

Finland

Act on the Screening of Foreign Corporate Acquisitions (2012)

Unofficial translation

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Ministry of Economic Affairs and Employment, Finland

Translation from Finnish

Legally binding only in Finnish and Swedish

Ministry of Economic Affairs and Employment, Finland

Act on the Screening of Foreign Corporate Acquisitions

(172/2012; amendments up to 682/2020 included)

By decision of Parliament, the following is enacted:

Section 1 Objectives of the Act

The objective of this Act is to screen, and, should a key national interest so require, restrict the transfer of influence to foreign nationals and foreign organisations and foundations in companies that are subject to screening.

Section 2 (496/2014) Definitions

In this Act,

1) key national interest means securing military national defence, functions vital to society, national security and foreign and security policy objectives, and safeguarding public order and security in accordance with Articles 52 and 65 of the Treaty on the Functioning of the European Union, if there is a genuine and sufficiently serious threat to a fundamental interest of society;

2) entity subject to screening means:

a) a defence industry enterprise;

b) a company that produces or supplies critical products or services related to the statutory duties of Finnish authorities essential to the security of society;

c) an organisation or business undertaking that is considered, when assessed as a whole, critical in terms of securing functions vital to society on the basis of their field, business or commitments;

3) foreign owner means:

a) a foreign national not domiciled in a European Union (EU) or European Free Trade Association (EFTA) Member State;

b) an organisation or foundation not domiciled within EU or EFTA Member States;

c) an organisation or foundation which is domiciled within EU or EFTA Member States but in which a foreign national 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 in another organisation or business undertaking;

4) defence industry enterprise means an organisation or business undertaking:

a) that produces or supplies defence materiel referred to in the Act on the Export of Defence Materiel (282/2012) or other products or services important for military national defence; or

b) whose export of products produced in Finland that are considered as dual-use items referred to in Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, hereafter the EC Regulation, or in the Act on the Control of Exports of Dual-Use Goods (562/1996), is subject to authorisation under the EC Regulation or the said Act, or whose export of technology referred to in the EC Regulation or the said Act and used in its operations in Finland is subject to authorisation under the EC Regulation or the said Act;

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 an entity subject to screening; 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 in a company subject to screening.

(682/2020)

An application under this Act shall be made concerning corporate acquisitions referred to in subsection 1, paragraphs 2a and 2b, and a notification under this Act may be made concerning a corporate acquisition referred to in paragraph 2c involving another entity subject to screening, when a buyer referred to in subsection 1, paragraph 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 in a limited liability company or other entity subject to screening. For a specific reason, the authority considering the matter may also oblige the buyer to file an application or a notification concerning a measure to increase the buyer's influence that will be taken after the consideration and that will not result in the exceeding of these limits. (682/2020)

Regarding enterprises referred to in subsection 1, paragraph 4, the provisions of 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 number of votes conferred by all shares in a limited liability company, or corresponding actual influence in an organisation or business undertaking, lies with a natural person or organisation or foundation that is resident or domiciled in an 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 shall 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 or entity 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 also apply to calculating the proportion of a foreign owner's votes in another organisation and foundation.

To calculate the aggregate number of votes in an entity subject to screening, votes relating to shares or interests belonging to the company itself or its subsidiary referred to in chapter 1, section 6 of the Accounting Act (1336/1997) will be deducted. The numbers of votes held by a person acting in his or 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 obligation to notify 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 (682/2020) Authorities

The Ministry of Economic Affairs and Employment considers matters concerning the screening 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 Economic Affairs and Employment may refer a matter concerning confirmation or denial of confirmation to a government plenary session for consideration.

The Ministry of Economic Affairs and Employment serves as the national contact point for matters relating to the implementation of Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union.

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

Section 4 (682/2020) Corporate acquisitions in the field of defence and security

A foreign owner shall apply for advance confirmation from the Ministry of Economic Affairs and Employment for any corporate acquisition involving a defence industry company or a company that produces or supplies critical products or services related to the statutory duties of Finnish authorities essential to the security of society. The application shall contain all information on the entity subject to screening, the foreign owner and the corporate acquisition that is necessary for examining the matter concerning confirmation of the corporate acquisition.

If a foreign owner has not applied for confirmation of a corporate acquisition in accordance with subsection 1, the Ministry of Economic Affairs and Employment may set a deadline for submitting the application.

The Ministry shall confirm a corporate acquisition unless it could endanger a key national interest. If the acquisition could endanger a key national interest, the Ministry shall refer the matter to a government plenary session for consideration. The Ministry may refer the matter to a government plenary session for consideration in other cases too.

Section 5 (682/2020) Other corporate acquisitions

A foreign owner may submit a notification concerning a corporate acquisition other than that referred to in section 4, subsection 1 for the confirmation of the Ministry of Economic Affairs and Employment. Such a notification may also be submitted in advance if the acquisition has reached the stage immediately preceding the final conclusion. The notification shall contain all information on the entity subject to screening, the foreign owner and the corporate acquisition that is necessary for examining the matter concerning confirmation of the corporate acquisition.

At the request of the Ministry of Economic Affairs and Employment, the foreign owner is obliged to provide the Ministry with all information necessary for examining the matter concerning the confirmation of the corporate acquisition referred to in subsection 1, with regard to the entity subject to screening, the foreign owner and the corporate acquisition. The Ministry shall request the information within three months of being notified of the corporate acquisition.

The Ministry shall confirm a corporate acquisition unless it could endanger a key national interest. If the acquisition could endanger a key national interest, the Ministry shall refer the matter to a government plenary session for consideration. The Ministry may refer the matter to a government plenary session for consideration in other cases too.

If, within six weeks, the Ministry of Economic Affairs and Employment does not decide to undertake a further examination of the matter or, within three months of receiving the information necessary for considering the matter, does not propose that the matter be referred to a government plenary session for its consideration, the corporate acquisition will be considered confirmed.

Section 5a (682/2020) Circumventing the Act

If it is evident that a corporate acquisition or an equivalent procedure, arrangement or other measure is intended to circumvent the provisions of this Act on applying for confirmation of a corporate acquisition from the Ministry of Economic Affairs and Employment, the measure shall, at the request of the Ministry, be brought to the Ministry for examination.

Section 5b (682/2020) Imposing conditions

In its decision concerning confirmation of a corporate acquisition, the Ministry of Economic Affairs and Employment may impose conditions necessary for the acquisition in order to safeguard a key national interest. Conditions may only be imposed if the parties to the corporate acquisition undertake to comply with them.

The competent authority in the matter is responsible for supervising compliance with the conditions, but the supervision is performed in cooperation with the Ministry of Economic Affairs and Employment.

The Ministry of Economic Affairs and Employment may impose a conditional fine to enforce compliance with the conditions imposed by the Ministry under subsection 1. Provisions on conditional fines are laid down in the Act on Conditional Fines (1113/1990).

Section 5c (682/2020) Inadmissibility of a matter

The Ministry of Economic Affairs and Employment may decide that an application or notification is inadmissible if it considers that the corporate acquisition does not fall within the scope of the Act.

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 limited liability company subject to screening, 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 lawfully holds the influence referred to in section 2, subsection 1, paragraph 5 in the limited liability company subject to screening, and if the acquisition does not involve a transfer of shares referred to in section 8; or
- 4) a business subject to screening is acquired from another foreign owner whose ownership is based on a procedure pursuant to this Act, or has otherwise come about legally.

Provisions of subsection 1, paragraphs 3 and 4 do not apply to a defence industry enterprise or to a company that produces or supplies critical products or services related to the statutory duties of Finnish authorities essential to the security of society. (682/2020)

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

If a foreign owner is denied confirmation of a corporate acquisition that would transfer influence in an entity subject to screening, that entity being 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. (496/2014)

Upon denial of confirmation of a corporate acquisition, where said confirmation concerns the transfer of actual influence 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 8a (682/2020) Disclosure of secret information to authorities

In addition to the provisions of the Act on the Openness of Government Activities (621/1999), the Ministry of Economic Affairs and Employment has the right to disclose secret documents and information it has received or prepared in the performance of the official duties laid down in section 3 of this Act to other authorities that carry out the screening of foreign acquisitions and investments in accordance with this Act or Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the Union. A precondition for the disclosure of documents and information is that the disclosure is necessary for the purpose of carrying out the screening of foreign acquisitions and investments under this Act and the said Regulation and for the purpose of issuing a statement referred to in section 3 of this Act, and that the documents and information are used only for the purpose for which they were disclosed.

Section 9 (682/2020) Request for review

Provisions on requesting a judicial review by an administrative court are laid down in the Administrative Judicial Procedure Act (808/2019).

A decision made by the Ministry of Economic Affairs and Employment under section 4, subsection 3 or section 5, subsection 3 concerning referral of a matter, or under section 5, subsection 4 concerning undertaking a further examination, shall nevertheless not be eligible for judicial review by appeal.

Section 10 Corporate acquisition violation

Anyone who intentionally or through gross negligence fails to apply for confirmation under section 4, subsection 1, or neglects the obligation to disclose information under section 5, subsection 2, or submits false information to an authority or withholds information deemed significant in terms of considering the matter, shall, unless the act in question is considered minor or a more severe punishment for the act is provided elsewhere by law, be sentenced to a fine for a corporate acquisition violation.

Section 11 Authority to issue decrees

Where necessary, further provisions on the procedure for screening corporate acquisitions under this 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 Foreigners' Corporate Acquisitions in Finland (1612/1992).

The provisions in force at the time of the entry into force of this Act apply to corporate acquisitions completed 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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