

## Finland

### Act on the Monitoring of Foreign Corporate Acquisitions (2012)

*Unofficial translation*

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## Contents

# **Act on the Monitoring of Foreign Corporate Acquisitions**

Law No. 172/2012

In accordance with the decision taken by Parliament, the following is enacted:

## **Section 1. Objectives of the Act**

The objective of this Act is to monitor, and, should a key national interest so require, restrict the transfer, to foreigners and foreign organisations and foundations, of influence over the companies monitored.

## **Section 2. Definitions**

For the purposes of this Act,

1. a key national interest means securing national defence or safeguarding public order and security in accordance with Articles 52 and 65 of the Treaty on the Functioning of the European Union, should the fundamental interests of society be under actual and adequately serious threat;
2. monitored entity means a defence industry company and any other such organisation and business undertaking considered critical in terms of securing functions fundamental to society on the basis of its field, business or commitments;
3. foreign owner means,
  - a. any foreigner not domiciled in a European Union (EU) or European Free Trade Association (EFTA) member state;
  - b. any organisation or foundation not domiciled within EU or EFTA member states;
  - c. any organisation or foundation domiciled within EU or EFTA member states in which a foreigner referred to in subparagraph a), or an organisation or foundation referred to in subparagraph b), controls at least one tenth of the aggregate number of votes conferred by all shares in a limited liability company, or has a corresponding actual influence over another organisation or business undertaking;
4. defence industry enterprise means an organisation or business undertaking that produces or supplies defence equipment or other services or goods important to military defence; defence industry enterprise also means an organisation or business undertaking that, in Finland, produces dual-use goods referred to in the Act on the Control of Exports of Dual-Use Goods (562/1996);
5. corporate acquisition means an acquisition or other corresponding measure due to which a foreign owner gains ownership of a number of shares referred to in subsection 2 in a monitored entity; a corporate acquisition also means an organisation other than one referred to in paragraph 3 becoming a foreign owner as referred to in paragraph 3, if it has the influence referred to in subsection 2 over a monitored company.

An application referred to in this act must be submitted concerning a corporate acquisition targeting a defence industry company, and an application referred to in this act may be submitted concerning a corporate acquisition targeting another monitored company, when a buyer referred to in subsection 1(3) gains at least one tenth, at least one third or at least one half of the total number of votes conferred by all shares in the company or corresponding actual influence over a public limited company or other monitored company. For a particular reason, the authority processing the matter may also oblige the buyer to submit an application or a notification concerning a measure that increases their influence that does not result in exceeding these limits taken after the processing of their application or notification has been completed.

Regarding enterprises in subsection 1(4), the provisions laid down in this Act on a foreign owner also apply to any natural person, organisation or foundation that is resident or domiciled in another EU member state, apart from Finland, or in an EFTA member state. The same applies to a Finnish organisation and foundation in which at least one tenth of the aggregate votes of all of a limited liability company's shares, or corresponding actual influence over an organisation or business undertaking, lies with a natural person or organisation or foundation that is resident or domiciled in a EU member state apart from Finland, or in an EFTA member state.

In calculating a foreign owner's proportion of the aggregate votes of a limited liability company's shares, account must also be taken of any shares:

1. held by a firm belonging to the same group as the foreign owner;
2. held by a member of the foreign owner's family or by an organisation or foundation over which such a family member exercises authority; or
3. entitling the foreign owner or another person referred to in paragraph 1 or 2 to exercise their voting rights by virtue of an agreement or some other transaction.

The provisions of subsection (4) above shall correspondingly apply to calculating the proportion of foreign owner's votes in another organisation and foundation.

To calculate the aggregate number of votes in a monitored entity, votes relating to shares or interests belonging to the monitored company itself or its subsidiary, referred to in section 6, Chapter 1 of the Accounting Act (1336/1997), will be deducted. The numbers of votes held by a person acting in his/her own name but on behalf of another are considered to belong to the party on whose behalf the person is acting.

Provisions on the duty of disclosure, by which the shareholder or a person comparable to a shareholder and the issuer of securities is bound, are laid down in the Securities Markets Act (746/2012).

### **Section 3. Authorities**

The Ministry of Employment and the Economy handles matters concerning the monitoring and confirmation of corporate acquisitions. If, on the basis of an application filed by virtue of Section 4 or a notification filed by virtue of Section 5, it appears that a corporate acquisition may conflict with a key national interest, the Ministry of Employment and the Economy may refer the confirmation, or denial of confirmation, of a corporate acquisition to a government plenary session.

When preparing to consider the confirmation of a corporate acquisition, the Ministry of Employment and the Economy must obtain statements from other authorities, to the extent deemed necessary.

### **Section 4. Corporate acquisitions in the defence sector**

A foreign owner must apply for advance confirmation by the Ministry of Employment and the Economy for any corporate acquisition involving a defence industry company. Said application must contain all information, regarding the monitored entity, the foreign owner and the corporate acquisition, necessary to examining said confirmation.

If a foreign owner has not applied for confirmation of a corporate acquisition in accordance with subsection 1, the Ministry of Employment and the Economy may set a deadline for submitting the application. If the foreign owner continues to neglect submitting the application, the Ministry shall decline confirmation of the corporate acquisition.

The Ministry must confirm the corporate acquisition unless it potentially conflicts with a key national interest. If it is the case that the application does conflict with a key national interest, the Ministry must refer the matter for consideration at a government plenary session.

#### **Section 5. Other corporate acquisitions**

A foreign owner may notify to a corporate acquisition concerning a non-defence industry company for the confirmation of the Ministry of Employment and the Economy. Such a notification may also be made in advance if the conclusion of the corporate acquisition is imminent. The notification must contain all information necessary to examining the matter concerning confirmation of the corporate acquisition, regarding the monitored entity, the foreign owner and the corporate acquisition.

Upon the request of the Ministry of Employment and the Economy, the foreign owner is obliged to provide the Ministry with all information necessary to examining the matter concerning the confirmation of the corporate acquisition referred to in subsection 1, with regard to the monitored entity, the foreign owner and the corporate acquisition. The Ministry must request information within three months of being notified of the corporate acquisition.

The Ministry must confirm the corporate acquisition unless it potentially conflicts with a key national interest. If it is the case that the corporate acquisition does conflict with a primary national interest, the Ministry must refer the matter for consideration at a government plenary session.

If, within six weeks, the Ministry of Employment and the Economy does not decide to undertake a further examination of the matter or, within three months of receiving the information, does not submit a proposal on referring the corporate acquisition to a government plenary session, the corporate acquisition will be considered confirmed.

#### **Section 6. Exceptions to confirming a corporate acquisition**

No confirmation is required for a corporate acquisition if,

1. in proportion to his or her existing shareholding in a monitored limited company, the foreign owner subscribes shares in that company in connection with an increase in its capital;
2. the foreign owner gains possession of property through inheritance, a will or marital right;
3. whether by virtue of a procedure under this Act or otherwise, another foreign owner exerts a legally held influence referred to in section 2(1)(5) on the monitored limited liability company, and if the acquisition does not involve a transfer of shares referred to in section 8; or
4. a monitored business undertaking is acquired from another foreign owner whose ownership is based on a procedure pursuant to this Act, or has otherwise come about legally.

The provisions laid down in subsection 1(3) and (4) do not apply to a defence industry company.

#### **Section 7. Denial of confirmation**

The Government may refuse to confirm a corporate acquisition only if this is necessary due to a key national interest.

#### **Section 8. Consequences of denial of confirmation**

Upon denial of confirmation, to a foreign owner, of a corporate acquisition that would transfer influence over a monitored entity which is a limited liability company, the foreign owner shall, within the time specified by the decision, dispose of shares in the limited liability company in question to a degree that diminishes the number of votes to which the shares entitle the owner, to less than one tenth, or some other share approved in a previous confirmation decision, of the aggregate number of votes of all shares in the company . After denial of confirmation, the foreign owner may only use shares that, at a maximum, entitle the holder to the aforementioned number of votes when voting at the general meeting, with no account taken of the foreign owner's other shares whenever the consent or backing of shareholders holding a certain share of company shares is required in order to reach a valid decision. Correspondingly, the same applies to the shares of a foreign owner in a cooperative and the number of votes at general meetings of cooperatives.

Upon denial of confirmation of a corporate acquisition, where said confirmation concerns the transfer of actual authority to a foreign owner in an enterprise other than a limited liability company, or concerns a business acquisition, agreements on the acquisition of influence or of a business undertaking will be dissolved at the time specified in the decision.

Should anyone who has been denied confirmation cease to be a foreign owner before the expiry of the time period referred to in subsection 1 or 2, the aforementioned consequences shall correspondingly expire.

#### **Section 9. Right of appeal**

Decisions made by the Ministry of Employment and the Economy under section 4(3) or section 5(3) on transferring the matter, or under section 5(4) on undertaking a further examination, are not open to appeal by presenting a complaint. A decision by the Government, referred to in section 7, or by the Ministry, referred to in section 4(2), is open to appeal in the manner prescribed in the Administrative Judicial Procedure Act (586/1996).

#### **Section 10. Offence against laws concerning corporate acquisitions**

Whosoever, whether intentionally or by gross negligence, omits to apply for confirmation under section 4(1), or neglects the duty to disclose under section 5(2), or submits false information to an authority or withholds information deemed significant in terms of handling the matter, shall, unless the criminal act in question is considered minor or a more severe penalty is imposed elsewhere under law, be sentenced to a fine for an offence in breach of a law concerning corporate acquisitions.

#### **Section 11. Power to issue decrees**

Where appropriate, further provisions on the procedure for monitoring corporate acquisitions under the present Act may be issued by government decree.

#### **Section 12. Entry into force**

This Act comes into force on 1 June 2012.

This Act repeals the Act on the Monitoring of Foreign Corporate Acquisitions in Finland (1612/1992).

The legal provisions in force at the time of the entry into force of this Act will apply to corporate acquisitions carried out before the Act's entry into force.

Any provisions in the articles of association of limited liability companies and the rules of cooperatives and economic associations, as well as any restrictions included in limited liability company share registers, share certificates and temporary certificates based on the Act on Foreigners' and Certain Organizations' Right to Own and Control Real Property and Shares in Finland (219/1939), shall be void.

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