

Restructuring Across Borders

Finland: corporate restructuring and insolvency procedures

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Introduction

The four principal restructuring and insolvency regimes for companies under Finnish law are:

- bankruptcy (*konkurssi*) under the Bankruptcy Act 2004
- business restructuring (*yritysaneeraus*) under the Restructuring of Enterprises Act 1993
- unofficial restructuring or voluntary restructuring
- liquidation

Bankruptcy (*konkurssi*)

Bankruptcy proceedings are a form of general enforcement of creditors' claims against the property of the debtor company. At the commencement of the bankruptcy proceedings, the debtor company forfeits

control of its assets and its estate is managed by a court appointed administrator who realises the assets and uses them to pay the bankruptcy creditors in accordance with the applicable priority rules.

Business restructuring (*yritysaneeraus*)

A business restructuring under the Restructuring of Enterprises Act 1993 offers a breathing space for companies with economic problems to resolve these problems without being declared bankrupt. An administrator is appointed by the court and supervises the day-to-day activities and interests of the creditors. The directors of the debtor remain in full possession of the business and are able to continue the normal day-to-day activities except that, for certain decisions, the consent of the administrator is required.

The purpose of the restructuring is the adoption of a restructuring plan according to which the existing debts are to be paid. The administrator generally prepares and submits a proposal to the court for a restructuring plan in collaboration with the parties. The parties may also prepare alternative proposals. The plan must confirm the

debtor's assets and liabilities and that an investigation of the debtor's previous activities is undertaken.

A creditors' committee may be appointed to supervise and assist the administrator. The creditors' committee looks after the creditors' interests, and may not decide on matters concerning the debtor's restructuring.

Different types of restructuring plans may be proposed. For example, the plan may:

- extend the repayment dates for the debts;
- reduce the rate of interest for the remaining term of the obligation; or
- reduce the amounts of the unpaid debts.

However, if any of the debts are secured, the plan cannot propose terms by which the unpaid amount of the

secured debt is reduced and there are restrictions on reducing the amount of interest on a secured debt.

The restructuring plan may be confirmed with the consent of all the creditors. If so confirmed, the plan's contents may differ from the provisions regarding the status of restructuring creditors contained in the Restructuring of Enterprises Act. The plan may also be confirmed once accepted by a simple majority (in value and number) of each of the creditor groups. Creditors are divided into groups according to their priority and the nature of their claims, as follows:

- secured creditors holding a fixed charge as security for their claims;
- secured creditors holding a floating charge as security for their claims;
- unsecured creditors so that one separate 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); and

- creditors with the lowest priority in accordance with section 6 of the Order of Priority Act (1578/1992).

If one or more unsecured creditors can show that it is probable that they would be better off after the debtor's bankruptcy, compared with the compensation they would receive in an eventual restructuring, the restructuring plan may only be confirmed with those creditors' consent.

Once the plan is confirmed, it will set the debtor's liabilities to pay restructuring debts and observe other legal relationships. The confirmed plan replaces any previous agreements by the parties regarding the company's debts. The confirmed plan is only of legal effect in relation to the company's restructuring debts; restructuring debts not known at the time of the plan's confirmation are extinguished once the plan is confirmed.

The restructuring plan is terminated when all creditors have been satisfied according to the plan. The restructuring plan may also become void by a court decision or when bankruptcy proceedings are ordered.

Unofficial restructuring or voluntary restructuring

Unofficial restructuring or voluntary restructuring is an informal proceeding which is not the subject of particular court proceedings or specific legislation.

A debtor may propose a private restructuring to its creditors.

Liquidation

Liquidation is only available for a solvent company. Liquidation can be commenced by a general shareholders' meeting of the company or by the registration authority (the Finnish Patent and Registration Office) or, in some cases, the court. A

liquidator is appointed to realise the assets of the debtor and repay all creditors in full. If the liabilities of the debtor exceed the value of its assets, the liquidator must apply for the bankruptcy of the debtor.

European Insolvency Regulation

The EU Regulation on Insolvency Proceedings 2015 (Regulation (EU) 2015/848) (the **Recast Regulation**) applies to all proceedings opened on or after 26 June 2017. Its predecessor, the EC Regulation on Insolvency Proceedings 2000 (Regulation (EC) 1346/2000) (the **Original Regulation**) continues to apply to all proceedings opened before 26 June 2017. One of the key changes in the Recast Regulation is that it brings into scope certain pre-insolvency “rescue” proceedings and these are now listed alongside the traditional insolvency procedures in Annex A to the Recast Regulation. The Recast Regulation retains the split between main and secondary/territorial proceedings but secondary proceedings are no longer restricted to a separate list of

winding up proceedings - secondary proceedings can now be any of those listed in Annex A. By contrast, the Original Regulation listed main proceedings in Annex A and secondary proceedings (which were confined to terminal proceedings) in Annex B.

Of the above restructuring and insolvency regimes, bankruptcy (*konkurssi*) and business restructuring (*yriytysaneeraus*) are available as main proceedings under the Original Regulation..

Bankruptcy is also available as a secondary proceeding.

Under the Recast Regulation, bankruptcy (*konkurssi*) and business restructuring (*yriytysaneeraus*) are listed in Annex A.

Further information

For further information on Finnish restructuring and insolvency procedures, we would refer you to the Sweet & Maxwell book “European Cross Border Insolvency”, edited by Allen & Overy. To purchase a copy of this book, please visit sweetandmaxwell.co.uk.

This fact sheet was prepared with the assistance of Castrén & Snellman Attorneys Ltd.

We have launched an online service for clients focusing on debt restructurings and insolvency issues. Developed

by our market-leading Restructuring group, “Restructuring Across Borders” is an easy-to-use website that provides information and guidance on all key practical aspects of restructuring and insolvency in Europe and the U.S.

To request access for your organisation, please contact your usual Allen & Overy contact, or email rab@allenover.com.

Key contacts

If you require advice on any of the matters raised in this document, please call any of our partners or your usual contact at Allen & Overy.



Ian Field
Partner

Tel +44 20 3088 2671
ian.field@allenoverly.com



Jennifer Marshall
Partner

Tel +44 20 3088 4743
jennifer.marshall@allenoverly.com



Lucy Aconley
Senior PSL

Tel +44 20 3088 4442
lucy.aconley@allenoverly.com



Nicola Ferguson
Senior PSL

Tel +44 20 3088 4073
nicola.ferguson@allenoverly.com

Allen & Overy LLP

One Bishops Square, London E1 6AD, United Kingdom

Tel +44 20 3088 0000

Fax +44 20 3088 0088

www.allenoverly.com

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