Country Guide
Finland

Prepared by

ROSCHIER

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Doing Business in Finland

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Introduction

This guide, "Doing Business in Finland", has been prepared by Roschier, Attorneys Ltd.

The purpose of the guide 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 contents of the guide 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 guide, but we do not warrant or guarantee the accuracy, completeness or adequacy of the information contained herein. The guide is 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 in this guide is current as of September 2018, unless otherwise expressly indicated.

We hope that you will find this guide 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.

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1. ABBREVIATIONS & TERMS

AECS = the Act on Electronic Communications Services

Agency Act = the Act on Commercial Representatives and Salesmen

Arbitration Act = the Finnish Arbitration Act

AIFM = the Finnish Act on Alternative Investment Fund Managers

APIs = application programming interfaces

BITA = the Finnish Business Income Tax Act

EEA = the European Economic Area

EPGs = electronic programming guides

EU = the European Union

EUIPO = the European Union Intellectual Property Office

FICORA = the Finnish Communications Regulatory Authority

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

FAI = the Finland Arbitration Institute

FAI Rules = the rules of the Finland Chamber of Commerce

FCCA = the Finnish Competition and Consumer Authority

FFSA = the Finnish Financial Supervisory Authority

FFSA's standard 9/3013 = Regulations and guidelines 9/2013 on takeover bids and the obligation to launch a bid

IFA = the Finnish Act on Investment Firms

IFRS = the International Financial Reporting Standards

ISA = the Finnish Investment Services Act

ITA = the Finnish Income Tax Act

MiFID II = the Directive on Markets in Financial Instruments (2014/65/EU)

MiFIR = the Regulation on Markets in Financial Instruments (EU) No 600/2014

Model Law = UNCITRAL Model Law on International Commercial Arbitration

MREC = mutual real estate company

MVNO = mobile virtual network operator

NBPR = the Finnish National Board of Patents and Registration

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

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

OREC = ordinary real estate company

PCT = the Patent Cooperation Treaty

Shipping Terms = the Finnish Standard Shipping Terms

SIEC = significant impediment to effective competition

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

SMP = significant market power

SPA = share purchase agreement

Stock Exchange = NASDAQ OMX Helsinki Ltd

Takeover Code = the Helsinki Takeover Code

TaxEBITDA = adjusted taxable net business profit

TFEU = the Treaty on the Functioning of the European Union

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

UCITS = Undertakings for the Collective Investment of Transferable Securities

VAT = Value Added Tax

VAT Act = the Value Added Tax Act

VPNs = virtual private networks

VR = Valtion Rautatiet Oy

WIPO = the World Intellectual Property Organization

2. FACTS ABOUT FINLAND

2.1 Introduction

Finland is the eighth largest country in Europe, covering an area of more than 338,000 km2. Countries neighboring Finland are Sweden, Norway, and Russia, and situated south of the Gulf of Finland are Estonia, Latvia and Lithuania. Midway between Finland and Sweden lie the Åland Islands, which form an autonomous, de-militarized, Swedish-speaking province of Finland.

With a population of 5.5 million, Finland is one of the most sparsely populated countries in Europe. 67 percent of the population lives in cities and other urban districts. The biggest city is Helsinki, the capital, with a population of approximately 642,000. Helsinki, Espoo (277,000 inhabitants) and Vantaa (221,000 inhabitants) form the metropolitan area, which is home to over one sixth of the country's total population. Other large cities are Tampere (230,000 inhabitants), Turku (188,000 inhabitants) and Oulu (201,000 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. Finns have a good knowledge of foreign languages and English in particular is widely spoken.

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 reason there are many similarities between the 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 2015 parliamentary elections, the seats were divided among eight parties as follows: the Centre Party (49 seats), the True Finns (38 seats), the National Coalition Party (37 seats), the Social Democratic Party (34 seats), the Green League (15 seats), the Left Alliance (12 seats), the Swedish People's Party (9 seats), the Christian Democrats (5 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 first elected in 2012 and re-elected in 2018. The coalition government of Finland is headed by Prime Minister Mr. Juha Sipilä, who represents the Centre 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

the metal and forest industries. In the beginning of the 1990s, the Finnish economy sank into a deep depression as a result of the global economic recession 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.

Today, Finland's main industrial sectors are: the metal industry (37%); the chemical industry (26%); the forest industry (19%); the food, alcohol and tobacco industries (11%); other manufacturing (5%); mining (1.5%); and the textile and leather industry (0.7%). Despite the fact that Finland's forest resources are relatively small in global terms, 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.

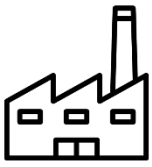
In international competitiveness comparisons, Finland has recently been ranked very high. In particular, the high level of education, the advanced technological environment, the well-developed telecommunications infrastructure and the functioning of society in general have been listed as the main assets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

Population of 5.5 million. Countries neighboring Finland are Sweden, Norway and Russia.

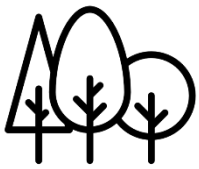
67

percent of the population lives in cities and other urban districts.

Member of the European Union since 1995. The currency unit is the Euro.



The main industrial sector is the metal industry (37%).



One of the world's foremost producers and exporters of forest industry products.

Constantly ranked high with regards to level of education and techno-logical environment.

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., the Government), and judiciary power belongs to the courts of law.

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. 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 aspect 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, along with traditional civil and political rights, 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. There are also certain specialist courts: 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.

4. COMPANY LAW

4.1 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 otherwise, 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[1] by the entrepreneur are always subject to licensing and permit requirements irrespective of whether or not the individuals involved in the business are resident in Finland.

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, a distinction is drawn between three types of limited companies: private limited companies (*FI: yksityinen osakeyhtiö,* which is abbreviated to "oy"), public limited companies (*FI: julkinen osakeyhtiö,* which is abbreviated to "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. Foreign companies may also conduct business in Finland through a Finnish branch office (*FI: sivuliike*). This form of business will be addressed in 4.7 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 arise 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.

4.2 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 is the private limited company. Out of a total of 608,486 enterprises and traders registered in the Trade Register by the end of 2017, 270,553 were private limited companies and 248 public limited companies, compared with 204,031 sole proprietorships. Further, also 28,279 limited partnerships, 10,054 general partnerships,

[1] For example mining, the handling and storage of dangerous chemicals and the resale of pharmaceutical products.

4,229 cooperatives and 1,184 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.

4.3 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 basic declaration is filed on a dual start-up notification form that serves the needs of both the Trade Register and the tax administration. 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 in 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 website http://www.prh.fi.

4.4 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. There are two types of Finnish partnership: general partnerships (*FI: avoin yhtiö*, which is abbreviated to "*Ay*") and limited partnerships (*FI: kommandiittiyhtiö*, which is abbreviated to "*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 of partnership 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 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.

4.4.1 General Partnerships

The Partnerships Act is based on the principle of freedom of contract. 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 veto rights. Each partner, however, has a statutory 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 on its behalf within the limits established by the objects of the partnership.

There are no legal requirements as to the capitalization of a partnership, so the partners are free to 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, unless otherwise agreed. Interest on the prevailing amount of paid up capital is paid out first. Partners can at any time withdraw funds invested in the partnership and/or take out funds or assets from the partnership. 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 the partnership's debts existing on the date he or she becomes a partner.

4.4.2 Limited Partnerships

In a limited partnership, silent partners are liable for partnership debts only up to the amount of their investment, which is defined in the Partnership Agreement. There are no statutory requirements concerning 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 powers nor the right to block decisions or to represent the partnership. Nevertheless, certain more important decisions cannot be made without their approval. This is the case, for instance, if the general partner wishes to go beyond the objects of the partnership, assign their share in the partnership (to another partner or a third party) or merge the partnership with another entity. Limited partnerships have proven to be useful for running family businesses, for professionals such as attorneys (though most now operate through limited companies) and architects, and for raising funds to be used for private placements (for example, private equity fund structures).

4.5 Limited Companies

4.5.1 Scope of Application

The limited company has its statutory basis in the Limited Liability 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 statutory minimum paid-up share capital for a private limited company is EUR 2,500. The shares and bonds in a private company may, as a general rule, not be traded on NASDAQ OMX Helsinki Ltd (the "**Stock Exchange**"). For more information about listing conditions, see chapter 14. Subject to a few exceptions, the rules in the Limited Liability Companies Act are identical for both private and public companies. The main differences relate to the decision-making procedures (e.g., relating to the acquisition or redemption by the company of its own shares) and to the auditing regulations. For banks and insurance companies that are incorporated as companies, there is specific legislation that to some extent takes precedence over the general Limited Liability Companies Act. State-owned companies are governed by the Limited Liability Companies Act. A separate set of rules has been enacted in order to define the role of Parliament and the Government concerning the sale or transfer of shares in those companies (1368/2007, *FI: laki valtion yhtiöomistuksesta ja omistajaohjauksesta*).

4.5.2 Formation and Shares

To establish a limited company, several formalities must be complied with. First, a memorandum of incorporation must be drawn up and signed by the party/parties 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. The time required for registering a company varies between two to three weeks. Those 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 as a result of 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 only on certain matters. Also, redeemable shares may be issued by the company. As a general rule, shares may be freely transferred and acquired, unless otherwise stipulated in the Articles. Bearer shares are not recognized.

The shares in both public and private companies are entered in a share register, kept by the board of directors. The register is open for inspection by any interested party. It is the obligation of the board of directors to keep the register. However, a shareholder of a private company does not need to have their shares entered in the register (unless the shareholder owns all the shares) – but, if they do not do so, they cannot exercise their rights as a shareholder, since entry in a share register is a prerequisite for exercising shareholder rights. Companies whose shares are listed on the Stock Exchange must join a paperless book-entry securities system either in Finland or abroad. However, if the registered office of the issuer is situated in Finland, the Finnish Limited Liability Companies Act is applicable even when a foreign book-entry securities system is chosen. All legal rights attached to the shares are evidenced by entries in book-entry accounts, and in Finland the share register is maintained in a central share register held by Euroclear Finland Oy. For more information about the book-entry securities system, see chapter 14.

4.5.3 Share Issues and Acquisition by a Company of its Own Shares

At any time after a company has been registered, it can issue new shares or transfer treasury shares for consideration or free of charge (the latter known as a "bonus issue"). Companies may, if they wish, opt to operate with a minimum and a maximum share capital. By a simple majority vote at a general meeting, shareholders can resolve to issue shares, or authorize the board of directors to do so up to a maximum number of shares of each class determined by the shareholders and as set out in the Articles. Shareholders can disapply their pre-emption rights to subscribe for new shares with a two-thirds majority if the resolution is warranted for compelling financial reasons based on the company's best interests.

Shareholders can also resolve to issue convertible bonds and options (whereupon the same principles as above apply for the resolution to be valid, namely the requirement for a two-thirds majority and that the resolution be warranted for compelling financial reasons).

Neither a company nor any of its subsidiaries is permitted to subscribe for shares in the company if the shares are issued for consideration. However, the company can issue shares to the company itself for no consideration and the new shares registered in the share issue will thereby be governed by the rules on treasury shares. Further, a company can acquire or redeem its own shares. A resolution to this effect must be adopted at a general meeting of shareholders (in a public company with a two-thirds majority) or by the board of directors

where previously authorized by a resolution adopted by a two-thirds majority of the shareholders. The number of shares in a public company owned by the company itself or any of its subsidiaries at any given time may not exceed ten percent of the total number of shares in the company, and a private company may not acquire or redeem all of its own shares. Usually, a public company acquires its own shares on the Stock Exchange). The acquisition by a company of its own shares is regulated in order to ensure shareholders are treated equally.

4.5.4 Organization

The ultimate decision-making powers in a company are vested in its shareholders, who adopt resolutions at the annual general meeting or extraordinary general meetings. As a general rule, all shareholders are entitled to take part in and to express their opinions and exercise their voting rights at general meetings. Most resolutions are passed by a simple majority, although some resolutions, such as a resolution to amend the Articles or to carry out a private placement, require a qualified two-thirds majority.

The annual general meeting must be held within six months of the end of the company's financial year, unless the Articles provide for a shorter term. At this 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 general meeting can be held whenever the board of directors or supervisory board (if any) considers it necessary, when stipulated in the Articles, or at the written request of the company's auditor or shareholders holding at least one-tenth (or a smaller proportion as stipulated in the Articles) of the shares in the company.

The power to manage a company is vested in the company's board of directors. In general, the board members are appointed by the shareholders at the annual general meeting for an indefinite term (private companies) or until the end of the next annual general meeting (public companies), unless stipulated otherwise in the Articles. The board consists of one to five members, unless otherwise stipulated in the Articles. If the number of ordinary board members is less than three, at least one 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 at board meetings 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 company may also have a managing director, who is appointed by the board and must comply with its instructions and orders. The managing director can be a member of the board but, according to the Finnish Corporate Governance Code 2015, should not act as the chairman of the board. The board of directors is responsible for the administration and organization 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 parties. 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 Limited Liability Companies Act concerning the management of groups. Therefore, every subsidiary must be managed by its own corporate bodies.

In general, a company has at least one auditor appointed at the annual general meeting. However, small companies are exempt from the obligation to appoint an auditor on certain conditions. In public companies, at least one 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 how audits must be conducted, auditor qualifications and the supervision of the auditing profession are set forth in the Auditing Act.

The Limited Liability Companies Act does not contain detailed rules on good governance and best managerial practices in listed companies. These issues are considered further in chapter 7.

4.5.5 Liability for Damages

Members of the board of directors and the supervisory board, as well as the managing director, are liable to compensate loss incurred by the company by their willful or negligent acts or omissions in breach of their duty of care. The liability in damages also applies to loss incurred by the company, its shareholders or other persons by willful or negligent acts or omissions in breach of the Limited Liability Companies Act or the Articles. Negligence is determined on a case-by-case basis according to the principle of *bonus pater familias*. Similar rules on liability also apply to a company's auditors.

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

4.5.6 Minority Protection

At the core of minority protection is the principle of equal treatment, which provides that a resolution by the shareholders or the board of directors, or a decision by 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 or made. The remedy for minority shareholders in the event a resolution is adopted by the shareholders (or the board of directors as far as concerns matters within the scope of authority of the shareholders that have been delegated to the board) in violation of this principle is the right to request a court to declare the resolution null and void.

Shareholders representing ten percent of all of the shares in the company can take 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 for the financial period be distributed as a dividend. Shareholders holding ten percent of the issued shares can request a special audit of the management and bookkeeping of the company for a specific previous period or for specific measures or matters. The right to instigate a special audit can be of particular importance when a qualified minority, having opposed a resolution to discharge the board of directors from liability, is considering instituting a derivative action against board members.

4.5.7 Restructuring Companies

The Limited Liability 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 (parent) company that has voted against the merger decision can demand that the merging company redeem the shareholder's shares at fair market value. The Limited Liability Companies Act also recognizes the right (and, at the request of another shareholder, the obligation) of a shareholder holding more than ninety percent of the shares and voting rights in a company to acquire the remaining shares at any time at fair market value.

A merger can take place only between entities of the same legal type. A wholly-owned company, however, can be absorbed through merger by a parent cooperative.

There are specific provisions in the Limited Liability Companies Act on the division of a company. One way is for all of the assets and liabilities of the company to be transferred to one or more newly-formed companies, in which case the original company ceases to exist. The other way is for only some of the assets and liabilities of the company to be transferred to one or more transferee companies, in which case the shareholders of the original company also become shareholders of the transferee companies.

A private limited company can be transformed into a public limited company by a resolution passed at a general meeting by a qualified majority, provided that the requirements imposed on public companies, 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, a sole proprietorship. It is recommended to review any tax effects of such structuring in advance.

4.5.8 The European Company

A Finnish public limited company may participate in the formation of a European company domiciled in Finland or any other EU country through a merger with one or more public limited companies from other EU countries, or be restructured as a European company. Correspondingly two 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 can transfer its domicile to another EU country without having to be liquidated.

4.6 Cooperatives

Cooperative societies are important players in the agricultural sector and retail sector (*FI: consumer cooperatives*) in Finland. Under the Cooperatives Act (421/2013, *FI: osuuskuntalaki*),

a cooperative (*FI: osuuskunta*, which is abbreviated to "*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 rules applicable to the cooperative rules may provide for an additional fee to be paid in case of liquidation or bankruptcy.

Members are required to pay one or more membership fees, which are returned when the member retires from the society. The cooperative rules may provide that the cooperative can issue investment shares, which have many features in common with shares issued by companies.

As regards governance, auditing and reorganization, the provisions of the Cooperatives Act are quite similar to those of the Limited Liability Companies Act. A cooperative can be converted into a company without having to be liquidated.

4.7 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 the 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.

Unlike a company, a branch office does not require fixed capital. The foreign company is liable not only up to the amount of capital invested in the branch office but also for all of the branch's debts and other obligations. The distribution of profits from a branch to its foreign parent is not restricted, and there is no requirement for a board of directors.

5. COMPETITION AND MERGER CONTROL

5.1 Applicable Legislation

The Finnish competition rules are laid down in the Competition Act (948/2011, as amended *FI: kilpailulaki*. Since its enactment in 1992, the Competition Act has been subject to several amendments, the most recent entering into force on 1 May 2017. The purpose of the Competition Act is to protect 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 Treaty on the Functioning of the European Union ("TFEU"). Further, the Competition Act contains the national provisions on merger control, public procurement and private enforcement[2]. It also lays down the procedural framework for enforcement and the powers of the competition authorities.

Where a restriction on competition may affect trade between EU Member States, the Finnish Competition and Consumer Authority ("FCCA") 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 FCCA and national courts only follow national law.

5.2 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 FCCA and the Market Court[3].

The FCCA's role is to examine conditions of competition and investigate competition restrictions. As the authority of first instance, the FCCA is responsible for assessing whether the provisions of the Competition Act (or Articles 101 and 102 of the TFEU) have been infringed. The FCCA has the power to order an undertaking to cease the infringing conduct or to deliver goods or services on non-discriminatory terms. The FCCA does not, however, have the power to impose fines for competition infringements but must make a proposal for the imposition of fines to the Market Court. The FCCA is also 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 FCCA can be appealed to the Market Court. In this respect, the Market Court also reviews the substance of the FCCA's decision. The Market Court has the exclusive power to impose fines or periodic penalty payments and to prohibit mergers, although it must always act on (although not necessarily follow) the FCCA's proposal.

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

[2] Supplemented by the Act on Competition law damages (1077/2016, *FI: laki kilpailuoikeudellisista vahingoista)*

[3] FI: markkinaoikeus.

5.3 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.

5.3.1 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 specifically prohibited, namely price fixing (including the fixing of selling prices and other trading conditions), limitation of output, the allocation of markets, customers, or sources of supply or the use of discriminatory trading conditions, and 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 the 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 Section 6 of the Competition Act where the conditions contained in that article are satisfied. The conditions are similar to those listed in Article 101(3) of the TFEU. 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 their interpretative guidelines.

5.3.2 Abuse of Dominant Position

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 prices 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.

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 EU 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.

5.4 Enforcement

The FCCA is entitled to bring proceedings for infringements on its own initiative or following a complaint. Accordingly, where the FCCA suspects that an infringement of Articles 101 or 102 of the TFEU or the equivalent national provisions has occurred, it can initiate proceedings to eliminate the restriction on competition or to remove the harmful effects of such a restriction.

The FCCA'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 FCCA 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 FCCA may impose a periodic penalty payment. Furthermore, intentionally providing incorrect information is punishable by criminal sanctions.[4] The FCCA may conduct inspections at undertakings' commercial or private premises (e.g., the homes of its directors). An inspection of private premises can only be carried out if there is a reasonable suspicion that documents and book-keeping material relating to the subject of the investigation are stored at such premises and requires prior judicial authorization by the Market Court. While conducting an inspection, the FCCA has far-reaching powers of entry and seizure, and undertakings are required to cooperate with any investigation.

To offset the extensive investigatory powers of the FCCA, the safeguards for undertakings during investigations into suspected competition restrictions include the right of an undertaking to be informed of its position in an investigation of a competition restriction by the FCCA and of the suspicions harbored about it, the right to information regarding documents related to the investigation and the state of the investigation, the right to be heard before the FCCA makes a proposal to the Market Court for the imposition of fines (akin to the EC's Statement of Objections procedure), or before taking a decision on the existence of a cartel or abuse of dominant position or another breach of competition law, and the right to protection under legal professional privilege (the confidentiality of undertakings' correspondence with external legal counsel) and against self-incrimination.

5.5 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 provides only for the imposition of administrative fines and liability for damages.

Insofar as administrative sanctions are concerned, the FCCA 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 Section 5 or 7 of the Competition Act or Article 101 or 102 of the TFEU. The amount of the fine is calculated based on an overall assessment of the infringement and, in determining the amount, the Market

[4] A fine or imprisonment under the Finnish Penal Code (39/1889, as amended, *FI: rikoslaki*).

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

The Competition Act also includes a leniency program providing for immunity from or the reduction of fines in cartel cases. In addition, the FCCA can also propose a reduction of the fine in cases concerning restrictions of competition other than cartels (such as a vertical restriction) if an undertaking is considered to have discernibly assisted the FCCA in its investigation of the restriction concerned.

The Competition Act also contains sanctions that can be imposed for 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 enforcing an injunction or other order, prohibition or requirement.

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 sanctions. However, there is one exception to this, namely where false evidence has been submitted to the FCCA, in which case fines or imprisonment of up to six months may be imposed in accordance with the Finnish Penal Code.

5.5.1 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.

5.6 Private Enforcement

When the provisions of the Competition Act or Article 101 or 102 of the TFEU have been breached, either negligently or intentionally, any person (thus, individuals, private entities and public entities) that has suffered damage as a result can claim compensation. Claims for damages are heard by the district courts at first instance. 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.

5.7 Merger Control

The provisions on merger control in the Competition Act entered into force on 1 October 1998. 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**").

5.7.1 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 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 FCCA 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.

5.7.2 Notification

A concentration must be notified to the FCCA 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. A concentration may be notified to the FCCA as soon as the parties demonstrate with sufficient certainty their intention to conclude a concentration.

The notification form is broadly similar to the EC Merger Regulation's Form CO. Depending on the details of the relevant concentration, various types of information must be given about 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. There are no filing fees.

5.7.3 Procedure

In the first stage, the concentration is examined by the FCCA. During the first-phase investigation, the FCCA has a period of one 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 initiate a second-phase investigation. If the FCCA decides to initiate a second-phase investigation, it must, within three months (or five 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.

Having received the FCCA’s request, the Market Court must make its decision to clear or prohibit the concentration within three months.

Including the Market Court procedure, the maximum aggregate investigation of a concentration may not exceed nine months. However, this is expected to occur only in very exceptional cases. In general, most concentrations are cleared during the first-phase investigation. The FCCA’s assessment may be speeded up by pre-notification discussions.

The general rule is that no steps may be taken to implement the transaction prior to the clearance of the concentration. The FCCA and the Market Court may, upon request, permit certain implementing measures to be taken during the investigation. For example, a party that has launched a public bid can purchase the shares offered prior to clearance, even though it may not exercise its voting rights to determine the competitive behavior of the target company.

5.7.4 Assessment of a Concentration

When assessing a concentration, the FCCA applies only the Finnish merger control provisions. The substantive test is the SIEC-test (significant impediment to effective competition) which is 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 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 FCCA 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, the degree and nature of residual competition, the bargaining power of customers and suppliers, potential competition, barriers to entry, and saturation of the markets.

The FCCA 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 FCCA will primarily negotiate these conditions with the parties involved and require that such conditions be complied with. Where conditions are imposed, the authorities usually prefer structural remedies, such as divestments, but behavioral undertakings can also be imposed. According to the Competition Act, the FCCA is not permitted to impose conditions that the notifying party has not accepted. This means that if the notifying party does not accept the conditions required by the FCCA, it can only refuse to accept them, which will cause the FCCA to propose to the Market Court to block the transaction.

5.7.5 Sanctions for Failure to Comply with the Notification Requirements

The filing of a notification with the FCCA is mandatory if the concentration is caught by the Competition Act. The general rule is that 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 adhering to any conditions imposed by the competition authorities or the Market Court’s decision to prohibit the concentration, an administrative fine of up to ten percent of the total turnover of the relevant undertaking(s) may be imposed.

5.8 Appeal

Administrative decisions of the FCCA can be appealed to the Market Court, with a further possibility of appeal to the Supreme Administrative Court. The decisions adopted by the Market Court as the first instance may be appealed 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 granted, from the Court of Appeal to the Supreme Court.

6. CONTRACT LAW AND DAMAGES

6.1 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, *FI: laki varallisuusoikeudellisista oikeustoimista*) governs the formation and invalidity of contracts as well as legal representation related to contractual relationships. However, there is no general legislation governing the content or breach of a contract or on related remedies and other key contractual issues.

Specific key legislation governing contracts includes (i) the Consumer Protection Act (38/1978, as amended, *FI: 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, *FI: kauppalaki*), (iii) Act on Commercial Representatives and Salesmen (417/1992, as amended, the "**Agency Act**", *FI: laki kauppaedustajista ja myyntimiehistä*), (iv) the Real Estate Code (540/1995, as amended, *FI: maakaari*), (v) the Employment Contracts Act (55/2001, as amended, *FI: työsopimuslaki*), (vi) the Insurance Contracts Act (543/1994, as amended, *FI: vakuutussopimuslaki*), (vii) the Residential Leases Act (481/1995, as amended, *FI: laki asuinhuoneiston vuokrauksesta*) and (viii) the Commercial Leases Act (482/1995, as amended, *FI: laki liikehuoneiston vuokrauksesta*).

The following are the main international statutes and principles that impact contractual relationships in Finland: (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 employment, (ii) the United Nations Convention on Contracts for the International Sale of Goods, which Finland ratified in 1988, and (iii) Nordic legal principles. Several key Finnish statutes, such as the Contracts Act, were produced jointly by the Nordic countries.

6.2 General Principles of Finnish Contract Law

6.2.1 Freedom of Contract

Finnish contract law adheres to the principle of freedom of contract. 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 on freedom of contract. If a term is regarded as unreasonable in accordance with section 36 of the Contracts Act, the term can be modified on the grounds that it is unreasonable. This provision is nevertheless applied only in very exceptional situations in respect of business-to-business contracts.

6.2.2 Binding Effect of Contracts (*pacta sunt servanda*)

In Finland, the general rule is that contracts are of binding effect, which derives from the need to encourage good faith in transactions. The contracting parties are free to enter into commitments that can, if necessary, be enforced by courts or enforcement authorities. However, it should be noted that, especially in the areas of consumer protection and labor law, mandatory provisions apply that affect the binding nature of contracts.

6.2.3 General Duty of Good Faith

In general, a contracting party has a duty to inform the other party of any significant matters that might affect the 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 contracting party is in relation to the other party, the more onerous the stronger party's duty to act in good faith.

The contracting parties' duty of good faith derives from the principle of reliance on a contract. The duty of good faith is more onerous in contractual relationships involving consumers than between commercial parties of equal standing. As previously stated, consumer laws contain mandatory provisions which cannot be contracted out of to the detriment of the consumer.

6.3 Formation of Contracts

Unless otherwise specifically provided, Finnish law does not recognize any legal formalities as regards the 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 entered into.

6.3.1 The Contracts Act

The formation of contracts is primarily governed by the Contracts Act. Other contractual legislation does not generally contain any provisions regarding the actual formation of contracts, but merely imposes certain formal requirements related to formation. Formal requirements can be found, for example, in the Real Estate Code regarding contracts under which title to land is transferred (these formal 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 generally considered binding from the moment the recipient has examined the offer. If the offer is oral, the answer must be given immediately, unless otherwise stated in the offer. If the offer has been made by other means, the answer must be given within the time period indicated in the offer or within a reasonable period of time.

The provisions of the Contracts Act concerning the formation of contracts are not exhaustive. The Contracts Act provides that there is no requirement that an offer be made and accepted for a legally binding contract to be entered into. In general, a contract is formed when the contracting parties have agreed to enter into a contract and on the provisions of the contract.

6.3.2 Other Means of Formation

In addition to the strict offer-acceptance mechanism above, there are other means of forming legally binding contracts, namely: (i) contracts formed through negotiations, where the contracts are usually formed gradually during the negotiations phase; (ii) circumstances forming a contract, i.e. where there are no actual expressions of intent, for example when using an automatic machine or travelling by public transport; (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 distance selling legislation. 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 to enter into a contract and the content of the contract without meeting personally.

6.4 Special Types of Contract

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

6.4.1 Agency Contracts

Finland has implemented the Commercial Agent Directive (86/653/EC) through the Agency Act. Most of the provisions of the Agency Act can be contracted out of by the parties. However, the Agency Act contains mandatory rules on termination of the contract and compensation, restrictions on competition, and the right for both parties to receive information from the other. These mandatory rules may not be contracted out of to the detriment of the agent, not even through choice of law clauses.

6.4.2 Distribution and Franchise Contracts

There are no statutes that specifically regulate distributorships or franchises in Finland, but a number of statutes have an indirect impact. For example, the court's power under the Contracts Act to sever (modify or invalidate) unreasonable clauses also applies to distribution and franchise contracts; the Residential Leases Act 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 elinkeinotoiminnassa*).

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.

6.5 Contract Interpretation

In interpreting a contract, a Finnish court will take into account both subjective and objective elements relating to the contract. The subjective elements relate to the parties' free will to enter into commitments, namely their state of mind and intentions, with the aim to reconstruct the contract reached by the parties. The objective elements relate to the principle of reliance on the contract. The court will therefore rely not only on the actual wording of the contract, but will also take into account the external circumstances prevailing during the contractual negotiations and the parties' performance of previous 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 include: (i) the consequences of ambiguity in a contract should be borne by the party who has drafted the contract; (ii) the wording of the contract overrides the headings and subheadings 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.

6.6 Termination of Contracts

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

6.6.1 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 payment in kind or compensation for the damage incurred. The Consumer Protection Act and the Agency Act contain certain limitations on this right to compensation.

Rescission of a contract is generally considered to be the most drastic way of terminating a contract and is used as a last resort. Rescission means immediate termination of a contract. The general principle under Finnish law regarding rescission of a contract is that rescission must be based on a fundamental breach of contract. However, in some special acts the conditions for rescission are specified. Due to rescission, the parties have to return the performances. Rescission of a contract does not require court actions or other actions taken by the authorities.

6.6.2 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. it is valid until further notice. Unless otherwise provided in the contract or applicable legislation, a party can terminate such a contract, with the result that the contract ceases to be in effect as of the date chosen by the party and without the party needing to put forward any specific grounds for the termination. In practice, the other party is afforded a reasonable notice period. Furthermore, the Employment Contracts Act and the Residential Leases Act, 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 term expires. Contracts concluded for a fixed term cannot be terminated prior to the expiry of the term, unless otherwise agreed between the parties.

Unless otherwise provided by law, all damage and loss caused by an unlawful termination of contract must be compensated. Compensation for unlawful termination may include costs

related to, for example, the examination of the right to terminate the contract, reorganization and removal costs, and any difference in the price paid to a new replacement party.

6.6.3 Cancellation

A contract may also cease to be in effect due to a bar to performance of the contract or due to a contracting party's passivity. A bar to performance usually only temporarily discharges the contracting party from performing its obligations under the contract. However, if the consequence of the bar to performance or the delay caused by the bar fundamentally impacts the contract, the entire contract may become void. Additionally, the contract may become void if the bar to performance lasts for a considerable time. The above does not rule out the possibility to bring a claim for damages or to recover payments made, etc.

6.7 Modification of Contracts

The Contracts Act gives the Finnish courts the power to sever (modify or invalidate) contractual terms that are unreasonable or that would be unreasonable if performed. In deciding whether a contractual term is actually or potentially unreasonable, the courts will consider the objective and subjective circumstances prevailing during and after the conclusion of the contract. If the court considers the entire contract unreasonable as a result of its modification or invalidation of a term, the court may decide to modify 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 the modification or invalidation of an unreasonable term.

The courts have considered the possibility of modification under the Contracts Act to be very broad in scope and are not averse to using it if a contractual term is improper taking into consideration 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.

6.8 Loss - Introduction

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

6.9 Contractual Loss

6.9.1 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 need only demonstrate that the loss 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 the case of both contractual and non-contractual loss, the basis for compensation is that the loss must have resulted from an act, omission, negligence or some other chain of events that gives rise to 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 loss 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 loss 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 loss 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 loss is direct or indirect. In all other situations both direct and indirect loss must be compensated by applying the same basis for liability. It is, however, common that liability for indirect loss is partially or entirely excluded by contract.

As a general 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 can be contracted out of unless otherwise specifically stated. 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.

6.9.2 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 modified 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.

6.9.3 Limitation of Liability

A party can generally limit its liability by contractually limiting the maximum amount of compensation payable and/or by excluding certain types of loss, such as indirect loss, 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 contractual negotiations or if it is obvious that the other party should have been aware of such clause.

Under Finnish law, a contracting party cannot rely on 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 modified by a court pursuant to the Contracts Act.

7. CORPORATE GOVERNANCE

7.1 Applicable Legislation

Corporate governance in Finnish companies is mainly regulated by the Limited Liability Companies Act, which applies to both public and private companies. The Limited Liability Companies Act includes provisions on the relationship between the board of directors, managing director and 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 (746/2012, 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**"). There is also a significant body of directly applicable EU legislation, including in particular the Market Abuse Regulation (EU Regulation No. 596/2014) ("**MAR**").

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 also been adopted by a number of private companies. Its provisions are not mandatory. However, if listed companies do not comply with some of the provisions of the Corporate Governance Code, they are required to report such non-compliance and explain the reasons for doing so (the "Comply or Explain" principle).

7.2 Shareholders' Rights

7.2.1 General

Shareholders exercise their principal rights at general meetings. These rights include to attend the meeting, to request information relating to the matters to be decided (resolved) upon at the meeting, to make proposals at the meeting and to vote.

Further, shareholders have the right to challenge a resolution adopted at the general meeting and to request a copy of the minutes of the meeting (regardless of whether the shareholder actually attended the meeting). Resolutions may be challenged on the grounds of a procedural error, for example if the meeting was not convened in accordance with the provisions of the Limited Liability Companies Act or the Articles or if the resolution itself is contrary to law.

7.2.2 Access to Information

Shareholders of 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 addressed 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 and MAR require that listed companies disclose, *inter alia,* all information about circumstances that may materially affect the price of the company's listed securities.

7.2.3 General Meetings

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

All companies must hold an annual general meeting within six 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 percent of the shares in the company demand that a meeting be held. Each individual shareholder has the right to have an item placed on the agenda for a general meeting, provided that the shareholder notifies the board of directors in sufficient time in advance of the general meeting. This applies to both annual and extraordinary general meetings.

The Limited Liability Companies Act sets out the matters that must be determined by the shareholders. However, it may be provided in the Articles that the shareholders must determine certain matters that fall within the general scope of authority of the board of directors and managing director. Also, the board may submit matters falling within the scope of authority of the board to be decided at a general meeting. In certain specific cases, shareholders can also adopt resolutions unanimously on a matter falling within the scope of authority of the board and managing director.

As a general rule, resolutions are adopted at general meetings by a simple majority of the votes cast. However, certain resolutions, such as the issuance of shares in deviation from the shareholders' pre-emptive rights and amendment of the Articles, must be supported by a qualified majority, i.e., two thirds of the votes cast and the shares represented at the meeting. In companies with several classes of shares, certain resolutions also require the support of a qualified majority of two-thirds of the votes cast and of the total number of shares within each of the classes of shares represented at the general meeting. Further, certain decisions affecting the rights of a shareholder are subject to more stringent qualified majority or consent requirements.

7.2.4 Legal Action on behalf of the Company

Under certain conditions, shareholders have the right to bring legal action in their own name against a member of the board of directors or the managing director (any damages to be paid 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 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 shareholders' resolution, but, in such case, the action must either be initiated within three months of the adoption of the resolution or concern matters that were not properly disclosed to the shareholders at the general meeting at which the resolution was adopted.

7.3 Management Structure and the Role of Board members

7.3.1 Structure

The power to manage a company is vested in 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 certain state-owned companies. Their use and significance is limited and has declined further in recent years.

7.3.2 Election

Board members are elected by the shareholders at a general meeting by a simple majority. The Corporate Governance Code recommends that a majority of the board members be independent of the company, and that at least two of these board members be also independent of the major shareholders. The Corporate Governance Code furthermore states that both genders must be represented on the board.

7.3.3 Board members' Duties

The board of directors is responsible for the administration and the 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 members include a duty of care and a fiduciary duty, requiring the board members to act loyally towards and in the best interests of the company. The Limited Liability Companies Act further sets out specific monitoring duties for board members of so-called "public interest entities" (including all listed companies) regarding e.g. financial reporting, internal control and risk management, and auditor independence.

A board member (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 board member (or the managing director) may also be held directly liable to a shareholder or another third party, if that party has suffered damage through the board member's breach of the Limited Liability Companies Act or the Articles. Breaches of the SMA, MAR and the board members' 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 relevant securities market legislation. The shareholders can remove a board member they have elected at any time by adopting a resolution to that effect.

7.3.4 Operations of the Board of Directors

The board of directors may decide in its discretion when and how to meet. According to the Corporate Governance Code, the board should adopt a written charter describing its main duties and working principles and the company should publish the key contents of the charter. The company should also report the number of board meetings held in each financial period, as well as the attendance of board members at the board meetings, so that shareholders can evaluate the efficiency of the work performed by the board. The Corporate Governance Code further states that the board of directors should conduct an annual evaluation of its operations and working methods. The company should also ensure that each board member 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 must make all decisions as a body and may not generally delegate its responsibilities and the liability imposed on it by 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 board members their own areas of responsibility subject to the above rule. However, any formal decisions can only be made by the entire board collectively.

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, as well as the shareholders' nomination board (which includes representatives of the major shareholders and may be established as an alternative to the board nomination committee). Other committees may also be established where necessary. If an audit, nomination or remuneration committee is established, its members must be elected from among the board members. A majority of the members of the audit committee must be independent of the company and at least one member must be independent of the major shareholders. A majority of the members of the nomination and remuneration committees must be independent of the company, and the nomination and remuneration committees must not include the managing director or any other executive. Each committee is required to regularly report on its work to the board of directors. The board of directors should adopt a written charter for each committee’s work and publish the key contents of the charter.

7.3.5 Remuneration

The shareholders decide on the remuneration payable for board members as well as the basis for its determination. The board of directors decides on the pay and other compensation for the managing director. In addition to monetary remuneration, the remuneration can comprise performance-related incentive schemes, pension schemes, as well as shares and share-related compensation schemes. However, the Corporate Governance Code recommends that rewarding non-executive board members via share-based compensation schemes should be separate from similar schemes for the company's chief executive officer, and other senior management and other personnel.

According to the Corporate Governance Code, the company should publish a remuneration statement on its website (under a section entitled "Governance Code" aimed at investors) containing a detailed description of remuneration payable at the company. The remuneration statement should contain details of the financial benefits payable to the board of directors, managing director and any other executives as well as information on the decision-making process, the main principles of remuneration and a remuneration report, providing information on the remuneration paid during the previous financial period.

The remuneration report should be published no later than simultaneously with the publication of the financial statements, the report by the board of directors, and the Corporate Governance Statement for the previous financial period.

7.3.6 Conflicts of Interest

According to the Limited Liability Companies Act, a board member may not participate in a proposed agreement or other transaction or arrangement between the board member and the company or between the company and a third party through which the board member would receive a material benefit that may be contrary to the interests of the company. The board member will have to evaluate in each case, whether his or her personal interest in a matter conflicts with the interests of the company. The board member's fiduciary duty may require 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.

According to the Corporate Governance Code, in order to avoid conflicts of interest, the majority of the board members should not have an interdependent relationship with the company. Although it is recommended that board members hold shares in the company, the majority of the board of directors, consisting of independent board members, should include at least two board members who are also independent of major shareholders of the company. Such composition of the board supports the objective that the board of directors must act in the interests of the company and all of its shareholders.

Further, according to the Corporate Governance Code, the board of directors of a company may establish committees in the event of conflicts of interest.

Finally, the Corporate Governance Code states that a company should evaluate and monitor transactions concluded between the company and its related parties and ensure that any conflicts of interest are taken into account appropriately in the decision-making process of the company. The company should keep a list of parties that are related to the company. The company should report the decision-making procedure applied in connection with related-party transactions that are material to the company and that either deviate from the company's normal business operations or are not entered into on market or market equivalent terms.

7.4 Disclosure

Pursuant to the SMA and MAR, 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 senior 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.

7.5 Accounts and Audits

All listed companies must elect at least one auditor who must be an approved auditor within the meaning of the Auditing Act or an auditing firm that satisfies the requirements of the

Auditing Act. The auditor is elected at the general meeting, usually for one year at a time. The requirement that auditors be independent means that an auditor must resign from their 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 should 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 Limited Liability Companies Act or the Articles.

As a general rule, a listed company must prepare annual accounts as well as an interim report for the first six months of the financial year. However, it is very common that listed companies prepare interim reports for the first three, six and nine months of the financial year, in addition to the annual accounts. The board members and the managing director must sign the annual accounts of the company. Listed companies must publish a financial statement bulletin, the annual report and the interim reports. The board of directors is ultimately responsible for such publications.

7.6 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 company law by individual shareholders or the companies themselves is generally carried out through court proceedings or arbitration.

7.7 Reforms

The implementation of the Shareholders' Rights Directive (2007/36/EC) first took place in August 2009 mainly through amendments to the Limited Liability Companies Act. As Finnish legislation already fulfilled most of the minimum requirements of the Directive 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. In May 2017, the Shareholders' Rights Directive was amended by Directive 2017/828. The changes concern the encouragement of long-term shareholder engagement. In Finland, based on this change to the directive, it has been proposed that certain changes be made to the Finnish Securities Markets Act, the Limited Liability Companies Act and the Act on Investment Services. The relevant changes to these acts are still being prepared by a working group. The proposed amendments aim to encourage long-term shareholder engagement and to enhance transparency between companies and investors.

A new version of the Corporate Governance Code was issued on 15 October 2015. The new Corporate Governance Code entered into force on 1 January 2016, replacing the previous version that was issued in June 2010. The new Corporate Governance Code implements changes included in the Corporate Governance recommendation published by the European Commission on 8 April 2014. Furthermore, it also reflects other regulatory projects within the European Union.

For more information about the Finnish securities market and the reform of securities market legislation, see chapter 14.

8. DISPUTE RESOLUTION AND ARBITRATION

8.1 Applicable Legislation

The Finnish legal system provides for several modern and well-established forms of dispute resolution. Civil litigation is governed by the provisions of the Code of Judicial Procedure (4/1734, as amended, *FI: oikeudenkäymiskaari*) and arbitration is regulated by the Arbitration Act (967/1992, as amended, *FI: laki välimiesmenettelystä*). Court-annexed alternative dispute resolution 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*). Administrative appeals and litigation are regulated by the Administrative Judicial Procedure Act (586/1996, as amended, *FI: hallintolainkäyttölaki*).

The following overview of dispute resolution in Finland will briefly describe civil litigation, administrative appeals 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.

8.2 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 individuals or private entities 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 specialist 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 (with certain exceptions) will 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 there are compelling reasons for doing so. The general reason for granting leave to appeal is that the Supreme Court considers a decision to be of importance for similar cases or in order to ensure consistency and uniformity of legal practice.

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 concerning certain matters of public interest between a public authority and private entities. Appeals against administrative decisions taken by state or municipal authorities are, in general, required to be lodged with the competent Administrative Court (*FI: hallinto-oikeus*), which is the court of first instance in most administrative matters. However, some decisions of government agencies and authorities can 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.

Specialist Courts: In addition to the general courts and the administrative courts, some specialist courts have been instituted for specific matters. Specialist courts offer expertise which general courts would not always be able to offer. Specialist courts in Finland include the Market Court (*FI: markkinaoikeus*), the Labour Court (*FI: työtuomioistuin*), the Insurance Tribunal (*FI: vakuutusoikeus*) and the High Court of Impeachment (*FI: valtakunnanoikeus*).

8.3 Use of Advocates in Legal Proceedings

It is not compulsory to use an advocate in legal proceedings in Finland, and advocates do not have the exclusive right to appear in court. A party to a case may represent himself unassisted, but in practice, counsel is usually engaged 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 a so-called licensed legal counsel as described below, or by a lawyer employed by the relevant litigant. As regards the licensed legal counsels and the employed lawyers, the requirements are that such an individual 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, the general rule is that representatives of or those assisting the party other than advocates and public counsels have to obtain a license to be entitled to appear in court. Laypeople may not be engaged as counsel, but close relatives as well as the party's spouse may represent or assist a party in a court.

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, and be independent and autonomous. Under the Code of Judicial Procedure, advocates are presumed to fulfill the legal qualifications for serving as trial counsel in any court.

8.4 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.

8.4.1 The Preparatory Stage

Exchange of Written Pleadings

Civil proceedings are initiated by means of a written statement of claim delivered to the office of the competent District Court. The case becomes pending once the court receives the application.

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

A statement of claim 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 statement of claim is incomplete, the court will invite the plaintiff to supplement it. If such invitation is not followed, the claim will be dismissed.

If and when the statement of claim meets the requirements set out in 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 30 and 60 days. It is generally 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 states its response to the plaintiff's claim and, where the claim is opposed, the grounds for the opposition. The defendant must also state as far as possible what evidence the defendant intends to submit and must present any claim for 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 statement of claim may be less detailed than in standard proceedings. It need only identify the claim and briefly describe the grounds for the claim. No information on evidence is needed. The plaintiff is, however, required to state in the statement of claim that, to the plaintiff's knowledge, the claim 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 statement of claim 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, subsequent to this, 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.

8.4.2 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 judges, one of whom must 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 case law, legal commentaries and any documents containing technical data which is not easily understood.

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.

8.4.3 Judgment

In civil litigation, the court may only adjudicate on matters claimed by the parties. The court may not take into account any facts other than those presented by the parties in support of their claim or opposition. The judgment must include the final ruling and the grounds for the ruling. The grounds must set out the facts and legal reasoning on which the judgment is based and the information on the basis of which a disputed question has been decided.

8.5 Administrative Appeal Procedure

8.5.1 Filing an Appeal

The main judicial remedy available to individuals and private parties against decisions of administrative authorities is to lodge an administrative appeal with the Administrative Courts. The appeal must be in writing and specify the decision challenged, the aspects of the decision that are challenged, and the modifications to the decision requested as well as the grounds for the modifications. The decision challenged and the documents on which the appellant relies in support of the request must also be included with the appeal.

The appellant may request a stay of execution and make certain other requests 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 case.

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

8.5.2 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 must 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 facts other than those presented by the parties.

The parties must be given the opportunity to comment on the requests made by other parties and on evidence that may affect the determination of the case. The case may be determined without giving the parties the opportunity to comment only where the claim is dismissed without being considered on its merits, immediately rejected, or if the parties' comments are manifestly unnecessary for any 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 being considered on its merits, immediately rejected, or an oral hearing is manifestly unnecessary for any other reason.

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

8.6 Provisional Measures

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

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

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 an 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 must be submitted to the competent District Court. The provisional measures provided for in the Code of Judicial Procedure are described separately below.

8.6.1 Attachment to Secure a Monetary Claim

An attachment order to secure a monetary claim is a process for seizing assets, rights and receivables of the defendant as security for the satisfaction of the plaintiff’s claim. Under the Code of Judicial Procedure, an attachment order will only be granted if the following criteria are met:

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

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.

8.6.2 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.

8.6.3 Injunction

Under the Code of Judicial Procedure, an injunction will only be grated if the following criteria are met:

- 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 Code of Judicial Procedure allows the use of injunctions in a wide variety of situations. The court may issue an injunction in the following circumstances:

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

However, when issuing an injunction, the court must 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 obtain an injunction than an attachment order.

8.6.4 Costs

The costs of civil litigation and administrative appeals 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 general courts, fees vary between EUR 65 and EUR 500 depending on the type of case, and in the higher instances fees in civil matters are primarily fixed at EUR 500. Court fees in the administrative courts vary between EUR 250 and EUR 500 depending on the type of case.
In civil litigation, the unsuccessful party is usually liable to pay all reasonable legal costs incurred by 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 rule that the successful party can recover only some of its costs from the unsuccessful party. Recoverable costs include 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 must compensate the other party for their legal costs in full or in part, if, based on the outcome, it is unreasonable for the other party to bear its own costs. The provision may also be applied to the administrative authority that made the challenged decision, although an individual or private entity may not be held liable for the costs of a public authority, unless they have made a clearly unfounded claim. When assessing a public authority's liability for costs, specific account is taken of whether the proceedings have arisen from the authority's error.

8.7 Enforcement

8.7.1 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. However, before the judgment becomes final, the plaintiff (*FI: kantaja*) must provide security to enable 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 is subsequently dismissed on appeal. In certain circumstances, the appellate court may grant a stay of execution in favor of the defendant.

8.7.2 Foreign Judgments

Foreign judgments are generally not recognized or enforceable in Finland, unless expressly provided by statute. Finland does not have general legislation in place governing the recognition and enforcement of foreign judgments. Rather, rules on the recognition and enforcement of foreign judgments stem from EU legislation, international conventions to which Finland is a party, or cooperation between the Nordic countries. The most notable instruments that provide for enforceability of foreign civil judgments are Council Regulation 44/2001/EC (the "**Brussels I Regulation**") and the Lugano Convention of 1988.

8.7.3 Administrative Decisions

Decisions that qualify for administrative appeal are normally not enforceable until they have become finalized, unless otherwise provided for in legislation or regulations, the decision is of a nature requiring immediate enforcement, or enforcement cannot be delayed for reasons of public interest. In such cases, the appellate authority or the Administrative Court with which an appeal of a decision has been lodged may nevertheless issue an order prohibiting the execution of the decision, an order staying execution, or another 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.

8.8 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 in 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.

The rules of the Finland Chamber of Commerce (the "**FAI Rules**") supplement the Arbitration Act. The Finland Arbitration Institute (the "**FAI**"), which is part of the Chamber of Commerce, is the sole arbitral institution in Finland.

8.8.1 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 in writing. The requirement for a written agreement 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).

8.8.2 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 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 FAI Rules. According to the FAI Rules, where the parties have not agreed on the number of arbitrators, the arbitral tribunal will be composed of a sole arbitrator, unless the Board determines that an arbitral tribunal composed of three arbitrators is appropriate taking into account the amount in dispute, the complexity of the case, any proposals made by the parties, and any other relevant circumstances. The FAI Rules set forth a procedure for appointing a sole arbitrator and an arbitral tribunal composed of three arbitrators in bi-party proceedings as well as a procedure for appointing an arbitral tribunal in multi-party proceedings.

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

8.8.3 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 a 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, present evidence (including witness testimony), comment on evidence presented by the other party, and argue their case.

The Arbitration 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 FAI Rules complement the Arbitration Act. The rules correspond on a general level to those of other international arbitration institutes. In addition to these rules, the FAI has introduced a set of rules for expedited arbitration in less complex disputes. The

rules, which have been effective since June 2004, provide for fast track arbitration intended to last not more than three months.

8.8.4 Rules Applicable to the Substance of the Dispute

Under the Arbitration Act, arbitral tribunals must 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 must apply that law. An arbitral tribunal may dispense with consideration of the law to decide the case *ex aequo et bono* only if the parties have expressly authorized them to do so.

8.8.5 Setting Aside an Arbitral Award

Once an arbitral award has been issued, it is final and, under Finnish law, the award may not be subject to judicial review on its merits. According to the Arbitration Act, an arbitral award can 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 issued, 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 a sufficient opportunity to present its case.

Further, an arbitral award is invalid 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 state how the dispute has been decided; or if the arbitral award is not made in writing or has not been signed by the arbitrators.

8.8.6 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, the arbitrator is 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 far as concerns the parties, the situation is less clear and therefore it is advisable to enter into separate confidentiality agreements in order to ensure confidentiality.

8.8.7 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 proceedings must 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 (or a certified copy of the) arbitration agreement and the original arbitration award.

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 comprise the following:

- invalidity of the arbitration clause;
- violation of due process;
- the arbitral tribunal having 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.

8.9 Alternative Dispute Resolution

8.9.1 Court-Annexed Mediation

Alternative dispute resolution 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 (394/2011, as amended, *FI: laki riita-asioiden sovittelusta ja sovinnon vahvistamisesta yleisissä tuomioistuimissa)*.

Mediation is possible in almost all civil litigation cases in the general courts. The procedure adopted in a particular case is based on the parties' requirements and is conducted 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 that a settlement reached in out-of-court mediation is enforceable.

8.9.2 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 skills and expertise to assist the parties to reach 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 do so. The mediator has no authority to impose solutions on the parties. The Bar Mediation Rules provide that mediators must be independent and impartial, and that the process must be confidential.

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 seek to facilitate communications between the parties, so as to enable them to reach a settlement. If the parties so wish, the mediator may also provide a non-binding assessment of the dispute.

9. INSOLVENCY AND CORPORATE REORGANIZATION

9.1 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 rules concerning credit institutions, insurance companies and the reorganization of the debts of individuals. These specific provisions are not, however, dealt with here, and this section will also not 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. The purpose of bankruptcy proceedings is to satisfy the claims of the creditors of an insolvent company, whereas the purpose of reorganization proceedings is to enable viable companies to arrange their debts.

9.2 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 rules on the priority of creditors.

9.2.1 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 is normally required, and the relevant claim does not 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 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 a bank guarantee or other security).

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

9.2.2 Effects of Bankruptcy

Upon commencement of the bankruptcy proceedings, the debtor forfeits its right to administer and exercise control over all of its assets, which are deemed to belong to the bankruptcy estate.

The court will, at its discretion, appoint a receiver to administer the bankruptcy estate. The most important task of the receiver is to ascertain the assets and debts of the estate and to prepare an inventory of property. Even though the receiver is in charge of making 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 that has been 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 as at the date on which 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 ascertained and categorized the estate's assets and debts and realized the assets. The receiver prepares a final settlement according to which the assets of the estate are divided among the creditors. The creditors must approve the final settlement at a creditors' meeting.

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 over unsecured creditors, with the exception of claims secured by a floating charge, which entitle the secured creditor to priority of payment up to a maximum of 50 percent of the liquidation value of the encumbered business assets.

It normally takes between one and three 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.

9.2.3 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 more than five 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 the payment of debts and the 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 months and three years.

A suit to recover property in accordance with the Recovery Act must generally be filed within six months from the date set by the court for filing claims.

9.3 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 corporations to be reorganized that have viable business potential, by means of an approved reorganization plan. 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 approve a reorganization plan for the debtor, which focuses not only on debt reorganization, but also on the business and the financial situation of the debtor.

9.3.1 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 creditors representing no less than 20 percent of the known debt must file a petition with the local District Court. Alternatively, if the court considers that it is clear that the debtor is currently or will imminently become 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.

9.3.2 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 plan 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 where there are 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 moratorium providing the debtor with general protection from their creditors,

unless an interim moratorium has been imposed in connection with the petition for reorganization. Save for an exemption granted by the court, no payment, set-off or enforcement is permitted in respect of reorganization debt.

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

9.3.3 The Reorganization Plan

The reorganization plan 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 the 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 plan 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 plan is approved, the automatic moratorium is lifted and reorganization debt may only be paid in accordance with the plan.

Creditors are divided into groups for the purposes of voting on whether or not to approve the reorganization plan. The reorganization plan may be approved unanimously by all creditors, by a majority vote among all groups of creditors or, in certain situations, by 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 plan generally expires when it has been fully completed, i.e. when all the reorganization debts have been paid as provided for in the plan and other actions stipulated have been taken.

9.4 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 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.

10. INTELLECTUAL PROPERTY

10.1 Applicable 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 Rights Act (1279/2009, as amended *FI: laki kasvinjalostajanoikeudesta*). In addition, the Unfair Business Practices Act (1061/1978, as amended, *FI: laki sopimattomasta menettelystä elinkeinotoiminnassa*) provide for protection against unfair utilization of goodwill, slavish imitation and abuse of trade secrets and know-how. Provisions regarding intellectual property infringements are contained in the respective intellectual property laws and in the Finnish Criminal Code (39/1889, as amended, *FI: rikoslaki*).

10.2 Copyright

The Copyright Act provides for legal protection for the original and unique expression of an idea, a motive, or the subject of a literary or 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. Works based on pre-existing works, such as translations, musical arrangements, literary abridgements, and motion picture adaptations, are viewed as derivative works, and authors of derivative works may exercise their rights only with the consent of the author of the original work. These rights are otherwise identical to the copyrights of the author of the original work. Copyright in a work of authorship arises when the work has been created, and no copyright registration is required or even possible.

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, photographs, and certain foreign press reports.

The general principle is that copyright in qualifying works is owned by the individual 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 regards the duration of the protection, the copyright in a work subsists until the end of the 70th year after the year in which the author died. The duration of copyright in a motion picture is calculated from the year of the death of the principal director, the scriptwriter, the screenwriter or the composer who wrote the musical score for the motion picture, whoever died last. Neighboring rights under the Copyright Act enjoy varying terms of protection. Performing artists' reproduction and distribution rights subsist until the end of the 50th 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 50th 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 economic 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 to use a computer program includes the associated right to produce back-up copies of the program required for its use and storage.

As of 1 January 2017, a new Act on Collective Management of Copyright (1494/2016, *FI: laki tekijänoikeuden yhteishallinnoinnista*) has been adopted, which is based on the CRM Directive (2014/26/EU) and governs activities that are managed by collective management organizations on behalf of right holders. 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 (for authors and composers of musical works), Gramex ry (for performers of musical works and for phonogram producers), Kuvasto ry (for works of art), Tuotos ry (for audiovisual works), and Sanasto ry (for literary works). Lastly, Kopiosto ry functions as an organization for authors, publishers and performing artists and mainly administers the collection of fees for photocopying, radio and TV programs. These organizations generally arrange with their members such matters as membership requirements and terms for the individual and group distribution of royalties collected.

10.3 Trademarks

The provisions of the Trademarks Act apply equally to goods and services. Applicants applying for trademark protection have three options to choose from: (i) registration under the national registration system, (ii) registration under the Madrid Protocol, or (iii) registration of an EU trademark covering the EU area.

Under the national system, an exclusive right to a trademark can be obtained either through registration with the Finnish National Board of Patents and Registration ("NBPR"), 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 distinctive sign or expression of its proprietor's goods or services. A trademark may consist of any sign or expression capable of being represented graphically and capable of distinguishing its proprietor's goods or services. A trademark may consist in particular of one or more words (including personal names), a design, a letter, a numeral, or the shape of goods or of their packaging. Through establishment, an exclusive right may also be obtained for other kinds of symbols used to distinguish goods or services. The definition of trademarks allows for the

protection of certain coloring, slogans, decorations, or musical jingles, provided that they fulfill the requirement of distinctiveness. The NBPR maintains a list in which trademarks with a reputation in Finland can be included on application, which increases awareness and may thus prevent future disputes.

An application for registration of a trademark must be made in writing to the NBPR, and it must state 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 the registration of figurative marks, ten clear reproductions of the trademark must be attached to the application. Non-Finnish applicants must name a representative resident in the European Economic Area ("EEA"). An application fee must be paid when the application is made. The application fee for a national trademark registration for one class of goods and services is EUR 225 for an online application, EUR 275 for a postal or email application, and EUR 100 for each additional class (fees applicable in March 2018). Use of a trademark is not a condition for registration, with the exception of geographical names which have to attain so-called secondary meaning by becoming established.

Registration applications are subject to a pre-registration examination by the registration authority. The registration authority examines *ex officio* absolute grounds for refusal, such as lack of distinctiveness, misleadingness in matters such as the mark's nature, quality or geographic origin, and the mark’s conformity with law, public order and morality. The registration authority also examines *ex officio* relative grounds for refusal, such as infringement of the copyright of a third party, the inclusion of the name of a natural person, or the likelihood of confusion with an earlier trademark, a pending registration application or the name or protected trade name of another trader. In addition, a prior international or EU trademark registration constitutes a relative ground for refusing to register a mark at national level. However, by consent, it is possible to overcome the relative grounds for refusal (caused by prior rights), unless the registration would obviously mislead the public.

The Trademarks Act does not distinguish between individuals and legal entities as holders of trademarks, i.e. any individual 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 activities are regulated by a separate Act on Collective Marks (795/1980, as amended, *FI: yhteismerkkilaki*).

The registration of a trademark takes effect from the date on which the application is filed, and it remains in force for ten 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 for a national trademark registration for one class of goods and services is EUR 225 for an online application, EUR 275 for a postal or email application, and EUR 100 for each additional class (fees applicable in March 2018). 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 NBPR. 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 NBPR. Unless otherwise agreed, a licensee may not further assign the right or grant sub-licenses. When a business holding a trademark is acquired, the trademark accompanies the business unless otherwise agreed.

10.4 Patents

According to the Patents Act, a person who has designed an invention fulfilling the criteria of novelty, inventive step, and industrial applicability (or his successor in title) is entitled, on application, 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: discoveries, scientific theories, or mathematical methods; aesthetic creations; schemes, rules or methods for performing mental acts, playing games, doing business, or computer programs; or presentations of information. Furthermore, no method of surgery, therapy, or diagnosis practice on human beings or animals can 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. As regards 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 ("EPC") in 1996. EPC registrations are available in Finland. In March 2006, the Patent Law Treaty administered by the WIPO came into force in respect of Finland. Finland also ratified the Unified Patent Court Agreement in 2016.

Patent rights are created through registration. As Finland has joined the EPC, an applicant can either file an application for a European patent with the European Patent Office (Finland being one of the designated countries) or file an application with the NBPR. Moreover, the applicant may lodge a PCT application with the NBPR. National patent applications are examined to test whether they satisfy the requirements of inventive step and novelty. Non-Finnish applicants seeking registration must appoint an agent resident in the EEA to represent them.

The original proprietor of a patent is the inventor or inventors, with certain exceptions regarding university research and employee inventions. The Act on the Right in Inventions Made in Universities (369/2006, as amended, *FI: laki oikeudesta korkeakouluissa tehtäviin keksintöihin*) provides that an institute of higher education is entitled to the rights to an invention which has been designed in contractual research, whereas the rights to inventions designed in open research remain with the inventor. Under the Act on the Right in Employee Inventions (656/1967, as amended, *FI: laki oikeudesta työntekijän tekemiin keksintöihin*), the employee has the same right to his or her invention as other inventors have to their inventions. However, the following exceptions apply:

1. If the invention has been designed as a result of activities carried out in the course of the performance of employee's work essentially through the use of experience gained at 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. If the invention has been designed as a result of more specific work 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 within the employer's field of business.

3. If the utilization of the invention is in the employer's field of business, but the invention has been designed in the course of an employee's employment in a situation other than those referred to in 1. above, the employer is entitled to use the invention.

A patent remains in force for a period of 20 years from the date on which the application is filed. Maintenance fees are payable annually to the NBPR. Where medical compounds and plant protection products are concerned, patent protection may be extended by application for an additional period not exceeding five years under the Supplementary Protection Certificate Regulation (469/2009/EC) and the Plant Protection Supplementary Protection Certificate Regulation (1610/96/EC). If (i) at least three years have elapsed from the date on which the patent was granted; (ii) at least four years have elapsed from the date on which the application was filed; and (iii) the invention has not been exploited in Finland to a reasonable extent, a party wishing to exploit the invention in Finland may be granted a compulsory license for that purpose, unless legitimate grounds for failing to exploit the invention are shown.

Patent rights are freely transferable. There is no obligation to register assignments and licenses. However, to protect related rights against third parties, it is recommended to register transfers of rights and licenses with the patent register. In addition, a patent granted as security may be registered. A licensee may independently bring an action before the court for a declaratory judgment to establish whether it enjoys protection against other parties on the basis of the patent in the event of uncertainty that may be prejudicial to it. For further details of the rights of the licensee to bring legal action, see section 10.7 below.

10.5 Designs

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 on the date of the application. The subject matter of protection is only the external appearance and not the potential technical function of the design.

A design will only be protected if it is registered. An application for national registration must be filed with the NBPR, and non-Finnish applicants seeking registration must appoint an agent resident in the EEA to represent them. It is also possible to file applications for registration of Community designs with the EUIPO. Moreover, the Geneva Act of the Hague Agreement, which entered into force in Finland on 1 May 2011, enables designs to be protected on the basis of international registration as well. 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 NBPR, which then forwards the application to WIPO for processing.

An exception to the general rule that a design must be registered applies to the protection of unregistered Community Designs. According to the Regulation on Community Designs, 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 applies for three years as from the date on which the design was first made available to the public within the EU.

A design will be protected if it is new and has individual character. A design is considered new if no identical design has been made available to the public before the filing date or, if priority is claimed, the date of priority. Designs are considered to be identical if their features differ only in terms of non-material details. A design is 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 filing date or, if priority is claimed, the date of priority.

The exclusive right to commercially exploit a design is vested in the creator of the design, but design rights are freely transferable to legal entities. The creator, nevertheless, must always be named in the application for registration. Unlike the regulation concerning patentable inventions, there are no particular rules 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.

The general rule is that a design registration obtains priority as from the date of application, and it remains in force for five years from such date. The registration can be renewed four times for consecutive five-year periods. Thus, the maximum duration of design protection is 25 years. In order to qualify for renewal, it is not a requirement that a design is in use. 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.

There is no obligation to register assignments and licenses in the design register. However, registration is advisable, because when an assignment, license or pledge is entered in the design register, any prior assignment, license or pledge is not enforceable against the register holder in good faith, unless a prior request for entry in the register has been made.

10.6 Utility Models

Utility models, or 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 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.

Protection under the Act on Utility Model Rights is granted to an invention comprising a technical solution that can be industrially utilized. Inventions in the field of chemical industry, such as chemical solutions, can also be protected by utility model rights. Unlike patents, utility model rights cannot be used to protect production processes. Utility model rights will only be grated protection if the criteria of novelty and inventive step are fulfilled and the invention

differs from what is in the public domain as at the application date. The inventive step requirement is assessed more leniently for utility models than for patents.

Utility model rights are obtained by registration. The registration procedure is similar to that of a patent application. The NBPR serves as the registration authority. International applications under the PCT can be submitted to the NBPR and have the same legal effect as national applications. Non-Finnish applicants seeking registration must appoint an agent resident in the EEA to represent them. An application for utility model protection can be made by converting a patent application or a European patent application into a utility model application. In such case, the date of priority will be the date on which the national or European patent application was filed, and the initial patent application will still remain in force unless cancelled by the applicant.

Utility model applications are subject to a pre-registration examination of the invention. However, the examination is mainly limited to the 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 a pre-examination of the substantive criteria and receive an opinion on whether these are fulfilled.

A utility model registration obtains priority as from the date of application and remains in force for four years from such date. The registration may be renewed twice, once for a four-year period and once for a two-year period. In order to qualify for renewal, it is not a requirement that a utility model has been exploited. Statutory fees are payable in connection with the submission of an application, renewal and other entries made in the register.

10.7 Procedural Matters

As regards enforcement and remedies relating to intellectual property rights, the Market Court functions as the specialist court for industrial property rights cases and copyright cases as of fall 2013. Specific rules concerning the Market Court can be found in the Market Court Act (99/2013, *FI: laki markkinaoikeudesta*) and the Market Court Proceedings Act (100/2013, *FI: laki oikeudenkäynnistä markkinaoikeudessa*). The Market Court has jurisdiction over cases referred to it under, among other things, all of the national intellectual property laws mentioned above in section 10.1. In addition, the Market Court may decide on precautionary measures under the Code of Judicial Procedure (4/1734, *FI: oikeudenkäymiskaari*). General courts still have jurisdiction over criminal cases.

As regards patents, utility models, the layout-design of integrated circuits, trademarks, collective marks, registered designs and plant breeders' rights, holders of licenses to these rights may bring an action for a violation of the exclusive right provided by the registration of any of these intellectual property rights. In such cases, the license holder must notify the licensor that it intends to bring the action. The same notification obligation for license holders also applies as appropriate to declaratory actions concerning whether or not the exclusive right exists as a result of the relevant industrial property right, or whether or not the plaintiff enjoys protection against third parties on the basis of the exclusive right.

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*) ensures compliance with Article 50 of the TRIPS Agreement, and also implements parts of the Enforcement Directive (2004/48/EC) which is also implemented in 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.

11. LABOR LAW

11.1 Applicable Legislation and Collective Agreements

The most relevant statutes 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*) and the Act on the Protection of Privacy in Working Life (759/2004, as amended, *FI: laki yksityisyyden suojasta työelämässä*).

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 replace or supplement labor and employment legislation and place restrictions on the type and scope of the terms and conditions that can be agreed in the employment agreement between the employer and the employee. Under the Collective Agreements Act (436/1946, as amended, *FI: työehtosopimuslaki*), the terms of a collective bargaining agreement prevail over any conflicting terms of an employment agreement when the latter are to the detriment of the employee.

11.2 General Principles

Finnish labor legislation extends strong protection to employees, as many employee rights cannot be contracted out of. Labor legislation and employment contracts tend to be interpreted in favour of the employee. However, managing directors are generally not regarded as employees in Finland, and hence are excluded from the protection.

The Employment Contracts Act imposes a general prohibition on discrimination. Employers are required to treat all employees equally and may not differentiate between employees unless there are legitimate reasons for doing so. This prohibition on discrimination also applies during the recruitment process. Sanctions can be imposed on employers who violate this statutory duty not to discriminate. An employee who has suffered discrimination can also claim damages and compensation for discrimination.

11.3 Employment Contracts

11.3.1 Forms of Employment Contracts

An employment contract may be concluded in any form. Where the contract is oral, within the first pay period the employer must provide the employee with a written statement setting out, at a minimum, 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 a fixed term, if any).
- The trial period (if any).
- The place of work.
- The employee's main duties.
- The applicable collective bargaining agreement (if any).
- The employee's salary and fringe benefits.
- The regular working hours.
- Holiday entitlement.
- The notice period for termination.

In addition to these mandatory terms, employment contracts, especially for more senior employees, often include other material terms, such as provisions on confidentiality, non-competition, non-solicitation and intellectual property rights.

11.3.2 Term of Employment

An employment contract may be concluded either for a fixed term or for an indefinite period. 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 indefinitely.

As a general rule, the parties may also agree on a trial period of up to six months. During the trial period, either party can terminate the contract without notice, provided that the employer can only do so if the grounds are not discriminatory or otherwise inappropriate with regard to the purpose of the trial period.

11.3.3 Remuneration

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

11.3.4 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. Other arrangements can also be agreed, such as an arrangement based on average weekly working hours and flexible working hours, where the employee determines the duration of each working day within certain specified parameters. The employer is required to keep a record of the working hours (including overtime work and other exceptional work).

Overtime work requires employee consent and is limited by provisions on daily and weekly rest periods. In cases where, at the employer's behest, an employee works in excess of his/her regular working hours, the employee is normally entitled to overtime compensation. Overtime compensation for daily overtime work – i.e. work in excess of the daily regular working hours – is usually paid in the form of an increased rate of pay for those overtime hours: 50 percent for the first two hours and 100 percent thereafter. If so agreed, overtime can also be compensated in the form of time off from work. For managerial employees, the employer can agree that overtime compensation is paid in the form of separate fixed monthly compensation.

In general, employees who are members of the senior management of a company are not subject to the provisions of the Working Hours Act. This is also the case for 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.

11.3.5 Annual Vacation

Employees generally accrue 2.5 days' paid vacation per month of work (Saturdays being included in the calculation), except during his/her first vacation accrual period, when only two days are accrued per month. The employer has the final say on when the employee will be entitled to 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 remainder before the start of the next vacation period (May the following year). As a general rule, the vacation should be continuous and the minimum requirement of uninterrupted holiday is 12 days.

Collective bargaining agreements generally also entitle employees to an additional vacation bonus corresponding to 50 percent of each employee's vacation pay. Also, many employers who are not required to comply with collective bargaining agreements have adopted a similar practice.

11.3.6 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 the employment contract in question to be amended. Under certain, limited circumstances, the employer may also be entitled to make unilateral changes to essential terms of the employment relationship (such as 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 that must be complied with in the event of termination has elapsed.

11.4 Termination of Employment and Lay-Offs

11.4.1 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 indefinite period is terminable 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 months. The notice period that applies for the employer to terminate the employment can be longer than the notice period that applies for the employee to terminate the employment, but the notice period that applies for the employee to terminate the employment cannot be longer than the notice period that applies for the employer to terminate the employment. Collective bargaining agreements usually provide for notice periods that are binding on both the employer and the employee.

Unless otherwise agreed by the parties or in collective bargaining agreements, the notice period that applies for the employer to terminate the employment is determined in accordance with the provisions of the Employment Contracts Act as follows:

- Up to one year of employment: 14 days.
- Over one year and up to four years of employment: one month.
- Over four years and up to eight years of employment: two months.
- Over eight years and up to 12 years of employment: four months.
- Over 12 years of employment: six months.

Unless otherwise agreed, the notice period that applies for the employee to terminate the employment is 14 days (if the employment has continued for up to five years) and one month (if the employment has continued for more than five years).

11.4.2 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) reasons deriving from the employer's business (collective grounds).

(i) Individual grounds: An employee's employment can be terminated in the event of a serious breach by the employee of their obligations arising from the employment contract or the law, and which have a significant impact on the employment relationship. Also, significant changes related to the employee, resulting in the employee being unable to perform his or her duties, can be considered acceptable grounds for terminating 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 period of time 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. The courts have accepted considerable carelessness, failure to follow instructions, gross negligence, dishonesty and absence without reason as grounds for termination. Certain employees enjoy added protection from dismissal, e.g. employee representatives.

Before terminating the employment, the employer must usually first issue the employee with a warning, thus making it clear that the employee's conduct, failure to act, etc. 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 terminated immediately for exceptional reasons. If a material breach by the employee renders it unreasonable to expect the employer to continue the employment even for the period of notice, the employer may terminate the employment contract within 14 days from discovering the grounds for the termination.

(ii) Collective grounds: Employment may be terminated on collective grounds where the amount of work has significantly diminished for a period that is more than temporary due to financial, production-related reasons or reasons deriving from a reorganization of the employer'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 comply with codetermination or information obligations owed to the employees. Collective bargaining agreements usually contain special provisions concerning the order in which employees can be dismissed. Otherwise, employers are free to choose which employees are made redundant, although prohibitions on discrimination naturally apply. For four or six months from the effective termination of an employee's employment, depending on the duration thereof, the employer must offer available work (which is the same or similar to the duties the employee in question used to perform) to employees made redundant who are registered as job-seekers with the Employment and Economic Development Office (*FI: työ- ja elinkeinotoimisto)*.

11.4.3 Compensation for Unjustified Termination

If an employer terminates an employment contract on grounds that do not constitute one of the legitimate grounds for termination, the employee may be entitled to compensation corresponding to 3–24 months' salary, depending on the circumstances. There is no minimum amount of compensation that must be paid in the event of unjustified termination on collective grounds or unjustified termination.

11.4.4 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 the employer is temporarily unable to offer work and 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. Some employees, such as employee representatives and fixed-term employees, enjoy added protection from layoffs.

11.5 Cooperation within Undertakings and Employee Representation

The Act on Cooperation within Undertakings sets out procedural rules for companies employing more than 20 employees. The provisions cover, among other things, the duty for an employer to provide information and allow for employee representation in relation to various matters at the company, lay-offs, a reduction in the workforce, and the impacts of a corporate restructuring.

The rules on employee representation are set out in the Act on Personnel Representation in the Administration of Undertakings (725/1990, as amended, *FI: laki henkilöstön edustuksesta*

yritysten hallinnossa), which applies to Finnish companies with a minimum of 150 employees in Finland. Under this Act, employee representation may be agreed between the company and the employees. 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.

11.6 Foreign Employees in Finland

Residence permits are not required from citizens of EEA member states or Switzerland. Employees from these countries may work freely in Finland for a period of three months, after which they are required to register their right to reside in Finland. Less rigorous requirements apply to citizens of the Nordic countries (Denmark, Iceland, Norway and Sweden) who are not required to register their stay if it does not exceed six months.

Employees from other countries must generally first apply for an employee residence permit, a procedure which is estimated to take roughly four months.

Employees that are posted to Finland by foreign employers providing cross-border services are generally subject to the Posted Workers Act (447/2016, as amended, *FI: laki työntekijöiden lähettämisestä*), which sets out certain minimum provisions that must be applied even if the employment is subject to foreign law.

12. MERGERS AND ACQUISITIONS

12.1 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 elements of company law, such as mergers and demergers, may be beneficial in certain circumstances but are fairly slow to implement due to mandatory notification and application procedures, including a three-month period for notifying creditors. Joint ventures and license agreements are both means of structuring arrangements between two or more cooperating parties. A takeover is often the only feasible alternative when targeting a listed company.

A major advantage of share sales is that this type of transaction 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 customer and supply agreements, licenses and leases, remain unchanged despite the transfer (save to the extent that the agreements contain specific change of control provisions) and are transferred as part of the target.

A key advantage of business sales 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 relating to employee-related liabilities. Therefore, the purchaser may be able to avoid taking on responsibility for unknown liabilities that would automatically be transferred in connection with a share sale. On the other hand, the major disadvantage is that all assets have to be specifically identified and properly transferred. Further, many such transfers require the consent of third parties, such as suppliers and licensors, which can be time-consuming and burdensome to obtain.

Sellers may often prefer to structure a transaction as a share sale (at least when they expect to make capital gains from the transaction), since Finnish companies pay no tax on capital gains from the sale of shares, 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 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 sections describe certain alternative structures for M&A transactions and present the advantages and disadvantages of each structure.

12.1.1 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 in the target transfer to the purchaser. Consequently, the private share purchase is often the simplest form of transaction 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 completed on an agreed date (known as "closing" or "completion"), provided that the conditions precedent have been fulfilled or duly waived. Before entering into a written share purchase agreement, the parties may enter into a letter of intent that outlines the terms and conditions of the contemplated acquisition and that is not binding upon the parties. Confidentiality agreements are also commonly used during the due diligence and negotiation phases to enable the 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 of the acquisition, i.e. the shares to be sold.
- Purchase price and its adjustments (if any), often calculated based upon so called locked-box accounts or closing accounts.
- Closing date and conditions precedent to closing, often including competition authority approvals, consents from key third parties, and so-called MAC (material adverse change) clauses.
- Warranties of both the seller and the purchaser, which are usually fairly detailed, ranging from ownership of the shares to environmental liabilities, and related indemnities.
- Remedies, possible escrow accounts and procedures for settling claims.
- Provisions regarding warranty & indemnity insurance.
- Specific indemnities for risks identified by the purchaser in the due diligence process or during the negotiations.

While there are no general limitations related to private share purchases, the articles of association of a private company may contain specific requirements, such as the obligation to offer existing shareholders the right to buy shares before they can be sold to third parties or the requirement to obtain the consent of the board of directors prior to the completion of the transaction. These provisions may be of particular relevance in a purchase of less than 100 percent of the target's shares.

12.1.2 Business Acquisition

The purpose of a business acquisition is generally to acquire a certain business and/or assets, while limiting the purchaser's assumption of risk. It is important for the purchaser to ensure that the business operations acquired will allow for the business to continue to be conducted without interruption after completion of the transaction. It is therefore generally in the purchaser's interest to carry out a comprehensive due diligence investigation 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 continuation of the business.

The documentation needed for a business purchase generally mirrors that required in connection with a share purchase (as described above), 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 from third parties to the transfer of key contracts has been obtained prior to the completion of the transaction.

When a business transfer (as defined under relevant labor legislation) 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. An employee can only be dismissed for either an individual reason (related specifically to the employee) or a collective reason (on financial-, production- or reorganization-related grounds). A business transfer is not such a reason. The key statutes related to employees and employee benefits 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 yritykissä*; see section 11.1). The latter Act applies to companies employing at least 20 employees and, in a business transfer, imposes 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. Failure to comply with the codetermination obligation may also constitute a criminal offence. The rules on co-operation with the employees also apply in the case of mergers and demergers.

12.1.3 Mergers

Mergers are rarely carried out when foreign companies enter Finland for the first time. Formerly, this was due to the fact that a merger could only be carried out under the Limited Liability Companies Act (624/2006, as amended, *FI: osakeyhtiölaki)* between Finnish entities. Therefore, mergers were commonly used to simplify the legal structure of the group after the actual transaction had taken place usually by way of 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) (2005/56/EY, Euroopan parlamentin ja neuvoston direktiivi pääomayhtiöiden rajatylittävistä sulautumisista) and its implementation into the Limited Liability 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 or other assets.

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

The Finnish merger process involves a number of notification and application procedures, as set out in the Limited Liability Companies Act. Therefore, the process takes approximately six months, at a minimum, to complete. The process commences by the preparation of a merger plan by the boards of both the merging and receiving company. The merger plan must be filed with the Trade Register within one month of being signed. Within four months of the registration of the merger plan, an application for a public notice to the unknown creditors of the merging company must be filed with the Trade Register. The notice period lasts for three months. A notice to the creditors of the receiving company must also be published if 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 must be given written notice of their right to oppose the merger no later than one month prior to the deadline stated in the public announcement.

The merger must be approved at a general meeting of the shareholders of the merging company by a two-thirds majority of both the votes cast and of the shares represented. In a subsidiary merger, the board of the merging company can approve the merger. In the receiving company, the merger can be approved by the board, unless shareholders holding more than one-twentieth of the shares in the company require that the merger be approved at a general meeting. Such resolutions must be passed within four months of the registration of the merger plan and no later than one month prior to the deadline stated in the public announcement. The merging companies need to file the notice with the Trade Register to implement the merger within six months from the approval of the merger. If the rights of the creditors have been secured, the Trade Register will consequently approve the merger.

The legal consequences of a merger take effect upon 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 and assumed by 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 must prepare a final report, present it to the general meeting and file it with the Trade Register.

12.1.4 Joint Ventures and Strategic Alliances

There is no specific legislation in Finland regarding the establishment or operations of joint ventures or strategic alliances. Thus, the general principles of Finnish contract law and company law apply. Under Finnish law, a majority shareholder effectively controls the operations of a limited company, subject to the rules on minority protection provided for in the Limited Liability Companies Act. However, a combination of corporate and contractual vehicles, typically consisting of the articles of the association and shareholders' agreements, may effectively transfer some or all of the control in the joint venture company to a minority shareholder(s). The parties should therefore agree on a balanced combination of the articles of association and the underlying shareholders' agreements, taking into account the nature of the business to be carried out and other relevant considerations.

12.1.5 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 legislation governing intellectual property rights.

License agreements are often regarded as a useful tool for setting out the terms and conditions governing the distribution and manufacturing of products as well as the creation of extensive service networks. The licensee agrees to manufacture, distribute and/or service 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 in the form of 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 investment in research and development.

12.1.6 Takeovers

A takeover is the most common way to acquire a listed company. Takeovers are governed by the Securities Market Act (SMA) (746/2012, as amended, *FI: arvopaperimarkkinalaki)*, which (i) sets out the offer process and related information requirements, (ii) requires equal treatment of all holders of the securities that are subject to the offer, and (iii) introduces a threshold of voting rights that triggers an obligation to offer to acquire all the remaining shares in the company. Compliance with the SMA and related legislation is monitored by the Finnish Financial Supervisory Authority ("**FFSA**").

12.2 Due Diligence

Due diligence is a widely accepted practice in virtually all significant M&A deals in Finland. In a typical private M&A transaction, where there is only one potential purchaser, 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 potential purchasers, 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 potential purchasers. Typically, the scope and quantity of information increases as the process progresses and the number of potential purchasers decreases. If the target company is listed on a stock exchange, the purchaser should also be aware of the insider rules and regulations and their implications for the contemplated transaction when conducting due diligence (see more below). Also, specific vendor due diligence investigations arranged by the seller are often carried out prior to allowing a potential purchaser to access information about the company and its business.

Even though there are no specific 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, and the content and scope of the warranties given by the seller.

A legal due diligence investigation 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 board meetings and general meetings, corporate guidelines, operating licenses and other compliance documents).

- Properties (including title to real estate and leases relating to 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 the initiation of the due diligence investigation. Special attention is paid to third-party transfer restrictions and change of control provisions.

- Management and employees of the company (including management and employment contracts as well as pension and incentive schemes).

- Claims and ongoing disputes (including potential tax claims).

- 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 process, 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 conduct a site visit. Virtual data rooms and other data platforms form the standard for information sharing and have rendered physical data rooms obsolete. The material findings of the due diligence investigation are presented and addressed in the final negotiations and, where necessary, also reflected in the final acquisition agreement.

It is fairly customary to make due diligence reports available to third parties. Depending on the client, the type and nature of the transaction and what the client and the lawyers agree on regarding the scope of the engagement, a due diligence report is often made available to certain third parties such as lenders or financial advisors (investment banks) of the client and the counterparty.

The basis for the disclosure and investigation obligations of the seller and the potential purchaser derives from the Sale of Goods Act (355/1987, *FI: kauppalaki)* 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, since the provisions of the Act are discretionary in nature, the parties generally contract out of the statutory provisions in the final acquisition agreement.

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 bring a claim against the seller based on a matter that should have been discovered upon examination of the goods prior to the purchase. Even if the parties almost always contract out of the provisions of the Sale of Goods Act in the final purchase agreement, general contractual principles under Finnish law support and verify this interpretation.

When conducting due diligence on a listed company, the purchaser should be aware of the insider rules and regulations and their implications for the contemplated transaction. In the course of the due diligence process, the purchaser may receive information regarding the company or its securities that is not public and that could have a material effect on the value of the company's securities (referred to as "inside information"). The purchaser may thereby become what is known as an "insider", meaning that the purchaser will be prohibited from buying or selling shares in 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 inside information prohibition, provided that both the seller and the purchaser have equal knowledge of the company's affairs. In an acquisition of all of the shares in a listed company by way of a takeover, any inside information received by the purchaser will also need to be disclosed to the public in connection with the tender offer, failing which the purchaser will be prohibited from making the offer. It is, however, possible to conduct due diligence on listed Finnish companies as well, provided that this is in the interests of the company and its shareholders as a whole and that the board of the target company grants its approval.

12.3 Restrictions Applicable to Foreign Acquirers

There are only a small number of restrictions applicable to 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 the requirement to obtain the approval of the Finnish authorities.

The Act on the Monitoring of Foreign Corporate Acquisitions in Finland (the "**Control Act**"; 172/2012, as amended, *FI: laki ulkomaalaisten yritysostojen seurannasta*) entered into force on 1 June 2012. The reason given by the Ministry for its proposed new Control Act was 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 "undesirable" stakeholder.

The Control Act does not provide a list of the industries or companies (other than the defense industry) to which the law applies. Thus, the defense industry remains the only industry where all the companies having a beneficial owner in any country other than Finland have to seek the approval of the Ministry if they intend to acquire a stake exceeding the set threshold of 10 per cent. The Control Act nevertheless extends the Ministry's authority to define situations where essential national interests are put at risk. Such relevant industries from the perspective of the Ministry and thus the national interest could include the payments industry and the TV and radio broadcasting industry. Based on general information on the Finnish market, no transaction has been rejected so far under the Control Act.

In addition to the Control Act, certain other specific Finnish regulations also apply to foreign acquisitions of companies owning real estate located in the border areas or other areas protected for defense purposes.

13. PROPERTY AND ENVIRONMENTAL LAW

13.1 Types of Entitlement to Real Property

There is a wide range of real property rights in Finland. 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 worthy of further explanation within the scope and purpose of this publication.

13.1.1 Freehold

Real property held in ownership is commonly referred to as a freehold. Freehold ownership gives the owner an exclusive right to own, occupy, encumber and dispose of a 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.

13.1.2 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 the use of the premises.

Leasehold

A leasehold right entitles the holder of such right to occupy for an agreed period of time a piece of land owned by another party, generally in exchange for payment 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 lessor (i.e. the owner of the land) and the lessee. As the rights and obligations of a lessor and a lessee in different types of land lease agreements are extensively regulated by the Land Lease Act (although these rules can be contracted out of by the parties), Finnish leasehold agreements are often quite limited in their substance in comparison with leasehold agreements in other jurisdictions.

Tenancy

A tenancy, as set out above, is the legal relationship between a landlord and a tenant whereby the main object of the lease is a building or a part thereof (the premises). A clear distinction can be drawn between a lease of residential premises and a lease of commercial premises.

Although the landlord and tenant are generally free to agree on most of the terms and conditions of a tenancy, in particular a tenancy relating to commercial premises, 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 and relate, among other things, to the transfer of ownership, the condition of the premises and the termination of the lease agreement.

13.2 Formation of Real Property and Registration System

13.2.1 Formation

The territory of Finland is divided into property units and other so-called "registration 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 by its own unique registration number. A property unit comprises the area of land and – unless owned by another party – any buildings that may belong to it.

Title to a property unit, a share of it or a parcel is generally evidenced by the registration of the ownership with the Land Register (not to be confused with the Real Estate Register). In exceptional cases, when a new owner has not yet been registered with the Land Register, the title can be evidenced by way of a complete series of transfer agreements following the most recent entry in the register.

13.2.2 Registration

General

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

Direct ownership of freehold property must be registered with the Land Register (*FI: lainhuuto- ja kiinnitysrekisteri)*, and leaseholds are subject to mandatory registration with the Land Register when they (i) are agreed on for a fixed period of time, (ii) are transferable without the 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. The freehold must be registered within six months from the signing of the deed of transfer or leasehold agreement, and failure to register a title or a leasehold results in an increase in the amount of transfer tax due up to a maximum of 100 percent of the original amount, as well as a potential fine.

The information entered in 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 in the register even if such information were not accurate. It is important to realize that under the Finnish system this “public effect” of property rights is linked to its registration. Hence, a *bona fide* party who purchases property is protected against later, but also possible earlier, alienations of the same property by the previous owner only upon registration of its ownership with the Land Register.

Easements

An easement is a burden with which a property is encumbered for the benefit of another property. Typical easements include a right of passage between neighboring properties or a right to install and use piping in the ground of another property. Easements may apply temporarily or permanently. An easement on a property can be registered with the Real Estate Register. The legal effect of an entry in the Real Estate Register is that the easement will be regarded as being in the public domain and, as such, will be protected against third parties.

Mortgages

Mortgages provide creditors with security for the fulfillment of their debtors' financial obligations. Both freehold and leasehold properties can be encumbered by one or more mortgages. A mortgage over a property is evidenced by either a physical or electronic mortgage deed, in each case drawn up or recorded (as applicable) by the National Land Survey of Finland upon application by the owner of the property in question. The National Land Survey will also attend to the registration of the mortgage with the Land Registry. As of 1 July 2017, physical mortgage deeds were replaced by electronic mortgage deeds. New physical mortgage deeds are no longer issued. However, existing physical mortgage deeds can be used to create new security interests over real estate until the end of 2019. A physical mortgage deed remains as a bearer document in the possession of the mortgagee for the full term of the mortgage. However, if the mortgage deed is in electronic form, the mortgagee is recorded as the holder of the mortgage deed with the Land Registry. Therefore, in a subsequent sale of the property, a new buyer that has arranged its own financing will require the seller to (i) deliver all physical mortgage deeds, and (ii) transfer the registration of all electronic mortgage deeds to a new mortgagee – 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 property.

13.3 Sale, Purchase, and Transfer of Real Estate

13.3.1 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 property. In both scenarios, the transfer of ownership finds its legal basis in the sale and purchase agreement to be entered into between the parties. However, whereas a sale and purchase of shares is relatively straightforward and is not subject to many formal requirements, a direct sale and purchase of property – due to the applicability of the Finnish Land Code (540/1995, as amended, *FI: maakaari*) – does require certain rules and procedures to be complied with. In commercial transactions, investors generally favor a transfer of indirect ownership.

13.3.2 Purchase and Transfer of Shares in a Real Estate Company

Finnish real estate companies are often set up in the form of a mutual real estate company ("**MREC**") which is a non-profit limited company and may either be governed by the Limited Liability 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 real estate company

whose purpose is to own and manage property, namely an ordinary real estate company ("**OREC**"). However, for legal purposes, an OREC is simply a standard limited company which e.g. seeks to make a profit and pays dividends to its shareholders. Thus, both MRECs and ORECs are essentially limited companies and their assets principally comprise a property or properties and any buildings that may be situated thereon.

The acquisition of indirect title to a property through a purchase of shares in a real estate company is not registered with the Land Register, but the share ownership is entered in the share register of the relevant real estate company.

MRECs

The main distinction between MRECs and ORECs concerns 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 let the premises to a third party, in which case the shareholder would receive all rental income directly from the tenant, which is taxed as the income of the shareholder. To achieve this, the articles of association of an MREC include a specific 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. Common areas (e.g., hallways and reception areas) in the 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. The maintenance charges are generally determined so as to leave the MREC with neither a profit nor a loss for tax purposes. 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 (letting) risk and the taxable income (rental income less service charges and other expenses) being retained by each shareholder individually.

ORECs

Unlike an MREC, an OREC has direct possession of the premises it owns. Furthermore, it is liable for the maintenance of the premises, lets the premises to third parties, receives rental income, and covers maintenance, renovation, construction and other costs related to the property, without charging maintenance fees to its shareholders. With respect to rights and powers of the shareholders, an OREC is an ordinary limited company. 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 redemption (i.e. post-transfer purchase right). Naturally, the shareholders may also agree upon restrictions on transfers of shares in a separate shareholders' agreement.

13.3.3 Direct Purchase of Real Estate

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

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

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

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 of the property 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 provisions in the Land Code regarding rights and obligations of the parties only apply if the parties have not contracted out of these provisions.

13.3.4 Municipalities' Pre-Emption Rights

A transfer of title to a property may be affected by the municipalities' right of pre-emption, which is stipulated in the Finnish Pre-Emption Act (608/1977, as amended, Fi. etuostolaki). Pursuant to this Act, a municipality has the right to step in to a property purchase after a sale has been executed, and purchase the property under the same terms (and at the same price) as the original sale. The municipality may use this pre-emption right subject to two restrictions: (i) in all other parts of Finland except in the Helsinki metropolitan area, the municipality may use its pre-emption right only if it acquires the property for the purpose of using it for recreational or nature preservation purposes, or for developing the community (for example by building infrastructure or public service buildings), and (ii) the municipalities may use their pre-emption right only in case the area of the sold property (or properties together) exceeds 5,000 m2, save for in the Helsinki metropolitan area where the corresponding area requirement is 3,000 m2. This statutory right of pre-emption lies with the municipality in which the sold property is located, or, if several properties are sold in the same transaction, the municipality in which the largest property is located. A decision on using the pre-emption right must be made by the municipality within three (3) months from the execution of the sale of a property. However, a waiver of the pre-emption right can be sought in advance.

13.3.5 Transfer Tax

A transfer tax of four percent of the purchase price is imposed on a transfer of a property. A transfer tax of two percent of the purchase price is imposed on a transfer of shares in a real estate company.

Generally, the parties agree that the transfer tax will 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.

13.3.6 Foreign Acquisitions

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

13.4 Planning Law

Institutional planning control functions on three levels: (i) the Finnish Government sets nation-wide goals for land use, (ii) regional councils establish 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 the local municipality takes initial enforcement measures.

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

13.5 Environmental Permits

Environmental permits are generally needed for all activities that may lead to air or water pollution or soil contamination, with the exception of certain short-term activities carried out on an experimental basis, as set out in more detail in the Environmental Protection Act (527/2014, as amended, *Fi: ympäristönsuojelulaki*) and the Environmental Protection Decree (713/2014, as amended, *FI: valtioneuvoston asetus ympäristönsuojelusta*). Environmental permit authorities are the Regional State Administrative Agencies (*FI: aluehallintovirasto*), and the designated environmental authority in the municipality (*FI: kunnan ympäristönsuojelu-viranomainen*).

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

13.6 Environmental Liability

13.6.1 General

The Finnish legislation governing 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 for remediation of contamination, and parties liable for remediation work are unable to contract out of their public law liability if the environmental authorities order that contamination be remediated, although it is possible to contractually re-allocate liability for contamination *inter partes*.

A seller or 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 contamination in the soil or groundwater. Failure to meet this obligation does not, as such, absolve the new occupant of its obligation to take care of

contaminated areas. However, it is a criminal offence for which the transferor can be liable to fines.

13.6.2 Civil Law Liability for Environmental Damage

Liability for injury or damage to a third party's health or property, or (in certain circumstances) financial losses, caused by pollution or another 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 injury or 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. Environmental damage resulting from activities carried out before 1 June 1995 and which are not subject to any specific legislation, such as legislation on nuclear or oil damage, are regulated in the Tort Liability Act (412/1974, as amended, *FI: vahingonkorvauslaki*). Under the Tort Liability Act, the obligation to pay compensation for environmental damage generally only arises 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.

13.6.3 Public Law Liability for Contaminated Soil and Groundwater

Under the Environmental Protection Act, the polluter is liable for the remediation of contaminated soil if the contaminating activity continued beyond 1 January 1994. The polluter is also liable for the remediation of contaminated groundwater. In general, a company could be regarded as the polluter, and thus responsible for the 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 its operations. If the polluter cannot be obligated to fulfill its duties, the occupier of the contaminated property can be held liable for the contamination under certain circumstances. However, the liability of the polluter is primary, which means that if the polluter exists and can be compelled to perform its clean-up duty, the occupier should not be held liable for the contamination.

Environmental liability issues can be rather complex, especially regarding historical contamination (i.e. contamination caused by activities that ceased prior to 1 January 1994), since the Environmental Protection Act does not apply in those cases. In such cases, the repealed Waste Management Act (673/1978, *FI: jätehuoltolaki*) applies if the activity which has caused the contamination continued after 1 April 1979. The allocation of liability is similar to the regime under the Environmental Protection Act. However, in contrast to the Environmental Protection Act, the Waste Management Act neither contains similar provisions regarding the occupier's consent to the pollution occurring or awareness of the state of the area, nor does the Waste Management Act explicitly provide for any reduction in the possessor's liability in the case of a clearly unreasonable remediation obligation.

In the event the activity that caused the contamination ceased 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 cleaning up contaminated groundwater.

It should be noted that public law environmental liability is not subject to any statute of limitations, although certain restrictions regarding historical pollution might apply in certain circumstances.

13.7 Liability for Remedying Damage to Bodies of Water, and Protected Species and Habitats

The Act on Reparation for Certain Environmental Damages (383/2009, *FI: laki eräiden ympäristölle aiheutuneiden vahinkojen korjaamisesta*) provides for measures to be taken in order to repair substantial damage caused to bodies of water, protected species and biotopes, who should bear the expenses for these measures, and limitations on liability. Generally, the operator that caused the damage bears the expenses for repairing the damage, regardless of whether the damage was caused intentionally or negligently. The Act applies in cases where the activity causing the damage continued after 1 July 2009.

14. SECURITIES MARKET

14.1 Applicable Legislation

The Finnish securities market is governed principally by the Securities Market Act (746/2012, as amended, FI: *arvopaperimarkkinalaki*) (the "**SMA**"), the Act on Trading in Financial Instruments (1070/2017, as amended, FI: *laki kaupankäynnistä rahoitusvälineillä*), the Investment Services Act (747/2012, as amended FI: *sijoituspalvelulaki*) (the "**ISA**") and the Act on the Book-entry System and Clearing Operations (348/2017, as amended, FI: *laki arvo-osuusjärjestelmästä ja selvitystoiminnasta*). These regulate, among other things, the following:

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

The above-mentioned acts are supplemented by a number of regulations and guidelines issued by the Finnish Financial Supervisory Authority (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 the Stock Exchange Rules, the Guidelines for Insiders, and the Finnish Corporate Governance Code. Further, in the context of tender offers for listed companies, the Helsinki Takeover Code (the "**Takeover Code**") is applicable (currently a non-binding self-regulatory recommendation issued by the Finnish Securities Market Association, *FI: arvopaperimarkkinayhdistys*). 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 and the other above-mentioned acts implement, among other things, the Directive on Markets in Financial Instruments (2014/65/EU) ("**MiFID II**"), the Transparency Directive (2004/109/EC, as amended), the Prospectus Directive (2003/71/EC) as amended by Directive 2010/73/EU and the EU Takeover Directive (2004/25/EC). Further, the EU's regulations relating to the securities market are directly applicable in Finland, including most importantly the Market Abuse Regulation ((EU) 596/2014), the Regulation on Markets in Financial Instruments ((EU) No 600/2014), the Prospectus Regulation ((EC) No 809/2004, as amended), the new Prospectus Regulation ((EU) 2017/1129, replacing the Prospectus Directive in stages from 2017 to 2019), and the Regulation on Key Information Documents for Packaged Retail and Insurance-based Investment Products ((EU) No 1286/2014).

14.2 The Stock Exchange

Since the end of 2015, the official name of the Stock Exchange is Nasdaq Helsinki Ltd (previously NASDAQ OMX Helsinki Ltd). The Stock Exchange, with some 130 listed companies, is part of Nasdaq Nordic Ltd, which includes stock exchanges 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 Nordic is part of the global Nasdaq Inc.

On Nasdaq 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 of between EUR 150 million and EUR 1 billion; and Small Cap for companies with a market capitalization of less than EUR 150 million.

Nasdaq First North is an alternative marketplace for small and medium sized growth companies with fewer disclosure and other obligations and less stringent listing requirements than those applicable to the main market discussed above.

14.3 The Finnish Book-Entry Securities System

The Finnish book-entry securities system is centralized at the Central Securities Depository, named Euroclear Finland Ltd. (the "**Euroclear"**), which is part of the international Euroclear Group. Euroclear provides national clearing and registration services for issuers of securities. Such services include maintaining electronic shareholder registers and insider registers, general meeting services, and assistance with corporate actions[5] and dividend payments.

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 depositary receipts or direct links from securities depositories outside Finland.

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 an account operator or register its 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 nominee shareholder 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 nominee-registered shareholder wishing to exercise the right to attend and vote at general meetings of the company must seek temporary registration in their own name in the shareholders' register kept by Euroclear.

[5] Corporate action means an action concerning a Finnish or foreign book entry which is carried out in the book entry system in accordance with law, a company's articles of association or terms and conditions of book entry or otherwise a decision by an issuer.

14.4 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 securities market and the entities operating on such market is subject to the supervision of the FFSA, while the authority to issue supplementary regulation is divided between the Ministry of Finance and the FFSA. The FFSA has the general authority to issue regulations, and the main tasks of the FFSA are to oversee financial market operations, supervise and guide market participants, promote good practice on the financial market, and maintain trust in the market. The FFSA has the right to impose administrative sanctions for breaches of the securities market regulations, to the extent that any such offence does not fall within the scope of the Penal Code (39/1889, as amended, FI: *rikoslaki*). The FFSA may, for example, issue a public reprimand or impose fines.

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

14.5 The Issue and Listing of Securities

14.5.1 Securities and Issuing Entity

The issue of securities by Finnish companies is regulated mainly by the Limited Liability Companies Act (624/2006, as amended, *FI: osakeyhtiölaki*) and the SMA. According to the latter, the security may, for example, be:

- a share in a limited company or a corresponding share in another entity as well as a depositary receipt in respect of such right;
- a bond or other securitized debt as well as a depositary receipt in respect of such right;
- any other security conferring the right to acquire or sell a security referred to above or a security giving rise to a cash settlement determined by reference to a security, currency, interest rate or yield, commodity or other index or measure;
- an unit in an investment fund or a unit issued by a collective investment undertaking comparable thereto.

14.5.2 Public Offerings

The SMA, supplemented by the Ministry of Finance Decrees on Prospectuses (1019/2012, *FI: valtiovarainministeriön asetus arvopaperimarkkinalain 3-5 luvussa tarkoitetuista esitteistä*), contains provisions on the obligation to publish a prospectus. A prospectus must 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 must be approved by the FFSA before its publication.

14.5.3 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 the following situations, among others:

- The securities are offered to qualified investors only;
- The securities are offered to fewer than 150 investors, which are not qualified investors according to the rules in each EEA Member State;
- The securities offered can be acquired only for a total consideration of at least EUR 100,000 per investor and per offer or in units with a denomination or consideration of at least EUR 100,000;
- The total consideration falls below EUR 2,500,000 calculated in the EEA over a period of 12 months;
- The total consideration falls below EUR 5,000,000 calculated in the EEA over a period of 12 months, the application is for the securities to be admitted to trading on a multilateral trading facility in Finland, and a company description in accordance with the rules of the trading facility is made available to the investors over the period of the offer.

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.

14.5.4 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 if certain requirements are met. A prospectus must be published either in Finnish or Swedish if the securities are offered to the public or an application is made to admit securities to public trading solely in Finland. The FFSA may, however, under certain circumstances give its consent to the use of another language (in practice English). A prospectus approved by the FFSA is valid for up to 12 months from the date on which the prospectus is approved.

The issuer is responsible for preparing the prospectus. A prospectus must contain sufficient information for an informed assessment to be made of the securities and their issuer as well as any guarantor. This will include substantial information on the assets, liabilities, financial position, profit and losses and future prospects of the issuer and any guarantor. 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. In general, a prospectus is prepared to comply with the minimum content requirements of the European Commission's Regulation (EC) No. 809/2004 on Prospectuses and the requirements of the European Parliament and Councils Regulation No. 1129/2017 on Prospectuses (as applicable). Further, Finnish law recognizes the concept of prospectus passporting.

14.5.5 Listing on the Stock Exchange

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

In brief, the main listing criteria include the following:

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

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

14.6 Tender Offers

14.6.1 General

The acquisition of publicly traded shares (or other securities) through a tender offer is largely governed by the SMA. The provisions of the SMA set forth, among other things, requirements on the information to be published in connection with a tender offer and the procedures to be followed in connection with the offer. The Limited Liability Companies Act regulates the compulsory purchase of minority shareholdings (squeeze-out) after the completion of a successful tender offer and sets forth the rights and obligations of the target's board of directors.

Tender offers are also governed by the rules and regulations of the Stock Exchange, which, in addition to disclosure matters and trading, provide for the delisting of securities. Furthermore, tender offers are governed by the Takeover Code and regulations and guidelines issued by the FFSA, such as Regulations and guidelines 9/2013 on takeover bids and the obligation to launch a bid (the "**FFSA's standard 9/3013**"). The target and the bidder have a so called "comply or explain" obligation to disclose whether or not they have undertaken to comply with the Takeover Code.

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% of the total voting rights in the target company. A shareholder's holding includes, among other things, the voting rights held by any undertakings controlled by the shareholder, voting rights held by the shareholder together with a third party, and 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 tender offers in general, the articles of association of a target company may affect the procedures to be complied with in a tender offer, for instance by imposing specific majority requirements or voting restrictions or an obligation to acquire minority holdings at lower thresholds than those prescribed by the SMA.

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

14.6.2 Conditions to 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 must include the main terms of the forthcoming offer. The offeror may determine the terms and conditions of the offer in its discretion, with the exception of certain mandatory provisions mainly relating to the offer price, the duration of the offer period, the equal treatment of all holders of shares or securities for which the offer is made, 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 on providing untrue or misleading information and on using procedures contrary to good practice must be observed.

The general rule is that the offer consideration must consist of 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 months preceding the date on which the obligation to make a mandatory offer was triggered. In the absence of such purchases, the price must (at a minimum) correspond to the volume-weighted average price paid for the securities in question in public trading during the three 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 a minimum) equivalent to the highest price paid by the offeror during the six months preceding the announcement of the offer. In the absence of such purchases, the offeror can determine the offer consideration in its discretion.

The offer consideration may consist of cash, securities or a combination of the two. However, in the case of mandatory offers, cash must always be offered at least as an alternative. In the case of 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 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 months from the end of the offer period.

The offer period must not be shorter than three weeks and not longer than ten weeks. The offer period may on special grounds, however, exceed the maximum of ten 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 9/2013 provide further guidance in this respect. The conditions should be unambiguous, 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, once it has been received by the offerees, can generally only be withdrawn if a competing offer has been made. Thus, once a tender offer has been launched, it may not be withdrawn, limited or otherwise amended to the benefit of the offeror.

Following the successful completion of a tender offer, the Limited Liability Companies Act provides for an obligation and a right to purchase 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 90% of the shares and voting rights 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.

14.7 Disclosure of Major Holdings

Under the SMA, shareholders have an obligation to notify the listed company and the FFSA their holding which reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% or 90% or two thirds of the total number of shares or voting rights in the listed company.

The obligation to disclose holdings applies to (i) actual holdings of shares and/or voting rights; (ii) financial instruments that entitle the holder to acquire already issued shares or that have similar economic effect; and (iii) the aggregate amount of actual holdings and financial instruments referred to above.

The definition of a financial instrument that triggers a disclosure obligation is broad, and includes options, futures, swaps, warrants, forward rate agreements, contracts for differences, repurchase agreements and any other agreements with similar economic effect. Also, agreements between shareholders may be regarded as financial instruments that trigger a disclosure obligation.

In addition, there are aggregation rules that must be taken into consideration in the calculation of the proportion of shares and voting rights. For example, the holdings of undertakings or foundations controlled by the shareholder, their pension foundations and pension funds, and voting rights held by parties acting in concert must be aggregated with the holdings of the shareholder.

Notification must be made to the listed company and the FFSA without undue delay, but not later than the trading day following the date on which a shareholder knows or should have known of the change in the holding. The listed company is obliged to publish notifications of major holdings without delay.

14.8 Institutional Participation

14.8.1 Provision of Investment Services

Investment services are defined in Finnish legislation in the same way as they are defined in MiFID II. The offering and marketing of investment services in Finland is governed by the ISA and subject to authorization from the FFSA. Among other things, the ISA implements MiFID II. Further, investment services can be offered by banks and credit institutions pursuant to the Act on Credit Institutions (610/2014, as amended, FI: *laki luottolaitostoiminnasta*), which applies to banking business.

The ISA also includes certain code of conduct rules, such as rules on the marketing of financial instruments and the obligation to give information to clients, and other rules to be observed in the provision of investment services. Also, the SMA's rules on good securities market practice and the prohibition on providing false or misleading information apply, and the FFSA has issued guidelines for the marketing of financial instruments to Finnish investors.

Under the ISA, an EEA investment firm that intends to provide investment services in Finland, on a cross-border basis or by establishing a branch, must notify the competent home state regulator of such intention. The investment firm may commence the operations of a branch in Finland within two months from the receipt of the home state regulator’s notification by the FFSA. Cross-border operations conducted without establishing a branch may be commenced immediately after the receipt of the home state regulator’s notification by the FFSA.

According to the ISA, subject to certain conditions relating to, among other things, sufficient supervision in its home state, a foreign investment firm authorized in a state outside the EEA may be granted authorization by the FFSA to establish a branch in Finland. In practice, the FFSA will only grant such authorization if the firm has in place a relevant memorandum of understanding with the competent authority of the foreign non-EEA state where the foreign non-EEA investment firm is established. A foreign non-EEA investment firm may offer investment services in Finland on a cross-border basis without establishing a branch in accordance with Articles 46 and 47 of the Regulation on Markets in Financial Instruments (EU) No 600/2014 ("**MiFIR**"). The provision of cross-border services by a foreign non-EEA

investment firm is currently not possible since ESMA has not given equivalence decisions as regards any non-EEA states as required by MiFIR.

14.8.2 UCITS Funds and Alternative Investments Funds

UCITS funds are governed by the Investment Funds Act (48/1999, as amended, FI: *sijoitusrahastolaki*) (the "**IFA**"). The IFA implements the UCITS Directives I-V (1985/611/EC, 2001/107/EC, 2001/108/EC, 2009/65/EC and 2014/93/EU). Non-UCITS funds, i.e., alternative investment funds, are governed by the Act on Alternative Investment Fund Managers (162/2014, as amended, FI: *laki vaihtoehtorahastojen hoitajista*) (the "**AIFM Act**"), which implements the AIFM Directive 2011/16/EU. The Finnish Ministry of Finance has an ongoing project to prepare and propose changes to national IFA and AIFM Act regimes, which are planned to be implemented in Finnish legislation during 2019.

The marketing and selling of units in non-Finnish UCITS funds is governed by and subject to IFA filing requirements, whereas the marketing and selling of units in non-Finnish alternative investment funds is governed by and subject to the AIFM Act filing requirements. EEA-based non-Finnish UCITS funds and alternative investment funds can be marketed in Finland after completing a passport procedure whereby the manager of the UCITS fund or the alternative investment fund notifies its home state regulator of the intention to market the funds in Finland. The home state regulator processes the notification, informs the FFSA of the notification and then confirms to the UCITS fund or alternative investment fund manager that it may begin marketing. After completing the passport procedure, EEA-based non-Finnish alternative investment funds can only be marketed to professional investors in Finland (as defined in the ISA), unless the fund manager receives separate permission from the FFSA to market the funds to retail investors.

Under the AIFM Act, non-EEA alternative investment funds can be notified for marketing to professional investors in Finland by providing notification to the FFSA, and marketing can commence after the fund manager receives the FFSA's approval. Non-EEA alternative investment funds may not be marketed to retail investors.

14.9 Insider Trading

Inside information is defined and regulated by the Market Abuse Regulation (EU) 596/2014. The misuse of inside information is also prohibited and criminalized under the Finnish Penal Code.

15. TAXATION

15.1 Applicable Legislation

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

15.2 Business Income

15.2.1 General

Limited companies domiciled in Finland are subject to corporate tax on their worldwide profits and gains at a flat tax rate of 20%. Their 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, namely general and limited partnerships. Partnerships are treated as transparent entities for income tax purposes.

15.2.2 Determination of Taxable Profit

Taxable profit is determined in accordance with the Generally Accepted Accounting Principles (GAAP), with only minor adjustments for tax purposes. Companies can also apply the International Financial Reporting Standards (IFRS). Consequently, all expenses and losses actually incurred for the purposes of obtaining or maintaining income are generally tax deductible.

15.2.3 Participation Exemption

Capital gains from the disposal of shares in a limited company are tax exempt for corporate entities, provided that the vendor company at the time of the transfer owned at least ten percent of the subsidiary's share capital and the shares disposed of for at least one year, and that the shares formed part of the vendor's fixed assets. The exemption is not applicable if the shares disposed of are in 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 shares disposed of are in either a Finnish company or a company described in the Parent-Subsidiary Directive (1990/435/EEC) or (ii) that a tax treaty has been entered into between Finland and the relevant company's state of domicile and applies to that company. Finally, the tax exemption does not apply if the vendor company is a private equity investor.

15.2.4 Loss carry-forwards

Losses incurred in business activities may be carried forward and offset against profits in the following 10 years.

15.2.5 Group Contributions

A group contribution regime can be used to a certain extent to consolidate the taxable income of a group of companies. A group contribution is tax deductible for the contributing company provided that certain requirements set out in the Finnish Group Contribution Act (825/1986, as amended, *FI: laki konserniavustuksesta verotuksessa,* the details of which are not discussed here) are met. The group contribution always constitutes taxable income of the receiving company.

While a group contribution can only be made between members of a Finnish group of companies (i.e. where the ultimate parent company is Finnish) according to legislation, the Finnish tax authorities and courts have concluded that group contributions are deductible between Finnish companies owned directly or indirectly by a qualifying foreign entity and between a Finnish subsidiary and a Finnish permanent establishment. The contribution is non-deductible to the extent that it leads to the contributing company showing a loss for the relevant fiscal year.

15.2.6 Dividends Received by a Company

Generally, dividends received from Finnish companies as well as from other EEA-based entities described in Directive 2011/96/EU are largely tax exempt.

Dividends received from EEA-based companies other than those referred to above are taxed in in the same way as domestic dividends if (i) the distributing company is liable to pay tax on its income at a minimum rate of 10% and (ii) the distributing company is resident in the EEA according to the rules of the relevant jurisdiction and for tax purposes.

However, 75% of the dividend is taxable (at the rate of 20%) and the remaining 25% is tax exempt if certain conditions are met.

Dividends received from a listed company, if the recipient company is neither a listed company nor owns at least 10% of the distributing company's share capital, are fully taxable. The same applies to dividends other than those referred to above.

15.2.7 Controlled Foreign Companies

Income tax can be levied on a tax-resident individual or company for their share of the profit of a controlled foreign company (CFC), regardless of whether the profit is distributed by the CFC to its shareholders. Generally, a CFC is a foreign company that in its country of tax residence is subject to income tax at a rate lower than three-fifths of the level of corporate tax payable in Finland. The criteria to apply CFC legislation for a company residing in a tax treaty country or in an EU/EEA member state is stricter than for a company residing in a country that has no tax treaty with Finland or is not an EU/EEA member state.

15.2.8 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. The amount of these payments is approx. 24% of the gross salary payable. These charges are deductible for income tax purposes.

15.3 Acquisition of a Business

15.3.1 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 effect a business acquisition in a tax neutral way by an exchange of shares or a merger (by virtue of the Merger Directive (90/434/EEC)).

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 10 years.

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 direct or indirect change in the ownership of the company's shares of more than 50 percent, 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 unless special clearance is obtained from the Finnish tax authorities.

15.3.2 Repatriating Profits from Finland

Dividend distributions from Finnish companies to non-residents are subject to withholding tax at rates varying from zero percent to 30 percent, depending on the applicable tax treaty. If such a treaty does not exist, the withholding tax rate is 30 percent (if the recipient is a private individual) and 20 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 withholding tax to be imposed. 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.

15.1 Thin Capitalization

In relation to the interest payments on loans, the Finnish BITA limits the interest deductions in connection with related party loans. According to the rules currently in force, interest expenses are always deductible up to the amount of interest income. Further, interest expenses exceeding interest income ("**net interest expenses**") are always tax deductible provided that the amount does not exceed EUR 500,000.

Net interest expenses are deductible up to 25% of the adjusted taxable net business profit ("**TaxEBITDA**"), while net interest expenses in excess of 25% of TaxEBITDA are non-deductible only up to the amount of the net interest expenses paid to related parties. Interest payable directly to a third party is always deductible unless assimilated with a loan from a related party. According to the Finnish BITA, the loan is considered assimilated with a loan from a related party if a related party has an outstanding account from the third party and the outstanding account has a connection to the loan, or the loan is secured by an outstanding account of a related party. Only the use of an outstanding account as a guarantee, or another

connection of the loan with an outstanding guarantee may make a third party loan to an associated loan.

The rules also contain a safe-harbor exception (i.e. escape clause): interest expenses are not subject to the limitations where the debtor's equity/asset ratio is equal to or higher than the corresponding ratio relating to the consolidated group.

Any net interest expense that is not deductible due to the interest barrier can be carried forward indefinitely and deducted in future years, subject to the above restrictions.

As a result of the implementation of the EU's Anti-Tax Avoidance Directive, amendments to the interest barrier rules are due to enter into force in Finland on 1 January 2019, which will also limit the tax deductibility of loans from unrelated parties.

15.2 Taxation of Employees

15.2.1 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 they reside there for a continuous period of six months or more, or if they have a permanent abode in Finland. Earned income of individuals is subject to progressive tax rates up to approximately 57 percent. Capital income received by individuals is subject to income tax at a rate of 30 percent on income up to EUR 30,000 annually and 34 percent on income exceeding that amount.

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 35 percent on earned income and a rate of 30 percent on capital income. The taxation of non-residents is further regulated by the relevant tax treaty between Finland and the employee’s country of residence.

There is a temporary special tax regime for qualifying key expatriates. The law applies to expatriates who are resident for tax purposes in Finland and fulfill certain requirements. The tax rate on salary is 35 percent and it applies for a maximum period of 48 months.

15.2.2 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 schemes based on options and convertibles.

15.2.3 Social Security Related Costs

In 2018, the pension insurance premium payable by an employee is 6.35 percent (7.85 percent if the employee is aged between 53 and 62). The unemployment insurance premium payable by an employee is 1.90 percent of his/her gross salary. These contributions are withheld from the employee’s salary by the employer.

15.3 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 percent of the purchase price. Tax is levied at a rate of 1.6 percent of the purchase price of Finnish securities when they are transferred and 2 percent of any other payments to the benefit of the seller and on the transfer of securities in a Finnish housing or real estate company or a foreign real estate company whose business consists of holding Finnish real estate. Transfers of listed securities for fixed cash consideration are, however, exempt from asset transfer tax if certain conditions are met.

15.4 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 24 percent. There are, however, reduced rates of 14 percent for food, non-alcoholic beverages and restaurants, and 10 percent for medicine, passenger transportation services, accommodation services, certain fees related to cultural, art and sports events and services, books, and magazine and newspaper subscriptions. Additionally, certain types of goods and services are exempt from VAT.

16. COMMUNICATIONS LAW

16.1 Liberalization

Telecommunications activities are today essentially liberalized services in Finland, with the exception of network services that use radio frequencies in a digital terrestrial mass communications network or in a mobile network practicing public telecommunications, and broadcasting on a terrestrial radio spectrum. Due to the scarcity of frequencies, such services are subject to some control via a licensing regime, if only to award the available frequencies to the most deserving users.

Finland has recognized that means of communications are converging through digitalization and the concentration of industries. Today, the current umbrella statute for regulating, among other things, electronic communications, the Act on Electronic Communications Services (917/2014, as amended, *FI: "laki sähköisen viestinnän palveluista"*, the "**AECS**"), does not distinguish between digital broadcast services and traditional communications services for regulatory purposes. Network operations and electronic communications services, save for the operation of mobile cellular or terrestrial mass communications networks, are not subject to a licensing regime, but only to a notification requirement.

In keeping with the spirit of liberalization, communications activities in Finland are generally subject to the Finnish competition legislation which applies *ex post* and which has been harmonized with 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 Finnish Communications Regulatory Authority ("FICORA", *FI: Viestintävirasto*) and the general competition authorities. General competition law cases are handled by the Finnish Market Court.

In certain cases, communications operators in Finland are also subject 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" ("**SMP**") obligations – such as cost-oriented, transparent, and non-discriminatory access and pricing (in some cases also maximum pricing set by FICORA on a wholesale level) – on communications operators that have been declared by the FICORA to possess significant market power.

16.2 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 AECS. In parallel with the AECS, the Finnish Competition Act, the Unfair Business Practices Act and the Consumer Protection Act (38/1978, as amended, *FI: kuluttajansuojalaki*) apply to the communications industry. The AECS also implements the equipment compliance requirements of the R&TTE Directive (2014/53/EU) on the harmonization of the laws of the Member States relating to making radio equipment available on the market.

Television and radio programming activities are regulated throughout mainland Finland under the AECS. Television and radio programming activities in the Åland Islands are regulated under the Åland Islands' own Television and Radio Broadcasting Act (*SWE: landskapslag (2011:95) om radio- och televisionverksamhet)*. The programming activity laws of both mainland Finland and

the Åland Islands have been harmonized with the **Audiovisual Media Services Directive** (**2010/13/EU**). 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 secures funding for YLE from the state budget, collected through the so-called "YLE tax", which is an individual public broadcasting tax. In addition, both YLE and other programming license holders are obligated to pay an annual supervision fee to FICORA, as provided in the AECS.

Finland has implemented the Directive (2002/58/EC) on Privacy and Electronic Communications, including its amendment via Directive 2009/136/EC, through the AECS. The privacy provisions enjoy special application to all communications transmitted through a public network located in Finland and also include within their scope communications conducted on a private network, if such network can be accessed from or provides access to a public network or such network is otherwise connected to a public network. In essence, the provisions on privacy in electronic communications of the AECS also apply to corporate virtual private networks ("**VPNs**") and impose 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 AECS is supplemented by the applicable rules the General Data Protection Regulation.

Freedom of speech is protected as a constitutional right in Finland. Accordingly, every individual or a legal entity in Finland 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 mainly 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. The Act also comprises provisions concerning the provision of information to law enforcement authorities about the sender or uploader of online content and the takedown procedure relating to this, both of which require a court order.

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 (39/1889, as amended), such as those prohibiting defamation, pornography, and racial hatred, are applicable. The provisions of specific legislation, such as the Act on Audiovisual Programs (710/2011, *FI: kuvaohjelmalaki*), the Copyright Act (404/1961, as amended, *FI: tekijänoikeuslaki*), and the provisions of AECS concerning the provision of information society services, which implement the E-Commerce Directive (2000/31/EC), also apply.

16.3 Regulators

The communications regulatory authorities in Finland are the Ministry of Transport and Communications (*FI: Liikenne- ja viestintäministeriö,* 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 Register, 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 the approval of the Ministry. FICORA is empowered to issue technical rules 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. Many of FICORA's regulations, decisions, and guidelines are usually prepared after consulting 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).

The Ministry and FICORA are assisted by Finland's competition authorities in matters concerning competition law and by the Finnish Data Protection Ombudsman (*FI: tietosuojavaltuutetun toimisto)* with respect to data protection and privacy matters. These authorities must heed the principles and purpose of the AECS when handling communications matters within their area of competence. The implementation of advertising restrictions and consumer protection under the AECS are entrusted to the Finnish Consumer Ombudsman (*FI: kuluttaja-asiamies)*.

As a general rule, the decisions of the Ministry must be based on law and may be appealed to the Finnish Supreme Administrative Court. Likewise, the decisions of FICORA must be based upon law and adverse decisions may be appealed to Administrative Courts or to the Market Court, depending on the topic of the decision.

16.4 Communications Infrastructure

16.4.1 General Regulation

The AECS makes a distinction between operating a communications network for communications services purposes (known as network services) and providing subscriber access and routing services as well as television and radio programming on a communications network (known as communications services). The AECS does not regulate the content distributed in the network.

16.4.2 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 network licensing under the AECS. Licenses are granted, after a public notice and application process, by the Council of State (*FI: valtioneuvosto)*. The decision to grant a public mobile network or a

terrestrial digital TV and radio network license must be made within six weeks from the expiry of the application period. However, the Council of State may, in certain circumstances, extend the six-week period by a maximum of eight months. License applications are subject to a fee of EUR 5,000. There are no statutory restrictions on the corporate form or nationality of license holders. However, some short-term and small scale operations are licensed by FICORA. 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, for new frequency spectrums that are appointed to mobile network use, a statutory auction procedure may be used for granting licenses. In 2009, such auction procedure was used for granting licenses for frequencies between 2500 and 2690 megahertz.

If frequency availability requires, the Council of State may impose on an applicant geographic restrictions and other conditions that serve non-economic public interests, such as 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 20-year periods.

Public network licenses may in principle be modified only with the consent of the license holder and the Council of State. However, if the license is modified due to technical developments or an essential change in operating conditions, the license holder's consent is not required. The Council of State may revoke in full or in part a license in the event that an operator ceases to fulfill the licensing requirements. A public network license is in most cases non-transferable. The Council of State may revoke a license in the event that the license holder undergoes a change of actual control. Changes of control that occur within a group of companies are not regarded under the AECS as constituting grounds for revocation.

16.4.3 Frequency Licensing

The general use of wireless radio equipment and frequencies in Finland is also governed by the AECS. 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 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).

Subject to the exception described above, radio frequencies are not generally auctioned off in Finland. Radio frequencies are granted on a first-come-first-served basis, other than in situations where frequencies are scarce. In such cases, FICORA grants the license to applicants whose operations best promote the general purposes of the AECS. Frequency licenses and transmitter permits are subject to annual fees and are generally not transferable or tradable without the consent of FICORA.

The AECS also establishes a system where, in return for a fee, frequencies can be reserved for one year at time if this is justified for planning or implementation of a radio system or if the procurement of a radio transmitter necessitates advance information on the radio frequencies available.

16.4.4 Notifications

Most other public network and communications services are subject to a notification system administered by FICORA. The notification form is straightforward and available on 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 provide confirmation to notifying operators within one week of its receipt of their notifications. The AECS does not impose any restrictions on the corporate form or nationality of notifying operators.

The AECS 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 are otherwise of minor significance. Regardless of these exemptions, all communications networks and equipment must comply with the relevant technical standards.

16.4.5 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, among other things, to prices, publicity of terms and conditions for subscribers, cost-accounting procedures, accounting separation and interconnection.

Under the AECS, FICORA must also designate one or more telephone services, network services and internet service operators, as well as operators providing a directory inquiry service or operators providing a telephone directory service, to be a universal service operator if this is necessary in order to ensure universal service provision in a certain geographic area. An operator designated as a universal service operator, for instance, in universal telephone services must 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 must e.g. allow users to use emergency services, make and receive national and international calls and use other ordinary telephone services at a reasonable price.

The AECS requires operators providing network services in a cable television network to provide (free of charge) the programming and ancillary services of YLE and national programming license holders. The transmission obligation also applies to operators providing network services in a cable television network, using something other than traditional cable television technology in the transmission of programming, provided that it is possible to receive the programmes with conventional reception equipment. Cable TV operators are not required to upgrade their networks to comply with these 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 AECS, a license for providing of network services in terrestrial mass communications networks will only be granted if the license holder ensures that YLE and the national programming license holder have sufficient capacity to provide their services.

The AECS 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 ("**EPGs**") and application programming interfaces ("**APIs**"). FICORA may also impose such obligations on operators that do not enjoy SMP status if this 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 monitoring and reporting. Operators are entitled to a small amount of 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 AECS 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 AECS. All traffic data and geographic information are also deemed to be confidential and, similarly, may be processed only in accordance with the AECS. Operators may process confidential traffic data only for specific purposes such as billing, routing, technical developments, and detection of misuse. Information on an operator's processing of traffic data must be stored for two years after such processing. The AECS enables corporate subscribers to process traffic data and geographic information in a limited number of cases specified in the Act.

Under the AECS, all operators and service providers are required to implement technical and organizational measures to ensure that their services are secure. When implementing these measures, operators and service providers are required 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.

16.5 Communications Services

16.5.1 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 AECS as communications services. Such services include, for instance, the provision of subscriber telephony and data services, broadband access services, mobile subscription resale services, and mobile virtual network operator ("**MVNO**") services. While the provision of such services is subject to the AECS, the content conveyed through such services or otherwise through a communications network is not subject to the communications provisions of AECS, but may be subject to programming provisions of the AECS or to the Act on the Exercise of Freedom of Expression in Mass Media.

16.5.2 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 fairly broadly construed in Finland. Communications notifications are valid for an indefinite period.

Telephony and data services operators are free to offer services to legal entities under any contractual terms they choose. 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 AECS, many of which cannot be contracted out of to the detriment of the consumer.

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.

16.5.3 Audio-Visual Programming Services

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

Under the AECS, programming licenses are awarded only under a public application process. Licenses are valid for a maximum of 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 matters such as coverage, broadcast times, and broadcast technology. Programming licenses may not be granted and a change in the factual controlling power in a programming licensing holder could lead to the revocation of the license.

The AECS does not impose nationality requirements on programming license holders.

However, the AECS 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 Audiovisual Media Services Directive.

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

16.5.4 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 AECS to submit a notification of such activities to FICORA. However, the technical requirements imposed for telecontracting are regulated extensively in regulations issued by FICORA.

16.5.5 Directory Services

The AECS 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. Correspondingly, directory services providers may not discriminate against any operator in publishing and otherwise making available their directory services.

17. MARITIME AND TRANSPORTATION LAW

17.1 Transportation

Over 90 percent of exports and over 70 percent of imports involving Finland are by sea; 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.

17.1.1 Sea Transport

The Finnish Maritime Code (674/1994, as amended, *FI: merilaki*) contains provisions on, among other things, the carriage of goods, chartering of vessels, nationality of vessels, ship-owners' liability, collisions, salvage, and maritime liens. The maritime codes of all Nordic countries are essentially similar.

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, as well as rules on the delivery of the goods to the carrier and to the consignee, and on the allocation of expenses, liability and duties. The Shipping Terms may be used only in Finnish ports, and they relate to the delivery of goods and ancillary operations. Furthermore, they apply only if incorporated into a contract of carriage.

17.1.2 Road Transport

Road transport in Finland is 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 tavarankuljetuksista tiellä*), the latter of which has as of 1 July 2018 largely been replaced by the Act on Transport Services (320/2017, as amended, *FI: laki liikenteen palveluista*). 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.

17.1.3 Air Transport

Finnish legislation on air transportation is based on international conventions, and the Montreal Convention of 1999 has been adopted directly, with certain reservations (Act 1228/2002, *FI: laki eräiden kansainvälistä ilmakuljetusta koskevien sääntöjen yhtenäistämisestä tehdyn yleissopimuksen lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta ja soveltamisesta*) and has been effective since 28 June 2004.

17.1.4 Railway Transport

Three different sets of rules are relevant to carriage by rail. The Act on Railway Transports (1119/2000, as amended, *FI: rautatiekuljetuslaki*) governs domestic carriage. Traffic between Finland and Russia is regulated by a special Agreement on Railway Traffic (Treaty number 87/2016; Act number 424/2016, as amended, *FI: Suomen tasavallan hallituksen ja Venäjän*

federaation hallituksen välinen sopimus suorasta kansainvälisestä rautatieliikenteestä). International rail carriage other than to Russia is governed by the Convention Concerning International Carriage by Rail (the COTIF Convention) of 1980, as amended (originally adopted in Finland through Treaty number 5/1985 and Act number 58/1985), including the CIM and CIV Conventions.

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. The new Railway Act (304/2011, as amended, *FI: rautatielaki*) enables free competition on the transportation of passengers within Finland. VR can conclude agreements with a railway company only to use the railway services provided by that specific company for periods of ten years. The Helsinki Region Transport has concluded such an agreement with VR, which is in force, as extended, until 2021. The Ministry of Transport and Communications has a similar exclusive right agreement with VR regarding long-distance traffic.

17.1.5 Multimodal Transport

There is no single piece of legislation which specifically regulates carriage involving several different modes of transportation (multimodal transport). Instead, each mode of transportation is governed by specific legislation, as described above. In addition, the Road Transport Act, for example, as well as the COTIF Convention and the Montreal Convention regulating airway transport, include provisions concerning their applicability to multimodal transport.

Since there is limited legislation on multimodal transport, 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).

17.1.6 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 2015, *FI: PSYM 2015*) introducing a minimum level of liability of freight forwarders in the context of multimodal transportation. Such general conditions have particular relevance in the Nordic countries.

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