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# Debt Restructuring and Debt Protection Act

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Amended by the following acts

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## Chapter 1 General Provisions

### § 1. Purpose of Act

(1) The purpose of this Act is to facilitate the restructuring of the debts of a natural person having solvency problems (debtor), in order to overcome the solvency problems and avoid bankruptcy proceedings. Thereby the legitimate interests of the debtor as well as those of their creditors are taken into account.

(2) A debtor is deemed to have solvency problems where they are unable or likely to be unable to perform their obligations at the time when they fall due.

### § 2. Essence of debt restructuring

(1) In debt restructuring proceedings the restructuring of the financial obligations of a debtor is made possible by way of extension of the time limit of performance of an obligation, by way of performing the obligation in instalments or by way of reducing the obligation.

(2) Only the extension of the time limit of performance and the performance in instalments is allowed in debt restructuring proceedings in the event of the following claims:

- 1) maintenance support claims;
- 2) claims for compensations of damage caused by a wilful unlawful act.

(3) The obligations of a debtor which have fallen due by the time of submission of a debt restructuring petition can be restructured in debt restructuring proceedings. In addition, obligations arising from a continuing contract, which are created or fall due after the submission of a debt restructuring petition, can be restructured on the terms and conditions provided for in § 3 of this Act.

### § 3. Restructuring obligations arising from continuing contract

(1) A restructuring plan may stipulate that a credit contract or another continuing contract, which has been made by a debtor before the submission of a debt restructuring petition and imposes on the debtor financial obligations which fall due after the submission of the debt restructuring petition, terminate upon approval of the restructuring plan. The termination of the contract has the same consequences as the extraordinary termination of the contract due to a circumstance arising from the debtor. The debtor's obligations arising from the termination of the contract can be restructured beforehand under the restructuring plan.

(2) A restructuring plan may stipulate that the debtor's financial obligations under the credit contract, which fall due not later than within one year after the approval of the restructuring plan, are restructured instead of terminating the credit contract specified in subsection 1 of this section. These obligations can be restructured only by extending the time limit of performance of the obligations or by allowing the debtor to perform the obligations in instalments.

(3) Where obligations arising from a leasing contract are to be restructured in the manner provided for in subsection 2 of this section, the lessor who is a creditor may extraordinarily terminate the contract within one week after the approval of the restructuring plan. To that end the restructuring plan may also provide for the restructuring of claims arising from the extraordinary termination of the contract, including the reduction of obligations.

#### **§ 4. Scope of application of Act**

(1) A debtor is subject to debt restructuring proceedings regardless of being an undertaking.

(2) Debt restructuring may be applied for by a debtor whose place of residence is in Estonia and who has resided in Estonia for a period of no less than two years before submitting the debt restructuring petition.

#### **§ 5. Application of Code of Civil Procedure**

The provisions of the Code of Civil Procedure regarding actions by petition apply to debt restructuring proceedings, unless otherwise provided for in this Act.

#### **§ 6. Competence of assistant judge**

(1) Instead of a judge, an assistant judge may also perform the functions of the court in debt restructuring proceedings.

(2) A judge decides the exact division of their own work and that of an assistant judge in a debt restructuring case and may give instructions to the assistant judge.

(3) Only a judge may decide on the admissibility of a debt restructuring plan, the appointment of an advisor and the approval, revision or setting aside of a restructuring plan.

(4) Subsections 2–4 of § 595 of the Code of Civil Procedure apply to the competence and removal of assistant judges.

#### **§ 7. Entry into force of and appealing against orders**

(1) An order by which a debt restructuring petition is declared admissible by the court as well as an order by which a debt restructuring plan is approved is valid and subject to enforcement as of its submission to the debtor. An order by which a debt restructuring plan is not approved and a petition is refused as well as an order by which a petition is dismissed or by which a debt restructuring plan is revised or set aside, is valid and subject to enforcement as of its entry into force.

(2) An interim appeal against an order made in debt restructuring proceedings can be filed only where the filing of an interim appeal is permitted by law. Where an interim appeal can be filed against an order of a district court, an appeal against an order made by a circuit court of appeal regarding the interim appeal against the order of the district court can be filed also with the Supreme Court, unless otherwise provided by law.

(3) An order made by a circuit court of appeal on the basis of an appeal filed against an order of a district court is valid and subject to enforcement as of its entry into force in accordance with subsection 3 of § 466 of the Code of Civil Procedure, unless the district court decides that its order is subject to immediate enforcement.

#### **§ 8. Procedural expenses**

(1) The debtor bears the expenses of the debt restructuring proceedings. The procedural expenses of creditors are borne by the creditors.

(2) The court may have the debtor bear the procedural expenses of the creditors where the debtor knowingly submitted an unfounded debt restructuring petition or caused procedural expenses to the creditors by otherwise knowingly submitting false information or knowingly submitting an unfounded petition or objection.

(3) The debtor does not receive any state-funded legal aid for paying the statutory fee. In the event of implementation of the debt restructuring plan the debtor does not have to compensate for the expenses of the procedural aid granted by the state.

## **Chapter 2**

# Submission of Petition and Action by Petition

## § 9. Jurisdiction

A debtor submits a debt restructuring petition to the district court of the location of the debtor's place of residence or seat.

## § 10. Debt restructuring petition

(1) Before submitting a debt restructuring petition to the court, the debtor takes steps to achieve the extrajudicial restructuring of the debt.

(2) At least the following information is submitted in the debt restructuring petition:

- 1) the debtor's explanation of the solvency problems and the reasons thereof;
- 2) whether and what the debtor has done to prevent or eliminate the solvency problems;
- 3) the debt restructuring measures requested by the debtor;
- 4) the debtor's explanation that the debtor is able to perform their obligations and that their insolvency can likely be prevented in the event of taking debt restructuring measures;
- 5) the debtor's confirmation that the debtor is unaware of any circumstances that might preclude the restructuring of the debt and that the debtor performs the obligations provided for in § 21 of this Act;
- 6) the debtor's opinion on the need for the appointment of an advisor;
- 7) information allowing for verifying payment of the statutory fee.

(3) A sole proprietor petitioning for the reorganisation of an enterprise must also explain that the enterprise needs reorganisation and that the sustainable management of the enterprise following the reorganisation is likely, as well as indicate the consequences of reorganisation for the employees of the enterprise.

(4) Spouses may submit a joint petition for restructuring debts. Where the petition is submitted by one spouse, the spouse must indicate the details of the other spouse in the petition and where the other spouse also has solvency problems, and explain why the petition is not submitted jointly. This also applies in an event where the marriage has been divorced, but the joint property has not been divided.

## § 11. Debt restructuring plan

(1) A debt restructuring petition must be accompanied by a debt restructuring plan (hereinafter *restructuring plan*) indicating the following:

- 1) the obligations to be restructured and the manner of restructuring;
- 2) the time limit of implementation of the restructuring plan.

(2) Where a debtor applies only for restructuring some debts or for restructuring various debts to a different extent, the debtor must explain the different treatment of the creditors in the petition.

(3) No debt restructuring plan needs to be annexed to a debt restructuring petition where the debtor applies for drawing up the plan with the help of an advisor.

## § 12. Other annexes to debt restructuring petition

(1) The following must be annexed to a debt restructuring petition:

- 1) a list of the assets, property and any and all income of the debtor and the family members belonging to the same household (hereinafter *list of assets*) at the time of submission of the petition, indicating the value of each asset item and their share in joint ownership and common ownership or in collective rights;
- 2) a list of the financial obligations of the debtor (hereinafter *list of debts*) at the time of submission of the petition, indicating the names and contact details of all the creditors, the presumable amounts of the principal and collateral claims, the collateral as well as separately point out any running expenses (housing expenses, maintenance obligations, etc.) and any joint and several obligations;
- 3) copies of the debtor's tax returns and bank account statements of the last three years and copies of the documents (loan agreements, etc.) serving as the basis for any major obligations.

(2) An undertaking must also annex to the petition the account statements of the last year and an overview of their financial position, economic results and cash flows. Where the undertaking uses the cash-based accounting method, the last year's tax return serves as the basis for the submission of the aforementioned information.

(3) Where a debtor has transferred an immovable, a registered movable or a right or gifted or lent money to third parties in an amount exceeding 3,000 euros within five years before the submission of the petition, it must be indicated in the list of assets. Transactions matching these criteria, which have been concluded with persons connected with the debtor for the purposes of § 117 of the Bankruptcy Act, must be indicated separately.

(4) In a list of debts submitted separately by one spouse, the obligations for which the other spouse is or may be liable as well as the obligations of the other spouse for which the debtor may be liable must also be indicated.

(5) Where a debtor does not admit any claims to any extent, the debtor must indicate it in a list of debts as well as point out any debts which are subject to judicial or other proceedings. A debtor must indicate in a list of assets whether any judicial or other proceedings, including enforcement proceedings, are in progress with regard to any assets or property and what assets are or what property is subject to any such proceedings.

(6) For the purpose of indicating obligations in a list of debts, a debtor may demand that a creditor give an overview of the accounts of the debtor's debt.

### **§ 13. Form relating to submission of petition**

(1) The forms of the debt restructuring petition, list of assets, list of debts and restructuring plan are established by a regulation of the minister responsible for the field, and debtors are required to use these forms. Sole proprietors seeking the reorganisation of their enterprise are not required to use the form of the debt restructuring plan.

(2) The forms specified in subsection 1 of this section must be freely and free of charge available to everyone on the website of the Ministry of Justice and in any court.

### **§ 14. Order of adjudication of debt restructuring petitions and bankruptcy petitions**

(1) Where a petition to declare the bankruptcy of a debtor has been filed with the court in addition to a debt restructuring petition, these are joined into the same proceedings and reviewed by the court with whom the petition or petition was filed first.

(2) In the event specified in subsection 1 of this section a debt restructuring petition is adjudicated first even where it was submitted after a bankruptcy petition. The court postpones the declaration of bankruptcy until the approval of a restructuring plan has been decided or until the debt restructuring proceedings have been completed. In such an event the adjudication of the bankruptcy petition is suspended also where an interim trustee has been appointed.

(3) In the event specified in subsection 2 of this section the court may take measures securing the bankruptcy proceedings where these do not impede the debt restructuring proceedings.

### **§ 15. Adjudication of admissibility of petition**

(1) Where necessary, the court hears the opinion of the debtor or their creditors or requests additional information or documents from them before declaring a debt restructuring petition admissible. The court may also request information about the financial position or solvency of the debtor or family members belonging to the debtor's household from other persons and institutions, including credit institutions.

(2) The court may also order that the debtor state under oath that the information given to the court about the assets, property, debts and economic or professional activities is true to the knowledge of the debtor. To that end the debtor must orally take the following oath:

"I, (name), hereby swear on my honour and conscience that the information given to the court about the assets, property, debts and activities is true to my knowledge." The debtor must sign the text of the oath.

(3) The court adjudicates the admissibility of a petition within seven days after receiving a valid petition and taking the steps specified in subsections 1 and 2 of this section.

(4) Already before the adjudication or submission of the petition, the court may grant provisional legal protection, among other things, suspend enforcement proceedings or compulsory enforcement aimed at the assets and property of the debtor.

### **§ 16. Admissibility of petition**

(1) The court declares a debt restructuring petition admissible where the petition complies with the requirements established in the Code of Civil Procedure and this Act.

(2) An order declaring a petition admissible is submitted to the debtor and to all creditors the restructuring of whose claims is sought by the debtor. The order is also published in the official publication *Ametlikud Teadaanded*.

### **§ 17. Inadmissibility of petition**

(1) The court declares a debt restructuring petition inadmissible where:

- 1) the debtor has been declared bankrupt;
- 2) in the last ten years before the submission of the petition the court has granted the debtor's debt restructuring petition or petition for a release from debts in bankruptcy proceedings;

3) the debtor does not have solvency problems or these can clearly be overcome without restructuring debts, among other things, by selling the debtor's assets and property to an extent that can be reasonably expected from the debtor;

4) the petition or annexes thereto do not comply with law and, among other things, the statutory fee has not been paid.

(2) The court may declare a debt restructuring petition inadmissible where:

- 1) the approval or implementation of the debt restructuring plan offered by the debtor is unlikely, considering, among other things, the debtor's solvency over a period of three years preceding the submission of the debt restructuring petition and the debtor's ability to engage in a reasonably profitable activity during the term of validity of the debt restructuring plan, considering the debtor's age, profession and education;
- 2) the debtor has failed to perform the obligation provided for in subsection 1 of § 10 of this Act;
- 3) the debtor has, wilfully or due to gross negligence, submitted materially incorrect or incomplete information about their assets, property, income, creditors or liabilities;
- 4) the debtor refuses to take an oath regarding the truthfulness of the submitted information or to submit additional information requested by the court;
- 5) the debtor has been convicted of committing a crime relating to bankruptcy proceedings or enforcement proceedings, a tax crime or a crime specified in §§ 380-381<sup>1</sup> of the Penal Code and the penal data has not been deleted from the penal register;
- 6) in the last three years preceding the submission of the petition or after the submission of the petition the debtor has, wilfully or due to gross negligence, submitted incorrect or incomplete information about their financial position for the purpose of obtaining aid or other benefits from the state, local authority or foundation or for the purpose of evading taxes;
- 7) the debtor has obviously wilfully concluded transactions harming the creditors.

(3) Where an undertaking applies for the reorganisation of an enterprise, the court may declare the petition inadmissible where the undertaking has not explained that the enterprise needs reorganisation and the sustainable management of the enterprise after the reorganisation is probably possible.

(4) The debtor may file an interim appeal against the order by which the court declared the debtor's debt restructuring petition inadmissible.

## **§ 18. Appointment of advisor**

(1) The court may, on the basis of a debtor's petition or of its own volition, appoint an advisor for ensuring the compliance of the action by petition with the requirements where it is necessary for identifying the debtor's pecuniary situation or where it clearly simplifies or expedites the action by petition or ensures better protection of the interests of the debtor or the creditors. The court may appoint an advisor also after declaring a debt restructuring petition admissible.

(2) A person having sufficient knowledge and experience may be appointed as an advisor. A court employee, the debtor or a creditor or a person dependent on them or the person specified in subsection 7 of § 15 of the Reorganisation Act is not appointed as an advisor. Usually, a bankruptcy trustee is not appointed as an advisor.

(3) Before appointing an advisor, the court hears the debtor's opinion. No advisor is appointed without the debtor's consent.

(4) Upon appointment of a person as an advisor, the person's consent is required.

(5) In the event of appointment of an advisor, the court determines the amount that the debtor must deposit to the designated account for the purpose of covering the advisor's fee and expenses and sets a time limit for depositing the amount.

[RT I, 31.01.2014, 6 – entry into force 01.07.2014]

## **§ 19. Functions of advisor**

(1) The advisor's function is to impartially and professionally inform the court and the creditors of the debtor's financial situation and of the possibilities of overcoming the solvency problems, and to advise and assist the debtor in the course of the debt restructuring proceedings and to verify the lawfulness of the creditors' claims and the lawfulness and reasonableness of the debtor's transactions.

(2) Among other things, the advisor:

- 1) assists the debtor in drawing up the debt restructuring plan and in negotiations with the creditors;
- 2) informs the court about the performance of the advisor's functions;
- 3) assesses whether the claims to be restructured are certified and lawful, informs the court of any non-existent claims, claims whose amount is unclear and claims whose lawfulness or certification cannot be assessed;
- 4) where necessary, requests from the debtor and the creditors evidence of the claims to be restructured;

5) performs other functions arising from law or assigned by the court, which are necessary for carrying out the debt restructuring proceedings.

(3) The advisor performs their functions with the diligence characteristic of a responsible and honest advisor and takes into account the interests of all the parties to the proceedings. The court exercises supervision over the advisor.

(4) The advisor must maintain the confidentiality of business secrets, personal data and other confidential information disclosed to the advisor in connection with the advisor's functions.

(5) The procedure for calculation of the advisor's fee and expenses to be compensated and the percentage limits of the fee is established by a regulation of the minister responsible for the field.

(6) The provisions of §§ 17–19 of the Reorganisation Act regarding the reorganisation advisor apply to the debt restructuring advisor. The provisions regulating the advisor in the Code of Civil Procedure do not apply to the debt restructuring advisor.

## **§ 20. Consequences of declaring admissibility of petition**

(1) Where a debt restructuring petition is declared admissible, the calculation of the default interest or a contractual penalty increasing over time on a claim aimed against the debtor is suspended until the approval of the restructuring plan or termination of proceedings. This does not apply to claims whose restructuring is not requested by the debtor.

(2) Where a petition has been declared admissible, the creditor cannot, relying on a breach of a financial obligation which occurred before the submission of the debt restructuring petition, terminate a contract made with the debtor, which gives rise to the claims whose restructuring is requested by the debtor, or refuse to perform its obligations on such ground. An agreement which authorises the creditor to terminate the contract in the event of submission of a debt restructuring petition or a debt restructuring plan is null and void.

(3) In the event of declaring a petition admissible, the court suspends the (compulsory) enforcement proceedings carried out with regard to the debtor's assets and property until the approval of the debt restructuring plan or termination of the proceedings. For the given period the court may:

- 1) suspend the court proceedings involving a financial claim against the debtor regarding which no judgment has yet been made;
- 2) cancel measures securing a claim, including the seizure of a bank account;
- 3) prohibit creditors to exercise rights arising from the collateral given by the debtor, including to sell or apply for the sale of the object of pledge;
- 4) take other provisional legal protection measures.

(4) Considering the legitimate interests of a creditor, the court may, on the basis of the creditor's petition, permit the continuance of suspended enforcement proceedings and the exercise of the rights arising from the collateral given by the debtor also before the approval of the restructuring plan or termination of the proceedings.

(5) Declaring a petition admissible does not preclude filing a claim for the recovery of assets and property by the creditors and adjudication of the claim in enforcement proceedings. An enforcement agent issues the gains to the creditors covered by a restructuring plan only at the request of the court and on the basis of the restructuring plan.

## **Chapter 3 Approval of Restructuring Plan**

### **§ 21. Duties of debtor**

(1) Information required in connection with the debt restructuring proceedings is given by the debtor to the court and to the advisor and, where ordered by the court, also to the creditors.

(2) The debtor assists the advisor in the performance of the advisor's functions. Where the court or the advisor considers it necessary to audit the debtor's assets and property for the purpose of identifying the debtor's pecuniary situation, the debtor presents their assets and property or grants access thereto.

(3) Where the debtor does not perform the duties provided for in subsections 1 and 2 of this section, the court may dismiss the debt restructuring petition.

### **§ 22. Informing creditors**

(1) After declaring a debt restructuring petition admissible, the court sends the petition along with the restructuring plan and other annexes without delay to the creditors specified in the restructuring plan, the restructuring of whose claims is requested. The court may allow the debtor to change the restructuring plan before submission to the creditors or order the debtor to submit a new restructuring plan.

(2) Upon serving the restructuring plan on the creditor, the court grants the creditor a time limit of at least two, but no more than four weeks after the serving of the restructuring plan in order to express an opinion to the court. The creditor expresses an opinion on whether the creditor consents to the debtor's information regarding the claim and the security thereof, the debtor's calculation and the restructuring of the debt in the manner requested by the debtor. Where the creditor does not consent to restructuring the debt in the manner requested by the debtor, the creditor indicatea whether the creditor would consent to restructuring the debt in another manner. The court also refera to the consequences of failing to express an opinion.

(3) Where the court has appointed an advisor, the court communicatea the advisor's name and contact details to the creditors and also informa the creditors of whether they have to submit their opinion to the advisor instead of the court.

(4) The court may also set the debtor or the advisor a time limit for holding negotiations with the creditors over the amount or restructuring of the debt and therefore extend the time limit provided for in subsection 2 of this section, but not more than three months as of the receipt of the restructuring plan.

(5) In the event of appointment of an advisor, the court may order that the advisor or the debtor supervised by the advisor serve the documents specified in subsection 1 of this section. Documents certifying service must be submitted to the court.

### **§ 23. Identification of amount of claim**

(1) Where the creditor whose claim is to be restructured does not consent to the information given by the debtor in the list of debts, the creditor informa the court or, where so determined by the court, the advisor about the extent in which the creditor does not consent to the claim and submita evidence certifying the circumstances. Where the creditor fails to make a statement by the prescribed date, it is deemed that the creditor has consented to the amount of the claim.

(2) The court forwards without delay the creditor's position regarding the amount of the claim and the restructuring of the claim to the debtor or to the advisor, unless the court ordered the creditor to submit its position to the advisor.

(3) Where the debtor or the advisor does not consent to an allegation contained in the creditor's statement specified in subsection 1 of this section, the debtor without delay forwards the statement along with evidence to the court and explains why the debtor does not consent to the contents of the statement.

(4) On the basis of the submitted allegations and evidence the court decides the amount of the creditor's principal and collateral claims and the existence of collateral not later than within one month after receiving the creditor's statement. Where necessary, the court first hears the debtor, the creditor concerned and the advisor.

(5) The court may refuse to identify the amount of the creditor's claim or identify it only partially where, in the opinion of the court, the claim that is to be restructured does not exist, its amount is unclear or the lawfulness or certification of the claim cannot be reasonably assessed and thus the claim or the scope thereof is identified outside the debt restructuring proceedings.

(6) An order which identifies the amount of the creditor's principal and collateral claims or refuses to do so is sent to the debtor, creditor and advisor.

(7) The debtor may file an interim appeal against an order by which the amount of the creditor's principal and collateral claims are identified or by which the court refuses to identify it. No appeal can be filed with the Supreme Court against an order made by a circuit court of appeal regarding an order of a district court.

### **§ 24. Approval of restructuring plan**

(1) The court approves the restructuring plan submitted by the debtor where no creditor or the debtor has challenged it within the prescribed time limit.

(2) The court may also approve the restructuring plan where at least half of the creditors of the claims not secured by a pledge approved the debt restructuring, the claims of such creditors represent at least a half of the claims not secured by a pledge and under the restructuring plan the creditor who submitted an objection to the restructuring plan is not treated substantially worse than other creditors, unless there is good reason for giving preference to some creditor.

(3) The court may also approve a restructuring plan which was not approved by the creditors or which the creditors approved to a smaller extent than provided for in subsection 2 of this section, where the court finds that:

- 1) the restructuring of the debt is justified, taking into account the legitimate interests and rights of the parties;

2) under the restructuring plan any creditor is not treated substantially worse than others, unless there is good reason for giving preference to some creditor.

(4) Upon weighing the interests and rights specified in clause 1 of subsection 3 of this section, the court considers, among other things, the scope in which the claim of the creditor who submitted an objection could be settled in bankruptcy proceedings in comparison with the amount to be paid to the creditor on the basis of the restructuring plan. Comparative data regarding bankruptcy proceedings are compiled based on the assumption that the bankruptcy proceedings are carried out as of the commencement of the debt restructuring proceedings. Upon comparison, the possibilities of releasing the debtor who is a natural person from debt are taken into account on the basis of the debtor's income during the restructuring proceedings. The provisions of this subsection are indicated in the statement of reasons of an order made on the approval of the restructuring plan.

(5) Upon approval of the restructuring plan on the basis provided for in subsection 3 of this section, the court is not bound by the requests of the debtor and the creditors, but may, among other things, approve the restructuring of only some debts and change the manner and scope of restructuring. Thereby the court takes into account, among other things, the extent to which the debtor should reasonably sell their assets and property for the purpose of settling their debts as well as the possibilities of recovery or other collection of the debtor's assets and property. The court does not make the scope or the manner of debt restructuring less favourable for the creditor than requested by the debtor.

(6) A claim secured by a pledge may be restructured only where the creditor consents to it, even where the pledgor is a third party. This does not preclude or restrict the restructuring, pursuant to the general procedure, of the claim remaining after selling the pledge. The pledgee's consent is not required for termination of a credit contract in accordance with subsection 1 of § 3 of this Act.

(7) The reduction of a creditor's interest and default interest claims to the level provided by law is not considered unequal treatment of the creditor.

(8) Before the approval of the restructuring plan, the court may hear the debtor and the creditors and appoint one expert or multiple experts to assess whether the restructuring of the debts is founded. No expert is appointed without the debtor's consent.

(9) Upon approval of the restructuring plan on the basis of subsection 3 of this section, the court hears the debtor and the creditor. Where, upon approval of the restructuring plan on the basis of subsection 3 of this section, the total amount of claims against the debtor exceeds 200,000 euros, the court, regardless of the debtor's consent, appoints one expert or multiple experts to assess the reasons of the restructuring plan.

(10) Along with the approval of the restructuring plan, the court may establish with the debtor conditions for the implementation of the plan, among other things, regarding reporting, and order that the debtor coordinate certain transactions with the court or the advisor.

## **§ 25. Refusal to approve restructuring plan, revision of restructuring plan and submission of new restructuring plan**

(1) Regardless of subsections 1–3 of § 24 of this Act, the court may refuse to approve the restructuring plan where:

- 1) the debtor does not have solvency problems or these can clearly be overcome without restructuring debts, among other things, by selling the debtor's assets and property to an extent that can be reasonably expected from the debtor or by recovery or other collection of the debtor's assets or property;
- 2) the implementation of the restructuring plan is unlikely, considering the debtor's assets, property and income;
- 3) the debtor has, wilfully or due to gross negligence, submitted materially incorrect or incomplete information about their assets, property, income, creditors or liabilities;
- 4) in the event of a petition for the reorganisation of an enterprise, the sustainable management of the enterprise is probably not possible after the reorganisation.

(2) Before making a decision on the approval of the reorganisation plan or in the event of refusal to approve the reorganisation plan, the court may set an additional time limit for the debtor for the revision of the reorganisation plan or for the submission of a new reorganisation plan on the basis of the opinions submitted by the creditors or for another good reason, among other things, where it may be necessary for reaching an agreement with the creditors. The revised restructuring plan is sent to the primarily concerned creditors for the purpose of expressing an opinion pursuant to the procedure provided for in § 22 of this Act.

## **§ 26. Order on approval of restructuring plan**

(1) An order approving or refusing to approve a restructuring plan is served on the debtor, all creditors whose rights are affected under the restructuring plan and the advisor. An order approving a restructuring plan is also made public and published in the official publication *Ametlikud Teadaanded*.

(2) The debtor may file an interim appeal against an order approving or refusing to approve a restructuring plan. The creditor may file an interim appeal against an order approving the restructuring plan where the debtor has submitted an objection against the plan beforehand.



## **§ 27. Approval of reorganisation plan pursuant to principles of reorganisation proceedings**

Where a debtor applies for the reorganisation of an enterprise by way of restructuring and an advisor has been appointed, the court may, with good reason, provide for the approval of the restructuring plan pursuant to the procedure laid down in §§ 20-37 of the Reorganisation Act instead of the provisions of this Chapter.

## **§ 28. Dismissal of petition**

- (1) The court may dismiss a debt restructuring petition after declaring it admissible, but before approving it.
- (2) The court dismisses a petition, above all, where the debtor requests it or where it becomes evident that the debtor is permanently insolvent.
- (3) The court may dismiss a petition where any ground due to which the petition should not have been declared admissible (§ 17 of this Act) becomes evident as well as where it becomes evident that the debtor has concealed or squandered their assets or property, concludes a transaction harming the interests of the creditors or violates the debtor's duty to assist or where the debtor fails to deposit the amount determined by the court to the designated account for the purpose of covering the fees and expenses of the advisor or expert.  
[RT I, 31.01.2014, 6 – entry into force 01.07.2014]
- (4) Before dismissing a petition the court hears the debtor and may also hear the creditors concerned and the advisor.
- (5) The court makes public an order dismissing a petition, publish a notice on the order in the official publication *Ametlikud Väljaanded*, after the order has entered into force, informs thereof the enforcement agent conducting the suspended enforcement proceedings and the court conducting the suspended court proceedings. The court may have the advisor perform the duty to inform.
- (6) The debtor may file an interim appeal against an order dismissing a petition.

# **Chapter 4**

## **Consequences of Restructuring Plan**

## **§ 29. Overall consequences of approval of restructuring plan**

- (1) As of the approval of the restructuring plan, the legal consequences specified in it become effective with regard to the debtor and the person whose rights are affected by the restructuring plan.
- (2) The approval of the restructuring plan does not release a person who is jointly and severally liable for the performance of the debtor's obligations from the performance of the person's obligations. Where the person who is jointly and severally liable for the performance of an obligation of the debtor has performed the obligation, the person has the right of recourse against the debtor only to the extent in which the debtor is liable for the performance of the obligation under the restructuring plan.
- (3) The approval of the restructuring plan does not limit the right of the creditor who did not approve the restructuring of their claim to satisfy the claim only at the expense of collateral which is a pledge or other physical collateral.
- (4) A restructuring plan approved by the court is an enforceable title with regard to the claim restructured by it. Where a restructuring plan specifies the extension of the time limit of performance of an obligation, the claim cannot be enforced within the time limit specified in the restructuring plan.
- (5) Subsection 4 of this section also applies to a person who, under a restructuring plan, assumes the obligation to secure the debtor's obligation towards a creditor.
- (6) The approval of a restructuring plan does not preclude filing a claim for the recovery of assets and property by the creditors and adjudication of the claim in enforcement proceedings. An enforcement agent issues the gains to the creditors covered by a restructuring plan only at the request of the court and on the basis of the restructuring plan.

## **§ 30. Preclusion of validity of restructuring plan**

A restructuring plan does not apply to a creditor on whom the restructuring plan has not been served for examination and expression of an opinion or who is otherwise unaware of the occurrence of the restructuring proceedings.

### **§ 31. Contentious civil claim and enforcement proceedings during term of validity of restructuring plan**

- (1) During the term of validity of a restructuring plan no statement of claim or petition can be filed on the basis of a claim regulated by the restructuring plan.
- (2) Upon approval of a restructuring plan, the enforcement proceedings and court proceedings regarding a claim not regulated by the restructuring plan, which were suspended upon declaring the restructuring petition admissible, is continued.
- (3) The approval of a restructuring plan does not limit the creditor's right to challenge claims not recognised in the restructuring plan in court proceedings. In court proceedings, the creditor may also challenge the amount of the claim insofar as a portion thereof has not been recognised.

### **§ 32. Default interest and contractual penalty during term of validity of restructuring plan**

Following the approval of a restructuring plan, default interest and a contractual penalty are calculated on a claim that is not restructured under the restructuring plan and the default interest and the contractual penalty are calculated on the basis of the initial legal relationship as of declaring the debt restructuring petition admissible.

### **§ 33. Bankruptcy petition during term of validity of restructuring plan**

- (1) During the term of validity of a restructuring plan no bankruptcy petition can be filed on the basis of a claim that is regulated by the restructuring plan.
- (2) During the term of validity of a restructuring plan a bankruptcy petition is heard in the framework of the same proceedings by the judge who conducts the restructuring proceedings.
- (3) The advisor who exercises supervision over the implementation of the restructuring plan is involved by the court in hearing the bankruptcy petition.
- (4) An interim trustee should not impede the implementation of a restructuring plan and should fully cooperate with the court and the advisor exercising supervision.
- (5) Where the court finds that, taking into account the contents of a restructuring plan, there is a ground for declaring the debtor bankrupt, the court sets the restructuring plan aside and terminates the restructuring proceedings.
- (6) The debtor and the creditor who filed a bankruptcy petition may file an interim appeal against an order by which the court adjudicates the bankruptcy petition.

### **§ 34. Supervision over implementation of restructuring plan**

- (1) The court exercises supervision over the implementation of restructuring plans.
- (2) The debtor gives the court information for exercising supervision and assists the court in the performance of the duty to supervise.
- (3) Every time a year has passed from the approval of the restructuring plan, the debtor or the advisor submits to the court and the creditors a report on the debtor's financial situation and implementation of the restructuring plan, unless otherwise decided by the court. The court may request at any time that the debtor or the advisor submit a report on the implementation of the restructuring plan and have the advisor or an expert examine it at the expense of the debtor.

### **§ 35. Revision of restructuring plan**

- (1) The debtor, advisor or creditor may, in the event of a change of circumstances, notably in the event of a significant change in the pecuniary situation of the debtor or in the event the debtor's actual pecuniary situation becomes evident, submit to the court a request to revise the restructuring plan or the time limit of implementation thereof. The restructuring plan may also be revised on the basis of a judicial decision made with regard to the validity or amount of a claim.
- (2) A restructuring plan may be extended to claims that fell due after the submission of a debt restructuring petition or after the approval of the restructuring plan, provided that these are based on a transaction made before the time or on another legal ground. Among other things, the restructuring plan may be extended to claims remaining following the sale of the object of pledge.
- (3) Sections 22–27 of this Act apply to the revision and approval of restructuring plans. This process involves creditors whose rights are to be limited by the revision of the restructuring plan.

## **Chapter 5**

# Termination of Proceedings

## § 36. Grounds of termination of debt restructuring proceedings

(1) Debt restructuring proceedings terminate in the event of rejection or dismissal of a debt restructuring petition, setting a debt restructuring plan aside, termination of proceedings or expiry of the time limit of implementation specified in a debt restructuring plan.

(2) In the event of dismissal or rejection of a petition or termination of proceedings, any and all consequences of declaring the petition admissible lapse retroactively.

## § 37. Consequences of expiry of time limit of implementation of restructuring plan

After the expiry of the time limit of a restructuring plan, a creditor can enforce a claim restructured under the restructuring plan only to the extent which has been agreed in, but not implemented under the restructuring plan.

## § 38. Early implementation of restructuring plan

In the event of early implementation of the restructuring plan the proceedings terminate where the debtor has performed all the obligations assumed under the restructuring plan before the expiry of the time limit of implementation of the restructuring plan.

## § 39. Setting restructuring plan aside

(1) The court set a restructuring plan aside on the basis of a petition of the debtor as well as in the event the debtor is declared bankrupt.

(2) The court may set the restructuring plan aside also where it becomes evident that:

- 1) to a material extent, the debtor fails to perform the obligations arising from the restructuring plan;
- 2) after at least a half of the term of validity of the restructuring plan has passed it is evident that the debtor is unable to perform the obligations assumed under the plan;
- 3) the debtor is not insolvent or has overcome the solvency problems and the restructuring of the claims of the creditor is no longer fair to the creditors due to material change of circumstances;
- 4) the debtor has, wilfully or due to gross negligence, submitted materially incorrect or incomplete information about their assets, property, income, creditors or liabilities;
- 5) the debtor has made payments to creditors not specified in the restructuring plan, thereby considerably harming the interests of other creditors;
- 6) the debtor does not assist the court or the advisor in the performance of the duty to supervise or does not give information which is necessary for exercising supervision;
- 7) the debtor fails to deposit to the designated account the amount determined by the court for the purpose of covering the fees and expenses of the advisor or expert.

[RT I, 31.01.2014, 6 – entry into force 01.07.2014]

(3) In the event of setting the restructuring plan aside, the consequences of declaring the debt restructuring petition admissible lapse retroactively. The right of claim of the creditor whose claim was restructured under the restructuring plan is restored against the debtor in the initial amount. Thereby the gains of the creditor in the course of implementation of the restructuring plan are taken into account.

(4) The court makes the setting aside of the restructuring plan public, publish a notice on setting it aside in the official publication *Ametlikud Väljaanded* and, after the set-aside has entered into force, inform thereof the enforcement agent conducting the suspended enforcement proceedings and the court conducting the suspended court proceedings. The court may have the advisor perform the duty to inform.

(5) Where the restructuring plan is set aside and within three months following the setting of the plan aside a bankruptcy petition is filed against the debtor, the claims of compensation of the fees and expenses of the advisor and expert are deemed as protected in these proceedings.

## Chapter 6 Amendment of Acts

§ 40.–§ 49.[Omitted from this text.]

## Chapter 7

# Entry into Force and Implementation of Act

## **§ 50. Entry into force of Act**

This Act enters into force on 5 April 2011.

## **§ 51. Implementation of Act**

The debt restructuring proceedings also apply to duties, obligations and liabilities that have emerged before the entry into force of this Act.

## **§ 52. Specifics of revision of restructuring plan**

(1) Where it is necessary and justified for the attainment of the purposes of the restructuring procedure, the court may, at the request of the debtor or advisor revise an approved restructuring plan, in addition to the manner provided for in § 35 of this Act, also in such a way that subsection 3 of § 35 is not applied to the revision of the restructuring plan.

(2) Before the revision of the restructuring plan, the court hears the creditor whose rights are to be limited by the revision of the restructuring plan and may also hear the debtor and the advisor.

(3) To revise the restructuring plan, the court revises the order of approval of the restructuring plan in accordance with § 480 of the Code of Civil Procedure. The debtor, the advisor and the creditor whose rights are to be limited by the revision of the restructuring plan may file an interim appeal against the order.

(4) A request for the amendment of a restructuring plan based on subsection 1 of this section can be filed until 31 March 2021.

[RT I, 04.01.2021, 4 – entry into force 05.01.2021]