



**COUNTRY
COMPARATIVE
GUIDES 2021**

The Legal 500 Country Comparative Guides

Denmark

RESTRUCTURING & INSOLVENCY

Contributing firm

SKAU REIPURTH

Skau Reipurth

Anders Ørskov Melballe

Attorney of the Danish High Courts, Partner | ame@skaureipurth.com

Pernille Bigaard

Attorney of the Danish Supreme Court, Partner | pbi@skaureipurth.com

Louise Krarup Simonsen

Attorney of the Danish High Courts, Partner | lks@skaureipurth.com

Lotte Lundin

Senior Associate (Supreme Court) | llu@skaureipurth.com

This country-specific Q&A provides an overview of restructuring & insolvency laws and regulations applicable in Denmark.

For a full list of jurisdictional Q&As visit legal500.com/guides

DENMARK

RESTRUCTURING & INSOLVENCY



1. What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?

Immovable property

In Denmark the three forms of security that may be granted over immovable property listed below are those most widely used:

- mortgage

The mortgage is typically issued by a creditor or a credit institution where a property is mortgaged with the payment of a specific amount in favour of the creditor/credit institution for a loan. The debtor will typically service the debt.

- indemnity bond

The indemnity bond is a mortgage where the debtor's property is mortgaged with the payment of a maximum sum in favour of a specific creditor in respect of a loan in respect of which the final amount owed has not yet been fixed. The indemnity bond is typically provided by the debtor as security for an overdraft facility.

- owner's mortgage

An owner's mortgage is a mortgage where the debtor reserves a mortgage of a fixed amount on its immovable property and provides this as security for an

underlying debt owed to the creditor, if the underlying debt is repaid, the owner's mortgage may serve as security for a new debt.

Movable property

As a starting point, security granted over movable property depends on the type of movable property. The most widely used types of security over movable

property are:

- floating charge

Floating charge means that the debtor grants a charge in favour of the creditor over, for instance, the inventory at any time, operating equipment, goodwill and amounts owing from sale of goods and services. Floating charge does not prevent that assets under the charge are separated from the debtor's business during operations.

- floating charge on receivables

Floating charge on receivables means that the debtor provides security in favour of the creditor over receivables from sale of goods and services. The debtor's receivables become included in the receivables charge as they are created and deleted from the charge as they are repaid.

- chattel mortgage

The chattel mortgage may be created on a specific chattel, for instance a car or a machine. For traders that carry on their business activities from leased premises chattel mortgages may be created on the operating plant and operating equipment situated at the business's address without any separate specification.

- pledge of rights

By agreement, pledges may be created on rights, for instance amounts owing, instruments of debt, shares, securities etc.

- pledge

A pledge may be granted over assets in respect of which the security in favor of the creditor is created by transfer of physical assets to the creditor.

It is a characteristic of the above types of security model – except from the last two – that the creditor must register the security. If the creditor does not have the security registered, the creditor will not be protected

against the debtor's other creditors or assignees in good faith but only rely on the charge agreement between the parties.

In respect of a charge on rights the security is established by information to the issuer of the right in question.

In respect of a pledge the creditor's security is established by physical dispossession of the pledged assets.

2. What practical issues do secured creditors face in enforcing their security (e.g. timing issues, requirement for court involvement)?

In respect of a mortgage secured on the debtor's immovable property, the creditor may commence a forced sale procedure before the enforcement court of the debtor's jurisdiction if the debtor defaults on the debt. However, it is a condition that the creditor levies execution on the debtor's immovable property and subsequently the creditor may file a request for a forced sale with the enforcement court of the debtor's jurisdiction.

In case of a charge on movable property, it is also possible for the creditor to request that execution be levied on the charged item. Based on the execution the creditor may dispossess the item as security for the creditor's agreement with the debtor and the creditor may sell the item in question for the purpose of covering the arrears. The creditor's request for execution may also be filed with the enforcement court of the debtor's jurisdiction.

Recovery through the enforcement court assumes that the creditor has obtained a basis for the recovery, for instance a judgment, instrument of debt, settlement etc.

3. What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency procedures upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?

Under Danish law, the test for insolvency for the debtor's insolvency is whether the debtor is able to fulfill its obligation as they fall due. If the debtor cannot do this, it is assumed that the debtor is insolvent, unless the inability to pay is temporary.

Individuals are not obliged to file their own petition.

Under Danish law, the management of a distressed company (the debtor) is not obliged to file a petition in bankruptcy. Under the Danish Companies Act the management of a company must ensure that the debtor's capital reserves are sufficient at any time so that the debtor is able to fulfill its present and future obligations as they fall due.

As a starting point, the management of a company does not incur liability if bankruptcy proceedings are commenced against the debtor. However, the trustee or a third party may raise a claim for civil management liability or criminal management liability against the management if it is discovered that the management has carried out transactions in a manner that has contributed decisively to the debtor's bankruptcy or if the operation has continued after the time at which the management could establish that further operation was to no avail.

The trustee may also institute disqualification proceedings against the management. If the management is disqualified, the management must not participate in the management of a limited liability company without being personally liable for the company's obligations.

4. What insolvency procedures are available in the jurisdiction? Does management continue to operate the business and/or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?

- What insolvency procedures are available in the jurisdiction?

There are two types of in-court insolvency procedures in Denmark; restructuring and bankruptcy.

The purpose of restructuring is to obtain an arrangement with the creditors, transfer a business or a combination or wind down operations in cooperation with the former management.

The purpose of bankruptcy proceedings is to sell the debtor's assets with a view to distributing the seller's assets between the creditors.

- Does management continue to operate the business and / or is the debtor subject to supervision?

In respect of restructuring proceedings, the management continues to operate the business together with a restructuring administrator appointed by the bankruptcy court. The management must not make important decisions without the consent of the restructuring administrator.

In certain circumstances, the restructuring administrator may take over the management.

When the bankruptcy order has been issued, the management is deregistered and subsequently the trustee takes over the management of the business.

- What roles do the court and other stakeholders play?

In restructuring proceedings, the proposed solution must be presented to the creditors for their approval. If the proposed solution is not accepted by the creditors, insolvency proceedings will be commenced against the debtor.

In bankruptcy proceedings, the trustee has the full decision-making power and may consequently deal with the assets of the estate without the consent of the creditors.

In respect of restructuring proceedings as well as bankruptcy proceedings, the bankruptcy court is the supreme authority and is not to approve transactions but is only to ensure that the administration is in accordance with the Danish Bankruptcy Act.

- How long does the process usually take to complete?

A restructuring process may take up to 12 months at which time a restructuring proposal is to be voted on. The restructuring administration usually takes 2-6 months. However, as a result of a new section 13g of the Danish Bankruptcy Act, it is now possible to restructure the debtor through a transfer of the debtor's business without the need for a restructuring plan and restructuring proposal. In this case, the restructuring process must be completed in 4 weeks (up to 8 weeks if the restructuring administrator requests so).

There is no specific timeframe for the administration of an insolvent estate, but it is typically 1-2 years. In case of particularly complicated estates or if legal proceedings are conducted, the administration may take considerably longer.

5. How do creditors and other stakeholders

rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities)? Could the claims of any class of creditor be subordinated (e.g. equitable subordination)?

- How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholder enjoy particular priority?

The order of priority of the creditors is governed by the Danish Bankruptcy Act.

According to the order of priority, costs and fees related to the administration of the estate are covered first.

Next costs related to a vain restructuring attempt or vain attempts at an overall arrangement with the debtor's creditors prior to the bankruptcy are covered.

Employees' claims are covered next.

Next claims are covered that concern duty on goods that are subject to duty, e.g. alcoholic and tobacco goods.

Next, the unsecured creditors are covered, e.g. an ordinary receivable based on an invoice, tax and VAT claims etc.

Finally, claims for interest after the issue of the bankruptcy order, gifts and fines are covered.

Creditors that hold a charge or another type of security over the debtor's assets are covered separately as the proceeds from the sale of the charged asset go directly to the secured creditor.

6. Can a debtor's pre-insolvency transactions be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?

On certain conditions, the debtor's pre-insolvency transactions may be avoided by the insolvent estate. Avoidance means that an otherwise valid transaction made by the debtor is reversed if the transaction in question has defeated the assets of the estate or increased the debtor's debt.

If the trustee believes that that debtor's actions are contrary to the avoidance rules of the Danish Bankruptcy Act, the estate in bankruptcy must no later than 12

months from the issue of the bankruptcy order institute legal proceedings against the third party or creditor that was given preference by the debtor's voidable transaction.

The debtor's voidable transactions under the Danish Bankruptcy Act include:

- gifts from the debtor;
- payment of debt;
- transactions giving preference to a creditor over the other creditors;
- transactions that mean that the debtor's assets avoid being included in the assets of the estate in bankruptcy; and
- transactions that mean that the debtor's debt increases.

If the trustee is successful in the claim for avoidance against a third party, the third party must give up and return the preference to the estate in bankruptcy that he has obtained through the debtor's voidable transaction, but not more than the loss of the estate.

7. What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors' claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?

Under Danish insolvency law, a moratorium may only be agreed voluntarily between a debtor and the debtor's creditors or as part of restructuring proceedings filed for or completed. As long as restructuring or bankruptcy proceedings filed for are pending, unsecured creditors are also barred from pursuing their claims.

A moratorium does not release the debtor from payment of the debt but for as long as the moratorium is maintained, the creditors cannot levy execution against the debtor or file a petition in bankruptcy against the debtor.

As a result of the circumstance that it cannot be requested that a Danish bankruptcy order be acknowledged abroad (with the exception of the Nordic countries) a moratorium only has extraterritorial effect in connection with bankruptcy and restructuring proceedings if the country of the foreign creditor acknowledges the Danish insolvency proceedings. The reason for this is that Denmark has not yet acceded to

the Insolvency Regulation of the EU. However, it must be mentioned that several countries will acknowledge Danish bankruptcy/restructuring proceedings in accordance with UNCITRAL's model law on cross border insolvency.

- In what circumstances may creditors benefit from any exceptions to such stay or moratorium?

The starting point of a voluntary arrangement in respect of an extension of payments (moratorium) is, as stated above, that the participating creditors are barred from seeking satisfaction in the debtor's assets by means of individual creditor action, but this is to be agreed individually in each arrangement.

If the moratorium is agreed as part of restructuring proceedings filed for or completed, the starting point is that the creditors are barred from pursuing their claims irrespective of whether they wish to participate or not.

However, there are some exceptions to the above starting point, which will be outlined below.

Creditors that have levied execution against claims before the commencement of the restructuring proceedings (in practice the rule is relevant for execution levied no later than three months prior to the reference date) may exercise dispossession and seek satisfaction on the basis of the charge on the claims in question, see section 12c(2) of the Danish Bankruptcy Act.

In restructuring proceedings filed for creditors that have a lien on the debtor's property until a specific amount has been paid have a right to levy execution against the lien property and seek satisfaction in such property, see section 12c(3) of the Danish Bankruptcy Act. Furthermore, creditors whose claims are secured by a pledge, a floating charge on claims or receivables charge may seek satisfaction in the charged assets, see section 12c(4) of the Danish Bankruptcy Act.

Under section 12c(5) of the Bankruptcy Act a debtor must on request from a creditor pay the periodical payments on a claim secured by a charge that concern the period of time after the commencement of the restructuring proceedings. If the debtor fails to make a payment in due time, the creditor may seek satisfaction in the asset charged irrespective of the general prohibition against individual creditor action.

8. What restructuring and rescue procedures are available in the jurisdiction,

what are the entry requirements and how is a restructuring plan approved and implemented? Does management continue to operate the business and/or is the debtor subject to supervision? What roles do the court and other stakeholders play?

Restructuring may be applied to individuals and businesses. In-court restructuring against a debtor may only commence if the debtor is insolvent and if the debtor or creditor requests that the insolvency court commence such proceedings.

It is a condition of in-court restructuring that the restructuring proposal includes a compulsory arrangement with the creditors and/or a transfer of the business.

In case of in-court restructuring the bankruptcy court will appoint a restructuring administrator (typically an attorney). If the debtor requests so, the insolvency court will also appoint a restructuring accountant for the debtor.

The restructuring administrator presents the restructuring proposal to the creditors that vote on the approval of the restructuring proposal. If the restructuring proposal is not approved, bankruptcy proceedings will commence against the debtor. As a starting point the proposal will be approved if not more than 50% of the creditors present at the meeting disapprove of the proposal.

The management of the debtor continues as a starting point if the creditors or the bankruptcy court do not decide otherwise. The management must not make important decisions without the consent of the restructuring administrator.

The bankruptcy court is only a supreme authority and is not to approve transactions but only to ensure that the administration takes place in accordance with the Bankruptcy Act.

9. Can a debtor in restructuring proceedings obtain new financing and are any special priorities afforded to such financing (if available)?

A debtor in restructuring proceedings is not prevented from obtaining new financing.

A creditor does not automatically become better secured but he may be if a proposal to this effect is made in a restructuring proposal that is approved. The claim may

also rank second in the order of priority in subsequent bankruptcy proceedings if the financing is obtained with the consent of the restructuring administrator.

Public loans obtained for the financing of employees' salaries in the restructuring period will automatically rank second in the order of priority in any subsequent bankruptcy proceedings.

10. Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?

Restructuring proceedings cannot release claims against non-debtor parties.

11. Is it common for creditor committees to be formed in restructuring proceedings and what powers or responsibilities do they have? Are they permitted to retain advisers and, if so, how are they funded?

Under Danish law creditor committees cannot be formed in restructuring proceedings, only in bankruptcy proceedings. In practice, however, it is not usual that a creditor committee is formed in bankruptcy proceedings.

If a creditor committee is formed, the creditors will be permitted to be represented by an attorney. However, it is only the appointed members of the creditor committee who may be paid by the estate in bankruptcy. Expenses for the members' own advisors will as the predominant main rule not be paid by the estate in bankruptcy.

The trustee does not require the consent of the creditor committee in order to make transactions, but the trustee must inform the creditor committee prior to material decisions. Non-compliance with the duty to provide information may result in a complaint from the bankruptcy court and possibly appointment of a new trustee. The creditor committee does not have the authority to make decisions.

12. How are existing contracts treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is

there any ability for either party to disclaim the contract?

- Contracts in restructuring processes

With the consent of the restructuring administrator the debtor may as a starting point continue contracts/bilateral contracts entered into. The debtor may also terminate the contracts with the consent of the restructuring administrator which is usually also the case for non-terminable contracts unless the non-terminability is secured by registration. In restructuring proceedings, contracts are treated under the same rules as contracts in bankruptcy proceedings so please see the section on such contracts.

It is noted that the debtor cannot continue the contract without the consent of the other contracting party if except from the restructuring proceedings the other contracting party was entitled to terminate the contract without notice for other reasons that debtor's delay in the contractual payment.

In restructuring proceedings, the debtor may in certain circumstances continue agreement that the other contracting party had terminated without notice no later than 4 weeks prior to the restructuring.

If the creditors approve a restructuring proposal that includes a transfer of business, the contracts may in certain cases be transferred to the buyer without the consent of the other contracting party.

- Contracts in bankruptcy proceedings

The estate in bankruptcy may decide to let the estate adopt the contract or not. Consequently, it cannot be effectively agreed in advance that bankruptcy or restructuring proceedings means that the agreement be terminated without notice. The other contracting party may require that the estate in bankruptcy decides on the adoption of a contract without undue delay.

If the estate in bankruptcy does not adopt the contract, the other contracting party may as a starting point terminate the agreement without notice and claim damages for its loss suffered by the non-performance of the contract.

If the estate in bankruptcy adopts the contract, the estate assumes the rights and obligations under the terms of the contract.

The maintenance of retention of title in restructuring and bankruptcy proceedings requires that the retention of title is valid prior to the commencement of the restructuring proceedings or the issue of the bankruptcy

order. Right of set-off may as a starting point be maintained but it is governed by the Danish Bankruptcy Act.

If the estate in bankruptcy adopts the contract, the other contracting party may only terminate the contract without notice if the estate in bankruptcy is in breach of its contractual obligations unless the other contracting party could terminate without notice based on the general rules of Danish law of obligations.

However, even though the estate in bankruptcy has adopted the contract, the estate is always entitled to terminate the contract by giving a month's notice if the contract concerns the delivery of an on-going service.

13. What conditions apply to the sale of assets / the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets "free and clear" of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are pre-packaged sales possible?

In restructuring as well as bankruptcy proceedings transfer of individual assets and entire businesses may take place.

In restructuring proceedings, the entire business or part of such business may be sold based on a restructuring proposal made by the restructuring administrator. The proposal must be approved by the creditors. The debtor's business may also be sold in the first 4 weeks of the restructuring proceedings (up to 8 weeks if the restructuring administrator requests so) only with the consent of the restructuring administrator as long as a majority of the creditors does not object to it.

The transfer typically takes place free of claims and liabilities, but the final terms depend on the restructuring proposal/transfer agreement.

When estates in bankruptcy sell assets together or one by one, such assets will as the predominant main rule be transferred without any liability for the estate in bankruptcy or the trustee and any buyer must consequently take over the asset as is.

In bankruptcy proceedings the trustee is not obliged to ask the creditors unless the assets transferred are charged.

If the assets are charged, the creditor must accept the transfer unless the sale is a forced sale.

If employees are transferred as part of a transfer of the entire business, the buyer takes over the employees' employment contracts, including the terms of the employment contract and any due payments.

- Credit bidding

Credit bidding is allowed under Danish law, but it requires that the chargee outbids the other bidders in respect of the charged asset.

- Pre-packaged sales

Legislation on pre-packed sales has not been passed in Denmark.

14. What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor?

The board of directors and the executive board (the "management") of a business that suffer from cash unavailability must pay particular attention to the so-called "time of no avail".

The time of no avail cannot be fixed in advance but it defines the time at which the management ought to have realised that the business could not continue operations properly without any further losses for the creditors.

If the management continues operations beyond the time of no avail, the trustee of the subsequent insolvent estate and creditors that believe that operation beyond the time of no avail has caused losses for the business and/or the creditors may at a later time raise a claim for damages against the former management.

If the business has passed the time of no avail, the management is also obliged to ensure that payment of creditors in an insolvent business takes place in a manner that complies with the ranking of creditors so that some creditors are not given preference over others.

In addition, the management must ensure that the business fulfils the general bookkeeping and tax obligations as these factors are decisive in a later assessment of any management liability.

The management may incur liability, see above, but may also be disqualified by the bankruptcy court if up to the bankruptcy the management has not fulfilled its management obligations. Disqualification means that each management member cannot participate in the management of a limited liability company without being personally liable for claims against the company.

- Is there any scope for other parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor?

The executive board and shareholders may incur liability if decisions made results in losses for the company or a third party. The executive must have acted intentionally or negligently in order to incur liability for the loss that the decisions have caused the company or a third party.

The assessment of liability is more severe in case of shareholders as the shareholder must have acted with gross negligence in order for him to incur liability for the loss that the company, other shareholders or a third party has suffered. This is consequently an exception to the rule that as a starting point the shareholder cannot incur liability.

15. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions?

No, neither restructuring nor bankruptcy proceedings release the management or the shareholders from liability for decisions made prior to the restructuring or bankruptcy proceedings if the decisions in question intentionally or (grossly) negligently caused a loss for the company, shareholders or a third party, see the reply to question above regarding "*Liabilities of directors and others*".

16. Will a local court recognise foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Does recognition depend on the COMI of the debtor and/or the governing law of the debt to be compromised? Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been

adopted or is it under consideration in your country?

As a result of Denmark's opt-out of the EU rules on justice and home affairs, Denmark is outside the Insolvency Directive that concerns mutual recognition of insolvencies in the EU.

However, Denmark recognises based on Directive 2001/24EF and 2009/24EF insolvencies over credit institutions and insurance companies if bankruptcy proceedings have been commenced in another EU Member State.

In addition to the above EU directives no express rules apply on recognition of foreign restructuring of bankruptcy proceedings in Denmark with the exception of the Nordic Bankruptcy Convention, see below.

The Danish Minister of Justice may lay down guidelines for recognition of foreign bankruptcy proceedings in Denmark, but so far, the Minister of Justice has not used this power. In case law it is consequently assumed that as long as the Minister of Justice has not laid down guidelines for the recognition of foreign bankruptcy proceedings, foreign bankruptcy proceedings do not prevent other creditors from individual creditor action in respect of the debtor's assets in action.

However, Denmark has acceded to the Nordic Bankruptcy Convention together with Norway, Sweden, Finland and Iceland according to which bankruptcy or restructuring proceedings against a debtor in one of the Nordic countries mean that the debtor's assets in the home country of the debtor and in the other Nordic countries are also covered by the bankruptcy or restructuring proceedings.

Based on the Nordic Bankruptcy Convention the bankruptcy courts in Denmark will consequently recognize bankruptcy or restructuring proceedings from the other Nordic countries.

- Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been adopted or is it under consideration in your country?

The UNCITRAL Model Law on Cross Border Insolvency and the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments has not been adopted in Denmark and they are not under consideration in Denmark.

17. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction? What are the eligibility requirements? Are there any restrictions?

If the debtor's business activities are carried out outside Denmark, bankruptcy proceedings may only be commenced against the debtor if the debtor's local court is in Denmark.

If the debtor's local court is not in Denmark, but the debtor carries out the business activities through a subsidiary in Denmark, bankruptcy proceedings may be commenced in Denmark against the subsidiary in question. This will most likely apply to branches if the branch is registered as having a share capital and limited liability.

Please note that if the debtor is subject to restructuring proceedings, bankruptcy proceedings may be commenced against the debtor in Denmark at the conclusion of the restructuring proceedings even though the debtor no longer carries on a business in Denmark or the debtor's local court is no longer in Denmark.

18. How are groups of companies treated on the restructuring or insolvency of one of more members of that group? Is there scope for cooperation between office holders?

When bankruptcy proceedings commence against a company, it is treated as an independent legal entity. This means that the remaining part of a group is not affected by the bankruptcy. If restructuring or bankruptcy proceedings are commenced against more companies of the same group, it will often be the same trustee or restructuring administrator who administers the estates.

Group companies are not entitled to vote in restructuring proceedings.

19. Is your country considering adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

The UNCITRAL Model Law on Cross Border Insolvency and the UNCITRAL Model Law on Enterprise Group Insolvency has not been adopted in Denmark and they are not under consideration in Denmark.

20. Did your country make any changes to its restructuring or insolvency laws in response to the Covid-19 pandemic? If so, what changes were made, what was/is their effect and were/are they temporary or permanent?

On March 23, 2021, the Danish Parliament passed amendments to the Danish Bankruptcy Act especially concerning the restructuring process. The overall scope of the amendments was to make it easier, cheaper and faster for Danish companies to restructure.

The amendment contained five essential changes:

1. The involvement of a restructuring accountant is no longer mandatory when restructuring a debtor,
2. the restructuring administrator can postpone the 4-week-meeting with the creditors up to 4 weeks without reason,
3. the debtor is no longer automatically declared bankrupt if the restructuring process ends before a restructuring plan has been approved by the creditors,
4. it is now possible to transfer the debtor's business only with the consent of the restructuring administrator as long as a majority of the creditors do not object to it and
5. restructuring proceedings are now reason for employees to have their unpaid salary covered by the Employees' Guarantee Fund.

Even though the changes have been made in the wake of the Covid-19 pandemic, the new rules on restructuring also include businesses that are in financial difficulties due to other reasons than Covid-19, and the changes are permanent.

21. Are there any proposed or upcoming changes to the restructuring / insolvency regime in your country?

On June 20, 2019, the European Parliament and the Council of the European Union passed Directive (EU) 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt. The implementation of this directive into Danish law is expected in the coming years.

Furthermore, the Ministry of Justice is expected to reform the Danish rules on company charges, which will

most likely affect secured creditors.

22. Is it a debtor or creditor friendly jurisdiction?

Generally, Denmark is a creditor friendly jurisdiction as restructuring and bankruptcy proceedings may be commenced at the petition of a creditor.

As a starting point, the debtor cannot avoid the restructuring or bankruptcy proceedings if the creditor is able to prove that the conditions have been fulfilled.

23. Do sociopolitical factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the state play in relation to a distressed business (e.g. availability of state support)?

Generally, the opinion in Denmark is that employees are not to be affected by the employer's unsuccessful restructuring and subsequent bankruptcy and consequently the employees' back pay will prior to the bankruptcy as well as during the subsequent notice period be secured by the Employees' Guarantee Fund.

24. What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?

The greatest barriers to successful in-court restructuring is funding and speed because the appointed restructuring administrator and the appointed restructuring accountant (if the Bankruptcy Court has appointed one) must not have advised the company before. Such persons must also quickly familiarize themselves with the company's affairs and submit statements and restructuring plans to the creditors.

This results in costly administration even in small-scale restructurings.

In addition, there are limited possibilities of obtaining funding for employees' salaries during an in-court restructuring.

In bankruptcies there is often a conflict between company charge holders which hold a charge on the

majority of the company's assets and the financial obligations that to a buyer of a company mean that the employees are entitled to have their employment transferred to a buyer of the business. This may lead to inexpedient termination of employees because it is not possible to set off the employee obligations transferred against the purchase price of the charged assets.

Transfers prior to an in-court restructuring or bankruptcies come with substantial liability for the management and advisors and it is subsequently often alluring to the management to have bankruptcies proceedings commenced against the business than to transfer it prior to bankruptcies.

Contributors

Anders Ørskov Melballe

**Attorney of the Danish High Courts,
Partner**

ame@skaureipurth.com



Pernille Bigaard

**Attorney of the Danish Supreme
Court, Partner**

pbi@skaureipurth.com



Louise Krarup Simonsen

**Attorney of the Danish High Courts,
Partner**

lks@skaureipurth.com



Lotte Lundin

Senior Associate (Supreme Court)

llu@skaureipurth.com

