

Finance for your clients: Harmonisation of Capital Markets

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National Report of Finland

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1. Briefly describe the level of integration of the capital markets at the infra-national, national and supra-national levels.

Due to the relatively small size of the Finnish economy on the European scale, the Finnish domestic capital market is less developed in comparison to many of its fellow European nations with the most common countries of comparison being Sweden, Norway, Germany and the UK. Although, according to the Bank of Finland, the growth in the Finnish loan market in the recent years has exceeded that of many European markets. Generally, however, the trends in the domestic market follow the trends prevalent in larger markets.

In 2015, traditional bank lending represented the majority of financing received by companies, whereas only a fraction was derived from the capital markets. However, over the past several years, the stagnant economic environment combined with ever increasing regulation in the banking sector has resulted in especially smaller companies having increased appetite for alternative sources of financing. These range from more established instruments, such as equity issuances and high yield bonds, to more innovative solutions, such as crowdfunding and new types of securitisation transactions previously unseen in the Finnish market.

In terms of regulation, as a member of the European Union and the Eurozone, Finland is focused on integration with the other European Union member states, and its capital markets legislation relies heavily on the implementation of European Union level legislation.

As the planned Capital Markets Union (CMU) initiative of the Commission progresses, the level of integration and the access to capital of Finnish companies is expected to improve further. The Finnish Ministry of Finance (FMF) has taken a relatively cautious view, and deemed the overall objectives of the CMU as ambitious, but nevertheless achievable in the long run.

Finland also cooperates extensively with other Nordic and Baltic countries in matters such as stability, integration and infrastructure of the capital markets.

2. Which measures have been adopted (or are foreseen) in your jurisdiction to support access to finance by small and medium sized enterprises (“SME”s)? Measures might include (i) supporting venture capital and equity financing; (ii) lowering information barriers; (iii) enhancing access to public markets; (iv) supporting equity financing; (v) facilitating infrastructure investment; and/or (vi) promoting innovative forms of corporate financing.

According to the FMF, the most pressing goals of the CMU initiative are to (i) enhance the possibilities for SMEs to obtain equity financing and enter the equity capital markets, (ii) improve access to cross-border financing, and (iii) promote

versatility in the capital markets. Some measures have already been taken to this effect and a number of further initiatives are underway.

By way of example, the Finnish export credit agency, Finnvera, recently received wider authority to grant financing for SMEs with more capital and increased periods of maturity. Finnvera's objects were also extended to cover certain domestic investments. These changes give Finnvera, *inter alia*, the capacity to issue guarantees for the financing of domestic deals, and enhanced capabilities to purchase debt issued by SMEs. Further, the government bill on legislation for crowdfunding is due to be issued next spring, opening up new possibilities for companies to attract investments. In addition, the FMF is currently working on a bondholder trustee model for the Finnish bond markets, which is planned to lower transaction costs, improve access to information and expedite decision making by the trustee.

- 3. Has your jurisdiction adopted (or are there any trends indicating that may do so in the future) any measures to remove barriers to cross-border investment? Measures could include (i) improving market infrastructure; (ii) fostering convergence of insolvency proceedings; (iii) removing cross-border tax barriers; (iv) strengthening supervisory convergence.**

Finland has welcomed the proposed CMU and plans to amend its legislation in accordance with it. The Commission is yet to give actual legislative proposals within the CMU project.

While the Finnish insolvency regimes are already quite compatible with the European Union legislation, such as the Insolvency Regulation, Finland is committed to further improving the compatibility of its domestic insolvency legislation with the European Union level capital markets regulation. For example, the Finnish Financial Collateral Act was recently amended to further clarify the scope of eligible financial collateral, which improves the predictability of treatment of financial collateral transactions in Finnish insolvency proceedings.

- 4. Have specific measures been adopted (or are foreseen) to increase choice and competition in cross-border retail financial services and/or insurance?**

The offering of retail financial services cross-border into Finland from within the European Union relies in particular on the implementation of the BCD, MiFID and AIFMD. Under the current regulatory framework, the offering of services cross-border from outside the European Union is very difficult, so the competition is heavily focused on service providers operating within the European Union.

- 5. Capital markets harmonisation aims to facilitate companies' access to finance, particularly for SMEs by promoting more diversified funding**

channels that are complementary to bank financing. Is non-bank financing significant in your country? Please consider the role of private equity, venture capital, alternative finance, loan-originating funds, etc.

Bank financing is still the most important source of funding for companies of all sizes, although many companies also obtain funding from other sources. Bank debt continues to be an attractive choice for large, stable companies with the requisite bargaining power, whereas other means of financing are more tempting for smaller companies and those with less impressive balance sheets.

In the recent years, many companies have opted for a combination of bank debt with issued debt. Also dual-track transactions have begun emerging, in particular for private equity portfolio companies, with savvy sponsors simultaneously exploring a bank loan, a debt issuance and/or even an IPO track.

A number of debt funds, both domestic and international, operate in the Finnish market. Since lending in itself does not require a credit institution licence, these and other non-bank lenders do provide a potential source of debt available to Finnish companies.

At the moment, crowdfunding still represents only a marginal portion of the Finnish companies debt market. Statistics from 2013 – the year of launching of the first high profile crowdfunding project for financing the sci-fi action film Iron Sky – showed the total crowdsourced debt at some EUR 18 million, but so far the number has doubled annually. Its popularity is expected to further increase assuming the government bill for the crowdfunding legislation is passed in the coming spring.

- 6. While loans traditionally represent the bulk of the banking assets, most financial entities also invest in capital markets. Do financial institutions in your jurisdiction invest highly in the capital markets? Are bonds and equity investments a significant proportion of the assets of financial institutions in your jurisdiction?**

According to the latest report by the Bank of Finland, at the end of 2014, Finnish financial institutions had approximately EUR 78 billion worth of securities investments in total, increased by some EUR 5 billion from the previous period. Some 85 per cent. of this EUR 78 billion consisted of debt securities. Investments in bonds and equity securities have increased substantially in recent years.

- 7. Harmonisation requires standardisation, particularly in terms of credit information. Is SME credit information easily available in your jurisdiction? Is your jurisdiction adopting any measures to boost availability and standardisation of SME credit information at the national and supra-national levels?**

SME credit information is currently provided by private credit reporting agencies,

whose operations are regulated by the Credit Information Act. The Bank of Finland has commenced building up a credit database (the ACDB project) and aims to start collecting information by 2017.

- 8. Is there any recent or proposed legislation in your jurisdiction aimed to establish a framework for simple, transparent and standardised securitisation? Examples might include measures (i) to simplify prospectus requirements; (ii) to increase/decrease the information required to be provided to investors before making an investment decision; or (iii) to reduce barriers for smaller firms to access capital markets. If there have been no recent developments, please describe the current situation of securitisation in your jurisdiction.**

Finland does not have a legislative framework tailored specifically for securitisation. In other words, securitisation transactions are structured on the general legal framework for capital markets and lending. Securitisation transactions were seen in the market before the financial crisis that began in 2008, after which there was a long period of non-activity. From the second decade of this millennium, securitisation transactions have begun re-emerging, with new and innovative structures and target industries previously unseen in Finland. On the one hand, the Finnish legal environment is more challenging as there is no specific securitisation legislation. On the other hand, the Finnish rules on recharacterisation facilitate the use of structures which, absent a true sale judgment, will nonetheless be upheld as secured lending transactions.

The amendments in the ambit of general capital markets regulation have also improved the possibilities for securitisation. Recent amendments to the legislation have, *inter alia*, removed the requirement to draft a prospectus for issuances below EUR 2,500,000 (this amount previously being EUR 1,500,000).

- 9. In your experience as a banking/capital markets lawyer, have you detected in your jurisdiction any unnecessary regulatory burdens, interactions, inconsistencies and/or rules that have unintended consequences which threaten the ability of the companies to finance themselves?**

The Finnish capital markets regulatory environment has gone through several major overhauls in the recent years. The lack of legal precedents and doctrine concerning the new legislation creates certain uncertainty as to how the new rules should be interpreted in practice. However, the Finnish regulatory environment as a whole does support the functioning of the capital markets. Due to the longer history of capital markets regulation, the general level of predictability is better

than for example in the emerging markets within the European Union, and the structuring of transactions is thus more straightforward and less risky.

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