
Finland

Financial Assistance

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INTRODUCTION

This guide sets out a general brief overview of the regulation dealing with the concept of financial assistance in Finland as currently regulated by the Finnish Companies Act (624/2006) (the Companies Act) in connection with Finnish private limited companies (Oy) and Finnish public limited companies (Oyj).

GENERAL OVERVIEW

What are the origins of financial assistance in Finnish law?

In respect of public limited companies, regulation of financial assistance in Finnish law has its origins in Article 23 of the Second Company Law Council Directive of 13 December 1976 (77/91/EEC).

In Finnish legislation, a prohibition on advancing funds, granting a loan or providing security by a Finnish limited company with a view to the acquisition of its shares by a third party applies to both private and public limited companies under the Companies Act.

What should be understood as financial assistance under Finnish law?

Chapter 13, Section 10 of the Companies Act explicitly prohibits a Finnish limited company from granting any monetary loan or other assets or security for the purpose of a third party acquiring shares in the company or in its parent company (employee share issues being an exception).

Is financial assistance accepted under Finnish law the?

The prohibition does not apply to measures taken, within the limits of the distributable assets, relating to the acquisition of shares by employees of the company or of a related party company (as defined in Chapter 1 of the Companies Act).

What are the consequences of providing financial assistance?

Civil law consequences

Legal transactions involving financial assistance provided in opposition to law may be considered null and void by operation of law.

Criminal liability

Under certain circumstances (and if the employee share acquisition exemption does not apply) financial assistance may be regarded as illegal distribution of assets, which may lead to both

- a duty to return funds received to the company; and
- criminal prosecution.

The penalty for such breaches range from a fine up to imprisonment of maximum one year. The limit does not apply if the act also meets the characteristics of another offence.

PRIVATE AND PUBLIC LIMITED COMPANIES

General rules

Chapter 13, Section 10 of the Companies Act explicitly prohibits a limited company from granting any monetary loan or other assets or security for the purpose of a third party acquiring shares in the company or in its parent company.

The financial assistance restriction is mandatory law. It cannot be contractually set aside, nor are there any means of whitewash provided by law.

There are, nonetheless, certain structures that can be considered market practice. One such structure is to merge the target into the acquirer after a certain period of time after the acquisition, and then having the merged entity provide collateral over its assets. Specific legal advice should be sought in relation to such structures to assess their permissibility. It should also be noted that any structure implemented solely to circumvent prohibitions under mandatory law may be construed as invalid by a court of law. There are no specifically provided waiting periods that always would be possible to rely on as safe havens.

The general position under Finnish law is that a reference to a parent company, in the context of the financial assistance prohibition in the Companies Act, shall be construed as a reference only to a Finnish parent company. Thereby, the prohibition on financial assistance would not apply to foreign parent companies, unless the ultimate parent of the group is Finnish.

Even if the Companies Act does not expressly prohibit financial assistance to foreign parent companies, such financial assistance would still be subject to a test of the corporate benefit received by the company giving the assistance. In practice, such test can, in many cases, be difficult to pass.

Exceptions to the applicability of the general rule

Chapter 13, Section 10.2 of the Companies Act recognises one exception to the general rule of prohibition of financial assistance. The prohibition does not apply to measures taken within the limits of the distributable assets of the company that encourage the acquisition of shares for employees of the company (or a company that is a related party).

The company's related parties are listed in detail in the Companies Act, and the regulation differs in part between a private and a listed public company. A company and/or another person shall be considered a related party if one controls the other or if one otherwise has significant influence in the financial and business decision making of the other.

A related party is typically a parent company or a company belonging to the same group of companies, or an individual director or one of their relatives.

CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE

Civil law consequences

Pursuant to the general principles of invalidity of a legal act, legal transactions involving financial assistance provided in opposition to law may be considered null and void due incompetent legal capacity.

Criminal liability

According to Chapter 25, Section 1 of the Companies Act, a person who intentionally violates the protection of the shareholders or the creditors by distributing the assets of the company in

contravention of the provisions of the Companies Act, shall be convicted of a company law offence and sentenced to a fine or to imprisonment for a maximum of one year (unless the act is of minor significance or subject to a more severe penalty elsewhere in the law).

Under the Companies Act, the board of directors (*hallitus*) is responsible for the management and the proper arrangement of the company's operations, as well as proper supervision of the accounting and the control of the financial matters of the company. Therefore, a board member may be held liable for illegal acts committed by the company. Under certain circumstances, other persons considered instigators or aiding the offence may be held liable.

In Finland the amount of a fine depends on a person's income. As such, there is no fixed maximum limit.