

Finland

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1. Types of companies

The Limited Liability Companies Act (the Companies Act) applies to all limited liability companies registered in accordance with Finnish law, unless otherwise provided in the Companies Act or other acts.

A limited liability company may be private (private limited company) or public (public limited company). These are the two types of companies that have share capital. The minimum share capital of a private limited company is €2,500 and for a public limited company €80,000.¹

A company is incorporated by the way of a written memorandum of association, signed by all shareholders. By signing the memorandum of association, a shareholder subscribes for a quantity of shares, as indicated in the memorandum of association. The term and the duties of the management and the auditors begin as of the signing of the memorandum of association.

However, the company is formally established when the company is registered with the Finnish trade register.

1.1 Shareholders' liability

According to the Companies Act, a limited liability company is a legal person distinct from its shareholders. As a general rule, the shareholders have no personal liability for the obligations of the company.² However, a shareholder shall be liable in damages for any loss that he has, by contributing to a violation of the Companies Act or the Articles of Association, deliberately or negligently caused to the company, another shareholder or a third party.³

Furthermore, before registration, a company cannot acquire rights or enter into obligations, nor can it appear as a party in court or in dealings with other authorities. Therefore, measures taken on the behalf of the company before registration shall be at the joint and several liability of the persons deciding on the measures and the persons participating in them. However, the obligations arising from measures taken after the signing of the memorandum of association, and from measures specified in

1 The Companies Act also defines a 'listed company', see Chapter 5(1a) of the Companies Act. The term listed company is used in connection with the general meeting as the Companies Act provides special rules for listed companies.

2 Chapter 1(2) of the Companies Act.

3 Chapter 22(2) of the Companies Act.

the memorandum of association and taken no earlier than one year before the signing, shall be transferred to the company upon registration.

1.2 Becoming a shareholder

(a) *Incorporation of the company*

The first way to become the shareholder of the company is through the incorporation of the company. As stated above, a company is incorporated by way of a written memorandum of association, signed by all shareholders. By signing the memorandum of association, a shareholder subscribes for a quantity of shares, as indicated in the memorandum.⁴

The subscription price paid in cash is paid into an account of the company in a Finnish deposit bank or in a branch of a foreign credit institution licensed to accept deposits in Finland, or into a comparable foreign account. If the subscription price is paid in full or in part with other assets instead of cash, the assets must at the time of conveyance have a financial value to the company at least equal to the price thus paid. An undertaking to perform work or services cannot be used as a method of payment.⁵

The board of directors may declare the right to a share forfeited if the subscription price, together with any overdue interest thereon, has not been paid although it has become due and the board of directors has not granted an extension to the subscriber. In this event, the board of directors may award the subscription right to a third party.⁶

The company must be registered within three months of the signing of the memorandum of association. If the company is not notified for registration during this period, the incorporation of the company shall lapse.⁷ Furthermore, only shares which have been fully paid up can be notified for registration.⁸

As stated before, the company shall be established upon registration. The obligations arising from measures taken after the signing of the memorandum of association, and from measures specified in the memorandum of association and taken no earlier than one year before the signing, shall be transferred to the company upon registration. After registration, a shareholder cannot withdraw from a subscription by asserting that a condition relating to the incorporation has not been met.⁹

(b) *Acquisition of shares*

As a general rule, a share may be transferred and acquired without restrictions. However, restrictions on the transfer or acquisition of shares may be included in the articles of association, but only as provided in the Companies Act.¹⁰

4 Chapter 2(1) of the Companies Act.
5 Chapter 2(6) of the Companies Act.
6 Chapter 2(7) of the Companies Act.
7 Chapter 2(8) of the Companies Act.
8 Chapter 2(8) of the Companies Act.
9 Chapter 2(9) of the Companies Act.
10 Chapter 3(7) and 3(8) of the Companies Act.

First, the articles of association may provide a redemption clause. It may be stated in the articles of association that a shareholder, the company or another person has the right to redeem shares due to be transferred to a third party by a shareholder other than the company. The redemption clause shall indicate who has the right of redemption and, where there are several persons who have the right of redemption, how their precedence is determined.

Unless it is otherwise provided in the articles of association, the following provisions apply to the redemption:

- The right of redemption shall apply to all types of acquisition;
- The redemption shall cover all of the shares subject to the same acquisition;
- The redemption price shall be equal to the fair price of the share; in the absence of other evidence, the fair price of a share acquired for consideration shall be the price agreed for the share;
- The board of directors shall notify the transfer of shares to the person who has the right of redemption, in writing or in the manner provided for the delivery of notices of the general meeting, within one month of the transfer of the shares being notified to the board of directors;
- The demand for redemption shall be presented to the company or, where the company is exercising the right of redemption, to the acquirer of the share, within two months of the transfer of the share being notified to the board of directors; and
- The redemption price shall be paid within one month of the expiry of the period referred to in the previous bullet point or, if the redemption price has not been fixed, within one month of the fixing of the redemption price.

Before it has been determined whether the right of redemption is to be exercised, the acquirer of the share shall have no shareholder rights in the company except for the right to payment in the event that assets are distributed and the pre-emptive right in a share issue. The rights and obligations in a share issue shall devolve on the person who exercises the right of redemption.

The company may redeem shares only with distributable assets.

Secondly, it is also possible that the articles of association provide a consent clause. It may be established that the acquisition of a share by way of a transfer requires the consent of the company. However, such a provision shall not apply to a share that has been acquired at a bailiff's auction or from a bankruptcy estate.

The board of directors shall decide on the giving of the consent, unless it is otherwise provided in the articles of association. Provisions may be taken in the articles of association on the criteria for giving consent. If the acquisition concerns several shares, the issue of consent shall be decided in the same way for each of them, unless it is otherwise provided in the articles of association.

If the decision on the consent has not been notified in writing to the applicant within two months of the delivery of the application to the company, or within the shorter period provided in the articles of association, the consent shall be deemed to have been given.

Before the consent has been given, the acquirer of the share shall have no

shareholder rights in the company except the right to payment in the event that assets are distributed and the pre-emptive right in a share issue. A share acquired on the basis of such a pre-emptive right shall not carry more shareholder rights than this, unless the company consents to provide such shares with normal shareholder rights.¹¹

A share acquisition notified by the acquirer to the company, and other changes to the information in the shareholder register notified to the company, shall be entered into the shareholder register without delay.¹²

Before an entry is made, reliable evidence of the acquisition and the payment of the transfer tax shall be provided. The entry shall be dated. However, if the share is subject to a redemption right or if consent is required for the acquisition of the share, the entry shall not be made until it is clear that the redemption right will not be exercised or until the consent has been given.¹³

(c) ***Share issue and other measures***

A company may issue new shares or transfer treasury shares (a 'share issue'). The share issue may involve the issue of shares against payment (a 'share issue against payment') or free of charge (a 'share issue without payment').¹⁴

In a share issue, the shareholders shall have a pre-emptive right to the shares to be issued in proportion to their current shareholdings in the company. If the company has several share classes, the pre-emptive rights of the shareholders shall be realised by issuing shares in all share classes in proportion to the classes, and by offering shares in each share class to the shareholders in proportion to their shareholdings in the respective share class.¹⁵ However, a derogation to the pre-emptive right may be made in a share issue (a 'directed share issue'), if there is a weighty financial reason for the company to do so.¹⁶

The general meeting shall make the decisions on share issues. However, provided that certain prerequisites are met, the general meeting can authorise the board of directors to decide on a share issue in full or for some part.

Furthermore, one can also become a shareholder in the company through option rights and other special rights granting entitlement to shares (as provided in Chapter 10 of the Companies Act). If there is a weighty financial reason for the company to do so, the company may issue special rights for the holder to receive new shares or treasury shares against payment. The holder may have the right to choose whether or not to subscribe for shares (an 'option right'). The right may also be attached to an undertaking to subscribe for shares.¹⁷

1.3 Pledges

According to the Companies Act, if no share certificate has been issued for a share,

11 Chapter 3(8) of the Companies Act.
12 Chapter 3(16) of the Companies Act.
13 Chapter 3(16) of the Companies Act.
14 Chapter 9(1) of the Companies Act.
15 Chapter 9(3) of the Companies Act.
16 Chapter 9(4) of the Companies Act.
17 Chapter 10(1) of the Companies Act.

any pledges and other encumbrances on the share that have been notified to the company shall also be entered into the shareholder register.¹⁸ Even where shares are pledged, as a general rule the shareholder can exercise his shareholder rights, for example, voting rights in the general meetings.

1.4 Restrictions on ownership of shares in certain companies

The Companies Act does not provide rules that would impose restrictions on who can own shares in a company. However, such rules may be provided in other acts, but are very rare in practice. For example, shares in a company which is an attorney's office may only be owned by attorneys.

2. Types of shares

All shares shall in principle carry equal rights in the company. However, it may be provided in the articles of association that the company has or may have shares that differ from each other as regards the rights or obligations they carry. In this event, the articles of association shall indicate how the shares are different.

Shares shall belong to different classes if they:

- differ from each other as regards the voting rights they carry or the rights that they carry in the distribution of the assets of the company; or
- are otherwise designated in the articles of association as belonging to different classes.

Provisions may be included in the articles of association on the conditions and procedures under which shares can be converted from one class to another (a 'conversion clause').¹⁹

One share shall in principle carry one vote in all matters dealt with by the general meeting. However, it may be provided in the articles of association that different shares carry different voting rights. It may also be provided in the articles of association that a share carries no voting rights, or that a share does not carry a vote in given matters dealt with by the general meeting. For each of the matters dealt with by the general meeting, such a provision shall concern only a part of the shares in the company.²⁰

This is an extract from the chapter 'Finland' by Oona Fromholdt, Pekka Jaatinen and Ilari Mustonen in Shareholders' Rights and Obligations: A Global Guide, published by Globe Law and Business.

18 Chapter 3(1) of the Companies Act.

19 Chapter 3(1) of the Companies Act.

20 Chapter 3(3) of the Companies Act.

21 Chapter 5(1) of the Companies Act.