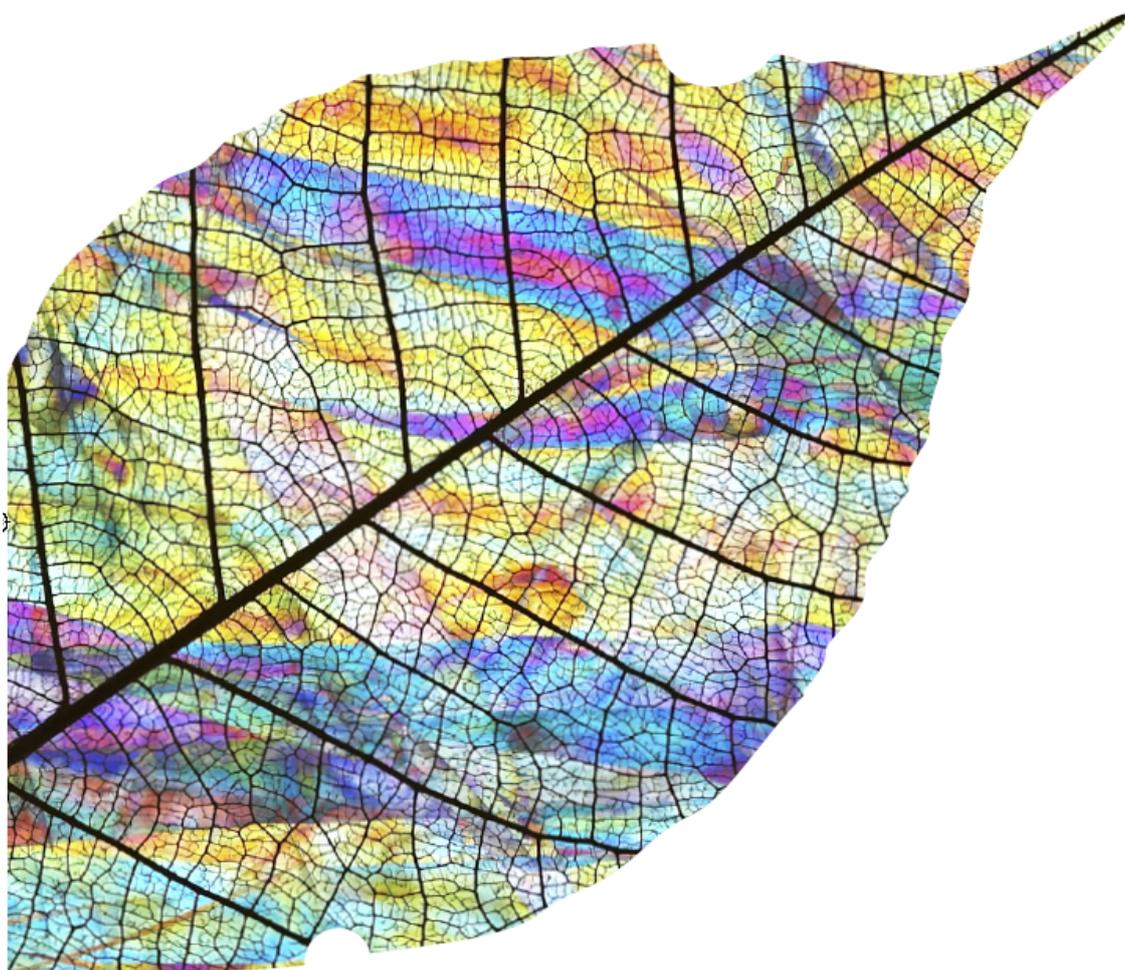


World Universities Comparative Law Project

Legal rating of Finland

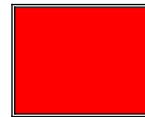
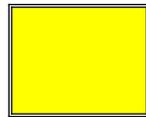
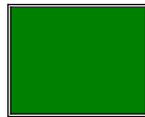
carried out by students at the University of Helsinki

A production of the Allen & Overy Global Law Intelligence Unit



June, 2016

World Universities Comparative Law Project
Legal rating of Finland
carried out by students at the University of Helsinki
May, 2016



Produced by the Allen & Overy Global Law Intelligence Unit

World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Finland was carried out by students at the University of Helsinki.

The members of the Faculty of Law at the University of Helsinki who assisted the students were:

Ville Pönkä, LL.D. (Helsinki), Adjunct Professor of Civil and Commercial Law

The members of the Practitioner Expert Panel with whom the students could discuss the questions in the survey were:

Kirsi Komi, LL.M. (Helsinki), Chairman and Board Professional

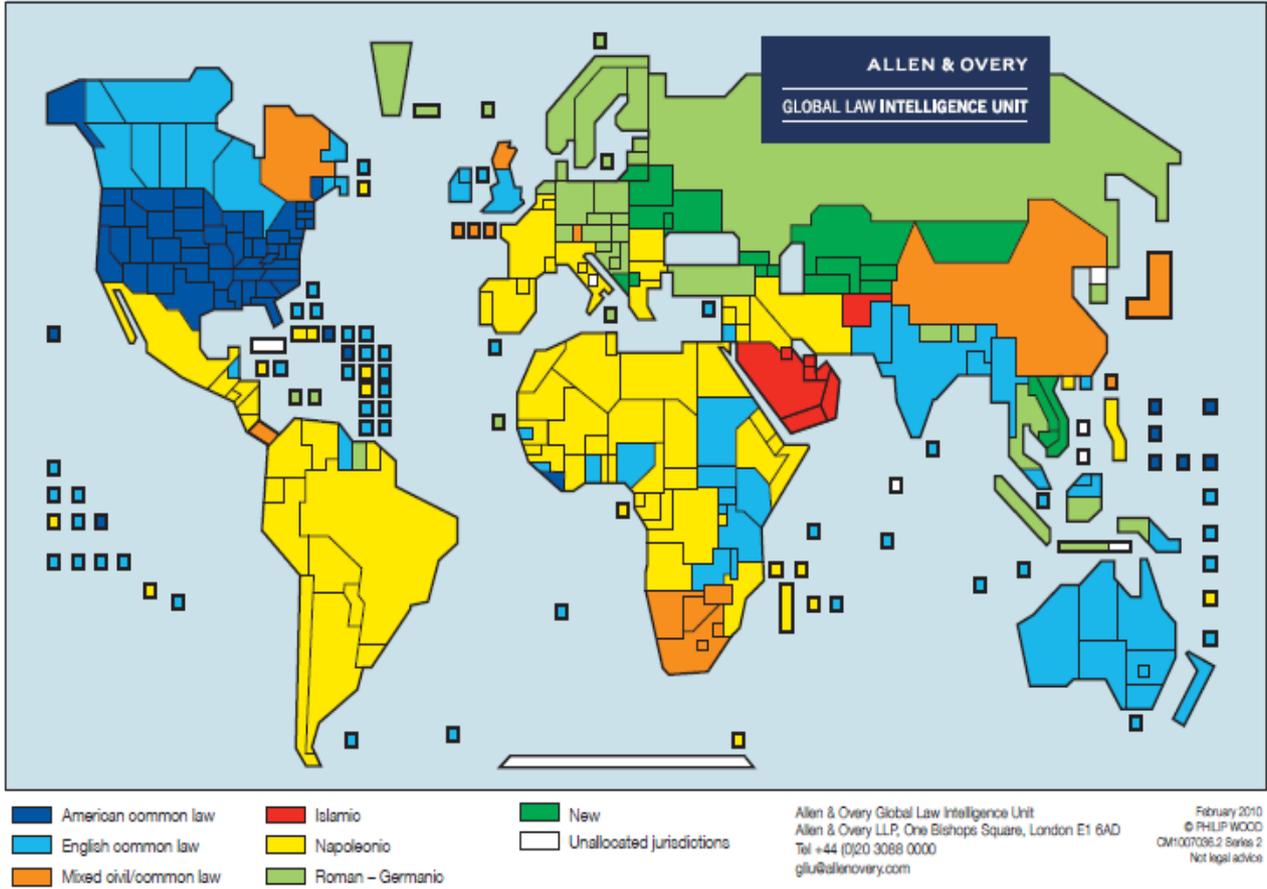
Sami Pauni, LL.M. (Helsinki), Senior Vice President, Corporate Affairs and Legal, Group General Counsel at Huhtamäki Oyj

Toni Siimes, LL.M. (Turku), Partner at Roschier Attorneys Ltd

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

In the old days law mainly used to be a national matter only. In that setting comparative law has developed both as a method of research and as a way of characterising and classifying various legal traditions. In fact, much of comparative law research has based on the assumption that a true knowledge about the differences between legal systems might contribute to the creation of some new legal order.

These days no single legal order can remain purely traditional. International and transnational law have a growing impact on the domestic legal orders. In business law this is more a rule than an exception. Lawyers work increasingly across legal cultural borders. It has become more and more important for the students to encounter with legal cultures that are different from ours.

Today we sometimes speak about intercultural legal skills. Law students of the University of Helsinki seem to be aware of this expectation since law students are among the most mobile ones in terms of student mobility. Almost 150 of our law students go abroad every year as part of student exchange programs. We are happy to receive an even higher number of international law students in Helsinki, many of them from outside Europe. We started an international master's program already in 1991.

Internationalisation thus affects also very much what we do in Helsinki. In 2013 we launched a Finnish Center for Chinese Law and Chinese Legal Culture at our faculty. We are one of the founding members of the New Silk Road Alliance of Law Schools established in Xi'an China in 2015. The law deans of the member universities of the LERU (League of the European Research Universities) meet on a regular basis to discuss issues relevant for collaboration.

The students coached by enthusiastic young scholars and volunteering professional lawyers are actively taking part in a variety of moot court competitions on different topics. Also many of the trainee programs are of an international character.

Helsinki University has recently decided to list Global Law as one of its core thematic profiles in research. In the coming years we will be working to make the best out of the new profile. This will benefit also the students as we will be striving at broadening further the coverage of our courses related to global law. International master of laws degree program will also be reformed to be introduced already in 2017.

Today global outreach really matters. A university needs to show that it plays a role in the global setting. Theory needs to be relevant for practice. Students need to be given chances to learn and train in ways which prepare them for the working life which they will enter in only a few years' time. For the students, it seems to me, this is rather natural way of proceeding. They seem to respond with enthusiasm to the new things that we have been able to provide them with the help of our partners. It gives me great pleasure to see that our partners are confident that our students will be able to handle demanding problems of legal regulation.

The World Universities Comparative Law Project deserves all our appreciation since it combines several of the virtues listed above. It gives the students the opportunity to reflect on their legal system in a comparative setting, thus enabling a new perspective to the own national law. Simultaneously the learning process has been designed to be carried out in the form of team work. The rating of one legal system would of course not mean much. But when you see the ratings put together, the picture changes. Suddenly we see contours of global law emerging. It is in fact rather amazing that this can result out of students working on the topics.

It feels a true privilege that our Faculty of Law has been selected as the collaboration partner. Let me thank on behalf of the Faculty of Law everyone who has been involved in this process of producing the rating on Finland and thus helped to make this entire enterprise possible.



Kimmo Nuotio, LL.D.
Professor of criminal law
Dean
Faculty of Law
University of Helsinki

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Finland with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

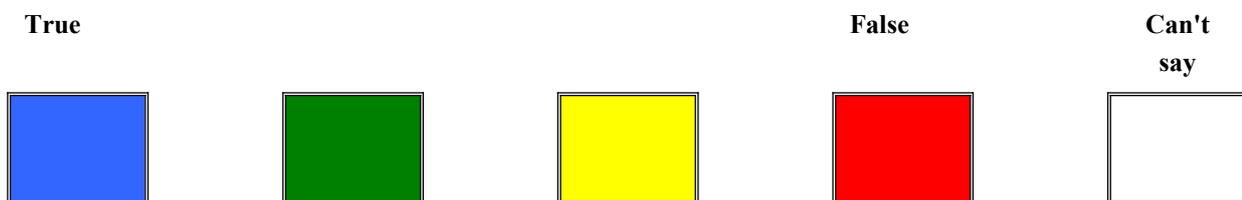
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at the University of Helsinki. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of the University of Helsinki, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Finland. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

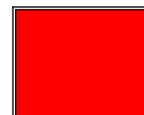
Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In **Finland**, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True



False



Can't say



Comment:

The Finnish legal system has traditionally been open to mutual set-off of debts in bankruptcy. According to the Bankruptcy Act (120/2004), ch. 6, s.1, the creditor has the right to use a claim in bankruptcy to set-off a debt owed to the debtor at the beginning of the bankruptcy. This general rule is subject to a number of exceptions contained in ss. 2 and 5, including restrictions preventing the creditor from using it to set-off against a claim that does not entitle him to a payment out of the bankruptcy estate or any claims which are junior to other existing claims under the Ranking of Claims Act (1578/1992), s.6. Further, any claims against the debtor which have been acquired from a third party more than three months prior to the cut-off date contained in the Recovery of Assets and Bankruptcy Estate Act (758/1991), s.2 cannot be used for set-off against a debt owed by the creditor to the debtor at the time of the acquisition.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

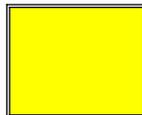
The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In **Finland**, the law offers a security interest which is highly protective of the secured creditor.

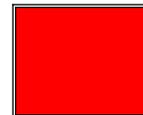
True



False



Can't say



Comment:

There are two classes of creditors: unsecured and secured creditors. The initial position in the Ranking of Claims Act (1578/1992), s.2 is that all creditors have an equal right to receive payment from the bankruptcy estate in proportion to the amount of their claim. However, this is subject to s.3, under which secured creditors have the right to satisfy their claim from the secured assets prior to the claims of unsecured creditors. In order to attain the rank of secured creditor, the security interest must be validly created in accordance with Finnish property law principles.

Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

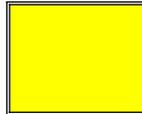
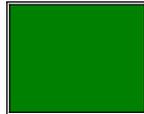
All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Finland has a universal trust for all assets.

True



False



Can't
say



Comment:

Finland is not a signatory to the Convention on the Law Applicable to Trusts and on their Recognition (The Hague, 1 July 1985) and Finnish law therefore does not recognise the legal concept of the trust.

However, the Supreme Administrative Court has previously ruled (KHO 2013:51) that the fact that Finnish national law does not recognise a trust must not lead to a situation where a trust's beneficiary is treated as the legal owner for taxation purposes. It can therefore be inferred that the legal matrix between parties under a trust must be examined on a case-by-case basis, taking into account applicable Finnish legislation, in order to ascertain their true legal relationship.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

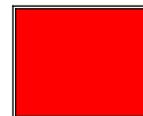
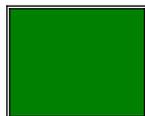
There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In **Finland** the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True

False

Can't say



Comment:

The Limited Liability Companies Act (624/2006) (“the CA”) does not explicitly impose personal liability on directors for further losses caused to creditors through insolvent trading. Accordingly, insolvent trading is not a statutory ground for piercing the corporate veil. However, maintaining the company’s solvency is an essential part of directors’ duties in Finland and insolvent trading may impose civil and criminal liabilities on directors. In addition, it should be noted that the enlightened value maximisation is recognized as a central part of the governance of the Finnish companies.

The CA, ch. 13 lists the ways in which a company’s assets can be lawfully distributed. Any distribution which does not fall under this list, or which does not have a sound business reason, is regarded as an unlawful distribution and may give rise to both civil and criminal liabilities on the part of the offending director.

The CA does not explicitly impose a duty on the directors to file for insolvency. However, under the CA ch. 20, s.23 directors are required to place a notice on the register if the company has negative capital. Further, a deliberate act of insolvent trading by a director may incur legal sanctions for dishonesty of a debtor under the Criminal Code (39/1889), ch. 39, s.1.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

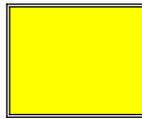
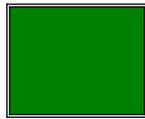
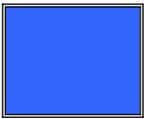
The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

Q5 Finland permits a company to grant financial assistance for the purchase of its own shares.

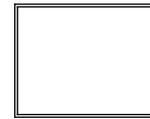
True



False



Can't
say



Comment:

According to the Limited Liability Companies Act (624/2006) ("the CA"), ch. 13, s.10, a company may not facilitate the acquisition of its shares, or those of its parent company, by an outsider through the provision of any assets, security or monetary loan. This does not apply, however, in cases of distributable assets which are used to acquire shares for employees of the company or those of a company in its immediate circle. The purpose of this legislation is to prevent an illegal disposition of the company's assets.

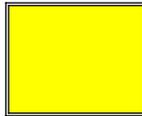
Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

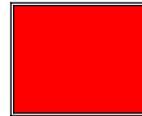
The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in **Finland** is open and has few restrictions.

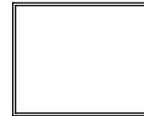
True



False



Can't
say



Comment:

The public takeover regime is largely open and places few restrictions on companies. The regime is based on the European Union Directive 2004/25 EC, which was implemented in Finland by the Securities Markets Act (746/2012) (“the SMA”). This legislation places limitations on the control acquisitions of the shares of listed companies. Additionally, the Helsinki Takeover Code provides recommendations concerning takeover bids. These recommendations are binding under the Securities Markets Act on a “comply or explain” basis. The objective of the Helsinki Takeover Code is to standardise the procedures in public takeover bids in Finland and so promote the legal protection of the parties. The Revised edition of the code entered into force on 1 January 2014 and is governed by the Securities Markets Association.

When a shareholder’s holdings, or their proportion of voting rights in a company, directly or indirectly fall below the levels prescribed by the SMA, the shareholder is obliged to file with the Financial Supervising Authority.

Further, under the SMA, ch. 11, s.19, after the target company’s shares have been listed on the market, a shareholder whose proportion of voting rights exceeds 30% or 50% of the target company’s voting shares must make a mandatory public offer for all remaining outstanding shares and securities entitling the holder to shares of the target company. It should be noted that the Limited Liability Companies Act (624/2006) (“the CA”), ch. 18, s.1 imposes a mandatory redemption procedure where a party’s shareholding exceeds 90% of the total number of votes and shares in the company. Accordingly, the redeemer shall redeem the shares of the minority shareholders at the fair price in accordance with the procedure stipulated in the articles of association or, when the articles of association remain silent on this matter, in accordance with the provisions of CA. Finally, the Supreme Court (KKO 2005:122) has recognized that the threshold for mandatory redemption may be set at a lower percentage in the company’s articles of association in some cases; this is known as a Finnish poison pill provision.

The Finnish system is an amalgamation between the board neutrality rule found in the United Kingdom and the board intervention principle found in the United States. The SMA contains a provision which states that the board of directors is subject to shareholder decisions in matters which could prevent or result in the frustration of the takeover bid or its material terms.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

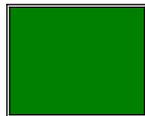
The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

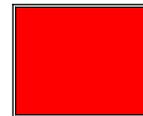
Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In **Finland**, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True



False



Can't
say



Comment:

The Finnish legislation remains silent on preliminary agreements and letters of intent. However, under the general principles of Finnish private law, parties can still draft a preliminary agreement which confirms their intent to contract in the future and outlines the terms of the planned contract. This preliminary agreement can bind the parties in relation to the actual formation of the contract but not to its exact terms. Failure to contract with the opposing party under the agreed upon terms may, therefore, give rise to a claim for breach of contract. The preliminary agreement generally has similar form requirements to the actual contract.

Letters of intent are separate to preliminary agreements. Unlike the latter, they are not normally binding as they tend to be in vague and general terms. If, however, the letter of intent is detailed and confirms essential terms, it may be interpreted as a preliminary agreement and therefore be binding upon the parties. The Finnish Supreme Court has ruled (KKO 1996:7) that the letter of intent can be considered a binding preliminary agreement under certain circumstances.

Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not

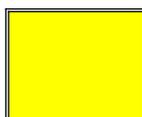
rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In **Finland**, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True

False

**Can't
say**



Comment:

According to Finnish legal principles, sophisticated parties (excluding consumers) have extremely wide freedom to contract and can therefore agree on terms concerning the termination of the contract. However, under the Contracts Act (228/1929), s.36, the court may adjust or set aside a contract term if it is unfair or if its application would lead to an unfair result. It should be noted that the threshold for the application of this section is very high. The Finnish Supreme Court has stated that a contract term can be adjusted under certain circumstances, especially when the position of the other contracting party is significantly weaker.

Exclusion clauses

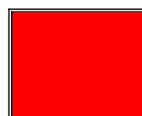
Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In **Finland**, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True

False

**Can't
say**



Comment:

The freedom to contract is an essential feature of the Finnish legal system and it ensures that parties are free to agree on most terms, including exclusion clauses. However, the court may, under the Contracts Act (228/1929), s.36, adjust or set aside contract terms which are manifestly unfair or if their application would lead to an unfair result (e.g. in situations where there is no equality of arms between the parties). It should be noted that in certain types of contracts (e.g. contracts on the conveyance of land) the parties are not entitled to entirely exclude their liability.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

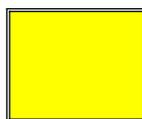
Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The **Finnish** courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Finnish public policy and mandatory statutes.

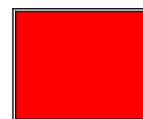
True



False



Can't
say



Comment:

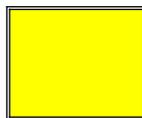
Finland applies EC Regulation No 593/2008 on the law applicable to contractual obligations (“the Rome I Regulation”). Under the Rome I Regulation, art. 3, contracts shall be governed by the law chosen by the parties, who may choose the law applicable to either the whole or only part of the contract. The parties may agree to change the applicable law at any time. Where all elements relevant to the contract are located in the EU Member States and the parties choose an applicable law from outside of the EU, this choice shall not prejudice the application of provisions of EU law. The Rome Regulation, art. 21 further states that the application of a foreign legal provision may only be refused if doing so would be “manifestly incompatible” with the public policy of the forum. Finnish courts will therefore apply an express choices of foreign law, but will do so subject to Finnish public policy and mandatory statutes.

Foreign jurisdiction clauses

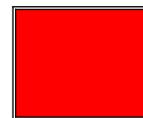
Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The **Finnish** courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True



False



Can't say



Comment:

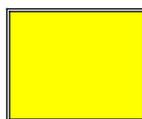
The Brussels I Regulation No 44/2001 on jurisdiction and the recognition and enforcement of judgments civil and commercial matters is applicable to Finland as an EU Member State. Under art. 23, where at least one of the parties is domiciled in a Member State and have agreed that a court of a particular Member State is to have jurisdiction to settle disputes arising in connection with a particular legal relationship, that court shall have jurisdiction. This rule is subject to a number of formality requirements: the agreement must be in writing, or in a form which accords with either practices the parties have established between themselves or practices according to international trade or commerce. It should be noted that the Regulation does not require a connection between the contract and the court of the selected Member State.

Arbitration recognition

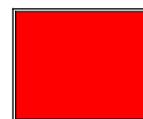
Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In **Finland**, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Finnish courts.

True



False



Can't say



Comment:

Finland is a signatory to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. According to art. 2, Contracting States shall recognise a written agreement by the parties to submit any disputes arising from a defined legal relationship to arbitration if the dispute concerns a subject matter which is capable of arbitration. Further, if an action is brought before a court of a Contracting State,

but the parties have entered into an arbitration agreement, the court shall, at the request of one of the parties, refer the parties to arbitration unless it finds that the agreement is void or incapable of being performed.

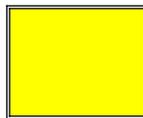
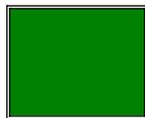
Under the Arbitration Act (967/1992), s.2, any dispute in a civil or commercial matter which is capable of being settled by agreement between the parties may be referred to arbitration. Finland is therefore very permissive about submitting contract disputes to a foreign arbitral tribunal to the exclusion of the national court.

Class actions

Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In Finland, class actions where the class is bound if they do not opt out are generally not allowed.

True



False



Can't
say



Comment:

The Class Actions Act (444/2007) allows civil cases between consumers and a business to be heard as a class action, within the limits of the competence of the Consumer Ombudsman. Section 8 of the Act states that in order to become a class member in a class action suit, one must have delivered a written letter of accession to the class. Individuals therefore cannot automatically become members of a class and so do not need to opt out of class actions in order to avoid being bound.

However, under the Code of Judicial Procedure (4/1734), ch. 18, s.2, actions brought by several claimants against the same defendant shall be heard in the same proceedings if they are based on essentially the same grounds, provided that the requirements for cumulation are met.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with

the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In **Finland** nationals and local corporations are entitled to own land absolutely.

True

False

Can't say



Comment:

In Finland land ownership is an extremely strong proprietary right. Land may be owned absolutely by nationals and local companies.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

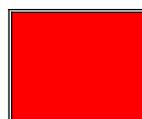
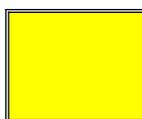
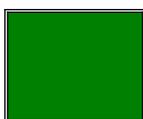
Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in **Finland** is registered in a land register which records most major interests in land, *e.g.* ownership, mortgages and longer-term leases.

True

False

Can't say



Comment:

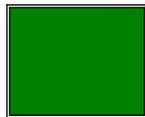
According to the Land Registration Act (1985/392), land and other land and water areas are catalogued in a public land registry. Section 2 states that the following must be entered into the registry: estates, property parcels, common areas, nationally owned forests, areas protected under environmental law, areas separated under compulsory purchase, areas separated for common usage, and water areas created through accretion and common water areas. Further, mortgages, easements and other rights or restrictions on the usage of the property must be entered into the Title and Mortgage Registry. These registries are kept by the National Land Survey.

Land development restrictions

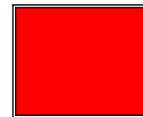
Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In **Finland**, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

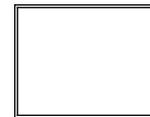
True



False



Can't
say



Comment:

Land usage and building is tightly regulated in Finland and is largely at the discretion of individual municipalities. Zoning and land development is regulated through different level plans, the most detailed of which are the plans drafted and maintained by municipalities. According to the Land Use and Building Act (132/1993), s.51, the municipalities, when evaluating the need to direct land usage, must prioritise the need for housing creation and advancing effective industry competition. Under s.52, all plans must be approved by the municipal council.

Planning permits are regulated through the municipal building supervisory authority. The fees for planning permits vary by municipality and type of permit. It may take anywhere between several months and several years to obtain a permit.

Other indicators

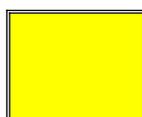
Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In **Finland**, there are few controls on hiring and firing employees or on the terms of employment.

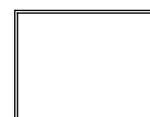
True



False



Can't
say



Comment:

Finland has a restrictive employment law regime which is very protective of employees. The most significant employment legislation is derived from Acts and from collective agreements by trade unions.

Finland has no nationally mandated minimum wage. Instead, the minimum wage for each industry is set by the relevant trade union through collective labour agreements. In the absence of any applicable agreement, the Employment Contracts Act (55/2001), ch. 2, s.10 states that an employee must be compensated in a fair and usual manner. Virtually all industries, however, are regulated through collective labour agreements which tend to set a high minimum wage.

Work hours are regulated by the Working Hours Act (605/1996), which states that the maximum regular working hours are 8 hours a day and 40 hours a week. This is, however, subject to a number of exceptions and different arrangements may be reached between the employer and employee. Collective labour agreements often set maximum hours for the industry.

Minimum holidays are regulated by the Annual Holidays Act (162/2005), which states that employees are entitled to two and a half days of holiday for each full holiday accruing month. If, however, the employment has lasted less than a year, the entitlement is two days per applicable month.

According to the Employment Contracts Act, ch.4, s.1, an employee has the right to receive the maternity, paternity and family leave periods defined in the Health Insurance Act (1224/2004) as holiday. The Act regulates the leave accrual and monetary benefits which are tied to the employee’s income. However, there is a national minimum provided by the government in cases of unemployed parents.

The Non-Discrimination and the Equality Between Women and Men Acts (1325/2014 and 609/1986, respectively) prohibits wage discrimination for any reason. These matters have been subject to public debate since salaries between women and men may differ depending on circumstances and profession. Active measures are taken to achieve equality.

According to the Employment Contracts Act, ch. 7, s.1, an employer may only terminate an employment contract for an indefinite period for an appropriate and substantial reason. These reasons are sub-divided into two categories: those relating to the employee and those relating to the employer’s financial or production issues. Terminating an employment contract for any other reason is illegal. Severance payments are not mandated under Finnish law, but employers and employees may agree on severance packages.

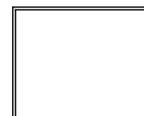
Environmental restrictions

Q18 In **Finland** the rules governing the environment and liability for clean-up are very light and relaxed.

True

False

Can't say



Comment:

Finland has strict rules on environmental liability. Legal liability for environmental damage is sub-divided in a number of ways depending on intent and the type and severity of the damage caused. According to the

Compensation for Environmental Damage Act (737/1994), the offender must compensate for any damage for which a probable causal link between his activities and the consequent loss can be established.

Environmental damage can give rise to criminal liability in the most serious occurrences, such as environmental destruction. Civil liability only occurs in cases of personal or property damage and other financial damages. In cases of damage to soil, sediment or ground water, an offender may be obligated to repair the damage. Liability for environmental damage is strict and any knowledge or intent on the part of the offender will result in harsher punishment.

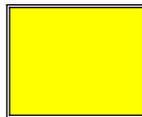
Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

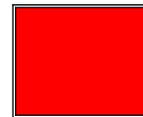
Foreign direct investment

Q19 In **Finland** foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

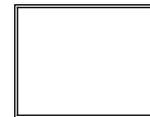
True



False



Can't
say



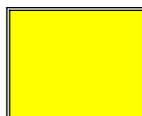
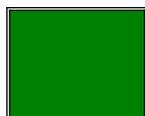
Comment:

Finnish legislation is generally open to foreign investment and the law treats foreign companies similarly to national ones. However, the Monitoring of Foreign Corporate Acquisitions Act (172/2012) enables governmental oversight on the acquisition of companies which are considered essential to national security interests and national emergency supply. If deemed necessary, the foreign ownership in such companies may be restricted and subject to approval. The scope of the applicable legislation is quite vague and therefore the limitations on the confirmation process are defined on a case-by-case basis and may vary.

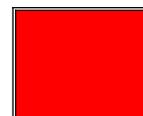
Exchange controls

Q20 In **Finland**, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

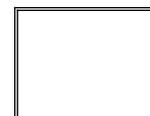
True



False



Can't
say



Comment:

Finnish legislation does not contain exchange controls. However, separate EU legislation prohibiting the funding of terrorism and money laundering exists and has been applied in Finland.

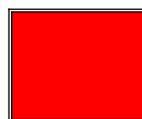
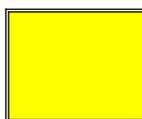
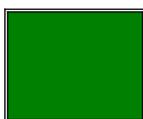
Alien ownership of land

Q21 In **Finland**, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True

False

Can't say



Comment:

Finnish legislation does not normally place any limitations on the rights of foreign-controlled companies to own or lease land. However, the Surveillance of Non-Residents' and Foreign Organisations' Acquisitions of Real Property Act (172/2012) does place some limitations on land ownership by foreign nationals and companies in borders and otherwise protected areas and is an exception to the general rule.

Application of the law

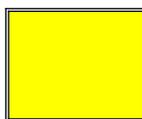
Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In **Finland**, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True

False

Can't say



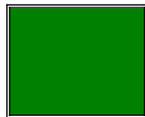
Comment:

The starting position of the Finnish legal system is that everyone is to be treated fairly and equally. According to the Constitution (731/1999), everyone is equal in the eyes of the law. Therefore, the courts do not give preferential treatment to local interest over foreign ones. It should be noted that, while the treatment of both companies and individuals is fair, the courts will take into account the equality of arms of the parties.

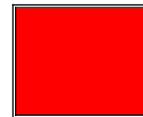
Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in **Finland** are not considered materially greater than in other comparable countries.

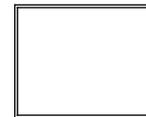
True



False



Can't
say



Comment:

Administrative fees in the higher courts are relatively low. The administrative fees may vary depending on the case but the current maximum fee is set at €6,000.

On average, judgments in cases brought in the higher courts take between 14 and 18 months. However, the duration of the trial may differ significantly from these times depending on the complexity and urgency of the issue. The Finnish higher courts have received a number of warnings and indictments from the European Court of Human Rights concerning unreasonable delays in court cases.

It should be noted that the most significant commercial litigations are often brought before an arbitral tribunal.

Overall ranking

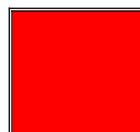
This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

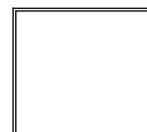
True



False



**Can't
say**



Commentary and suggestions for change

From a corporate perspective, Finland is very permissive and allows parties significant liberties, especially in the realm of contractual freedom. This is demonstrated by the prevalence of blue ratings, but exceptions to this general rule exist. Most notably, the Contracts Act (228/1929), s.36 grants the courts the discretion to alter contractual obligations which are manifestly unfair or which lead to a manifestly unfair result. It should be noted, however, that the threshold for this test is extremely high and cases where contractual terms have been altered or struck out are very rare, particularly in business-to-business contracts. Despite this, this rule does affect companies by creating a lack of certainty in the law concerning contractual formation and enforcement and, further, acts to undermine the principle of *pacta sunt servanda*. Exceptions to the wide freedom of parties which concerns companies exist in the form of governmental intervention in aspects of, for example, employment and environmental law. This increased regulation is reflected in the appearance of red on the ratings scale and invariably signals the presence of a public interest.

From a more general perspective, any examination of Finnish law necessarily requires an overview of international law due, in particular, to Finland's position as a Member State of the European Union. The EU is increasingly imposing mandatory legislation which reflects its common goals but which do not necessarily conform to the interests of businesses. A particularly noteworthy example is the Market Abuse Regulation (596/2014), which represents lofty aims, but contains unnecessary constraints that handicap its practical application. On the other hand, Finland has recognised that excessive legislation hampers the competitiveness of corporations and the current Government has therefore begun an ambitious reform aimed at dissolving obsolete legal norms.

Recent examples of these reforms include an overhaul of national employment law to introduce increased flexibility in the rules governing employment relations. However, for historical and structural reasons, implementing these changes has been problematic. A significant challenge has been overcoming the strong Union oversight and lobbying. On the other hand, the future Crowdfunding Act aims to improve the legal landscape for corporations by offering more varied options for acquiring financing through a secure legal framework.

We have analysed a significant portion of Finnish business legislation relating to legal risk. Despite the occasionally interventionist nature of the Finnish legislature and other community actors, the Finnish legal system ensures a wide freedom for parties to decide upon their legal relationships, rights and duties. Overall, the Finnish legislative landscape offers significant possibilities for foreign investors and companies.

Profiles

The survey was carried out by the following students:

Iiris Ikkelä is a third-year law student studying for a Master of Laws at the University of Helsinki. She will spend an academic semester at the University of Stellenbosch, South Africa from January 2017. Her areas of legal interest include international arbitration; and securities, corporate and financial law.

Jonna M. Kuparinen is currently finalising her Master's studies in law at the University of Helsinki. Her areas of legal interest are start-ups, financial and corporate law, and securities law. She also specialises in finance and macroeconomics at the Hanken School of Economics.

Tatu Kärhä is studying for a Master of Laws at the University of Helsinki and will study at the Erasmus University, in Rotterdam from 2016–2017. He wrote his bachelor thesis on competition law and his areas of legal interest also include European and company law.

Lauri Marjamäki is a fourth-year law student studying for a Master of Laws at the University of Helsinki. He has also studied as an exchange student at the University of Sydney Law School in 2015. Lauri's areas of legal interest include corporate law, capital markets regulation and comparative law.

Lauren Kristina van Nues-Wrigley is currently studying for a Master of Laws at the University of Helsinki, after graduating with a Bachelor of Arts in Jurisprudence from the University of Oxford in 2014. Her areas of legal interest include company, contract and financial law.

Johanna Puukka is a fifth-year law student from the University of Helsinki. She has studied in the United States at the University of Montana and participated in Nordic Business Law Academy. Johanna is interested in multiple fields of law, especially international arbitration, commercial law, contract law and sports law.

University of Helsinki

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The faculty member managing the survey

LL.D. Ville Pönkä is an Adjunct Professor of Civil Law and Commercial Law and a Senior Lecturer at the UH Faculty of Law. Pönkä is the director of the LL.M. Program in International Business Law and the responsible teacher of the Law and Economics discipline. He is also e.g. a board member of the Finland Arbitration Institute, chairman of the 7th section of The Consumer Disputes Board and the vice-chairman of the first plenary session and a member of the Securities Board. Pönkä's main fields of law are company law, contract law and commercial dispute resolution.

Members of the Practitioner Expert Panel

Kirsi Komi, a lawyer and a non-executive director in a number of Finnish public and private companies. During her legal career she worked mainly for Nokia Corporation where she last served as General Counsel and Member of the Executive Board of Nokia Siemens Networks. Since 2010 she has focused on board room work.

Sami Pauni, Group General Counsel in SVP Corporate Affairs and Legal and a member of the Group Executive Team of Huhtamaki.

Toni Siimes, Partner, M&A and Corporate Advisory practices of Roschier, Attorneys Ltd. in Helsinki.

Nina Isokorpi, Partner, Head of Employment & Benefits practice of Roschier, Attorneys Ltd. in Helsinki, also advising clients in M&A, Corporate and Compliance related matters.

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The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenoverly.com or Melissa Hunt, melissa.hunt@allenoverly.com.

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Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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