

## RESTRUCTURING OF ENTERPRISES ACT — FINLAND

*Laki yrityksen saneerauksesta*

(47/1993; amendments up to 247/2007 included)

### Chapter 1 — **General provisions**

#### Section 1 — *Purpose of the Act and the relationship of the Act to other legislation*

- (1) Restructuring proceedings under this Act may be undertaken in order to rehabilitate a distressed debtor's viable business, to ensure its continued viability and to achieve debt arrangements. In the proceedings, a court may approve a restructuring programme with instructions regarding measures on the activities, assets and liabilities of the debtor, as provided in this Act. (247/2007)
- (2) The provisions of this Act apply notwithstanding provisions elsewhere in the law on the right of a creditor to receive payment, to take measures for the collection of a debt, or to take measures to secure the payment of a debt.

#### Section 2 — *Scope of application*

- (1) A private entrepreneur, a general partnership, a limited partnership, a company, a co-operative, a housing company or an association engaged in economic activity may be the subject of restructuring proceedings. For the purposes of this Act, *private entrepreneur* means also a self-employed person and a person engaged in agriculture or commercial fishing.
- (2) The following entities cannot be the subject of restructuring proceedings:
  - (1) a credit institution referred to in the Act on Credit Institutions (1607/1993; *laki luottolaitostoinnasta*);
  - (2) an insurance company or a pension institution;
  - (3) a partnership, company or co-operative in liquidation. However, a deposit bank may be a subject of restructuring proceedings as provided in the Act on the Temporary Interruption of the Operations of a Deposit Bank (1509/2001; *laki talletuspankin toiminnan väliaikaisesta keskeyttämisestä*).  
(1510/2001)

#### Section 3 — *Definitions*

- (1) For the purposes of this Act,
  - (1) the *filing of the application* means the date when the application for restructuring proceedings has become pending;
  - (2) the *commencement of the proceedings* means the point in time when the court has issued the order on the commencement of restructuring proceedings;
  - (3) *insolvency* means the other than temporary inability of the debtor to repay its debts when they become due;
  - (4) *imminent insolvency* means that the debtor is at risk of insolvency;

- (5) *restructuring debt* means all of the debtor's debts that have arisen before the filing of the application, including secured debts and debts whose basis or amount is conditional or contested or which are otherwise unclear; however, a shortfall in the liabilities of a pension fund established by the debtor shall not be deemed a restructuring debt;
- (6) *real security rights* mean reservation of title and other security rights based on ownership, a right of lien to movable property or real estate, a right of recovery, and a right of retention that produces a priority right to the object in question;
- (7) *secured debt* means restructuring debt where the creditor holds, as against third parties, an effective real security right to property that belongs to or is in the possession of the debtor, in so far as the value of the security at the commencement of the proceedings would have been enough to cover the amount of the creditor's claim after the deduction of liquidation costs and claims with a higher priority;
- (8) *secured creditor* means the creditor in a secured debt;
- (9) *lowest priority debt* means a debt that can be repaid only after all other debts have been repaid.

(247/2007)

- (2) *Repealed.* (247/2007)
- (3) If, at the commencement of the proceedings, property belonging to the debtor stands as security for the debt of a third party, the provisions on the debtor's secured debt apply correspondingly to the liability thus incurred.
- (4) Interest that secures present value shall be determined in accordance with an appropriate index so that the interest payable for each quarter corresponds to the change in the index noted over the preceding quarter and converted into annual interest.

#### Section 4 — *Status of a person with individual liability*

- (1) In the application of the provisions of this Act, a person who has, by law, individual liability for the undertakings of the debtor shall be deemed equivalent to the debtor. However, this provision shall not affect the rights and obligations of such a person in so far as these are not connected with the activity that is the subject of the proceedings.
- (2) Debt arrangements in the restructuring programme shall apply also to the benefit of a person with individual liability for the undertakings of the debtor.

### Chapter 2 — **Commencement and interruption of restructuring proceedings**

#### Section 5 — *Standing to file*

The application for restructuring proceedings may be filed by

- (1) the debtor;
- (2) a creditor or several creditors together, but not, however, a creditor with a claim contested as to its basis, a claim essentially contested as to its amount, or a claim otherwise unclear;

- (3) a party for whom the insolvency of the debtor would probably cause financial loss on a claim, on grounds other than partnership or shareholding (*probable creditor*).

#### Section 6 — *Prerequisites*

- (1) Restructuring proceedings may be commenced if
  - (1) at least two creditors whose total claims represent at least one fifth of the debtor's known debts and who are not related to the debtor, as referred to in section 3 of the Act on the Recovery of Assets to a Bankruptcy Estate (758/1991; *laki takaisinsaannista konkurssipesään*), file a joint application with the debtor or declare that they support the debtor's application; (247/2007)
  - (2) the debtor faces imminent insolvency; or
  - (3) the debtor is insolvent and no other outcome ensues from the application of section 7(1)(1).
- (2) Restructuring proceedings on the basis of imminent insolvency shall be commenced on the application of a creditor or a probable creditor only if this is necessary in order to secure a considerable financial interest of the applicant's or in order to prevent such an interest from jeopardy.

#### Section 7 — *Barriers to restructuring and grounds for interruption*

- (1) Restructuring proceedings shall not be commenced if
  - (1) the debtor is insolvent and it is probable that the restructuring programme will not remedy the insolvency or prevent its recurrence otherwise than for a short period;
  - (2) it is probable that the debtor's assets are not sufficient to cover the costs of the restructuring proceedings and no one else has undertaken to cover these costs;
  - (3) it is probable that the debtor will not be able to repay debts arising after the commencement of the proceedings;
  - (4) there is justifiable reason to believe that the primary purpose of the application is to prevent a creditor from collecting on his or her claim or otherwise to violate the rights of a creditor or the debtor;
  - (5) there is justifiable reason to believe that the necessary conditions for the preparation or approval of a restructuring programme for the debtor do not exist; or
  - (6) the debtor's books are materially incomplete or erroneous, unless it can be shown that the books can without difficulty be rectified into a proper and reliable condition.
- (2) Unless there are reasons to the contrary, restructuring proceedings shall likewise not be commenced if
  - (1) the debtor or a person acting on the behalf of the debtor has been found guilty of a debtor's offence referred to in chapter 39, section 1—3 or section 6, of the Penal Code (39/1889; *rikoslaki*), an accounting offence or an aggravated accounting offence, charged with such an offence, or under a justifiable suspicion of such an offence, provided that the

offence has been committed in the context of the activity subject to the restructuring proceedings;

- (2) an individual debtor, a general partner in a debtor partnership or a person in the management of a debtor corporation has in the context of the activity subject to the restructuring proceedings breached a business prohibition, charged with such an offence or under a justifiable suspicion of such an offence; or
- (3) an individual debtor, a general partner in a debtor partnership or a person in the management of a debtor corporation has been guilty of conduct that would serve as grounds for a business prohibition, or is under justifiable suspicion of such conduct.

(247/2007)

- (3) If a circumstance referred to in paragraph (1) or (2) becomes apparent after the commencement of the proceedings, an order for the termination of the proceedings may be issued at the request of the administrator referred to in section 8 or of a creditor or the debtor. However, the situation referred to in paragraph (1)(1) shall not preclude the proceedings continuing if it is probable that the assets of the company or a material proportion of the assets can be transferred in accordance with this Act as a separate entity. (247/2007)

### Chapter 3 — **Administrator, committee of creditors and the debtor's duty of co-operation**

#### Section 8 — *Administrator*

- (1) The court shall appoint an administrator, who shall undertake the following measures in order to realise the purpose of the proceedings and to protect the interests of the creditors:
  - (1) prepare a report of the debtor's assets, liabilities and other undertakings and on the circumstances that affect the financial position of the debtor and its expected development;
  - (2) monitor and supervise the debtor's activities subject to the proceedings during the said proceedings;
  - (3) see to an audit of the debtor's activities before the commencement of the proceedings, to the extent necessary;
  - (4) if necessary, file an action for the reversal of the transactions entered into by the debtor, on the basis of sections 36 and 37, as well as exercise the right of action on behalf of the debtor as provided in section 31;
  - (5) see to the preparation of a draft restructuring programme;
  - (6) perform the duties provided in chapter 10.
- (2) A temporary administrator shall monitor and supervise the debtor's activities and, on request, provide the creditors and the court with such information on the debtor's activities that may be relevant in the decision-making on the commencement of the restructuring proceedings. (247/2007)
- (3) More than one administrator may be appointed if this is necessary in view of the extent of the duties or the expertise required for them, or in order to ensure the appropriate protection of the interests of various groups of

creditors. In addition, the duties referred to in paragraph (1) may be assigned to different persons as necessary.

- (4) The qualifications of the administrator are as follows: He or she shall be an adult, known to be honest, not bankrupt and with full legal competency. The administrator shall have the ability, skills and experience needed for the position. The administrator shall not have such a relationship with the debtor or with any of the creditors that may compromise his or her independence from the debtor or his or her impartiality as regards the creditors, in so far as not otherwise ensues from the application of section 83(4). A person who indicates consent to serve as an administrator shall declare to the court all circumstances that may compromise his or her impartiality or independence as an administrator or that may give rise to justifiable doubts as to his or her impartiality or independence as an administrator. (247/2007)
- (5) The duties of the administrator shall continue until the termination of the restructuring proceedings and also after that time in so far as is necessary for the filing of the notices and notifications relating to the termination and for the completion of the duties referred to in paragraphs (1)(4) and (1)(5). The duties of a temporary administrator shall continue until the order on the commencement of the proceedings is issued or the matter is otherwise closed before such time, or until the court otherwise orders. (247/2007)
- (6) The court shall issue the administrator with a certificate of appointment. (133/2004)

#### Section 9 — *Powers of the administrator*

- (1) In order to perform his or her duties, the administrator is entitled to enter business premises in the possession of the debtor and to peruse the debtor's books, business correspondence and other business documents and data files. Notwithstanding any provisions on secrecy, the administrator is in his or her duties entitled in the same way as the debtor to obtain information on the debtor's bank accounts, financial transactions, financial agreements and undertakings, assets, taxation, and other factors relating to the financial position or the activities of the debtor.
- (2) The administrator is entitled to participate in meetings of organs of a debtor business and to be heard there. Notices of such meetings shall be sent to the administrator.
- (3) The administrator is entitled to retain expert advisors in the performance of his or her duties.

#### Section 10 — *Committee of creditors*

- (1) On the request of the applicant, the administrator or a creditor, the court shall appoint a committee of creditors as the joint representative of the creditors, unless this is to be deemed unnecessary owing to the small number of creditors or some other reason. The committee of creditors shall have at least three members. The composition of the committee of creditors shall be determined so that various groups of creditors, such as secured creditors and creditors whose claims have a similar basis, are equally represented. The composition of the committee of creditors may also be determined so that the

creditors relevant to the activities of the debtor are represented, if this is conducive to the effective pursuit of the duties of the committee. (247/2007)

- (2) The duties of the committee of creditors, as an advisory body, are to assist the administrator in the performance of his or her duties and to monitor the activities of the administrator on the behalf of the creditors.
- (3) In order to perform their duties, the committee of creditors and its members are entitled, as necessary, to obtain information from the administrator on the matters referred to in section 9(1).
- (4) If the number of persons employed by the debtor is regularly at least fifty, the Employment and Economic Development Centre of the debtor's domicile is entitled to appoint one non-voting member to the committee of creditors as a representative of the employment authorities. (794/1998)

Section 11 — *Duty of the administrator to provide information* (247/2007)

- (1) The administrator shall without delay give the report referred to in section 8(1)(1), or a summary thereof, to the committee of creditors, the major creditors, to other creditors on request, the debtor, and the Bankruptcy Ombudsman. The administrator shall, at regular intervals and whenever necessary, inform the committee of creditors or, if no committee has been appointed, the creditors, of the measures taken and the observations made in the performance of his or her monitoring, supervision and inspection duties, and consult with the committee of creditors or the creditors on any significant decisions before such decisions are made. If the administrator becomes aware that the debtor has failed in a material way to repay debts other than restructuring debts, the administrator shall provide information also to this effect.
- (2) On the request of the debtor or a creditor, the administrator shall provide information on the grounds for his or her remuneration claim, as well as provide an estimate on the total costs of the restructuring proceedings. If the circumstances underlying the estimate later change in a material way, the administrator shall provide a revised estimate to the debtor and the creditors.

Section 12 — *Disqualification of the administrator or of a member of the committee of creditors*

The administrator and a member of the committee of creditors shall not participate in the consideration of an agreement between himself or herself and the debtor. He or she shall likewise not participate in the consideration of an agreement between the debtor and a third party if he or she stands to derive material benefit from such an agreement and this benefit may be in conflict with the interests of the debtor or of a creditor.

Section 13 — *Debtor's duty to provide information and to co-operate*

- (1) The debtor shall provide the court, the administrator and the committee of creditors with the information required by them on matters that may be relevant to the restructuring proceedings and the restructuring programme.
- (2) The debtor shall co-operate with the administrator and the committee of creditors so that they can perform their duties appropriately and so that the restructuring proceedings can be brought appropriately to a conclusion.

- (3) If the debtor is a corporation, the Members of its Board of Directors, the Managing Director and the persons individually liable for the undertakings of the corporation shall perform the duties referred to in this section. Persons employed by the debtor shall fulfil these duties to the extent that they are connected with their work.

#### Section 14 — *Secrecy obligation*

The administrator, a member of the committee of creditors and a creditor, a person employed by the same, or an assistant or expert advisor retained by them shall not disclose or use for personal benefit any information relating to the financial position, business relationships or business secrets of the debtor that he or she had learned in connection with the proceedings.

### Chapter 4 — **Legal effects of the commencement of restructuring proceedings**

#### Section 15 — *Undertakings of the debtor*

- (1) The commencement of restructuring proceedings shall have no effect on the existing undertakings of the debtor, in so far as not otherwise provided below.
- (2) The commencement of the proceedings shall interrupt the accrual of overdue interest on restructuring debts. The same provision applies to other consequences of delayed payment that are dependent on the length of the delay.
- (3) Section 32 contains provisions on debts arising after the filing of the application and section 38 contains provisions on the re-emergence of a debt on the basis of recovery. (247/2007)

#### Section 16 — *Reversal of transactions from the interim period*

- (1) Transactions entered into after the filing of the application for restructuring proceedings and before the commencement of the proceedings may be reversed as provided in chapter 6.
- (2) In debt adjustment, a change in the payment schedule to the detriment of the debtor that has been made during the period referred to in paragraph (1) may be disregarded.

#### Section 17 — *Interdiction of repayment and provision of security*

- (1) Once the proceedings have commenced, the debtor shall not repay restructuring debts or provide security for such debts.
- (2) A payment made in violation of the interdiction provided in paragraph (1) shall be returned. However, the provisions of sections 11 and 21 of the Act on the Recovery of Assets to a Bankruptcy Estate (758/1991; *laki takaisinsaannista konkurssipesään*) apply correspondingly to the obligation to return a payment on a bill of exchange or cheque. If, because of the payment, the creditor has returned security provided by a third party or if there is a personal surety for the debt, the provisions of sections 19 and 21 of the said Act apply correspondingly to the return of the payment; however, the provision in section 19 on the insolvency of the debtor pertains to the commencement of the restructuring proceedings.
- (3) The provision of a pledge or other security in violation of the interdiction provided in paragraph (1) shall be invalid unless otherwise ensues from the

application of provisions on negotiable instruments, other securities or book entries. A mortgage application on the property of the debtor filed after the commencement of the proceedings shall not result in priority status for restructuring debt.

Section 18 — *Exceptions to the interdiction of repayment*

- (1) Notwithstanding the interdiction provided in section 17, a secured creditor is entitled, in accordance with the terms of the debt, to receive payments of interest and other costs of credit that have become due after the filing of the application. The creditor shall not invoke a term of the debt concerning the payment of costs of credit before they become due. (247/2007)
- (2) Notwithstanding the interdiction provided in section 17,
  - (1) wages and salaries and compensation for work expenses shall be paid to employees for the three months preceding the filing of the application, unless the administrator declares that he or she considers the basis or amount of such a debt to be under dispute; (247/2007)
  - (2) holiday pay and holiday remuneration for the period preceding the filing of the application shall be paid to employees; (247/2007)
  - (2a) an employee's claim based on the financial services offered by the employer to its personnel shall be paid to an amount equalling the deduction made from the creditor's wages, salary or pension during the three months preceding the filing of the application; (247/2007)
  - (3) maintenance shall be paid to the child of the debtor to the extent that the maintenance would have had priority in enforcement at the time of the filing of the application;
  - (4) payment may be made on the decision of the administrator to creditors who have small claims, if this is appropriate from the point of view of the proceedings, as well as use a claim of the debtor's in set-off against a restructuring debt, where the creditor would have the corresponding right of set-off; (247/2007)
  - (5) unless the administrator decides otherwise, a payments account with an overdraft facility may be maintained in a bank, so that payments to the debtor continue to be deposited in such an account and continue to be used as part payment of the bank's overdraft claim;
  - (6) part payments and interest on a loan taken out from a pensions fund established by the debtor shall be paid to the extent that these are necessary in order to ensure the liquidity of the fund.

Section 19 — *Interdiction of debt collection*

- (1) After the commencement of the proceedings, no measures shall be directed at the debtor in order to collect on a restructuring debt subject to the interdiction of repayment or in order to ensure its payment. Measures that have already been initiated shall not be continued. Moreover, no sanctions for default shall be directed at the debtor in respect of such a debt. The following measures, among others, fall within the sphere of this interdiction:
  - (1) the exercise of rights of liquidation or recovery based on real security rights and the other utilisation of security in order to obtain payment;

- (2) the termination of a debt and the termination or cancellation of the contract underlying the debt owing to a default, with the exception of the termination or cancellation of a book credit facility or another revolving credit contract in order to refuse new credit;
  - (3) set-off by a credit institution against funds that the debtor has on deposit at the institution when the interdiction of collection takes effect or thereafter, or funds that are at the credit institution at that time for transfer into the debtor's account, where the account can according to its terms be used for payments; (247/2007)
  - (4) the issue of an administrative decision detrimental to the debtor on the basis of a restructuring debt being in default. (247/2007)
- (2) Measures contrary to the interdiction shall be invalid. If collateral has been transferred contrary to the interdiction, a *bona fides* transferee may nevertheless be protected against recovery as specifically provided to this effect. The interdiction shall not preclude a creditor from bringing an action or pursuing a pending action or other proceedings aiming for the maintenance of a right or the obtainment of a basis for enforcement.
- (3) During the restructuring proceedings, a creditor shall have the right to set a claim off against a debt owed to the debtor at the commencement of the proceedings under the same conditions as in bankruptcy proceedings. The notice of set-off shall be served also on the administrator. If a debt owed by a creditor who is not a secured creditor becomes due on a fixed date after the date when the interdiction of debt collection takes effect, the creditor shall have the right to withhold payment to an amount corresponding the claim from the debtor in restructuring, so that the debt relationship continues otherwise with the same terms until the set-off is effected or the interdiction of debt collection ends. (247/2007)
- (4) On the request of the administrator, chattels that are part of the fixed assets of the debtor and that are in the possession of a creditor on the basis of a right of security or retention, shall be returned to the possession of the debtor if this is necessary from the point of view of the continuation of operations. The creditor retains a priority right to payment from the value of the property as well as the right to return of the property to his or her possession in the cases mentioned in section 20(2), or if the restructuring proceedings are terminated without the restructuring programme being approved, or if the arrangements of debts under the programme expires. Property may not be transferred without the consent of the creditor.

#### Section 20 — *Granting exceptions to the interdiction of debt collection*

On the request of a secured creditor and after having heard the administrator, a court may grant a creditor permission to exercise the rights referred to in section 19(1)(1) if:

- (1) it is clear that, in view of the restructuring arrangements or the securing of reasonable living conditions or livelihood for the debtor or a member of his or her family, it is not necessary to retain the property standing as security in the possession of the debtor; or

- (2) the request is based on a default on the payments referred to in section 18(1) or section 33(1) or on the duty to procure insurance as provided in section 33(2), where the default is not of minor significance.

#### Section 21 — *Interdiction of distraint and other enforcement measures*

- (1) After the commencement of the proceedings, property may not be distrained for a restructuring debt falling within the scope of the prohibition on repayment. Distraint in violation of the prohibition shall be invalid. The consideration of a distraint application shall be discontinued. If the distraint has already been effected, the enforcement proceedings shall be discontinued and the enforcement officer shall on request hand over to the administrator the distrained property and the possible funds accruing on the same. If a public notice of the forced sale of distrained property has been given before the commencement of the proceedings, the court may order that enforcement be discontinued and the sale be cancelled, unless it is apparent that retention of the property in question in the possession of the debtor is not necessary in the manner referred to in section 20(1). A creditor who has applied for enforcement has the right to compensation from the debtor for enforcement costs that have become pointless owing to the cancellation of the sale.
- (2) After the commencement of the proceedings, a court order on the eviction of the debtor from premises in its possession and primarily used in the activity that is the subject of the proceedings shall not be enforced, if the basis for the eviction is default of payment of rent or other compensation for the use of the premises that has become due before the filing of the application. The same provision applies also to a court order under the Housing Companies Act (809/1991; *asunto-osakeyhtiölaki*) allowing premises used for the said purpose being taken over by the housing company. However, on the request of a creditor, the court may allow enforcement, if non-enforcement would be unreasonable in view of the measures that the creditor has already undertaken in respect of the premises. (247/2007)
- (3) After the commencement of the proceedings, executive assistance shall not be provided to the creditor of a restructuring debt for the recovery of property or final settlement, as referred to in the Hire-Purchase Act (91/1966; *laki osamaksukaupasta*). A pending recovery or final settlement process shall be discontinued.
- (4) If, before the commencement of the proceedings, security has been provided with the enforcement authorities so as to have a distraint or other enforcement process interrupted for the duration of a pending appeal, the security shall be returned to the administrator on request or, if the security has been provided by a third party, to that third party.

#### Section 22 — *Interim interdiction*

- (1) Once the application has been filed, the court may order, on the request of the applicant or the debtor, that the interdiction referred to in section 17, 19 or 21 is in effect on an interim basis already before the commencement of the proceedings, if this is deemed necessary. The interim interdiction may be issued without hearing the creditors or the debtor if this is deemed necessary in view of the urgency of the matter.

- (2) A court order on an interim interdiction, as referred to in paragraph (1), shall not be open to appeal.
- (3) Section 83a contains provisions on the appointment of an interim administrator. (247/2007)

Section 23 — *Interdiction of precautionary measures*

After the commencement of the proceedings, precautionary measures based on official decisions shall not be directed against the debtor otherwise than on the basis of section 30. A precautionary measure taken before the commencement of the proceedings shall lapse at that time, unless the court orders otherwise under section 30.

Section 24 — *Relationship to bankruptcy*

- (1) If, at the time of filing of the restructuring application, also an application for the bankruptcy of the debtor is pending, no decision shall be made on the bankruptcy application until a decision has been made on the commencement of the restructuring proceedings. The same provision applies if an application for the bankruptcy of the debtor is filed after the filing of the restructuring application but before the decision on the commencement of the proceedings. If the restructuring proceedings are commenced, the bankruptcy application shall lapse once the restructuring programme has been approved. If the restructuring application is rejected or the restructuring proceedings are ordered to be discontinued for a reason other than the approval of the programme, the consideration of the bankruptcy application shall be resumed. Section 96(2) contains provisions on the effects of appeal. (247/2007)
- (2) If the debtor has appealed or declared that it will appeal against a decision rejecting the restructuring application, the court seized with the bankruptcy application referred to in paragraph (1) or filed at a later date may, on the request of the debtor, suspend the issue of the order on bankruptcy until such time that the appeal has been decided by the appellate court or that the consideration of the matter is concluded for some other reason. It shall be a prerequisite for the suspension that there is an especially weighty reason for the same, in view of the grounds referred to in the appeal or declared as grounds to be referred to in the appeal. The decision to suspend shall not be open to appeal. If the debtor is declared bankrupt, the court may on the request of the debtor order that the bankruptcy estate is not to sell assets beyond an amount that is necessary in order to avoid losses or to cover the costs of administration of the estate and the management of its assets, until such time that the court order on the restructuring proceedings has become *res judicata* or a new order is issued. (247/2007)
- (3) A restructuring application filed after the debtor has been declared bankrupt shall be ruled inadmissible.
- (4) After the commencement of restructuring proceedings, the debtor may be declared bankrupt on the application of a creditor only if, at the commencement of the proceedings, the debtor had been insolvent and the circumstances are as referred to in section 7(1)(1), or if the bankruptcy application is based on default in the payment of a debt arising after the filing

of the restructuring application. In the latter case, the court shall hear the administrator, and the bankruptcy order may on the request of the debtor be suspended for at most one month, if there is an especially weighty reason for the same in view of the continuation of the restructuring proceedings. The decision to suspend shall not be open to appeal. If the debtor declared bankrupt, the restructuring proceedings shall lapse. (247/2007)

Section 25 — *Right of the creditor to collect from a third party*

- (1) The commencement of restructuring proceedings shall not prevent the collection of a restructuring debt from a guarantor or from the value of the collateral provided by a third party, nor the giving of notice or otherwise terminating the debt for the part of the guarantor or the provider of the collateral, where the guarantee or the collateral had been given in the context of business operations or other comparable activities. The provision above on a guarantor applies also to a joint debtor. The collection of payment from a guarantor shall not require preceding termination measures directed at the debtor. (794/1998)
- (2) If the guarantor, joint debtor or provider of collateral is a person other than one referred to in paragraph (1), the provisions of sections 19—22 apply correspondingly to the collection of the debt from the guarantor or joint debtor or from the value of the collateral. In the application of section 20 in this respect, the provider of the collateral shall be heard instead of the administrator. (247/2007)
- (3) Section 42(3) and section 48 contain provisions on the status of the guarantor, joint debtor and provider of collateral in debt adjustment.

Section 26 — *Right of the debtor to repay a secured debt before maturity*

- (1) After the commencement of the proceedings, an undertaking or agreement regarding a secured debt may be terminated by decision of the administrator so as to repay the debt before it would otherwise become due. The part of the credit costs that pertain to the remainder of the original term of the credit shall in this event be deducted from the balance of the creditor's claim. However, expenses incurred in the establishment of the credit, if specified in the agreement and not unreasonable, shall not be deducted. The provisions of the Hire-Purchase Act apply to the balance of a debt based on a hire-purchase agreement, with due note of the provisions of the said Act on a final settlement.
- (2) Notwithstanding the provisions in section 17, a secured debt that has been terminated may be repaid by decision of the administrator before it becomes due if this is appropriate from the point of view of the financial arrangements of the debtor.

Section 27 — *Status of certain agreements*

- (1) After the commencement of the proceedings, a lease or a credit-lease agreement where the debtor is the lessee may be terminated by the debtor, as provided in sections 29 and 30, to come to an end two months after the service of notice of the termination, notwithstanding any terms in the agreement on the duration of the agreement or on the service of notice. The compensation for the premature termination of the agreement shall include

the necessary costs incurred in the restoration of possession of the property and a reasonable compensation for other losses demonstrated by the lessor. In addition, the provision in section 26 on the credit costs that pertain to the remainder of the original term of the credit being counted in favour of the debtor apply in respect of a credit-lease agreement. (794/1998)

- (2) Notwithstanding the provisions in section 17, a person who before the commencement of the proceedings has contractually committed to a performance to the debtor but who has not completed the performance at the time of commencement of the proceedings, shall be entitled to consideration for his or her performance, if the performance can be deemed a regular part of the activities of the debtor.
- (3) If a person has before the commencement of the proceedings contractually committed to a performance other than one referred to in paragraph (2) to the debtor and if the debtor has at the time of commencement of the proceedings not met his or her payment obligation under the contract, the administrator shall on the request of the other party state whether or not the debtor will keep to its part of the contract. If the answer is in the negative or if it is not given in a reasonable time, the other party has the right to cancel the agreement.
- (4) The compensation due in the cases referred to in paragraphs (1) or (3) for the termination or cancellation of an agreement shall constitute restructuring debt of the debtor and it shall be taken into consideration notwithstanding the provisions below regarding the service of notice of claims.
- (5) The Employment Contracts Act (320/1970; *työsopimuslaki*) contains provisions on the right to terminate an employee's employment relationship in connection with restructuring proceedings.

#### Section 28 — *Validity of legal consequences*

- (1) In the event that an appeal is filed against the court order on the commencement of restructuring proceedings, the legal consequences of the commencement of the proceedings, including the powers of the administrator and the restrictions on the authority of the debtor, shall nonetheless remain in effect. The legal consequences shall lapse if the court order on the commencement of the proceedings is overturned by a *res judicata* decision or if the appellate court so orders.
- (2) The legal consequences of the commencement of the proceedings shall continue until the restructuring programme is approved. If the restructuring proceedings come to an end without a restructuring programme being approved, the legal consequences of the commencement of the proceedings shall lapse when the court declares the debtor bankrupt, or issues the order to terminate the proceedings, unless the court for a special reason orders that the legal consequences are to remain in effect until the decision becomes *res judicata* or until a different order is issued in the matter. If the debtor is placed in liquidation after the commencement of the proceedings, the legal consequences of the commencement of the proceedings shall lapse when the liquidation proceedings begin. (247/2007)

- (3) If the restructuring proceedings come to an end without the restructuring programme being approved for a reason other than the bankruptcy of the debtor, enforcement or executive assistance which had been discontinued or interrupted on the basis of section 21 may be continued on the basis of an earlier application for enforcement or executive assistance, after the legal consequences of the restructuring proceedings have lapsed.
- (4) When ordering the termination of the proceedings the court may, on the request of the creditor, at the same time order a precautionary measure referred to in section 23. If a precautionary measure had been in effect as against the debtor or its property at the time of commencement of the proceedings, the court shall order that it come into effect anew, unless otherwise ensues by reason of a statement by the creditor or by reason of the debtor being declared bankrupt, or unless the measure has otherwise become pointless.

## Chapter 5 — **Activity by the debtor and disposal of property during the proceedings**

### Section 29 — *Authority of the debtor and the restrictions to it*

- (1) Also after the commencement of the proceedings, the debtor shall retain its authority to dispose of its property and to decide on its activities, in so far as not otherwise provided in this Act. If property has been distrained from the debtor before the commencement of the proceedings so as to collect on a restructuring debt, the said property may be disposed of as provided in this Act, notwithstanding any provisions in chapter 4, section 30, of the Enforcement Act (37/1895; *ulosottolaki*).
- (2) However, after the commencement of the proceedings the debtor shall not without the consent of the administrator:
  - (1) take on new debt unless the matter is of a debt that is connected with the regular activities of the debtor and its amount and terms are not unusual;
  - (2) transfer a business or a portion thereof or transfer fixed assets, liquid assets, intellectual property rights or other essential rights necessary for its activities;
  - (3) grant a right of use or other rights to property referred to in subparagraph (2), unless the matter is of a measure connected with the regular activities of the debtor;
  - (4) transfer current assets otherwise than on the usual terms and as a part of regular activities;
  - (5) give notice of termination of agreements that are necessary for its activities or for the existence of the prerequisites of continued activity;
  - (6) provide security or undertake some other liability for the debt of a third person, unless the matter is of a measure connected with the regular activities of the debtor and the measure does not have unusual significance or incur unusual risk;

- (7) undertake other measures that are unusual or that have extensive consequences, with due note of the extent and nature of the activities of the debtor; nor
  - (8) surrender its property into bankruptcy.
- (3) A measure contrary to the provisions in paragraphs (2)(1)—(2)(7) shall be invalid, unless the other party did not know and ought not to have known that the debtor had no authority to enter into the said transaction.

Section 30 — *Special restrictions to the authority of the debtor*

- (1) On the request of the administrator or a creditor, the authority of the debtor may be restricted also in ways other than those referred to in section 29, if there is a risk of the debtor acting in a way that harms or compromises the interests of a creditor. The debtor may *inter alia* be deprived of the authority to:
- (1) enter into a given transaction;
  - (2) enter into a given transaction without the consent of the administrator;
  - (3) undertake a measure that can be assumed to decrease the value of property belonging to or in the possession of the debtor.
- (2) The deprivation or restriction of authority may be imposed on an interim basis and without hearing the debtor, if necessary owing to the urgency of the matter.
- (3) The deprivation of authority may be reinforced by the imposition of a threat of a fine.
- (4) A transaction entered into in violation of restrictions imposed under this section shall be invalid, unless the other party did not know and ought not to have known that the debtor did not have the authority to enter into the said transaction.

Section 31 — *Exercise of the debtor's right of action and notices to the debtor*

- (1) The debtor shall continue to be entitled to exercise its right of action in pending court proceedings or in other corresponding proceedings where it is a party, unless the administrator decides to undertake to exercise the debtor's right of action. The same provision applies to court proceedings or other proceedings that become pending after the commencement of the restructuring proceedings.
- (2) The administrator has the right to file claims and to initiate court proceedings or other corresponding proceedings on the behalf of the debtor, as well as to exercise the debtor's right of action in the proceedings.
- (3) Also the administrator may accept service of notices on the behalf of the debtor.

Section 32 — *Debt arising after the filing of the application (247/2007)*

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

- (2) If the debtor is declared bankrupt on the basis of a bankruptcy application filed before the conclusion of the restructuring programme or, if the restructuring proceedings have been discontinued without the approval of a restructuring programme, on the basis of a bankruptcy application pending during the restructuring proceedings or filed within three months of the discontinuation of these proceedings, the debt arising between the commencement and the discontinuation of the proceedings and the interest accruing on it until the date of repayment shall be repaid in the bankruptcy at a priority immediately following that of debts referred to in section 3 of the Act on the Ranking of Claims (1578/1992; *laki velkojien maksunsaantijärjestyksestä*). However, the unpaid remuneration and expenses of the administrator and the supervisor and the interest accruing on them until the date of payment shall be paid first.

#### Section 33 — *Protecting the value of collateral*

- (1) A secured creditor has the right to compensation for any decrease in the value of the collateral property to the detriment of the creditor, where the said decrease is due to the use of the property in the activities of the debtor while the interdiction referred to in section 19 or 22 is in effect. The compensation that is paid shall be deemed a payment against the balance of the secured debt.
- (2) The debtor shall hold appropriate insurance against damage to any property that stands as collateral for a restructuring debt and falls within the scope of the interdiction of debt collection.

#### Section 34 — *Priority of new debt*

- (1) On the application of the administrator, the court may order that debt taken on during the proceedings and specified in the order has the same or a higher priority than a restructuring debt in respect of property of the debtor that stands as collateral for both debts. It shall be a precondition for this that the arrangement is necessary to secure financing during the proceedings and that it does not significantly increase the risk of those creditors whose priority position would be weakened. Such an arrangement shall not affect the position of said creditors as secured creditors.
- (2) Before deciding a matter referred to in paragraph (1), the court shall reserve an opportunity to be heard to the debtor and to the creditors whose priority position would be affected by the change.
- (3) If the collateral that is based on a mortgage or on some other registration measure, the change in priority ordered by the court shall, on the application of the administrator or the new creditor, be entered into the appropriate register of mortgages or other register; it shall take effect as of the date of the application. If some other type of collateral is involved, the change in priority shall take effect when the relevant court order has been served on the secured creditors whose priority position is weakened. Service may be effected by the administrator or the new creditor, in the manner referred to in section 81.

## Chapter 6 — **Recovery in restructuring proceedings**

### Section 35 — *Grounds for recovery and right to seek recovery*

- (1) A transaction that could be reversed if a bankruptcy application had been filed instead of a restructuring application may be reversed in the restructuring proceedings on the same grounds as provided in the Act on the Recovery of Assets to a Bankruptcy Estate, observing also the provisions of the said Act on the status of third parties.
- (2) In the cases referred to in paragraph (1), the date when the restructuring application is filed or, if a bankruptcy application pertaining to the debtor was pending at that date, the date when the bankruptcy application is filed, shall be deemed the due date. If several restructuring or bankruptcy applications are pending, the date when the first pending application was filed shall be deemed the due date.
- (3) The administrator or a creditor may seek recovery, as provided in sections 36 and 37.

### Section 36 — *Recovery sought by the administrator*

- (1) The administrator shall bring the action for recovery within six months of the commencement of the proceedings. However, the action may also be brought within three months of the point in time when the administrator noticed or should have noticed the grounds for recovery.
- (2) In the context of recovery sought by the administrator, the provisions in sections 15—19 of the Act on the Recovery of Assets to a Bankruptcy Estate apply so that the provisions on the bankruptcy estate pertain correspondingly to the debtor.

### Section 37 — *Recovery sought by a creditor*

- (1) A creditor who wishes to seek recovery shall notify the administrator of the same. The creditor may bring the action if the administrator does not undertake to do so.
- (2) Where recovery is sought by one or several creditors, the provisions of chapter 3, sections 84, 89 and 90, of the Enforcement Act apply in so far as appropriate. Notwithstanding the provisions of this Act, the assets that are ordered to be transferred or compensated for on the basis of the action of the creditor shall be used to cover the claim of the plaintiff creditor. (690/2003)
- (3) The creditor shall bring the action referred to in paragraph (2) within six months of the commencement of the restructuring proceedings. The court shall reserve the administrator an opportunity to be heard in the matter. The administrator may take the action over by notifying the court of the same in his or her statement. In this event, the action shall be deemed one where the administrator seeks recovery, and the creditor shall have the right to compensation from the debtor's assets for the legal costs arising from the bringing of the action. Any dispute as to the compensation shall be decided by the court. (247/2007)

### Section 38 — *Debts arising on the basis of recovery*

Notwithstanding the provisions below on the declaration of claims, a claim that is restored to a creditor as the result of recovery where the creditor was the defendant shall be taken into consideration as a restructuring debt.

## Chapter 7 — **Restructuring programme**

### Section 39 — *Contents of the programme*

The restructuring programme shall contain an account on the financial status of the debtor and on other circumstances affecting the restructuring, as referred to in section 41, as well as the provisions referred to in section 42 on measures and arrangements that pertain to the status of the debtor and the creditors and aim for the continuation, alteration or termination of activities. The programme shall indicate the division of the creditors into groups, as referred to in section 51, and the absence of a right to vote, as referred to in section 52.

### Section 40 — *Preparation of a draft*

- (1) The administrator shall prepare a draft restructuring programme and submit it to the court within a period to be set by the court, not to exceed four months without a special reason.
- (2) When preparing the draft, the administrator shall negotiate with the debtor and the committee of creditors and, if necessary, with creditors and with a probable creditor who has applied for the proceedings.
- (3) Also the following are entitled to put forward a draft restructuring programme within the period referred to in paragraph (1):
  - (1) the debtor;
  - (2) a person who is personally liable for the debts of the debtor;
  - (3) persons who own at least one fifth of the shares or portions in the debtor company;
  - (4) secured creditors whose claims represent at least one fifth of the total claims of all secured creditors;
  - (5) creditors whose claims represent at least one fifth of the claims of other than secured creditors.
- (4) The persons entitled to put forward a draft have the right to obtain from the administrator the information that, in addition to the report referred to in section 8(1)(1), is necessary for the preparation of the draft.

### Section 41 — *Accounts*

The restructuring programme shall contain itemised accounts on:

- (1) the assets, liabilities and other undertakings of the debtor and of the security for the liabilities;
- (2) activities and their results from the period after the commencement of the proceedings;
- (3) changes after the commencement of the proceedings in the organisation or the other operating conditions of the debtor;

- (4) credit taken out after the commencement of the proceedings, the security provided for this credit and the undertakings assumed;
- (5) close relationships between creditors and the debtor, as referred to in section 3 of the Act on the Recovery of Assets to a Bankruptcy Estate;
- (6) the results of audits and inspections of the activities of the debtor, measures or suspicions regarding offences by a debtor, accounting offences or other criminal acts connected to business operations, as well as measures, observations or suspicions regarding grounds for recovery;
- (7) assessments of how the financial status and the operating conditions of the debtor and the status of the creditors can be assumed to develop in the absence of a programme and with the support of a programme;
- (8) whether or not the debtor has complied with its obligation under section 13 to provide information and to co-operate;
- (9) other circumstances relating to the debtor or to the activities pursued by the debtor that may be of significance in assessing the restructuring programme and the criteria for its implementation, such as the readiness of the debtor to continue its activities in the manner and with the changes required in the restructuring programme and to undertake the other measures referred to in the programme.

#### Section 42 — *Measures and arrangements*

- (1) The restructuring programme shall specify the measures and arrangements designed to improve the debtor's activities, the measures and arrangements that affect the status of the debtor and the creditors, as well as the reasons for the same. The programme shall contain provisions *inter alia* on:
  - (1) whether and to what extent the debtor's activities are to be continued, and the possible changes of corporate form, the articles of association, by-laws or contract of incorporation, or of the organisation of the company;
  - (2) the measures and arrangements relating to the assets of the debtor, such as allowing the debtor to retain assets, the liquidation or transfer of assets, the manner of liquidation or transfer, and the resulting or expected revenue from the same;
  - (3) the arrangements regarding the personnel;
  - (4) the arrangements regarding restructuring debts and the duty to make supplementary payments; (247/2007)
  - (5) the remuneration or other compensation to be paid to the debtor, a partner or shareholder in the debtor company or to a person close to such persons for their services, or the basis on which such remuneration or compensation is to be calculated;
  - (6) the financing of the programme;
  - (7) the monitoring of the programme.
- (2) For the debts, the restructuring programme shall contain a payments programme indicating the contents of the debt arrangement and the payment schedule of payments itemised for each debt and, for ordinary debts, an assessment of what their share would have been in bankruptcy without the

application of section 32(2). The payments programme shall also contain information on the set-offs carried out during the restructuring proceedings. (247/2007)

- (3) If someone is liable for a given debt as a personal guarantor or as a joint debtor, the programme shall also contain provisions on the duty of the said person to pay the creditor. If the security provided for a debt consists of a real security right over the property of a third person, the programme shall indicate the effect of the debt arrangement on the liability of the said person.
- (4) If, according to the programme, the debtor company, its business operations or assets or a part thereof are to be transferred as a going concern, the programme shall indicate the form and conditions of the transfer as well as the transferee, if known.

#### Section 43 — *Status of debts arising after the filing of the application*

The restructuring programme shall be prepared so that debts arising after the filing of the application are repaid after the repayment of secured debts and the respective costs of credit, as provided in section 45, and before other debts.

#### Section 44 — *Methods of debt arrangement*

- (1) The following debt arrangements may be applied to restructuring debts in the restructuring programme, subject to the restrictions noted below:
  - (1) a change of the payment schedule of a debt;
  - (2) an order that payments made by the debtor shall first be considered as payments against the balance of the debt and only later as payments against credit costs;
  - (3) a reduction in the obligation to pay credit costs relating to the remaining credit period;
  - (4) a reduction in the balance of the unpaid debt.
- (2) The debt arrangement may also incorporate the full or partial refinancing of the debt:
  - (1) as an one-off payment with new debt taken for this purpose; or
  - (2) with substitute performance that is reasonable in view of the creditor's field of activities and status.
- (3) No measures shall be used in the debt arrangement that would restrict the rights of a creditor beyond what is necessary for the achievement of the purpose of the restructuring programme and for the fulfilment of the requirements provided in this Act in respect of the relations between creditors.
- (4) It may be ordered in the restructuring programme that the debtor is to make supplementary payments to the creditors, if the state of the finances of the debtor improves between the approval and conclusion of the restructuring programme. However, assets that the debtor reasonably needs so as to continue its activities shall not be ordered to be paid out as supplementary payments. The creditors, not including creditors with the lowest priority, whose claims have been reduced in amount in the context of the debt

arrangement shall have an equal right, prior to the other debtors, to the supplementary payment. (247/2007)

Section 45 — *Status of secured debts in debt arrangement*

- (1) Only the measures referred to in section 44(1)(1)—44(1)(3) and 44(2)(1) may be applied to a secured debt. Overdue interest on a secured debt accruing before the commencement of the proceedings may also be reduced to the extent that it exceeds the regular interest. In the application of section 44(1)(2) to a secured debt, interest on the deferred credit costs shall be set at a rate that maintains their present value.
- (2) The debt arrangement shall not affect the existence or content of a creditor's real security right. Nonetheless, in the debt arrangement, the security arrangements relating to the debt may be altered by replacing the security with other fully adequate security.
- (3) Payments on a secured debt shall be set so that at least the present value of the secured debt will be repaid within a reasonable period, not to materially exceed the remainder of the credit period without the consent of the creditor or, if the debt has become due in full, not to materially exceed one half of the original credit period. In the reduction of credit costs on the basis of section 44(1)(3), due note shall also be taken of the length of the remaining credit period, so that, the longer the remaining credit period, proportionally the smaller the reduction of the credit costs.

Section 46 — *Status of creditors in respect of one another*

- (1) Creditors who, absent the restructuring proceedings, would have an equal right to payment of their claim shall have an equal status in the debt arrangements within the restructuring programme.
- (2) Notwithstanding the provision in paragraph (1), it may be provided in the restructuring programme, if this is deemed to be appropriate from the point of view of the proceedings, that creditors with small claims are to receive payment in full. In addition, notwithstanding the provision in paragraph (1), it may be provided in the restructuring programme, in respect of the repayment of a loan taken from a pension fund established by the debtor, that the amount of the pension liability not covered by the pension fund is not to increase as a result of the debt arrangement pertaining to such a loan.
- (3) In the debt arrangement, interest and other credit costs accruing during the restructuring proceedings to restructuring debts other than secured debts shall be deemed to be lowest priority debts; the lowest priority debts after such debts shall be those that would be paid last in a bankruptcy.

Section 47 — *Status of unclear and unknown restructuring debts and certain other restructuring debts*

- (1) If a restructuring debt is unclear as to its amount or basis, the court shall order the amount at which the said debt is to be included in the restructuring programme. The same provision applies correspondingly to other ambiguities regarding the right of a creditor. A decision referred to here shall not be separately open to appeal.

- (2) A restructuring debt that has not been declared by the debtor or, in accordance with section 71(1)(3), by the creditor, and which has otherwise not come to the attention of the administrator before the approval of the restructuring programme, shall lapse on the approval of the restructuring programme, unless otherwise provided in the programme. However, the debt shall not lapse if the creditor did not know and ought not to have known of it and it had not come to the attention of the administrator before the approval of the programme. A creditor whose claim is secured by a real security right has the right to collect from the value of the security regardless of the provision above in this paragraph. (247/2007)
- (3) Debt arrangements relating to bonds shall have effect in respect of all bondholders. The same provision applies to other debts where the undertakings of the debtor are in public circulation.
- (4) Notwithstanding the provisions in paragraph (2), the court may also on its own motion order, when approving the restructuring programme, that the debt arrangements for the compensation of sequential loss or of other corresponding groups of restructuring debts based on the same grounds have effect also to the benefit of creditors whose claims had not been noted during the proceedings in the manner referred to in paragraph (2).

#### Section 48 — *Status of third parties in certain cases*

- (1) If, in a context other than business activity or comparable activity, a private individual has given a personal guarantee for the debt of the debtor or provided as security for the debt of the debtor his or her residence, which corresponds to his or her reasonable needs, an arrangement of the liability for the guarantee or collateral may be ordered for him or her at his or her request, in the manner provided in the Act on the Adjustment of the Debts of Private Individuals (57/1993). The provision above on a guarantor applies also to a joint debtor.
- (2) If, in the cases referred to in section 25(1), the debt has not been collected during the proceedings from the guarantor or from the value of security provided by a third party, the creditor may notwithstanding the debt arrangement collect on his or her claim from the guarantor or the value of collateral in accordance with the original terms of the debt.

### Chapter 8 — **Approval of the restructuring programme**

#### Section 49 — *Alternative conditions for approval*

The court shall approve the draft restructuring programme if the conditions referred to either in section 50, in sections 51—53, or in section 54 are met, in so far as not otherwise provided in section 55.

#### Section 50 — *Approval with the acceptance of all creditors*

- (1) The restructuring programme may be approved if all of the known creditors accept the same. In this event, the contents of the programme may depart from the provisions of this Act as regards the status of creditors in restructuring proceedings.
- (2) Notwithstanding the above, the programme shall not be approved if:

- (1) the contents of the programme violate the right or justified interest of the debtor, a partner or shareholder in the debtor company or a third party, or are unreasonable in respect of such a person; or
- (2) adequate evidence has not been presented of the chance that the implementation of the programme will succeed.

Section 51 — *Approval with the acceptance of majorities in the groups of creditors*

- (1) The restructuring programme may be approved if a majority, as referred to in section 52, in each of the groups of creditors referred to in paragraph (3) accepts the same. In this event, the contents of the programme may depart from the provisions in this Act on the status of the creditors to the detriment of the accepting creditors.
- (2) Unless the programme is approved on the basis of section 50, the person presenting the draft shall also propose how the creditors are to be divided into groups.
- (3) The creditors shall be divided into groups as follows:
  - (1) secured creditors;
  - (2) creditors holding a floating charge as security for their claims;
  - (3) others than secured creditors, so that one group is formed by creditors whose claims may be enforced without a judgment or court order, as provided in the Act on the Collection of Taxes and Public Charges by Enforcement (367/1961; *laki verojen ja maksujen perimisestä ulosottoihin*);
  - (4) creditors with lowest-priority claims in accordance with section 6 of the Act on the Ranking of Claims, so that the groups are formed in accordance with the priority order of such claims.

(247/2007)

Section 52 — *Determination of the existence of a majority*

- (1) The majority required for the approval of a programme shall be deemed to exist if more than one half of the creditors participating in the vote in each group of creditors vote for approval, and the total claims of the creditors in favour of approval in each group of creditors is more than one half of the total claims of the creditors participating in the vote.
- (2) In assessing whether a majority exists, no consideration shall be taken of a creditor who, or group of creditors which, is to receive full payment for their claims according to the draft at the latest one month after the programme is approved or whose legal position will not be changed by the programme or will change only in that a default in payment that occurred before the proceedings had been commenced is rectified and the terms of the debt remain as they had been before the default. A creditor with the lowest priority shall not be taken into consideration if, according to the programme, a creditor with a higher-priority claim will not receive full payment or his or her legal position will otherwise worsen.
- (3) The draft shall indicate which of the creditors would not have the right to vote under paragraph (2).

- (4) A restructuring debt with an uncertain basis or amount shall be taken into consideration in the assessment of the majority requirement to the amount provided in section 47(1).

Section 53 — *Barriers to approval*

- (1) Even if the conditions under sections 51 and 52 are met, the restructuring programme shall not be approved if:
- (1) the contents of the programme violate the right or justified interest of the debtor, a partner or shareholder in the debtor company or a third party, or are unreasonable in respect of such a person; or
  - (2) adequate evidence has not been presented of the chance that the implementation of the programme will succeed; (247/2007)
  - (3) the contents of the programme, in respect of a creditor who voted against approval, are not in accordance with section 44 or do not meet the requirement of equality referred to in section 46;
  - (4) the contents of the programme do not meet the requirements provided in section 45 in respect of a secured creditor who voted against approval;
  - (5) another creditor who voted against approval shows it to be probable that the payment to be made to him or her in accordance with the programme would be less than what he or she would receive in the bankruptcy of the debtor, absent the application of section 32(2);
  - (6) the programme provides for the transfer of the debtor company, its business operations or assets or a part thereof as a going concern, and a creditor who voted against approval shows it to be probable that a transfer in accordance with the programme would lead to a result that would be financially less favourable than what could be achieved in another manner.
- (2) The programme shall likewise not be approved if there would be a barrier to the commencement of the restructuring proceedings, as referred to in section 7(2). (247/2007)

Section 54 — *Approval without the acceptance of majorities in all groups of creditors*

Even if the majority referred to in sections 51 and 52 does not exist in one or several groups of creditors, the restructuring programme may nonetheless be approved at the request of the person who had prepared the draft, the administrator or the debtor, subject to the following conditions:

- (1) there is no barrier to approval, as referred to in section 53;
- (2) a majority referred to in section 52 has voted for the approval of the programme in at least one group of creditors, and the claims of all of the creditors who have voted for approval represent at least one fifth of the known claims which are to be taken into consideration under section 52(2);
- (3) according to the programme, none of the creditors is to receive a benefit of a greater value than the amount of his or her claim;
- (4) if, according to the programme, the creditors are to receive payment in excess of the minimum level which is required for the group of creditors

in question under this Act, this benefit is allocated among the groups of creditors in a reasonable manner; and

- (5) according to the programme, creditors with claims that have a lower priority than the group of creditors voting against approval, other than one composed of secured creditors, are not to receive payment.

#### Section 55 — *Other reasons not to approve the programme*

- (1) In addition to what is provided above in this chapter, a restructuring programme shall likewise not be approved if:
  - (1) the contents of the programme do not meet the requirements set in sections 41 and 42;
  - (2) the procedural provisions on the consideration of the draft have not been followed, and this failure may be assumed to have affected the results of the consideration; or
  - (3) the law has been otherwise violated or improper procedure has been otherwise followed in the preparation or consideration of the draft.
- (2) A provision in the restructuring programme that is contrary to the law or unreasonable shall not be approved.
- (3) If a condition is set in the restructuring programme to the effect that, before the programme is approved, the debtor or another person makes a certain decision or performance, undertakes a certain measure or meets a certain criterion, the programme shall not be approved until this condition has been fulfilled.

#### Section 56 — *Competing draft programmes*

If several draft restructuring programmes fulfil the requirements for approval of the programme, priority shall be given to a draft that can be approved on the basis of section 50. A draft may be approved under section 54 only if there are no drafts that fulfil the requirements of section 50 or sections 51 and 52. If there are several drafts referred to in section 54, the one that has received the widest acceptance among the groups of creditors shall be approved.

### Chapter 9 — **Legal effects, implementation, amendment, and lapse of the restructuring programme**

#### Section 57 — *Legal effects of the restructuring programme*

- (1) Once the restructuring programme has been approved, the terms of the restructuring debts and the other legal relationships covered by the programme shall be redefined in accordance with the programme. Unknown restructuring debts shall cease when the programme is approved, unless otherwise provided in the programme or in section 47(2)—(4).
- (2) Distraint against the property of the debtor that is based on a restructuring debt shall lapse when the restructuring programme has been approved and become *res judicata*. The same provision applies to other enforcement based on a restructuring debt.
- (3) The approval of the restructuring programme shall not render a case pertaining to the basis or amount of a restructuring debt or to the validity or

contents of a security right relating to a restructuring debt inadmissible in court, if the debt or right has been contested in the restructuring proceedings and the case has under section 75 been directed to be heard in separate proceedings.

#### Section 58 — *Interdiction of asset distribution*

- (1) If the debt arrangement under a restructuring programme restricts the right of creditors to payment against the capital balance of their claims, the assets of the debtor shall not be distributed to the owners between the approval and the conclusion of the restructuring programme, with the exception of remuneration or compensation referred to in section 42(1)(5) for services in accordance with the programme.
- (2) Section 64(2) contains provisions on the effect of the debt arrangement on a distribution of assets in violation of this interdiction. The provisions in chapter 13, section 4, and in chapter 22 of the Companies Act (624/2006; *osakeyhtiölaki*) apply to the liability of a shareholder to return and to make compensation for assets distributed in violation of this interdiction.

#### Section 59 — *Nullity of secondary agreements*

An undertaking or agreement according to which the debtor is to make a payment based on or connected with a restructuring debt shall be void, unless the obligation to make the payment is based on the approved restructuring programme.

#### Section 60 — *Enforceability of the payment programme*

An obligation to make a payment under the payment programme of an approved restructuring programme may, if neglected, be enforced in the same manner as a judgment debt.

#### Section 61 — *Monitoring of the implementation of the programme*

- (1) A supervisor may be appointed to monitor the restructuring programme; the supervisor shall monitor the implementation of the programme on the behalf of the creditors, with due note of the provisions in sections 63—65 and attend to the measures under the programme that are not to be attended to by the parties. If the draft programme does not require the appointment of a supervisor, the committee of creditors or the creditors who, under section 40, would have had the right to present a draft may request that a supervisor be appointed.
- (2) The administrator or some other person may be appointed as the supervisor. The provisions of sections 8(3), 9, 12, 14 and 83—87 on the administrator apply correspondingly to the supervisor.
- (3) It may be provided in the restructuring programme that the term of the committee of creditors is to continue until the conclusion of the programme.
- (4) Between the approval of the restructuring programme and its conclusion, the debtor has the same obligation to provide information to and to co-operate with the supervisor, the committee of creditors and the court as provided in section 13.

*Section 62 — Report on the implementation of the programme*

- (1) The supervisor or, if there is no supervisor, the debtor shall report to the committee of creditors and the creditors at regular intervals on the implementation of the restructuring programme. The dates for the reports may be set in the restructuring programme or in the court order on the approval of the restructuring programme. Unless otherwise ordered, the report shall be given every six months.
- (2) At the conclusion of the restructuring programme the supervisor or, if there is no supervisor, the debtor shall without delay present the committee of creditors and the creditors a final report on the implementation of the programme. The final report shall also be presented to the court of first instance that dealt with the matter.

*Section 63 — Amendment of the programme*

- (1) The provisions on the rectification of a judgment apply to rectification of a clerical error, arithmetical error or other comparable obvious error in the approved programme. The same provision applies if the amount of a debt has been incorrectly entered into the payment programme owing to an earlier payment or some other comparable reason. The court may also rectify other errors in the programme if those whose position is affected by the matter accept the same. (794/1998)
- (2) The contents of a debt arrangement or the payment programme in an approved programme may be amended with the acceptance of the creditor whose rights are violated by the amendment. However, no acceptance need be obtained if the claim of the creditor is insignificant as to its amount and if the position of the creditor is not affected in a material respect because of the amendment. (247/2007)
- (3) If the amount of a restructuring debt or the right of a creditor is determined to be different from that entered into the restructuring programme in accordance with section 47(1), the programme shall be amended at the request of the creditor or the debtor in so far as the determination regarding the right of the creditor affects the contents of a debt arrangement or payment programme in the programme. Correspondingly, the same provision applies, if a creditor acquires a claim referred to in section 38 owing to a recovery of payment, or a new restructuring debt appears and has not lapsed under section 57(1). In the amendment of the payment programme, the creditor shall in the debt arrangement be treated equally with other creditors in the same position. (247/2007)
- (4) *Repealed.* (247/2007)

*Section 63a — Demand for supplementary payment (247/2007)*

- (1) The demand for the fulfilment of an obligation to make supplementary payments may be filed by the supervisor or a creditor.
- (2) Unless otherwise provided in the restructuring programme, the demand for the fulfilment of the obligation to make supplementary payments shall be filed with the court no later than one year after the presentation of the final report to the court. If the final report has not been presented to the creditors, a

creditor shall in any event file the demand no later than two years after the presentation of the final report to the court.

#### Section 64 — *Lapse of a debt arrangement*

- (1) At the request of a creditor, the court may order that a debt arrangement in the restructuring programme pertaining to this creditor is to lapse, if the debtor has materially neglected its obligations under the programme to the creditor and has not fulfilled these obligations within a reasonable additional period set by the creditor.
- (2) If the interdiction of asset distribution referred to in section 58 has been violated, the debt arrangement in the restructuring programme may be ordered to lapse in respect of those creditors whose right to payment against the capital balance of their claims has been restricted in the programme. A request for such an order may be filed by the supervisor or by a creditor in respect of his or her claim. The court may deny the request if the assets distributed in violation of the interdiction have been returned or compensation has been made on their value, and the lapse of the arrangements of debts would, taking this into consideration, be unreasonable.
- (3) The court may also order that a debt arrangement in the restructuring programme is to lapse if the programme provides for a ground other than that referred to in paragraph (1) or (2) for such lapse. A request for such an order may be filed by the supervisor or by a creditor in respect of his or her claim.
- (4) The lapse of the debt arrangement of debts shall not be ordered if there is reason to believe that the debtor has acted in the manner referred to in paragraphs (1)—(3) in order to favour the creditor in question.
- (5) The creditor in respect of whom the debt arrangement lapses has the same right to payment as he or she would have had, had the restructuring programme not been approved. However, the debtor need not pay overdue interest on the debt for the period during which the debt arrangement was in effect, unless the court orders otherwise for a special reason.

#### Section 65 — *Lapse of the programme*

- (1) The court may, on the request of the supervisor or a creditor, order that the restructuring programme is to lapse if:
  - (1) after the approval of the programme circumstances come to light which, under section 53(2), would have prevented the approval of the programme had they been known at the time; or
  - (2) the debtor has violated the programme in order to favour a creditor, and the violation is not petty.
- (2) If the debtor is a private entrepreneur or a self-employed person, and an order on the commencement of debt adjustment of a private individual is issued while the restructuring programme is in effect, the restructuring programme approved in accordance with this Act shall lapse. However, the court may order that the restructuring programme is not to lapse despite the debt adjustment, if there is a special reason for the same owing to the fact

that a major part of the restructuring debts in the programme has been paid in accordance with it. (247/2007)

- (3) If an order for the lapse of the restructuring programme is issued, it ceases to be in effect and the creditors have the same right to payment for restructuring debts as they would have had, had the restructuring programme not been approved. The lapse of the programme shall have no effect on the validity of transactions already entered into on the basis thereof.

#### Section 66 — *Effect of bankruptcy on the restructuring programme*

- (1) If the debtor is declared bankrupt before the conclusion of the restructuring programme, the programme shall lapse. In such a case, the right of a creditor in bankruptcy shall be determined as if the restructuring programme had not been approved.
- (2) Notwithstanding paragraph (1), the court may order, at the request of the debtor or of the creditor who applied for bankruptcy proceedings, that the restructuring programme is not to lapse despite the bankruptcy, if there is a special reason for the same owing to the fact that a major part of the restructuring debts in the programme has been paid in accordance with it.
- (3) Section 32(2) applies to the position in bankruptcy of a debt that arises after the commencement of the proceedings. Section 87(5) applies to the position in bankruptcy of the remuneration and compensation to be paid to the administrator and the supervisor.

#### Section 66a — *Status of unknown creditors (247/2007)*

If a restructuring debt appears after the conclusion of the restructuring programme and it would have been possible to amend the programme on the basis of that debt, the debtor shall repay the debt to an amount that the creditor would have received had the debt been taken into the restructuring programme.

### Chapter 10 — **Procedural provisions**

#### Section 67 — *Jurisdiction in restructuring proceedings*

- (1) Matters relating to restructuring proceedings under this Act shall be heard by the following courts of first instance: District Court of Ahvenanmaa, District Court of Espoo, District Court of Helsinki, District Court of Joensuu, District Court of Jyväskylä, District Court of Kuopio, District Court of Lahti, District Court of Lappeenranta, District Court of Oulu, District Court of Pori, District Court of Rovaniemi, District Court of Tampere, District Court of Turku, and District Court of Vaasa. The judicial district of the courts in these matters shall be determined by Decree of the Government. (247/2007)
- (2) Matters concerning restructuring proceedings shall be considered by the court referred to in paragraph (1) in whose district the general administration of the debtor is located. Matters concerning the restructuring of a subsidiary company in a group of companies shall, however, be considered by the court in which restructuring proceedings concerning the parent company are pending. If a matter concerning the restructuring of the parent company is filed later, the court considering the restructuring of the subsidiary company may transfer the matter to the court in which the matter concerning the

parent company is pending. If the transferring court is considering an application for bankruptcy concerning the debtor that has been filed after the restructuring proceedings had commenced, also this application shall be transferred for the decision of the said court. The rectification, amendment or lapse of an approved restructuring programme shall be considered by the court in which the restructuring proceedings were pending. If a restructuring application is filed with a court considering a bankruptcy application, that court, if it does not have jurisdiction, shall transfer the application to the court with jurisdiction at the request of the applicant (1029/1993)

(3) *Repealed.* (247/2007)

(4) *Repealed.* (609/1993)

#### Section 67a — *Jurisdiction in bankruptcy proceedings* (247/2007)

- (1) If a bankruptcy application pertaining to the debtor is pending when the restructuring application is filed, or if a bankruptcy application is filed before the court order on the commencement of restructuring proceedings becomes *res judicata*, the bankruptcy application shall be heard by the District Court where the restructuring application is pending or which heard the matter pertaining to the commencement of restructuring proceedings. The District Court where the bankruptcy application is filed shall transfer it to be heard by the District Court that is hearing or had heard the restructuring application.
- (2) A bankruptcy application pertaining to the debtor and filed during the restructuring proceedings shall be heard by the District Court where the restructuring proceedings are pending.
- (3) If the debtor is declared bankrupt, the District Court referred to in paragraph (1) or (2) may transfer the matter to the District Court that otherwise has jurisdiction in the bankruptcy of the debtor, if this is deemed appropriate. The District Court shall at the same time appoint an estate administrator.

#### Section 68 — *Procedure* (771/2002)

- (1) The provisions of chapter 8 of the Code of Judicial Procedure, pertaining to the hearing of petitionary matters, apply, in so far as appropriate, to the hearing of a matter referred to in this Act.
- (2) A matter pertaining to restructuring of enterprises shall be heard with the promptness required by the nature of the matter. (247/2007)

#### Section 69 — *Application*

- (1) An application for the commencement of restructuring proceedings shall be filed in writing to court registry. If the application is filed when a bankruptcy application pertaining to of the debtor is pending, it may be submitted to the court in the bankruptcy hearing.
- (2) The requisite information about the debtor shall be appended to the application. In addition, the debtor shall append to its application a statement on the creditors, the debts and their collateral as well as on the state of its finances. If the debtor has not filed the application together with the creditors, as provided in section 6(1)(1), and the creditors have not supported the application, the debtor shall provide a statement on the main reasons for

its financial difficulties, the prospects for the continuation of its activities, the funds needed to cover the costs of the restructuring proceedings and the means by which the debtor is to repay its debts other than restructuring debts. (247/2007)

- (3) More detailed provisions on the documents to be appended to the application and on the requisite information shall be issued by Decree.
- (4) An application for restructuring proceedings filed while an approved restructuring programme is in effect shall be ruled inadmissible. (247/2007)

#### Section 70 — *Interim measures on the basis of the application*

- (1) The court shall serve the application of the debtor on the creditors who, on the basis of their claims, are deemed significant and also to other creditors whom the court deems necessary to hear on the application, as well as reserve them an opportunity to submit a written statement by a set date. If the debtor has filed the application together with the creditors, as referred to in section 6(1)(1), or if the creditors have supported the debtor's application, the restructuring proceedings may be commenced without hearing the other creditors. (247/2007)
- (2) The court shall serve an application by a creditor or by a probable creditor on the debtor, as well as reserve it an opportunity to submit a written statement by a set date. The court shall also exhort the debtor to present to the court, by a set date, a statement on its creditors, debts and the collateral for the debts.
- (3) If the court deems it necessary on the basis of the application of a creditor or probable creditor, it may, before deciding on the commencement of the proceedings, reserve other creditors or the major creditors noted in the statement by the debtor referred to in paragraph (2) an opportunity to submit a written statement by a set date.
- (4) Where necessary, provisions on the notices to be filed on the application shall be issued by Decree. (1029/1993)

#### Section 71 — *Court order on the commencement of proceedings*

- (1) When the court issues the order on the commencement of restructuring proceedings, it shall:
  - (1) appoint an administrator as provided in section 83, unless otherwise provided in section 90;
  - (2) appoint a committee of creditors as provided in section 84, unless otherwise provided in section 10 or 90;
  - (3) set a date by which the creditors must declare their claims in writing to the administrator if these claims differ from those reported by the debtor, under the threat that the claim will otherwise not be taken into consideration and the claim will lapse as provided in section 47;
  - (4) set a date by which the administrator must serve the report on the financial situation of the debtor on the parties to the matter, as referred to in section 8(1);
  - (5) set a date by which the draft restructuring programme is to be prepared and delivered to the administrator and the court; and

- (6) make an entry on the court order of the (clock) time it was issued.
- (2) The court order shall indicate how the commencement of the proceedings limits the right of the debtor to dispose of its property and activities.
- (3) The administrator shall serve the court order without delay on the creditors noted in the application or the statement of the debtor and to the guarantors, joint debtors and providers of collateral. If the debtor is one referred to in section 10(4), the court order shall also be served on the appropriate Employment and Economic Development Centre. (794/1998)

Section 72 — *Initiation of the consideration of the draft programme*

- (1) When the draft restructuring programme has been delivered to the court, the court shall reserve the parties to the matter, other than the person who prepared the draft, an opportunity to submit a written statement regarding the draft within a set period, or summon such parties to be heard in court. A creditor who has been summoned to be heard may be reserved an opportunity to submit a written statement instead of appearing before the court. The administrator shall see to the service of the exhortation, the summons and the draft on the recipients.
- (2) At the request of a person entitled to present a draft, the court may extend the period reserved for the preparation of the draft if this is necessary for special reasons.
- (3) A draft submitted after the end of the set period shall not be taken into consideration.

Section 73 — *Absence of a draft programme (247/2007)*

If no draft restructuring programme that would meet the requirements of sections 41 and 42 has been submitted to the court within the set period, the court shall reserve the applicant, the administrator and the presenter of a possible incomplete draft an opportunity to be heard. Unless the hearing otherwise indicates, the court shall order the termination of the restructuring proceedings.

Section 74 — *Contesting of claims*

- (1) When deciding on the further consideration of the draft, the court shall at the same time reserve the parties to the matter an opportunity to declare in writing to the administrator, by a date prior to the set date referred to in section 72(1), their objections to claims referred to in the draft. Both the administrator and the debtor may submit objections on behalf of the debtor.
- (2) The administrator shall serve the objections declared by the set date on the debtor and on the creditors whose rights are affected by the objection in question. Before further consideration of the draft, the administrator shall present to the court a list of the objectors and the subject-matter of each objection.
- (3) Objections declared after the set date referred to in paragraph (1) shall not be taken into consideration.

### Section 75 — *Consideration of objections*

- (1) The objections referred to in section 74 shall be considered and the matter decided together with the consideration of the draft, if this is possible without causing material delay or other inconvenience to the restructuring proceedings, taking due note of the necessary evidence and the other circumstances.
- (2) If the matter cannot be considered and decided in accordance with paragraph (1) together with the restructuring proceedings, the court shall direct the party who has the burden of proof in the matter to submit, within a set period, the matter for consideration in separate judicial proceedings or in other proceedings intended for such a matter. Section 47(1) applies to the taking of such a claim into consideration in the restructuring proceedings.

### Section 76 — *Consideration of the draft programme, service and voting procedure*

- (1) After the parties to the matter have had the opportunity to state their views on the draft restructuring programme and the court has made a decision referred to in section 47(1) on the consideration of unclear restructuring debts, the person who has prepared the draft may be reserved an opportunity to rectify, review or supplement the draft within a set period.
- (2) After the court has received the final draft, it shall decide how the creditors are to be divided into groups and which groups have the right to vote. A decision referred to here shall not be subject to separate appeal.
- (3) The court shall exhort the creditors with the right to vote to state to the court in writing by a set date whether they accept or reject the draft (*voting statement*). A voting statement submitted after the set date shall not be taken into consideration. The administrator shall see to the service of the exhortation, the final draft, the minutes of the hearing or the parties written statements on the recipients.
- (4) The court shall serve the voting statements submitted by the set date on the administrator. The administrator shall, without delay, prepare a report on the voting statements and on the results of the vote in respect of each part of the draft (*voting report*), deliver the report to the court and see to its service on the recipients.
- (5) However, no vote need be taken, if the majority referred to in section 52 of each group of creditors has accepted the draft in writing and none of the creditors has in a statement referred to in section 72 mentioned a circumstance on the basis of which the restructuring programme should not be approved. (247/2007)

### Section 77 — *Court order on the approval of the restructuring programme*

- (1) After the court has received the voting report it may, if it deems this necessary, reserve the parties to the matter an opportunity to submit a written statement by a set date on this report and on the arrangements referred to in section 61 on the monitoring of the programme.
- (2) Once the court has issued an order on the approval of the restructuring programme and issued instructions on matters relating to the monitoring of

the programme, the administrator shall service the court order on the parties to the matter.

- (3) The restructuring programme shall be complied with regardless of appeal, unless the appellate court otherwise orders. (247/2007)
- (4) The restructuring proceedings shall come to an end when the restructuring programme has been approved.

Section 78 — *Court order on the termination of the proceedings without approval of the restructuring programme* (794/1998)

- (1) If a request is submitted for the discontinuation of the proceedings or a creditor with a restructuring debt applies for the bankruptcy of the debtor, the court shall reserve the debtor, the administrators and the creditors who are to be considered significant in view of the amount of their claims an opportunity to submit a written statement by a set date, or summon a party to the matter to be heard in court. The administrator shall see to the service of the exhortation or summons and the request on the debtor and creditors.
- (2) The administrator shall without delay serve the court order on the termination of the proceedings on all parties to the matter.

Section 79 — *Court order on the lapse of a debt arrangement or the restructuring programme* (794/1998)

- (1) Before an order is issued for the lapse of a debt arrangement or the restructuring programme on the basis of section 64 or 65, the court shall reserve the debtor, the supervisor and the creditors who are to be deemed significant in view of the amount of their claims, as well as the creditors that the court deems necessary to hear in the matter, an opportunity to submit a written statement in the matter, or summon the party to the matter to be heard in court.
- (2) Notice of the lapse of the debt arrangement shall without delay be served on the debtor and the supervisor, as well as on the creditors in so far as the court deems this necessary. Notice of the lapse of the restructuring programme shall be served on the debtor, all creditors and the supervisor.

Section 80 — *Public announcements and notices*

The court order on the commencement or termination of the restructuring proceedings, on an interim interdiction referred to in section 22 or on restrictions on the competency of the debtor referred to in section 30 shall be publicly announced and notified to certain authorities, as well as entered into the trade register as well as in various property registers and the register of mortgages, as provided by Decree.

Section 81 — *Manner of service* (247/2007)

- (1) Service of notices under this Act may be effected by post or by telecommunications, unless it is necessary to effect service against a receipt or proof-of-receipt or by means of another manner of verifiable service, as provided for civil cases.
- (2) A message delivered by means of telecommunications shall be deemed to have arrived in time if it has arrived as provided in sections 10 and 11 of the Act on

Electronic Services and Communication in the Public Sector (13/2003; *laki sähköisestä asioinnista viranomaistoiminnassa*)

- (3) The final report may be delivered to a creditor to the address provided by the creditor in the restructuring proceedings or later, after the approval of the restructuring programme, to the supervisor the debtor.

#### Section 82 — *Coercive measures against the debtor*

If the debtor neglects its obligations under section 13 or section 70(2), the court may order it to fulfil the obligation within a set period and impose a threat of a fine in order to reinforce the obligation.

### Chapter 11 — **Appointment of the administrator and the committee of creditors and their supervision**

#### Section 83 — *Appointment of the administrator*

- (1) The administrator shall be appointed on the proposal of a creditor or the debtor at the commencement of the proceedings. If there is no valid proposal to this end, the court shall appoint a suitable and willing person as the administrator. (247/2007)
- (2) At the request of the committee of creditors, an administrator proposed by the committee of creditors may be appointed instead of or in addition to the administrator appointed under paragraph (1). A request under this paragraph for the replacement of the administrator shall be submitted within one month of the appointment of the committee of creditors.
- (3) If at least one half of the known creditors in a group of creditors referred to in section 51(3) so request, the administrator proposed by this group may be appointed instead of or in addition to the administrator appointed on the basis of paragraph (1). It shall be a requirement for this that at least one half of the known creditors in each of the groups of creditors referred to above support the request. A request under this paragraph for the replacement of the administrator shall be submitted within one month of the commencement of the restructuring proceedings.
- (4) The administrator must always fulfil the requirements referred to in section 8(3). However, a person who is related to the debtor or a creditor in the manner referred to in said provision may be appointed as administrator if at least two thirds of the known creditors in each group of creditors is in favour of his or her appointment. A creditor who does not use the opportunity to express his or her position shall not be taken into consideration in calculating the majority.

#### Section 83a — *Interim administrator* (247/2007)

When the court decides on the interim measures referred to in section 22, or at a later date, it may at the request of the debtor or a creditor appoint an interim administrator, if this is necessary. The duties of the interim administrator are as provided in section 8(2). The provisions in section 9(1) on the right of the administrator to obtain information, in section 12 on disqualification, in section 14 on the secrecy obligation, in section 83 on the appointment of the administrator, in section 85 on supervision and coercive measures, in section 86 on the dismissal of the administrator, in section 87

on the remuneration and expenses of the administrator, and in section 94(1) on the administrator's liability in damages apply also to the interim administrator.

Section 84 — *Appointment of the committee of creditors and decision-making in the committee*

- (1) A committee of creditors may be appointed when the decision on the commencement of the proceedings is made, or at a later date. Unless otherwise ensues from the application of section 10, each member of the committee shall be appointed on the proposal of a creditor from the respective group of creditors. The committee may later be augmented with a representative of a group of creditors that is not represented on the committee. The committee of creditors shall elect a chairperson from among its members. (247/2007)
- (2) The representative of a group of creditors on the committee of creditors may be replaced if at least one half of the known creditors in the group so request.
- (3) The committee of creditors shall be convened by the administrator or the chairman at his or her own initiative or at the request of a member. The committee shall make its decisions by simple majority.

Section 85 — *Supervision and coercive measures*

If the administrator neglects a task or duty that he or she is obliged to undertake under this Act, the court may oblige the administrator to carry it out within a set period and impose the threat of a fine to reinforce the obligation.

Section 86 — *Dismissal of the administrator*

- (1) The court may, on its own initiative or at the request of the committee of creditors or a creditor, and after having reserved the administrator and, at the discretion of the court, other parties to the matter an opportunity to be heard, dismiss the administrator if he or she materially neglects his or her duties or there is another important reason for dismissal. The court may also relieve the administrator of his or her position at request, if there is valid reason for the same.
- (2) The court may order that the order referred to in paragraph (1) shall be complied with regardless of appeal, unless the appellate court otherwise orders.
- (3) The provisions of section 83 apply correspondingly to the appointment of a new administrator in the place of an administrator who has been dismissed or relieved of his or her position.

Chapter 12 — **Costs of the proceedings**

Section 87 — *Administrator's remuneration and expenses*

- (1) The administrator has the right to a reasonable remuneration for his or her services, to be paid from the assets of the debtor. The value of the debtor company at the time of the commencement of the proceedings, the demands of the position and the extent of the necessary measures, the results of the work of the administrator and other circumstances shall be taken into

consideration when determining the remuneration. At the request of the administrator, the remuneration may be paid in partial payments as his or her work progresses, if this is to be deemed reasonable with regard to the duration of the duty, the amount of work and the other circumstances.

- (2) The administrator has the right to compensation from the assets of the debtor for the expenses he or she has incurred and that are necessary from the point of view of the performance of the duty. At the request of the administrator, such compensation shall be paid in advance or before the completion of his or her work, if this is to be deemed justified with regard to the expected or realised amount of expenses. (247/2007)
- (3) The administrator shall append to the claim for a remuneration or compensation for expenses an account on the measures that have been carried out and an itemized statement that shows the bases for the remuneration and compensation. If there are several administrators, they shall present their claim at the same time, unless there is special reason to proceed otherwise.
- (4) The amount of the remuneration and compensation for expenses shall be determined by the committee of creditors or, if there is no such committee, by the court. The court shall also decide the matter of the remuneration or compensation if the administrator, the debtor or a creditor wants to contest the decision of the committee of creditors and brings an action within fourteen days of having been informed of the decision of the committee of creditors, but at the latest one month from the date on which the decision was taken. Before deciding the matter, the court shall reserve the parties to the matter an opportunity to be heard.
- (5) If the debtor is declared bankrupt, the unpaid remuneration and compensation referred to in this section, and the interest accruing on them until disbursement, shall be paid at a priority immediately following that of the claims referred to in section 3 of the Act on the Ranking of Claims, and preceding the claims referred to in section 32(2). In enforcement proceedings, the unpaid remuneration and expenses have the same priority as the claims referred to in section 4 of the Act on the Ranking of Claims. (794/1998).

#### Section 88 — *Expenses incurred by the committee of creditors*

- (1) Unless otherwise provided in the restructuring programme, the compensation of the necessary expenses incurred through the participation of a member of the committee of creditors in the work of the committee shall be the liability of the creditors in the group of creditors which is represented by the member in question or to which the member belongs. (247/2007)
- (2) A member of the committee of creditors has the right to a reasonable remuneration for his or her duty if the group of creditors which is represented by the member in question, or to which the member belongs, so decides. The decision shall a simple majority both of the creditors and of the amounts of the claims. (247/2007)
- (3) The creditors who are member of the group referred to above in paragraphs (1) and (2) shall be jointly and severally liable. The allocation of the liability

among the creditors shall be determined in proportion to the amount of their claims.

#### Section 89 — *Expenses of participation in the proceedings*

- (1) A person who wants to exercise the right to present a draft restructuring programme shall bear the costs of preparation of the draft himself or herself.
- (2) The parties to the matter shall themselves be liable for the expenses of participating in the restructuring proceedings. However, the provisions on legal costs in civil matters apply correspondingly in the consideration of the objections referred to above in section 75(1) and the consideration of the contestation referred to in section 87(4).

### Chapter 13 — **Simplified restructuring proceedings**

#### Section 90 — *No appointment of administrator or committee of creditors*

- (1) If the debtor has filed an application for the commencement of restructuring proceedings, no administrator need be appointed if no one has proposed the appointment of an administrator or otherwise requested this. If the application has been filed by a creditor, no administrator need be appointed if the known creditors of the debtor are reserved an opportunity to submit a written statement within a set period before a decision is made on the commencement of the proceedings and no one requests that an administrator be appointed. An administrator may be appointed after the proceedings have been commenced if a creditor or the debtor so requests. (247/2007)
- (2) The court may appoint an administrator even if no one so requests, if it deems this necessary for a special reason. Even if a request has been made for the appointment of an administrator, the court need not appoint an administrator if there is special reason to deem that the appointment of an administrator is not necessary from the point of view of the preparation of the restructuring programme or of the monitoring of the interests of the creditors. (247/2007)
- (3) The provisions of paragraph (1) apply correspondingly to the appointment of a committee of creditors.
- (4) If no administrator has been appointed:
  - (1) the obligations of the debtor referred to above in section 13 shall be directed towards the creditors;
  - (2) the debtor shall be heard when applying section 20 of this Act;
  - (3) the assets referred to above in section 21(1) shall be handed over to the debtor;
  - (4) the debtor shall not, without the consent of the known creditors, enter into any transactions which, according to this Act, would require the consent of the administrator;
  - (5) the court may order the extent to which the debtor may repay the small claims referred to in section 18(2)(4);
  - (6) the statement referred to above in section 27(3) shall be requested from the debtor, who shall present, within a reasonable time, the consent of the known creditors to keeping to the agreement;

- (7) notwithstanding section 29, the debtor may surrender its property into bankruptcy;
- (8) the court shall attend to the duties of the administrator in respect of service of notices and the preparation of the voting report.

#### Section 91 — *No public announcement*

- (1) At the request of the applicant for restructuring proceedings and with the consent of the known creditors of the debtor, the court may decide that the public announcement, referred to in section 80, of the commencement of the proceedings shall not be made. However, the court may publish the announcement if it deems this necessary for a special reason.
- (2) If no public announcement is made, a creditor who has not been served with the decision to commence the restructuring proceedings may, notwithstanding the provisions of this Act, request performance for his or her claims and exercise his or her rights as a creditor. If, however, the creditor must be assumed to have otherwise been informed of the commencement of the proceedings, the provisions of section 47(2) apply.

#### Section 92 — *Summary approval of a restructuring programme (247/2007)*

- (1) In the absence of a barrier referred to in paragraph (3), a draft restructuring programme may be approved as the restructuring programme without the need to comply with the provisions of sections 72 and 74—76, if the following items have been obtained:
  - (1) written acceptance from all known creditors whose claims total at least 80 per cent of the overall total claims of the creditors, and from each creditor whose claim is at least 5 per cent of the overall total claims of the creditors; and
  - (2) a written statement from the debtor.
- (2) Together with the draft, the court shall be presented with an account of how and when the creditors who have not accepted the draft have been informed of it and reserved an opportunity to comment, as well as with the written statements of the creditors objecting to the draft.
- (3) The draft restructuring programme shall not be approved, unless it is in compliance with sections 44—46 in respect of creditors who object to it, or if it otherwise departs from the provisions of this Act concerning the status of creditors, or if there is a barrier to approval, as referred to in section 50(2), 53(2) or 55.

### Chapter 14 — **Liability in damages**

#### Section 93 — *Liability in damages for an unjustified application*

A person who deliberately or through negligence files a manifestly unjustified application for restructuring proceedings shall be liable to compensate the loss thus caused to the debtor or a creditor.

#### Section 94 — *Liability for damages of the administrator and a member of the committee of creditors*

- (1) The administrator is liable in damages for loss that he or she has caused through an error or omission in performing his or her duty, to the debtor, a

creditor, a guarantor or a provider of collateral. The administrator shall be liable as an employer for losses caused to the persons mentioned above, as provided in chapter 3 of the Tort Liability Act.

- (2) The provisions of paragraph (1) apply correspondingly to the liability of a member of the committee of creditors in damages.

Section 95 — *Liability in damages for a violation of a secrecy obligation*

A person who, deliberately or through negligence, violates the secrecy obligation provided in section 14, shall be liable to compensate to the debtor the loss thus caused.

Section 95a — *Liability in damages for transferring a claim (247/2007)*

If the debtor transfers a claim while an interdiction of collection is in effect, so that a creditor is thus deprived of the chance of set-off, the debtor shall be liable in damages to the creditor for the loss thus caused.

Chapter 15 — **Miscellaneous provisions**

Section 96 — *Appeal*

- (1) Court orders in a matter connected with restructuring proceedings or the restructuring programme are subject to appeal, unless appeal has been separately prohibited or unless the order in question concerns a procedural issue.
- (2) If a court order rejecting an application for restructuring proceedings has been appealed and the debtor has been declared bankrupt before the matter has been decided by the appellate court, the bankruptcy shall lapse if restructuring proceedings are commenced. In such a case, debts that arise during the bankruptcy shall be deemed equivalent to debts that arise during the restructuring proceedings. If restructuring proceedings are commenced by the order of the appellate court and, at that time, an application is pending for the bankruptcy of the debtor, the application shall lapse once the restructuring programme is approved. (247/2007)
- (3) The court deciding on the commencement of the restructuring proceedings shall deliver the appeal document to the relevant appellate court without delay. The appeal shall be considered as a matter of urgency.

Section 97 — *Position of a creditor under public law in a debt arrangement*

A creditor with a claim under public law has the right, notwithstanding other legislation, to consent to a debt arrangement referred to in this Act or to a voluntary arrangement of debts where the contents correspond to the principles provided in this Act. The authority with jurisdiction over the collection of the claim may decide on the consent. The same provision applies correspondingly to a public corporation which has a claim on the debtor under private law.

Section 98 — *Loans with provision for the capitalization of interest in a debt arrangement*

- (1) If, according to the terms of a debt, interest is capitalized in the repayment of the debt, the term to this effect may be set aside in a debt arrangement and

the amount that is unpaid at the commencement of the proceedings may be considered in the same way as a debt where the interest is not capitalized.

- (2) If the debt arrangement referred to in paragraph (1) lapses, the creditor has the right to claim payment without consideration of the term regarding capitalization of the interest.

Section 99 — *Relationship of the statute of limitations and of the maximum period of collection to restructuring proceedings (746/2003)*

- (1) The provisions in sections 11 and 17 of the Act on the Statute of Limitations relating to Claims (728/2003; *laki velan vanhentumisesta*) apply to the interruption of the limitation period and the period for bringing a charge, and to the effects of the periods on a claim to be taken into the payment schedule. (746/2003)
- (2) If the creditor is to collect on the claim within a specific statutory period, under threat of forfeit, and the claim is not subject to the provisions of the Act on the Statute of Limitations relating to Claims, the expiration of the said period after the commencement of the restructuring proceedings or the beginning of an interim interdiction referred to in section 22 shall not prevent collection under the restructuring programme. If an interdiction of collection or enforcement under this Act lapses without a restructuring programme being approved or an approved debt arrangement lapses, the calculation of the period referred to in this paragraph shall proceed by the omission of the calendar year when the interdiction of collection or enforcement took effect, as well as the subsequent period until the end of the calendar year when the interdiction or the debt arrangement lapsed. If the restructuring proceedings lapse without a restructuring programme being approved, the term of effect of the interdiction of collection shall be omitted from the calculation of the time during which a creditor must demand payment from a guarantor referred to in section 25(2). (746/2003)
- (3) If, in order to retain the priority right provided in law, a creditor must request distraint within a set period, the provisions of paragraph (1) on the right to receive payment apply correspondingly to the securing of the priority right.
- (4) If an interdiction of enforcement under this Act ceases without approval of the restructuring programme or the debt arrangement approved in the programme lapses, the period between the beginning of the interdiction of enforcement and its cessation or the lapse of the arrangement of debts shall be omitted from consideration when calculating the set period referred to in paragraph (3). If distraint is interrupted due to an interdiction of enforcement under this Act or due to the restructuring programme, the period referred to shall be correspondingly omitted from consideration in assessing the retention of the priority position.

Section 99a — *Relationship of the statute of limitations and the maximum period of collection to a voluntary arrangement of debts*

If an agreement is reached with the debtor on a voluntary arrangement of debts whose contents correspond to the principles of this Act, the creditor shall be entitled to payment in accordance with the terms of the arrangement notwithstanding the expiry of the periods referred to in section 99. If the

matter is of a claim referred to in section 99(2), the creditor shall, under threat of forfeiture, collect on the claim no later than by the end of the calendar year following the end of the payment period under the arrangement of debts unless the original term for the collection of the claim ends only later. In other events, the statute of limitations or the maximum period of collection shall be deemed interrupted with the end of the payment period under the arrangement of debts.

#### Section 100 — *Use of trial documents for research purposes*

- (1) If trial documents pertaining to a matter referred to in this Act have been ordered secret under the Act on the Publicity of Court Proceedings (945/1984; *laki oikeudenkäynnin julkisuudesta*) or the Act on the Openness of Proceedings in the General Courts (370/2007; *laki oikeudenkäynnin julkisuudesta yleisissä tuomioistuimissa*), the court in which the matter had been pending may nevertheless grant access to information in such a document for scientific research, if it is apparent that access does not violate those interests that are to be protected by the secrecy order. (376/2007)
- (2) A person who has received secret information on the basis of this section has the same secrecy obligation as the parties to the matter.

#### Section 100a — *Register of restructuring proceedings*

Separate provisions shall be issued on the register of restructuring proceedings.

### Chapter 16 — **Provisions on entry into force**

#### Section 101 — *Entry into force*

- (1) This Act shall enter into force on 8 February 1993.
- (2) Measures for the implementation of this Act may be undertaken already before its entry into force.

#### Section 102 — *Transitional provisions*

[NB: The original transitional provisions from 1993 are obsolete. The transitional provisions relating to the amending Act 247/2007 are as follows:]

- (1) This Act enters into force on 1 June 2007.
- (2) Measures for the implementation of this Act may be taken already before its entry into force.
- (3) In so far as not otherwise provided in paragraphs (4)—(12), this Act applies if the application for the commencement of restructuring proceedings or for the approval of the restructuring programme under section 92, or for the bankruptcy of the debtor, is filed after the entry into force of this Act.
- (4) The provisions in sections 10(1), 84(1), 88(1) and 88(2) on the committee of creditors apply even if the application for the commencement of restructuring proceedings is filed before the entry into force of this Act.
- (5) The provisions in section 24(1) and (2) on the consideration of a bankruptcy application apply even if the application for the commencement of restructuring proceedings or for the bankruptcy of the debtor is filed before the entry into force of this Act.

- (6) The provisions in section 37(3) apply to the pursuit of an action for recovery, if the court, in a case brought by a creditor, is to hear the administrator after the entry into force of this Act.
- (7) The provisions in section 63(2) on the amendment of the restructuring programme apply to a matter filed after the entry into force of this Act, even if the application for the commencement of restructuring proceedings has been filed or the restructuring programme approved before the entry into force of this Act.
- (8) If the restructuring programme has been approved before the entry into force of this Act or is approved in a matter where the application for the commencement of restructuring proceedings was pending at the entry into force of this Act, supplementary payments may be demanded under the previous wording of section 63(4), unless it is otherwise provided in the restructuring programme. In this event, also section 63a on the demand for supplementary payment applies. However, if the final report on the implementation of the programme has been submitted to the court before the entry into force of this Act, the supervisor or a creditor may demand supplementary payments within one year of the entry into force of this Act notwithstanding the provisions in section 63a(2).
- (9) The provisions in section 65(2) on the lapse of the restructuring programme applies, if the court order on the commencement of debt adjustment of a private individual is issued after the entry into force of this Act.
- (10) Jurisdiction in restructuring matters shall be determined in accordance with section 67(1) after the entry into force of this Act. However, a District Court with jurisdiction under the previous provisions shall consider the matters that are pending there at the entry into force of this Act.
- (11) The provisions in section 76(5) on the voting procedure apply, even if the application for the commencement of restructuring proceedings has been filed before the entry into force of this Act.
- (12) The provisions in section 83(1) and 83a on the appointment of the administrator and in section 87(2) on the expenses of the administrator apply, even if the application for the commencement of restructuring proceedings has been filed before the entry into force of this Act.