

HANNES SNELLMAN

MEMORANDUM

7 September 2015

LEGAL PERSPECTIVE ON AN ANNUAL BOARD “STATEMENT OF SIGNIFICANT AUDIENCES AND MATERIALITY” - FINLAND

This memorandum has been prepared and submitted upon request of and following the research template provided by Mr. Robert G. Eccles (Professor of Management Practice, Harvard Business School), with the purpose of assisting on the analysis of the viability of an annual board “Statement of Significant Audiences and Materiality”.

The information contained in this memorandum is based solely on the laws and regulations of Finland effective as of the date hereof and does not consider the laws or regulations of any other jurisdiction.

Setting the legal landscape

1 Briefly explain the broader legal landscape regarding the obligations that a company has to its stakeholders or with regard to its impact on stakeholders, and in particular whether its primary duty is or is not to shareholders over all other stakeholders.

The Finnish Limited Liability Companies Act (624/2006, as amended) (the “**Companies Act**”) regulates public or private limited liability companies registered in accordance with Finnish law. The main difference between these two company forms is that the securities of a private company shall not be admitted to public trading. The second difference lies in the minimum capital requirement, according to which the share capital of a private company is 2,500 euros and that of a public company 80,000 euros.

The main purpose of a company under the Companies Act is to generate profits for its shareholders. In the Articles of Association, the purpose of the company may differ from that of the Companies Act, but in practice, the listed companies have not adopted provisions that differ from that of the law. The duty of the directors is to promote with due care the interest of the company and not necessarily of its shareholders or the significant shareholders. The directors shall at all times in their actions to facilitate the company to achieve its corporate purposes for the best interest of the company.

Other principal statutes include, among others, the Finnish Securities Markets Act (746/2012, as amended) (the “**Securities Market Act**”), governing Finnish listed companies in particular and the Finnish Accounting Act (1336/1997, as amended) (the “**Accounting Act**”) and the Auditing Act (459/2007, as amended) (the “**Auditing Act**”). The general contract and commercial law rules and principles as well as insolvency law also govern corporate governance issues.

The Finnish corporate governance is based on national legislation (and relevant EU regulations), primarily on the Companies Act. For the listed public companies also the

Securities Markets Act plays an important role, governing for example disclosure and transparency towards its shareholders.

In addition to the legislation and company's Articles of Association, there is a well-established self-regulation such as the Corporate Governance Code 2010 and the guideline issued by the Securities Market Association dated 15 June 2010 on comply or explain basis¹ that the listed companies have to comply with. The code consists of 55 recommendations on, e.g. the role of the General Meeting, the governance structure (one tier or two tiers), the Board of Directors and its committees, independent directors, remuneration, internal control, risk management and internal audit, insider administration as well as external auditing and corporate governance statement. The company is recommended to comply with all these recommendations. Further the recommendation regarding the procedures to be complied with in takeover bids and Helsinki Takeover Code issued by the Finnish Takeover Panel at the Central Chamber of Commerce of Finland regulates the takeover process in Finland².

Listed companies must also comply with the rules of NASDAQ OMX Helsinki Ltd ("**Helsinki Stock Exchange**") and other regulations applied by the Helsinki Stock Exchange as well as the standards and statements of the Finnish Financial Supervisory Authority.

To summarize the legal landscape in regards to the corporate governance system of Finnish listed companies, it is based on Finnish legislation, and the different codes complement the statutory procedures.

For more details on the social and ethical role of the company, please refer to questions 7, 10 and 11.

Regulatory framework

2 To what legal tradition does the jurisdiction belong, i.e. civil/common law, mixed?

Finnish legal tradition is part of the Nordic legal family, which is positioned between Continental and Anglo-American legal families. It has features typical to both civil and common law. Due to the European harmonisation, the differences in corporate governance regulation have decreased radically. Sources of Finnish law can be divided in three groups depending on their binding effect: (i) strongly binding, i.e. statutory law, established custom; (ii) weekly binding, i.e. legislative drafts, decisions of the Supreme Court and Supreme Administrative Court; and (iii) permitted, i.e. jurisprudence, unwritten general legal principles and actual arguments. In regards to corporate governance issues, an emphasis should be also given to the supervisory practice of the Finnish Financial Supervisory Authority ("**FIN-FSA**") as well as the statements given by the Takeover Panel regarding interpretation of its recommendations, compliance with good securities markets practice as well as individual company law issues.

3 Are corporate/securities laws regulated federally/nationally, provincially or both?

The corporate and securities laws are regulated nationally, primarily by the Companies Act, but also respective accounting act and act governing the securities market and securities trading, as well as relevant EU regulation, stock exchange rules and corporate governance codes.

¹ The *comply or explain* principle means that the code should be complied fully unless the company gives full account of the departures it makes from the code. It gives the company flexibility without losing transparency.

² The Board of Directors of the Securities Market Association approved the Takeover Code and confirmed the entry into force of the Code from 1 January 2014.

As mentioned in question 1, self-regulation is well established in Finland and plays an essential regulatory role in corporate governance as well as in other areas.

4 Who are the government corporate/securities regulators and what are their respective powers (in summary only)?

European Securities and Markets Authority (**ESMA**) is responsible for the supervision of the securities market and it has the power to issue technical standards³ that are directly binding on the Member States. ESMA has also the power to give recommendations and guidelines to national authorities and capital market players.

The securities market in Finland is supervised by the FIN-FSA, which administratively operates in connection with the Bank of Finland, but also makes independent decisions in its supervisory work. It makes its own investigations on suggested violations and brings if necessary criminal charges to prosecution. The police have investigators and the prosecuting authority has prosecutors specialised in economic crime, including securities market criminality.

Besides supervision, regulation is another core activity of FIN-FSA. This includes both the issuance of regulations and guidelines and participation in preparations for financial market legislation both in Finland and within the EU. The regulatory activity also includes other guidance, such as issuance of opinions in connection with legislative initiatives.

Self-regulation by the key capital markets infrastructure such as issued by the stock exchange plays also an important role from the investors' point of view and is binding to the parties taking part in the capital markets transactions.

5 Does the jurisdiction have a stock exchange(s)

Finland has currently one stock exchange, NASDAQ OMX Helsinki Ltd (the "**Helsinki Stock Exchange**"), which is part of the NASDAQ OMX Group, Inc. ("**NASDAQ OMX**"). NASDAQ OMX offers trading across multiple asset classes and its technology supports the operations of over 70 exchanges in 50 countries. Each country has its own official list and country-specific requirements. NASDAQ OMX's Nordic List was launched on 2 October 2006 and it consists of the exchanges in Helsinki, Copenhagen and Stockholm. In addition to Helsinki Stock Exchange, there is First North, which is NASDAQ OMX's European growth market, designed for small and growing companies. The First North runs parallel to the main market, where the shares are traded in a single trading system.

Incorporation and listing

6 Do the concepts of "limited liability" and "separate legal personality" exist?

Yes, the concepts of "limited liability" as well as "separate legal personality" do exist in Finland. A limited liability company is a legal person, which is distinct from its shareholders, which means that the shareholders are not personally liable for the acts and omissions of the company. In this aspect, the limited liability company differs from partnership or limited partnership in which the partners have personal liability for the commitments of the company. In limited partnership it is limited only to the active partners whereas the position of the sleeping partners can be compared to that of a shareholder in a limited liability company.

³ Technical standards shall be approved by the Commission.

A company's Articles of Association cannot include a provision, which would put the shareholders in such a position that they would incur direct liability for the liabilities of the company with regard to its creditors.

The fact that the shareholders are not personally liable for the acts and omissions of the company means that a company's creditor, contracting party or any other party cannot directly demand a shareholder to fulfil the obligations of the company.

7 Did incorporation or listing historically, or does it today, require any recognition by the company or its directors of a duty to society, an obligation to take account to the company's social or environmental impacts, or to respect its stakeholders?

No, there is no specific regulation on the companies' of directors' duty to society or obligations to take account the company's social or environmental impacts. However, based on the Government Bill, the activities of a company must be responsible and ethical. For further information, see answer to question 11 below.

According to the rules of the Helsinki Stock Exchange⁴, in exceptional cases, a company applying for listing may be deemed to be unsuitable for listing, despite the fact that the company fulfils all of the listing requirements. In order to maintain and preserve the public's confidence in the market, it is imperative that persons discharging managerial responsibilities in the company, including members of the board, do not have a history that may jeopardize the reputation of the company and thus confidence in the securities market. It is also important that the history of such persons be sufficiently disclosed by the company prior to the listing, as part of the information presented in the listing prospectus. For example, the company should carefully consider whether information relating to the criminal record of such persons should be disclosed or not, and the same goes for information pertaining to involvement in bankruptcies and suchlike. In extreme circumstances, if a relevant person has a history of felonies, in particular white-collar crimes, or has been involved in a number of bankruptcies in the past, such circumstances may disqualify the company from being listed, unless such a person is relieved from his or her position in the company.

8 Do any stock exchanges have a responsible investment index, and is participation voluntary? (See e.g. FTSE4Good⁵, Dow Jones Sustainability Index⁶, the Johannesburg Stock Exchange's Socially Responsible Investment Index⁷.)

Helsinki Stock Exchange has currently following indexes falling under responsible investment index: (i) OMX GES Ethical Indexes such as OMX GES Ethical Nordic Index and OMX GES Ethical Finland Index, and (ii) OMX GES Sustainability Indexes such as OMX GES Sustainability Nordic and OMX GES Sustainability Finland⁸.

The OMX Ethical Indexes are revised semi-annually together with GES Investments Services. All ethical indexes exclude companies that do not comply with the criteria of the analysis model GES Global Ethical Standard and companies with production or sales of weapons, tobacco, alcohol, pornography or gambling covered by analysis model GES Controversial. OMX GES Ethical indexes have been constructed with the objective of

⁴ Sustainability 2.2.3.14.

⁵ <http://www.ftse.com/products/indices/FTSE4Good>.

⁶ <http://www.sustainability-indices.com/>.

⁷ <https://www.jse.co.za/services/market-data/indices/socially-responsible-investment-index>.

⁸ OMXSUSTAINFI.

creating indexes based on the market development of companies listed in Finland, with companies classified as unethical excluded.

The OMX GES Sustainability Indexes are created for responsible investments. From the selected shares, GES Investment Service conducts the sustainability assessment, based on their model “GES Risk Rating”. GES Risk Rating analyses companies’ management of Environment, Social and Corporate Governance (ESG) factors. The analysis is based on international norms on ESG issues in accordance with the United Nations Principles for Responsible Investment (UN PRI).

Directors’ Duties

9 To who are directors’ duties generally owed?

The limited liability company is managed by directors elected by the shareholders of the company in a General Meeting and the duty of the directors is to promote with due care the interest of the company. This rule includes both the principle loyalty and the principle of care; the latter interpreted according to the business judgement rule.

The interest of the company is to generate profits to its shareholders and the board must take this into account in all decision-making. The directors must also bear in mind the equal treatment of the shareholders in all their actions. The provision prohibits taking measures that would cause undue benefit to a shareholder or another person at the expense of minority shareholder.

10 What are the duties owed by directors – please state briefly. Please indicate if there are express or implied duties to avoid damage to the company’s reputation?

Pursuant to the Companies Act, the Board of Directors has the general duty and competence to see to the administration of the company and appropriate organisation of its operations. The Board is further responsible for the appropriate surveillance to be arranged in relation to the Company’s accounts and finances. It can be stated that issues not falling within the duties and competence of the Managing Director or the General Meeting pursuant to the Companies Act or the Articles of Association may always be considered falling within the duties and competence of the Board of Directors. The Companies Act does not provide any detailed guidance as to how these general duties of the Board of Directors should be arranged in the company.

There is no specific regulation on the directors’ obligation to avoid damage to the company’s reputation. However, the directors’ duty of care and liability for the company could be interpreted to include such an obligation.

11 More generally, are directors required or permitted to consider the company’s impacts on non-shareholders, including impacts on the individuals and communities affected by the company’s operations? Is the answer the same where the impacts occur outside the jurisdiction? (See e.g. s. 172 UK Companies Act 2006, and in particular, ss. (1)⁹)?

The Companies Act does not contain such a detailed provision as the 172 UK Companies Act 2006. According to the Companies Act, the purpose of a company is to generate profit to its shareholders, unless otherwise provided in the Articles of Association. However, based on the Government Bill, the activities of the company must be responsible and ethical, which is directly linked to the generating profit in the long run. For example the public image of a

⁹ <http://www.legislation.gov.uk/ukpga/2006/section/172>.

company might have a major significance on the business and the value of the company's shares. This purpose of a company, so-called *enlightened value maximization*, requires that the needs of all of company's stakeholders, customers, employees, management, reporters and local unions will be met. However, this principle needs to be weighed against the principle of equality and provision, which forbids any actions that may cause unjustified benefit for third parties at the expense of the shareholders and the company. These principles shall be observed by the directors and the Managing Director. It has been also suggested that a company would have also a social purpose. The idea of corporate social responsibility means that the management would also have other duties than those towards the shareholders and other duties provided by the law. However, in order to fulfil the purpose of the profit generation, the management's decisions on matters related to social responsibility must be linked to the purpose of the company. A company can also decide to have social purpose instead of generating profit in its Articles of Association.

12 If directors are required or permitted to consider impacts on non-shareholders to what extent do they have discretion in determining how to balance different factors including such impacts? What, additional liabilities, if any, do the board or individual directors assume in exercising such discretion?

In order to fulfil the purpose of the profit generation, the directors' decisions on matters related to social responsibility must be linked to the purpose of the company. In case the board has acted with due care and according to its loyalty obligations in its decision-making, such acts may not be considered breach of the Companies Act, even though the decisions would turn out to be unprofitable.

13 What are the legal consequences for failing to fulfil any duties described above; and who may take action to initiate them? What defences are available? Can these issues given rise to other causes of action or regulatory routes whereby a stakeholder can exert pressure on a company with regard to its actions?

The Companies Act provides for remedies and penalties to be used in situation where the directors, Supervisory Board members or the managing director have failed to fulfil their duties and tasks, including the general duty of care. The directors, Supervisory Board members and the managing director are liable for damages for the loss that they have deliberately or negligently caused to the company in violation of the duty of care referred to in the Companies Act or to the company, a shareholder or a third party in violation of other provisions of the Companies Act or the company's Articles of Association. According to the Companies Act, one shareholder only has the right to bring an action in their own name for the collection for damages and it is proven that the non-enforcement of the claim for damages would be contrary to the principle of equal treatment. In other cases shareholders that hold at least one tenth of all shares at that moment can bring the action. If the person liable in damages has been discharged from liability by a decision of the General Meeting, the action shall be brought within three months of the decision. However, if a proposal for a special audit has been made and seconded in the same General Meeting, the action may in any event be brought within three months of the report of the special audit being presented to the General Meeting or the application for the appointment of a special auditor being rejected.

The burden of proof lies as a general rule on the person claiming a breach and loss. However, a presumption of negligence exists in case of a violation of a detailed provision of the Companies Act (other than the general principles) or of the Articles of Association, or in case of an act to the benefit of a related party, in which case the director in question must prove that he/she acted with due care.

The chairperson of a General Meeting is liable for damages for the loss that he/she has deliberately or negligently caused to the company, a shareholder or a third party in violation of the provisions of the Companies Act or the company's Articles of Association.

According to the Securities Market Act an administrative fine shall be imposed for the following breaches or omissions: i) Omission to submit required information to the FIN-FSA; ii) publication of information regarding transactions on the company's own shares and total amount of shares in the company; iii) publication of flagging notifications and iv) availability of the published information in the web page. The amount of administrative sanctions is EUR 5,000-100,000 for legal persons and EUR 500-10,000 for natural persons. Also a public warning may be imposed for a breach of other provisions than those applicable to administrative fines and penalty payments. In severe cases¹⁰ penalty payment may be imposed instead of administrative fine. The amount of penalty payments is 10 % of turnover for legal persons and max 10 % of taxable income for natural persons.¹¹

A breach of the Companies Act may also lead to criminal liability. Anyone who wilfully violates certain provisions of the Companies Act may be sentenced for a limited liability company crime to a fine or an imprisonment up to one year. According to the Companies Act, the Board of Directors, the managing director and other relevant organs of the company are liable to compensate all damage caused to the company on duty either wilfully or negligently. The same shall apply to damage caused to a shareholder or to a third party by a breach of the Companies Act or the Articles of Association. A liability to compensate such damage is limited to the term of office of a member of the Board of Directors and will usually be determined on the basis of date of action or omission. A member of the Board of Directors is not generally liable for a decision made before the term of office but liability may nonetheless arise if the Board member contributes to the execution of such decision. A member of the Board of Directors may also be found liable for an event occurred after his resignation to the extent that an action or omission of a successor of a resigned member of the Board of Directors has placed the relevant successor in a position where damage can no longer be avoided.

A shareholder's or a third party's right for compensation from a member of the Board of Directors is more limited than that of the company and applies only when a breach of the provisions of the Companies Act or the Articles of Association of the company has taken place.

14 Are there any other directors' duties which are relevant to the interests of stakeholders?

In addition to the duties mentioned above, there are no other directors' duties relevant to the interests of stakeholders.

¹⁰ Severe breaches or omissions: i) prohibition to give false or misleading information; obligation to make available sufficient information; ii) rules regarding ongoing and periodic disclosure obligations; iii) method of publication, delivery and availability of published information; iv) rules on public tender offers and mandatory bids; and iv) rules on company-specific insider register and market abuse.

¹¹ FIN-FSA to issue sanctions up to EUR 1 million, the Market Court to issue major sanctions.

15 For all of the above, if these exist in your jurisdiction, does the law provide guidance about the role of Supervisory Boards in cases of two tier board structures? What obligations are owed by senior management who are not board directors? Is this determined by law if no specific contractual provision applies?

According to the Companies Act, a company shall have a Board of Directors and it may also have a Managing Director and a Supervisory Board, which means that the Finnish companies have a one-tier board by default. Hence, the Finnish corporate governance structure lies between the Anglo-Saxon one-tier model and the continental European two-tier model.

The General Meeting is where the shareholders exercise their powers and participate in the supervision and control of the company.

The Board of Directors is responsible for the overall management of the company's affairs and appropriate organization of its operations. The Board of Directors is further responsible for the adequate surveillance to be arranged in relation to the company's accounts and finances. According to the Corporate Governance Code the majority of the directors shall be independent of the company. In addition, at least two of the directors representing this majority shall be independent of significant shareholders of the company. The managing director shall not be elected chairman of the board. It is very rare that an employee representative is appointed to the Board of Directors as in some other countries this might be mandatory. In a public company, the term of a member of the Board of Directors shall end with the conclusion of the next General Meeting following the appointment of the member.

Efficient organization of the Board of Directors' work may require the establishment of board committees for handling certain matters, such as audit, compensation and nomination committees. It is left to the Board of Directors to decide whether such subcommittees are necessary.

A listed company shall have a managing director appointed by the Board of Directors, which supervises his or her operations. The general duties and competence of the managing director include attending to the day-to-day business of the company. The Managing Director shall see to the executive management of the company in accordance with the instructions given by the Board of Directors. The Managing Director shall see that the accounts of the company are in compliance with the law and that its financial affairs have been arranged in a reliable manner.

In addition a company may have a Supervisory Board, however very few listed companies have them. For example the Norwegian and Swedish laws do not allow Supervisory Boards as company organs. Supervisory Board supervises the administration of the company, which is the responsibility of the Board of Directors and the managing director. It may be provided in the Articles of Association that the Supervisory Board appoints the Board of Directors. In other respects, duties may be assigned to the Supervisory Board only in so far as they fall within the general competence of the Board of Directors or have not been assigned by law to any other organ.

Reporting

- 16 Are companies required or permitted to disclose the impacts of their operations (including stakeholder impacts) on non-shareholders, as well as any action taken or intended to address those impacts? Is this required as part of financial reporting obligations or pursuant to a separate reporting regime? Please specify for each reporting route whether it is mandatory or voluntary. Please describe any mandatory reporting requirement, major voluntary initiative or trend towards voluntary reporting with regard to transparency (for example, payments to government or state-owned entities, reports on government orders to undertake surveillance or interception, reports on tax payments etc.)**

There are both mandatory and voluntary disclosure regimes. Companies (private or listed companies) are required to file the annual financial statements and any amendments in the Board of Directors, Articles of Association or changes in any other information registered with the trade register. In addition, the listed companies are subject to other specific rules regarding reporting.

Non-listed companies decide, on the basis of its own needs and requirements, how and to what extent it will inform its other interest groups about its business. Periodic disclosure is compulsory only for listed companies under the Securities Markets Act.

Finnish listed companies have adopted high standards of transparency towards their shareholders, the capital market and the surrounding society. The majority of the Finnish disclosure rules are based on EU regulations. Listed companies have regular reporting obligations, as well as an obligation to continuously disclose material information that may affect the value of the securities issued by the company. Further, the disclosure obligations are related to insider registers and securities trading.

Transparency is a key aspect of modern corporate governance especially concerning listed companies. The applicable rules and regulations require disclosure on an on-going basis of e.g. financial reports, Corporate Governance Statement, interim reports and share price sensitive information without undue delay through stock exchange releases. Moreover, full disclosure at the individual level of the remuneration of the members of the Board of Directors and the managing director and their shareholdings in the company is also required. In addition, the total holdings of the top management of the shares in the company must be included in the Board of Directors' annual review. Both the Companies Act and the Securities Market Act require that a large part of the information to be disclosed is available on the company's website, and also the Corporate Governance Code 2010 gives more detailed guidance on publishing the information in an easy-to-find, investor-friendly manner. All information published under the regulatory disclosure requirements shall be disseminated to the media and release storage at the Stock Exchange and kept available at the company's web page for at least five years.

According to the Securities Market Act the financial statements bulletin must be published without delay and in any case within two months from the end of the financial period, and the company shall publish the auditor's report without delay if it includes any further information considered necessary by the auditor.

17 Do legal reporting obligations extend to such impacts outside the jurisdiction; to the impacts of subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction?

As discussed above, the listed companies must disclose all such information, which might affect the value of the securities without undue delay.

18 Who must verify these reports; who can access reports; and what are the legal or regulatory consequences of failing to report or misrepresentation? Is there a regulator tasked with investigating complaints of misreporting?

With respect to listed companies the powers assigned to the FIN-FSA for supervision of listed companies' financial reporting are based on the Act on the Financial Supervisory Authority (the "FSA Act"). For IFRS supervision, FIN-FSA is entitled to exercise the same supervisory powers as for monitoring the disclosure obligation under the Securities Markets Act.

FIN-FSA has, for example, the right to obtain information from listed companies and their auditors and the right to carry out an inspection at the premises of a listed company. FIN-FSA may request a listed company to rectify an error in its financial statements, management report or interim report, oblige a company, under penalty of fine, to remedy a violation of law, or issue a public reprimand or warning to a company.

It should be noted that the starting point of the IFRSs is that they can be properly interpreted only by the interpretation body of IASB, namely IFRS Interpretations Committee. Therefore, the powers of the FIN-FSA should in practice only be applied in situations, where an IFRS accounting entity has clearly acted in violation of the standards or official interpretations of IFRS Interpretations Committee.

The FSA Act does not contain provisions as to how to remedy an error in the financial reports, since, according to the preliminary works of the FSA Act, the situations where errors appear are diverse depending, inter alia, on where the error is, when it has been discovered and on the type of the error.

In most situations, the IFRS accounting entity could rectify an error in its financial statement or other report concerning its financial standing by disclosing it and taking it into account in future reports. In case of such disclosure, the impact of the error on the results of operations and on the financial standing of the entity should be disclosed at the same time. In disclosing the error, the principles set out by Part III, Chapter 6, Section 4 of the Securities Markets Act on disclosure of information being likely to have a material effect on the value of a security, should be applied. Due to this, the IFRS accounting entity should, in most cases, disclose information on the request for correction immediately subsequent to the issuance of the request, even though the IFRS accounting entity would request an opinion on the matter from the Accounting Board, if the matter would, to the entity's understanding, be likely to have a material effect on the value of the security. If the matter has been or will be brought to the Accounting Board due to the fact that the IFRS account entity disagrees with the FIN-FSA on the application of the standards, the information disclosed by the IFRS accounting entity would not at this stage signify a correction of an error, but merely information regarding the fact that the FIN-FSA has called into question the applied financial reporting principle and that the opinion of the Accounting Board has been requested regarding the matter.

- 19 What is the external assurance regime for reporting on a company's impacts on stakeholders? Please specify any mandatory requirements and also where reporting is voluntary what the current market practice is as regards third party assurance. Please summarise any regulatory guidance on reporting that relates to impacts on non-shareholder stakeholders.**

The auditors of the company, appointed by the General Meeting, have in addition to auditing the company's annual accounts, duty to review the Board of Directors' and managing director's management of the company. The mandatory external auditing is regulated by the Auditing Act. According to the Auditing Act, the auditor shall be independent when carrying out auditing engagements. Auditor is liable in damages for the loss caused by him or her, deliberately or out of negligence, to a corporation or foundation when carrying out his or her duties. This shall be also applied to a loss caused to a shareholder, a partner, or a member of the corporation, or another person by a violation of the Act applying to the corporation or foundation, the Articles of Association, rules or Deed of Partnership.

Other external assurance regime does not exist. However, many listed companies have decided to assess a third party opinion on a voluntary basis due to request/demand by the shareholders.

Stakeholder engagement

- 20 Are there any restrictions on circulating shareholder proposals which deal with impacts on non-shareholders, including stakeholder impacts?**

The General Meeting has the authority to decide on all matters falling within its competence by virtue of the Companies Act. It may be provided in the Articles of Association that the General Meeting decides matters that fall within the general competence of the Managing Director and the Board of Directors. The Board of Directors may submit a matter within the general competence of the Managing Director to be decided by the General Meeting and in individual cases, unanimous shareholders may also otherwise make decisions on matters falling within the general competence of the Board of Directors or the Managing Director.

Under the Companies Act, an Extraordinary General Meeting may be called by the Board of Directors and the board has an obligation to call an Extraordinary General Meeting if an auditor or shareholders with a total of one tenth of all shares, or a smaller proportion as provided in the Articles of Association, so demand in writing in order for a given matter to be dealt with. In a private company, the notice shall be delivered within two weeks and in a public company within one month of the arrival of the demand. Notwithstanding the above, unanimous shareholders may make a decision in a matter within the competence of the General Meeting without holding a meeting. If the company has more than one shareholder, at least two of them shall sign the decision.

A shareholder shall have the right to have a matter falling within the competence of the General Meeting dealt with by the General Meeting, if the shareholder so demands in writing from the Board of Directors well in advance of the meeting, so that the matter can be mentioned in the notice. In case of a listed company the demand shall be considered given in due time if it has been notified to the Board of Directors at the latest four weeks prior to the submission of the notice to the shareholder.

21 Are institutional investors, including pension funds, required or permitted to consider such impacts in their investment decisions? What is legal duty that pension funds owe with regard to investment decisions in this regard? How does the legal duty of the fund align with term and contractual performance criteria of fund managers – does this facilitate or deter consideration of such impacts?

There is no legal requirement for the institutional investors to consider impacts of their investment decisions. However, the Finnish institutional investors take into account in their investment activities internationally acknowledged principles and norms, such as UN Global Compact initiative for corporate responsibility, OECD guidelines for multinational enterprises and ILO labour conventions and are committed to incorporate environmental, social and corporate governance factors into investment analysis and decision-making processes.

22 Can non-shareholders address companies' annual general meeting? What is the minimum shareholding required for a shareholder to raise a question at a company's AGM?

Non-shareholders cannot address companies' annual general meeting. Each shareholder has the right to participate in a General Meeting. In addition, a member of the Board of Directors, a member of the Supervisory Board and the managing director shall have the right to be present at a General Meeting, unless the General Meeting in an individual case otherwise decides. Also the company's auditor has the right to be present at the General Meeting. The General Meeting may permit also other persons to participate in the meeting. There are no quorum requirements for General Meetings in the Companies Act. It is a precondition for participation that the shareholder has been entered into the share register or that the shareholder has notified the acquisition to the company and presented reliable evidence of the same. In a company in the book-entry system, it shall be a precondition for participation that the shareholder has been entered into the share register eight business days (the record date) before the General Meeting.

A shareholder may exercise the rights of a shareholder at a General Meeting by way of proxy representation. The representative shall produce a dated proxy document or otherwise provide reliable evidence of the right to represent the shareholder. The proxy shall be valid for one General Meeting, unless it is otherwise indicated in the proxy document. A shareholder and a proxy representative may have an assistant at the General Meeting. A shareholder of a listed company may appoint separate representatives as regards shares held in separate securities accounts.

The representative's right to represent several shareholders may not be restricted.

A shareholder, even though he or she owns only one share, shall have the right to a matter falling within the competence of the General Meeting dealt with by the General Meeting if a request has been presented in writing from the Board of Directors well in advance of the meeting in order to have the matter included in the notice of the General Meeting.

In a General Meeting, each shareholder has the right to raise questions and request information regardless of the extent of his or her ownership. Questions do not need to be delivered in advance and written form is not required. However, the information shall not be provided if this would cause essential harm to the company. In case the question of a shareholder cannot be answered on the basis of information available in the meeting, the answer shall be provided in writing within two weeks.

- 23 Are there any other laws, policies, codes or guidelines or standards applied in the context of particular contractual relationships (for example project finance) or through adherence to particular sustainability principles (for example the UN Global Compact, the OECD Guidelines for Multinational Enterprises etc.), related to corporate governance that might encourage companies to consider in a structured way their impacts upon and the interests of their wider stakeholders including through a stakeholder engagement process?**

No, there are not any other laws, policies, codes or guidelines or standards applied in the context of particular contractual relationships or through adherence to particular sustainability principles related to corporate governance other than those described above.

- 24 Are there any laws requiring representation of particular stakeholder constituencies (i.e. employees, representatives of affected communities) on company boards?**

The Finnish corporate laws and regulations do not require such presentation on company's Board of Directors. It is specifically stated in the Corporate Governance Code applicable to listed companies that a director does not represent the interest of the parties who have proposed his or her election as director. Further, it is very rare that an employee representative is appointed to the Board of Directors.

- 25 Are there any laws requiring gender, racial/ethnic, religious or other stakeholder representation; or non-discrimination generally, on company boards?**

The Companies Act does not contain such provisions. However, the Corporate Governance Code 2010, both genders shall be represented on the board.

- 26 In your jurisdiction is there any legal route whereby a parent company can incur liability with regard to the impacts that one of its subsidiaries has had on stakeholders groups? Are there any serious proposals to impose such responsibility?**

As a general rule, the shareholders of a company shall have no personal liability for the obligations of the company unless they have been separately committed to such liability. The same rule applies to situations where another limited liability company is a shareholder; hence a parent company does not incur liability for the liabilities of its subsidiaries merely for owning shares or the use of controlling power.

However, there has been discussion on the identification of the liability also in Finland in which discussions certain national court cases have been referred to. However, the majority of those cases referenced in this context can be explained with other legal construction. In legal literature, identification has been considered possible in exceptional cases. As it is clearly regarded exceptional, identification is considered to require weighty arguments and to be possible mainly in matters related to a non-contractual obligation or a statutory obligation. In addition, firstly, the fact that a company is not organisationally and financially independent with regards to its owners, for instance if a parent company de facto operates in the form of a subsidiary, is in favour of the identification of the liability. Secondly, the fact that the owner has acted reprehensibly or unfaithfully with regards to third parties when establishing the company or when acting on behalf of it, and the actions aim to cause damages to creditors usually supports the identification of the liability.

The Finnish Supreme Court handled identification in its precedent KKO:2015:17. In this case an Estonian limited liability company X OÜ delivered equipment solely to Finnish consumers for which compensations required by the Finnish Copyright Law were not paid. The business was carried out entirely through a Finnish company Y Oy. In addition, when

the business activities were carried out, 80-100% of the shares of X OÜ were owned and controlled by the company Y and its only owner, natural person Z. According to the Supreme Court, the intention of X OÜ's actions was to fully avoid compensations related to products sold in Finland for which a compensation obligation existed. Moreover, X OÜ's business was run down when compensations were being collected from the company. When considering the ownership and control relationships between the companies as well as the artificial business arrangement, the Supreme Court deems that the identification of the liability was possible in this situation. According to the Supreme Court, the aim of Y Oy was to avoid statutory obligations. The Supreme Court deemed the actions of Y Oy to be of such reprehensibility that the corporate separateness of X OÜ from Y Oy could be disregarded. Y Oy and X OÜ were jointly liable for the reimbursement of the neglected compensations.

According to the Supreme Court, the identification of the liability was possible in this case as the group structure, the inter-company relations and the control of the shareholder were used in an artificial manner that violated the interests of creditors. The legal rules applied in the judgment clarify the former doctrine of the identification of the liability. In the light of the justifications of the judgment, the separateness of ownership and liability is, however, still a clear principal rule and deviating from this requires special grounds.

Other fields of law, however, have particular rules which allow deviating from the standard basis of responsibility. For example, according to article 26 of the Tax Procedure Act, section 5, article 11 of the Bankruptcy Act and section 4, article 14 of the Enforcement Code, a limited liability company can, if the conditions mentioned in the legal provisions are fulfilled, be regarded as an artificial arrangement in which the legal form does not correspond to the actual content and meaning of the arrangement. In that case the limited liability company may be disregarded and the liability for tax and debts may be directed towards a shareholder among others. Based on article 7 of the Act on the Compensation for Environmental Damage, besides the entity carrying out the activities, an entity or person who is comparable to the former may be liable for an environmental damage. When evaluating this comparability, the control of the person, his/her financial relations with regards to the entity carrying out the activities and his/her financial interest in the activities shall be taken into account.

According to the Companies Act, a shareholder shall be liable in damages for the loss that it, by contributing to a violation of the Companies Act or the Articles of Association, has deliberately or negligently caused to the company, another shareholder or a third party. Loss that has been caused by an act to the benefit of a related party, shall be deemed to have been caused negligently, unless the shareholder proves that it has acted with due care.

27 Are you aware of any incoming law or proposals that are relevant to the issues raised in this questionnaire? If so please describe, providing an indication of the anticipated date the legislation will come into force or be adopted.

The European Commission has on 16 April 2013 published a proposal for a Directive on the disclosure on non-financial and diversity information. According to the proposed Directive, large companies would be required to include in their annual report a non-financial statement containing information relating to at least environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters. Such statement should also include a description of the policies, results and the risks related to those matters. Further, the proposed Directive includes an obligation to disclose diversity policies for the management of companies as part of the corporate governance statement.

The Council adopted the Directive on disclosure of non-financial and diversity information by large companies and groups on 29 September 2014 and the Directive was published in the

EU Official Journal. Member States have two years to transpose the Directive into national legislation. Therefore, companies concerned will have time to adapt to the new requirements, and will start reporting as of their financial year 2017.
