

Translation from Finnish

Legally binding only in Finnish and Swedish

Ministry of Economic Affairs and Employment, Finland

Act on Safeguarding Direct Pension Promises in the Event of Employer Insolvency (209/2015)

Section 1

Application

- (1) This Act applies to supplementary pension commitments that form the basis for an employer's obligation to pay supplementary pension to an employee referred to in Chapter 1, section 1 of the Employment Contracts Act (55/2001) or Chapter 1, section 1 of the Seafarers' Employment Contracts Act (756/2011), for the purpose of securing or improving the employee's income after he or she transfers to an old-age pension referred to in Chapter 3, section 11 of the Employees Pensions Act (395/2006) or Chapter 3, section 8 of the Seamen's Pensions Act (1290/2006) (direct pension promise).
- (2) This Act also applies to direct pension promises that are used as a basis for paying supplementary pension upon the death of an employee to his or her widow or widower or child below the age of 18 (other beneficiary).
- (3) This Act does not apply to:
 - 1) the safeguarding of a supplementary pension scheme which the employer arranges via a life assurance company, industry-wide pension fund or company pension fund;
 - 2) an employer which, under Chapter 1, section 3 of the Bankruptcy Act (120/2004), cannot be declared bankrupt.

Section 2

Safeguarding obligation

- (1) The employer shall safeguard at least half of the amount of pension liability based on the direct pension promise in case of the employer's bankruptcy or restructuring procedures (safeguarding obligation).
- (2) The employer's safeguarding obligation commences when, under the terms of the direct pension promise, the employee or other beneficiary has a supplementary pension right that is independent of future events or circumstances. The safeguarding obligation will continue until the obligation to pay supplementary pension ceases or the pension liability is otherwise discontinued.
- (3) Further provisions on the calculation of pension liability may be issued by government decree.

Section 3

Fulfilling the safeguarding obligation

- (1) The employer may fulfil the safeguarding obligation:
 - 1) by taking out insurance that covers the pension liability from an insurance company which, under the Act on Insurance Companies (521/2008) or the Act on Foreign Insurance

- Companies (398/1995), has the right to engage in insurance activities Finland;
- 2) by setting in place collateral that covers the pension liability; the collateral may also be a bank guarantee issued by a party domiciled in a state belonging to the European Economic Area; or
 - 3) in some other manner comparable to the means referred to in paragraphs 1 and 2, by which the employee's right to supplementary insurance will be genuinely safeguarded in the event of the employer's bankruptcy or corporate restructuring.
- (2) The employer may also fulfil the safeguarding obligation by a combination of the means referred to in subsection 1. The safeguarding obligation is also considered to have been fulfilled if the employer has arranged at least half of the supplementary pension benefit it has promised the employee as group pension insurance, a personal pension plan or via a company or industry-wide pension fund, and the rest as a direct pension promise.
 - (3) Further provisions on insurance and collateral concerning the requirements for covering pension liability may be given, and the procedure for providing collateral laid down, by government decree.

Section 4

Employer's duty of disclosure

- (1) When an employer is subject to the safeguarding obligation on the basis of section 2(2), the employer shall provide the employee or other beneficiary with a written record of the amount of pension liability and of how the safeguarding obligation has been fulfilled, for each accounting period. The record shall be provided within four months of the close of the accounting period.
- (2) If any significant changes occur in the collateral value, the insurance coverage or other circumstances related to fulfilment of the safeguarding obligation, the employer shall give notification of these to the employee or other beneficiary without delay once the change becomes known to the employer.

Section 5

Supervision

- (1) Compliance with this Act is supervised by the occupational safety and health authorities on the basis of an inspection request from an employee or other beneficiary. Provisions on supervision are laid down in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006).
- (2) The employer and the employee or other beneficiary have an obligation to provide the occupational safety and health authority with the information necessary for supervision.

Section 6

Penal provisions

- (1) An employer or its representative that wilfully or through gross negligence
 - 1) provides false information when meeting the disclosure obligation referred to in section 4(1) or neglects the disclosure obligation referred to in section 4(2), where this act is likely to lead to the party with a right to supplementary pension failing to receive information about the neglect of the safeguarding obligation, or
 - 2) neglects a request issued by the occupational safety and health authority concerning the

safeguarding obligation referred to in section 2 or 3 or the disclosure obligation referred to in section 4

shall be sentenced to a fine for *violation of the provisions on the safeguarding obligation*, unless a more severe punishment is provided for the act elsewhere in the law.

- (2) Chapter 47, section 7 of the Penal Code of Finland (39/1889) applies to the allocation of liability between the employer and its representative.

Section 7

Entry into force

This Act enters into force on 1 April 2015.

Section 8

Transitional provisions

- (1) This Act will apply from 1 April 2016 to direct pension promises agreed before the entry into force of the Act.
- (2) If a direct pension promise has been agreed or the payment of supplementary pension under the terms of the promise begun before the entry into force of this Act, the occupational safety and health authority may, upon application, release the employer from the safeguarding obligation for up to two years at a time if:
 - 1) it can reasonably be considered that the company's financial standing covers the pension liabilities associated with the direct pension promise; and
 - 2) the party with a right to the supplementary pension under the direct pension promise agrees to the release.
- (3) For granting the release referred to in subsection 2, the occupational safety and health authority may impose collateral requirements, disclosure obligations or other similar additional requirements. The release may also be granted in part or conditionally. Further provisions on evaluating the requirements concerning the release may be given, and provisions on the procedure for release laid down, by government decree.
- (4) A claim for a revised decision may be made to the occupational safety and health authority concerning the decision issued about an application referred to in subsection 2 above. Provisions regarding the procedure for a claim for a revised decision are laid down in the Administrative Procedure Act (434/2003). An appeal against the decision concerning a claim for a revised decision may be made to an administrative court in compliance with the provisions in the Administrative Judicial Procedure Act (586/1996). The decision of the administrative court may be appealed against only if the Supreme Administrative Court grants leave to appeal.