

(Unofficial version)

**Act on the Operations of a Foreign Management Company in Finland
2.4.2004/225**

Pursuant to the decision of Parliament, the following is enacted:

CHAPTER 1

General provisions

Section 1

Scope of application

This Act shall apply to the operations of a foreign management company in Finland.

A foreign management company may carry out the activity referred to in section 5 of the Act on Common Funds (48/1999) in Finland as provided for in this Act in accordance with an authorisation granted in its home State. A foreign management company may not, however, establish common funds referred to in the Act on Common Funds in Finland.

A foreign management company engaged in operations referred to in section 5, subsection 2 of the Act on Common Funds shall be governed by the provisions on the provision of investment service on a professional basis and on the duties of a securities intermediary referred to in the Securities Markets Act (495/1989).

Membership of a branch of a foreign management company referred to in subsection 3 in an investor-compensation fund referred to in the Act on Investment Firms (579/1996) shall, where applicable, be governed by the provisions of sections 4 a, 4 b, 8 a, 8 b and 13 a of the Act on the Right of a Foreign Investment Firm to Provide Investment Services in Finland (580/1996).

The marketing of units in a UCITS carried out in Finland by a foreign management company shall also be governed by the provisions of sections 129-132 of the Act on Common Funds.

This Act shall not be applied to the marketing of units in a UCITS by a foreign management company if the units in a UCITS are marketed only to professional investors referred to in section 1, subsection 2 of the Act on Common Funds.

Section 2

Definitions

In this Act:

- 1) *a foreign management company* shall mean an organisation engaged in an activity referred to in the UCITS directive which has been granted an authorisation in another State than Finland corresponding to the authorisation referred to in section 5 a of the Act on Common Funds;
- 2) *a home State* shall mean the State in which the management company has been granted the authorisation;
- 3) *an agency* shall mean the permanent place of business in Finland of a foreign management company authorised in a State outside the European Economic Area, from where it shall not be entitled to provide the activity referred to in section 5 of the Act on Common Funds;
- 4) *the UCITS Directive* shall refer to Council Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (85/611/EC) with later amendments.

Section 3

Supervision

The supervision of the activity of a foreign management company in Finland as well as the right of the Financial Supervision Authority to disclose information to a foreign supervisory authority corresponding to the Financial Supervision Authority shall be governed by the Act on the Financial Supervision Authority (587/2003).

CHAPTER 2

Freedom of establishment from a State belonging to the European Economic Area

Section 4

Preconditions for starting a branch

Before a foreign management company can set up a branch in Finland, the Financial Supervision Authority shall receive a notification on the setting up of a branch from the supervisory authority corresponding to the Financial Supervision Authority that has granted an authorisation to the management company containing sufficient information on the intended business activity, administration and management of the branch as well as on the cover system meant for the protection of the investors of the branch or on lack thereof.

A branch may be set up and it may commence its operations at the latest within two months from receipt of the notification referred to in subsection 1 by the Financial Supervision Authority. The Financial Supervision Authority shall, within two months from the receipt of the notification, issue any provisions it deems necessary on the duty to disclose information relating to the supervision of the branch and set the conditions for the operation of the branch necessary for the public interest.

A foreign management company may commence the marketing of units of a UCITS managed by it which, on the basis of the legislation of its home State, meets the requirements set in the Mutual Fund Directive, within two months from the filing of the notification referred to in subsection 1 unless the Financial Supervision Authority, during that time period, forbids the commencement of marketing. The Financial Supervision Authority may forbid the commencement of marketing if it is in violation of an Act applicable to marketing or if the arrangements for making payments to holders of units in a UCITS, redemption of units as well as for the implementation of the duty to disclose of a UCITS do not correspond to Finnish law or the provisions or regulations issued thereunder. The Financial Supervision Authority shall notify the supervisory authority corresponding to the Financial Supervision Authority of the State that has granted the authorisation to the foreign management company of the decision forbidding the commencement of marketing.

The foreign management company shall notify the Financial Supervision Authority in writing of any changes in the information referred to in subsection 1 at the latest within one month before their intended implementation. The Financial Supervision Authority may, due to the intended changes, set regulations and conditions referred to in subsection 2.

Section 5

Provision of services without setting up a branch

A foreign management company which has been issued an authorisation referred to in section 2 (1) in a State belonging to the European Economic Area shall have the right to carry out operations in Finland also without setting up a subsidiary or a branch.

Before the commencement of operations of a foreign management company in Finland, the Financial Supervision Authority shall receive a notification relating to the provision of services from the supervisory authority corresponding to the Financial Supervision Authority of the State that has granted the authorisation to the management company including information on the activity which the management company intends to carry out in Finland and the manner in which it intends to carry it out as well as information on the cover system intended for the protection of investors or on lack thereof. Notwithstanding the provisions of section 1, subsection 5, the notification procedure referred to in this section shall not be governed by the provisions of section 130, subsection 1 of the Act on Common Funds.

The Financial Supervision Authority shall, after receiving the notification, set the foreign management company the conditions it deems necessary for the public interest relating to the carrying out of operations in Finland.

The foreign management company shall notify the Financial Supervision Authority in writing of any intended changes in the information referred to in subsection 2 at the latest within one month before their intended implementation. The Financial Supervision Authority may, due to the intended changes, change the conditions referred to in subsection 3.

Section 6

Withdrawal of the right to operate and restriction of operations

If a foreign management company violates this Act or the duties prescribed for it in the Act, the Financial Supervision Authority shall request the undertaking to end the illegal activity.

If the foreign management company fails to comply with the request referred to in subsection 1, the Financial Supervision Authority shall notify the supervisory authority corresponding to the Financial Supervision Authority that has granted the authorisation of the management

company thereof so that it may, without delay, undertake measures to prevent the continuation of the illegal activity.

If the foreign management company continues its operations in violation of the law despite the measures referred to in subsections 1 and 2, the Financial Supervision Authority may prohibit the provision of services in Finland by the foreign management company in full or in part. The decision shall be notified to the supervisory authority corresponding to the Financial Supervision Authority that has granted the authorisation to the management company.

The Financial Supervision Authority may immediately prohibit operations in violation of this Act if the prohibition is necessary due to the urgency of the matter in order to protect the interests of the investors or the parties to whom the services have been provided. The decision shall, without delay, be notified to the supervisory authority corresponding to the Financial Supervision Authority that has granted the authorisation to the foreign management company and to the European Commission.

The Financial Supervision Authority may prohibit a foreign management company from providing services in Finland in full or in part if the foreign management company has materially violated this Act, the Act on Common Funds, the Securities Markets Act, the Act on Investment Firms or other legislation relating to financial markets or provisions and regulations issued thereunder so that it may endanger the protection of an investor or public interest in general. The decision shall, without delay, be notified to the supervisory authority corresponding to the Financial Supervision Authority that has granted the authorisation to the foreign management company.

CHAPTER 3

Freedom of establishment from a State not belonging to the European Economic Area

Section 7

Authorisation of a branch

A foreign management company authorised in a State outside the European Economic Area shall apply for an authorisation from the Financial Supervision Authority for a branch to be established in Finland. The opinion of the Investor Compensation Fund shall be requested on the application if the intention of the branch is to carry out activity referred to in section 5,

subsection 2 of the Act on Common Funds. The accounts to be appended to the application shall be governed by a Decree of the Ministry of Finance.

The Financial Supervision Authority shall grant an authorisation if the legislation applicable to the management company in its home State corresponds to internationally approved recommendations for financial supervision as well as the prevention of criminal abuse of the financial system, if the economic operating conditions and management of the management company meet the requirements set for reliable operations and if the management company is also otherwise subject to adequately efficient supervision in its home State. If the branch intends to carry out activity referred to in section 5, subsection 2 of the Act on Common Funds, it shall, when granting the authorisation, be assessed whether the investor-compensation scheme of the home State of the branch corresponds to the level and scope of protection offered by the Investor Compensation Fund. When granting the authorisation, the Financial Supervision Authority may decide on the membership of the branch in the compensation fund. After hearing the applicant for an authorisation, the Financial Supervision Authority may include in the authorisation restrictions and conditions relating to the business operations of the branch and necessary for its supervision.

The authorisation entitles to carry out the operations in one or several places of business.

Section 8

Withdrawal of an authorisation or restriction of operations

The Financial Supervision Authority may withdraw the authorisation of a branch if:

- 1) its operations have essentially violated an Act or any provisions or orders issued thereunder or the terms of the authorisation;
- 2) the conditions for the granting of the authorisation no longer exist;
- 3) the operations or part thereof have not been started within 12 months from the granting of the authorisation;
- 4) it has not been operating for six months; or if
- 5) materially misleading information has been given in connection with the application for authorisation on matters significant with regard to regulation and supervision.

Prior to making the decision referred to in subsection 1 (1) or (2), the Financial Supervision Authority shall set the branch in question a time limit to remove the defects in its operations.

The Financial Supervision Authority may restrict the operations of a branch in accordance with the terms of the authorisation for a fixed period of time if incompetence or carelessness has been observed in the operations and if it is evident that the operations may seriously endanger the stability of the securities markets or the interests of the investors.

Section 9

Establishment of an agency and its operations

The establishment and operations of an agency of a foreign management company in Finland shall be governed by the provisions of section 10 of the Act on the Right of a Foreign Investment Firm to Provide Investment Service in Finland.

Section 10

Prohibitions of the operation of an agency

The Financial Supervision Authority may prohibit an agency from continuing its operations in Finland if the operations of the agency have essentially breached the provisions of an Act or a Decree or orders issued thereunder by an authority or if the authorisation of the foreign management company has been withdrawn.

Section 11

Freedom to provide services

A management company authorised in a State outside the European Economic Area may, subject to a permission of the Financial Supervision Authority, carry out activity referred to in section 5 of the Act on Common Funds in Finland without establishing a subsidiary or a branch.

CHAPTER 4

Other provisions

Section 12

Management of the branch

The branch shall have a branch manager who is responsible for its operations and who shall also represent the management company in legal relationships relating to the operation of the branch.

An incompetent or a person declared bankrupt or business prohibition may not act as branch manager.

The branch manager shall be liable to compensate any damage that he has caused in his assignment either wilfully or through negligence to a client of the branch or to another person through a breach of this Act or other provisions relating to the operation of the branch.

Section 13

Trade Register entries

A notification shall be submitted to the Trade Register of a branch as provided for in the Trade Register Act (129/1979).

Notwithstanding the provisions elsewhere in the law on a trade name, the management company may carry out operations in Finland under the trade name it has in its home State.

The National Board of Patents and Registrations may require that a distinguishing supplement be added to the trade name if it is not clearly distinguishable from names with a higher priority right or if there is a danger that it may be confused with a trade name or trade mark to which another party has an earlier sole right in Finland.

Section 14

Signing the trade name

The trade name of a branch shall be signed by its branch manager or, under an authorisation granted by the foreign management company, by another person alone or by several persons jointly.

Section 15

Liquidity and risk management

The liquidity of a branch which carries out activity referred to in section 5, subsection 2 of the Act on Common Funds shall be adequately safeguarded vis-à-vis its operations.

A branch may not, in the course of its operations, incur a risk that fundamentally endangers the operations of the branch. A branch shall have adequate risk management systems vis-à-vis its operations.

Section 16

Confidentiality

The confidentiality, the right to give information and breach of the secrecy obligation of an employee of a branch and an agency shall be governed by the provisions of sections 133, 133 a and 147 of the Act on Common Funds.

Notwithstanding the provisions of subsection 1, a branch and an agency shall have the right to give the information for which disclosure has been provided or duly ordered to the supervisory authority corresponding to the Financial Supervision Authority of the State that has granted the authorisation of the foreign management company as well as to the auditor of the foreign management company represented by them.

Section 17

Effects of the withdrawal of the authorisation

If an authority of the home State of the foreign management company withdraws its authorisation, the operations of the branch shall be terminated in the manner separately provided for by the Financial Supervision Authority.

The procedure provided for in subsection 1 shall be complied with also when the Financial Supervision Authority withdraws the authorisation of the branch or forbids the foreign management company from continuing its operations in Finland.

Section 18

Entry into force

This Act enters into force on 8 April 2004.

GP 110/2003, Statement of the Constitutional Law Committee 16/2003, Economics Committee Report 2/2004, Parliament's Reply 12/2004, Directive 2001/107/EC of the European Parliament and of the Council (32001L01107); Official Journal L 041, 13.2.2002 p. 20-34, Directive 2001/108/EC of the European Parliament and of the Council (32001L01108); Official Journal L 041, 13.2.2002 p. 35-42