

Finnish Bankruptcy Act 2.0

Robert Peldán runs through the key amendments to the new Bankruptcy Act in Finland



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As several other countries in the European Union, Finland has also decided to modernise its insolvency legislation by means of updating its Bankruptcy Act in July this year.

The Finnish Bankruptcy Act, which entered into force in 2004 after a comprehensive reform of the outdated Bankruptcy Code from 1889, is fairly modern, functional and efficient.

According to the World Bank's Doing Business Ranking 2018, Finland was ranked second best in the world in the category 'Resolving Insolvency', only after Japan¹. Regardless of the fact that there is a consensus between the creditors, insolvency practitioners and the Finnish Ministry of Justice that the current Finnish Bankruptcy Act works well, minor streamlining and updating was required.

The main objectives of the newest amendments were to simplify, digitise and speed-up bankruptcy proceedings. This rather extensive process started already in 2015 when the Finnish Ministry of Justice appointed an expert group comprising specialists in insolvency law. The aim of this group was to solve bankruptcy-related environmental and efficiency problems and propose necessary legislative changes. Some changes to the current legislation were made due to the new EU regulation on insolvency proceedings. After this process, the Finnish Bankruptcy Act has now been amended, and the amendments took effect on 1 July 2019. Furthermore, the Advisory Board for Bankruptcy Affairs, an

advisory board for the Bankruptcy Ombudsman's Office, has prepared written recommendations on how to implement the new amendments.

The key amendments will be discussed in more detail below.

Estate inventory and debtor's description

The content requirements for the estate inventory and debtor's description were alleviated in bankruptcies that lapse (total discontinuation) due to insufficiency of funds². The general rule of thumb is that two thirds of the bankruptcies will lapse. Now, the minimum requirement is that the estate inventory must include at least the debtor's largest creditors and their receivables, the most significant other commitments and an estimate of the total amount of other debts and liabilities.

The purpose of the amendment is to improve the bankruptcy estate administrator's ability to concentrate on identifying the debtor's assets, screening for possible wrongdoings and drafting debtor description, which are usually the most important factors in the early stages of bankruptcy. The amendment will speed up the bankruptcy proceedings and the creditors are not required to disclose their debts.

However, the administrator may still include all the debtor's debts in the estate inventory. This would be appropriate when it is assumed that the bankruptcy proceedings will continue so that disbursement will be paid out.

Creditor's right to disbursement

Prior to these new amendments, bankruptcy claims were dealt in two stages: first in the drafting of the estate inventory and later, with some exceptions, in the lodgement of claim procedure. Such a redundant procedure often causes unnecessary costs and loss of time for both the creditors and the bankruptcy estate. From now on, the bankruptcy estate administrator must take into account certain claims without the lodgement of a claim. In practice, this means that a creditor has to inform the bankruptcy estate of their claims only once. The lodgement can be done by filing the standard claims form referred to in Article 55 of the EU Regulation on Insolvency Proceedings.

Shorter timeframes

The deadline for the draft disbursement list was cut into a half of its original length, which means that now the bankruptcy estate administrator must draw up the draft disbursement list within one, or, in extensive bankruptcies two, months from the lodgement date. In addition, once the estate inventory and debtor description have been finalised, the bankruptcy estate administrator must either file a request for the lapse of bankruptcy or set a lodgement date within a timeframe of one month.

Digitalised portal for bankruptcy and restructuring matters

In Finland, the Bankruptcy Ombudsman's Office, which is a



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public authority, supervises the administration of bankruptcy estates and restructuring proceedings³. The Bankruptcy Ombudsman's Office upholds a digital portal called "*konkurssi- ja yrityssaneerausoiden asianhallintojärjestelmä*" or shortly "Kosti". Kosti provides a base for the estate administrator, the Bankruptcy Ombudsman's Office, debtor and creditors to communicate and share information relating to the ongoing bankruptcy and restructuring proceedings. Not only does the digital portal enhance insolvency proceedings by improving communication and distribution of documents between parties, but it also provides valuable information and statistics for the monitoring insolvency proceedings in the Finnish economy on a larger scale.

Kosti was launched in 2013, but after the new reform it is now obligatory for the insolvency practitioners to save documents and distribute information via Kosti. The documents that are saved by the bankruptcy estate can be sent to all creditors, as long as they have been listed as a creditor in Kosti, at the same time as the document is filed in Kosti. Furthermore, the obligation to save and distribute information via Kosti eases the Bankruptcy Ombudsman's Office's tasks to supervise bankruptcy estate administrators. In addition, Kosti provides means to distribute and file documents solely to the creditors, so that the Bankruptcy Ombudsman does not have access to them by filing the documents into the private section of Kosti.

Kosti also eases the bankruptcy estate administrator's work in several ways. Firstly, it provides an easy way to stay in touch with the involved parties. Secondly, filing a document to the portal means the creditors will actually receive it (if they have registered to the portal). Ultimately, prolongations to the mandatory due dates are made straight via Kosti and only, if needed, informed to the District Court⁴.

Public receivership

The Bankruptcy Ombudsman's office does not only have a pivotal role in supervising bankruptcy and restructuring proceedings, but it is in its sole discretion to take a bankruptcy proceedings into a public receivership, which is driven by a public receiver appointed by Ombudsman⁵. The public receivership is a method of scrutinising the pre-bankruptcy activities of the debtor and is an alternative to the lapse of bankruptcy. The public receiver has the same duties as the administrator and must meet the same qualifications (usually the administrator continues as the public receiver). The costs of the public receivership are covered from public funds whenever the assets of the bankruptcy estate run out.

By virtue of the new Bankruptcy Act, some amendments relating to the public receivership have been made. Firstly, to further enhance the creditors' rights, the public receiver has to, via Kosti, inform the creditors of the public receivership in its annual report. The new reform also gives a creditor a possibility to object to the final settlement of accounts, however, only for the part relating to the payment of disbursements.

The bankruptcy estate's liability for rental of premises

The bankruptcy estate's liability for payment in terms of rental premises was also further clarified in the Finnish Tenancy Act, the Act on Residential Leases, and the Act on Business Premises Leases.

Prior to the amended legislation, the bankruptcy estate shall be liable for the fulfilment of obligations arising from the lease agreement for any period during which it uses the premises, even if it has not assumed liability for their fulfilment. However, the new reform clearly states that if the bankruptcy estate solely leaves assets that have belonged to the debtor on the premises, this is not considered as usage of premises.

The costs relating to the removing, cleaning or disposing of the discarded assets are debts that the lessor has to lodge in the bankruptcy proceedings.

Reform in the legislation was necessary, because the legislator wanted to clarify the existing practice among the bankruptcy estate administrators, who sell and clear out the assets that have an economic value, leaving the remainder of the assets inside the leased premises.

Environmental liabilities

One of the most important objectives of the reform was to clarify the bankruptcy estate's environmental responsibilities. Their legal status, which tends to have a massive economic significance, has been unclear, and the clash of environmental and bankruptcy legislation is apparent. The government bill proposed in this matter included a new chapter to the Finnish Bankruptcy Act regarding the bankruptcy estate's environmental liabilities, stipulating the extent to which the bankruptcy estate is required to bear environmental responsibility at its own expense, and to what extent there is no obligation to act or no liability for costs. However, the Parliament rejected the parts of the bill, due to a statement provided by the Constitutional Law Committee. Hopefully, the clarifying amendments to the bankruptcy estates' environmental liabilities will be made available in the near future. ■

Footnotes:

- 1 www.doingbusiness.org/en/data/exploretopics/resolving-insolvency. In brief, the category Resolving Insolvency Rank in the Doing Business ranking studies the time, cost and outcome of insolvency proceedings involving domestic legal entities.
- 2 The court will make an order on lapse of bankruptcy if the bankruptcy estate's funds are insufficient for the costs of the bankruptcy proceedings.
- 3 Additional information: www.konkurssiasiamies.fi/en/index.html
- 4 Until now, the Finnish courts have acted more or less as the rubber stamp granting the prolongations when the actual supervision power lays within the Office of the Bankruptcy Ombudsman.
- 5 Additional information: www.konkurssiasiamies.fi/en/index/responsibilities.html



PUBLIC RECEIVERSHIP IS A METHOD OF SCRUTINISING THE PRE-BANKRUPTCY ACTIVITIES OF THE DEBTOR AND IS AN ALTERNATIVE TO THE LAPSE OF BANKRUPTCY

