The Acquisition and Leveraged Finance Review

Second Edition

Editor
Christopher Kandel

Law Business Research

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EDITOR'S PREFACE

Acquisition and leveraged finance is a fascinating area for lawyers, both inherently and because of its potential for complexity arising out of the requirements of the acquisition process, cross-border issues, regulation and the like. It can also cut across legal disciplines, at times requiring the specialised expertise of merger and acquisition lawyers, bank finance lawyers, securities lawyers, tax lawyers, property lawyers, pension lawyers, intellectual property lawyers and environmental lawyers, among others. An additional area of complexity and interest at the moment comes out of market forces that are driving convergence in the large cap leveraged financings between loan and high-yield bond products generally, as well as between different markets (particularly pressure on markets outside the US to conform to terms available in the US market but sometimes also *vice versa*), and in some cases the market is still debating whether to adjust for differences in bankruptcy, guarantee or security regimes.

The Acquisition and Leveraged Finance Review is intended to serve as a starting point in considering structuring and other issues in acquisition and leveraged finance, both generally but also particularly in cases where more than just an understanding of the reader's own jurisdiction is necessary. The philosophy behind the sub-topics it covers has been to try to answer those questions that come up most commonly at the start of a finance transaction and, having read the contributions, I can say that I wish that I had had this book available to me at many times during my practice in the past, and that I will turn to it regularly in the future.

Many thanks go to the expert contributors who have given so much of their time and expertise to make this book a success; to Nick Barette, Gideon Roberton and Shani Bans at Law Business Research for their efficiency and good humour, and for making this book a reality; and to the partners, associates and staff at Latham & Watkins, present and past, with whom it is a privilege to work. I should also single out Sindhoo Vinod and Aymen Mahmoud for particular thanks – their reviews of my own draft chapters were both merciless and useful.

Christopher Kandel
Latham & Watkins
September 2015

Chapter 9

FINLAND

Timo Lehtimäki and Maria Pajuniemi[1]

I OVERVIEW

Financing transactions in Finland are generally split into two separate markets. International bank syndicates provide the financing for typically English or US law-governed cross-border transactions, whereas domestic, smaller scale transactions are usually financed by local Finnish or Nordic banks with agreements often governed by Finnish law.

The strong market for cross-border acquisitions and financing transactions continued during 2014, including many interesting transactions, such as the sale of Fortum's electricity distribution networks in a transaction worth €2.5 billion, the acquisition of Nets and its Finnish subsidiaries by Advent International and Bain Capital for US$3.1 billion and the acquisition of CRF Health by Vitruvian Partners.

Since 2013, a strong trend of bond financing, either combined with bank facilities or without, has emerged. Following the global bond market movements, the demand for both high-yield and investment-grade issues has continued, but there have been a few bumps on the road with the uncertainty in the market. The recent issuers of US law-governed high-yield bonds with major assets in Finland include, for example, Coveris, First Quantum Minerals and CABB. The domestic and Nordic bond market continues to evolve, with more diversified deal structures and new issuers emerging, as well as standardised Finnish law bond terms being launched and new legislation being planned to support the deal structures.

1 Timo Lehtimäki is a partner and Maria Pajuniemi is a senior associate at Waselius & Wist.

II REGULATORY AND TAX MATTERS

i Licensing and regulatory issues; anti-money laundering requirements

The financing of transactions with a Finnish element by lenders, investors or security agents is not as such a regulated business in Finland.

As an EU Member State, Finland has implemented the third Anti-Money Laundering Directive (2005/60/EC). As a result, Finnish credit institutions and investment funds, *inter alia*, are subject to certain risk management and know your customer requirements, as well as notification requirements in respect of suspect activities. In addition, the sanctions imposed on Russia set further requirements for the compliance functions of market participants.

ii Overview of tax matters

The success of M&A transactions is highly dependent on an appropriate acquisition and financing structure. Using maximum leverage in an acquisition where the return on assets exceeds the interest expenses normally leads to a substantially higher return on equity. For this reason, debt pushdown structures are also frequently used in Finland.

A typical structure would be for a foreign acquirer to establish a Finnish special purpose vehicle (SPV), and that acquisition vehicle would borrow from both its shareholders and third-party lenders for the purpose of financing the acquisition of the target. Third-party funding is normally necessary owing to certain restrictions on the tax deductibility of interest expenses on shareholder or other intra-group loans.

The goal is to set off the interest expenses of the SPV against the target's income by using tax consolidation in the form of the Finnish group contribution scheme or by merging the target into the SPV. In principle, following the acquisition, the target's profits may, from a Finnish tax perspective, be offset against the SPV's losses (interest expenses) under the Finnish group contribution rules. Alternatively, the SPV and the target can merge following the acquisition, whereby the operating cash flow of the target may be used for interest payments and repayments of the funding received by the SPV.

Subject to the interest limitations rules, the interest expenses incurred by the SPV are otherwise generally (and fully) tax-deductible. Finnish tax laws do not, as such, contain any specific thin-capitalisation rules or rules according to which, for example, interest payments on hybrid loans could be reclassified as (non-deductible) dividend payments for tax purposes.

Interest payments made by a Finnish company to a non-resident company are only rarely subject to withholding tax in Finland (and would, in reality, require a reclassification of the loan instrument as equity). In addition, the domicile of the recipient of the interest payment is generally irrelevant for tax purposes, and interest payments made to recipients located in tax havens are equally exempted from withholding tax. The fact that a loan is widely syndicated (including mezzanine) or subordinated, or that the loan is a profit participating loan, should in normal circumstances not affect the tax deductibility of interest payments.

While the need to obtain debt financing for acquisitions is well understood, Finland has, following the pattern of most other jurisdictions, recently introduced limitations on interest deductibility.

The new Finnish interest limitation regime is applied if the net interest expenses paid by a company on intra-group loans (i.e., related party interest) exceed €500,000 annually. The amount of deductible net interest expenses is, at the outset, limited to 25 per cent of tax earnings before interest, tax, depreciation and amortisation of the company (adjusted taxable income based on Finnish tax principles). However, under a specific safe harbour rule, companies whose equity-to-assets ratio is equal to or larger than the corresponding ratio of the group are exempt from the limitation regime.

In order to tackle circumvention, interest payments to third parties may also be deemed as related party interest in certain cases and thus subject to the limitations. This would include interest paid in back-to-back arrangements or on third-party loans that have been secured by a related-party receivable.

III SECURITY AND GUARANTEES

i Establishing a security interest

The most common types of security in Finland to secure bank or bond financing are share pledges, floating charges over qualifying moveable business assets, mortgages over real estate, and pledges over registered intellectual property rights, bank accounts and intra-group receivables. Pledges of trade receivables are also sometimes used. In acquisition financing, acquisition claims are typically pledged. In addition, it is possible to mortgage certain moveables, such as registered aircraft, vessels and certain vehicles. The collateral use of other assets, such as insurance claims, is rare and complicated.

To establish a valid security interest under Finnish law, there must be a valid underlying debtor–creditor relationship that is being secured (a secured obligation), the pledgor (chargor) must expressly grant the security interest (typically in the form of a security agreement) and certain perfection measures must be taken.

The creation or enforcement of security is not, in itself, subject to tax or stamp duty, and no notarisation is required. Minor registration costs do apply in respect of certain types of security.

Due perfection of security under Finnish law generally entails that the pledgor or chargor must be effectively deprived of its right to control, deal with or dispose of the security assets. Where the pledgor may remain in possession of, retain exclusive or shared control over, be entitled to operate or collect, invest and dispose of any income from the security assets, security is not generally deemed effective in relation to third parties. Such unperfected security interest is vulnerable of being set aside in the event of the insolvency of the pledgor and may, potentially, be declared void. This depends, however, on the type of security and, for instance, floating charges, real estate mortgages and pledges of registered intellectual property can be duly perfected while the pledgor remains in control of the assets.

Finnish law does not recognise, *inter alia*, English law-type charges over rights, title and interest in contractual arrangements (which are, from a Finnish law point of view, classified as pledges of the relevant underlying claims), or US-type security perfection by way of Uniform Commercial Code filings. The key features of the most commonly used types of security and the related perfection mechanics are described below.

Shares

Pledges over shares in wholly owned private limited liability companies are generally easy to create and enforce, and provide a good security of 100 per cent of the equity of the company in question. Therefore, they are almost invariably included in a standard security package. Shares in partially owned subsidiaries are also sometimes pledged; however, such security is naturally less valuable and more complicated to enforce due to minority shareholder rights. Shares in listed public limited liability companies can be pledged, but often only subsidiary shares are part of the security package.

A notice of the pledge to the company and entry of the pledge in the company's register of shares are required for perfection. In Finland, no stock transfer forms are used. If share certificates have been issued, possession and control by the pledgee of the original share certificates, duly endorsed in blank by the pledgor, are also required for due perfection. Where shares are issued in paperless book-entry form (as is the case in respect of listed Finnish companies and certain other companies), the pledge is perfected by registering it over the relevant book-entry account.

If not separately pledged, shares owned by the pledgor will be covered by a floating charge.

Floating charge

A Finnish law floating charge (sometimes also referred to as a 'business mortgage' or 'enterprise mortgage') creates a security interest over the qualifying moveable assets of the pledgor company.

A floating charge will, by operation of law, cover all the pledgor company's moveable assets insofar as any specific assets have not been separately pledged. A floating charge may, depending on the circumstances, exclude separately pledged bank accounts, shares, intellectual property rights, certain claims, trade receivables, intra-group receivables, etc. Assets capable of being subject to a mortgage (generally land and buildings thereon, certain vehicles, aircraft and vessels) are always outside the ambit of the floating charge (apart from certain vehicles) even when they are not subject to a mortgage. Consequently, a floating charge will, typically, cover inventories (finished and semi-finished goods), raw materials, trade receivables, tools and equipment, and securities, cash and bank accounts (to the extent not specifically pledged).

A floating charge is created by the pledgor company issuing one or more floating charge promissory notes of the notional denomination as to be agreed with the secured lender. The promissory notes are then registered against the chargor company in a public register. After registration, the promissory notes are, legally speaking, pledged under a pledge agreement for the benefit of the lender and delivered to the lender in original.

Under law, the chargor company retains the right to dispose of the assets covered by the floating charge in the ordinary course of business. A Finnish law floating charge will not crystallise until enforcement.

Upon enforcement of a floating charge in bankruptcy, only 50 per cent of the net proceeds of the assets covered by the floating charge, after administration and sales costs have been satisfied, will be applied for the benefit of the floating charge holders. The balance (50 per cent) will be applied to satisfy the unsecured creditors (holders of floating charges will stand *pari passu* with unsecured creditors for satisfaction of their excess claims from the balance of the proceeds). If a floating charge is enforced in pre-insolvency enforcement proceedings before the formal bankruptcy of the debtor company, the floating charge holder has priority for the entire amount of the net proceeds covered by the floating charge. However, in reality such enforcement is rare, as the pending enforcement will in practice invariably lead to the bankruptcy or administration of the debtor company. In company administration (analogous to US Chapter 11 proceedings), a moratorium will apply.

A floating charge is always enforced through a bankruptcy liquidator or administrator or public enforcement authorities, whereas a pledgee of specific assets is generally able to enforce the pledge independently.

Real estate mortgage

A real estate mortgage can be registered against freehold and certain leasehold properties and buildings thereon.

A real estate mortgage under Finnish law is considered to be a good-quality security, and it does not suffer from the 50 per cent handicap as described above in respect of a floating charge. To create a real estate mortgage, mortgage certificates of a notional denomination are registered against the real estate and, similar to floating charges, delivered in original to the mortgagee to perfect the mortgage.

Registered intellectual property rights

For a pledge over intellectual property rights to be duly perfected, the pledge must be registered in a public register on an intellectual property right-specific basis.

A pledge over Finnish patents and trademarks is perfected by registering the pledge with the Finnish Patent and Registration Office or, in the case of European trademarks, registering the pledge with the Office for Harmonization in the Internal Market or, in the case of European patents, registering the pledge with the European Patent Office.

In Finland, for example, copyrights and other artistic product rights are not registered in a public register, and therefore cannot be effectively used as collateral.

However, if there is no separate pledge of intellectual property rights, they will be captured by the floating charge. The separate pledge must be registered prior to registering the floating charge, since a registered floating charge will prevent the subsequent registration of separate pledges. In principle, intellectual property rights that cannot be registered, and hence separately pledged, are also covered by the floating charge.

Receivables

Pledges over receivables (including, *inter alia*, intra-group and trade receivables and all types of claims) are duly perfected under Finnish law by notifying the underlying debtor of the pledge and instructing the underlying debtor upon the pledging of the receivable to make any payments under the receivable to the pledgee only. For example, if the underlying debtors are notified on a deferred basis upon an event of default, the pledge will be subject to a hardening period (which it would not be if notice is given upfront when the pledge is created) and will not be valid in relation to third parties or an insolvency liquidator or administrator. In respect of future receivables, the receivables must also come into existence for the pledge to be effective. The exact requirements for due perfection of future receivables are subject to scholarly debate and give rise to certain practical issues, in particular in project financing.

The use of receivables as effective collateral is limited because of the stringent perfection requirements. However, intra-group receivables are often included in a comprehensive security package, but as a commercial matter, perfection is often delayed until an enforcement event. Trade receivables often remain outside a security package as many Finnish pledgor–debtors often hold, in practice, a highly negative view of perfecting pledges of trade receivables (i.e., notifying their customers that the receivables have been pledged and that payments must be made to a third-party financier). The perfection requirements may also sometimes result in an impediment to securitisation in Finland.

If not separately pledged, receivables and any payments received thereunder will be covered by a floating charge.

ii Guarantee limitations

Security obligations of and guarantees granted by Finnish guarantors are limited by the mandatory provisions of the Finnish Companies Act regulating financial assistance, unlawful distribution of a company's assets and corporate benefit.

Pursuant to the Companies Act, a Finnish limited liability company is prohibited from providing loans, guarantees, assets or security for the purpose of a third party acquiring shares in such company or in any of its direct or indirect parent companies.

There are no exact time limits; nor is there any clear-cut whitewash procedure to counter financial assistance. Post-acquisition restructurings where the target company is merged upstream are fairly common, despite the fact that there is scholarly debate on whether this serves to eliminate concerns of financial assistance. No court precedents are available on this matter. Typically, appropriate limitation language is included in guarantees and security agreements. In addition, a failure to properly segregate acquisition financing from other financing runs the risk of contaminating the entire facility notwithstanding any limitation language. Hence, tranching is often used in acquisition financing to enable target companies to effectively guarantee non-acquisition tranches of the facilities.

Under the Finnish rules on unlawful distribution of a company's assets, any act that diminishes the company's assets or increases its debts without a business rationale may constitute unlawful distribution of assets. The granting of guarantees or security, depending on the circumstances, may thus be considered as an unlawful distribution of company's assets, for instance, if a Finnish company, on the date of resolving to grant a guarantee or security, is aware or ought to have been aware that it is likely that the guarantee or security will be enforced.

The Companies Act also requires that when a company enters into a financing, or indeed any, transaction, it receives adequate corporate benefit from the transaction. Conversely, no guarantee or security may be granted by a company unless doing so is in the company's own commercial interest and confers corporate benefit taking into account all relevant benefits (including indirect benefits and goodwill) and risks to the company. Accordingly, the concept of unlawful distribution of a company's assets is much entwined with the concept of corporate benefit, albeit they are two separate issues.

While the financial assistance limitation is only applicable to upstream guarantees, the corporate benefit requirement and the prohibition on unlawful distribution, in principle, apply in up, down and cross-stream relations. All benefits derived from, and risks caused by, the transaction are to be considered. Indirect benefits such as goodwill, may also factor into the assessment.

The prevailing debate over the exact meaning of the requirements has resulted in varied practices regarding guarantee limitations. Sometimes the guarantee limitation is one of the toughest issues in negotiating financing transactions between Finnish counsel.

iii Role of security agents

Finnish law does not recognise the concept of trust; therefore, a security agent structure in respect of Finnish law-governed collateral is generally employed in syndicated financing transactions.

There is some uncertainty under Finnish law as to whether security can validly be granted in favour of an agent alone and not in favour of the pledgees. In Finland, the market practice is to grant the security to the secured creditors, who are then represented by an agent who can enter into a security agreement for and on behalf of the pledgees based on a power of attorney or a mandate of agency. It follows that Finnish security agreements are usually executed by the security agent as the agent acting for and on behalf of the secured parties.

iv Revocation

Finnish law recognises several grounds for revocation of transactions, including collateral, in a bankruptcy or company administration environment. The key grounds are briefly described below.

Under the general rule, any act or arrangement undertaken within a critical period of five years (or with no time limits, where a related entity is the counterparty) may be set aside provided that the transaction favours a creditor over the others, or has decreased the debtor's assets or increased the debtor's debts to the detriment of the (other) creditors. In addition, it is required that the debtor was insolvent at the time of the transaction, or became insolvent as a result thereof, and that the act or arrangement is deemed inappropriate.

In addition, a repayment of debt by the debtor within a critical time of three months (or two years, where a related entity is the counterparty) may also be set aside, provided that the payment was effected through the use of unusual means of payment, prematurely or for an amount constituting a substantial part of the assets of the debtor, unless the payment is made in the ordinary course of the debtor's business.

A security interest granted by the debtor within a critical time period of three months (or two years, where a related entity is the counterparty) may also be set aside where the security interest had not been agreed upon when the debt was incurred, or where the requisite measures for perfecting the security interest were not taken without any undue delay after the debt was incurred.

IV PRIORITY OF CLAIMS

i Ranking of claims

Under Finnish law, the general rule is that similar creditors have an equal right to receive payment from the funds of the bankruptcy estate *pro rata* to their claims, unless otherwise provided by law.

Secured creditors holding a valid pledge over specific assets have priority to the relevant asset to satisfy their secured claim from the net proceeds of such assets and are generally able to enforce their right independently of bankruptcy proceedings.

Administrative expenses of the bankruptcy estate and debt incurred during insolvency proceedings enjoy the highest priority to the distribution of funds available to the estate. Taxes and employee benefits do not enjoy preferential treatment or protections and rank *pari passu* with other unsecured claims. Subordinated debt, such as capital loans (a special equity-like debt instrument governed by the Finnish Companies Act) or subordinated bonds in relation to other indebtedness of the debtor, rank ultimate after all creditors.

Contractual subordination is possible and frequently used. The Finnish Bankruptcy Act is relatively new and there is no case law available on the enforceability of English law Loan Market Association-compliant intercreditor agreements. While many legal scholars advocate the use of contractual subordination between creditors in syndicated debt financing, certain others suggest that an intercreditor agreement may not be binding in insolvency due to the operation of fundamental principles of Finnish law.

Structural subordination has no similar associated issues, and is commonly employed as the safer option when compared with purely contractual arrangements. US second lien structures have appeared recently in the Finnish market. These have been well received as a modification of the more traditional way of structural subordination.

V JURISDICTION

i Consent to jurisdiction and choice of forum

In Finland, the parties to an agreement may freely choose between themselves the applicable law and competent forum.

The application of non-Finnish law by a Finnish court in a matter brought before it is subject to the applicable law not being contrary to mandatory fundamental principles of Finnish law and the application of such law not resulting in an outcome contrary to *ordre public*.

Notwithstanding any choice of law clause, the application of Finnish procedural rules entails, *inter alia*, that punitive or exemplary damages are unenforceable, and a Finnish court may only award damages to the extent that they form compensation of actual losses and damage as proven by the claimant.

A feature of the Finnish civil procedure is that the burden of proof with respect to any claims presented lies, with certain rare exceptions, with the claimant. A party to legal proceedings in Finland is also ordinarily expected to plead its case primarily on the basis of the evidence that is available to it. For instance, US notions of discovery are not recognised under Finnish law, and a party seeking to obtain documents in the possession of counterparties or third parties is required to be able to specify such documents with relative precision.

ii Enforceability of foreign judgments and awards

There is no Finnish law that would recognise all foreign judgments and arbitral awards globally. Therefore, enforcement in Finland of a non-Finnish judgment or arbitral award requires specific legislation that allows such recognition and enforcement.

Finland has adopted the 1958 New York Convention (the Convention on the Recognition and Enforcement of Foreign Arbitral Awards), and arbitral awards issued in any other contracting state are enforceable in accordance with the New York Convention, subject to certain, limited defences.

EU Regulation No 1215/2012 on the jurisdiction and the recognition of judgments in civil and commercial matters contains rules on the enforcement of judgments in another EU Member State (excluding Denmark). Finnish courts will recognise and enforce a final judgment rendered by a court in another EU Member State. The Lugano Convention of 2007 provides for similar recognition and enforcement in Finland of Danish, Norwegian, Icelandic and Swiss judgments.

Conversely, final judgments given outside the EU or EEA (for instance, in the US) are not automatically enforceable in Finland and require re-examination of the merits by a Finnish court. In seeking a Finnish court judgment, a judgment of a foreign court will constitute circumstantial evidence of the questions of fact in the case concerned and evidence of the governing law as applied to the matter in dispute.

VI ACQUISITIONS OF PUBLIC COMPANIES

i Principal legal and regulatory framework

Takeover bids for Finnish listed companies are regulated, primarily, by the Securities Market Act, the main legal framework regulating issuance of securities to the public and public trade in securities. The Finnish Companies Act regulates certain related matters such as compulsory acquisition of minority holdings in squeeze-out procedures following the public takeover bid.

In addition to the laws and regulations that apply to takeover bids generally, the articles of association of the target company may affect the way in which a bid is structured.

The Finnish Financial Supervisory Authority supervises compliance with the provisions of the Securities Market Act and gives guidance on their interpretation. Nasdaq OMX Helsinki Exchange supervises the trading in publicly quoted securities in Finland. Compliance with national merger control regulations is supervised by the Finnish Competition and Consumer Authority.

The Securities Market Association has published the Helsinki Takeover Code, which contains recommendations relating to, *inter alia*, the preparation of a bid, due diligence, competing bids, holdings in the target company and the conditions of the completion of a bid.

ii Funds requirements

Prior to making a takeover bid, the offeror has a duty to ensure with sufficient certainty that it has the ability to fully meet the cash consideration requirement of the bid and take reasonable measures that may be required for the implementation of any other type of consideration.

The financing arrangement of the cash consideration may be conditional. The terms and conditions and elements of uncertainty relating to the financing arrangements that are relevant to the evaluation of the bid are to be made public when the bid is disclosed.

iii Voluntary takeover bids

Permitted conditionality

A voluntary takeover bid may be conditional, contrary to a mandatory takeover bid that may be conditional only upon requisite regulatory approvals.

Typically, a takeover bid is conditional upon merger clearances being obtained for the transaction. A conditional takeover bid is also often subject to the bid being accepted by at least a certain proportion of shares and voting rights in the target company (usually 90 per cent, which is the squeeze-out threshold for minority shareholdings).

The conditions of the offer must be transparent, unambiguous and reasonable. As a requirement of good practice, an offeror should not invoke a condition, unless it has material importance with respect to the transaction in question.

iv Mandatory takeover bids

Obligation to make a mandatory bid

A shareholder whose proportion of the voting rights in a listed company exceeds 30 or 50 per cent is under an obligation to launch an unconditional takeover bid for the remaining shares and other equity securities of the company. There are certain exemptions to this rule.

If a share pledge agreement provides that the voting rights are transferred to the pledgee, for instance upon an event of default, the above thresholds may be crossed when such event occurs or when the pledge is enforced. As a result, an obligation to make a mandatory bid obligation may arise.

Consideration

A mandatory bid under the Securities Market Act must be made at a fair price. The highest price paid by the offeror for the shares during the six months preceding the obligation to make the mandatory bid sets out the minimum price to be offered. The price so determined may be adjusted for special reasons, such as material changes in the target or on the market.

In the event that the offeror has not made any purchases during that period, the starting point for determining fair price is the volume-weighted trading price of the shares during the three-month period preceding the obligation to launch a bid. Again, such price may be adjusted for special reasons. Where securities are offered as consideration in a mandatory bid, a cash consideration must always be offered as an alternative to securities.

v Squeeze-outs and risks of minority challenge

Under the Companies Act, a shareholder that holds more than 90 per cent of the shares and votes of a limited company is entitled, as well as obligated, to purchase the remaining shares in the company at fair market value.

Disagreements regarding the right to squeeze out minority holdings, including disagreements on the acquisition price, are settled in arbitration. Upon a party's application, the arbitration board of the Finland Chamber of Commerce appoints a panel of arbitrators. The award given by the arbitrators may be appealed to a district court, and further appealed to the Finnish Supreme Court, if leave to appeal is granted.

VII OUTLOOK

The Finnish financing market follows closely the trends of larger markets, London being the nearest and most influential. Despite Greece's financing arrangements resulting in a heightened level of caution in the European market during the summer, the outlook in Finland remains cautiously positive for the remainder of 2015.

Bond financing is expected to retain much of its popularity due to investor appetite and the relative freedom from restrictive covenants for the issuers when compared with bank financing. The precedents of more diversified deal structures will be emulated and developed further in new transactions as the market becomes more familiar with the alternatives available. New legislation is being planned in order to lay the groundwork for more efficient Finnish bond market development. Proposed upgrades include confirmation of the legal position of bondholder representatives, which currently remains unlegislated and untested in courts.

Nonetheless, traditional bank financing will remain a source of debt financing for many Finnish companies.

The number of major Finnish companies in financial difficulties has remained relatively low with some isolated exceptions. Some of the companies with weaker balance sheets have been and may continue to be able to seize the market opportunity to issue high-yield debt instruments at rates that are lower than the current bank debt, with less restrictive covenants.

Appendix 1

ABOUT THE AUTHORS

TIMO LEHTIMÄKI

Waselius & Wist

Timo Lehtimäki is a partner in the firm's banking and finance practice group. He has a particular focus on complex, cross-border transactions. His client roster includes numerous leading international banks, other lending entities, private equity houses and corporates whom he advises in their Finland-related matters. His key areas of expertise include conventional bank lending and ABL transactions as well as high-yield bond issuances. He has represented senior and mezzanine lenders in various distress and enforcement scenarios, including pre-pack financial restructurings.

Mr Lehtimäki joined Waselius & Wist in 2007 and was appointed partner as of 1 January 2013. He has gained increased visibility in the Finnish market and has been recognised as 'up and coming' by both *Chambers Global* and *Chambers Europe* and a 'rising star' by *IFLR1000.*

MARIA PAJUNIEMI

Waselius & Wist

Maria Pajuniemi is a senior associate in the firm's banking and finance practice group. She specialises in cross-border financing, advising lenders and borrowers alike. Her expertise focuses on the Finnish aspects of English and US law-governed syndicated leveraged and acquisition financing transactions, including high-yield debt products and related bridge financing. Ms Pajuniemi has also gained experience by working at the securities/corporate department of a leading US law firm. She joined Waselius & Wist in 2012.

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