

NB: Unofficial translation

Ministry of Employment and the Economy, Finland
2011

Act on Personnel Funds (934/2010)

Chapter 1

General provisions

Section 1 Purpose of the Act

The purpose of this Act is to promote the use of remuneration schemes covering an organisation's entire personnel with a view of thus enhancing productivity and competitiveness.

This Act also aims to improve cooperation between the employer and personnel, as well as the personnel's opportunities for economic participation.

Section 2 Definitions

In this Act:

- 1) *A personnel fund* means a fund owned and controlled by the personnel, with the purpose of managing the performance bonus or profit bonus items and other assets referred to in this Act and paid into the fund by the company.
- 2) *personnel fund contribution* means a sum of money, the maximum amount of which is determined under consistent principles as well as according to a performance or profit bonus system encompassing all fund members and adopted by companies and profit units in a company participating in the personnel fund;
- 3) *A supplement to a personnel fund contribution* means a sum of money, upon which each company or profit unit in a company within the personnel fund can decide separately, concerning a certain part of the total personnel within the company or profit unit in a company having made said decision. At a maximum, the annual amount of the sum is the equivalent of one month's salary for members entitled to said supplement, or one month's salary for each member;
- 4) *Representatives of the personnel groups* mean personnel representatives referred to in the Act on Co-operation within Undertakings (334/2007), the Act on Co-operation in Government Departments and Agencies (651/1988) and the Act on Co-operation between the Employer and Employees in Municipalities (449/2007).

Section 3 Scope of application

This Act applies to a personnel fund operating in Finland and established by the personnel of a company, government agency or a municipality, and to:

- 1) a Finnish company or its profit unit or its foreign subsidiary ;
- 2) a foreign company's branch registered in Finland;
- 3) government department or agency or its profit unit;
- 4) a commercial enterprise in accordance with the State Enterprise Act (1185/2002) or its profit unit;
- 5) a municipality and a federation of municipalities or its profit unit;
- 6) the Social Insurance Institution of Finland (Kela);
- 7) a university as referred to in the Universities Act (558/2009).

A company refers to a corporation, foundation or natural person engaged in financial operations, regardless of whether the operation is intended to be profitable.

The provisions in this Act concerning an employee and a company also apply to a public servant in central and local government, as well as to a government department and agency, municipality and a federation of municipalities, the Social Insurance Institution of Finland (Kela) and a university, unless otherwise provided by law.

Section 4 Application of the Act within a group of companies

This Act also applies to two or more companies belonging to the same group and to a joint personnel fund established by their respective personnel. From within the same group, the group's personnel fund may comprise the personnel of a foreign company's branch registered in Finland and the personnel of a foreign subsidiary, provided that the latter has a Finnish parent company.

Furthermore, this Act applies to two or more government departments and agencies, or municipalities or federations of municipalities, and to a joint personnel fund established by their respective personnel.

Section 5 Establishment prerequisites

A personnel fund as referred to in this Act can be established only if the company or its profit unit regularly employs at least 10 people and the company's net sales or comparable revenue at the moment of the fund's establishment equal at least the amount provided in section 4(2)(2) of the Auditing Act (459/2007).

Section 6 Members

The personnel fund comprises all persons working for the company, unless otherwise indicated in section 16.

An employee of a company belonging to the same group, as referred to in section 54, can also be a member of the personnel fund.

Section 7 Legal capacity

A personnel fund gains legal capacity by registration. A fund is a distinct legal person which may acquire rights, make commitments and act as a litigant in a court of law and before other official bodies.

A personnel fund may not engage in operations other than those referred to in this Act.

Members of the personnel fund do not bear personal liability for the obligations of the fund, and no personal obligations may be associated with membership.

Chapter 2

Establishing a personnel fund and other company decisions concerning the fund

Section 8 Establishment procedure

The establishment of a personnel fund shall comply with the procedures provided below in this chapter:

- 1) negotiations on the establishment of a personnel fund and the performance or profit bonus system accruing personnel fund contributions;
- 2) company decision on the bonus system, as referred to in paragraph 1, and its application;
- 3) constituent meeting for the personnel fund and adoption of bylaws;
- 4) report for the registration of a personnel fund;
- 5) registration of the personnel fund.

Section 9 Negotiations concerning the personnel fund's establishment, the personnel fund contribution and amendments thereto

In planning a personnel fund, the company and its personnel shall discuss the establishment of the personnel fund as well as the performance or profit bonus system accruing the personnel fund contributions, alongside said system's determination criteria, in a procedure complying with the Act on Co-operation within Undertakings, or the Act on Co-operation in Government Departments and Agencies, or the Act on Co-operation between the Employer and Employees in Municipalities.

Where the Acts mentioned in subsection 1 do not apply, the issues referred to in said subsection must be discussed in another manner agreed by the company and its personnel. If employees employed by a foreign company are to become members of the personnel fund, the company must comply with the corresponding procedures applied in the country in question, or the employees' opportunities to exercise influence must be otherwise ensured.

The procedures referred to in this section must also be followed when amending the determination criterion of the personnel fund contribution.

Section 10 Company decisions

The company takes the decision on the performance or profit bonus system accruing personnel fund contributions and its application and the supplement to a personnel fund contribution.

The performance or profit bonus system accruing personnel fund contributions must be applied no later than the second financial year of the company after the fund has been established.

The company must decide on the criteria for determining the personnel fund contribution before the beginning of the period for which the personnel fund contribution is paid. For a special reason, the company may extend this time by a maximum of three months. However, deadlines do not apply when the company decides upon a supplement to the personnel fund contribution, its criteria or its allocation.

Section 11 Constituent meeting

Representatives of personnel groups must draft a proposal for the establishment of a personnel fund and its bylaws, and convene a constituent meeting for the personnel fund using a written invitation to the meeting or in another verifiable manner. The persons having drafted said proposal must submit a meeting invitation to future members or representatives elected by said members, no later than one week before the meeting.

Prior to deciding on the establishment of a personnel fund, the meeting must adopt bylaws for the personnel fund.

Decisions upon the bylaws and establishment of the fund can be adopted if at least two-thirds of the votes cast support said decisions.

For the personnel fund, the constituent meeting must elect a board and auditors, whereby at least one of the auditors must be an auditor or an audit firm approved by the Central Chamber of Commerce, a chamber of commerce or the Board of Chartered Public Finance Auditing. If only one auditor has been elected for the fund, and the auditor is not an audit firm, at least one deputy auditor must also be elected.

Section 12 Bylaws

The personnel fund's bylaws must contain at least the following information:

- 1) the name of the fund;
- 2) the company or its profit unit, in which the fund exists;
- 3) the domicile of the fund;
- 4) the principles whereby the members' shares of the personnel fund contribution are determined;
- 5) the option to pay a supplement to a personnel fund contribution into the fund;
- 6) how the restricted and withdrawable portions of the fund unit are determined;
- 7) the procedure when fund units are withdrawn;
- 8) when personnel fund meetings are arranged and how the invitation is delivered;
- 9) the items to be discussed at an annual meeting;
- 10) the number of board members and auditors and, if any, authorised representatives, or the way this number of representatives is determined, and the term of office;
- 11) the election procedure of representatives;
- 12) the financial year of the personnel fund.

Section 13 Registration report

A report for the registration of a personnel fund (*registration report*) must be submitted in writing to the cooperation ombudsman.

The registration report and its supplements must contain:

- 1) bylaws of the personnel fund;
- 2) the personnel fund's postal address and other contact information;
- 3) an account showing that the establishment procedure has been conducted as referred to in sections 9–11;
- 4) full names and domiciles of the board members and those entitled to sign for the personnel fund and, if relevant, any restrictions on their rights to sign for the fund.

The chairman of the personnel fund's board must sign the registration report and affirm that the information given therein is correct.

More detailed provisions on the contents of the registration report can be issued by Government decree.

Section 14 Registration

Having received a registration report, the cooperation ombudsman must register the personnel fund if there is no legal obstacle to so doing.

To indicate the fund's registration, the personnel fund's name is supplemented with the abbreviation 'hr'. Otherwise, the provisions of the Act on Business Names (128/1979) are applicable to the personnel fund's name.

More detailed provisions on the maintenance and contents of the personnel fund register can be issued by Government decree.

Section 15 Legal effects of registration

Responsibility on behalf of the personnel fund, concerning any obligations stemming from measures taken with respect to the personnel fund prior to its registration, is transferred to the personnel fund after its registration.

Chapter 3

Membership of a personnel fund

Section 16 Membership

A personnel fund's members comprise the company's employees. The bylaws of the personnel fund may provide that a company's managing director who is not in an employment relationship with the company can also be a member.

The bylaws may also provide that members of the company's management, as defined in more detail in the bylaws, may not be members of the fund.

Section 17 Commencement of membership

When a personnel fund is established, the persons defined in the bylaws obtain membership immediately thereafter.

People who are employed by the company after establishment of the personnel fund obtain membership at the beginning of their employment, unless otherwise provided in the bylaws. Membership must, however, begin no later than six months from the beginning of the employment relationship.

Section 18 Termination of membership

Membership of a personnel fund ends when the member's employment relationship has ended and the personnel fund units have been paid back to him/her in their entirety.

Chapter 4

Lawful authority in a personnel fund

Section 19 Personnel fund meeting

Lawful authority in a personnel fund is exercised by its members in a fund meeting, which must be held at a time provided in the bylaws.

Each member has one vote, unless the bylaws provide that the number of votes of a member depends on his/her fund unit.

The fund meeting shall decide over the following:

- 1) amendment of the fund bylaws;
- 2) voting and election regulations;
- 3) election or dismissal of the board and board members and auditors;
- 4) approval of the financial statements and discharge from liability;
- 5) measures necessitated by profit or loss;
- 6) dissolution of the fund; and
- 7) any other issues requiring consideration in a fund meeting under bylaws.

The personnel fund meeting must be convened in accordance with the provisions laid down in section 11(1) and as provided in the fund bylaws. The invitation to a meeting must specify the time and location of the meeting and the items mentioned in subsection 3, intended for consideration in the meeting.

The personnel fund's bylaws may provide that, subject to any conditions mentioned in the bylaws, participation in the meeting can also take place during or before the meeting, either by mail or by using a data connection or other technical tool. This requires that verification of the right to participate and of the validity of the vote count is possible using procedures comparable to those used for a regular fund meeting. In such a case, the invitation to the meeting must mention the participation possibility referred to in this subsection, any prerequisites for exercising said participation, any related restrictions on the member's exercising his/her right to speak, as well as the procedures to be followed when exercising said right.

For consideration by the fund meeting, a personnel fund member is entitled to introduce an item falling within the scope of the fund meeting as determined under this Act, if he/she so demands in writing from the board sufficiently early to allow the item's inclusion in the invitation to the meeting.

Section 20 Extraordinary personnel fund meeting

A personnel fund must hold an extraordinary meeting if:

- 1) the personnel fund meeting so decides;
- 2) the board considers there to be cause for an extraordinary meeting;
- 3) a minimum of ten per cent of the fund members or a personnel group representing at least ten per cent of the fund members presents a written demand that an extraordinary meeting be held in order to consider a specific issue;
- 4) the bylaws so provide;
- 5) the auditor so demands.

After receiving a demand referred to in subsection 1(3) or (5), the personnel fund's board must convene a fund meeting without delay.

Section 21 Decision-making procedure

Unless otherwise provided in the bylaws, decisions in the personnel fund meeting are adopted as follows:

- 1) an opinion supported by more than one half of the votes cast;
- 2) in the event of a tie, the chair has the casting vote, or if the decision is made in a closed ballot or separate voting sessions, a decision is made by drawing lots.

In a question that concerns revision of the bylaws or dissolution of the fund, the opinion supported by at least two-thirds of the votes given shall be adopted as the personnel fund's decision.

Section 22 Drawing up the minutes

The chairman of a personnel fund meeting must see to it that minutes of any decisions made at a meeting are drawn up. The minutes are signed by the chairman of the meeting and checked by at least two members nominated at the meeting for such a purpose, or approved by the meeting itself.

On request, a personnel fund member has the right to see the minutes and, without compensation, to receive a copy or extract thereof.

Section 23 Election

The bylaws must provide how an election is held, whether the election system uses the proportional vote or the majority vote and how the result of the vote is determined.

The right to participate in the nomination of candidates must be secured for all those who are entitled to vote in an election.

Section 24 Provisions concerning authorised representatives

If the bylaws of the personnel fund provide that lawful authority is exercised by the authorised representatives elected by the members from among themselves, the representatives' duties must also be provided in the bylaws.

The bylaws may provide that the representatives' seats or a certain number of them must be distributed among fund members, or among personnel groups formed by fund members, on the grounds provided in the bylaws. In said case, it must be stipulated that representatives should be elected from among candidates nominated by the said members or by the personnel groups they represent. If a personnel group does not nominate candidates, the authorised representatives can be elected from among the candidates nominated by others.

If a group of voters together represent at least ten per cent of the membership's total number of votes, the right to nominate candidates must always be secured for any employee group thus formed. Otherwise, the provisions concerning a personnel fund meeting and decisions laid down in this Act shall apply to the meeting of authorised representatives and its decisions.

Section 25 Annulment of a decision

If a personnel fund decision has not been made in the prescribed order or is otherwise in conflict with the law or the bylaws, a fund member, the board or a board member may bring an action against the fund and demand that the decision be declared void. If someone has contributed to the adoption of a decision at a meeting, he/she is not entitled to bring an action for annulment in such a case.

The action must be brought within three months of the date of the decision. If no action is brought within the time specified, the decision must be considered valid.

If the personnel fund board has brought the action, a fund meeting must be convened without delay to select a representative to answer for the fund.

Section 26 Invalidity of a decision

Irrespective of any action for annulment, a decision is invalid if it violates a third party's rights.

A decision which restricts any economic rights already achieved by a personnel fund member in accordance with the bylaws, or which either in content or in its decision-making procedure essentially violates the principle of equality between members, is also invalid.

A personnel fund member, the board or a board member, or anyone who considers that a decision violates his/her rights, may bring an action against the fund to obtain confirmation that the decision is invalid.

Section 27 Injunction against enforcement

When action has been brought against the personnel fund, the court may forbid enforcement of the fund's decision or suspend enforcement. An injunction or suspension of this kind may also be revoked. An injunction decision may not be appealed separately.

Chapter 5

Personnel fund administration, financial statements and auditing

Section 28 Board

The personnel fund must have a board which consists of a minimum of three members. The bylaws may provide that deputies should be elected for the board members. The provisions concerning a board member also apply to a deputy member.

A board member must be a personnel fund member or belong to the management of the company. A person who is legally incompetent, subject to a ban on business operations or bankrupt cannot be a board member.

Section 29 Duties of the board

The personnel fund's board represents the fund. The board must carefully manage the fund's operations in accordance with the law, the fund bylaws and the decisions of fund meetings.

In particular, the board must see to it that the administration and financial management of the personnel fund are properly organised and that fund assets are invested in accordance with the provisions of chapter 6. The board decides if and when the fund's assets should be placed in receivership.

Immediately after an evaluation day, the board must draw up the calculations referred to in section 42, following the principles provided in the bylaws.

Section 30 The right to sign for the fund

The bylaws of the personnel fund may provide that a board member is entitled to sign for the fund or that the board may grant such a right to a member or to someone else.

A person who is legally incompetent, subject to a ban on business operations or bankrupt cannot represent the personnel fund or sign for it. The right to sign for the fund may be restricted in the bylaws in such a way that two or more people are only jointly entitled to sign for the fund. No other restriction can be entered in the personnel fund register.

It is considered that a summons or some other notice has reached the personnel fund when it has been served to the chairman of the board or to a person entitled to sign for the fund, either alone or jointly with someone else.

Section 31 Notification of amendment

If the personnel fund's bylaws are amended or if board members or those entitled to sign for the fund change, notification (*notification of amendment*) must be sent to the personnel fund register. If the bylaws have been amended, the new bylaws must be appended to the amendment. The provisions of sections 13 and 14 on the registration report also apply to the compilation and review of the amendment.

The amendment to the bylaws comes into effect when it is entered in the register.

When a change in the persons entitled to sign for the fund has been entered in the register, it is considered that the change is known to outsiders, unless it is shown that an outsider has not been, and could not be expected to be, aware of the change. Before the amendment is entered in the register, it may not be appealed to, unless it can be shown that the outsider in question has been aware of the amendment.

More detailed provisions on the contents of the notification of amendment can be issued by Government decree.

Section 32 Notification of personnel fund contributions' determination criteria and their amendments

A personnel fund must notify the cooperation ombudsman of the criteria for determining the personnel fund contribution and their amendments, and of the criteria for determining the supplement to the personnel fund contribution, soon after deciding on said criteria.

If the personnel fund members include members referred to in section 54, the fund must provide an account showing that the determination criteria for the personnel fund contribution and its supplement, intended for transfer to the fund, comply with section 2(2) and (3).

Section 33 Financial statements

The provisions governing a personnel fund's legal obligation to keep books and its financial statements are laid down in the Accounting Act (1336/1997). In addition, the fund board must draw up a report on operations for each financial year of the fund. If a board member has presented a dissenting opinion on the financial statements, a comment to this effect must be appended to the financial statements, if he/she so demands.

The annual report must provide information on questions of importance for evaluation of the personnel fund's status and operations, but which need not be described in the income statement or the balance sheet, and on events that are essential to the fund even if they took place after the end of the financial year. The annual report must include a proposal for actions concerning any profit or loss made by the fund.

The documents mentioned in subsection 1 above must be submitted to the auditor no later than one month before the fund meeting at which the financial statements will be considered.

Section 34 Auditors' report

The provisions governing a personnel fund's audit are laid down in the Auditing Act. The provisions of this chapter and section 11 also apply to an audit. In addition, the auditors' report shall include a statement on whether the fund's assets have been invested in accordance with section 41.

The auditors' report must be supplemented with a statement by the company auditors, showing whether the personnel fund contribution and its supplement have been paid in accordance with the determination criteria decided on by the company. If the fund has invested its assets in the company on an equity-ranked basis, and these assets do not have a fair value that could be determined on the basis of the market value, the report must be supplemented with a statement by the company auditors affirming whether these investments are properly valued.

Chapter 6

Personnel fund capital and fund units

Section 35 Types of capital

The personnel fund's equity comprises the members' capital and other fund capital. The fund can also have current liabilities in accordance with the provisions of section 44.

The members' capital includes capital added to the members' fund units and any value adjustments that have been made to the investment of this capital. Other fund capital includes the fund's joint capital and any donations to the fund.

Section 36 Fund units

The personnel fund contributions received by the personnel fund are added to the members' fund units, as provided in the applicable bylaws. If the personnel fund contribution, as decided by the

company and in compliance with the performance or profit bonus system, or its supplement, is formed by personal units, these are added as such to each member's fund unit.

If the company pays personnel fund contributions or their supplements to the personnel fund more than once during a financial year and the applicable bylaws do not provide otherwise, the payments received by the fund during each financial year will remain either a separate single item or separate member-specific units, depending on the performance or profit bonus system accruing personnel fund contributions and their supplements, until the evaluation day referred to in section 42. If the fund contribution forms a one total sum, it will be divided in a manner provided in the fund bylaws, into members' shares which will be added to each member's fund unit after the evaluation day. A personal share will be added as such to a member's fund unit after the evaluation day.

Only the capital that has accrued from personnel fund contributions and their supplements, fund profits and investment revaluations may be added to members' fund units.

Section 37 Cash payment of share of personnel fund contribution

A member is entitled to withdraw his/her share of the personnel fund contribution or its supplement in cash, provided that a related regulation exists as part of the performance or profit bonus system adopted by the company. The amount of a share of a personnel fund contribution withdrawn in cash, before withholding tax and including social security contributions based on the share, shall be equal to that of the particular member's share of the personnel fund contribution provided according to the bylaws, or the personal share.

The employer shall pay a share withdrawn in cash directly to the member. Members must notify their employer company that they intend to withdraw their personnel fund contribution share in cash by a final date notified by the company, however, before the end of the company's financial year on which the fund contributions are based.

Before the final date of the notification the member must be provided with an account of how a cash withdrawal and a withdrawal made through a personnel fund differ in terms of taxation and other earnings-related benefits.

Section 38 Transferring a bonus share into a personnel fund

If a company decides to convert the performance or profit bonus system it has been using to accrue personnel fund contributions into a cash-based bonus system, a personnel fund member is entitled to transfer his/her share of the portion of the personnel fund contribution and its supplement, determined under this Act, into the fund, provided that the related regulation exists within the performance or profit bonus system adopted by the company. Members must notify their employer company that they intend to use their transfer right by the final date notified by the company, however, before the end of the company's financial year on which the fund contributions are based.

A company must decide upon the determination criteria of any bonus item transferable to the personnel fund, and on amendments to said criteria during the period laid down in section 10(3), in addition to which the fund must notify said determination criteria and their amendments to the cooperation ombudsman.

Section 39 Joint capital

It may be provided within the personnel fund's bylaws that a certain portion of the personnel fund contributions and the fund profit, or part thereof, may be transferred to the fund's joint capital, which is used by the fund for purposes serving the common good of the fund's membership.

The right, to member benefits acquired with joint capital, of a member who exercises his/her right, as laid down in section 37, to withdraw his/her share of the personnel fund contribution or its supplement in cash, may be restricted by the fund's bylaws.

Section 40 Donations

Any sums given as donations or bequests to the personnel fund are transferred to other fund capital. These sums must be used in accordance with the instructions of the deed of donation or testament.

Section 41 Investment options

The personnel fund must invest its funds in:

- 1) some secure and profitable target; or
- 2) the company in which the fund members are employed, or a company that belongs to the same group of companies, either on equity terms or loan terms.

In making investments it must be ensured that the personnel fund retains sufficient liquidity in view of the members' rights to withdraw their fund units.

Subsections 1 and 2 are not applied to joint capital or to donations.

The personnel fund may agree that it invests a certain portion of its funds in the way described in subsection 1(2). A provision of this kind may also be included in the fund bylaws.

Section 42 Evaluation

The value of the personnel fund as a whole, and the value of each member's unit, must be determined on the day when the fund's books are closed (*evaluation day*).

Funds must be evaluated at their fair value.

Section 43 Profit and loss

Any profit or loss accumulated on members' capital invested in a personnel fund and any value adjustments made in the investments of this capital must be added to the members' units during each financial year, in proportion to the value of the fund units that each of them has had on average during said financial year. It may be provided in the fund's bylaws that any profit or loss and value adjustments should be added to the members' units in proportion to the value of the fund units that each of them held at the beginning of the financial year. The bylaws may also provide that this profit, or part thereof, should be paid during each financial year to the members or added to the joint capital of the fund.

A member who has been repaid his/her fund unit on the grounds of termination of his/her employment relationship is not entitled to profit or loss or value adjustments for the period between the day on which the fund unit was paid back and the final day of the financial year.

Any loss accumulated on other types of capital except members' capital in a personnel fund must be covered during each financial year by the profits from previous years, the joint capital or the members' capital. The fund meeting decides on the use of any profit.

Section 44 Current liabilities

The personnel fund may take a loan from a company participating in the fund or from some other company in the same group of companies, for use in subscribing for shares in the company or in some other company in the same group of companies, or correspondingly, for raising the fund's equity.

The personnel fund may take out loans other than those mentioned in subsection 1 with the sole purpose of levelling out any variations in its liquidity, or to cover expenses at the establishment stage.

Section 45 Withdrawal of a fund unit

The fund unit is divided into a restricted portion and a withdrawable portion. On an annual basis and following the evaluation day as laid down in section 42, capital is transferred from the restricted portion to the withdrawable portion. The portion of transferable capital is provided in the personnel fund bylaws and can be a maximum of 15 per cent of the restricted portion.

A member is entitled to the withdrawable portion in cash without delay after the evaluation day referred to above, as provided in more detail in the fund's bylaws. The personnel fund bylaws may also provide that if a member so wishes, the portion withdrawable in a manner provided in the bylaws can be paid using shares of the employer company, or those of a company belonging to the same group of companies as said employer company, said shares having been admitted for public trading as laid down in the Securities Markets Act (495/1989).

Section 46 Statement of the fund unit

Immediately after the evaluation day, each personnel fund member must be given a written statement of the share of the personnel fund contribution and its supplement added to his/her unit, including the grounds for them, and the value of his/her unit and its division into restricted and withdrawable portions.

The board of the personnel fund has the right to decide to replace this statement of the fund unit with some other notification that it deems suitable in the case of members who do not have a fund unit or whose fund unit is subject to only insignificant change, and who have no withdrawable fund units.

After receiving said statement, a member may, within 14 days, demand for rectification from the personnel fund board, if he/she considers the statement incorrect. The board must deal with the demand for rectification without delay and inform the member of the decision reached.

Section 47 Payment of the fund unit after termination of the employment relationship

Irrespective of what bylaws provide with respect to withdrawal of the fund unit, the unit must be paid to him/her or his/her beneficiaries within four months of the next evaluation day, after the member's employment has ended.

If he/she so wishes, a member is always entitled to withdraw his/her fund unit, in items the amount of which the member may decide, on no more than four annual fund unit payment days following the end of his/her employment relationship, if the employment relationship ended:

- 1) due to a dismissal on the basis of financial or production-related reasons;
- 2) under chapter 5, section 7(1) of the Employment Contracts Act (55/2001) or section 29(1) of the State Civil Servants Act (750/1994) or section 32(1) of the Act on the Employment Security of Municipal Officeholders (304/2003), following a lay-off which has continued uninterruptedly for at least 90 days;
- 3) due to retirement.

The share of the personnel fund contribution that is to be added to the member's unit after the fund unit has been paid must correspondingly be paid to him/her or to his/her beneficiary.

Section 48 Delivering the statement of the fund unit and payment of the unit in a foreign subsidiary

With respect to fund unit statements and withdrawable fund units of fund members who are employed by a foreign subsidiary participating in the fund, a personnel fund is entitled to deliver them, in a manner it has agreed with the Finnish parent company, to said parent company. Said parent company must ensure the delivery of fund unit statements and payment of fund units to said members.

Section 49 Deferred payment of the fund unit

Notwithstanding the provisions of section 45, the personnel fund board has the right, if the maintenance of sufficient liquidity absolutely so requires, to defer the payment of units either partly or entirely for a period not exceeding two years. The deferment must affect all intended withdrawals equally.

The deferment cannot apply to withdrawals made under section 47.

Section 50 Non-transferability and distraint of the unit

A member's personnel fund unit is personal and cannot be transferred or pledged.

Only the withdrawable portion of the fund unit may be distrained. Distraint may be effected even before the member can withdraw his/her unit. The personnel fund must pay the distrained sum to the execution officer irrespective of whether the member has informed the fund of his/her intention to exercise his/her withdrawal right.

The provisions of subsection 2 concerning distraint of the withdrawable portion are also applied to the fund unit to be paid according to section 47 and to the distraint of the apportionment referred to in section 58.

One third of the returns coming to the member under this Act may be distrained. In other respects, the provisions on the garnishment of wages or salary in the Enforcement Code (705/2007) apply to distraining a unit. The fund unit is included in the member's bankrupt's estate to the extent it is liable to distraint, as provided in this section.

Chapter 7

Personnel fund in certain types of corporate restructuring

Section 51 The present chapter's scope of application

The provisions of this chapter apply when an employee's employment relationship with a company or profit unit with a personnel fund terminates because the operations of a company or its profit unit are transferred, due to a transfer of business, merger, division or similar restructuring, to another company (*receiving company*):

- 1) which has a personnel fund; or
- 2) which has conducted, within one year from said transfer of operations, discussions concerning the establishment of a personnel fund as referred to in section 9 and which has taken company decisions on a performance or profit bonus system accruing personnel fund contributions as referred to in section 10.

The provisions can also be applied if a company in a group of companies ceases to be part of the group and that group has a joint personnel fund for its several companies, or if a company with a personnel fund becomes part of the group of companies.

Section 52 Decision to transfer fund units

If fund units are transferred to an existing fund in the receiving company, the board of this personnel fund and the representatives of the employees moving to the company must draw up a proposal on the terms of the transfer and on the rights within the fund of the employees thus moving. Adopting the proposal requires that at least two-thirds of votes cast by employees moving to the receiving company are in favour of the transfer. The fund meeting in the receiving company must adopt the proposal following the procedure laid down in law or provided in the bylaws for bylaw amendment.

If the fund being established would also have members other than those referred to in subsection 1, the fund units can be transferred to the new fund only if at least two-thirds of the votes cast by employees moving to the receiving company are in favour of the transfer

If a transfer of fund units occurs within the same group of companies, a vote on the transfer of fund units does not need to be arranged among the moving employees and the moving employees are not entitled to withdraw their fund units. If fund units within the same group of companies are transferred to an existing fund in the receiving company, the meeting of the fund to be merged must decide upon the transfer of fund units by at least a two-thirds majority vote.

Section 53 Transfer of assets

When the decisions laid down above in section 52 have been taken, the boards of the personnel funds must ensure that the fund units of the employees moving to the receiving company are transferred to the receiving fund. Correspondingly, in such cases, the provisions on the payment of units of sections 47(1) and 49 apply. As well as the fund units of the employees who move to the receiving company, a corresponding portion of the assets included in other fund capital must be transferred to the new fund, unless these assets have been otherwise provided for in the event that the fund is dissolved. Before the assets may be transferred from the fund, the debts of the fund must be paid or collateral accepted by the creditor must be deposited if no other agreement is made with creditors.

Unless otherwise indicated in section 52(3), the fund units of those employees who have opposed the transfer of fund units in the vote must be paid as laid down in section 47(1). Demand for said payment must be presented to the fund board within 30 days after the proposal for the transfer of fund units has been accepted.

Section 54 The right to remain a fund member in internal restructuring of a group of companies

If an employee included in a personnel fund operating within a group of companies is transferred, due to the restructuring referred to in section 51, into a company of the group of companies or profit unit without a fund or where a fund will not be established in the manner referred to in this chapter, the employee may remain a member of the fund. Retention of membership requires that the employee is still within a performance or profit bonus system accruing personnel fund contributions which is applied in the group companies or profit units participating in the fund. More detailed terms and procedures for retaining membership must be provided in the personnel fund's bylaws.

An employee who has retained his/her membership has the same rights and obligations as other members with respect to the personnel fund. The fund must submit a notification concerning an employee who has retained his/her membership to said person's employer company.

Chapter 8

Dissolution of the personnel fund

Section 55 Negotiations concerning dissolution

When a company is planning to discontinue its performance or profit bonus system accruing personnel fund contributions or to dissolve the personnel fund, the matter must be processed as laid down in section 9.

Section 56 Grounds for dissolution

The personnel fund must be dissolved if:

- 1) the company is dissolved or considered dissolved;
- 2) the company is declared bankrupt;
- 3) the government agency is closed down;
- 4) the operations of a municipality or federation of municipalities are closed down;

- 5) the personnel fund does not meet the requirements laid down in this Act and the situation has not been remedied before a deadline set by the cooperation ombudsman, which may not exceed three years;
- 6) the personnel fund meeting otherwise decides to dissolve the fund.

If the personnel fund meeting has not made a decision to dissolve the fund in the cases described in subsection 1(1–5), the cooperation ombudsman may take the decision to dissolve the fund.

Section 57 Executors and liquidation procedure

When a decision on the dissolution of the personnel fund has been made, the fund board must carry out the necessary liquidation measures, unless the fund meeting has decided otherwise or the cooperation ombudsman considers that one or more executors should be appointed. The provisions on the board and its members also apply to executors.

In the liquidation, the personnel fund's assets must be converted into money as soon as it is possible without violating the fund members' interests, the fund debts must be paid, and other capital shares, except members' capital, must be dealt with in accordance with the agreement made concerning the dissolution. A public summons must be issued for any unknown creditors of the fund, unless this is obviously unnecessary.

Section 58 Apportionment of assets

When all liquidation measures have been completed, the persons who have seen to the liquidation must draw up a proposal for the apportionment of the personnel fund assets among members, prepare a report of the liquidation measures and convene a fund meeting.

Assets can be apportioned to members after the proposal for apportionment has been accepted at a fund meeting. A proposal for the apportionment of other assets except the members' capital is considered accepted only if at least two-thirds of the votes cast at the meeting support the proposal.

The personnel fund is considered dissolved when all fund assets have been apportioned. The executors or the board must inform the cooperation ombudsman of the dissolution for recording the matter in the personnel fund register.

Chapter 9

Miscellaneous provisions

Section 59 Companies' and fund's obligation to provide information

A company must supply a personnel fund with all the information the latter requires to establish the fund, maintain a register of members, calculate and pay fund units, and otherwise administer the fund. If the fund members include persons employed by a foreign company referred to in section 4(1), the Finnish parent company and the branch registered in Finland are under an obligation to ensure that the fund receives the information referred to above. If the fund has members referred to in section 54, the obligation to provide information rests with their employer companies.

A personnel fund must provide the company with the necessary information concerning a member's fund unit, if said member exercises his/her right to withdraw his/her fund unit in cash as laid down in section 37.

Section 60 Incapacity

A member may not participate in the consideration of a matter which concerns an agreement between him/her and the personnel fund or some other issue in which his/her private interests are in conflict with the fund interest.

A board member or any other person who has been entrusted with duties in the fund administration, may not participate in the consideration concerning the election or dismissal of an auditor, adoption of the fund's financial statements, or discharge from liability, if the matter at hand concerns administration for which he/she is responsible.

Section 61 Confidentiality

A member, deputy member or an executive officer of an executive body in a personnel fund have to keep confidential information he/she has obtained during the course of the duties referred to in this Act:

- 1) information relating to a business and trade secret of the employer company;
- 2) information relating to the employer company's financial position which is not public according to other legislation and dissemination of such information would probably be prejudicial to the company or its trade or contract partner;
- 3) information relating to a private person's financial situation or concerning him/her personally in any other way unless the person, for whose protection the confidentiality provisions have been laid down, has agreed that said information can be revealed.

If a person employed by a government department or agency or municipality or federation of municipalities is a member or deputy member of an executive body in a personnel fund, by derogation from subsection 1, provisions laid down in the Act on the Openness of Government Activities (621/1999) and elsewhere in legislation apply to him/her.

Punishment for violation of the obligation of confidentiality is imposed pursuant to chapter 38, section 2(2) of the Penal Code unless the act is punishable under chapter 40, section 5 of the Penal Code, or unless a more severe punishment for the act is prescribed elsewhere than in chapter 38, section 1 of the Penal Code.

Section 62 Liability for damages

A member of the personnel fund board and an employee of the fund must compensate for any damages that they have caused to the fund, either intentionally or through negligence. The same applies to any other damage caused to a third party by violating of this Act or the fund bylaws.

A member of the personnel fund is obliged to compensate for any damage he/she has caused to the fund, to another member or to a third party, either deliberately or through gross negligence, by contributing to a violation of this Act or the fund bylaws.

When more than one party is liable for damage, the provisions in chapters 2 and 6 of the Tort Liability Act (412/1974) apply to the mitigation of damages and the limitation of liability.

The provisions of chapter 12, section 1(3) of the Employment Contracts Act apply to liability for damages of an employee of a personnel fund.

Section 63 Supervision

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

Within four months of the end of the financial year, the personnel fund must submit copies of the following documents to the cooperation ombudsman: the income statement and balance sheet, including their supplements; balance sheet specifications; the report on operations; the auditors' report; and minutes of the annual meeting.

Provisions to the cooperation ombudsman on archiving the documents submitted to him/her or acquired by him/her for the purposes of supervising a fund shall be laid down in a Government decree.

Section 64 Instructions and statements of the State Accountancy Committee

Provisions concerning the right of the State Accountancy Committee to issue more detailed instructions and statements on the financial statements of a personnel fund and on how the Accounting Act must be applied to preparation of the financial statements of a personnel fund are laid down in chapter 8, section 2 of the Accounting Act.

Chapter 10

Entry into force

Section 65 Entry into force

This Act enters into force on January 1, 2011.

This Act repeals the Act on Personnel Funds (814/1989), hereinafter 'the old Act', as subsequently amended.

Section 66 Transitional provisions

The bylaws of any personnel funds shall be amended to conform to this Act no later than in the third fund meeting, as provided in the bylaws following this Act's entry into force.

A reference elsewhere in law to the old Act shall be deemed a reference to the corresponding provisions of this Act.

If the personnel fund's members include members who have joined the fund under section 14 a of the old Act or a company's managing director who does not have an employment relationship with said company, they shall remain members of the fund until the end of their employment relationship or work, unless otherwise provided in the fund bylaws.

All personnel funds registered under the validity of the old Act shall be transferred into the personnel fund register established under this Act using their existing registry numbers, while all

funds established under the validity of this Act shall be assigned a new, consecutive registration number.