

NB: Unofficial translation

Act on the Adjustment of the Debts of a Private Individual

(57/1993)

Chapter 1 — General provisions

Section 1 — Objectives of the Act and its relationship to other legislation

For the purpose of remedying the financial situation of an insolvent private individual (*debtor*), a court may issue an order on the adjustment of the debts of the said individual (*debt adjustment*) and confirm a payment schedule which corresponds to the ability of the debtor to pay, as provided in this Act.

Chapter 10 contains provisions on the adjustment of guarantee or security liabilities without recourse to debt adjustment.

The provisions in this Act apply without prejudice to the provisions in other Acts on the right of a creditor to a payment, on debt collection and on measures to secure the payment of a debt.

Section 2 — Scope of application

Debt adjustment and the adjustment of guarantee or security liabilities may be granted to a person resident in Finland.

Chapter 7 contains provisions on the application of this Act to a debtor pursuing a business.

Section 3 — Definitions

In this Act:

- 1) *start of debt adjustment* means the time when the court has issued the order on the commencement of debt adjustment;
- 2) *insolvency* means the other than temporary inability of the debtor to pay his debts as they become due;
- 3) *adjustable debt* means all debts of the debtor which have existed before the start of debt adjustment, including security liabilities and debts which are conditional, contentious or otherwise indefinite as to their amount or basis, as well as the interest on such debts accruing between the start of debt adjustment and the confirmation of the payment schedule, and the collection and enforcement expenses on such debts, where ordered payable by the debtor;
- 4) *collateral* means retention of ownership and other security rights based on ownership, a lien over movable or real property, the right of repossession and a privileged right of retention of an object;
- 5) *secured debt* means adjustable debt where the creditor has effective collateral against third parties, the said collateral being the property of or in the possession of the debtor, in so far as the collateral would have been sufficient, at the start of debt adjustment, to cover the debt after liquidation and the satisfaction of more privileged creditors;
- 6) *secure creditor* means the creditor of a secured debt;
- 7) *ordinary debt* means debt other than secured debt;
- 8) *owner-occupied home of the debtor* means the residence, house or apartment, of the debtor and/or his family, where (i) the debtor owns, outright or jointly, the shares entitling to the use of the apartment, (ii) the possession of the apartment is based on a guaranteed rental, or (iii) the debtor owns, outright or jointly, the real estate, or the building on rented real estate, where the debtor and/or his family reside;
- 9) *privileged maintenance debt* means unpaid maintenance to the child of the debtor which has become due within one year before the start of debt adjustment, as well as the debt owing to the child on the basis of chapter 5, section 4 of the Damages Act (412/1974) which has become due during the same period; this definition excludes debt based on the collection of reimbursements to the municipality for public child support paid to the child.

If the owner-occupied home of the debtor serves, at the start of debt adjustment, as collateral for the debt of a third person, the provisions on the secured debt of the debtor apply correspondingly to the liability involved.

Chapter 2 — General provisions on debt adjustment

Section 4 — *Assessment of ability to pay*

The following shall be taken into account when assessing the ability of the debtor to pay:

- 1) the funds from the liquidation of the assets of the debtor;
- 2) the income of the debtor and his earning potential, in view of his age, working capacity and other circumstances;
- 3) the necessary living expenses of the debtor;
- 4) the maintenance liability of the debtor; and
- 5) the other circumstances affecting the financial status of the debtor.

The Ministry of Justice may issue more detailed orders on the bases for the assessment of ability to pay. (113/1995)

Section 5 — *Use of income and assets to cover debts*

In debt adjustment, all of the income of the debtor exceeding his necessary living expenses and maintenance liability shall be used to cover his debts (*available funds*).

The assets which belong to the basic necessities of the debtor may be liquidated only in cases referred to in sections 15, 29 or 33. The following assets belong to the basic necessities of the debtor: the owner-occupied home of the debtor, the furniture therein in so far as reasonable, the personal effects of the debtor and his family in so far as reasonably necessary, and the working implements and comparable items needed by the debtor to maintain his livelihood. If the debtor has other assets, they shall always be used to cover his debts.

The debtor shall relinquish the assets which do not belong to his basic necessities and which have been obtained on the basis of a part-payment or hire-purchase scheme.

Section 6 — *Debtor's duty of disclosure*

The debtor is duty bound to provide the court, the creditors and, if appointed, the administrator with all necessary information on matters relevant to debt adjustment.

Section 7 — *Debtor's duty of co-operation*

After petitioning for debt adjustment and before the confirmation of the payment schedule, the debtor may use his funds only for his necessary living expenses and the expenses which he is entitled to cover under section 12(2). The debtor shall not take out new debt, unless this is necessary to maintain his livelihood or unless allowed under section 25(2). Before the start of debt adjustment, this section does not prevent the debtor from using his funds also for the expenses for which he is liable.

The debtor shall contribute to the appropriate carrying out of the debt adjustment and to the administrator performing his task. After petitioning for debt adjustment, the debtor shall strive to maintain his ability to pay and to undertake such measures to improve that ability as can reasonably be expected of him.

(63/1997)

During the course of the payment schedule, the debtor shall notify the debtors or their representative of any essential improvements in his ability to pay or in his other circumstances relevant to the debt adjustment.

The notification shall take place within one month of the change.

Section 8 — *Petitioner*

A debt adjustment case becomes pending upon the petition of the debtor.

Spouses, co-debtors with joint liability and a debtor and a guarantor may petition for joint debt adjustment.

Chapter 8 contains provisions on the petition for debt adjustment.

Chapter 3 — Commencement of debt adjustment

Section 9 — *Prerequisites*

An insolvent debtor may be granted debt adjustment, if

- 1) the main reason for the insolvency is an essential decline in the ability of the debtor to pay, owing to

illness, disability to work, unemployment or other change of circumstances not primarily the fault of the debtor; or

2) there otherwise is a good reason for debt adjustment in view of the proportion of the debts and other liabilities of the debtor to his ability to pay,

and the debtor cannot reasonably improve his ability to pay so as to be able to service his debts.

Section 9 a — *Temporary impediment to debt adjustment* (63/1997)

Debt adjustment shall not be granted, if the debtor has no available funds for a reason that is deemed temporary or if he for such a reason cannot cover more than an insignificant part of his debts with his available funds. When assessing the temporary nature of the reason and the amount of the available funds of the debtor, the earning potential of the debtor shall be taken specifically into account.

Section 10 — *General impediments to debt adjustment*

Unless there are specific reasons for the contrary, debt adjustment shall not be granted, if:

1) the debtor is liable for payment because of an offence, and the granting of debt adjustment cannot be justified taking into account the amount of the liability, the nature of the offence, the position of injured parties and the other pertinent circumstances; (63/1997)

2) the debtor is under suspicion in a criminal investigation or accused of or convicted for an offence, and debt adjustment could be denied on the basis of subparagraph (1) if the debtor were rendered liable for payment because of the offence; (63/1997)

3) there are significant liabilities arising from the pursuit of a business, where the creditors have been dealt with in a grossly improper manner, where essential statutory obligations have been neglected or where the objectives have been primarily speculative; (63/1997)

4) the debtor has, with a view on known or foreseen financial difficulties, improperly weakened his financial status, favoured one creditor over another or otherwise made financial arrangements to the detriment of the creditors, or there is reason to believe that the debtor has done so; (63/1997)

5) in enforcement proceedings, the debtor has avoided enforcement, concealed assets or income, or provided false or misleading information on the same;

6) the debtor has intentionally provided a creditor with false or misleading information on his financial status, said information having had an essential effect on the extension of credit, and the conduct of the debtor is especially reproachable in view of the amount of the credit and the other pertinent circumstances;

7) the bases and origins of the debts, the manner in which the debtor deals with his finances or other circumstances indicate a likelihood of the debtor having incurred debt deliberately, with a view to the debt adjustment, or obviously recklessly, taking into account the level of restraint which could reasonably have been expected from a person in his position under the prevailing circumstances;

8) the debtor has, for purposes of the debt adjustment, provided false or misleading information on his financial status, neglected to determine the possibilities for a negotiated settlement, failed to comply with the duty of disclosure provided in section 6 or the duty of co-operation provided in section 7, violated the stay on payment and security provided in section 12 or otherwise hampered the debt adjustment by action or omission;

9) there is reason to believe that the debtor would not comply with the payment schedule; or

10) the debtor has already earlier been granted debt adjustment.

Section 11 — *Duty to determine the possibility for a negotiated settlement*

Before petitioning for debt adjustment, the debtor shall determine whether there is a possibility to a negotiated settlement with the creditors for the remedying of the financial situation of the debtor.

Section 11 a — *Debt history* (63/1997)

When petitioning for debt adjustment, the debtor shall provide an account on the reasons for the incurring of debt, on the income and assets which were to be used to repay the debt and on the circumstances resulting in his insolvency.

Chapter 4 — Legal effects of the petition for and start of debt adjustment

Section 12 — *Stay on payment and security*

After the start of debt adjustment, the debtor shall not pay an adjustable debt nor give collateral for its payment.

The stay on payment provided above in paragraph (1) does not apply to privileged maintenance debt. Also, it does not apply to the service of secured debt in accordance with the terms of the debt. Where the assets of the debtor have been liquidated, the funds obtained may be used to cover the liquidation costs and the debt for which the liquidated assets have served as collateral. The court or the administrator may order that the stay on payment is not to apply to the payment of minor debts which do not exceed a given amount, where this is expedient in view of the debt adjustment. (113/1995)

A payment made in violation of the stay provided in paragraph (1) shall be returned. The provisions in section 17(2) and (3) of the Act on the Restructuring of Companies (47/1993) apply (i) to the return of payment for cheques and bills of exchange, (ii) to the return of payment where the creditor has as a result relinquished collateral given by a third party, (iii) to the raising of a lien or giving of other collateral in violation of the stay and (iv) to a mortgage application filed after the start of the debt adjustment.

Section 13 — *Stay on collection and precautionary measures*

After the start of debt adjustment, no measures shall be directed at the debtor to collect a debt subject to the stay on payment or to secure its payment. Measures already begun shall be discontinued. In addition, the penalties of late payment shall not apply to the debtor. The stay on collection provided herein includes, but is not limited to, the following:

- 1) the use of a right of liquidation or repossession based on collateral and the other use of collateral in order to receive payment;
- 2) calling the debt and termination or rescission of the underlying contract due to late payment, except for the termination or rescission of an overdraft facility in order to prevent the incurring of new debt;
- 3) set-off between the debtor's receivables from and debts to the creditor, except for the set-off referred to in the Tax Collection Act (611/1978).

A measure in violation of the stay shall be without effect. If assets which serve as collateral have been transferred in violation of the stay, the transferee may be entitled to protection of title on the basis of good faith, as separately provided elsewhere. The stay shall not prevent the creditor from bringing an action or initiating other proceedings so as to retain his right or to obtain a basis for enforcement. In addition, the stay shall not prevent the creditor from seeking an order for precautionary measures and the enforcement of such an order.

Precautionary measures relating to the assets of the debtor and ordered before the start of debt adjustment shall remain in force, unless otherwise ordered by the court. The creditor who sought the precautionary measures shall be reserved an opportunity to be heard before their cancellation or restriction.

Section 14 — *Right of the creditor to recover the debt from collateral given by a third party* (63/1997)

The start of debt adjustment shall not prevent a creditor from recovering the debt from a guarantor or from the value of collateral given by a third party; nor does it prevent the creditor from calling or otherwise terminating the debt as regards the guarantor or the person who gave the collateral. The debt need not be called from the debtor before it is recovered from the guarantor.

Section 15 — *Exceptions to the stay on collection*

The court may, on the request of a secured creditor, grant the creditor permission to use the rights referred to in section 13(1)(1), if the assets serving as collateral do not belong to the basic necessities of the debtor or if it is evident that the debtor will not be able to cover the secured proportion of the creditor, as referred to in section 29. The decision shall apply regardless of appeal, unless otherwise ordered by the court. The liquidation of the owner-occupied home of the debtor may be postponed on the conditions referred to in section 35, notwithstanding the request of a secured creditor referred to above.

Section 16 — *Accrual of past-due interest*

The start of debt adjustment interrupts the accrual of past-due interest on adjustable debts. The same provision applies to other penalties for late payment, where they depend on the duration of the delay in payment.

Section 17 — *Stay on distraint*

After the start of debt adjustment, the assets of the debtor shall not be distrained for adjustable debts, with the exception of privileged maintenance debt. A distraint carried out in violation of the stay shall be without effect. Distraint proceedings already begun shall be discontinued. If distraint has already been carried out, the enforcement shall be discontinued and the bailiff shall retain the distrained assets. If a notice on the forced sale of the distrained assets has been published before the start of debt adjustment, the sale may be carried out as provided in the Enforcement Act, unless otherwise provided in paragraph (3). The bailiff shall retain the proceeds of the distraint, until the payment schedule is confirmed or it is otherwise ordered. Notwithstanding the provisions in paragraph (1), an attachment of the wages, salary, pension, business income or other recurring income of the debtor shall remain in force as provided in the Enforcement Act, unless otherwise ordered by the court. With the exception of maintenance payable to a child, the bailiff shall retain the funds so accumulated, until the payment schedule is confirmed or it is otherwise ordered. If a notice on the forced sale of the assets distrained from the debtor has been published before the start of debt adjustment, the court may order a stay on enforcement and the cancellation of the sale, if the assets belong to the basic necessities of the debtor and if it is evident that the assets will not in the debt adjustment be used to cover the debts.

If collateral has been given to the enforcement authorities before the start of debt adjustment so as to have a distraint or other enforcement measures interrupted, the bailiff shall retain the collateral until the payment schedule has been confirmed or it is otherwise ordered or, if the collateral has been given by a third party, return it upon demand.

Section 18 — *Other enforcement and official assistance*

After the start of debt adjustment, a court order on the eviction of the debtor from an apartment occupied by him shall not be enforced, if the basis for eviction is the non-payment of rent or other remuneration for the apartment that has become due before the start of debt adjustment. The same provision applies to a decision made on the basis of the Housing Companies Act (809/1991) on the reclaim of the apartment of the debtor to the company. However, on the request of the creditor, the court may permit enforcement, if it being prevented would be unreasonable in view of the measures undertaken by the creditor as regards the apartment or if it is evident that the debtor will not be able to pay the rent or other remuneration as it becomes due after the start of the debt adjustment.

After the start of debt adjustment, official assistance may be given to carry out the repossession or settlement referred to in the Act on Part-Payment Schemes (91/1966), if the goods involved do not belong to the basic necessities of the debtor or if the creditor has been granted the permission to use his rights referred to in section 13(1)(1). Official assistance shall not be given to carry out the repossession or settlement regarding goods belonging to the basic necessities of the debtor; any pending repossession or settlement shall be discontinued until the payment schedule has been confirmed or it is otherwise ordered. A conversion sentence on unpaid fines shall not be enforced after the start of debt adjustment.

Section 19 — *Termination of certain contracts*

After the start of debt adjustment, the debtor is entitled to terminate a tenancy contract where the debtor is tenant with effect from two months after the notice of termination, notwithstanding any contract terms on the duration of the contract or the period of notice. Apart from the rent and remuneration for the period of notice, the debtor shall not need to pay compensation for the premature termination of the contract. The provisions in section 27 of the Act on the Restructuring of Companies apply to hire-purchase contracts.

Section 20 — *Relationship to bankruptcy*

If the creditor has initiated bankruptcy proceedings against the debtor and the debtor petitions for debt adjustment before being declared bankrupt, the bankruptcy proceedings shall be postponed until a court order on the commencement of debt adjustment has been issued. If the order is for the start of debt adjustment, the bankruptcy proceedings shall lapse.

Section 21 — *Temporary stay*

After the filing of the debtor's petition, the court may on the request of the debtor order that the stay referred in section 12, 13, 17 or 18 is to be temporarily in force even before the start of debt adjustment, if this is deemed necessary. The order may be issued without hearing the creditors, if the urgency of the matter is deemed to so require.

A court order on a temporary stay referred to in paragraph (1) shall not be separately subject to appeal. If the court has dismissed a request for a temporary stay, the order shall be separately subject to appeal only if the stay would concern the liquidation of assets which belong to the basic necessities of the debtor. The appeal of the debtor shall be forwarded to the appellate court without delay and it shall urgently be taken up for consideration. Where necessary, the court shall reserve the creditors an opportunity to respond to the appeal. (113/1995)

The court shall at once notify the enforcement authorities in the place of residence of the debtor and the places where the debtor owns real property of a temporary stay on enforcement. (714/2000)

Section 22 — *Cessation of the legal effects*

The legal effects of the start of debt adjustment shall remain in force until the confirmation of the payment schedule. If the petition for debt adjustment is dismissed, the legal effects shall cease at the time when the court order is issued, unless the court for special reasons orders that the legal effects are to remain in force until the order has become final or it is otherwise ordered.

After the cessation of the legal effects of debt adjustment owing to the dismissal of the petition, the stayed or postponed enforcement or official assistance referred to in section 17 or 18 may be continued on the basis of the original request for enforcement or official assistance.

Chapter 5 — **Meaning of debt adjustment**

Section 23 — *Payment schedule*

In debt adjustment, a payment schedule corresponding to the ability of the debtor to pay shall be confirmed for him.

A separate payment schedule shall be confirmed for each debtor, unless otherwise provided in section 24(1).

The draft payment schedule shall be drawn up by the debtor or the administrator.

Section 24 — *Payment schedule for co-debtors*

A joint payment schedule regarding secured debt may be confirmed for co-debtors who are jointly liable for the secured debt and who have filed a joint petition for debt adjustment.

Where co-debtors who are jointly liable for ordinary debt have filed a joint petition for debt adjustment, the debt shall be divided between the payment schedules for each co-debtor in proportion to their financial status. The financial status of a co-debtor is defined as the proportion of a debtor's assets and his accrued disposable funds over a payment schedule of five years to the debts of the debtor. The above provision applies also where a debtor and a guarantor file a joint petition for debt adjustment. (63/1997)

In cases referred to in paragraph (2) above, a debt based on the right of co-debtors and guarantors to recovery will have a subordinate status similar to that of the debts referred to in section 31(3). (63/1997)

Section 25 — *Mechanisms of debt adjustment*

In debt adjustment, subject to the restrictions provided below, the following mechanisms may be used on adjustable debt:

- 1) a change in the installment plan of the debt;
- 2) an order to the effect that installments paid by the debtor are to be credited first against the outstanding principal of the debt and only later against the unpaid interest;
- 3) a reduction in the interest on the outstanding principal;
- 4) a reduction in the outstanding principal;
- 5) a release from the debt.

The debt adjustment may involve the one-off repayment of a debt, in full or in part, by taking out a new debt for this purpose.

The mechanism least detrimental to the creditor and still sufficient to remedy the financial situation of the debtor shall be used. A reduction in the outstanding principal and a release from the debt shall be used only if the debt adjustment cannot otherwise be carried out.

Section 26 — *Status of secured debt in debt adjustment*

Only the mechanisms referred to in section 25(1)(1)—(3) and in section 25(2) may be used on secured debt. In addition, the past-due interest that has accrued on secured debt may be reduced or the debtor may be released from it. When section 25(1)(2) is applied to secured debt, a sufficient interest rate shall be set in order to secure the present value of the postponed interest installments. When interest is reduced under section 25(1)(3), the time remaining before the maturity of the debt shall be taken into account so that the reduction is conversely proportional to the length of the time.

The interest rate securing present value shall be determined on the basis of an appropriate index, so that the interest payable each quarter corresponds to the change in the index in relation to the preceding quarter, converted into a *per annum* interest rate.

Debt adjustment shall have no effect on the permanence or content of the lien right of the creditor.

However, the security arrangements relating to the debt may be altered in the debt adjustment by substituting other sufficient collateral to that held in lien by the creditor.

Section 27 — *Negative amortisation in debt adjustment*

As regards state residential loans and other loans whose terms call for negative amortisation, the pertinent loan terms may be disregarded in debt adjustment and the outstanding amount treated in the same manner as a debt not comprising negative amortisation.

As regards adjustable debt which a municipality must repay to the state under section 9(2) of the Housing Production Act, the municipality shall repay the debt to the state at the same rate as the debtor repays his debt to the municipality under the terms of the payment schedule.

If the debt adjustment is ordered to lapse, the creditor shall have the right to collect the debt from the debtor without regard to the loan term on negative amortisation.

Section 28 — *Indefinite debts*

If a debt is indefinite as to its amount or basis, the court shall order the amount at which it is to be included in the payment schedule. The same provision applies to other unclarities regarding the right of the creditor. The court order is not separately subject to appeal.

Section 28 a — *Status of unknown creditors (63/1997)*

If adjustable debt, not exceeding an amount fixed by Decree, is owed to a business and it has not been possible to contact the creditor, the debt may be disregarded in the payment schedule. The above provision does not preclude the creditor in question from petitioning for modification of the payment schedule.

Section 29 — *Content and duration of the payment schedule regarding secured debt*

If the debtor has debt secured by assets which belong to his basic necessities, the necessary portion of his available funds shall first be allocated to cover that debt (*portion for secured debt*). The portion for secured debt shall be large enough that at least the present value of the secured debt is repaid within a reasonable time. Unless there is a special reason for the same, the reasonable time shall not exceed the time originally remaining before the maturity of the debt. (63/1997)

If the debtor cannot cover the portion for secured debt as provided in paragraph (1), the assets shall be liquidated.

Section 30 — General provision on the payment schedule regarding ordinary debt

The ordinary debts of the debtor shall be covered with whatever remains from his available funds after subtracting the portion for secured debt, as well as with the funds from the liquidation of the assets of the debtor as provided in section 34.

As regards ordinary debt, the contents of the debt adjustment and the payment schedule shall be arranged so that the duration of the payment schedule is five years. However, the duration of the payment schedule may be less than five years, if this is reasonable in view of the circumstances of the debtor, the manner and extent of repayment before the confirmation of the payment schedule and the possibility to cover the debts by the liquidation of the assets of the debtor. (63/1997)

If the debtor has an owner-occupied home, he shall cover his ordinary debt at least to the amount provided in section 32. If the debtor is to retain that home, the duration of the payment schedule may exceed five years. However, the duration of the payment schedule, regarding ordinary debt, shall not exceed ten years.

If the debtor has in the payment schedule been released from his debts, the duration of the payment schedule shall be five years, unless otherwise provided in section 31a. (63/1997)

If the debtor is to cover the fee and expenses of the administrator, as provided in section 70(1), the duration of the payment schedule shall be extended by four months or by that shorter time over which the available funds of the debtor would suffice to cover the fee and expenses of the administrator after the confirmation of the payment schedule. (63/1997)

Section 31 — Equality of ordinary debts

The debtor's available funds and the funds from the liquidation of his assets shall be divided between the ordinary debts in proportion to their amount, unless otherwise provided in paragraph (2) or (3).

The available funds and the liquidation funds shall first be allocated for the payment of privileged maintenance debt. After that, they may be allocated for the payment of debts connected with the basic necessities of the debtor and debts from his essential living expenses.

The last liabilities to be allocated payment from the available funds and the liquidation funds of the debtor are the interest accrued between the start of debt adjustment and the confirmation of the payment schedule and the debts that would be subordinate were the debtor to be declared bankrupt.

The payment schedule may be drawn up so that the smallest portions payable to the debtors are paid first and also so that the periodically accruing available funds are paid over to the creditors in turn, if this is efficient in view of the realisation of the payment schedule and provided that the chances of the other creditors to receive payment are not thereby compromised. If there are several creditors, a creditor who would receive only an insignificant portion, not exceeding an amount laid down by Decree, may be left without payment. (63/1997)

Section 31a — Extension of the duration of the payment schedule in favour of a private creditor (63/1997)

If the creditor is a private individual (*private creditor*), the duration of the payment schedule may upon his request be extended by at most two years from the time when it ends as regards other ordinary debt. If the debtor retains his owner-occupied home, the two-year period may be ordered to start also at a time later than the end of the payment schedule as regards ordinary debt. It is a precondition for the extension of the duration of the payment schedule that there are persuasive reasons for the same in view of the amount of the claim of the private creditor and his financial status, as well as the circumstances of the debtor.

If the amount of the claim of the private creditor is indefinite or if it for other specific reasons has not been possible to issue the court order on the extension of the duration of the payment schedule at the time when the schedule was confirmed, the court order may be issued while the payment schedule is in force.

Section 32 — Debtor's owner-occupied home and the minimum aggregate for ordinary debts

Where the debtor has an owner-occupied home, he shall cover his ordinary debts to the amount corresponding to the mathematical minimum aggregate provided in paragraph (2) (*minimum aggregate for ordinary debts*) regardless of whether he gets to retain the home or whether it is to be liquidated.

The minimum aggregate for ordinary debts consists of:

- 1) the possible surplus of the anticipated sale price of the owner-occupied home of the debtor, minus the liquidation costs, the debts for which the home serves as collateral and the estimated capital amount securing the living arrangements of the debtor and his family at the cheapest feasible level (*portion for living arrangements*); and
- 2) the aggregate payment to the creditors over a payment schedule of five years, if the living expenses of the debtor and his family are estimated according to the cheapest feasible level.

Section 33 — Liquidation of the owner-occupied home of the debtor to cover ordinary debt

If it is noted that a debtor with an owner-occupied home will not, over a payment schedule of at most ten years, be able to cover the minimum aggregate for ordinary debts as provided in section 32, the home shall be liquidated. However, the home shall not be liquidated if it would increase the aggregate or the portion allocable to ordinary debts only insignificantly or if a reasonable alternative residence is not available.

Section 34 — Use of the funds from the liquidation of the assets of the debtor

The remainder of the funds from the liquidation of the assets of the debtor, after the payment of the liquidation costs and the debts for which the assets stand as collateral, shall be used to cover the ordinary debts of the debtor.

However, the funds from the liquidation of the owner-occupied home of the debtor shall be used to cover his ordinary debts only to the amount of the minimum aggregate for ordinary debts. The court may order that the debtor is entitled to pay the portions payable for the ordinary debts periodically in accordance with the payment schedule instead of a lump sum, if this is reasonable in view of the living arrangements of the debtor. The court may order that the funds left to the debtor after the liquidation of his owner-occupied home be used for his living arrangements or for securing the payments laid down in the payment schedule. If the debtor violates the order, the payment schedule may be ordered to lapse.

Section 35 — Postponement of the liquidation of the owner-occupied home of the debtor
(113/1995)

If the owner-occupied home of the debtor is to be liquidated under section 15, 29 or 33, the court may on the request of the debtor order that the liquidation is to commence only after a delay of at most one year, if this is to be deemed reasonable in view of the circumstances of the debtor and his family and if the debtor is during that delay able to service the secured debt for which the home serves as collateral. If the debtor neglects to service the debt, the creditor is entitled to use his rights referred to in section 13(1)(1).

Section 36 — Information to be included in the payment schedule

The following information shall be included in the payment schedule in sufficient detail:

- 1) those assets of the debtor not to be liquidated;
- 2) the funds received or anticipated from the liquidation of the assets of the debtor and the other orders concerning his assets;
- 3) the income of the debtor and an estimate on the foreseeable development of his income;
- 4) the expenses from the basic necessities and the maintenance liability of the debtor and the other circumstances affecting his financial status;
- 5) the monthly or other appropriately periodic available funds of the debtor;
- 6) the measures to be undertaken by the debtor to improve his ability to pay;
- 7) the secured debts and the collateral;
- 8) the secured portion, the mechanisms applied, the installments and the duration of the payment schedule regarding secured debt;
- 9) the ordinary debts; the available funds and liquidation funds that are to be used to cover the ordinary debts;

- 10) the mechanisms applied, the installments and the duration of the payment schedule regarding ordinary debt;
- 11) orders on enforcement, official assistance and precautionary measures, as referred to in sections 13 and 18;
- 12) the measures to be undertaken by the debtor in case of an essential improvement in his ability to pay; (63/1997)
- 13) the decisions on legal costs and the fee and expenses payable to the administrator.

Section 37 — *Liquidation*

Unless otherwise ordered by the court, the administrator shall liquidate the assets as laid down in the payment schedule and pass the funds to the designated recipients. If no administrator has been appointed or if it is otherwise expedient, the court may order a bailiff, the debtor or a secured creditor to liquidate the assets and pass the funds to the recipients. For specific reasons, the court may on the request of a secured creditor order that the liquidation be carried out in accordance with the provisions of the Enforcement Act, with the secured creditor as the applicant.

The liquidation of the assets of the debtor in connection with debt adjustment shall be carried out carefully and expediently, so that the sale price is as high as possible and the liquidation costs as low as possible. The liquidation costs shall be covered from the sale price. The debtor shall be heard before the liquidation is carried out. A written account on the liquidation and the passing of the funds to the recipients shall be given to the debtor.

Section 38 — *Confirmation of the payment schedule*

The payment schedule may be confirmed, if the prerequisites for debt adjustment provided in sections 9—11 are fulfilled and if the schedule has been drawn up in accordance with the provisions of this Act. Even if the schedule has not been drawn up in accordance with the provisions of this Act, it may be confirmed unless a creditor or the debtor has objected to the same in his statement on the draft payment schedule. A confirmed payment schedule shall be complied with regardless of appeal, unless otherwise ordered by the appellate court. When the court confirms the payment schedule, it may at the same time order that the provisions on the liquidation of the assets of the debtor not be applied before the court order confirming the schedule has become final or it is otherwise ordered.

Section 39 — *Forms and instructions*

The Ministry of Justice shall publish official forms for the petition for debt adjustment and the draft payment schedule, as well as issue instructions on the drawing up of the said documents.

Chapter 6 — **Provisions on the confirmed payment schedule**

Section 40 — *Legal effects of the payment schedule*

After the confirmation of the payment schedule, the terms of the adjustable debts and the other legal relationships covered by the debt adjustment shall be governed by the payment schedule. Regardless of the end of the payment schedule, the debtor's liabilities laid down therein shall remain in effect in so far as they have not been fulfilled. Dstraint proceedings directed at the assets of the debtor and based on adjustable debt shall lapse when the court order confirming the payment schedule becomes final. The same provision applies to other enforcement of adjustable debts. A conversion sentence for unpaid fines shall not be enforced while the payment schedule is in effect. (63/1997)

The confirmation of the payment schedule shall not prevent judicial proceedings for the purpose of determining the basis or amount of an indefinite adjustable debt or the validity or content of a lien right, if the debt or the lien right have become contentious during the debt adjustment and the matter has been directed to be settled in separate proceedings in accordance with section 57(2).

A commitment or contract to the effect that the debtor is liable on the basis of, or in connection with, adjustable debt shall be void, unless the liability has been laid down in the confirmed payment schedule or is based on the provisions of this Act. However, after the end of the payment schedule the debtor may

voluntarily repay his unpaid adjustable debts. (63/1997)

Section 40 a — *Status of unknown creditors* (63/1997)

If an adjustable debt appears after the end of the payment schedule and it would have been possible to modify the payment schedule because of the debt, the debtor shall repay the debt to the amount which would have been allocated to the creditor had the debt been included in the payment schedule.

Section 41 — *Observation of the payment schedule* (63/1997)

The debtor shall make the payments to each creditor, as laid down in the payment schedule, observing the installment plan included in the schedule. The court may, where it deems it expedient, order that the debtor make all payments or some of them to a bailiff, to be passed to the creditors. In order to collect the payments laid down in the payment schedule, the bailiff may attach the wages, salary, pension, business income or other periodic income of the debtor, observing, in so far as appropriate, the provisions of the Enforcement Act. The attachment shall lapse, if the bailiff deems that the payment schedule cannot be carried out. The bailiff shall notify the creditors of the lapse of the attachment.

Section 42 — *Consequences of a failure to observe the payment schedule and the lapse of the payment schedule*

If the debtor fails to pay an installment laid down in the payment schedule to a creditor with a lien right over the assets of the debtor, the creditor is entitled to use his rights referred to in section 13(1)(1) when the installment has been overdue for three months and still has not been paid. In addition, the provisions in section 34 apply to the liquidation.

If the debtor fails to pay an installment to a creditor other than that referred to in paragraph (1), the creditor may apply for enforcement on the basis of the payment schedule as provided in the Enforcement Act when the installment has been overdue for three months and still has not been paid. In this case, the creditor may demand the payment of the entire aggregate due to him in accordance with the payment schedule. No past-due interest accrues on the overdue installments laid down in the payment schedule. The enforcement shall continue, until the creditor requests its discontinuation or the debtor has paid the overdue installments to the creditor and provided credible proof of his observing the payment schedule in the future. If a notice on the forced sale of assets distrained from the debtor has been published, the assets may be sold unless the creditor requests the discontinuation of the distraint.

The bailiff shall retain the funds from the forced sale of assets referred to in paragraphs (1) and (2), if there is reason to believe that the funds may be used to cover a debt other than that owed to the creditor who applied for the enforcement.

The court may order that the payment schedule is to lapse, if;

- 1) the debtor has essentially failed to observe the payment schedule without a justifying reason;
- 2) after the confirmation of the payment schedule, it becomes known that there are circumstances which would have impeded the debt adjustment had they been known at the time when the order was issued;
- 3) the debtor has compromised the realisation of the payment schedule by taking out new debt which is not connected with his basic necessities or other comparable debt, or by otherwise neglecting his duty of co-operation.

If the payment schedule is ordered to lapse, the creditors are entitled to collect the debts from the debtor in accordance with the terms that would have been observed had there been no debt adjustment. However, the debtor shall not be liable for past-due interest over the duration of the payment schedule, unless the court orders otherwise because of the reason for the lapse.

The court order on the lapse of the payment schedule shall be observed regardless of appeal, unless the court for specific reasons orders that it is to be observed only after it becomes final or it is otherwise ordered.

Section 43 — *Effect of bankruptcy on the payment schedule*

If the debtor is declared bankrupt before the end of the payment schedule, the payment schedule shall lapse. The rights of the creditor in the bankruptcy shall be determined as if the payment schedule had not been confirmed.

Regardless of the provision in paragraph (1), the court may order, on the request of the debtor, that the payment schedule is not to lapse because of bankruptcy, if there is a specific reason for the same owing to the fact that most of the debts have already been repaid in accordance with the payment schedule.

Section 43 a — *Death of the debtor during the course of the payment schedule* (63/1997)

If the debtor dies during the course of the payment schedule, the payment schedule shall lapse and the debts shall be treated in the estate of the debtor as if there had been no debt adjustment. However, no past-due interest accrues over the course of the payment schedule.

However, if the debtor has retained his owner-occupied home in the debt adjustment, the court may on the request of the heirs order that the payment schedule is not to lapse. It is a prerequisite for this that the surviving spouse or the child of the debtor continues to reside in the home, that the retention of the home is necessary for them and that the heirs provide credible proof that the payment schedule will not be neglected. The request shall be filed with the court referred to in section 49(4) within six months of the estate inventory. The creditors whose claims have been included in the payment schedule shall be reserved an opportunity to be heard on the request. If the request is not filed within the time limit or it is dismissed, the payment schedule shall lapse, with the consequences provided in paragraph (1).

Section 44 — *Modification of the payment schedule*

The payment schedule may be modified on the petition of the debtor or a creditor, if:

- 1) an essential change has occurred in the ability of the debtor to pay or in the other circumstances relevant to the debt adjustment after the confirmation of the payment schedule;
- 2) after the confirmation of the payment schedule, it becomes known that there are circumstances which would have had been relevant to the debt adjustment had they been known at the time the court order was issued;
- 3) after the confirmation of the payment schedule, it becomes known that there is an adjustable debt which was not known when the payment schedule was being confirmed or which was not then included by virtue of section 28a; or (63/1997)
- 4) there is a reason for the modification of the payment schedule because of recovery proceedings or, in a case referred to in section 28, because the amount of the debt or the content of the right of the creditor has been determined to be different from how it was included in the payment schedule.

A change in the ability of the debtor to pay shall be deemed essential only if:

- 1) the ability of the debtor to pay has decreased for the long term so that it cannot be reasonably expected that he meet the liabilities laid down in the payment schedule;
- 2) the ability of the debtor to pay has improved because of an increase in his income or a decrease in his necessary living expenses due to a change in his living arrangements or costs, the annual decrease exceeding an amount fixed by Decree; or
- 3) the debtor has received an inheritance, gift or other one-off income, which by itself or together with other income exceeds an amount fixed by Decree.

(63/1997)

A modification in the payment schedule in favour of the creditors shall apply to all creditors. In cases referred to above in paragraph (2)(2), the debtor shall pass to the creditors 75 per cent of the increase in his funds. However, a creditor whose portion would be insignificant and less than an amount fixed by Decree may be left without a payment. A modification to the detriment of the creditors shall apply to those creditors who still would receive payments in accordance with the payment schedule. If the schedule is modified on the basis of paragraph (1)(3), the contents of the modification shall be such that, regardless of the provisions on the duration of the payment schedule, the portion for each creditor is equal to that of the other creditors of a similar status, unless this is unreasonable in view of the amount and basis of the debt and the impact of the income on the financial situation of the debtor. If the payment schedule is modified in favour of the creditors, the duration of the schedule may be extended by a time proportional to the improvement in the ability of the debtor to pay. The duration may also be extended for covering the fee and expenses of the administrator. (63/1997)

The modified payment schedule shall be observed regardless of appeal, unless otherwise ordered by the

appellate court. When ordering a modification in the payment schedule, the court may at the same time order that the provisions on the liquidation of the assets of the debtor be applied only after the court order has become final or it is otherwise ordered. (113/1995)

Chapter 7 — Specific provisions on a debtor pursuing a business

Section 45 — *Additional prerequisites for debt adjustment in certain cases*

A debtor who is pursuing a private business may be granted a debt adjustment in accordance with this Act only if:

- 1) the debtor has no or little debt arising from the business and he has few assets used solely or mainly in the business; or
- 2) he has more than little debt connected to the business, but this debt is not overdue and the debtor is able to service the debt from the proceeds of the business.

A debtor who is pursuing a business in an unlimited partnership or as the general partner in a limited partnership may be granted a debt adjustment in accordance with this Act only if:

- 1) the partnership is solvent and not at apparent risk of insolvency; or
- 2) the partnership is undergoing the proceedings provided in the Act on the Restructuring of Companies.

Section 46 — *Specific provision on debt and assets*

In a case referred to above in section 45:

- 1) the debts connected to the business and the debts of the partnership shall not be adjustable debts; and
- 2) notwithstanding the stay provided in section 7(1), the debtor may take out debt necessary for the pursuit of the business, provided that the amount or the terms of the debt are not irregular.

A debtor pursuing a private business shall not need to liquidate his business assets in so far as the assets are necessary for the continuation of the business and the continuation is appropriate in view of the income so gained by the debtor.

A debtor who is a partner in an unlimited partnership or a general partner in a limited partnership shall not need to liquidate his holding, unless a creditor so demands and it is probable that this would lead to a situation where the creditor would be better off than if the debtor remained a partner.

Section 47 — *Specific provision on the lapse of the payment schedule*

If the debtor pursues a private business and, during the course of the payment schedule, a court order is issued on the opening of the proceedings provided in the Act on the Restructuring of Companies as regards the debtor, the payment schedule confirmed in accordance with this Act shall lapse. However, the court may order that the payment schedule is not to lapse because of company restructuring, if there is a specific reason for the same owing to the fact that most of the debts included in the payment schedule have already been repaid in accordance with the schedule.

Section 48 — *Specific provision on a shareholder*

If the debtor pursues a business as the shareholder-manager of a limited company, a debt based on a guarantee given by the debtor in favour of the company shall not be deemed an adjustable debt. The provision in section 3(2) shall not apply to such a debtor.

However, the debt referred to in paragraph (1) shall be deemed adjustable debt, if the proceedings provided in the Act on the Restructuring of Companies have been opened as regards the company or if a restructuring schedule has been confirmed for the company. (63/1997)

The provision above in section 46(3) applies correspondingly to a debtor who pursues a business as a shareholder-manager of a limited company. (63/1997)

Chapter 8 — Court procedure

Section 49 — *Procedure and jurisdiction*

The provisions in the Act on the Procedure for Petitionary Matters in the General Lower Courts (307/1986) apply to matters referred to in this Act, unless otherwise provided in this Act.

In matters referred to in this Act, the court shall always have a quorum with one judge present. (113/1995)
 The court of the debtor's place of residence or, if co-debtors file a joint petition, the court of the place of residence of one of them, shall have jurisdiction in debt adjustment matters. In the cases referred to above in section 45 (2)(2) and section 48 (2), the court where the restructuring proceedings are pending shall have jurisdiction as regards the debt adjustment. (63/1997)

The court referred to in paragraph (3) or the court which issued the order on debt adjustment shall have jurisdiction as regards the lapse or the modification of the payment schedule. (63/1997)

Section 50 — *Petitioning for debt adjustment*

The petition for debt adjustment shall be drawn up in accordance with the official form. Failing this, the petition may not be admissible. The petition shall be filed with the registry of the court.

If co-debtors file a joint petition, the petition of each debtor shall indicate the reasons for the joint petition. The petition of a bankrupt debtor shall not be admissible. (63/1997)

Section 51 — *Annexes to the petition*

The necessary accounts on the circumstances affecting the ability of the debtor to pay and the other circumstances relevant to the debt adjustment shall be annexed to the petition. The debtor's draft payment schedule and a proposal for the appointment of an administrator may be annexed to the petition.

More detailed provisions on the documents to be annexed to the petition and the necessary accounts shall be issued by Decree.

Section 52 — *Hearing the creditors on the petition*

Before deciding on the commencement of debt adjustment, the court may reserve one or more creditors the opportunity to submit a written statement on the petition within a set time limit. A creditor may also be summoned to be heard in a session of the court.

The provisions in paragraph (1) on a creditor apply also to a guarantor in the debts of the debtor, to a person who has given collateral on the same and to a co-debtor.

Section 53 — *Procurement of information*

Where required, the court may on the request of a creditor procure the necessary information on the possible existence of circumstances which would lead to the dismissal of the petition on the basis of section 10. The court may procure such information also on its own initiative. (63/1997)

Where necessary for the procurement of information, the court may on its own initiative or on the request of a creditor ask for a bailiff to produce a distraint evaluation referred to in chapter 3, section 33 of the Enforcement Act or to provide other information necessary for a decision on the petition. At the same time, the court may order that, regardless of secrecy provisions, the bailiff is to have the same privileged access as the debtor to information on the bank accounts, payments, contracts and commitments of the debtor, as well as on his assets, taxation and other financial circumstances. The bailiff may also be summoned to be heard in a session of the court.

Section 54 — *Court order on the commencement of debt adjustment*

The court order on the commencement of debt adjustment shall be issued if, in the light of the available information, the prerequisites for debt adjustment are fulfilled and there is no impediment to it. A court order whereby the debt adjustment has commenced shall not be subject to appeal. (113/1997)

When issuing the order on the commencement of debt adjustment, the court shall:

- 1) set a deadline for the delivery of the draft payment schedule to the court, if the draft has not been annexed to the petition;
- 2) set a deadline for the creditors' written notifications to the administrator, another person drawing up the draft payment schedule or the court, as directed by the court, on the amount of the adjustable debts, if different from those declared by the debtor; failing a notification, the amount exceeding that declared by the debtor may be disregarded in the payment schedule;
- 3) unless an administrator is appointed, set a deadline for the written statements of the creditors on the petition and draft payment schedule of the debtor and for the possible objections to the debts included in

the draft; failing this, the creditors' statements and objections may later be disregarded;

4) appoint an administrator, if necessary under section 64. (113/1995)

In addition, the court shall

- 1) notify the debtor of the duty of disclosure provided in section 6, the duty of co-operation provided in section 7, the stay on payment and security provided in section 12, as well as the consequences of a failure or a violation regarding the same;
- 2) notify the enforcement authorities in the place of residence of the debtor and the places where the debtor owns real property of the start of debt adjustment; and
- 3) indicate the date and time of issue of the court order.

Unless otherwise provided in section 66, the court shall without delay send copies of the court order, the petition and the debtor's draft payment schedule to the creditors, the guarantors, the persons who have given collateral and the co-debtors; at the same time, the court shall inform them of the possibility to request the extension of the duration of the payment schedule, as provided in section 31 a. (63/1997)

Section 55 — *Court session before the confirmation of the payment schedule*

If necessary because of the written statements of the creditors, the summary of the administrator's draft payment schedule or the administrator's notification referred to in section 66(4), the court may order that the matter be heard in a session of the court. The court shall notify the debtor, the creditors and the administrator on the time and place of the session.

Section 56 — *Objections*

The creditors may object to debts included in the draft payment schedule either in writing before the deadline set by the court or in a session, should one be arranged. If the draft is drawn up by the administrator, also the debtor may object to the debts included in it. The objections shall be made to the administrator, who shall forward them to the court together with the draft payment schedule.

Section 57 — *Dealing with objections*

The objections referred to above in section 56 shall be dealt with in connection with the debt adjustment matter and decided in the payment schedule, if, taking into account the necessary evidence and the other circumstances, this is possible without causing an essential delay in the debt adjustment or otherwise hampering it.

If the objection cannot be dealt with in accordance with paragraph (1), the court shall direct the party with the burden of proof in the matter to bring a separate action or open other proceedings to have it resolved. Section 28 contains provisions on how such indefinite debts are to be taken into account in the payment schedule.

Section 58 — *Postponement and lapse of the matter in certain situations*

If the draft payment schedule cannot be confirmed under section 38, the court may reserve the debtor or the administrator the opportunity to draw up a new draft before a set deadline. The parties to the matter shall be asked to submit statements on the new draft before a set deadline, in so far as the court deems this necessary in view of the changes compared to the previous draft and the content of the statements already submitted. (63/1997)

If the debtor dies before the confirmation of the payment schedule, the petition shall lapse.

Section 59 — *Court's duty of instruction*

When the court confirms a payment schedule, it shall instruct the debtor on the meaning of debt adjustment and the consequences of a failure to observe the payment schedule, as well as draw the attention of the debtor to the fact that his taking out new debt not laid down in the payment schedule may compromise the realisation of the debt adjustment.

Section 60 — *Recovery in debt adjustment*

A transaction which could be reversed, if a petition for the bankruptcy of the debtor, instead of debt adjustment, had been filed, may on the request of a creditor be reversed in the debt adjustment as provided in the Act on Recovery to a Bankruptcy Estate (758/1991), including the provisions on the status of third parties.

In the cases referred to in paragraph (1), the date when the petition for debt adjustment was filed or, if bankruptcy proceedings were pending at that time, the date when the bankruptcy petition was filed shall be considered the material date as regards recovery. If several bankruptcy petitions were pending, the date when the first petition was filed shall be considered the material date.

Where appropriate, the provisions in chapter 3, section 35 of the Enforcement Act apply to recovery. The property which on the basis of the recovery action of a creditor is ordered to be returned or compensated for may be used to cover the claim of that creditor notwithstanding the provisions in this Act. The recovery action shall be filed within six months of the date when the creditor was notified of the start of debt adjustment.

If property is recovered from a creditor who is the defendant in the recovery proceedings, his claim is revived and shall be taken into account as adjustable debt.

Section 61 — *Petition for the lapse or modification of the payment schedule* (63/1997)

The petition for the lapse or modification of the payment schedule shall be filed with the court in writing. The petition shall be filed without undue delay after the time when the basis for it has become known to the debtor or a creditor. A petition for modification cannot be filed after the end of the payment schedule. A petition for lapse shall be filed within two years from the fulfillment of the liability laid down in the payment schedule. However, if the petition is based on an act of the debtor referred to in chapter 39, section 2 or 3 of the Penal Code, the petition may be filed within the statute of limitations provided for the offence. (63/1997)

If the debtor petitions for the modification of the payment schedule, he shall annex a new draft payment schedule to the petition. The creditors concerned shall be reserved an opportunity to be heard on the petition.

If the petition is filed by a creditor, the debtor and those creditors that the court deems necessary to hear shall be reserved an opportunity to be heard. If the court considers there to be a reason for the modification of the payment schedule, it may set a deadline for the debtor to deliver a new draft payment schedule to the court. The draft shall be dealt with in accordance with the provisions above. (63/1997)

Section 62 — *Legal costs*

The parties to the matter shall bear their own legal costs. However, the provisions on legal costs in civil proceedings apply to the proceedings for the decision on the objections referred to above in section 57(1) and, if there is a specific reason for the same, to the proceedings concerning a petition for the lapse of the payment schedule. Section 70(1) contains provisions on the liability of the debtor for the fee and expenses of the administrator.

(Paragraph 2 has been repealed by the Act 714/2000)

Section 62a — *Notifications and service* (113/1995)

The date when a court order on the payment schedule is to be issued shall be notified to the debtor, all creditors, the enforcement authority of the debtor's place of residence and, if appointed, the administrator. It shall be indicated in the notification whether the draft payment schedule has been altered after it was sent to the parties to the matter. However, no notification needs to be sent to a creditor whose claim on the debtor is insignificant and who has not submitted a statement on the draft payment schedule. The date when a court order on the modification of the payment schedule is to be issued shall be notified to the debtor and those creditors who have been reserved an opportunity to be heard in the matter. The lapse of a payment schedule shall be notified to the debtor, the enforcement authority of the debtor's place of residence and, in so far the court deems it necessary, to the creditors. An appellate court may leave the notification to be seen to by the District Court. (63/1997)

The notifications and other notices referred to in this Act may be served by post to the address provided by the debtor, by telefax or by electronic mail, unless it is deemed necessary to serve the documents against a receipt or by other means provided for the service of notices in civil proceedings. The enforcement authorities may be notified on the commencement of debt adjustment also by telephone.

Section 63 — *Appeal*

A court order on debt adjustment shall be subject to appeal, unless appeal has been specifically excluded or the matter concerns a procedural decision.

If an appeal has been lodged against a court order dismissing a petition for debt adjustment and the debtor has been declared bankrupt before the decision of the appellate court has been handed down, and the debt adjustment is then commenced by the appellate court, the bankruptcy shall lapse. (63/1997)

Chapter 9 — **Provisions on the administrator**

Section 64 — *Appointment of an administrator*

An administrator may be appointed for debt adjustment, where necessary for the clarification of the financial status of the debtor, the liquidation of his assets or otherwise for the realisation of the debt adjustment. An administrator may be appointed also for the adjustment of guarantee or security liabilities. (113/1995)

The court shall appoint the administrator when it issues the order on the commencement of debt adjustment. Where necessary, an administrator may be appointed also on other times. In addition, an administrator may also be appointed to draw up a modified draft payment schedule. (113/1995)

The court order on the appointment of the administrator shall not be subject to appeal.

Section 65 — *Qualifications of the administrator*

A person may be appointed as administrator, if he is an adult, is known for integrity, is not bankrupt, is not subject to restrictions of competence and consents to the appointment. The administrator must have the competence, skills and experience required by his duties. He shall not have a relationship with the debtor or any of the creditors which might compromise his independence from the debtor or his impartiality between the creditors. (462/1999)

A bailiff or a deputy bailiff may be appointed as an administrator, subject to the conditions provided in paragraph (1).

Section 66 — *Duties of the administrator*

The administrator shall draw up the draft payment schedule within the time limit set by the court and perform the other duties imposed by the court on the administrator. When drawing up the draft payment schedule, the administrator shall negotiate with the debtor and the creditors and provide them with the necessary information on the debt adjustment, as well as reserve them an opportunity to submit a statement on the petition and the draft payment schedule. The administrator may set a deadline for the statements and objections of the debtor and the creditors; a failure to observe the deadline may result in the statement or objection being disregarded. The deadline shall be set so that the parties to the matter have a reasonable time for making their statements. A summary, prepared by the administrator, on the statements of the debtor and the creditors on the petition and the draft payment schedule shall be annexed to the draft payment schedule. (113/1995)

The court may order the administrator to see to the service of the notifications referred to in sections 54, 55 and 62a(1) to the debtor and the creditors. (113/1995)

The administrator may be appointed to see to the liquidation of the assets of the debtor and the related measures and arrangements, as well as to the passing of the liquidation funds to the creditors.

If the administrator becomes aware of a circumstance which may result in the petition of the debtor being dismissed, the administrator shall submit the matter to be decided by the court.

Section 67 — *Prerogatives of the administrator*

Regardless of secrecy provisions, the administrator has the same privileged access as the debtor to information on the bank accounts, payments, contracts and commitments of the debtor, as well as on his assets, taxation and other financial circumstances.

Section 68 — *Supervision and compulsion*

If the administrator neglects a duty or obligation provided in this Act, the court may compel him to perform it within a set time limit and impose a threat of a fine to reinforce the compulsion.

Section 69 — *Dismissal of the administrator*

The court may, on its own initiative or on the request of the debtor or a creditor and after reserving the administrator an opportunity to be heard, dismiss the administrator, if he has essentially neglected his duties or there is another persuasive reason for dismissal. The court may, on the request of the administrator, dismiss the administrator, if there is a justifiable reason for dismissal. The court may order that the dismissal is to take effect regardless of appeal, unless otherwise ordered by the appellate court.

Section 70 — *Fee and expenses of the administrator*

The administrator is entitled to a reasonable fee for his services and to compensation for the necessary expenses incurred by him while performing his duties. The debtor shall cover the fee and expenses of the administrator to an amount not exceeding the available funds of the debtor over the four months following the confirmation of the payment schedule or the modified payment schedule. The amounts may be taken also from funds received by the debtor after the start of debt adjustment. The part of the fee and expenses of the administrator not covered by the debtor shall be paid from state funds. If the petition for debt adjustment is dismissed, the entire fee and expenses shall be paid from state funds. In this case, the debtor shall be liable to compensate the state for the amounts paid to the administrator, if the reason for the dismissal of the petition has been the failure of the debtor to observe his duties connected to the debt adjustment. If the administrator has been ordered to see to the liquidation of assets laid down in the payment schedule, the fee and expenses for this duty shall, however, be covered from the sale price. If a counsel providing public legal aid has acted as administrator, the fee and the expenses shall be paid to the legal aid office. The Ministry of Justice shall confirm the bases for fees and expenses. (714/2000) The provisions on the compensation payable to a witness who has been heard in court apply to the payment of the fee and expenses.

Section 71 — *Administrator's liability in damages*

The administrator shall be liable in damages for loss that he has caused, by error or negligence in his duties, to the debtor, a creditor, a guarantor or a person who has given collateral.

If a counsel providing public legal aid has acted as administrator, the State and the counsel shall be liable in damages as provided in chapters 3 and 4 of the Damages Act (412/1974). (714/2000)

Chapter 10 — **Adjustment of guarantee and security liabilities without recourse to debt adjustment**

Section 72 — *Adjustment of guarantee liabilities*

If a private individual has, in a connection other than a business or comparable activity, guaranteed a debt and then become liable on the guarantee, but cannot cover the debt without delay except by liquidating his owner-occupied home, corresponding to his reasonable living requirements, or by liquidating other assets belonging to his basic necessities, he may petition for a payment schedule on guarantee liabilities, as provided in section 75. It is a prerequisite for the confirmation of the payment schedule that the liability will be repaid in full, including interest calculated in accordance with section 75 (1), and that the payment schedule does not endanger the fulfillment of the other commitments of the guarantor.

Unless there is a specifically persuasive reason for the same, the adjustment of guarantee liabilities shall not be granted, if:

1) the guarantor has been charged with or convicted for a debtor's offence referred to in chapter 39,

- section 1—3 or 6 of the Penal Code, or he is suspected for such an offence;
- 2) the guarantor has been banned from business operations, or proceedings or a criminal investigation pertaining to such a ban are under way;
 - 3) the guarantor has neglected his duty of disclosure provided in section 74; or
 - 4) there is reason to believe that the guarantor will not observe the payment schedule.

The provisions in this chapter apply correspondingly to a co-debtor whose liability is comparable to that of a guarantor and from whom the entire unpaid balance of the debt is being recovered.

Section 73 — *Adjustment of security liabilities*

If a private individual has, in a connection other than a business or comparable activity, given his owner-occupied home, corresponding to his reasonable living requirements, as collateral for the debt of another, and the debt has then become due, but he cannot cover the debt without delay by liquidating other assets not belonging to his basic necessities, he may petition, on the conditions provided in section 72, for a payment schedule on security liabilities, as referred to in section 75, for the portion of the debt covered by the value of the collateral at the start of the adjustment.

If a payment schedule referred to in this chapter is confirmed to the person who gave the collateral, the owner-occupied home serving as collateral shall not be liquidated on the demand of the creditor, unless otherwise provided in section 42. Notwithstanding the confirmation or the payment schedule, the creditor shall retain the lien right, until the person who gave the collateral has fulfilled the liability confirmed in accordance with this Act or the creditor has otherwise received full payment for the debt in so far as the home serves as collateral for it.

Section 74 — *Duty of disclosure of the guarantor and the person giving collateral*

A guarantor and a person giving collateral shall give the court and the creditor all necessary information on the circumstances pertinent to the adjustment of guarantee and security liabilities.

Section 75 — *Contents of a payment schedule on guarantee or security liabilities*

In the payment schedule, the assets not belonging to the basic necessities of the guarantor or the person giving collateral, as well as his available funds, as referred to in section 5(1), shall be used to cover the debt referred to in section 72 or 73, in so far as not required for the fulfillment of other commitments, so that the debt, including interest as calculated in section 3(2) of the Interest Act (633/1982), will be repaid in five years or, if the original time before the maturity of the debt is longer, in that time.

If a payment schedule provided in this Act or the Act on the Restructuring of Companies has been confirmed for the debtor for whose debt the guarantee or collateral has been given, the payment schedule referred to in this section shall be confirmed for the portion of the debt which is not covered in the payment schedule of the debtor.

The guarantor or the person giving collateral shall draw up the draft payment schedule.

The provisions in sections 36, 38, 40, 41, 42, 43 and 44 apply, in so far as appropriate, to a payment schedule referred to in this section. The court may order that the adjustment of guarantee liabilities will be granted only if the guarantor gives the secured creditor a lien right over assets belonging to his basic necessities. The installment plan laid down in the payment schedule on guarantee liabilities may be enforced as a judgment debt. If the person giving collateral fails to make a payment laid down in the payment schedule, the secured creditor shall be entitled to use his rights provided in section 13(1)(1).

Section 76 — *Legal effects of the commencement of the adjustment of guarantee or security liabilities*

When the court order on the commencement of the adjustment of guarantee or security liabilities has been issued, measures within the scope of the stay on collection and enforcement provided in sections 13 and 17 shall not on the basis of these liabilities be directed at the guarantor or the person giving collateral. On the request of the guarantor or the person giving collateral, the stay may be ordered to be temporarily in effect even before the commencement of the adjustment. The court order may be issued without hearing the creditor, if the urgency of the matter so requires.

As regards the time after the start of the adjustment, only the interest accruing in accordance with section

3(2) of the Interest Act may be recovered from the guarantor or from the value of the collateral.

If the petition for the adjustment of guarantee or security liabilities is dismissed, the provisions in section 22 apply, in so far as appropriate, to the cessation of the legal effects of the adjustment.

Section 77 — *Court procedure*

The provisions on court procedure regarding a petition for debt adjustment apply, in so far as appropriate, to court procedure regarding the adjustment of guarantee or security liabilities. If the person for whose debt the guarantee or collateral has been given has petitioned for debt adjustment in accordance with this Act or for company restructuring, the petition shall be filed with the court where the previous petition is pending.

Chapter 11 — **Miscellaneous provisions**

Section 78 — *Status of creditors under public law in debt adjustment*

Notwithstanding a provision in another Act, a creditor under public law is entitled to consent to debt adjustment provided in this Act or to a negotiated settlement whose contents correspond to the principles of this Act. The authority which is entitled to collect the debt shall be competent to give the consent. The same provision applies to a public corporation which has a claim under private law from the debtor.

Section 79 — *Statute of limitations and debt adjustment*

If the creditor is to collect the debt within a statutory time limit, at the risk of collection being time-barred, the lapse of the time limit after the start of debt adjustment or the temporary stay provided in section 21 shall not preclude the collection of the debt as laid down in the payment schedule.

If a stay on collection or enforcement based on this Act lapses without a payment schedule being confirmed, or the payment schedule lapses, the calendar year during which the stay began and the period following, until the end of the calendar year during which the stay or the payment schedule lapsed, shall be disregarded when calculating the time limit referred to in paragraph (1).

If the creditor is to apply for distraint within a set time limit, at the risk of forfeiting a statutory privilege, the provisions in paragraph (1) on collection apply correspondingly to the retention of the privilege.

If the stay on collection or enforcement based on this Act lapses without a payment schedule being confirmed, or the payment schedule lapses, the period between the beginning of the stay and its lapse or the lapse of the payment schedule shall be disregarded when calculating the time limit referred to in paragraph (3). If collection by distraint is being discontinued because of a stay on enforcement or a payment schedule based on this Act, the period shall be correspondingly disregarded when determining the retention of the privilege.

Section 79a — *Statute of limitations and a negotiated settlement (113/1995)*

If the creditor is to collect the debt within a statutory time limit, at the risk of collection being time-barred, and a negotiated settlement corresponding to the principles of this Act is agreed with the debtor, the creditor shall be entitled to payment as laid down in the settlement regardless of the expiry of the time limit. At the latest, the creditor shall collect the debt at the end of the calendar year following the end of the payment period laid down in the settlement, at the risk of collection being time-barred. However, if the original time limit for collection expires only later, the creditor may collect the debt during that time.

Section 80 — *Duty of secrecy*

A creditor or the administrator shall not without the consent of the debtor disclose or, for private gain, use information on the financial status or personal circumstances of the debtor acquired in connection with debt adjustment or the negotiations for a settlement. This provision does not prevent a creditor from discussing issues relating to the debt adjustment with other creditors nor restrict the means available to him for the collection of the debt if the petition is dismissed or the payment schedule lapses.

The provisions in paragraph (1) apply also to a person who has participated in negotiations aiming at a settlement for the remedying of the financial situation of the debtor without recourse to debt adjustment.

Section 81 — *Use of court documents for research purposes*

In case of court documents pertaining to a matter referred to in this Act having been ordered to be kept secret in accordance with the Act on the Publicity of Court Proceedings (945/1984), the court which heard the matter may nonetheless grant access to such documents for purposes of scientific research, if it is evident that the access does not conflict with the interests for whose protection the secrecy order was issued.

A person who has been granted access to secret information shall be subject to the same duty of secrecy as a party to the matter.

Section 82 — *Penalty for a violation of the duty of secrecy (627/1995)*

The penalty for violations of the duty of secrecy provided in sections 80 and 81 (2) is governed by the provisions in chapter 38, section 1 or 2 of the Penal Code, unless a more severe penalty for the act is provided elsewhere in the law.

Section 83 — *Liability in damages for a violation of the duty of secrecy*

A person who intentionally or negligently violates the duty of secrecy provided in sections 80 and 81(2) shall be liable in damages to the debtor for the loss so incurred.

Section 84 — *Creditor's access to certain information (63/1997)*

Regardless of secrecy provisions, a payment schedule entitles the creditor to access to the debtor's tax information, in so far as necessary for the debt adjustment, as well as to information from the employment authorities on whether the debtor has signed up with an agency, whether he has been offered employment and whether he has turned down an offer of employment.

If there is a specific reason, the bailiff may on the demand of the creditor produce an evaluation on the financial status of the debtor also during the course of the payment schedule, applying, in so far as appropriate, the provisions in chapter 3 of the Enforcement Act.

Section 85 — *Violation and modification of a negotiated settlement*

In a negotiated debt adjustment settlement between a debtor referred to in this Act and his creditor, a term according to which the consequences of neglect or failure on the part of the debtor are more severe than those provided in section 42 of this Act shall be void. The same provision applies to a negotiated settlement on the adjustment of guarantee liabilities.

If a negotiated debt adjustment settlement has been made between a debtor referred to in this Act and his creditor, and it has not been otherwise agreed, the settlement may on the demand of the debtor or the creditor be modified according to the same principles as provided in section 44(1)–(3). If the parties cannot agree on a modification within two months of the time when the demand was notified to the other party, the party making the demand may bring an action for a court order on the modification of the settlement. (63/1997)

(Section 86 has been repealed by the Act 714/2000.)

Section 87 — *Debt adjustment register*

The Legal Register Centre maintains a register of matters pertaining to the adjustment of the debts of private individuals. (648/1999)

Everyone shall have access to the information in the register.

Information removed from the register shall be kept secret. However, such information may be released to a court for purposes of determining the prerequisites for granting debt adjustment. (648/1999)

Section 88 — *More detailed provisions*

More detailed provisions on the implementation of this Act and on the debt adjustment register shall be issued by Decree.

Chapter 12 — **Entry into force**

Section 89 — *Entry into force*

This Act enters into force on 8 February 1993.

Measures necessary for the implementation of this Act may be undertaken before its entry into force.

As regards secured debt taken out before the entry into force of this Act, the interest accruing after the confirmation of the payment schedule cannot be reduced in so far as the value of the collateral would at the start of debt adjustment have been sufficient to cover the principal of the debt as well as the present value of the entire interest mentioned above.