

Insolvency - Estonia

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Estonian legislation prescribes three different insolvency proceedings: bankruptcy proceedings, reorganisation proceedings and debt restructuring proceedings. Bankruptcy proceedings are governed by the Bankruptcy Act, the rules covering reorganisation are set out in the Reorganisation Act and the debt restructuring rules are set out in the Debt Restructuring and Debt Protection Act. The Acts are available in Estonian and in English from Estonia's official online publication, *Riigi Teataja* (State Gazette) (<https://www.riigiteataja.ee/>).

The aim of bankruptcy proceedings is to satisfy creditors' claims out of the debtor's assets by transferring the debtor's assets or rehabilitating the debtor's enterprise. A debtor who is a natural person is given the opportunity to be released from their obligations through bankruptcy proceedings. In the course of bankruptcy proceedings, the cause of the debtor's insolvency is ascertained.

The aim of reorganisation proceedings is to take account of the interests and protect the rights of undertakings, creditors and third parties in the course of the reorganisation of an enterprise. The reorganisation of an enterprise means the application of a set of

measures in order for an enterprise to overcome economic difficulties, restore its liquidity, improve its profitability and ensure its sustainable management.

The aim of debt restructuring proceedings is to facilitate the restructuring of the debts of a natural person having solvency problems (debtor), in order to overcome the solvency problems and avoid bankruptcy proceedings. Debt restructuring proceedings make it possible for a debtor to restructure their financial obligations (personal debts) by way of extending the term for performing an obligation, honouring the obligation in instalments or reducing the obligation.

The scope of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) covers bankruptcy proceedings and debt restructuring proceedings.

1 Who may insolvency proceedings be brought against?

Pursuant to Estonian law, a natural person is a human being, and in insolvency law no distinction is drawn between natural persons in terms of whether or not they act in a commercial or professional capacity (in other words there is no distinction between self-employed persons and consumers). A legal person is a legal entity founded pursuant to law. A legal person is either a legal person in private law or a legal person in public law. 'Legal person in private law' means a legal person founded in private interests and pursuant to an Act concerning the corresponding type of legal person. General partnerships, limited partnerships, private limited companies, public limited companies, commercial associations, foundations and non-profit associations are legal persons in private law. The state, local authorities and other legal persons founded in the public interest and pursuant to an Act concerning that legal person are legal persons in public law.

1. Bankruptcy proceedings

Bankruptcy proceedings are conducted in respect of insolvent legal and natural persons. The state or a local authority cannot be bankrupt.

2. Reorganisation proceedings

Reorganisation proceedings are conducted only in respect of legal persons in private law.

3. Debt restructuring proceedings

Debt restructuring proceedings are conducted in respect of natural persons experiencing solvency problems.

2 What are the conditions for opening insolvency proceedings?

1. Bankruptcy proceedings

Bankruptcy means a debtor's insolvency as declared by a court ruling. Thus, the first main precondition for the opening of bankruptcy proceedings is the fact that the debtor is insolvent.

A debtor is insolvent if the debtor is unable to satisfy the creditors' claims and, due to the debtor's financial situation, that inability is not temporary. A debtor who is a legal person is also insolvent if the debtor's assets are insufficient to cover its obligations and, due to the debtor's financial situation, that insufficiency is not temporary. If a bankruptcy petition is filed by the debtor, the court will declare bankruptcy also if insolvency is likely to occur in the future. If a bankruptcy petition is filed by the debtor, the debtor is presumed to be insolvent.

The second main precondition for the opening of bankruptcy proceedings is the filing of a bankruptcy petition, and it may be filed by the debtor or a creditor. In addition, in the event of the death of the debtor, a bankruptcy petition with respect to the debtor's assets may also be filed by a successor of the debtor, the executor of the debtor's will or the administrator of the debtor's estate. In this case, the provisions concerning bankruptcy petitions of debtors apply to the bankruptcy petition. In the cases provided by law, other persons may also file bankruptcy petitions, in which case the provisions concerning creditors apply to the persons unless otherwise provided by law.

If a bankruptcy petition is filed by the debtor, the debtor must substantiate their insolvency in the bankruptcy petition. If a bankruptcy petition is filed by a creditor, the creditor must substantiate the debtor's insolvency and prove the existence of the claim in the bankruptcy petition.

The court may require the petitioning creditor to pay the amount of money set by the court as a court deposit in order to cover the interim trustee's remuneration and expenses if there are grounds for believing that the bankruptcy estate is insufficient to cover them. If the creditor fails to pay the deposit, the proceedings will be closed. Where the petitioning creditors are employees of an insolvent employer who do not pay the amount set as the deposit in order for the bankruptcy proceedings to continue, they are entitled to apply for insolvency benefit from the state (through *Eesti Töötukassa* [the Estonian Unemployment Insurance Fund]).

The court will refuse to admit the creditor's bankruptcy petition if the bankruptcy petition does not reveal that the petitioner has a claim against the debtor, the bankruptcy petition does not substantiate the debtor's insolvency or the bankruptcy petition is based on a claim in respect of which a reorganisation plan or a debt restructuring plan applies. The court will also refuse to admit a bankruptcy petition if any other grounds provided for in the Code of Civil Procedure exist.

Before bankruptcy is declared and bankruptcy proceedings are opened, so-called preliminary proceedings are conducted. If the court decides to admit a bankruptcy petition, it will appoint an interim trustee. The court may also refuse to appoint an interim trustee, taking into account the debtor's financial situation, and declare the debtor bankrupt. If the court does not appoint an interim trustee, the proceedings will not be continued on the basis of the bankruptcy petition and the proceedings will be closed. The interim trustee determines the debtor's assets, including the debtor's obligations and the enforcement proceedings concerning the debtor's assets, and checks whether the debtor's assets are sufficient to cover the costs and expenses incurred in the bankruptcy proceedings. The interim trustee provides an assessment of the debtor's financial situation and solvency and of the prospects for the activities of the debtor's enterprise to continue and, if the debtor is a legal person, for the debtor's rehabilitation, ensures that the debtor's assets are preserved, etc. The activities of the interim trustee must reveal whether the bankruptcy petition is to be satisfied or dismissed.

The court will close proceedings by abatement without declaring bankruptcy, regardless of the debtor's insolvency, if the debtor's assets are insufficient to cover the costs and expenses incurred in the bankruptcy proceedings and if it is impossible to recover or reclaim the assets or submit a claim against a member of a management body.

The court declares bankruptcy by a ruling (bankruptcy ruling). A bankruptcy ruling must set out the time of the declaration of bankruptcy. Bankruptcy proceedings start with the declaration of bankruptcy.

If the court has declared bankruptcy, it will publish a notice to this effect (bankruptcy notice) without delay in the official publication *Ametlikud Teadaanded* (Official Announcements).

A bankruptcy ruling is subject to immediate execution. Execution of a bankruptcy ruling cannot be suspended or postponed, and the manner or procedure provided for by law for the execution of the bankruptcy ruling cannot be changed. If a higher court annuls a bankruptcy ruling, this does not affect the validity of the legal acts performed by or in respect of the trustee. The debtor and the petitioning creditor may file appeals against the bankruptcy ruling within 15 days of the publication of the bankruptcy notice. The debtor and the bankruptcy petitioner may file appeals with the Supreme Court against the district court ruling on the appeal against the ruling. The trustee may not file an appeal on behalf of the debtor or represent the debtor in the hearing of an appeal.

If a notice or procedural document is to be published in bankruptcy proceedings, the notice or procedural document must be published in *Ametlikud Teadaanded*. The court may publish a notice concerning the time and place of the hearing of a bankruptcy petition in *Ametlikud Teadaanded*. A notice concerning a bankruptcy ruling declaring a debtor bankrupt (bankruptcy notice) will be published by the court without delay in *Ametlikud Teadaanded*.

2. Reorganisation proceedings

In order to open reorganisation proceedings for an enterprise, the undertaking submits a corresponding petition.

The court will open reorganisation proceedings if the reorganisation petition meets the requirements set in the Code of Civil Procedure and the Reorganisation Act and if the undertaking has provided a justified argument indicating that:

1. it is likely to become insolvent in the future;
2. the enterprise requires reorganisation;
3. sustainable management of the enterprise is likely after the reorganisation.

Reorganisation proceedings will not be opened if:

1. bankruptcy proceedings have been brought against the undertaking;
2. a court ruling concerning the compulsory dissolution of the undertaking has been issued or supplementary liquidation is carried out;
3. less than two years have passed since the closure of reorganisation proceedings in respect of the undertaking.

If an undertaking requests the reorganisation of an enterprise, the court may also refuse to admit the petition if the undertaking has not provided a justified argument indicating that the enterprise requires reorganisation and that sustainable management of the enterprise is likely after the reorganisation.

The court will open reorganisation proceedings by means of a reorganisation ruling within seven days of receiving a reorganisation petition.

Among other things, the following are set out in a reorganisation ruling:

1. the details of the person appointed as the reorganisation adviser;
2. the deadline for adopting the reorganisation plan;
3. the deadline by which the reorganisation plan is to be submitted to the court for approval (may not be more than 60 days);
4. the amount to be paid by the undertaking into the designated account as a deposit to cover the reorganisation adviser's remuneration and expenses, and the deadline by which the undertaking must pay it.

The effects of opening reorganisation proceedings are as follows:

1. the court suspends enforcement proceedings conducted regarding the assets of the undertaking until the reorganisation plan is approved or the reorganisation proceedings are closed, except in the event of enforcement proceedings conducted to fulfil a claim that has arisen on the basis of an employment relationship or a claim for the payment of maintenance support;
2. the calculation of default interest or a contractual penalty that increases over time on a claim against the undertaking is suspended until the reorganisation plan is approved;
3. the court hearing the matter may, on the basis of a petition from an undertaking and with the approval of the reorganisation adviser, which is appended to the petition, suspend court proceedings involving a financial claim against the undertaking until the reorganisation is approved or the reorganisation proceedings are closed, except in the event of a claim lodged on the basis of an employment relationship or a claim for the payment of maintenance support regarding which no judgment has yet been made;
4. on the basis of a bankruptcy petition filed by a creditor, the court will postpone any decision on the opening of bankruptcy proceedings until the reorganisation plan is approved or reorganisation proceedings are closed.

If the court has decided to open reorganisation proceedings and issued a reorganisation ruling, the reorganisation adviser will without delay send the creditors a reorganisation notice notifying them of the opening of reorganisation proceedings and of the size of the claims that they have against the undertaking according to the list of debts.

3. Debt restructuring proceedings

Debt restructuring proceedings make it possible for a debtor to restructure their financial obligations. A debtor is deemed to have solvency problems if they are unable or likely to be unable to perform their obligations at the time when they fall due.

In order to open debt restructuring proceedings, a debtor submits a corresponding petition to a court, and this must be accompanied, among other things, by a debt restructuring plan indicating the obligations to be restructured and the manner of restructuring as well as the term for implementing the restructuring plan. Before submitting a debt restructuring petition to a court, a debtor must take the necessary steps for the extrajudicial restructuring of the debt.

The court will admit a debt restructuring petition if it meets the requirements set out in the Code of Civil Procedure and the Debt Restructuring and Debt Protection Act. A ruling on the admissibility of a petition will be transmitted to the debtor and to all creditors the whose claims the debtor is seeking to restructure. The ruling will also be published in *Ametlikud Teadaanded*.

The court will not admit a debt restructuring petition if:

1. the debtor has been declared bankrupt;
2. in the ten years preceding the submission of the petition the court has satisfied a debt restructuring petition from the debtor or a petition from the debtor for release from debts in bankruptcy proceedings;
3. the debtor does not have any solvency problems or these can clearly be overcome without restructuring the debts, among other things by selling the debtor's assets to cover its debts to an extent that can reasonably be expected from the debtor;
4. the petition or annexes thereto do not meet the legal requirements.

The court may refuse to admit a debt restructuring petition if:

1. it is unlikely that the debt restructuring plan proposed by the debtor will be approved or honoured, taking account, among other things, of the debtor's solvency in the three years preceding submission of the debt restructuring petition and the debtor's ability to engage in a reasonably profitable activity during the period of validity of the debt restructuring plan, considering the debtor's age, profession and education;
2. before submitting the debt restructuring petition to the court, the debtor has not taken the necessary steps extrajudicial restructuring of the debt;

3. the debtor has, intentionally or due to gross negligence, submitted materially incorrect or incomplete information about their assets, income, creditors or obligations;
4. the debtor refuses to take an oath regarding the truthfulness of the information submitted or to submit additional information requested by the court;
5. the debtor has been convicted of a crime relating to bankruptcy proceedings or enforcement proceedings, a tax crime or a particular crime relating to companies, and the information concerning the conviction has not been deleted from the criminal records database;
6. in the three years preceding submission of the petition or after submission of the petition, the debtor has, intentionally or due to gross negligence, submitted incorrect or incomplete information about their financial situation in order to obtain aid or other benefits from the state, local authority or a foundation or to evade taxes;
7. the debtor has obviously intentionally concluded transactions harming the creditors.

If the court decides, when adjudicating the debtor's petition, that debt restructuring proceedings are to be opened, the court will transmit the ruling on the admissibility of the petition to the debtor and to all the creditors whose claims the debtor is seeking to restructure. The ruling will also be published in *Ametlikud Teadaanded*.

---If the debt restructuring petition is admitted, the calculation of default interest or a contractual penalty that increases over time on a claim against the debtor is suspended until the restructuring plan is approved or the proceedings are closed. This does not apply to claims that the debtor is not seeking to restructure. If a petition is admitted, a creditor cannot, by relying on a breach of a financial obligation that occurred before the debt restructuring petition was submitted, terminate a contract that has been entered into with the debtor and that gives rise to the claims that the debtor is seeking to restructure, or refuse to perform their obligations on these grounds. Any agreement pursuant to which a creditor may terminate a contract when a debt restructuring petition is submitted or a debt restructuring plan is approved is null and void. When a petition is admitted, the court will suspend the enforcement proceedings (or compulsory enforcement) for the collection of money conducted with regard to the debtor's assets until the debt restructuring plan is approved or the proceedings are closed. The court may also suspend court proceedings involving a financial claim against the debtor regarding which no judgment has yet been made; cancel measures for securing an action, including the seizure of a bank account; and prohibit creditors from exercising their rights arising from the collateral given by the debtor, including from selling or requesting the sale of the object of pledge;

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?

When bankruptcy is declared, the debtor's assets become the bankruptcy estate and the debtor's right to administer and dispose of the bankruptcy estate is transferred to the trustee in bankruptcy.

The debtor's assets become the bankruptcy estate on the basis of a bankruptcy ruling and are used as assets designated for satisfying creditors' claims and conducting bankruptcy proceedings. The bankruptcy estate means the debtor's assets at the time of the declaration of bankruptcy, as well as assets reclaimed or recovered and assets acquired by the debtor during the bankruptcy proceedings. The debtor's assets on which, pursuant to law, no claim for payment may be made are not included in the bankruptcy estate.

Assets on which, pursuant to law, no claim for payment may be made are governed by the Code of Enforcement Procedure. The law prescribes a non-exhaustive list of objects not subject to seizure. The main aim of the catalogue of objects not subject to seizure is to ensure minimum social protection for the debtor. The prohibition on selling assets not subject to seizure also arises from the need to protect other fundamental rights: the right to freely choose one's area of activity, profession and position, the right to engage in entrepreneurial activity, the right to education, freedom of religion, protection of private and family life, etc. Furthermore, the seizure of certain objects is contrary to accepted principles of morality.

Pursuant to Estonian legislation, restrictions also apply to the seizure of income, and the main aim is to ensure that the debtor has the minimum means of subsistence necessary for themselves and their dependants in accordance with the conditions of the proceedings conducted in respect of the debtor.

After bankruptcy is declared, any dispositions by the debtor with regard to objects forming part of the bankruptcy estate are null and void. The assets transferred by the other party on the basis of a disposition are returned to the party if the assets remain in the bankruptcy estate, or compensation is provided if the bankruptcy estate has increased as a result of the transfer. If the debtor has disposed of their future claims before the declaration of bankruptcy, the disposition will become null and void when bankruptcy is declared in respect of the claims that have arisen after the declaration of bankruptcy. A debtor who is a natural person may dispose of the bankruptcy estate with the trustee's consent. Any dispositions without the trustee's consent are null and void.

After bankruptcy is declared, performance of an obligation that is included in the bankruptcy estate and is due to the debtor may only be accepted by the trustee. If the obligation was performed to the benefit of the debtor, the obligation is deemed to have been performed only if the assets transferred to perform the obligation are retained in the bankruptcy estate or the bankruptcy estate has increased as a result of the transfer. If the obligation was performed to the debtor's benefit before publication of the bankruptcy notice, the obligation is deemed to have been performed if the person who performed the obligation was not and did not need to be aware of the declaration of bankruptcy at the time of performing the obligation.

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

When bankruptcy is declared, a debtor who is a natural person forfeits their right to conclude transactions relating to the bankruptcy estate, and a debtor who is a legal person forfeits their right to conclude any transactions.

The debtor provides the court, the trustee and the bankruptcy committee with the information that they need in connection with the bankruptcy proceedings, particularly concerning the debtor's assets, including obligations, and business or professional activities. The debtor is required to provide the trustee with a balance sheet and an inventory of the debtor's assets, including liabilities, as at the date on which bankruptcy was declared.

The court may require the debtor to swear in court that the information submitted to the court concerning their assets, debts and business or professional activities is correct to the best of the debtor's knowledge.

The debtor must provide assistance to the interim trustee and the trustee in the performance of their duties.

The debtor may not leave Estonia without the permission of the court after bankruptcy is declared and before the debtor has taken an oath.

The court may impose a fine, compulsory attendance or arrest on the debtor in the event of non-compliance with a court order or in order to secure performance of an obligation provided by law.

The debtor has the right to examine the trustee's file and the court file of the bankruptcy matter. The trustee may, for justified reasons, deny the debtor's request to examine a document included in the trustee's file if this would be detrimental to the conduct of the bankruptcy proceedings.

Trustee in bankruptcy

- A trustee in bankruptcy enters into transactions relating to the bankruptcy estate and performs other acts. The rights and obligations arising as a result of the trustee's actions belong to the debtor. A trustee, in accordance with their duties, participates in court as a party to disputes relating to the bankruptcy estate in lieu of the debtor.
- When bankruptcy is declared, the debtor's right to administer and dispose of the bankruptcy estate is transferred to the trustee in bankruptcy. In the bankruptcy proceedings of a debtor who is a legal person, the trustee may conclude any transactions and perform any legal acts with the bankruptcy estate. In the event of the bankruptcy of a debtor who is a natural person, the trustee may only conclude such transactions and perform such legal acts with the bankruptcy estate that are necessary to achieve the aim of the bankruptcy proceedings and to perform the trustee's duties.
- A trustee defends the rights and interests of all the creditors and the debtor and ensures that the bankruptcy proceedings are lawful, prompt and financially reasonable. The trustee must perform their obligations with the care expected of a diligent and honest trustee and take into account the interests of all the creditors and the debtor.
- The trustee determines the creditors' claims, administers the bankruptcy estate, organises its formation and sale and satisfaction of the creditors' claims out of the bankruptcy estate; ascertains the causes of the debtor's insolvency and the time when the insolvency arose; arranges for the debtor's business activities to continue, where necessary; conducts the liquidation of the debtor who is a legal person, where necessary; provides information to the creditors and the debtor in the cases prescribed by law; reports on their activities and provides information concerning the bankruptcy proceedings to the court, the supervisory official and the bankruptcy committee; performs other obligations provided for by law. If the debtor's insolvency was caused by a grave error in management, the trustee is required to lodge a claim for damages against the person liable for the error immediately after sufficient grounds for lodging a claim become evident. In addition to the trustee's rights provided for by law, a trustee also has the rights of an interim trustee.

5 Under which conditions may set-offs be invoked?

Set-offs are permitted in Estonian bankruptcy proceedings. Set-offs of claims in bankruptcy proceedings are subject to the following conditions:

- 1) the claims to be set off must be financial obligations or other obligations of the same type;

- 2) the creditor's right to perform their obligation must have arrived and the debtor's obligation must have fallen due;
- 3) the creditor must make a declaration of set-off to the debtor before the final distribution proposal is submitted to the court, and the declaration must not have been made conditionally or by setting a term;
- 4) the creditor's right to set off their claim against the debtor's claim must have arisen before bankruptcy was declared.

If the debtor's claim was contingent on a suspensive condition or was not yet due at the time bankruptcy was declared or is not directed at the performance of obligations of the same type, the claim may be set off only when the suspensive condition has arrived, the debtor's claim has fallen due or the obligations have become obligations of the same type. No set-off is permitted if the suspensive condition of the debtor's claim arrives or the claim falls due before the creditor could set off their claim.

If a creditor's claim has expired, they may still set off the claim if the right to the set-off arose before expiry of the claim. A creditor may also set off a claim resulting from the debtor's failure to honour a contract which arose from the fact that the trustee waived the debtor's obligation after bankruptcy was declared. If the object of a contractual obligation is divisible and the creditor has performed their obligation in part by the time bankruptcy is declared, the creditor may make a set-off in respect of the debtor's financial obligation corresponding to that part of the creditor's obligation that has been performed. If the debtor is a residential or commercial lessor and the residential or commercial lessee has paid the debtor the rent for immovable property or premises in advance before bankruptcy is declared, this constitutes a claim of unjustified enrichment against the debtor which the residential or commercial lessee may set off against the debtor's claim against the residential or commercial lessee, and the residential or commercial lessee may also set off a claim for damages resulting from premature termination of the contract or withdrawal from the contract.

A claim acquired through assignment may be set off in bankruptcy proceedings only if the claim was assigned and the debtor was notified thereof in writing no later than three months before bankruptcy was declared. A claim against the debtor that is acquired through assignment cannot be set off if the claim was assigned within the three years preceding the appointment of an interim trustee and the debtor was insolvent at that time and the person who acquired the claim was or should have been aware of the insolvency at the time of assignment.

Claims that cannot be set off include claims for maintenance, claims for compensation arising from damage to health or the death of a person and claims arising from the unlawful and intentional causing of damage which the other party has against the party requesting set-off; the other party's claims on which no claim for payment can be made pursuant to law; a seized claim against the party's claim against the other party if the party requesting set-off acquired the claim after the seizure or if their claim fell due after the seizure and later than the seized claim; a claim against which the other party may raise objections or the other party's claim whose set-off is not permitted on other grounds arising from law.

Set-offs are not regulated separately in the event of reorganisation proceedings and debt restructuring proceedings, and so the general procedure under the Law of Obligations Act applies to them.

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

Bankruptcy proceedings

A trustee has the right to perform an unperformed obligation arising from a contract entered into by the debtor and require the other party to perform their obligations or waive the debtor's obligation arising from a contract, unless otherwise provided for by law. The trustee may not waive the debtor's obligation arising from a contract if the obligation is secured by an advance notice entered in the land register. If the trustee continues to perform the debtor's obligation or gives notice that they intend to perform the obligation, the other party to the contract will continue to perform their obligations. In this case, the trustee forfeits their right to refuse to perform the debtor's obligation. If the trustee requires the other party to the contract to honour the contract, the other party may require the trustee to secure performance of the debtor's obligation. The other party may refuse to perform their obligation, withdraw from the contract or cancel the contract until the trustee has secured performance of the debtor's obligation. The other party's claim against the debtor which has arisen from an obligation being performed after the trustee has required the obligation to be performed by the other party is a consolidated obligation. If the trustee waived the debtor's obligation after bankruptcy was declared, the other party to the contract may lodge a claim arising from failure to honour the contract as a creditor in the bankruptcy proceedings. If the object of a contractual obligation is divisible and the other party has performed their obligation in part by the time bankruptcy is declared, the other party can require that the debtor's financial obligation be performed to an extent corresponding to the share of the other party's obligation that has been performed only as a creditor in the bankruptcy proceedings.

The law also sets out special cases for certain types of contract:

- 1) if a debtor has sold movable property with reservation of ownership before bankruptcy is declared and has transferred possession of the movable property to the purchaser, the purchaser has the right to require that the sales contract be honoured. In this case, the trustee may not waive the debtor's obligations arising from the sales contract;
- 2) the bankruptcy of a residential or commercial lessor does not serve as a basis for termination of the residential or commercial lease contract, unless the contract provides otherwise. If the residential or commercial lease contract provides for bankruptcy as a basis for termination of the contract, the trustee may cancel the contract within a termination period of one month, or less if this is prescribed in the contract. The bankruptcy of a residential lessor of a dwelling does not serve as a basis for termination of the residential lease contract of the dwelling. If the rent for immovable property or premises has been paid to the debtor in advance before bankruptcy is declared, the residential or commercial lessee may set off a claim for unjustified enrichment against the debtor's claim against the residential or commercial lessee;
- 3) in the event of the bankruptcy of a residential or commercial lessee, the residential or commercial lessor may terminate the residential or commercial lease contract only pursuant to the general procedure, and the residential or commercial lease contract may not be cancelled due to a delay in the payment of the rent if the delay concerns payment of rent owed before the bankruptcy petition was submitted. A trustee has the right to cancel the residential or commercial lease contract entered into by the debtor within a termination period of one month, or less if this is prescribed in the contract. If immovable property or premises have not been transferred into the debtor's possession by the time bankruptcy is declared, both the trustee and the other party may withdraw from the contract. In the event of withdrawal from or cancellation of the contract, the other party may demand compensation for losses arising from the premature termination of the contract as a creditor in the bankruptcy proceedings or by set-off;
- 4) the procedure for a residential and commercial lease contract also applies to the leasing contracts entered into by the debtor.

A trustee has the right to decide on the continuation or termination of a contract, but if the other party makes a proposal to the trustee to exercise that choice, the trustee must immediately, but no later than within seven days, give notice of whether they will perform or waive the debtor's obligation. At the request of a trustee, the court may also extend that period. If the trustee fails to give notice in time of performing the obligation or of waiving it, the trustee does not have the right to require the other party to honour the contract before the trustee has performed the debtor's obligation.

It is also possible that some contracts entered into by the debtor are recoverable. For example, the court revokes contracts that have been entered into during the period from the appointment of an interim trustee until bankruptcy is declared. In addition to the condition as regards time, a precondition for recovery is that the contract has damaged the creditors' interests. If the creditors' interests have not been damaged and the bankruptcy estate does not increase as a result of recovery, there is no point in performing the recovery.

Generally, a debtor who is bankrupt or their trustee does not have the right to amend contracts. However, contracts may be amended if a composition is entered into following the declaration of bankruptcy. In this case, it is possible to reduce debts or extend the term for payment as a result of an agreement between the debtor and the creditors. The same result can also be achieved through reorganisation proceedings or debt restructuring proceedings. The Bankruptcy Act, the Reorganisation Act and the Debt Restructuring Act do not cover the assignment of claims or assumption of obligations separately, and thus the general procedure that is provided for in the Law of Obligations Act applies.

Reorganisation proceedings and debt restructuring proceedings

The restructuring of contracts is permitted in reorganisation proceedings. An agreement pursuant to which a creditor may terminate a contract when reorganisation proceedings are opened or a reorganisation plan is approved is null and void. A claim arising under an employment contract or from a transaction with derivatives may not be restructured in a reorganisation plan.

If a debt restructuring petition is admitted, a creditor cannot, by relying on a breach of a financial obligation that occurred before the debt restructuring petition was submitted, terminate a contract that has been entered into with the debtor and that gives rise to the claims the debtor is seeking to restructure, or refuse to perform their obligations on those grounds. An agreement pursuant to which a creditor may terminate a contract when a debt restructuring petition is submitted or a debt restructuring plan is approved is null and void. Obligations arising from a continuing contract which are created or fall due after a debt restructuring petition is submitted can be restructured in debt restructuring proceedings. A restructuring plan may stipulate that a credit agreement or other continuing contract that has been entered into by a debtor before a debt restructuring petition is submitted and that imposes on the debtor financial obligations that fall due after the debt restructuring petition is submitted terminates when the restructuring plan is approved. The termination of a contract has the same consequences as the extraordinary cancellation of a contract due to circumstances arising from the debtor. The debtor's obligations arising as a result of the termination of a contract can be restructured beforehand under a restructuring plan. If obligations arising from a leasing contract are to be restructured, the lessor who is a creditor may extraordinarily cancel the contract within one week of the restructuring plan being approved.

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

After bankruptcy is declared, the creditors in the bankruptcy proceedings may only lodge their claims against the debtor in the bankruptcy proceedings. The trustee must be notified of all their claims against the debtor that had arisen before bankruptcy was declared, regardless of the grounds or the due dates for fulfilling the claims. Enforcement proceedings opened in respect of a debtor are closed if bankruptcy is declared, and the creditor must submit a claim to the trustee in bankruptcy.

In reorganisation proceedings and debt restructuring proceedings, new proceedings cannot be brought during the term of validity of the reorganisation plan and debt restructuring plan, respectively, only by those creditors whose claims the plan in question concerns. In the event of reorganisation, enforcement proceedings are suspended, except in the event of enforcement proceedings conducted to fulfil a claim that has arisen on the basis of an employment relationship or a claim for the payment of maintenance support. In debt restructuring proceedings, the court may suspend enforcement proceedings as a measure of provisional legal protection even before the adjudication or submission of a petition. When admitting a petition, the court suspends enforcement proceedings (or compulsory enforcement) for the collection of money conducted with regard to the debtor's assets until the debt restructuring plan is approved or the proceedings are closed.

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 proceedings

In disputes over the bankruptcy estate or assets that can be included in the bankruptcy estate, the right to be a party to court proceedings in lieu of the debtor is transferred to the trustee. If an action or any other petition relating to the bankruptcy estate filed by the debtor against another person is being heard in court proceedings that began before bankruptcy was declared or if the debtor participates in court proceedings as a third party, the trustee may, in accordance with their duties, enter the proceedings in lieu of the debtor. If the trustee is aware of such proceedings but does not enter them, the debtor may continue as the plaintiff, petitioner or third party.

If there is a proprietary claim against a debtor in court proceedings that began before bankruptcy was declared, but no judgment concerning the claim has yet been made, the court will not hear the claim in the proceedings concerning the action. The court will reopen the proceedings on the basis of a petition from the plaintiff if a higher court has annulled the bankruptcy ruling and a ruling dismissing the bankruptcy petition has entered into force or if the bankruptcy proceedings have come to an end by abatement after bankruptcy is declared.

If a claim for the exclusion of an object from the bankruptcy estate has been lodged against the debtor in court proceedings that began before bankruptcy was declared, the court will hear the claim. In this case, the trustee in bankruptcy may enter the proceedings in lieu of the debtor. The trustee has the rights and obligations of the debtor as the defendant. If the trustee does not enter the proceedings, the proceedings may be continued at the request of the plaintiff.

If a proprietary claim exists against a debtor in court proceedings where the judgment made on the claim is subject to appeal, an appeal may be filed by the trustee on behalf of the debtor after bankruptcy is declared. The debtor may file the appeal with the trustee's consent.

If an administrative instrument against a debtor has been challenged in the court, the term for challenging that administrative instrument is suspended.

Reorganisation proceedings and debt restructuring proceedings

After a reorganisation petition is submitted, the court hearing the matter may, on the basis of a petition from an undertaking and with the approval of the reorganisation adviser, which is appended to the petition, suspend court proceedings involving a financial claim against the undertaking until the reorganisation plan is approved or the reorganisation proceedings are closed, except in the event of a claim lodged on the basis of an employment relationship or a claim for the payment of maintenance support regarding which no judgment has yet been made. When admitting a debt restructuring petition, the court will suspend court proceedings involving a financial claim against the debtor regarding which no judgment has yet been made until the reorganisation plan is approved or the proceedings are closed.

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

Participation of creditors in bankruptcy proceedings

A creditor represents their claim in the bankruptcy proceedings. Creditors are required to notify the trustee of all their claims against the debtor that had arisen before bankruptcy was declared, regardless of the grounds or due dates for fulfilling the claims, no later than within two months of the date of publication of the bankruptcy notice in *Ametlikud Teadaanded*. The trustee is to be notified of a claim by a written petition (proof of claim). Creditors must defend their claims at a general meeting of creditors (meeting for the defence of claims). Rights of security are defended together with the claims that they secure. A claim, its ranking and the right of security securing the claim are deemed to have been admitted if neither the trustee nor any of the creditors object thereto at the meeting for the defence of claims. A claim or its ranking admitted at a meeting for the defence of claims cannot be challenged later on.

In addition to the fact that each creditor represents their claim and the defence thereof, creditors also participate in the conduct of bankruptcy proceedings through the general meeting of creditors. A general meeting of creditors is competent to approve the trustee and elect the bankruptcy committee, decide on the continuation or dissolution of the debtor's enterprise, decide on the debtor's dissolution if the debtor is a legal person, make a composition, decide to the extent provided for by law on issues relating to the sale of the bankruptcy estate, defend claims, resolve complaints filed against the trustee's activities, decide on the remuneration of the members of the bankruptcy committee and resolve other issues that are within the competence of the general meeting of creditors pursuant to law. If a general meeting of creditors decides to elect a bankruptcy committee, it is the duty of the latter, among other things, to protect the interests of all creditors in the bankruptcy proceedings.

Participation of creditors in reorganisation proceedings

The reorganisation adviser immediately notifies creditors of the opening of reorganisation proceedings and of the size of the claims that they have against the undertaking according to the list of debts. To this end, the adviser submits a reorganisation notice to the creditors. If a creditor whose claim is sought to be restructured under a reorganisation plan does not agree with the information in the reorganisation notice, the creditor will submit to the reorganisation adviser, within the term set in the reorganisation notice, a written petition that sets out in which respect they do not agree with the claim in the reorganisation notice and submit evidence in proof of these circumstances. If no petition is submitted by the due date, the creditor is deemed to have agreed with the size of the claim. If the reorganisation adviser does not agree with an allegation made in the creditor's petition, they will submit the petition together with evidence promptly to the court and substantiate why they disagree with the information in the petition. The reorganisation adviser will justify their allegations. On the basis of the submitted allegations and evidence, the court will decide on the size of the creditor's principal claim and collateral claim and on the existence and scope of the security.

Participation of creditors in debt restructuring proceedings

Debt restructuring proceedings concern the creditors whose claims against the debtor have fallen due by the time a debt restructuring petition is submitted. The decision to admit a restructuring petition is taken by the court, which may, where necessary, also hear the creditor's opinion and ask for additional information or documents. The ruling on the admissibility of a petition is transmitted to the debtor and all the creditors whose claims the debtor is seeking to restructure. If a petition is admitted, a creditor cannot, by relying on a breach of a financial obligation that occurred before the debt restructuring petition was submitted, terminate a contract that has been entered into with the debtor and that gives rise to the claims the debtor is seeking to restructure, or refuse to perform their obligations on those grounds. When delivering a restructuring plan to the creditor, the court grants the creditor a term of at least two weeks, but no more than four weeks, after receipt of the restructuring plan to express an opinion to the court or adviser. The creditor will express an opinion on whether the creditor agrees with the debtor's information regarding the claim and the security, the debtor's calculation of the debt and the restructuring of the debt in the manner requested by the debtor. If the creditor does not agree with the restructuring of the debt in the manner requested by the debtor, the creditor must indicate whether they would agree with the restructuring of the debt in another manner. If the creditor whose claim is sought to be restructured does not agree with the information given by the debtor in the list of debts, the creditor will notify the court or, if so determined by the court, the adviser within the term set by the court in which respect they do not agree with the claim and submit the evidence in proof of these circumstances. If the petition is not submitted by the due date, the creditor is deemed to have agreed with the size of the claim. If the debtor or adviser does not agree with an allegation made in the creditor's petition, they will submit the petition together with evidence promptly to the court and substantiate why they disagree with the information in the petition. On the basis of the submitted allegations and evidence, the court will decide on the size of the creditor's principal claim and collateral claim and on the existence of the security.

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

The debtor's assets become the bankruptcy estate on the basis of a bankruptcy ruling and are used as assets designated for satisfying creditors' claims and conducting bankruptcy proceedings. The bankruptcy estate means the debtor's assets at the time

of the declaration of bankruptcy, as well as assets reclaimed or recovered and assets acquired by the debtor during the bankruptcy proceedings. The debtor's assets on which, pursuant to the law, no claim for payment may be made are not included in the bankruptcy estate.

When bankruptcy is declared, the debtor's right to administer and dispose of the bankruptcy estate is transferred to the trustee in bankruptcy. After bankruptcy is declared, any dispositions by the debtor with regard to objects forming part of the bankruptcy estate are null and void. Before bankruptcy is declared, the court may prohibit a debtor from disposing of assets or a share of the assets without the consent of the interim trustee.

The trustee must take possession of the debtor's assets and start the administration of the bankruptcy estate without delay after a bankruptcy ruling is issued. The trustee must reclaim the debtor's assets that are in the possession of a third party for the bankruptcy estate, unless otherwise provided for by law. Administration of a bankruptcy estate comprises the performance of acts with the bankruptcy estate that are necessary for the preservation of the bankruptcy estate and conduct of the bankruptcy proceedings, as well as management of the debtor's activities if the debtor is a legal person or organisation of the debtor's business activities if the debtor is self-employed. In the bankruptcy proceedings of a debtor who is a legal person, the trustee has such rights and obligations of the management board or of the body substituting for the management board of the legal person that are not contrary to the aim of the bankruptcy proceedings. The liability of the trustee is equal to the liability of a member of a management body.

A trustee may conclude a transaction with bankruptcy estate in cash only with the permission of the court. The trustee will not make any payments to creditors in cash on the basis of the distribution ratio. The trustee may conclude transactions of particular relevance to the bankruptcy proceedings only with the consent of the bankruptcy committee. Transactions of particular relevance are, above all, borrowing and, in the event of an enterprise that is included in the bankruptcy estate, all the transactions that are beyond the scope of the regular business activities of the enterprise. The trustee may not conclude any transactions with themselves or with persons related to them in respect of or on the account of the bankruptcy estate or conclude any other transactions of similar nature or involving a conflict of interests or request compensation for the expenses incurred in such transactions.

A trustee may start the sale of the bankruptcy estate after the first general meeting of creditors, unless the creditors have decided otherwise at the meeting. If the debtor has appealed against the bankruptcy ruling, the debtor's assets may not be sold without the debtor's consent before the appeal filed with the district court is heard. These restrictions do not apply to the sale of assets that are highly perishable, depreciate rapidly in value or are excessively expensive to store or preserve. If the activities of the debtor's enterprise continue, the assets may not be sold if this hinders the activities of the enterprise from continuing. If a proposal for composition is submitted, assets may not be sold before the composition is made, unless the general meeting of creditors decides that they may be sold, regardless of the proposal for composition. Bankruptcy estate is sold by auction pursuant to the procedure provided for in the Code of Enforcement Procedure.

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?

Claims to be lodged against the debtor's bankruptcy estate

All claims that arose against the debtor before bankruptcy was declared are to be lodged against the debtor's bankruptcy estate, regardless of the grounds or due dates for fulfilling the claims. When bankruptcy is declared, all the creditors' claims against the debtor are deemed to have fallen due, unless otherwise provided for by law. If a creditor has filed a corresponding claim with the court but no judicial decision has yet been made, the court will suspend the proceedings concerning the action and the creditor must lodge the claim with the trustee in bankruptcy. If a creditor has filed a claim with the court and the court has issued a judgment that has entered into force, the creditor must also lodge their claim with the trustee in bankruptcy, but such a claim is deemed to have been defended. If the debtor could have contested the judicial decision, the trustee in bankruptcy may do that.

Handling of claims arising after the opening of bankruptcy proceedings

After bankruptcy is declared, the creditors in the bankruptcy proceedings may only lodge their claims against the debtor in accordance with the procedure provided for in the Bankruptcy Act. Claims can only be lodged with the trustee in bankruptcy and only those claims can be lodged that had arisen before bankruptcy was declared. Claims arising after bankruptcy is declared cannot be lodged before the closure of the bankruptcy proceedings. Account must be taken of the fact that, in the case of legal persons, in most cases the closure of bankruptcy proceedings involves the liquidation of the legal person, and as a result there is no person against whom claims can be lodged after the bankruptcy proceedings. Thus, it is necessary to be careful and take that risk into account when concluding transactions with a legal person who is bankrupt. Claims against a natural person arising during bankruptcy proceedings can be lodged after the bankruptcy proceedings pursuant to the general procedure. Obligations to

compensate for damage caused during bankruptcy proceedings by the unlawful action of a debtor who is a legal person are consolidated obligations, and so the debtor may be required to perform them during the bankruptcy proceedings pursuant to the general procedure. Enforcement proceedings may also be conducted with regard to the bankruptcy estate for the obligations to be performed.

It is also possible for a situation to arise where there is a disposition by the debtor after bankruptcy is declared with regard to an object belonging to the bankruptcy estate. Such a disposition is null and void since, when bankruptcy was declared, the right to administer and dispose of the assets transferred to the trustee in bankruptcy. If there is nonetheless a disposition by the debtor, the assets transferred by the other party on the basis of the disposition are returned to the party if the assets have been retained in the bankruptcy estate, or compensation is provided if the bankruptcy estate has increased as a result of the transfer. If the debtor disposed of the object on the day bankruptcy was declared, it is presumed that the disposition took place after bankruptcy was declared. If the debtor has disposed of their future claims before bankruptcy is declared, the disposition will become null and void bankruptcy is declared in respect of the claims arising afterwards. A debtor who is a natural person may dispose of the bankruptcy estate with the trustee's consent. Any dispositions without the trustee's consent are null and void.

Handling of claims arising after the opening of reorganisation proceedings and debt restructuring proceedings

During the term of validity of a reorganisation plan, no statement of claim can be filed on the basis of a claim to which the reorganisation plan applies. Statements of claim may be filed about other claims. During the term of validity of a restructuring plan, no statement of claim or petition in proceedings on petition may be filed on the basis of a claim to which the restructuring plan applies. Statements of claim may be filed about other claims. Approval of a restructuring plan does not limit the creditor's right to challenge in court proceedings the claims not admitted in the restructuring plan. A creditor may also challenge in court proceedings the size of the claim to the extent of the share not accepted.

The submission of a debtor's reorganisation petition or debt restructuring petition suspends the limitation period in respect of claims against the debtor. After a reorganisation petition is submitted, the court hearing the matter may, on the basis of a petition from an undertaking and with the approval of the reorganisation adviser, which is appended to the petition, suspend court proceedings involving a financial claim against the undertaking until the reorganisation plan is approved or the reorganisation proceedings are closed, except in the event of a claim lodged on the basis of an employment relationship or a claim for the payment of maintenance support regarding which no judgment has yet been made. When admitting a debt restructuring petition, the court will suspend court proceedings involving a financial claim against the debtor regarding which no judgment has yet been made until the reorganisation plan is approved or the proceedings are closed.

A reorganisation plan does not release a person who is jointly and severally liable for performance of an obligation of an undertaking from performance of that person's obligation. Approval of a restructuring plan does not release a person who is jointly and severally liable for performance of the debtor's obligation from performance of that person's obligation.

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

Rules governing the lodging, verification and admission of claims in bankruptcy proceedings

Creditors are required to notify the trustee of all their claims against the debtor that had arisen before bankruptcy was declared, regardless of the grounds or due dates for fulfilling the claims, no later than within two months of the date of publication of the bankruptcy notice in *Ametlikud Teadaanded*. When bankruptcy is declared, all the creditors' claims against the debtor are deemed to have fallen due. The trustee is to be notified of a claim by a written petition (proof of claim). The proof of claim sets out the content, basis and size of the claim and whether the claim is secured by a pledge. Documents proving the circumstances referred to in the proof of claim are appended thereto. The trustee is required to verify whether the claims lodged are justified and the rights of security securing the claims exist. The creditors and the debtor may submit written objections concerning the claims or the rights of security securing the claims to the trustee before the meeting for the defence of claims.

Claims are defended at a general meeting of creditors (meeting for the defence of claims). Rights of security are defended together with the claims that they secure. At a meeting for the defence of claims, claims are heard in the order in which they were lodged. A claim, its ranking and the right of security securing the claim are deemed to have been admitted if neither the trustee nor any of the creditors object thereto at the meeting for the defence of claims or if the trustee or the creditor who filed an objection waives the objection at the meeting for the defence of claims. The trustee is required to object to a claim or a right of security at the meeting for the defence of claims if there are grounds for objecting. At a meeting for the defence of claims, claims satisfied by a court or arbitration decision that has entered into force, rights of security admitted by a court or arbitration decision that has entered into force and rights of security entered in the land register, ship register, commercial pledge register or the Estonian Central Register of Securities are deemed to have been admitted without defence. A list is prepared of admitted claims.

The minutes of a meeting for the defence of claims indicate whether or not each separate claim or the right of security securing the claim was admitted and who objected to the claim, its ranking or the right of security securing the claim. The minutes also indicate who waived an objection that had been lodged. If a creditor's claim has not been admitted and the creditor did not file an action for the claim to be admitted or the court dismissed the action, the creditor's objections to the claims of another creditor will be disregarded. If no other objections have been filed to the claim of another creditor, the claim is deemed to have been admitted. A claim or its ranking admitted at a meeting for the defence of claims cannot be challenged subsequently.

Rules governing the lodging, verification and admission of claims in reorganisation proceedings and debt restructuring proceedings

In reorganisation proceedings, the debtor submits a list of debts in which they set out all the claims against them as well as the corresponding creditors. Thus, creditors themselves do not lodge any claims. A creditor whose claim is sought to be restructured under a reorganisation plan and who does not agree with the size of their claim in the reorganisation proceedings may submit to the reorganisation adviser a written petition that sets out in which respect they do not agree with the claim in the reorganisation notice, and submits the evidence in proof of these circumstances. If no petition is submitted by the due date, the creditor is deemed to have agreed with the size of the claim. The debtor may object to the arguments put forward by the creditor, but the debtor must substantiate their positions. On the basis of the submitted allegations and evidence, the court will decide on the size of the creditor's principal claim and collateral claim and on the existence and scope of the security.

In debt restructuring proceedings, the debtor submits a debt restructuring plan indicating the obligations to be restructured and the manner of restructuring requested by the debtor. Similarly to reorganisation proceedings, creditors themselves do not lodge any claims. If a creditor whose claim is sought to be restructured does not agree with the information given by the debtor in the list of debts, the creditor will notify the court or, if so determined by the court, the adviser within the term set by the court in which respect they do not agree with the claim and submit the evidence in proof of these circumstances. If the petition is not submitted by the due date, the creditor is deemed to have agreed with the size of the claim. If the debtor or adviser does not agree with an allegation made in the creditor's petition, they will submit the petition together with evidence promptly to the court and substantiate why they disagree with the information in the petition. On the basis of the submitted allegations and evidence, the court will decide on the size of the creditor's principal claim and collateral claim and on the existence of the security.

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

The applicable principle is that all creditors are treated equally. Nevertheless, certain exceptions apply that provide some creditors with a preferential right.

Before money is paid on the basis of distribution ratios, payments relating to bankruptcy proceedings are made out of the bankruptcy estate in the following order:

- 1) claims arising from the consequences of exclusion or recovery of assets;
- 2) maintenance support payable to the debtor and their dependants;
- 3) consolidated obligations;
- 4) costs and expenses incurred in the bankruptcy proceedings.

After these payments have been made, the creditors' claims are satisfied in the following order:

- 1) admitted claims secured by a pledge;
- 2) other admitted claims that were lodged within the term set;
- 3) other claims that were not lodged within the term set, but that were admitted.

Third party liability for the debtor's obligations is possible in the case of solidary debtors. In this case, the solidary debtor is liable to the creditor, regardless of the debtor's insolvency. If a solidary debtor pays the share of the debt that the creditor has also lodged against the debtor, that share will be deducted from the claim.

It is also possible for the debtor's obligation to transfer to a third party on the basis of law. If the employer has become insolvent, i. e. the employer has been declared bankrupt or the bankruptcy proceedings have ended in abatement, the employee will be compensated for any remuneration not received before the employer was declared insolvent, any holiday pay not received before the employer was declared insolvent and any benefits not received when the employment contract was cancelled before or after the employer was declared insolvent. If an employer is insolvent, the creditor in bankruptcy proceedings in respect of the unemployment insurance premiums not received by the due date is the state.

In reorganisation proceedings and debt restructuring proceedings, it is not possible to talk about bankruptcy estate, and claims are satisfied according to the reorganisation or debt restructuring plan. A reorganisation plan does not release a person who is jointly and severally liable for the performance of an obligation of an undertaking from the performance of the person's obligation. If the person who is jointly and severally liable for the performance of an obligation of an undertaking has performed the obligation, the person will only have the right of recourse against the undertaking to the extent to which the undertaking is liable for the performance of the obligation under the reorganisation plan. The approval of a restructuring plan does not release a person who is jointly and severally liable for the performance of the debtor's obligation from the performance of the person's obligation. If the person who is jointly and severally liable for the performance of the debtor's obligation has performed the obligation, the person will only have the right of recourse against the debtor to the extent to which the debtor is liable for the performance of the obligation under the restructuring plan.

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

Closure of bankruptcy proceedings and effects of closure

Bankruptcy proceedings end with the dismissal of the bankruptcy petition, abatement of the bankruptcy proceedings, after the grounds for bankruptcy have ceased to exist, with the creditors' consent, when the final report is approved, when a composition is approved or on other grounds provided for by law.

The court will close proceedings by abatement by a ruling without declaring bankruptcy, regardless of the debtor's insolvency, if the debtor's assets are insufficient to cover the costs and expenses incurred in the bankruptcy proceedings and if it is impossible to recover or reclaim the assets or submit a claim against a member of a management body. The court may also close proceedings by abatement without declaring bankruptcy, regardless of the debtor's insolvency, if the debtor's assets consist primarily in claims for recovery or claims against third parties and the satisfaction of these claims is unlikely. The court will not close proceedings by abatement if the debtor, a creditor or a third party transfers the amount determined by the court as a deposit to cover the costs and expenses incurred in the bankruptcy proceedings to the account prescribed to this end. If the bankruptcy proceedings of a debtor who is a legal person end in abatement, the interim trustee will liquidate the legal person within two months of the entry into force of the ruling on the closure of the proceedings without liquidation proceedings. If, on the abatement of bankruptcy proceedings, the debtor has any assets, the interim trustee's remuneration will be paid and necessary expenses covered first.

The court will close bankruptcy proceedings on the basis of a petition from the debtor if the grounds for the bankruptcy proceedings have ceased to exist, provided that the debtor proves that they are not insolvent or that they are not likely to become insolvent if the bankruptcy was declared because the debtor was likely to become insolvent in the future. If bankruptcy proceedings are closed because the grounds for the bankruptcy proceedings have ceased to exist, the legal person is not dissolved.

The court will close bankruptcy proceedings on the basis of a petition from the debtor if all the creditors who lodged their claims within the term set have granted their consent to the closure of the proceedings. If a debtor who is a legal person is permanently insolvent, the court will decide on the liquidation of the debtor who is a legal person by a ruling on the closure of the proceedings.

Bankruptcy proceedings end by approval of a final report, when the trustee submits the final report to the bankruptcy committee and the court. In the final report, the trustee provides information concerning the bankruptcy estate and the money received from its sale, payments, claims admitted by creditors, actions filed and not yet filed, etc. Creditors may file objections to the final report with the court. The court decides on the approval of the final report and closure of the bankruptcy proceedings. The court will refuse to approve the final report and, by means of a ruling, will return it to the trustee for the bankruptcy proceedings to continue if the final report reveals that the rights of the debtor or the creditors have been breached in the bankruptcy proceedings.

Bankruptcy proceedings may also end with a composition being declared. Composition is an agreement between a debtor and the creditors concerning the payment of debts and it involves reduction of the debts or extension of the term for payment. A composition is made in bankruptcy proceedings on the proposal of the debtor or the trustee after bankruptcy is declared. A composition resolution is adopted by the general meeting of creditors. The court will decide on the approval of the composition. The court will close the bankruptcy proceedings by means of a ruling approving the composition.

If bankruptcy proceedings are not closed within two years of bankruptcy being declared, the trustee will submit a report to the bankruptcy committee and the court once every six months until the closure of the bankruptcy proceedings. In that report the trustee will set out the reasons why the bankruptcy proceedings have not been completed and provide information concerning the sold and unsold bankruptcy estate and concerning the administration of the bankruptcy estate. The court will release the trustee when the bankruptcy proceedings are closed, unless otherwise provided for by law. The court may refuse to release the trustee if, by the time the bankruptcy proceedings are closed, the bankruptcy estate has not been sold in full, money is still to be received for

the bankruptcy estate, the actions filed by the trustee have not been heard, or the trustee intends or is required to file an action. In this case, the trustee will also continue to perform their duties after the bankruptcy proceedings are closed. If, after the end of the bankruptcy proceedings and the release of the trustee, money is received in the bankruptcy estate, amounts of money deposited on distribution become available or it becomes evident that the bankruptcy estate includes objects that were not taken into account when the distribution proposal was prepared, the court will make a ruling on subsequent distribution on its own initiative or on the basis of a petition from the trustee or a creditor.

Closure of reorganisation proceedings and effects of closure

Reorganisation proceedings end if they are closed before the due date, the reorganisation plan is annulled, the reorganisation plan is implemented before the due date, or the term for implementing the reorganisation plan as set out in the reorganisation plan expires. Where a reorganisation plan is implemented before the due date, the reorganisation proceedings end if the undertaking has performed all the obligations they assumed under the reorganisation plan before the term for implementing the reorganisation plan expires.

Reorganisation proceedings may be closed before the due date only before the reorganisation plan is approved. The court will close reorganisation proceedings before the due date if the undertaking breaches its obligation to cooperate or fails to pay the amount set by the court as a deposit to cover the reorganisation adviser's or expert's remuneration and expenses, the reorganisation plan is not approved, the undertaking submits a petition to this effect, the grounds for opening the reorganisation proceedings cease to exist, the assets of the undertaking are squandered or the creditors' interests are damaged, the reorganisation plan is not submitted by the due date, or the claim is ambiguous. If the court closes reorganisation proceedings before the due date, any and all of the consequences of opening the reorganisation proceedings retroactively cease to exist.

When the term for implementing a reorganisation plan expires, the reorganisation proceedings will be closed.

Reorganisation proceedings may also end in the annulment of the reorganisation plan. A reorganisation plan is annulled if the undertaking has been convicted of a bankruptcy offence or a criminal offence relating to enforcement proceedings after the reorganisation plan was approved, the undertaking fails to perform its obligations under the reorganisation plan to a material extent, if it is evident, when at least one-half of the term of validity of the reorganisation plan has passed, that the undertaking is unable to perform the obligations it assumed under the reorganisation plan, on the basis of a petition from the reorganisation adviser if the fee for supervision is not paid or if the undertaking fails to provide assistance to the reorganisation adviser during performance of the supervision obligation or does not provide information to the reorganisation adviser that the latter requires to exercise supervision, if the undertaking submits a petition for the annulment of the reorganisation plan, or if the undertaking is declared bankrupt. If a reorganisation plan is annulled, the consequences of opening the reorganisation proceedings retroactively cease to exist.

Closure of debt restructuring proceedings and effects of closure

Debt restructuring proceedings end when the debt restructuring petition is dismissed or rejected, the debt restructuring plan is annulled, the proceedings are closed or the term for implementation as set out in the debt restructuring plan expires. When a restructuring plan is implemented before the due date, the proceedings end if the debtor has performed all the obligations assumed under the restructuring plan before the term for implementing the restructuring plan expired.

The court will annul a restructuring plan on the basis of a petition from the debtor and if the debtor is declared bankrupt. The court may annul a restructuring plan if the debtor fails to perform the obligations under the restructuring plan to a material extent, if it is evident, when at least one-half of the term of validity of the restructuring plan has passed, that the debtor is unable to perform the obligations assumed thereunder, the debtor does not have any solvency problems or has overcome them, the debtor has, intentionally or due to gross negligence, submitted materially incorrect or incomplete information about their assets, income, creditors or obligations, the debtor has made payments to creditors not referred to in the restructuring plan, thereby damaging the other creditors' interests to a material extent, the debtor fails to provide assistance to the court or the adviser during performance of the supervision obligation or does not provide the information required for supervision to be exercised, or if the debtor fails to pay the amount determined by the court as a deposit to cover the adviser's or expert's remuneration and expenses. If a restructuring plan is annulled, the consequences of admitting the debt restructuring petition retroactively cease to exist.

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

Creditors' rights after the closure of bankruptcy proceedings

After the closure of bankruptcy proceedings, claims that could have been, but were not, lodged during the bankruptcy proceedings and claims that were filed, but were not satisfied, or against which the debtor filed an objection may be lodged by the creditors against the debtor pursuant to the general procedure. In this case, interest and default interest will not be calculated for the period of the bankruptcy proceedings.

If a debtor who is a natural person is released from their obligations that were not performed during the bankruptcy proceedings, the claims of the creditors in the bankruptcy proceedings against the debtor, including the claims of the creditors in the bankruptcy proceedings who did not lodge their claims during the bankruptcy proceedings, except for obligations to compensate for damage caused intentionally by unlawful action or to pay maintenance support for a child or parent, extinguish.

After the closure of bankruptcy proceedings, creditors may also lodge claims arising from consolidated obligations that were not satisfied in the bankruptcy proceedings against the debtor. Claims arising during bankruptcy proceedings that could not be lodged in the bankruptcy proceedings may also be lodged against the debtor pursuant to the general procedure. In this case, the limitation period starts from the closure of the bankruptcy proceedings. To the extent that a creditor's claim admitted in bankruptcy proceedings was not satisfied in the bankruptcy proceedings, the ruling is the enforcement instrument unless the debtor has filed an objection to the claim or the court has admitted the creditor's claim.

Creditors' rights after the closure of reorganisation proceedings

If reorganisation proceedings are closed when the term for implementing a reorganisation plan expires, a creditor can enforce a claim restructured under the reorganisation plan only to the extent agreed on in the reorganisation plan but not fulfilled in accordance with the reorganisation plan.

If a reorganisation plan is annulled or terminated prematurely, the consequences of opening the reorganisation proceedings retroactively cease to exist. The right of claim of a creditor whose claim was restructured under the reorganisation plan is restored against the undertaking in the initial amount. Account must also be taken of the creditor's gains in the course of implementing the reorganisation plan.

Creditors' rights after the closure of debt restructuring proceedings

If a petition is rejected or dismissed or proceedings are closed, any and all of the consequences of admitting the petition retroactively cease to exist. The right of claim of a creditor whose claim was restructured under the restructuring plan is restored against the debtor in the initial amount. Account must also be taken of the creditor's gains in the course of implementing the restructuring plan.

After the term for implementing a restructuring plan expires, a creditor can enforce a claim restructured under the restructuring plan only to the extent agreed on in the restructuring plan but not fulfilled in accordance with the reorganisation plan.

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

Bankruptcy proceedings

If a bankruptcy petition is satisfied or the bankruptcy proceedings end in a composition, the costs and expenses incurred in the bankruptcy proceedings are paid out of the bankruptcy estate. If the court dismisses or rejects a creditor's bankruptcy petition or if the proceedings are closed because the creditor withdraws the bankruptcy petition, the costs and expenses incurred in the bankruptcy proceedings are reimbursed by the creditor. In the event of abatement of bankruptcy proceedings, the court will decide on the division of the costs and expenses incurred in the bankruptcy proceedings according to the circumstances.

If proceedings opened on the basis of the debtor's petition are closed by abatement without bankruptcy being declared and the debtor's assets are insufficient to make the required payments, the court will order the debtor to pay the interim trustee's remuneration and expenses subject to reimbursement, but may order them to be reimbursed from state funds. Any reimbursement of the interim trustee's remuneration and expenses from state funds will not exceed 397 euros (including the taxes prescribed by law, except value added tax). The court will not order the interim trustee's remuneration and expenses to be reimbursed from state funds if the debtor, a creditor or a third party has transferred the amount determined by the court as a deposit to cover the interim trustee's remuneration and expenses subject to reimbursement to the account prescribed to this end.

Reorganisation proceedings

If reorganisation proceedings are opened, the court will set a term during which the undertaking must transfer the amount determined by the court as a deposit to cover the reorganisation adviser's initial remuneration and initial expenses to the account prescribed to this end. If the undertaking fails to pay this amount, the court will close the reorganisation proceedings. The amount of the reorganisation adviser's remuneration and expenses to be reimbursed will be decided by the court when the reorganisation

adviser is released or the reorganisation plan is approved on the basis of the report on the reorganisation adviser's activities and expenses.

If the court involves experts in reorganisation proceedings, the experts have the right to be reimbursed for necessary and justified expenses incurred when performing their obligations and to receive remuneration for performing their duties. The amount of an expert's remuneration and expenses to be reimbursed will be decided by the court when the expert is released on the basis of the report on the expert's activities and expenses that has been submitted within the term determined by the court. When setting the expert's remuneration, the court may also hear the undertaking.

Debt restructuring proceedings

The debtor bears the costs and expenses incurred in debt restructuring proceedings. The creditors' procedural expenses are borne by the creditors themselves. The court may order the debtor to bear the creditors' procedural expenses if the debtor knowingly submitted an unfounded debt restructuring petition or caused procedural expenses to the creditors by otherwise knowingly submitting false information or knowingly submitting an unfounded petition or objection. The debtor will not be granted any procedural aid by the state for paying the state fee. If the debt restructuring plan is implemented, the debtor does not have to reimburse the expenses of the procedural aid granted by the state. If an adviser or expert is appointed, the court will determine the amount that the debtor must transfer as a deposit to cover the adviser's or expert's remuneration and expenses to the account prescribed to this end.

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

Bankruptcy proceedings

When bankruptcy is declared, the debtor's right to administer and dispose of the bankruptcy estate is transferred to the trustee in bankruptcy. After bankruptcy is declared, any dispositions by the debtor with regard to objects forming part of the bankruptcy estate are null and void. A debtor who is a natural person may dispose of the bankruptcy estate with the trustee's consent. Any dispositions without the trustee's consent are null and void.

The court will revoke, by way of recovery procedure, any transaction or other act by the debtor that was concluded or performed before bankruptcy was declared and that damages the creditors' interests. If a transaction subject to recovery has been concluded or any other act subject to recovery has been performed during the period from the appointment of an interim trustee to the declaration of bankruptcy, the transaction or act is deemed to have damaged the creditors' interests.

The debtor, a creditor or the trustee may request that the court revoke a resolution of the general meeting of creditors if the resolution is contrary to law or was made in violation of the procedure provided for by law or if the right to contest the resolution is directly prescribed by law. Revocation of a resolution of the general meeting of creditors may also be requested if the resolution damages the creditors' common interests.

If proceedings have been opened for the release of a debtor who is a natural person from their obligations, the court may, at a creditor's request, annul the ruling releasing the debtor from their obligations that were not performed during the bankruptcy proceedings within one year of issuing the ruling if it becomes evident that the debtor has intentionally breached their obligations during the proceedings for the release of the debtor from their obligations and has thereby materially hindered satisfaction of the creditors' claims.

If the debtor and creditors agree to enter into a composition after bankruptcy is declared, the court may annul the composition if the debtor fails to perform the obligations arising from the composition, is convicted of a bankruptcy offence or a criminal offence relating to enforcement proceedings or, when at least one-half of the term of validity of the composition has passed, it is evident that the debtor is unable to meet the conditions of the composition. The annulment of a composition affects all the creditors who participated in the composition and, thus, protects the general body of creditors.

Reorganisation proceedings

The court will annul a reorganisation plan if the undertaking has been convicted of a bankruptcy offence or a criminal offence relating to enforcement proceedings after the reorganisation plan was approved, the undertaking fails to perform its obligations under the reorganisation plan to a material extent, if it is evident, when at least one-half of the term of validity of the reorganisation plan has passed, that the undertaking is unable to perform the obligations assumed under the reorganisation plan, on the basis of a petition from the reorganisation adviser if the fee for supervision is not paid or if the undertaking fails to provide assistance to the reorganisation adviser during performance of the supervision obligation or does not provide information to the reorganisation adviser that the latter requires to exercise supervision, or on the basis of a petition from the undertaking, or if the undertaking is declared bankrupt. The right of claim of a creditor whose claim was restructured under the reorganisation plan is restored against

the undertaking in the initial amount, and account must also be taken of the creditor's gains in the course of implementing the reorganisation plan.

Debt restructuring proceedings

The court will annul a restructuring plan on the basis of the debtor's petition or if the debtor is declared bankrupt, or if the debtor fails to perform their obligations under the restructuring plan to a material extent, if it is evident, when at least one-half of the term of validity of the restructuring plan has passed, that the debtor is unable to perform the obligations assumed thereunder, the debtor does not have any solvency problems or has overcome them and the restructuring of the creditors' claims is no longer fair for the creditors due to a material change in circumstances, if the debtor has, intentionally or due to gross negligence, submitted materially incorrect or incomplete information about their assets, income, creditors or obligations, the debtor has made payments to creditors not referred to in the restructuring plan, thereby damaging the other creditors' interests to a material extent, the debtor fails to provide assistance to the court or the adviser during performance of the supervision obligation or does not provide the information required for supervision to be exercised, or if the debtor fails to pay the amount determined by the court as a deposit. The right of claim of a creditor whose claim was restructured under the restructuring plan is restored against the debtor in the initial amount. Account must also be taken of the creditor's gains in the course of implementing the restructuring plan.

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