

Finland

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1. MARKET OVERVIEW

The investment funds market in Finland can basically be divided into two different types of investment funds: mutual funds and private closed-ended funds. The mutual funds category can further be divided into two different categories, namely UCITS funds and non-UCITS funds, the non-UCITS funds category covering a wide variety of funds and including also hedge funds. The vast majority of the assets held by Finnish mutual funds are held by UCITS funds. Non-UCITS funds account for a smaller portion and, within this category, hedge funds represent an even smaller share.

According to a survey of the Federation of Finnish Financial Services, the aggregate amount of assets invested in mutual funds registered in Finland was EUR 69.7 billion as of 30 April 2013, which means that the Finnish mutual fund market has again reached its peak level of late 2007 and early 2008 after the dip in late 2008 when the aggregate amount of assets plummeted to EUR 40 billion following the start of the financial crisis.

Private closed-ended funds are a viable part of Finland's alternative investments market and private closed-ended funds are used for investments in a multitude of asset classes such as venture capital, growth capital, buyout, mezzanine finance and real estate. According to a survey of the Finnish Venture Capital Association (FVCA), Finnish venture capital and private equity managers had EUR 5.6 billion worth of assets under management at the end of 2012. In addition, there are numerous real estate and other funds structured as private closed-ended funds.

The year 2012 was reasonably active in terms of funds raised to private closed-ended funds managed by member firms of the FVCA, and the aggregate amount of funds raised increased to EUR 467 million, the highest amount since 2008. Generally, fundraising is still at a lower level in comparison to the years 2005 through 2007, the 2007 vintage topping the chart with EUR 989 million in funds raised. The fundraisings of 2012 include eg, CapMan successfully closing their tenth buyout fund in November 2012 with first closing aggregate commitments at EUR 152 million. As for the first half of 2013, the market has seen some notable successful fundraisings such as Pohjola Property Investment raising EUR 100 million at first closing to their real estate debt and secondaries fund.

2. ALTERNATIVE INVESTMENT FUNDS

2.1. Common structures

In Finland private closed-ended funds are typically formed as limited partnerships. Pursuant to Finnish law, a limited partnership gains separate

legal personality as of the execution of its limited partnership agreement. However, in its memorandum published in April 2013 (the Memorandum), the Finnish Ministry of Justice has proposed that a limited partnership would gain separate legal personality upon registration of the partnership agreement with the Finnish Trade Register. A Finnish limited partnership must have a general partner that has unlimited liability for the partnership's liabilities and one or several limited partners that are liable for the partnership's liabilities up to the amount of their capital commitments as set out in the limited partnership agreement of the partnership.

Unless otherwise agreed upon in the limited partnership agreement, the transfer of a limited partner's interest in the partnership requires the consent of all partners. However, this requirement is typically relaxed in the limited partnership agreement so that only the consent of the general partner is required for the transfer of a limited partner's interest. Certificates or similar documents representing partnership interests are generally not issued.

In Finland, hedge funds are typically structured as mutual funds regulated by the Mutual Funds Act (48/1999). Funds regulated by the Mutual Funds Act (48/1999) are all open-ended funds and thus hedge funds established in Finland are typically open-ended non-UCITS mutual funds. Therefore the text on hedge funds below only discusses hedge funds structured as such non-UCITS mutual funds.

The term of a hedge fund structured as a mutual fund is not predetermined and the term of each fund is thus indefinite. A mutual fund does not have corporate legal personality under Finnish law, but is merely a pool of assets raised from investors and invested in accordance with the fund rules. Investors in a mutual fund are called unit holders. The unit holders own the mutual fund in proportion to their holding of units. Units of a mutual fund are either yield units or growth units. Holders of yield units are entitled to annual distribution of profits whereas holders of growth units do not receive annual profit distributions as the annual profit in respect of their units is capitalised for the benefit of the holders of such units.

The structure described above has in practice proved to be generally suitable for private closed-ended funds. As discussed in further detail in section 2.5. below, a Finnish limited partnership is a flow-through entity in taxation and the income of the fund is thus in general subject to taxation only as income of the partners. Finnish limited partnerships are subject to certain mandatory provisions of the Partnerships Act (389/1988), but the partners are generally able to agree rather freely on most of the terms and conditions governing the fund.

Clear benefits of using a mutual fund structure for a hedge fund have been the liberal marketing regime and the tax treatment that applies to mutual funds. Further benefits include the flexibility associated with the fact that the number of units available to be issued is unrestricted, which entails that mutual funds can be structured as very flexible in accepting new subscriptions and executing redemptions. However, this flexibility is somewhat limited by the requirements imposed by the Mutual Funds Act (48/1999) that a mutual fund must have a minimum of 50 unit holders (and an aggregate minimum

of EUR 2 million of assets). If this level is not reached within six months from the establishment of the fund, or not maintained thereafter, the fund has to be either terminated or merged into another fund. One of the most significant disadvantages associated with the mutual fund structure for a hedge fund is the lack of flexibility associated with the fact that mutual funds are regulated vehicles that do not permit such bespoke arrangements that can be accomplished eg, in a limited partnership structure where the manager and the investors can negotiate and agree on the terms and conditions applicable to the fund.

The liability of a limited partner of a Finnish limited partnership generally cannot exceed the amount of such limited partner's unfunded capital commitment. As the distribution provisions of private equity funds are typically intended to regulate the distribution of cash flows, in the absence of any relevant case law it remains unclear whether and to what extent any distributions to such limited partner should be taken into account in determining the unfunded commitment of such limited partner. If a pro rata cancellation of capital commitments, or parts thereof, is desirable eg, in cases where the general partner is entitled to cancel unfunded commitments, then such cancellation should be registered with the Finnish Trade Register in order to effect a corresponding change to the liability of limited partners.

As a general rule, limited partners of a Finnish limited partnership are not entitled to manage the fund's activities, unless otherwise agreed upon in the limited partnership agreement. As the general rule is non-mandatory and Finnish law does not contain express provisions on losing limited liability status due to taking part in the management of the partnership, the limited partners of a Finnish limited partnership may generally be given such powers to engage in the activities of the partnership as is deemed commercially desirable.

An interest in a Finnish limited partnership is called a partnership interest, whereas an interest in a mutual fund is called a unit.

A Finnish private fund formed as a limited partnership is represented by its general partner which is usually formed as a Finnish limited liability company. In most cases, the general partner entity does not employ any personnel and the management and/or advisory services in relation to the fund are provided by a separate management and/or advisory company. The management and/or advisory company is usually formed as a Finnish limited liability company and, at the time of writing this article, should be formed so if such an entity is an alternative investment fund manager regulated under the Draft Finnish Act on Alternative Investment Fund Managers published on 25 June 2013 (the Draft AIFM Act).

2.2. Regulatory framework

Private closed-ended funds have generally been considered to fall outside the scope of Finnish securities market regulation. However, such funds are subject to certain mandatory provisions of the Partnerships Act (389/1988), eg, a provision allowing each partner to give notice of termination of the partnership's limited partnership agreement as of the tenth anniversary

of such partner's adherence to the partnership as well as mandatory rules on the clawback obligation of a limited partner. The Ministry of Justice's Memorandum proposes that the foregoing right of a partner to give notice of termination of the partnership's limited partnership agreement be abolished in respect of such partners that are legal persons.

The single most important act of legislation regulating hedge funds, fund management companies and custodians in Finland is the Mutual Funds Act (48/1999). Investment managers and investment advisers are further regulated by the Investment Services Act (746/2012).

The Directive on Alternative Investment Fund Managers (AIFMD) and the Finnish implementing measures in relation thereto impose a significant additional regulatory burden on managers falling under the scope thereof.

If a private closed-ended fund has an investment adviser in Finland, then an obligation to register pursuant to the Investment Services Act (746/2012) may under certain conditions apply to such investment adviser. In any case such obligation will not apply to the investment adviser if it belongs to the same group of companies as the general partner and refrains from providing services to clients not belonging to the same group of companies as the investment adviser. If the investment adviser is under the obligation to register, then it must apply for authorisation from the FIN-FSA. Receiving such an authorisation requires, *inter alia*, meeting minimum capital and reliability requirements as well as requirements relating to internal control and risk management. In a like manner to that set out in respect of alternative investment fund managers and MiFID regulated entities in Article 6 of the AIFMD, the Draft AIFM Act provides such restrictions on the activities an alternative investment fund manager may engage in which in practice are anticipated to exclude investment firms regulated under the Investment Services Act (746/2012) from the group of investment advisers and fund managers that will seek authorisation or registration under the Draft AIFM Act.

Before the implementation of UCITS IV into the Mutual Funds Act (48/1999), only a limited liability company incorporated in Finland was to be granted an authorisation to act as the fund management company of a hedge fund structured as a mutual fund. However, the implementation of a fund management company incorporated in the European Economic Area has been able to establish, with the permission of the FIN-FSA, a hedge fund in Finland and act as its fund management company. The board of directors of a Finnish fund management company has to comprise at least three members and at least one-third of the members of the board of directors have to be elected by the unit holders. The minimum share capital of the fund management company is EUR 125,000. In addition to the minimum share capital, the fund management company must have further proprietary assets in the minimum amount of 0.02 per cent of the amount by which the aggregate value of the mutual funds managed by it exceeds EUR 250 million. However, the aggregate proprietary assets of the fund management company need not exceed EUR 10 million.

The FIN-FSA is the main supervisory body of the Finnish financial markets.

Mutual funds, fund management companies, alternative investment fund managers, custodians, investment managers and investment advisers all need to be authorised by or registered with the FIN-FSA. A Finnish hedge fund that is structured as a mutual fund becomes authorised upon the FIN-FSA approving its fund rules, following which the fund management company may commence its marketing and accept subscriptions for fund units.

2.3. Operational requirements

The AIFMD and the Finnish implementing measures in relation thereto impose significant operational requirements on Finnish fund managers of private closed-ended funds as well as hedge funds structured as mutual funds. As Finnish alternative investment fund managers often employ a relatively small number of staff (eg, from 5 to 15), especially the provisions on organisational and administrative arrangements for preventing conflicts of interest (Article 14 of the AIFMD and section 7:6 of the Draft AIFM Act respectively) and the separation of the risk management function (Article 15 of the AIFMD and section 8:2 of the Draft AIFM Act) are anticipated to impose a serious burden on the Finnish manager community and may require some managers to implement changes to their current company structures. Further, at the time of writing this article, the lack of service providers carrying out the depositary functions set out in the AIFMD and Draft AIFM Act may prove a challenge for the Finnish fund industry.

In addition, the Draft AIFM Act introduces a new placement regime applicable to all alternative investment funds that are offered in Finland. The operational requirements of the regime provide that the manager shall comply with the information on how funds are to be invested that has been given to the investors pursuant to the disclosure obligation set out in Article 23 of the AIFMD and section 12:4 of the Draft AIFM Act, respectively. Further, according to section 12:8 of the Draft AIFM Act, the manager shall know its customers and identify ultimate beneficiaries or persons acting on behalf of the customer, have sufficient risk management systems for assessing the risks caused by its customers and comply with the reporting obligations relating to suspicious transactions and suspected terrorist financing in accordance with the Act on Preventing and Clearing Money Laundering and Terrorist Financing (503/2008) that eg, requires the alternative investment fund manager to have internal guidelines on anti-money laundering and to perform customer due diligence measures prior to establishing new customer relationships. In respect of non-EU managers and EU managers managing non-EU alternative investment funds, the foregoing imposes additional requirements in comparison to the requirements set out in Article 36 and Article 42 of the AIFMD.

In addition, funds, general partners and investment advisers are subject to generally applicable requirements such as the obligation to file a company's annual financial statements with the Finnish Trade Register.

The assets of a hedge fund structured as a mutual fund are held by its custodian. Such assets need to be held in a reliable manner and segregated from the custodian's assets and the assets of other mutual funds and clients of

the custodian.

The fund management company of a hedge fund is required to publish an annual, a semi-annual and a quarterly report on each fund it manages. The annual report must be published and filed with the FIN-FSA within three months from the end of the financial period whereas the semi-annual and quarterly reports must be published and filed within two months from the end of the relevant reporting period. Further, the fund management company has to publish and file with the FIN-FSA the prospectus and simplified prospectus of each fund as well as all changes made to these documents. All changes made to the fund rules have to be approved by the FIN-FSA prior to the entry into force of such changes.

The fund management company of a hedge fund is obliged to treat all unit holders of the same fund equally. This means that all unit holders must receive the same information concerning the fund and have the same rights to have their units redeemed. Finnish mutual funds may have several unit classes with each class having different minimum investment amounts and different overall fee structures. However, the fund rules need to clearly set out the fund's fee structure in a manner that permits every unit holder or prospective unit holder to assess the fees.

If the number of unit holders or the value of the hedge fund's assets has fallen below the required minimum level and such minimum level is not reached within 90 days, the fund management company must interrupt the redemption of fund units. If redemptions are interrupted, all marketing materials of the fund must during such interruption include a statement detailing the exceptional situation of the fund.

The FIN-FSA may also grant the fund management company permission to temporarily interrupt the issue of fund units if so required by the interests of the unit holders. Further, the FIN-FSA may order the issuance and/or redemption of units to be halted, if this is necessary in order to protect the trust in the securities or real estate markets, to safeguard the interests of unit holders or for another especially significant reason.

Each alternative investment fund manager is required to maintain an insider register of the holdings and trading of certain employees and connected parties, and certain holdings of such persons are also subject to public disclosure requirements. Fund management companies are also subject to the insider dealing and market abuse rules of Directive 2003/6/EC (ie, the Market Abuse Directive) as implemented by eg, the Securities Market Act (2012/746).

2.4. Marketing the fund

The AIFMD and the Finnish implementing measures in relation thereto will impose significant restrictions on the marketing of alternative investment funds to prospective investors. In addition, the Draft AIFM Act introduces a new private placement regime. The marketing restrictions of the regime provide that, in addition to the restrictions set out in Article 36 and Article 42 of the AIFMD, the following rules set out in sections 12:2 and 12:3 of the Draft AIFM Act apply in the marketing of alternative investment funds in

Finland:

- good practice in the securities market as set out in section 1:2 of the Securities Market Act (746/2012) shall be complied with. This restriction also expressly applies in situations involving reverse solicitation; and
- no marketing shall be conducted by giving false or misleading information. If any information material to investors is found to be false or misleading following its disclosure, such false or misleading information shall be rectified or complemented without delay. This restriction also expressly applies in situations involving reverse solicitation.

In respect of a non-EU alternative investment fund manager, marketing a non-EU alternative investment fund in Finland to professional investors by way of private placement, such marketing shall also be subject to the condition that an agreement ensuring efficient exchange of information in tax matters fully equivalent to the requirements set out in Article 26 of the OECD Model Tax Convention on Income and on Capital shall be in place between Finland and the third country where the non-EU alternative investment fund is established.

In addition to the foregoing, the marketing by an EU alternative investment fund manager of a non-EU alternative investment fund in Finland to professional investors by way of private placement is subject to the condition that that the alternative investment fund manager shall submit a notification to the FIN-FSA in a manner equivalent to that set out in Article 31 of the AIFMD.

An obligation to publish a prospectus (and certain other marketing restrictions) may apply, unless the alternative investment fund interests are offered: (i) solely to qualified investors, as defined in the Securities Market Act (2012/746); (ii) in each relevant EEA jurisdiction to less than 150 investors not being deemed qualified investors; (iii) to be acquired for a consideration of at least EUR 100,000 per investor or with regard to an offer or in portions of at least EUR 100,000 in nominal value or counter-value; (iv) in the EEA so that the aggregate consideration is less than EUR 1,500,000 calculated over a 12-month period; or (v) in the EEA so that the aggregate consideration is less than EUR 5,000,000 calculated over a 12-month period, provided that the fund interests are sought to be admitted to multilateral trading in Finland and a company prospectus in compliance with the rules of the operator of the trading system is available to the investors throughout the offering period; and (vi) transferable certificates or evidences of interest are not issued and may not be issued pursuant to the limited partnership agreement governing the fund. Private closed-ended funds have generally been structured so that the obligation to publish a prospectus and certain other marketing restrictions have not been applicable to such funds.

The units of a hedge fund structured as a Finnish mutual fund may be marketed to the general public in Finland. As such units under Finnish law are considered to be securities, the general prohibition against marketing of securities by giving false or misleading information or by using methods that are contrary to good practice or otherwise unfair still applies to the marketing

of such units.

The Draft AIFM Act provides that when marketing alternative investment funds to retail investors in Finland, the Finnish Consumer Protection Act (38/1978) shall be applicable. According to the Finnish Consumer Protection Act (38/1978) no conduct that is inappropriate or otherwise unfair shall be allowed in marketing. Further, marketing is regarded as being against good practice when it is clearly in opposition to generally accepted values. In addition, aggressive marketing, including harassment and coercion, is prohibited. The relevant provisions of the Finnish Consumer Protection Act (38/1978) are broadly based on the Unfair Commercial Practices Directive (2005/29/EC).

The marketing of alternative investment funds under the Draft AIFM Act has been limited to relatively well-known company forms. The alternative investment funds that are marketed to retail investors must be limited companies, limited partnerships, non-UCITS funds regulated under the Mutual Funds Act (48/1999), registered associations, cooperatives, or foreign equivalents regulated under the AIFMD. Each alternative investment fund marketed to retail investors in Finland must be based in an EEA member state.

Alternative investment funds formed as limited partnerships may be marketed to retail investors only if the profit-sharing of the fund has been limited in the partnership agreement, with appropriate sanctions. This restriction relates to the fact that under the Partnerships Act (389/1988) a general partner of a limited partnership may withdraw funds from the partnership, unless otherwise agreed upon in the partnership agreement. As Finnish private closed-ended funds formed as limited partnerships typically employ detailed provisions on distribution of cash flows, this restriction is not anticipated to restrict the marketing of private closed-ended funds to retail investors.

Furthermore, under the Draft AIFM Act, alternative investment fund managers shall create in respect of each alternative fund marketed to retail investors, a document containing information that is material to the investors (key information prospectus). The Draft AIFM Act sets out specific regulations as regards the content of the key information prospectus as well as specific language requirements. Retail investors must be provided with identifying information concerning the alternative investment fund, a short description of investment targets and policy, return history and, if necessary, expected returns, expenses and related fees, the investment's risk-reward profile and appropriate instructions and warnings on the risks concerning the relevant alternative investment fund.

The key information prospectus shall, among other things, be appropriate, concise and clear, understandable to retail investors and written in standard language. The FIN-FSA may exempt an alternative investment fund manager from the responsibility to create such a prospectus.

The marketing of hedge funds structured as mutual funds is regulated under the Mutual Funds Act (48/1999).

2.5. Taxation

A Finnish limited partnership is treated as 'semi-transparent' for Finnish income tax purposes. This means that the taxable income of the fund itself is calculated based on Finnish tax laws but it is, after deducting possible losses carried forward from previous years, taxed in the hands of its partners based on the partners' entitlement to the partnership's income. In relation to dividend income, the transparency of the fund is even more apparent, as the partners are entitled to a deduction corresponding to the dividend taxation level in their own taxation should they have received these dividends directly.

The partnership income of corporate limited partners is generally taxed at the rate of 24.5 per cent. However, dividend income received by the partnership may be subject to a lower effective tax rate of approximately 18.4 per cent (75 per cent out of 24.5 per cent) or 0 per cent in the hands of the limited partner due to the more apparent transparency of the limited partnership in respect of dividend income. Many domestic institutional investors in Finnish closed-ended private funds are tax-exempt or are in practise in a zero tax position due to the possibility of making certain tax deductible reservations.

The limited partner income of private individuals is divided into a capital income portion taxed at the flat rate of 30 per cent (and 32 per cent to the extent annual capital income exceeds EUR 50,000) and into an earned income portion taxed at a progressive rate up to approximately 54 per cent. The division is based on the net asset value of the partnership. Capital gains derived from a sale of shares that are part of the fixed assets of the partnership (eg, target shares of portfolio companies' of closed-ended private equity or venture capital funds) are treated as capital income regardless of the net asset value of the partnership. Generally only 70 per cent of the dividend income received by the partnership is taxable in the hands of the limited partner.

Non-resident limited partners of the partnership are generally taxed as having a permanent establishment in Finland. Their share of the partnership's income is thus taxed at the rate of 24.5 per cent (assuming that they are corporates). Qualifying non-resident investors in limited partnerships that carry on private equity investment activities are taxed as if they had invested directly in the assets held by the partnership. Therefore, only dividends received by the partnership from Finnish resident portfolio companies or real estate related income (rental income or capital gains) from the partnership's investments in Finnish real estate are taxed in Finland. In that case, the tax is withheld by the partnership from payments to the qualifying investor. A non-resident investor needs to be entitled to the benefits of a tax treaty between Finland and the domicile country of such investor to be considered a qualifying investor. The general dividend withholding tax rate for corporate investors is 24.5 per cent but there are exemptions available from this both in tax treaties and in domestic law for certain EU resident corporations. Real estate related income is taxed at the rate of 24.5 per cent (assuming that the qualifying investors are corporates). Based on Finnish case law, closed-ended private funds investing in private equity funds (ie, funds-of-funds) or real

estate are generally deemed to carry on private equity investment activities for Finnish tax purposes.

Although hedge funds structured as mutual funds do not have corporate legal personality under Finnish law, they are for Finnish tax purposes treated as corporations and thus opaque rather than transparent. However, based on a special exemption they are exempt from income tax. Further, from a Finnish point of view, mutual funds are generally deemed to be entitled to tax treaty benefits relating to any foreign source income they may receive.

Any distributions or capital gains from the sale of units in mutual funds are taxed as regular taxable income (at the flat rate of 24.5 per cent) of corporate investors and as capital income of private individuals that is taxed at the flat rate of 30 per cent (32 per cent to the extent investors' annual capital income exceeds EUR 50,000).

The exchange of a yield unit to a growth unit of the same mutual fund, or vice versa, is not deemed to be a transfer for tax purposes, and does thus not cause capital gain taxation. However, the exchange of a fund unit to a fund unit of another fund is deemed to be a taxable transfer, even if both mutual funds were managed by the same fund management company, and in such case a capital gain or loss is deemed to occur. This is the case even if no cash were received by the investor in the exchange, but the redemption price of the fund units would be used in full to pay for the subscription of units in another fund.

As mutual funds are deemed to be tax treaty subjects, non-resident investors may claim tax treaty benefits relating to the distributions they receive from the fund. From a Finnish point of view distributions are not for tax treaty purposes deemed to be dividends, but are considered as 'other income' so most tax treaties do not allow Finland to tax the distributions.

As regards the contemplated changes to the above tax rules that are expected to take effect as of 2014, please see section 4 below.

2.6. Customary or common terms

Regarding private closed-ended alternative investment funds, the term of the fund often continues until the tenth anniversary of its first closing. Such term may also expire earlier or later and limited partnership agreements typically provide for early termination upon realisation of all investments or the removal of the general partner (provided that no replacement general partner is elected).

The investment period may terminate eg, on the fifth anniversary of the fund's first closing. However, the inclusion of provisions on early termination of the investment period is customary, and such early termination is usually triggered eg, when a substantial amount of commitments have been drawn down. Following the expiration of the investment period uncalled capital commitments may in most cases be drawn down for the purpose of covering operational expenses, funding follow-on investments and/or investments in relation to which the fund prior to the expiration of the investment period has executed a letter of intent, term sheet or binding agreement.

The inclusion of a minimum commitment size in the limited partnership

agreement is customary, and the relative size of the minimum commitment varies by the commercial targets and fundraising prospects of the manager. Limited partner interests are typically not transferable without the prior consent of the general partner and the assumption by the transferee of all obligations of the transferring limited partner.

The commitment of the key investment professionals to the fund is usually secured by a number of provisions of the limited partnership agreement. Such key investment professionals are regularly required to make and maintain a firm commitment to invest also part of their personal wealth in the fund eg, through the general partner. Further, if key investment professionals cease to devote substantially all of their business time to the fund, and if such a key man event is not remedied to the satisfaction of the limited partners, typically certain adverse consequences are triggered (eg, a termination of the investment period or even a removal of the general partner).

The general partner commonly charges a management fee (eg, 2 per cent) calculated on the basis of aggregate commitments to the fund (up to the expiration of the investment period) and the aggregate acquisition cost of the fund's unrealised investments (as of the expiration of the investment period). Board member remuneration, transaction fees and similar fees paid by portfolio companies to the manager or its representatives are commonly offset against management fees payable by the fund.

The distribution waterfall provision setting out the partners' entitlement to proceeds distributed by the fund is customarily crafted on the basis of a whole-of-fund approach rather than on a deal-by-deal basis. Distribution waterfalls often provide for a carried interest at 20 per cent payable to the general partner following the payment of the preferred return to limited partners (at eg, 8 per cent per annum).

Limited partners are customarily protected by specific clawback clauses requiring the general partner to repay to the partnership any excess distributions received by the general partner and such clawback clauses may also provide for an escrow arrangement in respect of part of the distributions received by the general partner or a requirement on the general partner to provide some form of security for its obligation to make such repayments.

A Finnish private closed-ended fund is under the obligation to file the fund's annual financial statements with the Finnish Trade Register and its tax return to the Finnish Tax Administration. With respect to contractual reporting obligations to limited partners, general partners are typically required to prepare quarterly reports to the limited partners. The content of such reports varies, yet in most cases the report contains updated valuation information on the assets of the fund. Finnish venture capital and buyout funds frequently apply the International Private Equity and Venture Capital Valuation Guidelines.

Typically the fees payable by unit holders of a hedge fund structured as a mutual fund are: (i) a subscription fee; (ii) a redemption fee; (iii) a management fee (which also covers the fees payable to the custodian and any separate investment manager); and (iv) a performance fee based on the success of the fund. Fee levels vary depending on eg, the fund's investment

strategies and the fixed costs of the fund management company.

Whereas UCITS-compliant mutual funds have daily liquidity, non-UCITS funds such as hedge funds do not have to comply with this requirement. However, according to the FIN-FSA, in order for a hedge fund (or other non-UCITS fund) to be considered as an open-ended mutual fund under the Mutual Funds Act (48/1999), the fund must permit redemptions and subscriptions at intervals no longer than every three months.

Finnish hedge funds structured as mutual funds do not typically use redemption gate provisions, but the fund rules may impose certain restrictions on liquidity and the fund management company may temporarily interrupt the redemption of the units in a mutual fund in situations referred to in the fund rules.

3. RETAIL FUNDS

3.1. Common structures

Finnish retail funds are typically structured as open-ended mutual funds under the Mutual Funds Act (48/1999), and thus much of what is set out above in respect of hedge funds also applies to the retail funds discussed in this section. Retail funds investing in real estate could also be structured as real estate funds under the Real Estate Funds Act (1173/1997). However, as these structures are not commonly used, real estate funds structured in accordance with the Real Estate Funds Act (1173/1997) will not be discussed further in this section.

As stated in section 1 above, mutual funds can be either UCITS compliant or non-UCITS compliant and both of these fund types can be used for retail funds. In fact, a UCITS fund must be open for all investors, who are willing to invest the minimum subscription amount in the fund and thus a UCITS fund cannot restrict its investor target group in its fund rules. However, a non-UCITS fund can restrict the scope of eligible investors in its fund rules.

As discussed in section 2.1. above in respect of hedge funds structured as mutual funds, a mutual fund does not have corporate legal personality under Finnish law and its term is not predetermined. Similarly, what has been set out in section 2.1. above in respect of fund units and the establishment process applies to all mutual funds, and the benefits and disadvantages discussed in respect of hedge funds structured as mutual funds are also broadly the same in respect of all mutual funds.

3.2. Regulatory framework

The regulatory framework discussed in section 2.2. above in respect of hedge funds structured as mutual funds applies to all mutual funds (including retail funds).

3.3. Operational requirements

The operational requirements discussed in section 2.3. above in respect of hedge funds structured as mutual funds in many respects apply as such to all mutual funds (including retail funds). However, there are a few notable exceptions that mainly relate to retail funds structured as UCITS funds.

UCITS funds are prohibited from engaging in short selling and the assets of a UCITS fund may not be invested in precious metals or certificates entitling to precious metals. Further, the fund management company may not use the assets of a UCITS fund to make available loans or provide guarantees or other collateral to secure the obligations of third parties. The fund management company may also not invest the assets of the UCITS funds it manages in the shares of another fund management company. As regards reporting requirements, UCITS funds are exempt from the requirement to publish quarterly reports.

3.4. Marketing the fund

The marketing of mutual funds (including retail funds) is discussed in section 2.4. above.

3.5. Taxation

The taxation of mutual funds (including retail funds) is discussed in section 2.5. above.

3.6. Customary or common terms

The information set out in section 2.6. is generally applicable to all mutual funds (including retail funds).

4. PROPOSED CHANGES AND DEVELOPMENTS

The key development for the Finnish market of closed-ended private funds currently is the entry into force and national implementation of the AIFMD, which imposes significant new regulation of the industry. At the time of writing this article, the Finnish national implementation of the AIFMD is expected to be delayed by several months from the 22 July 2013 deadline set out in the AIFMD. This could have adverse consequences to fund managers currently conducting or contemplating cross-border fundraisings. The AIFMD also affects the managers of many mutual funds, namely the managers of all non-UCITS funds (including hedge funds) that fall within the scope of application of the AIFMD.

In May 2013, the Finnish Government announced its intention to propose to the Parliament later during year 2013 that the Finnish corporate income tax rate be decreased from 24.5 per cent to 20 per cent and that the threshold between 30 per cent capital income tax rate and 32 per cent capital income tax rate be decreased from EUR 50,000 to EUR 40,000. The intention is to have these rates apply as of the beginning of the year 2014. Should these changes be enacted, this would have a corresponding effect on the rates discussed above in section 2.5.

