

Global Rules on Foreign Direct Investment

Finland

Background

The Finnish Act on the Screening of Corporate Acquisitions (172/2020, as amended, the "Screening Act") provides the framework for the Ministry of Employment and Economic Affairs of Finland (the "Ministry") to review and, when necessary, to restrict, acquisitions of Finnish corporate entities by foreign investors where the target's business operations are considered to be of "key national interest" and the acquisition could endanger such an interest. It should be noted that separate rules apply to acquisitions of real estate in Finland, which require a mandatory approval prior to transfer of title when the acquiring party is "foreign". The responsible authority for screening acquisitions of real property is the Finnish Ministry of Defence.

Business operations subject to a review

The Finnish foreign direct investment ("FDI") regime is two-fold:

- Acquisitions by foreign investors of Finnish "defence industry or security industry enterprises" require a mandatory pre-closing approval by the Ministry.

A defence industry enterprise is one that produces or supplies defence materials, or "other products or services important for military national defence", or dual-use items. A security industry enterprise is one that supplies products or services to the Finnish authorities (such as, the Finnish Defence Forces, the Finnish Border Guard, the Finnish Police Force, and the Finnish Customs), which are critical to the discharge of such authorities' statutory duties. The legislation

leaves significant discretion to the national defence and law enforcement authorities in this respect, and it may not be clear in all cases, *a priori*, which products or services render an entity a defence or security industry enterprise.

As regards acquisitions of Finnish defence industry or security industry enterprises, a "foreign investor" is any legal or natural person that is not domiciled or resident in Finland. Accordingly, the mandatory notification obligation applies also to non-Finnish EU and EFTA legal and natural persons.

- Corporate acquisitions involving Finnish targets active in *other sectors that are or may be of key national interest* may be notified to the Ministry pre- or post-closing. The notification is optional, but the Ministry has the power to request a notification within three months having become aware of the specific acquisition.

The optional FDI notification applies to acquisitions of Finnish corporate targets with operations considered *critical for securing vital societal functions*. The *travaux préparatoires* to the Screening Act explicitly note that the criticality of operations is time and circumstance-specific, and thus it can, and does, vary depending on prevailing societal and political circumstances. For instance, during the height of COVID-19 pandemic, foreign investments involving medical supplies and equipment were of specific interest, while the energy crisis has brought the assessment of foreign investments into (renewable) energy to the fore.

As regards corporate acquisitions of Finnish entities that operate in sectors critical for securing vital societal functions, a "foreign investor" is considered any legal or natural person that is not resident or domiciled within the European Union or in any of the EFTA Member States.

Irrespective of the sector involved, the residence or domicile of the ultimate beneficial owner is decisive. Accordingly, a transaction structure involving one or several holding companies in the European Union or the EFTA Member States (or in Finland, in case of acquisitions in the defence and security sectors) does not exempt an acquisition from the Finnish FDI rules if the criteria are otherwise met.

"Corporate acquisition"

For the purposes of the Screening Act, a corporate acquisition is one where at least 10%, at least one-third or at least 50% of voting rights are acquired by a foreign investor.

Only acquisitions over a pre-existing Finnish corporate entity fall within the scope of the Screening Act. Consequently, an investment into the incorporation of a new Finnish legal entity does not trigger the application of the Screening Act and its notification obligations, even when undertaken by a "foreign investor". Similarly, the Ministry's practice has been to consider asset deals outside the scope of the Screening Act.

Process

The process varies somewhat between the mandatory, defence and security sector notifications, on the one hand, and the optional regime applied to the other critical sectors, on the other hand. In summary:

- For mandatory, pre-closing clearance in the defence and security sectors, there is no prescribed timeline for decision-making. In practice and depending on the Ministry's workload and the length of the inter-state department consultation (see below), the decision-making process usually takes between 6 to 10 weeks following a complete notification.

- As regards the optional notification in other critical sectors, the decision-making process can vary between 6 weeks and a maximum of 3 months (calculated from receipt of a complete notification). An optional notification can be submitted both pre- and post-closing. In case of pre-closing notification, there must be sufficient certainty that the transaction will be completed. If an acquisition in other critical sectors is not notified, the Ministry has three months from having become aware of the acquisition, to request the submission of a notification.

No expedited process is provided for in the Screening Act. In practice, if an acquisition is ultimately deemed outside the scope of the Screening Act, the Ministry seeks to swiftly issue a decision of non-applicability.

The Ministry acts as a coordinating authority, responsible for overseeing the consultation of other state departments and agencies. Based on consultation replies, the Ministry decides whether a foreign acquisition falls within the scope of the Screening Act, and ultimately whether a foreign acquisition can be approved. An acquisition must be approved unless it endangers a key national interest. If a foreign acquisition is not approved, the acquiring party must divest its ownership so that it holds less than 10% of the aggregate number of votes.

Based on publicly available information, to date no foreign acquisition has been prohibited under the Screening Act.

Finally, a small filing fee is payable in respect of the notification. This amounts to EUR 5,000 or EUR 1,000 if the Ministry issues a decision of non-applicability.

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