

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
INVESTMENT COMMITTEE**

**Investment policy related to national security**

**Notification by Finland**

On 2 October 2019, Finland notified the OECD of an investment policy related to national security pursuant to its obligations under the Codes of Liberalisation and the National Treatment instrument. This document reproduces the notification.

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## *Investment policy related to National Security Notification by Finland*

New legislation on real estate investment and ownership will enter into force in Finland on 1 January 2020. The recently passed legislation includes three new Acts, which allow the government to screen real estate transactions and ownership in Finland. The purpose of the legislation is to ensure that the ownership and use of real estate property, especially in strategically significant locations, does not pose a threat to Finland's national security interests.

### **1. Act on Transfers of Real Estate Property Requiring Special Permission**

The new Act requires any natural person or entity within the scope of the Act to apply for a special permit to purchase real estate property in Finland. The purpose of the Act is to create a screening mechanism of foreign real estate ownership in Finland and to allow the government to intervene in a real estate transaction if necessary.

The Act applies to transfers of real estate property if the transferee is:

- 1) an entity with a seat in a state other than a Member State of the European Union or a member country of the European Economic Area or a citizen of a state other than a Member State of the European Union or a member country of the European Economic Area; or
- 2) an entity with a seat in a Member State of the European Union or a member country of the European Economic Area when a natural person or entity within the meaning of the foregoing subsection 1 holds a minimum of one tenth of the aggregate number of votes carried by the shares of a limited liability company or exercises equivalent actual control in the company.

When the percentage of votes carried by the aggregate number of shares in a limited liability company referred to in subsection 1(2) above is determined, such a determination shall also include shares:

- 1) held by a company forming part of the same group of companies to which the transferee belongs;
- 2) held by a family member of the transferee or an entity or foundation in which such a family member exercises control; or
- 3) by virtue of which the transferee is entitled to exercise voting rights under a contract or other arrangement.

The provisions of the foregoing subsection 2 shall also apply, *mutatis mutandis*, to the determination of the transferee's percentage of votes in entities other than limited liability companies.

The application shall be made to the Ministry of Defence before the transfer or within two months of the confirmation of the transfer of a given real estate property.

Permission for the acquisition of real estate property may be granted if the acquisition is not deemed to complicate the organisation of defence, the surveillance and safeguarding of

territorial integrity or the assurance of border control, border security or the maintenance of emergency stocks of critical supplies.

If no permission is granted for the acquisition of the real estate property, the transferee must relinquish the property within one year of the date when the decision to deny permission gains legal force.

An unofficial English translation of the Act is available as [Annex A](#) of this document.

## 2. Act on the State's Right of Pre-emption in Certain Areas

According to the new Act, the State will have a right of pre-emption in real estate transactions near certain strategically significant locations.

The State enjoys the right of pre-emption in respect of properties located, in full or in part:

- 1) in areas allocated to the Finnish Defence Forces or Border Guard in the regional plan, master plan or town plan or located at a maximum distance of 500 metres from the same;
- 2) at a maximum distance of 1000 metres from communication centres, radar stations, airstrips or ports or other less significant sites used by the Defence Forces or Border Guard for waterborne or air transport purposes under normal, disruptive or emergency conditions;
- 3) at a maximum distance of 500 metres from sites other than those referred to in subsections 1 and 2 and used by the Defence Forces and Border Guard when the safeguarding of the activities carried out at such sites calls for an exclusion zone.

The decision on the exercise of the right of pre-emption shall be made by the Ministry of Finance on a proposal of the ministry responsible for the duties related to the property subject to the right of pre-emption. The right of pre-emption may be exercised if the acquisition of the real estate property concerned is necessary in order to ensure national defence, border control or border security or monitor and safeguard territorial integrity

The new Act has a universal personal scope and therefore applies to entirely domestic real estate transactions as well. In practice, the territorial scope of the Act covers around 1–2 % of the land area of Finland.

An unofficial English translation of the Act is available as [Annex B](#) of this document.

## 3. Act on the Right of Redemption of Immovable Property and Special Rights in Order to Protect National Security

The new Act establishes a right of redemption to the State for the purpose of safeguarding national defence, territorial integrity, government administration, border security, border control, maintenance of emergency stocks of critical supplies, the continued operation of the infrastructure necessary for the vital functions of society or other equivalent public interest.

A full compensation equivalent to the highest fair market price shall be payable to the asset subject in case the right of redemption is exercised. The redemption procedure follows the procedures laid out in the general Redemption Act (603/1977).

An unofficial English translation of the Act is available as [Annex C](#) of this document.

#### 4. Proposed amendment to the entry in the list of measures reported for transparency under the National Treatment instrument

Finland proposes to amend the current entry under item A. of the list of measures reported for transparency under the National Treatment instrument – shown in light grey below – by adding the text shown in black. The amendment would only be made with effect from 1 January 2020:

**“A. Measures Reported for Transparency at the Level of National Government**

***I. Measures based on public order and essential security considerations***

*a. Investment by established foreign-controlled enterprises*

On 1 June 2012, Finland’s “Act on the Monitoring of Foreigners’ Corporate Acquisitions” came into force. The Act establishes a new cross-sectoral review mechanism designed to secure national defense and to safeguard public order and security. The mechanism gives the government the authority to block an acquisition by a foreign –i.e. non-EU and non-EFTA –entity of a domestic business if the government believes that such an acquisition poses threats of “severe damage” to the “fundamental interests” of society.

*Authority:* Act on the Monitoring of Foreigners' Corporate Acquisitions.

On 1 January 2020, rules established by the Act on Transfers of Real Estate Requiring Special Permission; the Act on the State’s right of pre-emption in certain areas; and the Act on the Right of Redemption of Immovable Property and Special Rights in Order to Protect National Security establish: a review requirement for real estate acquisitions under specified conditions; a right of pre-emption in real estate transactions near certain strategically significant locations; and a right of redemption to the State for the purpose of safeguarding national defence, territorial integrity, government administration, border security, border control, maintenance of emergency stocks of critical supplies, the continued operation of the infrastructure necessary for the vital functions of society or other equivalent public interest.

*Authority:* Act on Transfers of Real Estate Requiring Special Permission; Act on the State’s right of pre-emption in certain areas; Act on the Right of Redemption of Immovable Property and Special Rights in Order to Protect National Security

## Annex A. Act on Transfers of Real Estate Requiring Special Permission

(Unofficial translation from the Finnish language –legally binding only in Finnish and Swedish)

**By decision of Parliament, the following is enacted:**

### Section 1 – Scope of application and relationship with other legislation

This Act applies to transfers of real estate in the territory of Finland if the transferee is:

- 1) an entity with a seat in a state other than a Member State of the European Union or a member country of the European Economic Area or a citizen of a state other than a Member State of the European Union or a member country of the European Economic Area;
- 2) an entity with a seat in a Member State of the European Union or a member country of the European Economic Area when a natural person or entity within the meaning of the foregoing subsection 1 holds a minimum of one tenth of the aggregate number of votes carried by the shares of a limited liability company or exercises equivalent actual control in the company.

When the percentage of votes carried by the aggregate number of shares in a limited liability company referred to in subsection 1(2) above is determined, such a determination shall also include shares:

- 1) held by a company forming part of the same group of companies to which the transferee belongs;
- 2) held by a family member of the transferee or an entity or foundation in which such a family member exercises control; or
- 3) by virtue of which the transferee is entitled to exercise voting rights under a contract or other arrangement.

The provisions of the foregoing subsection 2 shall also apply, *mutatis mutandis*, to the determination of the transferee's percentage of votes in entities other than limited liability companies.

For the purposes of this Act, transfer of real estate means a legal act by which title to a piece of real estate or to a share of real estate or to a parcel of real estate is transferred to a new owner.

This Act shall not apply in the territory of the Province of Åland.

### Section 2 – Transfers of real estate requiring special permission

The natural person or entity within the meaning of the foregoing section 1(1) may only acquire a piece of real estate in the territory of Finland subject to special permission issued by the Ministry of Defence.

No such permission is required if:

- 1) the transferor of the piece of real estate is the married or unmarried spouse or registered partner of the transferee;
- 2) the transferor is a person that the transferee could inherit under chapter 2 of the Code of Inheritance; or
- 3) the piece of real estate is to be acquired by the transferor together with his or her married or unmarried spouse or registered partner and one of them is not required to have the permission referred to this Act.

### Section 3 – Determination whether special permission is required

The transferor or transferee of the piece of real estate may request an ex-ante decision from the Ministry of Defence whether any permission within the meaning of section 2 is required or not. The request for the ex-ante decision shall include the details of the parties to the transaction and the piece of real estate being conveyed.

More detailed provisions on the contents of the request may be issued by government decree.

#### **Section 4 – Application for permission**

The transferee shall apply to the Ministry of Defence for permission for the transfer of a given piece of real estate before the transfer or within two months of the confirmation of the transfer or the date of entry of the transaction in the electronic trading system referred to in chapter 9a of the Code of Real Estate (540/1995).

If the transferee fails to file an application for permission for the transfer within the specified period of time, the Ministry of Defence shall notify the transferor of the obligation to apply for permission and impose a time limit of a maximum duration of two months within which permission must be applied for. Additionally, the Ministry of Defence may require an application for permission if it is evident that the piece of real estate has been acquired for the account of the persons referred to in section 1(1) in order to avoid the duty to apply for permission. The application for permission shall provide the details of the parties to the real estate transaction, the piece of real estate being transferred as well as the intended use of the piece of real estate. More detailed provisions on the contents of the application may be issued by government decree. Additionally, the transferee shall, at the request of the Ministry of Defence, provide other pertinent information relevant to the processing of the application for permission.

#### **Section 5 – Prerequisites for granting permission**

Permission for the transfer of a piece of real estate may be granted if the transfer is not deemed to complicate the organisation of defence, the surveillance and safeguarding of territorial integrity or the assurance of border control, border security or the maintenance of emergency stocks of critical supplies.

The Ministry of Defence shall request a statement from the government agency responsible for the operations that may be affected by the acquisition of the piece of real estate unless such a request is manifestly unnecessary. The Ministry of Defence may also obtain other necessary reports and clarifications relevant to the matter.

#### **Section 6 – Forwarding of real estate**

If no permission is granted for the transfer of the piece of real estate, the transferee must relinquish the piece of real estate within one year of the date when the decision to deny permission gains legal force. If no application for permission is filed within the period of time specified by the Ministry of Defence under section 4(1) of this Act, the one-year time limit for the relinquishment of the piece of real estate is determined from the closing date by which the application for permission should have been filed with the Ministry of Defence.

If the transaction is not cancelled or the piece of real estate forwarded to a new owner within the period of time specified in subsection 1, the Ministry of Defence shall order that the piece of real estate be sold as provided in chapter 5 of the Enforcement Code (705/2007).

#### **Section 7 – Reimbursement of costs**

If no permission for the transfer of a piece of real estate is granted, the state shall reimburse the transferee for the financial and other necessary expenses arising from the transaction as well as necessary expenses related to the administration, management and maintenance of the piece of real estate. An interest pursuant to section 3(2) of the Interest Act (633/1982) shall be paid on such reimbursed costs as of the date of payment by the transferee.

Any proceeds and other financial benefits earned by the transferee on the piece of real estate shall be deducted from the compensation referred to in subsection 1. Expenses incurred as a result of a failure to file an application for permission on a timely basis shall not be reimbursed.

#### **Section 8 – Access to information**

The Ministry of Defence shall have the right to obtain the information necessary for the discharge of the duties specified herein from Land Survey of Finland free of charge notwithstanding any secrecy provisions.

#### **Section 9 – Appeal**

A decision made by the Ministry of Defence under section 5 and 6 may be appealed to an administrative court as provided in the Administrative Judicial Procedure Act (586/1996). A decision of the administrative court may only be challenged if the Supreme Administrative Court grants leave to appeal.

**Section 10 – Entry into force**

This Act enters into force on 1 January 2020.

## **Annex B. Act on the State's right of pre-emption in certain areas**

(Unofficial translation from the Finnish language –legally binding only in Finnish and Swedish)

**By decision of Parliament, the following is enacted:**

### **Section 1 – State's right of pre-emption**

The State enjoys the right of pre-emption in a real estate transaction if the acquisition of the real estate concerned is necessary in order to ensure national defence, border control or border security or monitor and safeguard territorial integrity.

The provisions of this Act regarding a piece of real estate shall also apply to a share of real estate and to a parcel of real estate. A transaction concerning real estate shall be considered to be an assignment against payment in which the value of the payment does not consist mainly of real property. The right of pre-emption shall apply to all the real and movable property sold under the same deed of assignment.

### **Section 2 – Territorial scope of the right of pre-emption**

The State enjoys the right of pre-emption in respect of properties located, in full or in part:

- 1) in areas allocated to the Defence Forces or Border Guard in the regional plan, master plan or town plan or located at a maximum distance of 500 metres from the same;
- 2) at a maximum distance of 1000 metres from communication centres, radar stations, airstrips or ports or other less significant sites used by the Defence Forces or Border Guard for waterborne or air transport purposes under normal, disruptive or emergency conditions;
- 3) at a maximum distance of 500 metres from sites other than those referred to in subsections 1 and 2 and used by the Defence Forces and Border Guard when the safeguarding of the activities carried out at such sites calls for an exclusion zone.

More detailed provisions on the scope of the State's right of pre-emption may be issued by government decree.

This Act shall not apply in the territory of the Province of Åland.

### **Section 3 – Limitations of the right of pre-emption**

No right of pre-emption within the meaning of this Act applies if:

- 1) the buyer is the married or unmarried spouse or registered partner of the seller or person that could inherit the seller under chapter 2 of the Code of Inheritance (40/1965), or the married or unmarried spouse or registered partner of such a person;
- 2) the buyer is a municipality or congregation;
- 3) the exercise of the right of pre-emption would be manifestly unreasonable considering the relationship between the buyer and seller, the terms of the transfer or other circumstances.

### **Section 4 – Ex-ante decision on the exercise of the right of pre-emption**

Before the completion of the transfer, the owner of the real estate may request an ex-ante decision from the Ministry of Defence as to whether the State intends to exercise its right of pre-emption. The application shall provide details of the site being transferred and the terms of the transaction, the personal details of the prospective buyer and other information necessary for the assessment whether the right of pre-emption should be exercised or not.

The Ministry of Defence may announce that the State will not exercise its right of pre-emption if the piece of real estate is transferred in accordance with the details provided in the application for the ex-ante decision. The ex-ante decision shall be binding on the State for a specific period of time but not beyond two years from the date of service of the ex-ante decision.



### **Section 5 – Decision on the exercise of the right of pre-emption**

The decision on the exercise of the right of pre-emption shall be made by the Ministry of Finance on a proposal of the ministry responsible for the duties related to the piece of real estate subject to the right of pre-emption.

The Ministry of Finance shall promptly serve the decision on the buyer and seller by way of verifiable service as provided in the Administrative Procedure Act (434/2003) as well as inform the National Land Survey of Finland of the same.

The decision on the exercise of the right of pre-emption must be made and communicated to the National Land Survey of Finland within three months of the confirmation of the transfer or the date of entry of the transaction in the electronic trading system referred to in chapter 9a of the Code of Real Estate (540/1995).

### **Section 6 – Re-transfer of real estate**

Any forwarding of the piece of real estate taking place before the expiry of the time limit specified in section 5 or before the decision on the exercise of the right of pre-emption gains legal force, shall not prevent the State from exercising its right of pre-emption.

### **Section 7 – Buyer's obligations**

The Buyer shall be responsible for carrying out his or her transaction-related obligations in respect of the seller until the pre-emption is completed.

Once the decision on the exercise of the right of pre-emption has gained legal force, the buyer shall without delay forward to the State the deed of conveyance and all such documents in his or her possession related to the piece of real estate that are of significance to the State in its capacity as the owner of real estate.

### **Section 8 – Legal implications of a legally enforceable pre-emption purchase and the State's performance obligation in respect of the seller**

Once the decision on the exercise of the right of pre-emption has gained legal force, the State is deemed to have replaced the buyer on the closure of the transaction at the previously agreed-upon terms. The seller may not invoke any term of sale that was not communicated to the State and that the State was otherwise unaware of at time when making the decision on the exercise of the right of pre-emption. The State's position *vis-a-vis* any third parties is similar to that of the buyer.

If the buyer has performed any obligations related to the transaction before the completion of the pre-emption purchase, such performances shall inure to the benefit of the State.

If the transaction includes any condition that the State cannot, because of its nature, reasonably fulfil, such an obligation shall be converted into monetary compensation corresponding to its full value.

### **Section 9 – Entries into the title and mortgage register**

The National Land Survey of Finland is required to make the necessary entries in the title and mortgage register based on the communication referred to in section 5. The entries shall be deleted once the pre-emption purchase has been completed.

### **Section 10 – Buyer's right to compensation for payments and costs**

Once the pre-emption purchase has been completed, the State shall without delay reimburse the buyer for the payments referred to in section 8 made by the same except for any payments due to any failure to comply. Additionally, the State is required to reimburse the buyer for financing costs and other necessary expenses arising out of the transaction as well as necessary expenses due to the management, upkeep and maintenance of the piece of real estate. An interest pursuant to section 3(2) of the Interest Act (633/1982) shall be paid to the buyer on such reimbursed cost items as of the date of each such payment by the buyer.

Any proceeds and other financial benefits earned by the buyer on the piece of real estate shall be deducted from the compensation referred to in subsection 1.

### **Section 11 – Compensation for any loss of value of the piece of real estate**

If the value of the piece of real estate sold has decreased due to measures or omissions undertaken by the buyer, the State shall be entitled to fair compensation for such loss of value.

### **Section 12 – Effect of the pre-emption procedure on the registration of title**

Any transfer of real estate under this Act shall not be entered in the title and mortgage register until the time limit specified in section 5 has expired, the proceedings related to the pre-emption purchase has gained legal force, or until the State declares that it waives its right of pre-emption as provided in section 4.

The period of time during which the State shall have the real estate acquired through the pre-emption procedure entered in the title and mortgage register is determined from the date of issue of the decision on the exercise of the right of pre-emption.

### **Section 13 – Access to information**

The Ministry of Defence, the Ministry of the Interior and the Ministry of Finance shall have the right to obtain the information necessary for the discharge of the duties specified herein from the National Land Survey of Finland free of charge notwithstanding any secrecy provisions.

### **Section 14 – *Appeal***

A decision of the Ministry of Finance referred to in section 5 may be appealed to an administrative court as provided in the Administrative Judicial Procedure Act (586/1996). A decision of the administrative court may only be challenged if the Supreme Administrative Court grants leave to appeal.

### **Section 15 – Entry into force**

This Act enters into force on 1 January 2020.

## Annex C. Act on the Right of Redemption of Immovable Property and Special Rights in Order to Protect National Security

(Unofficial translation from the Finnish language – legally binding only in Finnish and Swedish)

**By decision of Parliament, the following is enacted:**

### Section 1 – Scope of application

This Act applies to the right of redemption of immovable property and special rights for the purpose of safeguarding national defence, territorial integrity, internal security, government administration, border security, border control, maintenance of emergency stocks of critical supplies, the continued operation of the infrastructure necessary for the vital functions of society or other equivalent public interest.

Redemption is governed by the Act on the Redemption of Immovable Property and Special Rights (603/1977), hereinafter *Redemption Act*, unless otherwise stipulated herein.

### Section 2 – Redemption permission

A ministry responsible for safeguarding the interest referred to in the foregoing section 1(1) may grant a public authority or entity permission to redeem immovable property or special rights if so required by public interest within the meaning of section 1.

### Section 3 – Interim prohibition on transactions

Once a ministry referred to in section 2 has commenced preparations for redemption within the meaning of this Act, it may provisionally prohibit, for a maximum of one year, such use of property or such exercise of special rights as may endanger the purpose of the contemplated redemption. If the redemption subsequently lapses, the owner or holder is entitled to compensation for any loss and damage incurred as a result of such a prohibition.

The redemption permission may stipulate that the asset may not be used in a way that endangers the very purpose of redemption. The prohibition shall apply as of the date of service of the decision on the redemption permission on the owner or holder up until the redemption process is completed or lapses. If the redemption process lapses, any loss and damage incurred as a result of the prohibition shall be compensated as provided in subsection 1.

If the parties fail to agree on the amount of the compensation referred to in this section, the amount shall be determined in redemption proceedings in accordance with the provisions of the Redemption Act unless proceedings have already been instigated.

### Section 4 – Compensation for redemption

The full compensation payable for the asset subject to redemption shall be equivalent to the highest fair market price. Otherwise, the determination of the amount of compensation shall be governed by the reimbursement rates set out in the Redemption Act.

If the redemption permission specifies a prohibition of measures referred to in section 3(2), the compensation for redemption shall include legal interest in accordance with section 95 of the Redemption Act payable as of the date of service of the redemption permission.

If the prohibition referred to in section 3(1) is imposed before the issuance of the redemption permission, the interest shall accrue as of the date of service of the decision on the prohibition.

### Section 5 – Experts

When contemplating consultations with the experts referred to in section 12(2) of the Redemption Act, special consideration shall be given for the purpose of the redemption.

### **Section 6 – Access to information**

The authority preparing redemption within the meaning of this Act shall have the right to obtain the information necessary for processing the redemption case from Land Survey of Finland free of charge notwithstanding any secrecy provisions.

### **Section 7 – Appeal**

A decision on the imposition of an interim prohibition of measures may be appealed to an administrative court as provided in the Administrative Judicial Procedure Act (586/1996). A decision of the administrative court may only be challenged if the Supreme Administrative Court grants leave to appeal.

In its decision on the interim prohibition, the ministry referred to in section 2 above may specify in its decision that the decision shall be complied notwithstanding any appeal, unless otherwise ordered by the appellate court.

### **Section 8 – Entry into force**

This Act enters into force on 1 January 2020.

This Act repeals the Act on the Redemption of Assets for Defence Purposes (1301/1996).

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