

Insolvency - Finland

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Insolvency proceedings in Finland

Insolvency means that a debtor is other than temporarily unable to pay their debts when they fall due. Here, insolvency proceedings refer to a proceeding which applies simultaneously to all of the debtor's debts.

There are three different types of insolvency proceedings in Finland: bankruptcy, restructuring of an enterprise, and adjustment of the debts of a private individual. Bankruptcies are governed by the provisions of the Bankruptcy Act (*Konkurssilaki 120/2004*), which entered into force on 1 September 2004. The Restructuring of Enterprises Act (*Laki yrityksen saneerauksesta 47/1993*) and the Act on the Adjustment of the Debts of a Private Individual (*Laki yksityishenkilön velkajärjestelystä 57/1993*) entered into force on 8 February 1993.

Bankruptcy is a liquidation procedure aimed at realising a debtor's assets and distributing the proceeds to the creditors. Restructuring of enterprises and the adjustment of the debts of private individuals are rehabilitation procedures to restore financial soundness and allow debtors to overcome their financial difficulties.

A debtor may also reach an agreement with their creditors on the payment of the debts and other arrangements outside official insolvency proceedings. There are no legal provisions governing arrangements which take place on voluntary basis.

1 Who may insolvency proceedings be brought against?

Bankruptcy

Bankruptcy is of general application, so both natural and legal persons may be declared bankrupt. A legal person may be declared bankrupt even if they have been removed from the relevant register or dissolved. A decedent's estate may also be declared bankrupt.

Restructuring

Any undertaking engaged in economic activity may be the subject to restructuring proceedings, as can a private entrepreneur. Certain undertakings, however, such as credit and insurance institutions subject to special regulation and control, are beyond the scope of restructuring proceedings.

Debt adjustment

Debt adjustment may only be granted to a natural person. A natural person who is pursuing a private business or who is pursuing a business in an unlimited partnership or as the general partner in a limited partnership may also be granted a debt adjustment under certain conditions.

2 What are the conditions for opening insolvency proceedings?

The general requirement for opening all three types of insolvency proceedings is that the debtor is insolvent. Insolvency means that a debtor is other than temporarily unable to pay their debts when they fall due. Restructuring proceedings can also commence where the debtor is at risk of insolvency.

Bankruptcy

Either the debtor or a creditor may petition for bankruptcy. The general prerequisite for a declaration of bankruptcy is the insolvency of the debtor. The Bankruptcy Act provides for insolvency assumptions to make it easier to establish whether someone is insolvent; a debtor who meets those assumptions shall be deemed insolvent, unless it is otherwise proven.

A debtor shall be deemed insolvent if:

1. the debtor declares that they are insolvent and there are no special grounds for not accepting that declaration;
2. the debtor has discontinued payments;
3. it has been determined in enforcement proceedings during the six months preceding the filing of the petition for bankruptcy that the debtor cannot repay the claim in full; or
4. a debtor, who is or who has been under the obligation to keep accounts during the year preceding the filing of the petition for bankruptcy, has not repaid the clear and due claim of the creditor within a week of the receipt of a reminder.

A creditor may petition for bankruptcy if their claim against the debtor is based on a judgment or other grounds for enforcement, a commitment signed by the debtor, which is not contested by the debtor with obvious justification, or is otherwise clear. The amount claimed does not have to be overdue. There are restrictions on petitioning for bankruptcy on the basis of insignificant claims and in cases where the creditor holds a security for the claim.

The court appoints an estate administrator and ensures that a notice of the commencement of bankruptcy is published in Finland's Official Journal without delay. The notice may also be published in any daily newspaper. It is the duty of the estate administrator to inform the creditors of the commencement of bankruptcy proceedings. A note of the commencement of bankruptcy proceedings is also made in, among other things, the Register on Bankruptcies and Reorganisations, the Trade Register, the Title and Mortgage Register, the Register of Ships, the Register of Ships under Construction, the Aircraft Register, the Enterprise Mortgage Register, the Vehicular and Driver Data Register and the Book-Entry Register.

Restructuring

A petition for restructuring proceedings may be filed by the debtor or a creditor. Most petitions are made by debtors.

Restructuring proceedings may be commenced if the debtor is insolvent and there are no legal barriers to the commencement of the proceedings. A barrier exists, for example, when it is probable that the restructuring programme will not remedy the insolvency or that the debtor's assets are not sufficient to cover the costs of the restructuring proceedings. Restructuring proceedings can also commence when the debtor faces imminent insolvency. Restructuring proceedings on the basis of imminent insolvency may be commenced on the petition of a creditor only if the claim concerns a considerable financial interest. Additionally, restructuring proceeding may be initiated by at least two creditors whose total claims represent at least one fifth of the debtor's known debts, and they file a joint petition with the debtor or declare that they support the debtor's petition.

The court shall publish an announcement of a decision to commence restructuring proceedings in the Official Journal of Finland. It is the duty of the insolvency practitioner to give notice of the commencement of the proceeding to the creditors. The commencement of restructuring proceedings shall also be notified to certain authorities, as well as entered into, among other things, the Register on Bankruptcies and Reorganisations, the Trade Register, the Title and Mortgage Register.

The legal consequences of the commencement of restructuring proceedings shall automatically come into effect from the date of the judgment opening the proceedings. After filing the petition, the court may, upon request by the petitioner or the debtor, order an interdiction of the repayment of the debts and the security provision for debts, an interdiction of debt collection, or an interdiction of distraintment or other enforcement measures to take effect prior to the commencement of the proceedings.

Debt adjustment

A debt adjustment case becomes pending upon the petition of the debtor. The commencement of debt adjustment proceedings requires that the debtor is insolvent and cannot reasonably improve his ability to pay so as to be able to service their debts. The main reason for the insolvency must be an essential decline in the ability of the debtor to pay, owing to a change of circumstances not primarily the fault of the debtor, such as illness. Debt adjustment may also be granted if there is otherwise a good reason for debt adjustment in view of the proportion of the debts and other liabilities of the debtor to their ability to pay them. When assessing the ability of the debtor to pay, the debtor's assets, income and earning potential, for example, are taken into account.

There must be no impediment in law to the debt adjustment proceedings (e.g. debt incurred through an offence or reckless and irresponsible incurrance of debt). However, debt adjustment may be granted notwithstanding a general impediment if there is a good reason for doing so. In such cases, attention shall be particularly paid to the measures taken by the debtor to repay their debts, how long the claimed amounts have been overdue and other circumstances of the debtor, as well as the significance of the debt adjustment in terms of both the debtor and the creditors.

The legal effects of the commencement of the debt adjustment shall automatically take effect from the date of the judgment opening the proceedings. After filing the petition, the court may, upon request by the debtor, order a temporary interdiction of the repayment of debts and the provision of security for debts, or debt collection, or distraintment and other enforcement measures to take effect prior to the commencement of the proceedings.

3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

Bankruptcy

The assets that the debtor has at the start of bankruptcy and the assets that the debtor acquires before the conclusion of bankruptcy shall be assets of the bankruptcy estate. The proceeds of assets of the bankruptcy estate, as well as assets that can be recovered to the estate and assets that are acquired by way of substitution to the bankruptcy estate, shall likewise be assets of the bankruptcy estate.

As a rule, non-distraintable assets shall not be assets of the bankruptcy estate. In addition, the assets acquired or the income earned by a natural person after the beginning of bankruptcy shall not be assets of their bankruptcy estate.

Restructuring

In the restructuring proceedings, a restructuring programme is prepared for the debtor. The programme shall contain, for example, an account on the financial status of the debtor, i.e. of the assets, liabilities and other undertakings of the debtor. The restructuring programme shall be prepared on the basis of the entire assets of the debtor at the time of the proceedings. Recovery is also possible: a transaction that could be reversed if a bankruptcy application had been filed instead of a restructuring application may be reversed in the restructuring proceedings on the same grounds as in the case of bankruptcy.

Although under exceptional circumstances it is possible to amend the restructuring programme after its approval, the amounts of payments to be made to each creditor can no longer be increased by amending the programme. However, assets transferred to

the debtor after the approval of the restructuring programme may provide grounds for creditors to demand supplementary payments from the debtor. The debtor may be ordered to make supplementary payments, if the state of the finances of the debtor is deemed better compared to the time the programme was prepared. A demand for supplementary payments may be filed if there are grounds for demanding such payments, and the demand shall be filed with the court no later than one year after the presentation of the final report to the court.

Debt adjustment

When assessing the ability of the debtor to pay, account must be taken, for example, of the funds from the liquidation of the assets of the debtor, the income of the debtor and the debtor's earning potential, the necessary living expenses and maintenance liability. In debt adjustment, a payment schedule corresponding to the ability of the debtor to pay shall be confirmed for the debtor. In debt adjustment, all of the income of the debtor exceeding their necessary living expenses and maintenance liability shall be used to cover the debts, as well as other assets of the debtor which do not belong to the basic necessities of the debtor. The assets considered to be the basic necessities of the debtor include the owner-occupied home of the debtor, the furniture therein insofar as reasonable, and the personal effects and working implements of the debtor insofar as reasonably necessary. The assets which are considered the basic necessities of the debtor may be liquidated only in the cases provided for by law.

In addition, the payment schedule may obligate the debtor to make supplementary payments due to additional income or assets received by the debtor during the payment schedule. The debtor is obligated to forward to the creditors a certain proportion of any gifts and other one-off payments received by the debtor during the payment schedule. Where the income of the debtor exceeds the income established for the payment schedule, the debtor may be ordered to pay a certain proportion of the additional income to the creditors.

4 What powers do the debtor and the insolvency practitioner have, respectively?

Bankruptcy

A declaration of bankruptcy is a matter for a court to determine. The court also appoints the estate administrator. A person may be appointed as an estate administrator, if he or she consents to the appointment, has the ability, skills and experience required for the duty, and is also otherwise suitable for the duty. The estate administrator shall not have a relationship with the debtor or the creditor that would compromise the administrator's independence of the debtor or impartiality towards the creditors, or their ability to perform the task in an appropriate manner. A legal person cannot be appointed as an estate administrator.

The estate administrator has a central role in the administration of an estate in bankruptcy. Among other things, the duties of the estate administrator include representing the bankruptcy estate, seeing to the current management of the estate, drawing up the estate inventory and the debtor description, receiving the lodgement of claims, and drawing up the disbursement list. The estate administrator also sees to the management and sale of assets belonging to the estate and disbursement of the funds.

Upon commencement of bankruptcy, the debtor shall lose their authority over the assets of the bankruptcy estate. The debtor shall be cooperative so that the bankruptcy proceedings can be brought to a conclusion. The debtor must disclose information to the estate administrator as is necessary for the drawing up of the estate inventory and to attest the estate inventory. The debtor shall have the right to receive information on the estate, attend the creditors' meetings, and to express opinions on matters under decision.

Restructuring

Upon commencement of proceedings to restructure an enterprise, the court shall appoint an insolvency practitioner. The insolvency practitioner shall be an adult, known to be honest, not bankrupt and with full legal competency. This person shall have the ability, skills and experience needed for the position. The insolvency practitioner shall not have such a relationship with the debtor or with any of the creditors that may compromise their independence from the debtor or their impartiality towards the creditors. A legal person cannot be appointed as an insolvency practitioner.

The insolvency practitioner is responsible for realising the purpose of the proceedings and for protecting the interests of the creditors. The insolvency practitioner prepares a report of the debtors' assets and liabilities and a proposal for a restructuring programme. The insolvency practitioner also supervises the debtor's activities.

The court may appoint a committee of creditors to represent the creditors and to act as an advisory body to assist the insolvency practitioner in the performance of their duties. A committee is not appointed if this is deemed unnecessary owing to the small number of creditors or some other reason.

The debtor shall retain the authority over their assets and activities, unless otherwise stipulated by law. However, after the commencement of the proceedings, the debtor shall not without the consent of the insolvency practitioner, for example, take on

new debt, unless the debt is connected with the regular activities of the debtor and its amount and terms are not unusual. On the request of the insolvency practitioner or a creditor, the authority of the debtor may be restricted also in other ways, if there is a risk of the debtor acting in a way that would harm or compromise the interests of the creditor. The debtor is required to cooperate with and provide information to the court, the insolvency practitioner and the committee of the creditors. The debtor shall continue to be entitled to exercise their right of action in pending or upcoming court proceedings, unless the insolvency practitioner decides to undertake to exercise the debtor's right of action.

Debt adjustment

Where necessary, the court may appoint an insolvency practitioner for debt adjustment, where necessary for the clarification of the financial status of the debtor, the liquidation of his assets or otherwise for the realisation of the debt adjustment. A person may be appointed as insolvency practitioner, if they are an adult, and are known for their integrity, not bankrupt, not subject to restrictions of competence and that they consent to the appointment. The insolvency practitioner must have the competence, skills and experience required by their duties. They shall not have a relationship with the debtor or any of the creditors which might compromise their independence from the debtor or their impartiality towards the creditors. A legal person cannot be appointed as an insolvency practitioner.

The duty of the insolvency practitioner, if any, is to draw up the draft payment schedule and perform the other duties imposed by the court on the insolvency practitioner. When drawing up the draft payment schedule, the insolvency practitioner shall negotiate with the debtor and the creditors and provide them with the necessary information on the debt adjustment, as well as reserve for them an opportunity to submit a statement on the petition and the draft payment schedule. The insolvency practitioner may also be appointed to see to the liquidation of the assets of the debtor, as well as to the passing of the liquidation funds to the creditors. If no insolvency practitioner is appointed, the debtor shall be responsible for drawing up a draft payment schedule. The commencement of proceedings to adjust the debts of a private individual is a matter for a court to determine. The court is also responsible for confirming the payment schedule.

The debtor shall retain the title and right of possession to their assets. However, all assets of the debtor which are not considered the basic necessities of the debtor shall be used to cover the debts. The debtor is required to provide the court, the creditors and, if appointed, the insolvency practitioner with all necessary information on matters relevant to debt adjustment. The debtor shall also contribute to the appropriate carrying out of the debt adjustment.

5 Under which conditions may set-offs be invoked?

Bankruptcy

Subject to certain exceptions, the creditor has the right to use a claim in bankruptcy for a setoff against a debt owed to the debtor at the beginning of bankruptcy, even if the debt owed to the debtor or the claim has not yet fallen due. The set-off right does not apply to a claim that does not entitle the creditor to a payment out of the bankruptcy estate, nor any claim that is junior to other claims. The creditor has a duty to supply information on a claim to be used for set-off.

Restructuring

Despite an interdiction of debt collection, a creditor shall have the right to set a claim off against a debt owed to the debtor at the commencement of the proceedings under the same conditions as in bankruptcy proceedings. The notice of set-off shall be served also on the insolvency practitioner. The set-off right does not apply to a set-off by a credit institution against funds that the debtor has on deposit at the institution when the interdiction of collection takes effect or thereafter, or to funds that are at the credit institution at that time for transfer to the debtor's account, where the account can be used for payments.

Debt adjustment

After the start of debt adjustment, no measures shall be directed at the debtor to collect a debt subject to the stay on payment or to secure its payment. The stay on collection also includes the set-off between the debtor's receivables and debts to the creditor. This stay, however, does not apply to the set-off of taxes.

6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

As a rule, contracts not involving receivables subject to the insolvency proceeding shall remain valid and unchanged in all types of insolvency proceedings.

Bankruptcy

If, at the start of bankruptcy, the debtor has not performed a contract to which they are a party, the other contracting party shall request a declaration of whether the bankruptcy estate will commit to the contract. If the estate declares that it commits to the

contract, and posts acceptable security for the performance of the contract, the contract cannot be terminated. However, the other contracting party may terminate the contract if the contract is of a personal nature, or there is another special reason for which there may be no other requirement for the other party to remain under contract with the bankruptcy estate.

In addition, an individual transaction may be annulled under a ground for recovery referred to in the Act on the Recovery of Assets to a Bankruptcy Estate (*Laki takaisinsaannista konkurssipesään 758/1991*).

Restructuring

The commencement of restructuring proceedings shall have no effect on the existing undertakings of the debtor, unless otherwise prescribed by law. A lease or a credit-lease agreement where the debtor is the lessee may be terminated by the debtor so as to end two months after the service of notice of the termination. A person who before the commencement of the proceedings has committed to a contractual performance to the debtor but who has not completed the performance at the time of commencement of the proceedings, shall be entitled to consideration for their performance, if the performance can be deemed a regular part of the activities of the debtor. If the issue concerns another type of contract concluded before the commencement of the proceedings and if the debtor has at the time of commencement of the proceedings not met their payment obligation under the contract, the insolvency practitioner shall, on the request of the other party, state whether or not the debtor will keep to its part of the contract. If the answer is negative or if it is not given in reasonable time, the other party has the right to cancel the agreement. An agreement whereby the debtor would make a payment based on or connected to a restructuring debt shall be void, unless the obligation to make the payment is based on the approved restructuring programme.

If an employer is subject to the restructuring procedure, the employer shall be entitled to terminate the employment contract regardless of its duration at a notice of two months under certain conditions.

A transaction that could be reversed if a bankruptcy application had been filed instead of a restructuring application may be reversed on the request of the creditor in the restructuring proceedings on the same grounds as provided in the Act on the Recovery of Assets to a Bankruptcy Estate.

Debt adjustment

The debtor shall relinquish assets which do not belong to their basic necessities and which have been obtained on the basis of a part-payment or hire-purchase scheme. The debtor is entitled to terminate a tenancy contract where the debtor is the tenant, or to terminate some other type of consumer contract or a hire-purchase scheme with effect from two months after the notice of termination. A person who before the commencement of the proceedings has committed to a contractual performance to the debtor but who has not completed the performance at the time of commencement of the proceedings, shall be entitled to consideration for their performance, if the performance can be deemed a regular part of the activities of the debtor. A contract to the effect that the debtor is liable on the basis of or in connection with the debt adjustment shall be void, unless the liability has been prescribed in the payment schedule or is based on law.

A transaction that could be reversed if a bankruptcy application had been filed instead of a debt adjustment application may be reversed on the request of the creditor in the debt adjustment proceedings on the same grounds as provided in the Act on the Recovery of Assets to a Bankruptcy Estate.

7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

Bankruptcy

After the start of bankruptcy, no action shall be brought against the bankruptcy estate for the purpose of obtaining a ground for enforcement concerning a claim in bankruptcy, and no enforcement measures shall be carried out on the assets of the bankruptcy estate in order to collect on a claim in bankruptcy. However, a creditor protected by collateral may bring an action to collect on the claim from the collateral.

Restructuring

As a rule, after the commencement of restructuring proceedings, the debtor is subject to an interdiction of repayment and the creditors are subject to an interdiction of debt collection, i.e. no measures shall be directed at the debtor in order to collect on a restructuring debt or in order to ensure its payment. In certain cases, a secured creditor may request the court to grant the creditor permission to utilise the security in order to obtain payment. This may be possible, for example, if it is clear that, in view of the restructuring arrangements, it is not necessary to retain the property standing as security in the possession of the debtor. As a rule, after the commencement of the proceedings, precautionary measures based on official decisions shall not be directed against the debtor.

Debt adjustment

As in the restructuring proceedings, in debt adjustment proceedings, the creditor is subject to a stay on debt collection. Where a debt is within the scope of the stay on payment, no measures shall be directed at the debtor to collect a debt subject to payment or to secure its payment. No measures shall be directed at the debtor to collect a debt subject to payment or to secure its payment. In addition, the penalties for late payment shall not apply to the debtor. However, in certain cases, a secured creditor may request that the court grant the creditor permission to utilise the security in order to obtain payment. This may be possible, for example, if the assets serving as collateral are not considered basic necessities of the debtor or if the debtor does not need the assets to pursue its business.

The creditor may bring an action or initiate other proceedings so as to retain their right to enforcement or to obtain a basis for enforcement. As a rule, notwithstanding the provisions on the interdictions related to the commencement of debt adjustment, the creditor may also seek an order for precautionary measures and the enforcement of such an order.

8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

Bankruptcy

At the start of bankruptcy, the debtor shall lose their authority over the assets of the bankruptcy estate to the estate administrator. As a consequence, the bankruptcy estate shall have a right to assume the status of a party in issues concerning the assets belonging to the bankruptcy estate: the estate shall be reserved the opportunity to resume court proceedings pending between the debtor and third parties concerning assets of the bankruptcy estate. If the estate does not avail itself of this opportunity, the debtor may resume the proceedings. Similarly, the bankruptcy estate shall be reserved an opportunity to resume court proceedings concerning a pending claim in bankruptcy against the debtor. If the estate declines to respond to the action, and the debtor is not willing to resume the proceedings, the plaintiff may request that the case be resolved.

Restructuring

The debtor shall continue to be entitled to exercise their right of action in pending court proceedings or in other corresponding proceedings where it is a party, unless the insolvency practitioner decides to undertake to exercise the debtor's right of action. The same provision applies to court proceedings or other proceedings that will become pending after the commencement of the restructuring proceedings.

The insolvency practitioner has the right to file claims and to initiate court proceedings or other corresponding proceedings on the behalf of the debtor, as well as to exercise the debtor's right of action in the proceedings. Furthermore, the insolvency practitioner may accept notification on the behalf of the debtor.

Debt adjustment

Commencement of debt adjustment shall not affect pending court proceedings, or the debtor's right of action in the proceedings.

9 What are the main features of the participation of the creditors in the insolvency proceeding?

Bankruptcy

The creditor can apply for a declaration of bankruptcy.

Creditors exercise supreme authority over an estate in bankruptcy. The authority in the bankruptcy estate shall be exercised by the creditors insofar as the matter is not by law to be decided or dealt with by the estate administrator. In addition, the creditors may retain authority in respect of matters of the current administration of the estate, or to assign some of their authority to the estate administrator. The right to exercise the creditors' authority shall belong to those creditors who have a claim in bankruptcy against the debtor and who have lodged their claim. The authority of the creditors in bankruptcy shall begin when the bankruptcy commences and cease when the bankruptcy ends.

The most important decision-making body is the creditors' meeting, but other decisionmaking procedures may also be applied. The creditors may also establish a creditors' committee to act as in negotiations and liaisons body between the estate administrator and the creditors. The voting strengths of the creditors shall be determined on the basis of their current claim in the bankruptcy. The decision of the creditors' meeting shall be constituted by the opinion that has the support of those creditors whose total voting strength is more than one half of all the creditors participating in the vote. In alternative decision-making procedures, votes shall be counted on the basis of the voting strengths of the creditors expressing a position.

Restructuring

The creditor may apply for restructuring proceedings.

A committee of creditors may be appointed as the joint representative of the creditors. The committee shall represent all groups of creditors, and its duties are to assist the insolvency practitioner in the performance of their duties and to monitor the activities of the insolvency practitioner on the behalf of the creditors. The committee shall make its decisions by simple majority.

When preparing the draft restructuring programme, the insolvency practitioner shall negotiate with the committee of creditors and, if necessary, with individual creditors. Additionally, creditors or groups of creditors whose claims exceed the limit laid down by law are entitled to put forward a draft restructuring programme. Once the draft restructuring programme is drawn up, it is forwarded to the creditors for approval. In the event that there are no barriers to approval of the programme, the programme may be approved with the acceptance of all creditors, acceptance of majorities in the groups of creditors, and, under certain circumstances, even without the acceptance of the majority in all groups of creditors.

Debt adjustment

The creditor may not apply for debt adjustment of a private individual. However, as a rule, before petitioning for debt adjustment, the debtor shall determine whether there is a possibility to negotiate a settlement with the creditors. In accordance with the established crediting and debt collection practices, the creditor shall cooperate in order to reach a settlement.

The creditors shall be provided with the opportunity to submit a statement on the debt adjustment petition and on the draft payment schedule. Where required, the creditors shall provide details of their claim in writing. An approved payment schedule may be amended on the request of the creditor, or it may be ordered to lapse under certain grounds.

10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

Bankruptcy

Assets of the bankruptcy estate shall be managed with due care and expediency. One of the duties of the estate administrator is to see to the sale of assets belonging to the estate. The bankruptcy estate shall liquidate the assets of the estate in the manner most advantageous to the estate, so that the result of the sale is as good as possible. Collateral belonging to the estate may only be sold if the creditor protected by the collateral consents to it or if the court grants permission for the same. Assets belonging to the bankruptcy estate may not be transferred to the estate administrator, or assistants of the estate administrator or to persons connected to the estate administrator or an assistant.

Restructuring and debt adjustment

The rights of the insolvency practitioner are limited to the right to have access to information required to meet the obligations of the insolvency practitioner. The debtor shall retain the title and right of possession to their assets and the insolvency practitioner shall have no right to use or transfer assets of the debtor. In debt adjustment proceedings, the insolvency practitioner may, however, be ordered to liquidate the assets and to carry out related measures and arrangements, as well as to pass on the resulting funds to the recipients.

11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

Bankruptcy

A claim in bankruptcy means a debt owed by the debtor and based on a legal basis that has arisen before the beginning of bankruptcy. Additionally, claims secured by collateral and claims whose basis or amount is conditional, disputed or otherwise unclear all count as claims in the bankruptcy. In a continuous debt relationship, the part of the debt from the period before the beginning of bankruptcy shall be deemed a claim in the bankruptcy.

Claims which have arisen after the start of bankruptcy are considered administrative expenses, i.e. debt of the bankruptcy estate that is paid in full using the assets of the estate.

Restructuring

Debts arising after the filing of the application shall be repaid as they become due. The same applies to fees, charges and other running expenses based on a continuous contractual relationship or on a continuous contract on use or possession, insofar as these relate to the period subsequent to the filing of the application.

Debt adjustment

Debt adjustment covers all debts of the debtor which have existed before the start of the debt adjustment. This includes security liabilities and debts which are conditional, contentious or otherwise indefinite as to their amount or basis, as well as the interest on such debts accruing between the start of the debt adjustment and confirmation of the payment schedule, and the collection and enforcement expenses on such debts, where ordered payable by the debtor.

Debts outside the debt adjustment shall be repaid as they become due.

12 What are the rules governing the lodging, verification and admission of claims?

Bankruptcy

In order to be entitled to a disbursement, a creditor shall lodge a claim regarding the bankruptcy in writing (letter of lodgement), by delivering it to the estate administrator no later than on the lodgement date. The letter of lodgement shall indicate, for example, the capital amount of the claim, the interest accrued and the basis for the claim and for the interest. The lodgement may also be revised or supplemented after the lodgement date. A claim may also be lodged retroactively if the creditor pays the bankruptcy estate an additional charge, unless there has been a valid excuse for not lodging the claim by the date of lodgement. The estate administrator may take a claim in bankruptcy into account in the draft disbursement list without lodgement, if there is no dispute concerning the basis and amount of the claim.

The estate administrator shall verify the legitimacy of the lodged claims and their possible ranking order of precedence. The claims conferring a right to disbursement shall be indicated in the draft disbursement list. The estate administrator, a creditor or the debtor may dispute a claim in the draft disbursement list. The dispute against the claim must be detailed and accompanied with reasons for the dispute. Where the claim of a creditor has been disputed, the estate administrator shall reserve the creditor an opportunity to be heard on the dispute and to present evidence in support of their claim. A claim that has not been disputed on time shall be considered accepted.

After this, the estate administrator shall draw up a disbursement list by taking account of the disputes and statements and to submit the list for certification by the court. The court shall hear the disputes and other disagreements. If a dispute cannot be resolved in the hearing, it is to be resolved separately in a civil procedure. Finally, the court shall certify the disbursement list.

Restructuring

The debtor shall append a statement on the creditors, the debts and their collateral to its application for the commencement of restructuring proceedings. When the court issues the order on the commencement of restructuring proceedings, it shall set a date by which the creditors must declare their claims in writing to the administrator if these claims differ from those reported by the debtor.

When the draft restructuring programme has been delivered to the court, the court shall reserve the parties to the matter an opportunity to declare in writing to the insolvency practitioner their objections to claims referred to in the draft, as well as an opportunity to submit a written statement regarding the draft within a set period, or summon such parties to be heard in court. Both the insolvency practitioner and the debtor may submit objections on behalf of the debtor. The objections shall be considered and the matter decided together with the consideration of the draft, if this is possible, or the matter may be decided in separate judicial proceedings. Once the court has made a decision on unclear debt restructuring, the person who has prepared the draft may be given an opportunity to rectify, review or supplement the draft. After this, the creditors shall vote on the draft restructuring programme.

As a rule, debt during restructuring that has not been declared by the debtor or by the creditor, and which has otherwise not come to the attention of the insolvency practitioner before the approval of the restructuring programme, shall lapse on the approval of the restructuring programme.

Debt adjustment

When issuing the order on the commencement of debt adjustment, the court shall send copies of the court order, the petition and the debtor's draft payment schedule to the creditors. The court shall also set a deadline for the creditors' written notifications on the amount of the adjustable debts, if different from those declared by the debtor, as well as a deadline for the written statements of the creditors on the petition and draft payment schedule of the debtor and for the possible objections to the debts included in the draft.

The objections shall be dealt with in connection with the debt adjustment procedure and decided in the payment schedule if this is possible without causing a substantial delay in the debt adjustment. Otherwise, the court shall direct the matter to be resolved in a separate action or other proceedings. After this, the payment schedule may be confirmed, provided that debt adjustment is granted to the debtor.

The payment schedule may be amended on the petition of the debtor or a creditor if after the confirmation of the payment schedule it becomes known that there is an adjustable debt. If an adjustable debt appears after the end of the payment schedule, the debtor shall repay the debt to the amount which would have been allocated to the creditor had the debt been included in the payment schedule.

13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

As a rule, in all types of insolvency proceedings, claims are considered as equal, i.e. each creditor has an equal right to receive a payment from the disbursed funds in proportion to their claim. Exceptions to this rule concern the provisions on the precedence and lowest priority of claims.

Bankruptcy

Disbursements to the creditors in bankruptcy shall be paid out in accordance with the certified disbursement list. Provisions on prioritising the claims in bankruptcy in situations where the assets of the debtor are insufficient to cover all claims are laid down in the Act on the Priority of Claims (*Laki velkojien maksunsaantijärjestyksestä* 1578/1992).

A claim secured by a collateral or right of retention are claims with precedence, as are claims arising in connection with a restructuring of an enterprise, maintenance payable to a child and business mortgages. Claims which are subordinate to other claims, and their mutual ranking, are specified by separate provisions. Such claims include, for example, the interest and penalty for late payment relating to a claim with no precedence accrued up to the beginning of bankruptcy, and other charges based on public law such as fines and penalty payments.

Restructuring

Creditors who, outside the restructuring proceedings, would have an equal right to the payment of their claim shall have an equal status in the debt arrangements within the restructuring programme. However, it may be provided in the restructuring programme that creditors with small claims are to receive payment in full.

Only limited debt arrangement measures may be applied to secured debts, as the capital of a secured debt may not be reduced. The debt arrangement shall not affect the existence or content of a creditor's real security right. In the debt arrangement, interest and other credit costs accruing during the restructuring proceedings for restructuring debts other than secured debts shall be deemed to be the lowest priority debts.

Debt adjustment

The debtor's available funds and the funds from the liquidation of his assets shall be divided between the ordinary debts in proportion to their amount. All available debt adjustment measures may be applied to the ordinary debt, but the payment obligation concerning secured debts may not be lifted. The debt arrangement shall not affect the existence or content of a creditor's real security right. The mechanism least detrimental to the creditor and still sufficient to remedy the financial situation of the debtor shall be used. The last liabilities to be allocated as payment from the available funds and the liquidation funds of the debtor are the debts that would be subordinate were the debtor to be declared bankrupt and the interest accrued between the start of debt adjustment and the confirmation of the payment schedule.

14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

Bankruptcy

Bankruptcy proceedings in court end with the establishment of the allocation list. The bankruptcy ends once the creditors have approved the final settlement of accounts. The estate administrator shall draw up a final settlement of accounts once the bankruptcy estate has been accounted for and the assets belonging to the estate have been liquidated. The final settlement of accounts may be drawn up even if the estate is partially unaccounted for, because collateral, or other assets of little value, have not been sold or because a claim in bankruptcy or an insignificant part of the claims is unclear.

A reconciliation, concluding the bankruptcy proceedings, may be established in a bankruptcy if the reconciliation is supported by the debtor and by majority of the creditors. With the certification of a reconciliation the appointment of the estate administrator and the authority of the creditors in bankruptcy shall cease.

The court shall make an order on the lapse of bankruptcy, if the funds of the bankruptcy estate are insufficient for the costs of the bankruptcy proceedings or the continuation of the bankruptcy would not for other reason be expedient. However, no court order on the lapse of bankruptcy shall be made, if the bankruptcy will continue under public receivership. Reasons for continuing the bankruptcy under public receivership may include, for example, a need for the debtor to be scrutinised. Public receivership ends in the final settlement of accounts.

Bankruptcy may be ordered to be reversed for a valid reason within eight days of the order of bankruptcy.

Liability for debts shall continue also after bankruptcy. The debtor shall not be released from liability for those debts in bankruptcy that are not repaid in full in the bankruptcy.

Restructuring

The court procedure on restructuring ends in the approval of the restructuring programme. Approval of the programme will return to the debtor their freedom of action and will cease the legal effects related to the opening of the proceedings, such as the prohibition of payment and debt collection. After the approval of the restructuring programme, the terms of the restructuring debts shall be governed by the restructuring programme and, as a rule, any unknown restructuring debts shall lapse.

The court may, on the request of the supervisor or a creditor, order the restructuring programme to lapse if the debtor has violated the programme and the violation is not merely petty. The restructuring programme shall also lapse, if the debtor is declared bankrupt before the conclusion of the programme. The court may also order that a debt arrangement in the restructuring programme pertaining to a certain creditor is to lapse, for example, if the debtor has materially neglected their obligations under the programme to the creditor. After the lapse, the creditor shall have the same rights as they had before the approval of the restructuring programme.

At the conclusion of the restructuring programme, the supervisor or, if there is no supervisor, the debtor shall present a final report on the implementation of the programme.

Debt adjustment

The court procedure on debt adjustment ends once the court confirms the payment schedule. After the confirmation of the payment schedule, the terms of the adjustable debts shall be governed by the payment schedule. The payment obligations set out in the payment schedule shall be binding to the debtor until all the specified obligations are fulfilled. Regardless of the end of the payment schedule, the debtor's liabilities specified therein shall remain in effect insofar as they have not been fulfilled. The debtor shall not be released from the repayment of the remaining debts until all of the obligations set out in the payment schedule are fulfilled.

The payment schedule shall lapse if the debtor is declared bankrupt before the conclusion of the schedule. On the request of the debtor or a creditor, the court may order the payment schedule to lapse, if the debtor has neglected their obligations as specified by law. After the lapse, the creditor shall have the same rights as they had before the debt adjustment.

15 What are the creditors' rights after the closure of insolvency proceedings?

Bankruptcy

Liability for debts shall continue also after bankruptcy: the debtor is still liable for those debts in bankruptcy that are not repaid in full during the bankruptcy.

Restructuring

The creditors have the right to receive payment for their claims itemised in the restructuring programme, and the restructuring shall not end until the obligations of the programme are fulfilled. Thus, after the conclusion of the programme, the creditors no longer have a right to receive payments.

Debt adjustment

The terms of the adjustable debts shall be governed by the payment schedule. A duration shall be determined for the payment schedule. Regardless of the end of the payment schedule, the debtor's liabilities laid down therein shall remain in effect until they are fulfilled. After the conclusion of the payment schedule, the creditors no longer have a right to receive payments.

16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

Bankruptcy

The costs of the bankruptcy proceedings shall consist of the court fees levied on the procedure, the fee of the estate administrator and the other costs arising from the scrutiny and administration of the estate.

The costs of the bankruptcy proceedings shall be covered from the funds of the bankruptcy estate. If the funds of the bankruptcy estate are insufficient for the costs, a creditor may assume liability for the costs to avoid lapse of bankruptcy.

The court may also decide that the bankruptcy is to continue under public receivership, if this is deemed justified, for example, owing to the insufficient means of the bankruptcy estate. In such a case, the appointment of the estate administrator and the authority of the creditors in bankruptcy shall cease. The costs of bankruptcy proceedings arising from public receivership shall be paid from state funds insofar as the funds of the bankruptcy estate are insufficient for the same costs.

Restructuring

Costs of the proceedings, such as the insolvency practitioner's remuneration, are to be paid from the assets of the debtor. Another party may also assume liability for the costs, as one of the barriers to restructuring is that it is probable that the debtor's assets are insufficient to cover the costs of the proceedings.

The compensation of expenses for the committee of creditors shall be the liability of the creditors. A person who wants to exercise the right to present a draft restructuring programme shall bear the costs of preparing the draft at their own expense.

Debt adjustment

The costs of the proceedings shall consist of a reasonable fee for the services of the insolvency practitioner and compensation for the expenses incurred to the insolvency practitioner. As a rule, the debtor shall cover the fee and expenses of the insolvency practitioner to an amount not exceeding the available funds of the debtor over the four months following the confirmation of the payment schedule or the modified payment schedule. The part of the fee and expenses not covered by the debtor shall be paid from state funds. If the petition for debt adjustment is dismissed, the entire fee and expenses shall be paid from state funds.

17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

Recovery provisions are applied to all types of insolvency proceedings.

Assets transferred before opening of insolvency proceedings and which meet the conditions set out in law may be reversed by bringing an action for recovery or an action concerning a title or an action for damages. In all types of insolvency proceedings, the provisions of the Act on the Recovery of Assets to a Bankruptcy Estate (758/1991) shall apply to the recovery. Grounds for recovery must exist.

The prerequisites for the existence of a ground for recovery, and thus for the reversal of the transaction, are as follows:

- The transaction has been used to inappropriately favour one creditor at the cost of the other creditors, to transfer assets outside the reach of the creditors, or increase the total amount of debt to the detriment of the creditors;
- The debtor was insolvent at the time of the transaction, or the transaction contributed to the debtor becoming insolvent; if the transaction concerns a gift, another prerequisite is that the debtor was over-indebted or became over-indebted due to the transaction;
- The other party to the transaction was, or should have been, aware of the debtor being insolvent/over-indebted or of the effects of the transaction on the financial status of the debtor, as well as of other factors making the transaction inappropriate.

If the other party to the transaction was a close relative of the debtor, the person in question is deemed to have been aware of the factors listed above, unless they can prove that they acted in good faith. If a transaction was concluded more than five years before the opening of the insolvency proceedings, it can only be reversed if a close relative of the debtor was a party to the transaction.

Debt repayments made more than three months before the date of application for the insolvency proceedings shall be reversed if the repayment was made using unusual means of payment or if it was made prematurely or if the repaid amount is deemed significant considering the funds of the estate. Repayments shall not be reversed, however, if they are deemed ordinary, considering the circumstances. Payments collected by means of distraint shall also be reversed, provided that the distraint has been carried out more than three months before the deadline. The applied time limit is longer for close relatives of the debtor. The payment shall be reversed even if the creditor had acted in good faith.

There are also separate provisions governing the reversal of, for example, gifts, division of property, set-offs and collateral.

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