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## **Act on the Supervision of the Administration of Bankruptcy Estates**

(109/1995; amendments up to 123/2004 included)

### *General provisions*

#### Section 1

- (1) The Bankruptcy Ombudsman, attached to the Ministry of Justice, supervises the administration of bankruptcy estates.
  - (2) The duties of the Bankruptcy Ombudsman are:
    - (1) to monitor the activities of bankruptcy estates and to promote and develop the proper administration thereof by making initiatives, giving advice and issuing guidelines;
    - (2) to supervise that bankruptcy estates are administered in a lawful and proper manner and that the estate administrators appropriately fulfil the duties entrusted to them;
    - (3) where necessary, to see to the auditing of the accounts and activities of the debtor;
    - (4) to undertake the necessary measures as regards omissions, transgressions and other comparable circumstances that have come to his knowledge;
    - (5) to see to the public receivership of bankruptcy estates;
    - (6) to perform the other duties assigned to him by Act or by Decree.
- (20.2.2004/123)
- (3) Correspondingly, the Bankruptcy Ombudsman monitors, to the extent necessary, also the direction of proceedings relating to the restructuring of enterprises and supervises that the restructuring administrators appropriately fulfil the duties entrusted to them.
  - (4) For special reasons, the Bankruptcy Ombudsman may decide that the state assumes the responsibility for the expenses of the liquidation of limited liability companies, co-operatives and foundations. The Bankruptcy Ombudsman may then order the liquidator to draw up a description, corresponding to the debtor description referred to in Chapter 9, section 2 of the Bankruptcy Act (120/2004), of the activities of the limited liability company, co-operative or foundation in a manner specified more accurately by the Bankruptcy Ombudsman.
- (20.2.2004/123)

## Section 2

Provision is made for the establishment of an Office of the Bankruptcy Ombudsman. The Office may employ the required number of presenting officials and other staff, within the limits laid down in the state budget.

### *Supervision of the administration of bankruptcy estates*

## Section 3 (20.2.2004/123)

- (1) The estate administrator shall without delay provide the Bankruptcy Ombudsman with the requested information and accounts that are necessary for supervision. The estate administrator shall also otherwise contribute to the appropriate performance of the Bankruptcy Ombudsman's duties. An estate administrator is under these obligations also after the end of his term.

## Section 4

- (1) The Bankruptcy Ombudsman has the right to inspect, to the extent he deems necessary for the fulfilment of his duties, documents and other records belonging to the estate and relating to the debtor or the estate. He has the right to take possession of the documents and records for the duration of the inspection, and make copies of them. The Bankruptcy Ombudsman has the right to enter the office, workshop, storeroom and other comparable premises of the estate and the right to carry out a cash check and a check of the other assets of the estate.
- (2) Notwithstanding the secrecy provisions, the Bankruptcy Ombudsman has the same right as the estate or the debtor to receive, free of charge, all information relating to the activities and financial status of the debtor or the estate, as well as all information on the bank accounts and payment transfers and the financing agreements and undertakings of the debtor or the estate.

## Section 5

- (1) The Bankruptcy Ombudsman may appoint an auditor or several auditors to carry out a special audit of the administration, accounts and activities of the debtor or the estate. The auditors have the rights laid down in section 4(1).
- (2) The special audit is paid for from state funds. The estate administrator shall provide the Bankruptcy Ombudsman with an account of the measures that the bankruptcy estate has taken on the basis of the special audit and of the funds that the estate has received in consequence of the measures. If the special audit proves to have been necessary from the point of view of the estate, the estate shall, on the demand of the Bankruptcy Ombudsman, reimburse the state for the total

or partial expenditure so incurred. This liability may be ordered to take effect only when the estate has received sufficient funds to cover it. Otherwise the Act on Criteria for Charges Payable to the State (150/1992) applies to the reimbursement, where appropriate. (20.2.2004/123)

- (3) The estate may seek review of the matter relating to its reimbursement liability in the competent court within 30 days of the date of service of the decision of the Bankruptcy Ombudsman. The court may order a stay of the enforcement of the decision.

#### Section 6 (20.2.2004/123)

- (1) The Bankruptcy Ombudsman has the right to participate in creditors' meetings and meetings of creditors' committees and to speak there, as well as have the statements that he deems necessary entered into the minutes.
- (2) The Bankruptcy Ombudsman may order the estate administrator to convene a creditors' meeting. For special reasons, the Bankruptcy Ombudsman may also convene the meeting.
- (3) The Bankruptcy Ombudsman may assist a debtor, a creditor or an estate administrator in the bankruptcy proceedings and in a trial connected to a bankruptcy, if the matter has wider general significance.

#### Section 7

- (1) If an estate administrator fails to perform his duty or to comply with his obligation, a court may upon the request of the Bankruptcy Ombudsman order him to remedy the failure within a set period, as well as impose a threat of a fine in support of the order.
- (2) A court may upon the request of the Bankruptcy Ombudsman dismiss an estate administrator on grounds laid down in Chapter 8, section 6 (1) of the Bankruptcy Act. Where necessary, a new administrator is then appointed in accordance with the provisions of the Bankruptcy Act. (20.2.2004/123)
- (3) A court may upon the request of the Bankruptcy Ombudsman reduce the administrator's remuneration decided on by the creditors, if he has significantly failed to perform his duty or comply with his obligations, or if the remuneration clearly exceeds what can be deemed reasonable. The request shall be made within 30 days of the date when the document including the creditors' decision has arrived at the Office of the Bankruptcy Ombudsman. (20.2.2004/123)
- (4) In a case referred to in subsections 1–3, the court shall hear the estate administrator and, upon its own discretion, the other parties to the matter.

## Section 8

- (1) The Bankruptcy Ombudsman has the right to take possession of and inspect the documents and records belonging to the estate, as provided in section 4(1), the right to receive information, as provided in section 4(2), as well as order that a special audit be carried out also in cases where the bankruptcy proceedings have been discontinued for lack or scarcity of funds. (20.2.2004/123)
- (2) If the debtor or another person in whose possession the documents and records referred to in subsection 1 are fails to hand them over to the Bankruptcy Ombudsman upon request, or if there is a danger of their being destroyed or concealed, a court may order them to be seized for the duration of the inspection. The court may issue orders also on other measures that are necessary to support the inspection. The provisions in Chapter 7, sections 4, 5, 8 and 11–14 of the Code of Judicial Procedure apply, where appropriate, to such precautionary measures.

### *Supervision of restructuring proceedings*

## Section 9

- (1) The Bankruptcy Ombudsman has the right, as provided in section 4(1), to inspect the documents and other records belonging to the restructuring administrators and relating to the restructuring proceedings.
- (2) A restructuring administrator shall without delay provide the Bankruptcy Ombudsman with the requested information and accounts that are necessary for supervision. He shall also otherwise contribute to the appropriate performance of the Bankruptcy Ombudsman's duties. A restructuring administrator is under these obligations also after the end of his term.

## Section 10

- (1) The Bankruptcy Ombudsman has the right to participate in the meetings of the creditors' committee and the right to speak there, as well as have the statements that he deems necessary entered into the minutes.
- (2) The Bankruptcy Ombudsman may assist a debtor, a creditor or a restructuring administrator in the restructuring proceedings and in a trial connected to restructuring, if the matter has wider general significance.

## Section 11

- (1) Upon the request of the Bankruptcy Ombudsman, a court may:
  - (1) in accordance with section 85 of the Restructuring of Enterprises Act (47/1993), order a

restructuring administrator to fulfil his duty or comply with his obligation under this Act or another Act;

- (2) in accordance with section 86 of the Restructuring of Enterprises Act, dismiss a restructuring administrator; and
  - (3) reduce the restructuring administrator's remuneration decided on by the creditors' committee, if he has significantly failed to perform his duty or comply with his obligation under this Act or another Act, or if the remuneration clearly exceeds what can be deemed reasonable in view of section 87(1) of the Restructuring of Enterprises Act.
- (2) A request referred to above in subsection 1(3) shall be filed and heard in accordance with the provisions in section 87(4) of the Restructuring of Enterprises Act, where appropriate.

### *Miscellaneous provisions*

#### Section 12

In a matter pending before it, a court may on its own initiative or upon the request of a party to the matter request the opinion of the Bankruptcy Ombudsman on a question within his ambit.

#### Section 13

- (1) The Bankruptcy Ombudsman may assign a subordinate official to appear in his stead in a court or to assist in a trial. The Bankruptcy Ombudsman may entrust a defined supervision assignment to a subordinate official or another person. The Bankruptcy Ombudsman may assign a subordinate official from his Office to act as a public receiver. (20.2.2004/123)
- (2) The Bankruptcy Ombudsman may use expert services.

#### Section 14

The Bankruptcy Ombudsman and a person carrying out a special audit or a supervision assignment has the right to official assistance by the police and other authorities where this is necessary for the performance of his duty.

#### Section 15

If the party adverse to a person assisted by the Bankruptcy Ombudsman or by a subordinate official loses his case in court, he shall be ordered to reimburse the state for the costs of the assistance on the same basis as provided for the reimbursement of legal costs.

#### Section 15a (20.2.2004/123)

A public receiver other than that referred to in section 13(1) has the right to appeal against the Bankruptcy Ombudsman's decision on the reimbursement of the costs of the proceedings of the public receivership. The public receiver shall lodge an appeal at the court within 30 days of the date of service of the Bankruptcy Ombudsman's decision. Provisions on the competent court are laid down in the Bankruptcy Act.

#### Section 16 (21.5.1999/650)

Notwithstanding the secrecy provisions laid down in the Act on the Openness of Government Activities (621/1999), the Bankruptcy Ombudsman may give information, obtained in the course of his duties and relating to the economic status, business secret or professional secret of a private person or a corporation or private circumstances of a person, to a court and to the tax administration as well as to a prosecutor and the police authorities in order to clear up an offence. The Bankruptcy Ombudsman has the right to give confidential information also to a person who needs it for safeguarding his interest or right or for fulfilling his duty.

#### Section 17

- (1) More detailed provisions on the implementation of this Act are issued by Decree.
- (2) Provisions on the information that an estate administrator or a restructuring administrator shall provide to the Bankruptcy Ombudsman without request may also be issued by Decree.

#### Section 18

- (1) This Act enters into force on 1 March 1995.
- (2) Measures necessary for the implementation of this Act may be undertaken before its entry into force.