Finland

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REAL ESTATE

1. Please briefly state what is considered real estate in your jurisdiction. What are the most common forms of security granted over it? How are they created and how are they perfected (that is, made valid and enforceable)?

Under Finnish property law, the concept of real estate or real property (*kiinteistö*) includes:

- Land and water areas.
- Components of the property (*ainesosa*), such as land mass, trees and permanent buildings serving the purposes of the property.
- Accessories (*tarpeisto*) to the property, such as building materials acquired for the purposes of a building belonging to the property.

Real property as security

The only security interest that can be granted over real property is a pledge (*panttioikeus*) of real property. A pledge is a fundamental concept in Finnish law of security interests. It can be used to perfect a real property mortgage and a floating charge. Depending on the type of security asset, a pledge is created by actual or constructive deposit of the pledged asset with the lender, who is entitled to dispose of the asset and apply the proceeds in repayment of the debt if the debt is not discharged when due.

A pledge of real property is implemented by pledging one or more deeds of pledge (*panttikirja*), which in turn are secured by a real property mortgage (*kiinteistökiinnitys*). Accordingly, establishing a pledge of real property includes two steps:

- Applying for and obtaining a mortgage on the real property. This must be registered in the Register of Land Ownership and Mortgages and represented by a standardised deed of pledge, which is issued by the registration authority after registration. Either the borrower or a representative authorised by the borrower (such as a lender) can apply for registration of a mortgage, in respect of which a deed of pledge is issued by the registration authority.
- The security interest is then perfected by entering into a pledge agreement and delivering the deed of pledge to the lender. There is no formal requirement for a pledge agreement to be in writing, although in practice a written agreement setting out the details of the pledge and the rights of the parties is required by the parties.

Once a deed of pledge used with a particular lender has been released by that lender (because the debt has been discharged or otherwise) the same deed of pledge can be repledged to another lender if required.

Real property mortgage

The nominal principal amount of the mortgage reflected in the deed of pledge is the maximum amount that the creditor can recover on the basis of the priority ranking conveyed by the mortgage. However, the holder of a real property mortgage cannot recover more than the actual debt secured by the mortgage.

The most common object of a real property mortgage is a registered piece of real estate (or, in cities, a "lot"). However, an unregistered parcel of land on a registered piece of real estate can also be mortgaged.

A mortgage can be granted over more than one piece of real estate (joint mortgage). This is practical, for example, when several pieces of real estate form one economic entity, such as a farm or an industrial estate.

A mortgage can also be granted by the tenant over land lease rights that have been registered in the Register of Land Ownership and Mortgages, and which are transferable without the consent of the landlord by the tenant. Such a mortgage also extends to a building or facility belonging to the tenant and located on the leased real property as well as any building that may be built there in the future (as agreed between the tenant and the landlord).

If real property is subject to a mortgage, the mortgage covers all the property (for example, it normally includes permanently-fixed production equipment in a factory building). To further clarify whether a mortgage covers components and accessories, the following can be registered:

- A declaration by the titleholder stating that a building or facility used in business, owned or later obtained by the titleholder and permanently located on the real property, or an object identified in the declaration or otherwise defined as to its characteristics, either:
  - does not belong to the real property, even if it would normally be deemed a component or an accessory; or
  - belongs to the real property, even if it would not normally be deemed a component or an accessory.
- Certain third party rights (such as retention of title), to limit the scope of the mortgaged property in relation to a building or facility used in business.

TANGIBLE MOVABLE PROPERTY

2. Please briefly state what is considered tangible movable property in your jurisdiction, for example, machinery, trading stock (inventory), aircraft and ships? What are the most common forms of security granted over it? How are they created and how are they perfected?

Pledge of movable property

In brief, the concept of movable property under Finnish law covers any property other than real property. The legal formalities required for creating a pledge depend on the type of asset being secured. A written agreement on the pledge, setting out the rights and obligations of the parties, is usually required according to market practice, whether or not legally required.

Unless otherwise required by legislation, a pledge is perfected by entering into a pledge agreement and delivering possession of the pledged asset, typically a piece of tangible movable property, (or a debt instrument or share certificate representing the pledged asset) to the lender (*Commercial Code (kauppakaari)*). A second ranking pledge of property already in the possession of the first ranking lender is perfected by a notice of the pledge to the first lender, which has first priority over the property.

Pledges of tangible assets (such as an inventory or other similar types of movable property) are rarely used in commercial banking transactions. This is because transferring possession is more difficult for both the lender and the borrower than a floating charge, which can be created over the same assets (although this has a lower priority ranking than a pledge (*see below, Floating charge*)).

Floating charge (*yrityskiinnitys*)

A floating charge (sometimes also referred to as a business mortgage) covers movable property of a business, to the extent that it cannot be otherwise mortgaged. For example:

- Buildings that are not characterised as real property (*see Question 1*).
- Equipment, machinery and other comparable fixed assets.
- Trade marks, patents, utility models and other comparable intellectual property rights.
- Lease rights and other specific rights.
- Raw materials.
- Inventories.
- Cash, receivables, securities and other current assets.

Once a floating charge has been created, it is forbidden to pledge property secured by the charge in any other way. Any such pledge is not binding on the floating charge holder, except for securities (in physical or book-entry form) and receivables.

Although not legally required, it is usually market practice to have a written agreement relating to the floating charge promissory notes secured by the floating charge. A floating charge is established by two steps:

- Applying for and registering a floating charge promissory note for a definite amount in the Register of Floating Charges maintained by the National Board of Patents and Registration (NBPR). Floating charge promissory notes must be issued on a standardised form, provided by the NBPR, which can be submitted for registration at the NBPR by the borrower or a representative authorised by the borrower (such as the lender).
- When a floating charge promissory note has been registered and released to the borrower, the charge is perfected by entering into a pledge agreement and by delivering (pledging) the promissory note to the lender.

Once a floating charge promissory note used with a particular lender has been released by that lender (because the debt has been discharged or otherwise), the same promissory note can be repledged to another lender, if required.

Strictly speaking, a floating charge is not a security interest entitling the lender to foreclose on the charged assets solely on the basis of default on the loan. Instead, the charge conveys a priority ranking to the lender, which applies when the charged assets are sold in a bankruptcy or on the basis of a court judgment.

The priority ranking of a lender with claims secured by a floating charge extends only to 50% of the value of property subject to the charge. All unsecured creditors (including the floating charge lender with regard to the debt not covered by its priority ranking) share the remaining 50% equally in proportion to the debts owed to each of them.

The nominal principal amount of the floating charge promissory note, together with interest and collection costs specified in the note, is the maximum amount that the lender holding a floating charge can recover as a secured lender in a foreclosure sale of the property. However, the floating charge lender cannot recover more than 50% of the actual debt secured by the mortgage.

Vehicle and vessel mortgages

It is possible to register mortgages in respect of vehicles (buses, trucks, trailers and certain special vehicles), ships and aircraft, although these assets are covered by a floating charge if the mortgage is not registered before the floating charge is created.

These mortgages are rarely used outside certain specialised transactions involving operators in these fields and, therefore, are not discussed in this chapter in further detail. However, the security rights over these assets are created and perfected by registration as follows:

- Ships or other types of registered seagoing vessels: the vessel register maintained by the Finnish Maritime Administration (*Merenkulkulaitos*).

- Certain types of motor vehicles (such as buses, trucks and trailers): the vehicle register maintained by the Finnish Vehicle Administration (*Ajoneuvohallintokeskus AKE*).
- Aircraft: the aircraft register maintained by the Finnish Civil Aviation Authority (*Ilmailuhallinto*).

SHARES AND FINANCIAL INSTRUMENTS

3. What are the most common forms of security granted over financial instruments, such as shares and other securities? How are they created and how are they perfected?

It is relatively common for lenders in commercial transactions to take a pledge of any of the following types of movable property:

- Securities (for example, certificated shares and shares held in book entry form).
- Bank accounts.
- Other receivables (*see below, Claims and receivables*).

A pledge of movable property is most often used in commercial banking transactions when the assets to be pledged consist of debt (bearer) instruments (such as bonds) or shares of private companies which do not belong to the national book-entry register (*arvo-osuusjärjestelmä*). In such cases, the security interest is easily implemented by delivering the debt instrument or share certificate(s) representing the pledged assets.

Certain other perfection measures, such as notice to the company that issued the pledged security, may also be advisable. A security interest in shares is typically perfected as follows:

- Unless issued in book-entry form, shares are pledged by providing a written notification of the pledge to the company that issued the shares (resulting in the pledge being registered in the company share register) and, if share certificates have been issued, by delivering the share certificates to the lender, typically with a blank endorsement by the borrower/owner of the shares. The lender should also ensure that the pledge is recorded in the company share register to provide notice to any party examining the records of the company, especially if no share certificates exist.
- Securities (such as shares, bonds and other corresponding instruments) represented by book-entries in the national book-entry system maintained by the Finnish Central Securities Depository Ltd. These securities must be registered in the book-entry account to which they relate, and in practice can only be effected by a pledge of the entire book-entry account containing such securities.

A bank account pledge is perfected by notifying the bank where the account is held and obtaining written confirmation from the bank that it acknowledges the pledge and will not, without the secured lender's consent, exercise its rights of set-off to collect debts owed by the pledgor to the bank from the funds in the account.

Also, a floating charge (*see Question 2, Floating charge*) would cover securities (both in physical or book-entry form), which have not been otherwise pledged.

CLAIMS AND RECEIVABLES

4. What are the most common forms of security granted over claims and receivables (such as debts or rights under contracts)? How are they created and how are they perfected?

A pledge of a receivable is perfected by an irrevocable notice from the borrower to the account debtor, notifying the debtor of the pledge and instructing him to make payments either (*Promissory Notes Act (velkakirjalaki, 622/1947)*):

- Directly to the lender or a bank account of the lender.
- To a bank account of the borrower that has been pledged to the lender.

A floating charge (*see Question 2, Floating charge*) would also cover claims and receivables.

INTELLECTUAL PROPERTY

5. What are the most common forms of security granted over registered and unregistered intellectual property? How are they created and how are they perfected? Consider if applicable:

- **Patents.**
- **Trade marks.**
- **Other intellectual property rights, such as copyright and registered designs.**

Finnish trade marks, patents and utility models can be pledged.

A valid and perfected security interest is created by public notification, that is, by the registration of the pledge in the relevant register maintained by the NBPR (unless the assets are covered by a floating charge, in which case the perfection procedures for a floating charge are sufficient). For the purposes of such registration, a written pledge agreement or undertaking is also required.

Further, a floating charge (*see Question 2, Floating charge*) would cover any intellectual property rights which have not been otherwise pledged.

For an overview of assets and related security regulations, see table, *Taking security over assets in Finland*.

TAKING SECURITY OVER ASSETS IN FINLAND		
Asset type	**What forms of security can be granted?**	**How is each security interest created and made valid and enforceable?**
Real estate	Pledge of real property.	A written agreement is usually required by the parties. Registration of the mortgage in the Land Register to obtain a deed of pledge, which must be delivered to the lender.
Tangible movable property such as machinery	Pledge of real property (if fixtures of real property).	*See above.*
	Floating charge (if movable property).	Floating charge promissory note issued by the debtor is registered in the Register of Floating Charges and delivered to the lender. The floating charge pledge is typically documented by a written pledge agreement.
	Pledge (if possible and feasible to transfer the possession from the owner).	Delivery of physical possession of the pledged asset to the creditor with the intention to create a security interest over it. If the secured asset is already in possession of a third party, for example, a lessee, the pledge is perfected by notification of the pledge to that third party. The pledge is usually documented by a written pledge agreement.
Trading stock (inventory)	Floating charge.	*See above.*
Shares and other financial instruments	Pledge of securities (such as shares or bonds).	Either delivery to the lender of the share certificate or other document representing the security, or notification to the issuer of the security or, if a book-entry security, registration of the entire book-entry account where such security is held. A written agreement is usually required by law or market practice.
	Floating charge.	*See above.*
Other claims (receivables, debts and rights under contracts)	Pledge of receivables (which can include invoices and rights to damages or indemnification payments).	Notification of the pledge by the bank to the account debtor and an irrevocable instruction to make the payments either directly to the lender or to a bank account pledged to the lender. A written agreement is usually required by law or market practice.
	Floating charge.	*See above.*
Intellectual property	Pledge of registered Finnish patents, trade mark and utility models.	Registration of the pledge, evidenced by a deed of pledge, at the National Board of Patents and Registration (NBPR). Typically, a separate pledge agreement (not filed at the NBPR) is entered into to govern the pledge.
	Floating charge.	*See above.*

COMMERCIAL SECURITY

6. What types of commercial or quasi-security (that is, legal structures used instead of taking security) are common in your jurisdiction? Is there a risk of such structures being recharacterised as a security interest? Consider the following and give brief details:

- **Sale and leaseback.**
- **Factoring.**
- **Hire purchase.**
- **Retention of title.**
- **Other structures.**

The following structures can be used:

- **Sale and leaseback.** Contractual arrangement under which one party sells property to a buyer and the buyer immediately leases the property back to the seller.
- **Factoring.** Selling trade accounts receivable on a non-recourse basis to a factoring company, which assumes responsibility for collections either on a recourse or a non-recourse basis. The debtor must be notified of the transfer of the receivables and that the factored receivables must be paid either directly to the factoring company or to a bank account which has been pledged to the factoring company.
- **Hire purchase or finance lease.** Typically, a long-term (conditional sale) contract under which the purchaser/lessee hires the goods for a monthly rent/lease payment. Ownership of the property is usually transferred to the purchaser/lessee at the end of the term automatically or with a lump sum payment agreed in advance. Such contracts are governed by the Act on Conditional Sales (*laki osamaksukaupasta, 1966/91*), and if the purchaser is a consumer, also by certain provisions of the Consumer Protection Act (*kuluttajansuojalaki, 1978/38*).
- **Retention of title or conditional sale.** The delivered goods remain the property of the vendor until full payment has been received from the purchaser. This is typically provided for under terms of the relevant purchase agreement.

- **Set-off.** The right of set-off is subject to the following conditions. The receivables to be set-off against each other must:
  - be of the same kind;
  - directly correspond to one another; and
  - be due and payable.

Additional restrictions apply to the ability of a creditor to off-set its debt against debts owed to it by a debtor under bankruptcy.

RISK AREAS

7. Are there types of assets over which security cannot be granted or is difficult to grant? Consider the following and give brief details:

- **Future assets.**
- **Fungible assets (a pool of assets that are indistinguishable from each other and that may change over time).**
- **Other assets.**

Future assets

Future assets can be subject to a floating charge. Assets cease to be subject to a floating charge if they are sold or otherwise disposed of in the ordinary course of business or in connection with the normal replacement of assets, unless the business itself (or a substantial part of it) is sold, including the charged assets. In this instance, the charge remains in force and the original lender retains priority over floating charge lenders of the buyer for six months (unless this right is waived by the original lender).

Future funds in bank accounts or book-entry securities accounts can be pledged.

The traditional view has been that future (unearned) receivables cannot be pledged under the so-called "earnings principle". However, a relatively recent Supreme Court ruling indicates that future receivables can, at least in some circumstances, be pledged if they can be sufficiently identified at the time of the pledge (*KKO 2002:113*).

Other types of assets or securities cannot be pledged until they have been acquired. However, such assets can be used as security by using a covenant to pledge or mortgage them in the future (although these arrangements can become subject to recovery rules, as voidable preferences, if the borrower becomes insolvent (*see Question 16*)).

Fungible assets

Fungible assets (such as stocks, inventory and accounts receivable) can be made subject to a floating charge.

Other assets

Finnish law does not recognise a security assignment of contractual rights as such. Contractual rights cannot be pledged, except to the extent they constitute receivables. Therefore, contractual rights to damages or indemnification payments can be pledged, as well as any receivables based on invoices issued under a contract.

8. Do company law rules affect the granting of security? In particular:

- **Financial assistance rules. For example, if a company granted security to secure debt used to purchase its own shares (or the shares of its holding company), would this breach such rules?**
- **"Corporate benefit" rules. For example, if a subsidiary company granted security in respect of a loan to its parent, would this breach such rules?**
- **Other rules?**

Unlawful financial assistance

A limited liability company (*osakeyhtiö*) is strictly prohibited from granting any loan, funds or security for obligations of another entity in order for that entity to acquire shares in either the company or its parent company (*Companies Act (osakeyhtiölaki, 624/2006)*).

Corporate benefit rules

Under the general principles of the Companies Act, the board of directors and other fiduciaries of a limited liability company must always act in the best interests of the company. Further, no measures can be taken to provide an unjustified benefit to a shareholder or another person, or to the detriment of the interests of the company or other shareholders. Unless otherwise stated in its articles of association, the purpose of a company is to generate profits for its shareholders.

These principles apply when the company issues a guarantee or security for the debts of another company belonging to the same group. Therefore, the board of directors approving the guarantee or other security must be satisfied that the company will derive adequate commercial benefit from the arrangement. When a company grants a guarantee or security for the debts of a group company, corporate benefit is often found in the form of, for example:

- The availability of intra-group financing.
- Marketing and management services.
- Rights to use trade marks belonging to other group companies.

The granting of a guarantee or security by a parent company to guarantee the debts of its subsidiary rarely raises the issue of corporate benefit. However, the corporate benefit rules typically come into question when the security is given upstream (that is, by a subsidiary for the benefit of its parent) or cross-stream (that is, for the benefit of a sister company).

The shareholders of a company can decide any matters that would normally fall within the decision-making powers (and duties) of the board of directors (*Companies Act*). However, a board of directors cannot implement measures (even if approved by a decision of the shareholders) which, contrary to the Companies Act, would either:

- Provide an unjustified benefit to a shareholder or another person.
- Prejudice the interests of the company or other shareholders.

The board of directors cannot implement such measures even if they have been approved by a unanimous resolution of all shareholders. This means that if the granting of security is approved by a shareholders' resolution, the board of directors must also conclude that this is in the interests of the company.

Other rules

The assets of a company can only be distributed to shareholders as provided for in the Companies Act, which normally only allows distributions from the accumulated profits and distributable equity. Any other transaction, which reduces the assets of a company or increases the amount of its liabilities without commercial grounds, is considered an illegal distribution of assets. Further, the assets of a company cannot be distributed if it is known, or it should be known, that the company is insolvent or that distribution of assets will result in insolvency.

There has been some judicial discussion on the degree to which these restrictions apply to the granting of security by a company (typically when a guarantee or security is granted for the liabilities of a member of the same group of companies). The Supreme Court, in interpreting the old Companies Act (*osakeyhtiölaki, 734/1997*), held that a variety of transactions involving a company and its shareholders can be deemed to be subject to limitations regarding the distribution of the assets of a company (*Rulings KKO 2003:33 and 2006:90*). Under these two rulings, if the company and/or the shareholder who is granted security by the company is, or is likely to become, insolvent, it is highly likely that:

- The limitation on distributions under the Companies Act will be applied.
- The security will be invalid to the extent it is deemed an illegal distribution of assets.

9. Could a party holding or enforcing security over land be liable under environmental laws, even if it did not cause any pollution of the land?

Liability under environmental laws is most likely to arise in connection with polluting activities carried out on real property (covered by a real estate mortgage) or by using buildings, equipment or machinery (covered by a floating charge). Creditors are only liable under environmental laws if they take possession of the real property and polluting activities take place during this possession. However, as foreclosure sales are dealt with by execution authorities, creditors are unlikely to take possession and become liable.

THE COMMERCIAL DEBT MARKET

10. Is contractual subordination of debt possible and common? If so, how can it be achieved, for example by an inter-creditor agreement between senior, mezzanine and junior creditors? Is structural subordination possible?

It is possible to subordinate debt. Subordination is typically provided for by contract, usually in the credit agreement, a separate inter-creditor agreement or corresponding document. Subordination can also be separately agreed for certain debts or receivables of certain creditors, for example by an inter-creditor agreement between the relevant creditors and the debtor.

Freedom of contract enables the use of different degrees of subordination. For example, it can be agreed that a certain loan is subordinated to all other non-subordinated debt and would therefore have lowest ranking priority if insolvency occurs. Alternatively, it can be agreed that a certain debt is subordinated only to another defined debt and is therefore not subordinated to other receivables, such as general trade receivables, from the debtor.

The Companies Act (*osakeyhtiölaki, 624/2006*) also provides for a specific type of subordinated debt called an equity loan (or capital loan) (*pääomalaina*), which is subordinated to all other debts of a company and which is reflected on the balance sheet of a company as a separate item.

11. Is secured debt traded in your jurisdiction? If so, what transfer mechanisms are used? How do buyers ensure that they obtain the benefit of the security associated with the transferred debt?

Secured debt governed by Finnish law can be transferred and, therefore, can also be traded. The main rule is that, as an ancillary obligation, the security associated with the debt can be transferred together with the debt, which is typically expressly permitted under the financing documents.

A notification of the transfer of the debt (and related security) must be issued to the debtor either by the assignee or the assignor. The perfection requirements, depending on the type of security interest, also apply. Usually, this requires an actual or constructive deposit of the pledged asset (or deeds of pledge for a real property mortgage, or floating charge promissory notes) with the assignee as security for the debt, which is often a condition precedent for a transfer of debt. In practice, a separate confirmation could also be requested from a borrower and/or a provider of the security.

For syndicated loans, a security agent is usually appointed to act as the representative of all finance parties and is party to a Finnish law security document for, and on behalf of, all lenders. No further actions (other than notices in the loan documents) are usually required to transfer the benefit of the security if the composition of the bank syndicate changes.

12. Is the trust concept recognised in your jurisdiction? If not:

- **Is a trust created under the law of another country recognised in your jurisdiction?**
- **Can a security trustee enforce its rights in the courts in your jurisdiction?**

There is no concept of a trust under Finnish law. For example, with syndicated loans and other lending arrangements where lenders use one party to hold the security on their behalf, documentation (if governed by Finnish law) would typically refer to the party holding the security as a security agent for all the secured parties, rather than as a trustee.

As a matter of civil law, a trust created under the law of another jurisdiction can be recognised in Finland (because the concept does not violate Finnish public policy) by reference to the other jurisdiction's law.

The rights of a security trustee can be enforced in Finnish courts, giving the trustee the powers and responsibilities it has in the jurisdiction in which the trust was created.

13. Do the different types of security in your jurisdiction need to be documented separately or does your jurisdiction allow a single security document?

Finnish law does not include any specific requirements regarding the documentation of security interests in separate documents. However, according to the prevailing market practice, each different type of security interest is separately documented.

ENFORCEMENT AND INSOLVENCY

14. Please briefly state the circumstances in which a secured creditor can enforce its security, for example, when an event of default occurs? What requirements must the creditor comply with?

Security can be enforced if the secured unpaid debt has become due and payable. The time when a debt becomes payable is determined by the principal finance documents, such as the loan agreement. These usually provide that the debt becomes, or may become, due and payable if the lender exercises its rights to accelerate the loan as a result of a payment default or any other event of default defined in the agreement, such as (material) breach of terms by the debtor, subject to possible notice or grace periods.

15. How are the main types of security interest usually enforced? What requirements must a creditor comply with (for example, a mandatory public sale of the secured asset through the courts)?

Pledge of movable property

There are certain formalities for enforcing pledges of movable property and guarantees, such as giving one month's notice before starting the sale of a pledged asset (*Commercial Code and Act on Guarantees and Security for Third Party Debt (laki takauksesta ja vierasvelkapantista, 361/1999)*). However, these formalities can, and usually are, excluded by contract. It is often agreed that the pledge or guarantee can be enforced at the creditor's discretion by selling the secured asset in a manner deemed suitable by the creditor, provided that the debtor's interests are taken into account (for example, seeking a fair value for the asset).

Pledge of real property

Typically, foreclosure sales of real property take place by a public auction completed by execution authorities. A pledge of real property does not provide the lender with the immediate right to sell the secured assets if non-payment or insolvency occurs. The lender must either:

- Obtain a valid title (that is, a court judgment) for execution by the execution authorities from a court or arbitral tribunal.
- In case of bankruptcy, submit a claim when the debtor's assets are realised by the bankruptcy administration.

Floating charge

A floating charge does not provide the creditor with the immediate right to sell the secured assets if non-payment or insolvency occurs. The creditor must either obtain a valid title for execution by the execution authorities or submit a claim when the debtor's assets are realised by the bankruptcy administration.

16. Are company rescue or reorganisation procedures (outside of insolvency proceedings) available in your jurisdiction? If yes, please give brief details, including voting requirements to approve such procedures. How do they affect a secured creditor's rights to enforce its security?

Court-administered restructuring protects the debtor from both secured and unsecured creditors (*Act on Restructuring of Companies (laki yrityksen saneerauksesta, 47/1993)*). If restructuring proceedings are initiated, the most important legal consequences are the following:

- The commitments already concluded by the debtor are not affected unless otherwise provided by law.
- The debtor cannot pay a debt subject to the restructuring or provide collateral security for such debt.
- No measures can be taken against the debtor to collect a debt subject to the restructuring or to ensure the payment of such debt.
- Property cannot be executed for debt subject to the restructuring.
- Set-off of debts is prohibited.

Restructuring does not affect the validity of the security granted, but enforcement or legal action can only be taken with court permission and a secured debt can only be repaid at the discretion of the court-appointed supervisor. Further, as part of the restructuring programme, a security interest can be replaced with another corresponding security, and the payment and amortisation schedules of secured debt can be adjusted.

The court-appointed supervisor draws up and submits a proposed restructuring programme to the court. The programme proposal outlines all measures concerning the continuation, alteration or termination of the company's operations. The creditors are divided into groups according to the priority and nature of their claims, and vote on the proposal.

The court must approve a restructuring programme that meets the applicable legal requirements, if:

- A majority of the creditors and a majority of the claimants in one creditor group vote for approval.
- The programme is supported by creditors with a combined value of over one-fifth of the restructuring debt.

If all the creditor groups vote for approval, there are only minimal other requirements that the programme need satisfy.

The shareholders of the company do not take part in the vote, but the programme can include measures that, according to the Companies Act, require the shareholders' consent.

17. How does the start of insolvency procedures affect a secured creditor's rights to enforce its security?

Bankruptcy or other insolvency does not affect the validity of security interests. A secured creditor can enforce a security interest after giving notice of the claims against the debtor and its intent to enforce the security to the bankruptcy estate. However, the bankruptcy estate can postpone the enforcement by up to two months to assess the validity of the creditor's claims or to preserve its own interests. In certain cases, the bankruptcy estate can sell the security assets itself, although the secured creditor would still be entitled to the proceeds of sale.

If security falls under the scope of Directive 2002/47/EC on financial collateral arrangements (that is, cash or financial instruments), implemented by the Act on Financial Collaterals (*rahoitusvakuuslaki, 11/2004*), the moratorium on enforcement does not apply and the security holders can enforce their security irrespective of restructuring or bankruptcy proceedings.

18. What transactions granting security can be made void if the entity that granted the security becomes insolvent? Please briefly state the time limits that apply and the conditions that must be met for the security to be made void.

Certain kinds of payments and security can be set aside as voidable preferences, and funds paid to creditors can be recovered to the bankruptcy estate, if the payments were made or security was granted within certain time limits before the debtor's insolvency (*Act on Recovery to the Bankruptcy Estate (laki takaisinsaannista konkurssipesään, 758/1992)*).

When a business has granted security to a lender, the security can become voidable in either of these situations:

- Both of the following occur:
  - the transaction, by itself or together with other transactions, inappropriately favours one lender over other creditors, transfers assets available to satisfy other debts or adversely increases the amount of debt owed to other creditors; and
  - the debtor was insolvent at the time of the transaction or the transaction contributed to insolvency within five years (or at any time, if the other party is part of the debtor's inner circle), and the other party to the transaction was, or should have been, aware of the actual or potential insolvency.
- The security interest was not agreed, or the security was not perfected without undue delay, at the start of the debt relationship and the business becomes insolvent within three months of the transaction (or at any time, if the other party is part of the debtor's inner circle).

19. Please list the order in which creditors are paid on the borrower's insolvency, assuming the security interests have been validly perfected. Consider:

- **Statutory claims (such as tax or other government claims, expenses of the insolvency proceedings and employee claims).**
- **The secured creditors considered in *Questions 1 to 5* (please state which order of priority applies between the relevant security interests).**
- **Unsecured creditors.**
- **Subordinated creditors.**

If there are bankruptcy proceedings or when recovering debt by an enforcement order, a debtor's debts are paid in the following order of priority until all available funds have been used:

- The highest priority is given to debts secured by mortgages or pledges, or owed to a lien holder. These debts are paid from the proceeds of sale of the asset subject to the mortgage, pledge or lien. Proceeds of sale are not shared with the other creditors of the insolvent debtor or with the bankruptcy estate.
- The second highest priority is given to certain debts incurred by the business during debt restructuring under the Act on Restructuring (*yrityssaneerauslaki, 47/1993*), if the debtor was placed in bankruptcy before the termination of the restructuring programme or within three months of its termination.
- The third highest priority is given to debts secured by floating charges. However, only 50% of the value of assets subject to the floating charge and only up to the nominal amount of the floating charge promissory notes (plus interest and collection costs) can be claimed under this priority ranking. The remainder of debt secured by a floating charge is treated as unsecured debt.
- Unsecured debt, in proportion to the debt owed to each creditor. Under Finnish law, statutory claims, such as due tax, are treated as unsecured debt.
- Certain subordinated creditors defined in the Creditors' Priority Act (*laki velkojien maksunsaantijärjestyksestä, 1578/1992*), such as loans and mass debt instruments issued by the debtor which, under their terms, are subordinated to the other creditors.

20. If more than one creditor holds the same security interest over the same asset, how is priority between them determined?

Priority rankings between deeds of pledge reflecting registered mortgages over the same real property are registered in the Register of Land Ownership and Mortgages. The starting point is that priority follows the order of registration. However, the priority order can be changed if requested by the owner of the real property

Country Q&A

and, if any deeds of pledge are outstanding, with the consent of each holder of those deeds of pledge. The same applies to floating charges and related promissory notes.

Unless otherwise agreed between holders of pledges over movable property, the creditor with the earlier perfected pledge has priority over any subsequent pledge. Certain limitations can be agreed on in connection with a pledge, for example, in relation to the maximum security value of the priority pledge.

21. If a security interest has not been validly perfected, where does the security holder rank on the borrower's insolvency?

If the formalities for perfection are not complied with, a security interest is not created and such lenders rank in priority as other unsecured creditors.

CROSS-BORDER ISSUES

22. Are there restrictions on granting security (over all forms of property) to foreign lenders? If yes, please give brief details, for example registration requirements.

There are no restrictions on granting security to foreign lenders.

23. Are there exchange controls that restrict payments to a foreign lender under a security document or loan agreement?

There are no exchange controls in force that would prevent the repatriation of realisation proceeds or other payments from Finland to a foreign lender under a security document or loan agreement.

24. Is a foreign choice of law clause in a security document recognised and applied by the courts in your jurisdiction? Does local law always apply in certain circumstances?

Foreign choice-of-law clauses in security documents are recognised and applied by courts in Finland in any proceedings for enforcing obligations, except to the extent that they violate public policy or go against principles of equity.

TAX AND FEES

25. Are taxes or fees paid on the granting and enforcement of security? Consider the following and state the fee amounts and tax rates, if they are more than a nominal amount:

- **Documentary taxes (for example, stamp duty).**
- **Registration fees.**
- **Notaries' fees.**

Stamp duty

No stamp duties, documentary taxes or any other similar *ad valorem* taxes are payable when establishing or enforcing security, except:

- When enforcing a pledge of securities (including a pledge of shares) by selling pledged shares or other securities (where the sale takes place outside a stock exchange), asset transfer tax must be paid by the seller at the rate of 1.6% of the purchase price.
- When real property is sold, asset transfer tax must be paid at the rate of 4% of the purchase price.

Registration fees

Registration fees must be paid to the relevant registry for the following types of security:

- Real estate mortgages.
- Floating charges.
- Mortgages in respect of motor vehicles, ships and aircraft.
- Pledges of patents, trade marks and utility models.

However, all the fees are flat (not percentage based) and relatively small.

Other fees

Notary fees are not applicable in Finland, but court costs and professional fees (including enforcement fees) may be payable.

26. If such taxes and fees make granting security too expensive, are there strategies to minimise costs?

The applicable fees are not considered prohibitively expensive.

REFORM

27. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

The final phase of the reform of the Execution Act (*ulosottolaki, 37/1895*) is pending. Although comprehensive, the reform does not fundamentally change the enforcement scheme. The changes to be introduced by the final phase of the reform, which enters into force on 1 January 2008, include:

- Restructuring the organisation within the enforcement branch.
- Renewal of enforcement fees as well as adjustments to appeal processes.
- Tax enforcement and provisions providing for the expiry of debt enforcement (usually in 15 years).