

## **NOTICE**

**These articles are provided for general information purposes only and do not constitute legal advice. Professional legal advice specific to individual circumstances should be obtained. AIG, Inc. or its subsidiaries or affiliates, either jointly or severally, will not accept any liability arising from the accuracy of the information provided in these articles.**



## **To be the best transactions law firm for our clients. That's our goal. But what does this mean in practice for you ?**

### **Practice areas:**

- mergers & acquisitions
- technology
- finance & capital markets
- dispute resolution & insolvency

### **Why choose Hannes Snellman?**

- work is done in teams that combine experience with specialist expertise
- practical approach – focus on solutions rather than legal jargon
- uncomplicated co-operation – dealing with us is easy, even when the case itself is complex

Hannes Snellman Attorneys at Law Ltd was established almost a century ago in 1909. Today we are one of Finland's largest law firms. We are specialised in commercial transactions and other demanding corporate legal matters. Our aim is to be the best in this field. We have close to two hundred professionals in our service, the majority of whom are lawyers. Our size gives us the resources necessary and ensures that specialist expertise is readily available. At the same time however, our concept of working in client team units gives us the flexibility and personalised service of a small practice.

*How do we ensure that the client gets the maximum benefit from his dealings with us?*

*Keeping up with the rapid development of high-technology companies presents a real challenge.*

### **In order to serve our clients, we have to be as professional in our field as our clients are in theirs.**

It goes without saying that specialised legal know-how is more important to companies today than ever before. It is essential, therefore, that we are able to guarantee our clients a truly thorough understanding of the relevant legal issues. We do this by focusing on those specific areas where we believe we can offer the best legal services available.

As a client, you will have access to specialist legal expertise for the most demanding requirements, including:

- mergers & acquisitions, including competition law & the EU, taxation
- technology
- finance & capital markets
- dispute resolution & insolvency



For each project, three kinds of specific abilities are needed; an understanding of the client's business area, specialist insight into all the legal intricacies of the case, and related professional skills needed to successfully complete the assignment. This is why we establish a client team for each project. Through this team concept we can ensure that the client's perspective, the legal perspective as well as the practical realities, are all taken into effective consideration.

*In our areas of specialisation, we offer the best legal services.*

### **Our working methods differ from those of most other law firms in a number of crucial ways.**

Since it is not possible for one person to be an expert in all matters, work is done in teams. These client teams are assembled for each project according to the specific expertise required for the task. Each team includes one or two partners, associate lawyers, and assistants. If a complete team is not necessary for the case, a smaller one is utilised. We never overlook the fact that people differ as much in their areas of expertise as in their personalities. Nor do we expect individuals to all come out of the same mould - on the contrary, only by giving our people the freedom to be themselves can we expect them to develop their full potential.

*With us, people don't all fit the same mould.*

### **We take the time to really get involved in each project**

We approach our work in a practical way. Our job is to offer clients solutions rather than just legal jargon. These solutions are presented as clear recommendations for action.

We don't confuse the issues and waste your time. Our aim is to give you practical answers.

We take the time and make the effort to gain a proper understanding of the client's business area and business climate. The client can, therefore, expect us to appreciate not only the legal requirements, but also the working philosophies as well as the background of the business whether it be, for example, biotechnology, forestry or marketing. Our involvement can be for either an intense, one-off project, or it can develop into a long-term 'family doctor' type of relationship stretching over many years. On the international level, we enjoy close co-operation with local law firms around the world. Because we are an independent firm, we are not constrained as to whom we work with. Instead, we are free to select the best foreign law firm for each particular project.

*What does this mean for the client?*

*We understand the client's business climate as well as the legal requirements.*

*We present solutions as clear recommendations for action.*

*To be the best, only the finest ingredients can be used.*

*Trust is earned from our actions, not just our words*



The key elements in our way of doing business are:

- the quality of our work and the professionalism of our staff
- high ethical standards
- an appreciation for the individualism of each client and project; standard solutions don't exist in this business
- a recognition and acceptance of responsibility
- a focus on the essential aspects; ours is a no-nonsense approach

We are frequently involved in matters that are of extreme importance to our clients. These key elements are not just empty statements, they form the very basis of our actions. You will come to recognise this when dealing with us.

### **Companies don't do the work, people do**

Law firms, like all companies, are the sum total of individuals. For this reason our staff - their personalities, expertise and experience - are of vital importance to us. In this continuously changing profession, we see to it that our staff undergoes continual training and schooling. Use of the latest information technology is also crucially important. It is an effective support tool that also assists and speeds up our work with the client. We continue to recruit fresh legal talent to develop and to learn from our many experienced lawyers. In this way we are assured not only of a continuous stream of legal expertise, but equally important, we get new perspectives and a modern focus.

At the very start of this brochure we stated our goal of being the very best commercial transactions law firm for our clients. But as we point out above, trust is earned from actions, not words. So why not contact us and find out what working with us is like in practice.

*We regularly organise seminars on topical business matters for our clients.*

*Don't think that this is the only outstanding law office in Finland - we have offices in Turku and Mariehamn too !*

### **Practice areas and contact information:**

#### **Our M&A Group**

The M&A Group represents the largest practice group within the firm comprising 12 partners and some 30 associate lawyers. The group's activities encompass all areas of M&A work including acquisitions, mergers and other corporate restructuring, MBO's, LBO's and general corporate work. Competition and EU matters as well as taxation are particularly strong complementary areas within our M&A practice.

Contacts (M&A):

Co-head of the M&A Group: Juhani Mäkinen, tel. +358 9 2288 4252, e-mail: [juhani.makinen@hannessonellman.fi](mailto:juhani.makinen@hannessonellman.fi)

Co-head of the M&A Group: Johan Aalto, tel. +358 9 2288 4239, e-mail: [johan.aalto@hannessonellman.fi](mailto:johan.aalto@hannessonellman.fi)



#### Other partners in the M&A Group:

Berndt Heikel, tel. +358 9 2288 4255, e-mail: berndt.heikel@hannessnellman.fi  
Magnus Pousette, tel. +358 9 2288 4231, e-mail: magnus.pousette@hannessnellman.fi  
Kenneth Neovius, tel. +358 18 17740, e-mail: kenneth.neovius@hannessnellman.fi  
Mikael Damstén, tel. +358 9 2288 4236, e-mail: mikael.damsten@hannessnellman.fi  
Jarmo Ikkala (Taxation), tel. +358 9 2288 4296, e-mail: jarmo.ikkala@hannessnellman.fi  
Juha Lindström, tel. +358 9 2288 4282, e-mail: juha.lindstrom@hannessnellman.fi  
Outi Raitasuo, tel. +358 9 2288 4263, e-mail: outi.raitasuo@hannessnellman.fi  
Carl-Henrik Wallin (Competition and EU), tel. +358 9 2288 4299, e-mail: carl-henrik.wallin@hannessnellman.fi  
Tapani Manninen, tel. +358 9 2288 4213, e-mail: tapani.manninen@hannessnellman.fi  
Heli Teräväinen, tel. +358 9 2288 4303, e-mail: heli.teravainen@hannessnellman.fi

#### **Our Technology Group**

The Technology Group, with 3 partners and some 15 associate lawyers, covers industry sector requirements ranging from M&A, capital markets and other commercial transactions, to intellectual property, regulatory and commercial work. In addition to serving the IT, biotech and other technology sectors, the group also serves clients from non- technology sectors who are in need of highly specialised advice on matters relating to the dynamics of the high-tech field.

#### Contacts (Technology):

Head of the Technology Group: Tomas Holmberg, tel. +358 9 2288 4246, e-mail: tomas.holmberg@hannessnellman.fi

#### Other partners in the Technology Group:

Mårten Aspelin, tel. +358 9 2288 4287, e-mail: marten.aspelin@hannessnellman.fi  
Tuomo Vähäpassi, tel. +358 9 2288 4242, e-mail: tuomo.vahapassi@hannessnellman.fi

#### **Our Finance & Capital Markets Group**

With more than 15 lawyers, the Finance and Capital Markets Group is in its field among the leading practices in Finland. Our finance practice provides advice relating to syndicated or other bank loans, acquisition finance, asset and project finance, structured finance and derivatives, as well as credit institutions and related regulatory issues. Our capital markets practice provides advice on public and private securities transactions and other corporate finance, such as offerings of debt and equity securities, convertibles, structured securities, or mutual funds, as well as investment firms and related regulatory issues. We act for various parties in respect to among other things, listings, de-listings, privatisations, tender offers, private equity and venture capital transactions.

#### Contacts (Finance & Capital Markets):



Head of the Finance & Capital Markets Group: Kari Lautjärvi, tel. +358 9 2288 4309, e-mail: kari.lautjarvi@hannessnellman.fi  
Partner, Matti Kurkela, tel. +358 9 2288 4289, e-mail: matti.kurkela@hannessnellman.fi  
Partner, Henrik Mattsson, tel. +358 9 2288 4285, e-mail: henrik.mattson@hannessnellman.fi

### **Our Dispute Resolution & Insolvency Group**

The Dispute Resolution and Insolvency Group deals with litigation, arbitration, mediation and matters concerning insolvency. The group comprises for the time being 2 partners and 6 associates. Lawyers of the firm acting in other groups are also involved in litigation and arbitration coached by the Dispute Resolution and Insolvency Group.

The arbitration practitioners of the group and of our firm have extensive experience as counsels, chairmen and arbitrators in domestic and international arbitration proceedings, both ad hoc and institutional e.g. under the Finnish Arbitration Act, the Arbitration Rules of the Central Chamber of Commerce in Finland and under the ICC Arbitration Rules. Many international arbitration proceedings have provided the arbitration practitioners of our firm with invaluable and wide-ranging experience.

The firm is represented in the ICC International Court of Arbitration, the ADR/mediation work of the Finnish Bar Association as well as in the committees for international Litigation, Arbitration and ADR of the International Bar Association.

Contacts (Dispute Resolution & Insolvency):

Head of the Dispute Resolution and Insolvency Group:  
Patrik Lindfors, tel. +358 9 2288 4234, e-mail: patrik.lindfors@hannessnellman.fi  
Partner, Pekka Inkeroinen, tel. +358 9 2288 4268, e-mail: pekka.inkeroinen@hannessnellman.fi

MANAGING PARTNER: Antti Heikinheimo, tel. +358 9 2288 4260,  
e-mail: [antti.heikinheimo@hannessnellman.fi](mailto:antti.heikinheimo@hannessnellman.fi)

Hannes Snellman Attorneys at Law Ltd, Eteläranta 8, FIN-00130 Helsinki Finland. Tel: +358 9 228 841,  
Fax: +358 9 177 393, [www.hannessnellman.fi](http://www.hannessnellman.fi)

---

**HANNES SNELLMAN**  
**Attorneys at Law**

**Directors, Officers and Managers Liability**  
**The Legal Position in Finland**

Hannes Snellman  
Attorneys at Law  
Eteläranta 8  
FIN-00130 Helsinki  
FINLAND

Contact: Matti Kurkela

Telephone (+358-9) 228 841  
Facsimile (+358-9) 177 393  
Email: [www.hannessnellman.fi](http://www.hannessnellman.fi)

# Directors', Officers' and Managers' Personal Liability

## The Legal Position in Finland

### 1. Structure of Finnish Corporate Entities

#### Finnish Limited Liability Companies

The fundamental characteristic of a limited liability company is that the company shareholders are not personally liable for the company's obligations. A company is duly incorporated only when it has been registered in the Trade Register. A company may be established either as a private or a public limited liability company. Private companies have less requirements than public companies, for example concerning minimum share capital.

The company shareholders do not have the right to represent the company. They can only exercise their authority concerning the company's affairs in a Shareholders' Meeting. The Shareholders' Meeting appoints a Board of Directors with at least three members.<sup>1</sup> The Board of a private company may have only one or two members but in that case it shall have one deputy member. The Board is responsible for the management of the company and the proper arrangement of the operations of the company.<sup>2</sup> As a general rule the Board of Directors represents the company and signs the company's name. The authority to sign for the company may also be given to the CEO or to a member of the Board, as well as to another person.<sup>3</sup>

A company shall have one or more auditors as stipulated in the Articles of Association. The auditors' liability falls outside the scope of this article.<sup>4</sup>

A company may also have a CEO who is in charge of the day-to-day management of the company in accordance with instructions and orders given by the Board of Directors. If the share capital of a company is at least EUR 80.000 a company shall have a CEO.<sup>5</sup> Public companies shall always have a CEO.

A company may also have a Supervisory Board. The Supervisory Board shall supervise the management of the company by the Board of Directors and the CEO, and present a report on the annual accounts and the audit report to the Shareholders' Meeting. The Supervisory Board is elected by the Shareholders' Meeting. A company with a share capital of less than EUR 80.000 may not have a Supervisory Board.<sup>6</sup>

---

<sup>1</sup> Companies Act 8:1

<sup>2</sup> Companies Act 8:6

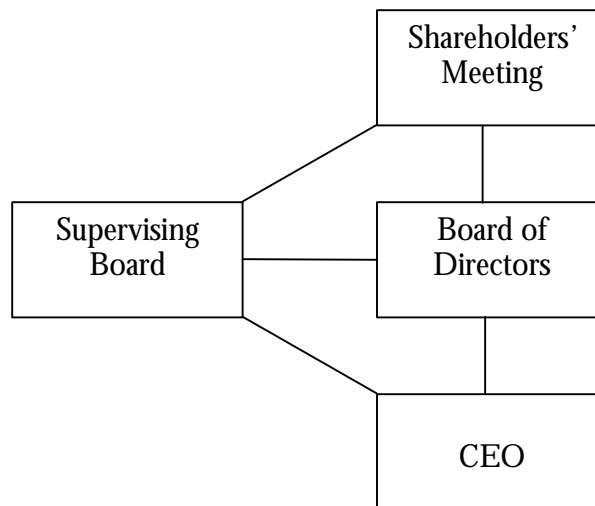
<sup>3</sup> Companies Act 8:12

<sup>4</sup> Companies Act 10:1

<sup>5</sup> Companies Act 8:3

<sup>6</sup> Companies Act 8:11, 8:12

The chart below illustrates the structure of the different organs of a limited liability company.



## 2. Directors, Officers and Managers

Pursuant to the Companies Act (734/1978) the directors of the company are made up of the members of the Board of Directors. Other management of the company include the CEO and the members of the Supervisory Board. A company may also have branch or division managers but the Companies Act does not stipulate their status and liability.

Finnish company law does not recognise officers, e.g. the company secretary, or managers in the same meaning as they have (to our understanding) in, for example, UK law.

## 3. The Legal Basis of Directors', Officers' and Managers' Liability in Finland

### a) Statutory, Civil or Contractual Legal Framework

Management referred to in the Companies Act may be held liable for damages in accordance with the Companies Act, the Tort Liability Act (412/1974) or on the basis of a contract. Criminal liability may arise in case a provision, for which a penalty is stipulated, has been violated.

#### Liability pursuant to the Companies Act

According to the Companies Act, a founding member, a member of the Board of Directors or of the Supervisory Board and the CEO shall be liable to compensate any damage caused to the company in office either wilfully or negli-

gently. The same applies to damage caused to a shareholder or a third person by an act infringing the Companies Act or the Articles or Association.<sup>7</sup>

The Companies Act does not include any provisions concerning the general preconditions for liability. General principles of liability are therefore applied to liability based on the above mentioned provisions of the Companies Act. Liability for damages requires that the following conditions are fulfilled:

- 1) damage has occurred;
- 2) there is a causal link between the damage and the act or omission;
- 3) the act or omission is performed either wilfully or negligently; and
- 4) the damage has been caused by someone acting in the capacity of certain positions in a company (for example as a member of a Board of Directors).

When evaluating management's responsibility towards the company, the organisation of the company's administration and functions shall be taken into consideration. Relevant provisions are found in the Companies Act, the Articles of Association of the company and in possible management agreements. Day-to-day business is normally managed by the CEO and therefore the members of the Board may not be held responsible unless they have neglected their duty to supervise the CEO. The liability of an individual member of the Board shall be considered separately. If two or several members have caused the damage, they are jointly and severally liable for the damage. Matters such as how responsibilities of the company are divided between different Board members may have an effect on the liability.

Even minor negligent acts or omissions may cause liability under the Companies Act. The act or omission shall be evaluated *in casu*. The degree of negligence may, however, affect the amount of indemnification. Negligence can be defined as failure to act with such prudence and carefulness, by which it would have been possible to avoid the damage and with which the person in question should have acted.

Liability under the Companies Act concerns only situations in which a person has acted in the capacity of a member of a Board or a Supervisory Board, a CEO or as a founder of the company. If the damage has been caused otherwise, for example in a contractual relationship, liability shall be judged in accordance with the contract or applicable special legislation.

The annual Shareholders' Meeting discharges the members of the Board and the Supervisory Board, as well the CEO from liability. The legal effect of such a decision is that the company no longer can claim for damages if it was aware of the matter at the time of decision. However, if the annual shareholders' meeting did not have knowledge concerning a certain matter, the decision to

---

<sup>7</sup> Companies Act 15:1

discharge the Board from liability does not prevent the company from suing for damages.<sup>8</sup>

A decision to take legal actions for damages shall be made by the General Shareholders' Meeting.<sup>9</sup> The Board may decide to take legal actions based on punishable actions. However, if a member of the Board has caused the company damage in another capacity than as a Board member, the decision to take legal actions belongs to the Board of Directors.

#### Liability based on a contract or on a criminal act

The managers' liability towards third parties is normally not based on a breach of contract. Management may, however, be held liable for damages, in accordance with the general rules of liability for damages, in case the damage has been caused by a criminal act even if such an act has been committed on the company's behalf. This matter will be discussed in more detail below.

#### Liability based on the Securities Markets Act

If a company's shares are publicly traded or are listed on a stock exchange, the personal liability of the management may be based on the Securities Markets Act (495/1989).

### **b) Duties and Requirements of Directors, Officers and Managers**

#### **Requirements**

A Board member shall be a physical person, i.e. he may not be a legal person. A member of the Board may not simultaneously hold any of the following positions; member or deputy member of a Supervisory Board, or an auditor or deputy auditor of the company or of a company from within the same group.

At least half of the members of the Board of directors shall be permanently resident in the European Economic Area unless the Ministry of Trade and Industry grants the company an exception from this requirement.

A person who is legally incompetent or has been declared bankrupt may not act as a member of the Board of Directors. Legally incompetent are persons under 18 years of age or who have been declared legally incompetent by a court decision.<sup>10</sup>

The Articles of Association may include further requirements.

---

<sup>8</sup> Companies Act 15:5

<sup>9</sup> Companies Act 9:5

<sup>10</sup> Companies Act 8:4

The same requirements apply also to the CEO and to the Supervisory Board. If the share capital of a company is EUR 80.000 or more, a CEO may not be the Chairman of the Board unless the company also has a Supervisory Board.<sup>11</sup>

## **Duties**

For the duties of the Board of Directors and the CEO, please see below.

The duties of other managers than those regulated in the Companies Act are determined in the contract of employment and by instructions given by the employer.

### **c) Is There an Equivalent to the US Business Judgement Rule in Finland**

There is a general principle in Finland corresponding to the US Business Judgement Rule according to which the management of a company shall not be responsible for decisions, acts or omission taken in good faith and due diligence. If the managers act on an informed basis and in good faith and believing that the decision is in the best interest of the company, they shall be protected by the business judgement rule i.e. the consequences of the decision is not relevant but the “due” decision making procedure. In Finland, however, already a minor negligent act or omission may establish liability. In order to eliminate liability management should make its decisions based on sufficient information. Decisions should also be motivated. Taking a financial risk does not, as such, cause liability.

### **d) Directors’, Officers’ and Managers’ Duties towards the Corporation**

#### Duties of the Board of Directors

The Board of Directors is in charge of the proper organisation of the company.<sup>12</sup> Part of the proper organisation of the operations of the company is to give necessary instructions to the employees of the company and to the CEO.

The Board shall make decisions concerning the company that do not belong to the general meeting or to the Supervisory Board. Unusual and far-reaching matters are normally decided by the Board of Directors whereas the CEO handles day-to-day matters. The Board executes decisions taken by the general meeting and the Supervisory Board.

The Board is responsible for the book-keeping and the financial management of the company being properly organised.<sup>13</sup>

The Board represents and signs for the company.<sup>14</sup>

---

<sup>11</sup> Companies Act 8:4, 8:11

<sup>12</sup> Companies Act 8:6

<sup>13</sup> Companies Act 8:6

<sup>14</sup> Companies Act 8:12

The Board is also responsible for filing the Trade Register notifications.

### The duties of the CEO

The CEO is responsible for the day-to-day management of the company in accordance with instructions and orders given by the Board of Directors. The CEO may take decisions on daily matters of the company whilst unusual and far-reaching matters are decided by the Board. The CEO is responsible the detailed organisation of the supervision of the company and its activities. Pursuant to the Companies Act the CEO is responsible for that the book-keeping of the company complies with the law and that financial matters are being handled in a reliable manner.<sup>15</sup>

### Duties of the Supervisory Board

The Supervisory Board is responsible for the supervision of the Board of Directors and the CEO. The Companies Act does not stipulate how this duty is to be performed in practice. The Supervisory Board shall also give the ordinary general meeting of the shareholders its reports on the annual accounts and the audit report.<sup>16</sup> Unless otherwise stipulated in the Articles of Association the Supervisory Board nominates the Board of Directors.

### **e) Duties of Directors, Officers and Managers towards Majority and Minority Shareholders**

The principle of equality between different shareholders is not written in any single provision of the Companies Act but becomes evident from different provisions of the Act. Such provision that obligate the management of the company are chapter 3, section 1, chapter 8, section 14 and chapter 9, section 16 of the Companies Act. Chapter 3, section 1, stipulates the equal rights of the shareholders. According to chapter 9, section 16, a general meeting of the shareholders may not make a decision liable to cause a shareholder or a third person unjust enrichment at the expense of the company or another shareholder. According to chapter 8, section 14, the Board or the CEO may not undertake an act or a measure which is likely to cause unjust enrichment to a shareholder or a third person at the cost of the company or another shareholder.

The objective of the principle of equality is not to guarantee that all shareholders of the company have the same status. The objective is to guarantee the status of a shareholder as it is determined in law and in the Articles of Association. The law, the Articles of Association and general principles form a “contract” between the shareholders and it is the duty of the company’s management to see to it that that this “agreement” is followed. If the shareholders have agreed that different shareholders have different rights the principle of equality protects also the constancy of such differences.

---

<sup>15</sup> Companies Act 8:6

<sup>16</sup> Companies Act 8:11 a

There are several provisions in the Companies Act protecting either majority or minority shareholders. They are mostly procedural rules, such as rules concerning qualified majority.

#### **f) Duties of Directors, Officers and Managers in Case of Bankruptcy**

If the Board of Directors, when preparing the annual accounts, notices or if it otherwise has reason to assume that the equity of the company is less than half of its share capital the Board of Directors shall as soon as possible prepare a balance sheet to ascertain the financial situation of the company. If the equity of the company according to the balance sheet is less than half of the share capital, the Board shall without delay submit the balance sheet to be audited by the auditors and convene the general meeting of the shareholders to handle the placing of the company in liquidation. If the general meeting of the shareholders fails to make a decision on liquidation, the Board shall apply to court to have the company placed in liquidation.<sup>17</sup>

When the company has been placed in liquidation the Board and the CEO shall without delay prepare the annual accounts for the period preceding liquidation for which annual accounts have not yet been presented at a general meeting of the shareholders.<sup>18</sup>

The terms of the Board of Directors, the Supervisory Board and the CEO end when the company is placed in liquidation. They shall deliver company documents and assets to the liquidators and acquaint them with the status and matters of the company.

#### **g) Status of the Enforcement of Directors', Officers' and Managers' Liability with Respect to Tax, Labour and Environmental Regulations**

Please see answer h) below for the allocation of liability. As explained in the mentioned answer, liability shall be allocated to a certain person or persons. The Criminal Act (39/1889) includes labour-related offences in chapter 47. Examples of labour-related offences are the work safety offence<sup>19</sup>, working hours offence<sup>20</sup> and violation of the right to organise.<sup>21</sup> According to the provisions of chapter 47 the employer or his representative may be held liable for the mentioned offences. The representative is defined as a member of a statutory or other decision-making body of the employer and one who on behalf of the employer directs or supervises the work.<sup>22</sup> Chapter 47 also includes the following provision:

---

<sup>17</sup> Companies Act 13:2

<sup>18</sup> Companies Act 13:8

<sup>19</sup> Criminal Act 47:1

<sup>20</sup> Criminal Act 47:2

<sup>21</sup> Criminal Act 47:5

<sup>22</sup> Criminal Act 47:8

“A person whose responsibility the commission or omission is shall be sentenced for the conduct of an employee or a representative thereof, where punishable under this chapter. In the allocation of liability due consideration shall be given to the position of that person, the nature and extent of his/her duties and competence and also otherwise his/her participation in the arising and continuation of the situation that is contrary to law.”<sup>23</sup>

Chapter 48 of the Criminal Act includes provisions concerning environmental crimes. Responsibility shall be allocated in accordance with section 7, which has the same wording as section 8 above concerning labour-related crimes.

The material provisions of the labour and environmental laws do not include any rules that allocate the responsibility towards certain persons in the company.

Tax laws do not include any provisions concerning allocation of liability. The normal rules explained under answer h) apply. However, tax laws include provisions that determine the responsibility to perform certain duties. As an example could be mentioned Act on Taxation Procedures (1558/1995) that determines who has the primary responsibility to file the tax return. Such provisions may give guidance in the allocation of liability.

### **h) Directors', Officers' and Managers' Criminal Liability**

The consequences of acts in violation of the Companies Act or the Articles of Association are normally civil. Some acts in violation of the former are, however, punishable as offences. In principle criminal liability is almost always based on breaches of the provision concerning protection of creditors.

The Companies Act includes criminal sanctions for certain acts or omissions. Criminal sanctions for breaches of the Companies Act are only applicable to natural persons. Sanctions may only be directed towards the management of the company as defined in the Companies Act since the obligations laid down in the Companies Act concern only management. The company itself may not be sentenced by virtue of Companies Act since the provisions concerning corporate accountability in the Criminal Act do not concern breaches of the Companies Act.

The premise for punishing someone for breaching the Companies Act is almost always that the criminal act has been committed wilfully. The Companies Act includes penal provisions in three categories:

- Offences targeted towards the authorities (Filing of an incorrect notification to the authorities or omission to file a notification);
- Significant offences (Illegal distribution of profits); or

---

<sup>23</sup> Criminal Act 47:7

- Situations where other ramifications would be ineffective mostly because it would be difficult to show damage.

Also other legislation includes criminal sanctions for actions which may be committed in the operation of a company. As a typical example one could mention criminal sanctions in the labour and environmental laws.

Criminal liability is individual liability. If an offence has been committed in the operation of a company, responsibility has to be allocated within the company. The purpose is to find a person or persons in the organisation who are responsible for the act or omission. Often the material provisions of the relevant legislation, such as the labour or environmental laws, shall be taken into consideration. Special legislation may include provisions according to which persons in a certain position shall be responsible for certain matters. In the absence of such provisions internal rules of the company may determine the responsible persons. Furthermore, internal established practices of the company may be used as a guideline. The status of the person and the extent and quality of his duties and authority shall be taken into account when assessing how liability is to be allocated.

The duties of the members of the Board of Directors may have been divided between the different members. In such cases criminal liability may also be allocated to those members who are responsible for the criminal act committed in their field of responsibility.

Please note that also the company may be held responsible for the committed offences on the basis of corporate accountability either alone or with the natural person(s) concerned.

#### **4. Statute of Limitations**

According to the Companies Act, an action against a founder, a member of the Board of Directors or the Supervisory Board, as well as against a CEO or a shareholder cannot be brought in the name of the company unless the action is based on a punishable act and is brought

- 1) against a founder no later than within three years from the decision to form the company at a meeting of formation;
- 2) against a member of the Board of Directors or the Supervisory Board or the CEO, no later than within three years from the end of the financial period during which the decision was made or the measure was undertaken upon which the action is based;
- 3) against an auditor no later than within three years from the date when the audit report, opinion or certificate upon which the action is based was presented;

- 4) against a shareholder no later than within two years from the decision or measure upon which the action is based.<sup>24</sup>

**a) Shareholders' Actions**

Derivative actions as explained under section 5a shall be taken within three months from the general meeting at which discharge from liability for management has been granted or the decision not to take legal actions has been made. Furthermore if discharge from liability has not been granted within eight months from the end of the financial period, or the decision to take legal actions has not been made within two months from the date on which the matter should have been handled by the general meeting, derivative actions shall be taken within the same period of time, i.e. within three months.<sup>25</sup>

**b) Contractual Disputes**

Damages that are based on contractual disputes fall under the general ten year rule in the Statute of Limitations. There may be exceptions to this general principle in applicable special laws.

**c) Discrimination Actions**

The Employment Contracts Act (2001/55) includes a provision according to which an employer may not treat employees differently without acceptable grounds due to their age, health, nationality or ethnic origins, sexual orientation, language, religion, labour union activity, political activity etc.<sup>26</sup> If this obligation is violated either wilfully or negligently the employer shall be liable for damages.<sup>27</sup> Damages shall be claimed within ten years. However, in accordance with the Employment Contracts Act, a legal action for compensation in accordance with the Act shall be taken within two years from the end of the employment relationship.<sup>28</sup>

The Act on Equality between Women and Men (1986/609, "the Equality Act") stipulates equality between the two sexes. Compensation for discrimination in accordance with the Act shall be claimed within one year from the violation of the prohibition on discrimination. The amount of compensation shall be no less than EUR 2,623.73 and no more than EUR 8,728.95. However, if the nature and the circumstances of the discrimination provide grounds for doing so, the maximum amount may be exceeded. The maximum amount may be doubled at most.<sup>29</sup>

---

<sup>24</sup> Companies Act 15:7

<sup>25</sup> Companies Act 15:6

<sup>26</sup> Employment Contracts Act 2:2

<sup>27</sup> Employment Contracts Act 12:1

<sup>28</sup> Employment Contract Act 13:9

<sup>29</sup> The Act on Equality between Women and Men, section 11

#### **d) Sexual Harassment Actions**

In accordance with the Equality Act an employer is obligated to prohibit sexual harassment.<sup>30</sup> If the employer omits this obligation, an employee who has been subject to sexual harassment, shall be entitled to claim compensation for prohibited discrimination in accordance with the Equality Act. Please see section c) above.

#### **e) Wrongful Termination Actions**

According to the Employment Contracts Act, a legal action for compensation in accordance with the Act shall be brought within two years from the end of the employment.<sup>31</sup>

#### **f) Fraud**

According to the Criminal Act (1889/39), sentence may not be passed unless charges have been brought within a certain time. The time limit varies according to the maximum penalty that may be imposed for the offence in question. In case of a minor fraud, charges shall be brought within two years from the criminal act. In case of fraud, charges shall be brought within five years and in case of a gross fraud within ten years.<sup>32</sup>

Damages shall be claimed within ten years from the loss in accordance with the Tort Liability Act.

#### **g) Tax**

There are no specific tax regulation provisions in this respect.

### **5. Who can sue?**

#### **a) Corporation: (derivative actions)**

##### **- brought by the Board of Directors on behalf of the company**

The decision to bring an action against a founder, a member of the Board of Directors or the Supervisory Board, or the CEO shall be made by the general meeting of the shareholders. The Board of Directors may decide on bringing actions for damages based on a punishable act.<sup>33</sup>

##### **- brought by shareholders on behalf of the company (is there a share ownership interest to bring such a claim?)**

---

<sup>30</sup> The Act on Equality between Women and Men, section 6 and 8

<sup>31</sup> Employment Contracts Act 13:9

<sup>32</sup> Criminal Act 8:1

<sup>33</sup> Companies Act 15:5

An action may be brought on behalf of the company upon the demand of the shareholders if:

- 1) the General Meeting of the Shareholders has granted discharge from liability or has otherwise decided not to bring an action for damages, but shareholders representing at least one-tenth of all the shares or one-third of the shares represented at the meeting have voted against it;
- 2) a decision on discharge from liability has not been made within eight months from the end of the financial period; or if
- 3) a decision on whether to bring an action for damages has otherwise not been made within two months from the date on which the matter ought to have been handled at the General Meeting of the Shareholders.

The action may be brought by shareholders holding a minimum of one-tenth of all the shares or at least the same portion of shares held by those who have voted against the decision and who are referred to in paragraph 1. If a shareholder decides to drop the action after it has been brought, the other shareholders who have participated in the bringing of the action may, however, continue to pursue it.

The shareholders bringing the action shall be responsible for the litigation costs. They shall, however, be entitled to reimbursement thereof from the company to the extent of any funds obtained for the company through the litigation. The court may order that the shareholders who have brought the action shall be paid the portion of the funds obtained for the company through the action that devolves on their shares.<sup>34</sup>

#### **- frequency and severity of such suits?**

To our knowledge such cases are rare and are not severe in terms of financial interest.

#### **b) Shareholders: (direct actions and class actions)**

##### **- how can minority shareholders sue under Finnish law?**

Derivative actions by minority shareholders have been explained above.

A shareholder may bring an action against a founder, a member of the Board of Directors or the Supervisory Board or the CEO in case they have caused a shareholder damage in breaching the Companies Act or the Articles of Association of the company.<sup>35</sup>

---

<sup>34</sup> Companies Act 15:6

<sup>35</sup> Companies Act 15:1

**- can shareholders bring direct, class and/or derivative actions?**

Finnish law does not recognise class actions.

Derivative actions and direct actions have been explained in sections a) and b).

**- can shareholders associate in a class action? And if so, what are the basic requirements for class actions under Finnish law ?**

Finnish law does not recognise class actions.

**- status of the Finnish legal evolution on shareholders rights;**

We are not aware of any pending amendments to shareholder rights in the Companies Act. To our knowledge the Ministry of Justice is planning to implement a general reform of the Companies Act. The contents of the reform have only been discussed on a very general level. The planned timetable is that the draft of the amendments would be published in 2003 and enter into force in 2005.

**- frequency and severity of such suits?**

To our knowledge such cases are rare and they are not severe in terms of financial interest.

**c) Creditors:**

Creditors may bring an action against a founder, a member of the Board of Directors or the Supervisory Board, or a CEO in case they have caused a shareholder damage in breaching the Companies Act or the articles of association of the company.<sup>36</sup> Creditors may also sue in case the damage has been caused by a criminal act.

**- frequency and severity of such suits?**

To our knowledge these cases are more frequent than the two mentioned above. They are not, however, severe in terms of financial interest.

**d) Third parties:**

Third parties may bring an action against a founder, a member of the Board of Directors or the Supervisory Board, or the CEO in case they have caused damage in breaching the Companies Act or the Articles of Association of the company.<sup>37</sup>

**- frequency and severity of such suits?**

To our knowledge such suits are very rare.

---

<sup>36</sup> Companies Act, 15:1

<sup>37</sup> Companies Act 15:1

**e) Insolvency Administrators/Trustees in Bankruptcy**

If the company is declared bankrupt upon an application made within two years from the date when the General Meeting of the Shareholders granted a discharge from liability or decided not to bring an action, the bankruptcy estate shall have the right to bring the said action notwithstanding this decision. The same shall correspondingly apply to a liquidator, if a procedure referred to in the Company Restructuring Act (55/1993) relating to the company has been started within the same period.<sup>38</sup>

**- frequency and severity of such suits?**

These types of suits are the most common of the ones considered in this section. Furthermore the financial interests involved may be significant.

**f) Regulatory Authorities: what type of administrative proceedings and court actions?**

**- The Finnish Capital market regulator**

The Financial Supervision Authority (FSA) supervises financial markets and participants in Finland. The operational objective is to promote stable conditions in the financial markets and enhance public confidence in supervision and market behaviour. The supervised entities include banks, brokerage firms, stock and derivatives exchanges and management companies for mutual funds. The FSA has authority to issue rules and regulation obligating companies under its supervision. It may perform inspections on these companies and has the right to obtain any information concerning the company which is necessary for carrying out its task.

The most important act regulating the Finnish securities market is the Securities Markets Act (1989/495). It includes provisions concerning issuance of securities to the public, disclosure of information affecting the value of securities issued by companies, listing of securities, insider regulation, market manipulation, redemption of minority shareholders etc. Most of the obligations laid down in the Securities Markets Act concern only publicly quoted companies. The FSA monitors company compliance with the Act and therefore the FSA has certain authority over companies obligated by the Securities Markets Act even though such companies aren't directly under the supervision of the FSA. Under the Securities Markets Act the FSA is entitled to receive such information from the companies which is necessary for the supervision. The FSA may also perform inspections necessary for the supervision. The FSA may take matters concerning marketing of securities to the Market Court. It may also impose and order payable a fine for the fulfilment of the duty of disclosure or in case a company refuses to submit information requested by the FSA. Furthermore the FSA effects supervision of insider trading and market manipulation. Should the FSA have reason to suspect that a company has rendered itself

---

<sup>38</sup> Companies Act 15:5

guilty of insider trading or market manipulation it shall transfer the matter to be investigated by the police. Other omissions of obligations set in the Securities Markets Act that are punishable pursuant to the Criminal Act may also be transferred by the FSA to the police for investigation.

### **- Finnish Employment and Labour Regulator**

There are several separate employment regulators in Finland. The Equality Ombudsman monitors compliance with the Equality Act and in particular observance of the prohibition on discrimination and discriminatory job and training advertising. The Equality Ombudsman is entitled to perform inspections in the working place if he has reason to suspect that provisions set forth by the Equality Act are being violated. In addition, the Equality Ombudsman may refer a matter to the Council for Equality if the prohibition on discrimination, discrimination in working life, or discriminatory advertising is being violated. The Council for Equality is entitled, if necessary, to prohibit the continuation or repetition of the prohibited practice under penalty of a fine.

The observance of occupational safety legislation is monitored by the Finnish Occupational Safety and Health Inspectorates. The Inspectorates supervise that provisions set forth by the Protection of Labour Act (299/1958), the Working Hours Act (605/1996) and the Act on Young Employees (998/1993) are complied with.

For each workplace, the employer shall appoint a labour protection supervisor responsible for co-operation in labour protection matters, if the employer does not himself act in that capacity. At a workplace with an average of at least ten employees, the employees shall elect a labour protection representative from among themselves to represent them in co-operation in labour protection matters and in relations with the labour protection authorities.

According to the Protection of Labour Act and the Act on Labour Protection Supervision and Appeals in Labour Protection Matters (131/1973), labour protection authorities are entitled to inspect workplaces to ensure that provisions regarding labour protection are being complied with. The Labour protection inspectors may order that any defects or shortcomings they have discovered during the inspection shall be rectified or remedied within reasonable time under penalty of a fine. Fines may be imposed either on an employer, his representative or both. In addition, if a defect or shortcoming at a workplace involves danger to the life or health of any employee, the inspector is entitled to prohibit the use of certain equipment or work methods, or the continuance of all work until the defect or shortcoming has been rectified or remedied. If there is an imminent danger to life or health this kind of prohibition may be issued immediately. The District Office of Labour Protection shall handle the decision of the inspector regarding such prohibitions. Orders given by District office may be appealed to the District Administrative Court.

If the labour inspection authority suspects that provisions of the labour protection legislation have been violated it is obligated to notify this to the District

Attorney. An employer or his representative may be sentenced to a fine or to a maximum one year prison sentence for a work safety offence. This presupposes that the employer or his representative has violated work safety provisions or has caused a defect or shortcoming contrary to labour protection regulation, or allowed a violation to continue to exist by failing to comply with work safety regulations.

**- frequency and severity of such suits?**

Supervisory actions by the FSA are normally made public especially if they concern insider dealing or market manipulation. A few cases have occurred in which the FSA has transferred a case concerning insider dealing to be investigated by the police. Severe supervisory actions by the FSA are, however, rather rare.

Suits taken by the labour authorities are according to our knowledge rather rare. Inspections to the workplaces and orders given pursuant to inspections are common.

**g) Employees:**

**- How and when can employees sue Directors, Officers and Managers for discrimination, sexual harassment and wrongful employment practices?**

The right of an employee to sue the management may be based on criminal or civil liability.

Chapter 47 of the Criminal Act on labour crimes includes section 7 concerning allocation which has been explained earlier under 3 g ) and h) above.

**- Frequency and Severity of Such Suits?**

There are no reliable statistics available but we requested the matter from the Federation of the Trade Unions. According to their view such suits are not very common. Discrimination cases are normally connected to illegal dismissal of the employee or to wrongful employment practices. There has not been many sexual harassment cases but they are becoming more common.

**6. What is the Enforceability of a Foreign Judgement concerning Finnish Directors, Officers and Managers under Finnish Law?**

The main rule is that foreign judgements are not enforceable in Finland.

A foreign judgement can be recognised and enforced in Finland only if an agreement exists between Finland and the country in which the decision was given. Where no such convention on the enforceability of judgements exists, foreign court decisions are not enforceable in Finland.

Currently there is one EU regulation (Regulation on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters) and one international convention (Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters done at Lugano on 16 September 1988) on the enforcement of judgements that are relevant in this context. If a court decision is given in a country not bound by the aforementioned EU Regulation or the Lugano Convention, it is not enforceable in Finland.<sup>39</sup>

### **Judgements given by courts of EU member states in civil and commercial matters**

The Commission of the European Union (EU) has given a Regulation on Jurisdiction and the Recognition and Enforcement of Judgements in civil and Commercial Matters (Regulation). In principle the Regulation that binds also Finland renders enforceable judgements given by courts of EU member states.

The Regulation repealed the former Brussels Convention on Jurisdiction and the Enforcement of Foreign Judgements of September 27, 1968 (Brussels Convention) that was concluded between EU member states.

The Regulation applies to judgements rendered after its entry into force (1 March 2002) if the jurisdiction is founded upon rules which accord with those provided for either in Chapter II of the Regulation, the Brussels Convention, the Lugano Convention or in a convention concluded between the state of origin and the state addressed which was in force when the proceedings were instituted.

According to the Regulation, it shall be applied to civil and commercial matters whatever the nature of the court or tribunal.

The principal rule is that a judgement given in a member state and enforceable in that state shall be enforced in another member state when, on the application of any interested party, it has been declared enforceable there.

The decision of a domestic court on the application for a declaration of enforceability may be appealed against by either party. Only if the declaration of enforceability is appealed against is the foreign judgement examined. However, the court with which an appeal is lodged shall refuse or revoke a declaration of enforceability only on one of the following grounds:

1. if the declaration of enforceability is manifestly contrary to public policy (ordre public) in the member state addressed;
2. where it was given in default of appearance, if the defendant was not served with the documents which instituted the proceedings or with an

---

<sup>39</sup> Please note that there is a convention between Finland, Island, Norway, Sweden and Denmark on the recognition and enforcement of civil matters. This does not, however, have much relevance since the Lugano convention is primarily applied.

equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgement when it was possible for him to do so;

3. if it is irreconcilable with a judgement given in a dispute between the same parties in the member state addressed;
4. if it is irreconcilable with a judgement given in another member state or in a third country involving the same cause of action and between the same parties, provided that the earlier judgement fulfils the conditions necessary for its recognition in the member state addressed.

### **Lugano Convention**

Finland is a party to the Convention on jurisdiction and the enforcement of judgements in civil and commercial matters done at Lugano on 16 September 1988 (Lugano Convention).<sup>40</sup>

The Lugano Convention provides a common regime for the international jurisdiction of the courts of contracting states and a uniform procedure to recognize and enforce their judgements. The stipulations in the Lugano convention are similar to those of the aforementioned EU Regulation.

The Lugano Convention applies to all civil and commercial matters whatever the nature of the court or tribunal. However, the Lugano Convention shall not extend, in particular, to revenue, customs or administrative matters.

A judgement given in a contracting state and enforceable in that state shall be enforced in another contracting state when, on the application of any interested party, it has been declared enforceable there.

The court applied to shall give its decision without delay. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

The application may be refused only for one of the reasons stated below:

1. if such recognition is contrary to public policy (ordre public) in the State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings or with an equivalent document in sufficient time to enable him to arrange for his defence;

---

<sup>40</sup> Member states of the Lugano Convention are (14 August 2002): Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, The Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland and the United Kingdom.

3. if the judgement is irreconcilable with a judgement given in a dispute between the same parties in the state in which recognition is sought;
4. if the court of the state of origin, in order to arrive at its judgement, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the state in which the recognition is sought, unless the same result would have been reached by the application of the rules of private international law of that state;
5. if the judgement is irreconcilable with an earlier judgement given in a non-contracting state involving the same cause of action and between the same parties, provided that this latter judgement fulfils the conditions necessary for its recognition in the State addressed.

In addition, certain other exceptional cases exist when a judgement shall not be recognised.

If enforcement is authorised, the party against whom enforcement is sought may appeal against the decision. During the time for an appeal and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures taken against the property of the party against whom enforcement is sought. The decision authorising enforcement shall entitle to proceed to any such protective measures.

### **New York Convention**

It is also worth noting that Finland is a party to the New York Convention of 10 June 1958 for the Recognition and Enforcement of Foreign Arbitral Awards. Hence foreign arbitral awards are enforceable in Finland if the Finnish court does not find such grounds for refusal that must be taken into consideration ex officio or the adverse party does not prove that a reason for refusal exists.

### **7. Can Directors, Officers and Managers be Liable for Punitive Damages under Finnish Law, and Are Punitive Damages Insurable under Finnish Law?**

Finnish law does not recognise punitive damages.

### **8. Can the Company Indemnify its Directors, Officers and Managers under Finnish Law and under Which Conditions?**

It is unclear under Finnish law whether it is legal for the company to pay damages for which the managers are liable. This possibility has been disputed for two reasons. First of all this kind of an agreement would affect the position of the shareholders of the company. In a bankruptcy such an agreement would also affect the position of the company's creditors.

Such an agreement should at least be stipulated in the articles of association of the company.

## **9. Are Directors', Officers' and Managers' Liability Insurances Legal?**

Yes, Directors', Officers' and Managers' Liability Insurances are legal and enforceable in Finland.

### **- Who Pays the Insurance Premium?**

The insurance premium is normally paid by the company.

### **- Must the D&O insurance policy be issued by a local admitted insurer? If so, does the same rule apply to a Finnish subsidiary of a multinational carrying a D&O insurance policy in the country of incorporation?**

There is no requirement to have the D&O insurance policy issued by a local admitted insurer.

### **- Issuing Tax Allocation of Local Premium for Local D&O Insurance Policy under Finnish Law**

The tax treatment of such insurance premiums is based on interpretations and case law of tax authorities and courts. According to case law, such insurance premiums are deductible for the company. Furthermore employees are not subject to any tax liability, as the insurance premiums are not regarded as a taxable fringe benefit.

## **10. General Comments**

Our estimate on the frequency and severity of the suits is based on our experience and on an account made to the Ministry of Justice. The account is based on 296 cases concerning limited liability companies solved by the six Court of Appeals of Finland between years 1990 – 1997. 74 of the cases concerned liability of the management, auditors and shareholders. The most common ground for the appeal was negligence of the duty of care (Companies Act, section 15:1) (43 cases). Another common ground was violation of provisions concerning winding up and liability rising thereof (24 cases). The account did not divide the cases in accordance with the claimant.

***This article is not an exhaustive description of the issues and should be relied on in any individual case. Under any circumstances the reader is advised to consult a member of Finnish bar for an in casu legal analysis.***