MARTINDALE-HUBBELL LAW DIGEST

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**Martindale-Hubbell Online**

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**Content of Law Digest**

This invaluable compendium, now in its 140th year, provides summaries or “digests” of the laws of 151 jurisdictions. In sum, the 2008 edition contains: 57 digests of U.S. States, Territories, and Federal Codes; eleven digests of Canadian Provinces and the Canadian Federal Code; 81 leading trading nations outside of the U.S. and Canada (this figure includes the European Union); and two specialty digests of the U.S. Uniform and Model Acts, and Selected International Conventions. Note: These two specialty digests are included on the CD ROM, Lexis Online, and martindale.com, but are not available in the Print-on-Demand service.

The inclusion of U.S. Uniform and Model Acts on the CD ROM is critical to the legal researcher because they have formed the basis of so much of the statutory law of many states. Also included here are the Uniform Commercial Code, the Uniform Probate Code, and the Revised Model Business Corporation Act.

The Selected International Conventions set forth the texts of those conventions to which the U.S. is a party. Annotations are included.

The Law Digest is the first place to look to find the law on the most important topics in jurisdictions worldwide. The Law Digest summarizes the breadth of statutory law that applies to significant areas of legal practice, for example business regulation, tax, and law related to cross border transactions and matters. General background information is provided to help understand the structure of the different governmental and legal systems in various jurisdictions. The Law Digest is updated annually by pre-eminent law firms, leading legal scholars and other content experts. Web sites are listed to provide further information and access to legal resources to make certain that users get to the next step in their search for relevant information. Further practical information is presented such as normal office hours and national holidays.
Arrangement of Law Digest

The digests are arranged by a standard taxonomy of Categories, Topics, and Sub-headings. This uniform arrangement of the material, supported by abundant citations, presents the laws in a predictable and accessible manner. To obtain the maximum benefit from the digests, the user should become familiar with the Topical Index included in the prefatory material. This index, which interfiles thousands of legal subjects and cross references, is a powerful research and reference aid. Attention is directed to the numerous forms of instruments preferred by local usage which appear throughout the digests under the appropriate topics, e.g., forms of acknowledgment under the topic “Acknowledgments,” sub-head “Forms.”

Notice

Changes to law may occur after production which can only be reflected in subsequent editions. Accordingly, it is suggested that local counsel be consulted as to the current law applicable to a particular situation.

Acknowledgments

I wish to extend a note of thanks to our Revisers and their knowledgeable staffs and colleagues, and our consulting Law Editors: Professor Michael J. Zimmer of Seton Hall University School of Law and Dr. John J. A. Burke, Professor, Riga International School of Economics and Business Administration, Riga, Latvia. Further, I would like to recognize the hard work of our Editorial staff: Padi Sinegra and Sandy Sauchelli, Senior Editors; and Wesley Barter, Assistant Managing Editor. Without their dedication, professionalism, and personal sacrifice, no work of this scope and quality could be achieved.

As always, I look forward to your suggestions for future Law Digest improvements and inclusions.

Thank you for your continued support.

Stephen L. Torpie
Senior Managing Editor
The Advisory Board's mission is to ensure that LexisNexis and Martindale-Hubbell are responsive to the constantly changing needs of the legal profession. In response to these needs, the Board entertains new strategies and concepts developed by the company, and provides impartial and candid points of view. The following lawyers selected from the private, corporate, academic and international sectors of the profession comprise the 2007-2008 Board.

DENNIS W. ARCHER of Dickinson Wright PLLC; Detroit, Michigan. Mr. Archer is the former Mayor of the City of Detroit, (1994-2001) and a former Associate Justice of the Michigan Supreme Court (1986-1990). He is the past President of the Wolverine Bar Association, the National Bar Association and the State Bar of Michigan. Mr. Archer is the past President of the National League of Cities, past President of the National Conference of Democratic Mayors and a past member of the Board of Trustees of the United States Conference of Mayors and Board of Directors of the National Conference of Black Mayors. He currently serves on the American Bar Association's Board of Governors. He was President of the American Bar Association-August 2002 to August 2003, the first person of color to be so honored. He also serves as Chairman of Dickinson Wright PLLC.

MARTHA W. BARNETT of Holland & Knight, LLP, Tallahassee, Florida. Ms. Barnett is a former Chair of the House of Delegates of the American Bar Association, the first woman lawyer to be so honored, and has served on the ABA's Board of Governors. She was elected President of the American Bar Association, serving as such from July 2000 to August 2001. Ms. Barnett now serves as Chair of Holland & Knight.

ROBERT H. BERNSTEIN joined Reed Smith in January 2005. Mr. Bernstein heads the Firm's Labor & Employment Global Marketing Team, strengthening the Firm’s offering to its national and international corporate clients. During the past 23 years, Mr. Bernstein has developed an extensive labor and employment practice, exclusively representing multinational and domestic corporations nationwide, with an emphasis in employment litigation. Mr. Bernstein lectures and writes extensively throughout the United States and overseas concerning a wide array of employment law issues. In 1982, Mr. Bernstein earned his J.D. from Georgetown University Law Center; in 1979, he received his B.S.F.S., with distinction, from the Georgetown University School of Foreign Service. Mr. Bernstein is admitted to the New Jersey Bar, the U.S. Court of Appeals for the Third Circuit, and the U.S. District Court for the District of New Jersey. He is a member of the Labor Law Section and Litigation Section of the American Bar Association.

THOMAS R. CIVILETTI is a partner of Venable, LLP in Washington, D.C. and Baltimore, Maryland. Mr. Civiletti is a former Attorney General of the United States under President Carter, 1979-1981. He is the former Chairman of the ABA Litigation Section and has been a member of the ABA House of Delegates since 1991. He also serves as the ABA Representative to the United Nations. He is the former Chairman of Venable. Mr. Civiletti is a Fellow of the American College of Trial Lawyers and the American Law Institute.

THOMAS R. CURTIN of Graham, Curtin & Sheridan, A Professional Association, Morristown, New Jersey. Mr. Curtin is a Life Fellow of the American Bar Foundation. He is a past President of the Morris County Bar Association (1978-1979), the New Jersey State Bar Foundation (1986-1988), the New Jersey State Bar Association (1993-1994), and the Notre Dame Law Association (2000-2001). He is a former Chairman of the New Jersey Commission on Professionalism in the Law (1996-1998). He is a member of the American Bar Association House of Delegates, serving as the New Jersey State Delegate, and the Sports Lawyers Association. He is currently a member of the Notre Dame Law School Advisory Council and has been on the Board of Directors for the National Football Foundation and College Hall of Fame since 2002.

THOMAS G. HEINTZMAN, O.C., Q.C., is a trial and appellate counsel practicing with the law firm of McCarthy Tétrault, Toronto, Ontario. He is a Bencher of the Law Society of Upper Canada, an Officer of the Order of Canada and a past President of the Canadian Bar Association. Mr. Heintzman is a Fellow of the International Academy of Trial Lawyers, and the American College of Trial Lawyers and the Co-Chair of its Special Problems in the Administration of Justice (Canada) Committee.

DOUGLAS B. HENDERSON is the Founding and Senior Partner of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Washington, D.C. Mr. Henderson was the Founder of the Federal Circuit Bar Association, a co-founder of the U.S. Court of Federal Claims Bar Association, and a co-founder of the ITC Trial Lawyers Association. He has been a Member of the Advisory Council of the United States Court of Federal Claims. He was formerly a member of the House of Delegates of the American Bar Association, and Chairman of the Patent Division and Member of Council of the Section of Intellectual Property Law of the American Bar Association.

PATRICK E. HOBBS, Dean of Seton Hall University School of Law, first joined the faculty of Seton Hall in 1990. He teaches in the area of taxation and has taught Federal Income Taxation, Corporate Taxation and Business Planning, and Law and Literature. In 1995, he became the Associate Dean for Finance. In 1999, he became the Law School's seventh Dean. Dean Hobbs graduated magna cum laude from Seton Hall University with a B.S. in Accounting. He received his J.D. from the University of North Carolina at Chapel Hill, and earned his LL.M. from New York University. Dean Hobbs was recently appointed a Commissioner on the New Jersey State Commission of Investigation by former Governor James McGreevey. He has chaired the American Bar Association, Section of Legal Education and Admissions to the Bar, Law School Development Committee since 2002, and was also recently appointed to serve on the American Bar Association Standards Review Committee. He also serves as a member of the boards of the Newark Alliance, LexisNexis, Newark Beth Israel Medical Center, the New Jersey Commission of Professionalism, and the New Jersey Institute for Continuing Legal Education. In 2004, he served as Chair of the Newark, New Jersey Mayor's Blue Ribbon Commission on the Downtown Core Redevelopment.

THOMAS J. KLITGAARD of Dillingham & Murphy, L.L.P., in San Francisco, California, teaches Asian Legal Systems at the University of San Francisco School of Law. He is a Director of the San Francisco-Shanghai Sister City Committee which has had nearly 200 business, cultural, and public works projects with the Shanghai Municipal Government over the past 25 years. Tom is also the current Chair of the Institute for Law and Technology at the Center for American and International Law in Plano, Texas. He is currently a member of the international arbitration panels of the American Arbitration Association and the Hong Kong International Arbitration Centre and is on the mediation panel of the American Arbitration Association. Tom is a former Senior Vice President and General Counsel of Tandem Computers Incorporated and Sega of America, Inc., and a former law clerk of Supreme Court Justice William O. Douglas. He is a graduate of the Monterey Institute of International Studies Training for Service Abroad Program in the Chinese language. He practices in the areas of patent litigation, intellectual property, and Asian and American corporate law.

RALPH J. LANCASTER, JR. of Pierce Atwood, LLP Portland, Maine has served as Independent Counsel, In Re Herman, by appointment of the Special Division of the D.C. Court of Appeals. He previously served as Counsel for the United States before the International Court of Justice in a case concerning delimitation of the Maritime Boundary in the Gulf of Maine and as Special Master by appointment of the United States Supreme Court in State of New Jersey vs. State of Nebraska and again as Special Master in State of Virginia vs. State of Maryland. He is currently serving as Special Master in State of New Jersey vs. State of Delaware. Mr. Lancaster began his legal career as a law clerk to the Honorable Edward T. Gignoux. He is a Past-President of the Maine State Bar Association and a former member of the House of Delegates of the American Bar Association. He served as Chair of the Standing Committee on Federal Judiciary of the ABA. He is a Fellow of the American College of Trial Lawyers and served as its President, 1989-1990. He is actively engaged in civil and criminal trial practice.

J. ALLEN MAINES of Paul Hastings Janofsky & Walker LLP concentrates on domestic and international corporate counseling, cross-border corporate governance issues and internal investigations, and securities and intellectual property litigation. He has served as Chairman of his firm's Securities Litigation Practice and Litigation Department, and has published and spoken extensively on securities, corporate governance and intellectual property.
issues. Mr. Maines is a faculty member for both the National Institute for Trial Advocacy and the National Association of Corporate Directors. He began his law career as the law clerk for James Wm. Moore, Sterling Professor of Law at Yale University, author of Moore's Federal Practice and editor-in-chief of Collier on Bankruptcy. He received his J.D. degree, with honors, in 1976 from the University of Florida, where he was executive editor of the Florida Law Review, and graduated magna cum laude from Taylor University in 1973. Mr. Maines serves on the Board of Directors for the March of Dimes, Earth Share, The Animal Health Trust, the Socionomics Foundation, several for profit entities, and a state university’s Center for Corporate Governance.

**Legal Advisory Board — continued**

**Karen J. Mathis**, a partner in the Denver office of McElroy, Deutsch, Mulvany & Carpenter, LLP, is the president of the American Bar Association. She will serve as president for a one-year term, which begins in August 2006 at the adjournment of the association’s Annual Meeting in Honolulu. Mathis is a business, commercial and estate planning lawyer with more than 30 years’ experience. An active member of the ABA for almost 30 years, Mathis served as the association’s second highest elected officer, chair of its House of Delegates, from August 2000 until August 2002. She is the third woman to serve as an ABA president, and the first president from Colorado. She has served as a member of the House of Delegates since 1982. Mathis is also a member of the ABA Board of Governors, and has served on its Executive Committee, Operations Committee and Program and Planning Committee. Mathis’s extensive ABA involvement includes leadership of numerous ABA entities. She served as chair of the 30,000-member General Practice, Solo and Small Firm Section (now a Division) in 2002 to 2003; as chair of the Commission on Women in the Profession from 1997 to 2000; and as chair of the Standing Committee on Membership from 1994 to 1997. Mathis has also been active in the Denver Bar Association and Colorado Bar Association for many years. She has held offices in the Young Lawyers Section of both bar associations, and served as vice president of the CBA from 1992-1993.

**Jeralyn E. Merritt** is a criminal defense lawyer in private practice in Colorado. Her practice is limited to criminal defense and related forfeitures, with an emphasis on complex federal drug and white collar crimes. Ms. Merritt served as Treasurer and Secretary and on the Board of Directors of the National Association of Criminal Defense Lawyers, from 1996 through 2004. She was a member of the governing council of the American Bar Association's Criminal Justice Section from 2000 through 2004. She is an elected fellow of the American Board of Criminal Lawyers and a past member of its Board of Governors. Ms. Merritt has testified before both Congress and the United States Sentencing Commission on drug sentencing laws. She is the co-author of a text on the Patriot Act, published by Lexis Publishing. She lectures nationally on a variety of criminal defense topics, and since 1996, has provided insightful legal analysis for MSNBC, Fox News, CNN, Court TV and other television and radio networks. From 2000 to 2003, she was a Lecturer-In-Law at Denver University's College of Law, teaching “Wrongful Convictions” and “Criminal Defense.” In 1996 and 1997, she served as one of the principal trial lawyers for Timothy McVeigh in the Oklahoma City Bombing Case. She is the founder and creator of two award winning websites, CrimeLynx.com, and TalkLeft: The Politics of Crime (TalkLeft.com), a weblog for legal professionals, journalists and the public.

**Harriet Miers** serves as Counsel to the President. Most recently, she served as Assistant to the President and Deputy Chief of Staff, and prior to that she was Assistant to the President and Staff Secretary. Before joining the President’s staff, she was Co-Managing Partner at Locke Liddell & Sapp, LLP from 1998-2000. She had worked at the Locke Purnell Rain & Harrell firm, or its predecessor, from 1972 until its merger with the Liddell Sapp firm. From 1995 until 2000, she was chair of the Texas Lottery Commission. In 1992, Harriet became the first woman president of the Texas State Bar, and in 1985 she became the first woman president of the Dallas Bar Association. She also served as Member-At-Large on the Dallas City Council. Ms. Miers had a distinguished career as a trial litigator, representing such clients as Microsoft, Walt Disney Co. and SunCard Data Systems Inc. Moreover, when she left her law firm of Locke Liddell & Sapp, Ms. Miers was serving as Co-Managing Partner of the firm which had more than 400 lawyers. In 1972, Ms. Miers became the first woman hired at Dallas’s Locke Purnell Rain Harrell. In March 1996, her colleagues elected her the first female president of Locke Purnell Rain & Harrell, at that time a firm of about 200 lawyers. She was the first woman to lead a Texas firm of that size. In 1985, Ms. Miers was selected as the first woman to become President of the Dallas Bar Association. In 1992, she became the first woman elected President of the State Bar of Texas. Ms. Miers served as the President of the State Bar of Texas from 1992 to 1993. Ms. Miers has served as Counsel to the President since February 2005. In this role, she has served as the top lawyer to the President and the White House, and in particular has been the principal advisor of judicial nominations. Ms. Miers’ professional accomplishments have been recognized time and time again.

**William G. Paul** of Crowe & Dunlevy, A Professional Corporation, Oklahoma City, Oklahoma. Mr. Paul is the former Senior Vice President & General Counsel, Phillips Petroleum Company, Bartlesville, Oklahoma. In 1999, he was elected President of the American Bar Association, to serve as such from August 1999 to July 2000. He has served as President for both the Oklahoma State Bar Association and National Conference of Bar Presidents. Mr. Paul has been a Member of the American Bar Association, House of Delegates since 1975 and is a Fellow in the American College of Trial Lawyers.

**Fernando Pombo**, Founder and Senior Partner of Gomez-Acebo & Pombo, Madrid, Spain, has contributed to and authored several publications in the field of international business law. Currently, he is President of the International Bar Association (2007-2009). Mr. Pombo has been a visiting professor at the Institute on International Legal Studies in Salzburg, Austria since 1991. He is also a former President of IES International, and member of the Spanish Arbitration Court. He is fluent in Spanish, English, French and German.

**Wm. Reece Smith, Jr.** of Tampa, Florida, is the senior member of Carlton, Fields, P.A. A Rhodes Scholar at Oxford University, England, he was later President of The Florida Bar (1972-73), the American Bar Association (1980-81), and the International Bar Association (1988-90). He is a Fellow of the American College of Trial Lawyers and the International Academy of Trial Lawyers and serves on the Council of the American Law Institute. He received the American Bar Association’s Gold Medal for “exceptionally distinguished service to the cause of American Jurisprudence.”

**Tomasz Wardyński**, Polish adwokat and Founding Partner and President of Wardyński & Partners is a member of the Polish Business Council, the European Circuit of England and Wales, and the Garrick Club. He is a specialist in international project financing, privatization and restructuring of state-owned enterprises. He is a member of the Polish Bar Association and a former chairman of its Foreign Committee (1988-92). In 1991-96 he was a member of the Advisory Council on Privatisation to the Prime Minister of Poland. He is a former member of the Supervisory Board of the Polish Development Bank. Since 1986 Tomasz Wardyński has been an honorary legal advisor to her late husband, Poland’s Ambassador, and is now a visiting scholar at the American Bar Foundation as well as an Honorary Commander of the Civil Division of the Most Excellent Order of the British Empire. Tomasz Wardyński is a member of the Polish-British Legal Association, a member of the International Bar Association, a member of the European Circuit of England and Wales, and a member of the Garrick Club.

**Walter H. White, Jr.** is a Partner in Grundberg Moscatta Rakison LLP (GMR), where his practice concentrates on cross-border securities law and emerging markets investment activities. He was the Founding Partner of White & Jones LLP, London, England, which merged with GMR in 2006. Mr. White previously has served as a Partner and Managing Director of Siepote & Johnson International. Mr. White is a former Commissioner of Securities for the State of Wisconsin 1988-1991. He currently serves on the boards of the ABA Center for Human Rights and the Center for Rule of Law Initiatives; he has previously served as a member of the executive committee of the ABA Board of Governors in the House of Delegates, as the Chair of ABA Africa, as Chair of the Section of Individual Rights and Responsibilities, and also as Chair of the Young Lawyers Division. Mr. White has also been a member of the State Bar of Wisconsin Board of Governors, on the board of the Milwaukee Foundation and as a board member of the Central-Asian-American Enterprise Fund by appointment of former President Clinton. He also currently serves as a Trustee of Hampshire College and a Director of Church Mutual Insurance Company.
Topical Index

The body of law suitable for presentation in the Martindale-Hubbell Law Digests of the states of the United States, the District of Columbia, Puerto Rico and the Virgin Islands has been classified under a system of categories and topics, that are uniform in these Digests. The same classification system is followed, as closely as cultural conditions permit, in the International Section of the Law Digests.

The components of this classification system follow a hierarchy of: Category; Topic; Sub-heading; Catchline. The table of contents before each digest shows only the Categories and the Topics, which are the heart of the classification system. Please note that the Categories are arranged alphabetically in each digest except for the ‘Introduction’ Category which always comes first. Here is an example of the classification hierarchy showing all components noted above:

**DOCUMENTS AND RECORDS**

**ACKNOWLEDGMENTS**

What Persons May Take.—
Within State —

Outside State But Within United States.—

Outside United States.—

(Category: 12 pt, bold, all caps)

(Topic: 7 pt, bold, all caps)

(Sub-heading: 7 pt)

(Catchlines: 7 pt. italics)

The digests often make cross references to another Topic within the instant Category, or to another Category and Topic entirely. Here is an example of two such cross references that may be found under the Category **ESTATES AND TRUSTS**:

**ALLOWANCES:**
See topic Descent and Distribution.

In this first example, the Topic ‘Descent and Distribution’ is also under the Category **ESTATES AND TRUSTS**.

**CLAIMS:**
See topic Executors and Administrators; category Civil Actions and Procedure, topic Pleading; and category Dispute Resolution, topic Arbitration and Award.

In this second example, the Topic ‘Executors and Administrators’ is also under the Category ‘Estates & Trusts’. The subsequent references however are to different Categories entirely.

This Topical Index inter-files all the Categories and Topics used in the Law Digests, and the more commonly used Sub-headings into a unified index. The user may then identify all major classification entities, and how they reference one another. Forms of many instruments will be found under the appropriate topics. For example, forms of acknowledgment under Category ‘Documents and Records’, Topic ‘Acknowledgments’, Sub-head ‘Forms’. United States Uniform and Model Acts (promulgated by the National Conference of Commissioners on Uniform State Laws [NCCUSL]) in effect in a given jurisdiction, are listed in each Digest under the Category ‘Courts and Legislature’, Topic ‘Statutes’, Sub-heading ‘Uniform Acts’. If the law summarized under a specific Topic is governed in large part by a Uniform Act - without substantial local deviations - reference to that Act will also be made under the specific Topic affected. For example, if the Uniform Commercial Code governs a particular subject, this is stated, and the reader referred to the Category ‘Business Regulation and Commerce’, Topic ‘Commercial Code’. Please note that uniform acts not promulgated by NCCUSL are covered under the relevant Categories.

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Texts of Selected United States Uniform and Model Acts within the scope of the Martindale-Hubbell Law Digests are supplied in full. See the table of contents.
and Procedure, topic Limitation of Actions.  
Affidavit of defense, see category Civil Actions and Procedure, topic Pleading.  
AFFIDAVITS.—See category Documents and Records; see also topics  
Acknowledgments; categories Civil Actions and Procedure, topics Depositions and  
Discovery, Evidence, Pleading; Estates and Trusts, topic Executors and  
Administrators.  
Affirmation as substitute for acknowledgment, see category Documents and Records,  
topic Acknowledgments.  
Affirmation as substitute for affidavit, see category Documents and Records, topic  
Affidavits.  
Afterborn children, see category Estates and Trusts, topics Descent and Distribution,  
Wills.  
Age, see category Family, topics Adoption, Infants, Marriage.  
AGENCY.—See categories Business Organizations; see also topics Corporations,  
Partnerships; categories Business Regulation and Commerce, topic Factors; Civil  
Actions and Procedure, topic Brokers; Employment, topic Labor Relations; Property,  
topic Powers of Attorney.  
Agent for service of process, see categories Business Organizations, topic  
Corporations; Civil Actions and Procedure, topic Process; Estates and Trusts, topic  
Executors and Administrators; Insurance, topic Insurance Companies; Property, topic  
Absentees; Transportation, topic Motor Vehicles.  
AIRCRAFT.—International Digests only. See category Transportation.  
Air pollution, see category Environment, topic Environmental Regulation.  
ALCOHOL, BEVERAGES AND TOBACCO TAXES.—See category Taxation.  
Alienation of property, restrictions on, see category Property, topic Perpetuities.  
ALIENS.—See category Immigration in International Digests.  
Alimony, see category Family, topic Divorce; see also category Family, topic Marriage.  
Allowances, see category Estates and Trusts, topic Executors and Administrators.  
Annulment of marriage, see category Family, topic Marriage; see also category  
Family, topic Divorce.  
Answer, see category Civil Actions and Procedure, topic Pleading.  
Antenuptial contracts, see category Family, topic Husband and Wife.  
Antitrust, see category Business Regulation and Commerce, topic Monopolies;  
Restrain of Trade and Competition.  
APPEAL AND ERROR.—See category Civil Actions and Procedure; see also topics  
Certiiorari; categories Courts and Legislature, topic Courts; Taxation, topic Taxes.  
Appearance, see category Civil Actions and Procedure, topic Actions, Pleading,  
Process.  
Applicable law, see categories Business Regulation and Commerce, topics Contracts  
and Sales in certain International Digests.  
Appoinment, see category Taxation, topic Taxes.  
Appraisal of dissenting shareholder's stock, see category Business Organizations,  
topic Corporations, subhead Appraisal.  
ARBITRATION AND AWARD.—See category Dispute Resolution; see also category  
Civil Actions and Procedure, topic Submission of Controversy.  
Arbitration of death taxes, see category Taxation, topic Taxes, subhead Interstate  
Cooperation.  
Armed Forces, acknowledgments of persons in, see category Documents and  
Records, topic Acknowledgments.  
Armed Forces, members of, exemptions, see category Taxation, topic Taxes;  
Transportation, topic Motor Vehicles.  
Armed Forces, notarial powers of officers, see category Documents and Records,  
topics Notaries Public, Acknowledgments.  
Articles of association or incorporation, see category Business Organizations, topic  
Corporations.  
ASSIGNMENTS.—See category Debtor and Creditor; see also categories Business  
Regulation and Commerce, topics Commercial Code, Sales; Civil Actions and  
Procedure, topic Judgments; Employment, topic Labor Relations; Intellectual  
Property, topic Trademarks and Tradenames; Mortgages, topics Chattel Mortgages,  
Mortgages of Real Property; Property, topic Deeds.  
ASSOCIATIONS.—See category Business Organizations; see also topics  
Corporations, Joint Stock Companies.  
Assumed business names, see category Intellectual Property, topic Trademarks and  
Tradenames.  
ATTACHMENT.—See category Debtor and Creditor; see also topics Executions,  
Exemptions, Garnishment.

Attestation, see category Estates and Trusts, topic Wills.  
Attorney ethics, see category Legal Profession, topic Attorneys and Counselors.  
Attorney fee clauses, see category Business Regulation and Commerce, topic Bills and  
Notes.  
ATTORNEYS AND COUNSELORS.—See category Legal Profession; see also  
category Civil Actions and Procedure, topics Costs, Evidence, subhead Witnesses.  
Attorneys in fact, see category Property, topic Powers of Attorney.  
Attorneys, professional association or corporation, see category Legal Profession,  
topic Attorneys and Counselors; also category Business Organizations, topics  
Associations, Corporations.  
Authentication, see categories Civil Actions and Procedure, topic Depositions and  
Discovery; Documents and Records, topics Acknowledgments, Affidavits.  
Automobiles, see category Transportation, topic Motor Vehicles.  
Award, see category Dispute Resolution, topic Arbitration and Award.  
 Bail, see category Criminal Law, topic Criminal Law.  
Bailments, see category Business Regulation and Commerce, topics Carriers,  
Warehousemen.  
Bank collections, see category Business Regulation and Commerce, topics Banks and  
Banking, Commercial Code.  
Bank deposits, see category Business Regulation and Commerce, topics Banks and  
Banking, Commercial Code.  
Bankruptcy, see category Debtor and Creditor, topic Receivers; and category Debtor  
and Creditor, topic Bankruptcy in International Digests.  
BANKS AND BANKING.—See category Business Regulation and Commerce; see  
also topics Bills and Notes; categories Business Organizations, topic  
Corporations.  
Bar, see categories Legal Profession, topic Attorneys and Counselors; Property, topics  
Curtesy, Dower.  
Bastards, see categories Estates and Trusts, topic Descent and Distribution; Family,  
topic Adoption.  
Beer, see categories Business Regulation and Commerce, topic Licenses, Business and  
Professional; Taxation, topic Taxes.  
Beneficiaries, see categories Estates and Trusts, topics Descent and Distribution,  
Executors and Administrators, Trusts, Wills; Taxation, topic Taxes, subhead  
Inheritance Tax.  
Bills, see category Estates and Trusts, topic Wills.  
Beverage taxes, see category Taxation, topic Alcohol, Beverages and Tobacco  
Taxes.  
BILLS AND NOTES.—See category Business Regulation and Commerce, see also  
topic Commercial Code.  
Bills of exchange, see category Business Regulation and Commerce, topic Bills and  
Notes.  
Bills of lading, see category Business Regulation and Commerce, topic Carriers; also  
Bills of sale, see category Business Regulation and Commerce, topic Sales; also category  
Birth certificates, see category Documents and Records, topic Records.  
Blue Sky Laws, see category Business Regulation and Commerce, topic Securities.  
BONDS.—See category Civil Actions and Procedure; see also topics Appeal and Error,  
Costs, Injunctions, Replevin; see also categories Business Regulation and Commerce,  
topics Brokers, Commercial Code, Securities, Warehousemen; topics Debtor and  
Creditor, topics Attachment, Executions, Garnishment, Receivers; Documents and  
Records, topics Notaries Public; Estates and Trusts, topic Executors and  
Administrators; Family, topic Guardian and Ward; Insurance, topic Surety and  
Guaranty Companies; Legal Profession, topic Attorneys and Counselors; Mortgages,  
topic Mortgages of Real Property.  
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WILL.—See category Estates and Trusts; see also topics Descent and Distribution, Executors and Administrators; category Taxation, topic Taxes.

Wine, see categories Business Regulation and Commerce, topic Licenses, Business and Professional; Taxation, topic Taxes.

WITNESSES.—See also categories Civil Actions and Procedure, topic Depositions and Discovery; Documents and Records, topics Acknowledgments, Affidavits; Estates and Trusts, topic Wills.

Workers, see category Employment, topic Labor Relations.

Wrongful death, see category Estates and Trusts, topic Death.
History: The firm was founded in Helsinki on 1 June 1888 by Kaarlo Castrén and Frans Emil Snellman. In November 1896 the law office was entered into the trade register as the first law firm in Finland. Today Castrén & Snellman is one of the largest law firms in Finland.

Castrén & Snellman has 23 partners: Jouko Huhtala, Pekka Jaatinen, Jan Kuhlefelt, Johan Åkermarck, Juha Väyrynen, Marko Hentunen, Merja Kivelä, Pekka J. Lehtinen, Jan Örndahl, Mika Ilveskero, Kimmo Rekola, Pauliina Tenhunen, Uwe Uusitalo, Hannu Pokela, Niklas Langenskiöld, Jari Sonninen, Samuli Palin, Mårten Janson, Sari Hiltunen, Anna Kuusniemi-Laine, Heidi Paalanen-Koev, Sari Laaksonen, Matias Wallgren and 90 associates.


Castrén & Snellman serves clients in Finnish, Swedish, English, Italian, German, French and Russian.

Client Base: A majority of the clients represented by Castrén & Snellman are subsidiaries of foreign companies and local medium to large corporations engaged in activities in Finland and abroad.

The clients are in a wide spectrum of industries, including banking and finance, insurance and investment, trade, media and publishing, telecommunication and electronics, metals and engineering, pulp and paper, foods, chemicals, construction, pharmaceuticals, energy and forestry.

Firm Activities: All partners are members of the Finnish Bar Association and other local professional associations.

The partners are also engaged in international activities such as the International Bar Association and the Young Lawyers International Association (AIJA).

The firm has worldwide professional contacts and works in especially close cooperation with law firms in other Nordic and Baltic countries.

Subsidiary: Castrén & Snellman has a subsidiary, Castrén & Snellman International Ltd., in Russia. It has offices in St. Petersburg and in Moscow.

Internet: For more information about the firm please visit the firm’s homepage at http://www.castren.fi.
## FINLAND LAW DIGEST

(The following is a list of all Categories and Topics, including cross-references, covered in this Digest.)

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INTRODUCTION

CURRENCY:
Legal currency in Finland, as in all countries in European Economic and Monetary Union, is €, divided into 100¢.

Bank of Finland (Suomen Pankki) is central bank of Finland, and functions within European Central Bank system. Main goal of Bank of Finland is to stabilize currency and financial system.

EUROPEAN UNION:
Finland is member of EU as of 1995.

GOVERNMENT AND LEGAL SYSTEM:

HOLIDAYS:
Public holidays are New Year’s Day; Epiphany; Good Friday; Easter Day and second day of Easter; May Day; Ascension Day; Whit Sunday (or Pentecost); Midsummer; All Saints’ Day; Finnish Independence Day; Christmas Day and Boxing Day.

OFFICE HOURS AND TIME ZONE:
Finland is in the +02:00GMT time zone. Office hours are generally from 8:00 a.m. to 4:15 p.m.

BUSINESS ORGANIZATIONS

AGENCY:
There is no monopoly of attorney representation in legal proceedings in Finland. Parties have right to use attorney. Attorney or agent must be authorized by his principal. Written authorization is required. This does not apply to advocates. See category Legal Profession, topic Attorneys and Counselors. Authorization is given in form of power of attorney.

Procuration is regulated in Procuration Act (130/1979). Procuration (prokura) is oral or written authorization given by company registered in commercial register to specified person and is expressly stated to be procuration. Person authorized under procuration (prokurist) has authority to act for his principal in all matters pertaining to conduct of principal’s business and sign his principal’s name. Unless expressly authorized, procurist cannot sell, mortgage or pledge his principal’s real property. In signing in his principal’s name, procurist must indicate procuration, by adding letters “p.p.” or words “per procuram”. Entry of procuration in commercial register is not mandatory, but if it is registered, entry of alteration or revocation of such procuration is mandatory. It is inherent in procuration that mentioning it as such notifies third person of content of authorization.

ASSOCIATIONS:
Main purpose of co-operative associations is to assist members in carrying on business, or otherwise improve their living condition. Liability of members depends on whether association agreement contains liability for additional payment.

In general, the business of a co-operative may be in any field of economic endeavor other than insurance business. Co-operative association may be either production co-operative or consumer co-operative.

The co-operative is constituted by written agreement. Minimum number of members is three persons. Notice of Co-operative must be filed with commercial register. Name of co-operative must contain word co-operative association (“osuuskunta” or “an-del slag”) or word “osuus” or “andel” or abbreviation “osk”.

Affairs of co-operative are determined by its members, or their representatives, at annual meeting, at which board of directors of co-operative is also elected. Board of directors also represents co-operative association against third persons. If number of members decreases below three, board of directors must proceed to have co-operative dissolved.

In meetings of members, each member has one vote. However, in articles of association, it is permitted to stipulate for unequal number of votes. In changing articles of association, insofar as it is permitted, majority of qualified voters is required.

See also topics Joint Stock Companies, Partnerships; categories Business Regulation and Commerce, topic Commercial Register; Citizenship, topic Aliens.

CORPORATIONS:
See topics Associations, Joint Stock Companies.

JOINT STOCK COMPANIES:

Finnish joint stock company is corporation carrying on activities with capital contributed by shareholders and divided into shares without personal liability of shareholders for obligations of company.

Share capital of private limited liability company must not be less than €2,500. Minimum share capital of public limited liability company is €80,000. Shares do not generally have par value. Shares can, however, be given par value in articles of association.

Formation.—Company is formed by one or several shareholders. Founding shareholders shall draw up, date and sign deed of formation including information on shareholders, subscribed shares, subscription price, term of payment of subscription price, board members, auditors and articles of association. Company shall apply to National Board of Patent and Registration for registration no later than three months after deed of formation is signed. At date of registration, share capital must be fully paid up. If property other than cash is given as payment of shares, there must be provision concerning it in deed of formation. Also circumstances affecting valuation of such property and valuation principles must be stated in deed of formation.

Prior to registration, company can neither acquire rights nor enter into obligations, nor can it sue, complain or defend itself in court or before any other authority. Persons acting in company’s name before it is registered are personally liable for such action. At registration, liability passes to company provided that obligation results from deed of formation or has arisen subsequent to formation of company.

Articles of association must specify: (a) Name of company, (b) domicile of company, and (c) object of company. Companies Act contains regulations, concerning for example, number of board members that are applied to company if articles of association do not contain deviating provisions.

Articles of association may provide that shareholders or others have right of redemption if share has been transferred to new owner. Articles of association may also stipulate that acquisition of shares by transfer requires consent of company.

Shares.—Share certificates shall be signed by board of directors. Signatures may be printed. Share certificate shall state name of company, serial number of shares, registration number of company, name of shareholder, signature of board of directors or person authorized by board of directors. Share certificates may not be issued before shares are fully paid up and company or increase of share capital has been registered in trade register.

Share certificate represents title to shares. Bona fide holder of share certificate, who can prove his title by unbroken chain of transfers or endorsements in writing from duly registered shareholder to specific person or in blank, is protected as legitimate shareholder and is entitled to be registered as shareholder.

Board of directors must maintain register in which all shares and shareholders must be registered. Register, which is open to public, is basis for checking shareholders and their votes at general meeting of shareholders.

Book-Entry Securities System.—Finnish listed companies, whose shares are quoted on Helsinki Stock Exchange, are required to transfer their shares to book-entry securities system. This requirement does not apply to foreign companies quoted on Helsinki Stock Exchange. Transfer of shares of other companies to book-entry securities system is voluntary and requires approval of Finnish Central Securities Depository.

Instruments other than equity-ranked instruments may be transferred to book-entry system at request of registrar representing issuer.

Increase of Share Capital.—Share capital may be increased by subscription of new shares against payment (new issue), without payment by transferring funds from non-restricted equity to share capital (bonus increase) or by subscribing funds invested in company to share capital without new issue of shares (share capital investment). Resolution to increase share capital must be adopted at general meeting of shareholders. Resolution concerning share capital investment must be made by board of directors. Companies Act (624/2006) contains detailed provisions concerning contents of such resolutions.

Increase in share capital by bonus increase may be effected by transfer to share capital of amounts which may be distributed as dividends.

Decrease of Share Capital.—Shareholders’ meeting can decide to decrease share capital. Purpose of decreasing share capital may be covering loss which cannot be covered from non-restricted equity, distribution of share capital, or transfer of assets to non-restricted equity.

Management of company is carried out by board of directors and managing director. Board of directors consists of at least one and at most five members, if not stipulated otherwise in articles of association. If board consists of one or two members one deputy
JOINT STOCK COMPANIES—continued

must be appointed. Board of directors is elected by general meeting of shareholders. Articles of association may stipulate that one or more directors, being less than half of total number of directors, are elected through other procedures.

Board of directors may authorize director, managing director or any other person to represent and sign for company if such delegation of authority is permitted by articles of association. Managing director may always represent and sign for company with regard to measures which do not exceed director’s duties.

**General Meeting of Shareholders.**—Shareholders’ right to make decisions concerning company’s affairs is exercised at general meetings of shareholders. Board of directors may allow shareholders to participate in general meeting of shareholders through technical device. Shareholder may exercise his rights at general meetings of shareholders personally or by proxy. Unless otherwise prescribed in articles of association, shareholder has one vote per share.

Resolution of general meeting of shareholders must be adopted by simple majority. In case of equality of votes (tie), chair has casting vote except that election of directors and auditors must be decided through drawing of lots. For certain important resolutions, such as amendment of articles of association, qualified majority is required. Annual general meeting of shareholders must be held within six months from end of each fiscal year. At this general meeting resolutions shall be passed in respect of: (a) Adoption of income statement and balance sheet, (b) appropriation of company’s profit or loss according to balance sheet, (c) directors’ and managing director’s discharge from liability, (d) election of directors and managing director, (e) other matters which are in accordance with Company Acts or articles of association must be dealt with at this meeting.

Extraordinary meetings of shareholders shall be held whenever board of directors deems appropriate or at request of auditor or owners of one-tenth of all shares for specified purpose.

**Merger and Division.**—Companies can, according to Companies Act, both merge and divide. Divisions can be carried out by transferring all assets and liabilities of company being divided into one or more recipient companies or by transferring only part of its assets and liabilities.

**Auditing.**—Auditor may be individual or accounting firm. Shareholders must elect one or more auditors at general meeting. Deputy auditor is mandatory if only one auditor is elected, except if accounting firm is elected as auditor. In public limited liability companies at least one auditor must be approved by Central Chamber of Commerce. Auditor must render its report to general meeting of shareholders for every fiscal year. Auditor’s report must include statement on adoption of balance sheet and income statement, inter alia.

**Financial Instruments.**—Shares give generally equal rights to shareholders. It may, however, be prescribed in articles of association of company that shares may vary with regard to rights and obligations. Differences between shares must emerge from articles of association.

Shares give generally equal voting rights at shareholders’ meetings. However, it may be prescribed in articles of association of company that shares have different amounts of votes or that certain shares do not give right to vote.

Subordinated bonds can be issued only under certain preconditions. During company’s activities, capital can be refunded only to extent that amount of non-tied equity and all subordinated loans exceed amount of losses according to latest financial statement. Further, loan ranks only above share capital in liquidation or bankruptcy. No security can be issued for preferred capital loan by company or its subsidiary.

Companies may issue options entitling holders thereof to subscription for its shares. Companies may issue options entitling holders thereof to subscription for its shares or sell its shares through stock market only one week after having issued official announcement thereof.

**Dividends.**—Resolution to distribute dividends must be adopted at general meeting of shareholders. Distribution of profit may not exceed amount of non-restricted equity deducted by amount that may not be distributed in accordance with articles of association. Funds may not be distributed if company is insolvent or distribution results in insolvency.

General meeting of shareholders may not distribute dividends higher than those proposed or approved by board of directors. Shareholders representing not less than 10% of share capital may, in certain circumstances, call for distribution of higher dividend in accordance with stipulations in Companies Act (624/2006); however, not exceeding 8% of company’s own capital.

**Liquidation.**—General meeting of shareholders may resolve that company shall be liquidated.

Trade register must place company in liquidation if company does not have competent registered director of directors, company does not have registered representative with domicile in Finland, company has not registered its annual accounts within year from end of financial year despite notification by register authority, or company is declared bankrupt and bankruptcy has become void because of lack of funds.

General meeting of shareholders which resolves, or trade register which orders, that company must be placed in liquidation shall at same time appoint one or more liquidators. Liquidators replace board of directors and managing director and are responsible for carrying out liquidation of company.

Auditor’s appointment does not terminate when company is placed in liquidation.

Companies Act (624/2006) gives detailed provisions for administration of liquidation.

**Trade name of company** must contain word “osakeyhtiö” or “aktiebolag” or their abbreviation (“Oy” or “Ab”) or for public limited liability companies “julkinen osakeyhtiö-oyj” or “publikt aktiebolag-abp” and shall be clearly distinguishable from other trade names previously entered in Trade Register. If name of company is registered in two or several languages, each version must be mentioned in articles of association. Further, company’s business ID must be printed on all official papers.

**Names of divisions or branches.** Trade name units may be registered as supplementary trade names in addition to name of company.

**Miscellaneous.**—Companies Act (624/2006) also contains detailed provisions regarding compulsory transfer of minority shares, damages, penalties and registration. See also category Citizenship, topic Aliens.

**PARTNERSHIPS:**

Finnish partnerships or so-called open companies (general partnership) and comman-
ded companies (limited partnership) are regulated in Partnerships Act (389/1988).

**Community partnership** has a minimum of two partners who carry on trade together on basis of written partnership agreement and who are personally liable for obligations of partnership. Partner cannot assign one’s partnership interest without consent of all other partners. Consent of all partners is also required for accepting new partner into partnership.

Limited partnership must have minimum of two partners, general partner and limited (silent) partner. General partner is personally liable for obligations of partnership, but silent partner’s obligations are limited to amount of his investment in partnership.

Trade name of partnership must clearly differ from any other trade names already recorded in Trade Register.

See categories Business Regulation and Commerce, topic Commercial Register; Citi-
zenship, topic Aliens, subhead Corporations Owned or Controlled by Aliens.

**SOCIETAS EUROPAEA:**

Formation of Societas Europaea (SE) has been possible since Oct. 8, 2004. Formation is harmonized by EU regulation (516/2001) and National Societas Europaea Act (242/2001).

Also rules of Companies Act (624/2006) regarding public limited companies are appli-
cable to SE. Companies forming SE are required to be public limited companies.

See also topic Joint Stock Companies.

**BUSINESS REGULATION AND COMMERCE**

**BILLS AND NOTES:**

**Bills of Exchange.**—Bill of exchange is negotiable instrument, form of which is strictly prescribed by law and in which consideration is conclusively presumed. Special feature of obligation under bill of exchange is its severity toward debtor and possibility of seeking judgment and execution thereof in shorter time and in simplified manner.

In bill of exchange each indorser in general is liable to subsequent indorsers.

Parties to bill of exchange, in accordance with general rule, are drawer, drawee (who after acceptance of bill is known as acceptor), and payee. Bill of exchange may be made payable to or by drawer himself.

Bill of exchange must bear words “bill of exchange” (“vekseli” or “växel”), place and time of issue, amount of money payable, name of payee and drawee, address of drawee, time when and where bill is payable, and signature of drawer. Name of acceptor is written on face of instrument and indorsements on back. Transfer may be either by full in-
dorsement or by blank indorsement.

If obligation to pay money on bill of exchange is not fulfilled, claim must be made to official at latest on second day, result of which is that person who filed claim of protest preserves his rights under bill of exchange against all parties liable on instrument. Once these rights under bill of exchange are lost, bill of exchange is considered as ordinary promissory note which does not have defenses as to proof and collection inherent in bill of exchange. However, in order to preserve rights under bill of exchange, action on same must be commenced within specified time, for instance against acceptor within three years from due date. Actions against indorser and drawer must be commenced within one year from conditions specified in act on bills of exchange.

Procedure to be followed by holder of bill of exchange in order to preserve his rights where it is payable outside of Finland, is governed by law of that place or accepted customary usage. (Bill of Exchange Act 242/1932).

**Checks.**—Check must contain on its face word “check” (“shekki” or “check”), place and time of drawing, order to pay specified sum of money, place of payment, name of bank who shall pay check, and signature of drawer.

Check is payable at bearer, although even though it contains different time of payment or if time of payment is not mentioned. Check may be made payable to designated person or to bearer.

Check may be transferred in same way as bill of exchange. In order to preserve retroactive cause of action, check must be presented for payment at latest on 20th day after date of issue, other than checks issued outside Europe which must be presented for payment on 70th day after date of issue. Checks payable abroad are governed by law of place of payment. There are separate provisions on this point concerning checks issued abroad.

In order to preserve retroactive cause of action where check presented for payment is not paid, claim for nonpayment or equivalent proof is necessary. (Check Act 244/1932).

**COMMERCIAL REGISTER:**

(Trade Register Act 129/1979).

Those desiring to conduct trade, manufacturing, handicraft, or other business are obliged to file notification with commercial register prior to starting business activities (basic notification) within prescribed time period.

Commercial register is kept by National Board of Patents and Registration of Finland. Entries to commercial register and documents filed are open to public and entries are generally published in Official Gazette.

Note: See at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.
FINLAND LAW DIGEST

BUSINESS REGULATION AND COMMERCE

COMMERCIAL REGISTER . . . continued

Basic notification to commercial register must contain, inter alia, company name and type, company’s domicile and address, line of business, and who represents company. For information on trade register, forms and instructions for registration, please see note at head of Digest.

Changes in registered particulars must be filed to trade registry immediately using amendment notification form. Dissolution of company and termination of business also have to be registered. Any annual accounts of company must be submitted to registry. Failure to register may lead to fines, liability for damages, lapse of incorporation of company, etc. If no notification has been made to commercial register within ten years, company may, after procedure prescribed by Act, be removed from register.

CONTRACTS:

In accordance with Contract Act (228/1929) (revised co-Nordic legislation), contracts ensue from acceptance of offer. This is not applicable to contracts fixed in form by law and certain other contracts such as pledge of personal property that require conveyance of object. In case of oral offer, acceptor must accept immediately unless grace period is granted. Other offers must be accepted within stated period of time. Promisor and acceptor are respectively bound by offer and acceptance which cannot be withdrawn or revoked unilaterally after having come to other party’s attention.

Contracts are valid regardless of form except in certain specified contracts such as sale of real estate. Contract is null if non-qualifying as necessarily or necessarily for nonperformance. Invalidity of contract can be alleged in circumstances enumerated in Act including duress, fraudulent persuasion, exercise of undue influence and incapacity or mental disorder of contracting party. Third party acting in good faith may be protected if contract is null. Contracts Act contains rules on general adjustment of exorbitant stipulations. In accordance with these, conditions which are exorbitant may be adjusted or ignored. Other conditions may be modified or entire contract may be set aside if unreasonable conditions arise of such importance that it cannot reasonably be argued that contract should be valid.

Applicable Law.—There are no statutory rules concerning conflict of laws in contracts except as regards bills of exchange and checks.

Government Contracts.—State and public authorities and some legal persons governed by public law must observe Public Procurement Act (348/2007). Entities operating in water, energy, transport, and postal services sectors must apply Utilities Act (349/2007) in procurement procedures. See also topic Sales.

INFORMATION TECHNOLOGY, INTERNET AND NEW MEDIA:

Computer programs are copyright protected as literary works under Copyright Act (404/1961) implementing EU directive on protection of computer programs (91/250/EEC). Prerequisite for copyright protection is that program is considered to be creative and original work of author. No qualitative criteria may be applied. Ideas and principles of computer programs are not subject to protection under Copyright Act (404/1961) implementing EU directive on protection of computer programs (91/250/EEC). Copyright holder of program has exclusive right to grant license to copy, modify, translate or arrange computer programs, and to distribute or hire out originals of computer programs or copies. Right of user to copy softwares for backup purposes or to watch, examine or test programs to find out ideas or principles of program cannot be excluded by contract provisions. Users may also reverse engineer computer programs with certain limitations to acquire information required to implement interoperability with another program. All works of computer programs paid for employment while conducting tasks under employment or according to employer’s instructions will belong to employer.

E-Commerce.—Electronic Commerce Directive (2000/31/EC) has been implemented in Finland, primarily into Act on Provision of Information Society Services (458/2002). Act on E-Commerce deals with issues concerning, inter alia, electronic commerce, information society services, information requirements, commercial communications, electronic contracts and liability of intermediary service providers.

Provider of information society services is required to give to recipients of services and authorities, inter alia, service provider’s name, contact details and information on public register in which service provider is registered and certain additional information in case of regulated professions, in easily, directly and permanently accessible manner. Further, service providers are required to provide information on technical steps necessary to conclude electronic contract, whether contract will be filed and accessible, means available to identify and correct input errors, languages offered for conclusion of contract and any codes of conduct applied by service provider, prior to recipient’s placement of order.

When legislation requires that contract be in written form, electronic contract that cannot be independently altered and remains accessible by parties will also fulfill this requirement. If contract requires signature, electronic signature fulfilling legal requirements therefore will fulfill this requirement.

In accordance with provisions on liability of intermediary service provider, under certain conditions ISPs are free from liability for caching and hosting illegal content. ISPs are also free from liability for unauthorized use of material hosted or transmitted by ISP. However, role of ISP in these situations must be merely technical in nature, and ISP must also remove illegal contents without delay, if so ordered by court.

However, when contents constitute infringement of copyright, so-called “notice and take-down” procedure will apply. Under this, ISPs must remove from their server content that copyright holder claims infringes on their copyright. On other hand, if content provider responds to copyright holder’s claim within 48 days and provided that response fulfills requirements set out in proposed Act, ISPs are required to cancel take-down proceedings. If copyright holder still wishes contents to be taken down, it must come before court in one-month time period. Review of decision will be possible on the same time period. Offense is punishable with fine.

To some extent, e-commerce is also regulated by provisions in Consumer Protection Act (38/1978), which implements Distance Selling Directive (97/7/EC), concerning distance selling. Law applies now to all types of distance sales, including e-commerce activities that involve the use of electronic delivery, payment or goods or services.

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.
Business Regulation and Commerce - Martindale-Hubbell Law Digest - 2008

Licenses, Business and Professional:

See categories Citizenship, topic Aliens; Foreign Trade and Commerce, topic Foreign Exchange Regulations.

Commercial Representatives—Act on Commercial Representatives and Salesmen (417/1992). As stated in Act, commercial representative promotes, as agent, for its principal's account, sales of its goods by obtaining purchase offers for its principal or by concluding sales agreements in its principal's name. Commercial representative is either agent with permanent place of business or salesman.

General—Except where otherwise expressly provided, Act is applied only if nothing contrary follows from contract or from custom of trade.

Agency agreement and amendments thereto must be made in writing if one of parties so requests.

If application of any provision in agency agreement would obviously be repugnant to sound business practice or otherwise unreasonable, such provision may be modified or set aside.

Commission—Agent has right to commission while agency agreement is in force for all sales agreements which he has concluded or which otherwise can be attributed to his contribution.

For sales attributable to agent, agent is entitled to commission even if sales were made after termination of agreement, provided buyer's offer reached principal or agent prior to termination of agency agreement. Agent right to commission for post-agency sales further exists when such sales arose primarily from agent's activities while agency still was in force and when sales were made within reasonable time after termination of agency agreement.

If parties have not agreed upon any commission rate, such rate shall be calculated in accordance with common payments for similar or equivalent services at agent's place of business.

In addition to commission, after termination of agency, agent is entitled to compensation that, at most, equals compensation that the agent is entitled to receive for new customers agent obtained for principal or for any significant expansion of business agent achieved with principal's old customers if these factors result in significant benefit to principal in manner of business transaction with or after termination of agency, provided that such compensation is reasonable in light of all relevant factors of each particular contract. Contractual provision that restricts agent's right to such post-agency compensation beyond that stated in Act is null and void.

Termination—Agency agreement concluded for fixed period of time expires when period agreed upon has elapsed. Agency agreement concluded for indefinite period of time can be terminated after one month's notice provided that agreement has been in force for less than a year. For each subsequent year, notice period to terminate increases by one month up to maximum of six months. Parties may not agree on notice periods shorter than those stated above, provided that parties may agree on three-month notice period for agent even if agency has been in force for more than three years.

Either party may rescind agreement at any time in event of any actions or omissions by other party resulting in being unreasonable for that party to continue performance relationship. Agency agreement may be prematurely terminated without existence of valid grounds if terminating party compensates other party for all resulting damages.

Money Laundering:

According to Finnish Penal Code (39/1889) as amended, any person who knowingly receives, uses, converts or transfers property acquired through offensory or tries to conceal true nature or origin of such property, must be sentenced for money laundering to fine or imprisonment of six years in prison, or in case of aggravation of form of crime, for maximum of six years in prison. Also attempt is punishable. Law also includes rules for negligent money laundering.

In accordance with Preventing and Clearing Money Laundering (68/1998 as amended) imposes obligation for variety of parties, e.g. credit and financial institutions, real estate agents, investment firms, providers of legal assistance in legal matters (except trial proceedings) to identify and follow new customers and their business and detect suspicious transactions and report them to Money Laundering Clearing House (Central Criminal Police, Money Laundering Clearing House, Jokinemenkuja 4, PO Box 285, 01301 Vantaa, Tel. +358 (09) 8388 661, Faks. +358 (09) 8388 6811, e-mail: kpk-tahuepesu@kpk. poliisi.fi). Failure to report or act according to due diligence rules and obligations of law may constitute punishable offence.

Monopolies, Restraint of Trade and Competition:

Finland is member state of EU, wherefore Finnish competition legislation closely follows EC Competition rules.

In accordance with Act on Competition Restrictions (480/1992 reformed in 2004; current Act as of 1 January 2004) and other World Trade Organization (WTO) provisions of respective agreements or concerted practices between undertakings or decisions by associations of undertakings that prevent, restrict or distort competition are prohibited. Hence, cartels and vertical restrictions, allowing consumers or customers fair share of benefit, provided that it does not impose on undertakings concerned restrictions which are not indispensable to attainment of these objectives, and provided that it does not afford such undertakings possibility to eliminate competition in relevant market in piecemeal fashion. Undertakings concerned must conduct self-assessment whether agreement, concerted practice or decision of association of undertakings prohibited in principle may be allowed based on abovementioned exception.

Act also prohibits abuse of dominant position.

Upon request undertakings or associations of undertakings are obliged to give Finnish Competition Authority all information and documentation needed to investigate competition restrictions. If undertaking is found to be in breach of prohibition of Act, fines up to 10% of undertaking's turnover can be imposed. Finnish Competition Act also provides for leniency, i.e. immunity from fines for party first revealing prohibited restriction of competition of which it is party.

Business acquisitions, mergers and full-function joint ventures must be notified to Finnish Competition Authority if combined worldwide turnover of undertakings concerned exceeds €350 million and at least two of parties to acquisition each have turnover exceeding €20 million in Finland. Rules also apply to foreign-to-foreign mergers and acquisitions. In case concentration leads to dominant position, which might impede competition in relevant Finnish market, Market Court has right to prohibit, declare void or set conditions for concentration.

For further information, please see website of Finnish Competition Authority: http://www.kelpailuvirasto.fi.

See also category Treaties and Conventions, topic Treaties.

Negotiable Instruments:

See topic Bills and Notes.

Sales:

General—Sale is either sale of real or movable property. Applicable law must be chosen depending on type of real property.

Sales of real property are governed by Code of Real Estate Sale (540/1995). Sales of real property require prescribed form. Contract has to be made in writing and confirmed by notary public. When sale has been completed transfer of ownership must be registered at local court. By registration, ownership of buyer is made public and secured against claims of other buyers or creditors of seller. Title passes, however, when sale is made and contract is signed.

Sales of Goods—In accordance with Sale of Goods Act (355/1987). Act applies to sale and barter of movable property unless otherwise agreed or usage or trading practice prevails. Agent's average follows from Consumer Protection Act. Sales of movable property are not restricted to any set form. Sale may be made either in writing or orally. Title to movable property passes to buyer at moment sale is concluded.

Goods must be placed at buyer's disposal at seller's place of business or residence. If goods are to be transported delivery takes place when handed over to buyer or to carrier. Fixed goods must be delivered within reasonable time from conclusion of contract. Either party may withhold performance until buyer pays or tender is tenanted. Risk for goods passes on in act of delivery. Goods must be fit for purpose for which similar goods are ordinarily used. Goods must be corresponded to information given by seller. If goods are sold subject to "as is" clause, delivery is deemed defective if goods are in considerably worse condition than buyer had reason to expect considering nature and quality of goods, market price and other circumstances. Delay in delivery may entitle buyer to require performance or declare contract void as well as claim damages. Right to declare contract void on account of delay arises only if breach of contract is of essential importance to buyer and seller must have realized this.

Sellers is not obligated to perform delayed delivery if there are insurmountable obstacles to delivery or delivery would cause unreasonable sacrifice. Buyer must claim fulfillment of delayed delivery within reasonable time. Unless buyer, when asked if willing to accept delayed delivery, answers without unreasonable delay, right of declaring contract void is forfeited. If delivery already made is found to have been delayed, buyer's right to declare contract void or claim damages is forfeited unless intention to do so is declared within reasonable time after buyer received delivery. If defective goods are delivered and this is not dependent on buyer or circumstances on his part, buyer may claim remedy of defect, re-delivery, or price reduction, or declare contract void. In addition, buyer may claim damages. Buyer is liable to examine goods in reasonable time after delivery, and if goods are defective must give notice of defect within reasonable time after delivery takes place. If buyer does not have notice of defect within reasonable time after delivery takes place, buyer may claim damages. Buyer is entitled to delay of receipt or payment if goods are defective. Buyer may claim rectification without costs if this does not cause seller unreasonable inconvenience. Buyer has right to claim re-delivery on account of defect if breach of contract is of essential importance to buyer and seller knew or should have known this. If seller does not remedy defect, buyer is entitled to compensation for having goods rectified. Although buyer does not claim rectification or re-delivery seller is entitled to take respective measures if this does not cause buyer unreasonable inconvenience and buyer is reimbursed for his costs.

If remedy of defect and re-delivery are out of question or not effected within reasonable time, investigating buyer is entitled to order defendant to pay reduction of price. If defective contract void arises only if breach of contract is of substantial importance to buyer and seller knew or should have known this. Right to cancel is contingent upon notice within reasonable time after buyer became or should have become aware of defect.

If buyer fails to pay in time, seller may claim performance or declare contract void as well as claim damages. He is also entitled to interest and, under certain circumstances, to keep goods in possession of seller.

Seller may declare contract void for late payment if buyer's delay is substantial. If goods are in buyer's possession seller may declare contract void only if seller reserved such right to buyer.

If goods are to be delivered in instalments, non-performance of one instalment is not reason to claim reduction of price. If party has gone bankrupt before fulfilling its obligations other party must require bankrupt estate (receiver or trustee in bankruptcy) to state whether estate wants to be reimbursed for its adequately assured of its interests.

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See note at head of Digest as to 2007 legislation covered. See Topical Index in front part of this volume.
SALES . . . continued
buyer or his estate after bankruptcy, seller can claim goods be returned unless payment is
made immediately.
Compensation for breach of contract includes compensation for costs, price-difference, lost profit or other direct or indirect loss. In principle, responsibility for direct loss is
more severe whereas liability for indirect loss normally requires negligence. Indirect loss is
lost caused by reduction or interruption of production or turnover, loss caused by fact that
such goods cannot be used as intended, lost profit because of non-fulfillment of contract
with third party, loss caused by damage to other property or other similar loss that is
difficult to foresee.
Party suffering damage must try to minimize its loss. If buyer does not collect goods in
time seller shall take care of goods on buyer’s account. Same rule applies to buyer if
he wishes to reject goods he already has received. In both cases seller and buyer have
right to compensation for costs. If it is not possible to take care of goods or to continue
taking care of them, goods may be sold. Surplus must be paid to other party.

Consumer Protection.—Consumer Protection Act (38/1978) concerns supply, sale
and marketing of commodities to consumers for private use. Act prohibits marketing
practices which are incompatible with good marketing standards or otherwise unfair to
consumers, for example untrue or misleading information. Consumer Ombudsman and
Market Court supervise that Act is observed. Latter may also impose fines. General court
of first instance may impose fine for consumer protection violation. Consumer cannot be
deprived of rights provided by Act by contract. Seller’s liability for damages is judged
in accordance with normal liability principles and implies seller’s negligence.

Product Liability.—In accordance with Product Liability Act (694/1990), entrepre-
neur (importer, manufacturer and in some cases seller of products) is obligated to com-
penstate any and all damages caused by product which they have imported, manufactured
or sold irrespective of negligence. Act is in conformity with EC-regulations except that
there is no self risk in Finland for damages caused to objects.

Warranties.—See category Debtor and Creditor, topic Guaranty.

International Sale of Goods.—United Nations Convention on Contracts for Inter-
by Part II of Convention (Formation of Contract) and Convention does not apply to
contracts of sale where parties have their places of business in Denmark, Finland, Sweden,
Iceland, or Norway. If parties are from Nordic countries, national laws are applicable.
In these cases, applicable act is chosen based on rules of international private
law. See category Treaties and Conventions, topic treaties and Part V; Selected Inter-
national Conventions.

CITIZENSHIP

ALIENS: See category Immigration, topic Aliens.

CITIZENSHIP: In accordance with Nationality Act (359/2003), person acquires automatically Finnish citizenship on basis of birth, marriage of parents (legitimation), adoption, or place of
birth. In addition, Finnish citizenship can be acquired by application or by declaration
to authorities. Foreign nationals may be granted Finnish citizenship upon application
provided they have resided in Finland for sufficient length of time, can speak Finnish or
Swedish and meet integrity requirement. Essential requirement for citizenship is that
applicant’s identity has been reliably established. Finnish legislation accepts multiple
nationality (dual nationality). Declaration procedure is limited to certain groups of people
such as former Finnish citizens and young people (aged 18-22) who have resided in
Finland for long time.

Upon application, Finnish citizen may be released from Finnish citizenship if person
is citizen of or is about to gain citizenship of foreign state.

Military/National Service.—Finland’s national defence is based on system of military
service. Military service is not restricted to conscription: period during which Finnish
men are eligible for military service starts at beginning of year in which they turn 17 and
continues until end of year when they turn 60. Conscription lasts 365 or 362
days. Reservists can be commanded to undergo refresher courses in total from 40 to
100 days. Conscientious objector is person who for religious or ethical reasons refuses to
serve in Finnish Defence Forces. Personal conviction against use of weapons no longer
needs to be proven. Service preformed must consist of work that benefits public inter-
est—generally it is carried out in government or municipalities.

EQUITY: Act on equality between Women and Men (609/1986) aims to prevent gender based
discrimination, promote equality between women and men and improve position of
women in working life. Issues related to religion and personal life are not within scope of
Act. Act contains general prohibition against gender discrimination in working life and
this prohibition is sanctioned by compensation by employer in breach of this prohibition. Equality Ombudsman acts as special supervising authority in gender discrimination issues.

Non-Discrimination Act (21/2004) has been in force since Feb. 2004. Act prohibits discrimination based on age, ethnic or national origin, nationality, language, religion,
belief, opinion, health, disability, sexual orientation or other personal characteristics. Act
defines direct and indirect discrimination and infringements of Act are sanctioned. Pro-
hibition on all discriminations based on ethnic origin, other than in employment and service
relationships governed by public law, are supervised by Ombudsman for Minorities and
Discrimination Board.

IMMIGRATION: See category Immigration, topic Immigration.
In order for bankruptcy petition to be successful, there must be general grounds for bankruptcy at hand. That is, debtor is required to be insolvent. Debtor is considered to be insolvent if it is other than temporarily unable to pay its debts when they fall due. Bankruptcy Act lists situations in which insolvency is presumed, unless proven otherwise: (i) Debtor has ceased paying, or has discharged any of his debts, on terms which have taken place during six months preceding submitting of bankruptcy petition, it has become apparent that debtor’s assets do not cover outstanding debts in full; or (ii) after having received creditor’s request for payment, debtor has not repaid respective valid and due amount within period of one week. However, mere notification from creditor confirming insolvency is sufficient in this respect, unless there are specific reasons to believe that such notice is inaccurate.

In court decides to open bankruptcy proceedings, court appoints administrator, or if deemed necessary, more than one administrator, to take bankruptcy estate into his custody and to administer it. Appointment of administrators is generally governed by wishes of creditors representing majority of claims in bankruptcy. New Bankruptcy Act has introduced concept of “public receivership”. If debtor’s assets do not cover costs of bankruptcy proceedings, such public receivership may take place. Court may decide upon placing debtor under public receivership based on Bankruptcy Act’s proposition. As consequences, possible misconducts and defaults can be detected also as regards truly indigent companies. This new provision might also prevent misconduct within administration of going concern. When court has decided to open public receivership, administrator no longer represents estate. Moreover, creditors forfeit power of decision regarding bankruptcy estate’s matters. Bankruptcy Ombudsman appoints public receiver, who shall seize assets of bankrupt’s estate.

Bankruptcy proceedings have commenced, debtor forfeits control of all assets belonging to estate, and any precommitted matters such as settlements or involvements, become null. Creditors’ meeting has final power of decision as regards affairs of bankruptcy estate, although administrator is usually vested with authority to sell assets of estate and to take other measures needed for lawful and effective administration thereof. Creditors’ meeting can be held at distance with help of modern technology (e.g., by telephone or video conference).

After two months from commencement of bankruptcy proceedings, administrator submits plan to court to distribute estate to creditors, who have requested it. Directors of debtor or other authorized representatives must sign inventory as confirmation of its accuracy or if court so orders, attest under oath to its accuracy. Estate inventory must include all assets of debtor and all debts that accrued before commencement of bankruptcy proceedings. After estate inventory has been drawn up, creditors will decide at creditors’ meeting on process for sale or realization of assets. Creditors have final decision with respect to realization process and administrator(s) must act accordingly, taking also into consideration mandatory provisions of law.

Administrator will establish lodgement date by which all creditors must submit their claims. Each creditor must generally lodge his claim in writing or by electronic transmission, and state which priority he claims thereto. Creditor is required to notify administrator of agreements, undertakings or other written evidence, which claim is based on. Also, claims in foreign language must be accepted and claims must be translated into Finnish or Swedish by creditor of receiver on his own request (unless claim and factual evidence or basis thereof are clear, administrator may take such receivable into account without lodgement. In such case, administrator must inform creditor of amount of receivable that will be stated in proposal for distribution list. If creditor files proof of claim after deadline set by administrator, claim will not be finally disallowed. Creditor shall, however, be charged for this so-called retroactive lodgement with fee amounting to 1% of lodged claim. Fee is never less than €600 or more than €6,000. Notwithstanding foregoing, retroactive lodgement is disallowed after confirmation of proposal for distribution. Within two months from lodgement date, administrator must draw up proposal for distribution list. Proposal for distribution list, or notice thereof, must be submitted to debtor and to those creditors who have requested it as well as to creditors whose claims administrator has contested. Generally, disbursement to creditors must be paid out in accordance with certified distribution list.

Once bankruptcy estate has been scrutinized and assets liquidated, administrator must draw up final settlement for accounts which were available to it against original creditor. If negotiable instrument is transferred, in question, instrument of indebtedness may not be assigned and transferred to detriment of recipient. Creditor may assign and transfer its claim to another. Unless negotiable instrument is otherwise available to it against original creditor, if negotiable instrument is transferred, debtor does not have this advantage. Transfer of negotiable instrument presupposes agreement between transferee and transferee. Transfer of nonnegotiable instrument has to be notified to debtor. There is no prescribed form for this agreement. On other hand, transfer must be indorsed on instrument when it is negotiable instrument. This indorsement can be confined to mere blank indorsement, in which case law has been specifically provided (for instance as to bills of exchange). Bearer instrument may be negotiated by transfer of possession to transferee.

Report: See topic Law Reports.

Statutes: Laws of Finland are based to large extent upon codification of laws from Sweden from 1734, which have, however, been greatly changed and amplified by newer legislation since Finland was separated from Sweden in 1809.

In criminal law: Extradition varies between countries owing to different regional arrangements. Regional arrangements have been concluded between Nordic countries (uniform legislation), Member States of EU (Council Framework Decision of 13 June 2002) and between Member States of Council of Europe (European Convention on Extradition, Treaty Series 32/1971, and its Second Additional Protocol, Treaty Series 15/1985). Finland has Bilateral Agreement on Extradition with Australia, Canada, France, Great Britain and Northern Ireland, Kenya, Netherlands, New Zealand, Uganda, and U.S.A.

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EXECUTIONS — continued

enforcement where enforcement measures are limited to garnishment of wages, salaries or other corresponding incomes which may be ascertained from public registers. Further, private debts may be collected from individuals only for period of 15 years from final judgment date. Time limit may be extended to 20 years in certain circumstances. Latter reform has partially retroactive effect, i.e., if final judgment was issued before Mar. 1, 1993, such judgment is enforceable until Mar. 1, 2008 or 2013 depending on applicable time limit whereas time limit for later judgments run from actual judgment dates.

EXEMPTIONS:

Generally, ordinary household effects, utensils and necessary working tools may not be foreclosed. Further, only one-third of wages, salaries, pensions, unemployment benefits and maternity benefits may be garnished provided that protective portion needed for livelihood and established yearly by Ministry of Justice is not prejudiced. Protected portion for single debtor is €19.50 per day and €7.00 per day for each dependent.

GARNISHMENT:

See topics Attachment, Executions, Exemptions.

GUARANTY:

Guaranty is contract, by which guarantor becomes obligated to creditor for liability of third person, debtor. There are no provisions as to form of guaranty. Accordingly, guaranty can be concluded orally or in writing. Provisions of Act on Guaranties and Third-Party Pledges (361/1999) are mandatory where debtor is consumer.

Guaranty is in cases in which case guarantor guarantees debtor. Generally, however, with guaranty is meant property guaranty by which guarantor undertakes in specified event to pay certain amount of money. In Finland difference is made between personal debt guaranties and secondary Guaranties. In former case, guarantor is jointly bound with debtor and in latter case guarantor undertakes to pay any deficiency remaining after eventual enforcement or bankruptcy of debtor. Guaranty is secondary guaranty provided that parties have not agreed on personal debt guaranty.

If there are several guarantors for same debt, guaranty may be joint and several when each guarantor is liable for himself and for others, so that debt may be collected from any one of them; or guaranty may be per capita in which case each guarantor is liable only for own share (pro rata parte). Undertaking is joint and several if guarantors have not divided liability among themselves by express provision. Guarantor, who has paid debt, is subrogated to rights of creditor as against debtor and other guarantors.

LIENS:

Landlord has right to retain goods which tenant has upon leased land or in building until payment of rent. Similar right of retention belongs to house owner and keeper of inn to goods of tenant staying in house or inn. Right is limited when chattels on which lien has been made. Attorney-at-law may retain papers of client until expenses and fees have been paid.

PLEDGES:

Right of pledge is such right to chattel as entities creditor to use sale price of chattel pledged in order to obtain certain sum of money. Changes in title to pledged chattels have in general no effect on rights of pledgee. Right of pledge survives even though debt secured by pledged chattel is owed out. Both real and personal property may be pledged. To preserve right of pledge to real property against new owners of realty, mortgage is necessary. Pledging of chattel requires delivery of chattel to creditor, except in cases in which enterprise mortgage is permissible (see category Mortgages, topic Chattel Mortgages). Use of pledged chattel for payment of debt is accomplished by conversing chattel to cash. Sale of chattel by auction is usually stipulated in agreement made at time of pledging. Real property is sold at judicial sale.

Enterprise mortgage gives preference in event property is sold at judicial sale or in case of debtor’s bankruptcy. Enterprise mortgage is secured by application to Patent and Register Office in Helsinki. Application is made on form specified by registration authorities and must be note and debtor’s consent to mortgage. Enterprise mortgage is valid until it is discharged.

RESTRUCTURING:

Provisions relating to restructuring of enterprises are included in Restructuring of Enterprises Act (47/1993) which was recently amended. Aim of Restructuring of Enterprises Act is to rehabilitate viable business activities of debtor in difficulties and to reschedule debts. Process of enforced debt restructuring or rescheduling closely resembles American Chapter 11 of Bankruptcy Act. There are, however, some major differences, e.g. Finnish law provides that one or more administrators always are appointed. Application for restructuring, which is made to court of first instance, can be filed either by: (i) Debtor; (ii) creditor or group of creditors (excluding any creditors whose claims are contestable or otherwise unclear); or (iii) party for whom debtor’s executory obligations have not been performed.

Reorganisation of procedures for restructuring financing and proposals for restructuring financing and operations such that debtor may be rendered healthy once again. Furthermore, proposal for restructuring debts shall be included therein. Debts can either be arranged by: (i) Charging time schedule for rescheduling payments at capital in first hand and at interest; (ii) reducing debt costs; or (iv) reducing amount of remaining debt.

If application for surrendering company’s assets into bankruptcy has been made, but court has not yet declared company bankrupt before application for restructuring is filed, latter shall be decided upon first. Same applies to bankruptcy application that is filed during consideration of restructuring application in court.

Act on Adjustment of Debts of Private Individuals (571/1993) follows, wherever applicable. Provisions for restructuring financing and proposals for restructuring operations such that debtor may be rendered healthy once again. Furthermore, proposal for restructuring debts shall be included therein. Debts can either be arranged by: (i) Charging time schedule for rescheduling payments at capital in first hand and at interest; (ii) reducing debt costs; or (iv) reducing amount of remaining debt.

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APPLICATION AND ARBITRATION:


Arbitration may be used only in private law disputes, which can be agreed on. Act is relatively detailed, but leaves number of issues for parties to agree on. Arbitration agreement must be made in writing. It is possible to start arbitration on basis of several similar arbitration agreements at same time provided that they relate to same subject matter. Finnish arbitration is based on doctrine of “independence” of arbitration agreement. Parties are free to agree on number of arbitrators, and failing such agreement, arbitration panel consists of three arbitrators as stipulated in Act.

Control of legality of award, due process and fundamental legal rules including order of public is subject to post control by courts in connection with enforcement of award.

MEDIATION:

Judicial Mediation in Civil Disputes.—Act on Conciliation of Civil Cases in Ordinary Courts (663/2005) entered into force on Jan. 1, 2006. New Act provides possibility for District Court and Court of Appeal to decide upon initiating mediation in civil disputes. Mediation requires that both parties consent to procedure, that dispute is suited to mediation and that mediation is appropriate considering claims of parties. Judge of court acts as mediator. Mediation is free.

If attempt at conciliation is successful, conditions of conciliation can be set down in agreement. At request of parties, court may confirm conciliation agreement which then constitutes enforceable judgment and is subject to appeal. Mediation procedure is terminated without conciliation if party so wishes or if judge finds that no real prospects for conciliation exists. After termination of mediation procedure, parties may initiate or continue court litigation proceedings. Circumstances put forward by party during mediation may not be invoked before court.

MEDIATION IN CRIMINAL MATTERS.—Act on Conciliation in Criminal and Certain Civil Cases (1015/2005) entered into force on Jan. 1, 2006. In criminal matters, mediation is process in which victim and offender may meet confidentially in presence of impartial mediator in order to discuss mental and material harm caused by crime and to reach agreement on restitution of that harm. Mediation requires free consent of parties.
MEDICATION...continued

and it may deal only with crimes considered eligible for conciliation. In cases of serious crimes, possibility of mediation is often excluded.

Mediation is carried out by voluntary lay mediator who is trained for task. Successful mediation may result in decision not to prosecute, waiving of sentence or more lenient punishment.

Mediation of Finnish Bar Association.—Rules for mediation of Finnish Bar Association have been in force since Jan. 1999. Mediation, in accordance with these regulations, is voluntary and based on agreement between parties. Mediation complies with procedure agreed by parties. Mediator is advocate appointed to settle dispute between parties. Finnish Bar Association arranges education in mediation for lawyers.

Unless otherwise agreed, mediator is entitled to hold confidential discussions with either party separately and to receive material from either party provided that this is not disclosed to other party. Mediation ends either with written settlement agreement between parties, by mediator notifying parties that there is no reason to continue mediation, or by one of parties notifying mediator in writing that he or she no longer wishes to continue mediation.

DOCUMENTS AND RECORDS

ACKNOWLEDGMENTS:

Foreign documents to be used in Finland must be certified by relevant country’s notary public, legalised by relevant country’s Ministry of Foreign Affairs and legalised by particular embassy/consulate of Finland. If relevant country is member of Hague Convention, documents must only be certified by country’s notary public and provided with apostille.

AFFIDAVITS:

Use of affidavit is confined to certain cases where oath is administered by court only.

NOTARIES PUBLIC:

Duties are exercised in cities by magistrates and by bailiffs in rural districts in accordance with Act on Notaries Public (287/1960).

RECORDS:

Real property is entered into computer based register. Information in database is valid as evidence and presumed to be correct. All judicial acts pertaining to real property must be recorded in database.

In addition to above-mentioned real property register, there are following public registers: association register, patent register, ship register, motor vehicle register, register of matrimonial or prenuptial agreements, etc.

See category Business Regulation and Commerce, topic Commercial Register.

Births, deaths and marriages are registered with local parish priest, who for nominal fee will issue certificates as to birth, death and marital status of any member of this parish. Registration regarding persons not belonging to church is kept by County Registrars. All population information is delivered to Population Register Centre that maintains complete population information system. These certificates are accepted as legal evidence by Finnish courts.

SEALS:

Although many courts and departments use their own seals on official documents they have really no effect on legality of documents as Finnish law contains no provisions concerning seals.

EMPLOYMENT

LABOR RELATIONS:

Employment contracts concluded individually between employers and employees are regulated by Employment Contract Act (55/2001). Provisions of this Act are applicable unless agreed otherwise, but this Act also contains number of mandatory provisions. Stipulation under which either party consents to refrain from membership of association is void in accordance with Act which thus guarantees freedom of association. As to collective agreements there is Collective Agreements Act (436/1946). Disputes concerning collective agreements are settled by Labor Court (Labor Court Act 64/1974).

Working time is legally fixed in General Hours of Working Act (605/1996) to be eight hours daily and at maximum of 40 hours weekly or upon average 40 hours per week in 52 week period. There are number of statutes containing provisions regarding working time under special circumstances and in certain occupations. Annual overtime up to 250 hours is allowed with increased wages for overtime and Sunday work. There are special provisions concerning young employees. In accordance with Employee’s Annual Holiday Act (162/2005), every employee is entitled to two days (after one year’s employment 2½ days) paid annual vacation for each month during which employee has worked for more than 14 days.

Most important item of legislation in field of employee protection is Protection of Labor (738/2002). Trade supervisory authority ensures that provisions of this Act are observed. Labor Council grants exceptions from provisions concerning employee protection. Protection of employee’s private life and rules concerning processing and collecting of private data in employment relationship are governed by Act on Protection of Privacy in Working Life (759/2004). Act includes provisions on employees’ privacy in working life and camera surveillance. Act provides employers, when necessary, with opportunity to access their employees’ e-mail messages, subject to specific statutory procedures, while at same time safeguarding confidentiality of employees’ private e-mail messages.

See also Act on equality between women and men (609/1986), as well as Act on non-discrimination (21/2004), category Citizenship, topic Equality.

Compulsory pension insurance for employees was adopted by Acts 395/1961 and 134/1962, premiums to be paid by employers. Employee Pensions Act was amended in depth and amendments mainly came into force Jan. 1, 2005. However, premium principle remains in force also after reform of Act.

ENVIRONMENT

ENVIRONMENTAL REGULATION:

Finnish environmental legislation was sector-based until year 2000, when comprehensive code of environmental protection, Environmental Protection Act (86/2000), came into force. Finnish legislation concerning pollution control is now regulated in one comprehensive act.

Soil contaminant levels are regulated by Governmental Statute of evaluating polluted land and remediation needs (214/2007, as amended) which includes list of threshold and standard value for most common harmful substance concentrations.

Environmental regulation is based on administrative decisions and permits granted by authorities. Particular authority makes its decision case-by-case basis, based on general provisions and administrative guidelines. Use of Finland’s membership in EU, all environmental EU directives must be implemented in Finland.

For construction of establishments, environmental permit is required in accordance with Environmental Protection Act. For water management or construction, permit is required according to Water Act (264/1961). Chemical issues are regulated in Chemicals Act (744/1989). Chemicals Act has been amended to meet requirements of European Chemicals Regulation (REACH). Furthermore, penal provisions relating hereto have been implemented into national legislation.

For construction of establishments causing notable harm to environment, assessment on impacts of environment is required. (Act on Environment Impact Assessment Procedure 468/1994). This assessment has to be annexed to environmental permit application mentioned above.

Air.—Environmental Protection Act is main rule concerning protection of air. Most essential means of air pollution control are general regulations issued by Council of State. Regulations set limitations for concentration of substance in emission. General regulations are directly binding on plant operators, importers of fuel, etc.


Water.—Rules on water pollution control are included in Environmental Protection Act. Rules on water management are included in Water Act. New Water Act is under preparation and Government Bill will most likely be provided in winter 2008. EU Water Framework Directive has been implemented by Act on Organization of Water Management (1299/2004).

Compensation for Environmental Damage.—Act on Compensation for Environmental Damage (737/1994) is based on strict liability, reduced requirement for evidence on causality and joint responsibility.

ESTATES AND TRUSTS

CLAIMS:

See topic Descent and Distribution.

DEATH:

If person dies and Death appears unnatural, post-mortem examination must be held and if result of this examination still is unsatisfactory inquest must be held to ascertain cause of death.

If person, at time of disappearing, has been in accident causing imminent danger to life or in similar situation and there is no reason to believe that person has survived, petition to have person declared legally dead may be presented immediately after person has disappeared. Under other than aforementioned circumstances petition may be presented after five years have passed from date when person was last known to have been alive. However, if person, at time of disappearance was under circumstances involving danger to life or of considering circumstances related to disappearance, as well as other factors, it is highly probable that person is dead. Waiting time is one year.

Petition must be filed with court which would be proper forum if person were alive. If such forum cannot be established petition may be presented to applicant’s own forum.

Court summons absentee and any person who might know about former to give notice to court before certain day, fixed at least three months after summons has been published in official gazette. If court at fixed day has no information that absentee may be alive, court will declare that person is considered dead. Day of death will be fixed on day disappeared person most likely died. If that day cannot be determined, day of death will be fixed on day when five years have passed from date when person was last known to be alive.

See category Documents and Records, topic Records.

Actions for Death.—In case of death caused by criminal act, widow or child of deceased is entitled to plead in court for damages or necessary allowance, and other relatives for damages. There is no maximum or minimum rate of allowance prescribed by law but this depends on criminal’s solvency and deceased’s own share of guilt, inter alia.

Action must generally be taken within ten years, but if crime falls under statute of limitations later, action can take place as long as crime can be prosecuted or as long as criminal matter is pending in court.

Special stipulations concerning damages caused by motor vehicles, aeroplanes, trains, etc., in which cases liability for payment of damages might arise even if no criminal or negligent act has been committed.

Above-mentioned is also applicable to foreigners.

See note at head of Digest as to 2007 legislation covered.

See Topical Index in front part of this volume.
DIVORCE:

Grounds for Separation and Divorce.—Court can terminate cohabitation on demand of both spouses or either spouse and rule that other spouse must leave common home. Such decision not force more than two parties. Spouses may give divorce after consideration period of not less than six months and not more than one year. Divorce is possible without consideration period provided that spouses have lived separately for preceding two years. Marriage is dissolved by court, which at same time addresses questions regarding care and education of children, duty to support and, if parties so request, decrees these issues. (Marriage Act 234/1929)

Proceedings for divorce can be taken in Finland if at least one of spouses has his or her domicile in Finland, or if party applying for divorce was previously domiciled in Finland and provided that proceedings cannot be taken in foreign country or such foreign proceedings would cause unreasonable difficulties for applicant and it is held appropriate with regard to circumstances. Proceedings for terminating cohabitation can be taken in Finland if spouses have residence in Finland, which was intended to be home for both parties. Finnish law is applied in divorce proceedings taken in Finland.

HUSBAND AND WIFE:

Both spouses, after marriage, secure their own surnames or either of spouses may select surname of other spouse. Spouses have equal legal rights. Each spouse has right to make contracts with third persons on his or her own behalf and are to sue and defend in courts. Spouses may make contracts between each other; as of 1992 they may give gifts to each other. In case donor becomes over-indebted in future, notice regarding gift to donor must be given to the local register office. Time for making claim for recovery in bankruptcy will, in such case, be calculated from date such notice was made.

Marriages contracted prior to Jan. 1, 1930, were governed by principle of joint ownership. Property of spouses in general belonged to them both. However, by law and by marriage settlement agreement certain property or certain types of property might belong personally to one or other of spouses (Marriage Act Apr. 5, 1889). In marriages contracted after Jan. 1, 1930, principle of separate property governs. Property which belonged to one spouse upon entering marriage continues to belong to that spouse, and same is true as to property obtained during marriage. Spouses, upon certain conditions, are entitled to control their own property. Rule is that each spouse is solely liable for debts contracted by such spouse.

Spouses have dower right in property of each other. Surviving spouse on distribution of estate receives one-half of surplus. No dower right exists with respect to property governed by provision made in marriage settlement agreement, deed of gift or last will and testament. However, in case of emergency, court can rule on dower right or by conduct injurious to other spouse. Dower right may be excluded upon demand of one spouse when other has become bankrupt.

Conveyance of Property.—Spouse may not without written consent from other spouse convey common home of spouses or chattels intended for mutual use of spouses or work equipment used by either spouse or chattels intended for personal use of other spouse or children. If such property as defined above is sold without consent buyer must return property without compensation under certain conditions. If common home is rented equal rules apply on conveyance of rental right.

If consent is denied by other spouse without acceptable reason court may rule otherwise. Persons intending to enter matrimony and persons married under Marriage Act 234/1929 may by agreement change property arrangement which would otherwise exist between them in accordance with provisions of law. Under earlier law, such agreement could relate to share of spouses or so-called dower right, to their joint estate, and partly concerning control of property. Under present law, it may be provided in such agreement that no dower right shall exist with respect to certain property. Such agreement must be in writing and filed with court for safekeeping.

Under main rule, each spouse is solely liable for debts such spouse has contracted during marriage or prior thereto. Exceptions are such debts as have been contracted jointly, or debts contracted by either spouse for support of family.

INFANCY:

In accordance with Finnish law, age of majority is 18. Agreements entered into by minors are invalid until age of majority is reached. There are some exceptions as regards marriage contract, means earned with own work and contract of employment. Parents or, in their absence, appointed person, act as guardian. Minors below age of 15 cannot be made to local criminal offences and have only subsidiary responsibility for damages. Up to age of 18 there is reduced penalty. Minors below age of 15 can give evidence at court only with consent of latter. See also topic Marriage.

MARRIAGE:

Persons must have reached age of 18 to be married, unless Ministry of Justice for special reasons allows exception to age limit. Marriage is solemnized by church or civil wedding. Prior to marriage, local register office must determine that no impediments to such marriage exist.

Freedom of marriage is restricted by impediments such as consanguinity or affinity, relationship of adoption, and former subsisting marriage.

REGISTRATION OF PARTNERSHIP:

Persons of same sex over age of 18 may register their partnership as of Mar. 1, 2002. Authorities that perform civil weddings register same sex partnerships. Registration grants couple same rights as marriage, if not otherwise stated. (Act on Registered Partnership 950/2001). Registration of partnership does not grant couple right to adopt children.
FOREIGN EXCHANGE REGULATIONS:

Summary of Prevailing Exchange Control Regulations.—Since Jan. 1, 2002, Finland is part of € area. Bank of Finland operates in accordance with guidelines and under supervision of European Central Bank. There are no exchange control regulations in Finland. In general, there are no restrictions concerning foreign exchange transactions.

Import of Goods.—Finland is member of EU and import regulations of EU therefore apply in Finland.

Export of Goods.—Export regulations of EU apply in Finland. In addition, there are restrictions concerning export of military material and products that could be used for military purposes.

FOREIGN INVESTMENTS:

See category Citizenship, topic Aliens.

FOREIGN TRADE REGULATIONS:

See topic Foreign Exchange Regulations.

HEALTH

PHARMACEUTICAL REGULATIONS:

Finnish Pharmaceutical Industry Federation, voluntary organization, monitors pharmaceutical establishments with view to improving public confidence in industry. National Agency for Medicines (NAM) is main regulatory authority for medicinal products. NAM’s functions include supervision of pharmaceuticals and monitoring manufacture, importation, distribution and sale of pharmaceutical products. It is governed by Ministry of Social Affairs and Health. Pharmaceuticals cannot be sold to public or otherwise put in circulation without marketing authorisation from NAM or EU institution. Individuals and legal entities based in EEA wishing to import medicine must also apply for wholesale license, which should be submitted to NAM.

Only pharmaceuticals defined in Medicines Act (395/1987 as am’d) can be advertised or marketed as medicines. Pharmaceutical product may be advertised in breach of advertising law but can prohibit continuation or repetition of that advertising and may order correction to be issued. These actions can be backed up by conditional fine. Marketing authorization is valid for five years. It can be renewed by application for subsequent period of five years in case that NAM, based on medicines safety reasons, so requires. Otherwise, and always after second fixed-term period, authorization is valid until further notice. Pharmaceutical products sold outside pharmacies have been widened to include nicotine compensation self-care products in addition to certain herbal, homeopathic and anthroposophic products through change in Medicines Act in 2006.

Detailed regulations on manufacture, import and wholesale of medicines as well as regulations on pharmaceutical marketing and clinical trials are set out in Medicines Decrease (693/1987 as am’d) and in various administrative regulations of NAM. Medicinal products can only be manufactured on industrial scale in pharmaceutical plants with approved production facilities and prior permission (manufacturing license) from NAM. Licenses may have conditions attached to them. Licenses are granted for indefinite period. NAM has issued regulations in relation to packaging and labeling of medicinal products. Labels and leaflets must be at least in Finnish and in Swedish. EU Product Liability Directive was implemented in Finland by Product Liability Act (69/4/1990 as am’d) and has been amended to apply also to pharmaceuticals in 1993. Act establishes system of compensation for damage caused by defective products, covering personal injury and damage to property (which, at time of damage, was primarily in private use). Pharmaceutical industry has also established together with insurance companies Medical-Related Injuries Insurance which is voluntary scheme regarding medicines distributed for consumption in Finland. Most personal injuries caused by use of medicine are covered by this system.

Medicines Act includes provisions on generic substitution. Pharmaceutical product sold in pharmacies must be substituted with least expensive product containing same amount of same active ingredient in accordance with NAM regulations, unless doctor or patient forbids substitution. Doctor may forbid substitution only on medical or treatment-related grounds.

IMMIGRATION

ALIENS:

Nationalisation, acquisition and loss of Finnish citizenship are determined in Nationality Act (359/2003). Foreigners may apply for Finnish citizenship if they are of legal age (i.e. have reached age of 18), have lived in Finland for significant length of time, six years without interruption as rule, before making application, have lived respectable life, have secure income and have adequate skills in Finnish or Swedish. Act also contains rules regarding dual citizenship.

Foreigners are without political rights in general elections in Finland but permanently residing foreigners may vote in municipal elections. EU citizens may also vote in EU elections provided, e.g., that they reside in Finland at time of election. Certain public offices require that office holder is Finnish citizen. Some property rights and business occupations are also supervised and restricted from foreigners. It can be stated that foreigners residing in Finland are divided in two categories, i.e. EU/EEA and non-EU/EEA nationals of which EU/EEA nationals often enjoy similar rights to Finnish citizens.

Corporations Owned or Controlled by Aliens.—Act on Monitoring of Foreigners’ Acquisitions of Shares in Finnish Companies (1612/1992), when national interests require, restricts aliens’ and foreign corporations’ gaining of power in important companies. National interests are defined as: (a) securing of national defence; (b) prevention of serious economic, public or environmental difficulties; and (c) public order and safety and health of citizens. Subject to supervision and restrictions are only companies of substantial size. If company is reckoned to be important company and exceeds limits of size, as set out by law, permission for acquisition from Ministry of Commerce and Industry is required. As to right of inheritance, see category Estates and Trusts, topic Descent and Distribution. See also categories Business Organizations, topic Joint Stock Companies; Business Regulations and Commerce, topic Commercial Register; Estates and Trusts, topic Death, subhead Actions for Death.

IMMIGRATION:

Freedom of movement enables EU/ECA citizens to move freely within that territory from one country to another if purpose is to work, look for work, set up enterprise, for self-employment or studies. Even other grounds will be accepted if person concerned can financially sustain himself this way. Thus, citizens of states belonging to EU or EEA can freely enter Finland and are entitled to reside and work in Finland without visa or residence permit for three months. For longer periods, residence permit is granted by local police in Finland. Entry into and residence in Finland as well as asylum issues are regulated in Aliens Act (301/2004) and Schengen agreement and convention. Schengen countries have agreed on what countries are free of visa requirements and what countries are under visa obligations. Visas are valid for temporary residence not exceeding three months. Citizens of Nordic Countries (Sweden, Norway, Denmark and Iceland) may freely enter Finland and reside there without residence permit and work as main rule without work permit.

New Member States of EU (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, Slovenia, Sweden and Turkey) have right of residence and work. Finns working in these states may be entitled to residence permit without work permit.

INSURANCE

INSURANCE COMPANIES:

Supervision.—Insurance Supervision Authority (Mikonkatu 8, POB 449, 00101 Helsinki, Tel. +358 9 415 5950, Fax +358 9 415 59660, www.vakuutusvalvonta.fi) started in 1999 under supervision of Ministry of Social Affairs and Health. Insurance Supervision Authority’s task is to inspect insurance and pension institutions and other agencies operating in insurance sector.

Consumer Protection.—Finnish insurance sector has contractual consumer organisation which is joint body of consumer authorities, organisations and insurers. Finnish Insurance Companies Bureau (Malminkatu 34, 00100 Helsinki, Tel. +358 9 6850120, Fax +358 9 68501220) gives guidance and advice to customers and settles disputes between insurers and policyholders. There is also supervisory board and Finnish Insurance Complaints Board in same organization.

Establishing Insurance Company.—Ministry of Social Affairs and Health grants license for Finnish insurer to establish insurance company in Finland if applicant fulfills certain conditions, e.g. insurer must obey sound and cautious business principles, members of upper management must be professional, and insurance company must have basic capital assets required by law.

Due to third insurance directive of EU (92/49/EC), insurers can offer services and establish branches in Member States of European Economic Area (EEA) on basis of single license issued by their home Member State. At moment, (7/2007) there are 20 foreign insurance branches in Finland. Foreign insurers have to observe Finnish mandatory provisions, e.g. Insurance Contracts Act (543/1994) in consumer relations. Insurer’s home state is responsible for economic supervision of insurers that offer their services to other Member States of EEA but Finnish authorities supervise marketing, insurance terms and conditions in Finland.

Insurers whose home state is outside of EEA must apply for license from Finnish Ministry of Social Affairs and Health if they wish to offer insurance services in Finland. Finnish Insurance Supervision Authority is responsible for supervision and inspection of these insurers in Finland.

Insurance Legislation.—Finnish insurance legislation has undergone many changes since new joined EEA and EU. Harmonisation of insurance sector has caused changes to among others Insurance Companies Act (1062/1979) and Foreign Insurance Companies Act (398/1995). Insurance Contracts Act (543/1994) (http://www.valve.fi/asp/ system/empty.asp?P=554&VID=default&SID=676795502210&ES=2&A=&locale=fi&.../2545) is mandatory. It is applied to insurance of person and nonlife insurance.

In accordance with Insurance Companies Act insurance companies are authorized to provide financial services other than insurance products. This amendment entered into force on May 15, 2001.

Statutory Pension System.—Finland has statutory earnings-related pension scheme. Retirement age is flexible (between 62 and 68 years) and rewards those who continue work between 63 and 68 with accelerated accrual of pension rights at rate of 4.5% per year (rate is 1.5% until age of 53 and is 1.9% in following ten years). Pensions are calculated based on basis of earnings during the years, work accident pension accrues from age 18. Pension can exceed 60% of wage. (For additional information on topic, please see site of Central Pension Security Institute: http://www.etk.fi/default.asp?lang=2.)

Insurance Economy.—In 2006, premiums written by nonlife insurers grew by 4.7% to €23.9 billion and statutory pension premiums increased by 8.7% to €3.7 billion, following growth in recent years. Life and personal pension insurance premium income shows slight decrease after last year’s growth premium income being €23.8 billion.

INTELLECTUAL PROPERTY

COPYRIGHT:

(Copyright Act 404/1961 am’d).

Author of copyright protected work has within certain limits exclusive right to exploit one’s creation commercially. In addition, copyright confers protection to author in form of so called moral rights also attached to copyright protected work. Protection is granted
TRADEMARKS:

(Trademarks Act 7/1964 as amd.)

Trademark right under Finnish Trademarks Act can be obtained based on any symbol capable of being represented graphically either through registration of mark with Finnish National Board of Patents and Registration or simply by establishment of mark through actual use in Finland. Trademarks Act further provides provisions on trademark protection against parallel importation procedure or trademark registration. For protection of trademark, registration is required which makes possession of trademark sufficiently distinctive and does not fall foul of other criteria for registration. Protection under trademark confers exclusive right to use trademark starting from filing date of application. Registration procedure takes average about one year. Protection against use of trade-marks by others is, however, limited to situation in which mark is likely to arise as to origin of goods or services offered under trademarks concerned. Standard of confusion is determined on basis of whether marks themselves are likely to be confused with each other and whether they are used for same or similar type of goods or services. Therefore, even identical marks that do not involve similar goods or services are not considered confusing within meaning of trademark law. Exception to this general rule exists for trademarks considered to have particularly widespread reputation and well-known position. Trademark registration is valid for period of ten years from date of registration and may be renewed for consecutive ten-year periods for unlimited number of times. On other hand, if trademark has been unused for period of five years, registration may be cancelled upon claim to that effect in District Court of Helsinki by third party experiencing harm from use of trademark. Rights to established trademark may also be lost if mark has since its registration or establishment lost its distinctiveness or become misleading or violates law or public order.

LEGAL PROFESSION

ATTORNEYS AND COUNSELORS:
Party to proceedings before court usually uses services of counsel, even though this is strictly speaking not required by Finnish law. Only advocate or otherwise honest, suitable and competent person with full legal capacity is qualified to function as attorney or trial counsel.


Qualifications of Advocate.—Only members of Finnish Bar Association are entitled to use professional title “advocate.” Advocate must be citizen of Finland or another EEA (European Economic Area) Member State who has reached age of 25 and completed Master of Laws (LL.M.) degree in Finland. He must be known to be person of integrity and have minimum of four years experience in legal profession or other judicial duties. He also has to pass special examination in advocacy law given by Finnish Bar Association. Advocate must be independent and autonomous in relation to government and all other quarters with exception of his client.

Advocate from another member state of EU, who regularly practices profession of advocate in Finland under professional title of his home member state, may enter EU register of advocates.

EU advocate may be admitted as member of Finnish Bar Association three years after he has passed examination in EEA. EU advocate must be able to prove that he has practiced profession of advocate regularly in Finland for at least three years. Person qualified for profession of advocate in another EEA state may also be accepted as member if he has practiced profession given by Finnish University of Helsinki and conferring qualification for duties requiring master of laws degree on Finland. Passing of special examination in advocacy law is also required.

Advocates' Duties and Their Supervision.—Advocate is to fulfill his duties in accordance with law and code of professional ethics honestly and conscientiously in all activities. Outlines of these universal rules are included in 1958 Advocates Act (496/1958) and in rules of Finnish Bar Association. It is obligation of Board of Bar Association to supervise and ensure that advocates fulfill their duties in accordance with professional ethics. Supervision and responsibility are enforced through disciplinary actions.

MINERAL, WATER AND FISHING RIGHTS

MINES AND MINERALS:

(Mining Act 503/1965).

Natural mineral resources are conceded to claimers, i.e., to finders of mineral resources. Legislation is thus built on claiming-system and not on concession-system as in several other countries. Prospector must announce one’s claim to local bailiff and after this, file it within one year with Ministry of Trade and Industry. Concession will be granted if formal conditions are fulfilled. Individual or corporation domiciled within European Economic Area may search, claim and use mineral findings. Individual or corporation domiciled outside of European Economic Area can be granted concession by Ministry of Trade and Industry.

Note: New Mining Act is under preparation.

MORTGAGES

CHATTEL MORTGAGES:

See category Debtor and Creditor, topic Pledges.

MORTGAGES:

Mortgage is act by official by which creditor is given right of pledge to real property of debtor as security for debt, or by which certain insecure chattel rights are strengthened in such manner that they are not defeated upon change of ownership to real property. Debtor may also be secured even without consent of debtor by one having due from owner of real property certain sum of money or goods or by one who has right to secure from such owner certain income or pension. Mortgage is lawful on any freehold estate in rural sections, on building and building lot in cities and, to third person in such manner that they are not defeated upon change of ownership to real property.

Property under mortgage is subject to liability for future debts due from owner of real property. Mortgage is subject to claim and use mineral findings. Rights to established mortgage may also be lost if mark has since its registration or establishment lost its distinctiveness or become misleading or violates law or public order.
MORTGAGES . . . continued
Mortgage may also be granted on vessel, aircraft, private railroad or real property as security for right to cut timber or borrow soil or minerals, and as security for right to partition specified area. Under certain conditions, it is possible to obtain ratification of mortgage covering growing forest, without subjecting reality as such to liability for mortgage.

PROPERTY

ABSENTEES:
Interest of absentee in matters concerning one’s property and with regard to rights as an heir, legatee or beneficiary is attended to by trustee appointed by court. This applies also to cases in which heirs to deceased are unknown or uncertain. See also category Estates and Trusts, topic Death.

CONVEYANCES:
See topic Deeds; category Business Regulation and Commerce, topic Sales.

CURTESY:
Does not exist in Finland.

DEEDS:
Generally, juridical acts may be performed either orally or in writing. Written form is necessary for legal effect in transfers of real property, ante-nuptial agreements, partnership or joint stock company agreements, etc. See category Family, topic Husband and Wife; subhead Conveyance of Property; also category Business Regulation and Commerce, topic Sales.

DOWER:
See category Family, topic Husband and Wife.

POWERS OF ATTORNEY:
Form of general power of attorney is open power of attorney. It is not necessary to specify purpose for which power of attorney is issued, and therefore, it is sufficient to use wording: “open power of attorney.” In court proceedings, attorneys who are members of Bar Association of Finland need power of attorney only if court so orders.

REAL PROPERTY:
Law of Finland draws sharp distinction between real property and personal property. This distinction is important, for instance, in inheritance, matrimonial and tax law matters, in questions concerning property under mortgage, form of sale, etc. Real property comprises pieces of real estate, lots, common lands and waters. Components and appurtenances of real property, such as growing timber and chattels which are attached to buildings are included in definition of real property.

TAXATION

ADMINISTRATION:
Direct taxation is carried out by regional tax offices. Appeals against their decisions and proceedings can be made to higher authorities and finally to Supreme Administrative Court. Indirect taxation, e.g. excise duties, on other hand, is carried out by several authorities.

State income tax, municipal tax, church tax, pension premiums, insurance premiums, unemployment insurance premiums and health insurance premiums are collected during tax year through prepayment system. Employer is obliged to withhold these taxes from all wages paid to employees. In connection with these withholdings, employer must pay to state employer’s social security premium.

CORPORATE TAXES:
See topic Income Tax.

EXCISE DUTIES:
Main excise duties are those on liquid fuels, alcohol and alcoholic beverages and manufactured tobacco. In addition, excise duties are payable on soft drinks, gas, electricity, etc.

GIFT TAX:
Gift tax is payable to state on progressive rate. Rate is dependent upon consanguinity between parties concerned.

INCOME TAX:
National income tax is most important of direct taxes. Taxation of individuals is governed by Income Tax Act (1535/1992 as am’d). Taxable earned income of individuals is determined in accordance with person’s net income. However, individuals are entitled to some special deductions. Married persons are taxed separately. Gains on sale of real estate and personal movables are taxed as capital income according to fixed rate of 28%. Gains on selling one’s own dwelling are tax exempt under certain conditions. Total amount of marginal taxation for individuals in Finland may amount to maximum burden of approximately 60% of income earned during year depending on municipality. Corporate income taxation is governed by Act on Taxation of Business Income (360/1968 as am’d). This law contains broad notion of income and all costs relating to procurement of income are deductible. In principle, all realised capital gains are taxable in net corporate result at fixed rate of 26%. However, capital gains gained by company from sales of shares are under certain condition exempt from tax. Losses are deductible to extent that corresponding gain would be taxable. Certain provisions of Income Tax Act are also applicable to corporations.

In accordance with Act on Taxation of Shareholders of Controlled Foreign Companies (1217/1994), under certain circumstances income incurred by CFCs, resident in tax haven countries, can be taxed in Finland as income of Finnish shareholders.

Tax consequences on individuals depend on type of company paying dividend. Dividends paid out to another company are mostly exempt.

Local income tax is proportional tax collected from every individual. Tax rate varies from 6% to 21%

Church tax is imposed on basis of taxable income in local taxation. Tax rate is 1-2.25% payable by individual members of church.

PROPERTY TAXES:
REAL ESTATE TAX:

Real estate tax is levied upon owning of real estate, with particular exceptions mentioned by law. Real estate is defined as any independent registration unit land owning. Law also applies on buildings situated on real estate. Tax percentage is decided and paid to municipality in which real estate is situated. Percentages vary between 0.50% and 3.0% of tax value of real estate. Limits of percentages are lower for housing (0.50%).

VALUE ADDED TAX:

Standard rate of VAT is 22%. Reduced tax rate of 8% is applied to books, medicines, passenger transport services, accommodation services and services enabling sporting activities. Reduced tax rate of 17% is applied to food products.

WEALTH TAX:

Wealth Tax Act has been abolished on Jan. 1, 2006 and, therefore, there is no net wealth tax assessed on assets from beginning of 2006.

TRANSPORTATION

MOTOR VEHICLES:
Motor vehicle, before its use, must be approved at proper inspection, registered within specified time and provided with identifying license plate. All drivers must have drivers’ license. Licensees must be 18 years old, complete training and pass theoretical and practical tests. Owners of registered motor vehicles have statutory Third Party Motor Insurance with insurance company licensed to carry out such insurance business in Finland. Compensation is paid out from such insurance for damages or injuries arising from use of motor vehicle in traffic regardless of whether or not any personal liability is involved.


SHIPPING:

Finnish Maritime Code (674/1994) is result of co-Nordic legislation and is mix of Hague-Viby and Hamburg rules. Vessels are considered Finnish if Finnish national or Finnish registered corporation owns more than 50% of vessel. All Finnish merchant vessels of at least 15 meters length must be entered into Register of Ships. Master is legally competent to bind ship owner in matters concerning maintenance and operation of vessel.

Owners can limit their liability pursuant to general provisions on limitation in c. 9 of Maritime Code, which are based on Convention on Limitation of Liability of Maritime Claims 1976. Code also contains detailed provisions on carrier’s liability in connection to carriage of goods and carriage of passengers. Period of liability for damage to or loss of goods is period during which goods are in custody of carrier.

Certain claims are secured by lien on ship and cargo by law. Those claims (e.g. wages, salvage awards, average contribution etc.) are enumerated in Code.

TREATIES AND CONVENTIONS

TREATIES:


See note at head of Digest as to 2007 legislation covered.
See Topical Index in front part of this volume.

Finland is also party to Convention on Recognition and Enforcement of Foreign Arbitral Awards (June 10, 1958, New York).

Finland has ratified agreement on European Economic Area. Agreement has come into force Jan. 1, 1994.

Since Jan. 1, 1995 Finland has been member of EU and therefore EU law applies in Finland.

**Tax Conventions.**—Tax conventions for avoidance of double taxation exist between Finland and following countries: Argentina, Australia, Austria, Azerbaijan, Barbados, Belgium, Bosnia-Herzegovina, Brazil, Bulgaria, China, Croatia, Czech Republic, Denmark, Egypt, Estonia, France, Germany, Great Britain, Greece, Hungary, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Republic of Korea, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Macedonia, Malawi, Malta, Mexico, Montenegro, Morocco, The Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tanzania, Thailand, Turkey, Ukraine, United Arab Emirates, USA, Uzbekistan, Vietnam, Republic of Zambia.

There are also agreements on death duties and gift taxes with several countries.

In 1955, Finland’s application for membership in United Nations was accepted. Finland joined in 1950 General Agreement on Tariffs and Trade (GATT) and in 1961 became associated member of European Free Trade Association (EFTA). In 1969 Finland joined the OECD.
