

NB: Unofficial translation
Ministry of Employment and the Economy, Finland
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Act on Personnel Representation in the Company Administration (725/1990)
(as amended by the several Acts, including No. 220/2010)

GENERAL PROVISIONS

Section 1. Purpose of the Act

To advance the functioning of the company, to intensify cooperation between the company and its personnel and to increase the personnel's possibilities to exert influence in the company, the personnel shall have the right to participate in decision-making in executive, supervisory or advisory bodies of the company when they are handling matters of importance to the business operations, finances, and the personnel's position in the company. Personnel representation shall be arranged as provided by this Act.

Section 2. (1128/2007) Scope of application

This Act shall be applied to Finnish joint-stock companies, cooperatives and other economic societies, insurance companies, commercial banks, cooperative banks and savings banks that have a regular staff of at least 150 working in Finland. The scope of application of employee involvement in cross-border mergers and divisions shall be stipulated in sections 9 a–9 f of this act.

Section 3. Choice of the personnel representation system

Personnel representation can be arranged through an agreement, as provided in section 4. If no agreement can be reached on representation, the personnel is entitled to demand that representation be implemented in accordance with section 5.

AGREEMENT ON PERSONNEL REPRESENTATION

Section 4. Personnel representation based on agreement

Personnel representation in the administration of companies may be implemented as agreed in a meeting as referred to in section 9, subsection 1, of the Act on Co-operation within Undertakings (334/2007), or in the committee referred to in section 9, subsection 2 of the said Act, between the employer and at least two personnel groups as referred to in section 8 of the said Act that together represent the majority of the personnel. The outcome of negotiations shall be recorded as provided in section 54 of the Act. (339/2007)

The agreement mentioned above in subsection 1 cannot, however, be used to deviate from the provisions of sections 6, 11, 12 and 15 or from what has specifically been stipulated about the qualifications and responsibility of the members of the body in question.

PERSONNEL REPRESENTATION BASED ON LAW

Section 5. Personnel representation arranged in accordance with legal provisions

If no agreement is reached on personnel representation in the manner mentioned in section 4, and no provisions to the contrary are set below, and if a minimum of two personnel groups that together form the majority of the personnel so demand, the personnel shall have the right to nominate their representatives, with personal deputies, to one or more administrative bodies, selected by the

company from among the supervisory board, the board of directors, or such management groups or similar bodies that together cover the profit units of the company.

Personnel representatives shall be nominated in addition to the members elected by the company to the body in question. The number of personnel representatives may be total one quarter of the number of the rest of the members in the body in question; the minimum number of representatives shall, however, be one and the maximum number four. Personnel representatives shall have the same term of office as the rest of the members in the body, unless otherwise agreed in the manner referred to in section 4. If the maximum duration of the term has not been set or agreed, it shall last three years.

Unless otherwise agreed as referred to in section 4, personnel representation shall be implemented within one year after the conditions laid down in section 2 have been met and representation has been demanded. When a company that has implemented personnel representation alters its administrative structure, the representation shall also be altered to correspond to the new structure. If the change comes about as a result of a transfer of business, or a merger or demerger of companies, personnel representation may be altered later, but not beyond one year after the alteration of personnel representation has been demanded. (724/1997)

Notwithstanding the provisions of this section, agreement may be reached on changing personnel representation so as to be governed by an agreement under the provisions of section 4.

REPRESENTATIVES OF THE PERSONNEL (238/1993)

Section 6. (238/1993) Qualifications of a personnel representative

A personnel representative must be a legally competent person, who is employed by the company and is not bankrupt or under a ban on business operations.

Section 7. Election of personnel representatives

If personnel groups cannot agree amongst themselves on the election of personnel representatives, the representatives shall be elected, whenever applicable, following the procedure laid down for the election of a labour protection representative in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006).

The personnel groups referred to in the Act on Co-operation within Undertakings shall nominate the candidates in the election mentioned in subsection 1.

Section 8. Personnel representative's incapacity and resignation

If a personnel representative loses the qualifications referred to in section 6, resigns, or is prevented from carrying out his duties, he shall be replaced by his personal deputy until a new regular member is elected or the representative's incapacity ends.

Section 9. Personnel representative's rights, duties and responsibility

The personnel representatives and the members elected by the company to the administrative body shall have the same rights and duties, unless otherwise stipulated below. Whenever applicable, the provisions set forth elsewhere for the administrative body shall also apply to a body supplemented with personnel representatives.

Personnel representatives and their deputies shall have the right to examine the materials on any issue at hand to the same extent as the other members in the administrative body. Personnel representatives shall not, however, have the right to participate in the handling of matters that concern the election, dismissal and contract terms of the management of the company, the personnel's terms of employment, or industrial actions. The personnel representative's voting rights may be restricted through an agreement referred to in section 4.

If only one personnel representative is nominated to the company's board of directors, his deputy shall also be entitled to participate in meetings and voice his opinions.

EMPLOYEE INVOLVEMENT IN CROSS-BORDER MERGERS AND DIVISIONS (1128/2007)

Section 9 a. (1128/2007) Application of the legislation in the Member State a company is registered in

Employee involvement in the formation of a company that comes to be through a cross-border merger within the European Economic Area, the domicile of which is listed in law as Finland shall be determined in accordance with this act, unless sections 9 b—9 f state otherwise.

Section 9 b. (1128/2007) Application of European Company Regulation

If at least one company taking part in cross-border merger, has an employee involvement system in place that is in accordance with section 3, paragraph 12, of the Act on Employee Involvement in European Companies (SE) and European Social Cooperatives (SCE) (758/2004), the special negotiating body defined in section 4, subsection 2, of the said Act shall hold talks with decision-making bodies in the participating companies on the employee involvement systems. In this case, that which is defined in section 2, subsection 1, sections 4—12 and 14, section 16, subsection 1, paragraphs 1 and 7—9, section 16, subsection 2, section 18, subsection 1, section 19, section 28, subsections 2 and 3 and sections 29 and 30, of the said Act shall be applied to the involvement of the employees. Additionally, section 18, subsection 2, paragraph 2 shall be applied so that instead of the 25 per cent requirement, the requirement for application of sections 28-30 on employee involvement would be 33 $\frac{1}{3}$ per cent. Article 12, subsections 2—4 of Council Regulation (EC) No 2157/2001 on European Company rules and regulations shall also be applied to employee involvement.

However, companies participating in cross-border mergers can decide, without holding talks with employees, that they will apply the secondary provisions on employee involvement outlined in sections 28—30 of the Act on Employee Involvement in European Companies (SE) and European Social Cooperatives (SCE) immediately upon registering the company.

If at least one of the companies participating in the merger has an employee involvement system in place and if the company that comes to be as a result of the cross-border merger has such a system in accordance with subsections 1 and 2, the company in question must adopt a corporate form that enables its employees' rights of involvement.

Section 9 c (1128/2007) Decision to discontinue or not initiate talks

The special negotiating body referred to previously in section 9 b, subsection 1, can make a decision to not initiate or to discontinue talks. The decision requires an approving vote by at least two-thirds of the special negotiating body's members, who represent at least two-thirds of the personnel,

including votes by members, who represent personnel working in at least two member states. In this case, sections 9 b and 9 d–9 f shall not be applied.

Section 9 d (1128/2007) Restrictions on employee involvement

If at a time after talks are held with employees, the secondary provisions on employee involvement outlined in sections 28–30 of the Act on Employee Involvement in European Companies (SE) and European Social Cooperatives (SCE) are applied, the share of employee involvement in a company formed in a cross-border merger can be limited. However, the share of employee representatives in the formed company's administrative bodies cannot be less than one-third, if employee representatives, in at least one of the companies that participated in the merger, made up one-third of the board or other administrative body.

Section 9 e (1128/2007) Protection of employee involvement rights

If, as a result of a cross-border merger, a Finnish company merges with another Finnish company, the employees' rights of involvement shall not weaken the enactment of the cross-border merger for a period of three years following the merger.

Section 9 f. (1128/2007) Cross-border division

That which is stated previously on employee involvement in cross-border mergers, shall also apply, where applicable to cross-border divisions.

MISCELLANEOUS PROVISIONS

Section 10. Release from work and compensations

The company shall grant a personnel representative, referred to in this Act, release from his regular work for the time that he needs for the representation duties referred to in section 4 or 5 and for the directly related preparation work carried out by the personnel representatives together, and the company shall compensate him for the resulting loss of income. Any other time off and compensations shall be agreed upon between the company and the personnel representative separately in each individual case.

If the personnel representative participates in the meeting of an administrative body, referred to in this Act, outside his working hours, the company shall compensate him for the relevant expenses and pay a fee for attending the meeting.

Section 34 of the Act on Employee Involvement in European Companies (SE) and European Social Cooperatives (SCE) is applied to all which is previously stated in section 9 b, subsection 1, on the termination the special negotiating body members' employment and the loss of income that they incur, as well as compensation for negotiation body related expenses. (1128/2007)

Section 11. (1128/2007) Personnel representatives' protection against dismissals

The provisions of chapter 7, section 10, of the Employment Contracts Act (55/2001) on the termination of a shop steward's or an elected representative's as well as the member of the special negotiating body as defined in section 9 b, subsection 1, employment contract also apply to the termination of personnel representatives' and their deputies' employment contracts.

Section 12. Confidentiality

Unless otherwise stipulated elsewhere on the obligation of the members or deputy members of the administrative bodies to maintain confidentiality, any information that has been announced by the

company to constitute trade or professional secrets and deemed potentially harmful to the company or its contracting parties if disclosed to outsiders, may only be discussed by the workers, employees and personnel representatives who are affected by the said information. Even then, the information may not be disclosed to outsiders.

Information that concerns an individual's financial position, state of health or other private matters shall also be kept confidential unless the person in question has granted permission to disclose the information.

Section 31 of the Act on Employee Involvement in European Companies (SE) and European Social Cooperatives (SCE) is applied to the confidentiality obligation of members of the special negotiating bodies referred to previously in section 9 b, subsection 1, and the experts, who assist said members. (1128/2007)

Section 13. (220/2010) Supervision

Provisions on supervision of compliance with this Act are laid down in the Act on Cooperation Ombudsman (216/2010).

Section 14. (220/2010) Penalty of fine

On application, the court of law may order a company, under penalty of fine, to meet the requirements laid down in this Act. The application may be filed either jointly by the representatives of a minimum of two personnel groups, which together represent the majority of the personnel of the company, or by associations representing these personnel groups.

Section 15. (676/1995) Penalties

The punishment for violating section 11 is prescribed in chapter 47, section 4, of the Penal Code.

The punishment for violating the confidentiality duty prescribed in section 12 shall be pronounced in accordance with chapter 38, section 2, subsection 2, of the Penal Code, unless more severe punishment for the act is prescribed elsewhere in the law other than in chapter 38, section 1, of the Penal Code.

Section 16. Commencement

This Act enters into force on January 1, 1991. The obligations referred to in section 5, or related obligations, shall, however, be applied as of the first annual general meeting, or a similar meeting, to be held after July 1, 1992.

Any arrangements for personnel representation that have been carried out before the Act enters into force shall be considered arrangements based on section 4, unless at least two personnel groups that together represent the majority of the personnel of the company demand that these arrangements be changed.