

Reorganisation Act

Chapter 1

General Provisions

§ 1. Purpose of Act

This Act regulates the reorganisation proceedings of enterprises the aim of which is to take account of the interests and protect the rights of undertakings, obligees and third parties in the course of reorganisation of the enterprises.

§ 2. Reorganisation of enterprise

The reorganisation of an enterprise means the application of a set of measures in order for an enterprise to overcome economic difficulties, to restore its liquidity, improve its profitability and ensure its sustainable management.

§ 3. Scope of application of Act

- (1) Reorganisation is applied only with regard to legal persons in private law.
- (2) For the purposes of this Act, legal persons in private law who are not undertakings within the meaning of the Commercial Code are also undertakings.
- (3) This Act does not apply to credit institutions, electronic money institutions, insurers, investment firms, management companies, investment funds founded as public limited companies, the registrar of the Estonian Central Register of Securities, operators of a securities settlement system and administrators of a payment system.

§ 4. Application of Code of Civil Procedure

The provisions of the Code of Civil Procedure concerning proceedings on petition apply to reorganisation proceedings unless otherwise provided by this Act.

§ 5. Jurisdiction

The provisions of the Bankruptcy Act regulating jurisdiction applicable to the filing of bankruptcy petitions apply to jurisdiction in reorganisation proceedings.

§ 6. Invalidity of agreement to terminate contract

An agreement according to which an obligee may terminate a contract upon commencement of reorganisation proceedings or approval of a reorganisation plan is void.

Chapter 2

Commencement of Reorganisation Proceedings

§ 7. Reorganisation application

- (1) An application for the reorganisation of an undertaking (hereinafter reorganisation petition) shall be submitted by the undertaking.
- (2) A reorganisation application of an undertaking shall set out an explanation of the undertaking regarding the reasons for the economic difficulties and shall substantiate that:
 - 1) the undertaking is likely to become insolvent in the future;
 - 2) the enterprise requires reorganisation;
 - 3) the sustainable management of the enterprise is likely after the reorganisation.

(3) A financial statement for the previous financial year, an overview of the financial situation, profit or loss and cash flows of the debtor and a list of debts as at the date of submission of a reorganisation application shall be appended to the reorganisation petition. The list of debts shall set out the name and details of the obligee and the amount of the principal claim and the collateral claim, and information concerning the assets of the undertaking.

(4) If an application for the commencement of bankruptcy proceedings and for the commencement of reorganisation proceedings are submitted with a court at the same time, the petitions shall be joined for one procedure and heard by the court with whom the first petition is submitted. In such case, the terms for the commencement of bankruptcy proceedings apply.

§ 8. Prerequisites for commencement of reorganisation proceedings

(1) A court shall commence reorganisation proceedings if the reorganisation application meets the requirements of the Code of Civil Procedure and this Act and if the undertaking has substantiated that:

- 1) the undertaking is likely to become insolvent in the future;
- 2) the enterprise requires reorganisation;
- 3) the sustainable management of the enterprise is likely after the reorganisation.

(2) Reorganisation proceedings shall not be commenced if:

- 1) bankruptcy proceedings have been brought against the undertaking;
- 2) a court ruling concerning the compulsory dissolution of the undertaking has been made or supplementary liquidation is carried out;
- 3) less than two years have passed from the termination of reorganisation proceedings regarding the undertaking.

§ 9. Oath of undertaking

(1) Upon commencement of reorganisation proceedings, a court may require an undertaking to swear in court that the information submitted to the court concerning the assets, debts and business or professional activities of the undertaking is correct to the undertaking's knowledge.

(2) Upon refusal to take the oath, a court may refuse to commence reorganisation proceedings.

(3) An undertaking shall take the following oath orally:

"I (name) swear by my honour and conscience that the information submitted to the court concerning property, debts and business activities is correct to my knowledge."

The undertaking shall sign the text of the oath.

§ 10. Reorganisation ruling

(1) A court shall commence reorganisation proceedings by a ruling (hereinafter reorganisation ruling) within seven days after the receipt of the reorganisation ruling.

(2) A reorganisation ruling shall, inter alia, set out the following:

- 1) information on the person who has been designated as a reorganisation adviser;
- 2) the term for acceptance of the reorganisation plan;
- 3) the term during which the reorganisation plan must be submitted to the court for approval;
- 4) the amount which the undertaking must pay into court to cover the remuneration of and expenses relating to the reorganisation adviser;
- 5) the term during which the undertaking must pay the amount specified in clause 4) of this subsection.

- (3) The term specified in clause (2) 3) of this section shall not exceed sixty days.
- (4) The applicant may file an appeal against the ruling on refusal to commence reorganisation proceedings.

§ 11. Consequences of commencement of reorganisation proceedings

- (1) The following are the consequences of commencement of reorganisation proceedings:
 - 1) a court suspends enforcement proceedings conducted regarding the assets of the undertaking until the reorganisation plan is approved or reorganisation proceedings are terminated, except in the case of enforcement proceedings conducted to fulfil a claim arising on the basis of an employment relationship or a claim for support;
 - 2) calculation of a fine for delay or a contractual penalty which increases in time on claims against the undertaking is suspended until approval of a reorganisation plan;
 - 3) a court hearing the matter may, on the basis of the application of an undertaking and the approval of the reorganisation adviser which is appended to the application, suspend court proceedings regarding a financial claim against the undertaking until the approval of the reorganisation plan or termination of the reorganisation proceedings, except in the case of a claim filed on the basis of an employment relationship or a claim for support regarding which decisions have not yet been made;
 - 4) on the basis of a bankruptcy petition of an obligee, a court suspends deciding on the commencement of bankruptcy proceedings until the approval of the reorganisation plan or termination of the reorganisation proceedings.
- (2) In the approval specified in clause (1) 3) of this section, a reorganisation adviser shall assess whether the suspension of court proceedings is necessary for the reorganisation of the enterprise.
- (3) A court which commences reorganisation proceedings shall, on the basis of the application of an undertaking and during the period from the commencement of reorganisation proceedings to the approval of the reorganisation plan, adjudicate the validity of measures for securing actions and of enforcement actions of a tax authority or of seizure of the bank account of a tax authority.

§ 12. Reorganisation notice

- (1) A reorganisation adviser shall promptly notify the obligees of commencement of reorganisation proceedings and the amount of the claims that they have against the undertaking according to the list of debts. For that purpose, the adviser shall communicate the reorganisation notice to the obligees.
- (2) A reorganisation notice shall set out at least the following information:
 - 1) information on the court which made the reorganisation ruling and the date of making the ruling;
 - 2) the name and details of the reorganisation adviser;
 - 3) the amount of the principal claim and the collateral claim of the obligee on the basis of the accounting of the undertaking as at the time of commencement of the reorganisation proceedings and whether the claim is secured by a pledge;
 - 4) the term during which the obligee must inform the reorganisation adviser of refusal to agree with a claim specified in clause 3) of this subsection, and the consequences of failure to give notification;
 - 5) the consequences of commencement of reorganisation proceedings arising from subsection 11 (1) of this Act;
 - 6) the term for acceptance of the reorganisation plan and the term for submission of the plan to the court for approval.

- (3) The term specified in clause (2) 4) of this section shall not be shorter than two weeks and longer than four weeks.
- (4) Upon delivery of a reorganisation notice by post, the reorganisation notice shall be sent to the address indicated in the list of debts. If the address is different from the registered address of an obligee, the reorganisation notice shall also be sent to the registered address.

§ 13. Refusal to agree with claim

- (1) If an obligee the transformation of whose claim is requested by a reorganisation plan refuses to agree with the information specified in clause 12 (2) 3) of this Act, the obligee shall submit within a term specified in clause 12 (2) 4) of this Act a written application which sets out the part of the claim specified in the reorganisation notice to which he or she refuses to agree and shall submit the evidence certifying these circumstances. Upon failure to submit an application by the due date, the obligee is deemed to have agreed to the amount of the claim.
- (2) If a reorganisation adviser does not agree to an allegation set out in the obligee's application specified in subsection (1) of this section, he or she shall communicate the application together with evidence promptly to a court and shall substantiate why he or she disagrees with the information set out in the application. The reorganisation adviser shall justify his or her allegations.
- (3) On the basis of the submitted allegations and evidence, the court shall decide the amount of the principal claim and the collateral claim of the obligee and the existence and scope of security within two weeks after receipt of the obligee's application from the reorganisation adviser.
- (4) A ruling which specifies the amount of the principal claim and the collateral claim of an obligee shall be delivered to the undertaking, reorganisation adviser and obligee.
- (5) An undertaking may file an appeal against a court ruling which specifies the amount of the principal claim and the collateral claim of the obligee.

§ 14. Obligation of undertaking to cooperate

- (1) An undertaking shall provide the court and the reorganisation adviser with information which they need in connection with the reorganisation proceedings.
- (2) An undertaking shall provide help to a reorganisation adviser in the performance of his or her duties.
- (3) If an undertaking fails to perform the obligations provided for in subsections (1) and (2) of this section, a court shall terminate reorganisation proceedings.

Chapter 3

Reorganisation Adviser

§ 15. Reorganisation adviser

- (1) A court shall appoint a reorganisation adviser upon commencement of reorganisation proceedings after having considered the opinion of the undertaking. Upon making the decision, the court is not required to take account of the opinion of the undertaking.
- (2) If the court has appointed several reorganisation advisers but has not determined the division of the duties, the reorganisation advisers shall perform the duties on the basis of mutual agreement and shall cooperate comprehensively upon conducting of reorganisation proceedings.

- (3) The following may act as reorganisation advisers:
- 1) sworn advocates, sworn advocates' senior clerks, trustees in bankruptcy and auditors;
 - 2) other natural persons who are honest and of moral character and who are proficient in oral and written Estonian, who possess good economic and the necessary legal knowledge and who have been awarded an officially recognised Master's level degree or have qualifications equal thereto within the meaning of subsection 28 (2²) of the Republic of Estonia Education Act or a foreign qualification equal thereto;
 - 3) investment firms and credit institutions.
- (4) If a person specified in clause (3) 3) of this section acts as a reorganisation adviser, he or she shall inform the court of the name and details of the natural person who performs the duties of the reorganisation adviser instead of him or her or organises the performance of these duties. Such natural person must meet the conditions provided for in clause (3) 2) of this section.
- (5) A reorganisation adviser or a person specified in subsection (4) of this section shall not be an employee of a court and shall be independent from the undertaking and the participants in reorganisation proceedings.
- (6) The consent of the person is required for his or her appointment as a reorganisation adviser.
- (7) The following shall not be reorganisation advisers or persons specified in subsection (4) of this section:
- 1) persons with a criminal record for an intentionally committed criminal offence;
 - 2) persons who, during the preceding ten years, have been removed from the position of judge, notary, prosecutor or bailiff or disbarred, or whose professional activities as an auditor have been terminated except termination of professional activities on the basis of the application of the auditor;
 - 3) persons who have been released from public service for a disciplinary offence during the preceding five years;
 - 4) persons who are bankrupt;
 - 5) persons with regard to whom a prohibition on business applies;
 - 6) persons who have been deprived of the right to be trustees in bankruptcy or operate as an undertaking by a court judgment.

§ 16. Duties of reorganisation adviser

- (1) A reorganisation adviser shall perform his or her duties with due diligence and honesty and shall take the interests of all the participants in the proceedings into account.
- (2) The duty of a reorganisation adviser is to inform the obligees and the court of the economic situation and reorganisation possibilities of the enterprise in an impartial and competent manner, to advise and assist the undertaking in the course of reorganisation proceedings and to verify the lawfulness of the claims of the obligees and the purposefulness of the transactions of the undertaking.
- (3) A reorganisation adviser shall:
 - 1) immediately obtain information about the economic situation and the planned reorganisation of the enterprise;
 - 2) analyse the solvency of the undertaking during reorganisation proceedings and, if insolvency has become evident, notify the court and the undertaking promptly thereof;
 - 3) assist the undertaking during preparation of the reorganisation plan and negotiations with the obligees and creditors;

- 4) within reasonable time after the receipt of the application, provide the court, the obligees and creditors with information on the economic situation of the enterprise and preparation of the reorganisation plan;
 - 5) provide information on the performance of his or her duties to the court;
 - 6) assess whether the claim to be transferred is certified and lawful, and inform the court of a claim which actually does not exist, the amount of which is unclear or the lawfulness or certification of which cannot be determined;
 - 7) if necessary, request from the undertaking and obligees evidence regarding the claim to be transformed;
 - 8) perform other duties arising from law or assigned by the court which are necessary for the conduct of reorganisation proceedings.
- (4) Violation of the obligation of a reorganisation adviser specified in clause (3) 2) of this section does not influence the liability of a member of the management board or of a body substituting for the management board for failure to submit a bankruptcy petition.
- (5) A reorganisation adviser is required to maintain the business secrets and the confidentiality of personal data and other confidential information which has become known to him or her in the performance of his or her duties.

§ 17. Liability of reorganisation adviser

- (1) A reorganisation adviser who has wrongfully caused damage to the undertaking by violation of his or her obligations shall compensate for the damage.
- (2) The limitation period for a claim for compensation for damage arising from violation of the obligations of a reorganisation adviser is three years as of the date when the victim became aware of the damage and the circumstances on which the liability of the reorganisation adviser is based, but not more than three years as of the release of the reorganisation adviser.

§ 18. Remuneration of reorganisation adviser and reimbursement of expenses

- (1) Upon commencement of reorganisation proceedings, a court shall designate a term during which an undertaking must pay the initial remuneration of the reorganisation adviser and the amount of money specified by the court into court in order to cover the initial expenses. If the undertaking fails to pay the amount, the court shall terminate reorganisation proceedings.
- (2) Upon release of a reorganisation adviser or approval of a reorganisation plan, the reorganisation adviser has the right to receive reimbursement of the necessary and justified expenses incurred upon performance of his or her obligations and remuneration for the performance of his or her duties.
- (3) The remuneration and the extent of reimbursement of the expenses of a reorganisation adviser shall be decided by the court upon release of the reorganisation adviser or approval of a reorganisation plan on the basis of the report on the activities and expenses of the reorganisation adviser which is submitted within the term specified in clause 10 (2) 3) of this Act. Upon approval of the reorganisation plan, the court may determine that the remuneration of the reorganisation adviser and the compensation for expenses are paid in instalments. Upon determination of the remuneration of the reorganisation adviser, the court may also hear the undertaking.
- (4) The procedure for calculating the remuneration of reorganisation advisers and the expenses subject to reimbursement and the limits of remuneration as a percentage shall be established by a regulation of the Minister of Justice.

(5) A decision specified in subsection (3) of this section is an enforcement document in respect of an undertaking to the extent of the amount which exceeds the amount paid into court specified in subsection (1) of this section.

(6) An undertaking or a reorganisation adviser may file an appeal against a court ruling specified in subsection (3) of this section.

§ 19. Release of reorganisation adviser

(1) A court shall release a reorganisation adviser:

- 1) at his or her request;
- 2) upon termination of reorganisation proceedings;
- 3) if the reorganisation adviser has failed to perform his or her duties or has performed them inadequately;
- 4) if it becomes evident that the reorganisation adviser does not have the right to operate as a reorganisation adviser.

(2) A reorganisation adviser shall notify the court of a request to be released in writing ten days in advance.

(3) On the bases specified in clauses (1) 3) and 4) of this section, a court shall release a reorganisation adviser on the initiative of the court or on the basis of an application of an undertaking.

(4) If a reorganisation adviser is released in the course of reorganisation proceedings, a court shall appoint a new reorganisation adviser.

(5) A reorganisation adviser may file an appeal against the ruling by which the court released the reorganisation adviser on the basis specified in clause (1) 3) or 4) of this section. An appeal may be filed against a circuit court ruling regarding an appeal against a ruling.

Chapter 4

Preparation, Acceptance and Approval of Reorganisation Plan

§ 20. Preparation of reorganisation plan and submission of plan for examination

(1) After the commencement of reorganisation proceedings, a reorganisation adviser shall prepare a reorganisation plan in the name of the undertaking.

(2) If a reorganisation plan is prepared after the commencement of reorganisation proceedings, the following shall be done during the term specified in clause 10 (2) 2) of this Act:

- 1) the possibilities to reorganise the enterprise and the sources of financing shall be ascertained;
- 2) negotiations with the obligees shall, if necessary, be conducted for the transformation of claims;
- 3) other acts necessary for the reorganisation of the enterprise shall be performed.

(3) At least two weeks before the expiry of the term specified in clause 12 (2) 6) of this Act, the draft reorganisation plan shall be delivered to the obligees for examination and for an opinion.

(4) The draft reorganisation plan shall be delivered to the obligees, taking account of the provisions regarding the delivery of reorganisation notices specified in § 12 of this Act.

§ 21. Reorganisation plan

(1) A reorganisation plan shall, inter alia, set out the following:

- 1) the description of the economic position of the enterprise as at the commencement of reorganisation proceedings and the analysis of the reasons which have brought about the need to reorganise the enterprise;
 - 2) the expected economic position of the enterprise after reorganisation;
 - 3) the term for compliance with the reorganisation plan;
 - 4) the description of the reorganisation measures to be implemented and the analysis of their purposefulness, including the description of and justification for the transformation of a claim of an obligee;
 - 5) the impact of the reorganisation plan on the employees of the enterprise.
- (2) A reorganisation plan may prescribe that the claims of obligees are satisfied by each group of obliges separately. Obligees with the same rights form one group. The bases and reasons for the formation of groups shall be set out in the reorganisation plan.

§ 22. Transformation of claim

- (1) Inter alia, transformation of a claim means:
- 1) extension of terms for the performance of obligations;
 - 2) fulfilment of a financial claim in instalments;
 - 3) reduction of the amount of debt;
 - 4) replacement of an obligation with the holding or shares of a legal person.
- (2) A reorganisation plan shall not transform a claim which has arisen on the basis of an employment contract.

§ 23. Notice concerning meeting on acceptance of reorganisation plan and invitation to submit positions regarding acceptance of reorganisation plan

- (1) The notice concerning a meeting on acceptance of a reorganisation plan or the invitation to submit a position regarding acceptance of a reorganisation plan in writing by the date of acceptance of the reorganisation plan shall be appended to the draft reorganisation plan specified in subsection 20 (3) of this Act.
- (2) The notice shall set out the place and time of the meeting or voting. Both the notice and the invitation shall explain to obligees the consequences of failure to attend the meeting or submit positions.
- (3) The notice concerning a meeting or an invitation shall be delivered to the obligees, taking account of the provisions regarding the delivery of reorganisation notices specified in § 12 of this Act.

§ 24. Acceptance of reorganisation plan

- (1) The obligees shall accept a reorganisation plan by way of voting at a meeting or without holding a meeting.
- (2) The number of the votes of each obligee is proportional to the amount of the obligee's principal claim which has been ascertained pursuant to this Act.
- (3) A reorganisation plan shall be accepted if at least one-half of all the obligees who hold at least two-thirds of all the votes vote in favour.
- (4) If obligees are divided into groups on the basis of a reorganisation plan, the plan shall be accepted if, in each group, at least one-half of all the obligees who belong into the same group and who hold at least two-thirds of all the votes represented in the group vote in favour of the reorganisation plan.
- (5) An obligee whose claim is not transformed by a reorganisation plan shall not participate in voting and the amount of his or her claim shall not be taken into account upon calculation of the proportions specified in subsections (3) and (4) of this section.

§ 25. Record of voting

- (1) A record of voting shall be prepared on the results of voting and it shall set out:
- 1) information on the undertaking;
 - 2) the name of the recording secretary;
 - 3) the list of persons to whom a notice or an invitation was sent according to § 23 of this Act;
 - 4) in the case of voting at a meeting, also the list of persons who participated at the meeting and the number of their votes;
 - 5) in the case of voting without holding a meeting, the list of persons who participated and the number of their votes;
 - 6) voting results, including the names of obligees who voted in favour of the decision;
 - 7) if voting is held in groups, voting results by each group separately;
 - 8) at the request of an obligee who maintains a dissenting opinion with regard to acceptance of the reorganisation plan, the content of the obligee's dissenting opinion;
 - 9) other circumstances of importance with regard to the vote.
- (2) If voting is held without holding a meeting or an obligee has submitted his or her position in writing by the time of the meeting, the written position of the obligee shall be an integral part of the voting record.

§ 26. Obligee's application for refusal to approve reorganisation plan

An obligee may, within the term specified in clause 10 (2) 3) of this Act, submit a reasoned application with a court in which he or she requests that approval of the reorganisation plan be refused if:

- 1) he or she has voted against the reorganisation plan;
- 2) his or her rights have been materially violated in the course of preparation of the reorganisation plan or acceptance of the reorganisation plan or
- 3) on the basis of the reorganisation plan, he or she is treated substantially less favourably as compared to other obligees or as compared to other obligees belonging to the same group.

§ 27. Opinion of reorganisation adviser

- (1) A reorganisation adviser shall submit a reorganisation plan and a written opinion on the reorganisation plan to a court at the same time.
- (2) A reorganisation adviser shall, inter alia, provide a reasoned opinion whether:
- 1) improvement of the economic situation of the enterprise and restoration of its profitability is possible on the basis of the reorganisation plan;
 - 2) the claim which is transformed by the reorganisation plan is certified and lawful;
 - 3) it is an important undertaking and, inter alia, an important employer.
- (3) The reorganisation adviser shall, together with an opinion, also submit a report on activities and expenses to the court.

§ 28. Approval reorganisation plan which has been accepted

- (1) If the obligees have accepted a reorganisation plan, it shall be submitted to the court for approval within the term specified in clause 10 (2) 3) of this Act. The voting record and the annexes thereto shall be appended to the reorganisation plan.
- (2) A court shall approve an accepted reorganisation plan within thirty days after the receipt thereof. Upon approval, the court shall verify whether:
- 1) the reorganisation notice specified in § 12 of this Act has been communicated to the obligee and whether it complies with the requirements of this Act;

- 2) the draft reorganisation plan has been communicated to the obligee for examination according to subsection 20 (3);
 - 3) the notice concerning participation in the meeting on the acceptance of the reorganisation plan or an invitation to submit a position specified in subsection 23 (1) of this Act has been communicated to the obligee;
 - 4) the reorganisation plan complies with the requirements provided for in § 21 of the this Act;
 - 5) the requirements prescribed in § 24 of this Act have been complied with upon acceptance of the reorganisation plan, in particular whether the reorganisation plan has received the required number of votes and the rights of the obligee have not been violated upon voting.
- (3) Upon approval of a reorganisation plan, a court shall give an opinion regarding the obligee's application for refusal to approve the reorganisation plan.
 - (4) In order to decide approval of a reorganisation plan, a court may hold a session.
 - (5) A court shall refuse to approve a reorganisation plan and shall terminate reorganisation proceedings if, upon verification in accordance with subsection (2) of this section, on the basis of the application submitted pursuant to § 26 of this Act, the opinion of the reorganisation adviser or other circumstances, it becomes evident that:
 - 1) violation of a requirement arising from this Act has significantly influenced the voting results;
 - 2) on the basis of the reorganisation plan, an obligee is treated substantially less favourably as compared to other obligees;
 - 3) reorganisation of the enterprise is unlikely or
 - 4) other circumstances which justify refusal to approve the reorganisation plan exist.

§ 29. Application for approval of reorganisation plan which has not been accepted

- (1) If obligees have refused to accept a reorganisation plan, the undertaking may submit an application with a court for the approval of the plan if:
 - 1) less than one-half of the obligees participate in voting held for the acceptance of the reorganisation plan or, in some groups, less than one-half of the obligees belonging to the group participate in voting;
 - 2) at least one-half of all the obligees or, in a group, at least one-half of the obligees belonging to the group vote in favour of the reorganisation plan.
- (2) An application shall be submitted within the term specified in clause 10 (2) 3) of this Act.
- (3) The reorganisation plan, the voting record and the annexes thereto, the opinion of the reorganisation adviser and evidence regarding delivery of the draft reorganisation plan and a notice or an invitation specified in § 23 of this Act shall be appended to the application.

§ 30. Satisfaction of application for approval of reorganisation plan which has not been accepted

- (1) A court shall satisfy an application specified in § 29 of this Act by a ruling to that effect within fourteen days after the receipt of the application:
 - 1) if the reorganisation notice has been delivered to the obligee whose claim is to be transformed by the reorganisation plan;
 - 2) if the notice or invitation specified in § 23 of this Act has been delivered to the obligee;

- 3) if the reorganisation plan complies with the requirements provided for in § 21 of this Act;
- 4) if, according to the reorganisation adviser, the reorganisation of the enterprise is likely;
- 5) in the case of an important undertaking who is an important employer;
- 6) if the requirements set out in § 29 of this Act are complied with.
- (2) A ruling shall, inter alia, set out the following:
 - 1) information concerning at least two experts assessing the reorganisation plan;
 - 2) the amount which the undertaking must pay into court to cover the remuneration of and expenses relating to the experts;
 - 3) the term during which the undertaking must pay the amount specified in clause 2) of this subsection;
 - 4) the term during which the court decides approval of the reorganisation plan.
- (3) The term specified in clause (2) 4) of this section shall not be longer than sixty days from the date of making the ruling.
- (4) If an undertaking fails to pay the amount of money specified by the court for the remuneration of and expenses relating to experts into court, the court shall deny the application and reorganisation proceedings shall be terminated.
- (5) A ruling shall give an opinion of the court regarding the obligee's application specified in § 29 of this Act for refusal to approve the reorganisation plan.
- (6) If a court refuses to accept an application, reorganisation proceedings shall be terminated.
- (7) Undertakings and obligees may file appeals against the ruling by which the court accepted or refused to accept the application. An appeal may be filed against a circuit court ruling regarding an appeal against a ruling.

§ 31. Expert

- (1) A court shall appoint at least two experts who provide an opinion on the reorganisation plan in a ruling by which the court accepts an application of an undertaking for approval of a reorganisation plan which the obligees have refused to accept.
- (2) The following may act as experts:
 - 1) auditors and trustees in bankruptcy who are competent and with extensive experience in economics;
 - 2) other natural persons who are honest and of moral character and who are proficient in oral and written Estonian, who possess good economic and the necessary legal knowledge and who have been awarded an officially recognised Master's level degree or have qualifications equal thereto within the meaning of subsection 28 (2²) of the Republic of Estonia Education Act or a foreign qualification equal thereto;
 - 3) investment firms and credit institutions.
- (3) If a person specified in clause (2) 3) of this section acts as a reorganisation adviser, he or she shall inform the court of the name and details of the natural person who performs the duties of the reorganisation adviser instead of him or her or organises the performance of these duties. Such natural person must meet the conditions provided for in clause (2) 2) of this section.
- (4) An expert or a person performing the duties of an expert according to subsection (3) of this section shall not be an employee of a court and shall be independent from the undertaking and the participants in reorganisation proceedings.
- (5) The provisions of the Code of Civil Procedure concerning experts apply to experts, taking account of the specifications arising from this Act.

(6) The consent of the person is required for his or her appointment as an expert.

§ 32. Rights and obligations of experts

(1) Within a term provided by the court, an expert shall prepare a written, impartial and professional analysis of the reorganisation plan, which sets out a reasoned opinion on the need to reorganise the enterprise, the purposefulness of the transformation of claims and the purposefulness of other reorganisation measures, the likelihood of success upon reorganisation of the enterprise, whether the interests and rights of obligees have been taken into account and on other relevant facts as regards reorganisation of the enterprise, including the importance of the enterprise as an employer.

(2) An expert shall perform his or her duties independently and professionally and only on the basis of the instructions of a court.

(3) An expert has the right to receive information necessary for the performance of his or her duties from a court, an undertaking, a reorganisation adviser and other persons. The expert may use the information obtained upon performance of obligations only in order to perform a duty.

(4) An expert is required to maintain the business secrets and the confidentiality of personal data and other confidential information which has become known to him or her in the performance of his or her duties.

§ 33. Remuneration of expert and reimbursement of expenses

(1) Upon release of an expert, the expert has the right to receive reimbursement of the necessary and justified expenses incurred upon performance of his or her obligations and remuneration for the performance of his or her duties.

(2) The remuneration and the extent of reimbursement of the expenses of an expert shall be decided by the court upon release of the expert on the basis of the report on the activities and expenses of the expert which is submitted within the term specified by the court. Upon determination of the remuneration of the expert, the court may also hear the undertaking.

(3) The procedure for calculating the remuneration of experts and the expenses subject to reimbursement and the limits of remuneration as a percentage shall be established by a regulation of the Minister of Justice.

(4) A ruling specified in subsection (2) of this section is an enforcement document in respect of an undertaking to the extent of the amount which exceeds the amount paid into court specified in clause 30 (2) 2) of this Act.

(5) An undertaking or an expert may file an appeal against a court ruling in order to contest a court ruling on the amount of the remuneration of the expert and the extent of reimbursement of his or her expenses.

§ 34. Release of expert

(1) A court shall release an expert:

1) at his or her request;

2) upon termination of reorganisation proceedings or approval of the reorganisation plan;

3) if the expert has failed to perform his or her duties or has performed them inadequately;

4) if it becomes evident that the expert does not have the right to operate as an expert.

- (2) An expert shall notify the court of a request to be released in writing ten days in advance.
- (3) If an expert is released without termination of the reorganisation proceedings or before the approval of the reorganisation plan, a court shall appoint a new expert.
- (4) An expert may file an appeal against the ruling by which the court released the expert on the basis specified in clause (1) 3) of this section. An appeal may be filed against a circuit court ruling regarding an appeal against a ruling.

§ 35. Liability of expert

- (1) An expert shall be liable for the damage caused wrongfully.
- (2) The limitation period for a claim for compensation for damage arising from violation of the obligations of an expert is three years as of the date when the victim became aware of the damage and the circumstances on which the liability of the expert is based, but not more than three years as of the release of the expert.

§ 36. Approval of reorganisation plan which has not been accepted

A court shall approve a reorganisation plan which has not been accepted by obligees:

- 1) if the requirements arising from this Act have not been violated;
- 2) if, according to the experts, the reorganisation of the enterprise is likely to succeed;
- 3) on the basis of the reorganisation plan, no obligee is treated substantially less favourably as compared to other obligees or as compared to other obligees belonging to the same group;
- 4) in the case of an important undertaking who is an important employer.

§ 37. Ruling to approve reorganisation plan

- (1) A ruling by which a reorganisation plan is approved or the approval of a reorganisation plan is refused shall be delivered to an undertaking and all obligees whose rights are affected by the reorganisation plan. The ruling by which the reorganisation plan is approved shall be enforced immediately.
- (2) A court shall terminate reorganisation proceedings by a ruling refusing to approve a reorganisation plan.
- (3) The undertaking and the obligees may file appeals against a ruling by which the reorganisation plan has been approved or the approval of the reorganisation plan has been refused.

Chapter 5

Termination of Reorganisation Proceedings

§ 38. Bases for termination of reorganisation proceedings

- (1) Reorganisation proceedings shall terminate upon premature termination of the proceedings, revocation of the reorganisation plan, implementation of the reorganisation plan before the due date or upon expiry of the term for implementation of the reorganisation plan which is set out in the reorganisation plan.
- (2) Upon implementation of a reorganisation plan before the due date, reorganisation proceedings are terminated if the undertaking has performed all the obligations assumed in the reorganisation plan before the expiry of the term for implementation of the reorganisation plan.

§ 39. Premature termination of reorganisation proceedings

- (1) Reorganisation proceedings may be terminated prematurely only before the approval of the reorganisation plan.
- (2) A court shall terminate reorganisation proceedings prematurely:
 - 1) upon failure to perform the obligation of an undertaking to cooperate – according to subsection 14 (3) of this Act;
 - 2) if the undertaking fails to pay the amount of money specified by the court for the remuneration of and expenses relating to a reorganisation adviser or an expert into court – according to subsection 18 (1) or 30 (4) of this Act;
 - 3) due to refusal to approve the reorganisation plan – according to subsection 28 (5) of this Act;
 - 4) upon refusal to satisfy the application for approval of a reorganisation plan which has not been accepted – according to subsection 30 (6) of this Act;
 - 5) upon refusal to approve the reorganisation plan which has not been accepted – according to subsection 37 (2) of this Act;
 - 6) on the basis of an application of an undertaking - according to subsection 40 (1) of this Act;
 - 7) where the bases for the commencement of reorganisation proceedings cease to exist – according to subsection 40 (2) of this Act;
 - 8) upon squandering of the property of an undertaking or damaging the interests of obligees – according to § 41 of this Act;
 - 9) due to the failure to submit the reorganisation plan by the due date – according to § 42 of this Act;
 - 10) due to the ambiguity of a claim – according to § 43 of this Act.

§ 40. Termination of reorganisation proceedings on basis of application of undertaking and where bases cease to exist

- (1) An undertaking has the right to submit an application for the termination of reorganisation proceedings with a court.
- (2) A court shall terminate reorganisation proceedings if it becomes evident that the undertaking is permanently insolvent or other bases for the commencement of reorganisation proceedings cease to exist.

§ 41. Termination of reorganisation proceedings upon squandering of property or damaging interests of obligees

- (1) A court shall terminate reorganisation proceedings if it becomes evident that the undertaking squanders the property thereof or performs a transaction which damages the interests of obligees.
- (2) Upon termination of reorganisation proceedings, a court shall ask an undertaking for an explanation concerning the activities of the undertaking.
- (3) A court may ask a reorganisation adviser for an opinion on the activities of the undertaking.

§ 42. Termination of reorganisation proceedings due to failure to submit reorganisation plan by due date

A court shall terminate reorganisation proceedings if an undertaking fails to submit a reorganisation plan to a court for approval within the term specified in clause 10 (2) 3) of this Act.

§ 43. Termination of reorganisation proceedings due to ambiguity of claim

- (1) A court shall terminate reorganisation proceedings if it becomes evident that a claim against an undertaking the transformation of which is requested by a reorganisation plan actually does not exist, the amount of the claim is unclear or the reorganisation adviser cannot determine the lawfulness or certification of the claim.
- (2) An undertaking may file an appeal against a court ruling by which reorganisation proceedings are terminated.

§ 44. Consequences of premature termination of reorganisation proceedings

- (1) If a court terminates reorganisation proceedings prematurely, all consequences of commencement of reorganisation proceedings retroactively cease to exist.
- (2) Upon premature termination of reorganisation proceedings, the reorganisation adviser shall inform the bailiff performing the enforcement proceedings suspended pursuant to clause 11 (1) 1) of this Act and the judge performing the enforcement proceedings suspended pursuant to clause (1) 3) of the same section of termination of the proceedings.

Chapter 6

Validity and Revocation of Reorganisation Plan and Bankruptcy Proceedings Following Reorganisation Proceedings

§ 45. General consequences of approval of reorganisation plan

- (1) Upon approval of a reorganisation plan, the legal consequences prescribed in the reorganisation plan apply to an undertaking and a person whose rights are affected by the reorganisation plan.
- (2) Subsection (1) of this section does not apply if the circumstances specified in § 46 of this Act exist.
- (3) The declaration of intent expressed in a reorganisation plan is deemed to be valid if the declaration is submitted in the form prescribed by law or an agreement.
- (4) A reorganisation plan does not release a person who bears liability for an obligation solidarily with the undertaking from the performance of his or her obligation. If the person who bears liability for an obligation solidarily with the undertaking performs the obligation, the person has the right of recourse against the undertaking only to the extent to which the undertaking would be liable for performance of the obligation according to the reorganisation plan.
- (5) A reorganisation plan approved by a court is an enforcement document in respect of a claim transformed by the reorganisation plan. If the reorganisation plan prescribes extension of the term for the performance of obligations, a claim shall not be invoked in the reorganisation plan within the specified term.
- (6) Subsection (4) of this section also applies to a person who, by a reorganisation plan, undertakes to ensure the obligations of the undertaking for the benefit of the obligees.

§ 46. Preclusion of validity of reorganisation plan

- (1) A reorganisation plan does not apply to an obligee to whom a reorganisation notice or a draft reorganisation plan has not been delivered for examination and for an opinion or who, for any other reason, is not aware of the conduct of reorganisation proceedings.
- (2) An undertaking shall prove the fact that a reorganisation notice or a draft reorganisation plan has been delivered to an obligee for examination and for an opinion

or that the obligee is, in any other manner, aware of the conduct of reorganisation proceedings.

§ 47. Actions and enforcement procedure during term of validity of reorganisation plan

(1) During the term of validity of a reorganisation plan, statements of claim shall not be filed on the basis of the claims to which the reorganisation plan applies.

(2) A bailiff shall continue actions and enforcement proceedings in respect of claims regarding which the reorganisation plan does not apply and which were suspended as a result of commencement of reorganisation proceedings.

§ 48. Fines for delay and contractual penalties during validity of reorganisation plan

After the approval of a reorganisation plan, fines for delay and contractual penalties on claims which are not transformed by a reorganisation plan shall be calculated according to the original legal relationship.

§ 49. Bankruptcy petitions during term of validity of reorganisation plan

(1) During the term of validity of a reorganisation plan, bankruptcy petitions shall not be filed on the basis of the claims to which the reorganisation claim applies or which existed before the approval of the reorganisation plan.

(2) During the term of validity of a reorganisation plan, a petition for the commencement of bankruptcy proceedings shall be heard in the course of reorganisation proceedings.

(3) A court shall involve a reorganisation adviser exercising supervision over the implementation of the reorganisation plan in the hearing of the bankruptcy petition.

(4) An interim trustee in bankruptcy shall not endanger, by his or her activities, implementation of the reorganisation plan and shall cooperate in every way with the reorganisation adviser exercising supervision.

(5) A reorganisation adviser exercising supervision who has the right to act as a trustee in bankruptcy may also be appointed as an interim trustee in bankruptcy.

(6) If a court establishes that, taking account of the provisions of the reorganisation plan, there is still bases to declare the undertaking bankrupt, the court shall revoke the reorganisation plan and terminate reorganisation proceedings.

(7) The undertaking and the petitioning obligee may file appeals against the court ruling on adjudication of the bankruptcy petition.

§ 50. Supervision over compliance with reorganisation plan

(1) A reorganisation adviser shall exercise supervision over implementation of the reorganisation plan.

(2) A reorganisation adviser shall, at the end of every six months, submit to the obligees and the court a report which describes the economic position of the enterprise, implementation of the reorganisation plan and other relevant facts which the obligees may have interest in. The court may impose supplementary obligations on a reorganisation adviser upon exercise of supervision.

(3) A reorganisation adviser shall inform the undertaking immediately of the facts indicating the insolvency of the undertaking and, in the case of permanent insolvency, the adviser shall also inform the obligees and the court which approved the reorganisation plan of the insolvency.

(4) The obligation of the reorganisation adviser specified in subsection (3) of this section does not influence the liability of a member of the management board or of a body substituting for the management board for failure to submit a bankruptcy petition.

(5) An undertaking shall provide information which the reorganisation adviser requires for the exercise of supervision to the adviser and provide assistance to the reorganisation adviser upon performance of the supervision obligation.

(6) Upon exercise of supervision, §§ 17, 18 and 19 of this Act apply to a reorganisation adviser. The amount of remuneration to be paid to a reorganisation adviser for the exercise of supervision shall be determined by a court upon approval of the reorganisation plan.

§ 51. Revocation of reorganisation plan

(1) A court shall revoke a reorganisation plan:

- 1) if the undertaking has been convicted of a bankruptcy offence or a criminal offence relating to enforcement procedure after the approval of the reorganisation plan;
- 2) if the undertaking fails to perform the obligations arising from the reorganisation plan to a material extent;
- 3) if, upon expiry of at least one-half of the term of validity of the reorganisation plan, it is evident that the undertaking is unable to perform the obligations assumed in the reorganisation plan;
- 4) on the basis of an application of the reorganisation adviser if no remuneration is paid for the exercise of supervision;
- 5) on the basis of an application of the reorganisation adviser if the undertaking fails to provide assistance to the reorganisation adviser upon performance of the supervision obligation or refuses to provide information to the reorganisation adviser which he or she requires for the exercise of supervision;
- 6) on the basis of an application of the undertaking;
- 7) if the undertaking is declared bankrupt.

(2) Upon revocation of a reorganisation plan, the consequences of commencement of reorganisation proceedings retroactively cease to exist. The right of claim of an obligee whose claim is transformed by a reorganisation plan shall be restored against an undertaking in the initial amount. In such case, all that the obligee has already received in the course of implementation of the reorganisation plan shall be taken into account.

(3) Upon revocation of a reorganisation plan, the reorganisation adviser shall inform the bailiff performing the enforcement proceedings suspended pursuant to clause 11 (1) 1) of this Act and the judge performing the enforcement proceedings suspended pursuant to clause (1) 3) of the same section of termination of the proceedings.

§ 52. Declaration of bankruptcy proceedings

If a reorganisation plan is revoked and, within the following three months, the undertaking is declared bankrupt, the claims of reorganisation advisers, experts and reorganisation advisers exercising supervision regarding their remuneration and reimbursement of their expenses are deemed to be defended.

§ 53. Consequences of expiry of term for implementation of reorganisation plan

- (1) Upon expiry of the term for the implementation of a reorganisation plan, reorganisation proceedings shall be terminated.
- (2) After the expiry of the term for the implementation of a reorganisation plan, an obligee may invoke a claim transformed by the reorganisation plan only to the extent which is agreed in the reorganisation plan and has not been fulfilled according to the reorganisation plan.
- (3) Upon expiry of the term for the implementation of a reorganisation plan, the obligation of the reorganisation adviser to exercise supervision over implementation of

the reorganisation plan also terminates. If the term for the implementation of the reorganisation plan expires, the report specified in subsection 50 (2) of this Act shall be submitted for the last time.

Chapter 7

Implementing Provisions

§ 54. Amendment of Law of Succession Act

The Law of Succession Act (RT I 2008, 7, 52) is amended as follows:

1) subsection 140 (3) is amended and worded as follows:

”(3) In calling proceedings, claims which are secured by a possessory pledge or a pledge entered into a public register and claims specified in §§ 131–133 of this Act need not be given notification of.”;

2) subsection 142 (6) is amended and worded as follows:

”(6) If an estate is insufficient for the satisfaction of all the claims specified in clauses (1) 1) and 2) of this section and the successor objects to the satisfaction of the claims out of his or her property, the administrator of the estate or the successor is required to promptly submit an application for the declaration of bankruptcy of the estate.”;

3) section 153 is repealed.