

# **Act on the Right of a Foreign Investment Firm to Provide Investment Services in Finland** **26.7.1996/580**

*Unofficial translation, amendments up to 155/2007 included, in May 2007*

## **CHAPTER 1** **General provisions**

### **Section 1** **Scope of application**

This Act shall apply to the right of a foreign investment firm to provide investment services in Finland on a professional basis.

A foreign investment firm shall also be governed by the provisions on the provision of investment services on a professional basis and on the duties of a securities intermediary provided for in the Securities Markets Act (495/1989).

### **Section 2** **Definitions**

In this Act:

- 1) a foreign investment firm shall refer to a natural or legal person which provides the service referred to in Council Directive (93/22/EEC) on the investment services in the securities field on a professional basis and which has been granted an authorization in another State than Finland corresponding to the authorization referred to in sections 9 and 16 of the Act on Investment Firms;
- 2) investment service shall refer to the service referred to in sections 3 and 16 of the Act on Investment Firms;
- 3) freedom of establishment shall refer to the right of a foreign investment firm to establish in Finland a permanent place of business (a branch) from where it can provide investment services which are covered by its authorization; as well as
- 4) an agency shall refer to the permanent place of business in Finland of a foreign investment firm authorized in a State outside the European Economic Area from where it shall not be entitled to provide investment services.

### **Section 3** **Supervision**

The supervision of the activity of a foreign investment firm in Finland as well as the right of the Financial Supervision Authority to disclose information to a supervisory authority corresponding to the Financial Supervision Authority shall be governed by the Act on the Financial Supervision Authority (503/1993).

## **CHAPTER 2** **Freedom of establishment and freedom to provide investment services in a State belonging to the European Economic Area**

### **Section 4** **Preconditions for starting a branch**

Before a foreign investment firm can establish a branch in Finland, the Financial Supervision Authority shall receive a notification from the supervisory authority corresponding to the Financial Supervi-

sion Authority that has granted an authorization to the investment firm containing sufficient information on the business activity, administration, persons responsible and the place of business of the branch to be established as well as other necessary information.

A branch may be established and it may commence its operations at the latest within two months from the receipt by the Financial Supervision Authority of the notification referred to in paragraph 1. The Financial Supervision Authority shall within two months from the receipt of the notification issue any provisions it deems necessary on the duty to disclose information relating to the supervision of the branch and set the conditions for the operation of a branch necessary for the public interest.

A foreign investment firm shall notify the Financial Supervision Authority in writing of any changes in the information referred to in paragraph 1 at least one month prior to their intended implementation. The Financial Supervision Authority may set requirements and conditions referred to in paragraph 1 due to the intended changes.

#### **Section 4 a (10.7.1998/519)**

##### **Supplementary cover of a branch and measures to supplement the cover (30 April 2004/317)**

The heading of section 4 a in the form amended temporarily by Act 317/2004 shall be in force from 1 May 2004 to 31 December 2007. The previous wording was: Supplementary cover of a branch

A branch of a foreign investment may apply in Finland for membership of the investor-compensation fund referred to in the Act on Investment Firms, hereinafter the compensation fund, in order to supplement the cover of the claims of investors provided in its home Member State if the cover offered by its home Member State is not as adequate as the compensation-fund cover in accordance with the aforementioned Act.

The application shall contain sufficient information on the foreign investment firm and the cover scheme of its home State. The compensation fund shall request an opinion of the Financial Supervision Authority and the Bank of Finland on the application. The compensation fund may reject the application if the cover offered by the home State of the foreign investment firm can be deemed adequate and the Financial Supervision Authority consents to it. (27 June 2003/597)

The decision issued by the compensation fund on the application referred to in paragraph 1 shall indicate the scope and amount of claims which the compensation fund in Finland shall compensate and the amount of the contribution payment payable by the foreign investment firm. The total cover offered by the cover of the home Member State of a foreign investment firm and the cover offered by the compensation fund may, however, not exceed the amount of cover provided for in section 40, paragraph 1 of the Act on Investment Firms.

The duty of the compensation fund to pay the claims of investors referred to in paragraph 3 shall commence at the moment when the compensation fund has received a notification from the supervisory authority of the home Member State of a foreign investment firm on the obliging of the cover scheme of the home Member State to compensate the claims of investors of the foreign investment firm.

The compensation fund shall notify the investors of the branch of the commencement of the duty to compensate. The compensation fund shall also submit a public notice of the measures which the investors will have to take in order to protect their rights. The notice shall also be published in the biggest newspapers published in the operating area of the branch in Finnish and Swedish.

In order to implement the duty of the compensation fund, the foreign investment firm shall submit to the compensation fund information on the investors and their claims referred to in paragraph 1. The compensation fund may not give this information to other parties than to authorities entitled to receive information subject to a secrecy obligation.

If the harmonised minimum level of compensation required in Directive 97/9/EC of the European Parliament and of the Council on investor-compensation schemes is not applied in the home State of an investment firm under the accession agreement to the European Union, an investment firm authorised in such Member State shall apply for membership of the compensation fund for its branch to be established in Finland to cover the difference between the level of compensation of the investor-compensation scheme of its home State and the minimum level of compensation required in the Directive. The application for membership and the obligations arising from membership shall be governed by the provisions of subsections 2 – 6. Membership need not be applied for if, in accordance with the accession agreement, the minimum level of compensation required in the Directive is covered through the investor-compensation scheme of the home State of the investment firm and an account thereof is included in the notification referred to in section 4, subsection 1. (30 April 2004/317)

\* Subsection 7 added by Act 317/2004 shall be valid temporarily between 1 May 2004 - 31 December 2007 with the exemptions provided in the provisions on the entry into force. Cf. provisions on the entry into force.

#### **Section 4 b (10.7.1998/519)**

##### **Exclusion of a branch from the compensation fund**

If a foreign branch has materially violated the provisions of this Act or the regulations issued thereunder or the rules of the compensation fund, the compensation fund may dismiss it at the earliest 12 months after the compensation fund has issued a warning to the branch. The compensation fund shall hear the investment firm and the Financial Supervision Authority before issuing a warning and before a decision on dismissal. The compensation fund shall obtain the consent of the Financial Supervision Authority and the supervisory authority of the home State of the investment firm corresponding to the Financial Supervision Authority for the issuing of the warning and the making of the decision on dismissal. (27 June 2003/597)

The claims of investors held in custody by a foreign branch, which has been excluded from the compensation fund, based on an investment service offered prior to the decision of exclusion, shall be covered until their maturity. An investment firm which has been excluded from the compensation fund shall continue to have joint responsibility for the payment of the claims of investors referred to in this paragraph until the claims have matured and they have been indisputably paid.

The compensation fund shall notify the Financial Supervision Authority and the supervisory authority of the home Member State of the investment firm of the decision of exclusion. The compensation fund shall also submit a public notice of the decision of exclusion to be published in the biggest newspapers published in the operating area of the branch in Finnish and Swedish.

#### **Section 5**

##### **Freedom to provide investment services**

A foreign investment firm authorized in a State belonging to the European Economic Area in accordance with section 2, paragraph 1 shall be entitled to provide investment services in Finland also without establishing a subsidiary or a branch.

Before a foreign investment firm can freely provide investment services in Finland, the Financial Supervision Authority shall receive a notification from the supervisory authority that corresponds to the Financial Supervision Authority and which has granted an authorization to the investment firm on the provision of services containing information on the investment services which the foreign investment firm intends to provide in Finland as well as issue any conditions relating to the provision of investment services that it deems necessary for the public interest.

A foreign investment firm shall notify the Financial Supervision Authority in writing of any changes in the information referred to in paragraph 2. The Financial Supervision Authority may change the conditions referred to in paragraph 2 due to the intended changes.

## **Section 6**

### **Withdrawal of the right to operate and restriction of operations**

If a foreign investment firm violates this Act or any other duties prescribed for securities intermediaries in the law, the Financial Supervision Authority shall request the undertaking to end the illegal activity.

If a foreign investment firm does not comply with the request referred to in paragraph 1, the Financial Supervision Authority shall notify the supervisory authority corresponding to the Financial Supervision Authority that has authorized the investment firm so that it may, without delay, take measures to prevent the continuation of the illegal activity.

If the foreign investment firm continues its operations in violation of the law despite the measures referred to in subsections 1 and 2, the Financial Supervision Authority may prohibit the provision of investment services in Finland by the foreign investment firm in full or in part. The decision shall be communicated to the supervisory authority corresponding to Financial Supervision Authority that has granted the authorisation to the investment firm. (27 June 2003/597)

The Financial Supervision Authority may immediately prohibit operations in violation of this Act if the prohibition is necessary due to the urgency of the matter in order to protect the interests of the investors or the parties to whom the investment services have been provided. The decision shall, without delay, be notified to the supervisory authority corresponding to the Financial Supervision Authority that has granted the authorisation to the investment firm and to the European Commission. (27 June 2003/597)

The Financial Supervision Authority may prohibit a foreign investment firm from providing investment services in Finland in full or in part if the foreign investment firm has materially violated this Act, the Securities Markets Act, the Act on Investment Firms or other legislation relating to financial markets or provisions and regulations issued thereunder so that it may endanger the protection of an investor or public interest in general. (27 June 2003/597)

## **CHAPTER 3**

### **Freedom of establishment, an agency and the freedom to provide investment services from outside the European Economic Area**

#### **Section 7 (27 June 2003/597)**

##### **Authorisation of a branch**

A foreign investment firm authorised in a State outside the European Economic Area shall apply for an authorisation from the Financial Supervision Authority for a branch to be established in Finland. An opinion of the compensation fund shall be requested on the application. The provisions of section 9 of the Act on Investment Firms shall, where applicable, be complied with when applying for an authorisation.

#### **Section 8**

##### **Granting of an authorisation**

The Financial Supervision Authority may grant an authorisation to an investment firm authorised in a State outside the European Economic Area for a branch to be established in Finland if the legislation applicable to the investment firm in its home State corresponds to the internationally approved recommendations relating to financial supervision as well as the prevention of criminal abuse of the financial

system, if the economic operating conditions and administration of the investment firm fulfil the requirements set on the reliable provision of investment services and the investment firm is otherwise subject to adequate supervision in its home State. When granting the authorisation, it shall be assessed whether the investor-compensation scheme of the home State of the branch corresponds to the level and scope of the protection offered by the compensation fund. When granting an authorisation, the Financial Supervision Authority may decide on the membership of a branch in the compensation fund. (27 June 2003/597)

After hearing the applicant for an authorisation, the Financial Supervision Authority may include in the authorisation restrictions and terms relating to the business operations of the branch and necessary for its supervision. (27 June 2003/597)

The authorization shall entitle to operations in one or more places of business.

### **Section 8 a (10.7.1998/519)**

#### **Duty to compensate**

The assets of the compensation fund may be used to pay the claims of investors held in custody by a branch of a foreign investment firm in Finland, referred to in section 7, for the purpose of providing investment services, if the branch belongs to the compensation fund and has been placed in liquidation or bankruptcy and if the assets of the investment firm or its bankruptcy estate are not sufficient for their payment. The compensation to be paid to one investor may not be more than the part of the claims not exceeding ECU 20 000. The claims may be paid already during the liquidation or bankruptcy proceedings.

The duty of the compensation fund to pay shall commence when the compensation fund has received a notification from the supervisory authority of the home Member State of the foreign investment firm regarding the fact that the foreign investment firm has been placed in liquidation or bankruptcy and that the assets of the investment firm or its bankruptcy estate are not sufficient for the payment of the claims of investors. After receipt of the notification of the placing of the firm into liquidation or bankruptcy, the compensation fund shall notify the investors who are customers of the branch in question thereof. The compensation fund shall also submit a public notice of the measures which the investors will have to take in order to protect their claims. The notice shall also be published in the biggest newspapers published in the operating area of the branch in Finnish and Swedish.

For the implementation of the duty of the compensation fund referred to in paragraph 2, the branch of the investment firm shall submit to the compensation fund information on all investors and their claims referred to in paragraph 1. The compensation fund may not give this information to any other parties than to authorities entitled to receive information subject to a secrecy obligation.

### **Section 8 b (10.7.1998/519)**

#### **Exclusion of a branch from the compensation fund**

If a branch referred to in section 7 has materially violated the provisions of this Act or the regulations issued thereunder or the rules of the compensation fund, the compensation fund may dismissed it at the earliest 12 months after the compensation fund has issued a warning to the branch. The compensation fund shall hear the investment firm and the Financial Supervision Authority before issuing a warning and before a decision on dismissal. The compensation fund shall obtain the consent of the Financial Supervision Authority and the supervisory authority of the home State of the investment firm corresponding to the Financial Supervision Authority for the issuing of the warning and the making of the decision on dismissal. (27 June 2003/597)

The claims of investors held in custody by a branch of a foreign investment firm, which has been excluded from the compensation fund, based on an investment service offered prior to the decision of exclusion shall be covered until their maturity. An investment firm which has been excluded from the

compensation fund shall continue to have joint responsibility for the payment of the claims of investors referred to in this paragraph until the claims have matured and they have been indisputably paid.

The compensation fund shall notify the Financial Supervision Authority and the supervisory authority of the home Member State of the investment firm corresponding to the Financial Supervision Authority of the decision of exclusion as well as by a public notice which shall be published in the biggest newspapers published in the operating area of the branch in Finnish and Swedish.

## **Section 9**

### **Withdrawal of the authorization or restriction of operations**

The Financial Supervision Authority may withdraw the authorisation of a branch if: (27 June 2003/597)

- 1) its operations have essentially violated an Act, Decrees or orders issued thereunder by the authorities or the terms of the authorisation;
- 2) it has not been operating for six months;
- 3) the conditions for the granting of the authorisation no longer exist;
- 4) its operations or part thereof have not been started within 12 months from the granting of the authorisation; or if
- 5) misleading information has been given when applying for the authorisation.

The Financial Supervision Authority may restrict the operations of a branch in accordance with the terms of the authorisation for a fixed period of time if incompetence or carelessness has been observed in the operations and if it is evident that the operations may seriously endanger the stability of the securities markets or the interests of the investors. (27 June 2003/597)

The Financial Supervision Authority shall, prior to making the decision referred to in subsections 1 and 2 hear the investment firm in question. (27 June 2003/597)

## **Section 10**

### **Establishment and operations of an agency**

Before a foreign investment firm may establish an agency in Finland, it shall notify the Financial Supervision Authority thereof. The Financial Supervision Authority shall, within two months from the receipt of the notification, issue further orders on the establishment, operations and supervision of an agency.

An agency may be established when the foreign investment firm has presented an account on the compliance with the orders issued by the Financial Supervision Authority referred to in paragraph 1.

## **Section 11**

### **Prohibition of the operations of an agency**

The Financial Supervision Authority may prohibit an agency from continuing its operations in Finland if the operations of an agency have essentially breached the provisions of an Act or decree or orders issued thereunder by the authorities or if the authorization of the foreign investment firm has been withdrawn.

## **Section 12 (27 June 2003/597)**

### **Freedom to provide investment services**

An investment firm authorised in a State outside the European Economic Area may, subject to a permission of the Financial Supervision Authority, provide investment services in Finland without establishing a subsidiary or a branch.

## **CHAPTER 4**

### **Other provisions**

#### **Section 13**

##### **Management of the branch**

Responsibility for the activity of the branch shall lie with the branch manager, who shall also represent the foreign investment firm in legal relationships relating to the operation of the branch.

A minor or a person declared bankrupt or enjoined from carrying on a business activity may not act as branch manager.

A branch manager shall be liable to compensate any damage that he has caused in his function either willfully or through negligence to a client of the branch or to another person through a breach of this Act or other provisions relating to the operation of the branch.

#### **Section 13 a (10.7.1998/519)**

##### **Duty to provide information of a branch**

A branch shall make in a clear and comprehensible form and in Finnish and Swedish available information on the cover offered by the compensation fund to the claims of investors of the branch, on the lack or restriction thereof as well as on material changes relating to this information. A branch shall, in addition, on request, inform the investors of the prerequisites for compensation and of the measures which the investors will have to take in order to protect their claims.

#### **Section 14**

##### **Trade name**

The trade name of the branch shall be signed by its manager or under an authorization of the foreign investment firm by another person alone or by several persons jointly.

#### **Section 15**

##### **Liquidity**

The liquidity of a branch shall be adequately safeguarded vis-à-vis its operations. (19.12.1997/1348)

A branch may not, in the course of its operations, incur a risk that fundamentally endangers the operation of the branch. A branch shall have adequate risk monitoring systems vis-à-vis its operations.

#### **Section 16**

##### **Secrecy obligation**

The secrecy obligation, right to give information and breach of the secrecy obligation by an employee of a branch and an agency shall be governed by the provisions of sections 48 and 49 of the Act on Investment Firms. (30.1.1998/72)

Without prejudice to the provisions of paragraph 1, a branch and an agency shall have the right to submit to the supervisory authority corresponding to the Financial Supervision Authority of the State which has authorized the foreign investment firm that it represents as well as an auditor of the foreign investment firm it represents the information provided to be disclosed by the law or by duly issued provisions.

#### **Section 17**

##### **Entry into force**

This Act shall enter into force on 1 August 1996.

Council Directives 93/6/EEC (OJ L 141, 11.6.1993, p. 1); 93/22/EEC (OJ L 141, 11.6.1993, p. 27)

GP 1996/7; Economics Committee Report 1996/10; Parliament's Reply 1996/96

Entry into force and application of the amendments:

19 December 1997/1348:

This Act shall enter into force on 1 January 1998.

GP 1997/208; Economics Committee Report 1997/34; Parliament's Reply 1997/215

30 January 1998/72:

This Act shall enter into force on 1 March 1998.

GP 1997/158; Administrative Committee Report 1997/26; Parliament's Reply 1997/221

Council Directive 91/308/EEC

10 July 1998/519:

This Act shall enter into force on 1 September 1998.

A branch which upon the entry into force of this Act offers investment services in Finland, shall submit to all the investors which are its customers the information referred to in section 13 a within six months from the entry into force of the Act.

The amount of compensation referred to in section 8 a to be paid to one investor may until 31 December 1999 be no more than an amount in marks corresponding to ECU 15 000.

GP 1998/56; Economics Committee Report 1998/11; Parliament's Reply 1998/56

GP 56/1998, Finance Committee Report 11/1998, Reply of Parliament 56/1998

27 June 2003/597:

This Act enters into force on 1 July 2003.

If an authorisation has been applied for from the Ministry of Finance prior to the entry into force of this Act, the Act in force upon the entry into force of this Act shall be applied to the handling of the application.

GP 175/2002, Finance Committee Report 27/2002, Reply of Parliament 277/2002

30 April 2004/317:

This Act enters into force on 1 May 2004 and it shall remain in force until 31 December 2007. The Act shall be applied to a branch in Finland of an investment firm authorised in the Republic of Slovakia until 31 December 2006.

GP 37/2004, Finance Committee Report 9/2004, Reply of Parliament 48/2004

9 February 2007/155:

This Act enters into force on 1 May 2004 and will remain in force until 31 December 2011.

This Act enters into force on 1 March 2007.

GP 276/2006, Finance Committee Report 32/2006, Reply of Parliament 278/2006

Directive 97/9/EC of the European Parliament and the Council (3199L0009), Official Journal L 084, 26.03.97, p. 0022-0031