



# Finland

Prepared by Lex Mundi member firm,  
Roschier, Attorneys Ltd.

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# LEGAL FRAMEWORK FOR DOING BUSINESS IN FINLAND

Roschier, Attorneys Ltd.  
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## INTRODUCTION

This booklet, "Legal Framework for Doing Business in Finland", has been prepared by Roschier, Attorneys Ltd.

The purpose of the booklet is to provide an introduction to Finnish business law, the focus being on areas of law that may be of interest to business people and investors. The booklet should not be construed as legal advice or a legal opinion on any specific facts or circumstances. We have used reasonable efforts in collecting, preparing and providing the information in this booklet, but we do not warrant or guarantee the accuracy, completeness or adequacy of the information contained herein. The contents of this booklet are intended for general informational purposes only, and you are urged to consult a lawyer concerning your situation and any specific legal questions you may have.

The information contained in this booklet is current as of April 2012, unless otherwise expressly indicated.

We hope that you will find this booklet useful when considering investments or other business activities in Finland. We would be pleased to render legal services to you in connection with such activities.

ROSCHIER, ATTORNEYS LTD.

Helsinki, Finland

April 2012

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## 1. ABBREVIATIONS & TERMS

**ADR** = Alternative dispute resolution

**Agency Act** = the Act on Commercial Representatives and Salesmen (417/1992, as amended)

**AIF** = Act on Investment Funds (48/1999, as amended)

**APIs** = application programming interfaces

**EPGs** = electronic programming guides

**CEDR** = Centre for Dispute Resolution

**CFC** = Controlled Foreign Corporation

**CMR Convention** = the Convention on the Contract for the International Carriage of Goods by Road

**EC Merger Regulation** = Council Regulation (EC) No. 139/2004 of 20 January 2004 on the Control of Concentrations Between Undertakings

**ECN** = the European Competition Network

**Euroclear** = Euroclear Finland Ltd

**FCA** = the Finnish Competition Authority

**FFSA** = the Finnish Financial Supervisory Authority

**FIFA** = Act on Foreign Investment Firms (580/1996, as amended)

**HLR** = home location register

**IFA** = Act on Investment Firms (922/2007, as amended)

**IFRS** = International Financial Reporting Standards

**IPPC** = Council Directive on Integrated Pollution Prevention and Control (2008/1/EC)

**KIID** = the Key Investor Information Document

**MiFID** = Directive on Markets in Financial Instruments (2004/39/EC)

**Model Law** = UNCITRAL Model Law on International Commercial Arbitration

**MREC** = mutual real estate company

**MVNO** = mobile virtual network operator

**New Control Act** = the Act approved by the Finnish parliament on 28 February 2012 that has replaced the Old Control Act but has not yet been ratified by the president

**OHIM** = the Office for Harmonization in the Internal Market

**Old Control Act** = the Act on Control of Foreign Acquisitions of Finnish Companies (1612/1992, as amended)

**OREC** = ordinary real estate company

**PCT** = the Patent Cooperation Treaty

**Radio Act** = Radio Frequencies and Telecommunications Act (1015/2001, as amended)

**Shipping Terms** = the Finnish Standard Shipping Terms

**SIEC** = significant impediment of effective competition

**SMA** = Securities Markets Act (495/1989, as amended)

**SMP** = significant market power

**SPA** = a share purchase agreement

**Stock Exchange** = NASDAQ OMX Helsinki Ltd

**TFEU** = the Treaty on the Functioning of the European Union

**TRIPS** = Agreement on Trade-Related Aspects of Intellectual Property Rights

**VAT** = Value Added Tax

**VoIP** = voice over IP

**VPNs** = virtual private networks

**VR** = Valtion Rautatiet Oy

**WIPO** = the World Intellectual Property Organization

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## 2. FACTS ABOUT FINLAND

### 2.1 Introduction

Finland is the fifth largest country in Europe covering an area of more than 338,000 sq. km. Neighboring countries to Finland are Sweden, Norway, and Russia; and south of the Gulf of Finland, Estonia, Latvia and Lithuania. Midway between Finland and Sweden lie the Åland Islands that form an autonomous, demilitarized, Swedish-speaking province of Finland.

With a population of 5.4 million, Finland is one of the most sparsely populated countries in Europe. Sixty-seven percent of the population lives in cities and other urban districts. The biggest city is Helsinki, the capital city, with a population of approximately 595,000. Helsinki, Espoo (252,000 inhabitants) and Vantaa (203,000 inhabitants) form the metropolitan area, which is home to over one sixth of the country's total population. Other large cities are Tampere (215,000 inhabitants), Turku (179,000 inhabitants) and Oulu (144,000 inhabitants).

The official languages are Finnish and Swedish. Finnish is spoken as a first language by 90 percent of the population and Swedish by 5 percent. In addition, Lapland has an indigenous language, Sami, which is the first language of about 1,800 people. Finnish and Sami are members of the small Finno-Ugric group of languages, which also includes Estonian and Hungarian. Finns have a good knowledge of foreign languages and English in particular is widely spoken.

In Finland, mobile phone ownership is one of the highest in the world with more than 1.4 mobile phone connections per capita. In spring 2011 up to 85 percent of households had an internet connection.

### 2.2 History and Political System

Finland is a parliamentary democracy with a republican constitution. Before gaining independence in 1917, Finland had been a Grand Duchy under Russia since 1809. Prior to that, Finland was a Province of the Kingdom of Sweden for seven hundred years. This common history is the basis of many similarities between Finnish and Swedish societies, which can be seen in the culture as well as in legal and political structures. Finland became a member of the European Economic Area on 1 January 1993 and a member of the European Union on 1 January 1995.

Legislative power is exercised by the Parliament (*Fi: eduskunta*). The Parliament consists of one chamber with 200 members who are elected through a direct and proportional vote every four years. In the 2011 parliamentary elections, the seats were divided among eight parties as follows: the National Coalition Party 44 seats, the Social Democratic Party 42 seats, the True Finns 39 seats, the Centre Party 35 seats, the Left Alliance 14 seats, the Green League 10 seats, the Swedish People's Party 9 seats, the Christian Democrats 6 seats and Others (Province of Åland representative) 1 seat.

The supreme governmental powers are shared between the President of the Republic and the government and its subordinate ministries. The president is elected for a six year term by direct popular vote. The incumbent president, Mr. Sauli Niinistö, was elected in 2012. The coalition government of Finland is headed by Prime Minister Mr. Jyrki Katainen, who represents the National Coalition Party.

### 2.3 Economy

Finland has traditionally been a small open economy with a large export sector in relation to GNP. Industrialization has been rapid in Finland after having begun in earnest only after the Second World War. During the post-war period Finnish industry had its foundation mainly in metal and forest industry. In the beginning of the 1990's, the Finnish economy sank into a deep depression as a result of the recession in the world economy and the collapse of the Soviet Union. Owing to a rapid growth in the electronics

industry and, in particular, the telecommunications equipment sector, Finland recovered from the depression in a surprisingly short period of time. The markets plummeted again due to the severe global economic downturn in 2008 -2011 and have remained volatile in the beginning of 2012.

Today, Finland's main industrial sectors that together account for over 80 percent of the total exports are: the metal and electronics industry at 46 percent, the forestry industry at 19 percent and the chemicals industry at 17 percent. Despite the fact that Finland's forest resources are relatively minor in global comparison, Finland is one of the world's foremost producers and exporters of forest industry products.

The currency unit of Finland is the Euro. Finland was one of the 12 EU countries that started using the Euro in 2002.

In international competitiveness comparisons Finland has recently been ranked very high. In particular, the high level of education, the advanced technological environment, the well-developed telecommunications infrastructure and the functioning of society in general have been listed as the main assets in Finland. High taxation and a relatively inflexible labor market are considered to be the biggest inconveniences.



## 3. INTRODUCTION TO THE FINNISH LEGAL SYSTEM

### 3.1 General

The Finnish legal system has developed in close connection with that of the other Nordic countries - Sweden, Norway, Denmark and Iceland. Swedish legislation has been particularly influential, due to Finland's union with Sweden, which lasted for seven hundred years. As a result of several decades of extensive legislative cooperation between the Nordic countries, the Finnish legal system is presently generally the same as that of other Nordic countries. It is based on the principle of the rule of law and on general European legal traditions, such as the fundamental rights of the citizen and the sanctity of law.

EU law is directly applicable in Finland and takes precedence over national legislation. After joining the EU in 1995, Finland completed the implementation process of EC directives into the national legislation within a couple of years.

### 3.2 Constitution and Rule of Law

Parliamentarianism and the division of governmental tasks are regulated in the Constitution (731/1999, as amended, *Fi: Suomen perustuslaki*) in accordance with the doctrine of tripartite division of powers. Therefore, legislative power is vested in the Parliament, executive power is exercised by the President together with the Council of State (i.e., Government), and judiciary power belongs to the courts of law. According to the Constitution, the members of the Government must enjoy the confidence of Parliament. This principle applies to the entire state administration system in the sense that the Government ultimately bears the political responsibility for the functioning of public administration and the management of public affairs.

The rule of law as understood in regard to state administration and in activities of public authorities is encapsulated in the Constitution, which states, firstly, that any exercise of public authority (power) must always be premised on law and, secondly, that in all activities of the authorities, law must be strictly respected. As a general rule, a superior authority is responsible for overseeing that a subordinate authority observes the law in the performance of its official duties. In addition, there are special legality observers such as the Chancellor of Justice and the Parliamentary Ombudsman. Although being an underlying obligation, the rule of law must not be understood in absolute terms. In general, legal principles such as equality, fairness and good governance are also recognized as sources of law. According to an old Nordic maxim, "there is no legality without justice, equity and fairness".

An essential part of the Constitution is the fundamental rights accorded by it. The constitutional protection of fundamental rights is based on a broad understanding of rights that deserve protection in society, including, besides traditional civil and political rights, also economic, social, cultural and environmental rights. Internationally recognized human rights are considered part of Finnish national law. Finland has also, usually without reservations, ratified almost all of the major international and European human rights treaties and has subjected itself to complaint procedures before international courts and treaty bodies.

### 3.3 Sources of Law

As described above, Finland has a statutory legal system with the primary source of law being the written law. The Constitution and acts of a constitutional character, such as international treaties, form the highest level of the normative hierarchy. The most essential domestic sources of law are Parliamentary Acts and accessory decrees and orders issued by the government or ministries. EU law is applied simultaneously with Finnish law and takes precedence over national legislation.

### 3.4 Judiciary

According to the Finnish Constitution, judicial power in Finland belongs to independent courts of law, with the Supreme Court (*FI: Korkein oikeus*) and the Supreme Administrative Court (*FI: Korkein hallinto-oikeus*) exercising supreme jurisdiction at the top of the system. The independence of the courts means that the courts are obligated only to apply the law in force without any other restrictions or instructions. The independence of courts is ensured by permanent tenure of judges and the prohibition on establishing ad hoc courts.

Finnish courts of law can be divided into two categories; general courts that deal with civil and criminal matters, and administrative courts that mainly deal with disputes between a public authority and private individuals. Also special courts exist: the Market Court, the Labor Court, the Insurance Court and the High Court of Impeachment.

As Finland has a statutory legal system, the decisions of the Supreme Court and the Supreme Administrative Court are not legally binding sources of law. However, the principle of equality as well as the extent and complexity of today's regulations have in practice lead to decisions of the Supreme Court and the Supreme Administrative Court enjoying a stronger precedential value in Finnish jurisprudence than has previously been the case.

### 3.5 Transparency and Surveillance of Legality

The transparency of public administration and the judiciary is one of the foundations of the Finnish legal system. Transparency is generally considered a prerequisite for the general public to participate in societal debate and to observe their rights in relation to public authority. In Finland, transparency is enforced in various ways. For example, Finnish law imposes extensive disclosure obligations on authorities and access to documents is widely recognized as a prerequisite to any future action.

A peculiar feature of the Finnish legal system is the existence of the position of Chancellor of Justice (*FI: valtioneuvoston oikeuskansleri*) and the Parliamentary Ombudsman (*FI: eduskunnan oikeusasiamies*) which function as guardians of the rule of law by ensuring the courts of law, public authorities and public servants observe the law and fulfill their obligations in the performance of their official duties. The roles of these guardians are similar, with the exception that the Chancellor of Justice oversees the President and the Government. The supervisory duties of both positions mainly involve investigation of complaints put forth by ordinary people. Both observers also have the right to intervene on their own initiative in matters that, in one way or another, come to their attention. As a consequence of illegal or improper conduct they may issue admonitions and, as the most severe measure, bring criminal charges against public servants.

In addition to the powers of general surveillance of the legal system discussed above, some more functional legal control is exercised in certain specific fields of law. Institutions of note are the Ombudsman for Equality, the Data Protection Ombudsman and the Minority Representative. The surveillance of these authorities is focused on compliance with specific legislation (i.e. Act on Equality, Act on Data Protection and legislation concerning the rights of foreigners and ethnic minorities).

## 4. BANKING AND FINANCIAL INSTITUTIONS, INSURANCE

### 4.1 Applicable Legislation

Finnish credit institutions and their activities are regulated by the Credit Institutions Act (121/2007, as amended, *FI: laki luottolaitostoiminnasta*), which also contains provisions on the rights of foreign credit institutions to provide banking activities in Finland. In addition, the activities of Finnish and foreign credit institutions are governed by the guidelines and regulations issued by the Finnish Financial Supervisory Authority (the “**FFSA**”, *FI: finanssivalvonta*).

The activities of mortgage banks in Finland are governed by the Act on Mortgage Credit Bank Operations (688/2010, as amended, *FI: laki kiinnitysluottopankkitoiminnasta*) and the Credit Institutions Act. There are also a number of specific laws that govern particular corporate forms of credit institutions and that supplement the general provisions of the Credit Institutions Act.

### 4.2 Supervision of the Financial Sector

The FFSA continuously supervises licensed institutions on the financial markets in order to ensure the viability of their financial condition and the fulfillment of other requirements relating to their activities. The supervisory powers and activities are set forth in the Act on the Financial Supervisory Authority (878/2008, as amended, *FI: laki finanssivalvonnasta*). The coordinated supervision of the activities of financial and insurance conglomerates is regulated by the Act on Supervision of Financial and Insurance Conglomerates (699/2004, as amended, *FI: laki rahoitus- ja vakuutusryhmittymien valvonnasta*). Such conglomerates are supervised by the FFSA.

The FFSA has extensive powers to perform examinations of and obtain information from supervised entities, such as branches or representation offices of foreign credit institutions. Formal inspections of supervised entities may be carried out to the extent and at such intervals as necessary, and the FFSA may also attend meetings of their corporate bodies. The FFSA has the power to impose a conditional fine on a supervised entity in case it does not provide information or let the FFSA perform examinations. The FFSA may and has issued requests for information to be submitted by supervised entities, thus creating a comprehensive obligation to submit information in addition to filing financial statements and to regularly submit reports and information on for example, risk exposure, risk management, capital adequacy and liquidity.

The FFSA can also impose certain limitations on licenses it has already granted as well as revoke such licenses. Further, the FFSA may issue a public warning or an administrative penalty both to supervised entities and other parties operating in the Finnish financial markets, where such parties do not comply with the laws and regulations governing those financial markets. In addition, the FFSA may prohibit a person deemed to be unreliable or unfit for the position from acting as a board member or managing director of a credit institution.

### 4.3 Licensing of Banks

According to the Credit Institutions Act, banking activities may not be carried out without a credit institution license. The Act defines banking activity as business activity where repayable funds are accepted from the public, and where credits or other financing are being offered on one's own account.

Until the end of 2011 the Credit Institutions Act included provisions regarding a limited liability company or a cooperative being able to conduct certain limited banking activities without an operating license. However, the provisions that allowed these limited activities were repealed and such limited banking activities are now regulated in the Payment Institutions Act (2010/297, *FI: maksulaitoslaki*).

The Credit Institutions Act does not restrict the offering of credit and provision of other banking services in or into Finland provided that the activities do not involve taking deposits or other fund raising from the public. The lack of regulation of such activities derives from the purpose of the Act, which is to protect the public when repayable funds are raised or when making deposits. For the purposes of the Act, companies engaged in these activities are defined as financial institutions, which are funded by means of equity investments or lending from private institutions, as opposed to lending from the public. Financial institutions may, as a rule, offer credits and provide other financing services without a license. Nevertheless, if a financial institution wishes to engage in securities trading or other operations in securities, a license from the FFSA is required pursuant to the Act on Investment Firms (see chapter 15 for further details).

#### 4.4 Authorization Procedures for Foreign Service Providers

The procedures for establishing foreign credit institutions and other financial institutions in Finland vary depending on whether or not the institution is licensed to operate in a country belonging to the EEA.

#### 4.5 Requirements for Banking Activities

According to the Credit Institutions Act, a credit institution authorized to provide certain banking services in its home state belonging to the EEA, may, on the basis of its local authorization, establish a branch or otherwise provide banking services cross-border into Finland. The right to provide services in or into Finland covers in principle all banking services covered by the license granted in the home state.

Before a branch is established or the above banking services otherwise commenced, the FFSA must receive a notification of the establishment and the provision of specific banking services in Finland from the competent supervisory authority in the home state of the relevant credit institution. The operations of a branch may be commenced within two (2) months from the receipt by the FFSA of such notification. Within those two (2) months, the FFSA shall issue (i) any provisions it deems necessary for the supervision of the branch and (ii), where necessary, any conditions required from a public interest point of view.

A foreign credit institution licensed outside the EEA must, in order to be able to offer banking services in Finland, apply for an operating license from the FFSA. Such license shall be granted to a foreign credit institution in case it is subject to sufficient supervision in its home state and fulfills also the requirements set out by the Finnish legislation. The company should naturally also comply with its home state legislation, which should correspond to the international recommendations on financial supervision and prevention of criminal exploitation of the financial system.

A foreign credit institution authorized in a non-EEA state may provide banking services in Finland only through establishing a branch in Finland. It is thus not possible for a non-EEA credit institution to provide services on a cross-border basis into Finland, without establishing a Finnish branch. Further, a non-EEA credit institution may establish a representative office in Finland. No license is required for a representative office but the FFSA must be notified of such establishment in advance.

#### 4.6 Requirements for Financing Activities

The provision of financing activities is subject to a license under the Credit Institutions Act only when such services are provided by a credit institution, which takes deposits or raises other repayable funds from the public (in which case such financing activities equal banking activities described above in Section 4.5). An EEA financial institution belonging to the same consolidation group as another credit institution located in an EEA state may carry on lending and financing activities covered by its license through a Finnish branch or on a cross-border basis, subject to a notification by the relevant supervisory authority in its home state to the FFSA. The operations of a branch may be commenced within two (2) months from the date of receipt by the FFSA of such notification. The FFSA shall within those two (2) months issue (i) any

provisions it deems necessary for the supervision of the branch and (ii), where necessary, any conditions required from a public interest point of view.

A credit institution licensed in a non-EEA state may establish a branch in Finland subject to obtaining a separate license from the FFSA. The position of a financial institution belonging to a consolidation group of a non-EEA credit institution is not regulated. Since the purpose of the Act is to protect the interest of the public in a foreign context and it derives from the Banking Directive (2000/12/EC) and its amending directive the Markets in Financial Instruments Directive (2004/39/EC), the applicability of such provisions cannot be extended to credit institutions operating outside the EEA.

## **4.7 Supervisory Requirements**

### **4.7.1 Regulatory Capital Adequacy**

The relevant EC directives and the Basel Committee guidelines on capital adequacy have been implemented in Finland through the Credit Institutions Act. The Act requires Finnish credit institutions to ensure that their aggregate amount of own funds is at all times at least equal to its minimum capital requirements. Furthermore, credit institutions are required to comply with a higher capital requirement than the minimum capital if the required capital adequacy ratio (own funds in relation to its risk-weighted assets and off-balance sheet items) calculated with respect to credit, market and operational risks exceeds the ratio for the minimum capital requirement. The Act further contains detailed provisions on the calculation of capital adequacy and risk classification of assets. Capital adequacy requirements are applied to the global assets of Finnish credit institutions.

The international regulatory framework for banks has been developed by the Basel Committee on Banking Supervision in order to strengthen the regulation, supervision and risk management of the banking sector. The Basel Committee published the Basel II report on "International Convergence of Capital Measurement and Capital Standards: a Revised Framework" in June 2004. The report has been updated and supplemented later on and in September 2011 the Basel Committee published its first Progress report on Basel III implementation, which focuses on the status of domestic rule-making processes to ensure that the Committee's capital standards are transformed into regulations according to the internationally agreed timeframes. Although Basel III is likely to further increase the cost of banking transactions for several companies, there are different opinions among the market players on whether the benefits of the regulations will nevertheless outweigh its possible disadvantages.

### **4.7.2 Internal Control and Operational Risk**

Adequate internal control and risk management of Finnish credit institutions are required by the Credit Institutions Act and the Act on Supervision of Financial and Insurance Conglomerates, and are governed more specifically by a regulation and a guideline issued by the FFSA. The basic principle is that the risk management and other aspects of internal control exercised by credit institutions should be adequate, considering the nature and scope of operations. Further, credit institutions should refrain from excessive risk-taking in their operations and should employ control methods that enable identification, assessment and limitation of the risks inherent in business. The regulation further contains detailed provisions on management style, control policy, risk management, segregation of duties, adequate information and communication systems as well as on monitoring procedures and corrective measures.

A credit institution's management is responsible for organizing internal control. On a consolidation group level, the management of the credit institution or financial holding company operating as the parent undertaking of the consolidation group is responsible for laying down the group's strategies and policies concerning risk management and other aspects of internal control, and must monitor the undertakings of the group on a comprehensive basis. Nevertheless, the parent undertaking's extensive responsibility does not relieve the management of a subsidiary credit institution from its responsibility for organizing internal control within its own entity.

### 4.7.3 Bank Ownership

Major acquisitions of shares in credit institutions are monitored by the FFSA. Any acquisition of shares, whether direct or indirect, exceeding 10 percent of all the shares or voting rights of a credit institution must be notified to the FFSA prior to the acquisition. The same applies to holdings that would otherwise entitle to use an influence comparable to the above holding or other significant influence in the management of the credit institution. In addition, the notification duty applies to any acquisition that increases a shareholder's proportion of the share capital or voting rights of a credit institution to more than twenty (20), thirty (30) or fifty (50) percent or decreases the same to below ten (10), twenty (20), thirty (30) or fifty (50) percent. The same thresholds also apply to financial and insurance conglomerates.

The FFSA may within sixty (60) working days from the receipt of a notification prohibit an acquisition if the ownership, due to the lack of credibility and suitability of the owner or otherwise, is likely to endanger the proper and sound business activity of the credit institution or its consolidation group. Further, a failure to comply with the notification duty or the FFSA's prohibition to acquire shares in certain credit institutions entitles the FFSA to prohibit or nullify the registration of the acquisition into the share and shareholders registers of the relevant entity, which affects the voting rights of the shares.

## 4.8 Customer Protection

### 4.8.1 Deposit Protection

A Finnish credit institution cannot be made subject to company reorganization proceedings (the Finnish equivalent to Chapter 11 proceedings in the United States). On the other hand, Finnish law provides for a regime through the Act on Temporary Interruption of Operations of Deposit Banks (1509/2001, as amended, *FI: laki talletuspankin toiminnan väliaikaisesta keskeyttämisestä*), which in many respects is similar to the general company reorganization regime whereby the operations of a deposit bank may be suspended for an interim period in the situation where continuation of the operations would jeopardize the interests of the depositors and other creditors or would prejudice the stability of the financial markets. The decision to suspend a bank is made by the Ministry of Finance. In respect of bankruptcy of a deposit bank or other credit institution, the general bankruptcy rules apply with certain exceptions as stipulated in the Act on Commercial Banks (1501/2001, as amended, *FI: laki liikepankeista ja muista osakeyhtiömuotoisista luottolaitoksista*).

In order to safeguard the interests of depositors in the event of insolvency of a deposit bank, a Finnish deposit bank is required to be a member of the Finnish deposit guarantee fund. Further, a branch of a foreign credit institution operating in Finland may apply for membership in the fund. The deposit guarantee fund is funded by way of annual contributions paid by the participating deposit banks. In case a deposit bank is unable to meet its deposit repayment obligations and such failure is the result of its financial difficulties (other than of a temporary nature), the fund will compensate the depositor for the shortfall. Subject to certain exceptions, the maximum amount of compensation payable to an individual customer with respect to deposits in one deposit bank is a total of EUR 100,000.

### 4.8.2 Dispute Resolution

The FFSA reviews the general contractual terms used by credit institutions in Finland. In addition, the FFSA has issued guidelines concerning various dealings by a credit institution with its customers. In a retail context, the Finnish consumer protection legislation is of significant importance. For example, consumer credits are subject to detailed regulation protecting the weaker contracting party. The Consumer Credit Directive (2008/48/EC) has been implemented in Finland further enhancing the customer protection aspects in credit granting. The Finnish Consumer Ombudsman (*FI: kuluttaja-asiamies*) has the general responsibility for ensuring that the consumer protection legislation is adhered to by the market participants.

As to dispute resolution between a credit institution and a consumer, unless amicable resolution is reached between the parties, the matter will quite often in the first instance be submitted to the Finnish Consumer Disputes Board (*FI: kuluttajariitalautakunta*) for assessment. The Consumer Ombudsman may assist the consumer in the proceedings. Compared to court proceedings, proceedings in the Consumer Disputes Board are quicker, more informal and less costly. On the other hand, rulings of the Consumer Disputes Board lack enforceability and thus normal court proceedings may be required as a subsequent step. However, in practice market participants often tend to follow the rulings of the Consumer Dispute Board.

The Finnish Securities Complaint Board (*FI: arvopaperilautakunta*), operating in connection with the Finnish Financial Ombudsman Bureau (*FI: vakuutus- ja rahoitusneuvonta*), gives recommendations on, *inter alia*, disputes arising between a bank or an investment services firm and its customers relating to the provision of banking or investment services. As with the Consumer Disputes Board, the rulings given by the Board are not enforceable on the parties.

#### 4.9 Prevention of Money Laundering

The Act on Preventing and Clearing Money Laundering and Terrorist Financing (503/2008, as amended, *FI: laki rahanpesun ja terrorismin rahoittamisen estämisestä ja selvittämisestä*) imposes obligations on credit institutions and financial institutions, both Finnish and foreign, operating in Finland. The purpose of the act is to prevent money laundering and terrorist financing, to promote their detection and investigation and to reinforce the tracing and recovery of the proceeds of crime. The act also lays down provisions on the obligation to register certain activities, the requirements set for them and their supervision.

Under the Act on Preventing and Clearing Money Laundering and Terrorist Financing, credit institutions and financial institutions are required to give the authorities any information that could help achieve the objectives of the legislation. This requirement applies to every type of credit institution and financial institution, including Finnish branches and representative offices of foreign credit institutions and financial institutions.

Customer identification and verification shall be made in respect of new customers and a credit institution or financial institution is required to suspend a transaction pending further clarification, or to refuse to accept an assignment, should any doubt arise as to the origin of the funds used in the transaction or as to the funds being used for criminal activity or terrorism. Entities or persons covered by the Act must report any such suspicious transactions or suspected terrorist financing to the Money Laundering Clearing House (*FI: rahanpesun selvittelykeskus*). If, however, suspension or rejection of the transaction would hamper detection of the ultimate beneficiary, the transaction may be executed, and the institution must inform the Money Laundering Clearing House forthwith.

#### 4.10 Insurances

Subject to obtaining a concession from the FFSA, an insurance company may be established either as a limited company or as a mutual insurance company in accordance with the Finnish Insurance Companies Act (521/2008, as amended, *FI: vakuutusyhtiölaki*), which is based on corresponding European Union regulation.

The Foreign Insurance Companies Act (398/1995, as amended, *FI: laki ulkomaisista vakuutusyhtiöistä*) allows any insurance company established within the EEA to underwrite (i) non-life insurance coverage for certain risks relating to Finland; and (ii) life insurance coverage for private residents of Finland and for enterprises in respect of their establishments in Finland, either through an establishment in Finland or from its domicile on the basis of freedom of services. Other foreign insurance companies require a concession from the FFSA for such activities.

Non-life and life insurance contracts are, with certain exceptions, governed by the Insurance Contracts Act (543/1994, as amended, *FI: vakuutusopimuslaki*). However, this act does not apply to, for example, statutory insurances or to reinsurance.

The dominant companies in the Finnish insurance market differ according to the type of insurance. As regards non-life insurances, the figures from 2010 show that the largest companies are OP-Pohjola group, If and Tapiola group, measured by the gross premiums written. As regards life assurances, the biggest companies include OP, Nordea and Mandatum Life.

The market for insurance brokerage has grown significantly in Finland after the adoption of the Act on Insurance Intermediaries (570/2005, as amended, *FI: laki vakuutusedustuksesta*), which implemented the Directive on Insurance Mediation (2002/92/EC). One noteworthy feature of the Finnish insurance system is that employment pensions are organized within private mutual pension insurance companies, the largest of which include Varma, Ilmarinen, Tapiola and Eläke-Fennia, measured by the gross premiums written in 2010.



## 5. COMPANY LAW

### 5.1 Introduction

Natural persons domiciled in an EEA member state, Finnish entities and duly registered branches of EEA entities are entitled to carry on a legitimate trade or business in Finland without prior permission from the government in accordance with the Freedom of Trade Act (122/1919, as amended, *FI: laki elinkeinon harjoittamisen oikeudesta*). Unless Finland's international obligations provide differently, other natural and legal persons are entitled to carry on a trade or business in Finland only if they are granted a permit by the National Board of Patents and Registration (*FI: patentti- ja rekisterihallitus*). Most of the permits are granted on first application. Some types of businesses requiring e.g. specific skills or specific care by the entrepreneur are always subject to licensing and permit requirements irrespective of whether carried out by Finnish or non-Finnish persons.

The most important forms of incorporation for business enterprises are: general partnerships (*FI: avoin yhtiö*), limited partnerships (*FI: kommandiittiyhtiö*), limited companies (*FI: osakeyhtiö*) and cooperative societies (*FI: osuuskunta*). In Finland, one distinguishes between three types of limited companies: private limited companies (*FI: yksityinen osakeyhtiö*, which is abbreviated oy), public limited companies (*FI: julkinen osakeyhtiö*, which is abbreviated Oyj) and European companies (Societas Europaea (SE), *FI: eurooppayhtiö*). Associations (*FI: yhdistys*) and foundations (*FI: säätiö*) that are established for non-profit making purposes may also engage in business activities, whereas a private limited company may be founded with a non-profit objective. Non-profit organizations will not be dealt with further in this presentation. As mentioned above foreign companies may also conduct business in Finland through a Finnish branch office (*FI: sivuliike*). This form of business will be covered in 5.7 below.

Business can also be conducted as a sole proprietorship (*FI: yksityinen elinkeinonharjoittaja*), which, although registered in the Finnish Trade Register (*FI: kaupparekisteri*), is not considered a separate legal entity. The same applies to joint ventures, which are not regulated by law. Joint ventures may emerge through shareholders' agreements, joint construction projects and various pooling arrangements between enterprises. They cannot acquire rights or assume obligations on their own and there is no specific decision making structure regulated for a joint venture.

### 5.2 The Choice of Corporate Form

In general, the form of the business in Finland may be freely chosen among those currently recognized and regulated by law. In certain regulated areas, such as financial services, this choice is restricted to certain corporate forms. The choice of form is important, since such matters as tax treatment, exposure to personal liability, the right to dispose of company funds and methods of administration vary significantly between the different forms.

The most popular form of business in Finland overwhelmingly is the private limited company. Out of a total of 548,915 enterprises and traders registered in the Trade Register by the end of year 2012, 224,074 were private limited companies and 202 public limited companies, compared with 187,488 sole proprietorships. Further, also 35,376 limited partnerships, 12,671 general partnerships, 4,227 cooperatives and 1,059 branch offices had been registered with the Trade Register. When assessing these figures it should be kept in mind that a considerable number of registered companies – maybe as many as one third – have in fact ceased their activities or are mere shell companies.

### 5.3 Registration of Enterprises

Companies and cooperatives organized under Finnish law as well as sole proprietors must register with the national Trade Register before commencing business activities. The Trade Register is kept in Helsinki, but the registration documents can also be submitted to local register offices (*FI: maistraatti*), Centres for Economic Development, Transport and the Environment (*FI: elinkeino-, liikenne- ja ympäristökeskus*) and

local tax offices (*FI: verovirasto*). The basic declaration is filed on a dual start-up notification form that serves the needs of both the Trade Register and the tax administration, including the Value Added Tax (the “VAT”) register (see the Trade Register Act (129/1979, as amended, *FI: kaupparekisterilaki*) and the Business Information Act (244/2001, as amended, *FI: yritys- ja yhteisötietolaki*). Upon filing the notification form, the Trade Register will check that the suggested trade name is not violating any existing names or trademarks.

The public Trade Register includes basic information about the business enterprises registered therein and of their annual accounts. The Trade Register also maintains Finnish entries into the European Business Register, which includes official information about business enterprises Europe-wide. Further information about registration procedures can be found on the Trade Register’s web site <http://www.prh.fi>.

## 5.4 Partnerships

Partnerships are fairly common in Finland, but are not widely used as a vehicle for establishing a business in Finland from overseas. A partnership is formed by an agreement between the partners. Finnish partnerships are of two types: general partnerships (*FI: avoin yhtiö*, which is abbreviated *Ay*) and limited partnerships (*FI: kommandiittiyhtiö*, which is abbreviated *Ky*). Partnerships are governed by the Partnerships Act (389/1988, as amended, *FI: laki avoimesta yhtiöstä ja kommandiittiyhtiöstä*). The key difference between the two forms is that in a general partnership all partners are jointly and severally liable for the partnership’s obligations, whereas a limited partnership has general partners, who are personally liable for the partnership’s obligations, as well as limited partners (also known as silent partners), whose liability is limited to the amount of their capital investment. A general partnership and a limited partnership may be converted into a private limited company, and similarly a private limited company, provided that it has at least two (2) shareholders, may be changed into a general partnership or a limited partnership so that the shareholders of the company become partners in the general or limited partnership.

### 5.4.1 General Partnership

The Partnerships Act is based on the principle of contractual freedom. This means that as far as the mutual relations between the partners are concerned, they may make whatever arrangement they see fit, concerning, among other things, the division of power between the parties, the management of the partnership and the veto right. Each partner, however, has a mandatory right to investigate the company accounts and books and to bring a legal action challenging the annual accounts.

Partnerships in general are very simply organized, owing to the fact that in most cases there are no more than two partners. In relation to third parties each partner may, if not otherwise agreed, represent the partnership and sign its name within the limits set by the objects of the partnership.

There are no legal requirements as to the capitalization of a partnership, hence the partners may freely agree on their investments in the partnership. Partners working actively in the partnership may be paid a salary. Profits are distributed between the partners equally, if not otherwise agreed. Interest on the prevailing amount of paid up capital is paid out first. Partners can at any time withdraw money invested in the partnership and/or take out money or assets from the company. Consequently a creditor can demand full payment from any of the partners for a claim on the partnership, and a new partner is personally liable for company debts existing on the date of entry into the company.

### 5.4.2 Limited Partnership

In a limited partnership, silent partners are liable for partnership debts only to the amount of their investment, which is defined in the Partnership Agreement. There are no peremptory provisions on the minimum capital investment. The position of the general partner is the same as that of partners in a general partnership. The limited partners have neither managerial power nor a right to block decisions or to represent the partnership. Certain decisions of great significance can nevertheless not be made without

their approval. Such is the case, for instance, if the general partner wishes to go beyond the objects of the partnership, assign his share in the partnership or merge the partnership with another company. Limited partnerships have proven to be useful for running family businesses, for professionals such as attorneys and architects and for raising money to be used for private placements.

## 5.5 Limited Companies

### 5.5.1 Scope of Application

The limited company has its statutory basis in the Companies Act (624/2006, as amended, *FI: osakeyhtiölaki*) and can be a private limited company or a public limited company. A public limited company must have a minimum paid-up share capital of EUR 80,000. The required minimum paid-up share capital for a private limited company is EUR 2,500. The shares and bonds of a private company may, as a general rule, not be subject to trade on NASDAQ OMX Helsinki Ltd (the “**Stock Exchange**”). For more information about listing conditions, see chapter 15. The rules in the Companies Act are, subject to a few exceptions, identical for both private and public companies. The main differences relate to the decision making procedures for, e.g., acquisition or redemption of company’s own shares and to the auditing regulations. For banks and insurance companies limited by shares there is specific legislation that to some extent overrules the general Companies Act. State-owned companies are governed by the Companies Act. A separate set of rules has been enacted in order to define the role of Parliament and the Government concerning the disposition of shares in those companies (1368/2007, *FI: laki valtion yhtiöomistuksesta ja omistajaohjauksesta*).

Annual accounts and consolidated annual accounts shall be prepared in accordance with the provisions of the Accounting Act (1336/1997, as amended, *FI: kirjanpitolaki*). In order to comply with Regulation (EC) No. (1606/2002) on the application of international accounting standards, companies listed on the Stock Exchange have to prepare their consolidated accounts in accordance with the International Financial Reporting Standards (the “**IFRS**”). Furthermore, if a company listed on the Stock Exchange is not required to prepare consolidated accounts, it has to apply the IFRS to its annual accounts. The listed companies may, if they so wish, apply the international standards also to the individual annual accounts. Finnish law allows for other limited companies to comply with IFRS, if they so choose and if the Auditing Act (459/2007, as amended, *FI: tilintarkastuslaki*) applies to them.

### 5.5.2 Formation and Shares

To establish a limited company, several formalities must be followed. First, a memorandum of incorporation must be drawn up and signed by the person or persons forming the company. The memorandum must include, among other things, the Articles of Association of the company being formed (the “**Articles**”), and an offer of and subscription for the company’s shares. There are no restrictions as to the nationality of the shareholders. In other words, a company from another country can found a wholly owned subsidiary in Finland without the participation of any third party. The actual incorporation of a company occurs through its registration in the national Trade Register. A general condition for registration is that the share capital subscribed for has been paid in full (as stated in a certificate from the auditors or, if the election of an auditor is not mandatory, otherwise demonstrated) and that the board of directors and, if applicable, the managing director have produced a written statement declaring that the legal requirements for the formation of the company have been observed. The time required for registering a company varies between two (2) to three (3) weeks. Persons who have participated in measures or decisions taken on behalf of the company prior to its registration are jointly and severally liable for any obligations the company incurs through such measures and decisions.

The company’s shares may be held by one or more shareholders. The Articles may provide for different classes of shares carrying different rights or obligations, such as voting rights. The Articles may also provide for shares that carry no voting rights at all or do not carry a vote in certain matters only. Also

redeemable shares may be issued by the company. As a rule, shares may be freely transferred and acquired, unless otherwise stipulated in the Articles. Bearer shares are not recognized.

The shares of both public and private companies are entered both into a numeric share register and an alphabetical shareholders' register, kept by the board of directors. Both registers are open for inspection by any interested party. In a private company it is the obligation of the board of directors to keep the registers. However, a shareholder of a private company does not need to have his or her shares entered into the registers (unless the shareholder is the sole owner of all the shares) – in which case he or she cannot use his or her shareholder rights, since a share register entry is a prerequisite for the use of shareholder rights. Companies with shares listed on the Stock Exchange must join a paperless book-entry securities system, which is also available for other companies on a voluntary basis. All legal rights attached to the shares are evidenced by entries in book-entry accounts and the share and shareholders' registers are maintained in a central share register held by Euroclear Finland Oy. For more information about the book-entry securities system, see chapter 15.

### 5.5.3 Share Issues and Acquisition of a Company's Own Shares

At any time after the company has been registered it may issue new shares or transfer treasury shares against payment or free of charge (bonus issue). Companies may, if they wish, opt to operate with a minimum and a maximum share capital. Shareholders at the general meeting can, by simple majority vote, decide on the share issue, or authorize the board of directors to do so within the maximum amount per share class set by the meeting and the limits set by the Articles. A decision to depart from the shareholders' pre-emptive right to subscribe for new shares (directed share issue) and corresponding authorization to the board of directors must be made with a 2/3 majority and be based upon a weighty financial reason considering the company's best interest.

Shareholders at the general meeting can also decide to issue convertible bonds and option rights. The same principles of authorization, 2/3 majority and weighty financial reason prevail.

A company or its subsidiary may not subscribe to the shares of the company, if the shares are issued against payment. However, the company may decide on a share issue to the company itself without payment so that the new shares registered in the share issue are governed by the provisions on treasury shares. Further, a limited company may decide to acquire or redeem its own shares. The decision must be made at the general meeting of shareholders and in a public company with a 2/3 majority or by the board of directors upon a previous authorization by a 2/3 majority at the general meeting. The amount of own shares held by a public company or its subsidiary at any given time may not exceed ten (10) percent of all the shares in the company, and a private company may not acquire or redeem all of its own shares. Usually, a public company's own shares are acquired in public trade (at the Stock Exchange). The acquisition of a company's own shares is regulated in order to ensure equal treatment of the shareholders. When acquiring a business enterprise by a merger or otherwise, a company may take possession of its own shares regardless of the restrictions mentioned above.

### 5.5.4 Organization

The ultimate decision-making power in a limited company is vested in its shareholders at the annual general meeting of shareholders. As a rule, all shareholders are entitled to take part in and to express their opinions and use their voting rights at shareholders' meetings. Most resolutions are passed by simple majority, though some, such as the amendment of the Articles and directed share issue, require a qualified majority of 2/3.

The annual general meeting must be held within six (6) months of the end of the company's financial year, unless the Articles provide for a shorter term. At that meeting the shareholders elect the members of the board and the auditor, approve the annual accounts, decide upon the distribution on any profits and discharge the board from liability. An extraordinary shareholders' meeting can be held whenever the board

of directors or potential supervisory board considers it necessary, when stipulated in the Articles, or at the written request of the company's auditor or shareholders holding at least 1/10 (or a smaller proportion as stipulated in the Articles) of the shares in the company.

The management of a limited company is vested in the company's board of directors. The board members are, as a rule, appointed by the shareholders at the annual general meeting, in a private company for an indefinite term and in a public company until the end of the next annual general meeting, unless stipulated otherwise in the Articles. The board consists of one (1) to five (5) members, unless otherwise stipulated in the Articles. If the number of ordinary board members is less than three (3), at least one (1) deputy member must be elected. If there is more than one board member, a chairman must be elected. At least one board member and one deputy member, if any, must be an EEA resident unless the National Board of Patents and Registration grants an exemption.

More than half of the members of the board must be present for the board meeting to form a quorum, unless a larger proportion is required in the Articles. Resolutions are usually passed by a majority of the members in attendance, unless the Articles provide for a qualified majority for the resolution in question. Board meetings are convened by the chairman of the board when necessary, required by the Articles or requested by a board member or the managing director. A supervisory board may be appointed to oversee the board of directors and the managing director, if provided in the Articles. In practice, such supervisory boards exist mainly in some large state-owned companies.

A limited company may also have a managing director, who is appointed by the board and must abide by its instructions and orders. The managing director can be a member of the board but, according to the Finnish Corporate Governance Code 2010, should not act as the chairman of the board. The board of directors is responsible for the administration and the proper arrangement of the operations of the company, including measures that are unusual or extensive, and the managing director is responsible for the day-to-day management of the company.

The board of directors represents the company and signs for the company. Usually, the Articles stipulate that the chairman of the board or the managing director has the right to sign for the company alone or together with another board member, or that the board may grant this right to its members or third persons. In all cases, the company must ensure that a member of the board of directors, a managing director or some other representative resident in an EEA state is authorized to accept service of documents and other notices on the company's behalf.

There are no specific rules in the Companies Act concerning the management of groups. Therefore, every subsidiary shall be managed by its own legal structure. Furthermore, the Companies Act does not contain provisions on workers' participation in decision making bodies. This issue has been regulated in a separate Act on Personnel Representation in the Administration of Undertakings (725/1990, as amended, *Fl: laki henkilöstön edustuksesta yritysten hallinnossa*). This Act applies to all limited liability companies and cooperatives with total personnel located in Finland averaging at least 150 persons. According to the Act, the social partners in a business enterprise may agree on how to arrange employee representation. In practice, personnel are often represented in a management group under the leadership of the managing director. If they agree upon representation at the board level, which is rather unusual in Finland, the employee representatives are elected in addition to the board members that are elected at the general meeting. Employee representation can amount to a maximum of 25 percent of all members elected (however, not less than one (1) and not more than four (4) representatives).

In general, a limited company has at least one (1) auditor appointed at the annual general meeting. However, small size companies are except from obligation to appoint an auditor subject to certain conditions. In public companies at least one (1) auditor must be an accountant authorized by the Central Chamber of Commerce. The audit, which must be conducted in accordance with generally accepted auditing practices, is prepared as a written report and presented at the annual general meeting. Provisions on auditing performance, qualifications and the supervision of the auditing profession are set forth in the Auditing Act.

The Companies Act does not contain detailed rules on good governance and best managerial practices in listed companies. These issues are considered further in chapter 8.

### 5.5.5 Liability for Damages

Members of the board of directors and the supervisory board, as well as the managing director, are liable to compensate damages caused to the company by their willful or negligent acts or omissions violating the duty of care. The compensation liability applies also to damages caused to the company, its shareholders or other persons by willful or negligent acts or omissions violating the Companies Act or the Articles. Negligence is measured individually according to the principle of *bonus pater familias*. Similar liability rules apply also to company auditors.

A shareholder is liable for damages only if he/she has through a willful or negligent act or omission violated the Companies Act or the Articles. The board of directors decides when to bring an action for damages on behalf of the company. The decision may also be made in a general meeting of shareholders.

### 5.5.6 Minority Protection

At the core of minority protection is the principle of equal treatment, which provides that a resolution by the general meeting, the board of directors, the supervisory board or the managing director that is likely to unduly benefit a shareholder or a third party at the expense of the company or another shareholder may not be passed. The remedy against a violation of this clause made by the general meeting (or the board of directors in matters within the competence of the general meeting that have been delegated to the board) is the right to request a court to declare the resolution null and void.

Shareholders representing ten (10) percent of all shares in the company may exercise certain protective measures. Such a qualified minority may, for example, demand that an extraordinary general meeting be held to address a certain matter, or request that at least half of the profit of the financial period be distributed as dividends. Holding ten (10) percent of the issued shares affords the right to request a special audit of the management and bookkeeping of the company for a specific previous period or for specific measures or matters. The special auditor is appointed by the Regional State Administrative Agency (*Fi: aluehallintovirasto*) of the company's domicile at the request of the minority shareholders. The right to instigate a special audit can be of particular importance when a qualified minority, having opposed a discharge from liability, is considering instituting a derivative action against board members.

### 5.5.7 Restructuring Companies

The Companies Act offers a flexible set of options for companies that wish to merge. Companies may amalgamate through absorption or through combination, in which case a new company comes into existence. The Act provides for a simplified procedure when a parent company wishes to absorb a wholly-owned subsidiary. A shareholder of the merging company, who has voted against the merger decision, can demand the company to redeem his shares at fair market value. The Companies Act also recognizes the right (and, at the request of another shareholder, the obligation) of a shareholder holding more than ninety (90) percent of the shares and the voting power in a company to redeem at any time the remaining shares at fair market value.

A merger can take place only between associations with the same legal constitution. A wholly-owned limited company, however, can be absorbed through merger by a parent cooperative.

There are specific provisions in the Companies Act on the division of a company either so that all the assets and liabilities of the company being divided are transferred to one or more limited companies to be formed, in which case the original dividing company ceases to exist, or so that only part of the assets and liabilities of the company being divided are transferred to one or more recipient companies, in which case the shareholders of the divided company become also shareholders of the recipient companies.

A private limited company can be transformed into a public limited company by a resolution made at the annual general meeting by a qualified majority, provided that the requirements set for a public company, such as a paid-up share capital of EUR 80,000 or more, are fulfilled. Correspondingly, a public limited company can be transformed into a private limited company, provided that the company's shares are not subject to public trading. A private limited company may also be changed into a cooperative, a partnership or, if there is only one shareholder, into sole proprietorship. It is recommended to review any tax effects of such structuring in advance.

### 5.5.8 The European Company

As of 8 October 2004 a Finnish public limited company may participate in the formation of a European company with its domicile in Finland or any other EU country through merger with one or more public limited companies from other EU countries, or be restructured as a European company. Correspondingly two (2) or more companies registered in other EU countries can establish a joint subsidiary in Finland structured as a European company. Once formed as a European company, the company may transfer its domicile to another EU country without dissolution. The legal regime of the European company in Finland is based on Regulation (EC) No. (2157/2001), the Finnish European Companies Act (724/2004, as amended, *FI: eurooppayhtiölaki*) and the Act on Employee Involvement in European Companies (758/2004, *FI: laki henkilöstöedustuksesta eurooppayhtiössä (SE) ja eurooppaosuuskunnassa (SCE)*), which implements the Directive (2001/86/EC).

### 5.6 Cooperatives

Cooperative societies are important players in the agricultural sector and in the retail business (*FI: consumer cooperatives*) in Finland. Under the Cooperatives Act (1488/2001, *FI: osuuskuntalaki*) a cooperative (*FI: osuuskunta*, which is abbreviated *osk*) is a society whose number of members and amount of capital is not determined in advance and whose purpose is to carry on business operations in order to support the finances or trade of its members by having them use the services of the society. The members of a cooperative are not personally liable for the debts of the cooperative but the cooperative rules may, however, provide for an additional fee to be paid in case of liquidation or bankruptcy.

Members must remit one or several membership fees, which shall be returned upon resignation from the society. The cooperative rules may provide that the cooperative can issue investment shares, which have many features in common with shares of limited companies.

As regards governance, auditing and reorganization, the provisions of the Cooperatives Act are quite similar to those of the Companies Act. A cooperative can convert to a limited company without liquidation.

### 5.7 Branch Offices

A foreign company may establish itself in Finland through a branch office (*FI: sivuliike*) trading from a fixed place of business in the company's name and on its behalf. The trade name of the branch must contain the trade name of the foreign company, with a supplement in Finnish or Swedish to indicate its status as a branch. The decision to establish a branch office is made by the governing body of the foreign company. The Trade Register Act sets forth detailed provisions on the compulsory registration of a branch office and the filing of the annual accounts of the foreign company with the Trade Register.

Companies from EEA countries may establish branch offices in Finland by submitting a notification to the Finnish Trade Register, but companies from other countries require permission from the National Board of Patents and Registration. For branch offices of companies' resident outside the EEA, a natural person resident in Finland must be appointed as a domestic representative of the branch with authority to accept service of documents and other notices on the foreign company's behalf. If the company establishing the branch is resident in the EEA, it is sufficient that the representative is resident in the EEA area.

Unlike a limited company, a branch office does not require fixed capital. The foreign company is liable not only to the extent of the capital invested in the branch office but for all debts and other obligations of the branch. The distribution of profits from a branch to its foreign parent is not restricted, nor is a board of directors required.



## 6. COMPETITION AND MERGER CONTROL

### 6.1 Applicable Legislation

The Finnish competition rules are laid down in the Competition Act (948/2011, *FI: kilpailulaki*). The Competition Act has, since its enactment in 1992, been subject to several amendments, the most recent entering into force on 1 November 2011. The latest amendments have resulted in the full harmonization of the substantive provisions of the Competition Act with Articles 101 and 102 of the Treaty on the Functioning of the European Union (“**TFEU**”). The purpose of the Competition Act is the protection of sound and effective economic competition from harmful restrictive practices. The Competition Act contains a prohibition against anti-competitive agreements and concerted practices as well as a prohibition against abuse of dominant position corresponding to Articles 101 and 102 of the TFEU. Further, the Competition Act contains the national provisions on merger control. It also lays down the procedural framework for enforcement and the powers of the competition authorities.

Although the 2011 Competition Act does not include any major changes to the essential elements of competition restrictions as they were regulated by the Act on Competition Restrictions (480/1992, *FI: laki kilpailunrajoituksista*) repealed by the 2011 Competition Act, the 2011 Competition Act does introduce a few substantive amendments. Most notably in the field of merger control, the dominance test previously used by the Finnish Competition Authority (“**FCA**”, *FI: Kilpailuvirasto*) in assessing concentrations was replaced by the SIEC test (significant impediment to effective competition) applied by the European Commission and several other EU Member States. Another substantive amendment is the harmonization of the concept of an undertaking with the definition developed by the European courts, which becomes important in connection with the allocation of the liability for fines. The Competition Act includes also procedural changes in relation to the investigative powers of the FCA, sanctions and the merger control process.

Where a restriction on competition may affect trade between EU Member States, the FCA and national courts apply Articles 101 and 102 of the TFEU in parallel with the Competition Act. Where a restriction on competition affects only the Finnish market, only the substantive provisions of the Competition Act are applied. The fact that the same substantive criteria are applied, irrespective of whether the assessment is made under EU or Finnish law, significantly removes any problems arising from the difficulties in interpretation of the concept of trade effect. As regards procedural rules, the FCA and national courts only follow national law.

The Competition Act applies to economic activities performed by “business undertakings”. A business undertaking is defined in Section 4(1) of the Competition Act as a natural person, or one or more private or public legal persons, who engage in economic activity. The concept of “undertaking” was aligned with the definition applied in the context of EU competition rules in the latest reform of competition rules taking effect on 1 November 2011.

### 6.2 The Competition Authorities

The two main authorities responsible for enforcing the national competition rules, as well as Articles 101 and 102 of the TFEU, are the FCA and the Market Court (*FI: markkinaoikeus*).

The FCA’s role is to examine conditions of competition and investigate competition restrictions. As the authority of first instance, the FCA is responsible for assessing whether the provisions of the Competition Act (or Articles 101 and 102 of the TFEU) have been infringed. The FCA has the power to order an undertaking to terminate the infringing conduct or oblige an undertaking to deliver goods or services on non-discriminatory terms. In addition, the FCA may decide that commitments brought forward by undertakings involved in an alleged competition restriction shall be binding on the undertakings in question if these commitments are such that they may eliminate the restrictive nature of the conduct. Where necessary, the FCA may order interim measures. The FCA may also withdraw the benefit of a Block

Exemption Regulation within Finland if it finds that, in a particular case, the agreement, decision by an association of undertakings or concerted practice to which the exemption regulation applies has effects which are incompatible with Article 101(3) of the TFEU within Finland or a significant part thereof. The FCA does not itself have the power to impose fines for competition infringements but must make a proposal for the imposition of fines to the Market Court. The FCA is further responsible for merger control, and in this context investigates a concentration in the first stage, and either clears it, with or without conditions, or requests the Market Court to prohibit it.

Decisions adopted by the FCA can be appealed to the Market Court. In this connection, the Market Court also reviews the substance of the FCA's decision. The Market Court has the exclusive competence to impose fines or periodic penalty payments and to prohibit mergers, although it must always act on (although not necessarily follow) the FCA's proposal.

The ultimate appellate body in competition matters is the Supreme Administrative Court ("**SCA**", *FI: Korkein hallinto-oikeus*), which functions as the second appellate instance for the FCA's decisions and as first appellate instance for the Market Court's decisions.

In addition, at the regional level, the regional state administrative agencies also have powers to investigate restrictions on competition in cooperation with the FCA. In particular, they have the power to conduct on-site inspections. The agencies, however, lack the power to make any findings of substance. Thus, the competence to assess (and establish) infringements of the Competition Act and/or Articles 101 and 102 of the TFEU rests at a national level exclusively with the FCA.

There are also sectoral authorities for certain industries. The Finnish Communications Regulatory Authority (*FI: Viestintävirasto*) and the Energy Market Authority (*FI: Energiamarkkinavirasto*) ensure effective competition in the telecommunications and energy markets respectively.

On the international level, the FCA forms part of the European Competition Network ("**ECN**") and thus cooperates on a formal basis with the competition authorities of the EU, including the European Commission. Additionally, the FCA cooperates on an informal basis with other foreign competition authorities outside the EU framework.

## 6.3 Competition Restrictions

Sections 5 and 7 of the Competition Act contain prohibitions against anti-competitive agreements and concerted practices as well as a prohibition against abuse of dominant position. These provisions are aligned with Articles 101 and 102 of the TFEU.

### 6.3.1 Anti-competitive Agreements and Concerted Practices

Section 5 of the Competition Act prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices by undertakings that have as their object or effect the significant prevention, restriction or distortion of competition. Section 5 of the Competition Act provides a non-exhaustive list of practices that are in particular prohibited. These are price fixing (including the fixing of selling prices and other trading conditions), limitation of output, allocation of markets, customers, sources of supply or the use of discriminatory trading conditions as well as tying.

Section 5 of the Competition Act prohibits horizontal competition restrictions entered into between competitors or potential competitors such as agreements on prices, sharing of markets, customers or sources of supply, or bid rigging (often referred to as cartels). However, other kinds of horizontal cooperation such as exchange of sensitive information, joint selling arrangements or other joint ventures may also be prohibited. In addition, vertical agreements entered into between undertakings operating on different levels of trade or manufacturing are caught by Section 5 if they include competition restrictions such as resale price maintenance (price-fixing) or market sharing.

A prima facie restriction on competition may benefit from an exemption under article 6 of the Competition Act where the conditions contained therein can be satisfied. The conditions are similar to those listed in Article 101(3) of the TFEU. Generally speaking, competition restrictions such as cartels between competitors or price-fixing and market sharing in the context of vertical agreements, are considered hard-core competition law violations and will not be eligible for exemptions. Conversely, typical vertical agreements such as exclusive distribution, supply, franchising or subcontracting agreements as well as horizontal joint R&D, production, purchasing or standardization agreements and technology transfer agreements are generally considered to create efficiency benefits which justify the exemption. This is, however, provided that they do not involve hard-core restrictions or, in general, result in detrimental market-foreclosure. As the criteria allowing the exemption under Section 6 are consistent with those under Article 101(3) of the TFEU, guidance on the application of the exemption can be sought from the various block exemption regulations issued by the European Commission as well as the interpretative guidelines of the European Commission.

In addition to the general exemption provided for in Section 6, the FCA will refrain from investigating the matter if competition on the relevant market functions properly notwithstanding the anti-competitive practice. This *de minimis* rule is also interpreted in line with established EC practice.

### 6.3.2 Abuse of Dominant Position

Section 7 of the Competition Act, which contains a prohibition against abuse of dominant position, repeats Article 102 of the TFEU nearly verbatim. The objective of the wording is to ensure that the Competition Act contains a level of control for abusive behavior by dominant undertakings corresponding to that established in EC practice. Hence, abusive conduct such as predatory or excessive pricing or price discrimination, fidelity rebates, refusals to deal, discriminatory contract conditions or the abuse of intellectual property rights by dominant companies without a justified reason is prohibited.

According to Section 4(2) of the Competition Act, a dominant position is deemed to be held by one or more undertakings which, either within the entire country or within a given region, hold an exclusive right or other dominant position in a specified product market, which enables them to significantly control the price level or terms of delivery of that product, or in some other corresponding manner influence the competitive conditions on a particular level of production or distribution.

## 6.4 Enforcement

The FCA may commence proceedings on its own initiative or following a complaint. Accordingly, where the FCA suspects that an infringement of Articles 101 or 102 of the TFEU or the equivalent national provisions has occurred, it shall initiate proceedings to eliminate the restriction on competition or to remove the harmful effects of such a restriction.

The 2011 reform of the Competition Act provided the FCA with the right and the duty to prioritize its assignments and thereby optimize the use of its resources. Accordingly, the FCA will not investigate a case if

- it cannot be deemed likely that an infringement of Sections 5 or 7 of the Competition Act or Articles 101 or 102 of the TFEU has occurred;
- competition in the relevant market may be considered functional as a whole, irrespective of the suspected infringement; or
- the complaint in the matter is manifestly unjustified.

The FCA's investigative powers are closely aligned with those conferred on the European Commission under Regulation (EC) No 1/2003 on the implementation of the rules laid down in Articles 101 and 102 of the TFEU ("**EC Implementation Regulation**").

The FCA may send a request for information to any undertaking, to which the latter has a legal obligation to reply. Where an undertaking intentionally or negligently provides incorrect information in response to an information request, or fails to submit information within the specified time limit, the FCA may impose a periodic penalty payment. Furthermore, the intentional provision of incorrect information may entail criminal liability (a fine or imprisonment) under the Finnish Penal Code (39/1889, as amended, *FI: rikoslaki*).

The FCA may conduct inspections at undertakings' business premises or private premises (e.g., residences of its directors). Advance notice of an inspection may be given, but, and especially where undertakings are suspected of participation in a cartel, the FCA tends to carry out inspections without prior warning. The FCA's right to inspect private premises was introduced in the 2011 reform of the Competition Act. An inspection of private premises can only be carried out if there is a reasonable suspicion that documents and book-keeping relating to the subject of the investigation are stored at such premises and requires prior judicial authorization to be granted by the Market Court. While conducting an inspection, the FCA has far-reaching powers of entry and seizure, and undertakings are required to cooperate with any investigation. The FCA's officials are empowered to:

- enter premises and examine books, financial accounts and other documents (including computer files);
- copy or take extracts from such books and business records;
- request on-the-spot oral explanations and record the answers given; and
- seal business premises and books or records for a period and to the extent necessary for the conducting of an inspection.

In addition, in the 2011 reform of the Competition Act, the FCA was given the right to summon representatives of business undertakings or other individuals who can reasonably be suspected to have acted in furtherance of the competition restriction being investigated to appear at the FCA's premises to be questioned for the purpose of gathering information on the subject of the investigation. These questioning sessions may be recorded.

To offset the extensive investigatory powers of the FCA, the safeguards for undertakings during investigations into suspected competition restrictions were also codified in the Competition Act in the 2011 reform. The contents of the provision are in line with the previous non-codified practice of the FCA. The provision on undertakings' rights of defense include the right of an undertaking to be informed of its position in an investigation of a competition restriction by the FCA and of the suspicions directed towards it. Further, an undertaking subject of an investigation is entitled to information regarding documents related to the investigation and the state of the matter, unless precluded by applicable law. Furthermore, it is provided that an undertaking has a right to be heard before the FCA makes a proposal to the Market Court for the imposition of fines, or before taking a decision on the existence of a cartel or abuse of dominant position or another breach of competition law. Moreover, the provision lays down the confidentiality of undertakings' correspondence with external legal counsel (*legal professional privilege*), as well as protection against self-incrimination.

## 6.5 Sanctions

Anti-competitive agreements and concerted practices are void ipso jure. Such agreements and practices cannot be legally enforced in courts of law or arbitration tribunals.

The Competition Act is of an administrative law nature, and accordingly provides only for the imposition of administrative fines and liability for damages.

Insofar as administrative sanctions are concerned, the FCA may order an undertaking to cease conduct that violates the Competition Act. In addition, The Market Court may impose an administrative fine on an undertaking that infringes the provisions of Sections 5 or 7 of the Competition Act or Articles 101 or 102 of the TFEU. Calculation of the amount of the fine is based on overall assessment and in determining the

amount the Market Court shall consider the nature and extent, degree of gravity, and the duration of the infringement. The fine may not exceed ten (10) percent of the undertaking's total annual turnover in the last year of its cartel participation.

The fine is imposed by the Market Court, which can act only upon a proposal from the FCA. The Market Court is however not bound by the FCA's proposal in setting the amount of the fine.

As described in detail below, the leniency program provides for immunity from or reduction of fines in cartel cases. In addition, the FCA can also propose a reduction of the fine in cases concerning other restrictions of competition than cartels (such as a vertical restriction) if an undertaking is considered to have markedly assisted the FCA in its investigation of the restriction concerned. In these cases the Market Court may reduce the fine or decide not to levy a fine at all. Generally, no fine will be imposed where a violation is deemed *de minimis* or where the imposition of a fine is considered unnecessary for the safeguarding of competition.

There is a five-year limitation period for the imposition of fines following an infringement of the Competition Act. The limitation period starts to run from the date on which the competition restriction occurred, or in the case of a continued infringement the date on which the infringement ended. The FCA's investigatory measures (e.g., a dawn raid or the sending of a written request for information) restart the limitation period. The FCA's authority to propose the imposition of a fine will finally fall under the statute of limitations if it has not made a proposal for the imposition of a fine to the Market Court within ten (10) years of the date on which the competition restriction occurred or in the case of a continued infringement the date on which the infringement ended.

The Competition Act also contains sanctions against breaches of the procedural rules. Periodic penalty payments can be imposed for the purposes of, e.g., securing access to information or documents during an investigation or enforcement of an injunction or other order prohibition or obligation.

No criminal liability arises for the infringement of the substantive provisions of the Competition Act, nor does infringement of the Competition Act by an undertaking expose its management to criminal law penalties. However, there is one exception to this, that being where false evidence has been submitted to the FCA, fines or imprisonment of up to six (6) months may be imposed in accordance with the Finnish Penal Code.

### 6.5.1 Leniency

The Competition Act contains provisions for granting total immunity from fines or a reduction of fines in cartel cases. In the 2011 reform of the Competition Act, the leniency program, introduced in 2004, was aligned with the ECN Model Leniency Program and the European Commission's leniency program.

According to the Competition Act, the FCA may refrain from imposing a fine on an undertaking that has participated in a cartel where the applicant undertaking:

- provides the FCA with information and evidence on a competition restriction, which allows the FCA to conduct a surprise inspection; or
- provides the FCA with information and evidence after it has conducted a surprise inspection which allows the FCA to conclude that Section 5 of the Competition Act and/or Article 101 TFEU has been infringed.

Both types of information must be provided to the FCA before it has obtained it from other sources. Moreover, an applicant found to have coerced others into participating in the cartel cannot benefit from immunity.

Where total immunity is no longer available or an applicant does not otherwise qualify for total immunity, an undertaking may benefit from a reduction of fines. According to the Competition Act, an undertaking that is the first to provide the FCA with information and evidence significant for the clarification of the infringement, its extent or nature, will obtain a fine reduction of thirty (30) per cent to fifty (50) per cent, the second applicant will obtain a reduction of twenty (20) per cent to thirty (30) per cent and other applicants fulfilling the criteria would see their fines reduced by a maximum of twenty (20) per cent.

The grant of immunity from or a reduction of fines is additionally conditional upon the applicant undertaking satisfying the following criteria:

- the applicant must immediately terminate participation in the competition restriction (unless the FCA advises it to do otherwise);
- the applicant must cooperate with the FCA continuously throughout the investigation;
- the applicant does not destroy any relevant evidence; and
- the applicant does not disclose to any third party (with the exception of the European Commission or a competition authority of another country if it is necessary for the investigation of the restriction concerned) the fact that it has made an application for immunity from or reduction of fines to the FCA.

Immunity from fines can only be granted to one applicant and only in respect of hard-core cartels, for example, agreements or other horizontal arrangements whereby undertakings have agreed to fix prices, limit output or share markets, customers or sources of supply. An applicant receives a separate decision from the FCA stating whether it has satisfied the conditions for the grant of immunity. By reason of the nature of the criteria, the FCA's decision is conditional on the undertaking continuing to cooperate with the authority throughout the investigation. In cases concerning immunity, the FCA will refrain from making a proposal to the Market Court for the imposition of a fine and thus has the ultimate decision-making power. As regards a reduction of the fine, the FCA makes a proposal to the Market Court in accordance with the scaling laid down in the Competition Act and the Market Court will either confirm the FCA's proposal or substitute it with its own decision.

With respect to the use of information and evidence provided to the FCA by an applicant seeking immunity or leniency, the Competition Act contains a provision according to which such information may not be used for purposes other than for the decisions that the FCA is authorized to take (and their possible further handling in appellate bodies), so as to not worsen the position of the applicant in relation to other participants in the cartel in view of private enforcement proceedings.

## 6.6 Private Enforcement

When the provisions of the Competition Act or Articles 101 or 102 of the TFEU have been breached, either negligently or intentionally, any individual (thus also a private person or public entity) that has suffered damage as a result can claim compensation. Claims for damages are heard by the district courts at first instance. Prior to the 2011 reform this right was strictly confined to undertakings and accordingly consumers, for example, had no standing as claimants under the Competition Act.

The right to obtain damages under the Competition Act covers expenses, price differences, loss of profits and other direct or indirect economic losses caused by an unlawful restriction on competition. The amount of damages can be adjusted where full compensation is considered unreasonable in view of the nature and extent of the damage, the circumstances of the parties involved and other relevant factors.

Punitive or exemplary damages are not available under Finnish law. Further, class actions are not available under Finnish law in respect of competition law-based damages claims.

No specific provisions on the standard of proof exist under Finnish law. The court will in each case assess the relevance, materiality and weight of evidence that the parties present in the course of the proceedings.

and determine the outcome of the case by applying the law to the facts that it finds have been established by the parties. The burden of proving that a violation of competition law has occurred rests with the party alleging the violation, unless the claim is based on a final decision that already establishes that a violation has occurred. The plaintiff will further have to prove that it has suffered a loss and that said loss has been caused by the defendant's anti-competitive conduct.

The right to obtain damages expires if the claim has not been brought within ten (10) years following the date on which the infringement occurred or, in case of a continued infringement, from the date on which the infringement ended. However, if the claim is based on the FCA's decision finding a competition restriction or a proposal to the Market Court for the imposition of a fine, the right to obtain damages does not expire until one year has passed from the date on which the decision in the matter gained legal force.

## 6.7 Merger Control

The provisions on merger control in the Competition Act entered into force on 1 October 1998. In the latest reform of the Competition Act, certain changes were made also to the merger control provisions. The Finnish merger control provisions are broadly similar to those of the Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings ("**EC Merger Regulation**").

### 6.7.1 Concentration and Jurisdictional Thresholds

According to the Competition Act, a concentration is deemed to arise where:

- control (*de jure* or *de facto*) of an undertaking is acquired;
- the whole or part of the business of an undertaking is acquired;
- two (2) or more undertakings merge; or
- a joint venture performing on a lasting basis all the functions of an autonomous economic entity (i.e. a full-function joint venture) is established.

A concentration must be notified to the FCA if the combined aggregate worldwide turnover of the parties exceeds EUR 350 million and the aggregate turnover generated in Finland (including imports into Finland) of each of at least two of the parties exceeds EUR 20 million, provided, however, that the concentration does not fall under the jurisdiction of the European Commission.

In the calculation of the relevant turnovers, the turnover of the whole buyer group is taken into account, whereas of the seller's turnover only the amount relating to the target of the acquisition is relevant. The rules on calculating the turnover correspond for the most part to the provisions of the EC Merger Regulation. If the target company is acquired in stages, all acquisitions from the same seller over a period of two (2) years are taken into account in the turnover calculation.

### 6.7.2 Notification

A concentration must be notified to the FCA if the concentration meets the above-mentioned turnover thresholds. The responsibility to notify rests with the acquirer, the merging parties or those obtaining joint control. The notification must be submitted to the FCA following the conclusion of the acquisition agreement, the acquisition of control, or the announcement of the public bid but prior to the implementation of the transaction. A concentration may also be notified to the FCA as soon as the parties demonstrate with sufficient certainty their intention to conclude a concentration.

The notification form is broadly similar to Form CO of the EC Merger Regulation. Various types of information must be given – depending on the details of each case – *inter alia*, on the parties, the transaction structure, relevant markets, competitors, customers, suppliers, market conditions, entry barriers, trade associations and ancillary restraints. The notification form must be completed either in

Finnish or in Swedish. However, appendices to the notification are generally accepted in English. The FCA may, in individual cases, grant waivers in respect of the information to be given, if certain information is deemed unnecessary for the investigation or if the transaction affects competition only to an insignificant extent. The time limits set for the authority's decision-making will not start running until a complete notification has been filed.

There are no filing fees.

### 6.7.3 Procedure

In the first stage, the concentration is examined by the FCA. During the first-phase investigation, the FCA has a period of one (1) month during which it must either clear the concentration as such or with conditions, conclude that the transaction will not be caught by the Competition Act, or decide to initiate a second-phase investigation. If the FCA decides to initiate a second-phase investigation, it must, within three (3) months (or five (5) months with the permission of the Market Court) of such decision, either clear the concentration as such or with conditions, or request the Market Court to block it.

The time limits set for the FCA's decision-making will not start running until a complete notification has been filed. In addition, in the 2011 reform of the Competition Act a "stop-the-clock" provision was included in the Act. According to this provision, in case the parties do not provide the information requested by the FCA within the set time limit, or provide substantially incomplete or erroneous information, the FCA may make a decision to prolong the time limits for decision making by the corresponding number of days during which the requested information was outstanding.

Having received the FCA's request, the Market Court must make its decision to clear or prohibit the concentration within three (3) months.

With the Market Court procedure included, the maximum aggregate investigation period of a concentration may amount to up to nine (9) months. However, this is expected to occur only in very exceptional cases. Under the main rule, most concentrations are cleared during the first-phase investigation. The FCA's assessment may be speeded up by pre-notification discussions.

Under the main rule, no steps may be taken to implement the transaction prior to clearance of the concentration. However, when the Market Court is investigating a transaction on the basis of the FCA's request to block it, the prohibition on the implementation ceases within one (1) month from such request, unless the Market Court orders the suspension to continue. The FCA and the Market Court may, upon request, permit certain implementing measures to be taken during the investigation period. For example, a party that has launched a public bid can purchase the shares offered prior to clearance, even though it may not use its voting rights to determine the competitive behavior of the target company.

### 6.7.4 Assessment of a Concentration

When assessing a concentration, the FCA applies only the Finnish merger control provisions. The substantive test for the assessment of concentrations was amended in the 2011 reform of the Competition Act. The dominance test applied previously was replaced by the SIEC-test (significant impediment to effective competition) also applied by the European Commission. Under the SIEC-test, a concentration may be prohibited if it may significantly impede effective competition in the Finnish market or a substantial part thereof, in particular as a result of the creation or strengthening of a dominant position.

As the wording of the SIEC-test indicates, it is expected that the creation or strengthening of a dominant position will remain as the most common cause of incompatibility of an acquisition with the merger control rules. When assessing the creation or strengthening of a dominant position based on these



effects, the FCA takes into account not only the market shares of the parties but also other factors such as the economic and financial strength of the concentration, amount and nature of residual competition, the bargaining power of customers and suppliers, potential competition, barriers to entry and saturation of the markets.

In addition to dominance cases, the SIEC-test is primarily intended to enable intervention in certain arrangements between competitors on markets that can be considered as oligopolistic, where, however, the market leader is not involved and no dominant position is created or strengthened. By applying the SIEC-test to notified acquisitions, the FCA aims to direct attention to post-merger competition effects as a whole, instead of examining the structure of the concerned market(s). Therefore, the role of economic analysis of the effects of concentrations will be more prominent than under the dominance test.

The FCA investigates a concentration and either clears it, with or without conditions, or requests that the Market Court prohibit it. If the impediment to competition may be avoided by attaching conditions to the implementation of the concentration, the FCA shall primarily negotiate and order such conditions to be followed. Where conditions are imposed, the authorities usually prefer structural remedies, such as divestments, but behavioral undertakings can also be used. In the 2011 reform of the Competition Act, the right of the notifying party to appeal a decision whereby the FCA has conditionally approved a transaction was explicitly removed. According to the Competition Act, the FCA is not allowed to impose conditions that the notifying party has not accepted. This means that if the notifying party does not agree with the conditions required by the FCA it can only refuse to accept them, which will cause the FCA to propose to the Market Court to block the transaction. What the notifying party can no longer do is to accept the conditions required by the FCA, close the transaction, and thereafter appeal to the Market Court for the removal of the conditions.

If the impediment to competition cannot be avoided by attaching conditions, the FCA requests that the Market Court prohibit the concentration. Until March 2012, the FCA has proposed blocking a concentration only twice, although several cases have entered the second-phase investigation and have been resolved by commitments given by the parties concerned.

#### **6.7.5 Sanctions on Failure to Comply with the Notification Requirements**

The filing of a notification with the FCA is mandatory if the concentration is caught by the Competition Act. Under the main rule, no steps may be taken to implement the transaction prior to clearance of the concentration. If the parties implement the concentration before clearance or without regard to conditions imposed by the competition authorities or the Market Court's decision to prohibit the concentration, an administrative fine of up to ten (10) percent of the total turnover of the relevant undertaking(s) may be imposed.

Notwithstanding a prior decision, the Market Court may, at the proposal of the FCA, prohibit the concentration, order the concentration to be dissolved or attach conditions to the implementation of the concentration if the parties to the concentration have supplied false or misleading information that has had a substantial effect on the decision. The same applies if the concentration has been implemented during the suspension period or without regard to the conditions imposed by the competition authorities or the Market Court's decision to prohibit the concentration. The FCA must inform the parties of its intention to reassess the concentration no later than one (1) year after the final decision became effective or after the concentration was implemented, whichever occurs last.

#### **6.8 Appeal**

Administrative decisions of the FCA can be appealed to the Market Court, with a further appeal possibility to the Supreme Administrative Court. The decisions adopted by the Market Court as the first instance are also subject to an appeal to the Supreme Administrative Court.

Private law-based claims for damages for violations of competition law are heard by the general courts of law. Accordingly, a claim for damages can be brought before the district courts. A judgment rendered by a district court concerning a claim for damages for violations of competition rules can be appealed to the competent Court of Appeal, and, if leave to appeal is exceptionally granted, from the Court of Appeal to the Supreme Court.

## 7. CONTRACT LAW AND DAMAGES

### 7.1 Contract Law – Applicable Legislation

Finnish legislation on contracts is divided into several different statutes covering different types of contracts. The Contracts Act (228/1929, as amended, *Fl: laki varallisuusvoikeudellisista oikeustoimista*) as a general law regulates the formation and invalidity of contracts as well as legal representation related to contractual relationships. However, there is no general law on the content or breach of a contract or on related remedies and other significant contractual questions.

Specific contractual laws of significance are, *inter alia*, (i) the Consumer Protection Act (38/1978, as amended, *Fl: kuluttajansuojalaki*) which governs contracts involving consumers and contains mandatory provisions protecting the interests of consumers, (ii) the Sale of Goods Act (355/1987, as amended, *Fl: kauppalaki*), (iii) Act on Commercial Representatives and Salesmen (417/1992, as amended, the “**Agency Act**”, *Fl: laki kauppaedustajista ja myyntimiehistä*), (iv) Code of Real Estate (540/1995, as amended, *Fl: maakaari*), (v) the Employment Contracts Act (55/2001, as amended, *Fl: työsopimuslaki*), (vi) the Insurance Contracts Act (543/1994, as amended, *Fl: vakuutusopimuslaki*), (vii) the Act on Residential Leases (481/1995, as amended, *Fl: laki asuinhuoneiston vuokrauksesta*) and (viii) the Act on Lease of Business Premises (482/1995, as amended, *Fl: laki liikehuoneiston vuokrauksesta*).

The main international statutes that impact contractual relationships in Finland are: (i) EU regulations on various types of contracts and contractual legal questions, especially in the areas of consumer protection, product liability, sales representatives, insurance, competition and labor, (ii) the United Nations Convention on Contracts for the International Sale of Goods, which Finland has ratified in 1988, and (iii) the Nordic tradition. Several significant Finnish statutes, such as the Contracts Act, are based on joint Nordic drafting.

### 7.2 General Principles of Finnish Contract Law

#### 7.2.1 Contractual Freedom

Finnish contract law adheres to the principle of contractual freedom. According to this principle, two parties of equal standing are themselves free to decide whether to contract with each other and to define the content of their contracts. The parties may thus, in general, freely decide upon the content of the contract. There are nevertheless some statutory limitations to contractual freedom. If a term is regarded unreasonable in accordance with section 36 of the Contracts Act, such a contract term may be adjusted due to unreasonableness. This section is nevertheless applied only in very exceptional situations in business-to-business relations.

#### 7.2.2 Binding Effect of Contracts (*pacta sunt servanda*)

In Finland, contracts are subject to the rule of binding effect, which derives from the protection of good faith. The contracting parties are free to enter into commitments that can, if needed, be enforced by courts or execution authorities. However, it should be noted that there are, especially in the field of consumer protection, mandatory provisions that affect the binding nature of contracts.

#### 7.2.3 General Duties of Good Faith and Loyalty

In general, a contractual party has a duty to inform the other party of any significant matters that might affect fulfillment of their contractual obligations, and to do its utmost to minimize any damage that it might suffer through the performance or breach of the contract. The weaker a contractual party is in relation to the other party, the greater the stronger party's duties of loyalty are.

The contracting parties' duty of loyalty derives from the principle of reliance in contract. The duty of loyalty is greater in contractual relationships involving consumers than between business partners of equal standing. As previously stated, consumer laws contain mandatory provisions which cannot be deviated from to the detriment of the consumer.

#### 7.2.4 Contractual Fairness

Contractual relationships are subject to the principle of fairness. Contracts are viewed as mutual exchange of values balancing the interests of the contracting parties. While Finnish contract law recognizes first and foremost the binding nature of contractual obligations, there are provisions in the Consumer Protection Act, in the Act on Contractual Terms between Commercial Parties (1062/1993, as amended, *FI: laki elinkeinonharjoittajien välisten sopimusehtojen sääntelystä*), and in the Contracts Act, that allow the courts as a last resort to override this binding nature to create an equitable solution, where certain circumstances prevail.

### 7.3 Formation of Contracts

Finnish law does not, unless otherwise specifically provided, recognize any legal formalities as regards formation of contracts. An oral contract is considered as binding as a written contract. However, due to difficulties in verifying the formation and the agreed content of the contract, oral contracts are seldom used.

#### 7.3.1 The Contracts Act

The formation of contracts is primarily regulated in the Contracts Act. Other contractual legislation does not, as a rule, contain any provisions regarding the actual formation of contracts, but merely imposes certain form requirements related to formation. Form requirements can be found, for example, in the Code of Real Estate regarding contracts on transfer of title to a real estate (these form requirements do not apply when transferring shares in a real estate company) and in the Arbitration Act (967/1992, as amended, *FI: laki välimiesmenettelystä*) regarding arbitration agreements.

Under the Contracts Act, a contract is formed when an offer is accepted. An offer is considered binding, as a rule, from the moment the recipient has examined the received offer. If the offer is oral, the answer is to be given immediately, unless otherwise provided in the offer. If the offer has been given by using other means, the answer is to be given within the time period indicated in the offer or within a reasonable time.

The provisions of the Contracts Act on formation of contracts are not exhaustive. The Contracts Act provides that the formation of a legally binding contract does not require a specific offer and acceptance. In general, a contract is formed when the contracting parties have unanimously agreed upon the conclusion and content of the contract.

#### 7.3.2 Other Means of Formation

In addition to the strict offer-acceptance mechanism above, there are other means of forming legally binding contracts. These are as follows: (i) contracts formed through negotiations, where the contracts are usually formed gradually during the negotiations phase; (ii) facts forming a contract, i.e. where there are no actual expressions of intent, for example in the case of use of an automatic machine or travelling by public transportation; (iii) tacit contracts where parties co-operate together in such a way that a contractual relationship can be deemed to exist, but the time or the means of formation of the agreement cannot be verified later; and (iv) contracts concluded by using standard terms unilaterally drafted by one party.

Finland has implemented the Directive on Distance Marketing of Consumer Financial Services (2002/65/EC) in 2005. The implementation, which was concluded by adding a new chapter, chapter 6 a, to the Consumer Protection Act, supplemented the Finnish provisions on distance selling. According to the

new provisions, so called “distance contracts”, i.e. contracts for financial services between a supplier and a consumer under an organized distance sales or service-provision scheme run by the supplier, who, for the purpose of that contract makes exclusive use of distance communication at the time the contract is concluded, will also be recognized as a new form of contract in Finland. This means that the contracting parties agree upon the conclusion and the content of the contract without meeting personally.

## 7.4 Special Types of Contract

Separate statutes do not exist for every contract type. Different classifications of contracts such as individual, standard, consumer, business/commercial, agreements concluded for a specific performance and long-term agreements have an impact on the interpretation of the contract. The regulations on certain significant commercial contracts are briefly described below.

### 7.4.1 Agency Contracts

Finland has implemented the Commercial Agent Directive (86/653/EC) through the Agency Act. The provisions of the Agency Act are, as a rule, optional, and the parties may therefore freely deviate from them. However, the Agency Act contains mandatory rules on contract termination and compensation due, restrictions on competition, and both parties’ right to receive information from the other. These mandatory rules may not be deviated from to the detriment of the agent, not even through choice of law clauses.

### 7.4.2 Distributor and Franchising Contracts

There are no statutes that specifically regulate distributorships or franchises in Finland, but a number of statutes have indirect impact. For example, the court’s power under the Contracts Act to adjust or nullify inequitable clauses also applies to distributorship and franchising contracts; the Act on Residential Leases applies if the franchisee is granted a lease by the franchisor; trademark licensing is subject to the Trademarks Act (7/1964, as amended, *FI: tavaramerkkilaki*); and information disclosed by a franchisor to a franchisee is protected under the Unfair Business Practices Act (1061/1978, as amended, *FI: laki sopimattomasta menettelystä elinkeinoalalla*).

Distributorships and franchises are also subject to general provisions of Finnish competition law that prohibit anti-competitive practices, such as price-fixing and abuse of a dominant market position.

## 7.5 Contract Interpretation

In interpreting a contract, a Finnish court will take into account both subjective and objective aspects related to the contract. The subjective aspects relate to the parties’ free will to enter into commitments, state of mind and intentions, with the aim to reconstruct the contract reached by the parties. The objective aspects relate to the principle of reliance of contract. The court will therefore not rely solely on the actual wording of the contract, but will also take into account the external circumstances prevailing during the contracting stage and the parties’ performance of earlier contracts. Therefore, contractual interpretation in Finland does not focus on the wording of the contract as much as in common law countries.

When a linguistic interpretation does not clearly manifest the contracting parties’ mutual agreement, there are a number of supplementary rules of interpretation that can be employed. Examples of such rules are: (i) the consequences of an ambiguity in a contract should be borne by the party who has drafted the contract; (ii) the text of the contract overrides the titles and subtitles used in the contract; (iii) specific clauses override general clauses; and (iv) a contracting party’s obligations set forth in the contract should not be interpreted expansively.

## 7.6 Termination of Contract

Contractual obligations may be terminated on several different grounds. Some of the main ways of terminating a contract are described below.

### 7.6.1 Withdrawal and Rescission

As a general rule, one cannot unilaterally withdraw from a contract, unless the contract provides otherwise. Unlawful withdrawal has no effect, and the creditor is entitled to require a payment in kind or a compensation for the damage incurred. The Consumer Protection Act and the Agency Act contain certain limitations to this compensation right.

Rescission of a contract is generally considered to be the most drastic way of terminating a contract and is used as a last resort. The general principle under Finnish law regarding rescission of a contract is that rescission must be based on a fundamental breach of contract. Rescission of a contract has two main legal consequences: (i) the contract immediately ceases to be in effect and (ii) the contracting parties are required to return all payments made or items transferred.

### 7.6.2 Termination

Contracts concluded for a specific purpose usually terminate, when the contracting parties have fulfilled their contractual obligations in accordance with the contract.

As a general rule, a contracting party is free to terminate a contract which has been concluded for an unspecified period of time, i.e. is valid until further notice. The contracting party may, unless otherwise provided in the contract or applicable legislation, terminate such a contract, with the result that the contract ceases to be in effect as of the time chosen by it and without presenting any specific grounds for the termination. In practice, the other party is given the benefit of a reasonable notice period. Furthermore, the Employment Contracts Act and the Act on Residential Leases, for example, contain certain limitations on this right of unilateral termination.

Contracts concluded for a fixed period of time usually cease to be in effect when the contract term expires. Contracts concluded for a fixed period of time cannot be terminated prior to expiry, unless otherwise agreed between the parties.

Unless otherwise provided by law, all damages caused by an unlawful termination of contract shall be compensated. Compensation for unlawful termination may therefore include costs related to, for example, the examination of the right to terminate the contract, reorganization and removal costs and the possible difference in price paid to a new contracting party for replacement.

### 7.6.3 Cancellation

A contract may also cease to be in effect due to an obstacle to performance of the contract or due to a contracting party's passivity. An obstacle to perform usually only temporarily absolves the contracting party from performing its obligations under the contract. However, if the consequence of the obstacle to performance or the delay caused by the obstacle fundamentally impacts the contract, the entire contract may become void. Additionally, the contract may become void, if the obstacle to perform lasts for a considerable time. The above does not rule out the possibility to claim for damages or the return of effected payments etc. Further, a contract may be cancelled by public authorities, for example, in a situation where competition authorities declare a merger null and void.

## 7.7 Adjustment of Contract

The Contracts Act gives the Finnish courts the power to adjust or nullify contractual terms that are inequitable or that would be inequitable if performed. In deciding whether a contractual term is actually or potentially inequitable, the courts will consider the objective and subjective circumstances prevailing during and after the conclusion of the contract. In case the court considers the entire contract inequitable as a result of adjustment or nullification of a term by it, the court may decide to adjust other provisions in the contract, as well, or to declare the entire contract terminated. The latter alternative, however, is possible only when the contract as a whole has become untenable due to adjustment or nullification of an inequitable term.

The courts have considered the possibility of adjustment under the Contracts Act to be very broad in scope and are not averse to using it, if a contractual term is improper considering the contents of the contract, the circumstances of the formation of the contract, subsequent events and the characteristics and relative bargaining positions of the parties.

## 7.8 Damages - Introduction

The Finnish laws covering compensation of damages can be divided into three separate categories. The first category covers damages arising from contractual relationships and the second category covers liability for non-contractual damages, i.e. damages caused to third parties. Only the latter are governed by the Finnish Tort Liability Act (412/1974, as amended, *FI: vahingonkorvauslaki*). Damages resulting from breach of contract are assessed in accordance with the contract breached. The third category of damages covers damages to which special legislation providing for strict liability applies, such as damage caused by electricity, product liability, liability for nuclear damage, transportation liability and liability for environmental damage.

## 7.9 Contractual Damages

### 7.9.1 General

In general, a contracting party that causes economic loss by breaching a contract, either itself or through individuals under its control must compensate the other party for the loss. The injured party needs only demonstrate that the damage resulted from the other party's act or omission. There is therefore a presumption of negligence on the part of the breaching party, which the breaching party must rebut to avoid liability.

Under Finnish law, in case of both contractual and non-contractual damages, the basis for compensation is that the damage must have resulted from an act, omission, negligence or some other chain of events that incurs liability. Causality is primarily determined by comparing the actual chain of events to a hypothetical chain of events, where the act or omission claimed to have caused the damage is removed. The liability does not, however, have unlimited reach through the chain of events, nor does it extend to improbable or unforeseeable consequences. This limitation concerns indirect damage in particular.

The distinction between personal injury or property damage and economic loss is seldom important in contractual relationships. All of the above categories fall within the scope of compensation without any specific prerequisites. In practice, a typical compensation obligation concerns tangible economic loss.

The distinction between direct and indirect damage is more significant, although there is no established definition thereof in Finnish law. In the Sale of Goods Act and the Consumer Protection Act, the liability for damages differs depending on whether the damage is direct or indirect. In all other situations both direct and indirect damages are to be compensated by applying the same basis for liability. It is, however, common that liability for indirect damages is partially or entirely excluded by contract.

As a rule, the maximum amount of compensation that can be received cannot exceed the economic loss suffered by the claimant, unless otherwise specifically provided by statute or by contract. This rule stems from the principle of prohibiting unjust enrichment, according to which the compensation payable cannot place the injured party in a better position than that party would have been in, had the breach not occurred.

The statutes governing contractual liability are optional unless otherwise specifically provided for. Contracting parties may therefore agree upon the legal consequences of a breach of contract, both by specifying remedies already recognized by law (e.g. by using limitation of liability clauses) and by inventing new forms of remedies.

### 7.9.2 Liquidated Damages and Other Contractual Consequences

Liquidated damages are commonly used in different types of contracts, particularly in contracts regarding construction, delivery, competition and confidentiality. A liquidated damages clause enables the claimant to claim compensation without having to prove the existence of damage or even the cause of the damage; it is sufficient that a breach, as set forth in the contract, has occurred.

There are no specific statutes in Finland regarding liquidated damages. Unless otherwise agreed, the prerequisites for claiming liquidated damages are derived from general contract law principles.

In addition to liquidated damages, contracts may include a termination fee clause. A termination fee enables a party to avoid its contractual obligations by paying an agreed fee. A further form of contractual remedy in the case of termination is the forfeiture clause. Under a forfeiture clause, the terminating party forfeits all or part of the payment already effected. A forfeiture clause may, however, in certain situations be deemed unreasonable for the terminating party and may therefore be adjusted by a court. However, it is more typical to initially claim a reduction in price and rectification. Further, the injured party can often claim the cost of covering purchases from another source as compensation for the direct damage caused by a breach of contract.

### 7.9.3 Limitation of Liability

Limitation of liability is usually achieved by contractually limiting the maximum amount of compensation and/or by excluding certain types of damage, such as indirect damage, from the scope of compensation. It should be noted that, in regard to standard form contracts, a limitation of liability clause is enforceable only, if it has been duly brought to the attention of the other party during the contracting stage or if it is obvious that the other party should have been aware of such clause.

Under Finnish law, a contracting party cannot invoke a limitation of liability clause if he or she has caused the damage intentionally or by gross negligence. On the other hand, a limitation of liability clause can be adjusted by a court pursuant to the Contracts Act.



## 8. CORPORATE GOVERNANCE

### 8.1 Applicable Legislation

Corporate governance in Finnish companies is mainly regulated by the Companies Act, which applies to both public and private companies. The Companies Act includes provisions on the relationship between the board of directors, managing director and the shareholders, as well as provisions on their respective rights and obligations.

The duties of the company and the board of directors towards the securities market are regulated by the Securities Markets Act (495/1989, as amended, the “SMA”, *FI: arvopaperimarkkinalaki*) and other securities market legislation, such as the rules and regulations issued by the FFSA, the rules of the Stock Exchange and other rules applied by the Stock Exchange, which include the Finnish Corporate Governance Code (the “**Corporate Governance Code**”).

The rules of the Stock Exchange apply to all companies that are listed or have applied for listing on the Stock Exchange. The Corporate Governance Code similarly applies only to listed companies but has in practice been applied also by a number of private companies. Its provisions are not mandatory. However, if listed companies do not comply with the Corporate Governance Code, they shall explain the reasons for not doing so (the so called “Comply or Explain” principle).

### 8.2 Shareholders' Rights

#### 8.2.1 General

Shareholders exercise their principal rights at the general meeting of shareholders. These include the right to attend the meeting, the right to request information relating to the matters to be decided upon at the meeting, the right to make proposals at the meeting and the right to vote.

Further, shareholders have the right to challenge a decision made at the general meeting and to request a copy of the minutes of the meeting (regardless of whether the shareholder actually attended the meeting). Decisions may be challenged in case of a procedural fault, for example if the meeting was not convened in accordance with the provisions of the Companies Act or the Articles or if the decision itself is contrary to law.

#### 8.2.2 Access to Information

Shareholders in listed companies have no general right to access company information. They do, however, have a right at the general meeting to request the board of directors or the managing director to provide further information on matters that may affect the assessment of the financial statements and the financial status of the company or another matter being handled at the meeting. The board of directors or the managing director must provide this information unless they consider that such disclosure may cause material damage to the company. In addition, the SMA requires that listed companies disclose all information about circumstances that may materially affect the price of the company's listed securities.

#### 8.2.3 General Meeting of Shareholders

General meetings of shareholders are generally convened by the board of directors. The general meeting constitutes a quorum when at least one (1) shareholder is present. However, in order for a meeting to be valid, all rules pertaining to the convocation of the meeting must have been followed, such as the proper and timely notification to all shareholders as set out in the Companies Act and the Articles.

All companies must hold an annual general meeting within six (6) months of the end of each financial period. Extraordinary general meetings are convened when the board so decides or when the auditor of the company or shareholders holding at least ten (10) percent of the shares in the company demand that a meeting be held. Each individual shareholder has the right to have a matter falling within the competence of the general meeting dealt with by the general meeting. This applies to both annual and extraordinary general meetings.

Issues that shall be decided upon at every annual general meeting are:

- the adoption of audited financial statements, which in a parent company include also consolidated financial statements;
- the measures to which the profit of the adopted financial statements may give rise;
- the granting of discharge from liability to the directors, the members of potential supervisory board and the managing director;
- the appointment of directors, members of potential supervisory board and the auditors, unless otherwise provided in the Companies Act or in the Articles on their term of appointment; and
- other matters that according to the Articles are to be decided by the annual general meeting.

Matters that fall under the competence of the general meeting are determined by the Companies Act. However, it may be provided in the Articles that the general meeting decides on a matter that falls within the general competence of the board of directors and managing director. Also, the board may submit matters falling within the general competence of the board to be decided by the general meeting. In individual cases, unanimous shareholders may also otherwise make decisions on a matter falling within the general competence of the board and managing director.

As a general rule, resolutions of the general meeting are made by a simple majority of votes cast. However, certain resolutions, such as the issuance of shares in deviation from the shareholders' preemptive rights and amendment of the Articles, must be supported by a qualified majority, i.e., two thirds (2/3) of the votes cast and the shares represented at the meeting. In companies with several share classes, certain resolutions also require the support of a qualified majority of two thirds (2/3) of the votes cast and of the total number of shares within each of the share classes represented at the general meeting.

## **8.2.4 Legal Action on behalf of the Company**

Under certain conditions, shareholders have the right to initiate legal action in their own name towards a member of the board of directors or the managing director for the collection of damages to the company, provided that it is likely that the company will not itself make a claim for damages. Such action may be initiated if the plaintiff shareholder(s) hold at least ten (10) percent of all the shares in the company or if it is shown that non-enforcement of the claim for damages would be contrary to the principle of equal treatment of shareholders. An action can be initiated notwithstanding that the person liable in damages has been discharged from liability by a decision of the general meeting but in such case the action must be initiated within three (3) months of the decision.

## **8.3 Management Structure and the Role of Directors**

### **8.3.1 Structure**

A company's management is vested with the board of directors. The board may appoint a managing director (who may also be a member of the board) with responsibility for the day-to-day management of the company. A company may also have a supervisory board that supervises the management of the company. Supervisory boards are used mainly in some government-controlled companies. Their use and significance is limited and has further declined in recent years.

### 8.3.2 Election

Directors are elected by the general meeting. The Corporate Governance Code recommends that a majority of the directors be independent of the company, and that at least two (2) directors be independent of the major shareholders. The Corporate Governance Code furthermore states that both genders shall be represented on the board. If the company has a nomination committee, the committee will typically be responsible for preparing a proposal for the election of directors to be presented at the general meeting.

### 8.3.3 Directors' Duties

The board of directors is responsible for the administration and the proper organization of the operations of the company. The board generally elects the managing director and is responsible for the supervision of the book-keeping and control of the company's financial affairs. The duties of the board of directors include a duty of care and a duty of loyalty, requiring the directors to act with loyalty towards and in the best interest of the company.

A director (or the managing director) who willfully or negligently breaches his or her duties may be held liable to compensate any damage caused to the company. A director (or the managing director) may also be held directly liable towards a shareholder or another third party, if that party has suffered damage through the directors' breach of the Companies Act or the Articles. Breach of the SMA and the directors' duties towards the securities market – e.g. in connection with the company's disclosure obligations or in relation to duties in connection with a takeover – may also trigger liability under the securities market legislation. The general meeting can remove a director it has elected at any time.

### 8.3.4 Operations of the Board of Directors

The board of directors may freely decide when and how to meet. According to the Corporate Governance Code, the board shall adopt a written charter describing its main duties and working principles and the company shall disclose the essential contents of the charter. The company shall also report the number of board meetings held each financial period, as well as the attendance of directors at the board meetings, so that shareholders can evaluate the efficiency of board work. The Corporate Governance Code further states that the board of directors shall conduct an annual evaluation of its operations and working methods. The company shall also ensure that each director is properly introduced to the company's operations and that he or she is provided with the necessary information on the company's operations on a regular basis.

The board of directors shall make all decisions as a body and may not generally delegate its responsibilities and liability under law. This does not, however, mean that the board of directors would not be able to assign specific matters to be prepared by board committees or to give individual directors their own areas of responsibility subject to the above rule. However, any related decisions can only be made by the entire board.

According to the Corporate Governance Code, the effective discharge of the duties of the board may require that board committees are established. The Corporate Governance Code addresses the roles of the audit, nomination and remuneration committees. Other committees may also be established where necessary. If an audit, nomination or remuneration committee is established, its members shall be elected from among the directors. All members of the audit committee shall be independent of the company and at least one (1) member shall be independent of significant shareholders. A majority of the members of the nomination and remuneration committees shall be independent of the company and the nomination and remuneration committees shall not include the managing director or any other executive. Each committee shall regularly report on its work to the board of directors. The board of directors shall approve a written charter for each committee's work and disclose the essential contents of the charter.

### 8.3.5 Remuneration

The general meeting decides on the remuneration payable for board members as well as the basis for its determination. The board of directors decides on the remuneration of the managing director as well as other compensation payable to him or her. In addition to monetary remuneration, the remuneration can comprise performance-related incentive schemes, pension schemes, as well as shares and share-related compensation systems. However, the Corporate Governance Code recommends that non-executive directors should not participate in share-based remuneration schemes.

According to the Corporate Governance Code, the company shall publish a remuneration statement on its website containing a consistent description of remuneration within the company. The remuneration statement shall contain information on the financial benefits of the board of directors, managing director and supervisory board as well as information on the decision-making process and main principles of remuneration.

### 8.3.6 Conflicts of Interest

According to the Companies Act, a director may not participate in the handling of an agreement or other legal act between the director and the company or between the company and a third party through which the director would receive a material benefit that may be contrary to the interests of the company. The director will have to evaluate in each case, whether his or her personal interest in a matter conflicts with the interest of the company. The director's duty of loyalty may oblige him or her to refrain from participating in a matter in which he or she has an interest which may be contrary to that of the company.

## 8.4 Disclosure

Pursuant to the SMA, a listed company is under a continuous obligation to disclose to the market all decisions and information about circumstances that may materially affect the price of the company's listed securities. The rules of the Stock Exchange further specify situations in which information must be disclosed. Liability for breach of this disclosure obligation rests principally with the company. The board of directors may also be held liable to compensate damage caused to the company. Both the company and the members of the board and management may also be subject to administrative and criminal sanctions. Breach of the rules of the Stock Exchange is dealt with by the Disciplinary Board of the Stock Exchange, which may impose various disciplinary sanctions on the company.

Furthermore, listed companies have an obligation, based on the SMA, to issue a Corporate Governance Statement in connection with the annual report indicating, *inter alia*, how they comply with the Corporate Governance Code.

## 8.5 Accounts and Audits

All listed companies must elect at least one (1) auditor certified by the Central Chamber of Commerce. The auditor is elected at the general meeting, usually for one (1) year at a time. The requirement of auditors' independence requires that an auditor resigns from this position should a situation arise that would prevent the auditor from discharging his or her duties independently. The performance of non-audit services may compromise the auditors' independence. According to the Corporate Governance Code, the company shall disclose the fees paid to the auditor for the financial period and separately report any fees paid for non-audit services. When in willful or negligent breach of his or her duties, an auditor may be held liable to compensate damage caused to the company or to a shareholder or another third party if that party suffered damage through the auditor's breach of the Auditing Act, the Companies Act or the Articles.

As a main rule, a listed company shall prepare annual accounts as well as an interim report for the first three (3), six (6) and nine (9) months of the financial year. The directors and the managing director shall sign the annual accounts of the company. Listed companies shall disclose a financial statement bulletin,

the annual report and the interim reports. The board of directors is ultimately responsible for such disclosures.

## 8.6 Enforcement

Enforcement of the regulations governing listed companies is carried out by the FFSA or through the disciplinary procedures of the Stock Exchange. In addition to market control, the enforcement of corporate law by individual shareholders or the companies themselves is generally carried out through court proceedings or arbitration.

## 8.7 Reforms

The implementation of the Shareholders' Rights Directive (2007/36/EC) took place in August 2009 mainly through amendments to the Companies Act. As Finnish legislation fulfilled most of the minimum requirements of the Directive already before its implementation and the practices of Finnish public companies conformed to a large extent even with the detailed requirements of the Directive, no major amendments to Finnish legislation were necessary due to the implementation of the Directive.

A new version of the Corporate Governance Code was issued on 15 June 2010. The new Corporate Governance Code entered into force on 1 October 2010, replacing the previous version that was issued in October 2008. The new Corporate Governance Code implements changes required by the Remuneration Recommendation (2009/385/EC) issued by the European Commission on 30 April 2009. Furthermore, it reflects amendments made to the Finnish Companies Act in 2009 as a result of the implementation of the Shareholders' Rights Directive (2007/36/EC).

In the beginning of 2009, the Ministry of Finance appointed a working group to draft proposals on a new SMA and other related legislation. The working group presented its proposal for a reform of the securities markets legislation in February 2011 and it is expected that the new legislation will enter into force on 1 July 2012.

The purpose of the reform is to ensure that legislation on the Finnish securities market is effective, clear and understandable, and that it promotes the competitiveness of the Finnish securities market.

For more information about the Finnish securities market and the reform of the securities market legislation, see chapter 15.

## 9. DISPUTE RESOLUTION AND ARBITRATION

### 9.1 Applicable Legislation

The Finnish legal system contains modern and well-established provisions for various forms of dispute resolution. Civil litigation is governed by the provisions of the Code of Judicial Procedure (4/1734, as amended, *FI: oikeudenkäymiskaari*), which was subject to a substantial revision in 1993. Administrative appeal and litigation are regulated by the Administrative Judicial Procedure Act (586/1996, as amended, *FI: hallintolainkäyttölaki*) and arbitration is regulated by the Arbitration Act (967/1992, as amended, *FI: laki välimiesmenettelystä*).

Alternative dispute resolution (the “ADR”), or more specifically mediation, has recently been introduced as a useful alternative to the more traditional forms of dispute resolution. Court-annexed ADR has been a valid dispute resolution method in Finland since 2005, and is now governed by the Act on Mediation in Civil Matters and Confirmation of Settlements in General Courts (394/2011, as amended, *FI: laki riita-asioiden sovittelusta ja sovinnon vahvistamisesta yleisissä tuomioistuimissa*). In addition, the Finnish Bar Association, in co-operation with the Centre for Dispute Resolution (the “CEDR”) in London, has been training Finnish mediators since 1998.

The following overview of dispute resolution in Finland will briefly describe civil litigation, administrative appeal and the arbitration procedure. It will also briefly examine the new methods of alternative dispute resolution in Finland. Criminal proceedings and penalties are outside the scope of this overview.

### 9.2 Court System

**Two branches:** The court system in Finland consists of two separate branches: the general courts and the administrative courts. Matters regarding relations between natural or private legal persons are typically handled by the general courts and those relating to the application of administrative law are generally subject to the jurisdiction of the administrative courts. Criminal law, despite its administrative nature, falls within the jurisdiction of the general courts. The courts of both branches are organized into a three-step hierarchy.

**General branch:** The courts of first instance for most matters in the general branch are the District Courts (*FI: käräjäoikeus*). This is the case even for large commercial disputes, since Finland has no special courts for commercial disputes. The decisions of the District Courts may be appealed to the competent Court of Appeal (*FI: hovioikeus*), which mainly processes cases in writing, but will with certain exceptions hear the case in oral proceedings whenever requested by a party. Appeals to the Supreme Court (*FI: korkein oikeus*) are permitted only if the Supreme Court grants the appellant leave, which will be the case only where weighty reasons exist. The basic reason for granting leave to appeal is that the Supreme Court considers a decision important for similar cases or in order to ensure consistency and uniformity of legal practice. In practice, leave to appeal is granted in less than ten (10) percent of cases.

**Administrative law branch:** Various government agencies and administrative authorities issue decisions affecting the rights, obligations or interests of individuals. The administrative courts mainly deal with appeals against such decisions, and disputes over some public interest between a public authority and private persons. Appeals against administrative decisions taken by state or municipal authorities are, as a rule, lodged with the competent Administrative Court (*FI: hallinto-oikeus*), which is the court of first instance in most administrative matters. Some decisions of government agencies and authorities can however be appealed to the Ministry under which they operate or to other administrative authorities. The Supreme Administrative Court (*FI: korkein hallinto-oikeus*) functions as the appeal court for decisions taken by top-level administrative authorities and the Administrative Courts.

**Special Courts:** In addition to the general courts and the administrative courts, some special courts have been instituted for specific matters. Special courts offer expertise which general courts would not always

be able to offer. Special courts are, *inter alia*, the Market Court (*FI: markkinaoikeus*), the Labour Court (*FI: työtuomioistuin*), the Insurance Tribunal (*FI: vakuutusoiikeus*) and the High Court of Impeachment (*FI: valtakunnanoikeus*).

### 9.3 Use of Advocates in Legal Proceedings

It is not compulsory to use an advocate in legal proceedings in Finland, nor do advocates have the sole right to appear in court. A party to a case may represent himself unassisted, but in practice, counsel is usually employed in commercial litigation. The title “advocate” or “attorney-at-law” (*FI: asianajaja*) is reserved for members of the Finnish Bar Association, but besides advocates, the party may be represented or assisted by another person who has a Master’s degree in law, is honest and otherwise suitable and competent, and who is not bankrupt and whose legal competence has not been restricted. As of 1 January 2013, other representatives or persons assisting the party than advocates and public counsels, as a rule, have to obtain a license from the authorities to be entitled to appear in court. Laypersons may not be employed as counsel, but close relatives as well as the party’s spouse may represent or assist a party in a court of law.

Membership of the Finnish Bar Association is open to citizens of EEA member states who are at least 25 years of age. They must have a recognized law degree, four years of qualified experience in law (of which two years must be in private practice) and have passed the Bar examination. Advocates must possess integrity, independence and autonomy. Under the Code of Judicial Procedure, advocates are presumed to fulfill the legal qualifications for serving as trial counsel in any court.

An advocate’s fees are a matter for private agreement with the client. The fee is normally based on the time spent on the case, though other considerations, such as the value and importance of the case and the degree of difficulty involved, may also be relevant.

### 9.4 Civil Procedure in the General Courts

Civil court procedure at all levels is governed by the Code of Judicial Procedure. The proceedings are normally divided into two stages: the preparatory stage and the main hearing stage. The preparatory stage involves exchange of written pleadings and a preparatory hearing. The written pleadings comprise the application for summons, the defendant’s written response and any further written submissions. The preparatory hearing aims at clarifying for the court the parties’ claims and the grounds for the claims. The preparatory hearing may also facilitate settlement of the dispute.

In the main hearing, the parties present their respective claims and arguments, witnesses are examined and cross-examined and the parties deliver their closing arguments. At the end of the main hearing, the court will either issue a judgment immediately or tell the parties when it can be expected.

#### 9.4.1 The Preparatory Stage

##### *Exchange of Written Pleadings*

Civil proceedings are initiated with a written application for summons delivered to the office of the competent District Court. The case becomes pending once the court receives the application.

The application for summons must comprise among other things the following information:

- the specified claim of the plaintiff;
- an account of the facts on which the claim is based;
- as far as possible, the evidence that the plaintiff intends to present (both written and oral) and what each piece of evidence is intended to establish;

- any claim of litigation costs; and
- the basis for the court's jurisdiction over the matter, unless jurisdiction can be inferred from the application for summons or documents attached thereto.

An application for summons usually also contains legal arguments in support of the claim, and has written evidence attached. The latter may however also be filed subsequently in connection with the preparatory hearing.

If the application for summons is incomplete, the court will invite the plaintiff to supplement it. If such invitation is not followed, the application will be dismissed.

If and when the application for summons meets the requirements of the Code of Judicial Procedure, the court issues a summons inviting the defendant to respond in writing and to send the document to the court within a time limit, which is normally between thirty (30) and sixty (60) days. It is, as a rule, the duty of the court to attend *ex officio* to the service of the summons, but the court may also entrust the plaintiff with the task, where the plaintiff so requests.

The defendant's first written pleading is the written response, in which the defendant shall state its view of the plaintiff's claim and, where the claim is opposed, the grounds for the opposition. The defendant shall also state as far as possible what evidence the defendant will submit and present any claim of litigation costs. If the defendant fails to deliver the required response within the time specified, the plaintiff is entitled to default judgment in the matter.

When the court has received the defendant's response, it may, at its discretion, request either or both of the parties to file a written submission commenting further on certain disputed issues. The court may also decide the case solely on the basis of written material if holding a hearing is deemed clearly unnecessary by the court and the parties agree to it.

The Code of Judicial Procedure includes special provisions for undisputed matters, such as undisputed debt collection and tenancy issues. In such cases, the application for summons may be less detailed than in standard proceedings. It need only identify the claim and briefly describe the grounds. No information on evidence is needed. The plaintiff is, however, required to state in the application for summons that the claim, to his knowledge, is undisputed.

Undisputed matters are handled swiftly, normally giving the defendant a shorter period of time within which to respond. Where the defendant contests the claim, despite the plaintiff's belief that it is undisputed, the court will request the plaintiff to amend the application for summons to meet the standard requirements.

### *The Preparatory Hearing*

Cases which are not decided based on written material proceed either to a preparatory hearing before a single judge or, where a preparatory hearing is deemed unnecessary by the court, directly to the main hearing. The objective of the preparatory hearing is to clarify the parties' claims and the grounds for the claims, as well as to identify the issues in dispute. The court will at this point also seek to establish in detail what evidence the parties will present and for what purpose.

At this stage the Code of Judicial Procedure expressly encourages settlement and the court has an express obligation to assess the likelihood that an agreement can be reached. The court can confirm a settlement reached by the parties.

When the court considers that the claims and views of all parties have been sufficiently clarified to ensure expedient handling of the case at the main hearing, the preparatory hearing is concluded. This is a crucial



event in the proceedings, because after that, the parties are not allowed to present new facts or evidence, unless they can show an acceptable reason for not producing such information earlier in the proceedings.

#### **9.4.2 The Main Hearing**

Where a case remains unresolved after the preparatory stage of the proceedings, a separate main hearing will follow. At the main hearing, the proceedings are resumed from the point reached in the preparatory stage. The main hearing is generally held before a panel of three (3) judges, one (1) of whom shall be the judge who handled the case in the preparatory stage.

Like the preparatory hearing, the main hearing is oral. The parties are not allowed to read out written statements, but they may use written notes to support their memory. Parties may read their claims from a document and refer directly to legal practice, judicial literature and any documents containing technical data which is not easily understood. Witnesses are also heard and cross-examined at this point.

#### **9.4.3 Judgment**

In civil litigation the court may judge only on what has been claimed by the parties. The court may not take into account any other facts than the parties have presented in support of their claim or opposition. The judgment must include the final resolution and a statement of grounds. The statement of grounds shall state what facts and legal reasoning the judgment is based on and it must indicate the information on the basis of which a disputed question has been decided.

### **9.5 Administrative Appeal Procedure**

#### **9.5.1 Filing an Appeal**

The main judicial remedy available to individuals and private parties against decisions of administrative authorities is the administrative appeal procedure in the Administrative Courts. Under the Administrative Judicial Procedure Act, an appeal shall be lodged with the Administrative Court. The appeal shall be in writing and it shall indicate the decision challenged, the parts of the decision that are challenged, and the amendments demanded to it as well as the grounds for the amendments. The decision challenged and the documents on which the appellant relies in support of his demand shall also be attached.

The appellant may request a stay of execution and make other subsidiary demands even after the expiry of the appeal period. The only restriction on presenting new grounds in support of an administrative appeal is that they may not result in a change in the nature of the matter.

If the appeal is incomplete, the appellant shall be given the opportunity to supplement it within a specified time limit.

#### **9.5.2 Review on Appeal**

The Administrative Judicial Procedure Act stipulates a general obligation for the Administrative Court to actively review the matter before it. The court shall on its own initiative obtain evidence insofar as the impartiality and fairness of the proceedings and the nature of the case so require. The courts may also take into account other facts than those presented by the parties.

The parties shall be given the opportunity to comment on the demands of other parties and on evidence that may affect the resolution of the matter. The matter may be resolved without giving the parties a chance to comment only where the claim is dismissed without considering its merits, immediately rejected, or if commenting is manifestly unnecessary for some other reason.

The process is normally pursued in writing, but an oral hearing may be conducted where necessary. An oral hearing must be conducted where a party so requests, unless the claim is dismissed without considering its merits, immediately rejected, or an oral hearing is for some other reason manifestly unnecessary.

The Administrative Court has the power to affirm or overrule a decision challenged by an appeal. Additionally it may also amend it, but not to the detriment of the appellant. The judgment must contain a statement of grounds and the final resolution.

## 9.6 Provisional Measures

The Code of Judicial Procedure recognizes three main types of provisional measures:

- attachment for the purposes of securing a monetary claim;
- attachment for the purposes of securing priority over a specified asset; and
- injunction.

In regard to administrative appeals, the only provisional measure provided for in the Administrative Judicial Procedure Act is an execution order by the appellate authority. This measure is described below in the chapter on enforcement of decisions resulting from administrative appeal. If other provisional measures are deemed necessary in connection with an administrative appeal proceeding, an application for provisional measures under the Code of Judicial Procedure shall be submitted to the competent District Court. The provisional measures provided for in the Code of Judicial Procedure are described separately below.

### 9.6.1 Attachment to Secure a Monetary Claim

An attachment order to secure a monetary claim is a process for seizing assets, rights and credits of the defendant as security for the satisfaction of the plaintiff's claim. Under the Code of Judicial Procedure, the granting of such an attachment order is subject to:

- prima facie evidence of an actionable monetary claim; and
- the existence of a threat that the defendant will hide, destroy or dispose of his property or take other steps which could jeopardize the plaintiff's claim.

The first pre-requisite, that the claim shall be actionable, means that it must be capable of serving as the basis for a decision enforceable in Finland. In civil and commercial matters, such a decision can be either a judgment by a court or an arbitral award. Enforceability is not an issue if the main legal proceedings are instituted in Finland, but will be relevant where an attachment is sought in Finland to support litigation abroad. Under Finnish private international law, foreign judgments are generally unenforceable, unless otherwise expressly provided by statute.

The second pre-requisite, that the defendant could compromise the plaintiff's claim, is usually easily satisfied: the mere risk that the defendant will hide, destroy or dispose of his property, or take other steps to jeopardize the plaintiff's claim, will normally suffice. It is not necessary to submit evidence that the defendant has tried to avoid his responsibilities or that he is unreliable.

To enforce a provisional measure, the plaintiff must provide security to cover any loss or damage which may result from the measure. The executive officials within their discretion decide what constitutes adequate security to cover the plaintiff's strict liability. A bank guarantee for a specified sum will usually suffice.

### 9.6.2 Attachment to Secure Priority over an Asset

An attachment order to secure priority over an asset does not apply to the assets of the defendant generally, but to a specific asset. The Code of Judicial Procedure stipulates that such an asset of the defendant may be attached if the plaintiff can show:

- prima facie evidence of priority over the asset in question; and
- a threat that the plaintiff's right will be jeopardized.

These requirements are similar to those for an attachment to secure a monetary claim. However, the focus is on a particular asset, for the possession of which the plaintiff must be able to invoke actionable grounds.

### 9.6.3 Injunction

Under the Code of Judicial Procedure, the requirements for an injunction are:

- prima facie evidence of an actionable claim (other than a claim which may give rise to an attachment order); and
- the existence of a risk that the defendant will take steps which could jeopardize the plaintiff's rights.

The considerations relevant for attachments are relevant also to these pre-requisites. The Code of Judicial Procedure allows the use of injunctions in a wide variety of situations. The court may issue an injunction to:

- prohibit the defendant from doing or undertaking something, under threat of a fine;
- oblige the defendant to do something, under threat of a fine;
- entitle the plaintiff to do, or have done, something;
- order that assets belonging to the defendant be surrendered to the custody and care of a trustee; or
- make any other order necessary to safeguard the plaintiff's rights.

However, when issuing an injunction, the court shall ensure that the defendant does not suffer unreasonable harm in comparison to the interest to be secured. In practice it is usually much more difficult to get an injunction than an attachment order.

### 9.6.4 Costs

The costs of civil litigation and administrative appeal consist of court fees, witness expenses and the fees and costs of the party's counsel. Court fees payable to the State are relatively low in Finland. In the lower courts in the general branch fees vary between EUR 60 and EUR 180 depending on the matter in question, and in the higher instances fees vary between EUR 180 and EUR 230. Court fees in the administrative courts vary between EUR 90 and EUR 230 depending on the issue.

Under the Code of Judicial Procedure, the unsuccessful party in civil litigation is usually liable to pay all reasonable legal costs of the successful party. If the parties are unsuccessful on certain issues but successful on others, the court may order each party to bear their own costs. The court may also order the successful party to recover only a part of its costs from the unsuccessful party. Recoverable costs include both court fees, witness expenses and fees of counsel (both local and foreign), to the extent that such costs were reasonably necessary to protect the party's interest in the case. In addition, the successful party is entitled to reasonable compensation for its own work and for loss directly linked to the litigation.

Under the Administrative Judicial Procedure Act, a party shall compensate the other party for their legal costs in full or in part, if considering the outcome, it is unreasonable to make the other party bear its own costs. The provision may be applied also to the administrative authority that made the challenged decision, however a private individual may not be held liable for the costs of a public authority, unless he has made

a clearly unfounded claim. When assessing a public authority's liability for costs, special account is taken of whether the proceedings have arisen from the authority's error.

## 9.7 Enforcement

### 9.7.1 Judgments

Civil judgments are enforced by state executive officials, primarily the district bailiffs (*FI: kihlakunnanvouti*). Enforcement can be initiated even before the judgment has become final (*res judicata*), i.e., while it is still open to ordinary appeal. Before the judgment is final, the plaintiff (*FI: kantaja*) however must provide security in order for the executive officials to realize the defendant's (*FI: vastaaja*) assets to satisfy the judgment or to transfer any funds recovered to the plaintiff. After the judgment has become final, no security is required.

The plaintiff is strictly liable for any loss or damage incurred by the defendant in connection with the enforcement of a judgment that is not final and which subsequently is dismissed on appeal. The appellate court may under certain conditions grant a stay of execution in favor of the defendant.

### 9.7.2 Foreign Judgments

As mentioned above, foreign judgments are generally not recognized or enforceable in Finland, unless expressly provided by statute. Finland does not have a general legislative Act on private international law which would regulate recognition and enforcement of foreign judgments in general. Rather, provisions concerning recognition and enforcement of foreign judgments stem from either EU legislation, international conventions to which Finland is a party, or from Nordic cooperation. The most notable instruments that provide for enforceability of foreign civil judgments are the Council Regulation 44/2001/EC ("Brussels I Regulation") and the Lugano Convention of 1988.

### 9.7.3 Administrative Decisions

Decisions that qualify for administrative appeal are normally not enforceable until they have become finalized, unless otherwise provided for in an Act or a Decree, if the decision is of a nature requiring immediate enforcement or if enforcement cannot be delayed for reasons of public interest. In such cases the appellate authority or the Administrative Court where an appeal of a decision has been lodged may nevertheless issue an order prohibiting the execution of the decision, an order of stay, or other order relating to the execution of the decision.

As with civil judgments, enforceable administrative decisions are enforced by state executive officials under the Execution Act.

## 9.8 Arbitration

Finland has a long tradition of resolving commercial disputes through arbitration. A remarkably high number of commercial disputes are referred to arbitration and arbitral clauses are very frequently included into both domestic and international business agreements. The Arbitration Act reflects the substance of the UNCITRAL Model Law on International Commercial Arbitration (the "**Model Law**"), although the Model Law as such has not been implemented into Finnish law.

### 9.8.1 Arbitrability and Arbitration Agreements

Under the Arbitration Act, any dispute which can be settled by agreement between the parties may be referred to and finally resolved in arbitration. The decisive criterion is whether the recourse sought could be obtained without the intervention of public authorities.

The formal requirement for an arbitration agreement to be enforceable under the Arbitration Act is that the agreement is made in writing. The writing requirement may also be met by using modern means of communication, as long as they provide a written record of the agreement.

In addition, it is advisable that the following matters be explicitly determined when drafting an arbitration agreement:

- the parties to the agreement;
- the scope of the agreement;
- the law governing the main agreement;
- the seat of the arbitration;
- whether *ad hoc* or institutional arbitration will be used;
- the applicable institutional rules;
- the number of arbitrators;
- the way in which the arbitrators should be appointed;
- the language to be used in the arbitral proceedings; and
- confidentiality (between the parties).

### 9.8.2 Selection of Arbitrators

Under the Arbitration Act, any natural person may be appointed to act as arbitrator, the only general requirement being legal capacity, i.e. that the person in question must be of legal age and must not be under guardianship or in personal bankruptcy. In cases of *ad hoc* arbitral tribunals, the parties are, in principle, free to choose the number of arbitrators and the mode of their appointment. If the parties have not agreed on the matter, there will be three (3) arbitrators. Each party chooses one, and the third is elected by the other two arbitrators to act as Chairman of the tribunal.

In institutional arbitration, the arbitrators are selected in accordance with the rules of the Arbitration Institute of the Central Chamber of Commerce of Finland, which is the sole arbitral institution in Finland. These rules supplement the Arbitration Act. According to the rules, there will be three (3) arbitrators, unless the parties have agreed otherwise. The Arbitration Institute may however consider it appropriate to appoint a sole arbitrator. If a sole arbitrator is appointed, the Arbitration Institute will make the appointment. In other cases, each party will appoint an equal number of arbitrators and the Arbitration Institute will appoint the Chairman. If there are more than two (2) parties involved, the Arbitration Institute may appoint all arbitrators.

An arbitrator must be independent and impartial. Arbitrators appointed by the Arbitration Institute are further required to possess sufficient knowledge in the field at issue. Only a lawyer is qualified to be appointed Chairman or sole arbitrator, unless the Arbitration Institute decides otherwise due to particular reasons.

### 9.8.3 Conduct of the Arbitral Proceedings

The Arbitration Act contains a fairly limited number of procedural rules and only one mandatory provision reflecting the principle of *audiatur et altera pars*, i.e. the parties' right to be given sufficient opportunity to present their case. This principle means in practice that both parties must be allowed to file written pleadings and respond to the other party's pleadings, to present evidence, including witness testimony, to comment on evidence presented by the other party, and to argue their case.

The Act contains no specific rules on how the hearings should be conducted. The arbitrators are under a general obligation to ensure the impartiality and expediency of the proceedings as well as the principle of party autonomy in relation to the procedure to be followed. The emphasis is therefore on the parties' wishes, and the impartiality and speed of proceedings.

As mentioned above, the rules of the Arbitration Institute of the Central Chamber of Commerce complement the Arbitration Act. The rules correspond on a general level to those of other international arbitration institutes. In addition to these rules, the Arbitration Institute has introduced a set of rules for expedited arbitration in less complicated disputes. The rules, which have been effective since June 2004, provide for fast track arbitration intended to last not more than three (3) months.

#### 9.8.4 Rules Applicable to the Substance of the Dispute

Under the Arbitration Act, arbitral tribunals shall decide the substance of the disputes in accordance with the rules of law. Where the parties have specified that the law of a given state be applicable to the substance of the dispute, the arbitral tribunal shall apply that law. An arbitral tribunal may go beyond the bounds of the law to decide the case *ex aequo et bono* only if the parties have expressly authorized them to do so.

#### 9.8.5 Setting Aside an Arbitral Award

Once an arbitral award has been decided, it is final and there is, under Finnish law, no judicial review of the award on its merits. An arbitral award may, according to the Arbitration Act, only be set aside on the following grounds:

- the arbitral tribunal exceeded its authority;
- an arbitrator was not duly appointed;
- an arbitrator could have been disqualified from acting as arbitrator, but a challenge to this effect was not accepted before the award was given, or the party only became aware of the grounds for disqualification at such a late stage that it was not able to challenge the arbitrator before the arbitral award was given; or
- the arbitral tribunal did not give a party sufficient opportunity to present its case.

Further, an arbitral award is null to the extent that the arbitrators have decided a non-arbitrable issue; to the extent the award violates the public policy (*ordre public*) of Finland; if the award is so unclear or incomplete that it does not appear in it how the dispute has been decided; or if the arbitral award is not made in writing or has not been signed by the arbitrators.

#### 9.8.6 Confidentiality

Unlike court proceedings, arbitration is not public. There are no statutory provisions ensuring confidentiality, but it is generally considered that the arbitrators may not disclose what has come to their knowledge during the arbitral procedure. In the event that an arbitrator is a member of the Finnish Bar Association, he is further bound by the specific confidentiality obligation applicable to Bar members, which is also considered to apply when a member is acting as an arbitrator.

As to the parties, the situation is less clear and therefore it is advisable to enter into separate confidentiality agreements in order to ensure confidentiality.

#### 9.8.7 Enforcement of an Arbitral Award

The Arbitration Act includes provisions dealing with the enforcement of awards rendered in Finland, and separate provisions reflecting the New York Convention on the recognition and enforcement of foreign arbitral awards.

### *National Awards*

All arbitral awards made in Finland, irrespective of whether related to a national or an international dispute, are subject to the same enforcement rules. Enforcement shall be initiated before the competent District Court, most often the court having jurisdiction in the area where the unsuccessful party is domiciled or has assets. The application should include as enclosures the original arbitration agreement and the original arbitration award or a duly certified copy of the same.

### *Foreign Awards*

Finland ratified the New York Convention in 1962 and the Arbitration Act meets its requirements. Finland has, however, not made any reservations regarding reciprocity. Recognition and enforcement are therefore not restricted to awards rendered in countries which have ratified the New York convention.

An arbitral award rendered outside Finland is recognized and enforceable in Finland:

- if it flows from an arbitration clause which fulfils Finnish law requirements; and
- to the extent that the award does not violate Finnish public policy.

The Arbitration Act lists the grounds on which recognition or enforcement may be refused. These grounds largely correspond to the New York Convention and are the following:

- invalidity of the arbitration clause;
- violation of due process;
- the arbitral tribunal exceeded its authority;
- irregularity in the composition of the arbitral tribunal or significant irregularity in the arbitral procedure;
- the award not being binding or being set aside; and
- violation of Finnish public policy.

The procedure for enforcing a foreign arbitral award is the same as for awards rendered in Finland.

## **9.9 Alternative Dispute Resolution**

### **9.9.1 Court-Annexed Mediation**

Alternative dispute resolution (ADR) in the form of court-annexed mediation has been an option in Finland since 2005, and it is now governed by the Act on Mediation in Civil Matters and Confirmation of Settlements in General Courts.

Mediation is possible in almost all civil litigation cases in the general courts. The procedure is based on the parties' requirements and it is pursued relatively informally. Both matters which are pending in court and matters which are not yet pending may be submitted to mediation. The mediator acts as a judge of the competent court and the settlement achieved can be confirmed in court and thereby become an enforceable, final decision. Court-annexed mediation will normally be public. The district court may also confirm a settlement reached in out-of-court mediation enforceable.

### **9.9.2 Mediation under the Finnish Bar Association**

In addition to the court-annexed mediation, the Finnish Bar Association offers a means of mediation. Under the Bar Mediation Rules, parties may submit almost any kind of dispute to mediation.

If adopted by the parties as a part of their agreement to mediate, the Bar Mediation Rules provide a framework for submission of any civil or commercial dispute to mediation. The parties may appoint a mediator themselves, or they may ask the Bar Association to propose one of its members. The Bar Association trains mediators and maintains a list of members who have participated in mediation training and who thus possess the requisite skill and knowledge to assist the parties in achieving an amicable settlement.

The mediation procedure is non-binding. Although the parties have agreed to submit their dispute to mediation, they are not obliged to participate in or continue with the mediation process if they do not wish to. The mediator does not have any authority to impose solutions on the parties. The Bar Mediation Rules provide for the independence and impartiality of mediators, as well as confidentiality of the process.

The Bar Mediation Rules do not contain any detailed procedural provisions. Instead, the procedure is informal and may be tailored by the parties and the mediator to the specific requirements of the case. The mediator should above all endeavour to facilitate communications between the parties, so as to enable them to achieve a settlement. If the parties so wish, the mediator may also give a non-binding assessment of the dispute.



## 10. INSOLVENCY AND CORPORATE REORGANIZATION

### 10.1 Applicable Legislation

The main body of the Finnish insolvency law relating to companies and other business entities is contained in the Bankruptcy Act (120/2004, as amended, *FI: konkurssilaki*), the Recovery Act (758/1991, as amended, *FI: laki takaisinsaannista konkurssipesään*), the Creditors' Priority Act (1992/1578, *FI: laki velkojien maksunsaantijärjestyksestä*) of 1992 and the Reorganization Act (47/1993, as amended, *FI: laki yrityksen saneerauksesta*). In addition, there are specific insolvency provisions concerning credit institutions, insurance companies and the reorganization of the debts of a private person. These specific provisions are not, however, dealt with here, nor will this section address exemptions available in respect of netting in relation to securities, currency and payment systems.

The procedures regulated by the Bankruptcy Act, on the one hand, and by the Reorganization Act, on the other, differ from each other in terms of their general principles and underlying goals. Bankruptcy proceedings are intended to satisfy the claims of the creditors in an insolvent company, whereas reorganization proceedings aim at enabling viable companies to arrange their debts in a satisfactory manner.

### 10.2 Bankruptcy

The Bankruptcy Act is a general act regulating bankruptcy of all types of legal persons as well as private persons. Accordingly, it applies to, among others, sole proprietors, partnerships (both general and limited), co-operatives and limited companies.

The purpose of bankruptcy proceedings is to wind up the bankruptcy estate, realize its assets and use the proceeds from the estate to satisfy the creditors' claims in a predictable and cost-efficient manner and by observing applicable provisions on the creditors' priorities.

#### 10.2.1 Prerequisites for Bankruptcy

Bankruptcy proceedings may be initiated either by the debtor or by its creditors by filing a bankruptcy petition. All petitions for bankruptcy proceedings are handled by the District Courts and the forum will, as a rule, be the debtor's domicile. When creditors initiate proceedings, the court must give the debtor an opportunity to be heard. No minimum claim amount is normally required, nor does the relevant claim have to be due when the petition is filed by the creditor.

The general prerequisite for commencement of bankruptcy proceedings is that the debtor is insolvent (i.e. that the debtor's inability to pay debts when they fall due is not just temporary). The debtor is presumed to be insolvent if the insolvency petition is filed by the debtor itself, the debtor has suspended its payments, unsuccessful collection attempts have been made within the last six (6) months or, where the debtor is required to prepare annual accounts, the debtor has failed to pay a due and uncontested claim within a week from receipt of a notice from the creditor. If the debtor is already subject to liquidation proceedings, it is, however, sufficient to establish over-indebtedness. A debtor will not be declared bankrupt if the relevant claim is fully secured (e.g. by bank guarantee or other collateral).

If the court decides in favor of the petition, bankruptcy proceedings commence as of the time of the court's decision.

#### 10.2.2 Effects of Bankruptcy

Upon commencement of the bankruptcy proceedings, the debtor forfeits its right to administer and dispose of all property and the possession of the same is deemed to belong to the bankruptcy estate.

The court shall, at its discretion, appoint a receiver to administer the bankruptcy estate. The most important task of the receiver is to determine the assets and debts of the estate and to prepare an inventory of property. Even though the receiver is in charge of day-to-day decisions and represents the estate in relation to third parties, the ultimate decision making power regarding the estate is exercised by the creditors at the creditors' meeting. The estate may continue the business of the company being declared bankrupt.

Creditors who have duly presented their claims in the bankruptcy proceedings are entitled to receive payment from the assets and funds owned by the debtor at the date when the bankruptcy proceedings began. Claims against the bankruptcy estate must be filed on or before a due date set by the court. Creditors who fail to file their claims forfeit their rights to any share of such assets and funds, but are still entitled to receive payment from assets that the debtor acquires after the commencement of bankruptcy proceedings.

Bankruptcy proceedings are typically brought to an end when the receiver has sorted out the assets and debts of the estate and realized the assets belonging to the estate. The receiver prepares a final settlement according to which the assets of the estate are divided among the creditors. The creditors' meeting must confirm the final settlement.

If the net assets of the estate are not sufficient to satisfy all creditors' claims, the order of priority for the various categories of creditors is determined on the basis of the Creditors' Priority Act. The main principle of the Creditors' Priority Act is that creditors are entitled to a *pro rata* share of the net assets. However, a claim secured by a lien, a right of retention or a legally registered encumbrance on the debtor's property entitles the secured creditor to priority of payment in relation to other unsecured creditors, with the exception of claims secured by floating charges, which entitle the secured creditor to priority of payment up to a maximum of fifty (50) percent of the liquidation value of the encumbered business assets.

It normally takes one (1) to three (3) years until the bankruptcy estate has been completely wound up and the bankruptcy proceedings closed. The duration of the proceedings depends, among other things, on the specific characteristics of the estate and court actions taken by the receiver.

### 10.2.3 Recovery to the Bankruptcy Estate

Recovery of property to the bankruptcy estate is regulated by the Recovery Act. According to the Recovery Act, any fraudulent transaction can be rescinded and property recovered if a creditor is unfairly favored to the detriment of another creditor, assets are removed beyond the reach of creditors, or the debt is increased to the detriment of creditors. This is always provided that the debtor is insolvent, or that the transaction contributed to the debtor's insolvency and that the other party knew or should have known of the insolvency or of the impact on the debtor's financial state as well as of the circumstances due to which the transaction was unfair. If the transaction was concluded earlier than five (5) years before the bankruptcy petition, it may be recovered only if the other party was someone closely related to the debtor.

The Recovery Act also contains specific grounds for recovery, which apply to payment of debt and provision of security. The specific grounds for recovery may apply even though no fraudulent action can be established and are based on claw back periods varying between three (3) months and three (3) years.

A suit to recover property in accordance with the Recovery Act must, as a rule, be filed within six (6) months from the date set by the court for filing claims.

## 10.3 Corporate Reorganization

Reorganization is a court-based procedure for corporations that are, or are likely to become insolvent. The objective of the Reorganization Act is to enable reorganization of corporations that have viable business potential, by means of an approved reorganization program. The Reorganization Act applies to, among

others, sole proprietors, partnerships (both general and limited), co-operatives and limited companies. The purpose of reorganization proceedings is to prepare and confirm a reorganization program for the debtor, which focuses not only on debt reorganization, but also on the business and financial situation of the debtor.

### 10.3.1 Prerequisites for Reorganization Procedure

A petition for reorganization can be presented by the debtor, a creditor, or a potential creditor. In order to commence reorganization proceedings, the debtor and at least two (2) creditors representing no less than twenty (20) percent of the known debt must file a petition with the local District Court. Alternatively, if the court considers it clear that the debtor is currently or imminently insolvent (i.e. that the inability to pay debts when they fall due is not just temporary), proceedings may be commenced on the basis of either the debtor's sole petition or the petition of a creditor. However, commencement of proceedings on the grounds of imminent insolvency requires that the applicant creditor has a substantial and long-term economic interest in ensuring the solvency of the debtor and in accomplishing reorganization. Reorganization proceedings cannot be commenced if the debtor has already been declared bankrupt.

If the court decides to grant the petition, the reorganization proceedings commence as of the time of the court's decision.

### 10.3.2 Effects of Reorganization

At the commencement of reorganization proceedings, the court appoints one or more administrators. The administrator's primary function is to prepare a proposal for a reorganization program together with the debtor and its creditors.

The management of the debtor company remains in control of the day-to-day business operations. Decisions that are beyond the scope of day-to-day operations may not be undertaken without the approval of the administrator. The administrator supervises the operations of the debtor and in cases with a large number of creditors, a creditors' committee (with members representing each group of creditors) is formed to supervise and consult with the administrator.

Reorganization proceedings only affect debts that existed before the commencement of reorganization (reorganization debt). Commencement of reorganization proceedings triggers an automatic stay providing the debtor with general protection from their creditors, unless an interim stay has been imposed in connection with the petition for reorganization. Save for exemption granted by the court, no payment, set-off or enforcement is permitted in respect of reorganization debt.

A transaction that may be recovered in connection with bankruptcy proceedings based on the Bankruptcy Act may similarly be recovered in connection with reorganization proceedings.

### 10.3.3 The Reorganization Program

The reorganization program can include, among other things, debt reorganization, changes in the business operations, changes in production procedures, development of investment plans and improvement of employee relations. Additionally, it may set out changes to be made in the capital and financial structure of the debtor.

For purposes of debt reorganization, the Reorganization Act differentiates between secured and unsecured debt. The principal amount of a secured debt may not be reduced if and to the extent that the collateral has a market value amounting to the principal amount of the secured claim. However, the payment period may be extended and the interest rate of a secured claim may be reduced, although the reorganization program must always provide for the payment of interest on the secured claims at a rate which, considering the effect of inflation, maintains the market value of the claims. These restrictions do

not apply to unsecured debt. Once the reorganization program is confirmed, the automatic stay is lifted and reorganization debt may only be paid in accordance with the program.

Creditors are divided into groups for purposes of voting on the confirmation of the reorganization program. The reorganization program may be confirmed by unanimous vote of all creditors, a majority vote among all groups of creditors or, in certain situations, a majority vote by at least one group of creditors.

The duration of reorganization proceedings may vary from a few months to several years, depending on the size of the company and the nature of the restructuring measures involved. The program generally expires when it has been fully consummated, i.e. when all the reorganization debts have been paid as provided for in the program and other actions stipulated have been taken.

#### **10.4 International Proceedings**

Finland does not, as a rule, recognize insolvency proceedings commenced abroad. The main exception to this rule is insolvency proceedings falling within the scope of the Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings, which is based on the principle of mutual recognition and cooperation. On the basis of the Bankruptcy Convention of the Nordic Countries, bankruptcy proceedings commenced in Finland or in another Nordic country are to a certain extent recognized in the other Nordic countries.

## 11. INTELLECTUAL PROPERTY

### 11.1 Applicable Legislation

Finnish intellectual property legislation has traditionally been in harmony with the corresponding laws of the other Nordic countries. Consequently, there are strong similarities between Danish, Norwegian, Swedish and Finnish intellectual property laws. Moreover, Finnish intellectual property legislation is constantly developing in accordance with the corresponding European Union legislation.

In Finland, the principal laws providing protection for intellectual property rights are the Copyright Act (404/1961, as amended, *FI: tekijänoikeuslaki*), the Patents Act (550/1967, as amended, *FI: patenttilaki*), the Trademarks Act (7/1964, as amended, *FI: tavaramerkkilaki*), the Registered Designs Act (221/1971, as amended, *FI: mallioikeuslaki*), and the Act on Utility Model Rights (800/1991, as amended, *FI: laki hyödyllisyysmallioikeudesta*). Software is protected under copyright law, and the layout design of integrated circuits is protected by the Act on the Exclusive Right in the Layout-Design (Topography) of an Integrated Circuit (32/1991, as amended, *FI: laki yksinoikeudesta integroidun piirin piirimalliin*). The rights of plant breeders are protected under the Plant Breeder's Right Act (1279/2009, *FI: laki kasvinjalostajanoikeudesta*).

In addition, the Unfair Business Practices Act contains provisions providing for protection against unfair utilization of goodwill, direct copying and abuse of trade secrets and know-how. Provisions regarding intellectual property offences are stipulated in the respective intellectual property laws and in the Finnish Penal Code.

### 11.2 Copyright

During the past decade the Finnish Copyright Act has undergone extensive legislative revisions. The legislative amendments have mostly aimed at the national implementation of the harmonization efforts of the European Union in the European copyright regime, such as at the implementation of the Copyright Directive (2001/29/EC).

The Copyright Act provides legal protection to the original and unique expression of an idea, motive, or subject of a literary or an artistic work of authorship. Works of authorship comprise works of fine art, novels, musical scores, dramas, photographs, motion pictures, maps and other descriptive drawings or graphical or three-dimensional works and qualifying data compilations. Computer programs and their applications also enjoy protection as works of authorship under the Copyright Act. According to the Copyright Act, works based on pre-existing works are viewed as derivative works. These works include translations, musical arrangements, literary abridgements, and motion picture adaptations. Authors of derivative works may exercise their copyrights only with the consent of the author of the original work. These copyrights are otherwise identical to the copyrights of the author of the original work.

Legal protection of neighboring rights is provided under the Copyright Act to performers for their performances of literary and artistic works and to fixations of these performances, producers for sound recordings and motion pictures, radio and television broadcasts, non-copyrightable data compilations or databases, and photographs, and qualifying foreign press reports.

Copyright in a work of authorship arises when the work has been created. No copyright registration is required or even possible. Also neighboring rights are automatic. For instance, the rights of producers with regard to their fixations of motion pictures and sound recordings arise automatically once the fixation of a motion picture or a sound recording has occurred.

The rights protected under the Copyright Act can be divided into economic and moral rights. Accordingly, authors enjoy economic rights, such as exclusive distribution and reproduction rights, to their works. These

rights are defined in the Copyright Act as the right of authors to dispose of their works by reproducing copies and making them available to the public in an unaltered or altered form, in the form of a translation or modification or by using another production method. With respect to neighboring rights, economic rights also include the rights of reproduction and distribution granted to performing artists, producers of sound recordings and motion pictures, and broadcasting organizations. As regards non-copyrightable photographs, the photographers are granted the exclusive right of reproduction and making the works available to the public. Performing artists and broadcasting organizations are granted the exclusive right of fixation, in addition to which the exclusive right of reproduction and public display for producers of non-copyrightable data compilations or databases also belongs to economic rights.

Moral rights include the rights of authors and performing artists, as well as of photographers with respect to their photographs, whether copyrightable or not, to have their name announced in connection with the protected work, performance, or photograph whenever it is performed, reproduced, broadcast, shown or displayed whether to the public or in private. In addition, moral rights include the right to prevent any showing or distribution of a protected work, performance, or photograph when such showing or distribution could injure the literary or artistic respect enjoyed by the author, performing artist or photographer.

The reform of the Copyright Act, discussed above, introduced a prohibition against circumvention of technological measures protecting copyrights. The concept of fair compensation for private use was also adopted. In addition, the amended Copyright Act provides for more effective means against counterfeit and pirated goods.

As a general principle, copyrights in qualifying works are owned by the natural person who authored the work. However, copyrights in works authored in the course of employment are, in practice, regarded as owned by the employer if the work forms part of the employer's business. Employees often transfer their copyrights to their employer by virtue of their employment contract or the nature of their work. Copyrights in computer programs and directly related works, as well as in copyrightable data compilations and databases created by employees, transfer to the employer on the basis of law.

If the work is the creation of several authors, copyrights to the work belong to these contributing authors jointly. Consequently, the use of a joint work requires the permission of each author, and these authors may pursue remedies for infringement separately and independently from each other.

As a general rule, the copyright in a work subsists until the end of the seventieth (70<sup>th</sup>) year after the year in which the author died. The duration of copyright in a motion picture is calculated from the year of death of the principal director, the scriptwriter, the screenwriter or the composer who wrote the musical score for the motion picture, whoever died last. The Copyright Act also provides extended protection to literary works considered by the Finnish Ministry of Education to be "classics". This protection covers only the moral rights of the author, and it subsists for as long as the work is considered a "classic".

Neighboring rights under the Copyright Act enjoy varying lengths of duration. Performing artists' reproduction and distribution rights subsist until the end of the fiftieth (50<sup>th</sup>) year after the year in which the performance occurred. If the fixation of the performance is released during this period, the performing artists' protection with respect to the fixation subsists until the end of the fiftieth (50<sup>th</sup>) year after the year in which the fixation was released for the first time.

Copyrights and neighboring rights may be wholly or partially transferred. However, as a general rule, moral rights cannot be transferred. The Copyright Act contains provisions governing the transfer of such rights, but those provisions are applicable only when the parties concerned have not agreed otherwise. For instance, in the absence of an agreement to the contrary, the sale of a copy of a protected work does not include the transfer of the copyright to that copy. The Copyright Act also provides that the sale of the right of use to a computer program includes the associated right to produce back-up copies of the program required for its use and storage.

To represent right holders and collect royalty entitlements on their behalf, various collecting societies have been established in Finland. The most important of these include Teosto ry, Gramex ry, Kopiosto ry, Kuvasto ry, Tuotos ry and Sanasto ry, representing authors of different types of copyrightable works. As a rule, these societies arrange with their members such matters as membership requirements and terms for the individual and group distribution of collected royalties.

### 11.3 Trademarks

In Finland, trademarks are mainly regulated by statutory law. The provisions of the Trademarks Act apply equally to goods and services. The Finnish Trademarks Act has been amended to reflect Finland's adherence to the Madrid System for the International Registration of Marks and EU legislation relating to the Community Trademark. Accordingly, applicants applying for trademark protection have three (3) options to choose from: either national registration system or international systems, i.e. international registration under the Madrid Protocol or registration of a Community Trademark covering the European Union area.

As regards the national system, an exclusive right to a trademark as a special symbol to distinguish the goods or services of one's business from the goods or services of others can be obtained either through registration with the Finnish National Board of Patents and Registration, or through establishment. A trademark is deemed established if it has become generally known to the relevant business community or consumer segment in Finland as a special symbol of its proprietor's goods or services.

Registration under the Madrid Protocol can be applied for if the applicant is a Finnish citizen or domiciled in Finland or has a real and effective industrial or commercial establishment in Finland. In addition, a Finnish trademark registration or an application concerning the mark in question must be pending in Finland. The international registration must be consistent with that Finnish basic registration or basic application. The application is filed with the National Board of Patents and Registration, which certifies that the international application and the Finnish basic registration or basic application are consistent with each other, and then forwards the application to the International Bureau of the World Intellectual Property Organization (the "WIPO"). Community Trademarks are registered by the Office for Harmonization in the Internal Market (the "OHIM").

A trademark may consist of any symbol capable of being represented graphically and capable of distinguishing its proprietor's goods or services. A trademark may consist particularly of one or more words (including personal names), a design, letter, numeral, or the shape of goods or of their packaging. Through establishment, an exclusive right may be obtained even as to other kinds of symbols used to distinguish goods or services.

The definition of trademarks enables protection of certain coloring, slogans, decorations, or musical jingles, provided that they fulfill the requirements of distinctiveness. An application for registration of a trademark must be made in writing to the National Board of Patents and Registration, and it must state the applicant's name or trade name and the goods or services and classes of goods or services that the trademark will be used to identify. The mark must be clearly reproduced in the application. With respect to applications concerning registration of figurative marks, ten (10) clear reproductions of the trademark must be attached to the application. A foreign applicant must also name a representative in Finland. An application fee must be paid on filing the application. The application fee for a national trade mark registration is EUR 215 for three classes of goods and services and EUR 80 for each additional class (information based on the fees applicable in April 2012).

Registration applications are subject to a pre-registration examination by the registration authority. The registration authority examines *ex officio* absolute grounds of refusal, such as lack of distinctiveness, deceptiveness in matters such as nature, quality or geographic origin, and the mark's conformity with law, public order and morality. For instance, a mark that solely or with only few alterations indicates the type, quality, quantity, purpose, price or place or time of manufacture is not, as such, considered distinctive, and

it does not qualify for registration. Furthermore, a mark that, without describing it, evokes a product different from the goods it designates can be misleading to the public, and it cannot be registered. Moreover, as of 1 January 2011, a mark is not deemed to qualify for registration if there is an obstacle to registration within the meaning of Article 14 of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, Article 118l of Council Regulation (EC) No 491/2009 amending Regulation (EC) No 1234/2007 establishing a common organization of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), or Article 23 of Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89.

In Finland, the registration authority also examines *ex officio* relative grounds of refusal, such as confusing similarity to an earlier trademark (or to a pending registration application) or to the name or protected trade name of another trader, or infringement of another's copyright. In addition, a prior international or Community Trade Mark registration constitutes a relative ground for refusal of national filings.

Furthermore, a trademark may not be registered if it is liable to be confused with a trade symbol being used by someone else at the time of the registration application and the applicant has cognizance of such use and has not used his own mark before the use of the other trade symbol began. However, by consent, it is possible to overcome the obstacles to registration caused by prior rights, unless the registration would obviously mislead the public.

Use of a trademark is not a condition for registration. However, marks such as geographical names cannot be registered until they have attained so-called secondary meaning by becoming established. The average processing time for trademark applications has decreased in recent years. In April 2012, the average period for processing of national applications was five (5) months.

National Board of Patents and Registration also maintains a list into which trademarks with a reputation in Finland can be entered on application. The purpose of the list is to increase awareness of trademarks with a reputation and thus to prevent future trademark disputes.

The Trademarks Act does not distinguish between physical and legal persons as holders of trademarks, i.e. any natural person or legal entity having legal capacity can obtain a right to a trademark. The Trademarks Act allows trademarks to be held by Finnish as well as foreign entities and persons. Registration and protection of collective trademarks used by groups engaged in industry and commerce or occupational activity are regulated by a separate Act on Collective Marks (795/1980, as amended, *Fl: yhteismerkilaki*). The owner of a collective mark must have its own regulations or rules for the use of the mark.

The registration of a trademark takes effect from the date of filing the application, and it remains in force for ten (10) years from the date of registration. Registrations can be renewed indefinitely for consecutive ten-year periods.

A written application for renewal to the registration authority is needed only if the holder wishes to make changes to the registration entry. If no changes are requested, the registration may be renewed automatically by paying a renewal fee. The renewal fee is EUR 235 for three (3) classes of goods and/or services and EUR 125 for each additional class (information based on the fees applicable in April 2012). It is not necessary to establish use of the trademark when it falls due for renewal.

Trademarks are freely transferable, and there is no obligation to register assignments and licenses with the National Board of Patents and Registration. However, registration is advisable since non-registered assignments and licenses are not enforceable against a third party who has acquired a right to a trademark in good faith.



The parties are free to agree on the terms of the assignment or license but, if the registration authority deems the use of the trademark under an assignment or license as being clearly liable to mislead the public, the registration entry can be refused. A right to a trademark can also be pledged by a written agreement, which must be filed with the National Board of Patents and Registration. Unless otherwise agreed, a licensee may not further assign his right or grant sub-licenses. When a business holding a trademark is conveyed, the trademark accompanies the business unless otherwise agreed.

## 11.4 Patents

According to the Patents Act, a person who has made an invention fulfilling the criteria of novelty, inventive step, and industrial applicability, or his successor in title will, on application, be entitled to obtain a patent for the invention and thus to acquire the exclusive right to commercially exploit the invention. The Patent Act does not recognize the following as patentable inventions:

1. discoveries, scientific theories, or mathematical methods;
2. aesthetic creations;
3. schemes, rules or methods for performing mental acts, playing games, doing business, or computer programs; or
4. presentations of information.

Neither may any method of surgery, therapy, or diagnosis practice on human beings or animals be regarded as a patentable invention. Nevertheless, a patent may be granted for a product, including substances or compositions thereof, intended to be utilized in a method of this kind. Moreover, it is possible to patent the so called second medical use of a substance. In regard to patenting of biotechnological inventions, Finnish legislation has been brought into line with the Directive on the Legal Protection of Biotechnological Inventions (98/44/EC).

Finland ratified the Patent Cooperation Treaty (the "PCT") in 1980 and the European Patent Convention in 1996. European Patent Convention registrations are available in Finland. In March 2006, the Patent Law Treaty administered by the WIPO, came into force in respect of Finland.

Patent rights are created through registration. As Finland has joined the European Patent Convention, an applicant can choose between filing an application for a European patent with the European Patent Office, with Finland as one of the designated countries, or filing an application with the National Board of Patents and Registration. Moreover, the applicant may lodge a PCT application with National Board of Patents and Registration. National patent applications are subject to thorough examination of the requirements of inventive step and novelty. In April 2012, the average period for the examination of a national patent application was approximately two (2) to two and a half (2.5) years.

The original proprietor of a patent is the inventor or the inventors. According to the Act on the Right in Employee Inventions (656/1967, as amended, *Fl: laki oikeudesta työntekijän tekemiin keksintöihin*), the employee has the same right to his invention as other inventors have to their inventions. However, if:

1. the invention has been made as a result of activities carried on for the fulfillment of the work assignment essentially through the use of experience gained in the employer's company or plant, the employer is entitled to acquire the right to the entire invention, provided that the utilization of the invention is in the employer's field of business.
2. the invention has been made as a result of a more specific working task, which has been assigned to a certain employee; the employer has the same right to the invention even if the utilization of the invention does not fall under the employer's field of business.
3. where the utilization of the invention is in the employer's field of business, but the invention has been made in some other relation to an employee's contract of employment than those referred to in the first case above, the employer is entitled to use the invention.

The employer is equated with the employer's group of companies. Act on the Right in Employee Inventions also obligates the employee to notify the employer of any intention to apply for a patent before filing an application.

In addition, the Act on the Right in Inventions Made in Universities (369/2006, as amended, *FI: laki oikeudesta korkeakouluissa tehtäviin keksintöihin*) provides that an institution of higher education is entitled to the rights to an invention which has been made in contractual research, whereas the rights to inventions made in open research remain with the inventor.

A patent may remain in force for a period of twenty (20) years from the date of filing of the application. Maintenance fees are payable annually to the National Board of Patents and Registration. Where medical compounds are concerned, patent protection may be extended by application for an additional period not exceeding five (5) years in accordance with the Council Regulation (EEC) No. 1768/1992 of 18 June 1992 on Supplementary Protection Certificate. Similarly, plant protection products are eligible for a Supplementary Protection Certificate in accordance with Regulation No. 1610/96/EC of the European Parliament and Council.

If at least three (3) years have expired from the grant of the patent and at least four (4) years from the filing of the application and if the invention has not been exploited in Finland to a reasonable extent, a party who desires to exploit the invention in Finland may be granted a compulsory license for that purpose, provided that there is no acceptable excuse for the failure to exploit the invention.

Patent rights are freely transferable. There is no obligation to register assignments and licenses. However, to protect related rights against third parties, registration of transfers of rights and licenses with the register of patents is possible and advisable. In addition, a patent put up as security may be registered.

## 11.5 Designs

Finland has a reputation for being a country of original, elegant and valuable designs, both in the area of purely artistic appearance and in the field of industrial design.

The Finnish Registered Designs Act was originally prepared in close cooperation with the other Nordic countries, and has later been revised to meet the requirements of the Directive on the Legal Protection of Designs (98/71/EC). In addition, the Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community Designs is an important source of law as regards protection of designs in Finland.

The Registered Designs Act provides protection for industrial designs involving functional elements, aesthetic designs and ornaments qualifying as creative, novel and in possession of individual character at the date of application. The subject matter of protection is only the outer appearance and not the possible technical function of the design.

Registration is a precondition for design protection. An application for national registration shall be filed with the National Board of Patents and Registration. It is also possible to file applications for registration of Community designs with the OHIM. Moreover, the Geneva Act of the Hague Agreement entered into force in Finland on 1 May 2011 enabling protection of designs also on the basis of international registration. While WIPO is in charge of the international registration of designs, an application for an international registration may be filed either directly with the International Bureau of WIPO or with the National Board of Patents and Registration of Finland which then forwards the application to WIPO for processing.

An exception to the main rule requiring registration is the protection of unregistered Community Designs according to the Regulation on Community Designs. According to this exception, all new Community Designs, which are disclosed to the public and comply with the requirements of novelty and individual character, will be protected with respect to unauthorized copying automatically throughout the internal

market. The protection of an unregistered Community Design is in force for three (3) years as from the date on which the design was first made available to the public within the EU.

A design shall be considered new if no identical design has been made available to the public before the date of filing of the application for registration or, if priority is claimed, the date of priority. Designs will be considered to be identical if their features differ only in irrelevant details. Absolute novelty is not required. Disclosure of a design that takes place less than twelve (12) months before the date of the application for registration does not imply loss of novelty.

A design must also possess individual character to qualify for registration. The requirement of individual character is relevant both in connection with the capability of being registered and with regard to defining the scope of protection of a registered design, e.g. in an infringement suit. A design will be considered to have individual character if the overall impression it makes on an informed user differs from the overall impression made on such user by any design which has been made available to the public before the date of filing of the application for registration or, if priority is claimed, the date of priority. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration. Where no obstacles for registration are found, the design will be entered into the design register and published. In April 2012 the average processing time of applications for design protection was six (6) to eight (8) months.

The exclusive right to commercially exploit a design is vested in the creator of the design. The concept of an independent creative element as a precondition for registration clearly defines the creator as a physical person. Design rights are, however, freely transferable to legal persons. The creator, nevertheless, must always be named in the application for registration.

Unlike the regulation concerning patentable inventions, there are no particular provisions of law regarding the employer's right to a design created by an employee. Consequently, where a professional designer is employed, it is advisable to provide for the employer's right to commercially exploit designs created in the course of employment as well as possible additional compensation to the employee, if any, in the employment agreement.

A design registration obtains, as a rule, priority as from the date of application, and it remains in force for five (5) years from such date. Prior to the implementation of the Design Protection Directive, the registration of a design could be renewed twice for consecutive five-year periods. The present provisions of the Registered Designs Act enable a design to be renewed four (4) times for consecutive five-year periods. This means that the maximum duration of design protection is twenty-five (25) years.

Use of a design is not a precondition for renewal. The applicant is required to file an application for renewal only if the registration entries are amended in connection with the renewal. Otherwise, the design is renewed by payment of a renewal fee.

Design rights are freely transferable and licensable. Design rights may also be used as security. There is no obligation to register assignments and licenses with the design register, and such entries are mainly of procedural interest. Registration is advisable because when an assignment, license or pledge is entered into the design register, any prior assignment, license or pledge is not enforceable against the register holder in good faith, unless a prior request for register entry had been made.

## 11.6 Utility Models

Utility models, the so-called "petty patents", are protected under the Finnish Act on Utility Model Rights. The regulation of utility models follows relatively closely the principles laid down in the Patent Act and the Registered Designs Act. Utility models serve as an appropriate form of protection in two (2) different situations:

1. for technical ideas and solutions which do not fulfill the criterion of inventive step required for patentability but, nevertheless, are not obvious to a person skilled in the art in the relevant field; and
2. for small inventions and improvements which, as such, fulfill the criteria of patentability but which, due to the type of invention or the brief commercial utilization period of the product, do not benefit from the relatively slow and expensive process for obtaining patent protection.

In April 2012, the average processing time of utility model applications was two (2) to three (3) months.

Protection under the Act on Utility Model Rights is granted to an invention comprising of a technical solution that can be industrially utilized. The Act on Utility Model Rights originally protected only inventions embodied in the design or structure, or the combination of the two, of a product. Inventions in the field of chemical industry, such as chemical solutions, can also be protected by utility model rights.

As opposed to patents, utility model rights cannot be used to protect production processes. Preconditions for the granting of utility model protection are that the criteria of novelty and inventive step are fulfilled and that the invention differs from what is known by the date of application. The requirement of inventive step is assessed more leniently for utility models than for patents.

Utility model rights are obtained by registration. The registration procedure is rather similar to that of a patent application. The National Board of Patents and Registration serves as the registration authority. The Act on Utility Model Rights also contains specific provisions regarding international applications, i.e. applications filed under the Patent Cooperation Treaty. An international application, which is submitted to a national registering authority, i.e. the National Board of Patents and Registration, or an international organization, has the same legal effect as a national application. Applications for registration of utility models, as a rule, are prepared by industrial property agents with technical knowledge. Non-resident applicants seeking registration must appoint an agent resident in the European Economic Area to represent them in all matters concerning the application and registration.

According to the Act on Utility Model Rights, one may also apply for utility model protection by converting a patent application or a European patent application into a utility model application. The date of priority will, in such case, be that of the filing of the patent application or the European patent application. Consequently, the patent application, which has been transformed into a utility model application, still remains in force unless cancelled by the applicant. Such possibility provides a clear improvement from the point of view of the applicant, as the applicant through rapid processing of a utility model application can quickly obtain an enforceable industrial property right in relation to third parties and, simultaneously, retain the possibility of obtaining long-term patent protection.

Utility model applications are subject to pre-registration examination of the invention. The examination is, however, mainly limited to fulfillment of the formal requirements, and does not involve an assessment of novelty and inventive step. However, the applicant may file a written request for pre-examination of the substantive criteria and receive an opinion on whether these are fulfilled. On registration of the utility model or publication of the application, anyone may file such written request for an opinion. In order to facilitate this, the National Board of Patents and Registration gives a public notice of the application after it has become public. This notice is published on the website of the National Board of Patents and Registration and it shall include among other things the first claim and possibly a picture of the invention.

As a rule, a utility model registration obtains priority as from the date of application and remains in force for four (4) years from such date. The registration may be renewed twice for consecutive four-year and two-year periods, respectively.

Exploitation of a utility model is not a precondition for renewal. Statutory fees are payable in connection with the submission of an application, renewal and other entries made in the register.

## 11.7 Provisional Measures to Preserve Evidence in Civil Cases

To ensure that Finnish law is in compliance with Article 50 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the “**TRIPS Agreement**”), the Act on Preservation of Evidence in Civil Cases Concerning Intellectual Property Rights (344/2000, as amended, *FI: laki todistelun turvaamisesta teollis- ja tekijänoikeuksia koskevissa riita-asioissa*) was enacted in 2000. The provisions of the Enforcement Directive (2004/48/EC) are implemented in Finland as amendments to said Act as well as to other Finnish intellectual property rights legislation.

The Act enables a competent court to order the seizure of material that can be of importance in a civil case relating to intellectual property rights. In addition, more far-reaching measures can be taken to preserve or obtain evidence. In the Act, intellectual property rights are defined as statutorily protected copyrights, patents, utility models, layout designs of integrated circuits, trademarks, designs, trade names, and plant breeders' rights. The applicability of the Act also extends to certain other provisions, such as unfair utilization of trade secrets in the Unfair Business Practices Act.

Provisional measures are defined in the Code of Judicial Procedure and the Enforcement Code (705/2007, as amended, *FI: ulosottoaari*). These procedural laws are applied in parallel with the Act on Preservation of Evidence in Civil Cases Concerning Intellectual Property Rights.

## 12. LABOR LAW

### 12.1 Applicable Legislation and Collective Agreements

The most relevant statutes on labor and employment are the Employment Contracts Act (55/2001, as amended, *FI: työsopimuslaki*), and the Act on Co-operation within Undertakings (334/2007, as amended, *FI: laki yhteistoiminnasta yrityksissä*). Other generally relevant statutes applicable to most employment relationships are the Working Hours Act (605/1996, as amended, *FI: työaikalaki*), the Annual Holidays Act (162/2005, as amended, *FI: vuosilomalaki*), the Occupational Safety and Health Act (738/2002, as amended, *FI: työturvallisuuslaki*), the Non-Discrimination Act (21/2004, as amended, *FI: yhdenvertaisuuslaki*), the Act on Equality between Women and Men (609/1986, as amended, *FI: laki naisten ja miesten välisestä tasa-arvosta*), the Act on the Protection of Privacy in Working Life (759/2004, as amended, *FI: laki yksityisyyden suojasta työelämässä*) and the Act on the Protection of Privacy in Electronic Communications (516/2004, as amended, *FI: sähköisen viestinnän tietosuojalaki*).

Finnish labor legislation is largely mandatory. However, some provisions of law can be superseded by individual employment contracts and some rules are mandatory unless deviated from in a collective bargaining agreement. The Finnish labor market is highly organized. The numerous collective bargaining agreements together cover almost the entire employment field. The collective bargaining agreements lay down specific rules that substitute or supplement labor and employment legislation and set limits to individual contracting. Under the Collective Agreements Act (436/1946 as amended, *FI: työehtosopimuslaki*), the terms of a collective bargaining agreement supersede any conflicting terms of an employment agreement when the latter are to the detriment of the employee.

### 12.2 General Principles

Finnish labor legislation extends strong protection to employees as many employee rights are mandatorily regulated. Interpretation of labor legislation and employment contracts tends to be employee-friendly. However, not everyone is encompassed by this protection. Managing directors of limited liability companies are generally excluded and some acts contain specific exclusions as well, such as the exclusion of certain senior managers from the protection of the Working Hours Act.

The Employment Contracts Act imposes a general prohibition on discrimination against employees. An employer is required to treat all employees equally and may not differentiate between employees for unjustified reasons including the employee's origins, religion, sex, age, political leanings, trade union membership and similar. This prohibition on discrimination also applies during the recruitment process. Employers are also prohibited from discriminating against fixed-term or part-time employees. The specific non-discrimination legislation contains further provisions on discrimination. Employers who violate this statutory duty to refrain from discrimination can be subjected to sanctions. An employee who has suffered discrimination can also claim damages and compensation for discrimination.

### 12.3 Employment Contracts

#### 12.3.1 Forms of Employment Contracts

An employment contract may be concluded in any form. Where the contract is oral the employer must within the first pay period provide the employee with a written statement setting out at least the material terms of the employment. The same applies, if the written contract is silent with respect to any material term, such as:

- The employer's place of business and the employee's domicile;
- The date of commencement of work;
- The term of employment (and grounds for fixed term, if any);

- The trial period (if any);
- The place of work;
- The employee's main duties;
- Applicable collective bargaining agreement (if any);
- Salary and fringe benefits;
- Regular working hours;
- Holiday entitlement; and
- The notice period for termination.

In addition to these mandatory terms, employment contracts, especially for more senior clerical employees, can comprise other material terms, such as clauses on confidentiality, non-competition and intellectual property rights.

### 12.3.2 Term of Employment

An employment contract may be concluded either for a fixed term or until further notice. A fixed-term contract can only be used under specific circumstances; such as due to the nature of the work or the employee's engagement as a substitute for a permanent employee. A contract concluded for a fixed term without valid grounds will be deemed to be in force until further notice.

As a general rule, the parties may also agree on a trial period of up to four (4) months. During the trial period either party can cancel the contract without notice, provided that, for the employer, the grounds are not discriminatory or otherwise inappropriate with regard to the purpose of the trial period.

### 12.3.3 Remuneration

Employees are generally paid an hourly or monthly salary, which is paid regularly to each employee's bank account. Remuneration may be based on the time working, results, and a combination of the aforementioned or other agreed criteria. In addition to the monetary salary, employees often receive fringe benefits such as lunch, mobile phone, car and/or housing benefits.

### 12.3.4 Working Hours

The Working Hours Act limits the maximum regular working hours to 8 hours per day and 40 hours per week. Working hours may be further limited in collective bargaining agreements or individual employment contracts e.g. to 37.5 hours/week. The maximum working hours can also be arranged so that the average weekly working hours do not exceed 40 hours within a 52-week period. Also other arrangements are possible, such as flexible working hours, where the employee within set limits decides the length of each working day. Overtime work requires employee consent and is limited by provisions on daily and weekly rest periods. The total maximum amount of overtime is set at 138 hours per four months and 250 hours per calendar year, with a limited possibility of agreeing with the employees on additional overtime. The employer is required to keep a record of the working hours (including overtime work and other exceptional work).

When an employee at the employer's behest works in excess of his/her regular working hours, the employee is normally entitled to overtime compensation. Overtime compensation for daily overtime – work in excess of the daily regular working hours – is usually paid as an increased rate of salary for overtime hours: fifty (50) percent for the first two hours and hundred (100) percent thereafter. Weekly overtime – work in excess of the regular working hours per week (but not per day), e.g. Saturday work – is compensated by an increased salary of fifty (50) percent per hour. If so agreed, overtime can also be compensated in time off from work. With managerial employees the employer can agree that overtime compensation is paid as a separate fixed monthly compensation.

Employees who are part of the top management of a company are not, as a rule, subject to the provisions of the Working Hours Act, nor are employees whose work is carried out under such circumstances that the employer cannot exercise control over their working hours, i.e. employees working from home or sales representatives working in the field.

### 12.3.5 Annual Vacation

Employees are generally entitled to 2.5 days' paid vacation per month of work (Saturdays included in the calculation), except for each employee's first vacation accrual period during which less vacation is accrued. The employer has the final say on when the employee will take the accrued vacation, but the employer should let the employee express his/her opinion on the matter. The employee is entitled to 24 days of vacation during the time defined as the summer vacation period (May to September) and the rest before the start of the next vacation period (May the following year). As a rule, the vacation should be continuous, but the minimum requirement of uninterrupted holiday is 12 days. The employer and employee may to some extent agree on other arrangements, but must nonetheless observe the minimum amount of uninterrupted holiday.

Collective bargaining agreements generally also entitle employees to an additional vacation bonus corresponding to fifty (50) percent of each employee's vacation pay. Many employers who are not required to observe collective bargaining agreements have adopted a similar practice.

### 12.3.6 Amendments to Employment Contracts

Employers have a general right to give directions to employees regarding the work, for example working methods and the way the work is organized. However, these directions cannot alter terms and conditions which are essential in the employment relationship, e.g. terms regarding the place of work, working hours and salary. Hence, changes contemplated by an employer often require amending the employment contract in question. Under certain, limited circumstances, the employer may have a right to make unilateral changes also to essential terms of the employment relationship, e.g. lowering the employee's salary, if the alternative to the changes would be termination of the employment. Unilateral changes, as an alternative to termination, come into force only after the notice period observable in case of termination has passed.

## 12.4 Termination of Employment and Lay-Offs

### 12.4.1 Notice period

A fixed-term employment contract expires without notice at the end of the fixed term. A fixed-term contract cannot be terminated during its term (but can be rescinded for serious breaches) unless the parties have agreed on a notice period.

An employment contract concluded for an undefined period may be terminated by either party, who, unless otherwise agreed between the parties, must observe the applicable notice period. If the employer is not obliged to apply a collective bargaining agreement, the parties are free to agree on a notice period of up to six (6) months. The employer's notice period can be longer than the employee's, but the employee is always entitled to observe the shorter notice period of the employer, i.e. the notice period of the employee cannot be longer than the employer's. Collective bargaining agreements usually bindingly define notice periods for both the employer and the employee.

Unless otherwise agreed by the parties or in collective bargaining agreements, the notice period is determined in accordance with the provisions of the Employment Contracts Act as set forth below:



Termination by employer		Termination by employee	
Duration of employment	Notice period	Duration of employment	Notice period
0–1 year	14 days	0–5 years	14 days
1–4 years	1 month	over 5 years	1 month
4–8 years	2 months		
8–12 years	4 months		
over 12 years	6 months		

### 12.4.2 Grounds for Termination

As a general rule, termination of employment requires objective, substantial and justifiable reasons. Under the Employment Contracts Act, employment can be terminated for (i) reasons deriving from the circumstances, actions or conduct of the employee (individual grounds), or (ii) financial or production-related reasons or reasons deriving from reorganization of the employer's operations (collective reasons).

Serious breach or neglect of obligations arising from the employment contract or the law, and which essentially impact the employment relationship, constitutes individual grounds for termination. Also essential changes related to the employee's person, which render the employee unable to cope with his or her duties, can be considered acceptable grounds for termination of the employment. Illness or injury cannot be grounds for termination, unless the working capacity of the employee has been substantially reduced for such a long term as to render it unreasonable to require the employer to continue the employment. The employee's political, religious or other opinions, participation in social activities or associations, or recourse to judicial procedure are also not grounds for termination of the employment. In case law, material carelessness, failure to follow instructions, gross negligence, dishonesty and absence without reason have been accepted as grounds for termination. Certain employees enjoy added protection from dismissals, e.g. employee representatives.

Before terminating the employment, the employer is generally required to first issue the employee a warning, thus making it clear that the employee's conduct, neglect or similar is endangering the employee's continued employment. The employee must then be given a fair chance to improve his/her performance. The employer must also consider whether the situation can be resolved by transferring the employee to other duties.

Irrespective of the term or notice period agreed, an employment contract may be rescinded immediately for exceptionally weighty reasons. The grounds for the rescission of an employment contract are twofold. First, the employee must have breached or neglected obligations arising from the employment contract or the law which essentially impact the employment relationship, and second, this must have been done in such a manner as to render it unreasonable to expect the employer to continue the employment even for the period of notice. The right to rescind an employment contract must be exercised within 14 days from when the grounds for rescission were discovered.

Employment may be terminated on collective grounds where the amount of work has significantly diminished for more than a temporary period due to financial, production-related reasons or reasons deriving from reorganization of the employee's operations, and provided that the employee, in view of his or her skills, cannot be assigned other duties or re-trained. Prior to termination, the employer may have to observe codetermination or information obligations towards the employees. Collective bargaining agreements usually contain special provisions on the order in which employments can be terminated (for example by suggesting that the work of employees with dependants should be preserved) but for employers who do not apply a collective bargaining agreement the choice of which employees to make redundant is free though prohibitions on discrimination naturally apply here as well. For nine (9) months

from the expiry of an employment relationship terminated on collective grounds, the employer must offer available work (which is the same or similar to the duties the employee in question used to perform) to employees who were made redundant and who are registered as job-seekers with the Employment and Economic Development Office.

### 12.4.3 Compensation for Unjustified Termination

If an employer terminates or rescinds an employment contract on insufficient grounds, the employee can become entitled to compensation corresponding to 3–24 months' salary, depending on the circumstances. There is no lower limit for the amount of compensation in case of unjustified termination on collective grounds, or unjustified rescission.

### 12.4.4 Lay-offs

The Employment Contracts Act permits an employer to temporarily lay off employees on 14 days' notice, provided that the employer has collective grounds for termination, or that employer's ability to offer work has diminished temporarily and the employer cannot reasonably provide the employee with other suitable work or training. The circumstances are considered temporary if they can be estimated to last a maximum of 90 days. Employees can be laid off until further notice or for a fixed term as well as either full time or part-time. It is also possible for the employer and the employee to agree on a lay-off for a fixed period, if this is necessary in view of the employer's operations or financial situation. Some employees, such as employee representatives and fixed-term employees, enjoy added protection from layoffs. While laid-off, an employee's work and salary are suspended, but the employment relationship remains otherwise intact. The employee is entitled to perform other work for the duration of the lay-off and has an increased right to terminate the employment. The employer is obliged to offer available work, which is suitable to the employee in question, to laid-off employees before recruiting new personnel.

## 12.5 Cooperation within Undertakings and Employee Representation

The Act on Cooperation within Undertakings sets out procedural rules and regulations for companies employing more than twenty (20) employees. The provisions cover, among other things, employee representation and participation in various matters in the company, lay-offs, termination of employment and the impact of corporate restructuring upon employment. The Act also imposes certain information obligations on the employer.

Employee representation in the employer's company is set out in the Act on Personnel Representation in the Administration of Undertakings (725/1990, as amended, *FI: laki henkilöstön edustuksesta yritysten hallinnossa*), which affects Finnish companies with a minimum of 150 employees in Finland. Under this Act, employee representation may be agreed within the company. Unless otherwise agreed between the parties, employee groups may nominate representatives for the supervisory board, the board of directors or such management groups which handle the company's profit centers. The employer chooses the administrative body for employee representation.

## 12.6 Foreign Employees in Finland

Residence permits are not required from citizens of EEA member states or Swiss citizens. Employees from these countries may work freely in Finland for a period of three (3) months, after which they are required to register their right to reside in Finland. Less rigorous requirements apply for citizens of the Nordic countries (Denmark, Iceland, Norway and Sweden) who are not required to take registration measures if their sojourn is shorter than six (6) months.

Employees from other countries must generally first apply for an employee residence permit, a procedure which is estimated to take roughly four (4) months. Residence permits should, as a rule, be applied for before arriving in Finland, from Finnish consulates or the consular office of a Finnish Embassy.

Employees that are posted to Finland by foreign employers providing cross-border services are as a rule subject to the Posted Workers Act (1146/1999 as amended, *FI: laki lähetetyistä työntekijöistä*) providing certain minimum terms to be applied even in case the employment would be subject to foreign law.

## 13. MERGERS AND ACQUISITIONS

### 13.1 Structuring an M&A Deal

The structure chosen for a specific M&A deal depends on the goals of the transaction and on various legal, tax, and commercial considerations. Commercial risks, liabilities to be assumed, legal aspects related to the assets and agreements, and the ownership structure of the target may also be relevant when considering various structures.

Share and asset (“business”) sales are the most common transaction structures. Structures involving corporate law aspects, such as mergers and demergers, may be beneficial in certain circumstances but are rather slow to implement due to mandatory notification and application procedures, including a three (3) month creditor notice period. Joint ventures and license agreements are both useful in their own characteristic usage areas, involving two or more cooperating parties. A public takeover is often the only feasible alternative when targeting a publicly listed company.

A major advantage of share transactions is the fact that such a structure is the easiest way to secure ownership of all relevant assets, such as intellectual property rights, without too many formalities. Also, third party contracts, such as purchase, license and lease agreements, stay unchanged despite the transfer (save to the extent that the agreements contain a specific change-of-control provision) and are transferred as part of the target.

A key advantage of business transactions is that the parties can choose the assets and liabilities to be transferred and leave the remaining assets and liabilities with the selling company, with certain exceptions as to employee related liabilities. Therefore, the purchaser may be able to avoid taking responsibility for unknown liabilities that would automatically be transferred in connection with a share transaction. On the other hand, the major disadvantage is that all assets have to be specifically identified and properly transferred. Further, many such transfers require consents from third parties, such as suppliers or licensors, which can be time consuming and burdensome to obtain.

Given the Finnish tax laws, sellers may often favor share transactions, at least when they expect to make capital gains from the transaction. Capital gains from share deals are tax exempt for Finnish enterprises, provided that the following three conditions are met: (i) the shares are included in the fixed assets of the seller, (ii) the seller controls at least ten (10) percent of the total number of the shares in the target, and (iii) the seller has owned the shares for at least a year.

The following paragraphs describe certain alternative structures for M&A transactions and present the advantages and disadvantages of each structure.

#### 13.1.1 Private Share Purchase

Perhaps the most common deal structure is the private share purchase, under which all the assets and liabilities of the target remain with the company and only the shares of the target transfer to the purchaser. Consequently, the private share purchase is often the most simple transaction method as there is no need to agree on the transfer of individual assets, liabilities, contracts or employees between the seller and the purchaser.

The documentation in a cross-border acquisition commonly follows the framework of Anglo-American agreements, with certain amendments to better fit the Nordic legal environment. A typical cross-border acquisition is conducted in two phases: a conditional Share Purchase Agreement (the “SPA”) is signed and the acquisition is subsequently consummated at an agreed date (i.e. closing), provided that the conditions precedent have been fulfilled or duly waived. The conclusion of a definitive purchase agreement between the parties may be preceded by a letter of intent that outlines the contemplated acquisition and that by nature is not binding upon the parties. Confidentiality agreements are also commonly used during

the due diligence and negotiation phases to enable sufficient disclosure of information to the potential purchaser without risk of harming the business operations of the target.

The main provisions of a typical Finnish SPA include the following:

- Definition of the object, i.e. the shares to be sold;
- Purchase price and its adjustments, often calculated based upon signing or closing accounts, or an earn-out;
- Closing date and conditions precedent for closing, often including, *inter alia*, competition authority approvals, consents from essential third parties and so-called MAC (material adverse change) clauses;
- Representations and warranties of both the seller and the purchaser, which are usually fairly detailed ranging from title to shares to environmental liabilities, and related indemnification;
- Remedy, possible escrow accounts and procedures for settlement of claims; and
- Specific indemnities for risks identified by the purchaser in the due diligence or during the negotiations.

While there are no general limitations related to private share purchases, the Articles of a private limited liability company may contain specific requirements, such as redemption clauses or consents by existing shareholders, which may be of particular relevance in a purchase of less than one hundred (100) percent of the target's shares.

### 13.1.2 Business Acquisition

The purpose of a business acquisition is generally to acquire a certain business operation and/or assets, while limiting the purchaser's assumption of risk. On the other hand, it is important for the purchaser to ensure that the business operations acquired will be sufficient for uninterrupted conduct of business after completion of the transaction. It is therefore generally in the purchaser's interest to carry out a comprehensive due diligence to identify the assets and rights of the target that should be transferred and to identify the liabilities to be assumed and those that should be left outside the acquisition. Detailed due diligence will also enable the purchaser to assess the transferability of, *inter alia*, material agreements and licenses necessary for the continued conduct of business.

The documentation of the business transaction generally follows the guidelines described above in connection with a share purchase, the main exception being the need to identify assets, liabilities and employees to be transferred. The Business Purchase Agreement usually also includes a condition precedent that consent for the transfer of the most important third party agreements have been obtained prior to the completion of the transaction.

When a business transfer (as defined by relevant labor laws) is implemented, the employees of the acquired company are by law automatically transferred to the receiving company along with the business. Neither the transferor nor the transferee has the right to terminate any employment contracts solely based on the transfer. To terminate an employee there must be either an individual reason (related to the employee's person) or a collective reason (related to financial, production or reorganization causes). A business transfer is not such a reason. The central statutes related to employees and employee benefits are the Employment Contracts Act and the Act on Co-operation within Undertakings (see section 12.1). The latter Act applies to companies employing at least twenty (20) employees and imposes, in a business transfer, obligations on both the transferor and the transferee. One such obligation is the obligation to inform the employees of the reasons for and the (planned) date of the acquisition, as well as the legal, economic and social consequences of the transfer to the employees. If terminations, lay-offs or reorganizations are expected as a consequence of the business transfer, the transferor or the transferee, as the case may be, must fulfill the codetermination negotiation obligations provided for in the Act. If the employer has deliberately or by gross negligence failed to fulfill the codetermination negotiation obligation, the employees may be entitled to compensation of up to EUR 30,000. A failure to comply with the codetermination obligation may also constitute a criminal act. The rules on co-operation with the employees apply also in case of mergers and divisions.

### 13.1.3 Merger

Mergers are rarely used when foreign companies enter Finland for the first time. Earlier, this was due to the fact that merger was, under the Companies Act, possible only between Finnish entities. Therefore, mergers were commonly used to simplify the legal structure of the group after the actual transaction had taken place usually through a share or business transfer. Since the end of 2007, however, cross-border mergers have become possible as a result of the Cross-Border Mergers Directive (2005/56/EC) and its implementation into the Companies Act.

In a merger the assets and liabilities of the merging company are transferred to the receiving company, while the shareholders of the merging company receive shares in the receiving company as consideration. The consideration may also be cash, other assets and undertakings.

A merger can be implemented either as a merger of one company into another (absorption merger) or as a merger of two or more companies to form a new company (combination merger). A merger of a wholly-owned subsidiary with its parent is considered a special form of absorption merger, called a subsidiary merger. Tripartite merger is an absorption merger, where another party than receiving company provides the consideration.

The Finnish merger process involves a number of notification and application procedures, as set out in the Companies Act. Therefore, the process takes approximately six (6) months, at a minimum, to complete. The process commences by the preparation of a merger plan by the board of both the merging and receiving company. The merger plan must be filed with the Trade Register within one (1) month of its signing. At least within four (4) months of the registration of the merger plan, an application for a public notice to the unknown creditors of the merging company shall be filed with the Trade Register. The notice period lasts for three (3) months. A notice shall be published also to the creditors of the receiving company in case the auditors consider in their statement that the financial position of the receiving company could be jeopardized by the merger. The known creditors of the merging company shall be informed by written notifications on their right to oppose the merger no later than one (1) month prior to the due date set in the public notice for creditors to oppose the merger.

The merger must be approved at the general meeting of shareholders of the merging company by a two-thirds (2/3) majority of both the votes cast and of the shares represented. In a subsidiary merger the board of the merging company can decide to approve the merger. In the receiving company, the merger can be approved by the board, unless shareholders holding more than one twentieth (1/20) of the shares in the company require that the merger shall be approved at the general meeting of shareholders. Such resolutions must be passed within four (4) months of the registration of the merger plan and no later than one (1) month prior to the due date set in the public notice. The merging companies need to file the notification to the Trade Register to implement the merger within six (6) months from the approval of the merger. If the rights of the creditors have been secured, the Trade Register shall consequently approve the merger.

The legal consequences of a merger take effect as of the registration of the implementation of the merger with the Trade Register. As a consequence, the assets and liabilities of the merging company are transferred to the receiving company and the merging company is deemed dissolved. As soon as possible after the implementation of the merger, the board of the merging company shall prepare a final report, present it to the general meeting of shareholders and file it with the Trade Register.

### 13.1.4 Joint Ventures and Strategic Alliances

There are no specific laws in Finland regarding the establishment or operations of joint ventures or strategic alliances. Thus, the general principles of Finnish contract and corporate law apply. Under Finnish law, a majority shareholder effectively controls the operations of a limited liability company, subject to the rules on minority protection provided for in the Companies Act. However, a combination of corporate and

contractual vehicles, typically consisting of the Articles and Shareholders' Agreements, may effectively transfer some or all of the control in the joint venture company to a minority shareholder. The parties should therefore agree on a balanced combination of the Articles and the underlying Shareholders' Agreements, taking into account the nature of the business to be carried out and other relevant considerations.

### 13.1.5 License Agreements

There is no specific legislation on license agreements in Finland. Accordingly, licensing is governed primarily by general contract law, the Commercial Code (3/1734, as amended, *FI: kauppakaari*), competition law and laws regulating intellectual property rights.

License agreements are often viewed as good tools for the distribution and manufacturing of products as well as the creation of extensive service networks. The licensee will manufacture, distribute and/or care for the service of the products according to the licensor's specifications, while sharing the commercial benefits with the licensor. As a general rule, the licensor receives the benefits as royalty fees, but also through increased sales and access to new market areas. The licensee, on the other hand, gains access to new technologies, rights to use the licensor's intellectual property rights and goodwill, and the possibility to enhance its own knowledge without excessive investments in research and development.

### 13.1.6 Public Tender Offers

A public tender offer is the most common way to acquire a publicly listed company. Public tender offers are governed by the SMA, which (i) regulates the offer procedure and related information requirements, (ii) requires equal treatment of all holders of the securities that are tendered for, and (iii) introduces a threshold of voting rights that triggers an obligation to offer to acquire all the remaining shares of the company. Compliance with the SMA and related legislation is monitored by the FFSA. Public tender offers are discussed in more detail in chapter 15 below.

## 13.2 Due Diligence

Due diligence is a widely accepted practice in virtually all M&A deals of note in Finland. In a typical private M&A transaction, where there is only one purchaser candidate, the due diligence process is often driven by the purchaser. In such case, the process is normally initiated by the purchaser submitting a due diligence request list to the seller, specifying the information that the purchaser requests to be disclosed. An auction process with several purchaser candidates, on the other hand, is generally coordinated by the seller or its advisor(s). The seller and its advisors typically arrange a data room for controlling the scope and quantity of the information that is disclosed to the purchaser candidates. Typically, the depth of information increases along the process as the number of purchaser candidates involved decreases. If the target company is publicly listed, the purchaser should also be aware of the insider rules and regulations and their implications on the contemplated transaction when conducting due diligence (see more below). Also specific vendor due diligences arranged by the seller are often carried out prior to allowing a potential purchaser to access information on the company and its business.

Even though there are no precise standards for the scope of a legal due diligence investigation, certain market practices have developed over time. The areas covered may, however, vary depending on the industry and type of business in question. Further, the following issues may impact the scope of the due diligence: the purchaser's expertise in the relevant business, the structure of the acquisition, the likelihood of unknown liabilities, the characteristics of the target, the relationship between the parties, the difficulty of conducting due diligence, the time, funds and resources available for due diligence, as well as the content and scope of the representations and warranties given by the seller.

A legal due diligence normally covers the following areas:

- Corporate structure and company organization (including basic corporate information, and ownership structure as well as historical share transfers in the case of a share deal);
- Corporate governance (including minutes of the board of directors' meetings and general meetings of shareholders, corporate guidelines, operating licenses and other compliance documents);
- Properties (including title to real estate and lease agreements of premises);
- Liabilities (including loan agreements and other financing arrangements, inter-company indebtedness, pledges and other encumbrances, guarantees and other undertakings);
- Details of inter-company relationships;
- Material agreements (including acquisitions or disposals of assets or shares, supply, purchase, sale, maintenance, service, consultancy, distributor, agency, dealer, lease, license, cooperation, joint venture and similar agreements but also the identities of the largest customers, ongoing projects, and product warranties). The level of materiality is defined in the information request list sent to the seller prior to due diligence. Special attention is paid to third party transfer restrictions and change of control provisions;
- Management and personnel of the company (including management and employment contracts as well as pension and incentive schemes);
- Claims and ongoing litigation (including also possible tax claims); and
- Intellectual property, data protection, IT, insurances and environmental matters.

Due diligence is usually conducted concurrently with ongoing business negotiations and prior to the signing of a binding acquisition agreement. Prior to commencing the due diligence, it is common market practice for the seller and the potential purchaser to enter into a confidentiality agreement. As part of the due diligence, the seller usually provides the potential purchaser with the possibility to visit a data room with documentary information and to attend a management presentation and/or a site visit. Virtual data rooms are increasingly popular in large transactions. The material findings of the due diligence are presented and addressed in the final negotiations and, where necessary, reflected also in the final acquisition agreement.

It is not customary to make due diligence reports available to third parties. Depending on the client, the type and nature of the transaction and the assignment of the lawyer, a due diligence report can, however, be made available to certain third parties such as lenders or financial advisors (investment banks) of the client.

The basis for the disclosure and investigation obligations of the seller and the potential purchaser derives from the Sale of Goods Act as well as from the general contractual principles and practices of Finnish law. The Sale of Goods Act has been widely interpreted to apply to all types of share and business acquisitions. However, the provisions of the Act are discretionary in nature and therefore it is often agreed in the final purchase agreement that the provisions of the Act are excluded and that only the terms of the final acquisition agreement shall apply.

The Sale of Goods Act imposes a duty on the purchaser to examine, upon the seller's request, the goods prior to purchase. According to the provisions of the Sale of Goods Act, the purchaser may not invoke a fact that should have been noticed upon examination of the goods prior to the purchase. Even if the applicability of the Sale of Goods Act is nearly always excluded in the final purchase agreement, the general contractual principles of Finnish law support and verify this interpretation.

When conducting due diligence of a publicly listed company, the purchaser should be aware of the insider rules and regulations and their implications on the contemplated transaction. In the due diligence, the purchaser may receive information regarding the company or its securities that is not public and that may have a material effect on the value of the company's securities (insider information). The purchaser may thereby become an insider and be prevented from trading in the shares of the target until the relevant information has been published. The FFSA has, however, taken the view that transfers and acquisitions of certain large shareholdings would normally fall outside the scope of the insider information prohibition, provided that both the seller and the purchaser have equal knowledge of the company's affairs. In an



acquisition of all the shares in a publicly traded company through a public tender offer, any insider information received by the purchaser will need to be disclosed also to the public in connection with the tender offer, or otherwise the purchaser will be prevented from making the offer. It is, however, possible to conduct due diligence also on publicly traded Finnish companies, naturally provided that this is in the interest of the company and its shareholder collective and that the board of the target company agrees to it.

### 13.3 Restrictions for Foreign Acquirers

There are only a few restrictions for foreign acquirers in Finland, since the general restrictions on foreign ownership of Finnish companies were abolished in 1993. As a general rule, shares in Finnish companies as well as their assets can therefore be acquired by foreign entities without any approvals by the Finnish authorities.

The Act on Control of Foreign Acquisitions of Finnish Companies (1612/1992, as amended, the “**Old Control Act**”, *Fi: laki ulkomaalaisten yritysostojen seurannasta*) provided for the possibility of certain governmental controls to protect essential national interests. According to the Old Control Act, foreign investments in companies and/or businesses within the defense sector required clearance by the Ministry of Defense. In addition, acquisitions of dominant control (i.e., more than one-third (1/3) of the votes) in larger companies or businesses by non-EEA or non-OECD acquirers required a clearance from the Ministry of Employment and Economy. The authorities were to accept the acquisition unless they viewed that the acquisition could endanger important national interests. The “important national interest” were to be interpreted narrowly.

The Old Control Act has, however, recently been repealed by the new Act on Control of Foreign Acquisitions of Finnish Companies (the “**New Control Act**”), which will enter into force on 1 June 2012. The Ministry justified its proposal for the New Control Act by arguing that the Finnish government did not have sufficiently efficient methods for preventing companies that are “essential for Finland’s security” from being acquired by an “unwanted” stakeholder. So far, there have been only a few applications for confirmation per year, all of which have related to the defense industry. However, the New Control Act is expected to increase the number of applications.

Similar to the Old Control Act, the New Control Act does not provide a list of the industries or companies, apart from the defense industry, to which the law applies. Thus, the defense industry remains the only industry where all the companies registered in any country other than Finland have to seek the confirmation of the Ministry if they intend to acquire a stake exceeding the set threshold. The New Control Act nevertheless extends the Ministry’s authority to define situations where essential national interests are jeopardized. The main amendments of the New Control Act as compared to the Old Control Act are listed below:

- whereas the Old Control Act defined foreign companies as companies with their registered offices in a non-OECD country, the New Control Act broadens the definition to cover all companies with registered offices in non-EU / non-EEA countries;
- the threshold that defines a “foreign acquisition” has been decreased from “at least one-third (1/3) of the voting power out of all the shares of the company” to ten (10) percent or to a “corresponding actual influence in the monitored entity” – a concept, which has not been further elaborated on in the New Control Act;
- whereas under the Old Control Act, in order to be defined as a “monitored entity”, the company had to exceed certain thresholds regarding the number of employees, the turnover and the latest approved balance sheet, the New Control Act does not refer to any such financial limits, but instead defines a monitored entity as “another entity or business that may, based on its industry, business or engagements, be considered critical regarding essential national interests”.

In addition to the New Control Act, some other specific Finnish regulations also apply to foreign acquisitions of companies, which hold real property located on the border zone or other areas protected for defense purposes.

## 14. PROPERTY AND ENVIRONMENTAL LAW

### 14.1 Types of Entitlement to Real Property

Entitlements to real property in Finland are diverse. It must be emphasized that this section does not deal with all the legal forms that exist, but only with those that are most common and are deemed valuable to elaborate on within the scope and purpose of this publication.

#### 14.1.1 Freehold

Property held in ownership is commonly referred to as a freehold. A freehold ownership title gives the owner an exclusive right to own, occupy, encumber and dispose of a real property. Anything that is constructed on the land is regarded as a fixture and by rule of accession treated as a part of the property, unless specifically agreed otherwise. A freehold title can be held either in the form of direct ownership of land or in the form of indirect ownership through the ownership of shares in a (mutual) real estate company.

In commercial transactions investors generally favor a transfer of indirect ownership. This is mainly for reasons of a higher transfer tax rate that applies to a transfer of direct ownership and somewhat burdensome mandatory requirements that direct transactions incur (e.g. specific contract form and notarization). Another noteworthy limitation burdening direct property transfers is the statutory pre-emption right of municipalities that is applicable to transfers of properties that are of certain type and exceed certain size limits.

Freehold titles must be registered with the Land Register (*FI: lainhuuto- ja kiinnitysrekisteri*) within six (6) months from the signing of the deed of transfer. A failure to register may result in a fine and an increase on the amount of transfer tax due up to a maximum of one hundred (100) percent of the original amount. The obligation to register only applies to direct ownership titles. The acquisition of indirect title through a purchase of shares in a real estate company cannot be registered with the Land Register, but the share ownership is registered with the share and shareholders' registers of the relevant property company.

#### 14.1.2 Leases

##### *General*

With regard to real property, the Finnish legal system distinguishes two types of leases: (i) leaseholds and (ii) tenancies. Leaseholds, where the main object of the lease is land, are governed by the Land Lease Act (258/1966, as amended, *FI: maanvuokralaki*). Tenancy concerns the lease of a building or a part thereof and is governed by the Act on Residential Leases (481/1995, as amended, *FI: laki asuinhuoneiston vuokrauksesta*) or the Act on Commercial Leases (482/1995, as amended, *FI: laki liikehuoneiston vuokrauksesta*), depending on the purpose of use of the premises.

##### *Leasehold*

Leasehold entitles the owner of such right to occupy for an agreed period of time a piece of land owned by another party, generally against payment of compensation in the form of rent. It usually also includes the right to construct and/or own buildings on the land. In most cases a leasehold right can be transferred as an independent right separate from the land ownership.

Subject to certain mandatory provisions laid down in the Land Lease Act, the terms of a leasehold may be freely agreed upon between the landowner and lessee. As the rights and obligations of a land owner and a lessee in different types of land lease agreements are extensively regulated by the Land Lease Act, even though by non-mandatory provisions, Finnish leasehold agreements are often quite limited in their

substance when compared to international standards, with the exception of leaseholds concerning land used for industrial or business purposes which often require more detailed terms and conditions.

Leaseholds are subject to mandatory registration with the Land Register when they (i) are agreed on for a fixed period of time, (ii) can be transferred without prior consent of the landowner and (iii) include buildings and/or constructions on the land owned by the lessee or a right for the lessee to erect buildings and/or constructions. Registration by the lessee must take place within six (6) months from the date of signing of the leasehold agreement. As applies to freehold ownership, non-registration can lead to a fine or an increase of transfer tax up to a maximum of one hundred (100) percent of the original amount.

### Tenancy

Tenancy, as set out above, is the legal relationship between a landlord and a tenant whereby the main object of lease is a building or a part thereof (premises). A most obvious distinction can be drawn between a lease of residential premises and a lease of commercial premises. As regards commercial premises a further subdivision can be made into: retail (shops, restaurants etc.), offices, warehouses and industrial premises.

Although tenancies, in particular those relating to commercial premises, can be quite freely agreed on, the Act on Residential Leases and the Act on Commercial Leases both contain mandatory provisions that cannot be contracted out of by the parties. Such provisions exist primarily for the protection of the tenant relating, *inter alia*, to the transfer of possession, the condition of the premises and the termination of the lease agreement.

## 14.2 Formation of Real Property and Register System

### 14.2.1 Formation

The territory of Finland is divided into real property units and other so called register units (mainly public land and water areas). Real property is defined as an independent unit of land ownership, registered with the Real Estate Register (*FI: kiinteistörekisteri*) and identifiable through its own unique registration number. A real property unit comprises the land area and – unless owned by another party – the buildings that may belong to it. Real property units may be divided into various smaller property units through subdivision, after which such new formed units are separately registered with the Real Estate Register and can be identified through their own registration number.

Title to a real property unit, a share of it or a parcel is customarily evidenced by a registration with the Land Register (not to be confused with the Real Estate Register). Exceptionally, when a new owner has not yet been registered with the Land Register, the title can be evidenced through a complete series of transfer agreements following the last register entry.

### 14.2.2 Registration

#### General

In Finland, information on all registered real property can be found through a publicly available real estate database. This database distinguishes a Real Estate Register and a Land Register. As per 1 January 2010, both registers fall under the responsibility of the National Land Survey Offices (*FI: maanmittauslaitos*). The Real Estate Register holds information on size, formation history and planning status of properties and also includes maps and cadastral survey documents. The Land Register includes information on ownership title, mortgages and other registered encumbrances and special rights.

The information entered into the Land Register is considered to be in the public domain, which means that a party acting in good faith can rely on the information entered into the register even if such information

were not accurate. It is important to realize that under the Finnish system the “public effect” of an entitlement is tied with its registration. Hence, a *bona fide* party who purchases a real property is protected against later, but also possible earlier, alienations of the same property by the previous owner only upon registration of its ownership title with the Land Register.

### Easements

An easement is a burden with which a real property is encumbered for the benefit of another real property. Typical easements are e.g. a right of passage between neighboring properties or a right to install and use piping in the soil of another real property. Easements may be vested temporary or permanent. An easement on a real property can be registered with the Land Register. The legal effect on an entry in the Land Register is that the easement shall be deemed public knowledge and becomes as such protected against contesting third parties.

### Rights of Mortgage and Pledge

Rights of mortgage and pledge are vested in creditors as security against fulfillment of their debtors' financial obligations. Both freehold and leasehold properties can be encumbered with a mortgage. A mortgage over a real property is evidenced by a mortgage deed, drawn up by the competent District Land Survey Office upon application by the owner of the real property in question. The District Land Survey Office will also take care of registration of the mortgage with the Land Register. The mortgage deed stays as a bearer document in the possession of the mortgagor for the full duration of the mortgage period. Therefore, in a subsequent sale of the property a new buyer having arranged for its own financing will require the seller to deliver all mortgage deeds – free from any encumbrances – prior to the closing of the transaction. A mortgage is registered for a fixed amount and it encumbers the land and any fixtures, including buildings, located on the real property. Contrary to a right of mortgage, a pledge of shares cannot be registered with any public register.

## 14.3 Sale, Purchase, and Transfer of Real Estate

### 14.3.1 General

Investors looking to acquire Finnish real estate may structure their investments in two different ways: through acquiring shares in a real estate company or through a direct purchase of the real property. In both scenarios the transfer of ownership finds its legal basis in the sale and purchase agreement drawn up between the parties. However, where a sale and purchase of shares is relatively free of form and formal requirements to be met, a direct sale and purchase of real property – due to the applicability of the Finnish Land Code (540/1995, as amended, *Fi: maakaari*) – does underlie certain rules and processes that cannot be set aside.

### 14.3.2 Purchase and Transfer of Shares in a Real Estate Company

Finnish real estate companies are quite often arranged in the form of a mutual real estate company (the “**MREC**”) which is a non-profit limited liability company and may either be governed by the Companies Act or the Housing Company Act (1599/2009, as amended, *Fi: asunto-osakeyhtiölaki*). In addition to an MREC, there is also another type of a real estate company with the purpose of owning and managing real property, an ordinary real estate company (the “**OREC**”). An OREC is, however, for legal purposes nothing else than a normal limited liability company which e.g. seeks profits and pays dividends to its shareholders. Both MRECs and ORECs are thus on a general level limited liability companies and their assets principally comprise a property and any buildings that may be situated thereon.

### MRECs

The main distinction between ORECs and MRECs lies within the ownership and control structures of the company's principal assets (i.e., the property and buildings). Shares in an MREC entitle each shareholder to possess specific premises in a building owned by the MREC. This includes the right to lease the premises to a third party, in which case the shareholder would receive all rental income directly from the lessee. To achieve this, the articles of association of an MREC include a special provision stating that all or a majority of its shares are grouped into units, each of which gives its holder the exclusive right to possess and use a specific part of the premises in the buildings on the property. This being said, common areas (e.g., hallways, reception areas) belonging to the real property are for practical purposes usually left to the control of the company. The role of an MREC is limited to owning and maintaining the real estate and its costs are covered by charging maintenance fees to the shareholders normally in proportion to the area of the premises possessed by each shareholder.

As opposed to an OREC, the shareholder(s) of the MREC, and not the company, are entitled to lease the premises under their possession and, consequently, the respective rental income is paid directly to, and is taxed as income of, the shareholders. In this scenario, the shareholders qualify as the landlord, not the MREC that owns the real property. The actual role of the company is generally limited to the maintenance and operation of the real property, financed by maintenance charges collected from the shareholders. The maintenance charge is normally determined by the annual shareholders' meeting as a fixed amount per square meter for all premises. If a shareholder fails to pay the maintenance charge or mismanages the premises, the MREC can temporarily take control of the premises and the related rental income. In practice, most MRECs are just passive entities used by their shareholders to jointly administer one or more properties, with the business (renting) risk and the taxable income (rental income less service charges and other expenses) being retained by each shareholder individually. The maintenance charges are generally determined so as to leave the MREC with neither a profit nor a loss for tax purposes.

### ORECs

Unlike an MREC, an OREC has direct possession of the premises it owns. Furthermore, it is liable for the maintenance of the premises and it leases the premises to third parties as well as receives rental income and covers maintenance and other costs related to the real estate, without charging maintenance fees to its shareholders. The assets of an OREC consist mainly of (i) a freehold or leasehold property and (ii) one or more buildings that may be located thereon. The property and buildings may be leased out by the company, and the respective rental income is paid to the company in its capacity as landlord. The company is in principle liable for all maintenance to the property and buildings, as well as for renovation and reconstruction work unless agreed otherwise, e.g. with a tenant.

An OREC is an ordinary limited liability company. The rights and powers of the shareholders are the same as in any other limited liability company. For a minority shareholder in an OREC, this means that he/she has the right to vote at shareholders' meetings and is further entrusted with the powers that fall within standard minority protection (if the holding exceeds ten (10) percent), such as the right to require an extraordinary shareholders' meeting to be held for a specified purpose and the right to request the appointment of a special auditor. All shareholders are in principle entitled to receive profits, but only in accordance with the procedures in the Companies Act. As in an ordinary limited company and in an MREC, the shares of an OREC may freely be disposed of unless otherwise agreed, e.g., in the articles of association. Typically, for the purposes of limiting the shareholders' rights to dispose of their shares, the articles of association of an OREC may include provisions entitling the other shareholders to a right of redemption. Naturally, the shareholders may also agree upon disposal limitations in a separate shareholders' agreement.

An acquisition of shares in both an MREC and an OREC is an ordinary share deal and the parties conclude the transaction by entering into a standard share purchase agreement. The parties have basically full freedom of contract and no specific form is required for the agreement.

### 14.3.3 Direct Purchase of Real Estate

Direct purchases of real estates are regulated by the Land Code.

Pursuant to the main mandatory provisions of the Land Code, a real estate sale and purchase agreement shall be:

- made in writing,
- signed simultaneously by the parties in front of a notary,
- witnessed by the notary, and
- in a form identifying: (i) the purpose of the acquisition, (ii) the target real estate, (iii) the seller(s) and the purchaser(s), and (iv) the purchase price and/or other possible compensation.

A sale and purchase agreement that has not been concluded in the manner prescribed by the Land Code is not legally binding and, subsequently, the purchaser cannot register its ownership with the Land Register.

Outside of the above mandatory provisions and certain transaction specific provisions in the Land Code, the parties have a wide freedom of contract and the Land Code's non-mandatory provisions regarding rights and obligations of the parties become applicable only, if the parties have not agreed otherwise.

### 14.3.4 Municipalities' Pre-Emption Right

A contemplated transfer of title to a real estate may be affected by municipalities' pre-emption right under the Finnish Pre-Emption Act (608/1977, as amended, *Fi: etuostolaki*). Pursuant to this Act municipalities have a right to redeem, for the purposes of civil engineering, recreation and protection, a property located in its area exceeding 5,000 m<sup>2</sup> (3,000 m<sup>2</sup> in the Helsinki metropolitan area). It should be noted that there are no limitations as to the purpose for the redemption by the cities in the Helsinki metropolitan area. However, in practice municipalities rarely use this right with respect to commercial real estates, especially as regards properties with commercial buildings erected thereon.

### 14.3.5 Transfer Tax

A transfer tax of four (4) percent of the purchase price is imposed on a transfer of a property. A transfer tax of one point six (1.6) percent of the purchase price is imposed on a transfer of shares in a real estate company.

As a rule, parties agree that the transfer tax shall be paid by the purchaser (which is also the case according to the law). Due payment of transfer tax is a condition for registration of ownership in the Land Register.

### 14.3.6 Foreign Acquisitions

There are no restrictions for foreign persons acquiring or owning properties in Finland (except in the Åland Islands).

## 14.4 Defects in Real Estate

### 14.4.1 Purchase of Shares in a Real Estate Company

Due to the ambiguities in applying the general rules set by the Sale of Goods Act to a share transaction, the parties, as a rule, tend to exclude applicability thereof to a share transaction. Therefore, detailed provisions covering the characteristics and quality of the target company and the property owned by it as

well as risk allocation between the parties in relation to defects in the ultimate target property or its holding company will be necessary in a share purchase agreement.

#### 14.4.2 Direct Purchase of Real Estate

Basically the quality and characteristics of the target property is agreed upon between the parties in the sale and purchase document. In case the property does not fulfill the quality and characteristics as agreed between the parties there is a defect in the property.

In addition to what has been agreed upon between the parties, certain provisions of the Land Code stipulate when the target property can be regarded as defective. It is possible to deviate from these provisions only by explicitly explaining in the purchase contract how the rights of the purchaser deviate from what is provided for by the Land Code. In practice this means that full exclusion of the applicability of these provisions in a direct property sale is very challenging, especially with regard to latent defects.

Under the Land Code defects are categorized either as (i) physical defects, (ii) defects concerning use and occupancy of the real estate, or (iii) legal defects. These defects include e.g. wrongful or misleading information given by the seller to the purchaser concerning the real estate or a decision by an authority applying to the real estate, if such information can be regarded to have affected the transaction. The seller is not only responsible for wrongful or misleading information, but he also has a positive obligation to inform the purchaser of existing authority decisions (the seller cannot validly claim that he was unaware of any such decisions) and correct any erroneous impression of the purchaser concerning matters that may prevent the purchaser from using or occupying the real estate as intended.

#### 14.4.3 Consequences of Defects

Pursuant to the Land Code, if there is a defect in the real estate, the purchaser has the right to a price reduction, or if the defect is essential, the right to cancel the transaction. With the exception of latent physical defects, the purchaser has also usually a right to a compensation for incurred damages. However, a limited freedom of contract prevails as to the consequences of defect in the target property.

The purchaser can lose his right to claim compensation for the defect unless he informs the seller of the defect and his claims with regard thereto within a reasonable time (i) from the detection of the defect or (ii) from the time that the defect should have been detected by the purchaser. The seller must be informed of a physical defect within five (5) years from the transfer of possession of the real estate.

### 14.5 Planning Law

Institutional planning control functions on three levels: (i) the Finnish Government sets forth nation-wide goals for land use, (ii) regional councils set forth regional plans for the use and development of land, and (iii) local municipalities prepare general plans and detailed town plans, which regulate building and development. Where development requires permission, an application is usually made to the local municipality and it is the local municipality that takes initial enforcement steps.

A building permit is generally required for the construction of a building and for major repairs and alterations comparable to building construction. A building permit is further required for a material change in the use of a building.



## 14.6 Environmental Permits

### 14.6.1 System for Environmental Permits

An integrated system for environmental permits was introduced in Finland by the Environmental Protection Act (86/2000, as amended, *Fl: ympäristönsuojelulaki*), which implements the Directive on Integrated Pollution Prevention and Control (2008/1/EC). Environmental permits are generally needed for all activities that may lead to air or water pollution or contamination of the soil, with the exception of certain short-term activities undertaken on an experimental basis. Activities subject to an environmental permit are described in more detail in the Environmental Protection Decree (169/2000, as amended, *Fl: ympäristönsuojeluasetus*). Large scale activities that may have a significant adverse impact on the environment may also be subject to an environmental impact assessment, which has to be completed before an environmental permit can be granted.

Environmental permit authorities are the Regional State Administrative Agencies (*Fl: aluehallintovirasto*), and the designated environmental authority in the municipality (*Fl: kunnan ympäristönsuojeluviranomainen*).

Further permits for an activity may be required in sector specific legislation, such as, for example, the Water Act (587/2011, *Fl: vesilaki*) regarding construction affecting a body of water and the Land Extraction Act (555/1985, as amended, *Fl: maa-aineslaki*) regarding extraction of soil and gravel.

### 14.6.2 Sanctions

Violation of the permit regulations may result in (i) revocation of the environmental permit, (ii) an order to suspend operations and/or rectify the violation under a penalty of a fine or (iii) the violation being rectified at the operator's expense.

In cases of deliberate or negligent pollution without the required permit or in breach of the permit conditions, an operator may also be sentenced to fines or imprisonment for a maximum of six (6) years, or six (6) months in case of an environmental misdemeanor where the risk of pollution of the environment or a hazard to health is remote.

## 14.7 Environmental Liability

### 14.7.1 General

The Finnish legal regime regulating environmental liability is generally divided into civil law and public law liability. Civil law liability can further be subdivided into liability under tort law or contract law. Public law liability concerns the requirement of remediation of contamination and liable parties are unable to contract out of their liability vis-à-vis the environmental authorities enforcing requirements of remediation.

Environmental liability issues can be rather complex especially regarding historical contamination. Under public law liability the general rule is that the polluter is primarily liable for contamination. However, if the polluter cannot be obligated to fulfill its duties, the possessor of the contaminated property can be liable for the contamination under certain circumstances. According to civil law (tort law) liability the polluter is generally liable for environmental damage. These main rules are further elaborated in the case law of the Supreme Court and the Supreme Administrative Court.

Regarding public law liability it should be further noted that it is possible to contractually re-allocate liability for contamination inter partes, for example, between the seller and purchaser or the lessor and lessee of a property. However, such contractual arrangements will not bind environmental authorities.

A seller or a lessor of a property is required to provide the new owner or tenant with any information available regarding the activities carried out on the property as well as waste or substances that may cause pollution of the soil or groundwater. Failure to meet this obligation does not, as such, remove the obligation of the new occupant to take care of contaminated areas. However, it is a criminal offence for which the transferor can be sentenced to fines.

#### 14.7.2 Civil Law Liability for Environmental Damage

Liability for damage to a third party's health or property, or financial losses (in certain circumstances), caused by pollution or other similar impact on the environment is regulated in the Act on Compensation for Environmental Damages (737/1994, as amended, *FI: laki ympäristövahinkojen korvaamisesta*). The act only applies to damage caused by activities, which are carried out on or after 1 June 1995. The Act provides for strict, as well as joint and several liability.

The Tort Liability Act (412/1974, as amended, *FI: vahingonkorvauslaki*) applies to environmental damage resulting from activities carried out before 1 June 1995, which are not subject to any special legislation, such as legislation on nuclear or oil damage. Under the Tort Liability Act, the obligation to compensate for environmental damage arises, in general, only where the damage has been caused intentionally or by a negligent act or omission. However, according to case law of the Supreme Court, strict liability can apply to generally hazardous operations.

#### 14.7.3 Public Law Liability for Contaminated Soil and Groundwater

Under the Environmental Protection Act the polluter is liable for the clean-up of contaminated soil if the contaminating activity has continued beyond 1 January 1994. The polluter is also liable for the clean-up of contaminated groundwater. As a rule, a company could be regarded as the polluter, and thus responsible for contamination, in cases where the company has either carried out the polluting activity or where the company has continued to operate the polluting activity when the previous operator ceased with its operations. In case of multiple culprits the liability for remediation and preceding investigations would, as a main rule, be divided between polluters.

Under the Environmental Protection Act, the possessor (owner or lessee) of the contaminated property can be liable for cleaning up the contamination under certain circumstances: if the polluter is unknown or it cannot fulfil its remediation duty, AND

- a) if the pollution has occurred with the consent of the possessor; OR
- b) the possessor knew or should have known the state of the area when it acquired the area.

In addition, the clean-up duty for the possessor must not be clearly unreasonable. Further, it should be noted that the liability of the polluter is primary, which means that if the polluter exists and can be compelled to fulfill its clean-up duty, the possessor should not be held liable for the contamination.

If the contaminating activity has ended prior to 1 January 1994, the Environmental Protection Act is not applicable. In such cases the repealed Waste Management Act (673/1978, *FI: jätehuoltolaki*) applies, if the activity, which has caused the contamination, has continued beyond 1 April 1979. The division of liabilities is similar to the regime under the Environmental Protection Act. The polluter is liable for cleaning up contaminated soil. If the polluter cannot be established or reached, or the polluter cannot be compelled to fulfill its clean-up obligation, the current owner or occupier can be liable for the clean-up of contaminated soil. However, in contrast to the Environmental Protection Act, the Waste Management Act neither contains similar provisions regarding the possessor's consent of the pollution occurring or awareness of the state of the area, nor does the Waste Management Act explicitly provide for easing of the possessor's liability in case of a clearly unreasonable clean-up duty.

In case the activity, which has caused the contamination, has ended prior to 1 April 1979, the liability for contaminated soil is governed by somewhat inconclusive case law, and the liability of the polluter or the occupier of the property cannot be categorically excluded. Generally speaking, the polluter is also liable for the clean-up of contaminated groundwater.

It should be noted that public law environmental liability knows no statute of limitations, although certain restrictions regarding historical pollution might be applicable under certain circumstances.

#### **14.8 Liability for Remedying Damage to Water Bodies, and Protected Species and Habitats**

The Act on Reparation for Certain Environmental Damages (383/2009, *Fi: laki eräiden ympäristölle aiheutuneiden vahinkojen korjaamisesta*) entered into force on 1 July 2009. It implements the Environmental Liability Directive (2004/35/EC). The act provides for measures to be taken in order to repair substantial damage caused to waters, protected species and biotopes, the responsibility for the expenses of these measures, and liability limitations. As a main rule, the operator that caused the damage is responsible for the expenses of repairing the damage, regardless of whether the damage was deliberately or negligently caused. The act is applied in case the activity causing the damage has continued beyond 1 July 2009.

## 15. SECURITIES MARKET

### 15.1 Applicable Legislation

The Finnish securities market is governed principally by the SMA. The SMA regulates, among other things, the following:

- issue, offering and marketing of securities;
- continuous and regular disclosure obligations of an issuer;
- disclosure of major holdings;
- licenses and operations of public market places;
- clearing and settlement of trades;
- admission of securities to listing;
- provision of investment services; and
- public tender offers.

The SMA is supplemented by a number of regulations and guidelines issued by the FFSA as well as by regulations issued by the Ministry of Finance. In addition, listed companies must comply with the rules and regulations of the Stock Exchange, which include, *inter alia*, the Harmonized Disclosure Rules, the Guidelines for Insiders and the Finnish Corporate Governance Code. Further, in the context of public tender offers for listed companies, the Helsinki Takeover Code is applicable (currently a non-binding self-regulatory recommendation issued by the Finnish Takeover Panel and drafted in cooperation by issuers, leading law firms, investment banks and other market players; see 15.8.1 below). The operations of options exchanges and trading in standardized options and futures are regulated by the Trade in Standardised Options and Futures Act (772/1988, as amended, *Fi: laki kaupankäynnistä vakioiduilla optioilla ja termineillä*). In addition to these statutes and rules, specific legislation applies to e.g. investment firms, credit institutions, investment funds and real estate funds.

The SMA implements, *inter alia*, the Directive on Markets in Financial Instruments (2004/39/EC) (the “**MiFID**”), the Transparency Directive (2004/109/EC), the Prospectus Directive (2003/71/EC) as amended by the Directive 2010/73/EU, the EU Takeover Directive (2004/25/EC) and the Market Abuse Directive (2003/6/EC).

Currently the SMA is, however, in the process of being revised and a working group established in February 2009 published its first report on the proposed amendments in February 2011. The proposed revision of the current SMA is part of a broader reform of Finnish securities market legislation which aims, *inter alia*, to improve the clarity, comprehensibility and competitiveness of the securities market legislation, to increase the effectiveness of the custody and settlement operations and to ease the administrative burden of listed companies. The reform also aims to enhance investor protection e.g. through the introduction of clearly stricter administrative sanctions to be imposed by the FFSA. As part of the revision, the current SMA is proposed to be split into several acts, namely the new, amended SMA, the Act on Trading in Financial Instruments, the Investment Services Act and the Act on the Book-entry System and Clearing Operations. Among many other substantive amendments being proposed, the new SMA will also introduce wider exemptions to the obligation to publish a prospectus in accordance with the amended Prospectus Directive. The new Acts are expected to enter into force on 1 July 2012.

### 15.2 The Stock Exchange

The official name of the Stock Exchange is, since the acquisition of OMX by NASDAQ in February 2008, NASDAQ OMX Helsinki Ltd. The Stock Exchange, with some 130 listed companies, is part of NASDAQ OMX Nordic, which includes stock exchanges also in Stockholm (Sweden), Copenhagen (Denmark) and Reykjavik (Iceland). These stock exchanges share the same trading system, provide common listing and

index structures, enable cross-border trading and settlement and provide one market source of information. Further, NASDAQ OMX Nordic is a part of the global NASDAQ OMX Group.

On NASDAQ OMX Nordic, listed companies are first presented by market capitalization and then by industry sector following the international Global Industry Classification Standard. Listed companies are divided into three segments: Large Cap for companies with a market capitalization of at least EUR 1 billion; Mid Cap for companies with a market capitalization between EUR 150 million and EUR 1 billion; and Small Cap for companies with a market capitalization of less than EUR 150 million.

NASDAQ OMX First North is an alternative marketplace for small and medium sized growth companies with fewer disclosure and other obligations and lighter listing requirements compared to the main market discussed above.

### 15.3 The Finnish Book-Entry Securities System

The Finnish book-entry securities system is centralized at the Central Securities Depository, named Euroclear Finland Ltd. (“**Euroclear**”), being part of the international Euroclear Group. Euroclear provides national clearing and registration services for issuers of securities. Such services include the technical maintaining of shareholder registers and insider registers, general meeting services and assistance with corporate actions and yield payments. Euroclear has securities links to the Central Securities Depositories in Sweden, Germany, France and Estonia. The book-entry system is also linked to Switzerland via the German Central Securities Depository. The links enable the transfer and handling of both Finnish and foreign equities and debt instruments.

Registration in the Finnish book-entry securities system is mandatory for shares listed on the Stock Exchange. However, foreign issuers that intend to list securities on the Stock Exchange may use Finnish depository receipts or direct links from securities depositories outside Finland. In practice listed debt securities are also registered in the book-entry securities system.

In order to effect entries in the Finnish book-entry securities system, a holder of securities must establish a book-entry account with Euroclear or with an account operator or register its securities through nominee registration. Currently, Finnish security holders may not hold their equity securities through nominee registration. A non-Finnish security holder may appoint an account operator to act as a custodial nominee account holder on its behalf. A beneficial owner is entitled to receive dividends and to exercise all share subscription rights and other financial and administrative rights attaching to the shares held in a nominee account. A beneficial owner wishing to exercise the right to attend and vote at general meetings of the company must seek temporary registration in the shareholder’s own name in the shareholders register maintained by Euroclear. One of the basic principles underlying the Finnish book-entry securities system is the publicity of shareholding. A nominee is therefore required to disclose to the FFSA and to the relevant issuer, upon request, the identity of the shareholder of any shares registered in the name of such nominee, where the beneficial owner is known, as well as the number of shares owned by such beneficial owner.

### 15.4 Supervision

The Ministry of Finance is responsible for ensuring that the legislative framework for financial markets in Finland is stable and efficient. The SMA authorizes the Ministry of Finance to issue supporting regulations.

The supervision of the securities market and the entities operating on such market is solely within the authority of the FFSA, while the authority to issue supplementary regulation is divided between the Ministry of Finance and the FFSA. The FFSA has a general authority to issue regulations and the main tasks of the FFSA are to oversee financial market operations, to supervise and guide market participants and to maintain trust in the market. The FFSA has the right to impose administrative sanctions for breach of securities market regulation, e.g. the provisions relating to market abuse and disclosure requirements, to

the extent that any such offence does not fall within the scope of the Penal Code. The FFSA may, for example, issue a public warning or impose monetary penalties.

In addition to the FFSA, the Disciplinary Committee of the Stock Exchange supervises compliance with securities market regulation, primarily with the rules of the Stock Exchange, and may impose disciplinary sanctions in case of non-compliance.

## 15.5 Issue and Listing of Securities

### 15.5.1 Securities and Issuing Entity

The issue of securities by Finnish companies is regulated mainly by the Companies Act and the SMA. The latter defines securities as certificates given for instance for:

- shares or any other fractions of a corporation's capital stock, for related rights to dividends, interest or profit or for related subscription rights;
- mass instruments of debt or other corresponding obligations or for related interest or profit warrants;
- a combination of any of the rights mentioned above;
- rights to sell or purchase any of the rights mentioned above; or
- units in an investment fund.

### 15.5.2 Public Offerings

The SMA, supplemented by the Ministry of Finance Decrees on Prospectuses (818/2007 and 452/2005), contains provisions on the obligation to publish a prospectus. A prospectus shall be prepared and published where securities are offered to the public or when an application is made to admit securities to public trading. The prospectus shall be approved by the FFSA before its publication.

### 15.5.3 Prospectus Exemptions

Where the securities offering does not involve the admission of securities to public trading the prospectus requirement does not, by operation of law, apply in, *inter alia*, the following situations:

- The addressees of the offering consist of a group of pre-selected potential investors (whereas their sophistication as investors is not relevant), the number of such potential investors in Finland does not exceed 99 (149 under the new SMA) and no other than the named, pre-selected potential investors can participate in the offering;
- The securities are offered to qualified investors only (as defined in the Prospectus Directive);
- The securities offered can be acquired only for a consideration of not less than EUR 50,000 per investor or in denominations of not less than EUR 50,000 (both thresholds EUR 100,000 under the new SMA);
- The total subscription price of the securities offered falls below EUR 100,000 calculated over a period of 12 months (below EUR 1,500,000 under the new SMA).

Upon application, the FFSA may also under certain circumstances grant an exemption from the duty to publish a prospectus where securities are offered to the public or admitted to public trading.

### 15.5.4 The Preparation, Structure and Contents of a Prospectus

According to the SMA, a prospectus can be drawn up either as a single document or as separate documents consisting of a registration document, a securities note and a summary note. Information may be incorporated in the prospectus by reference to previously or simultaneously published documents approved by or filed with the competent authority of the issuer's home Member State. A prospectus must

be published either in Finnish or Swedish. The FFSA may, however, under certain circumstances give its consent to the use of another language (in practice English). The summary of a prospectus must nevertheless always be translated into Finnish or Swedish. A prospectus approved by the FFSA is valid for 12 months.

The issuer and the manager of the issue are responsible for the preparation and contents of the prospectus. It is customary to conduct a business, financial and legal due diligence review of the issuer in connection with a public offering.

A prospectus must contain sufficient information to enable an informed assessment of the securities and their issuer. This will include substantial information on the assets, liabilities, financial position, results and future prospects of the issuer. Rights attaching to the securities must also be set out, as should any other matters which could materially affect the value of the securities in question. As a rule, a prospectus is prepared to comply with the minimum content requirements of the European Commission's Regulation (EC) No. 809/2004 on Prospectuses. Domestic regulations may be applied with respect to offerings limited in size. Further, in accordance with the Prospectus Directive, Finnish law recognizes the concept of prospectus passporting.

### 15.5.5 Listing on the Stock Exchange

The Stock Exchange may admit to public trading a security which is likely to be subject to sufficient demand and supply and the price formation of which can thus be expected to be reliable.

In brief, the main listing criteria include the following:

- An operating history of three (3) years;
- Documented earnings capacity or sufficient working capital for at least twelve (12) months ahead;
- 25 % of the share capital held by the public (free float); and
- An adequacy requirement with respect to the company's organisation, management and board of directors.

Debt instruments may be admitted to public trading provided that:

- The face value of a debt issue is at least EUR 200,000;
- They are freely transferable;
- Their issuer is sufficiently financially sound; and
- The issuer's reporting and supervision processes are organized in an appropriate manner.

Resolutions regarding the admission to listing and delisting of securities are made by the Listing Committee of the Stock Exchange.

## 15.6 Public Tender Offers

### 15.6.1 General

The acquisition of publicly traded shares (or other securities) through a public tender offer is largely governed by the SMA. The provisions of the SMA set forth, *inter alia*, requirements on the information to be published in connection with a public tender offer and the procedures to be followed in connection with the offer. The Companies Act regulates the redemption of minority shareholdings (squeeze-out) after the completion of a successful tender offer and sets forth the rights and duties of the target board.

Public tender offers are also governed by the rules and regulations of the Stock Exchange, which regulate, in addition to disclosure matters and trading, e.g. the delisting of securities. Furthermore, public tender

offers are governed by the Helsinki Takeover Code (the 'Takeover Code') and the FFSA's standards (partly binding and partly recommendatory procedural and application guidelines on the provisions of the SMA). Currently, the Takeover Code is not legally binding, but rather a recommendation recording best practices and good conduct on the securities market in connection with public tender offers. The Takeover Code has been issued by the Takeover Panel, an independent self-regulatory body having statutory footing in the SMA and operating in connection with the Finnish Central Chamber of Commerce. However, the Takeover Panel is proposed to be abolished and in practice replaced by a new independent organ in connection with the reform of the securities market legislation. Under the new SMA, the Takeover Code would also be subject to a "comply or explain" obligation.

The SMA contains provisions regarding both voluntary and mandatory offers. The threshold triggering a mandatory offer is reached when a shareholder's holding in a Finnish listed company exceeds 30 or 50 per cent of the total voting rights in the target company. A shareholder's holding includes, among others, the voting rights held by any undertakings controlled by the shareholder, voting rights held by the shareholder together with a third party, as well as voting rights held by parties acting in concert with the shareholder to exercise control over the target company.

In addition to the laws and regulations governing public tender offers in general, the Articles of a target company may affect the way in which a public tender offer will have to be structured, for instance by imposing specific majority requirements or voting restrictions or an obligation to acquire minority holdings at levels lower than those imposed by the SMA.

Further, public tender offers are subject to Finnish contract law in general and may fall within the ambit of other provisions, for example provisions regarding merger control. Finnish law does not draw a distinction between friendly and hostile public tender offers. In a friendly transaction it is customary for the offeror to enter into a so called combination agreement with the target board. Such agreement governs the transaction process and typically includes the main terms and conditions of the offer as well as the conditions and prerequisites under which the target board will recommend the offer to the shareholders.

#### **15.6.2 Conditions and Conduct of an Offer**

The offeror must disclose its decision to launch a tender offer immediately after such decision has been made. The disclosure shall include the main terms of the forthcoming offer. The offeror may quite freely decide on the terms and conditions of the offer, with the exception of the mandatory provisions mainly relating to the offer price, the duration of the offer period, the equal treatment of all holders of shares or securities that are tendered for and the requirement to secure financing for the tender offer before announcing a decision to make such offer. Further, the general prohibition under the SMA to give untrue or misleading information and to use procedures which are contrary to good practice or otherwise inappropriate must be observed.

The offer consideration shall, as a general rule, be the market price of the shares in question. In mandatory offers, the market price is defined as the highest price paid by the offeror during the six (6) months preceding the date when the obligation to make a mandatory offer was triggered. In the absence of such purchases, the price must at least correspond to the volume-weighted average price paid for the securities in question in public trading during the three (3) months preceding the date mentioned above. In a voluntary offer made for all the securities in the target company, the offer consideration must be at least equivalent to the highest price paid by the offeror during the six (6) months preceding the announcement of the offer. In the absence of such purchases, the offeror is free to determine the offer consideration.

The offer consideration may be cash, securities or a combination of both. In mandatory offers cash must, however, always be offered at least as an alternative. In voluntary offers the offeror may itself decide upon the form of consideration to be offered (except for certain situations in which it is required to offer a cash consideration at least as an alternative).



According to the SMA, all shareholders must be treated equally in a tender offer, i.e. shareholders must be offered equal consideration on equal terms. In particular, the SMA imposes a statutory top-up obligation, requiring the offeror to adjust the offer terms if target securities are acquired by the offeror for a higher price than the initial offer price after the announcement of the offer and prior to the expiry of the offer period. The adjustment will need to reflect such higher price paid. A similar top-up obligation will apply if target securities are acquired by the offeror for a higher price than the initial offer price during a period of nine (9) months from the end of the offer period.

The offer period must not be shorter than three (3) weeks and not longer than ten (10) weeks. The offer period may on special grounds, however, exceed the maximum of ten (10) weeks, provided that this does not impede the operations of the target company for an unreasonably long period. The FFSA may also order an extension of the offer period in order for the target company to convene a general meeting of shareholders to consider the offer. Before the commencement of the offer period, the offeror must publish an offer document approved by the FFSA.

The completion of a voluntary tender offer can be made conditional upon the fulfillment of certain conditions, e.g. reaching a certain acceptance level. Legislation does not regulate the kinds of conditions that are permitted in a tender offer, but the Takeover Code and the FFSA's standard on Takeover Bids and Mandatory Bids provide further guidance in this respect. The conditions should be unambiguous, so that their satisfaction may be clearly determined, thus ensuring that the completion of the offer does not effectively occur at the offeror's sole discretion. Further, in order to invoke a condition to completion, the non-fulfillment of the condition must be of material relevance to the offeror in relation to the contemplated transaction.

An offer is binding on the offeror and may, once it has been received by the offerees, as a rule, only be withdrawn in the case of a competing offer. Thus, once a public tender offer has been launched, it may not be withdrawn, limited or otherwise amended to the benefit of the offeror.

Following a successful completion of a tender offer, the Companies Act provides for an obligation and a right to redeem the minority shareholdings when the offeror (alone or jointly with undertakings controlled by the offeror or certain other specified persons or entities) holds more than ninety percent (90 %) of the shares and votes in the target company.

The offeror is obliged to report its holding in the target company (during and after the offer period) in accordance with the general provisions on disclosure of major holdings described below.

### 15.7 Disclosure of Major Holdings

Under the SMA, a shareholder the holdings of which reaches, exceeds or falls below the thresholds of 5, 10, 15, 20, 25, 30, 50 or 66.7 (2/3) percent of the voting rights or the shares in a Finnish company the shares of which are subject to public trading within the EEA is obliged to disclose his holding to the target company and the FFSA. The new SMA will introduce also new flagging thresholds of 33.3 (1/3) and 90 percent.

In the calculation of the proportion of voting rights and shares referred to above, for example the following are also to be considered holdings of a shareholder:

- Holdings of an undertaking controlled by the shareholder;
- Holdings of a pension fund or foundation of the shareholder or of an undertaking controlled by the shareholder; and
- Holdings, the disposal and exercise of which is, on the basis of an agreement or otherwise, at shareholder's sole discretion or at the joint discretion of the shareholder and a third party.

Disclosure is also required where a shareholder is a party to an agreement or other arrangement that, if enforced, will cause his holding to reach, exceed, or fall below one of the above thresholds.

The target company and the FFSA must be notified without delay once the shareholder has or should have become aware of the change in his holding or on the day the agreement or arrangement concerning such holding is entered into. The target company is obliged to publish the information without delay.

## 15.8 Institutional Participation

### 15.8.1 Provision of Investment Services

The offering and marketing of investment services on a professional basis in Finland is governed by the Act on Investment Firms (922/2007, as amended, the “**IFA**”, *FI: laki sijoituspalveluyrityksistä*) and the Act on Foreign Investment Firms (580/1996, as amended, the “**FIFA**”, *FI: laki ulkomaisen sijoituspalveluyrityksen oikeudesta tarjota sijoituspalveluja Suomessa*) which implement the MiFID. Further, investment services can be offered by banks and credit institutions pursuant to the Credit Institutions Act (121/2007, as amended, *FI: laki luottolaitostoinnasta*), which applies to the conduct of banking business on a professional basis.

Investment services are defined largely correspondingly as in the MiFID and include e.g. investment advice, reception and transmission of orders, execution of orders for clients and investment management.

The SMA includes code of conduct rules to be observed in the provision of investment services. The FFSA has also issued guidelines for the marketing of financial instruments to Finnish investors. Further, the IFA contains code of conduct rules concerning e.g. separation of assets, prevention of money laundering and confidentiality.

Under the FIFA, an EEA investment firm that intends to provide investment services in Finland, on a cross-border basis or by establishing a branch office, must notify the competent home state regulator of such intention. The home state regulator will consequently notify the FFSA thereof. The investment firm may commence the operations of a branch office in Finland within two (2) months from the receipt of the home state regulator’s notification by the FFSA. The FFSA shall within that time period issue any provisions it deems necessary regarding the duty to disclose information relating to the supervision of the activities of the investment firm and regarding specific operational conditions necessary for the general good. Cross-border operations conducted without establishing a branch office may be commenced immediately after the receipt of the home state regulator’s notification by the FFSA.

According to the FIFA, a foreign investment firm authorized in a state outside the EEA may be granted an authorization by the FFSA to establish a branch office in Finland if the firm (i) is subject to sufficient supervision in its home state and (ii) has sufficient operating conditions and a management fulfilling the requirements for the reliable provision of investment services. Also, in order to offer investment services on a cross-border basis without establishing a branch office or subsidiary, a foreign non-EEA investment firm must apply for an authorization by the FFSA.

### 15.8.2 Mutual or Investment Funds

Mutual funds are governed by the Act on Investment Funds (48/1999, as amended, the “**AIF**”, *FI: sijoitusrahastolaki*). The AIF implements the UCITS Directives I-IV (1985/611/EC, 2001/107/EC, 2001/108/EC and 2009/65/EC). Finnish mutual funds can either be UCITS funds or so called ‘special mutual funds’ (typically hedge funds). A special mutual fund differs from a UCITS fund for example by the fact that a special mutual fund is not subject to the investment restrictions set forth for a UCITS fund under the AIF.

The UCITS IV Directive should have been implemented in each EU Member State by 1 July 2011 but in Finland there was a delay in the implementation due to national parliamentary elections held in the spring 2011. The directive was implemented on 31 December 2011 by amending the AIF. The main changes in the UCITS IV and the amended AIF are that investment funds no longer need to prepare simplified prospectuses, since they have been replaced by the Key Investor Information Document (the “KIID”). Distributors of fund units must present the KIID to the customer well in advance of the final investment decision. The KIID provides the customer with the most important details on the investment fund in a standardized two page -document. The objective of the KIID is to ensure that KIIDs covering different funds and countries are as similar as possible so that different investment funds can be compared with each other.

The marketing and selling of units in non-Finnish mutual funds that qualify as AIF funds will, as a rule, be governed by and subject to AIF filing requirements. Should such foreign funds not qualify as funds under the AIF (e.g. typically where the funds are close-ended), they will only be subject to the general provisions governing securities contained in the SMA (including the prospectus requirements described above).

EEA funds authorized in accordance with the UCITS Directives are always governed by the AIF. The new notification procedure in accordance with the amended AIF involves regulator-to-regulator communication rather than UCITS-to-regulator communication. This means that the fund must submit the standard model notification letter to its home state regulator. After having reviewed the documentation, the home state regulator shall submit the notification to the FFSA and thereby inform the FFSA of the fund's intention to market and offer its units in or into Finland. The FFSA is precluded from imposing additional notification requirements to those which are set out in the UCITS IV Directive. However, the foreign funds still need to comply with the Finnish marketing provisions when marketing the units of their funds in or into Finland.

The home state regulator must make a notification to the FFSA within ten (10) working days of the receipt of the aforementioned documentation. The marketing of the fund in Finland may be commenced immediately after the filing of all of the above documents with the FFSA. It is the responsibility of the home state regulator to provide the fund with a confirmation that the notification has been made to the FFSA and that the marketing may begin immediately after the notification. There is no scope for any discretion by the FFSA as regards the reception of the notification form.

If units in a non-UCITS fund are marketed solely to professional investors in Finland, the AIF does not apply. However, if a non-Finnish mutual fund with a non-UCITS status is marketed (even partly) to non-professional investors, the fund cannot be marketed in Finland without the authorization of the FFSA. Such authorization can only be granted if foreign legislation provides unit holders protection that is sufficiently comparable with that of the AIF. Further, the fund shall, according to its home state regulations, be subject to supervision comparable to that set forth in the EU regulations, and sufficient cooperation between the supervising authority and the FFSA must have been ascertained.

## 15.9 Insider Trading

The definition of insider information in the SMA corresponds to the definition under the Market Abuse Directive (2003/6/EC). The prohibitions relating to insider information under the said Directive have been implemented in the SMA. The misuse of insider information is prohibited both under the SMA and the Penal Code and criminalized.

The basic principle concerning the use of insider information is that insider information may not be used in any manner, directly or indirectly, in the purchasing or selling of securities or by advising somebody in securities trading. Insider information cannot be disclosed to anyone unless the disclosure is part of the customary performance of the work, profession or assignment of the person disclosing the information. There must also be a justified reason for such disclosure. There are, however, certain confirmed exemptions to the disclosure prohibition, e.g. under certain circumstances disclosure to the major

shareholders of the company may be allowed (e.g. when company management is contemplating a measure or transaction which would subsequently require the shareholders' approval).

## 16. TAXATION

### 16.1 Applicable Legislation

The main sources of tax law are the Income Tax Act (1535/1992, as amended, *Fl: tuloverolaki*) and the Business Income Tax Act (360/1968, as amended, *Fl: laki elinkeinotulon verottamisesta*), which govern among other things the taxability of income and the deductibility of expenses, as well as the computing of income tax, and the Value Added Tax Act (1501/1993, as amended, *Fl: arvonlisäverolaki*).

### 16.2 Business Income

#### 16.2.1 General

A Finnish limited liability company pays corporate income tax on its worldwide profit at a flat rate of twenty-four point five (24.5) percent. Its income and expenses are allocated among three different categories of income, namely business income, agricultural income and other income. Income and expenses in one category cannot be offset against income and expenses in another category. The same also applies to permanent establishments of foreign companies in Finland.

There are two different kinds of partnerships in Finland, general and limited partnerships. Partnerships are treated as transparent entities for income tax purposes. Sole proprietorships are generally used by individuals for entrepreneurial businesses. The business income of a sole proprietor is calculated according to the same rules as for limited liability companies, but is divided into earned income and capital income of the individual for tax computation purposes.

#### 16.2.2 Determination of Taxable Profit

Taxable profit is determined in accordance with generally accepted accounting principles, with only minor adjustments for tax purposes. A company's worldwide income is recorded as income on an accrual basis. Consequently, all expenses and losses actually incurred for the purposes of obtaining or maintaining income are generally tax deductible.

#### 16.2.3 Participation Exemption

Capital gains from the disposal of shares in a limited liability company are tax exempt for corporate entities, provided that the vendor company at the time of the transfer had owned at least ten (10) percent of the subsidiary's share capital and the disposed shares for at least one (1) year, and that the shares belonged to the vendor's fixed assets. Conversely, losses, including liquidation losses, relating to disposals of shares in the same situation, are not tax deductible. The exemption is not applicable if the disposed company is a Finnish housing company, a mutual real estate company or any other company, the activities of which mainly consist of owning or managing real property.

The tax exemption further requires (i) that the disposed company is either a Finnish company or a company described in the Parent-Subsidiary Directive (1990/435/EEC) or (ii) that a tax treaty between Finland and the disposed company's state of domicile exists and applies to that company. Finally, the tax exemption is not applied if the vendor company is an equity investor.

#### 16.2.4 Loss carry-forwards

Losses incurred in business activities, other than capital losses arising from disposals eligible for participation exemption, may be carried forward and offset against profits in the following ten (10) years.

A capital loss arising from a disposal, which would otherwise be eligible for participation exemption but where the disposed shares have been owned for less than one (1) year or where the participation was less than ten (10) percent, may be carried forward for five (5) years but offset only against capital gains from disposals of shares belonging to the vendor's fixed assets. However, a loss is not deductible if the disposed assets are shares in a foreign company (i) which does not qualify under the Parent-Subsidiary Directive or (ii) which is not resident in a tax treaty country and eligible for the benefits under that tax treaty.

### 16.2.5 Group Contributions

There is no fiscal unity or consolidated tax return procedure in Finland. However, a group contribution regime can be used to a certain extent to decrease the total tax burden of a group of companies.

A group contribution is tax deductible provided that certain requirements set out in the Finnish tax law (the details of which are not discussed here) are met. While the amount of the contribution is deductible to the contributing company only if all requirements set out in the law are fulfilled, the amount is always taxable income of the receiving company. The contribution may be given by a subsidiary to its parent, by a parent to its subsidiary or between two subsidiaries. The contribution is non-deductible to the extent that it leads to the contributing company showing a loss for the relevant fiscal year.

While a group contribution can only be given between members of a Finnish group of companies (i.e. where the parent company is Finnish), EU principles and the typical non-discrimination clause included in most double taxation treaties have in tax practice been considered to require that group contributions be deductible between Finnish companies owned directly or indirectly by a qualifying foreign entity, as well. Further, a group contribution between a Finnish subsidiary and a Finnish permanent establishment has been accepted for the same reasons.

### 16.2.6 Dividends Received by a Company

The Finnish dividend tax system is based on a (classical) partial double taxation of distributed profits. Dividends received by corporate entities are normally not taxed. However, seventy-five (75) percent of dividends on shares considered to be investment assets are taxable. This applies equally to domestic and foreign entities, unless the distributing company is an entity to which the Parent-Subsidiary Directive applies, and the recipient company owns directly at least ten (10) percent of the share capital. If the Directive applies, no tax can be levied in Finland. Additionally, seventy-five (75) percent of the dividend is taxable if the distributing company is not resident in the EU. Whether tax is actually levied, depends in most cases on the relevant Finnish tax treaty. However, if there is no tax treaty, the whole amount of the dividend is taxable.

Further, even if the shares are not regarded as investment assets, seventy-five (75) percent of dividends received on shares in a listed company are taxable, if the recipient company is neither listed nor owns at least ten (10) percent of the distributing company.

### 16.2.7 Controlled Foreign Companies

Tax can be levied on an individual or a corporation resident in Finland for their share of the profit of a Controlled Foreign Corporation (the "CFC"), regardless of whether or not such a profit share is distributed by the CFC to its shareholders. In order for tax to be levied on a shareholder, the company has to be under Finnish control. A CFC is a foreign corporation that in its domicile is subject to a lower level of effective income taxation equivalent to three-fifths (3/5) of the level of corporate tax levied in Finland. Generally, this means that the tax rate applicable to a CFC is fourteen point seven (14.7) percent ( $3/5 * 24.5$  percent) or lower. The CFC-rules are, however, not applicable to a foreign company whose income mainly originates from industrial production or shipping carried out by the CFC in the relevant jurisdiction.

In addition, as a main rule the CFC-rules are not applicable if a tax treaty between Finland and the CFC's state of domicile exists and applies to that company.

### 16.2.8 Employer's Social Security Contributions

A Finnish employer is obliged to pay social security tax and social security contributions based on the gross amount of salaries. Generally, the charges payable by the employer vary between approximately twenty-one point three (21.3) percent and twenty-three point seven (23.7) percent. These charges are deductible for income tax purposes.

## 16.3 Acquisition of a Business

### 16.3.1 General

A business may be acquired in various ways, the two most common being an asset deal and a share deal. It is also possible to accomplish a business acquisition in a tax neutral way by an exchange of shares, a transfer of assets or a merger (by virtue of the Merger Directive (90/434/EEC)).

### 16.3.2 Asset Deal

In an asset deal, the purchaser may generally depreciate the entire purchase price, with the exception of any portion allocated to securities, land and similar assets that are not subject to deterioration. The purchase price must be allocated among the various assets on the basis of their fair market value. Where the total purchase price exceeds the aggregate market value of all assets, the difference must be recorded as goodwill. Goodwill can be depreciated for tax purposes, normally over a period of ten (10) years. Where the assets transferred include shares or real property, asset transfer tax is levied (see section 16.5). In general, interest expenses related to the financing of the purchase are deductible in corporate taxation.

### 16.3.3 Share Deal

In a share deal, provided the acquiring company is a Finnish company, the purchaser may not depreciate the acquisition cost of the shares in taxation. If there is more than fifty (50) percent direct or indirect change in the ownership of the company's shares, the company's tax loss carry forward, as well as the losses that it incurs in the year of the change in ownership, will lapse. A special clearance can be obtained from the Finnish tax authorities allowing utilization of the above attributes, despite the change in the ownership. Shares that are listed on the Stock Exchange are disregarded when the relevant change in ownership is calculated.

Asset transfer tax of one point six (1.6) percent is payable on the purchase price of the shares. Holding company structures can sometimes be advantageous for the acquisition of shares in Finnish companies.

### 16.3.4 Repatriating Profits from Finland

Dividend distributions from Finnish companies to non-residents are subject to withholding tax at rates varying from zero (0) percent to thirty (30) percent, depending on the applicable tax treaty. If such a treaty does not exist, the withholding tax rate is thirty (30) percent (if the recipient is a private individual) and twenty-four point five (24.5) percent (if the recipient is a corporate entity). No tax may be levied, if the Parent-Subsidiary Directive applies to the companies.

Interest paid on loans from abroad is normally exempt from Finnish withholding tax under Finnish domestic tax law. This also applies in cases where the relevant tax treaty would allow the levying of withholding tax. However, in order to prevent this rule from being used to circumvent the withholding tax levied on

dividends, it is expressly provided that the exemption does not apply to interest paid on loans representing investments comparable to equity.

There are no formal thin capitalization rules in Finland. However, the Ministry of Finance is currently preparing a proposal on restrictions of interest deductions and the rules (the content of which is still unknown) are expected to come into force already in the beginning of 2013.

## 16.4 Taxation of Employees

### 16.4.1 Income Tax

Individuals are subject to tax on their global income only to the extent that they are resident in Finland during the calendar year. An individual is deemed to be resident in Finland if he resides there for a continuous period of six (6) months or more, or if he has a permanent abode in Finland. Earned income of individuals is subject to progressive tax at rates up to approximately fifty-three (53) percent. Investment income received by individuals is subject to income tax at a rate of thirty (30) percent up to EUR 50,000 annually and then thirty-two (32) percent.

Non-residents are subject to tax on income derived from Finland. Taxation of non-residents is generally achieved by the withholding of tax at a flat rate of thirty-five (35) percent for earned income and a rate of thirty (30) percent for capital income. However, a reduction of EUR 510 per month or EUR 17 per day (for other than full months) is made from earned income before the tax is withheld. The taxation of non-residents is further regulated by the relevant tax treaty between Finland and the employee's state of residence.

### 16.4.2 Share and Share Option Schemes

The benefit accrued from a right based on an employment relationship to subscribe for or purchase shares at a price lower than their current value is taxed as earned income. This includes among other things schemes based on options and convertibles. However, only the amount of benefit exceeding a discount of ten (10) percent in the subscription price for new shares (other than shares issued on the basis of option and convertible plans or similar arrangements) is, under certain restrictions, subject to income tax. In the case of options, convertibles and similar arrangements, tax is levied when exercised and not when granted.

### 16.4.3 Social Security Related Costs

In 2012 the pension insurance premium payable by an employee is five point fifteen (5.15) percent (six point fifty (6.50) percent, if the employee is aged fifty-three (53) or older) and the unemployment insurance premium payable by an employee is point six (0.6) percent on his/her gross salary. These contributions are withheld from the employee's salary by the employer.

### 16.4.4 Special Tax Regime for Expatriates

There is a temporary special tax regime for qualifying key expatriates, the purpose of which is to encourage foreign specialists to work in Finland regardless of the high progressive tax rates. The law applies to expatriates who are resident for tax purposes in Finland and fulfill certain requirements. The tax rate on salary is thirty-five (35) percent and it applies for a maximum period of forty-eight (48) months.

Net wealth tax has been abolished in Finland in 2006.



## 16.5 Asset Transfer Tax

Transfer tax is levied on the purchase of Finnish real estate and normally also on transfers of land lease agreements at a rate of four (4) percent of the purchase price. On the transfer of Finnish securities, tax is levied at a rate of one point six (1.6) percent of the purchase price. Transfers of publicly listed securities against fixed cash consideration are, however, exempt from asset transfer tax under certain conditions.

## 16.6 Value Added Tax

Value added tax (“VAT”) is levied on the consumption of goods and services supplied in Finland by businesses and on the import of goods into Finland. The standard rate of VAT is currently twenty-three (23) percent. There are, however, reduced rates of thirteen (13) percent for food, non-alcoholic beverages and restaurants and nine (9) percent for books, medicines and passenger transportation services. Additionally, certain types of goods and services are excluded from VAT. Exemptions apply e.g. to the educational services, health care and social welfare services, as well as financial and insurance services.

If a foreign entity has a permanent establishment in Finland (i.e. a branch), the branch is entered in the Finnish VAT register. However, if the foreign entity does not have a permanent establishment in Finland for VAT purposes and has not applied for taxable status as regards the selling and provisions of services in Finland (i.e. for a Finnish VAT number), the buyer is usually liable to pay the VAT on goods and services sold in Finland by the foreign entity.

## 17. COMMUNICATIONS LAW

### 17.1 Liberalization

Telecommunications and broadcasting activities are today essentially liberalized services in Finland. The road to liberalization was embarked on already in 1987, ahead of the European Commission's efforts to liberalize the telecommunications markets in the EU. The pace of liberalization in Finland has been rapid and already by the fall of 1994, Finland had implemented an operator dial-up and pre-selection regime, local loop unbundling, and administrative separation between the regulator and the then wholly state-owned operator Telecom Finland (in 2002 Telecom Finland merged with Sweden's national operator Telia to form TeliaSonera, of which the Finnish state in 2011 owned thirteen point seven (13.7) percent). Already by 1996 Finland had over eighty (80) independent telecommunications operators (serving a population of five (5) million). By summer of 2004, Finland had implemented the 2002 communications regulatory framework directives package.

The only service that is not fully liberalized in Finland is the offering of network services that use radio frequencies in a digital terrestrial mass communications network or in a mobile network practicing public telecommunications. Nevertheless, a license for providing services in digital terrestrial mass communications network is not required if the operation lasts for two (2) weeks at most and if the radiation power of the television transmitter used in the operation does not exceed fifty (50) watts. The scarcity of frequencies has required that such services are subject to some control, if only to award the available frequencies to the most deserving users. In the spirit of liberalization frequencies in Finland are awarded to the best applicants based on their proposed fulfillment of the principles of the communications laws. However, an amendment to the Finnish Communications Market Act (393/2003, the "CMA", as amended, *FI: viestintämarkkinalaki*) which entered into force on 1 July 2009, introduced a statutory auction procedure for granting licenses for frequencies between 2500 and 2690 megahertz. However, provided that the operations last no more than one (1) month and the radiation power of the transmitter used in the digital television operation does not exceed twenty (20) kilowatts, the operation is subject only to a license granted by the Finnish Communications Regulatory Authority (*FI: viestintävirasto*, "FICORA"). The first auction, in which four (4) different companies were granted licenses, was held in November 2009.

Finland has recognized that means of communications are converging through digitalization and the concentration of industries. The first statutory recognition of this occurred already in 2002, when Finland's Telecommunications Market Act was broadened in its scope to include the provision of digital wireless terrestrial broadcasting networks and cable TV networks. Today, Finland's Communications Market Act also includes in its scope internet service providers (the "ISPs") and digital TV and radio programming services.

The success of Finland's statutory convergence can be attributed in part to the far-reaching technology neutrality adopted already in the first Finnish Communications Market Act (396/1997, repealed). Today, the current CMA does not distinguish between digital broadcast services and traditional communications services for regulatory purposes. Telecommunications network operators and broadcast network operators, i.e., the construction and operation of transmission network infrastructure, are subject to the same regulatory regime. All network operation, save for the operation of a mobile cellular or a terrestrial mass communications network as mentioned above, is not subject to a licensing regime but only to a notification requirement.

Under the CMA, the provision of services – whether as regards subscription for video-on-demand services or for traditional point-to-point telecommunications services, on fixed, mobile, or traditional broadcasting networks – is subject to a notification requirement.

In keeping with the spirit of liberalization, communications activities in Finland are as a general rule subject to the Finnish competition legislation which applies *ex post* and which has been harmonized with the EU competition law. This applies to communications operators' ordinary business as well as to their mergers

and acquisitions. Compliance with these rules is administered by the FCA and the provincial law enforcement authorities. General competition law cases are handled by Finland's special Market Court.

Communications operators in Finland are also subject in certain cases to competition rules that apply *ex ante*. This is due to Finland's implementation of the EU's telecommunications directives which require the imposition of so called significant market power (the "SMP") obligations – such as cost-oriented, transparent, and non-discriminatory access and pricing – on communications operators that have been declared by the FICORA to possess significant market power. So far FICORA has based its relevant market definition on the European Commission recommendation on relevant product and services markets, and has issued SMP decisions using the eighteen (18) different markets defined in the recommendation.

## 17.2 Applicable Laws

Communications activities such as the construction and operation of a network and the provision of communications services on a network are regulated throughout Finland under the technology neutral CMA and the Radio Frequencies and Telecommunications Act (1015/2001, as amended, the "Radio Act", *FI: laki radiotaajuuksista ja telelaitteista*). In parallel with the aforementioned specific laws, Finland's general Act on Competition Restrictions, the Unfair Business Practices Act and the Consumer Protection Act apply to the communications industry. The CMA and the Radio Act also implement the equipment compliance requirements of the R&TTE Directive (1999/5/EC) on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity.

Television and radio programming activities are regulated throughout mainland Finland under the Act on Television and Radio Operations (744/1998, as amended, *FI: laki televisio- ja radiotoiminnasta*). Television and radio programming activities in the Åland Islands are regulated under the Åland Islands' own Television and Radio Broadcasting Act (Act number 2011/95 of Åland Islands' legislation, as amended, *SWE: landskapslag om radio- och televisionsverksamhet*). The programming activity laws of both mainland Finland and the Åland Islands have been harmonized with the Television without Frontiers Directive (89/552/EEC) and the Amending Directive (97/36/EC). The programming activities of the national broadcaster YLE are financed in large part through a public fund set up under the Act on the State Television and Radio Fund (745/1998, as amended, *FI: laki valtion televisio- ja radiorahastosta*). The Act imposes an annual television fee, collected by FICORA, on end users based on their ownership of a television set. In addition, both YLE and other programming license holders are obligated to pay an annual supervision fee to FICORA, as provided in the Act on Television and Radio Operations. The administration of YLE and its public service obligations are regulated under the Act on Yleisradio Oy (1380/1993, as amended, *FI: laki Yleisradio Oy:stä*). However, according to recent proposals, YLE's public service broadcasting would be funded from the state budget from 2013 onwards in the form of a so called "YLE tax", which would be an individual public broadcasting tax. The legislative proposal by the Ministry of Transport and Communications for the new funding of YLE is expected to proceed to the handling and possible approval by the Parliament during the course of 2012.

Finland has implemented the Directive (2002/58/EC) on Privacy and Electronic Communications, including its amendment via Directive 2009/136/EC, through the Act on the Protection of Privacy in Electronic Communications (516/2004, as amended, *FI: sähköisen viestinnän tietosuojalaki*). This law enjoys special application to all communications transmitted through a public network located in Finland and also includes within its scope communications conducted on a private network if such network can be accessed from or provide access to a public network or such network is otherwise connected to a public network. In essence, the Act on the Protection of Privacy in Electronic Communications also captures corporate virtual private networks (the "VPNs") and imposes upon corporate IT managers, and ultimately corporate boards, essentially the same obligations with respect to the inviolability of communications privacy as are placed on public communications operators. The Act on the Protection of Privacy in Electronic Communications is augmented by the applicable rules of Finland's general Personal Data Act (523/1999, as amended, *FI: henkilötietolaki*), which implements the Data Protection Directive (95/46/EC).

Freedom of speech is protected as a constitutional right in Finland. Accordingly, every person in Finland whether an individual or a legal entity is entitled to express, publish, and receive information, opinions, and other communications without advance censorship. Accountability for media content and hence freedom of speech is provided for under the Finnish Act on the Exercise of Freedom of Expression in Mass Media (460/2003, as amended, *FI: laki sananvapauden käyttämisestä joukkoviestinnässä*).

The Act on the Exercise of Freedom of Expression in Mass Media is technology and content neutral and can be characterized as a public order law in that it is not intended to encroach on the constitutional right to the freedom of expression but rather to provide for accountability for expression communicated through the mass media. The Act expressly provides that its interpretation may restrict expression only to the extent that it is unavoidable bearing in mind the significance given to the freedom of expression in a democratic society.

Regardless of whether the Act on the Exercise of Freedom of Expression in Mass Media is applied or not, the provisions of the Finnish Penal Code, such as those prohibiting defamation, pornography, and racial hatred, are applicable. Also the provisions of special laws, such as the Act on Audiovisual Programs (710/2011, *FI: kuvaohjelmalaki*), the Copyright Act (404/1961, as amended, *FI: tekijänoikeuslaki*), and the Act on Provision of Information Society Services (458/2002, as amended, *FI: laki tietoyhteiskunnan palvelujen tarjoamisesta*), which implements the E-Commerce Directive (2000/31/EC), apply in parallel.

### 17.3 Regulators

The communications regulatory bodies in Finland are the Ministry of Transport and Communications (here, the “**Ministry**”) and FICORA. The Ministry is entrusted with preparing and proposing national communications policy.

The monitoring of compliance with Finland's communications laws and regulations is entrusted to FICORA, which operates administratively under the Ministry. FICORA is responsible for monitoring network activities, programming, subscriber access services, network access terms, and even postal services. FICORA is also responsible for administering communications operator notifications, cable TV programming notifications, frequency licensing, numbering, “fi” domain name allocation, network security, digital signature certification services and network and equipment standardization as well as for defining the relevant markets in the communications sector in accordance with the EU Commission guidelines and conferring SMP status on operators. However, any market definition deviating from the market recommendation of the European Commission is subject to a decision of the Ministry. FICORA is empowered to issue technical regulation on these matters and resolve operator disputes over interconnection, access, and local loop terms. FICORA works in cooperation with national and international customers and interest groups. As a rule, many of FICORA's regulations, decisions, and guidelines are prepared after consultation with these groups.

FICORA charges fees for many of the services it provides. Some of these fees cover FICORA's administrative costs and some, such as frequency license fees and numbering fees, are fixed. A good portion of FICORA's expenses are covered by annual operating fees imposed on all licensed and notifying operators. The operating fee is individual for each operator as it is calculated on the basis of the operator's turnover for the previous year (excluding any turnover from broadcasting activities that are subject to the Act on Television and Radio Operations).

The Ministry and FICORA are assisted by Finland's competition authorities in matters concerning competition law and by Finland's Data Protection Ombudsman with respect to data protection and privacy matters. These authorities must heed the principles and purpose of the CMA when handling communications matters within their area of competence. The implementation of programming requirements and advertising restrictions under the Act on Television and Radio Operations and consumer protection under the CMA are entrusted to Finland's Consumer Protection Ombudsman.

As a general rule, the decisions of the Ministry must be based on law and may be appealed to Finland's Supreme Administrative Court. Likewise, the decisions of FICORA must be based upon law and adverse decisions may be appealed. Many of FICORA's decisions may be appealed directly to the Supreme Administrative Court. FICORA is required, as a rule, to issue a decision on a case within four (4) months after the case has been instituted.

FICORA is responsible for only those competition issues that are specific to communications and which are addressed in the communications laws. These include, for instance, violations of obligations imposed on operators possessing SMP, leased line and local loop rates, and cable duct and antenna platform disputes. The FCA is responsible for violations of Finland's general competition laws. These might include, for instance, an operator's abuse of its dominant market power. Cases that involve violations of both communications specific laws and the general competition laws may be instituted with either FICORA or with the FCA. It is conceivable that an operator could violate its SMP obligations as well as abuse its dominant market power. Under the CMA, FICORA shall work in cooperation with the competition authorities wherever necessary.

To avoid conflicts over jurisdiction, FICORA and the FCA have agreed on case handling guidelines for the communications sector. The guidelines recognize that FICORA is better able to handle cases related to the reasonableness of pricing whereas the FCA is better able to handle cases concerning price discrimination. The outlines also set out how the authorities will exchange information within the restrictions of statutory confidentiality obligations and each authority should avoid issuing a conflicting decision in a matter by postponing its decision until the other authority has issued its decision in the matter.

## **17.4 Communications Infrastructure**

### **17.4.1 General Regulation**

The CMA makes a distinction between the construction, operation and maintenance of a communications network (known as network services) and the provision of subscriber access and routing services as well as television and radio programming on a communications network (known as communications services). The CMA does not regulate the content distributed in the network.

Since 2007, network services have been provided only in digital network. Analogue television networks were closed down in August 2007, even though due to certain transitional provisions analogue services were still provided through cable television until the end of February 2008.

In general, a communications network operator offering network services focuses on the management, maintenance and development of a communications network and organizes, for instance, the interconnection of networks. A network operator offers its network, which is either owned by or is otherwise in the possession of the operator, to its own service operations division or to another service operator.

### **17.4.2 Mobile Networks and Terrestrial Digital Broadcast Networks**

In Finland, only the provision of public mobile network services, dedicated government mobile network services, and terrestrial digital TV and radio network services are subject to licensing under the CMA. Licenses are granted, after a public notice and application process, by the Council of State. The decision to grant a public mobile network or a terrestrial digital TV and radio network license must be made within six (6) weeks from the expiration of the application period. The Council of State may, however, in certain circumstances extend the six-week period with a maximum of eight (8) months. License applications are subject to a fee of EUR 1,000. There are no statutory restrictions on the corporate form or nationality of license holders.

After an amendment implemented in 2009, FICORA and the Ministry of Transport and Communications may act as licensing authorities in certain circumstances. The license will be granted by FICORA when the operation is short-term and small in scale. The Ministry, for its part, can grant a license for wireless broadband services under certain circumstances if the telecommunications operator already possesses a radio license. However, as a general rule, the licenses are still granted by the Council of State. As discussed above, since 2009 a license is not required if the operation lasts for two (2) weeks at most and if the radiation power of the television transmitter used in the operation does not exceed fifty (50) watts.

The Council of State may, if frequency availability requires, impose on an applicant geographic restrictions and other such conditions that serve non-economic public interests like network security, operability, compatibility and data protection. Restrictions on network service licenses for wireless digital TV and radio networks may involve transmission technology, the offering of capacity to programming operators and other communications service providers, and technical aspects relating to the use of the network. Licenses may be granted for twenty (20) year periods.

Public network licenses may in principle be modified only with the consent of the license holder and the Council of the State. However, if the license is modified due to technical development or an essential change in operating conditions, the license holder's consent is not required. The Council of State may revoke in full or partially a license in the event that an operator ceases to fulfill the licensing requirements. As a general rule, a public network license is non-transferable. The Council of State may revoke a license in the event that a change of actual control occurs in the license holder. Changes of control that occur within a group of companies are not viewed under the CMA to constitute grounds for revocation.

#### 17.4.3 Frequency Licensing

The use of wireless radio equipment and frequencies in Finland is governed under the Radio Act. The construction and operation of a wireless network or link, whether subject to a network license or not, requires a radio frequency assignment by FICORA. In assigning radio frequencies, FICORA issues either a transmitter-specific permit valid for up to ten (10) years or a frequency license in the case of user frequencies for public mobile networks.

A transmitter permit is required for each wireless link in a network (except for transmitters that have been waived from such requirements, e.g. if the radio transmitter functions only on the collective frequency designated for it by FICORA and if its conformity has been confirmed).

With the exception discussed above, radio frequencies are not as a general rule auctioned in Finland. Radio frequencies are granted on a first-come-first-serve basis, save for those situations where frequencies are scarce. In such cases, FICORA grants the license to those applicants whose operations best promote the general purposes of the Radio Act. Frequency licenses and transmitter permits are subject to annual fees and may not, as a general rule, be transferred or traded without the consent of FICORA.

The Radio Act also establishes a system where frequencies can, for a fee, be reserved for one (1) year at time if the design and implementation of a radio system requires such or if the procurement of a radio transmitter presupposes advance information as to spectrum availability.

#### 17.4.4 Notifications

Most other public network provision and communications services are subject to a notification system administered by FICORA. The notification form is straightforward and available at FICORA's website. Notifications may be submitted electronically. Notification changes are effected by submitting the change in writing or electronically to FICORA. Once the notification has been effected, the notifying operator is entitled to apply for the subscriber numbers, service prefixes and network codes required for its operations.

FICORA is required to confirm within one (1) week to notifying operators of its receipt of their notifications. The CMA does not impose any restrictions on the corporate form or nationality of notifying operators.

The CMA exempts from the notification requirement public communications services that are temporary, targeted at a small number of subscribers or a very limited viewing audience or which are otherwise of little significance such as public services with an annual turnover of less than EUR 300,000. Regardless of these exemptions, all communications networks and equipment must comply with the relevant technical standards.

#### 17.4.5 Network Operator Obligations in Brief

Network operators have general obligations relating to the technical elements of their networks; interconnection; data collection, processing, retention, and protection; and contingency preparation. Further obligations apply to operators with SMP status. These SMP obligations relate, inter alia, to pricing, publicity of subscriber terms and conditions, cost-accounting procedures, accounting separation and interconnection. As an example, the SMP obligations may apply to the provision of unbundled local loop and fixed lines, national and international roaming services and other access to mobile networks, cost-oriented termination services, antenna mast platform and cable duct sharing, offering of selection codes, provision of line rental of leased lines, and relinquishing of access rights. The SMP regime under the CMA arguably focuses on competition restraints at the wholesale market level. For instance, FICORA may impose SMP obligations regarding price squeezing, unfair pricing, tying, and unfair dealing at the retail market level only if measures taken at the wholesale market level have failed.

As a general rule, all operators in Finland, save for SMP operators, are free to set interconnection charges among themselves. Operators are also entitled to require reasonable payment security from an operator requesting interconnection. SMP operators are subject to non-discrimination, publicity, and accounting separation obligations and cost-oriented tariff practices with respect to interconnection.

Under the CMA, FICORA shall assign one or more telecommunications operators, operators providing a directory inquiry service or operators providing a telephone directory service as a universal service operator if this is necessary in order to ensure universal service provision in a certain geographic area. The universal service obligation is technology neutral. Operator assigned as a universal service operator in universal telephone services shall provide, at a reasonable price and regardless of the geographical location, a subscriber connection to the public communications network at the user's permanent place of residence or location. Such subscriber connection shall allow users to use emergency services, make and receive national and international calls and use other ordinary telephone services. Said connection shall also allow an appropriate Internet connection for all users, taking into account prevailing rates available to the majority of subscribers, technological feasibility, and costs. Further, the part of the net costs constituting an unreasonable financial encumbrance with regard to the size of the operator, type of business activities, turnover of the operator's telecommunications, directory inquiry service, and telephone directory service, or other similar elements shall be compensated to the universal service operator from state funds, if the operator so requests.

The CMA obligates operators providing network services in a cable television network to carry free of charge the programming and ancillary services of YLE and of the national programming license holders. The transmission obligation applies also to operators providing network services in a cable television network, using other than traditional cable television technology in the transmission of programming, provided that the reception of the programming is possible with conventional reception equipment. Cable TV operators are not required to upgrade their networks to comply with the aforesaid obligatory programming rules if such improvements require significant investment. Further, the obligatory programming rules do not apply if the cable TV operator requires the network capacity for its own TV and radio operations or the capacity is required for the reasonably foreseeable needs of the cable TV operator. Moreover, pursuant to the CMA, the license for providing of network services in terrestrial mass communications networks is conditioned upon that the license holder for its part ensures that YLE and the national programming license holder have sufficient capacity to provide their services.

The CMA also imposes an obligation on, for instance, SMP cable TV network operators and SMP terrestrial broadcast network providers to provide other communications services operators (including programming license holders) access on non-discriminatory and reasonable terms to their network capacity.

Under the SMP regime, FICORA may also impose non-discriminatory and reasonable access obligations on operators that control electronic programming guides (the “**EPGs**”) and application programming interfaces (the “**APIs**”). FICORA may also impose such obligations on operators that do not possess SMP status if such is necessary to secure open EPGs and APIs.

All operators in Finland are subject to general obligations with respect to emergency call routing and police interception. For instance, all operators are required to route emergency calls (112) to emergency call centers and police calls to police call centers free of charge. Operators are also required to make the necessary technical arrangements to allow law enforcement officials to perform lawful call monitoring and reporting. Operators are entitled to some compensation for making the necessary technical arrangements.

The inviolability of communications is protected as a constitutional right in Finland. In support of this constitutional right, the Act on the Protection of Privacy in Electronic Communications permits end users to use whatever technical means available (e.g., encryption) to protect the inviolability of their communications and prohibits the import of certain encryption circumventing technologies. All communications are deemed confidential unless intended to be received by the public and may only be processed in accordance with the Act on the Protection of Privacy in Electronic Communications. All identification data – such as the name of the party to the communication – and geographic information, are also deemed to be confidential and likewise may be processed only in accordance with the Act on the Protection of Privacy in Electronic Communications. However, recent amendments to the Act enable corporate subscribers certain possibilities to process identification data and geographic information in a limited number of cases specified in the Act. Operators may process confidential identification data only for specific purposes such as billing, routing, technical development, and detection of misuse. Information on an operator’s processing of identification data must be stored for two (2) years after such processing.

Under the Act on the Protection of Privacy in Electronic Communications, all operators and service providers are required to implement technical and organizational measures to ensure the security of their services. Operators and service providers are required when implementing measures to take into consideration the security risks and the sensitivity of data involved. Operators are required to inform users and FICORA of any particular security risks that come to their attention.

## 17.5 Communications Services

### 17.5.1 General Regulation

The provision of traditional telecommunications subscriber access and routing services and video-visual and television and radio programming on a communications network are subject to the CMA as communications services. Such services include, for instance, the provision of subscriber telephony and data services, enterprise VPN services, Internet modem dial-up and broadband access services, voice over IP (the “**VoIP**”) services, subscriber video-on-demand services, mobile subscriber services including the use of one’s own home location register (the “**HLR**”), mobile subscription resale services, and mobile virtual network operator (the “**MVNO**”) services. While the provision of such services is subject to the CMA, the content conveyed through such services or otherwise through a communications network is not subject to the CMA but to other laws such as the Act on Television and Radio Operations and the Act on the Exercise of Freedom of Expression in Mass Media.



### 17.5.2 Telephony and Data Services

The provision of a communications service to the public is subject to the same notification regime as network operators. For the purposes of the notification regime, the definition of what constitutes a public service is broadly construed in Finland. For example, the provision of VPN services to any requesting corporation is viewed to be a public communications service even if each discrete corporate VPN is in essence a private network. Once an operator has duly effected the communications notification, the operator is entitled to apply for the subscriber numbers, service prefixes and network codes required for its operations. Communications notifications are valid for an indefinite period. However, FICORA may state on its own initiative that the operations of a telecommunications operator have ended if it receives reliable evidence of terminated operations.

Telephony and data services operators are free to offer services to legal entities under any terms they choose subject to a contract. In the absence of specific contractual provisions, an operator is deemed to provide services under at least the conditions set forth in the CMA. Operators are required to draw up standard terms and conditions for consumer agreements and publish their price tariffs. The provision of services to consumers is subject to the specific provisions of the CMA, many of which cannot be deviated from to the detriment of the consumer. For example, an operator may enter into a time-limited agreement with the consumer for a maximum period of two (2) years but if the operator offers an agreement exceeding twelve (12) months, the consumer shall also be offered the possibility to enter into a time-limited agreement of twelve (12) months. Moreover, a telecommunications operator shall not extend a time-limited agreement by another time-limited agreement without concluding a new agreement in writing with the consumer. While operators are not subject to price regulation at the consumer retail level, operators are required to draw up standard terms and conditions and tariffs which must be submitted to the Consumer Ombudsman and to FICORA before their implementation.

Operators must permit their subscribers to port without charge their numbers to other operators. Mandatory number portability applies when porting a fixed network subscriber number to another fixed network or a mobile network subscriber number to another mobile network but not when porting a mobile network subscriber number to a fixed network or vice versa. Operators must perform porting without delay.

### 17.5.3 Audio-Visual Programming Services

TV and radio programming distribution through the terrestrial airwaves is subject to programming licensing by Finland's Council of State, or under certain circumstances from FICORA, for example when the operation is short-term and small in scale. All other forms of TV and radio programming distribution such as cable TV programming and satellite programming are subject only to a prior notification to FICORA. The TV and radio broadcasting activities of YLE are not subject to a license provided that YLE operates the frequencies reserved for it.

Under the Act on Television and Radio Operations, programming licenses are awarded only under a public application process. Licenses are valid for a maximum of ten (10) years. While Finnish law recognizes a presumption of renewability, it cannot be guaranteed that any given license will be renewed. Programming licenses may contain provisions, for example, on such matters as coverage, broadcast times, and broadcast technology. Programming licenses may not be assigned and a change in the factual controlling power in a programming licensing holder could lead to the revocation of the license.

The Act on Television and Radio Operations does not impose nationality requirements on programming license holders. In granting a programming license, however, it cannot be ruled out that nationality considerations would be taken into account by the Council of State due to the general requirement to take into account the requirement to promote free speech, secure diversity of programming and fulfill special interest groups' needs.

The Act on Television and Radio Operations imposes certain programming obligations on programming license holders with respect to the protection of minors, advertising, sponsorship, European content, and independently produced programming. These obligations mirror, to the extent applicable, the rules set forth in the European Television without Frontiers Directive.

The CMA empowers FICORA to set forth TV signal standards, subscriber equipment standards, and subscriber television technical system characteristics. FICORA may require public subscriber television service providers to offer, on non-discriminatory and reasonable terms, to programming license holders technical services necessary to allow subscription TV subscribers to receive the programming license holders' public digital programming despite the service provider's decoding devices.

#### **17.5.4 Tele-contractors**

Since January 2008, contractors that perform construction, installation, and maintenance services (so called telecontractor services) with respect to public communications networks and services have no longer been required under the CMA to submit a notification of such activities to FICORA. However, the technical requirements set for telecontracting are regulated extensively in regulations issued by FICORA.

#### **17.5.5 Directory Services**

The Communications Market Act imposes a general obligation on all licensed and notifying operators to ensure that the public has access to extensive and reasonably priced directory services. In performing this obligation, all operators, that are party to a subscriber connection contract, are required to release the name, address and number of each subscriber connection to an electronic or paper publication that is updated at least once a year. Operators must also make available on non-discriminatory terms to directory services providers the name, address and number of their subscribers in a readily usable format. Operators are entitled to charge a cost-based fee for providing subscriber information to directory services providers. Conversely, directory services providers may not discriminate against any operator in publishing and otherwise making available their directory services.

## 18. MARITIME AND TRANSPORTATION LAW

### 18.1 Transportation

Over 90 percent of the exporting and over 70 percent of the importing international carriage of goods involving Finland is sea carriage; domestic carriage in Finland, on the other hand, is mostly transported by road. Transportation by rail is also particularly relevant both for domestic traffic and for traffic between Finland and Russia. Air transport focuses mainly on the carriage of passengers.

Finnish transportation legislation is based on the international conventions adopted by Finland. The various modes of transportation are regulated separately.

#### 18.1.1 Sea Transport

The Finnish Maritime Code (674/1994, as amended, *FI: merilaki*), sets forth provisions on, among other things, carriage of goods, chartering of vessels, nationality of vessels, ship-owners' liability, collisions, salvage, and maritime liens.

The Maritime Code was subjected to a thorough reform in respect of carriage of goods in 1994 as a result of joint drafting with Sweden, Norway and Denmark. Consequently, the maritime codes of all Nordic countries are essentially similar.

The Maritime Code makes a fundamental distinction between the carriage of goods and the chartering of vessels. The provisions on the carriage of goods are mandatory if the carriage has a Nordic connection. In contrast, the starting point in the chartering of vessels is based on freedom of contract. The Maritime Code's provisions on carriage of goods are based primarily on the Hague-Visby Rules, supplemented by elements of the Hamburg Rules.

Under the Maritime Code, a carrier of goods is liable for loss of or damage to the goods while in its charge, unless the carrier can prove that it has not been negligent. A carrier is also liable for delay in delivery. In such circumstances, the carrier may attempt to invoke global limitation of liability, or the proportional limitation to the gross weight or the shipping unit of the lost or damaged goods. If, however, the loss or damage is shown to have been caused by the carrier's willful misconduct or gross negligence, the carrier loses the right to limit liability. Furthermore, the carrier is liable for the acts and omissions of its employees and independent assistants. The carrier may therefore be liable for loss or damage caused, for example, by a stevedore.

The statute of limitations for claims for damage to or loss of goods in sea carriage is generally one year from the date when the goods were delivered or should have been delivered. In addition, the Maritime Code contains further special limitation periods.

The Finnish Standard Shipping Terms (the "**Shipping Terms**"), the latest version of which were issued in 2008, specify when and where goods should be delivered to the carrier at the port of origin, and by the carrier at the port of discharge. The Shipping Terms set forth rules on delivery of the goods to the carrier and to the consignee, and on division of expenses, liability and duties. The Shipping Terms may be used only in Finnish ports, and they relate to delivery of goods and ancillary operations. Furthermore, they apply only if incorporated into a contract of carriage.

The Maritime Code's provisions on carriage of passengers are founded largely on the Athens Convention of 1974, amended by the London Protocol of 1990, although Finland has ratified neither. The basis of liability is similar to that for carriage of goods, with certain exceptions regarding the carrier's right to limit its liability.

### 18.1.2 Road Transport

Road transports in Finland are principally regulated by the Road Transport Agreements Act (345/1979, as amended, *FI: tiekuljetussopimuslaki*) and the Act on Commercial Road Transport (693/2006, as amended, *FI: laki kaupallisista tavrankuljetuksista tiellä*). The Act on Commercial Road Transport provides for a specific permit procedure for commercial road transports. As a general rule, transporting goods by road requires a permit, if such transporting is performed for compensation. However, there are several limitations to this general rule, for example for small vehicles.

The Finnish Road Transport Agreements Act is based on the Convention on the Contract for the International Carriage of Goods by Road (the “**CMR Convention**”) but contains certain deviating provisions on domestic transportation. The provisions of the Road Transport Act are mandatory. The Road Transport Act imposes liability on the carrier for the acts and omissions of those who work for the carrier and of any independent assistants. If several carriers are involved (so called “successive delivery”), each carrier can in principle be held liable for the whole carriage. Liability between the carriers is settled thereafter in recourse actions. In addition, where a carrier uses a sub-carrier, the primary carrier is liable for the whole carriage as if the primary carrier had performed it.

The carrier is liable for loss of or damage to the goods occurring between the time the carrier takes possession of the goods and the delivery of the goods, as well as for any delay in delivery. Moreover, the liability of the carrier is strict, subject to *force majeure* exceptions. The carrier may be relieved from liability if the carrier is entitled to rely on special grounds, such as defective packing, defective goods or any circumstance the carrier could not have avoided. As in sea carriage, a carrier of goods by road may invoke certain limitations of liability, though the right to do so is lost if the loss is shown to have been caused by the carrier’s willful misconduct or gross negligence.

The statute of limitations for road carriage claims is generally one (1) year from the date when the goods were delivered to the consignee.

### 18.1.3 Air Transport

Finnish legislation on air transportation is based on international conventions, in particular the Warsaw Convention of 1929. The Act on Transportation on Aircrafts (*FI: laki kuljetuksesta ilma-aluksessa*) of 1937 was based on the original convention. The Air Transport Agreements Act (*FI ilmakuljetussopimuslaki*) of 1977 implemented the Hague Protocol of 1955 and the Guadalajara Convention of 1961. The Air Transport Act (387/1986, repealed, *FI: ilmakuljetuslaki*) of 1986 implemented the Guatemala and Montreal Protocols of 1971 and 1975. Finally, the Montreal Convention of 1999 has been adopted directly, with certain reservations (Act 1228/2002, *FI: laki eräiden kansainvälistä ilmakuljetusta koskevien sääntöjen yhtenäistämistä tehdyn yleissopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta ja soveltamisesta*) and has been effective since 28 June 2004.

Under the Montreal Convention, the carrier’s vicarious liability is similar to that under the Road Transport Act. As with road transport, if the carrier uses a sub-carrier, the primary carrier is liable for the whole carriage. In successive carriage by air, however, each carrier is liable only for its part of the carriage.

The carrier is liable for loss of or damage to the goods resulting from an accident while the goods are in its care at the airport or in the aircraft. If the cargo is transported by the air carrier from the airport to an inland terminal by road, the Road Transport Act applies instead of the Montreal Convention. An air carrier’s liability is strict and may be avoided only where the loss or damage is caused by a defect in the goods, defective packing, acts of war, or actions by authorities in connection with exports or imports. The carrier is also entitled to invoke proportional limitations of liability.

The statute of limitations for claims relating to loss of or damage to goods in air carriage is generally two (2) years from the date when the aircraft arrived at its destination.

#### 18.1.4 Railway Transport

Three different sets of rules are relevant to carriage by rail. The Act on Railway Transports (1119/2000, as amended, *Fl: rautatiekuljetuslaki*) governs domestic carriage. Traffic between Finland and Russia is regulated by a special Agreement on Connecting Traffic (Treaty number 48/1997; Act number 625/1997, as amended, *Fl: sopimus Suomen ja Venäjän välisestä rautatieyhdysliikenteestä*). International rail carriage other than to Russia is governed by the Convention Concerning International Carriage by Rail (the COTIF Convention) of 1980 (adopted in Finland through Treaty number 5/1985 and Act number 58/1985), including the CIM and CIV Conventions.

The liability of a railway carrier is similar to that of a carrier by road – that is, strict liability with certain *force majeure* exceptions. A railway company is liable for the acts and omissions of its own personnel and of other persons used in the carriage. As regards international carriage, the company may also be held liable for the acts and omissions of another railway company's personnel. A rail carrier is also entitled to invoke proportional limitations of liability.

The statute of limitations for claims relating to loss of or damage to goods in the course of carriage by rail is normally one (1) year from delivery of the goods to the consignee.

Rail transportation in Finland has historically been a monopoly operated solely by the state-owned company, Valtion Rautatiet Oy (“**VR**”). Free competition became possible as regards freight transportation on Finnish railways in 2007. However, interest in carriage by rail has been low among other companies, mainly because freight transportation by rail between Finland and Russia still remains an exclusive right of VR. On the other hand, the new Railway Act (304/2011, as amended, *Fl: rautatielaki*) enables free competition on the transport of passengers within Finland. However, competition may be limited by the fact that competent officials have a possibility to conclude agreements with a railway company to only use the railway services provided by that specific company for ten (10) years at a time. The Helsinki Region Transport has concluded such an agreement with VR, which is in force till the end of year 2017. The Ministry of Transport and Communications has a similar exclusive right agreement with VR regarding long-distance traffic.

#### 18.1.5 Multimodal Transport

There is no single piece of legislation which specifically regulates carriage involving several different modes of transportation (multimodal transport). Instead, each mode is governed by its own statutes, as described above. The Road Transport Act, for example, is applicable where the vehicle used in the carriage is transported via another mode of transport, such as a vessel. Where the goods are not unloaded from the vehicle during sea carriage, the Road Transport Act will apply throughout the whole carriage. Similarly, the COTIF Convention contains certain provisions relating to multimodal transport. According to the Montreal Convention regulating airway transport, the general rule is that in the case of multimodal transport the provisions of the Convention shall apply only to the carriage by air. Nevertheless, if the carriage takes place in the performance of a contract for carriage by air, i.e. for the purpose of loading, delivery or transshipment, any damage is presumed to have been the result of an event which took place during the carriage by air. In addition, if a carrier without the consent of the consignor, substitutes airway transport by another mode of transport, such transport is deemed to be within the period of carriage by air.

Since regulation on multimodal transport is limited, great efforts have been made to handle the situation using standard terms. Such terms usually follow the Geneva Convention of 1980. Examples include the UNCTAD/ICC Rules for Multimodal Transport Documents of 1991 and the General Conditions of the Nordic Association of Freight Forwarders (described below).

### 18.1.6 Forwarding

Freight forwarding is not regulated by any specific legislation. The Nordic Association of Freight Forwarders has, therefore, prepared a set of general conditions (NSAB 2000, *FI: PSYM 2000*) introducing a minimum level of liability of freight forwarders in a multimodal transport context. Such general conditions have particular relevance in the Nordic countries.

Under NSAB 2000, a freight forwarder can be held liable for loss of or damage to goods, either as a carrier or as an intermediary. A freight forwarder is liable as a carrier if it performs the carriage using its own means of transport or if, through an express promise of carriage or otherwise, the freight forwarder has taken responsibility as a carrier. The freight forwarder is further regarded as a contracting carrier if it issues its own transport document, markets the goods carried as its own product, or undertakes carriage of goods by road.

The freight forwarder's liability as a carrier is dictated by the particular circumstances. Where the forwarder and the customer expressly agree that a certain means of transportation will be used, or if the means being used when the loss or damage occurred can be proven, the freight forwarder will be liable under the provisions governing that means of transportation. In other situations, the freight forwarder's liability is dictated by the terms of NSAB 2000, which are similar to those of the Road Transport Act.

The freight forwarder may be able to rely on special grounds for avoidance of liability, for instance where the loss or damage is caused by the fault or neglect of the customer, by defective goods, defective packing or generally by circumstances which the freight forwarder could not have avoided.

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