Doing business in Finland

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LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

Finland has a civil law system. EC law is directly applicable and takes precedence over national legislation.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

There are no general restrictions on foreign investment, although authorisation is required in certain regulated sectors such as banking.

3. Are there any exchange control or currency regulations?

There are no exchange control or currency regulations.

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

Government subsidies are available in certain areas and usually take the form of:

- Start-up grants.
- Subsidised loans.
- State-guaranteed financing.
- Freight subsidies.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- Registration formalities (including timing).
- Minimum (and maximum) share capital.
- Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).
- Any restrictions on the rights that can attach to shares.
- Any restrictions on foreign shareholders.
- Management structure and any restrictions on foreign managers.
- Directors’ liability.
- Parent company liability.
- Reporting requirements (including filing of accounts) and cost of compliance.

The most common form of business vehicle used by foreign companies is a private limited liability company (osakeyhtiö).

- Registration formalities. A limited liability company must register the following with the
Trade Register within three months of signing the memorandum of association:

- articles of association and memorandum;
- minutes of the board of directors’ meeting;
- a directors’ certificate; and
- an auditor’s certificate.

The share capital must be paid in full before registration. Registration takes from two to ten weeks.

- **Share capital.** The minimum share capital is EUR2,500 (about US$3,574) for private limited liability companies and EUR80,000 (about US$114,357) for public limited liability companies. There is no maximum share capital.

- **Non-cash consideration.** Companies can issue shares for non-cash consideration. A valuation report from the auditors is required.

- **Rights attaching to shares.** All shares carry equal rights unless otherwise provided for in the articles. A company can also have non-voting shares having the right to vote only in certain situations.

- **Foreign shareholders.** There are no restrictions on foreign shareholders.

- **Management structure.** The board of directors manages the company. A company can also appoint a managing director and have a supervisory board. The management structure is not tied to the share capital.

- **Directors’ liability.** The managing director and members of the board and supervisory board are liable to compensate:
  - the company for damage caused deliberately or through negligence;
  - the shareholders or third parties for damage caused through breach of the articles or the Companies Act (2006/624).

- **Parent company liability.** A parent company is not generally liable for its subsidiaries’ debts, unless it has provided a guarantee for those liabilities.

- **Reporting requirements.** Companies must submit their annual accounts to the Trade Register. Public companies must prepare and publish interim reports generally four times per year.

### EMPLOYEES

6. **What are the main laws regulating employment relationships?**

The most relevant statutes regulating employment relationships in Finland are the:


In addition, numerous collective bargaining agreements contain provisions that need to be taken into account when determining the rights and obligations of the parties.

Other generally relevant statutes applicable to most employment relationships are the:

- Occupational Safety and Health Act (2002/738).

In general, all employers are subject to labour laws, irrespective of their size and line of business. Finnish labour laws contain some mandatory provisions from which the employer and the employee cannot deviate to the detriment of the employee, even with a choice of law clause in the employee’s employment contract. However, some labour law provisions can be superseded by provisions set out in collective bargaining agreements or employment agreements.

Finnish labour laws are generally applicable to all employment relationships in Finland, including:

- Foreign employees working in Finland.
- Finnish employees seconded to work abroad.
7. Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?

A written contract is not required, unless requested by either party. Where the contract is oral, the employer must give the employee a written statement of the main terms of the employment relationship within the first pay period (ECA 2001).

There are numerous collective bargaining agreements which:

- Set out specific rules that substitute or supplement labour and employment law.
- Set limits on private contracting.
- Supersede any conflicting terms of an employment agreement when the terms are to the employee's detriment (Collective Agreements Act (1946/436)).

8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

When an employer has at least 20 regular employees, the employer must consult the employees and/or their employee representatives on issues such as:

- Redundancies.
- Temporary layoffs.
- Making employment relationships part-time.
- Material changes to the terms of employment.

Management representation is required where there are regularly at least 150 employees (Act on Personnel Representation in the Administration of Undertakings (1990/725)).

9. How is the termination of individual employment contracts regulated?

As a general principle, an employer cannot dismiss an employee unless it is for a relevant and substantial reason (ECA 2001). Case law indicates that a relevant and substantial reason may, in general, be constituted by:

- Carelessness.
- Failure to follow instructions.
- Gross negligence.
- Dishonesty.
- Absence without reason.

In the case of justified dismissal, employees are entitled to their notice period salary and compensation for accrued holidays. There is no obligation to make severance payments.

An employee cannot be dismissed on the grounds of the employee's:

- Illness or injury, unless his work capacity is reduced substantially and the employer cannot reasonably be expected to continue the employment relationship in the future.
- Participation in a strike or other industrial action.
- Political, religious or other opinions.
- Participation in community or association activities.
- Recourse to judicial procedure.
- Pregnancy (it is presumed that when a pregnant employee is dismissed, the dismissal is motivated by the employee's pregnancy, unless the employer proves otherwise (ECA 2001)).

All employees are protected against unfair dismissal. An employee dismissed without sufficient legal grounds and without the required procedure is generally entitled to compensation of up to 24 months' salary, subject to the particular circumstances of the dismissal.
10. Are redundancies/mass layoffs regulated? If so, please give details.

An employer can terminate an employment contract provided both of the following apply (*ECA 2001*):

- The amount of work has reduced substantially and permanently due to financial, productional or reorganisational reasons. The reduction is usually considered temporary unless it clearly exceeds 90 days.
- The employees affected cannot, within reason, be given suitable alternative work within the company (or the company's group) or be retrained for other duties.

A redundancy is deemed invalid if either:

- Prior to or following the redundancy, a new employee is employed to perform tasks similar to those performed by the redundant employee, although the operational preconditions of the employer have not changed.
- The reorganisation of the work, which has been referred to as the reason for the redundancy, does not actually diminish the amount of work available.

The Codetermination Act is applied, with certain exceptions, to companies employing regularly at least 20 employees. The Act covers all undertakings, societies and foundations regardless of whether their operations aim for profit or not. When the company anticipates dismissals, layoffs or making employment relationships part-time, the employer must, before making a decision, consult the employees and/or their representatives regarding the reasons for, and effects of and possible alternatives to, the planned measures.

If the employment contract is terminated in connection with a measure that according to the Codetermination Act should have been subject to the codetermination procedure, but was not, the employer may be deemed liable to pay fines or to pay to the employee concerned, monetary compensation up to a maximum of EUR30,000 (about US$42,884).

11. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

All citizens of the EU can work in Finland without a (worker’s) residence permit. Also citizens of Norway, Iceland, Liechtenstein and Switzerland do not need a residence permit. If the work lasts longer than three months, they must register their right to reside in Finland.

Citizens of the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia must provide information on their employment to the Employment Office. This information is then forwarded for registration no later than 14 days from the date the foreign person starts working in Finland. However, the notification is not needed if the duration of the employment is less than 14 days (or if the local police have already registered the foreign person's right to reside in Finland). Citizens of Bulgaria and Romania can also notify their employment at the Employment Office or register their right to reside in Finland where their work will last over three months.

All other citizens than those mentioned above must apply for a worker's residence permit, which includes a partial decision of the Finnish Employment Office and a residence permit decision of the Directorate of Immigration.

A worker’s residence permit application procedure normally takes two to three months. However, in cases of emergency, applicants can speed up the process by making a written request to the Directorate of Immigration. The fee for a worker’s residence permit is EUR200 (about US$286).

**TAX**

12. In relation to employees, what constitutes tax residency in your jurisdiction?

Finnish or foreign individuals are treated as Finnish tax residents if they either:

- Have their main dwelling and home in Finland.
- Stay in Finland for more than six consecutive months.

Citizens of Finland may be deemed to be residents for three years after leaving Finland.
13. What income tax or social security contributions must the following pay:

- Tax resident employees?
- Non-tax resident employees?
- Employers, in relation to their employees?

**Tax resident employees**

Tax resident employees must pay progressive tax rates of up to 54% on their earned worldwide income.

Employees must also pay:

- Pension insurance contributions of 4.1% (or 5.2% for employees aged 53 or older).
- Health insurance contributions of 1.91%.
- Unemployment insurance contributions of 0.34%.

**Non-tax resident employees**

Subject to any double tax treaties, non-tax resident foreign employees working for a Finnish company or Finnish branch of a foreign company are subject to a withholding tax of 35%. EUR510 (about US$729) is deducted from the monthly salary before the tax is withheld.

The salary and fringe benefits paid to qualifying foreign key employees with special knowledge or competence, are taxed at 35% during the first four years of their assignment in Finland provided they have a special tax card (applied for separately).

Non-tax resident employees must in most cases pay social security payments (including pension) of approximately 7% of all Finnish source earned income, unless they have a certificate E101 of a posted employee.

**Employers**

Employers must make the following contributions:

- Social security.
- Unemployment insurance.
- Pension insurance.

- Collective life insurance.
- Accident insurance.

The amount of these payments is approximately 23% of the gross salary payable. The amount of individual contributions may vary substantially depending on the branch and size of the employer company.


A company is treated as a Finnish tax resident if it is registered in Finland or established under Finnish law. A European company (Societas Europaea) registered in Finland is also treated as tax resident.

15. Please give details of the main taxes that potentially apply to a tax resident business vehicle (including rates).

**Corporate tax**

Finnish resident companies are subject to corporate tax on their worldwide profits and gains at a flat rate of 26%, subject to any double tax treaties. Generally, corporate tax is based on the profit and loss statement prepared in accordance with the Finnish Generally Accepted Accounting Principles (GAAP) with only minor adjustments for tax purposes. Companies can also apply the International Financial Reporting Standards (IFRS).

**Value added tax (VAT)**

VAT is payable at the standard rate of 22% on:

- The commercial sale of goods and services supplied in Finland.
- Imported goods.

The reduced rates are:

- 17% on food and non-alcoholic beverages.
- 8% on medicine and books.

Some supplies are zero-rated (for example, magazine subscriptions and newspapers).
Transfer tax

A transfer tax of 1.6% is payable on the transfer of Finnish securities and 4% on the transfer of real estate. Transfer of securities is tax exempt if either:

- The securities are listed on a qualifying stock exchange or subject to multilateral trading, provided that the securities are transferred against fixed cash consideration through a securities intermediary and that certain other qualifications are fulfilled.
- Both parties are non-residents, unless the securities are in a Finnish housing or real estate company in which case the transfer is always subject to transfer tax.

Social security payments

A Finnish employer must pay:

- Employers’ social security contributions of between 2.771% and 5.871% on gross salaries.
- Insurance premiums of between 18.57% and 20.77%.

(See Question 13, Employers.)

16. How are the activities of non-tax resident business vehicles taxed?

Generally, a Finnish branch of a non-resident company constitutes a permanent establishment and must pay corporate tax on its Finnish source income and gains attributable to that branch (see Question 15, Corporate tax). A non-resident company, not domiciled in a double tax treaty country, may be liable for corporate tax on its activities in Finland even when a permanent establishment is not created.

17. Please explain how each of the following is taxed:

- Dividends paid to foreign corporate shareholders.
- Dividends received from foreign companies.
- Interest paid to foreign corporate shareholders.
- Intellectual property (IP) royalties paid to foreign corporate shareholders.
- Dividends paid. Generally, dividends paid by Finnish companies to foreign corporate shareholders are subject to a 28% withholding tax. However, dividends paid on nominee registered shares are generally subject to a 15% withholding tax if the recipient resides in a double tax treaty country.

Dividends paid to an EU resident company holding at least 15% (decreased to 10% as of 2009) of the share capital in the distributing company are not subject to withholding tax, provided that the recipient falls within Article 2 of Directive 90/435/EEC (as amended by the Directive 2003/123/EEC) on the taxation of parent companies and subsidiaries.

- Dividends received. Generally, dividends received by companies are tax exempt. However, 75% of dividends are taxable and the remaining 25% is tax exempt in the following situations:
  - where dividends are received from shares accounted for as investment assets of the recipient company;
  - where the distributing company is not a domestic or an EU company mentioned above;
  - where dividends are received from shares held in a listed company, if the recipient company is neither a listed company nor owns at least 10% of the distributing company’s share capital.

- Interest paid. Interest paid to foreign corporate shareholders on a loan is not subject to withholding tax, provided that the loan is not deemed to be a capital investment comparable to the borrower’s equity.

- IP royalties paid. Generally, royalties paid by a Finnish company to an affiliated EU corporate shareholder are not subject to withholding tax under Directive 2003/49/EC on interest and royalty payments. Otherwise, a withholding tax of 28% is payable. Usually double tax treaties reduce or eliminate this tax.

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

There are no formal thin capitalisation rules.
19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Income tax can be levied on a Finnish-resident individual or company for their share of the profit of a controlled foreign company (CFC), regardless of whether the profit share is distributed by the CFC to its shareholders. Generally, a CFC is a foreign company that in its domicile is subject to income tax at a rate lower than 60% of the level of corporate tax payable in Finland.

20. Are there any transfer pricing rules? If so, please give details.

Related transactions must be carried out in accordance with the arm’s-length principle, even if between Finnish resident companies. In addition, transfer pricing documentation must be prepared by large enterprises.

21. How are imports and exports taxed?

Exports of goods outside the EU are exempt from VAT. Imports from outside the EU are subject to Finnish VAT, which is payable by the importer as if the goods were supplied in Finland (see Question 15, Value added tax (VAT)). Customs duty and excise duty may also be payable on the imported goods.

22. Is there a wide network of double tax treaties? If so, please give details.

Currently, Finland has double tax treaties with 65 countries. The tax treaties generally follow the OECD Model Tax Convention on Income and on Capital.

COMPETITION

23. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

The following are prohibited (Act on Competition Restrictions 1992/480):

- Agreements between undertakings, decisions by associations of undertakings and concerted practices having as their object or effect the prevention, restriction or distortion of competition.
- Abuse by one or more undertakings of a dominant market position.

Otherwise prohibited agreements and practices may be acceptable where the benefits to the consumers exceed the restrictive effects, for example, due to improvement of production or distribution of goods, or promotion of technical or economic progress.

INTELLECTUAL PROPERTY

24. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- Nature of right.
- How protected.
- How enforced.
- Length of protection.

Patents

- Nature of right. To be protected, an invention must:
  - be novel;
  - involve an inventive step; and
  - be capable of industrial application.

A patent generally provides a right to permit or prohibit the manufacture, offering, making available and the use of the invention in Finland.

- How protected. Patent protection is conditional on registration with the National Board of Patents and Registration (NBPR).

- How enforced. The District Court of Helsinki, or on appeal, the Helsinki Court of Appeal or the Supreme Court, may:
  - issue interlocutory injunctions;
  - issue injunctions;
award compensation for unauthorised use and/or damages;

- sentence the infringer to fines or imprisonment;
- order disclosure of information on the origin and distribution network of products or services;
- allow the claimant to publish information regarding the judgment at the defendant’s expense.

- **Length of protection.** Subject to the payment of renewal fees, protection lasts for 20 years from filing the application. Patent protection for inventions concerning pharmaceutical products and plant protection products may be extended for a further five years.

**Trade marks**

- **Nature of right.** To be protected, a sign must be:
  - capable of graphic representation; and
  - distinctive.

The right to a trade mark provides an exclusive right to use the mark in commerce and to prevent others from using it, or a mark confusingly similar to it.

- **How protected.** Trade marks are established through registration with the NBPR or the Office of Harmonization for the Internal Market (OHIM), or through use in Finland.

- **How enforced.** Trade mark rights are enforced similarly to patent rights (see above, Patents).

- **Length of protection.** Protection lasts for 20 years from filing the application. Patent protection for inventions concerning pharmaceutical products and plant protection products may be extended for a further five years.

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- **How protected.** Trade marks are established through registration with the NBPR or the Office of Harmonization for the Internal Market (OHIM), or through use in Finland.

- **How enforced.** Trade mark rights are enforced similarly to patent rights (see above, Patents).

- **Length of protection.** Protection lasts for 20 years from filing the application. Patent protection for inventions concerning pharmaceutical products and plant protection products may be extended for a further five years.

**Registered designs**

- **Nature of right.** To be registered, a design, pattern or ornament must be both:
  - novel; and
  - distinctive.

The design right provides an exclusive right to use the protected design and to prevent others from exploiting it by manufacturing, offering, making available, using, importing, exporting or storing a product based on, or including, the protected design.

- **How protected.** Rights to registered designs are protected by registration with the NBPR or OHIM.

- **How enforced.** Registered design rights are enforced similarly to patent rights (see above, Patents).

- **Length of protection.** Protection lasts for five years and is renewable for four additional five-year periods.

**Unregistered designs**

- **Nature of right.** For unregistered designs, protection is available based on Regulation (EC) No. 6/2002 on Community designs. Unregistered designs are only protected against copying.

- **How protected.** No registration is required for protection.

- **How enforced.** Unregistered design rights are enforced similarly to patent rights (see above, Patents).

- **Length of protection.** Protection lasts for three years from the date the design first became known in the EU.

**Copyright**

- **Nature of right.** The original and unique expression of an idea, motif or subject of a literary or an artistic work of authorship is protected. The copyright owner has the exclusive right to authorise or prohibit the use of the work through:
  - reproduction of the work;
  - distribution of the work or copies thereof;
  - communicating or making the work available to the public.

- **How protected.** Protection subsists automatically and does not require registration.
How enforced. Any District Court may enforce copyright through similar remedies as the District Court of Helsinki may enforce patent rights (see above, Patents).

Length of protection. Protection usually expires 70 years after the author’s death.

Confidential information

Nature of right. Confidential information is information that is considered valuable to its owner’s business, is kept in secret and the value of which derives from it being kept secret or otherwise controlled by the owner. It is prohibited to unlawfully obtain or attempt to obtain information concerning a trade secret, or use or disclose any information related to the trade secret.

How protected. Confidential information is protected by the Unfair Business Practices Act (1978/1061) and the Penal Code (1889) if the above conditions (see above, Nature of right) are met or by agreement of the parties.

How enforced. The owner can file civil or criminal proceedings with the Market Court or the District Court. Unlawful use of confidential information can also result in:

- an injunction;
- liability for damages;
- fines;
- imprisonment.

Length of protection. Protection lasts as long as the information meets the conditions for protection.

Utility models

Nature of right. Utility models are rights to protection for technical inventions comprising a technical solution that can be industrially applied and are novel and inventive. A utility model provides an exclusive right to authorise or prohibit the commercial exploitation of the invention protected by the utility model.

How protected. Protection is conditional on registration with the NBPR.

How enforced. Utility model rights are enforced similarly to patent rights (see above, Patents).

Length of protection. Protection lasts for four years and is renewable twice: first for a four-year period and thereafter for a two-year period.

MARKETING AGREEMENTS

25. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- Agency.
- Distribution.
- Franchising.

Agency. The Act on Commercial Representatives and Salesmen (1992/417) contains mandatory rules on:

- termination of agency contracts;
- agents’ remuneration and compensation on termination;
- restrictions on competition.

Distribution. No statutes specifically regulate distributorships, but a number of statutes indirectly apply to distribution agreements.

Franchising. No specific statutes regulate franchises, but a number of statutes indirectly apply to franchising agreements.

E-COMMERCE

26. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

In addition to general statutes, the following acts regulate e-commerce:

The Act on the Provision of Information Society Services (2002/458). The Act regulates the offering and provision of services electronically from a distance. It regulates the information to be provided by the service provider as well as notice and take down procedures in the case of infringement of intellectual property rights.
The Act on Electronic Signatures (2003/14). The Act regulates certification service providers that offer qualified certificates verifying electronic signatures to the public and determines the legality of electronic signatures.

The Consumer Protection Act (1978/38). The Act applies also to e-commerce and contains requirements on the information to be provided to the customers as well as the customer’s right to receive a refund.

The Act on the Protection of Privacy in Electronic Communications (2004/516). The Act sets out the rules for electronic direct marketing through means such as e-mail and short message service. It contains provisions on the protection of privacy of users of electronic services.

DATA PROTECTION

27. Are there any data protection laws? If so, please give brief details.

The collection, storage and processing of personal data are regulated by the Personal Data Act (1999/523).

28. Are there any laws regulating product liability and product safety? If so, please give brief details.

The Product Liability Act (1990/694) provides for compensation for personal injury and damage caused by a defective product to property where the property is intended, and primarily used, for private use or consumption.

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Gavin Robert, Partner, Linklaters.
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