

## 6. Public Bid, Damages Liability

1. U Ltd and A on behalf of S Ltd, a company under formation, bought all the 662.000 K shares and 56.900 pieces of A shares of K Ltd, a company whose shares were subject to public trade according to the Finnish Securities Markets Act (SMA) 3:12 (the so-called other public trade in securities). U Ltd bought 437.316 K shares and 37.554 A shares and S Ltd 225.284 K shares and 19.346 A shares. The shares traded were 40,6 per cent of the total share capital of K Ltd, representing 92,71 per cent of the total number of votes of all the shares of the company, of which the mentioned proportion of U Ltd was 61,2 per cent and that of S Ltd 31,5 per cent. - The formation of S Ltd then lapsed according to CA (the Finnish Companies Act) 2:10, and a company named H Ltd took the responsibility for the purchase that was made on behalf of S Ltd.

The complicated arrangements reported above may hide an attempt to circumvent the SMA provisions (chapter 6) on tender offers and the duty of redemption. The persons involved, besides A, were B, C, D and E. B owned the share majority in U Ltd, and C, a minority owner of U Ltd, was also a shareholder and a member of the board of directors in S Ltd. A, D and E were members of the board of directors in U Ltd and had the control in both U Ltd and S Ltd. In an agreement between U Ltd and C the former had committed itself to redeem the S Ltd shares owned by C. There was also I Ltd, the parent company of U Ltd (owning 90 per cent of the daughter's shares), which had a special kind of a "factual controlling connection" to S Ltd. And an investment company owned by E attended to and controlled the investments of both U Ltd and S Ltd.

Consider whether the duty of redemption according to SMA 6:6 applies to this case with respect to K Ltd shares. When defining the scope of the expression "organizations - - controlled by the shareholder" in SMA 6:6,2.1 please take into account the provisions in CA 1:3 on the definition of a consolidated corporation. Note also SMA 6:6,2.3 on shares held by those acting together to exercise control of the company.

In this case, a damages claim based on a breach of the redemption duty and the duty to publish circumstances giving raise to it was brought by minority shareholders in K Ltd against the mentioned active persons. The damages claim was based on SMA 9:2 concerning damages caused by breach of SMA and other relevant provisions. The claims were presented against those charged with the redemption and publishing duties, i.e. I Ltd, U Ltd, A, D and E. The claims were directed also against B who had acted on behalf of S Ltd under formation and who was the founder, shareholder and the only member of the board of directors of H Ltd, as well as against the bank financing the purchase and F, the MD of the bank, representing it in the transaction.

Consider also the damages claims. Especially concerning the damages liability of the bank and the bank director F, some additional facts must be taken into consideration. The foreign currency loan granted by F to U Ltd for the purchase of K Ltd shares was later divided by the bank so that a part of it was allotted to S Ltd, and a new credit application was antedated to the same day as the original application and the same number was also used in the credit decision documents.

Concerning the damages liabilities, consider also the causation problems relating to the shareholders alleging to have suffered losses for losing the possibility of having their shares redeemed. Take also a position to assessing the amount of possible damages. And remember that negligence is a precondition of damages liability according to Finnish provisions applicable to securities markets, too.