

Advisory Board of Bankruptcy Affairs

Guideline 15 annex

RIGHTS AND RESPONSIBILITIES OF A DEBTOR IN BANKRUPTCY

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1. Overview

Bankruptcy is a common form of insolvency proceedings covering all the liabilities of the debtor, where the debtor's assets are liquidated and used in payment of the claims in bankruptcy. A court of law orders on bankruptcy and appoints an estate administrator for the management and liquidation of the debtor's assets and for determining of liabilities.

The debtor loses their authority over the assets of the bankruptcy estate in the beginning of bankruptcy. The estate administrator appointed by the court must take possession of the assets of the bankruptcy estate without delay. The estate administrator, together with the debtor, will draw up an estate inventory indicating the assets and liabilities of the debtor.

The debtor is liable to assist the estate administrator with transferring control of the bankruptcy estate to the estate administrator and drawing up the estate inventory. The estate inventory shall be attested by a person or persons specified by the estate administrator. The estate administrator will contact the debtor if the administrator requires other assistance with carrying out their duties.

Creditors make the key decisions concerning the bankruptcy estate. The debtor may attend the creditors' meeting, and the estate administrator will inform the debtor in advance about matters to be dealt with in the creditors' meeting. The debtor also has the right to receive other information on the bankruptcy from the estate administrator.

In a bankruptcy, liabilities are divided into lodged claims and administrative expenses. Lodge claims are based on debts that are owed by the debtor on the basis of a commitment or other legal basis that has arisen before the beginning of bankruptcy. Administrative expenses include debts that arise from the bankruptcy proceedings or are based on a contract or commitment entered into by the estate. The debtor is not liable for administrative expenses.

The position of the debtor in bankruptcy will be discussed in more detail in the sections below.

The Bankruptcy Ombudsman is responsible for supervising the activities of estate administrators. Further information on bankruptcy is available on the

website of the Office of the Bankruptcy Ombudsman at www.konkurs-siasiamies.fi.

2. Who is the debtor

According to the Bankruptcy Act, a debtor is considered to be a private individual, a board member or managing director of a limited liability company, a general partner in a limited partnership, a partner in an unlimited partnership or a board member of an association who has been declared bankrupt, or a person who has held such a position during the year preceding the filing of the bankruptcy petition.

The court may also order that provisions on debtors shall apply to another person, such as a person who has been in actual charge of the business of a debtor. A request for such a court order may be filed by the estate administrator or a creditor. The court will notify the prospective subject of the order and provide them with an opportunity to be heard.

The court may also deem a person who has held a managerial position in a corporation more than year prior to the filing of the bankruptcy petition to be a debtor. This can be happen in cases, for example, in which a corporation has not had a board of directors or a managing director in the preceding year or the board of directors having been fully replaced. If the debtor is a private individual, a person who has been in actual charge of the business of the debtor or administered their assets may also be deemed to be a debtor.

3. The debtor's right to information and to be heard

The debtor has the right to receive information from the estate administrator on the estate and its administration.

The estate administrator always provides the debtor with the estate inventory, the debtor description, the draft disbursement list, the disbursement list and the annual report on the administration of the estate. Upon request, the debtor will also be provided with information on documents that have been transferred to the estate administrator due to the bankruptcy and other information concerning the estate, as well as information contained in estate administration documents completed in the course of the bankruptcy proceedings.

The debtor has the right to attend creditors' meetings and express their opinion on the matters being discussed, but the debtor does not hold voting

rights. The estate administrator will deliver to the debtor an invitation to the meeting and information about matters on the agenda. Creditors may also decide on matters related to the bankruptcy estate without holding a meeting, as provided by law. In such cases, the estate administrator shall reserve the debtor an opportunity to express their opinions.

The estate administrator may restrict the debtor's right to information and right to be heard, if such restriction is to be deemed necessary so as to protect the interests of the estate or a third party or for some other special reason. However, the information will be given to the debtor once the impediment has passed.

4. The debtor's duty of cooperation and disclosure

The debtor must be cooperative so that the estate administrator can perform their duties. The debtor must provide the estate administrator with their contact details and be accessible to the administrator if necessary. When the personal presence of the debtor is necessary in a place such as company premises, the estate administrator will request the debtor to attend.

The debtor's duty to cooperate lasts until the conclusion of the bankruptcy, and beyond if necessary for the performance of belated scrutiny measures. The debtor may ask the estate administrator about the extent to which the debtor needs to be accessible to the administrator and for how long.

The debtor must see to it that the estate administrator gains possession of the assets of the estate and the debtor's premises. The debtor must also grant the estate administrator access to the debtor's IT systems, for example by providing the administrator with the necessary passwords.

The debtor must disclose to the estate administrator information on the assets of the estate and the claims in the bankruptcy. The debtor must also disclose to the estate administrator other information necessary for the performance of the administrator's duties.

Accounting materials and other documents pertaining to the business or professional activities of the debtor belong to the bankruptcy estate and must be handed over to the estate administrator.

If the books have not been completed, the debtor may agree with the estate administrator that the debtor shall see to the completion of the books and drawing up of final accounts at the debtor's expense.

The debtor's duty of disclosure is not limited to information requested by the estate administrator and the debtor must volunteer information that the debtor considers to be necessary for the scrutiny and administration of the estate.

4.1 Privilege against self-incrimination

Pursuant to Chapter, 4, section 5a of the Bankruptcy Act, the debtor shall have the right not to disclose information related to an offence of which the debtor is suspected or an offence with which the debtor has been charged (privilege against self-incrimination).

The estate administrator is responsible for informing the debtor about this right. The Advisory Board recommends that the estate administrator should inform the debtor about this right immediately after the beginning of bankruptcy, in connection with explaining the bankruptcy proceedings to the debtor.

If the debtor decides not to disclose information based on privilege against self-incrimination, the debtor must announce this in connection with the attestation of the estate inventory at the latest.

Non-disclosure of information must be related to a specific pending criminal investigation or charge. The debtor must already be a suspect or defendant in a criminal case. In such cases, the debtor has the right not to disclose to the estate administrator information concerning factors on which the suspicion of offence or charge is based. If the debtor is unable to specify the suspected offence, the criminal investigation or the charge, the debtor does not have the privilege against self-incrimination.

The debtor does not have the right to refuse to disclose information concerning acts or measures that might meet the definition of an offence but of which the debtor has not been officially suspected or charged at the time when the information is requested.

If the debtor has not disclosed information subject to the debtor's duty of disclosure by pleading to the privilege against self-incrimination, the debtor may have committed the offence of fraud by a debtor.

If it is later revealed that information that the debtor refused to disclose by pleading to the privilege against self-incrimination was in no way connected to an act on which suspicion of an offence was based and the debtor should have understood this, the debtor may have committed the offence of fraud by a debtor.

5. Attestation of the estate inventory

The debtor shall attest the estate inventory by their signature. By attesting the estate inventory, the debtor confirms that the information on the assets and liabilities of the debtor contained in the estate inventory is correct. If the debtor disagrees about the content of the estate inventory, the debtor must present to the estate administrator or append to the estate inventory the additions and corrections that the debtor deems necessary. The estate administrator must also append to the estate inventory any notice on the debtor's plea to privilege against self-incrimination as referred to in section 4.1.

At the request of the estate administrator, the court may order that instead of signing the estate inventory the debtor must appear in court and attest the estate inventory under oath or solemn affirmation and to provide other information for the estate inventory.

The punishment for attesting a false and misleading estate inventory and provision of false or incomplete information is laid down in Chapter 39, sections 2 and 3 of the Criminal Code of Finland.

6. Subsistence of the debtor

Right to financial support

In the bankruptcy of a private individual, the estate administrator may grant the debtor and the debtor's dependents financial support from the assets of the bankruptcy estate, if their livelihood is not otherwise secured. Financial support may also be granted to a partner in an unlimited partnership, a general partner in a limited partnership, or a shareholder-manager of a limited company, if the debtor partnership or company has been the main source of livelihood for that person.

In considering whether support will be granted, the estate administrator takes into consideration the debtor's earning potential. The debtor's personal income during the bankruptcy proceedings is not included in the bankruptcy estate.

The amount of basic social assistance is used as a basis for the amount of financial support. The amount may be greater if the debtor has needs such as necessary medical expenses. The estate administrator may also allow

the debtor to continue living in a residence that has been transferred to the bankruptcy estate.

In addition to the need for subsistence, the debtor's active contribution towards the scrutiny of the estate and the ability of the estate to pay the support also have a bearing on the decision on granting financial assistance. Financial support must usually be paid if the debtor cannot obtain income from another source due to the bankruptcy proceedings. Support cannot be paid from an insolvent bankruptcy estate. Support may be granted for a period of no more than six months after the beginning of bankruptcy.

Right to compensation for expenses

The debtor may incur expenses related to the bankruptcy proceedings. The debtor has the right to reasonable compensation for any necessary travel, food and accommodation expenses.

Disputes related to financial support and compensation for expenses

If there is a dispute regarding financial support or compensation for expenses between the debtor and the estate administrator, the debtor may bring the matter before a district court.

7. Processing of the debtor's mail

The estate administrator has the right to take possession of and open letters and other messages and parcels that are addressed to the debtor and connected to the debtor's economic activities or the scrutiny of the estate. Other messages include emails and other messages that have been delivered electronically.

If a delivery is personal, the estate administrator will deliver it to the debtor.

If necessary, the estate administrator shall allow the debtor and their employees to report that their email address is no longer in use. With the consent of the estate administrator, they can delete files that were in their personal use, such as personal address books.

8. Restrictions of the debtor's competency

The competency of a private individual who is a debtor in bankruptcy has been restricted for certain positions. For example, a debtor may not act as a board member or managing director of a limited liability company.

The restrictions of competency will remain in effect from the beginning of bankruptcy until the attestation of the estate inventory. However, the restrictions cannot remain in effect for more than four months, unless otherwise provided in legislation pertaining to the office or position.

9. Precaution measures over the debtor's assets or person

The court may issue an order on urgent precautions needed to secure scrutiny of the estate even before declaring the debtor bankrupt. This requires that the bankruptcy petition is manifestly justified.

The court may order seizure of the debtor's assets or make another precautionary order related to assets, if there is a danger of the debtor hiding, destroying or conveying assets or otherwise acting in a manner compromising the interests of the creditors. Similar orders may be issued on documents related to the debtor's business, such as accounting documents.

An injunction against leaving the country may be imposed on the debtor if there are probable reasons to believe that the debtor will leave the country and fail to discharge their duty of cooperation and obligation to provide information. The injunction will remain in effect at most until the debtor has attested the estate inventory. A person subject to an injunction against leaving the country will not be issued with a passport, and any valid passport must be handed to the police for as long as the injunction is in effect.

10. Coercive measures against the debtor

Coercive measures that can be used in connection with a bankruptcy include conditional fines and imprisonment. Coercive measures may be used if the debtor acts contumaciously by neglecting their duty of cooperation and obligation to provide information with the result that the estate administrator is prevented from performing their duties in an appropriate manner, or if the debtor refuses to attest the estate inventory or provide information towards the estate inventory. Coercive measures are ordered by a court at the request of the estate administrator. The court will usually hear the debtor before issuing its decision.

The primary coercive measure is typically a conditional fine. If the debtor does not discharge their duty without delay, a conditional fine may be imposed on the debtor.

If the debtor continues to neglect their duties despite the conditional fine, the debtor may be ordered to be taken into detention. A court may also order for the debtor to be taken into detention without the imposition of a conditional fine, if it is evident that the debtor will persist in their contumacy regardless any threat of a fine.

The debtor cannot be kept in detention for more than six months. If the debtor complies before that time, the court will release the debtor from detention. A debtor who is kept in detention can notify a prison authority about their willingness to cooperate.

11. The debtor's right to resume court proceedings

In court proceedings pertaining to assets of the bankruptcy estate, the right of the estate to be heard is primarily exercised by the estate administrator. If the estate administrator declines to use this right, the debtor has the right to resume the pending proceedings. Furthermore, the debtor has the right to bring an action concerning assets of the bankruptcy estate, if the estate has declined to do so.

If the bankruptcy estate wishes to settle with a third party but the debtor disagrees, the debtor has the right to bring action or to resume the proceedings. In such case, the debtor must post security to the bankruptcy estate in the amount of the settlement offer.

Any profit or benefit gained by the debtor in court proceedings belongs to the bankruptcy estate. However, the debtor has the right to collect any compensation for legal costs ordered to be paid to the debtor by the opposing party.

12. The debtor's right to dispute creditors' claims

Bankruptcy involves certification of the disbursement list on the basis of which creditors receive disbursements for their claims. Creditors must lodge their claims for the disbursement list by reporting them to the estate administrator. The debtor must assist the estate administrator with the scrutiny of claim at the request of the estate administrator. If the debtor considers a lodgement of claim to be incorrect, the debtor must contact the estate administrator.

The estate administrator has a duty to contest unfounded or false claims lodged by creditors.

The debtor may also contest a claim or precedent entered in the draft disbursement list drawn up by the estate administrator. The debtor must specify the claim or precedent being disputed and provide grounds for disputing the claim or precedent. The dispute must be lodged in writing and submitted to the estate administrator within a month from the date of completion of the draft disbursement list.

Disputes are resolved by a court.

Tax claims and other claims of public receivables are not within the jurisdiction of ordinary courts and cannot be considered by the court. If the debtor considers such claim to be incorrect or unfounded, the debtor must contact the estate administrator. The estate administrator must determine whether there is cause for appeal.

13. The debtor's right to object to the decision of the creditors

Creditors make the key decisions concerning the bankruptcy estate. Creditors typically exercise their power of decision in the creditors' meeting. The debtor may attend the creditors' meeting, and the estate administrator will inform the debtor in advance about matters to be dealt with in the creditors' meeting.

At the request of the debtor or a creditor, the court may overturn a decision made by the creditors or amend the decision, if possible, under the

circumstances of the case. Decisions may be overturned or amended due to an error in the procedure or the content of the decision.

The decision not having been made in accordance with the correct procedure constitutes a procedural error. The petitioner must show that the error has affected the outcome of the decision or that the error can otherwise be considered significant.

The decision may be overturned or amended if the outcome of the decision is conducive to conferring unjust advantage to a creditor or someone else, or if the decision is manifestly unreasonable to a creditor or the debtor.

Before concluding the creditors' meeting, the chairperson must provide instructions for objecting to the decision of the creditors' meeting as provided by law. If the debtor is dissatisfied with the decision of the debtors' meeting, the debtor must at once declare their discontent to the chairperson of the meeting, or else forgo the right to protest.

For the purpose of decision-making, the estate administrator may also request that the creditors express their opinions on a matter that would otherwise have to be dealt with by the creditors' meeting. In such case, the estate administrator must also reserve an opportunity for the debtor to express their opinion on the matter within a deadline determined by the estate administrator. The estate administrator must notify the debtor about the decision made in the alternative decision-making procedure and about when the decision was made.

14. The debtor's right to damages and liability for damages

The debtor may be entitled to damages if the estate administrator has intentionally or negligently caused the debtor to suffer loss. A creditor in bankruptcy may also be liable to pay damages to the debtor for loss intentionally or negligently caused to the debtor in the bankruptcy proceedings.

The debtor is liable to pay damages for any loss that the debtor has caused to the bankruptcy estate or a creditor by essentially neglecting the debtor's duty of cooperation.

15. Confidentiality

The debtor may not disclose to third parties nor use for personal gain information received in the context of the bankruptcy proceedings and pertaining to a business or professional secret of the bankruptcy estate.

The debtor must likewise not disclose or use a business or professional secret pertaining to the debtor's pre-bankruptcy operations, if it is evident that the disclosure or use may decrease the value of the assets of the estate or hamper the liquidation of such assets.

Punishment for breach of confidentiality is laid down in Chapter 38, sections 1 and 2 of the Criminal Code of Finland.

Regardless of bankruptcy, the debtor may use their professional skills and information obtained in their business activities, such as business connections, in order to secure the debtor's livelihood.

The debtor's obligation of confidentiality ends when the bankruptcy is concluded.

16. Bank account(s) in the bankruptcy of a private individual

Under the Bankruptcy Act, the assets acquired or the income earned by a private individual after the beginning of bankruptcy shall not be assets of his or her bankruptcy estate.

For example, the debtor's receivables arising from before the beginning of bankruptcy belong to the bankruptcy estate.

After the beginning of bankruptcy, the debtor must open a bank account to which assets not belonging to the bankruptcy estate can be transferred. The estate administrator shall assist the debtor with opening a bank account if necessary.

17. Financial and debt counselling services and debt adjustment

A person under personal liability for debts may seek adjustment of the debts, if the criteria laid down by law are satisfied (Act on the Adjustment of the Debts of a Private Individual, 57/1993). In a bankruptcy, this may apply particularly to a private individual, a partner in an unlimited partnership, a general partner in a limited partnership, or a shareholder-manager of a limited company.

Financial and debt counselling services provide information and guidance for resolving problems related to financial situations. Financial and debt counsellors can also help with preparing a debt adjustment application and managing other affairs related to debt adjustment. Financial and debt counselling services are provided by state legal aid offices. Further information is available from the website of financial and debt counselling at www.talousjavelkaneuvonta.fi. Counselling is provided free of charge.