

SCHEDULE 2

FINLAND

COUNTRY ANALYSIS

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1. General

1.1 Pledge – General Characteristics

Pledge

- Assets that may be pledged include shares of Finnish companies, mostly in book-entry form (held in an account with Finnish Central Securities Depository); Government bonds mostly in book-entry form (held in an account with the Finnish CSD); Bonds and CDSs issued by Finnish banks in book entry form, held in an account with Finnish CSDs and Bonds issued by Finnish Corporations, eligible for ECB Tier 1 or NCB Tier 2 list (held in an account with the Finnish CSD). As regards shares voting rights do not pass to pledgee; dividends, interests or other yield is not paid to the pledgee, if not otherwise agreed in the pledge contract. As regards registered shares and bearer bonds in certificated form, the securities are delivered to the pledgee or agreed third party (custodian) to be held for the benefit of the pledgee.
- Securities in book-entry (uncertificated form) are held in an account with the Finnish Central Securities Depository Ltd; the statutes which govern securities in book-entry form are the Act on Book-entry System and the Act on Book-entry Accounts. Perfection requires the pledge to be registered as an entry in the relevant book-entry account; it is the duty of the pledgee to apply for registration having received written authorisation from the owner's account (the authorisation is normally given in the pledge agreement). Entries registered in a book-entry account may include a pledge of a book-entry. Where the registration is to apply only to certain book entries registered in the book-entry account, a separate account shall be opened for them. Unless otherwise agreed upon or stipulated, a dividend or interest or other such yield shall be paid to the account holder, and amortisation, subscription and warrant rights, the right to a new share and other payment to be deemed as capital of the book entries pledged shall be paid the pledgee. A secondary pledge may not be registered on a right of pledge registered in a book-entry account. Nor may a right of pledge for another receivable be registered on a pledged book entry.

Floating Charge

- Under the Finnish Act on Company Floating Charges (24.8.1984/634 as amended), a floating charge may be created as a form of security over the movable assets of a company, including receivables, securities and book-entry accounts.
- In the event of bankruptcy, a claim secured by a floating charge has priority over other receivables only up to 50% of the value of the charged assets.

The security value of a floating charge may thus be inadequate.

- Pledges over securities, book-entry accounts and receivables have priority over a floating charge even if the pledge is created after registration of the floating charge.

1.2 Transfer of Title – General Characteristics

- Finnish jurisprudence takes a negative view of transfer of title as a means of providing collateral. Transfer of title for such purposes will be subject to risks which will limit its function and value.
- Recharacterisation risk is present in relation to title transfer arrangements. In various cases decided by the Finnish Supreme Court, a transfer of title to collateral has been deemed ineffective in relation to third parties such as the other creditors of an insolvent on the basis that the true intention of the parties was to create a security interest. It has been argued in Finnish legal literature with some case law support that if the formal requirements for the perfection of a valid pledge have been observed, a transfer of title could be recharacterised as a valid pledge. The transferee would thus not be deprived of all his rights to the transferred assets but would be entitled to the interests of a pledgee.
- The effectiveness and formal validity of a transfer of title under the Finnish conflicts of laws rules, is determined by the lex situs of the assets. Thus should the transferred assets be located in Finland the parties must comply with any formal steps (transfer of possession etc...) required by Finnish law, regardless of any choice of laws. Accordingly, a transfer of title as a form of security may be recharacterised as a pledge even if the agreement is governed by a foreign legal system that does not recharacterise.
- Close out netting may not be available in all circumstances and there are limitations on the availability of insolvency set off. Legislation concerning the validity and enforceability of netting arrangements came into force in Finland on July 1, 1997. The Act on Certain Terms in Securities and Foreign Exchange Transactions (19.6.1997/588, as amended) ("Netting Act") clarifies the position of close-out netting under Finnish Law. By virtue of this Netting Act security arrangements relating to financial transactions are enforceable even in the event of the insolvency of one of the parties to an agreement. The new legislation also implements the European Parliament and Council Directive on Settlement Finality and Collateral Security.
- Under Finnish law it is generally possible to transfer rights to third parties. However an agreement may incorporate a clause prohibiting assignments in which case contractual rights may not be transferred to a third party. It should be noted that pursuant to Section 5 of the Finnish Act on the Recovery of Assets for the Bankruptcy Estate (26.4.1991/758 as amended) (the "Recovery Act") any transfers could be set aside in the event of restructuring or bankruptcy proceedings.
- Upon restructuring of a corporate, or suspension of the business of a credit institution, a freeze is imposed during which security interests cannot be enforced or rights of set-off be exercised.

1.3 Considerations relevant to collateral arrangements

- A security interest can be created in relation to a future collateral; however the collateral itself should be defined and transferred into the possession of the pledgee at the time the collateral contract is entered into.
- A Pledge over a fluctuating pool of assets is possible provided that the pledgor is in possession of the pool, which usually comprises of assets held in custody and that pledgor authorises any substitution of assets in the pledged pool of assets.
- Substitution does not affect the continuity of security interest, provided, however, that in case of the subsequent bankruptcy of the pledgor, the value of the assets, which have replaced the securities originally subject of the pledge are not substantially higher than that of the original securities.
- As regards overcollateralisation there is no restriction with respect to the amount of collateral to be pledged in relation to the value of the debt obligation to be secured. The preferential right of the pledgee is, however restricted to the amount of the secured claim.
- Under Chapter 10 Section 6 of the Finnish Commercial Code the pledgee is under a general obligation to take reasonable care and to ensure the safe custody of pledged assets in its possession.
- No stamp duties or other governmental fees are payable in connection with a pledge on movable assets.
- Although the pledgee is not allowed to dispose of the securities it holds, the pledgee is entitled to re-pledge the pledged assets to a third party as security for its own liabilities according to Chapter 10 Section 6 of the Finnish Commercial Code. The re-pledge shall be subject to the terms and conditions as in the original pledge (e.g. the security assets should not be valued at a higher amount). The initial pledgor (the owner of the pledged assets) must be notified of the re-pledge. However, securities held in a book –entry account may not be re-pledged.
- The pledgee is not entitled to use the pledged assets or to lend the assets to a third party without the consent of the pledgor.

2. Private International Law and Domestic Law Aspects of Collateral

Validity of the Contract/Attachment

Finnish private international law:

- The law chosen by the parties to govern their contract between them will be the *lex contractus*, which shall govern the validity of the agreement. However, the court may require that the law chosen as "*lex contractus*" has a material connection to the parties or to the agreement itself.

Finnish domestic law:

- A commercial pledge is created and perfected by way of written or oral agreement (two witnesses required) with simultaneous delivery of the securities to the pledgee.
- It is further required that there is an underlying debt obligation, which will be secured by the pledge. Without the underlying obligation the pledge contract is considered void. The obligation need not be between the pledgor and the pledgee nor does it have to be for a fixed amount. A pledge may secure future and conditional obligations.
- The pledge contract can be a general pledge, concerning all the pledgor's obligations owing to the pledgee or a specific pledge concerning a certain obligation only.

Perfection:

Finnish private International Law:

- Finnish legal authorities state that the perfection formalities of a valid pledge should be determined by the *lex situs*, that is the law of the place where the relevant property is situated at the time of the contract.

Should the assets be considered located in Finland it is necessary to take action under Finnish law to ensure the formal validity and priority of a pledge against third parties' interests.

- Questions concerning the perfection of the collateral granted by a Finnish pledgor will be governed by the "*lex rei sitae*" and Finnish Law irrespective of the "*lex contractus*".
- In respect of securities in certificated form the perfection will depend on the law of the place where the securities are situated.

Finnish domestic law:

- The perfection of the pledge is done by delivering the pledged asset to the pledgor. If the assets are held by a depository, it needs to be notified of the pledge. If the pledged asset is a receivable, the obligor needs to be informed.
- Although the pledge does not require any registration, a pledge concerning book entries has to be registered in the relevant book-entry account.

Priorities:

Finnish private international law:

- Priorities are determined by "*lex rei sitae*", however under Finnish law the ranking of pledges with respect to the same assets is determined by *order of creation*.

Finnish domestic law:

- The Act on Creditors' Order to Obtain Payment stipulates the priorities among the creditors in the event of a bankruptcy of the pledgor. The pledgee may, in the case of pledgor's bankruptcy be paid out of the realisation of the pledged asset in priority of all the other creditors. Once the pledgee has received full payment of the secured obligation it is obliged to return the surplus assets to the bankruptcy estate.
- Ranking of pledges with respect to the same assets is determined by order of creation (even when the pledge has been created for a future or conditional obligation). It should be noted that any pledges created during the "suspect period" preceding bankruptcy may be nullified.

Enforcement:

Finnish private international law:

- Enforcement is to be effected in accordance with Finnish law, which also applies to securities established abroad (subject to recognition by the applicable laws of the jurisdiction where the relevant assets are located).

Finnish domestic law:

- Under Finnish law, the pledgee is not the owner of the pledged assets and may sell the pledged assets only in the specific circumstances described below (Chapter 10 Section 2 of the Commercial Code as amended in 1988/15.7.1988/687).
- According to Chapter 10 Section 2 of the Commercial Code the pledgee may sell the pledged assets at his own initiative, provided that the obligation has become due and the pledgor has been notified of the payment failure, and it has not been remedied in one month's time of the notification. In the event of bankruptcy no Court judgment is required, nor does section 2 of Chapter 10 of the Commercial Code apply (the section is not mandatory and may be modified by agreement between the parties).
- According to Section 76 of the Bankruptcy Act the pledgee may sell the pledged asset with a prior notification to the bankruptcy estate. The pledgee shall render an account of the sale of the assets to the bankruptcy estate and return any surplus assets to the estate.
- The bankruptcy estate may offer to purchase the pledged asset or to sell on behalf of the pledgee. The pledgee may hold the pledged assets as long as necessary to protect his claim. The bankruptcy estate cannot force the pledgee to realise the collateral.
- A pledgee may sell the pledged asset by private sale following the procedures described above.

- The commencement of corporate restructuring proceedings will result in a period of protection, during which no debts that arose before the proceedings may be paid, collected or enforced. Any action in violation of this prohibition will be deemed invalid. During the period of protection, a pledge may not be enforced.

Insolvency:

Finnish private international law:

- Insolvency proceedings may be instituted in Finland in respect of a debtor whose domicile or principal place of business is in Finland. The insolvency proceedings extend to all domestic assets, and, subject to recognition by the applicable insolvency laws of the jurisdiction where the relevant assets are located, to foreign assets of such entity.

Finnish domestic law:

- Bankruptcy proceedings may be initiated either by the debtor or by the creditors. If the court adjudicates in favour of the petition, the bankruptcy proceedings are opened at the precise time of the decision.
- At the opening of the bankruptcy proceedings the debtor forfeits control of all assets belonging to the estate. Any transfer entered into by the debtor or the debtor's agents after opening of the bankruptcy and relating to these assets are void.
- The Finnish Netting Act also applies to collateral security provided under a pledge to a clearing organisation or a contractual party in connection with certain financial transactions. Under Finnish law there are three main conditions which must be fulfilled for set-off to be valid on insolvency: the claims must be similar in nature, enforceable and mutual. Set-off in the event of bankruptcy is subject to these general conditions and to another specific condition prescribed by Section 33 of the Bankruptcy Act which must be fulfilled. In order to set-off a debt owed to the bankruptcy estate, both claims must originate prior to the commencement of the bankruptcy proceedings. Under the Finnish Act on Restructuring of Companies (25.1.1993/47 as amended) ("Restructuring Act") the making of an order for restructuring proceedings to commence will result in a period of protection, during which any right to set-off receivables with respect to the company under restructuring is prohibited. The period of protection remains in force until a restructuring proposal, covering all debts and assets, included pledged assets, is approved by the company and a court order made or alternatively, when the restructuring proposal is rejected by the court and the company is placed into bankrupt.

The provisions of the Restructuring Act will not apply to credit institutions such as banks. Furthermore the bankruptcy proceedings of such institutions are only partially governed by the Finnish Bankruptcy Act. Special provisions regarding insolvency of the different forms of credit institution are included in

the Commercial Bank Act, the Savings Bank Act and the Co-operative Bank Act respectively (their insolvency provisions in each Act are very similar).

In the event that auditors of a credit institution or the Finnish Financial Supervision Authority make specific findings regarding the solvency of the credit institution, the Ministry of Finance may order a credit institution to suspend acceptance of deposits from customers, the withdrawal of funds from any accounts and settlement of any other liabilities. Such an order may be imposed for a maximum of four months. After these operations have been suspended, no proceedings against the credit institutions for the enforcement of debts or other liabilities may be commenced and although not expressly provided by the law, it is likely that any right of set-off is also stayed once the operations of a credit institution have been suspended.

The Netting Act creates a significant exception to the restrictions imposed by the above insolvency regulations and means that security arrangements relating to financial transactions are enforceable even in the event of the insolvency of one of the parties to an agreement, allowing netting of certain financial obligations despite the commencement of bankruptcy proceedings or of restructuring proceedings in relation to a company or any suspension of business in relation to credit institutions.

- Even if a pledge has been perfected in accordance with the law and is valid in all relevant aspects, the pledged assets may be recovered for the benefit of the bankruptcy estate in certain circumstances:
 - Article 14 of the Recovery Act concerns the recovery of pledged assets. Any security for the bankrupt's debt given within the three months prior to the commencement of bankruptcy proceedings shall be liable to recovery from the creditor if, inter alia, the pledge was not agreed in connection with the granting of new credit.

Should the parties to the pledge agreement be considered closely connected as that concept is defined in the Recovery Act the relevant look-back period would be extended to two years. In this case the pledged assets would be recovered unless the debtor was solvent at the time of the granting of the pledge and did not become insolvent as a result.
 - Article 5 of the Recovery Act sets out general rules relating to the recovery of assets and covers all transactions between the insolvent debtor and a counterparty, including security arrangements, and states that any transaction agreed within five years prior to the commencement of bankruptcy proceedings shall be set aside if the transaction improperly preferred one creditor to the detriment of other creditors or increased the company's liabilities so long as the company was either insolvent or became insolvent due to the transaction and the creditor either knew or should have known of the circumstances (if the parties to a transaction are closely connected the look-back period would be unlimited)
- The Netting Act also creates an exception to Section 14 of the Recovery Act

stating that deliveries of collateral will not be subject to avoidance pursuant to that Section provided that the collateral provider is a party to a financial transaction such as securities trading or a securities repurchase transaction and is liable to transfer collateral and/or additional collateral and this collateral and/or additional collateral has been transferred without unreasonable delay.

3. Miscellaneous

3.1 Cross-border transactions in multi-tiered holding systems

- The depository does not in general have any rights in assets deposited with it and is not allowed to co-mingle those assets with its own assets.
- With regard to interests in securities in a book-entry system, the main interest in a book-entry account is absolute title to the assets. Therefore, the interest in the securities would, under Finnish law, be characterised as absolute title to the securities. Finnish law does not recognise any forms of divided ownership.

There are certain other rights that may be registered on a book-entry account. First, a book –entry account may include an entry registering a pledge of the account. Such a pledge would cover all assets in the account. Second, a proxy or a right to operate an account may be registered including an unrestricted right to transfer book entries from the account, the right to obtain information regarding the contents of the account and the right to receive income or other payments made with respect to assets held in the account. Such rights will arise as a result of an agreement with the owner of the account.

- There has been a gradual shift from certificated securities to book-entry securities, especially after the legislation creating the Finnish Central Securities Depository (FCSD) came in to effect.
- The Act on Book-Entry Accounts stipulates that the book-entry registrar shall have the right to obtain, from the value of the book entries registered in the book-entry account, payment from its receivables incurred through the maintenance of the book-entry account, when not more than 12 months have elapsed since the maturity of the receivables. The depository may also create a security interest over the deposited assets to cover its own fees, expenses, etc,... This is normally included in the standard safe custody agreements.

3.2. Implementation of the Settlement Finality Directive

In 1998 the Ministry of Justice set up a working group to oversee and supervise the implementation of the Directive. A draft working paper was released in May 1999. Regarding securities entered into the Finnish book entry system, the implementation in the Act on Book Entry Accounts is reported to be broad. With respect to other securities such as foreign securities, it appeared that the proposed legislation in the Act on Certain Conditions of Securities and Currency Trading as well as a Payment System (the Netting Act) would follow the Directive closely and be given narrow interpretation. However, changes in the Netting Act approved by Parliament in November have extended the scope of the provision so that it is now broad.

Finland