INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

High growth companies and how to fund them – a real driver of economic growth?

Corporate Acquisitions and Joint Ventures Commission

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The working session in Prague is entitled "*High-growth companies and how to fund them – a real driver of economic growth*?" In the working session we plan to address funding alternatives for high-growth companies (i.e. companies with significant annual growth over time); opportunities and challenges that both entrepreneurs and investors may encounter in your jurisdiction. The working session will also look at corporate governance issues in connection with investments in high-growth companies. This questionnaire mainly concentrates on these two topics in relation to high-growth companies, but will also cover commercial and regulatory opportunities and constraints.

1. CORPORATE FINANCE – FUNDING ALTERNATIVES

1.1 Which financial instruments are typically used when investing in high growth companies; ordinary shares, preference shares, convertibles, warrants, stock options, debt instruments such as bonds, hybrid instruments such as participating debentures etc.?

Instruments used vary depending on the firm, the need for financing and the overall risk profile of the company. The financial instruments typically used in investments to high growth companies are equity based instruments (different classes of shares or convertible loans). Bank financing has also traditionally been used in financing companies. In addition to ordinary debt instruments, the financing instruments include different forms of mezzanine financing such as capital loans, a type of subordinated loan, is used often by public funds. The capital loan and its interest may only be paid back provided that the company has a sufficient amount of distributable funds to do so as stipulated in the Finnish Companies Act (624/2006, Fi: *Osakeyhtiölaki*, "**FCA**").

Options are widely used in high growth companies, although often to incentivise the employees and management instead of financing for the company. In addition, options and warrants may also be used as anti-dilution instruments to protect e.g. the founders of the company or investors against dilution although anti-dilution mechanisms are not very common.[1]

1.2 Please elaborate on the pros and cons of the instruments used (ref. 1.1 above)

The benefit of equity based instruments is that they improve the debt/equity ratio of the company and the revenue received from business operations can be used for expansion instead of paying interest on debt instruments. The FCA provides substantial flexibility and possibilities to create different classes of shares which can differ e.g. with respect to voting rights, dividends or on how the assets are distributed should the company be liquidated. However, the liquidity and possibilities to dispose of one's shares may become an issue. In addition, the capital distribution rules of the FCA limit the possibilities under which circumstances e.g. dividends can be paid to shareholders. Share issues and special rights entitling to shares (e.g. option rights) need to be registered with the Finnish Trade Register.

In addition to shares, subordinated loans, such as capital loans are used to provide funds to the company with elements somewhat comparable to equity without requiring the lender becoming a shareholder in the company. Further, the board of directors of a company may resolve on taking a capital loan as opposed to a share issue which requires a decision by the general meeting.

[1] However, please see section 5.2.

The use of debt based instruments prevent the dilution ownership and can often be more easily utilised when the need for financing is not significant. Further, in case of a bankruptcy the position of a debt holder is better compared to the position of a shareholder.

1.3 Are there any regulatory constraints to the instruments used (ref. 1.1 above)?

The Finnish Securities Markets Act (746/2012, Fi: *Arvopaperimarkkinalaki*, "**SMA**") restricts the offering of securities for the public. When financing high growth companies, the shares and other securities are usually offered only to a limited number of professional investors, such as venture capital funds and business angels. The offering of securities for the public would mainly be subject to the requirements of preparing a prospectus, the cost of which would often be too high for the purposes of gathering financing for a high growth company. Consequently, the offerings are subject to the requirement of publishing a prospectus, unless an exemption set out in the Prospectus Directive applies to the offering. However, even in cases when there is no duty to publish a prospectus (e.g. the offering is under EUR 1.5 million), sufficient information must always be provided on factors that may have a material effect the value of the investment. 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.

The FCA contains restrictions concerning the payment of interest and the repayment of capital loan. Pursuant to the FCA interest may be paid on the capital loan and the loan may be paid back only provided that the amount of unrestricted equity in the company together with the capital loans exceed the amount of loss recorded in the latest balance sheet of the company.

1.4 Is crowdfunding a funding alternative in your jurisdiction? How wide is the practice? If at all, please describe pros and cons.

Crowdfunding has been used as a financing method and a number of crowdfunding platforms have emerged in Finland during the recent years and include both equity and non-equity crowdfunding. In Finland crowdfunding without consideration (non-equity crowdfunding) is restricted based on the Money Collection Act (255/2006, Fi: *rahankeräyslaki*). According to the interpretation by the Finnish National Police Board, such crowdfunding is fundraising which requires a permit under the said Act. Such projects would need a consideration element e.g. an admissions ticket or a product. The legal framework of crowdfunding is fairly established in Finland. As regards equity based crowdfunding, this needs to comply with the SMA as is the case with any other offering of securities to the public as set out above.

The Ministry of Interior established a working group in 2012 to examine whether the Money Collection Act should be amended. However, at the moment no amendments contemplated to the legislation as regards crowdfunding.

In spite of the above limitations, there have been successful examples of the use of crowdfunding also in Finland, the most high-profile example being probably the Finnish-German-Austrian science fiction comedy "Iron Sky" which was partly financed through crowdfunding.

2. INVESTORS VIEWPOINT – OPPORTUNITIES AND CONSTRAINTS, LEGAL AND COMMERCIAL

2.1 Who are typical investors into a high growth company in your jurisdiction? Sources of funding (i.e founders-family-friends, angel investments, venture capital investments, private equity)

The financing sources of start-ups and growth companies in Finland consist often of a mix of private and public funding. The typical private investors include the founders of the company as well as their family and friends, banks, business angels (especially in the seed and early growth phases) as well as domestic and international venture capital funds. The public funding includes various state grants and loans.

In the growth phase more financing alternatives normally become available including an increase in the investments made by venture capital funds. In addition, angel investors tend to invest into early stage start-ups and provide know-how and contacts. The investments by business angels are made especially in the seed / early growth stage companies whereas in the growth phase the financing usually sifts towards private equity / venture capital financing and the companies have already some established turnover.

Investors in the growth phase of the company are normally venture capital funds and through the public innovation system, the main public sources of finance being normally the Finnish funding agency for innovation ("Tekes") and Finnvera, a specialised financing company owned by the State of Finland, together with its subsidiary Veraventure. In addition, banks have traditionally provided a substantial amount of financing into companies. Furthermore, in the growth phase the company receives also revenue from sales to finance its operations.

2.2 Is there a typical size of the investment into a high growth company in your jurisdiction?

The typical investment size varies depending on the growth phase as well as on the circumstances at hand, e.g. on the line of business of the company. The investments made by business angels to early stage companies usually vary between tens of thousands euro up to hundreds of thousands, whereas the average investment is normally between EUR 30,000–50,000. In the growth phase the investments normally vary between hundreds of thousands euro to a few million euro. The private equity investments often amount to from little less of a million up to a few million euros.

In 2011 the investments made by venture capital funds into seed and growth phases totalled to approximately EUR 78 million in Finland.[2] A typical investment to a growth phase company was between EUR 1–1.5 million.[3] In the later expansion phases the investments may amount from approximately 5 million euro up to tens of million euro.

The initial investments by Finnvera can amount up to a maximum of EUR 500,000[4] and the fund's holdings vary between 10–40%.

2.3 Describe the process of documenting the investment

The selection of investments by venture capital funds results into a more extensive due diligence process as compared to angel investors. Although venture capital funds utilise a wide range of instruments, usually equity based ones are preferred. In addition, the structuring and terms of the investments are usually more extensive than as is the case with angel investors. Usually 50% of the instruments used by venture capital funds are equity based.[5]

In connection with equity based financing instruments, the most important documents are the shareholders' agreement and the articles of association. The relationship and rights of the shareholders' are normally stipulated in detail in the shareholders' agreement, whereas the articles usually contain only certain provisions to make the stipulations enforceable also against third parties.

In connection with the execution of the shareholder's agreement, the articles of association are often amended to take into account specific requirements of the investors which may include, for instance, the right to represent the company, consent and redemption clauses, as well as creating different classes of shares (corresponding e.g. preference shares and common shares). When different classes of shares are used, the differences between the share classes need to be stipulated in the articles of association of the company. The differences can relate, for instance, to the voting rights of the shares, entitlement to dividends or the right to convert the shares into to another class of shares.

In order to be enforceable against third parties, the redemption and consent clauses, liquidation preference, and differences between share classes need to be included in the articles. More detailed provisions on the rights of the shareholders, such as tag-along and drag-along, right of first refusal or right to nominate board members are normally included in the shareholders' agreement. In comparison to the articles of association, the shareholders' agreement can be kept confidential as opposed to the articles of association which is a publicly available document.

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[2] FVCA VC/PE Industry in Finland 2011

[3] FVCA Yearbook 2008

[4] www.finnvera.fi.

[5] FVCA Yearbook 2008.

Furthermore, lenders require often provisions in the shareholders' agreement and the articles of association or in the terms of the convertible loan (covenants) which guarantee the lender certain rights in the company's decision making.

2.4 Are there incentive schemes for investing into high growth companies

Public financing is primarily available through the public innovation program which is organised under the Ministry Employment and Economy. The program provides financing amounting to some tens of millions of euro each year for potential companies. The public incentive schemes can be divided into two classes consisting of (i) public subsidies, grants and loans and (ii) equity investments and loans. The public incentive schemes are mainly administered by Tekes and Finnvera.

Tekes grants funding for research, development and innovation projects that aim to create in the long-term the greatest benefits for the economy and society. Tekes does not derive financial profit or claim IPR's its activities. Finnvera makes direct investments in early-stage enterprises. The aim of Finnvera is to supplement the product development funding and private equity investments and the investments' objective is to enable and accelerate growth and internationalisation among its investment targets and to make them attractive targets for further financing by other investors and industrial actors. Investments are made in technology enterprises at an early stage and in technology-intensive or innovative service enterprises that have potential for developing into international growth enterprises. Furthermore, Finnvera provides financing for the start, growth and internationalisation through offering loans, domestic guarantees, venture capital investments, export credit guarantees and other services associated with the financing of exports. In addition, Finnvera acts as the official Export Credit Agency (ECA) of Finland.

Finally, Act on tax concessions on investments activities for fiscal years 2013–2015 (993/2012, Fi: *Laki sijoitustoiminnan verohuojennuksesta verovuosina 2013–2015*) which entered into force in 2013, can be mentioned. The purpose of the Act is to grant tax reliefs for business angels through deferring the taxation of profits gained from start-up investments. However, the Act has received substantial criticism on failing to support any investments.[6]

2.5 Any instruments referred to in section 1 preferred from the point of view of an investor? Why? Would the answer differ if the investor is international or domestic?

The matter of which financing instruments are used depends primarily on the investors and the investor's objective as regards profit and risk of the investment. This is further affected by the overall condition of the firm, the need for financing,

[6] For more detailed description, see section 6.1.

risk profile of the company. Due to their uncapped potential for profit, venture capital funds usually prefer shares. Public funds often use also capital loans as a way of making investments as their objectives differ from the private venture capital funds aiming to make a profit.

The investments are usually made by subscribing new shares or acquiring shares from the previous owners as well as by granting capital loans (a subordinated loan). In addition, convertible loans and different mezzanine instruments are used by venture capital funds. Finnvera's venture capital investments are either share capital investments or convertible loans. The loans can also be granted as capital loans.

3. ENTREPRENEUR'S VIEWPOINT – OPPORTUNITIES AND CONSTRAINTS, LEGAL AND COMMERCIAL

3.1 Which company form is most popular?

The limited liability company (Fi: *osakeyhtiö*) is clearly the preferred and most popular company form and the standard company form used in Finland. The limited liability company is also the most flexible company form, for instance, as regards various 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 will not, based on the Finnish company law, be personally liable for the obligations of the company. There are no special company forms for high growth companies and due to the flexibility of the limited liability company, and the demand for such would very likely to be quite limited.

The requirements concerning different tiers of management for a high growth company are the same as for a regular Finnish privately held company. The company is under the FCA required to have a board of directors. In addition, the company may have a managing director, which is quite common although not required under the FCA. Often in a high growth company, the main shareholders and the management are at least partly the same persons and are actively involved in the day to day business. Venture capital funds usually provide their own expertise in the assistance of the high growth companies or may utilise their contacts to find key persons with suitable skills for the companies.

3.2 What sectors are most preferred by high growth companies in your jurisdiction (information and communications technologies, biotech, etc.)?

The industries which have attracted most investments have been communications, life sciences, computer & consumer electronics.[7] In addition, cleantech industry can be mentioned as a more specialised industry in which a number of investors are seeing substantial growth potential. Finally, the Finnish mobile gaming

[7] FVCA VC/PE Industry in Finland 2011

industry is worth mentioning, especially after the success of the mobile gaming companies such as Rovio Entertainment with its highly successful Angry Birds franchise and Supercell the creator of Clash of Clans and Hayday mobile games, of which a 51% majority stake was recently acquired by the Japanese companies Softbank Corporation and GungHo Online Entertainment for a consideration of USD 1.5 billion.

3.3 Are there incentive schemes for entrepreneurs incentivising high growth companies

The Aalto Entrepreneuship Society (Aaltoes), a non-profit organisation founded in 2009 by students of Aalto University in Helsinki as well as its Startup Sauna Seed Accelerator Program and Startup Life Internship Program are worth mentioning as regards start-up incubators in Finland. Aaltoes has gained substantial reputation after its foundation and been often affiliated with the emergence of the Finnish start-up culture during the last few years.

The objective of Aaltoes is to support and encourage entrepreneurship in universities and provide start-ups support through its different programs. Aaltoes has also been one of the main organisers of Slush, the largest annual start-up conference in the Nordics and one of the largest in Europe.

3.4 Any instruments referred to in section 1 preferred from the point of view of an entrepreneur? Why?

The assets of the entrepreneur and bank loan have no effect on the ownership of the company. Investments made by business angels and private equity funds bear less risk on the entrepreneur but result into decrease in ownership. In addition, the entrepreneur may appreciate the know-how and experience and contacts provided by business angels / VC funds. Financing necessary for large scale growth is often only available through large PE / VC funds.

The main benefits of the equity based instruments relate naturally to their unlimited earnings potential. From the entrepreneur's point of view, the equity investments do not need to be paid back by the company during the investor's investment period. Revenue from sales can be used to expand and develop the business. Further, such equity instruments improve the debt / equity ratio of the company and the companies can benefit from the know-how of the venture capital fund.

4. CORPORATE GOVERNANCE – CONTROL ISSUES

4.1 In a typical investment into a high growth company, whether a loan related investment or equity investment, how much control would a typical investor take? And what is of particular importance to an entrepreneur? In particular, please elaborate on the following terms from the perspective of your jurisdiction and practice: Anti-dilution measures, Rights of first refusal,

pre-emption rights, drag and tag along, Protective provisions, Information rights, Dead-lock resolution, Board seats / observer rights, Any other terms specific/important in your jurisdiction?

Private equity investments are made as equity investments usually by subscribing for shares. Convertible loans and other loans as well as mezzanine finance instruments may be considered as well.[8]

A private equity investor is almost always a minority investor in the company. The majority of the company is often owned by an entrepreneur, or the ownership is divided between several parties so that none of the shareholders holds the majority of the company's shares.[9]

Although a private equity investor is almost always a minority investor in a company and does not have direct power of decision, it often has substantial control over the company's business. Even though entrepreneurs consider it vital to retain control and majority of the shares of the company, veto rights and other similar rights included in a shareholders' agreement entitle the investor to intervene in the business of the company if necessary.

The FCA includes mandatory and non-mandatory provisions.[10] Parties to a shareholders' agreement are, thus, able to deviate e.g. by way of a shareholders' agreement or articles of association from the non-mandatory provisions of the FCA. The shareholders' agreement is, accordingly, considered as an instrument for regulating (the level of) control over a company.[11] [12]

When dealing with shareholders' agreements, it is essential to note that a shareholders' agreement binds *inter partes* and does not have a similar binding corporate effect as the articles of association.[13] For example, the company itself is not bound by a shareholders' agreement (unless it is a party to such agreement).[14]

Typical ways for the investor to control the company is to include provisions in the shareholders' agreement or articles of association of the company concerning e.g. anti-dilution, rights of first refusal, pre-emption rights, drag and tag along, information rights, dead-lock and board seats / observer rights.

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[8] http://www.fvca.fi/.

[9] http://www.fvca.fi/.

[10] Some of the provisions are considered partly mandatory since these can only be deviated from to the benefit of minority shareholders (Sakari Helminen, *Osakeyhtiön yhtiöjärjestys*, p. 61, 2006 Hämeenlinna).

[11] Ville Pönkä, *Määräysvallasta osakeyhtiössä*, Defensor Legis No. 5 /2008, p.737.

[12] See Ari Saarnilehto (edit.), *Osakassopimuksesta*, p. 21, Turku 1995, where it is noted that the purpose of a shareholders' agreement is often to form a shadow board.

[13] Ville Pönkä, *Määräysvallasta osakeyhtiössä*, Defensor Legis No. 5 /2008, p.753.

[14] Raimo Immonen, *Yritysjärjestelyt*, p. 29, Helsinki 2011.

Provisions relating to board seats are quite typical in a shareholders' agreement of a Finnish company with fewer shareholders. For example, the shareholders could agree that each shareholder has a right to nominate one person to the board. Further, it is usual to agree that the minority shareholders have a cyclic nomination right where each minority shareholder has a right, one after another, to elect a board member for a period of one year.[15]

In addition, various restrictive provisions in relation to the transferability of shares are rather common especially in companies with a thin ownership base. Although a redemption clause and a consent clause can be included in the articles of association of a company[16], it is quite usual to include other various restrictions (also) in a shareholders' agreement.[17] For example, a right of first refusal clause or similar clauses (as well as drag-along and tag-along clauses) are often included into Finnish growth company's shareholders' agreement.

However, e.g. anti-dilution clauses in the shareholders' agreements of Finnish growth companies are quite rare. By way of an anti-dilution clause, an investor is seeking to protect its proportional share of ownership from dilution when the company is issuing new shares or other instruments (convertible bonds or option rights).[18] These types of clauses are often disadvantageous for the founder, and are thus seldom used.

5. EXIT STRATEGIES AND TIME HORIZON

5.1 Type of exit which is most common (sale to venture capital/private equity firms/funds, trade sale, write-off, initial public offering)? Typical transaction length?

The purpose of a private equity investor is to receive an adequate return for the investment. The expected profit depends on the risk assessment of the investment. In general, the profit realises in approximately three to five years after the investment is made. The realisation of the expected profit requires that the value of the target company has increased as expected and that the business of the company is profitable.[19]

The time and type of the exit depends not only on how the business of the company has developed but also on how the investor is engaged in the company and the business. According to the Finnish Venture Capital Association (FVCA),

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[15] Ville Pönkä, *Määräysvallasta osakeyhtiössä*, Defensor Legis No. 5 /2008, p.754.

[16] According to Chapter 3 Section 6 of the FCA, restrictions of the transfer or acquisition of shares may be included in the articles of association only as provided in sections 7 (redemption clause) and 8 (consent clause) of the FCA. For further information, see Airaksinen – Pulkkinen – Rasinaho, *Osakeyhtiölaki I*, p. 151–171, Helsinki 2010.

[17] Raimo Immonen, *Yritysjärjestelyt*, p. 29, Helsinki 2011.

[18] Jari Lauriala, Pääomasijoittaminen, p. 166, Helsinki 2004.

[19] http://www.fvca.fi/.

the most popular method of divestment, calculated in deal value, made by Finnish private equity firms in H1/2013 was divestment by trade sale (43%). The trade sale was followed by repayment of preference shares/loans (32%) and divestment by write-off (11%). However, in terms of deal volume, the most common method was repayment of preference shares/loans (35%) followed by divestment by trade sale (25%) and divestment by write-off (21%). Other divestments methods were also used by the Finnish private equity firms, e.g. sale to management.[20]

The typical length of a transaction process where the target company is a Finnish company varies between 3 and 12 months. The length is dependent on several factors. It is affected by the size of the target company, how the transaction is concluded (e.g. whether it is an auction sale), and e.g. whether there is a need for a permit from competition authorities or an advance ruling / permit to retain tax losses from tax authorities.[21] Also, corporate restructurings (e.g. a merger, de-merger or liquidation) in connection with a transaction typically delay the length of the process.

5.2 How are new investors dealt with in your jurisdiction? How would the issues set out in section 5 above be dealt with? Are initial investment and shareholders' agreements/shareholders' agreements upheld in the next round, or new agreement is entered into?

When new investors join a Finnish growth company, it often depends on the status of the new investor whether a shareholders' agreement and other similar agreements are upheld and whether previous investments are diluted. In general, it can be said that quite often the shareholders' agreement and the possible related agreements are re-negotiated and renewed as a whole or partially.

Especially the geographical background of the new investor plays a significant role in determining the adjustments to be made to the original shareholders' agreement. For instance, if a Finnish investor invests into a Finnish growth company as the second investee, the shareholders' agreement could remain rather same. On the other hand, in case the investor is from other parts of Europe or from farther off, the necessity to amend the shareholders' agreement is usually more evident. In addition, the shareholders' agreements of Finnish growth companies seldom include anti-dilution provisions and, thus, initial investments are rarely upheld.

6. REGULATORY ISSUES

[20] The FVCA presentation: VC/PE Industry in Finland H1/2013, 23 August 2013.

[21] Reading: Raimo Immonen, *Yritysjärjestelyt*, Helsinki 2011.

6.1 Any tax implications (positive or negative) that a high growth company encounters in your jurisdiction?

The Finnish tax system has traditionally aimed at maintaining a broad tax base, and therefore there are not very many tax incentives or other tax benefits targeted to high-growth companies available.

However, as an answer to the challenge set by international tax competition, the Finnish general corporate income tax rate was lowered to 20% as of 2014, which may been seen as a tax incentive despite of its general applicability.

A more specific tax incentive targeted to high-growth companies is that based on a temporary act, Finnish resident private individuals making investments in the share capital of a start-up company (i.e. a company which has been registered for no more than 6 years prior to the investment) may deduct from their capital income 50% of the amount of such investments made during 2013–2015. The deduction may be EUR 5,000–75,000 per each investee company, and in maximum EUR 150,000 per each individual and fiscal year. Further, the investee company is not allowed to receive more than MEUR 2.5 worth of investments entitling to these special deductions per calendar year in addition to which certain other requirements mostly relating to the business activities of the investee company shall be fulfilled. The deducted amount shall be subsequently included in the taxable income of the individual when e.g. the shares in the target company are further disposed.

As regards other tax incentives potentially relevant for high-growth companies, double depreciations are temporarily allowed on new plants and related machinery and equipment taken into use during the fiscal years 2013–2014. Furthermore, another temporary tax incentive allows double deductions of salaries related to research and development activities (as specifically defined). This regime is applied during the fiscal years 2013–2014.

Finnish tax regulation allows carry-forward of losses and setting the losses off later against income from the same source during the subsequent 10 tax years, which i.a. may facilitate deduction of losses generated in the starting phase of the company against future gains created in the mature stage. The losses are, however, normally forfeited if more than 50% of shares in the company or a company holding at least 20% of that company change ownership during the year in which a loss is recorded or thereafter. If the losses are forfeited based on a change of ownership, a special permit may be sought from the tax administration for retaining the losses in use despite the ownership change. The regulation means in practice that loss-making companies should keep careful track of the losses and any changes in their ownership structure in order to avoid adverse changes generated through lost tax assets.

6.2 In addition to any of the issues set out above, any other regulatory incentives or constraints with respect to high growth companies? Any constraints

deriving from obligation for local participation in a high growth company? Co-investment obligation? etc.

In addition to the regulatory incentives/constraints discussed earlier, there are certain other regulatory constraints arising from Finnish legislation with respect to companies established under the laws of Finland. However, in practice, these constraints rarely limit the operations of the companies. Some of these constraints are discussed below in more detail.

Firstly, under Chapter 6 section 10(2) of the FCA, at least one of the members of the board of directors of a limited liability company has to be resident within the European Economic Area (EEA), unless the Finnish Trade Register grants an exemption. The same regulation applies to deputy board members and to a managing director, if deputy board members or a managing director are/is elected. The permit is applied for by a free form written application, giving the grounds why the permit should be granted. According to the Trade Register, the permit consideration practice is rather strict.[22]

Secondly, in regular businesses there are no specific restrictions regarding the right to own shares based on the place of residence or nationality. However, there are some rare situations which are governed by the Act on the Monitoring of Foreigners' Corporate Acquisitions in Finland (172/2012, Fi: *Laki ulkomaalaisten yritysostojen seurannasta*). The Act provides a basis for the monitoring of and, should an important national interest so require, for restricting the transfer of authority in a major company to foreigners or to foreign organisations and foundations[23]. The purpose of the Act is to improve the Finnish Government's possibilities to intervene with planned corporate acquisitions if compelled by a highly important national interest.

For the purpose of the said Act, an acquirer is deemed to be "foreign", if the acquirer is established outside the EU or EFTA area, or an entity outside the EU or EFTA area owns a minimum of 10% of the voting rights in the acquirer or exercises corresponding factual control. In addition, the Act also qualifies as "foreign" companies in the defence industry established inside of the EU or EFTA area as well as Finnish entities where those acquirers who fulfil the criteria for "foreign" (as defined above) owns a minimum of 10% of the voting rights or exercises corresponding factual control.

Under the Act, acquisitions by non-Finnish acquirers of Finnish companies in the defence industry have to be notified in advance to the Ministry of Employment and the Economy for approval. Acquisitions by foreign acquirers of other Finnish entities, which are critical for fundamental operations of society due to their field of activity, business or undertakings, are subject to voluntary notification to the

[22] http://www.prh.fi/en/.

[23] Section 1 of the Act on the Monitoring of Foreigners' Corporate Acquisitions in Finland.

said Ministry. The threshold for such monitored entities is not determined in the Act. Hence, the interpretation is in practice left to the eventual discretion of the said Ministry and the Finnish Government.

7. OTHER

7.1 Please elaborate on any other issues relevant to your jurisdiction with respect to high-growth companies which have not been discussed in responses to earlier questions (if any).

Nil.