

## **Translation from Finnish**

**Legally binding only in Finnish and Swedish**

**Ministry of Justice, Finland**

## **Act on the Recovery of Assets to Bankruptcy Estates**

*(758/1991; amendments up to 1131/2019 included)*

### **Chapter 1**

#### **General provisions**

##### **Section 1**

##### **Scope of application**

Once a debtor's assets have been relinquished in a bankruptcy, a court decision may order the reversal of transactions applying to assets of the debtor as laid down in this Act. The provisions on transactions in this Act shall also apply to any action, arrangement or other measure that has an effect comparable to a transaction.

##### **Section 2**

##### **Cut-off date**

In this Act, cut-off date means the date on which the bankruptcy petition was filed with the court. If several bankruptcy petitions have been pending concurrently, the date on which the first petition was filed shall be considered the cut-off date.

However, if a death estate transferred to the administration of the estate administrator is declared bankrupt upon petition made within three months of the estate administrator's appointment, the cut-off date shall mean the date on which the application for the estate administrator's appointment was made. (635/2006)

If the debtor's assets are relinquished in a bankruptcy upon petition filed during pendency of a procedure referred to in the Restructuring of Enterprises Act ([47/1993](#)) or within three months of the date on which the procedure expired for reasons other than the confirmation of the

restructuring programme, the cut-off date shall be considered the date referred to in section 35, subsection 2 of the Act. If the debtor's assets are relinquished in a bankruptcy upon petition filed during pendency of a procedure referred to in the Act on the Adjustment of the Debts of a Private Individual ([57/1993](#)) or within three months of the date on which a petition for debt adjustment was rejected or dismissed without considering its merits, the cut-off date shall be considered the date referred to in section 60, subsection 2 of that Act. (797/1998)

### **Section 3**

#### **Persons close to each other**

When applying this Act, the debtor and the following persons shall be considered to be persons close to each other:

- 1) the debtor's spouse;
- 2) the debtor's or his or her spouse's relative in the direct ascending or descending line, sibling, stepbrother or stepsister, and the spouse of such a person; and
- 3) a person who is otherwise particularly close to the debtor.

Also considered close to each other shall be a private trader, company, other corporate entity or foundation and:

- 1) a person who, individually or together with persons close to him or her, has a material beneficial connection with the trader, corporate entity or foundation based on an interest or comparable financial circumstance;
- 2) a person who, on the basis of a leadership position, has a material influence on the activities of the trader, corporate entity or foundation; and
- 3) a person who is close to any of those referred to in paragraphs 1 or 2.

A close relationship based on subsection 2, paragraph 3 above is not of significance if it is established likely that the relationship has had no connection with the transaction.

### **Section 4**

#### **Insolvency and over-indebtedness**

In this Act, insolvency means that the debtor is unable, other than temporarily, to pay his or her debts when they fall due. Over-indebtedness means that the debtor's liabilities are greater than his or her assets.

## **Chapter 2**

### **Grounds for recovery of assets**

#### **Section 5**

##### **General grounds for recovery of assets**

A transaction shall be reversed if, alone or together with other measures, it has unduly favoured a creditor at the expense of other creditors, transferred assets beyond the reach of creditors or increased debts to the detriment of the creditors. A precondition for the reversal is that the debtor was insolvent at the time the transaction was made or that the transaction contributed to the debtor's insolvency. However, if a gift, a gift-like agreement or a distribution of assets is to be reversed, the reversal shall be subject to the precondition that the debtor was over-indebted at the time the transaction was made or that the transaction contributed to the over-indebtedness. A further precondition is that the other party knew, or should have known, about the insolvency or over-indebtedness, or about the transaction's significance for the financial circumstances of the debtor and the circumstances on account of which the transaction was inappropriate.

If a person close to the debtor has been a party to a transaction referred to in subsection 1, the person shall be deemed to have been aware of the facts referred to in that subsection, unless it is established as likely that he or she did not know and should not have known about them.

If a transaction was made more than five years before the cut-off date, it shall be reversed only if a person close to the debtor was a party to it.

#### **Section 6**

##### **Reversal of gifts and gift-like agreements**

A gift shall be reversed if it was redeemed less than one year before the cut-off date. A gift that was redeemed at least one year but less than three years before the cut-off date shall be reversed if it was given to a person close to the debtor and there has been a failure to demonstrate that the debtor was not over-indebted and that the debtor did not become over-indebted due to the gift.

A gift referred to in section 6 of the Finnish Gift Promises Act shall also be reversed if the notification referred to in that section was not made before the cut-off date. A gift shall also be reversed when the notification was made after the gift was redeemed:

- 1) if the notification was made less than one year before the cut-off date; or
- 2) if the notification was made at least one year but less than three years before the cut-off date and there has been a failure to demonstrate that the debtor was not over-indebted when the gift was redeemed and that the debtor did not become over-indebted due to the gift.

A sale, exchange or other agreement shall be reversed as provided for gifts under subsection 1 if the disparity between the transactional actions of the contracting parties at the time of agreement was so evident that part of the agreement has to be considered a gift.

Reversal of grants and customary gifts that have not been disproportionate to the financial position of the debtor may not be requested under this section.

## **Section 7**

### **Reversal of an unreasonable benefit**

The provisions of section 6, subsection 1 concerning the reversal of a gift shall apply to the payment of salary, fees or other comparable benefit in so far as the payment is manifestly disproportionate to what can be considered reasonable in view of the work done and other circumstances.

## **Section 8**

### **Presumption of gift**

If the debtor has transferred assets to a person close to him or her or has concluded a sale, exchange or other agreement with such a person or has paid the person a salary, fees or other comparable benefit, and it is claimed that the transfer was made without consideration or that the agreement has to be considered a gift at least in part due to the disparity between the transactional actions of the two parties, or that the payment of a salary, fees or other comparable benefit is disproportionate to what can be considered reasonable on the basis of section 7, the transfer, agreement or payment shall be considered a gift in whole or in part, unless some other explanation is established as likely.

## **Section 9** (1131/2019)

### **Reversal of a distribution of assets**

If the debtor has waived his or her right in a distribution of assets in the manner referred to in [section 104 of the Marriage Act](#), the distribution shall be reversed:

- 1) if the deed of distribution was not submitted to the Digital and Population Data Services Agency or, in the Province of Åland, to the State Department of Åland before the cut-off date;
- 2) if the deed of distribution was submitted to the Digital and Population Data Services Agency or, in the Province of Åland, to the State Department of Åland less than one year before the cut-off date; or
- 3) if the deed of distribution was submitted to the Digital and Population Data Services Agency or, in the Province of Åland, to the State Department of Åland at least one year but less than three years before the cut-off date and there has been a failure to demonstrate that the debtor was not over-indebted when the distribution of assets was performed and that the debtor did not become over-indebted due to the distribution of assets.

## **Section 9a** (1131/2019)

### **Reversal of separation of assets and compensation**

If the debtor has waived his or her right in the manner referred to [in section 11](#) of the Act on the Dissolution of the Household of Cohabiting Partners (26/2011), the separation of assets or the compensation shall be reversed:

- 1) if the deed of separation of assets or the compensation agreement or other document were not submitted to the Digital and Population Data Services Agency or, in the Province of Åland, to the State Department of Åland before the cut-off date;
- 2) if the document referred to in paragraph 1 was submitted to the Digital and Population Data Services Agency or, in the Province of Åland, to the State Department of Åland less than one year before the cut-off date; or
- 3) if the document referred to in paragraph 1 was submitted to the Digital and Population Data Services Agency or, in the Province of Åland, to the State Department of Åland at least one year

but less than three years before the cut-off date and there has been a failure to demonstrate that the debtor was not over-indebted when the separation of assets was performed or the compensation transaction made and that the debtor did not become over-indebted due to the separation of assets or the compensation transaction.

## **Section 10**

### **Reversal of debt payment**

The payment of a debt less than three months before the cut-off date shall be reversed if the debt was paid using an uncommon means of payment or prematurely or in an amount that has to be considered significant in relation to the assets of the estate. However, the payment shall not be reversed if it can be considered normal in view of the circumstances. If the payment was made to a person close to the debtor at least three months but less than two years before the cut-off date, the payment shall be reversed accordingly, unless it is demonstrated that the debtor was not insolvent and did not become insolvent due to the payment.

## **Section 11**

### **Reversal of the payment of a bill of exchange or a cheque**

Under section 10, the payment of a bill of exchange or a cheque shall be reversed only in so far as the recipient could have refused to accept the payment without losing his or her right to a bill of exchange or cheque against someone else from whom he or she could have received payment.

If the payment is not reversed under subsection 1, the provisions of section 21, subsection 1 shall apply to the liability to compensate incurred by a third party.

## **Section 12**

### **Reversal of a payment received through distraint or garnishment**

A payment received by a creditor through distraint or garnishment shall be reversed if the distraint or garnishment was performed less than three months before the cut-off date. The payment shall also be reversed if the distraint or garnishment was performed to the benefit of a person close to the debtor at least three months but less than two years before the cut-off date, unless it is demonstrated that the debtor was not insolvent and did not become insolvent due to the distraint or garnishment.

The provisions of subsection 1 shall apply to the distraint or garnishment of child or spousal maintenance only to the extent that the child or spouse has been unduly favoured in the distraint or garnishment.

### **Section 13**

#### **Reversal of set-off**

The provisions of this Act on the reversal of payments shall, correspondingly, apply to set-off if a creditor would not have been entitled to set off a claim in bankruptcy.

### **Section 14**

#### **Reversal of security**

Collateral provided by or other security given by the debtor for his or her debt less than three months before the cut-off date shall be reversed if such security had not been agreed at the time the debt was incurred or if possession of the collateral had not been transferred or other measures required for establishing a security right had not been taken without undue delay after the debt was incurred. If security was given for a person close to the debtor at least three months but less than two years before the cut-off date, the security shall be reversed, unless it is demonstrated that the debtor was not insolvent and did not become insolvent due to the security arrangement.

### **Chapter 3**

#### **Effects of recovery**

### **Section 15**

#### **Return of assets or compensation for value of assets**

When a transaction is reversed, the assets received from the debtor shall be returned to the bankruptcy estate.

The bankruptcy estate shall refund the consideration given to the debtor for the assets referred to in subsection 1. However, if the consideration has been placed beyond the reach of the creditors and the person who gave the consideration knew or should have known that this was the purpose of the debtor, there shall be no obligation for it to be returned.

If nothing remains of an asset to be returned under subsections 1 or 2 or it is not otherwise returnable, its value shall be compensated for. If the return of a certain asset would be to the detriment of the person liable for it, the court may entitle him or her to pay compensation in accordance with the asset's value in lieu of the return of the asset.

## **Section 16**

### **Depreciation**

If the value of the asset to be returned has significantly decreased as a result of wear or damage, the person liable for the return shall be liable to compensate for the loss of value of the asset.

Where the value of the asset has decreased for a reason other than that referred to in subsection 1, the defending party in the recovery shall be liable to pay reasonable compensation for the loss of value of the asset in the period following presentation of the claim for recovery of the transaction. If the obligation to return is based on section 5, an obligation may be imposed on the defending party to pay compensation starting from the time when he or she took possession of the asset.

## **Section 17**

### **Proceeds, benefit and interest**

The person liable for the return shall surrender the proceeds from the asset that were received after the claim for reversal of the transaction was presented or compensate for the value of the proceeds, complying accordingly with the provisions of section 15, subsection 3. The person liable for the return shall also pay reasonable compensation for the benefit he or she received from the asset after the stated point in time, unless this benefit can be considered to be included in the compensation paid for the depreciation of the asset. If the recovery is based on section 5, the liability to pay compensation referred to above may be imposed on the person liable for the return from the time when he or she took possession of the asset.

If the asset to be returned is money or if the value of the asset has to be compensated for, the defending party in the recovery shall pay interest in accordance with [section 4 of the Interest Act \(633/1982\)](#) from the time of presentation of the claim for reversal of the transaction. If the recovery is based on section 5, an obligation may also be imposed on the defending party to pay

interest in accordance with [section 3, subsection 2](#) of the Interest Act from the time he or she took possession of the asset.

## **Section 18**

### **Costs invested in assets**

The person liable for the return shall have the right to be compensated for necessary costs and, where deemed reasonable, other costs that he or she has invested in the asset to be returned.

## **Section 19**

### **Security given by a third party**

Where a third party has given security for a debtor's liability and this security has been returned to him or her as a result of fulfilment of the obligation, the creditor shall, in the event of reversal of the payment, be obliged to return only the portion exceeding the value of the security if he or she cannot recover the security and he or she did not know and should not have known of the debtor's insolvency at the time he or she returned the security. The provisions above shall correspondingly apply when a person has entered into a guarantee of an obligation of the debtor and the debtor has fulfilled his or her obligation.

Provisions on the liability to pay compensation applicable to a third party to whom security is returned and to a guarantor are laid down in section 21, subsection 2.

## **Chapter 4**

### **Status of a third party**

## **Section 20**

### **Status of acquiring party**

If an asset which may be claimed for return to the bankruptcy estate under the provisions of this Act has been transferred onwards, the return of the asset or compensation for its value may, correspondingly, be claimed from the acquiring party if that party knew or should have known of the circumstances giving entitlement to reversal of the transaction. In this case, the provisions of sections 15–18 on the effects of reversal shall also apply. However, in the case referred to in

section 16, subsection 1, the acquiring party is not obliged to compensate for the depreciation of the asset during the period preceding the acquisition.

## **Section 21**

### **Return of security and the liability of a bill of exchange debtor and a cheque debtor**

If the payment of a bill of exchange or a cheque is not reversed under section 11, the party who would ultimately have suffered the loss in the payment not being made shall be liable to pay compensation to the bankruptcy estate. A precondition for the liability to compensate is that the payment, if it had been made to him or her as a creditor, could be ordered for reversal.

In the case referred to in section 19 above, the third person recovering the security or the guarantor shall be obliged to reinstate the security or to compensate the creditor for its value or, if so required, compensate the estate directly. A precondition for this is that the payment, if it had been made to him or her as a creditor, could be ordered for reversal.

## **Chapter 5**

### **Adjustment and recovery procedure**

#### **Section 22**

##### **Adjustment**

Liability for recovery of assets under this Act may be adjusted where the liable party is not a bankruptcy estate, provided there are serious grounds for this.

#### **Section 23 (121/2004)**

##### **Claim for recovery**

Recovery may be claimed by the estate administrator or a creditor who has lodged his or her claims in the bankruptcy or whose claims have otherwise been taken into account in the disbursement list. The same applies to other claims made on behalf of a bankruptcy estate under this Act.

Recovery is claimed by bringing an action before a court or by issuing a complaint against the lodgement. Instead of the jurisdiction provided in [chapter 10 of the Code of Judicial Procedure](#), the

action may be brought before the district court in which the bankruptcy matter was considered, and in the context of restructuring, in the district court that considered the matter concerning the start of the restructuring procedure. The estate administrator may also claim recovery by issuing an objection against another claim concerning the bankruptcy estate. (248/2007)

If the debtor is declared bankrupt during restructuring of a company or during a restructuring programme, the action for recovery pending at that time may be continued by the estate administrator in lieu of the receiver, on behalf of the bankruptcy estate. If the action has been brought by a creditor, the creditor may continue the action on behalf of the bankruptcy estate. Correspondingly, a creditor may continue a recovery action he or she has brought in connection with debt adjustment of a private individual. A condition for the continuation of the action is that notification of the action's continuation be submitted to the court considering the recovery action within three months of the lodgement date referred to [in chapter 12, section 5](#) of the Bankruptcy Act (120/2004).

## **Section 24**

### **Commencement of an action**

A recovery action shall be brought within one year of the commencement of bankruptcy. However, an action may still be brought within three months of the date on which the bankruptcy estate noticed or should have noticed grounds for recovery. (87/2013)

If a creditor has brought an action, the court shall reserve the estate administrator an opportunity to be heard in the matter. Notification of the consideration of the matter may be sent to the estate administrator by post. (121/2004)

## **Section 25 (121/2004)**

### **Retroactive lodgement**

If the recovery action is brought so late that the defending party wishing to lodge a claim in the bankruptcy due to the action cannot do so on the lodgement date, he or she may lodge the claim after the lodgement date as provided in chapter 12, section 16 of the Bankruptcy Act. Anyone needing to lodge a claim in the bankruptcy after the lodgement date due to a claim referred to in section 23, subsection 2, shall have the same right.

## **Chapter 6**

## **Entry into force**

### **Section 26**

#### **Transitional provisions and entry into force**

This Act enters into force on 1 January 1992.

This Act applies where a bankruptcy petition is filed after the Act enters into force. The provisions in force at the time of the entry into force of this Act shall apply in lieu of the provisions of sections 1–22 if the transaction was made before the Act's entry into force. However, a transaction made before the entry into force of this Act shall not be reversed if it would not be reversed under this Act. Neither is there any return, compensation or other similar liability in respect of a transaction made before the entry into force of this Act, in so far as such liability does not exist under this Act.