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 controls 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 state:

- 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.

Foreign companies most commonly conduct business through private or public limited liability companies or a Finnish branch office. Business can also be con-
ducted through general or limited partnerships or cooperatives. The answers below follow the provisions of the Companies Act (734/1978), which entered into force in Finland on 1 September 2006.

- **Registration formalities.** A company must register the following with the Trade Register within three months of signing the memorandum of association (memorandum):
  - its articles of association (articles) and memorandum;
  - minutes of the board of directors' (board) meeting (to register the board's chairman);
  - 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$3,208) for private limited liability companies and EUR80,000 (about US$102,653) 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 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. At least one board member and the managing director must be resident in the European Economic Area, unless an exemption is granted.

- **Directors' liability.** The managing director and members of the board and supervisory board are liable to:
  - compensate the company or the shareholders for damages caused deliberately or through negligence;
  - third parties for any breaches of the articles or the Companies Act.

- **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 at least four times a year. There are no costs for complying with the reporting requirements.

### EMPLOYEES

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

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


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

- Working Hours Act 1996.
- Safety at Work Act 2002.

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 agreements or employment agreements.

Finnish labour laws are generally applicable to all employment relationships in Finland, including:
9. **What statutory rules govern the termination of individual employment contracts?**

As a general principle, an employer cannot dismiss an employee unless it is for a reason that is relevant and substantial (ECA 2001). Precedents indicate 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 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:

- The amount of work has been reduced substantially and permanently due to financial, production or reorganisation reasons.
- 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.

The reduction is usually considered temporary unless it clearly exceeds 90 days.

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 that has been referred to as the reason for the redundancy does not actually diminish the amount of work available.

Companies that regularly employ at least 30 employees, or at least 20 employees when the company anticipates at least ten redundancies, must, before making a decision, consult the employees (or their representatives) about the reasons and effects of the redundancy and thereafter separately consult them about the possible alternatives for the planned measures (CEA 1978).

The CEA 1978 also contains rules concerning specified obligations to be followed within a group of companies.

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

Finnish or foreign individuals are treated as a Finnish resident if they either:

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

However, a Finnish national who has left Finland may be considered to be a Finnish resident until three years have elapsed from the end of the year in which he left the country.

12. 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 are taxed at progressive tax rates of up to 56% on their earned income, including salary.

Employees must also pay from their gross salaries:

- Part of the pension insurance contribution at the rate of 4.3% (or 5.4% for employees aged 53 years or more).
- Health insurance contribution at the rate of 2.1%.
- Unemployment insurance contribution at the rate of 0.56%.

Non-tax resident employees

Subject to any double tax treaties, non-resident foreign employees working for a Finnish company or for a Finnish branch of a foreign company are subject to withholding tax at the rate of 35%. From 1 January 2006, EUR510 (about US$654) is deducted from the monthly salary before the tax is withheld.

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

In addition, non-tax resident employees must in most cases pay from their gross salaries health insurance contributions at the rate of 2.1%.
Employers

Employers must make the following contributions:

- Social security.
- Unemployment insurance.
- Pension insurance.
- Collective life insurance.
- Accident insurance.

These payments may amount to up to 27% of the gross salary payable.

13. 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?

Citizens of:

- Iceland, Norway, Sweden and Denmark do not need a residence permit or a work permit.
- EU member states, Liechtenstein and Switzerland do not need a residence permit or a worker’s residence permit for a stay not exceeding three months. After this period, they can continue their stay by registering with the local authority.
- Other countries must generally apply for a residence permit or a worker’s residence permit from a Finnish diplomatic mission before arriving in Finland. In certain cases, persons can engage in paid employment in Finland without a residence permit.

The cost of a worker’s residence permit is EUR175 (about US$225).

14. In relation to business entities, what constitutes tax residency in your jurisdiction?

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

15. What proportion of a tax resident business entity’s income is taxed and what are the main taxes that potentially apply (including rates)?

Corporate tax

Finnish resident companies are subject to corporate tax on their worldwide profits and gains at a flat rate of 25%, subject to the provisions of 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 with only minor adjustments for tax purposes. Companies can also apply the International Financial Reporting Standards.

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, among other things, food and non-alcoholic beverages.
- 8% on, among other things, medicine and books.

Some supplies are zero rated (for example, subscribed magazines and newspapers).

Transfer tax

Transfer tax is payable at the rate of 1.6% on the transfer of Finnish securities and at the rate of 4% on the transfer of real estate. Transfer of securities is tax exempt if the transfer takes place on the Helsinki Stock Exchange, in an equivalent exchange, or if both transaction parties are non-residents, unless the securities transferred are in a Finnish housing or real estate company in which case the transfer is always subject to transfer tax.

Social security contributions

A Finnish employer must pay:

- Employees’ social security contributions of between 2.958% and 6.058% on gross salaries.
■ Insurance contributions of between 18.63% and 20.83%.

(See Question 12, Employers.)

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

Generally, a Finnish branch of a non-resident company constitutes a permanent establishment and must pay corporate tax on its Finnish-sourced income and gains attributable to that branch (see Question 15, Corporate tax). A non-resident company, which is not domiciled in a double tax treaty country, may be liable to corporate tax on its Finnish-sourced income and gains 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 20% 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 on the taxation of parent companies and subsidiaries (Parent-Subsidiary Directive). Double tax treaties may reduce or eliminate dividend withholding tax.

■ 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. This applies equally to domestic and foreign entities. However, if the distributing company is an entity to which the Parent-Subsidiary Directive applies and the recipient company owns directly at least 10% of its share capital, no tax is levied;

   ○ where the distributing company is not a domestic or an EU company mentioned above. Double tax treaties also may relieve or eliminate Finnish tax on dividends received from foreign companies. If no tax treaty exists between Finland and the country of the distributing company, 100% of the dividends are taxable;

   ○ where dividends received from shares held in a listed company are taxable if the recipient company is neither a listed company nor owns at least 10% of the distributing company’s share capital.

Generally, foreign withholding tax is credited in Finland in accordance with the applicable tax treaty or the domestic legislation. No credit is possible in relation to tax-exempt income.

■ 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. Are there any controlled foreign company rules? If so, please give details.

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 lower level than 60% of the level of corporate tax payable in Finland.

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


A new government bill on transfer pricing documentation in relation to income taxation was issued in autumn 2003, according to which related transactions must be carried out in accordance with the arm's length principle. Further, transfer pricing documentation must be prepared by large enterprises. The Act is expected to enter into force on 1 January 2007 as an amendment to various tax laws.

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 the 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.

Within the EU, supplies between VAT-registered traders are generally zero rated. The buyer must pay VAT at its country's rate on its intra-community acquisitions. However, sales to non-VAT-registered customers are subject to Finnish VAT.

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

Currently, Finland has double tax treaties with 64 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 anti-trust law in your jurisdiction? If so, please give brief details.

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

- Agreements, decisions and conducts between enterprises, which prohibit, restrict or distort competition.
- The abuse of a dominant market position.

The prohibitions do not apply to agreements and practices in which the benefits exceed the restrictive effects, for example, by boosting production or the distribution of products to the benefit of consumers.

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. An invention must:
  - be novel;
  - involve an inventive step;
  - be capable of industrial application.

The right to a patent provides, in general, an exclusive right to manufacture, offer, make avail-
able and use the invention within Finland.

- **How protected.** Patents are protected by registration with the National Board of Patents and Registration (NBPR).

- **How enforced.** The District Court in Helsinki can:
  - issue interlocutory injunctions;
  - issue cease and desist orders and orders for compensation;
  - award damages and/or fines;
  - sentence the infringer to imprisonment for up to two years;
  - order the defendant to disclose information on the origin and distribution network of infringing products or services;
  - allow the claimant to publish the judgment or other appropriate information on the infringement at the defendant’s expense.

- **Length of protection.** Protection generally lasts for 20 years.

**Trade marks**

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

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

- **How protected.** Trade marks are protected by registration with the NBPR or by use in Finland.

- **How enforced.** Trade mark rights are enforced in the same way as patent rights (see above, Patents).

- **Length of protection.** Protection lasts for ten years and is renewable indefinitely for consecutive ten-year periods. Unregistered trade marks (those established through use) are protected provided sufficient use can be established. An unregistered mark is deemed established if it is generally known among the relevant business and consumer circles to be the particular mark of products and/or services offered by its holder.

**Registered designs**

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

  The right provides an exclusive right to exploit the protected design by manufacturing, offering, making available, using, importing, exporting or storing a product based on, or including, the protected design.

- **How protected.** Registered designs are protected by registration with the NBPR.

- **How enforced.** Registered design rights are enforced in the same way as 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.** Protection is available, on the basis of Regulation (EC) No. 6/2002 on Community designs, for designs that meet the requirements for registered designs. Unregistered designs are only protected against copying.

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

- **How enforced.** Unregistered design rights are enforced in the same way as patent rights (see above, Patents).

- **Length of protection.** Protection lasts for three years.

**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 author-