

STATUS OF CONTRACTS IN THE BANKRUPTCY

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The Finnish Bankruptcy Act, dating from 1868, does not provide any rules concerning the status of contracts in the event of bankruptcy. In general the status of the various contracts will be solved on the basis of special legislation (e.g. the Sale of Goods Act, the Employment Contracts Act, the Act on Lease of Business Premises) and general legal principles. The administration of a bankruptcy estate must examine the status and the possible continuance of each type of contract individually.

The legislation on the status of contracts in the event of bankruptcy is not very clear, and due to the lack of case law the Finnish law leaves several questions unanswered regarding the status of contracts in bankruptcy. Different cancellation clauses are especially problematic. Another difficult question is whether the estate that has decided to continue an agreement is liable for *old* obligations that have arisen before the initiation of the bankruptcy proceedings. It shall be taken into account that if the bankruptcy estate chooses to continue the fulfilment of a contract, the estate is liable for all new obligations arising after the continuation.

A proposition of government bill for a new Bankruptcy Act was passed by a legislative committee early this year. The pending draft of the proposed bankruptcy law takes into consideration the problems and uncertainties posed by contractual relationships in bankruptcy.

The Bankruptcy Act shall regulate the legal effects of the initiation of bankruptcy proceedings to an agreement, which the debtor has not fulfilled. The regulation of the bankruptcy estate's right to continue an agreement of the debtor shall be an imperative legal provision, and the debtor and its contracting party may not deviate from the regulation by agreements in a manner that is detrimental to the estate.

When the debtor has been declared bankrupt the contracting party shall make an inquiry concerning the bankruptcy estate's willingness to continue the debtor's agreement. The contracting party may not terminate the agreement if the bankruptcy estate notifies the contracting party that it will continue the agreement and deposits an acceptable security within a reasonable time.

The purpose of this regulation is that the bankruptcy estate may become a contracting party as a substitute of the debtor in a situation where the other contracting party might have a right to terminate the agreement (e.g. due to the in-

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solvency of the debtor) towards the debtor itself. The regulation also means that the contracting party must allow the bankruptcy estate to continue the debtor's agreement. In general, the bankruptcy estate has a right to choose which agreements shall remain in force.

As an exception to the regulation the contracting party may terminate the agreement on the basis of a personal nature of an agreement, *i.e.* the fulfilment of the contractual obligation is essentially based on the personal contribution, knowledge and skills of the debtor. The agreement may also be terminated on the basis of *some other special reason*. For example, an established and close stationary contractual relationship, e.g. a franchising agreement, where the other party cannot be expected to continue the relationship with a bankruptcy estate, may fall into the scope of application of this regulation.

The field of activity also has significance when examining the other party's right of termination on the basis of some other special reason. It may be detrimental to the other party to continue an agreement with a bankruptcy estate particularly in the service branch. A party should have the right to terminate an agreement concerning branded products if continuing the agreement with a bankruptcy estate might have a negative effect on the value of the trademark and cause direct damage to the contracting party.

The government bill for the new Bankruptcy Act shall be given sometime during the spring 2003.