FINLAND

Investment rules of the world

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At DLA Piper, we have one of the largest finance and projects teams in the world with more than 600 dedicated lawyers and an established local law firm network. We share knowledge and skills in debt instruments, debt securities, funds, derivatives and portfolios, as well as energy, infrastructure and other projects, across Europe, the Middle East, Africa, Asia Pacific and the Americas.

When and wherever we work for you on finance and investment deals and projects, you can rely on our international platform; we are backed by the network and resources of one the largest and most-connected business law firms in the world.

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Investment Rules of the World

With input from across our global network, this guide covers key legal topics for different financial activities and projects and gives you an overview of the points you may consider when initially looking at financing or investing in particular jurisdictions. Please contact us if you would like to discuss any legal issues or solutions for your business. We also welcome your feedback about this guide via investmentrules@dlapiper.com.

Finland

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Capital markets and structured investments

Issuing and investing in debt securities

Are there any restrictions on issuing debt securities?

There are restrictions on offering and selling debt securities under both Finnish and EU law. The Securities Markets Act regulates offering and selling debt securities in Finland.

Unless exclusions or exemptions apply, it is unlawful to offer debt securities to the public in Finland or to request that they are admitted to trading on a regulated market operating in Finland unless a prospectus, that the Finnish Financial Supervisory Authority has approved, has been made available to the public.

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What are common issuing methods and types of debt securities?

The most common types of debt securities issued in Finland are bonds or notes issued on a stand-alone basis or under a program.

Many different types of debt securities are offered in Finland. Some common forms include:

- debt securities characterized by the type of interest or payment such as fixed-rate securities, floating-rate securities, variable-rate securities, zero-coupon securities and high-yield bonds;
- guaranteed securities, subordinated securities, perpetual debt securities (i.e. debt securities that have no specified redemption date);
- asset-backed securities;
- derivative securities such as securities linked to the value of one or more reference asset including shares, commodities, interest rate, currency rate or index, and credit-linked notes;
- hybrid securities (securities with both debt and equity features);
- equity-linked securities such as convertible bonds (debt securities convertible into the equity of the issuer);
- exchangeable bonds (debt securities convertible into the equity of a third party);
- depositary receipts (a security issued by a depositary conferring on the holders beneficial ownership of certain underlying assets held by the depositary for the holders); and
- warrants (securities giving the holders the option to purchase the equity of the issuer or a related company).

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What are the differences between offering debt securities to institutional / professional or other investors?

The Prospectus Regulation is implemented in Finland by Chapter 3 of the Securities Markets Act and the Decree of the Ministry of Finance on the Prospectus referred to in Chapter 3–5 of the Securities Markets Act. The Act does not make a distinction between professional and other investors for the purposes of its disclosure requirements, however, different methods of disclosure apply. In relation to the obligation to prepare a prospectus, see the following answers in Issuing and investing in debt securities.

According to the Act, anyone who offers securities to the public and seeks admission to trading on a regulated market of a security shall publish a prospectus of the securities prior to the entry into force of the offer or the admission to trading on a regulated market of a security and keep it available to the public while the offer is open.

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When is it necessary to prepare a prospectus?

Under the Securities Markets Act, unless an exemption applies, it is necessary to publish a prospectus where there is an offer of securities to the public or an application for the securities to be admitted to trading on a regulated market.

An offer would not be deemed to have been made to the public if it is made solely to qualified investors, addressed to fewer than 150 persons (other than qualified investors) per European Economic Area state or where the minimum denomination per unit is at least €100,000.

If the offer is deemed not to be made to the public, a prospectus may still be required if an application is made for the securities to be admitted to trading on a regulated market.

According to Chapter 3, Section 2, however, a prospectus need not be published, for example, if the notification procedure as provided for in article 25 of the Prospectus Regulation is not applied to the offering, and the securities are offered in the EEA-area during a period of twelve months in an amount with a total consideration of a maximum €8 million. In addition it is required that the issuer publishes and delivers to the Finnish Financial Supervisory Authority a Key Investor Information Document, in cases where the securities are offered in an amount with total consideration of less than €1 million calculated in the EEA area over a period of 12 months.

Furthermore, a prospectus need not to be published, if the securities are offered:

- solely to qualified investors;
- calculated per each EEA member state, to fewer than 150 investors;
- to be acquired for a total consideration of at least €100,000 per investor and per offer or in units with a denomination or consideration of at least €100,000; or
- in an amount with a total consideration of less than €2.5 million calculated in the EEA over a period of 12 months.

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What are the main exchanges available?

Nasdaq Helsinki is a regulated market licensed in Finland. Nasdaq First North is a market for smaller companies and growth companies.

Trading at Nasdaq Helsinki is governed by the Issuer Rules, the Member Rules and the Warrant Rulebook. Nasdaq First North is an MTF that is subject to separate rules.

Issuers on the Nasdaq Helsinki market are subject to the requirements of a number of EU Directives, including the Market Abuse Directive (implemented in Finland by several Acts, including the Markets Securities Act and the Act on Trading in Financial Instruments) and the Transparency Directive (implemented in Finland by the Markets Securities Act).

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Is there a private placement market?

There is no definition of a private placement in Finnish legislation, but it is generally understood to mean an offering of securities that are exempted from, in case of transferable securities, the requirement to publish a prospectus. In our opinion, there is a private placement market in Finland.

Private placement may be qualified as offering of investment services under the Finnish Investment Services Act. The general provisions of Chapter 1 of the Act governing disclosure obligation and practices are applicable to all securities offerings (also where there is no obligation to publish a prospectus). The Act does not set any specific requirements as to the form of document with regard to a prospectus exempted offering, customarily a private placement memorandum/investor presentation is provided.

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Are there any other notable risks or issues around issuing or investing in debt securities?

Issuing debt securities

Issuers are required to take responsibility for prospectuses for debt securities. Misleading statements in, or omissions from, any applicable offering document can give rise to both administrative and criminal liability under Finnish law.

Investing in debt securities

The most significant risk related to debt securities is the issuer's repayment capacity, or the risk as to whether the issuer is able to perform its obligations on the maturity date (or other payment dates), that is, to repay the nominal capital and return to the investors. In order to enable the assessment of the issuer's repayment capacity, the bond prospectus or base prospectus describes the issuer's financial position and risks factors related to debt securities.

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Establishing and investing in debt / hedge funds

Are there any restrictions on establishing a fund?

Generally

Establishing a fund, offering fund securities and operating a fund, amongst other things, are regulated activities under the Act on Mutual Funds (the MFA). The MFA governs common funds, which are Undertakings for Collective Investments in Transferable Securities (UCITS) funds as provided in the Undertakings for Collective Investments in Transferable Securities Directive,.

Mutual fund activity is defined in the MFA as raising of funds from the public for their joint investment and the investment thereof mainly in financial instruments as well as the management of a common fund and the marketing of units in accordance with the UCITS Directive and the MFA.

Only a management company authorized as provided in the MFA may establish one or more common fund (UCITS fund) and carry out mutual fund activities.

Only a management company authorized or registered as provided in the Act on Alternative Investment Fund Managers may establish one or more special common fund or other alternative investment fund.

Custodial activity of a common fund, a special common fund or other alternative fund may only be carried out by a custodian, which has an authorization for the custodial activity.

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What are common fund structures?

There are two main categories of funds: Undertakings for Collective Investments in Transferable Securities (UCITS) funds (common funds) and non-UCITS funds (special common funds and other alternative investment funds).

Risk in a special common fund does not need to be diversified as broadly as with UCITS funds. A special common fund is also an alternative investment fund as provided in the Act on Alternative Investment Fund Managers.

Common (UCITS) funds

Common funds are regulated by the Act on Mutual Funds, implementing the UCITS directive, which specifies the eligible investment types and the required diversification between investments in Chapter 11 of the Act. The Finnish Financial Supervisory Authority (FIN-FSA) approves the fund rules.

Special common (Non-UCITS) funds and other alternative investment funds

Special common funds are non-UCITS, alternative investment funds deviating from the principle of diversification of risk pursuant to Chapter 13 of the Mutual Funds Act. If the units of a special mutual fund shall be offered to non-professional clients, the risk must be diversified (but to a lesser amount than in an UCITS fund) and the rules of the fund must indicate the deviations from the principles of Chapter 13 of the MFA. The rules regulating the subscription and redemption of the units in a special common fund may also deviate from those of a UCITS fund. The name of the fund must indicate that it is a non-UCITS fund. The Finnish Financial Supervisory Auhority has to be notified of the rules of a special common fund.

The investment operations of other alternative investment funds are not regulated, but the Act on Alternative Investment Fund Managers specifies the information that the funds must provide on themselves. Subject to certain exceptions as to e.g. family offices and business angel investors, alternative investment funds may be marketed to non-professional investors only, if the fund manager has been authorized and rules and a key investor information document (KIID) have been prepared for the fund. The FIN-FSA does not approve the rules of alternative investment funds.

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What are the differences between offering fund securities to professional / institutional or other investors?

Retail funds

Undertakings for Collective Investments in Transferable Securities (UCITS) funds must be open for all investors and are therefore subject to substantial regulatory oversight and restrictions, including obligations with regard to independent custodian/depositary arrangements for assets, investment and borrowing powers specifications, concentration requirements and other matters. The information to be provided to investors in an UCITS fund is regulated by Mutual Funds Ac. The Act does not make a distinction between non-professional and professional/institutional investors in an UCITS fund.

Non-UCITS funds can restrict the scope of eligible investors in their fund rules. However, if the units of a special mutual fund shall be offered to non-professional investors, the risk must be diversified (but to a lesser amount than in an UCITS fund) and the rules of the fund must indicate the deviations from the principles of Chapter 13 of the MFA. As a main rule, a special mutual fund shall have a minimum of ten investors.

Subject to certain exceptions as to e.g. family offices and business angel investors, the units in an alternative investment fund may be marketed to non-professional investors only if the fund manager has been authorized, the rules and a key investor information document (KIID) have been prepared for the fund and all the required documents and information has been provided to the FIN-FSA. The legal forms and domiciles of alternative investment funds (AIFs) allowed to be offered to non-professional investors is restricted. Further, the AIF units may not be offered to non-professional investors if the subscription obligates to additional investments and any such obligations are non-binding on a non-professional investor.

Professional investors may waive their legal right to receive information from the alternative investment fund manager in writing. As mentioned, if the AIF units are only offered to professional investors the key investor information document (KIID) does not need to be prepared.

When offering and marketing the funds to consumers, also the provisions of the Finnish Consumer Protection Act shall also be adhered to.

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Are there any other notable risks or issues around establishing and investing in funds?

Establishing funds

It can be noted that as a main rule, the fund documentation shall be drafted in Finnish or Swedish if no other language is approved by FIN-FSA, when the fund is marketed to non-professional investors.

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Managing and marketing debt / hedge funds

Are there any restrictions on marketing a fund?

Several acts regulate marketing a fund; the Mutual Funds Act as well as the Act on Alternative Investment Managers regulate specifically the marketing of funds. Further, the Consumer Protection Act regulates all marketing directed at consumers and the Unfair Business Practices Act regulates marketing in general. All these regulations shall be taken into account when marketing a fund, as applicable.

The Finnish Financial Supervisory Authority (FIN-FSA) has also given instructions and regulations on marketing funds. These instructions contain, amongst other things, information on:

- what kind of language shall be used in marketing (a non-professional investor should be able to understand the language that is used);
- how comparisons between different funds shall be made; and
- how the funds shall be identified in marketing.

Undertakings for Collective Investments in Transferable Securities (UCITS) funds

The management company may not begin to market the units in a common (UCITS) fund to the public or receive funds from public into the common fund before the fund rules have been confirmed by the FIN-FSA.

A UCITS fund manager from another EEA country may market units in such fund in Finland if the competent authorities of its home Member State have submitted to the FIN-FSA a notification of the commencement of marketing.

Special Common Funds and other alternative investment funds (AIFs)

The management company may not market units in a special common fund or receive money to the fund before the board of directors of the fund management company has approved the rules and the FIN-FSA has been notified of the rules and the commencement of marketing of the fund.

The alternative investment fund manager may market the units in an AIF managed by after a notification to the FIN-FSA as regards the AIF and receipt of a notification from the FIN-FSA regarding the same. The same applies also to the marketing by an investment firm of the AIF units. However, subject to certain exceptions as to e.g. family offices and business angel investors, the units in an AIF may be marketed to non-professional investors in Finland only if the fund manager has been authorized, the rules and a key investor information document (KIID) have been prepared for the fund and all the required documents and information has been provided to the FIN-FSA.

The manager of an AIF from another EEA country or from a third country may market its units in Finland when it has submitted to the FIN-FSA a notification of the commencement of marketing and received a notification from the FIN-FSA regarding the same.

Reverse solicitation and the definition of ‘marketing’

'Marketing' is not defined in the Act on Alternative Investment Fund Managers. In the relevant government Bill, it has been viewed that in order to qualify an action as 'marketing', it has to be made by the alternative investment fund manager (AIFM) or on its behalf and it has to contain the offering of the units in an alternative investment fund managed by it. The offering can be direct or indirect.

It has been held in the government Bill that an action which does not include offering of units cannot be seen as marketing and, consequently, actions taken by the AIFM or on its behalf to map the interest of investors to invest in a certain type of investment ('soft circling') would not be qualified as marketing. Further, actions directed towards professional investors, which do not aim to a binding subscription to the fund units, should not be labelled as marketing in the context of the Act. These can include for example road shows initiated by the AIFM, provided such events do not include a specific sale or purchase offer of the AIF units (although comparable events initiated by issuers or investment service providers may qualify as marketing of securities). In addition, reverse soliciting ie the investor contacting the AIFM and the AIFM providing information on different investment opportunities, should not be seen as marketing.

Provision of offering documents related to an established fund managed by the AIFM is considered as negotiations on the terms of an investment and subject to prior FIN-FSA notification. Provision of various agreements related to a fund which has not been established yet does not, however, require that the AIFM must adhere to the provisions of law regarding marketing. When a binding subscription is made, the AIFM must be able to demonstrate that it has adhered to the marketing provisions of the AIFM Act and duly made a notification to the FIN-FSA.

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Are there any restrictions on managing a fund?

Fund management is a regulated activity in Finland under the Mutual Funds Act. Managing a fund is subject to authorization granted by the Finnish Financial Supervisory Authority (FIN-FSA) that also supervises fund management companies. Under the Mutual Funds Act, each mutual fund must be managed by an authorized fund management company.

A fund management company must separate fund assets from its own assets by assigning the former to a custodian. Fund management companies may engage only in the fund activity and other essentially related business (as defined in the applicable legislation), if doing so does not materially conflict with the interests of holders of mutual fund shares. In addition, fund management companies may provide asset management services and investment advice as well as safekeeping and administration of shares in mutual funds and undertakings for collective investment in transferable securities (UCITS).

Fund management companies must have sufficient financial strength to operate effectively and must not be closely associated with companies or individuals that could prevent effective supervision of the management company. A management company shall carry out fund activity independently, in compliance with the applicable legislation, and with care and expertise and in the best interests of the common fund and its unitholders.

Alternative Investment Fund Managers (AIFMs) are also subject to regulation under the Act on Alternative Investment Fund. Under the Act, an AIF may only be managed by and AIFM authorized by the FIN-FSA. However, some AIFM can be exempted from full regulation on certain grounds, including managing assets under €500 million where assets are not leveraged and investors have no redemption rights for five years, and managing assets under €100 million including assets acquired through leverage. Exempted managers must still register with the FIN-FSA and are subject to limited reporting.

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Entering into derivatives contracts

Are there any restrictions on entering into derivatives contracts?

Under the Act on Investment Services, investment services (including derivatives contracts) may only be offered by authorized entities, unless a specific exemption applies.

There are no general restrictions in relation to the counterparty, however, certain entity specific restrictions may apply (for example the Mutual Funds Act provides restriction on mutual funds when entering into derivatives agreement).

The European Market Infrastructure Regulation (EMIR) applies to all derivative transactions and requires transactions to be reported to regulators, for transactions between dealers to be cleared or subject to other risk mitigation techniques such as initial margin and variation margin requirements.

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What are common types of derivatives?

The main types of derivatives contracts used in Finland include *inter alia*:

- swaps (such as interest rate and currency swaps);
- forwards;
- options;
- futures; and
- commodity-linked derivatives.

The value of the derivative contracts is based on the value of the underlying assets. The main classes of underlying assets are:

- equity;
- fixed income instruments;
- commodities;
- foreign currency; and
- credit events.

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Are there any other notable risks or issues around entering into derivatives contracts?

Since the global financial crisis in 2007-to-2008, derivatives and particularly over-the-counter derivatives have attracted significant regulatory attention. The European Commission has sought, in particular, to:

- enhance transparency by requiring the provision of comprehensive information on over-the-counter derivative position;
- reduce counterparty risk by increasing the use of central counterparty clearing; and
- improve the management of operational risk by increasing the standardization of derivatives contracts.

As a result, the derivatives market has seen, and continues to see, the introduction of a significant amount of new regulation and this has led to substantial compliance costs for market participants.

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Debt finance

Lending and borrowing

Are there any restrictions on lending and borrowing?

Lending

Lending is a regulated activity in relation to lending to consumers. The Consumer Protection Act regulates consumer credits and the Finnish Competition and Consumer Authority supervises lending to consumers.

Consumer loans are subject to a range of regulatory requirements. For example, there are particular restrictions around:

- how the loans are marketed;
- how to deal with borrowers who fall behind with their payments; and
- how payments may be claimed from the consumers.

Borrowing

Borrowing is generally not regulated in Finland. However, certain borrowers may benefit from specific protection provided to them under Finnish law (for example consumers).

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What are common lending structures?

Lending in Finland can be structured in a number of different ways to include a variety of features depending on the commercial needs of the parties.

A loan can either be provided on a bilateral basis (a single lender providing the entire facility) or syndicated basis (multiple lenders each providing parts of the overall facility).

Syndicated facilities by their nature involve more parties (such as agents which fulfil certain roles for the finance parties), are more highly structured and involve more complex documentation. Larger financings will typically be done on a syndicated basis with one of the syndicate taking the lead in coordinating and arranging the financing.

Loans will be structured to achieve specific objectives, e.g. term loans, working capital loans, equity bridge facilities, project facilities and letter of credit facilities.

Loan durations

The duration of a loan can also vary between:

- a term loan, provided for an agreed period of time but with a short availability period;
- a revolving loan, provided for an agreed period of time with an availability period that extends nearer to maturity of the loan and which may be redrawn if repaid;
- an overdraft, provided on a short-term basis to solve short-term cash flow issues; or
- a standby or a bridging loan, intended to be used in exceptional circumstances when other forms of finance are unavailable and often attracting a higher margin.

Loan security

A loan can either be secured, unsecured or guaranteed.

Loan commitment

A loan can be:

- committed, meaning that the lender is obliged to provide the loan if certain conditions are fulfilled; or
- uncommitted, meaning that the lender has discretion whether or not to provide the loan.

Loan repayment

A loan can be paid back in instalments of the same size consisting of a loan repayment portion and an interest portion. The size of the monthly instalment changes in line with changes in interest rates, but the loan period remains unchanged (annuity loan).

It can also be paid back in instalments of the same size consisting of a loan repayment portion and an interest portion. The size of the monthly instalment remains unchanged when interest rates change, nut the loan period changes (fixed instalment loan).

It can also be paid back in instalments consisting of a fixed loan repayment portion and an interest portion that changes as interest rates change. When interest rates change, the size of the monthly instalment changes, but the loan period remains unchanged (fixed period loan).

It can also be paid back in one instalment consisting of the whole loan amount at the end of the loan period, and during the loan period only interest payment shall be made.

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What are the differences between lending to institutional / professional or other borrowers?

Lending to legal persons is subject to less regulatory oversight and so less burdensome from a compliance perspective. It is mainly a matter of contract law.

The Consumer Protection Act (especially Chapters 7 and 7a) regulates lending to consumers and the provisions in the Act are mandatory.

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Do the laws recognize the principles of agency and trusts?

Trusts are generally not recognized in Finland however, under the quite recent Act on Detecting and Preventing Money Laundering and Terrorist Financing, trust, as they are defined in Article 3, Section 7 of the Directive (EU) 2015/849, are recognized as legal entities for the purposes of the said Act.

The principle of agency is recognized in Finland and in accordance with the Act on Agent of Bondholders,it is possible to appoint an agent to act on behalf of other parties and to hold rights and other assets for the lenders or secured parties.

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Are there any other notable risks or issues around lending?

Generally

Loan agreements and other finance documents are subject to general contractual principles. Consumer clients must be taken into consideration because the regulations regarding consumers are mandatory.

Specific types of lending

For instance, providing mortgages to consumers is subject to mandatory regulations. The Mortgage Credit Directive, which is implemented in Finland through chapters 6, 7 and 7a of the Consumer Protection Act, imposes a number of requirements on lenders. These requirements include, amongst other things, the lender's need to:

- conduct affordability tests before lending;
- provide standard information about the mortgage to enable borrowers to compare products; and
- ensure that staff are suitably trained.

Standard form documentation

Most Finnish syndicated finance transactions are governed by documentation based on recommended forms published by the Loan Market Association (LMA). These are often governed under English law, however. Bilateral finance transactions are more likely to be documented on bank standard form documentation prepared in-house and be governed by Finnish law.

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Are there any other notable risks or issues around borrowing?

Borrowers should be aware of the potential implications of the EU's Bank Recovery and Resolution Directive (BRRD), which outlines certain measures for dealing with failing financial institutions. It has been implemented in Finland through the Act on Resolution of Credit Institutions and Investment Firms (*laki luottolaitosten ja sijoituspalveluyritysten kriisinratkaisusta*) and the Act on the Financial Stability Authority (*laki rahoitusvakausviranomaisesta*).

The BRRD applies to financial institutions incorporated in the European Economic Area (EEA), but does not apply to EEA branches of non-EEA incorporated entities.

Article 55 of the BRRD gives authorities the power to 'bail-in' obligations of failed EEA financial institutions and also postpone the enforcement of early termination rights against the affected institution. 'Bail-in' describes a variety of write down and conversion powers, such as the power to convert certain liabilities into shares or cancel debt instruments. In the case of English or other EEA law contracts, such powers override what the contracts says. In the case of non-EEA law contracts, there are requirements to incorporate such provisions into the contract.

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Giving and taking guarantees and security

Are there any restrictions on giving and taking guarantees and security?

Under Finnish law, a security interest shall be validly and bindingly given and established, provided that the following four requirements have been met:

- a pledge agreement between the parties;
- competence to give the pledge (i.e. security);
- an underlying obligation which is to be secured by the security; and
- the applicable perfection measures having been taken.

From these requirements, we would especially highlight requirements the second and last (ie competence and perfection measures) as worthy of consideration. When these four requirements are met, the pledge constitutes a valid and binding obligation of the party giving the security.

The following points should also be considered.

Capacity

It is important to check the constitutional documents of a company giving a guarantee or security to ensure it has an express or ancillary power to do so and there are no restrictions on the directors' powers that would be preventative. In some cases, it would also be advisable to request a copy of the decision of the board of directors (or an extract of it), in which it was decided to enter into the transaction in question. If it is not within the company's capacity to enter into a security agreement, but such an agreement is entered into regardless, the agreement shall be binding unless the counterparty knew, or it ought to have known, that the signatories were acting against their capacity. It should also be noted, that Section 1 of Chapter 13 of the Companies Act states how a limited liability company may distribute it assets. According to this section, any distribution of assets which is contrary to the provisions of the Companies Act, constitutes unlawful distribution of assets. Under the Companies Act, distribution of assets includes all transactions which might affect the company's liquidity. Further, under the Companies Act, a company must always ensure that entering into any transaction is in the best interest of the company.

Insolvency

In insolvency proceedings any security given may be set-aside if the provisions of the Recovery Act are met. Under Section 14 of the Recovery Act, a security may be set-aside if:

- the security was given for an already existing debt obligation; or
- if the relevant perfection measures were not taken without undue delay.

It is further required under both the above-mentioned situations that the security was given within three months prior to the beginning of the insolvency proceedings (or within two years for connected parties). It should be noted that any security given (and the related agreements) may also be subject to proceedings under alternative provisions of the Recovery Act to those listed here.

Financial assistance

Under the Companies Act it is unlawful for a limited liability company, including both private and public companies to provide financial assistance for the purchase of its own (or its holding company's) shares. Financial assistance in this context would include giving a guarantee or security in connection with the share purchase.

Natural person

If security or a guarantee is given by a natural person, there are some specific mandatory requirements which need to be taken into consideration. For example, under applicable legislation, the natural person must be given sufficient information about the pledge or the guarantee by the beneficiary.

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What are common types of guarantees and security?

Common forms of guarantees

Guarantees may be given for one's own debt or for someone else's. In both cases the guarantees may be either performance guarantees or payment guarantees. Performance guarantees guarantee the performance of the underlying obligations of the debtor. Such guarantees are typically given by a parent company for the performance obligations of its subsidiary. Payment guarantees on the other hand cover the payment obligations of the debtor rather than any contractual performance obligation. The specific terms and conditions applicable to guarantees are determined on a case by case basis.

Common forms of security

The most common forms of securities granted by a company of its assets are:

- a mortgage over real estate;
- a pledge over assets which are identifiable and can be controlled by the creditors (such as equipment and vehicles);
- a floating charge over the fluctuating assets of the company (*Yrityskiinnitys*); and
- a pledge of receivables (such as rental income) and bank accounts.

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Are there any other notable risks or issues around giving and taking guarantees and security?

Giving or taking guarantees

The most notable risks are related to guarantees given by natural persons.

If a guarantee is given by a Finnish limited liability company for liabilities of a third party then the guarantee is subject to the condition that sufficient corporate benefit, as such concept is applicable under the Limited Liability Companies Act, is given to the guarantor or pledgor, and the requirement set out in Section 13:2 of the Companies Act that no distribution of funds should lead to insolvency will apply. The existence of corporate benefit and the fulfilment of the requirement in Section 13:2 are ultimately questions of fact. Should the above referenced requirements not be fulfilled, any guarantee or other security provided for obligations owed by other parties, may be limited and funds or proceeds received may have to be returned to the guarantor.

Giving or taking security

A pledge is only valid and binding if it meets certain prerequisites (for more information, see Giving and taking guarantees and security – restrictions). Of these prerequisites, particular consideration should be had to perfection measures, as if these are not undertaken in accordance with the applicable law, the pledge might not be binding to third parties and it is also more likely to be subject to proceedings to have the pledge set aside. The perfection measures differ depending on the nature of the pledged assets (for example, with real estate mortgages the pledge has to be notified to the register at the Finnish land registry and with shares the pledge has to be written in the share and shareholder's register and relevant share certificates must be given to the beneficiary).

In addition, we would recommend that pledge and guarantee agreements are made in written form signed by both parties. While this is not a mandatory requirement under Finnish law it is recommended for good order.

In addition, any security or guarantee may be subject to measures to have such guarantee or security set-aside under the Recovery Act.

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Financial regulation

Law and regulation

What are the main laws and regulations that apply to entities that are involved in finance and investments generally?

Generally

Securities Markets Act (746/2012, *Arvopaperimarkkinalaki*)

Unfair Business Practices Act (1061/1978, *Laki sopimattomasta menettelystä elinkeinotoiminnassa*)

Act on Trading in Financial Instruments (1070/2017, *Laki kaupankäynnistä rahoitusvälineillä*)

Act on Security Accounts (750/2012, *Laki arvopaperitileistä*)

Act on Detecting and Preventing Money Laundering and Terrorist Financing (444/2017, *Laki rahanpesun ja terrorismin rahoittamisen estämisestä ja selvittämisestä*)

The Act on Finnish Financial Supervisory Authority (878/2008, *Laki Finanssivalvonnasta*)

Consumer credit

Act on Consumer Mortgage Brokers (852/2016, *Laki asunto-omaisuuteen liittyvien kuluttajaluottojen välittäjistä*)

Consumer Protection Act (38/1978, *Kuluttajansuojalaki*)

Act on Registration of Certain Loan Providers and Credit Brokers (853/2016, *Laki eräiden luotonantajien ja luotonvälittäjien rekisteröinnistä*)

Credit institutions

Act on Credit Institutions (610/2014, *Laki luottolaitostoiminnasta*)

Payment Services Act (290/2010, *Maksupalvelulaki*)

Act on Payment Institutions (297/2010, *Maksulaitoslaki*)

Act on Foreign Payment Institutions' Actions in Finland (298/2010, *Laki ulkomaisen maksulaitoksen toiminnasta Suomessa*)

Act of Registration of Entities Undertaking Debt Collection (411/2018, Laki perintätoiminnan harjoittajien rekisteröinnistä)

Act on Agent of Bondholders (574/2017, Laki joukkolainanhaltijoiden edustajasta)

Corporations

Limited Liability Companies Act (624/2006, *Osakeyhtiölaki*)

Partnerships Act (389/1988, *Laki avoimesta yhtiöstä ja kommandiittiyhtiöstä*)

Funds, platforms and investing

Act on Crowd Funding (734/2016, *Joukkorahoituslaki*)

Act on Investment Services (747/2012, *Sijoituspalvelulaki*)

Act on Alternative Fund Managers (162/2014, *Laki vaihtoehtorahastojen hoitajista*)

Act on Mutual Funds (213/2019, *Sijoitusrahastolaki*)

Other key market legislation

Bank Recovery and Resolution Directive (2014/59/EU), implemented by the Act on Resolution of Credit Institutions and Investment Firms and by the Act on the Financial Stability Authority

Markets in Financial Instruments Directive (2004/39/EC), implemented by several national acts, mainly however, by the Act on Investment Services and by the Securities Markets Act

Capital Requirements Regulation (Regulation (EU) 575/2013) (capital requirements)

European Market Infrastructure Regulation (Regulation (EU) 648/2012) (derivatives)

Market Abuse Regulation (Regulation (EU) 596/2014) (market abuse)

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Regulatory authorization

Who are the regulators?

Finanssivalvonta, or the Finnish Financial Supervisory Authority (FIN-FSA), is the authority for supervision of Finland's financial and insurance sectors. The entities supervised by the authority include banks, insurance and pension companies as well as other companies operating in the insurance sector, investment firms, fund management companies, virtual currency providers and the Helsinki Stock Exchange. The FIN-FSA identifies the problems encountered by the markets and supervised entities and takes appropriate action. The supervision supplements controls undertaken by supervised entities and markets themselves. The FIN-FSA ensures that the supervised entities are professionally managed and that they have adequate risk management systems in place and operate according to ethically and professionally qualitative business principles and practices.

Rahoitusvakausvirasto, or, the Financial Stability Authority protects depositors and taxpayers from the effect and expenses of financial crises. It also prevents financial crises and promotes bail-in as part of the Single Resolution Mechanism. It is responsible for the Finnish deposit guarantee system.

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What are the authorization requirements and process?

Depending on the type of firm, a firm must apply to the Finnish Financial Supervisory Authority (FIN-FSA), Ministry of Finance, Ministry of Social Affairs and Health or the Finnish government for authorization. The FIN-FSA grants authorizations for credit institutions, Finnish life, non-life and reinsurance companies, investment firms, fund management companies and custodians.

The application forms, instructions and list of required appendixes are available at the FIN-FSA web page in Finnish and Swedish. The FIN-FSA shall assess whether the application meets the required threshold conditions within three to twelve months of the submission of the complete application.

Authorization is granted only when the entity seeking authorization meets the necessary regulatory requirements. The key pre-condition is that the entity is managed in a professional manner and in line with sound and prudent business principles. The entity must have sound internal governance and adequate financial resources. The entity's headquarters must be located in Finland.

The FIN-FSA authorizations fee depends on the type of the application ranging from €3,700 to €14,300.

Virtual currency providers must be registered in the register of virtual currency providers maintained by the Financial Supervisory Authority (FIN-FSA). A foreign service provider may conduct its activities in Finland either by establishing a branch or by providing its services across the border. Commencement of activities is contingent on the authorization or notification procedure by the FIN-FSA.

Supervised firms and registered insurance intermediaries as well as service providers that have submitted a notification are listed on the FIN-FSA's list. This information is public and may be accessed from the website of the FIN-FSA.

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What are the main ongoing compliance requirements?

Fulfilment of the prerequisites of authorization (such as having adequate financial resources and compliance arrangements in place) and acting in accordance with the applicable legislation are ongoing compliance requirements for authorized firms. Authorized entities may also have to comply with specific compliance requirements applicable to certain entities.

Entities supervised by the Finnish Financial Supervisory Authority (FIN-FSA) shall report various information regularly to the FIN-FSA.

Failure to comply with the authorization prerequisites and applicable legislation can result in administrative sanctions for firms and regulated individuals, and loss of authorization.

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What are the penalties for failure to be authorized?

A person undertaking a regulated activity without being authorized or exempt commits a criminal offence and is liable to a fine or to imprisonment.

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Regulated activities

What finance and investment activities require authorization?

Generally

A person must not carry on a regulated activity in Finland unless authorized or exempt.

A financial activity requires regulatory authorization when it is identified as a specified activity in relation to a specified investment, it is carried on by way of business in Finland and it does not fall within any of the available exemptions.

The operations of a credit institution, investment firm, fund management company, alternative investment fund manager, custodian or insurance company can only be pursued by entities that have been granted authorization by the Finnish Financial Supervisory Authority (FIN-FSA). Virtual currency providers must be registered in the register of virtual currency providers maintained by the Financial Supervisory Authority (FIN-FSA).

Authorizations are regulated in the Credit Institutions Act, Investment Firms Act, Alternative investment fund manager Act, Mutual Funds Act, Insurance Companies Act and Act on Virtual Currency Providers. However, some of these acts include provisions which include conditions which also apply when the operations are not regarded as authorized business.

Consumer credit

Consumer credit activities are regulated activities. These activities can only be offered by firms that have been authorized by the FIN-FSA or equivalent authority in another EEA member state or registered as loan providers in accordance with the Act on Registration of Certain Loan Providers and Credit Brokers. The Consumer Protection Act applies to provision of consumer credit. In addition, the Act on Residential Property Consumer Credit Intermediaries regulates providing residential property consumer credit to consumers.

Consumer is defined in the Consumer Protection Act as a natural person who acquires consumer goods and services primarily for a use other than his or her business or trade (*elinkeinotoiminnassaan*).

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Are there any possible exemptions?

Authorizations are regulated in the Credit Institutions Act, Investment Services Act, Alternative Investment Fund Manager Act, Mutual Funds Act, Insurance Companies Act and Act on Virtual Currency Providers. However, some of these acts include provisions which include conditions which also apply when the operations are not regarded as authorized business.

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Do any exchange controls or other restrictions on payments apply?

Finland does not operate any foreign currency controls.

Where money is transferred from non-EU member states, imports of foreign currency may need to be declared to customs, but there is no legal restriction on moving money in and out of the country.

There may be anti-money laundering (in accordance with EU Directives No. 2015/849/EU and No. 2015/847) and tax considerations to take into account.

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What are the rules around financial promotions?

Rules

According to applicable Finnish Financial Supervisory Authority (FIN-FSA) guidelines, marketing of financial services and instruments means all actions and operations aiming to promote the selling of financial services and instruments. Financial services include all services provided by the various regulated and authorized financial services providers and financial instruments include all instruments provided by the same service providers.

The rules governing marketing and offering of various financial services and instruments are not found in a single piece of legislation but are scattered into service provider and/or financial instrument specific legislation (for more information, see Law and regulation). The objective of the rules is to promote the clarity and high quality of customer and investor information on products and services offered and to ensure appropriate code of conduct of service providers.

The FIN-FSA has issued regulations and guidelines on marketing financial services and instruments as well as regulations and guidelines on codes of conduct when offering financial services and instruments that apply to all service providers and instruments. As a general

rule, the rules and guidelines apply both to domestic service providers, such as deposit banks, credit institutions, payment institutions, investment firms, fund management companies, managers of alternative investment funds and insurance companies, and to Finnish branches of EEA-authorized service providers as well as EEA-authorized service providers providing cross-border services in Finland.

In addition to the service provider and instrument specific legislation, the Unfair Business Practices Act includes general requirements on marketing and conducting business in Finland and the Consumer Protection Act regulates financial promotions directed to consumers. These apply also to providers of virtual currencies. The requirements aim to ensure that, among other things, a company's marketing is in accordance with good and acceptable practices, no improper procedures are undertaken and sufficient information is given to consumers prior to entering into a contract.

Exemptions

The applicable marketing and offering of financial services and products rules differ depending on the type of the customer. Marketing and offering to consumers and non-professional (private) clients is more strictly regulated than the same towards professional clients and eligible counterparties, which may be exempted from certain requirements.

As regards securities offering, offering securities to the public is more regulated than private placements. According to the Securities Market Act, offering securities to the public means a communication to persons presenting or intended to present sufficient information on the terms of the offer and the security offered, so as to enable to decide to purchase or subscribe to the security.

The Finnish rules are generally applicable also to Finnish branches of EEA-authorized service providers as well as EEA-authorized service providers providing cross-border services in Finland, but there are certain exemptions. For example, the FIN-FSA marketing guidelines do not apply to EEA-authorized service providers providing cross-border investment services in Finland.

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Entity establishment

What types of legal entity are generally used to undertake financial or investment activity?

Generally

The most common type of legal entity is a limited liability company regulated by the Limited Liability Companies Act. A limited liability company is a body corporate with separate legal personality and which limits the liability of its members. A limited liability company can be either private or public depending on whether or not the shares are offered to the public.

The liability of a company's shareholders is limited by shares (i.e. to the invested share capital), in which case they are liable to pay for their shares but not the company's debts. However, if the shareholders have given separate guarantees for the company's obligations they are also liable for the amount guaranteed if the company does not fulfil the guaranteed obligation.

In addition, many Finnish Banks (usually credit institutions) are established as cooperatives (*osuuskunta*). Cooperatives are owned by their members and are thus similar to limited liability companies.

In addition, limited partnerships can undertake investment activities. Limited partnerships are formed by a private agreement, which is signed by all of the partners.

Funds

Investment funds can take the form of limited partnership when they are classified as alternative investment funds. Mutual funds and special mutual funds are defined as a pool of acquired assets and they are not legal persons. They are managed by fund management companies, who manage the funds in their own name but on behalf and for the benefit of the fund.

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Is it possible to conduct lending or investment business through a branch or establishment?

Yes, provided however, that if the company conducts any authorized activities it must be authorized in another EEA country.

A company can conduct lending or investment business in Finland through a branch but this does not create a separate legal entity. The foreign trader must submit a start-up notification concerning its branch to the Finnish Patent and Registration Office before the branch commences its operations. If the business to be conducted and the services to be provided are regulated activities (i.e. it is a branch to a credit institution, insurance company, investment company or management company) then the Finnish Financial Supervisory Authority (FIN-FSA) must also be notified.

If the trader is from a country outside the EEA, it will also need a permit from the Finnish Patent and Registration Office, as well as the FIN-FSA for the establishment of the branch.

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FinTech

FinTech products and uses

What are the most common technology products and FinTech applications used or being developed in the finance and investment marketplace?

Peer-to-peer funding platforms and marketplace lending

There is no strict definition for marketplace lending, given the wide variety of entrants and financing techniques involved. The principal characteristics of new marketplace lenders, however, would include:

- operating from or through a non-bank lending platform established as a specialist corporate or special purpose vehicle (SPV) based structure;
- applying technology to leverage and optimize the lending platform and user experience; and
- connecting borrowers and lenders through the platform rather than applying funding arising from a wider deposit-based relationship.

Marketplace lending is available to address most forms of traditional bank funding products. Recently products have included:

- consumer loans (Fixura and Lainaaja are examples of providers); and
- small and medium-sized enterprises (SME) lending (eg Fellow Finance).

It is likely that the volume of lending in these product areas as well as further and additional product areas will significantly increase over the coming years, as financing becomes more readily available to support the marketplace lending sector.

Blockchain, smart contracts and cryptocurrencies

WHAT IS BLOCKCHAIN?

Blockchain provides a new approach to holding and authenticating data. It is a database operating through distributed ledger technology, in which data is recorded on computers, by way of a peer-to-peer mechanism, based on pre-agreed consensus algorithms in the applicable participating network. It is a form of database where data is stored in the chain in either fixed structures called 'blocks' or algorithm functions called 'hashes'.

Each block includes unique features, such as its unique block reference number, the time the block was created and a link back to the previous block. Each block is reviewed by a number of nodes and the block is only added to the database if the node reaches consensus that the block only contains valid transactions. Content includes digital assets and instructions which reflect the transactions and parties

to those transactions. The ability to track previous blocks in the chain makes it possible to identify transactions back to the first ever transaction completed, enabling parties to verify and establish the authenticity of the assets in the latest block. This makes blockchain exceptionally accurate and secure.

Specialist users on the system apply advanced computing software to identify time stamped blocks, verify the accuracy of the blocks using sophisticated algorithms and add the verified blocks to the chain. As the number of participants increases, the replication of the data over a wider base makes it harder for any person to alter the data in the chain. Any attempted addition or modification to the information on a block needs to be approved by all users in the network and verification of any block can only happen through a 'proof of work' process. This process requires vast amounts of computing power, making it practically impossible to insert fake transactions into a block.

As a result, the data is identified and authenticated in near real-time, providing a permanent and incorruptible database sufficiently robust to operate as a store of value (eg in the case of cryptocurrencies such as bitcoin) or providing an indisputable record for example relating to securities transfer.

Blockchain is a decentralized system, created and maintained by users of the network rather than being dependent on any central or third party intermediary. It may be public and open ('permissionless' or 'unpermissioned') or structured within a private group ('permissioned').

Permissionless blockchains include bitcoin and ethereum, in which anyone can set up a node that, once authorized can validate, observe and submit transactions. The identities of the participants are not known (other than the unique and random identities known as an 'address'). Permissioned ledgers restrict participation in the network and only the specific participants are given access and are known within the network. The network is private, and only organizations that have been authorized can participate and view transactions.

WHAT ARE SMART CONTRACTS AND DECENTRALIZED AUTONOMOUS ORGANIZATIONS (DAOS)?

Developments in blockchain are also providing an ability to transfer and rely on instructions verified within the system in the form of so called 'smart contracts'. These contracts have been converted into code and are then executed and enforced by the blockchain network on the occurrence of an event. This reduces the need for intermediaries to collect, store and act on communicated information.

Smart contracts are essentially pre-written computer codes which are stored and replicated on distributed ledger platforms such as blockchain. Execution takes place over the network, eliminating the need for intermediary parties to confirm the transaction, leading to self-executing contractual provisions. These contracts can be as simple as moving a balance from one account to another or advanced more-complex interactions with the outside world using so called 'Oracles'. With Oracles the contract code consults with a service outside of the blockchain network to make a decision. This may entail receiving a confirmation that an event has occurred, such as payment, which automatically executes a further step in the contract, such as the transfer of an asset, which might be in digital form, or by delivering instructions to a person or warehouse to release the asset for delivery.

DAOs are essentially online, digital entities that operate through the implementation of pre-coded rules. These entities often need minimal to zero input into their operation and they are used to execute smart contracts, recording activity on the blockchain. DAOs can be particularly challenging to regulate depending on their software engine, the nature of transactions they are completing or other unique features. Questions of ownership and responsibility for resulting acts of DAOs can also be brought to question if any technical issues arise with their operation.

WHAT IS A CRYPTOCURRENCY?

The European Central Bank definition of a cryptocurrency is that it is a digital representation of value that is neither issued by a central bank or public authority nor necessarily attached to a fiat currency, but is issued by natural or legal persons as a means of exchange and can be transferred, shared or traded economically. The oldest and best-known cryptocurrency is bitcoin (itself based on the bitcoin platform) although many other cryptocurrencies now exist. For example, the most widely-known alternatives to bitcoin include ether based on the ethereum platform and litecoin (these cryptocurrencies are now actively traded with a large developing infrastructure for holding, pricing and exchanging currency).

Initial coin offerings and token-based products

WHAT IS AN INITIAL COIN OFFERING (ICO)?

ICOs are a form of digital currency or token using blockchain technology. ICOs are often a means by which funds are raised for a new blockchain or cryptocurrency venture. ICOs come in a wide variety of forms and may be used for a wide range of purposes. Some forms

of ICOs may be directed at customers or suppliers as a form of loyalty program or a form of access or purchasing power (preferential or otherwise) in respect of assets of the issuer's business. Other forms may be more focused on raising initial funding.

In an ICO the company issues digital tokens or coins that have value inside the company's ecosystem. The tokens or coins can be transferred either to other ecosystems, or for government regulated money.

It is essential to examine the legal and regulatory basis for any ICO, as an unauthorized offering of securities is illegal and may result in criminal sanctions in a number of jurisdictions. Legal analysis of the underlying token will determine if it should be treated as a virtual currency (as discussed later in detail), a specified investment or form of regulated security, or is more appropriately a form of asset that is not itself subject to the regulatory regime.

Typical attributes provided by tokens will include:

- access to the assets or features of a particular project;
- the ability to earn rewards for various forms of participation on the platform; and
- prospective return on the investment.

Key aspects to consider will include the:

- availability and limitations on the total amount of the tokens;
- decision-making process in relation to the rules or ability to change the rules of the scheme;
- nature of the project to which the tokens relate;
- technical milestones applicable to the project;
- basis and security of underlying technology;
- amount of coin or token that is reserved or available to the issuer and its sponsors and the basis of existing rights;
- quality and experience of management; and
- compliance with law and all regulatory requirements.

The nature of the business and the purpose and structure of the token offering will typically be set out in a white paper available to potential purchasers.

Artificial intelligence and robo advisory systems

Automated financial advice tools, also known as 'robo advisors' are software tools driven by artificial intelligence (AI) that provide a variety of investment advice services, from portfolio selection to personal finance planning. The systems are generally operated on a platform /personal dashboard basis; a user can input a set of personalized data to be processed by the AI algorithms which produce optimized outcomes around specified parameters. Although generally used in the asset management sector, AI and automated advice tools also impact in the banking and private wealth advisor sectors; the implications include decreased human involvement, although recent trends have included a growth in popularity of hybrid structures which combine AI and human inputs. In Finland, for example, Taaleri has an authorized robo-advice system.

Data analysis and cloud computing

Cloud computing enables delivery of IT services through internet-based tools and applications, rather than direct connection to a physical server. Cloud-based storage makes it possible to save masses of data to remote servers, accessible through the internet rather than by way of a physical connection. With the vast data processing and storage capabilities offered by cloud computing technology and virtually no infrastructure barriers to entry, there are a number of applications in building and running FinTech businesses and the technology has had a significant impact in recent years.

Financial management for businesses

There are currently several Finnish FinTech companies (Holvi and Zervant are examples) providing online financial management services for SMEs. Such services include, for example, online invoicing, paperless bookkeeping, portfolio management, customer relationship management and reporting.

Payment technology

Finnish FinTech companies are also providing different types of online payment services. These include, for example, an application by PayiQ through which a client may acquire tickets for events or public transport.

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Are there any restrictions, specific laws, regulations or procedures that apply to FinTech products?

General financial regulatory regime

The Finnish Financial Supervisory Authority (FIN-FSA) is the regulator for firms providing financial products and services in both retail and wholesale markets.

GENERAL

A person must not carry on a regulated activity in Finland unless authorized or exempt. A financial activity requires regulatory authorization when it:

- is identified as a specified activity in relation to a specified investment;
- is carried on by way of business in Finland; and
- does not fall within any of the available exemptions.

Where FinTech products and/or applications involve financial activity which require regulatory authorization, the firms providing such products and/or applications must be authorized by the FIN-FSA.

FIN-FSA INNOVATION HELP DESK

To foster the growth and development of startup companies and other innovators, the FIN-FSA has set up an Innovation Help Desk to advise whether an innovation requires authorization and to advise further on permits, registration and other authorization issues. The FIN-FSA Innovation Help Desk is available to both startup companies in the sector and enterprises that are already established and are planning a new type of product, service or way of operating. More information can be found here.

Virtual currency

The Act on virtual currency providers (572/2019) entered into force 1 May 2019. The Act is part of the national implementation of the EU's Fifth Anti-Money Laundering Directive. According to the definition, a virtual currency means a digital representation that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically. Further FIN-FSA regulations and guidelines 4/2019 concerning virtual currency providers enter into force on 1 July 2019.

According to the Act on virtual currency providers, virtual currency issuers, operators of virtual currency exchange services (including marketplaces) and providers of virtual currency custodian wallet services are subject to a registration obligation as of 1 May. Virtual currency providers operating in the market prior to the entry into force of the Act must submit an application for registration with the FIN-FSA by 18 August 2019 in order that their qualification for registration can be assessed by 1 November. New providers considering the launch of activities after the entry into force of the Act may only provide services to customers after their applications for registration have been processed and approved.

Virtual currency providers are considered obliged entities under the Anti-Money Laundering Act as of 1 December 2019, which means that they must report suspicious transactions to the Financial Intelligence Unit of the Police. The FIN-FSA supervises the actions and measures of virtual currency providers related to anti-money laundering and counter-terrorist financing.

Crowdfunding services and peer-to-peer lenders

CROWDFUNDING SERVICES

The Crowdfunding Act (Fi: *Joukkorahoituslaki* 734/2016, as amended) (Crowdfunding Act) entered into force in September 2016. The objective of the Crowdfunding Act was to clarify the responsibilities of various authorities in the supervision of crowdfunding, to improve investor protection, to diversify the financial markets and to ease the regulation on entities offering crowdfunding services.

The Crowdfunding Act covers both loan-based crowdfunding and investment-based crowdfunding (ie which involves the issue of securities or other instruments), but is not applied to either peer-to-peer (P2P) lending or to money collection. Under the Crowdfunding Act, entities offering crowdfunding services (ie crowdfunding intermediaries) must have a permit issued by, and entered in, a register maintained by the FIN-FSA. Depending on the operating model of the crowdfunding intermediary, the operations may also be subject:

- to other regulations, such as the:
  - Money Collection Act (Fi: *Rahankeräyslaki* 255/2006, as amended);
  - Sale of Goods Act (Fi: *Kauppalaki* 355/1987, as amended) and;
  - Consumer Protection Act (Fi: *Kuluttajansuojalaki* 38/1978, as amended) (as is the case with loan-based crowdfunding); or
- to financial markets legislation, such as the:
  - Credit Institutions Act (Fi: *Laki luottolaitostoiminnasta* 610/2017, as amended);
  - Investment Services Act (Fi: *Sijoituspalvelulaki* 747/2012, as amended);
  - Act on Alternative Investment Fund Managers (Fi: *Laki vaihtoehtorahastojen hoitajista* 162/2014, as amended); and
  - Securities Markets Act (Fi: *Arvopaperimarkkinalaki* 746/2012, as amended) (with investment-based crowdfunding).

Intermediaries providing services under the Crowdfunding Act are within the optional exemption available to European Union member states under article 3 of the Markets in Financial Instruments Directive (MiFID 1). This means that crowdfunding intermediaries operating under the Crowdfunding Act do not require authorization as MiFID investment firms. Consequently, entities permitted by FIN-FSA to offer crowdfunding services are not within the European Union passporting regime and may not offer crowdfunding services in other European Economic Area (EEA) countries and, *vice versa*, entities authorized in other EEA countries may not offer such services in Finland without FIN-FSA's permission. It should be noted, however, that this position does not apply to entities which have been authorized to carry out a regulated activity which is within the scope of MIFID I. These include *inter alia* credit institutions operating under the Credit Institutions Act (Fi: *Laki luottolaitostoiminnasta* 610/2017, as amended) and investment firms operating under the Investment Services Act (Fi: *Sijoituspalvelulaki* 747/2012, as amended). Such entities may act as crowdfunding intermediaries under their authorization without needing separate permission for crowdfunding services.

PEER-TO-PEER LENDERS

P2P lending so far, requires no authorization; hence, for example, the administrative staff, internal control or risk management systems of a P2P lending intermediary are not subject to official supervision. This also means that there is no supervision of the credit ratings that may be assigned to borrowers by P2P lending companies. However, authorities have decided that certain participating parties in P2P lending must be entered in a register of credit providers maintained by, and must be supervised by, the Regional State Administrative Agency of Southern Finland (Fi: *Etelä-Suomen aluehallintovirasto*). Under the Act on Registration of Certain Loan Providers and Credit Brokers (Fi: *Laki eräiden luotonantajien ja luotonvälittäjien rekisteröinnistä* 853/2016, as amended) the lending intermediary must be registered in the register maintained by the Regional State Administrative Agency of Southern Finland if they provide consumer credit or are considered to offer consumer credit, as defined in the Consumer Protection Act (Fi: *Kuluttajansuojalaki* 38/1978, as amended) or if they act as an intermediary in P2P lending.

Regulation of payment services

Payment services include, for example, account transfers, card payments and direct debits (where the service provider acts as intermediary between payer and payee and transfers funds between the parties in accordance with given instructions). In Finland, payment services can only be provided by service providers that meet the requirements laid down in the Payment Institutions Act (Fi: *Maksulaitoslaki* 297/2010, as amended), either acting as authorized payment institutions or entities that the FIN-FSA has approved for the provision of payment services without actual authorization.

Payment services can be provided without authorization, as long as the total value of completed transactions does not exceed:

- for natural persons, an average of €50,000 a month over a period of 12 months; and
- for legal persons, an average of €3 million a month.

However, those providing payment services without authorization must submit a notification to FIN-FSA prior to the commencement of the service. After receiving such a notification, FIN-FSA investigates whether the service provider meets the statutory requirements.

- A natural person cannot be authorized as a payment institution.
- Legal persons must apply for authorization as a payment institution if the total value of their payment services exceeds the above-mentioned limit.
- A credit institution may provide payment services based on its own authorization.
- A foreign payment institution authorized in EEA may also provide payment services in Finland, provided that proper notification is made to FIN-FSA.

The legal requirements for the provision of payment services, such as the disclosure requirements and contract terms and conditions, are laid down in the Payment Services Act (Fi: *Maksupalvelulaki* 290/2010), as amended. It regulates, for example, the service provider's obligation to provide information to end users on the terms of the relevant agreement governing the provision of the services and executed payments. It also regulates how payments are executed, what the terms and conditions are, and what responsibilities the parties have.

FIN-FSA supervises terms and conditions, disclosure obligations and the carrying out of such services in respect of payment institutions, credit institutions and their agents.

The European Union's Payment Services Directive II has been transposed into Finnish law through changes to the Payment Institutions Act and the Payment Services Act. It can be noted that the FIN-FSA complies with European Banking Authority's proposed additional time for strong customer authentication in e-commerce card-based payments and such requirements must be implemented by 31 December 2020.

Application of data protection and consumer laws

General principles of processing and disclosing personal data are regulated by the European General Data Protection Regulation (GDPR), supplemented by the Personal Data Act of Finland (*Tietosuojalaki* 1050/2018, as amended). Criminal liability may ensue if obligations of the Data Protection Act are not followed.

In addition to sector-specific regulations, general consumer protection regulation applies to the provision of payment services to consumers. A consumer is defined in the Consumer Protection Act (Fi: *Kuluttajansuojalaki* 38/1978, as amended) as a natural person who acquires consumer goods and services primarily for other purposes than to his or her professional purposes. The Finnish consumer ombudsman supervises the terms and conditions and disclosure obligations and the carrying out of such services in respect of payment services providers without authorization, where the users of the service are consumers.

Money laundering regulations

Payment services providers must comply with anti-money laundering requirements as provided in the new Finnish Act on Preventing Money Laundering and Terrorist Financing (Fi: *Laki rahanpesun ja terrorismin rahoittamisen estämisestä* 444/2017, as amended), which entered into force in July 2017. The new Act implements the European Union's Fourth Money Laundering Directive.

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What type of funding arrangements and incentives are available to FinTech businesses?

Early stage

SEED INVESTMENT

Initial investment in FinTech businesses may be provided by, for example, the founders and other high-net-worth individuals (often known as business angels) in return for an equity stake. Such seed investment is often used to fund the establishment and early growth of the business before larger investment is available. The investing individuals may also provide know-how and expertise to assist in the company's development. The seed investors would typically not require the same controls over the business as, for example, venture capital providers.

THE FINNISH FUNDING AGENCY FOR TECHNOLOGY AND INNOVATION (TEKES)

Tekes is the most important public funding agency for research funding in Finland. Tekes provides funding to transform research-stage ideas into viable businesses, and may combine direct unconditional funding with Tekes-guaranteed loans, conditional on the success of the resulting business.

ANGEL INVESTORS

Business angel financing has developed as an important source of early stage capital for startups. A business angel is an individual who provides capital for a startup and usually in exchange for convertible debt or ownership equity. Business angel funding is also provided through cooperative platforms, such as the Finnish Business Angels Network (FiBAN).

ACCELERATORS

Accelerators, which are normally set up by business communities, governments or academic centers provide essential mentoring, capital and connections for FinTech companies. Accelerators had an important role in startup financing some years ago but their relevance has, however, since declined.

CROWDFUNDING

Crowdfunding is available but is not a common way of funding for a FinTech business, because the business ecosystems around FinTech are typically highly complex and not easily marketable to the public. Crowdfunding involves members of the public investing in a business by pooling their resources through an intermediary platform. The idea of crowdfunding is, that a large number of investors make relatively small investments through an online platform to a certain company, which usually is in its early stages.

Venture capital and debt

Venture capital funding is a type of equity investment usually targeted at early stage FinTech companies with an established business and some trading history. Venture capital provides a viable alternative to traditional lending given that the business is unlikely to have the tangible asset base or long track record needed to attract traditional debt funding from financial institutions.

Corporate venture capital (CVC) is a type of venture capital and involves an equity investment by a corporate fund. The benefit of having a CVC as an investor for a FinTech startup is that the fund is able to share its knowledge and expertise of the FinTech sector with the company and act as an advisor.

An additional funding option is venture debt, which is secured against a company's assets and includes an equity element allowing the debt provider to purchase shares in the company. However, venture debt providers will usually only invest into companies that have already received investment through venture capital.

Peer-to-peer platform funding

One form of funding is by way of peer-to-peer (P2P) lending platforms, which bring individual borrowers and lenders together without the involvement of traditional banks. P2P lending does not involve equity investments, and instead interest is paid on the money borrowed.

Senior bank debt and capital markets funding

Once a FinTech company is established and has a track record, bank debt becomes a more viable source of funding, either on a secured or unsecured basis, depending on the creditworthiness and asset base of the business. In contrast to capital markets funding which is often covenant-lite, bank funding will generally involve the imposition of financial covenants and controls that will apply over the life of the facility. Bank finance may be particularly important for working capital, overdraft, accounts management and general liquidity purposes.

CAPITAL MARKETS FUNDING

In Finland both debt and equity capital markets are accessible to businesses (usually of a certain size).

A FinTech company may raise finance by listing on First North, which is a Nordic alternative market designed for small and growing companies. The First North market is maintained by local NASDAQ OMQ stock exchange companies (in Finland NASDAQ OMX Helsinki Oy). Using a less extensive rulebook than the main market, the First North market provides companies with more room to focus on their business and development, while still taking advantage of all the positive aspects of being a listed company. The First North market runs in the Nordic stock exchange parallel to the main market, where the shares are traded in a single trading system. For investors, First North offers an opportunity to invest in companies that are in an interesting stage of their growth. Many large and established companies began their journey on First North, creating growth and gaining experience. Many of these companies went on to listing on the NASDAQ regulated main market.

As an alternative to bank or other types of financing, Nordic companies are increasingly funding themselves via corporate bonds. The benefits of corporate bonds include, for example:

- the possibility for longer maturities;
- fixed interest rates and bullet repayment (ie no amortization);
- reduced dependency of banks;
- less detailed terms compared to bank loans; and
- transparency in secondary market pricing.

The Nasdaq First North Bond Market is an alternative marketplace with an efficient admissions process. On the Nasdaq First North Bond Market, bonds can be admitted to trading without having a prospectus approved by the Finnish Financial Supervisory Authority or without a need to comply with IFRS accounting standards. Due to these reasons, issuing bonds on the Nasdaq First North Bond Market can be seen as a tempting alternative for FinTech companies as it allows them to concentrate on developing their core business.

Last modified 26 Nov 2019

Portfolio sales

Loan transfers and portfolio sales

What are common ways of buying and selling loans?

A loan can be sold on an individual basis or packaged up with other loans and sold as a portfolio pursuant to overarching terms.

The most common ways of selling loans are:

- **Transfer** – A transfer is a full legal transfer of the loan agreement, including all rights and obligations of the lender as well as the underlying security. It is a tripartite arrangement between the existing parties and the transferee and results in a fresh contract being formed between the continuing party and the transferee and the transferor being released from its obligations.
- **Assignment** – An assignment is a transfer of lender's rights only, not obligations. Subject to any contractual restrictions, assignment can be done without the consent of the debtor. An assignment can be effected as either an equitable assignment or legal assignment depending on whether certain statutory requirements have been satisfied.
- **Sub-participation** – A sub-participation is a transfer of the economic interest in a loan without changing the legal relationship between the existing parties. Sub-participations involve the buyer taking on double credit risk, both on the seller as well as the borrower.

- **Securitization** – In a securitization transaction the creditor/issuer creates a financial instrument by combining and repacking loans and selling the related cash flow to investors in a form of securities.

Loan transfers are commonly documented using standard form contracts made available by the Loan Market Association. For more complex transactions, a more bespoke form of sale and purchase agreement would tend to be used. The form and content of the transfer documentation will depend on the nature of the loan assets being sold.

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What are the main considerations when transferring a loan and related security?

There are a number of issues to be considered before transferring a loan or portfolio of loans. These issues are often covered as part of a due diligence exercise by the seller's legal advisors. Some of the key considerations include:

- **confidentiality** – whether the seller of the loan is allowed to disclose information relating to the loan to a potential purchaser;
- **data protection** – whether there is any personal data or other restricted information in the loan that should not be disclosed to a potential purchaser;
- **lender eligibility** – whether there are any restrictions around the type of entity to which the loan can be transferred;
- **undrawn commitments** – whether there are any continuing obligations for further funding or other material obligations on the part of the lender that may fall on the transferee or reduce claims made by the transferee;
- **transfer mechanics** – whether there are any steps that need to be taken to transfer the loan in accordance with its terms;
- **consent** – whether a transfer requires the consent or notification of any other parties;
- **lender's position** – according to Finnish law, the transferee of a loan will not obtain a better position towards the borrower than the original transferor (thus, to the extent the borrower may present claims against the original lender, it may also present such claims against the new lender);
- **security** – whether the loan is covered by guarantee or other security (Finnish law does not recognize an assignment of security. However, under Finnish law, secured loans can be transferred and the general rule is that, as an ancillary obligation, the guarantee /security associated with the loan is transferred together with the debt which is typically expressly permitted under the financing documents.); and
- **syndicated loans** – usually, a security agent is appointed to act for and on behalf of all lenders (no further actions, other than notices in the loan documents, are usually required to transfer the benefit of the security if the composition of the bank syndicate changes).

Last modified 26 Nov 2019

Projects

Financing / investing in energy / infrastructure

To what extent are energy and infrastructure assets publicly or privately owned?

Generally

The ownership of energy and infrastructure assets in Finland varies according to the asset class. The main asset class may be divided into:

- economic infrastructure (energy, aviation, rail, telecommunications, water, roads and waste); and
- social infrastructure (education, health and justice/prisons, housing).

Key sectors are considered below.

Energy

Finland's electricity market was gradually opened to competition after the passing of the Electricity Market Act in 1995. Since late 1998, all electricity users, including private households, have been able to choose their preferred electricity supplier. Monopolistic electricity transmission is regulated and supervised by the national authority, which in Finland is the Finnish Energy Authority.

Fingrid Oyj is responsible for the electricity transmission in the hihg-voltage transmission in Finland. Republic of Finland owns approximately 28% of the shares, National Emergy Supply Agency 25% and Ilmarinen Mutual Pension Insurance Company 20 %. There are approximately 76 electricity distribution network operators in Finland. Sale of electricity does not require permit but is regulated and supervise by the authorities. The electricity market also allows electricity consumers (including households) to practice small-scale electricity production and sell the energy on the market.

The electricity market is regulated by the Electricity Market Act and Government Decrees based on the Electricity Market Act. The Energy Authority monitors compliance with the electricity market legislation and promotes the operation of the competitive electricity and natural gas markets.

From the beginning of 2020, the Finnish natural gas transmission network wil be operated by state-owned gas transmission operator, Gasgrid Finland. Under the Natural Gas Market Act the wholesale and retail natural gas markets will be opened for competition at the beginning of 2020. Simultaneously the previous TSO, Gasum will be unbundled and Finland is not anymore an isolated market.

Telecoms infrastructure

The telecommunication networks in Finland are privately owned by a number of service providers. *Elisa, TeliaSonera* and DNA, which is a subsidiary of the Norwegian Telenor.

The Finnish Transport and Communications Agency Traficom steers and supervises compliance with the provisions and regulations that apply to its field of activity. Traficom's steering and supervision applies to telecommunications operators, TV and radio operators, users of radio frequencies, postal operators, and several players related to electronic communications networks.

Transport infrastructure

LIGHT RAIL

Light rail systems (metro and trams) in Helsinki are managed by the Helsinki City Transport (HKL) that is owned by the City of Helsinki. HKL owns the tramways, metro tracks and metro stations of Helsinki, as well as the trams and metro trains themselves. Further, HKL owns the public transport infrastructure in Helsinki and is in charge of developing and maintaining it. Other cities in Finland do not have light rail public transportation.

HEAVY RAIL

In Finland the rail passenger market is not yet open to competition and VR is the only train operating company in Finland. The rail freight market was fully opened to competition in 2007, with the first new entrant on the market in 2012.

The Finnish Transport Agency is responsible for the state-owned railways. The transport system is maintained and developed in cooperation with other actors, such as VR Tracks, a subsidiary of the VR Group.

ROADS, BRIDGES AND TUNNELS

Together with the regional ELY Centers, the Finnish Transport Agency is responsible for the maintenance and development of the state-owned road network. The Finnish road network comprises highways (owned by the State), municipal street networks (maintained by municipalities) and private roads (owned by private individuals or associations, and are mainly used to enable the passage to private lands and may only be used by those who own the roads). Private roads may only be established by application and in accordance with the Act on Private Roads. The public sector does not currently outsource the construction, maintenance or operation of roads. It does however, use public procurement procedures when planning and contracting and maintaining roads. For example, Public-Private Partnership (PPP) financing models have been used in motorway projects (eg E18 *Muurla-Lohja* motorway).

AVIATION

The basic rules governing aviation in Finland can be found in the Aviation Act and in EU regulations directly applicable in all member states. Some of the market is privatized however, the principal actors on the market are government owned companies. For example the biggest airline is Finnair, of which the state owns almost 60%. However, airports themselves and the aviation infrastructure are not privatized and are all owned by the state of Finland. The maintenance of all airports is the responsibility of *Finnavia Oyj*, which is a public limited liability company owned by the state.

PORTS

In the past, the ports in Finland have been public utilities of municipalities but after the decision of the European Commission, the ports were incorporated and are nowadays limited liability companies. The ports are however, mainly in the ownership of municipalities or a group of municipalities. Also, the industrial sector owns some ports for the purposes of their industry.

Other infrastructure

SOCIAL INFRASTRUCTURE (SCHOOLS, HOSPITALS, EMERGENCY SERVICES, CENTERS/PRISONS)

Typically, all are owned by the public sector.

Hospitals/healthcare

Healthcare in Finland consists of a highly decentralized, publicly funded healthcare system and a relatively small private sector (mainly consisting of occupational health care, provided to employees by their employer as a work benefit and also of few private hospitals and healthcare hubs). Each person residing in Finland has the right to healthcare services.

The Ministry of Social Affairs and Health is the highest decision-making authority regarding healthcare, but the municipalities are responsible for providing healthcare to their residents. The municipal financing of healthcare consists of two sources; municipal taxes and user fees. The municipalities also have the right to receive state subsidies, if their tax levy is not adequate for providing the public services required.

The private sector is relatively small and the barrier to using private healthcare services are high due to the higher service fees. However, the Social Insurance Institution (KELA) reimburses a significant share of the cost.

There is an ongoing social welfare and healthcare reform in Finland, the objective of which is to create financially viable bodies as service organizers (including private sector bodies), and to also to achieve complete horizontal and vertical integration of social welfare and health care services. This reform is expected to offer opportunities to investors.

Schools

Schools are generally owned by the public sector (mainly municipalities). However, schools may outsource certain services such as building, maintenance and other projects to private sector entities.

DEFENSE

Defense assets are owned by the public sector.

WASTE

The municipalities must organize the recovery and treatment of hazardous agricultural waste and domestic waste. In addition to this, municipalities are responsible for the urban waste produced by public administration services and the education sector. Municipalities also distribute information and offer guidance on waste management. Municipal responsibilities are described in more detail in Section 32 of the Waste Act. In practice, many municipalities sub-contract most of their waste management duties to local companies.

WATER

The municipalities are responsible for the arranging of water and wastewater services in Finland but water supply establishments usually provide the services. The regional ELY Centers as well as the municipal health authorities regulate and supervise the water sector.

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Are there special rules for investing in energy and infrastructure?

Generally

There is no specific regime governing or restricting investment in energy or infrastructure projects in Finland over and above existing regulation for investors and funders more generally but a particular proposed investment may be subject to legislative or regulatory control (eg merger control rules). As regards the planning and implementation of the underlying energy or infrastructure project (in which the investment is to be made) the legal/regulatory position relevant to that project must be considered. For example, a project involving development on land will require planning permission; and a project may need environmental authorizations and/or sector specific regulatory consents or licenses.

Energy

The energy markets in Finland are open to competition (with the exception of *Åland*) and there are no restrictions on entering into the market. However, the regulation is fairly complex: while the production and sales of electricity are open to competition, distribution activities are divided into regional monopolies, subject to permits and are under the surveillance of Energy Market Authorities.

Production activities are heavily regulated and supported by legislation and authorities (eg for environmental reasons).

Electricity production facilities are capital-intensive and investments in them are long-term investments. The functioning of the markets, legislation and predictability of such markets and legislation are influential considerations to investments in electricity production facilities on a commercial basis.

The most important legislative development in Finland pertaining to renewable energy took place in June 2018 by the amendment of the Finnish Act on Production Subsidy for Electricity Produced from Renewable Energy Sources (1396/2010, Fi: laki uusiutuvilla energialähteillä tuotetun sähkön tuotantotuesta), which implemented a new support scheme for renewable energy based on technology-neutral premium based tender process.

The Act adopts a new tendering system for renewable energy subsidies. Unlike in the previous feed-in tariff system, under the new auction-based tendering system the state will define the annual target amount of renewable energy for each tendering round, and eligible electricity producers will then file their bids with the Finnish Energy Authority.

During each tendering round, the producers must determine the premiums (i.e. the amount of support from the state) they require for producing energy and the predicted annual volume of their energy production. The projects will then be ranked based on the bids, and those with the lowest premium rates will be accepted in ascending order until the annual target amount of renewable energy production is reached. The premium offered would have to fall under the threshold price of the process, which to start with is EUR 53.5 per MWh, i.e. the same as under the current feed-in tariff system. The state will grant premiums for the accepted projects for a maximum period of 12 years.

The first (and so far the only) auction round took place between 15 November and 31 December 2018. The annual electricity production available for auction was 1.4 TWh.

The principal legal framework regarding energy markets consists of the Act on Electricity Markets and the Act on Natural Gas Markets.

Corporate PPAs:

Corporate power purchase agreements (PPAs) for renewable energy have only recently entered the Finnish renewable energy market. This results from the fact that while the installed capacity of wind energy has doubled within two years to roughly 2,000 MW in Finland in 2018, a majority of these wind energy investments were made with the support of state aid from the previous feed-in tariff scheme, which was closed at the end of 2017.

Registration and reporting obligations under REMIT:

Undertakings active in the electricity sector are preparing for registration and reporting obligations under REMIT to enter into force gradually in force in Finland. Registration and reporting obligations, as well as ensuring compliance with several partially overlapping regulatory regimes (REMIT, financial regulation, competition law), increase the administrative burden and costs of numerous undertakings active in the sector.

Currently, it is hard to anticipate the exact effects of the REMIT regime in Finland and on the Nordic electricity markets, and much will also depend on the actual activity of the Energy Authority, Financial Supervisory Authority and their cooperation with other relevant domestic and supranational authorities.

Telecoms infrastructure

The telecoms markets are heavily regulated and certain activities are subject to permits (eg network permits) from the FICORA. However, FICORA actively intervenes in competition problems detected on the broadband and telephone markets, which enables new and innovative service providers to enter the markets.

The principal legal framework consists of the Information Society Code, which regulates most parts of the field.

Transport infrastructure

There is an ongoing legislation project to implement a new Traffic Code, which will also affect the legal framework regarding transportation more generally.

In Finland, the rail passenger market is not yet open to competition and VR is the only train operating company in Finland. The tracks however, are the responsibility of the Finnish Transport Agency who procures the planning, building and maintenance from companies in the field. VR Tracks is the principal actor in the market. The rail freight market is open to competition.

Maintenance of the roads is on the responsibility of the government. The public sector usually procures services for road projects from private sector entities, who carry out the projects. However, these actions are not outsourced.

Last modified 26 Nov 2019

What is the applicable procurement process?

Finnish public procurement is subject to national procurement legislation (Act on Public Contracts and Concessions). In addition, there are sector-specific regulations, such as the act regarding public contracts and concessions on certain special fields (ie water and energy maintenance, traffic and postal services) and the Act on Defense and Security Public Contracts. These implement the EU directives on public procurement.

Under these regulations, public sector procurement must follow transparent open procedures ensuring fair and non-discriminatory conditions of competition for suppliers.

Investing in energy and infrastructure

Public procurement is relevant where a public unit is seeking to outsource delivery of a new project. On an infrastructure project, a potential investor would have to bid in its own capacity or as part of a consortium to deliver the overall deal, which could include design, build, operation, maintenance and financing of the relevant energy or infrastructure asset. The relevant procurement legislation applies to certain public bodies including central government departments, local authorities etc.

A regulated procurement is required where certain financial thresholds are met. On most major infrastructure projects, it is likely that those thresholds will be met so a regulated procurement would need to be run.

In most cases, the public sector will need to publish a contract notice in the Office Journal of the European Union (OJEU) and typically run one of the following procedures (please note that in the procurements subject to the act regarding public contracts on certain special fields, ie water and energy maintenance traffic and postal services, the procedure is more flexible than described below in accordance with the Act on Public Contracts):

- **Open procedure** – This is suitable for easy-to-evaluate projects and tenderers simply submit a tender in response to the OJEU notice. Change and negotiations to the tender are not permitted.
- **Restricted procedure** – There is a shortlisting of at least five tenderers following an expression of interest stage and tenderers submit a bid. Again, no negotiation is permitted other than limited clarification and finalization of the contract terms.

- **Competitive dialogue** – This is often the most common procedure for complex infrastructure projects and involves a shortlisting of at least three bidders who are invited to dialogue with the public sector to develop detailed solutions which are capable of being accepted by the public sector. Clarification and further negotiations are allowed following final tender but only on the basis of confirming the financial and other commitments in a tenderer's bid.
- **Competitive procedure with negotiation** – This is sometimes described as a hybrid procedure as it allows dialogue with bidders but also allows the public sector to award a contract on the basis of an initial tender (or further stages) but clarification and negotiation is not allowed following final tender.

The Competition and Consumer Authority supervises the compliance of the procurement regulations and it may issue reminders to procurement units if it observes unlawful conduct, and, in the case of illegal direct procurement, it may prohibit the implementation of a procurement decision. The authority may also propose that the Market Court impose sanctions. The Market Court is the court which hears public procurement cases (appeals) in the first instance.

Last modified 26 Nov 2019

What are the most common forms of funding / investing in energy and infrastructure?

The principal forms of private sector funding are:

Funding

Common forms of funding in energy and infrastructure include:

- loans made on a corporate finance basis (balance sheet debt);
- loans made on a project-finance basis;
- bond finance;
- mezzanine debt (in some sectors, generally not very common in Finland); and
- refinancing of the debt in operational projects.

Funding/funding products can also, sometimes, be provided by the European Investment Bank and export credit agencies.

Investing

Common forms of investing in energy and infrastructure include:

- 'equity' investment in special purpose vehicles or entities that may have a portfolio of interests, ie share capital and subordinated sponsor loans; and
- secondary market investment in operational projects (acquisition of 'equity').

Last modified 26 Nov 2019

Restructuring

Enforcement and sanctions

When can there be regulatory investigations?

The supervisory powers of the Finnish Financial Supervisory Authority are defined in the Act on the Financial Supervisory Authority. These powers include the right to perform inspections of supervised entities, or, when deemed necessary, other financial market participants and to obtain documents and other records necessary for the conduct of supervision. The powers also include the right to convene meetings of authorized supervised entities with decision-making and administrative powers and to attend these meetings.

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What regulatory penalties may apply?

The Finnish Financial Supervisory Authority (FIN-FSA) may exercise supervisory powers in respect of financial markets, such as temporary prohibition from holding a managerial position in a supervised entity and curtailment of operations subject to authorization.

In addition, the FIN-FSA may impose administrative sanctions, ie administrative fines, public warnings, and penalty payments. FIN-FSA may also request a police investigation.

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What criminal penalties may apply?

Criminalized activities include *inter alia*:

- insider dealing, misleading statements and practices and manipulating the markets;
- breaches of money laundering regulations; and
- conducting regulated activities without authorization.

The criminal penalties vary between fines and imprisonment.

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Tax

Tax issues

Are stamp, registration, transfer or other similar taxes applicable?

Are there stamp, registration, transfer or other similar taxes payable on the advance, transfer or assignment of a loan?

There are no stamp, registration, transfer or other similar taxes payable on the advance, transfer or assignment of a loan.

Are there stamp, registration, transfer or other similar taxes payable on the taking, transfer or assignment of a mortgage, debenture or other security?

There are no stamp, registration, transfer or other similar taxes payable on the taking, transfer or assignment of a mortgage, debenture or other security.

Are there stamp, registration, transfer or other similar taxes payable on the issue, transfer or assignment of a debt security (eg a bond)?

There are no stamp, registration, transfer or other similar taxes payable on the issue, transfer or assignment of a debt security.

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Do tax authorities take priority on enforcement?

On the enforcement of security, do tax authorities take priority over secured lenders or secured debt security holders (eg secured bond holders)?

Secured lenders and secured debt security holders take priority over the Finnish tax authorities on the enforcement of security.

Last modified 26 Nov 2019

Is withholding tax on interest payments applicable?

Is there withholding tax on interest payments under a loan?

No, but withholding tax can be levied in a few exceptional cases. These are very rare in practice. These exceptional cases include where interest is paid to a person who is not resident in Finland on:

- additional investments into Finnish funds;
- deposits into staff cash pools;
- deposits into co-operative cash pools;
- debt between private individuals where the creditor ceased to be resident for tax purposes in Finland after the debt arrangement was put in place; and
- debt which is recognized as a capital investment for tax purposes.

If so:
What is the rate of withholding?

In the exceptional cases where withholding tax applies, the rate of withholding tax is 20%, where the interest is paid to a company not resident in Finland, and 30% where the interest is paid to an individual not resident in Finland.

What are the key exemptions?

An exemption from the application of withholding tax in the exceptional cases in which it applies may be available, in whole or in part, under the terms of a double tax treaty entered into by Finland, provided that the requisite conditions are met.

Would the same analysis apply to interest payments under a debt security (eg a bond)?

Yes.

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Are foreign lenders and debt security holders subject to tax on interest payments?

Will the lender be taxed on interest payments under a loan in the jurisdiction of the borrower (other than by way of the application of withholding taxes (if any)), assuming the lender is not otherwise resident in that jurisdiction for tax purposes (eg by virtue of incorporation, residence or local branch)?

No.

Would the same analysis apply to interest payments under a debt security (eg a bond)?

Yes.

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