

**THE FINNISH BAR ASSOCIATION**

July 2005

**ADVOCATES ACT**

(12 December 1958/496)

## Section 1

An “advocate” is a person who is registered in the Roll of Advocates as a member of the general Finnish Bar Association.

In the present Act, the Association referred to above, shall be called the “Bar Association”.

## Section 2

(30 July 2004/697) The by-laws of the Bar Association shall state at least the following:

- 1) the name of the Association;
- 2) the municipality in Finland where the Association has its registered seat;
- 3) the purpose of the Association;
- 4) the dues which the members are required to pay and how such dues shall be determined;
- 5) how the Board of the Association shall be set up and the term of office of the Board;
- 6) when the accounts of the Association shall be balanced and how the audit of the accounts and administration shall be arranged;
- 7) how the Delegation shall be elected and its activities otherwise arranged, as well as when the ordinary meeting of the Delegation shall be held and, if there are several such meetings, what matters shall be dealt with at each meeting;
- 8) how notices to the members of the Association shall be delivered;
- 9) how the by-laws of the Association shall be adopted; and
- 10) how the assets of the Association shall be used if the Association is disbanded or abolished.

In addition, the by-laws of the Association may contain other provisions on the Association and its members, as is necessary for the activities of the Association.

Once adopted in accordance with the relevant provisions in the by-laws, the by-laws of the Bar Association and any amendments thereto shall be ratified by decision of the Ministry of Justice and published in *The Statutes of Finland*.

### Section 2a

(28 February 1992/197) The powers of decision in matters regarding the Association are exercised by the Delegation, elected by the members of the Association. The activities of the Association are managed by the Board, elected by the Delegation, and the members of the Board must be advocates.

### Section 3

A citizen of Finland or another state within the European Economic Area, who has reached the age of 25 years, may be accepted as an advocate, if:

- 1) he is known to be honest and in respect of his other characteristics and way of life suitable for the profession of advocate;
- 2) he has passed the academic requirements stipulated in Finland for judicial office, and he has acquired the skills required for practice as an advocate and he has acquired the practical experience stipulated in the by-laws of the Bar Association; and
- 3) he is not a bankrupt and has full legal capacity (1 April 1999/458)

In accordance with international commitments that have entered into force in Finland, a person mentioned under paragraph 1, who holds the professional qualifications of an advocate in one of the states of the European Economic Area, may be accepted as an advocate, the provisions in paragraph 1, subparagraph 2, notwithstanding. In such cases the applicant must prove, in an examination arranged by the Association, that he has sufficient knowledge of Finnish legislation and of the practice of law in Finland. Specific instructions regarding the examinations are given in the Decision of the Ministry of Justice regarding the confirmation of the by-laws of the Bar Association. (8 January 1993/31).

The provisions under paragraph 1, subparagraph 2, and paragraph 2 notwithstanding, a person according to paragraph 1, who holds the professional qualifications of an advocate in a member state of the European Union, may be accepted as an advocate. Acceptance as an advocate under this paragraph is subject to the applicant having been registered for at least three years in the EU register kept by the Bar Association under section 5 b, paragraph 1, and proving the regular pursuit of the profession of an advocate in Finland, as specified in the Decision by the Ministry of Justice (191/1959) on the ratification of the by-laws of the Bar Association, for at least that period. (23 December 1999/1249)

A person who holds a State or municipal office or who is in other service based on an employment relationship in the public sector cannot be an advocate, unless the Board of the Bar Association agrees thereto for special reasons. Furthermore, a person who is in the service of another or who is engaged in other gainful employment in a manner which can be presumed to be detrimental to his independence as an advocate, shall not be an advocate.

#### Section 4

The Board of the Association shall have the power to admit the members of the Bar Association. Should an application be rejected, the reasons for such a decision must be given.

The Board of the Bar Association shall keep the Roll of Advocates and the EU register referred to in section 5 b, paragraph 1, and an extracts of them must annually be sent to the Ministry of Justice. The Board must keep the Rolls for public inspection and everybody has the right to receive a copy of the Roll or the EU register or part of them for a reasonable fee. (28 February 1992/197)

#### Section 5

An advocate shall honestly and conscientiously fulfil the tasks entrusted to him and he shall, at all times, observe the rules of proper professional conduct for advocates.

The practice of advocacy in a company is not allowed, except with another advocate, unless the Board of the Bar Association grants a permit based upon specific grounds. The practice of advocacy in the form of a limited liability company is allowed only by permit from the Board of the Bar Association and upon the specific conditions set forth in it. The by-laws of such a limited liability company may be amended only if a similar permit has been obtained. A shareholder of such a company is liable for all the obligations emanating from a mandate jointly and severally with the company. If a mandate is handled by someone who is not an advocate-shareholder, or if it is not known, who is responsible for the mandate, every advocate-shareholder is jointly and severally with the company responsible for an obligation, which has emanated while he held such a position in the company. An advocate is not allowed to practise law abroad, outside the states of the European Economic Area, without permission by the Board of the Bar Association. (8 January 1993/31).

An advocate must keep any funds and other assets of his clients separate from his own assets.

The obligation of an advocate to assist or represent someone in a trial, if ordered by a court of law, shall be governed by separate provisions.



#### Section 5a

(8 January 1993/31). Anyone entitled to practise advocacy in one of the states of the European Economic Area must, when pursuing a mandate in Finland, use the professional title used in his home member state, expressed in one of the languages of that state, with an indication of the professional organisation of which he is a member, or the court of law before which he is entitled to practise. When representing a client before a court of law or an authority and also when pursuing other practice, an advocate shall observe the rules of professional conduct of Finland, as well as his obligations in his home member state.

Concerning the obligations of the Board of the Bar Association to supervise the activities of an advocate mentioned under paragraph 1 in Finland, the same rules apply as stipulated below regarding a member of the Bar Association. A decision, in which an advocate is declared to have acted in breach of the rules of proper conduct as an advocate, shall be notified by the Board of the Bar Association to the appropriate authority in the home member state of the advocate.

#### Section 5b

(23 December 1999/1249) An advocate qualified to practise law in a member state of the European Union, is entitled to be included in the register administered by the Bar Association of advocates using the professional title of their home member state and qualified to practise advocacy in another member state (*EU register*).

The provisions on advocates in law and the Decision of the Ministry of Justice on the by-laws of the Finnish Bar Association, apply to an advocate registered in the EU register, where applicable. An advocate registered in the EU register shall pursue his practice in accordance with the provisions concerning the practice of advocacy in Finland.

Before beginning a disciplinary matter against an advocate registered in the EU register, the Bar Association shall notify the proper authority in the home member state of the advocate. The disciplinary matter is conducted in co-operation with this authority, but without prejudice to the right of decision by the Bar Association.

#### Section 5c

(21 April 1995/626) An advocate or his assistant shall not, without due permission, disclose the secrets of an individual or family or business or professional secrets which have come to his knowledge in the course of his professional activity.

Breach of the obligation of confidentiality provided for under paragraph 1 above shall be punishable in accordance with chapter 38, section 1 or 2, of the Penal Code, unless the law otherwise provides for more severe punishment for the act.



### Section 6

(30 July 2004/697) The Board of the Bar Association shall supervise that advocates fulfil their obligations when appearing in a court of law or before another authority as well as in their other activities. An advocate has an obligation to supply the Board with the information required for this supervision. Moreover, an advocate shall permit a person designated by the Board to carry out an audit in his office, where the Board deems this necessary for the exercise of the supervision, and in this context present the documents required for carrying out the audit. A member of the Board and the auditor shall not without authorisation disclose any secret information learned in the context of the supervision.

When deciding issues pertaining to membership in the Bar Association, the members of the Board shall have the responsibility of public officials.

The Chancellor of Justice has the right to initiate a supervision matter referred to in section 7c, if he deems that the advocate is in violation of his or her duties. The Chancellor of Justice has likewise the right to demand that the Board of the Bar Association undertake measures against an advocate, if he deems that the latter has no right to serve as an advocate. The Board of the Bar Association and the advocates shall supply the Chancellor of Justice with the information and accounts necessary for the performance of the duties assigned to him under this Act.

### Section 6a

has been repealed by the Act of 30 July 2004/697.

### Section 7

(30 July 2004/697) The Disciplinary Board of the Bar Association considers and decides supervision matters, as referred to in section 7c, as well as issues recommendations on fee disputes between an advocate and the client, as referred to in section 7e.

If it is found, on the basis of circumstances discovered in the consideration of a supervision matter, that an advocate has violated the provisions of section 5, paragraph 1, the Disciplinary Board shall impose a *disciplinary sanction* on the advocate; the disciplinary sanctions are disbarment, monetary penalty, caution and reprimand.

If an advocate acts dishonestly or otherwise deliberately violates the interests of another person while practicing advocacy, the advocate shall be disbarred. If there are mitigating circumstances, a monetary penalty or a caution may be imposed instead.



If an advocate otherwise acts in violation of proper professional conduct, a caution or a reprimand shall be imposed. If the advocate engages repeatedly in conduct referred to in this paragraph or paragraph 3, or if there are aggravating circumstances, the advocate may be disbarred or a monetary penalty imposed. The provision above in this paragraph applies also if an advocate commits an act detrimental to the reputation of the Bar.

The monetary penalty, payable to the Bar Association, shall be no less than EUR 500 and no more than EUR 15,000; the assessment of the amount of the penalty shall be based on the censurability of the misconduct, the experience of the advocate and the advocate's financial position, so that the penalty is in just proportion to the misconduct.

The Disciplinary Board may decide that a decision on disbarment is to take effect notwithstanding any appeal.

An advocate entered into the EU Register shall be struck from that register under the same conditions that govern the disbarment of an advocate.

#### Section 7a

(30 July 2004/697) The Disciplinary Board shall be composed of the chairperson and eight other members, as well as personal alternates for the members. The chairperson, five members and the alternates for these members shall be advocates. Three members and the alternates for these members must not be members of the Bar, but they shall hold university degrees in law and be well versed in advocacy and also in adjudication or the academic research or teaching of law. The term in office of the members and the alternates shall be three years.

The Delegation of the Bar Association shall elect the chairperson of the Disciplinary Board and the members and alternates who are advocates. The Government shall appoint the members and alternates who are non-members of the Bar on the proposal of the Ministry of Justice, issued after the Ministry receives the favourable opinion of the Bar Association concerning the qualifications of the candidates. The request for the opinion shall present double the number of candidates as there is positions.

The members of the Disciplinary Board have the responsibility of judges; they shall not without permission disclose any secret information learned in the context of a supervision matter or a fee dispute.



### Section 7b

(30 July 2004/697) The Disciplinary Board may operate in three divisions. The Disciplinary Board shall set up the divisions so that each is composed of two advocates and one non-member of the Bar. The chairperson of the Disciplinary Board and two vice chairpersons elected annually by the Disciplinary Board from among its members shall serve as division chairpersons. However, in a fee dispute, the non-member of the Bar shall serve as the chairperson of the division.

Cases are dealt with by the divisions of the Disciplinary Board or by the whole Board sitting in plenary session. The plenary session shall have a quorum with the chairman or a vice chairman and no less than six other members are present. A division of the Disciplinary Board shall have a quorum with all of its members present.

If there is no consensus, the case shall be decided by taking a vote in accordance with the procedure applied in a multi-member court of law. However, in the decision-making relating to a supervision matter, the voting procedure provided in chapter 10 of the Criminal Procedure Act (689/1997) shall be applied.

### Section 7c

(30 July 2004/697) A supervision matter shall become pending when a written complaint against an advocate, a notice by the Chancellor of Justice or a notice issued by a court of law under chapter 15, section 10a, of the Code of Judicial Procedure is received at the Office of the Bar Association. A matter shall become pending also where the Board of the Bar Association has decided to refer a matter before it to be dealt with by the Disciplinary Board.

If a complaint contains such shortcomings that the matter cannot be taken up for a decision on the basis thereof, the complainant shall be exhorted to remedy the shortcomings within a set period. At the same time, the complainant shall be advised of the nature of the shortcomings and of the fact that the Disciplinary Board may decline to consider the matter if the complainant fails to heed the exhortation. The Disciplinary Board shall not reopen the consideration of an already decided case on the basis of a new complaint, unless the complaint contains relevant new information.

If the events covered by the complaint have occurred more than five years previously, the Disciplinary Board may decline to consider the complaint.



#### Section 7d

(30 July 2004/697) Supervision matters shall be dealt with by a division of the Disciplinary Board or by the whole Board in plenary session. Matters so assigned by the chairperson of the Disciplinary Board or reassigned by the divisions shall be dealt with in plenary session. Decisions on disbarment and the imposition of a monetary penalty shall always be made in plenary session.

Written procedure shall be applied in a supervision matter. However, a decision on disbarment or the imposition of a monetary penalty may be made only if an oral hearing has been held in the case. The Disciplinary Board or a division may hold oral hearings also under other circumstances. The advocate concerned and the complainant shall be summoned to the oral hearing.

The advocate shall be reserved an opportunity to be heard before the case is decided. The advocate shall supply the required information and accounts openly and truthfully. The complainant shall be reserved an opportunity to comment on the response of the advocate. The Disciplinary Board and a division shall also otherwise see to it that the matter is investigated thoroughly.

#### Section 7e

(30 July 2004/697) A fee dispute shall become pending when the written application of the client or some other customer of an advocate is received at the Office of the Bar Association. If the application contains such shortcomings that the matter cannot be taken up for a decision on the basis thereof, the applicant shall be exhorted to remedy the shortcomings within a set period. At the same time, the applicant shall be advised of the nature of the shortcomings and of the fact that the Disciplinary Board may decline to consider the matter if the applicant fails to heed the exhortation.

The parties to a fee dispute shall be the advocate and the firm to whose account the advocate has acted, as well as the applicant. The advocate and the firm shall be reserved an opportunity to be heard before the case is decided. The applicant shall be reserved an opportunity to comment on the response of the advocate and the firm.

A fee dispute shall be dealt with by a division of the Disciplinary Board, applying written procedure. The division may hold an oral hearing; the parties shall be summoned to the oral hearing.

No recommendation shall be issued if the applicant's right to demand a fee reduction has expired.

A recommendation cannot be compulsorily enforced and it does not have the legal effects of a court judgment.



#### Section 7f

(30 July 2004/697) If the same fee dispute is pending both in a court of law and in the Disciplinary Board, and the customer of the advocate so notifies the court before responding to the substance of the case, the court shall stay the proceedings until such time that the Disciplinary Board has issued its recommendation.

#### Section 7g

(30 July 2004/697) The decision issued in a supervision matter or a fee dispute shall be issued as a specific document. The document shall indicate:

- 1) the type of the case and the date of issue of the decision;
- 2) the names of the parties and the complainant;
- 3) a description of the claims and responses made in the case, with reasons;
- 4) a statement of the reasons for the decision;
- 5) the legal provisions, sections in the by-laws of the Bar Association and rules of proper professional conduct applied in the case;
- 6) the result of the case; and
- 7) the names and positions of the persons participating in the decision and a note of whether a vote was taken; if a vote was taken, the dissenting opinions shall be attached to the decision document.

Instructions shall be attached to a decision on a fee dispute, informing the applicant of the procedure to follow if the applicant wishes to bring the dispute to be decided by a court of law.

#### Section 7h

(30 July 2004/697) A public diary shall be kept on the supervision matters and fee disputes dealt with in the Bar Association, containing information on the complainant or applicant, the advocate, the firm where applicable, the type of case, the date of issue of the decision and the result of the case. The diary shall also indicate the status of pending cases. The public diary shall also contain an indication of whether the advocate has complied with the recommendation issued by the Disciplinary Board in a fee dispute.

Entries shall be deleted from the public diary:

- 1) in ten years, when the information concerns disbarment or the imposition of a monetary penalty;
- 2) in six years, when the information concerns a caution; and
- 3) in three years, when the information concerns a reprimand or a supervision matter where no sanction has been imposed.



Entries shall be deleted from the public diary in three years from the issue of the recommendation.

However, an entry shall not be deleted if the public diary contains more recent information on the advocate concerning a sanction or fee reduction, and that information cannot yet be deleted under paragraphs 2 or 3.

#### Section 7i

(30 July 2004/697) A public summary shall be drawn up of the decisions in supervision matters and fee disputes. The summary shall indicate:

- 1) the type of case and the date of issue of the decision;
- 2) the name of the advocate concerned and, in a fee dispute, also the name of the firm;
- 3) a summary of the case and the reasons for the decision;
- 4) the legal provisions, sections in the by-laws of the Bar Association and rules of proper professional conduct applied in the case;
- 5) the result of the case; and
- 6) the names and positions of the persons participating in the decision and a note of whether a vote was taken; if a vote was taken, the result supported by those in dissent, with reasons, shall be attached to the public summary.

The Bar Association shall keep the public summary available to the public for as long as the entry on the decision is maintained in the public diary in accordance with section 7h.

#### Section 7j

(30 July 2004/697) Access to the documents provided to the Disciplinary Board for the consideration of a supervision matter or fee dispute shall be governed by the provisions on an official document in the Act on the Openness of Government Activities (621/1999), in so far as not otherwise ensues from an advocate's duty of confidentiality.

However, there shall be no access to a document before the decision of the Disciplinary Board has been issued or it is available to the parties.

#### Section 8

(23 December 1999/1249) A person disbarred from membership in the Bar Association or struck from the EU register as a disciplinary sanction, may, after three years have passed from the disbarment or removal, on application be re-entered as a member of the Association or correspondingly be re-registered in the EU register.

### Section 9

(30 July 2004/697) An advocate who loses the citizenship of a state mentioned in section 3, is bankrupt, or no longer has full legal capacity, shall cease to be a member of the Bar Association and the Board shall strike him or her from the Roll of Advocates.

If an advocate listed in the EU register ceases to be an advocate in his or her home Member State, he or she shall be struck from the EU register.

If an advocate no longer meets the qualifications referred to in section 3, paragraph 1, subparagraph 1, the Board shall disbar him or her.

If an advocate ceases to practise the profession of advocate or if he or she, for a reason referred to in section 3, paragraph 4, no longer is entitled to serve as an advocate, he or she shall resign from the Bar Association. If he or she does not resign without delay, the Board shall disbar him or her.

### Section 10

(30 July 2004/697) A person whose application under section 3, paragraph 4, or section 4, paragraph 1, has been rejected or who has not been entered into the EU register, or who has been sanctioned or struck from the Roll of Advocates or the EU register, has the right to appeal against the decision of the Board or the Disciplinary Board to the Helsinki Court of Appeal.

The Chancellor of Justice has the right to appeal the decisions of the Board or the Disciplinary Board on matters referred to in sections 7 and 9.

The period for filing an appeal is thirty days. The appeal period begins on the date of service of the decision on the recipient. At the latest on the last day of appeal period, before the end of government office hours, a written appeal addressed to the Helsinki Court of Appeal shall be delivered to the Office of the Bar Association, at the risk of loss of standing. The Bar Association shall without delay forward the appeal and its annexes, a copy of the decision, and its own statement on the appeal to the Court of Appeal.

When hearing the appeal, the Court of Appeal shall reserve the Chancellor of Justice, the Bar Association and the complainant an opportunity to be heard on the appeal and, where necessary, to submit evidence and other information.

### Section 11

Should a person who is not an advocate use the professional title of advocate to refer to himself, or refer to his office as an advocate's office, or otherwise announce his professional field in a way that he may erroneously be presumed to be a member of the general Bar Association, he shall be fined.

Criminal charges based upon the act referred to in paragraph 1 may be instigated by a public prosecutor or the Bar Association.

### Section 12

The Bar Association may establish funds to pursue its aims and to care for advocates and their families, by gathering special dues from its members.

### Section 13

The provisions of this Act shall not restrict the right to represent or assist someone in a court of law.

### Section 13a

(31 August 2001/765) The provisions of this Act and of the Decision by the Ministry of Justice (191/1959) on the ratification of the by-laws of the Bar Association on a person qualified to practice advocacy in a Member State of the European Union shall apply also to a person qualified to practice advocacy in a state with which the European Union and the Member States thereof have concluded an agreement on the mutual recognition of professional qualifications.

### Section 14

This Act shall enter into force on 1 July 1959.

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The provisions on entry into force and implementation of the latest amendment Act (30 July 2004/697) are as follows:

This Act enters into force on 1 November 2004.

This Act applies also to supervision matters and fee disputes pending at its entry into force. As regards sanctions, any acts or omissions shall be assessed by applying the legislation resulting in the more lenient sanction against the advocate.

The term of the Disciplinary Board in office at the entry into force of this Act shall continue until its set conclusion. Notwithstanding the provision in section 7a, paragraph 1, the first appointment of the third non-member of the Bar and the respective alternate shall be for a term of one year.

Measures necessary for the implementation of this Act may be undertaken before its entry into force.