published in the Official Gazette within the same time limit.

B Shareholder approval

19. In the merging company, the general meeting will make the decision on a merger. However, in a subsidiary merger, the decision may be made by the board of directors of the merging company. In the surviving company, the board of directors shall make the decision on a merger. However, the decision shall be made by the general meeting, if shareholders with at least one-twentieth (1/20) of the shares in the company so request.

20. The general meeting that is to decide on the merger shall be held or the board of directors' decision on the merger made within four months of the registration of the draft terms of merger or the merger will lapse. In any event, the general meeting shall be held no later than one month before the due date for the creditors' right to object to the merger, unless all shareholders and, where appropriate, all holders of option rights or other special rights entitling to shares have waived their right to demand redemption.

21. The merger decision of the general meeting shall be made by qualified majority, which means that the proposal has to be supported by at least two-thirds (2/3) of the votes cast and the shares represented at the meeting. If the company has several share classes, it shall be an additional requirement for the validity of a decision that it is supported by a qualified majority within each of the share classes represented at the meeting (Chapter 5, Section 27 Companies Act). The merger can only be approved or dismissed in its entirety. If the merger is not approved in its entirety in all of the participating companies, the merger will lapse. The dismissal or the lapse of the merger must be reported to the Trade Register without delay.

5 Pre-merger certificate

22. If no creditor has objected to the merger or if it is affirmed by a court as explained in Section 29, the registration authority shall register the merger. Further, in a cross-border merger the foreign companies participating in the merger shall accept the right of redemption referred to in Section 27 and that the registration authority is provided with evidence of employee participation in the acquiring company in a manner corresponding to that provided in Article 16 of the Cross-border Merger Directive. If the assets of a Finnish company participating in a merger are subject to a business mortgage, as referred to in the Act on Business Mortgages, a prerequisite for the permission to implement the merger is that a registrable petition is pending for the mortgage being transferred to be the liability of a branch to be established in Finland, or that the mortgage has been cancelled.

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23. If the above-mentioned criteria are fulfilled, the registration authority shall issue the merging company a certificate on the granting of the permission for the Finnish companies participating in the merger. The certificate is given only if the acquiring company is a foreign company. The registration authority shall verify and certify that the participating Finnish company has carried out the measures required for the merger and completed the statutory formalities. Further, it shall contain a reference whether any of the redemption proceedings referred to in no. 28 of this chapter are pending. The said information is important to the acquiring company, which is liable for the payment of the redemption price. The redemption procedure most likely reduces the assets of the merging company and may result in decreasing the equity below the restricted shareholders' equity.

24. After the verification, the registration authority will issue the said certificate without delay. The certificate is valid for six months. The participating companies shall send the certificate to the authority designated under the local laws of the surviving company.

6 Effects of the decision

25. The companies involved in the merger must notify the registration authorities of the implementation of the merger within six months of the decision regarding the approval of the merger, or the merger will lapse. The notification must include the following: confirmation of the boards of directors and the managing directors of the companies participating in the merger that the Companies Act has been complied with in the merger; a certificate of a certified public accountant attesting that the surviving company has received full consideration for the amount entered into its equity (if applicable), and a statement regarding the account in the merger plan; and confirmation by a board member or the managing director that the merging company's known creditors have been notified of the merger.

26. The registration authority must register the merger if the creditors have not opposed the merger. The legal effects of the merger will enter into force upon the registration of the implementation of the merger.

27. As from the registration of the cross-border merger, it cannot be declared void or be changed after the implementation of the merger.

VI Minority shareholders

28. A shareholder in the merging company may at the general meeting demand that his or her shares be redeemed; the shareholder shall be reserved the opportunity to make this demand before the decision on the merger is made (Chapter 15, Section 13 Companies Act). The said right is not applicable in subsidiary

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mergers. The holder of option rights or other special rights entitling to shares may demand redemption of the rights at the general meeting that decides on the merger or verifiably file a written demand to this effect with the merging company before the general meeting. A shareholder who demands redemption shall vote against the merger decision. The redemption price shall be the price of the share at the time preceding the merger decision. The acquiring company shall be liable for the payment of the redemption price. The merging company shall without delay notify the acquiring company of any demands for redemption.

29. If no agreement is reached with the surviving company on the redemption of shares, option rights or other special rights entitling to shares or on the terms of redemption, the matter shall be submitted to arbitration.

VII Protection of creditors

30. Creditors of the merging companies whose receivables have existed before the registration of the draft terms of merger have the right to object to the merger. The registration authority shall, upon request by the merging company, issue a public summons to the creditors of the merging company, who have the right to oppose the merger by delivering a written notice to the registration authority not later than on the date specified in the summons. The merger will lapse if the merging company has not filed for the public summons within four months of the registration of the merger plan.

The merging company must send the written notification of the public summons to its known creditors not later than one month before the due date. The above-mentioned protection of creditors shall not be applied to a foreign company participating in the merger. Instead, the applicable laws regarding the protection of the creditors of the foreign company shall be applied.

In the event that the creditor has objected to the merger, the registration authority shall notify the company without delay after the due date. If a creditor objects, the merger shall lapse one month after the due date. However, the registration authority shall suspend the proceedings if the company shows that it has within one month of the due date brought an action in order to have the court affirm that the creditor has received payment or full security for the receivable, or if the company and the creditor together request that the proceedings be suspended.

VIII Employee participation

31. The Cross-border Merger Directive has in Finland been implemented in the Act on Personnel Representation in the Administration of Undertakings (24.8.1990/725 as amended, hereinafter the 'APRAU'). The implementation was enacted by an amendment to the APRAU, which entered into force on

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15 December 2007. Based on the APRAU, certain parts of the SE Employee Involvement Act (13.8.2004/758 as amended, hereinafter the 'EIA') become applicable in the situation.

1 Employee participation in companies established in Finland resulting from a cross-border merger

32. Employee participation in Finnish companies is regulated by the APRAU. The APRAU shall be applied to limited liability companies, cooperatives and other economic societies, insurance companies, commercial banks, cooperative banks and savings banks that have a regular staff of at least 150 working in Finland.

33. The purpose of the APRAU is to advance the functioning of the undertaking, to intensify cooperation between the undertaking and its personnel and to increase the personnel's possibilities to exert influence in the undertaking. The personnel shall have the right to take part in the decision making in executive, supervisory or advisory bodies of the undertaking when they are handling matters of importance to the business operations, finances and the personnel's position in the undertaking.

34. As mentioned above, the APRAU may also become applicable in case of a cross-border merger. In addition, based on the APRAU, specified parts of the EIA becomes applicable if at least one of the participating companies has organised a personnel representation system as defined in the EIA. In such a case a special negotiation body shall be established to negotiate the organising of personnel representation with the competent organs of the companies involved in the merger. Based on the EIA, personnel representation is considered to be organised if an employee representative body or the employee representatives have a right to elect or appoint some of the members of the company's supervisory or administrative organ or such management groups or equivalent bodies which together cover the company's profit units, or if the employee representatives have a right to recommend or oppose the appointment of some or all of the members of the company's supervisory or administrative organ.

35. The participating companies may, however, without negotiating with the employees decide to apply the secondary rules for organising the personnel representation provided for in the EIA as of the registration of the merger.

36. If at least one of the merging companies provides for an employee participation system and, as a result of the above rules, the company resulting from the merger shall be governed by that system, it must take a legal form that allows the exercise of employee participation rights.

37. If no corresponding employee representation system is applied in any of the companies involved in the cross-border merger, there is no obligation under Finnish law to organise an employee representation system following the

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