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**FENNO ATTORNEYS AT LAW
ESTABLISHING A BUSINESS ENTITY IN FINLAND**

ILN CORPORATE GROUP



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ESTABLISHING A BUSINESS ENTITY IN FINLAND



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TYPES OF BUSINESS ENTITIES AVAILABLE IN FINLAND

The most common forms of business entities in Finland are a limited liability company, a general or a limited partnership, and a co-operative. It is also possible to run a business as a branch of a foreign enterprise. Other entities such as associations and foundations also exist, but such entities operate typically on a non-profit basis and are not discussed in this overview. A private person may also operate as a private trader.

Matters to consider when choosing a particular business entity type in Finland are, for instance, the taxation, differences in responsibilities and decision-making, operational flexibility, number of people establishing the business, the need for capital and its availability, continuity of

operations, attitude of finance providers, profit sharing and covering losses.

Certain commercial activities in Finland are subject to a license; these include the serving of alcohol, debt collection and security guard business. Licenses are also needed in certain industries, such as banking, insurance, investment activities and fund management.

LIMITED LIABILITY COMPANY

The present Limited Liability Companies Act (624/2006) (the “Companies Act”), which entered into force in 2006, introduced a very modern and flexible company law that allows the rules of the company to be efficiently tailored through the articles of association. Limited liability company (Ltd) can be organized either as a private or public company (Plc). Starting from July 2019, minimum capital requirement was abolished and nowadays a private limited liability company can be established without any share capital, which makes the process quite straightforward. However, the minimum capital requirement regarding a public company is EUR 80,000. The shares of a public limited company may be listed and traded on the stock markets.

Limited liability company may be established by at least one person or organization. The shareholders use the decision-making power and, perhaps the most important feature is, that the shareholders are not personally liable for the obligations of the company.

A limited liability company is the most common type of business entity in Finland, and it is the recommended form of business when there are several owners and/or when the business is intended to be large scale.

PRIVATE TRADER

One of the most popular business types nationally is the private tradership, which is the simplest company form and quite easy to establish. Operating as a private trader means that the person establishing the business shall carry out the business operations alone or together with his/her spouse. The private trader is registered only in the name of one person, even when a couple would set up and operate the business together. The registration of a private trader is more of a notification to the authorities that the person shall operate as an entrepreneur. The private trader is an option suited for business operations where there is no need for big investments or capital, such as a carpenter, freelance journalist, massage therapist or photographer etc.

PARTNERSHIPS

There are two types of partnerships; a general partnership and a limited partnership. To establish a partnership there must be at least two partners, generally natural people but a partner can also be a legal entity (business). The partners invest a contribution in the partnership in the form of money, assets or work. General partners are personally liable for the obligations of the partnership, whereas limited (or silent) partners have no such personal liability. At least one of the partners in a general partnership or of general partners in a limited partnership must have a place of residence or, if the partner is a legal person, its registered office in the European Economic Area (EEA). Otherwise, a permit from the Finnish Patent and Registration Office must be applied for all partners that are not from the EEA.

General and limited partnerships are similar forms of business and in principle, are set up the same way. A general partnership is ideal for a small business with a trusted partner and a

limited partnership could be well suited for business activities based on personal work input combined with an investor. One advantage of a partnership form is that the income flows through to the partners and is not taxed at the partnership level, which makes the partnerships the most common form of Finnish closed-end funds (private equity and venture capital funds).

A BRANCH OF A FOREIGN CORPORATION

A foreign corporation or foundation may establish itself through a branch office that runs a continuous business or trade in Finland, from a permanent place of business located in Finland. The branch office is considered an extension of the foreign corporation and it must operate in the same line of business as the foreign entity. The foreign entity is liable for all debts and other obligations as the branch office is not considered to be a separate legal entity as such but a part of the foreign entity.

A branch office is rather easy to establish, and no separate management is required especially when the foreign entity comes from the EEA. The foreign entities outside of the EEA need a license to establish a branch in Finland before registration, whereas foreign entities within the EEA may only register the branch without any separate licenses.

CO-OPERATIVE

A co-operative society is a separate legal entity from its members established through registration. A co-operative is an association which has one or more members. The members may be private individuals, undertakings or other associations. The main purpose of this type of business entity is typically to allow the members to use the services provided by the co-operative. The members are not personally liable for the obligations of the co-operative. The regulations regarding co-operatives are set



out in the Co-operatives Act (421/2013). The co-operative is not usually a suitable form of business for a foreign business.

STEPS AND TIMING TO ESTABLISH

LIMITED LIABILITY COMPANY

The registration of a limited liability company is quite easy, and notification may be in certain standard cases submitted online. When the limited liability company is being established, the founders register all shares of the company. At least one of the ordinary members of the board and one of the deputy members (calculated separately) must have permanent residence in the EEA area. If not, a license must be sought from the Finnish Patent and Registration Office for all board members from outside the EEA area.

The founders of a limited liability company must sign and provide specific documents to the Trade Register to establish the company along with the Trade Register notification. These include data forms, memorandum of association and articles of association. Memorandum of association shall include, among others, the initial share subscriptions and the first board members. If a person without a Finnish personal identity code is reported for registration for the first time, a proof of the person's existence must be enclosed (such as a copy of the passport, or an extract from a business register in another country). The company will receive a business identity number at registration.

PRIVATE TRADER

Establishing the firm is simple since no separate founding documents are needed. A private trader must register the business in the Trade Register if the following circumstances exist; trader operates in permanent premises (such as a room separate from home); trader employs people other than spouse or child or grandchild

who is a minor; or trader operates in a licensed field of trade. The private trader must also register for VAT if selling goods or services.

Even though registration is not compulsory it might be a wise thing to do since it gives e.g., protection to the company name.

PARTNERSHIPS

Both types of partnership are founded by a partnership agreement. It is possible to agree in the partnership agreement on, for example, who has the right to represent the partnership, conveyance of the partnership share, resignation from the partnership, distribution of profit as well as termination or cancellation of the partnership agreement. The partnership agreement is supplemented by the provisions in the Partnership Act (389/1988).

For the registration the partnership agreement and personal data forms as well as permits (if applicable) must be provided. After submitting the documents, the company will be registered by the Trade Register and the company receives a business identity number.

In addition to the partnership agreement the partners may also draft a separate partner agreement in writing in connection with the founding of the partnership. The partner agreement may contain specific clauses regarding the administration of the partnership, the decisions requiring unanimity of the partners, distribution of funds, non-competition and the handling of disputes. The agreement also aims to regulate the liabilities of the partners concerning the debts and commitments of the partnership. Such a restriction is not, however, binding on a third party.

BRANCH OF A FOREIGN CORPORATION

The branch office should be registered to the Trade Register prior to starting the business



operations. Certain documents must be provided to the Trade Register, including specific forms, evidence of the establishment of the branch and of the appointment of a representative and indication of granting of the right to sign the company name. Also, an extract from the register in which the foreign entity has been entered in its home state or other evidence of its existence and a Finnish or Swedish-language copy or a legally valid translation of the memorandum of association, articles of association, rules or other corresponding documents of the entity must be provided. If the foreign entity is from outside the EEA a license must be provided and if a new person is entered in the Register and they have no Finnish personal identity code, there must be a proof of the existence of the person (passport or other such document).

It should be noted that the documents needed for the establishment of the branch shall be provided in Finnish or Swedish which means that the documents must be translated. The establishing document of the branch office is usually the minutes of a board meeting regarding the establishment of the branch office. The retrieval of required documents and translations may be time-consuming and expensive.

HANDLING TIMES

Founding documents regarding limited liability company and private trader may be submitted online to the Trade Register and then the registration takes only a few days. When documents are provided in paper form, the handling takes normally three to five weeks, but also faster registration is possible in case of urgency.

Governance, Regulation and Ongoing Maintenance

PRIVATE LIMITED LIABILITY COMPANY

The issues relating to the company are decided by the shareholders in general meetings or by the board of directors in board meetings. The decision-making power is divided in relation to the number of shares and the shareholders are liable for the commitments of the company only to the extent of the capital they have invested in the company, unless they have guaranteed loans or other liabilities on behalf of the company. Generally, all shares carry equal rights unless otherwise set out in the articles of association. Share classes and the rights of the share classes can be set out quite freely, for instance non-voting shares are accepted.

The shareholders appoint a board of directors that shall represent the company and take care of the management of the company. The board may also appoint a managing director who can be named during the establishment of the company, or later by decision of a board meeting. If the board comprises of less than three ordinary members, at least one deputy member must also be appointed and if there are several ordinary members, a chairperson must be named. The representation rights of directors and the managing director can be defined in the articles of association.

An annual general meeting must be held, and other meetings must be held if needed. Decisions of unanimous shareholders and board of directors can be adopted without convening any physical meetings, provided the decisions are recorded in writing in the minutes, which makes the decision-making process quite flexible.

Certain decisions, like share issuance or issuance of share options, a change of board



members and managing director as well as change of representation rights must be registered to the Trade Register.

Financial reporting

Financial statements and consolidated financial statements must be prepared annually in accordance with the Finnish generally accepted accounting principles (GAAP) or, if the company is listed on the stock exchange, in accordance with the IFRS. The form and the scope of financial reporting depends on the size of the company; small companies are for instance exempt from the requirement to prepare financial statements in accordance with the Finnish GAAP and IFRS. The Financial Statements must be submitted for publishing to the Trade Register eight months after the end of the financial period at the latest.

Minority shareholders' rights and protection

The minority shareholders are protected by an equal treatment principle in the Companies Act. Shareholders that represent 10 % of all the shares in the company are further protected by certain minority protection provisions and may for example demand a special audit or election of an auditor, demand that an extraordinary general meeting is held to address a certain matter or demand that a minority dividend is distributed, or they may bring an action on behalf of the company. A minority shareholder can also require a squeeze-out (to redeem the shares of the minority shareholder at a fair price) on a shareholder holding at least 90 % of the shares.

Minority shareholders may waive certain minority rights, which is typically done in a shareholders' agreement. The liability of a shareholder is limited to the value of their shares, but a shareholder may be personally liable if he/she has caused damage to the company deliberately or by negligence by

violating the Companies Act or the articles of association of the company.

PUBLIC LIMITED LIABILITY COMPANIES

A public limited liability company form is typically used for larger companies or listed companies. Therefore, the Companies Act provides certain additional obligations to the public limited liability company concerning the corporate governance and reporting compared to a private limited liability company.

PARTNERSHIPS

A general partnership (*in Finnish; Avoin yhtiö, AY*) consists of at least two partners who jointly carry on business based upon the partnership agreement. In this business entity type the partners have an equal status and are personally liable for the debts and other obligations of the partnership. The partners have a personal right and an obligation to decide on the matters of the business. The right is limited however; the field of business is agreed upon in the partnership agreement and a decision regarding activities not in the scope of the business field must be agreed unanimously by the partners.

The purpose of a general partnership is to work towards a joint financial aim, and this requires a high level of loyalty. As mentioned above the capital of the business consists of the contributions of the partners. The contributions may differ in the amount or quality but both partners are entitled to use the assets of the partnership freely. The use of capital assets of the general partnership can be handled in the bookkeeping as distribution of profits, return of equity, private withdrawal or as a loan.

The liability of general partners towards a third party is unlimited. The partners may agree upon a certain mutual arrangement regarding debts and obligations etc. However, a third party has the right to demand payment from



any of the partners if the general partnership has not paid the debt, and the personal assets of a partner can be used to pay such debts. The partnership is personal, and it cannot be transferred without the unanimous consent of other partners.

A limited partnership (*in Finnish; Kommandiittiyhtiö, KY*) is similar to the general partnership except that there are two types of partners, general (also called active) partners and silent partners. There must be at least one of each type of partners in the limited partnership. The general partners have the same rights and obligations as in the general partnership described above; they are personally liable for the debts and obligations of the partnership. The liability of the silent partners is more limited, although the partners may agree otherwise in the partnership agreement; the liability of a silent partner may be limited to the amount of the contribution of the partner agreed upon in the partnership agreement. The silent partners receive an agreed interest on the earnings (no “direct” access to funds) and do not have the right or obligation to participate in the decision making.

The general partners may contribute money, assets or work in the limited partnership whereas the silent partner shall invest assets of monetary value in the business and the value is to be declared in the partnership agreement. The silent partner then earns profit for the assets contributed and acts in the role of outside investor and shall have the right to review the bookkeeping of the company.

Note that there must be a continuity of operations and to establish a general partnership for a project, such as construction project, has not been accepted in taxation.

Financial reporting

Financial statements and consolidated financial statements must be prepared annually in accordance with the Finnish generally accepted accounting principles (GAAP). The financial statements must be submitted for publishing to the Trade Register if certain requirements are met: if a general partner is a limited liability company or if the turnover, size of the balance sheet and number of employees exceed certain thresholds. The Financial Statements must be submitted for publishing to the Trade Register six months after end of the financial period at the latest.

Liability, Governance and Protection

The general partners in both partnership entity types are liable for the decisions, obligations, liabilities and debts of the business, and thus if one partner makes a commitment, the others are also liable for it. Partnerships are thus considered to be the most suitable option for family enterprises as this business entity type requires a high level of trust among the partners. However, as mentioned above, agreements may be used to limit, for example the liabilities of the partners.

The general partners have a personal right and an obligation to decide on the matters of the business which is limited by the scope of business of the partnership. The operations and governance of a partnership are thus quite easy and informal. There are no specific provisions on the administration and governance in the Partnership Act and the partners are quite free to set up the administration the way they want. The partners’ unanimity and the right and obligation to handle matters regarding the partnership are the main governing principles. The general partner has a veto right which means that a partner has the right to prohibit another partner from undertaking an individual measure.



The silent partners do not have the above-mentioned rights, representation rights or veto rights, and usually they act more of as an investor in a partnership.

Foreign Investment, Thin Capitalization, Residency and Material Visa Restrictions

SIGNIFICANT BARRIERS TO ENTRY FOR AN OFFSHORE PARTY

There are no significant restrictions on the number or nationality of shareholders. However, restrictions may apply to certain types of businesses.

Since early 2022, the European Union has introduced extensive sanctions against Russia for its aggression against Ukraine. Also, the sanctions that were imposed in 2014 after the Russia took over Crimea are still in force. The sanctions include export restrictions, various restrictions on banks and the financial sector, and so-called sanctions lists requiring the freezing of assets and suspension of business activities against named individuals and companies.

SPECIAL BUSINESS OR INVESTMENT VISA ISSUES

It is not necessary for investors to have a visa to invest in Finland. If the owner would like to work or live in Finland, a residence or a work permit might be necessary. Visas are entry permits for a short, temporary visit of less than three months. If you plan to work or be an entrepreneur in Finland, you will usually need a residence permit. Special rules apply to citizens from EU Member States, Iceland, Liechtenstein, Norway and Switzerland.

Finland has tightened the criteria for granting residence permits to Russians because of Russia's invasion of Ukraine.

FOREIGN INVESTMENT

There are no general restrictions on foreign investment but, under the Foreign Corporate Acquisitions Act (2012/172), the Finnish Ministry of Economic Affairs and Employment monitors foreign corporate acquisitions and may restrict them, if key national interests require. These key national interests may concern national defense, security of supply or functions fundamental to society.

The guiding principle of the Foreign Corporate Acquisitions Act is a positive attitude to foreign ownership. The Finnish authorities could, however, exercise control over the ownership of companies considered essential in terms of security of supply and national security and, if necessary, restrict foreign ownership in such companies. As regards the defense material industry, monitoring covers all foreign owners. In other sectors, monitoring only applies to foreign owners residing or domiciled outside the EU or European Free Trade Area.

THIN CAPITALIZATION

In Finland, interest limitation rules have been implemented instead of thin capitalization rules. The deductibility of a company's net financing expenses is limited to 25 % of the adjusted taxable income of the company ('EBITD'). The restrictions on the deductibility of interests apply to all financing expenses, to both group undertakings and external parties. If the total net financing expenses exceed EUR 500,000, the interest deduction limitations will apply. When the total net financing expenses exceed the threshold of EUR 500,000, the deductible net financing expenses are limited to 25% of the company's adjusted taxable income. It should be noted however that external net financing expenses are fully deductible up to EUR 3 million and will be deducted before internal financing expenses.



RESTRICTIONS ON REMITTING FUNDS OUT OF THE JURISDICTIONS

If the receiver is not a resident in Finland and gets dividends, interest or royalties, the Finnish payer must withhold tax at source. The tax at source is 30 percent. Depending on the provisions of different tax treaties, a lower rate - or even a full exemption from taxation - may be applied. Finland may be in an agreement with the foreign country to avoid double taxation, which means that the taxation depends on the provisions of the applicable tax treaty.