Legal Aspects in Business Acquisitions in Finland

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Finland as the acquisition target country

The process of acquiring a company is seen in many jurisdictions as something complicated and time-consuming. This does not apply to the Nordic countries let alone to Finland. We have a culture of transparency, openness and minimal form requirements. Our legal culture has minimized red tape which fact facilitates business dynamism. Mergers and acquisitions in Finland are generally regulated by the Finnish Companies Act along with special regulation on areas such as tax law, competition law, provisions on the rights of employees, etc.

The Finnish legal system is based on the Scandinavian and continental European tradition of written law. The Finnish contract law is based on the idea of freedom of contract. Although you do not necessarily need lengthy anglo-saxon type contracts in Finland you should still be very clear as contracts that do not contain clear terms may be disputed. A business person hardly wishes it to be left to the judges to decide what is enforceable. Courts interpreting the badly drafted contracts are constantly facing the difficulty of deciding the rights of parties who have expressed themselves incompletely. A number of rules is used in Finland to guide the court in the process of interpreting and determining an ambiguous expression. At the end of the day the court will have to consider a contractual provision as an expression of free will and at the same time our courts are likely to try to reconstruct the original intention of the parties in that specific contractual context.

Type of acquisition

One of the first decisions to be reached by the buyer and seller in an acquisition process is whether the purchase will go forward as a business acquisition (the assets of the business) or a share acquisition. Many buyers prefer a business acquisition as it often comes with the opportunity to pick and choose the assets that are acquired, and to avoid any hidden liabilities which may reveal themselves later on. The sellers of a company mostly prefer to get rid of any potential future liability offered by a share sale.

There are many factors influencing the choice between business acquisition and share acquisition, and the buyer and seller often have conflicting interests. Almost without exception the seller prefers a straight forward transfer of title due to tax and liability reasons. The buyer prefers a business purchase for the ability to choose assets, and for the tax advantages from the buyer's viewpoint. The Finnish fiscal system grants a good base cost of assets for tax purposes, and income tax relief in the form of capital allowances and depreciations on the price paid for certain assets e.g. plant and machinery. Labor issues need to be scrutinized carefully as employees enjoy certain rights in connection with a takeover, whether this occurs as an acquisition of assets, shares or otherwise. For instance, an acquirer of assets succeeds in the liabilities towards employees.

At the end of the day the bargaining power of the parties will determine how the transaction proceeds.

How to structure the deal

During the pre-contract period the parties often enter into a letter of intent setting out the main terms according to which the parties have agreed to proceed, and the seller may grant the buyer a period during which it has the exclusive right to negotiate the purchase. A confidentiality agreement is almost always entered into between the buyer and seller, obliging the buyer to keep confidential information about the business that may disclosed during the pre-contract stage of the transaction, and usually also obliging both seller and buyer to keep the fact of the proposed deal itself a secret.

Supported by the letter of intent and a possible exclusive bargaining right, the buyer will proceed to acquire as much information as possible about the target business.

The due diligence process inevitably leads into the drafting and negotiation of transaction document (purchase agreement). It is normally prepared by the buyer's attorneys and contains protection for the buyer in the form of representations and warranties - and indemnities that the seller agrees to give with respect to the object company.

Due diligence of a Finnish company

when going through the target business, the buyer is trying to protect itself by ensuring that the company is worth the contemplated purchase price, and by requesting representations and warranties from the seller in areas where there may be potential liabilities of both hidden or clearly visible nature. The buyer's accountants prepare a report covering the commercial activities of the business, its management structure and employees, profitability and taxation. The legal investigation will be customized due to the objectives and past of the target business, but it always covers the target company's most important contracts, financial arrangements, premises, and company law matters. A careful buyer pays special attention to the quality of assets he purchases and meticulously verifies if the change of ownership terminates or entitles to terminate any important agreements. An acquisition of assets usually means that only the rights and liabilities agreed upon between the parties are transferred. So it is very important to obtain consent from customers and suppliers.

Reps and Warranties - Liability issues

The buyers' due diligence investigations provide a certain amount of information and endeavor to ensure that that the target company is worth the purchase price. Yet, there is usually not time enough for a full investigation, and a buyer of shares takes the risk of hidden liabilities in buying the shares. The representations and warranties included in the acquisition agreement therefore provide a way of redress for the buyer if the company turns out to be worth less than the buyer expected. If a warranty proves to be false, the buyer is entitled to indemnities.

Warranties and indemnities are an essential post-contract exposure for the seller, a risk that may cost a lot of money. It is therefore logical for the seller to try to limit the extent of this possible liability. The seller should make complete disclosures during the due diligence as it will not be in breach of warranty in relation to matters which have been fully and fairly disclosed. The disclosure letter therefore qualifies the warranties. The seller will also negotiate time limits on its liability in the share purchase agreement itself. The seller can usually expect to be free from the worry of further liability after a period of 1-3 years for most matters. Tax and environment related warranties are, however, substantially longer.

About The Author:
I have guided numbers of foreign and domestic companies through the acquisition processes in Finland.The process does not have to be unduely complicated or expensive as long as we concentrate on the essentials of the deal instead of making it fancy. Finland is a country of written law which makes the deal manageable and the contracts shorter. Unnecessarily lengthy dd-reports and contracts are an expression of inexperience and lead to absence of clarity. They just muddle the otherwise clear facts.Visit my website http://www.salvelex.com/ for more information on Mergers and Acquisitions in Finland

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