The pursuit of a company's interest over the life of a company

Corporate Acquisition and Joint Ventures Commission

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General Reporters:

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Introduction

The typical lifecycle of a company consists of various phases, as for example, startup, growth phase, maturity (mid- to large-size privately held company), IPO and listed phase, and finally the acquisition by another company.

The various stakeholders in a company – understood in a very broad sense including equity holders, debt holders, management, employees, advisors and public – have expectations in the company. According to the stakeholder-value-theory all these expectations of the stakeholders form the company's interest.

Undoubtedly, the expectations of the various stakeholders and, therefore, the company's interest change and develop over the life cycle of the company.

The general report and the working session focus on these changes and developments, how they are reflected resp. influenced by the rules of the various jurisdictions and what the consequences are for us, the legal advisors. For efficiency reasons, the general report is limited to the developments of certain stakeholders' expectations (see A to D in the below matrix)

The following matrix provides an overview of the stakeholders (A to D) and the phases (1 to 5) that are covered by this general report. At the same time it provides an overview of the structure of this questionnaire (chapters A to D, each having sub-chapters 1 to 5). Our goal is to shed light on one or several aspects of a specific stakeholder's interests in each phase so that, as a result, the entire questionnaire provides an overview of the development of the interests of the various stakeholders over the life cycle of the company and, thus, shows the development of the company's interest as such.

	1. Startup	2. Growth	3. Maturity	4. IPO / Listed	5. Acquisition
A. Equity holders	A.1	A.2	A.3	A.4	A.5
B. Debt holders	B.1	B.2	B.3	B.4	B.5
C. Management / Employees	C.1	C.2	C.3	C.4	C.5
D. Lawyers	D.1	D.2	D.3	D.4	D.5

The general report and the working session focus on these changes and developments, how they are reflected resp. influenced by the rules of the various jurisdictions and what the consequences are for us, the legal advisors.

A. Interest of equity holders

1. Start-up phase

1.1 In your opinion, what is an entrepreneur's typical reasoning for setting up a specific business association? Attract investments by third parties? Avoidance of personal liability? Tax reasons? Protect IP rights and technology?

The most typical reasons are normally the avoidance of personal liability as well as the attraction of investments from third parties. Furthermore, the business structure shall be such that the association will be a legal person of its own and hold e.g. rights to IPR instead of the entrepreneur.

1.2 What kind of business association structures does your jurisdiction offer to equity holders (e.g., partnerships, corporation, LLC, etc.)?

The limited liability company (Fi: *osakeyhtiö*) is clearly the preferred and most popular company form and the standard company form used in Finland. According to the statistics by the Finnish Trade Register, the most commonly registered new business of the approximately 30,000 new registered businesses in 2014 were either limited liability companies or private traders. The other possible association forms include, for instance a general or a limited liability partnership as well as a cooperative. However, all the aforesaid association forms are mainly of marginal interest as opposed to the limited liability company.

The limited liability company is the most flexible company form, for instance, as regards creating different types of financing structures and the issuance of shares and granting option rights. Furthermore, from the entrepreneur's point of view, the limited liability company provides that the entrepreneur is not be personally liable for the obligations of the company.

Besides common shares, the equity instruments used in financing include loans with an equity element, e.g. convertible loans entitling the loan holder to subscribe company's shares or option loans. Capital loan, which is a special type of subordinated loan comparable to equity set out in the Finnish Companies Act (Fi: *Osakeyhtiölaki*, "**FCA**") is also often used. In addition, options are often used in the growth phase, although often

to incentivise the employees and management instead of providing financing for the company. Options and warrants may also be used as anti-dilution instruments to protect e.g. the founders of the company or investors against dilution.

Under the FCA, the company shall maintain a share and shareholder register in which the company's shareholders are recorded and anyone is entitled to request a copy of a limited liability company's share and shareholder register against the payment of reasonable expenses for producing such copy. The use of bearer shares is not possible under Finnish company law.

1.3 Once the entrepreneur has set up a company: what could be a typical focus of third party equity investors when they invest in a company in this phase?

The professional investors focus is naturally on the potentially very high financial upside of a start-up. The focus would also involve keeping the entrepreneur working in the company and also having sufficient anti-dilution and similar rights. Whereas the professional investors have usually better capabilities to participate in further financing of the company, the individual investors e.g. the entrepreneur's family may be more interested maintaining sufficient control rights in the company, e.g. through use different share classes attached with more voting rights. As the financing sources of start-ups and growth companies in Finland consist often of a mix of private and public funding the focus of various investor may differ significantly.

With respect to legal documentation, the level of quality and detail of the documentation may vary significantly depending on the parties involved. Entering into a shareholders' agreement ("**SHA**") is usually required by professional investors which may not be the case with regard to FFF.

2. Growth phase

2.1 In your opinion, does the focus of the equity holders (e.g., the FFF or professional investors) shift in the growth phase (as compared to the start-up phase)?

The growth phase often requires significant investment depending on the line of business of the company as well as the geographic scope of the expansion. Consequently, in the growth phase, there are often new investors stepping in as there is a more established business model and normally at least some revenue although the company may still occur heavy expenses due to investments required. Also more financing alternatives normally become available in the growth phase, including an increase in the investments made by venture capital funds. Furthermore, in the growth phase the financing usually shifts towards private equity / venture capital financing and the companies have already some established turnover.

In the growth phase there are normally new professional investors (such as venture capital funds) stepping in to provide further equity financing. Their focus is normally to ensure that the entrepreneur and other key persons remain committed towards the company and development of business.

Although it is possible that the founders will cash-out some part of their holdings, the investors want usually keep them working for the company through the growth phase. However, it may be that some of the start-up phase investors either cash-out or accept dilution.

2.2 ***In your jurisdiction, does the company law provide existing equity holders protection from being diluted in further financing rounds in the growth phase? If so, how are they protected? Is there a need for equity holders to seek protection on a contractual basis?***

As a main rule under the FCA the existing equity holders have a pre-emptive subscription right to participate in further share issues of a company. However, in case of a weighty financial reason, the share issue may be carried out as a directed share issue (i.e. in deviation of the existing shareholders' pre-emption right) which requires that 2/3 majority at a general meeting. For instance, the existing shareholders' (especially individuals) often lack the financial means to participate pro rata in further financing rounds.

The mechanisms provided by the FCA alone do not normally provide sufficient protection against dilution and such further contractual protection is normally provided in the SHA, e.g. by stipulating the parties rights to participate in further financing rounds or anti-dilution clauses.

2.3 ***When new potential investors offer to come on board during the growth phase, the existing equity holders may be reluctant to provide the information required to satisfy the potential new investor's need for valuation. The reason for the existing shareholders' reluctance may be, for example, that the required information contains (still) unprotected intellectual concepts, knowledge or ideas. In your experience, which legal instruments are used to find a balance between the potential new investor's need for information and the existing equity holders' wish to keep such information confidential? Do existing equity holders have legal means to prevent management from disclosing such information?***

The management of the company has a general duty of loyalty towards the company and is, as such, forbidden of disclosing information against the interest of the company. However, as in the growth phase the (largest) shareholders normally have also a seat in the board of directors, the risk of board disclosing information against the interests of shareholders is often somewhat limited in practice.

As the publicly available information concerning a non-listed company is mainly limited to annual financial statements and certain information available through the Trade Register (which normally are not sufficiently up-to-date or at the level of detail are required by a potential investor) the process would normally involve a limited due diligence subject to the company and the investor having entered into non-disclosure agreement restricting the use of any information provided for the investor during the process.

3. Maturity

3.1 In your opinion, how does the equity holder base change between the start-up phase, the growth phase and the maturity phase? How does the focus of the equity holders change? Focus on fair distributions of earnings?

At the maturity phase the company has normally reached a steadier cash-flow and is also starting to generate profits as opposed to the growth phase having required often significant investment. Furthermore, the growth phase investor often cash-out at this stage through a trade sale exit. In case of significant new investors joining the company the shareholders' agreement and the possible related agreements are quite often re-negotiated and renewed as a whole or partially. Depending on the company's ownership base the focus will normally shift from "no dividends" policy towards distributing at least a certain percentage amount of the company's result as dividends (subject to mandatory FCA requirements).

3.2 In your jurisdiction, does the law provide for stricter corporate governance rules for large (privately-held) companies as compared to small companies? If so, what exactly triggers the application of the stricter corporate governance rules? In which sense are the corporate governance rules different / stricter?

The corporate governance rules provided by law do not make a difference between smaller and larger privately held companies and the matters triggering stricter corporate governance results depend mainly on whether the company is listed or not. However, e.g. cooperation obligations with respect to employee matters are triggered when there are 20 or more employees working at the company.

In case of a listed company the company is required to comply with the Finnish Code on Corporate Governance (Fi: *Listayhtiöiden hallinnointikoodi*) which is built on the comply-or-explain principle.

3.3 In your jurisdiction, do (certain) equity holders (e.g., majority shareholders) have obligations towards (certain) other shareholders or the company (e.g., duty of loyalty)? Please explain such obligations.

As a main rule, the equity holders' do not have obligations towards each other or the company. However, the FCA contains the general requirement of equal treatment of the shareholders and the majority shareholders cannot be favored at the minority's expense.

3.4 Does the company have any means to control the circle of its equity holders (i.e., can the articles of incorporation prevent competitors from holding shares in the company?) or have such restrictions to be agreed among the other equity holders (e.g., shareholders' agreement)?

As a general rule the shares of a company are freely transferable. The FCA stipulates that, as a deviation of this main rule, transfer restrictions may be included in the articles of association of a company. The transfer restrictions permitted under the FCA are a redemption or /and a consent clause.

The redemption clause may entitle the other shareholder(s) or the company (provided that is has sufficient distributable funds) to redeem the transferring shareholders shares. In order for such redemption clause to be effective, the redemption right shall be stipulated in the company's articles of association. The redemption clause can further stipulate on which types of transfers are subject to redemption, how the redemption price is determined and who has the redemption right in case the default of the FCA is not followed. The consent clause stipulates that the consent from the board of directors shall be obtained before the rights attached to the transferred shares can be exercised by the new shareholder. Until such consent has been obtained, the new shareholder does not have rights other than right to dividend and pre-emptive right in case of a share issue.

In addition to the redemption and consent clauses provided in the FCA, various restrictions in relation to the transferability of shares are rather common (especially in companies with a thin ownership base) in an SHA. For instance, rights of first refusal as well as drag-along and tag-along clauses are often included in the SHA.

Usually the SHA contains further provisions on how the redemption rights are exercised, for instance, by stipulating that in case the transfer has been carried out in accordance with the SHA, the other shareholders shall waive their redemption right. However, as the transfer being contrary to the SHA, would not as such make the transfer ineffective, the redemption and consent clauses in the articles are normally required in the articles as these are also binding towards third parties as opposed to the SHA having effect only *inter partes*.

4. IPO / Listed phase

4.1 ***How does the focus of the shareholders change through the going public as compared to the maturity phase? Does the fact that a shareholder may at any time sell the residual value in its share (ideally) at a fair price in your opinion soften the focus on distribution of earnings? Does the focus shift from long term to short term?***

Generally the publicly traded companies are subject to more attention than (large) privately held ones and normally the value of the company is reflected in its share price. The focus of the shareholder may therefore be e.g. a steady cash-flow in the form of dividends or the focus may be on purely speculative matters (e.g. anticipation of a takeover etc).

4.2 ***In your jurisdiction, are there publicly available records on the identity of (certain of) the shareholders in a listed company? If so, does this in your opinion influence the shareholders' focus?***

The shareholders of a listed company are publicly available and anyone may, at his request, receive a copy of the company's register of shareholders. However, shares that are owned by non-Finnish persons or entities may be registered in a custodial nominee account (i.e. being in the name of a custodial account holder) and such shareholders can remain anonymous towards the general public. A custodial nominee account contains information on the custodial account holder instead of the beneficial owner and indicates that the account is a custodial nominee account. Book-entry securities owned by one or more beneficial owners may be registered in a custodial nominee account. In addition, the shares owned by a foreigner, foreign entity or trust may be deposited in a book-entry account opened in the name of such foreigner, foreign entity or trust, but the holding may be registered in the name of a nominee in the company's register of shareholders.

4.3 ***An efficient allocation of resources requires a most accurate pricing of the shares. In this regard, are companies that are listed in your jurisdiction under an obligation to publish price-relevant information (ad hoc publicity)? If so, please provide a short overview of the respective rules including the exemptions from such obligation. It can be assumed that no jurisdiction requires listed companies to publish all price sensitive information. If this is correct in your jurisdiction, how does the law protect the market and its participants (including, the equity holders in the company) from market abuse? Are there insider trading and market manipulation prohibitions? If so, please provide a short overview and, if you can, provide certain peculiarities about them?***

The Finnish Securities Markets Act (Fi: *Arvopaperimarkkinalaki*, "**SMA**") specifies minimum disclosure requirements for companies listed on the Nasdaq OMX Helsinki

Stock Exchange or making a public offering of securities in Finland. The information provided must be sufficient to enable a potential investor to make a sound evaluation of the securities being offered and the issuing company as well as of matters that may have a material impact on the value of the securities. Finnish listed companies have a continuing obligation to publish financial information on the company and to disclose any matters likely to have a material impact on the value of their securities.

The issuer may, for an acceptable reason, delay the public disclosure of information if the nondisclosure of the information does not prejudice the position of the investors and the issuer is able to ensure the confidentiality of the information. The issuer shall notify the FSA and the party operating the regulated market in question of its decision to delay the public disclosure of the information and the reasons therefor. An acceptable reason for delaying the disclosure could be e.g. a contemplated M&A acquisition.

The Finnish Penal Code (Fi: *Rikoslaki*) criminalizes the breach of disclosure requirements, the misuse of inside information and market manipulation. Pursuant to the SMA, the FSA has the right to impose administrative sanctions to the extent the offence does not fall within the scope of the Penal Code. The FSA can, for instance, issue a public warning or impose administrative fines or monetary penalties for the breach of disclosure requirements or public tender offer, insider register or market abuse provisions.

5. Acquisition

5.1 In case a listed company (target) is approached by another company (bidder), the board of the target will have to decide whether it supports the offer (friendly offer) or not (unfriendly offer). What are the interests that the board of directors needs to take into consideration for this decision? Shareholders' interests only (e.g., offer price only)? The interests of other stakeholders (employees, community etc.)?

Pursuant to the FCA, the board has the general duty to act in the best interests of the company and its shareholders. Therefore, when evaluating the bid the board has the duty to pursue the best possible outcome for all shareholders in line with the board’s general duty of loyalty.

5.2 In case of an acquisition of the listed company (target) by another company (bidder), the shareholders' are at a disadvantage as they cannot communicate efficiently or act in concert (for example, regarding the rejection of a low offer). A rational bidder should try to use this disadvantage of the shareholders to his benefit. In your jurisdiction, how does the law protect shareholders of the target in case of public tender offers? (for example, is there a specific process for public takeover offers

which provides protection? Does the bidder need to treat target shareholders equally? Are there, for example, minimum price rules and/or best price rules?)

Pursuant to the general principle of the SMA all shareholders' shall be treated equally. The same consideration shall be given to all shareholders and no special deals shall be concluded with any shareholders. Furthermore, the relationship between different classes of shares shall be equitable. In case there are different share classes publicly traded, the difference in trading prices may give indication on this.

The general structure of the offer procedures, rules on publication of the offer and disclosure obligations, the requirement to make a mandatory offer, pricing of offers and rules on competing offers are furthermore stipulated in the SMA. Other regulation concerning Finnish public takeovers includes regulations and guidelines issued by the Finnish Financial Supervision Authority ("**FSA**") as well as the Helsinki Takeover Code issued by the Takeover Board of the Securities Market Association. Public offers are also subject to monitoring by the FSA.

With respect a mandatory public tender offer stipulated in the SMA (an obligation which is triggered by exceeding an ownership threshold of 30% and 50% of the votes in a company) the price shall be the fair price. The fair price is determined either based on the highest price paid by the tenderer for the company's shares during the preceding six month period or as the volume adjusted trading price of the share calculated from the three month period preceding the obligation to make an offer.

5.3 As mentioned above, a listing provides (ideally) liquidity for the company's shares and ensures a high level of information for a potential new investor. In fact, equity investors may invest in listed companies exactly for these reasons. In your jurisdiction, how is an equity investor protected from a delisting? Does the delisting require (qualified) shareholder consent? What are the deadlines for the delisting? Do issuers need to provide for an off-exchange trading for a certain period following delisting?

With respect to delisting the NASDAQ OMX Helsinki (the stock exchange) may, upon application of the company, terminate trading in the listed company's securities. Such delisting may not result in any significant harm to investors or to the orderly operation of the securities market. Generally the delisting has required that the full ownership of the company is in the same hands and this applies especially with respect to takeover situations. However, recently in certain other cases it has been sufficient that all shareholders of a company have been given the opportunity to sell their shares for the fair price prior to delisting. Such delistings have been preceded by a voluntary tender offer for the company's shares, whereafter the company has applied for a delisting.

B. Interest of debt holders

1. Start-up phase

1.1 In your experience, what could be the typical focus of the FFF in this phase? Helping the entrepreneur to get his / her business going? How is this focus reflected in the legal relationship? For example, will such debt holders be likely to refrain from asking for security? Is the agreed interest rate likely to correctly reflect the risks for the debt investor?

The focus of FFF would mainly be different from that of a professional lender as the incentives for providing a loan are likely to relate on more on the person of the entrepreneur than on the "business case" of granting a loan. It may also be that the risk level is not sufficiently reflected in the interest rate. The terms may vary in significant amount and case-by-case depending on the parties involved but would likely to be more beneficial than ones received from a bank or other sophisticated lender.

1.2 In your experience, is it common for professional investors to act as debt holders in this phase? If so, how is the different focus of professional investors typically reflected in the legal relationship? What are the legal instruments commonly used in your jurisdiction to protect their interests? For example, is it common for the professional investors to request a personal security by the entrepreneur in case the company does not yet have (a lot of) assets to secure a loan?

Depending on the business case and the nature of the start-up and the entrepreneur, professional lenders may often act as lenders already in the start-up phase. In case of bank financing the loan agreements would be mainly standard and prepared in accordance with the bank's standard templates. The instruments normally used in connection of loan would mainly be pledge agreements, other forms of collateral (such as personal security from the entrepreneur and the shares in the company). In addition, the bank may e.g. require that the entrepreneur's banking will be centralized to the lender bank.

In addition to bank financing there are various publicly subsidized loans available for the early-stage entrepreneurs. Such loans may be subordinated or otherwise granted with more beneficial terms. The publicly subsidized loans are usually without security and granted in accordance with standard terms and conditions used by the lender. However, such loans may often contain e.g. change of control terms according to which the lender may require prepayment of the loan in case of change of ownership in the company.

2. Growth phase

2.1 In your experience, who provides debt in this phase and what could typically be their focus (e.g., high return on investment)?

The debt providers are, for instance, banks, public entities (e.g. Finnvera, Tekes) as well as the shareholders of the company. The focus of the debt holder may vary from high return on investments, benefit of the general public or providing the company for sufficient funds in order to maximize the equity investment.

2.2 What kind of security is commonly request by debt holders in this phase? For example, rather collateral (pledge, etc.) or personal guarantees by the entrepreneur? What is the reason for the preference of a specific kind of security?

In the growth phase the security tends to be more in the form of collateral (e.g. business mortgages, liens). As the growth phase normally requires significant investments, the comfort received from a personal guarantee of the entrepreneur may be limited as opposed to the assets of the company.

2.3 During the growth phase, the burn rate of the company may be quite high and the company may continuously be at the verge of over-indebtedness. Will investors usually be willing to subordinate their debt? Usually only the entrepreneur / FFF from the start-up phase or also professional investors?

The shareholders may often need to subordinate their loans or the shareholder loans have been originally granted e.g. as capital loans (a subordinated loan set out in the FCA). Furthermore, the public loans granted are often granted in the form of subordinated loans. Normally the banks will be less willing to subordinate their loans.

2.4 Investors providing debt in this phase may wish to keep the possibility to participate in the potential valuation upside. How could this wish be accommodated in your jurisdiction? For example, are profit-participating loans or convertible loans commonly used instruments?

Both profit participating loans (in which the interest would depend e.g. on the company's result) or convertible loans can be used. Although no statistics exist, the convertible loans tend to be more common.

3. Maturity

3.1 In your jurisdiction, who is usually the debt holder in the maturity phase (e.g., banks)?

In the maturity phase, the debt holders are mainly different banks or bank syndicates. In addition, e.g. in the case of private-equity owned firms, the debt holders may be private equity shareholder(s). Also high-yield and other corporate bonds have increased importance as financing source for larger companies and the market has recently seen issues of high-yield bonds (e.g. Paroc Group's EUR 430 million US high-yield bond).

3.2 Before providing debt to a company, the potential debt holder may require information about the company's financial status to assess the default risk. What financial information is publicly available for potential new investors who wish to invest in a privately-held company? Are financial statements available from public registers? Excerpt from the debt enforcement register? Tax returns? Do companies have means to influence the amount of publicly available financial information?

The financial information publicly available is mainly limited to the annual financial statements of a company. In addition, a potential investor may request information whether the company is subject to debt enforcement proceedings. The companies may themselves decide to publish more detailed financial information e.g. on their website which may often be the case.

4. IPO / Listed

4.1 Once a company is listed, the debt holders have a considerably higher level of information regarding the company's financial situation. One could expect that this reduces the risk for the debt holder. Thus, in your jurisdiction, do listed companies usually have to pay lower interests?

Once listed the company has the obligation to publish more up-to-date information on its financial position as opposed to a privately-held company which can be considered to the debt holder's risk position. However, the interest rates payable by companies depend more on the overall financial stability of a company as well as on its cash flow and debt service capabilities than whether the company is listed, and potentially on its shareholder base. For instance, there have been some distressed or highly leveraged listed companies, and consequently, the listing alone would not lower the interest rates payable by a company.

5. Acquisition

5.1 In your jurisdiction, what is the typical influence of a public tender offer on existing credit facilities?

There is no statutory requirement for the offeror to acquire or redeem any existing credit facilities. However, the credit facilities of the target company may include change of control terms that may be triggered in connection with the tender offer.

C. Interest of management / employees

1. Start-up phase

1.1 Which are the most commonly used means to ensure that the management / key employees will not leave the company until the company reaches the growth or maturity phase? Are warrants or similar incentives granted during this stage?

Often the management and key employees of a company are also significant shareholders or have otherwise been with the company since the early beginning and may therefore have a personal incentive to stay with the company. Often the management's incentives are linked to investments made by the management (e.g. having subscribed shares in the company) combined with good / bad leaver provisions which stipulate the price payable for the shares in case the person leaves the company.

1.2 It is likely that at this stage, there are not sufficient funds for remuneration of management / key employees. Is it common to grant warrant or stock incentive schemes in your jurisdiction? Is there any other scheme to liaise with this issue?

Granting of stock or option incentive plans for employees is quite common in start-ups, especially in knowledge incentive sectors such as gaming or programming requiring specific skills.

2. Growth phase

2.1 In case new investors come on board in the growth phase and such investors request replacement of the current management: in such replacement, does the current management usually lose rights granted under an incentive plan? How broad are "bad leaver" provisions usually formulated?

In case of a replacement of management, the majority shareholder(s) or the company are usually granted the right (but not necessarily the obligation) to acquire the departing manager's shares. Depending on the incentive plan, the plan / agreement may contain an exhaustive list of events when a person is considered a "good leaver" e.g. retirement,

death or termination of employment by the company due to the actions of the employee, whereas in any other event the person is determined a "bad leaver".

2.2 ***Upon implementation of an incentive plan, the rights related to the shares that the management will be entitled to receive are usually subject to vesting. Is there any specific vesting period that is applied in your jurisdiction or is the vesting period usually linked to a liquidation event (such as an IPO)?***

The vesting periods are very much subject to what has been agreed case-by-case in an incentive plan. However, the vesting periods are often linked to a liquidation event, the more common ones being a trade sale or an IPO. In practice, trade sale being by far the more common event.

2.3 ***In certain jurisdictions the management may fall out of labor relationship since it is developing executive duties for the company and/or may hold certain stock of the company (it might fall in a special labor relationship or corporate relationship). Is this the case in your jurisdiction? If so, is the loss of labor rights compensated by special laws or by contractual means?***

Pursuant to the Finnish law, the management of the company is normally in an employment relationship with the company. The only exclusion is the managing director (CEO) who is not an employee but an executive organ of the company. The managing director may be removed by the board of directors without cause with immediate effect. The managing director is normally compensated through contractual means in the managing director's agreement which may e.g. provide the managing director with 6-12 months' salary in case of termination by the company.

3. Maturity

3.1 ***In your jurisdiction, do the various corporate bodies (e.g., board of directors, directors, management) have an obligation to "act in the best interest of the company"? If so, how is the "interest of the company" defined? Is it the interest of all stakeholders (including the interests of all equity holders (e.g., holder of non-voting shares), debt holders, management, employees and public) or just the shareholders? Are only long term interests taken into account or also short term interests? "fiduciary duties" or a duty to treat equity holders equally? How are these defined?***

Pursuant to the general principle of the FCA, the Board of Directors has a general duty act in the best interests of the company and all of its shareholders which means that they cannot promote their own interests or those of any specific shareholder or group of shareholders ("duty of loyalty"). Furthermore the board members shall always act

diligently and with due care ("duty of care"). In addition, the Board has a duty to act in accordance with the purpose of the company, which generally is to generate profits for its shareholders; and to comply with the principle of the equal treatment of shareholders.

The above duties have been not exhaustively defined and the final assessment will need to be taken case-by-case. It is, however, generally accepted that the board should promote the long-term interests of a company instead of short-term profit maximization.

3.2 ***In your jurisdiction, how are conflicts of interest addressed by the law? Are the rules on conflicts of interests for listed companies applied to non-listed companies? Have the rules on conflicts of interests become more rigid in recent years?***

The FCA provides certain situations in which there is a conflict of interest and a member of the board of directors is barred from participation in the decision-making. Pursuant to the FCA, a board member is formally disqualified from participating in matters pertaining to an agreement or other legal action between him or her and the company or between the company and a third party, if the board member has interests in an agreement that are not aligned with those of the company. The said rules contained in the FCA concern both listed and non-listed companies.

3.3 ***In your jurisdiction, is it common to put in place incentive plans for key management and employees or are they only entitled to receive a cash bonus (usually based on individual and overall performance)? Do incentive plans provide tax advantage for the company?***

Depending on the company's (and its shareholders' preference) both specific incentive plans and cash bonus are used.

4. IPO/ Listed phase

4.1 ***It is our understanding that when a company goes from a private to a public setting it implies considerable changes for management and employees. In your experience and within this framework, what is the most significant change for management and employees? Does going public usually increase the total amount of the compensation and/or does it usually change the structure of the compensation (cash, shares, warrants, etc.)?***

The most substantial changes relate to the on-going reporting obligations of a publicly traded company as opposed to a privately held one which may require significant amount of time from the management. Furthermore, the management's focus may be more concentrated on the reporting of quarterly earnings rather than a longer-term performance. The publicly traded companies have often some kind of employee incentive

plan in place as being listed brings liquidity to the shares of the company. However, at the same time insider regulations often limit the managements' possibilities to trade the company's shares.

4.2 ***Following the IPO the management is constantly assessed by the performance of the share price. Also the management's pay may to large extent depend on the share price performance. One could expect that management may abstain from taking any steps that are likely to weaken the share price – even if such steps are beneficial to the company in long term. In your jurisdiction, are there any measures that are commonly taken to address this conflict (i.e., incentives for long term strategies)? Is, for example, by law or by agreement a part of the pay paid in mid- to long term options?***

The focus of the managements' incentives has somewhat shifted towards longer-term incentive plans (in the duration of several years) which are normally aimed to incentivize the long-term performance of the company's shares. The incentive terms are normally described in an agreement between the management and the company. Furthermore, as the issuance of shares, options or other special rights is subject to authorization by the general meeting, such approval needs to have been sought in advance.

4.3 ***Is the management and/or employees bound by a mandatory lock up period upon the IPO? In the event the lock up period is not mandatory, please explain the common standards in your jurisdiction towards implementing a lock up period.***

Although not mandatory, the lock up periods with respect to the management / employees are normally agreed to lock-up undertaking with the arranger pursuant to which they will not sell shares during a period of 90-180 days.

5. Acquisition

5.1 ***The focus of the board of directors of a listed company may be set to a large extent on the share price performance. Usually, this should be in line with the corporate interest. However, in case a listed company is being approached by a potential bidder, the board of directors and the management of the potential target may face a conflict of interest: an acquisition that may be beneficial to the shareholders of the potential target, may at the same time require replacement or adjustment of the target's board of directors and management. In your jurisdiction, how is this conflict of interest addressed? For example, are there limits to the defense measures that the board of directors of the target may take?***

The board has the general duty to act in the best interest of the shareholders and the actions taken by the board shall be assessed against this principle. Pursuant to the SMA and the Takeover Code, in case the board aims to take actions that may frustrate the

tender offer, a general meeting of shareholders shall normally be convened to decide on the matter. Such frustrating actions may be, for instance, sale of assets outside ordinary course of business, strategic agreements or business acquisitions.

5.2 Which are the common alternatives in order to keep management / key employees focused and keen to continue in the company?

The common alternatives include incentives (e.g. a management incentive program) through which the management and key employees will be rewarded e.g. following an exit-event.

5.3 In parallel, is it common to reinforce non-competition and confidentiality undertakings of the management / key employees upon acquisition? Is it common to regulate a non-solicitation by the Seller and that it is enforceable (for which period)?

The employment agreements of the key employees may be renegotiated following an acquisition. In case of a listed company being acquired, the non-competition and confidentiality provisions are often already at a sufficient level. Non-competition and non-solicitation provisions are common in private M&A deals whereas in public M&A such provisions would be more difficult as there are multiple sellers.

D. Interest of advisors / lawyers

1. Startup

1.1 Which are the common difficulties you liaise with during this stage? How do you tend to structure your fees (for example, do you go below your standard rates and agree to have this difference compensated at a later stage when the company has become more successful)?

The common problems experienced relate e.g. on the management's focus being solely on the development on the business and setting aside different legal matters, for instance, with regard to agreeing on a shareholders' agreement or ensuring sufficient protection of the IPR of the company (e.g. through an employee invention policy).

From the general legal market perspective, there may be discounted rates offered for start-ups or other tailored service packages aimed especially for start-ups e.g. general legal advice or access to document templates for a fixed monthly fee.

1.2 In case you accept warrants / rights to shares as compensation for professional services rendered: how do you set the amount or the value of such warrants and

rights? Do you rely on valuations of the company? If so, whose valuations? Is it common for an advisor in this situation to request that the company has previously successfully completed a minimum viable product ("MVP") stage which reduces the risk of failure (i.e., as part of the lean startup methodology it is advisable to diminish uncertainty for the project by means of developing an MVP to validate the project)?

N/A.

2. Growth

2.1 ***How do you tend to structure your fees during this stage (in particular, is there a difference in the fee structure as compared to the start-up phase)?***

Please see 1.1.

2.2 ***Is it common for advisors (in particular, lawyers) to take board positions during this phase? If so, how is such board member compensated? In cash? Or with exclusivity for providing legal services to the company?***

Advisors may take board positions in the growth phase. Generally the advisors are compensated in cash (together with a possible incentive plan for board members e.g. in the form of options or shares)

2.3 ***As the lawyer you may be asked by the entrepreneur to render advice on the division of equity (in particular to FFF)? What is the basis for your advice regarding the division of equity?***

The advice concerning the division of equity would mainly concern the statutory and other rights granted to shareholders having a certain amount of the company's shares. Pursuant to the FCA, the shareholder(s) having 10% of the shares may exercise such minority rights as demand a minority divided or request the company to convene a general meeting. In addition, when considering the division of equity the supermajority requirements should be observed (e.g. amendment of the company's articles of association requires the majority of 2/3 at a general meeting).

2.4 ***In certain jurisdictions corporate law is rigid and does not allow to regulate certain rights of the shareholders in the by-laws of the company (such as, preferential preemptive rights, drag along or tag along rights). Please explain (succinctly) which is corporate legal scheme that applies in your jurisdiction. Is the shareholders agreement enforceable against third parties in your jurisdiction or is only binding between the relevant shareholders?***

As such the FCA provides substantial flexibility for the shareholders to stipulate in the articles of association of the company. However, the more common approach is that the matters concerning, for instance, tag-along or drag-along rights are stipulated in the shareholders' agreement entered between some or all the shareholders. However, the shareholders' agreement is only enforceable *inter partes* and not binding towards a third party as opposed to the articles of association which is a publicly available document.

3. Maturity

3.1 How do you tend to structure your fees during this stage (in particular, is there a difference in the fee structure as compared to the start-up or growth phase)?

When examining the Finnish legal market in general, there is some variance in which firms tend to advise start-up or growth companies as compared to larger privately-owned or listed companies. With respect to start-up or growth companies, some firms offer e.g. certain types of help-desks or tool kit designed more for the purposes of such companies.

3.2 Are you able to become member of the board of directors of the companies? Do you tend to render more unique advice to companies (while the corporate counsel provides the typical ongoing corporate advice)?

As such a member of the bard may become a board member. However, any possible conflict of interest issues should be assessed carefully prior to becoming a board member.

In general, when companies reach maturity stage they often expand their own support function capabilities, e.g. by having one or several in-house legal counsels. In such cases the companies often seek more specialized advice e.g. with respect to M&A or dispute resolution whereas the on-going legal advice is primarily provided by the in-house legal counsel or department.

4. IPO/ Listed phase

4.1 From a lawyers' perspective, which are the main regulatory aspects of offering equity to the public? Is it common that companies reach this stage (in certain jurisdictions becoming a listed company is less rigid)?

The restrictions concerning equity offerings to the general public are set out in the SMA. The offering of securities for the public would mainly be subject to the requirements of preparing a prospectus. As the costs relating to preparing a prospectus are substantial, this would mainly into question only at a later stage usually in connection with an IPO.

During the recent years there has been a slight increase in IPO activity in Finland, although IPOs are still somewhat uncommon as compared e.g. to Sweden. However, due to some successes especially in the First North the IPO market has become more attractive during the recent years.

4.2 Is there any specific secondary market in your jurisdiction that allows early startup companies to become listed with the aim of obtaining more equity (given the complexity of becoming a public company in certain jurisdictions a startup company can become listed in a specific market which is less rigid and allow it to obtain other sources of financing, among others)?

In addition to the main list of NASDAQ OMX Helsinki, First North is an alternative stock exchange for smaller companies designed for smaller and growing companies in the Nordic market. First North is an alternative trading platform exempted from certain of the requirements set out in the securities markets regulation (e.g. MiFID, IFRS, Takeover directive or Market abuse directive (to the extent pertaining to the disclosure obligation of the issuer). From the investors' perspective First North provides an opportunity to invest to companies already before reaching maturity phase which may generate larger profits for investments.

4.3 Does the fact of becoming a listed company imply that the lawyers and/or advisors adjust rates their rates accordingly?

Generally the rates in Finland are more subject to the type of advice rendered as well as on the arrangements in place with a specific client. However, as listed companies normally have a legal function of their own, the advice requested may require further expertise and would be subject to rates adjusted accordingly. On the other hand, the listed company in question may be a large client for a specific law firm and the rates may therefore be subject to price pressure e.g. in the form of discounts.

5. Acquisition

5.1 Which is most frequent scheme of implementing an acquisition (asset deal vs share purchase deal)?

Although no statistics concerning acquisitions implemented in Finland exist, the share purchase deals tend to be more common than asset deals. In case of a share purchase the object of acquisition can be more easily identified as opposed to an asset deal in which more focus needs to be aimed in identifying the assets subject to transfer as well as taking into account the possible misallocation of assets (e.g. through wrong pocket clauses etc.).

The main driver for choosing the form of transaction is often taxation. An asset deal may be preferable from the buyer's perspective, since the buyer may obtain a step-up in basis and depreciate the acquired assets (incl. goodwill). However, the tax loss carryforwards of the target do not follow in an assets deal although may be lost in a share deal due to the change of ownership in the company. The sellers typically prefer share deals, as the profit is often tax exempt in a share deal (save for private equity). An asset deal may be preferred by a seller with carry-forward tax losses, or if the sale resulted in a loss.

Finally, it can be noted that nevertheless of the final acquisition structure when the ownership of the target has been passed to the buyer, the implementation of the acquisition may be preceded by a intra-group reorganization or carve-out which may contain a mix of share and assets deals through which the target business is carved-out from the seller's group.

5.2 From a lawyers' perspective, which are the main differences within the process of acquiring a stake in listed companies versus private companies?

As the takeover of a listed company is a process stipulated in detail, the acquisition of a privately held company can be structured more freely with only limited formal or statutory requirements regardless of whether the transaction is carried out as an asset or a share deal.

The main differences relate to the securities markets regulations as well as the often dispersed ownership base in case of an acquisition of a listed company. As opposed to the acquisition of a private company, the purchaser may not have a direct counterparty with whom to negotiate the sale. Further, as opposed to an acquisition from an individual or a limited number of seller, the purchaser may not rely much on any contractual protection e.g. through representations and warranties.

In case of a listed company, the information available publicly would include the share and shareholders' register of the company, annual accounts, interim reports and information published pursuant to the company's disclosure obligations. The due diligence may also be more limited when the target is a listed company as opposed to a privately owned one.

5.3 From a lawyers' perspective, which are the main steps in your jurisdiction in order that a public entity becomes a private entity as a consequence of an acquisition?

Generally, the ownership of all shares in the public company needs to have been passed to the acquirer. The public tender offer is normally followed by a squeeze-out procedure set out in the FCA which be initiated by a shareholder holding directly or indirectly more than 90% of the shares and votes of a company. Where the said 90% threshold was exceeded as a result of a public offer, the offer price is regarded as the fair price unless

there are special reasons for deviation from that price. The squeeze-out is carried out through arbitration proceeding normally initiated by the majority shareholder. Following the completion of the squeeze-out, an application is made to the listing committee of OMX Helsinki to delist the company.