Finland: All you need to know about becoming an Insolvency Practitioner

Eeva Arko-Koski describes the rules and regulations in Finland

EEVA ARKO-KOSKI
The Office of Bankruptcy Ombudsman, Finland

“Nearly all administrators are private sector lawyers and usually members of the Finnish Bar Association.”

Access to the profession

The definition of an insolvency administrator in the Finnish legislation is quite open. According to the *Finnish Bankruptcy Act (2004)* a person appointed as an estate administrator must have the ability, skills and experience required for the duty and be also otherwise suitable for the duty. The *Restructuring of Enterprises Act* includes a similar definition. So there is neither a requirement of a legal or other higher education nor examination, licence or special training to be completed.

Nearly all administrators are private sector lawyers and usually members of the Finnish Bar Association.

Only individuals can be appointed insolvency administrators. The administrator shall not have a relationship with the debtor or the creditor that would compromise his or her independence of the debtor or the impartiality towards the creditors, or his or her ability to perform the task in an appropriate manner. This requirement of impartiality and independence has been emphasised by several legislative changes which reassigned numerous duties from the courts to the bankrupt estate and gave administrators new powers and duties.

Appointment

When the court makes an order of bankruptcy, it also appoints an estate administrator. Several administrators may be appointed if this is necessary owing to the extent of the duty or for some other reason. The administrative duties may be allocated to the administrators in accordance with the court order.

The debtor or the creditor petitioning the proceedings usually puts up an individual (a lawyer) as a candidate for an administrator. Before the appointment the court reserves the main creditors and the candidate, and at its discretion, the debtor and other creditors an opportunity to be heard. The court is not bound by creditors' or the debtor's proposals. However, the court usually appoints the administrator according to creditors' opinions.

The administrator can be dismissed on several grounds, if he or she

- is not capable of the task or is disqualified in the case
- neglects the duties or acts in breach of proper administrative practice
- or for some other important reason.

The debtor or a creditor or the Bankruptcy Ombudsman can apply for dismissal of the administrator. The court rules on the matter after hearing the administrator and other parties concerned.

Supervision

As mentioned, most of the insolvency administrators in Finland are lawyers and members of the Finnish Bar Association. Therefore, these administrators are subject to the supervision of their professional body. This supervision materialises through disciplinary actions. Also, the creditors in creditors' meetings (bankruptcies) and in creditors' committees (restructuring of enterprises) control the work of administrators.

Finland's own concept for supervising insolvency administrators and insolvency proceedings is an independent special authority, the Bankruptcy Ombudsman (BO). The Ombudsman is attached to the Ministry of Justice and has a staff of ten, consisting of eight lawyers and two secretaries.

The main duty of the BO is to supervise the administration of bankrupt estates, ensuring that they are in accordance with the law and that proper practice is being obeyed in administering the estates. The administrators must cooperate with the BO and provide his office with all adequate information. Without an explicit request they must send the estate inventory and the debtor description, annual reports and records from creditors' meetings and also the final settlement of accounts. The BO has the right to inspect all documents and records belonging to the estate, and relating to the debtor or the estate, and to make inspections at the premises of the estate. The BO may also appoint an auditor to carry out a special audit of the administration.

The BO can also inform the administrator or the creditors of any cases of negligence or abuse he has discovered. In many cases this kind of information will be enough to have the incorrect course of action corrected. The BO can also inform the proper authority, such as the police, the prosecutor or the taxing authorities. The BO can also turn to the court and demand that

- the administrator who has neglected his duties is fined unless he fulfils the duties;
- the administrator is dismissed from his duties if he has

essentially neglected his duties or for other weighty reasons; or
- the administrator's fee must be reduced if he has essentially neglected his duties or if the fee is clearly above a reasonable level.

The BO also has a duty to develop the good practice of administering the bankrupt estates. An *Advisory Board for Bankruptcy Affairs* assists him in this work. The Board issues written guidance on the good practice of administering bankrupt estates.

Remuneration

According to the Bankruptcy Act the administrator is entitled to a reasonable fee in view of the demands of the duty, the measures taken, the extent of the estate and the other circumstances, as well as to a compensation for costs that have been necessary in the administration of the estate. The remuneration is paid from the estate's funds. If the estate is assetless, the government guarantees a fee but only up to €500. A creditor may also assume the costs of the proceedings.

The court decides the administrator's fee at the same time as it orders the bankruptcy to be cancelled because of lack of assets. In those cases when the bankruptcy continues, the creditors decide the fee in the creditors' meeting. In reorganisation cases the fee is decided by the creditors' committee or the court. If the administrator or some of the creditors or the debtor is not satisfied with the fee, the dispute is solved by the court.

The *Advisory Board for Bankruptcy Affairs* has issued a regulation on the remuneration of administrators. The regulation's purpose is to help administrators, creditors and courts to define a reasonable fee in each bankrupt estate. This guidance is not binding, but it is very widely obeyed in bankrupt estates.

This regulation deals with the legislation applicable to the fees of administrators, the customary duties of administrators, specific charges and the continuing of the debtor's business by the administrator. In addition, the regulation discusses the approval of the invoice and the advance payment of fees.

The regulation makes a distinction between short bankruptcy proceedings, which end due to the lack of assets, and continuing bankruptcy proceedings.

In a short bankruptcy the fee is based on the measures which the administrator has undertaken. However, there is a method of comparing the fee to an average fee or 'a fee of comparison' which describes the amount of work and the usual fee in a "normal" estate. The minimum level of this average fee is between €1500 – €2500 in a simple bankrupt estate with little assets and a cooperative debtor. This fee can be raised due to the amount of work which is described in the regulation with nine typical tasks. Each task that the administrator has carried out brings €300 – €500 extra to the basic level fee.

In continuing bankruptcy cases the proceedings are divided into two stages. At the first stage (usually the first two to four months) the fee is determined by the measures that the administrator has undertaken. But also here there is 'a fee of comparison' which in this context is based on the monetary value of the bankrupt estate. There is a lower limit and an upper limit for this value and the correct level depends on the difficulty and the demands of the estate. The other stage in a continuing bankruptcy is determined by the monetary conversion value of the estate. Also here there is a lower limit and an upper limit of the fee between which the fee can be either increased or decreased. On valid grounds the fee can also be determined reasonably beyond the lower or upper limits.

> "Finland's own concept for supervising insolvency administrators and insolvency proceedings is an independent special authority, the Bankruptcy Ombudsman (BO)."