



# Real Estate Investment in Finland

THE LEGAL PERSPECTIVE

# Introduction

The Finnish real estate market has grown significantly in the last ten years. The market witnessed high transaction volumes up until the early 2020 when it was dampened by the outbreak of the COVID-19 pandemic. A record-high volume of EUR3 billion was achieved during the first quarter and total transaction volume of the real estate market in 2020 was EUR5.7 billion (compared to EUR6.3 billion the previous year). Despite the COVID-19 pandemic, several transactions were closed at the end of the year, and the volume of the fourth quarter reached circa EUR1.7 billion. Offices maintained their position as the most exchanged property category. The second most-exchanged category was care and public use properties, followed by residential properties as the third most-exchanged category. Some decreasing interests towards shopping center and retail real properties can be seen in recent years.

The interest of foreign investors in the Finnish real estate market remains strong. In 2020, international investors made approximately 53% of all real estate investments. Still, there seems to be more demand than supply with respect to potential real estate investments.

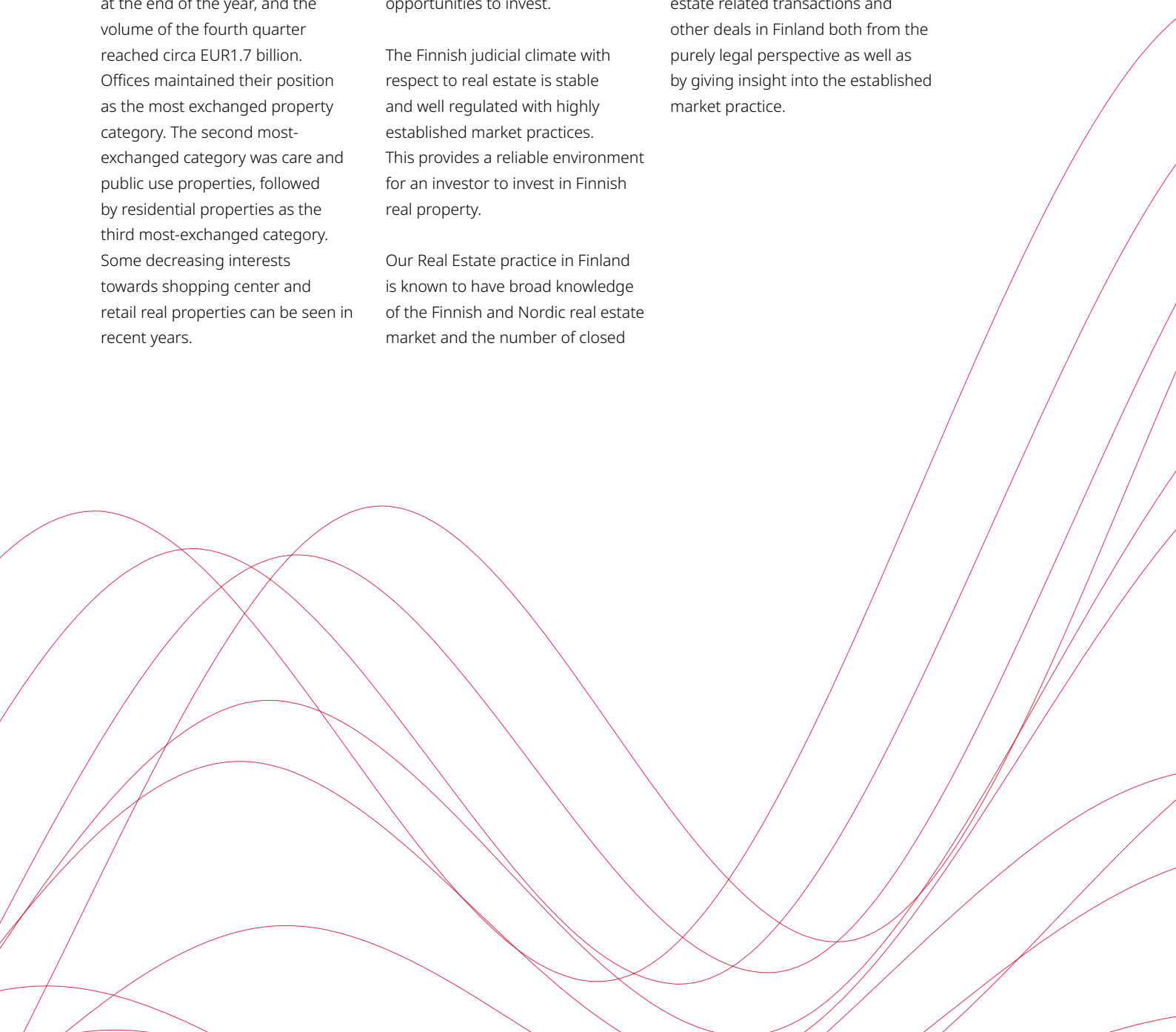
The Finnish legal system has some special characteristics with respect to company forms tailored for real estate business that provide investors with great opportunities to invest.

The Finnish judicial climate with respect to real estate is stable and well regulated with highly established market practices. This provides a reliable environment for an investor to invest in Finnish real property.

Our Real Estate practice in Finland is known to have broad knowledge of the Finnish and Nordic real estate market and the number of closed

deals has been significant. We have advised a huge variety of both Finnish and international clients on various transactions, financing deals, commercial leases and property development projects all over Finland. Our growing team is eager to take up new tasks and projects and, with our can-do attitude, we always aim to provide our clients with rock-solid advice.

In this investment guide, we summarize the most relevant legal aspects of performing real estate related transactions and other deals in Finland both from the purely legal perspective as well as by giving insight into the established market practice.



# Recent and upcoming legislative reforms

In the last couple of years, there have been several reforms that have affected the real estate market in Finland. This section discusses the most relevant changes in the legislation that have already come to force or are coming to force in the near future.

Changes to the Finnish Land Code regarding mortgage deeds came into force in 2017, which meant the end of the paper era of mortgage deeds. New paper mortgage deeds are no longer issued but all deeds are registered to an electronic system maintained by the National Land Survey of Finland. All existing paper deeds should be converted to electronic deeds by the end of 2019. From the beginning of 2020, old paper deeds are no longer valid for mortgaging.

The Finnish Companies Act has been amended and the changes came into force in July 2019 with the effect that no minimum share capital requirement exists for limited companies, which means that the share capital of a limited company may be zero. Reasoning behind the amendment included enabling easier founding of companies.

New legislation concerning electronic residential and commercial property information system came into force in the

beginning of 2019 with the effect that information concerning the ownership of residential apartments, pledges and restrictions will slowly be collated in the electronic registers maintained by the National Land Survey of Finland. Paper share certificates will gradually be void in stages and the electronic registration of ownership replaces the paper share certificate in transferring ownership of apartments and using them as collateral. All new housing companies established after January 2019 will automatically be entered into the electronic register and no paper share certificates will be printed. All housing companies established before 2019 must transfer their list of shares to the electronic system by the end of 2023.

Further changes affecting different companies derive from recent amendments to the anti-money laundering legislation. All companies are obliged to maintain information regarding beneficial owners of the company. Housing companies and mutual real estate companies are exempt from the obligation to register this information with the relevant authorities. This does not however release such companies from the obligation to maintain the information themselves.

In addition, new legislation came into force in the beginning of 2020 regarding certain property transactions to require special consent from relevant authorities before closing or at the latest two months from closing. This legislation is applied in the case that the buyer of a property is from outside of the EU/EEC or an entity or a person from outside of EU/EEC holds at least 10% of voting rights in the buying entity or otherwise has actual influence in such entity. However, the legislation is only applied to direct property transactions, not to share deals where the target company owns or holds properties, which decreases the legislation's impact on the real estate market.

Finally, major reforms in the Land Use and Building Act have been prepared by the Ministry of the Environment. Among others, the reform aims to promote carbon neutral society, diversity of nature and digitalisation, as well as the improvement of the quality of construction. The Government's proposal for the new Act is planned to be submitted to the Parliament by the end of 2021.

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# 1. Ownership of real estate

## 1.1. Freehold or leasehold

Properties may be held either in freehold or in leasehold. A freehold ownership title gives the owner an exclusive right to hold, occupy, encumber, and dispose of real property. Leasehold interests provide for a right to occupy and use the land of another for an agreed period of time, often in exchange for payment in the form of rent. In most cases, leasehold means that the ground is owned by a different party than the buildings and the owner of the buildings has agreed with the property owner on the use of the property for a fixed period.

## 1.2. Three-dimensional properties

Three-dimensional real property formation came into force during 2018 thus enabling formation of three-dimensional properties. Three-dimensional properties are formed based on conventional two-dimensional properties so that the three-dimensional property

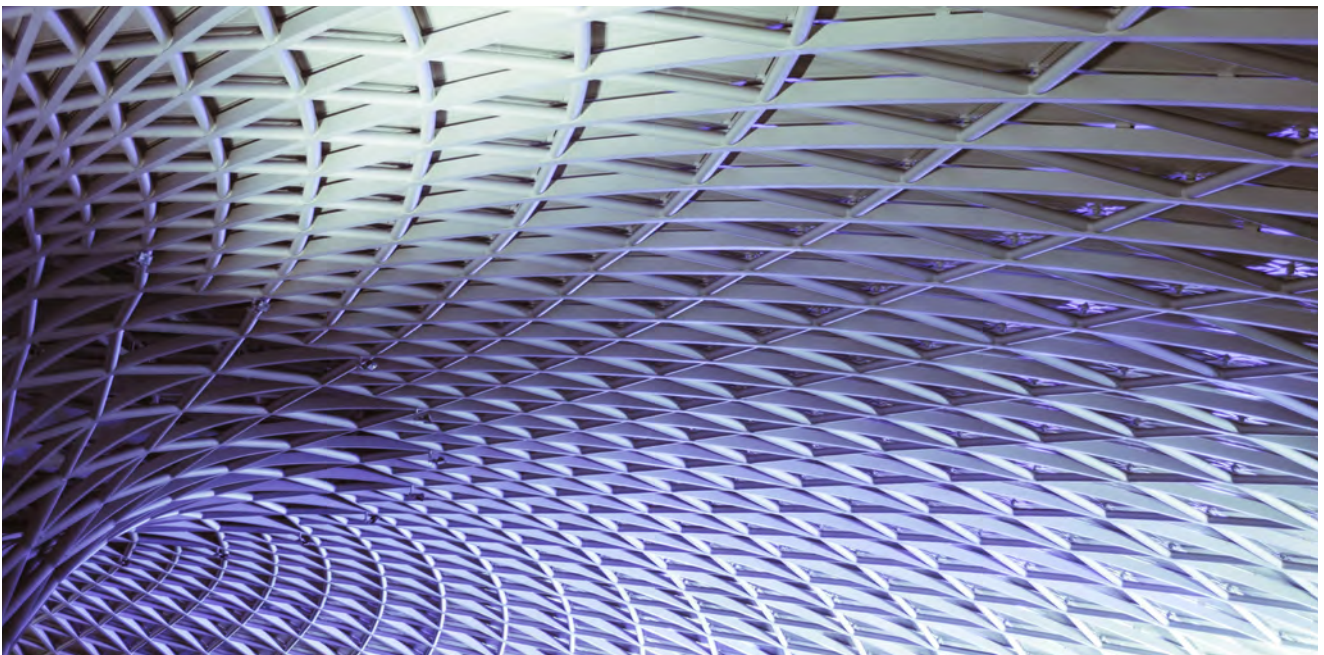
will be formed and registered to be located above or below the so-called base property or properties that are conventional two-dimensional properties.

## 1.3. Restrictions on ownership and transfer

With the exception of border zones, military areas and real property located in the Åland Islands, there are no legal restrictions on foreign investors acquiring shares in real estate companies owning properties in Finland, provided that the real estate company does not conduct any business related to the defense industry. Investors with domicile outside the EU and the European Free Trade Association may also be requested to provide the Finnish Ministry of Employment and Economy with information on the acquisition. However, such acquisitions may only be prohibited if a very significant national interest is jeopardized, which is not deemed to be relevant in the vast majority of commercial real estate transactions.

With the exception of the city of Helsinki (where a minor part of the residential properties are subject to a price control (*Hitas*), real property located in the Åland Islands and real estate affected by the ARA (The Housing Finance and Development Centre of Finland) social housing policy operated under supervision of the Ministry of the Environment, there are no special Finnish national laws restricting the transfer of certain types of real estate.

Further, and as described above, starting from January 2020 certain property transactions require special consent from relevant authorities before closing or latest two months from closing. This legislation is applied in the case that the buyer of a property is from outside the EU/EEC or an entity or a person from outside the EU/EEC holds at least 10% of voting rights in the buying entity or otherwise has actual influence in such entity. However, the legislation is only applied to direct property transactions.



## 2. Acquisition of ownership

### 2.1. Direct and indirect ownership

An essential characteristic of Finnish real estate law is the fact that real estate can be acquired either directly by acquisition of ownership in a property as either a freehold or a leasehold interest (asset deal), or indirectly by acquisition of shares in a company owning a real property (share deal). Further, there are two different types of real estate companies in Finland: an ordinary real estate company (REC) and a mutual real estate company (MREC). RECs and MRECs are limited liability companies, the assets of which comprise freehold or leasehold plots of land and one or several buildings located on the plot. The main difference between RECs and MRECs is that in a REC the respective rental income shall be paid to the REC in its capacity as a lessor. In MRECs, the shareholders have direct control of predetermined premises in the building(s), and the respective rental income shall be paid directly to the shareholders of the MREC.

A housing company is a special type of MREC, designated for owning the residential building. The Housing Companies Act and Decree regulate mutual real estate companies that operate in the housing sector (*asunto-osakeyhtiö*). These regulations are always applied when more than 50% of the area of the building is designated for residential use. The Act regulates, for instance, long-term planning of repairs and the communication of those plans to shareholders, as well as decision-making procedures and responsibilities of shareholders.

Legally, in MREC and in a housing company, the company owns all of its buildings. The owners of the

shares are its shareholders who have both rights and obligations resulting from the ownership of shares. The main right is to have control and possession of the apartment, which is entitled by the shares. The main obligation is to pay the housing company the fees the housing company needs to cover its costs. An MREC can determine whether the Finnish Companies Act or the Finnish Housing Companies Act applies to the MREC based upon the provisions included in the articles of association of the company.

The MREC and a housing company is responsible for the management of the property and upkeep of joint facilities, for which it collects a maintenance fee from the shareholders, the basis of which is defined in the company's articles of association. This fee is most typically based on the floor area designated for each shareholder. The division of these responsibilities between the company and its shareholders may be specified in the company's articles of association.

Another typical structure for indirect property investment is the limited partnership (*kommandiittiyhtiö*), which is a legal entity formed by at least one general partner and one limited partner. In general, the general partner bears all the liabilities over the debts and decisions of the limited partnership whereas the liability of the limited partner is limited to the amount invested into the limited partnership. Limited partnership structures are common for indirect property investment vehicles targeted at institutional investors, where, in most cases, the fund management company acts as the

general partner. Finnish limited partnerships are governed by the Finnish Act on Partnerships and Limited Partnerships.

### 2.2. Transfer of title in direct deals

Transfer of title in asset deals concerning freehold and leasehold properties is subject to the provisions of the Land Code, meaning that the sale and purchase agreement shall follow certain mandatory requirements set out therein (the agreement shall contain, inter alia, purpose of divestment, description of the relevant property, names of the parties, purchase price and other consideration) and is to be notarized by a notary public.

The transfer of title to real estate is typically effected by the seller and the purchaser entering into a real estate sale and purchase agreement. Changes to a freehold title must typically be registered with the Land Register within six months of the signing of the transfer deed. Failure to register may result in a fine and an increase in the amount of transfer tax due, up to a maximum of 100% of the original amount. The change of title cannot be registered before the transfer tax has been paid. In addition, leasehold title transfers should be registered into the Land Register in most cases. The obligation to register only applies to direct ownership titles. Under Finnish law, the entry into the Land Register is not a condition precedent for the transfer of ownership, meaning that the entry into the Land Register has a declaratory effect only.

### 2.3. Indirect investments

As stated above, real estate may be acquired by acquisition of shares in a company owning a real property, typically a REC, MREC or a housing company. Acquisitions of indirect title through a purchase of shares in a real estate company cannot be registered with the Land Register, but are registered in the share and shareholders' registers of the relevant real estate company. If share certificates have been issued, they are to be delivered duly endorsed to the purchaser at closing. Once a housing company's share certificates have been transferred into the electronic residential and commercial property information system, the electronic registration will replace the paper certificates in transferring ownership of apartments and using them as collateral for loans.

### 2.4. Pre-emption and redemption

With regards to asset deals, the relevant municipality may be entitled to redeem the property in accordance with the provisions set out in the Pre-Emption Act. Pursuant to said Act, municipalities have a right to redeem a property located within its area exceeding 5,000 m<sup>2</sup>, for the purposes of civic and community facilities, recreation and protection. It should be noted that there are no limitations as to the purpose with respect to redemption exercised by the cities of Helsinki, Espoo, Kauniainen and Vantaa, which have a right to redeem any property exceeding 3,000 m<sup>2</sup> sold within their boundaries. In order to avoid such a risk, the parties usually request a waiver from the municipality prior to entering into the sale and purchase agreement. It is to be noted that in practice, municipalities rarely use this right with respect to commercial properties that have been improved with commercial buildings.

Further, redemption of properties may be permitted by either the Council of State or the National Land Survey, for instance for purposes of nature conservation or establishment of air traffic areas.

Compulsory rights of use may be granted, particularly for energy suppliers. Within local detailed plan areas, the municipalities are – without a specific permit – entitled to expropriate public areas and plots of public buildings based on the local detailed plan, which are designated to a municipal agency or for other needs of the municipality. Save for certain exceptional cases, the property owners are entitled to indemnification for incurred losses. In addition, new legislation came into force in January 2020 enabling redemption of certain properties based on national security as described above.

## 3. Other rights to property

### 3.1. Mortgages

Mortgages may be registered over properties by applying for a mortgage in the Finnish National Land Survey. Mortgage deeds are issued only in electronic form. Further, all existing paper deeds should be converted to electronic deeds by the end of 2019. From the beginning of 2020, old paper deeds are no longer valid for mortgaging.

### 3.2. Special rights to properties

Land lease rights may be and in some cases, as described above, should be registered into the

Land Register. In addition, a lease agreement to a building on a property may be registered as a special right, this however is fairly rare. Other possible registrable special rights can include e.g. right to extract soil from a property owned by someone else.

### 3.3. Easements

Various types of easements may be registered over properties. An easement is to be considered as an usage right over other property. The classic examples of such rights are, right to roads, well, parking space, boatyard or electric wiring.

Easements are normally created by entering into an easement agreement or joint use agreement describing the easements to be registered. One property's easement corresponds to other's encumbrance. Easements are registered with respective municipal authorities and entered into the Land Register. Systematically easements differ from registrable special rights so that easements are registered by and between properties, whereas special rights (and mortgages) are registered in favor of a person or an entity.

## 4. Zoning and planning law permits

Zoning and planning decisions regulate how and for what purpose a certain area may be used (e.g. residential, industrial or recreational). Furthermore, general plans and, in particular, detailed local plans contain detailed rules on maximum number of floors, floor space, and location of buildings, among other things. A zoning and planning decision affects the ability to develop an area, including the ability to obtain a building permit or an operation permit. Constructing a building requires a building permit. The legal definition of a building is wide in scope, and covers constructions that in everyday

vocabulary would perhaps not be regarded as buildings. Even if the construction is not considered to be a building (e.g. due to its size or limited impact on the surroundings), a construction similar to a building would still require a construction permit.

Institutional zoning and planning control takes place on three levels:

- the Finnish government sets forth nationwide goals for land use;
- regional councils set forth regional plans for the use and development of land; and

- local municipalities prepare general plans and detailed local plans, which regulate building and development.

Where development or construction requires a permit, an application is usually made to the local municipality and it is the local municipality that takes initial enforcement steps. Certain deviation permits are applied from the Centre for Economic Development, Transport and the Environment (ELY Centre). The main legislation regulating zoning, building and development of real estate is the Land Use and Building Act (132/1999).

## 5. Environmental liability

In Finland the environmental liability regulations derive from the Environmental Protection Act (527/2014, as amended) and the Act on Compensation for Environmental Damage (737/1994, as amended). Primarily, the so-called polluter-pays principle is applied, which means that the person(s) responsible for the contamination or environmental damage is liable for the same. That liability ensues even if the polluter was not negligent. If the polluter is not able to fulfil its

obligations (e.g. due to bankruptcy) or if the polluter is unknown, the possessor of the property may be held liable for the remediation. However, this is only the case if the contamination occurred with the consent of the possessor, or if the possessor was or should have been aware of the contamination when the property was acquired. The possessor may be the owner or the occupier (e.g., tenant) of a real property. The possessor is not liable for the remediation if this

would be clearly unreasonable. Lastly, if neither the polluter nor the possessor may be held liable, the remediation obligation lies with the municipality.

For the above stated reasons, environmental due diligence as part of real estate due diligence is of high importance when acquiring properties to mitigate possible environmental liability that might be imposed after acquisition of a real estate.



## 6. Leases

### 6.1. Basics

The only commercially relevant type of arrangement allowing a person, company or other organization to occupy and use real estate for a limited period of time is entering into a lease agreement concerning the relevant premises or apartment.

It should be kept in mind that in a REC the respective rental income shall be paid to the REC in its capacity as a lessor. In MRECs, the shareholders have direct control of predetermined premises in the building(s), and the respective rental income shall be paid directly to the shareholders of the MREC.

### 6.2. Rent and term of lease

Neither the rent levels nor the lease terms (save for certain mandatory provisions in the Act on Commercial Leases) are subject to compulsory regulations in Finland. Periods of commercial lease agreements and rent levels are, in principle, freely negotiable. It is customary market practice to agree on the adjustment of the rent in accordance with the Finnish cost-of-living index, entitling the lessor to increase the rent annually or biannually, provided that the index value has increased in comparison to the preceding year. Further, it is common that commercial lease agreements include a minimum increase of rent. Increase rate of 1.5% seems to be the most common. Such minimum rent clauses normally stipulate that the rent is increased in accordance with increase in the cost-of-living index and the rent is in any case increased in accordance with the minimum increase rate.

Lease agreements are valid until further notice or for a fixed term.

The termination periods under lease agreements that are in force until further notice vary a lot, depending on the purpose of use of the lease object and the length of the lease term. Unless otherwise agreed, the notice period for a tenant is one month, and three months for a lessor, but the notice period is, as a rule, agreed in the lease agreement. As a general note, termination periods between three and 12 months are most common. With respect to fixed-term leases, the length of the lease period varies depending on the needs of the parties and the type of the lease object. Prime office and retail properties have somewhat longer terms than other lease agreements (ten years or more).

### 6.3. Other payments

As a general rule, the allocation of costs resulting from maintenance and annual repair obligations is subject to an agreement between the lessor and the tenant. It is, however, established market practice to transfer the maintenance obligations and costs by virtue of the lease agreement wholly or partly to the tenant. According to Finnish legal praxis, the lessor is responsible for major renovations (i.e. renovations and renewals of structural elements including HVAC, electricity systems and elevators of the building) unless otherwise explicitly agreed between the lessor and the tenant.

Electricity is typically charged based on actual usage by each tenant. Costs for other utilities and telecommunications are typically paid by the owner but borne on a pro rata basis by the tenants and charged as part of the maintenance rent.

### 6.4. Restrictions on use of leased premises

Restrictions on how a tenant may use the real estate may be agreed in the lease agreement. The lessor is entitled to terminate the lease agreement without observing any notice period if the leased premises are used for a purpose other than that agreed upon. Such termination would be subject to a written warning. In the event that the tenant fulfils its obligations without delay upon receipt of a written warning or if the matter is otherwise corrected, the lessor is not entitled to terminate the lease agreement.

### 6.5. Alterations

Unless otherwise agreed, the tenant is not entitled, without the lessor's consent, to any other renovation or modification measures than those which are necessary to remedy damage caused by the tenant to the premises or to prevent immediate damage. It is customary market practice to stipulate in the lease agreement that the tenant is entitled to minor modifications, provided that the tenant restores the initial condition by expiry of the lease period. Any material modifications or improvements would typically be subject to the lessor's consent.

### 6.6. Effect of tenant's insolvency

In the event of a tenant's bankruptcy, the lessor has the right to rescind the lease agreement based on that bankruptcy, unless the bankruptcy estate has announced, within a time limit of no less than one month set by the lessor, that it will fulfil the liabilities arising from the lease agreement after the commencement of the bankruptcy.

The lessor's outstanding rent receivables resulting from the time prior to the commencement of the insolvency proceedings are categorized as unsecured debt of the bankruptcy estate and usually satisfied only to a minor extent. However, some part of the lessor's outstanding receivables can be

covered by the lease security provided by the tenant at the commencement of the lease term.

To protect against a tenant's failure to meet its obligations, rental deposits, pledged bank accounts or parent company guarantees amounting three to six months' rent

are considered customary. Under residential lease agreements, a stipulation in the lease agreement concerning a lease security corresponding to an amount of more than three months' rent is null and void.

## 7. Taxation

### 7.1. Transfer tax

Transfer of real estate or shares in a Finnish real estate company is subject to transfer tax, even when the transfer takes place between non-residents. However, when the securities have been issued by a non-resident real estate holding company that owns shares in underlying real estate companies that have more than 50% of their assets located in Finland, one of the parties to the transfer has to be resident in Finland for tax purposes in order for the transfer tax to become payable. The transfer tax must be paid simultaneously with the application for the registration of title, at the latest within six months of signing the purchase agreement. With respect to shares in a real estate company, the transfer tax is payable within two months of the date of a binding purchase agreement. The purchaser is ultimately liable for payment of the transfer tax, except in situations where the buyer is a non-resident for Finnish tax purposes – then the seller is liable to collect and pay the transfer tax. Transfer tax for real estate is 4% and the transfer tax for shares in real estate company is 2%.

Transfer tax is calculated based on the purchase price or the value of the consideration. Certain additional

items are included in the deemed purchase price. These are the purchaser's performances to third parties based on the transfer agreement and liabilities (towards the seller or a third party) assumed by the purchaser based on the transfer agreement, provided the performance or the assumption of liabilities accrues to the benefit of the seller. For real estate companies, the company debt allocated to the transferred shares will be added to the tax base, provided that the seller has the right or obligation to repay the debt to the company. The deemed purchase price will thereby, in general, reflect the debt-free price of the shares.

### 7.2. Real estate tax

Real estate tax is payable in Finland by the owner of real estate. The amount of real estate tax payable is based on the taxation value of the real property, determined on a yearly basis by the local authorities. The general real estate tax rates (applicable, for example, to real estate used in business, including offices or other business premises) vary in different municipalities, ranging from 0.93% to 2% in 2021. No exemptions apply to real estate tax, but it is deductible for income tax purposes when the real estate is used in business or other income-accruing activities.

### 7.3. Capital and corporate income taxes and rental income

Rental income and capital gains realized as a result of the sale of real estate or shares in an MREC or REC are considered taxable income. The taxable capital gain is calculated as the difference between the sales price and the residual tax acquisition cost for the real property. The taxation is carried out in accordance with the Act on Tax Assessment Procedure, based on annual tax returns, not as withholding taxation.

When real property is owned directly, a non-resident individual is subject to capital income tax at a rate of 30% for the first EUR30,000 income accrued from the investment, and 34% for the part of income exceeding EUR30,000. A non-resident corporate entity is subject to a general corporate income tax rate of 20%, with taxable income being calculated in the same way as for Finnish resident corporate entities.

If the investment in Finnish real property is made indirectly, the income will first be taxed at the level of the MREC or REC, subject to the general corporate income tax rate of 20%. Therefore, in disposals by a Finnish entity, the capital

gains are subject to income tax at a rate of 20%. It is to be noted that when the investment is made through a REC, the REC receives the rental income and shall be taxed on that. For an MREC, however, the rental income is paid to the shareholder(s) of the MREC, and the MREC charges maintenance and financing fees to its shareholders, which are taxable income for the MREC and a deductible expense for the shareholder. In general, the amount of maintenance fees and financing charges is determined so that it corresponds to the MREC's expenses, the MREC's taxable income amounts to (approximately) zero. Accordingly, the profit from

the rental activities being taxed only at the level of the shareholders in accordance with the rules described above.

Any profit distributed by an REC or MREC to its shareholders is taxed in accordance with tax rules applicable to dividend distributions. Cross-border dividends may be subject to Finnish withholding tax at the rate of 30% for individual shareholders and 20% for corporate shareholders; however, subject to applicable EU-based legislation and tax treaty stipulations, lower rates or even an exemption may apply. For nominee registered shares the withholding tax rate can be 35 %.

If the shares in an MREC or REC are sold, capital gains are, in general, subject to income tax.

From the beginning of 2019, interest deduction limitation rules applies also to real estate holdings. According to new legislation net interest expense is always tax deductible up to EUR500,000 or up to an amount equal to 25% of taxable EBITD. If interest is paid only to non-related parties, net interest up to EUR3 million is tax deductible. These thresholds are calculated on a company level independently.

## 8. Real estate finance

### 8.1. General

As described above ownership to property may be acquired either directly or indirectly. Mainly for tax reasons, the vast majority of investments in Finland are executed as share deals. The mix of equity and debt in Finnish real estate transactions has, by and large, followed global trends. Leverage levels in recent real estate transactions have ranged between 50% and 70%.

Additional levels of debt can be included in between the senior loan financing and the equity investment. Even though contractual subordination is typical, structural subordination is also used occasionally, and effective subordination can also be achieved in other ways, e.g. by a capital loan, which is a specific subordinated debt instrument under Finnish law and may be treated, for certain purposes, as equity rather than debt in the debtor's accounts.

For the purposes of raising financing via mezzanine debt, it is possible to adjust the yield profile of the loan, e.g. by providing all or part of the interest for capitalization. Profit participation loans may also be feasible, where the interest is dependent on the debtor's financial performance or the return on the equity investment. However, the tax treatment of profit participation loans should be given diligent consideration when structuring the transaction.

### 8.2. Typical securities

The availability and effectiveness of security is pivotal in large real estate transactions. Target of a portfolio acquisition is typically one or more RECs or MRECs. This multi-tier structure means that the scope of the security package potentially available can be quite diverse, and often includes pledges of shares and intragroup receivables in addition to real estate mortgages and pledges of rental income, bank

accounts and possible sale and purchase agreement (SPA) and/or insurance claims. Direct real estate security, i.e. mortgages, may be available only to the extent the loan is either borrowed by or on-lent to the companies that directly own the properties.

It is worth mentioning that, in Finnish covered bond legislation, pledges over shares in housing companies and other MRECs are considered real estate security in the same way as real estate mortgages (in the case of MRECs, this is subject to certain conditions being met, mainly relating to the MREC's articles).

The fact that properties may be held by limited liability companies may give rise to considerations that would not be relevant in other jurisdictions where such a concept has not been established. For example, the legal entities involved in the financing

arrangement will include (all) the companies in the target group, in addition to the purchasing company (often a Finnish special purpose limited liability company).

Only the portfolio companies directly owning the properties may grant security over the properties, and cross-collateralization among different property owners is usually impossible. Further, in the case of RECs (which are the companies that receive rental income from the property), security over rental income – including the bank accounts into which such rental income is payable – can only be granted by such companies.

A lender may also wish to take security over insurance proceeds, although lenders holding property mortgages have commonly been satisfied with the statutory protection provided by the Land Code to mortgagees and have not required insurance proceeds to be separately pledged. If the purchasing company also owns substantial movable property, a business mortgage over the assets of the company can be relevant as well.

The security granted by the purchasing company and (if possible) by the companies in the target group will normally include all of the shares held by that

company in its subsidiaries (i.e. the RECs, MRECs and/or sub-holding companies), security over its bank accounts and often also a pledge of various receivables such as claims against a hedge counterparty and the seller under the relevant SPA, intra-group receivables from subsidiaries and, where relevant, rental income. Business mortgages may also be used to supplement other forms of security.

Further, lenders tend to require that both the purchasing company and the target companies guarantee, to the extent possible, the obligations of the other group companies.

### **8.3. Legal requirements for giving valid securities**

When the target of a transaction is shares in a Finnish company, and as customarily is the case, the Finnish target company may grant guarantees or security only within the limits set out by the mandatory provisions of the Finnish Companies Act regarding the financial assistance prohibition and corporate benefit requirements.

The financial assistance prohibition applies to the granting of a guarantee or security for the financing of the acquisition of shares in the acquired company or its parent company but,

due to the narrow construction of the term “parent company” in Finnish company and accounting law, the prohibition is generally not considered to apply to the acquisition of shares in a foreign parent.

All transactions must be in the commercial interest of the Finnish company granting guarantees or security under the facilities. Under Finnish law, this evaluation should be made at the outset, on a stand-alone basis and without regard to group benefit.

Equal treatment of shareholders of the company is also a mandatory requirement under the Companies Act. If a subsidiary is not wholly owned, this may prevent it from granting guarantees or security that would indirectly benefit some but not all of its shareholders.

Breach of the above-described financial assistance prohibition or corporate benefit requirements or other mandatory provisions of the Companies Act can lead to liability for the relevant company's management. Further, any guarantee or security granted in violation of the Companies Act is generally held invalid, especially if the beneficiary knew or should have known about the violation.

## 9. Residential leases

In housing companies, rental agreements are made between the shareholder and the tenant, and the rental cash flow goes directly to the shareholder.

Rents for free market rental dwellings were gradually deregulated during the 1990s. Currently, there are no restrictions for rental periods or rental levels. Finnish legislation regulating lease agreements is among the most liberal in the world and is based on the idea of freedom of agreement between two parties. The Act on Residential Leases, which is applied to residential leases, contains some restrictions to protect the tenant, but even there the legislation has very few restrictions compared with most other countries.

### 9.1. Rent levels

The rent payable remains the same for the whole lease period, unless otherwise agreed. Rents are typically indexed, with the cost of living index being the most used. It is also common to agree on a higher level of rental increases, for instance a minimum of 3% or 5%. This kind of indexation is used by professional investors in particular, and allows the landlord to adjust rental increases to prevailing market conditions in different areas and buildings.

Finnish law does provide a general principle of fairness, according to which any provision in an agreement – including one concerning the amount of rent – that is considered to be inconsistent with good (rental) practice or is considered to be otherwise unreasonable may be revised or disregarded. Under the Act on Residential Leases, the rent may be adjusted by a competent

court if it is substantially higher than the market rent for comparable premises in the area without any justifiable reason thereto.

### 9.2. Compulsory stipulation

Certain provisions of the Act on Residential Leases are to certain extent compulsory law protecting the interests of the tenant.

The parties cannot deviate from certain provisions contained in said Act, such as the amount of the lease security to be provided by the tenant; the exclusion of the tenant's set-off rights in the lease agreement; the right of the tenant and the landlord to request that a court determines whether the rent level is reasonable or not; the transfer of the lease agreement to the new owner; the notice period of more than one month (by the tenant) or less than six months (by the landlord), if the lease agreement has been valid for one year or longer; and certain provisions concerning the tenant's protection against termination of the lease agreement. No other sector specific laws or regulations exist.

### 9.3. Lease term

A common term in Finnish lease agreements is "until further notice": an indefinite contract is valid until either the tenant or the landlord wishes to terminate it after an agreed notice period or notice period based on the Act on Residential Leases. If a fixed lease period has been agreed, the Act on Residential Leases does not include provisions, which would entitle a tenant automatically, to prolong the lease term. In principle, the tenant shall leave the premises on the first working day following the

expiry date of the lease agreement. There are no legal provisions requiring specific measures from the landlord in this context. The tenant may request a court to determine a new move-out date to be no later than 12 months following the initial move-out date. During the court proceedings concerning the new move-out date, the lease agreement remains valid with the same terms as prior to filing the claim. The tenant's right to request the competent court to determine a new move-out date cannot be excluded in the lease agreement.

### 9.4. Termination

The tenant has in most situations a possibility to terminate a lease agreement with one month's termination period. However, termination by the landlord without justifiable reasons is prohibited by law to protect the tenants. For instance, the landlord's own need may be considered as a justifiable reason to terminate the lease agreement. The notice period of the landlord is six months if the lease period has continued more than 12 months and three months if the lease period has continued less than 12 months.

### 9.5. Certain restrictions concerning subsidized housing

In the subsidized housing stock – depending on the form of subsidy – there might be restrictions related to both rental levels and tenant selection. However, in 2018, strict income criteria were removed from tenant selection rules, and selection is now based on a more holistic approach with consideration on the need for moderately priced housing. In so-called ARA-housing stock, where long-term state housing



loans or subsidies are used, rents are cost-based, and the calculation of costs is controlled and supervised by ARA.

In some interest subsidy dwellings, there might be varying conditions for tenant selection or the holding period of buildings, but rents are typically market-oriented. In the current ten-year subsidy model, there are restrictions

for annual rental increases, the amount of dividend paid to the investor, as well as for the amount collected and reserved for repairs and refurbishments. In these apartments, rents are expected to be higher than in traditional subsidized stock, but lower than in the non-subsidized market.

## 9.6. Eviction

Court proceedings and execution of a legally binding judgment are required for the eviction of a tenant. If the dispute is completed in the district court without any appeal proceedings, the duration of such a process may be less than one year. In the event of an appeal against the district court's decision, the expected duration can be up to 24 months.

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