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1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller: (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a binding contract arise as a result of the behaviour of the parties?

(a) Under Finnish law, receivables contracts or enforceable debt obligations do not need to be concluded in any particular form. They can be oral or in writing, but can also arise as a result of the behaviour of the parties. In practice, written receivables contracts usually exist, and are recommended to evidence a receivable.

(b) An invoice would be a sufficient basis for a receivable.

(c) Yes, but only with respect to non-consumer loans. Consumer loans must be concluded in writing, either as a hard copy or electronically.

1.2 Consumer Protections. Do your jurisdiction's laws: (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

(a) Yes. The Finnish Consumer Protection Act (38/1978, as amended, the "CPA") includes the following restrictions applicable to consumer loans:

(i) the interest rate on credit may not be agreed to be higher than the reference rate laid out in the Interest Act plus 15 percentage points. The reference rate under the Finnish Interest Act (533/1982, as amended, the "Interest Act") is currently 3.5%. However, the annual percentage rate for a consumer loan may not exceed 20% *per annum*; and

(ii) the credit costs of a consumer loan may not exceed 0.01% per day of the credit amount or the credit limit under the credit agreement, or EUR 150 per year, whichever is lower.

The above limitations do not, however, apply to hire purchase agreements regarding the purchase of a transport vehicle registered in the Finnish Transport Register (such as cars) unless the consumer also has the right to withdraw cash under the agreement.

(b) The general statutory late payment interest under the Interest Act is 7% higher than the official reference rate in force at the time in question (currently 3.5%), unless otherwise agreed. However, in respect of consumers, the agreed late payment interest cannot be higher than the general statutory late payment interest.

(c) Consumers have the right to cancel a consumer credit contract within a period of 14 days of entering into the contract. However, if a copy of the contract is delivered to the consumer afterwards, the cancellation period only begins when the consumer receives a copy of the contract.

(d) Under the CPA, certain defences have been extended in favour of consumers. Such rights include, e.g., payment holidays in case of social *force majeure*, extended set-off rights due to the joint liability of the seller of consumer goods and the financier, and the right to repay a consumer credit in whole before it becomes due. Enforcement of a loan is further subject to certain requirements set out in the CPA.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

There are no such laws or regulatory requirements in respect of loan agreements or commercial contracts entered into with the government or a government agency. However, public sector receivables are frequently subject to contractual transfer restrictions.

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in your jurisdiction that will determine the governing law of the contract?

The Rome Convention on the law applicable to contractual obligations (the "Rome Convention") and Regulation (EC) 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (the "Rome I Regulation") create the legal basis for the choice of law. Also, other multilateral international conventions may apply, depending on the contents of the contract.

Under both the Rome Convention and the Rome I Regulation, the general principle is that the parties can choose which law to apply to a contract. In certain cases, such as consumer

contracts and individual employment contracts, the choice of law is, however, restricted.

In the absence of a choice of law, a contract is in general governed by the law of the country with which it is most closely connected. The Rome Convention sets out circumstances that are decisive in determining the country to which the contract is most closely connected.

2.2 Base Case. If the seller and the obligor are both resident in your jurisdiction, and the transactions giving rise to the receivables and the payment of the receivables take place in your jurisdiction, and the seller and the obligor choose the law of your jurisdiction to govern the receivables contract, is there any reason why a court in your jurisdiction would not give effect to their choice of law?

No, there is not.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in your jurisdiction but the obligor is not, or if the obligor is resident in your jurisdiction but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in your jurisdiction give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such as that between the seller and the obligor under the receivables contract?

Generally, yes, subject to: (i) such application of foreign law not being contrary to the overriding provisions of mandatory Finnish law, which shall be considered to be applicable irrespective of the agreed choice of law; and (ii) such non-Finnish law not being contrary to the public policy ("*ordre public*") of Finland.

In certain cases, such as in the case of consumer contracts, the choice of law is, however, restricted.

3 Choice of Law – Receivables Purchase Agreement

3.1 Base Case. Does your jurisdiction's law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., your jurisdiction's laws or foreign laws)?

No. Pursuant to Article 3(1) of the Rome I Regulation, a contract shall be governed by the law chosen by the parties. The Rome I Regulation does not, however, regulate the effects of the transactions in relation to third parties. Pursuant to the *lex rei sitae* principle, as traditionally applied in Finland, the *ultra partes* effects of the sale of receivables are determined under the laws of the country where the receivable is located. It is not entirely clear where a receivable would be deemed to be located, as different views have been expressed in doctrine, with the most popular views being that either the jurisdiction of the obligor or the seller should be decisive. Therefore, Finnish law perfection requirements for the sale should be followed if the seller or obligor is in Finland.

3.2 Example 1: If (a) the seller and the obligor are located in your jurisdiction, (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of your jurisdiction to govern the receivables purchase agreement, and (e) the sale complies with the requirements of your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

Yes, provided that the sale is duly perfected in accordance with Finnish law requirements.

3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign law requirements of the obligor's country or the purchaser's country (or both) be taken into account?

Yes, provided that the sale is perfected in accordance with Finnish law requirements, a Finnish court would, at the outset, recognise the sale as effective. However, where an obligor is located outside Finland, the perfection requirements under the laws of the country of such obligor may also have to be observed.

3.4 Example 3: If (a) the seller is located in your jurisdiction but the obligor is located in another country, (b) the receivable is governed by the law of the obligor's country, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the obligor's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller) without the need to comply with your jurisdiction's own sale requirements?

Yes, provided that the sale is perfected in accordance with Finnish law requirements, a Finnish court would, at the outset, recognise the sale as effective. However, where an obligor is located outside Finland, the perfection requirements under the laws of the country of such obligor may additionally have to be observed.

3.5 Example 4: If (a) the obligor is located in your jurisdiction but the seller is located in another country, (b) the receivable is governed by the law of the seller's country, (c) the seller and the purchaser choose the law of the seller's country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller's country, will a court in your jurisdiction recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with your jurisdiction's own sale requirements?

Yes, provided that the sale is perfected in accordance with Finnish law requirements, a Finnish court would, at the outset,

recognise the sale as effective. However, where a seller is located outside Finland, the perfection requirements under the laws of the country of such seller may additionally have to be observed.

3.6 Example 5: If (a) the seller is located in your jurisdiction (irrespective of the obligor's location), (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the purchaser's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in your jurisdiction and any third party creditor or insolvency administrator of any such obligor)?

Yes, provided that the sale is perfected in accordance with Finnish law requirements, a Finnish court would, at the outset, recognise the sale as effective. However, where an obligor is located outside Finland, the perfection requirements under the laws of the country of such obligor may additionally have to be observed.

4 Asset Sales

4.1 Sale Methods Generally. In your jurisdiction what are the customary methods for a seller to sell receivables to a purchaser? What is the customary terminology – is it called a sale, transfer, assignment or something else?

Typically, a written receivables sale and purchase agreement is concluded between the seller and purchaser. As regards terminology, sale, transfer and assignment are all used somewhat interchangeably – the nature of the transfer as true sale or assignment for collateral purposes is determined on the basis of the specific terms of the agreement and any related contractual arrangements.

4.2 Perfection Generally. What formalities are required generally for perfecting a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

For a sale of receivables to be duly perfected under Finnish law, the underlying obligor must be notified of the sale. Such notification must be sufficiently clear and include instructions to make all payments in relation to such receivable to the purchaser or its order, instead of the seller. This is because the seller should have no control over the receivable(s) after the sale has taken place.

The relevant receivable(s) must be appropriately identified in the notice. However, no specific form requirements apply. If the receivable is evidenced by a negotiable promissory note, the promissory note must be transferred to the possession of the purchaser.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

In respect of negotiable promissory notes, the sale is perfected by delivering the original promissory note to the purchaser. Marketable debt securities are usually issued in dematerialised form in a book-entry/securities account. To perfect the transfer of such dematerialised debt securities, the securities need to be transferred to a book-entry/securities account of the purchaser.

The transfer of secured loans generally requires that the security assets (e.g., in respect of mortgage loans, the real estate mortgage certificates or share certificates, as applicable) are also transferred to the purchaser, and that the obligor is notified of such transfer.

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Whether or not notice is required to perfect a sale, are there any benefits to giving notice – such as cutting off obligor set-off rights and other obligor defences?

Receivables are generally transferrable without the obligor's consent, unless otherwise agreed in the underlying contract. A notice to the obligor is required to perfect the sale and render it effective in relation to third parties (such as the obligor and creditors of the seller). The notice will allow the purchaser to collect the receivables from the obligor and, generally, limit the obligor's right to make payments to the seller with discharging effect or set-off claims owed by the seller to the obligor against the sold receivable.

The notice does not need to be acknowledged. However, for evidentiary purposes, an acknowledgment is recommended insofar as is commercially feasible.

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective – for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings have commenced against the obligor or the seller? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

No specific form requirements apply. The notification must, however, be sufficiently clear and include instructions to make all payments in relation to such receivable to the purchaser or its order, instead of the seller. For evidentiary purposes, the notice should be delivered in writing.

The notice does not have to be registered, notarised or otherwise confirmed by any officials.

Generally, the notice should be delivered without delay after the sale. A notice delivered after the commencement of insolvency proceedings in respect of the seller would not have the effect of transferring the receivables beyond the reach

of the seller's bankruptcy creditors. Further, a notice delivered within the applicable suspect period prior to insolvency proceedings may not be effective due to claw-back rules.

While a transfer of future receivables, which can be identified in sufficient detail, would be recognised between the parties to the transfer, there is some uncertainty with respect to the effectiveness of their transfer in relation to third parties. The transfer of any such receivables or claims that are not in existence (and/or have not been earned) upon their transfer may not be deemed effective or enforceable in relation to third parties until such receivables or claims have come into existence (and/or have been earned), any requisite counter performance has been made and the obligor has received a notice of the transfer.

4.6 Restrictions on Assignment – General Interpretation. Will a restriction in a receivables contract to the effect that "None of the [seller's] rights or obligations under this Agreement may be transferred or assigned without the consent of the [obligor]" be interpreted as prohibiting a transfer of receivables by the seller to the purchaser? Is the result the same if the restriction says "This Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights or obligations)? Is the result the same if the restriction says "The obligations of the [seller] under this Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights)?

Yes, a contract prohibiting the rights or obligations from being transferred would restrict the seller from selling the receivables. The interpretation of each of the above examples would, however, depend on the context and how the intent of the parties can be construed.

4.7 Restrictions on Assignment; Liability to Obligor. If any of the restrictions in question 4.6 are binding, or if the receivables contract explicitly prohibits an assignment of receivables or "seller's rights" under the receivables contract, are such restrictions generally enforceable in your jurisdiction? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If your jurisdiction recognises restrictions on sale or assignment of receivables and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or tort, or on any other basis?

Such restriction would be generally enforceable against the seller, and the sale of such receivable would generally not be effective. However, in the event of a *bona fide* purchase by the purchaser of a receivable, the transfer of which is explicitly prohibited in the underlying receivables contract, the purchase could be deemed enforceable.

In this event, the seller nevertheless sells receivables to the purchaser. Despite a restriction to do so in the underlying receivables contract, the seller would be liable to the obligor for breaching the contract. It has also been argued that the purchaser could be liable to the obligor for tort, provided that the purchaser was aware of the restriction, but there is, however, no legal practice on this matter.

4.8 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells *all* of its receivables to the purchaser, is this sufficient identification of receivables? Finally, if the seller sells *all* of its receivables *other than* receivables owing by one or more specifically identified obligors, is this sufficient identification of receivables?

The receivables to be sold must be sufficiently identified by, for example, a reference to the underlying contract, as applicable. The sale of all receivables that the seller has or may have, or all such receivables except for some, without individually identifying them, would likely not be sufficient.

4.9 Recharacterisation Risk. If the parties describe their transaction in the relevant documents as an outright sale and explicitly state their intention that it be treated as an outright sale, will this description and statement of intent automatically be respected or is there a risk that the transaction could be characterised by a court as a loan with (or without) security? If recharacterisation risk exists, what characteristics of the transaction might prevent the transfer from being treated as an outright sale? Among other things, to what extent may the seller retain any of the following without jeopardising treatment as an outright sale: (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; (d) a right of repurchase/redemption; (e) a right to the residual profits within the purchaser; or (f) any other term?

A description and statement of intent by the parties may not be respected if it does not correspond to the actual substance of the transaction. A transaction purported to be an outright sale can be recharacterised as a loan transaction with security. In the absence of express provisions of law or legal practice on recharacterisation, no definite indication may be given as to when a transaction is deemed to constitute an outright sale. Generally, according to doctrine, a risk for recharacterisation may exist in particular where:

(a) a transferor has agreed to assume and bear the (in full or significant part) risk for the solvency of the obligors;
(b) a transferee is obligated to compensate the transferor for the aggregate surplus of payments exceeding the purchase price of the transferred receivables; or
(c) a transferor is entitled or obligated to repurchase the transferred receivables.

However, the limited presence of one or several of the features that suggest a security assignment instead of an outright sale does not necessarily result in recharacterisation. The conclusions of the true nature of a transaction and the true intentions of the parties are in each case based on an assessment of the transaction as a whole.

4.10 Continuous Sales of Receivables. Can the seller agree in an enforceable manner to continuous sales of receivables (i.e., sales of receivables as and when they arise)? Would such an agreement survive and continue to transfer receivables to the purchaser following the seller's insolvency?

The seller and the purchaser may agree on the continuous sale of receivables, but each transfer would become effective in

relation to third parties only once the sale of each receivable is duly perfected. Such an arrangement would generally not survive the insolvency of the seller.

4.11 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., "future flow" securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to *versus* after the seller's insolvency?

Transfers of future receivables or receivables that have not been "earned" at the time of the transfer (e.g., because of a lacking counter performance) are generally recognised under Finnish law only in an *inter partes* relation. The transfer of future receivables has, under Finnish legal doctrine, not been held effective and enforceable in relation to third parties and will not be upheld in the seller's insolvency unless the receivables have come into existence and have been "earned" and the transfer has been duly perfected before the commencement of the insolvency proceedings.

4.12 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

Where the receivable is secured, the transfer of the security needs to be duly perfected in accordance with the requirements applicable to that type of security.

4.13 Set-Off; Liability to Obligor. Assuming that a receivables contract does not contain a provision whereby the obligor waives its right to set-off against amounts it owes to the seller, do the obligor's set-off rights terminate upon its receipt of notice of a sale? At any other time? If a receivables contract does not waive set-off but the obligor's set-off rights are terminated due to notice or some other action, will either the seller or the purchaser be liable to the obligor for damages caused by such termination?

Generally, the obligor may set off a claim that the obligor has against the seller ("counterclaim") notwithstanding the sale of the receivable, subject to the following:

(1) The obligor may not set off any counterclaim that the obligor has acquired after he/she became aware of the sale (or should have become aware that the sale took place).

(2) Once the obligor becomes aware of the sale of the receivables (or should have become aware that such sale took place), the obligor no longer has the right to set off a counterclaim, except where:
   (i) the counterclaim falls due before the sold receivable falls due; or
   (ii) the counterclaim was due before the obligor became aware of the sale (or should have become aware that the sale took place).

Under the CPA, the set-off rights have been extended in favour of consumers due to the joint liability of the seller of consumer goods and the financier. This entails that, in the event that an obligor has a claim against the seller or the relevant seller of consumer goods, the obligor may be allowed to set off the amount of such claim against any amount outstanding under the contract if the obligor had such a claim before the obligor was notified of (or otherwise became or should have become aware of) the sale of the receivable.

4.14 Profit Extraction. What methods are typically used in your jurisdiction to extract residual profits from the purchaser?

Any residual profit is generally distributed according to the relevant transaction documents by an appropriate final waterfall item and/or the purchaser's constitutional documents. When deciding on the method of extraction, parties should be mindful of the issues regarding recharacterisation (see question 4.9 above).

5 Security Issues

5.1 Back-up Security. Is it customary in your jurisdiction to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that an outright sale is deemed by a court (for whatever reason) not to have occurred and have been perfected (see question 4.9 above)?

No, it is not.

5.2 Seller Security. If it is customary to take back-up security, what are the formalities for the seller granting a security interest in receivables and related security under the laws of your jurisdiction, and for such security interest to be perfected?

This is not applicable.

5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in your jurisdiction to grant and perfect a security interest in purchased receivables governed by the laws of your jurisdiction and the related security?

A security over the purchased receivables may be taken in the form of a pledge of receivables, which is perfected by delivering a notice of the pledge to the obligor. Where possible, the collections account is pledged. Further, a floating charge covering the qualifying movable assets (including receivables, account monies and inventory to the extent not separately pledged) may be registered against the purchaser's assets.

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of your jurisdiction, and that security interest is valid and perfected under the laws of the purchaser's jurisdiction, will the security be treated as valid and perfected in your jurisdiction or must additional steps be taken in your jurisdiction?

Pursuant to the *lex rei sitae* principle, the *ultra partes* effects of

security over receivables are determined under the laws of the country where the receivable is located. While there is some uncertainty as to where a receivable should be deemed to be located, as a minimum, Finnish law perfection requirements should generally be observed in relation to obligors located in Finland.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

The same principles as for security interest in receivables apply; see question 4.3 above. However, security over marketable debt securities in dematerialised form would be created by recording the pledge in the relevant book-entry/securities account.

5.6 Trusts. Does your jurisdiction recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller's own assets (so that they are not part of the seller's insolvency estate) until turned over to the purchaser?

Finnish law does not have the concept of trust but recognises trusts that are duly established as legal entities under the laws of foreign jurisdictions.

It is not feasible under Finnish law for the seller to hold collections in trust for the purchaser. If the collections received are paid on a bank account of the seller, the payment proceeds would generally be deemed to belong to the insolvency estate of the seller, and the purchaser would only have an unsecured claim against the seller's insolvency estate corresponding to the amount of such proceeds.

To avoid the above issues, a separate collections account is usually opened. To create a robust structure, the collections account would typically be opened in the name of the purchaser or a third party; if in the name of the seller, the seller's access to the account would be contractually restricted. If the seller is a regulated entity and special legislation applies to the seller that ensures the legal segregation of client funds from the seller's assets, a client funds account in the name of the seller can potentially be used.

5.7 Bank Accounts. Does your jurisdiction recognise escrow accounts? Can security be taken over a bank account located in your jurisdiction? If so, what is the typical method? Would courts in your jurisdiction recognise a foreign law grant of security taken over a bank account located in your jurisdiction?

Yes, contractual escrow accounts are common in Finland. However, the use of escrow accounts of the seller as collection accounts or transaction accounts is limited by the considerations described in question 5.6 above. A bank account pledge is perfected by delivering a notification of the pledge to the account bank and blocking the pledgor's access to the account.

A Finnish court would recognise a foreign law pledge over a bank account located in Finland, provided that the pledge is perfected in accordance with the Finnish law requirements.

5.8 Enforcement over Bank Accounts. If security over a bank account is possible and the secured party enforces that security, does the secured party control all cash flowing into the bank account from enforcement forward until the secured party is repaid in full, or are there limitations? If there are limitations, what are they?

Yes. However, notwithstanding such security, the account bank may set off amounts held on the account against its claims against the owner of the bank account if the prerequisites for set-off exist (such set-off right of the account bank is, however, limited in insolvency in respect of certain current accounts). When notifying the account bank of security over bank accounts, the account bank is generally requested to acknowledge that it will not set off amounts held on the pledged accounts against its claims against the pledgor. It is also relatively common for account banks to be party to the transaction documents, sign up to the common terms and agree to receive their fee through the waterfall.

5.9 Use of Cash Bank Accounts. If security over a bank account is possible, can the owner of the account have access to the funds in the account prior to enforcement without affecting the security?

Generally, no. The pledged account must be blocked so that the account is in control of the pledgee or a third party acting on behalf of the pledgee, and the pledgor cannot dispose of the monies on the account. If the pledgor retains access until a trigger event, the security is likely to be ineffective or become subject to claw-back. See also question 6.3 below.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will your jurisdiction's insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a "stay of action")? If so, what generally is the length of that stay of action? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

Finnish law recognises two forms of formal insolvency proceedings of corporate obligors: (i) bankruptcy; and (ii) administration (i.e., restructuring) proceedings.

(i) Bankruptcy

Where the receivables have been sold to the purchaser and the sale has been duly perfected before the commencement of bankruptcy proceedings and is not subject to claw-back or recharacterisation, the receivables no longer belong to the seller's estate and cannot be used for the settlement of the seller's claims to its creditors. The purchaser may enforce its rights against the relevant obligor(s) independently notwithstanding the insolvency of the seller.

In the event of recharacterisation of the sale as a secured loan, and assuming that the transfer has been duly perfected, the purchaser would have a security interest in the receivables and could generally also enforce such security irrespective of the bankruptcy proceedings. In such event, the bankruptcy liquidator may, however, prohibit the purchaser from

enforcing its security over the receivables for a maximum period of two months for the reason of either determining the purchaser's right to enforce or protecting the interests of the bankruptcy estate.

(ii) Administration proceedings

In the event the seller is placed in administration, an automatic stay for enforcement actions against the seller applies. The automatic stay continues until the administration programme is approved. However, assuming true sale and due perfection of the transaction prior to the commencement of the proceedings, the purchaser would be entitled to retain any proceeds already received from the obligors and also to continue to collect payments from them.

In the event of recharacterisation of the sale as a secured loan, enforcement of such secured loan would be restricted during the stay.

6.2 Insolvency Official's Powers. If there is no stay of action, under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of its ownership rights over the receivables (by means of injunction, stay order or other action)?

An insolvency officer (a bankruptcy liquidator or an administrator) would have no right to prohibit the purchaser from exercising its rights to the sold receivables, provided that the sale has been duly perfected and the assets are not commingled with the seller's assets that form part of the insolvency estate.

In the event that the sale is recharacterised as a secured loan, the bankruptcy liquidator may prohibit the purchaser from enforcing its security over the receivables for a maximum period of two months for the reason of either determining the purchaser's right to enforce or protecting the interests of the bankruptcy estate.

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the seller's insolvency proceedings? What are the lengths of the "suspect" or "preference" periods in your jurisdiction for (a) transactions between unrelated parties, and (b) transactions between related parties? If the purchaser is majority-owned or controlled by the seller or an affiliate of the seller, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period? If a parent company of the seller guarantee's the performance by the seller of its obligations under contracts with the purchaser, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period?

The Finnish Act on the Revocation of Transactions in Bankruptcy of 1991 (the "Revocation Act") contains several grounds for the claw-back of transactions. In general, all types of transactions, including a sale of receivables, can be subject to claw-back.

Generally, any transactions made within the suspect period of five years may be subject to claw-back, where the transaction favoured certain creditors to the detriment of others, where the seller was insolvent at the time of the transaction or became insolvent as a result thereof and where the transaction is deemed inappropriate and the counterparty of the transaction was aware or should have been aware of the insolvent state of the seller and the inappropriate nature of the transaction.

In addition, the granting of security within a suspect period of three months may be subject to claw-back where the security was not agreed upon when the underlying debt was entered into, or the perfection measures were not taken without undue delay. For related parties, longer suspect periods apply.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding? If the purchaser is owned by the seller or by an affiliate of the seller, does that affect the consolidation analysis?

The seller will be treated as an isolated entity for Finnish law insolvency purposes, and assets will not be consolidated with the assets of the seller's affiliates.

6.5 Effect of Insolvency on Receivables Sales. If insolvency proceedings are commenced against the seller in your jurisdiction, what effect do those proceedings have on (a) sales of receivables that would otherwise occur after the commencement of such proceedings, or (b) sales of receivables that only come into existence after the commencement of such proceedings?

(a) After the commencement of bankruptcy proceedings, the seller may no longer dispose of its assets, and any sale of receivables by the seller would be invalid.

(b) Also, the sale of future receivables or receivables that have not been earned prior to commencement of bankruptcy proceedings, or that have not been duly perfected prior to commencement of bankruptcy proceedings, will not be effective in the event of the seller's insolvency.

Administration proceedings would generally have no effect on the existing contracts of the seller. However, administration proceedings will often result in a termination trigger event under the relevant sales contract.

6.6 Effect of Limited Recourse Provisions. If a debtor's contract contains a limited recourse provision (see question 7.4 below), can the debtor nevertheless be declared insolvent on the grounds that it cannot pay its debts as they become due?

A contractual limited recourse or non-petition clause would not generally preclude a Finnish company from being deemed to be insolvent and being placed in bankruptcy or administration.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in your jurisdiction establishing a legal framework for securitisation transactions? If so, what are the basics? Is there a regulatory authority responsible for regulating securitisation transactions in your jurisdiction? Does your jurisdiction define what type of transaction constitutes a securitisation?

The Promissory Notes Act (622/1947, as amended) is the primary piece of legislation governing the transfer of receivables. No

specific securitisation legislation exists. However, the EU Regulations related to securitisation have a direct effect in Finland. These include the EU Securitisation Regulation, Solvency II Regulation, Capital Requirements Regulation and Money Market Funds Regulation, each as amended, and delegated regulations and guidelines. The Finnish National Competent Authority under the EU Securitisation Regulation is the Finnish Financial Supervisory Authority.

7.2 Securitisation Entities. Does your jurisdiction have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

No such law exists in Finland.

7.3 Location and form of Securitisation Entities. Is it typical to establish the special purpose entity in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the special purpose entity in your jurisdiction? If offshore, where are special purpose entities typically located for securitisations in your jurisdiction? What are the forms that the special purpose entity would normally take in your jurisdiction and how would such entity usually be owned?

The special purpose vehicle is typically established offshore; for example, in Ireland.

7.4 Limited-Recourse Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) limiting the recourse of parties to that agreement to the available assets of the relevant debtor, and providing that to the extent of any shortfall the debt of the relevant debtor is extinguished?

A limited recourse clause that constitutes valid and binding obligations of the parties under the laws by which they are stated to be governed will, as a rule, be given effect by a Finnish court.

7.5 Non-Petition Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

A non-petition clause will be valid and binding as a contractual undertaking between the parties but is unlikely to be fully enforceable in all circumstances.

7.6 Priority of Payments "Waterfall". Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) distributing payments to parties in a certain order specified in the contract?

A waterfall clause that constitutes valid and binding contractual undertaking of the parties under the laws by which they are stated to be governed will, as a rule, be given effect as a contractual undertaking by a Finnish court. However, the enforceability of provisions in agreements between creditors and, as applicable, obligors, with respect to the ranking, priority and subordination of liabilities and obligations, is untested in the context of insolvency proceedings in Finland.

7.7 Independent Director. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) or a provision in a party's organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

Probably not, but this remains untested. All directors of the securitisation entity would have their primary duties to the entity itself and would generally have to be free to take an independent position on when to file (or not to file) for insolvency.

7.8 Location of Purchaser. Is it typical to establish the purchaser in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the purchaser in your jurisdiction? If offshore, where are purchasers typically located for securitisations in your jurisdiction?

The purchaser would typically be established offshore; for example, in Ireland.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in your jurisdiction, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in your jurisdiction? Does the answer to the preceding question change if the purchaser does business with more than one seller in your jurisdiction?

In general, the activity of purchasing receivables without simultaneously engaging in the activity of deposit taking or receiving repayable funds from the public (as defined in the Finnish Credit Institution Act (610/2014, as amended, implementing Directive 2013/36/EU)) is not subject to any authorisation or licensing requirements in Finland. However, for a credit institution or investment firm, receivables finance would qualify as ancillary service and would be allowed in Finland only if the credit institution or investment firm is duly licensed for such activities in Finland, or if such home state licence has been passported into Finland under EU passporting rules.

Debt collection is, in certain circumstances, subject to a registration requirement in Finland. Pursuant to the Finnish Act on Registration of Debt Collection Agencies (411/2018, as amended), collection of receivables on behalf of another, as well as the collection of one's own outstanding debts in cases where it is apparent that the outstanding debts have been received solely for the purpose of debt collection, requires registration with the Regional State Administrative Agency.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third-party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

Generally, no, provided that the servicer role is structured appropriately. For instance, the sole activity of providing an outsourced customer service function and sending invoices or payment requests/reminders on behalf of the purchaser, with instructions to make payments directly to the purchaser, is generally not considered a debt collection activity that would trigger a debt collector registration requirement. For more information on debt collection registration, please see question 8.1 above. Further, the servicer role should be structured so as not to involve such activities that constitute payment services within the meaning of Directive (EU) 2015/2366 on payment services in the internal market ("PSD2"), unless the servicer has a payment institution licence.

8.3 Data Protection. Does your jurisdiction have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

Sharing or transferring of any personal data constitutes processing of personal data. All processing of personal data must be carried out in compliance Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the "General Data Protection Regulation"). Under the General Data Protection Regulation, personal data cannot be shared with or transferred to entities outside the EU and the EEA, except where certain additional requirements are met.

As a general rule, transfer of receivables from seller to the purchaser should include the transfer of personal data relating to such receivables and that the parties (including the servicer, if applicable) should have data processing agreements in place as required under the General Data Protection Regulation.

The General Data Protection Regulation only addresses the personal data of individuals and does not apply to data concerning legal persons. Further confidentiality obligations may, however, apply with respect to information that may be disclosed by regulated entities, such as banks, investment firms or insurance companies.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of your jurisdiction? Briefly, what is required?

Consumers are protected under the CPA. Under the CPA, in respect of loans linked to goods or services, extended set-off rights exist due to the joint liability of the seller of consumer goods and the financier. Further, under the CPA, the enforcement of a receivable in the event of a default by the consumer obligor is subject to certain limitations regarding social *force majeure*. Under the CPA, a consumer has the right to repay a consumer credit in whole before it becomes due.

8.5 Currency Restrictions. Does your jurisdiction have laws restricting the exchange of your jurisdiction's currency for other currencies or the making of payments in your jurisdiction's currency to persons outside the country?

No, it does not.

8.6 Risk Retention. Does your jurisdiction have laws or regulations relating to "risk retention"? How are securitisation transactions in your jurisdiction usually structured to satisfy those risk retention requirements?

No national requirements or gold-plating apply in addition to the relevant EU Regulations. Any of the methods permitted in the relevant EU Regulations may be used in the Finnish market.

8.7 Regulatory Developments. Have there been any regulatory developments in your jurisdiction which are likely to have a material impact on securitisation transactions in your jurisdiction?

The most important legislative amendments to affect the Finnish securitisation market include the introduction of the EU Regulations mentioned in question 7.1 above. We understand that a regulatory project for securitisations has been initiated in Finland, but so far nothing has been published.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in your jurisdiction? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located? In the case of a sale of trade receivables at a discount, is there a risk that the discount will be recharacterised in whole or in part as interest? In the case of a sale of trade receivables where a portion of the purchase price is payable upon collection of the receivable, is there a risk that the deferred purchase price will be recharacterised in whole or in part as interest? If withholding taxes might apply, what are the typical methods for eliminating or reducing withholding taxes?

In Finland, withholding tax is generally not levied on any payments on receivables to a non-Finnish resident purchaser. Accordingly, the assessment of withholding tax liability should generally not be affected by the location of the purchaser, the nature of the receivables, term to maturity or the purchase price of the receivables.

9.2 Seller Tax Accounting. Does your jurisdiction require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

No, it does not. However, in the event the purchaser or any other special purpose vehicle is established offshore and such entity is deemed to have a permanent establishment in Finland, it is required that such entity keeps accounts for its activities (i.e., permanent establishment) in Finland. Generally, however, no permanent establishment is expected to arise for a special purpose vehicle in securitisation transactions involving Finnish receivables (please see question 9.6 below).

9.3 Stamp Duty, etc. Does your jurisdiction impose stamp duty or other transfer or documentary taxes on sales of receivables?

Finnish transfer tax is charged (generally at a rate of 1.5%) on any instrument effecting a transfer of securities. Receivables do not, however, normally qualify as securities for transfer tax purposes.

9.4 Value-Added Taxes. Does your jurisdiction impose value-added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

As a general rule, all commercial sale of goods and services in Finland is subject to value-added tax ("VAT"). VAT is levied on goods and services supplied in Finland by businesses, on the import of goods into Finland, and on intra-EU acquisitions.

The standard VAT rate is currently 25.5%, but lower rates apply to certain specific goods and services. Certain goods and services are also entirely excluded from VAT, such as financial and insurance services. The sale of receivables would generally qualify for this exemption.

However, servicing and debt collection are generally subject to Finnish VAT at the standard rate.

9.5 Purchaser Liability. If the seller is required to pay value-added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

Generally, claims are not made against the purchaser due to the seller omitting to pay VAT on its taxable supplies. However, when the reverse-charge mechanism applies, the purchaser may be liable for VAT.

9.6 Doing Business. Assuming that the purchaser conducts no other business in your jurisdiction, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in your jurisdiction?

A non-Finnish resident entity that does not have a permanent establishment in Finland may be liable to Finnish income tax on certain Finnish source income only, subject, however, to the provisions of an applicable double tax treaty. No such charge to Finnish income tax would generally be expected to arise for a non-Finnish resident entity from the mere act of acting as the purchaser of receivables or the appointment of the seller as the servicer and collection agent of the purchased receivables.

However, as of tax year 2021, the concept of place of effective management has been introduced to determine the tax residency of a foreign entity in Finland. Under the new rules, a foreign entity could be regarded as generally liable to tax in Finland if its place of effective management, i.e., the location where the day-to-day decisions of the highest company organ are made, is located in Finland. There is presently no legal praxis on the interpretation of the new rules.

9.7 Taxable Income. If a purchaser located in your jurisdiction receives debt relief as the result of a limited recourse clause (see question 7.4 above), is that debt relief liable to tax in your jurisdiction?

This would generally be dependent on whether or not the debt relief can be held to have an economical value at the time of the waiver. Unless the receivable is deemed entirely worthless for the creditor in accordance with the foregoing principles, a waiver of such receivable may be considered taxable income for the Finnish debtor.

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