

INSOL Europe/LexisNevis coronavirus (COVID-19)—Tracker for Insolvency Reforms—Finland

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Restructuring & Insolvency analysis: On 16 March 2020, the government of Finland declared a state of emergency due to the coronavirus (COVID-19) pandemic outbreak. The government has taken measures in order to protect the functioning of the Finnish society and economy and to ensure the functioning of businesses despite the financial distress caused by the pandemic. Written by Jan Lilius of Hannes Snellman Attorneys Ltd, Council Member and Country Co-ordinator (Finland) of INSOL Europe and Associate Lawyer Tiia Heikkinen of Hannes Snellman Attorneys Ltd.

Temporary limitation on creditors' right to file for bankruptcy

On 16 April 2020, the government of Finland issued a legislative proposal (No 46/2020) for the temporary amendment of the Finnish Bankruptcy Act. The reform will remove the provision regarding the so-called assumption of insolvency of a debtor ('insolvency assumption') in cases where a creditor files for bankruptcy. This is the provision that is typically invoked by creditors in their bankruptcy applications to prove the debtor's state of insolvency.

Pursuant to the proposal, the Bankruptcy Act would be temporarily amended so as to restrict a creditor's right to file for the bankruptcy of a debtor on the basis of an insolvency assumption. Pursuant to the current Bankruptcy Act, a debtor is deemed insolvent by the court if the debtor has not repaid a clear and undisputed claim that has fallen due within one week of the receipt of a payment reminder. Thus, as a result of the law reform, this assumption would be temporarily removed. However, irrespective of said temporary amendment, a creditor can still file for bankruptcy and prove the debtor's insolvency in the other ways set out in law. In such a case, the creditor needs to prove that the debtor's inability to repay the debts when they fall due is not only temporary.

It should be noted that the proposed amendment includes a transitional provision, which sets down two situations in which the insolvency assumption would still be applied: (i) if the payment reminder has been issued to the debtor prior to the adoption of the amendment; and (ii) if the payment reminder has been issued to the debtor after the adoption of the amendment and is based on a debt that has fallen due more than two months prior to the adoption of the amendment.

The amendment was approved by Parliament on 28 April 2020 and will be adopted as soon as possible. Once the law has been put into effect, the amendment will be in force until 31 October 2020.

Temporary amendments to the Enforcement Code

On 16 April 2020, the government also issued a legislative proposal (No 44/2020) for a temporary amendment of the Finnish Enforcement Code (705/2007, as amended). Pursuant to the proposal, the provisions of the Enforcement Code governing the conditions for the reduction, limitation, and postponement of the enforcement proceedings would be amended in such a way that the exceptional circumstances arising from the coronavirus pandemic and the financial difficulties resulting from it could be taken into account in the enforcement proceedings.

The main rule is still that the enforcement proceedings must proceed without undue delay. However, enforcement may be postponed if this is deemed to be in the best interests of the respondent and if the postponement does not cause considerable inconvenience to the applicant. Pursuant to the proposal, the coronavirus pandemic should be taken into consideration when the enforcement proceedings are initiated and time limits are set for the applicants and debtors.

Pursuant to the proposal, additional payment time would also be granted for the debtor. Pursuant to the current Enforcement Code, the bailiff may provide, at the debtor's request and for a special reason, additional

time for the payment. The government has now proposed that the additional payment time can be extended up to six months instead of the current three months. Pursuant to the proposal, a probable repayment from the debtor after the extension would be considered a sufficient 'special reason'.

The proposal also includes an amendment to the current provision concerning materially weakened financial standing of private persons. Pursuant to the proposal, the amount withheld from the debtor's wages or salary would be reduced if the debtor's financial standing has materially weakened as a result of the coronavirus pandemic. The proposal also suggests that the coronavirus pandemic should be regarded as one of the grounds giving rise to payment-free months for private persons with regard to distraint of wages or salary. This amendment will give more discretion to the bailiff.

In addition, the proposal includes certain amendments to the regulations regarding the withholding of business income and to the eviction rules.

Just like the proposed amendment of the Bankruptcy Act, the amendment of the Enforcement Code was approved by Parliament on 28 April 2020 and will be adopted as soon as possible. The amendment will remain in force until 31 October 2020.

Continuation of restructuring proceedings despite payment default

Formal corporate restructuring proceedings under the Finnish Restructuring Act must, as a main rule, be discontinued when the debtor is unable to repay debts arising during such proceedings (so-called new debts). In effect, this typically results in the bankruptcy of the debtor. Because of the coronavirus outbreak, the Advisory Board for Bankruptcy Affairs (hereinafter the 'Advisory Board') issued a recommendation on 25 March 2020 proposing that the inability to repay new debts should not necessarily lead to the discontinuation of the restructuring proceedings.

The Advisory Board has stated that the financial impact of the coronavirus outbreak can be considered somewhat exceptional. Late payments during this exceptional period do not necessarily mean that the debtor's business is, as such, unprofitable or that it is unable to repay its new debts once the situation gets back to normal. Thus, the Advisory Board proposes that administrators should discuss the possibility of investigating the success of the payment of new debts which have arisen during the proceedings over a period longer than the current term. The recommendation has the status of 'soft law'. It is, however, assumed that Finnish restructuring administrators follow the guidelines set by the Advisory Board. The recommendation will be in force until further notice.

INSOL Europe/LexisNexis Coronavirus Tracker of Insolvency Reforms

A tracker of insolvency reforms globally produced by Lexis Nexis in partnership with INSOL Europe is now available—[Coronavirus \(COVID-19\) Tracker of insolvency reforms globally](#).



We look at various countries worldwide which are expediting reforms to their restructuring and insolvency laws, temporarily suspending onerous insolvency law provisions, increasing limits for statutory demands, suspending enforcement powers and introducing other measures to deal with the coronavirus crisis. As the situation is rapidly evolving with more countries adding new measures daily, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.