

Act on the Monitoring of Foreigners' Corporate Acquisitions in Finland

(1612/1992; amendments up to 623/1999 included)

Chapter 1 - General provisions

Section 1 - Objectives

This Act provides a basis for the monitoring of and, should an important national interest so require, for restricting the transfer of authority in a major company to foreigners or to foreign organisations and foundations.

Section 2 - Important national interest

For the purposes of this Act, 'important national interests' refers to:

- (1) securing national defence;
- (2) preventing such serious economic, social or environmental sectoral or geographic troubles as are likely to be permanent, and
- (3) safeguarding public order and the population's safety and health.

Section 3 - Monitored entity

For the purposes of this Act, monitored entities mean any limited companies and any business undertakings capable of being transferred as they stand and:

- (1) with more than one thousand persons on their payrolls during the preceding or ongoing financial year;
- (2) with the turnover exceeding one thousand million Finnish Marks at the latest closing of its accounts; or
- (3) with the latest approved balance sheet total exceeding one thousand million Finnish Marks.

For a limited company which is the parent company of a group referred to in the Accounting Act (655/1973), the number of the employees and, respectively, the turnover or approved balance sheet total to be taken into account when applying the first subsection of this section shall be those of the whole group.

Notwithstanding the provisions in the first subsection of this section, monitored shall be any organisations or business undertakings that produce defence material referred to in the Act on the Export and Transit of Defence Material (242/1990) or provide for the purposes of military national defence vital ancillary services or goods

such as maintenance, research, development services or spare parts.

An insurance company, a credit institution or a financial institution shall not, however, be considered a monitored entity, when the financial institution is a subsidiary of a credit institution or a holding company referred to in the Act on Credit Institutions (1607/1993). (1614/1993)

Section 4 - *Foreign owner*

For the purposes of this Act, foreign owners are:

- (1) any foreigners not domiciled in Finland;
- (2) any foreign organisations or foundations; and
- (3) any Finnish organisations in which the dominant control is exerted by one or more foreign owners.

Foreign owners have the dominant control in a Finnish organisation if, in the case of a limited company, more than half of the voting power involved by all the shares is exercised by foreign owners by virtue of ownership or an agreement; in the case of a general partnership, one of the partners or, in the case of a limited partnership, one of the responsible partners is a foreign owner; in the case of any other organisation, more than a half of the members' voting power is exercised by foreign owners.

The Nordic Investment Bank, the Nordic Project Fund and the Nordic Environment Finance Corporation are not, however, taken to be foreign owners.

Chapter 2 - **Monitoring of corporate acquisitions**

Section 5 - *Confirmation of a corporate acquisition*

A foreign owner shall obtain for his corporate acquisition the confirmation of the Ministry of Trade and Industry (*company purchase*). A corporate acquisition shall be taken to be any purchase or other transaction through which the foreigner has become, in the monitored limited company, the owner of shares representing at least one-third of the voting power involved by all the shares of that company or obtained the dominant control in any other type of an organisation as referred to in section 3(3), or become the owner of a monitored business undertaking.

In calculating a foreign owner's proportion of the votes involved by the shares of a limited company, account shall also be taken of any shares

- (1) held by a firm belonging to the same group with the foreign owner;
- (2) held by a member of the foreign owner's family or by an organisation or foundation dominantly controlled by such a family member; or
- (3) entitling the foreign owner or another person referred to in subsection(1) or (2) to exercise their voting rights by virtue of an agreement or some other transaction.

The provisions of this Act concerning corporate acquisitions shall extend to cases where a Finnish organisation becomes a foreign owner referred to in section 4, provided it exerts, in a monitored limited company, authority as referred to above or, in another organisation referred to in section 3(3), the dominant control.

Section 6 - Exemptions from obtaining confirmation for a corporate acquisition

No confirmation needs to be obtained for a corporate acquisition if

(1) the foreign owner subscribes, in proportion to his or her existing shareholding in a monitored limited company, shares in that company in connection with an increase of its capital;

(2) the foreign owner gains possession of any property through inheritance, a will, or marital right;

(3) another foreign owner exerts, whether by virtue of a procedure under this Act or otherwise, a legally held influence referred to in section 5, and if the acquisition does not involve a transfer of shares referred to in section 11 in a monitored limited company; or

(4) a monitored business undertaking is acquired from another foreign owner whether his or her ownership is based on a procedure under this Act or has come about otherwise legally.

What is provided in subsection 1(3) and (4) above is not applicable to organisations or business undertakings referred to in section 3(3).

Section 7 - Applying for confirmation

Confirmation shall be applied for within one month of a corporate acquisition referred to in section 5. The application, which may also be made in advance, shall include adequate information on the monitored entity, the foreign owner and the act of acquisition.

Section 8 - Handling of applications (1614/1993)

Applications for confirmation of corporate acquisitions are handled by the Ministry of Trade and Industry. The applicants are handled by the Ministry of Defence in the case of organisations or business undertakings referred to in section 3(3). Ministerial confirmation shall be obtained unless an important national interest be jeopardised through it, when the matter shall be transferred to the Council of State for consideration.

Section 9 - Denial of confirmation

The Council of State may refuse to confirm a corporate acquisition if an important national interest referred to in section 2 were jeopardised through the deal.

Section 10 - *Failure to apply for confirmation*

If a foreign owner fails to apply for confirmation under section 7, the Ministry may stipulate a period of time in which the application shall be made. Should the application for confirmation still be neglected, the Ministry shall refuse to confirm the acquisition.

Section 11 - *Consequences of a denial of confirmation*

Upon denial of confirmation to such a corporate acquisition as would transfer, in a monitored limited company, any amount of influence into the hands of a foreign owner, the latter shall, within a period of time to be stipulated by the Ministry in its decision, dispose of his or her shareholding in that company to a degree diminishing the number of the votes involved by their shareholding to less than one-third of the aggregate number of votes involved by all the shares of the company. After such denial, the number of votes the foreign owner may use in the general meeting of the shareholders shall not exceed the maximum stated above.

Upon denial of confirmation either to any such corporate acquisition as would transfer, in an organisation other than a limited company as referred to in section 3(3), the dominant control to a foreign owner, or to a business undertaking, any agreements on the acquisition of such dominant control or of such business undertaking shall be void as from the date to be laid down by the Ministry in its decision.

Should anyone who has been denied confirmation cease to be a foreign owner before the expiry of the period of time referred to in subsection 1 of 2, all the consequences envisaged above shall cease to obtain.

Chapter 3 - **Effect of an international agreement on the monitoring**

Section 12 - *Termination and restoration of monitoring*

Monitoring under this Act shall be terminated by decree vis-à-vis the State members to the European Economic Area as provided by the EEA Agreement. On the same occasion or at any time thereafter, monitoring may be terminated by decree even otherwise if no important national interest requires its maintenance. On the other hand, monitoring may be restored to the necessary extent if an important national interest so requires and, for cases falling within the scope of the EEA Agreement, subject to compliance with the provisions of Article 112 of that Agreement.

Monitoring is not terminable in the case of any corporate acquisitions bearing on an organisation or a business undertaking referred to in section 3(3).

Chapter 4 - **Miscellaneous provisions**

Section 13 - *Right of appeal*

A decision by the Ministry concerning referral of a matter under section 8 is not appealable through complaint insofar as the decision bears on whether or not the acquisition may jeopardise an important national interest.

Section 14 has been repealed by 623/1999.

Section 15 - *Sanctions*

Whoever intentionally or out of gross negligence omits to apply for confirmation under this Act, furnishes untrue information to a public authority, or conceals any details essential for the process of considering an application shall, unless the act or omission is negligible and unless a more severe penalty has been stipulated for it in law, be sentenced to fines for an *offence against laws concerning corporate acquisitions*.

Section 16 - *Further provisions*

Further provisions on the implementation of this Act may be given by decree, when necessary.

Section 17 - *Entry into force*

This Act enters into force on 1 January 1993. Section 12 will, however, enter into force on a date to be defined by decree.

This Act repeals:

- (1) the Act of 28 July 1939 on Foreigners' and Certain Organizations' Right to Own and Control Real Property and Shares in Finland (219/1939) as subsequently amended;
- (2) the Act of 28 July 1939 on Middlemanship in Share Trade (224/1939); and
- (3) the Act of 18 April 1973 on Foreigners' and Certain Organizations' Right to Become Partners in Finnish General and Limited Partnerships (322/1973) as subsequently amended.

This Act is not applicable to transactions made before the Act's entry into force.

Any such provisions in the articles of association of limited companies or in the rules of cooperatives and economic associations and any such restrictions inserted in share registers, shareholders' registers, share certificates, temporary certificates or talons or in waiting lists or issue accounts as have been based on the Act repealed under subsection(2)(1) shall be void as from the entry into force of this Act.