



Fall | 23



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Bankruptcy, Insolvency & Rehabilitation Proceedings in Finland

ILN RESTRUCTURING & INSOLVENCY GROUP



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## KEY FACTS OF BANKRUPTCY, INSOLVENCY & REHABILITATION PROCEEDINGS UNDER FINNISH LAW

### Corporate restructuring in Finland

Insolvency legislation in Finland provides for two alternative statutory processes: bankruptcy and corporate restructuring, which both have separate proceedings. The purpose of restructuring may be to rehabilitate the viability of the healthy parts of the business or to facilitate their operation, and to make debt adjustment possible. Corporate restructuring in Finland can be done via formal legal proceedings or via out of court proceedings.

As it is common in other countries, also in Finland the voluntary, out of court proceedings are done mostly in big companies. In the SME sector it is popular to do restructuring by formal restructuring proceedings based on law. In this text we are focusing on formal corporate restructuring proceedings in Finland.

### Three steps of process

Corporate restructuring in Finland divides into three steps: 1) Application 2) Restructuring proceedings 3) Restructuring programme.

#### 1. Application

The Corporate restructuring process in Finland starts when the debtor or a creditor files an application for restructuring to a district court. The decision to start a corporate restructuring process is made by a district court whose jurisdiction the general administration of the debtor is located in. The Court hears the biggest creditors about the application. Negative statement should be justified with arguments which are based on the law.

Under the restructuring proceedings the restructuring debts are defined to the day when application for the proceedings has been filed for the district court. Debts which have arisen before that day are considered

as restructuring debts. Once the application has been filed, the company can apply a court order to protect it from the debt collection acts. Starting debt collection after the debtor has filed for restructuring is in most cases pointless and may cause extra costs for the creditor.

Because the corporate restructuring in Finland is based on law, the court appoints almost without exception an administrator for the proceedings. An administrator appointed is almost in every case an attorney.

#### 2. Restructuring proceedings

Administrator's role is to monitor and supervise the debtor's activities during the restructuring proceedings. Administrator also audit the debtor's activities before the proceedings.

Administrator is responsible to react if illegal acts are founded. The administrator is also responsible to react if the company has started to lose money again and it cannot pay the debts which have arisen after the filing of the application. In those cases, administrator will file the application for interruption of the restructuring proceedings to the court.

If it seems that the restructuring proceedings can continue, administrator prepares a report of the debtor's assets, liabilities and other undertakings and on the circumstances that affect the financial position of the debtor. The report will be sent to all known creditors by the administrator. The report will be done in Finnish, but the administrator can usually give translation or summary of the report also in English if needed.

In the end of the proceedings the administrator will prepare a draft of the restructuring programme. The programme is based on the forecast of the debtor's financial statement. In larger companies the proceedings and programme can be focused on real business turnaround including the changes in company's strategy.

Under Finnish restructuring proceeding it is common that the haircut is between 50 – 70 percent of the unsecured debts. Secured debts cannot be haircutted. Normal length for the payment programme is between 6 – 8 years.

Restructuring proceedings ends to the voting procedure concerning the proposed restructuring programme. Creditor can accept or reject the programme in the voting. If the programme reaches the majority in each group of creditors participated in voting, the programme shall be approved by the district court.

In Finnish restructuring proceedings it is rare to use debt conversion, so it is very common that the shareholders of the company own the company fully also after the restructuring.

It is important for creditors to understand that in the end only less than 30 percent of the companies reach the approved programme.

### 3. Restructuring programme

The district court appoints a supervisor to monitor the implementation of the restructuring programme. The Company is responsible to report to the supervisor about the implementation of the programme and company's financial statement.

When the restructuring programme has been approved, the debtor is responsible to

follow the payment programme which has been set out in the programme. If the debtor cannot follow the payment programme, creditor has a right to request a lapse of the programme from the district court. After the lapse, the creditor has a right to start the collection of the debts again.

It is important for the creditors to understand that only under 10 percent of the companies succeed in implementing the restructuring programme fully. Most of the restructuring proceedings fail in some of the above-mentioned three steps.

### Bankruptcy proceedings in Finland

In Finland the bankruptcy proceedings can be declared if the debtor is unable to fulfill its payments on time and shall be deemed insolvent. Application for bankruptcy can be done debtor by self or the creditor of the company. In Finland the creditor is not responsible to pay the costs of the proceedings if there is no current assets in the bankruptcy estate.

The decision to declare a bankruptcy process is made by a district court whose jurisdiction the general administration of the debtor is located in. The court appoints an administrator/trustee for the bankruptcy. Administrators' role is to control the assets of the debtor and liquidate the assets. In Finland most of debtor's assets is usually sold via internet auction but it is also possible to sell the whole business of debtor.

### Employees

In Finland the employees of the company has a right to have their salaries and other costs related to the employment agreement between the company and employee from Pay security. In bankruptcy the termination period for the employment agreement is 14 days.

### Lodgement Letter

If your company has open receivables from debtor which is declared bankrupt in Finland, the most important task to do is to file the lodgement letter of open receivables/claims toward debtor. Lodgement letter must be sent to the administrator no later than the day administrator has ordered as the lodgement date. When the lodgement of claims is done, the administrator will write creditor's lodgement to the disbursement list. The district court approves the disbursement list and in the end of the bankruptcy proceedings the disbursements of the bankruptcy estate's assets will be paid to the creditors whose claims has been taken into account in the approved disbursement list.

### Long-lasting proceedings

As in other countries, every bankruptcy is different, but in Finland it is normal that bankruptcy proceedings lasts up to 18 – 36 months. If there is assets which are challenging to sell or there is open court cases pending or arisen during the bankruptcy proceedings, the proceedings may last over 36 months.