

# Restructuring & Insolvency

*Contributing editors*

**Catherine Balmond and Katharina Crinson**



2019

GETTING THE  
DEAL THROUGH 

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*Contributing editors*

**Catherine Balmond and Katharina Crinson**  
**Freshfields Bruckhaus Deringer**

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# Preface

## Restructuring & Insolvency 2019

Twelfth edition

**Getting the Deal Through** is delighted to publish the twelfth edition of *Restructuring & Insolvency*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on China, Japan and Korea.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Catherine Balmond and Katharina Crinson of Freshfields Bruckhaus Deringer, for their continued assistance with this volume.

GETTING THE  
DEAL THROUGH 

London  
November 2018

# Norway

Stine D Snertingdalen and Ingrid E S Tronshaug

Kvale Advokatfirma DA

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## General

### 1 Legislation

#### What main legislation is applicable to insolvencies and reorganisations?

The main legislation applicable to insolvencies and reorganisations in Norway are the Bankruptcy Act of 1984 and the Satisfaction of Claims Act of 1984. The Bankruptcy Act regulates both judicial debt negotiation proceedings and winding-up proceedings, and mainly provides procedural rules, including criteria for the opening, handling and finalisation of the respective proceedings. The Satisfaction of Claims Act includes, inter alia, rules on the bankruptcy estate's automatic seizure of the debtor's assets, avoidance (clawback or annulment of transactions), how to treat a bankrupt debtor's contracts, as well as rules on creditors' claims and the order of priority for such claims.

### 2 Excluded entities and excluded assets

#### What entities are excluded from customary insolvency or reorganisation proceedings and what legislation applies to them? What assets are excluded or exempt from claims of creditors?

Banks, insurance companies and certain other financial institutions, as well as parent companies of such entities, cannot be subject to insolvency proceedings pursuant to the Bankruptcy Act. Insolvency proceedings in such entities are governed by the Guarantee Schemes Act of 6 December 1996 No. 75. The act gives the government the authority to place financial institutions under public administration if they cannot fulfil their obligations as they fall due and they do not have sufficient funds to secure future operations, or they are not capable of fulfilling capital adequacy requirements.

If possible, the board of directors will be heard before such actions are taken. If public administration proceedings are opened in a financial institution that is a parent company in a financial group, the other companies in that financial group may also be included in the proceedings.

According to the Satisfaction of Claims Act, with only a few exceptions for personal bankruptcies, all of the debtor's assets may be subject to enforced recovery actions from creditors, and a bankruptcy estate automatically seizes all of the debtor's assets. Examples of assets that are exempt from seizure in personal insolvency proceedings are certain personal assets as well as certain monetary contributions that the debtor receives while under insolvency proceedings.

### 3 Public enterprises

#### What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

There is no specific insolvency legislation for government-owned enterprises and insolvent public enterprises.

### 4 Protection for large financial institutions

#### Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

No; however specific legislation applies to banks and financial institutions (see question 2).

### 5 Courts and appeals

#### What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?

Insolvency proceedings shall be opened by the district court where the debtor has its main office or domicile. The court presides over the proceedings opened by that court, and all matters concerning the proceedings are heard by that same court, including ancillary proceedings (for example avoidance claims or disputes over a creditor's claim).

All court orders may be appealed within a month of their passing. An appellant has an automatic right of appeal, and does not need to obtain permission to do so. The appellant must, however, have a legal interest in the matter. There is no requirement to post security to proceed with an appeal; however, the appellant must pay a court fee. The size of the court fee varies and depends on which type of decision is appealed, whether a court hearing is held and for how many days, etc.

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## Types of liquidation and reorganisation processes

### 6 Voluntary liquidations

#### What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

A debtor wanting to commence a voluntary liquidation case must be insolvent (ie, be both illiquid and have negative net assets). The debtor must deliver a written petition for bankruptcy to the court, supported by a set minimum of documentation. The court rarely denies a petition for voluntary liquidation.

### 7 Voluntary reorganisations

#### What are the requirements for a debtor commencing a voluntary reorganisation and what are the effects?

A debtor who cannot meet its financial obligations as they fall due may file for a formal, judicial debt negotiation proceeding, even if the debtor is not insolvent. The petition to the court to open proceedings must be made in writing, and must fulfil certain contents and documentation requirements set out by the Bankruptcy Act. The court will usually ask the debtor to put up security to cover the costs of the initial proceedings.

There are no specific requirements for a debtor commencing a voluntary, out-of-court reorganisation.

## 8 Successful reorganisations

**How are creditors classified for purposes of a reorganisation plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?**

In a voluntary debt negotiation proceeding, the creditors have to be treated equally. There are no other mandatory features; however, the plan must be accepted by all creditors. In a compulsory debt negotiation proceeding where the debtor suggests a compulsory composition, the minority voters are crammed down by the majority voters. The plan must provide a minimum dividend payment of 25 per cent to all unsecured creditors with claims not ranking in priority, and the reorganisation plan requires a majority both in number of creditors and of the total amount of all claims filed to be binding on all creditors (ie, 'double majority'). The main requirements for reaching a double majority in a compulsory composition are (the numbers referring to creditors and claims that are granted voting rights):

- if the dividend payment is at least 50 per cent, the plan must be accepted by at least three-fifths of the creditors holding at least three-fifths of the total debt; or
- if the dividend payment is less than 50 per cent (but not below 25 per cent), the plan must be accepted by at least three-quarters of the creditors holding at least three-quarters of the total debt.

Claims ranking in priority shall be paid in full, and creditors with priority claims are therefore not entitled to vote. Nor will secured claims give voting rights, to the extent that they would be covered if the secured assets were to be sold or realised. Finally, closely related parties to the debtor do not have the right to vote.

A reorganisation plan will in itself not release non-debtor parties from liability. A release of liability would require the consent from each party against whom such protection is sought.

## 9 Involuntary liquidations

**What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?**

A bankruptcy petition from one or more creditors must be delivered to the court in writing. The petitioner must provide documentation for the claim and its foundation. If the court finds that the claim is well founded and sufficiently documented, or if the claim is undisputed but the debtor cannot pay, the court will grant the petition and open bankruptcy proceedings in the debtor. If the claim is disputed, or if the debtor argues not being insolvent, the court will hear the parties before deciding on whether or not to open proceedings.

If the court decides to grant the petition, the debtor is taken under bankruptcy proceedings. If the court denies the petition, proceedings are not opened and the debtor may continue its operations as usual. If the court has denied the petition because it found the creditor's claim unfounded, the decision cannot be used by the debtor as evidence that the creditor has no claim. Hence, the creditor may initiate court proceedings before a regular court to determine whether their claim is valid. If that court decides that the claim is valid and the debtor still does not pay, the creditor may thereafter deliver a new petition for bankruptcy in the debtor.

There are no material differences between proceedings opened voluntarily and proceedings opened involuntarily.

## 10 Involuntary reorganisation

**What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?**

Creditors cannot commence an involuntary reorganisation of a Norwegian debtor. However, a debtor that cannot meet its obligations as they fall due may itself file for a 'compulsory' debt negotiation proceeding, under which creditors or debt may be crammed down, subject to certain rules.

The petition must fulfil the same criteria as in a voluntary proceeding (see question 7).

## 11 Expedited reorganisations

**Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?**

Procedures for expedited reorganisations do not exist under Norwegian law.

## 12 Unsuccessful reorganisations

**How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?**

A voluntary debt negotiation plan cannot be carried out unless it is approved by each of the debtor's creditors. A proposed compulsory plan is defeated if the voting requirements (see question 8) are not met. Further, the court may in certain situations decide not to accept the plan, for instance if the procedure has not been carried out in accordance with the law or if the plan does not treat the creditors equally and the creditors have not agreed to differential treatment. Other reasons the court may have for not accepting a plan include that it would be unreasonable or that it is considered likely that the debtor will not be able to fulfil the plan.

The court may decide that the debtor's fulfilment of the plan shall be supervised, usually by one or more members of the debt negotiations committee. If a debtor is subject to supervision and severely or repeatedly acts against its duties, the court shall open liquidation proceedings against the debtor if petitioned by the supervisors, and if it is not clear that the debtor nevertheless will be able to fulfil the plan. If a non-supervised debtor fails to adhere to a plan, there are no automatic consequences; however, the creditors may initiate (new) debt recovery proceedings.

## 13 Corporate procedures

**Are there corporate procedures for the dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?**

Forced liquidation or dissolution proceedings follow the procedural rules of an insolvent winding-up proceeding and are also governed by the Bankruptcy Act. The law differentiates between forced dissolution and forced liquidation, as the conditions for the opening of the two proceedings are different.

The court may take charge of a dissolution process if the company has reported to the National Register of Business Enterprises that it is in the process of a regular dissolution but has not managed to complete the dissolution process within a year from delivering the first notification. The court may also take charge of a dissolution process if this is requested by shareholders representing at least one-fifth of the total shares in the company.

A company may be subject to a forced liquidation process if it has failed to fulfil certain legal requirements, including those related to the composition of the board of directors, the appointment of an authorised public auditor and the reporting of the company's annual accounts to the Register of Company Accounts.

Insolvency is not a precondition for the opening of forced dissolution or liquidation. The business may even be solvent and ongoing and still be subject to proceedings, as the conditions to open such proceedings are objective and absolute. Nevertheless, most of these cases result in liquidation of the company, as the process of returning the company to its shareholders is often complex, time-consuming and expensive.

## 14 Conclusion of case

**How are liquidation and reorganisation cases formally concluded?**

Judicial debt negotiation proceedings are a 'make or break' situation for a company, and are finalised either by a successful reorganisation plan being carried out, or by ending in liquidation proceedings. The conclusion is formally decided by the court either way. Liquidation proceedings are formally concluded by a court decision.

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**Insolvency tests and filing requirements**


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**15 Conditions for insolvency****What is the test to determine if a debtor is insolvent?**

The test to determine whether a debtor is insolvent is twofold. Firstly, the debtor has to be illiquid, meaning that the debtor cannot settle its debt as it falls due. Secondly, the total value of the debtor's assets and income must be insufficient to cover the total debt.

**16 Mandatory filing****Must companies commence insolvency proceedings in particular circumstances?**

The board of directors in a limited liability company must act promptly if the company's equity is not considered reasonable compared with the size and risk of the business operations. Such actions include measures to improve the company's financial situation, convene a shareholders' meeting to discuss the situation and, ultimately, to file for bankruptcy proceedings if it is unlikely that the financial difficulties can be resolved in the immediate future.

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**Directors and officers**


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**17 Directors' liability – failure to commence proceedings and trading while insolvent****If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?**

If the board of directors fails to meet its obligation to act, as described in question 16, and carries on business while the company is insolvent, it may result in penal liability or economic responsibility for the directors, or both.

**18 Directors' liabilities – other sources of liability****Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? Can they be subject to sanctions for other reasons?**

The most common breach of duty for which the CEO or general manager and board members are held liable in Norway, is a lack of payment of employees' tax deduction. The company's duty to pay income tax on behalf of its employees is very strict, and the CEO can be held personally liable for any lack of such payment.

Furthermore, corporate officers and directors may – subject to further requirements – be held liable for their corporation's obligations, if such obligations are the result of negligent acts or omissions by the officers or directors.

The board of directors has certain duties when the company is experiencing financial difficulty, and failure to comply with such duties may lead to the directors being held liable for damages or criminally liable. For instance, they shall ensure that the company's creditors are treated equally, and that the company does not incur any new debt or obligations that it cannot meet, unless the creditor is familiar with, or informed of, the company's financial situation and the risk involved with providing new loans or credit.

Furthermore, the directors must act promptly if the company's equity is not considered reasonable compared with the size and risk of the business operations (see question 16).

If the court finds it probable in relation to a bankruptcy proceeding that corporate officers or directors are guilty of criminal violations (typically a lack of accounting duties or embezzlement) or unfit to run a business, the court may quarantine the responsible persons from establishing a new company or being a corporate officer or director in any company for the duration of the quarantine period (normally two years from the opening of the relevant bankruptcy proceedings).

**19 Shift in directors' duties****Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?**

The various rules on liability for board members and rules regarding the priority between claims when a company has insufficient funds to meet all their obligations, gives a de facto shift for directors' responsibilities; going from being towards the owners and shareholders to being towards the creditors (the latter ranking higher in priority than the shareholders in an insolvency process).

**20 Directors' powers after proceedings commence****What powers can directors and officers exercise after liquidation or reorganisation proceedings are commenced by, or against, their corporation?**

In a judicial reorganisation process in Norway, either voluntary or involuntary, the debtor retains legal powers over its assets, and the company's board of directors maintains responsibility for the ongoing business. The debtor and its operations are, however, supervised by an administrator and a debt negotiations committee, both appointed by the court. The debtor cannot renew or obtain new debt, pledge assets or sell or lease out its real property, business premises or any asset of significant value without the consent of the administrator and debt negotiations committee.

Directors and officers are stripped of all their powers if the company is taken under insolvent winding-up proceedings, or forced liquidation or dissolution proceedings.

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**Matters arising in a liquidation or reorganisation**


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**21 Stays of proceedings and moratoria****What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?**

The opening of an insolvency proceeding triggers an automatic stay on certain enforcement proceedings against the debtor, including a creditor's attempt to carry out an enforced sale of the debtor's assets. The stay lasts six months from when the proceedings are opened. Further, the creditors are prevented from attaching an execution lien in any of the debtor's assets throughout the proceedings, for claims originating from before the proceedings were opened.

When a petition for judicial debt negotiation proceedings has been filed, there is a three-month automatic stay of any petitions for winding-up proceedings related to debt incurred prior to the opening of the proceedings. The stay may be prolonged at the discretion of the court upon a motion from the debtor. If compulsory judicial debt negotiation proceedings are opened, the automatic stay lasts throughout the proceedings.

The automatic stay is, however, not effective against a petition for winding-up proceedings filed by at least three creditors with voting rights whose claims in sum represent at least two-fifths of all claims entitled to dividend payment, even though the debt arose prior to the filing of the petition.

If the debtor at the time of the opening of liquidation proceedings is the claimant in a legal proceeding, the case is automatically stopped by the court. If the debtor is the defendant, however, the claimant may choose to include the bankruptcy estate as a defendant in the legal proceeding to have their claim tried by the court. Any award in the creditor's favour against the debtor has to be filed as a claim in the estate and receive dividend payment subject to the rules on priority between claims.



## 22 Doing business

**When can the debtor carry on business during a liquidation or reorganisation? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?**

In a formal reorganisation process in Norway, either voluntary or involuntary, the debtor retains legal powers over its assets, and the company's board of directors maintains responsibility for the ongoing business. The court has a passive role in the proceedings. The debtor and its operations are, however, supervised by an administrator and a debt negotiations committee, both appointed by the court. The members of the committee are usually representatives for the largest creditors. See question 20.

Creditors who supply goods or services after the filing will not be given any special treatment with respect to claims that arose prior to the reorganisation proceedings, but will be entitled to payment for any services or goods delivered in agreement with the debtor after the opening of proceedings.

The administrator of a liquidation proceeding may choose to carry on the business operations of the debtor for a limited period of time (often merely a few days) during negotiations with potential buyers, enabling the business to be sold as a going concern. The estate will be responsible for goods and services delivered upon request from the administrator or estate after the opening of the liquidation proceedings, and the estate will normally enter into new agreements with suppliers, employees, etc to regulate the terms of delivery.

## 23 Post-filing credit

**May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is or can be given to such loans or credit?**

A debtor in liquidation may not obtain secured or unsecured loans or credit. A debtor in a formal reorganisation (judicial debt negotiation proceedings) may only obtain loans or credit if accepted by the debt negotiations committee.

## 24 Sale of assets

**In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?**

In judicial debt negotiation proceedings, the sale of specific assets or the entire business of the debtor are generally subject to the same rules as a company that is not in an insolvency proceeding; however, the debtor is supervised by a debt negotiations committee, which shall approve the sale of any real property and assets of significant value. See question 20.

If a compulsory judicial debt negotiation proceeding is successful, any encumbrances that supersede the assumed value of the encumbered assets cease to exist. In liquidation proceedings, the business may be sold free and clear of debt (see the Bankruptcy Act, section 117a). In such a sale, encumbrances that supersede the value of any asset sold by the bankruptcy estate may be eradicated if they are sold together with other assets, or as part of the business operations, subject to certain further statutory conditions. This provision is, however, quite narrow and hardly ever used in practice, meaning that a bankruptcy estate must usually respect and deal with any pledgees.

## 25 Negotiating sale of assets

**Does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?**

There is no practice of 'stalking horse' bids in sale procedures in Norwegian insolvency proceedings. Credit bidding in sales is not practised in Norwegian insolvency proceedings, except if the bidder has a security interest (ie, a pledge or lien) in the respective asset, and an

unsecured creditor cannot purchase assets from the insolvent debtor by reducing the amount of their claim against the debtor. Any encumbered asset of the debtor may be transferred to the pledgee holding security in that asset, in exchange for the pledgee reducing its claim against the debtor accordingly (see the Bankruptcy Act, section 117c).

## 26 Rejection and disclaimer of contracts

**Can a debtor undergoing a liquidation or reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?**

A debtor undergoing judicial debt negotiation proceedings may not reject or disclaim an unfavourable contract merely because of the opening of proceedings; the debtor's contracts remain unchanged when the proceedings are opened. When liquidation proceedings are opened, however, the bankruptcy estate may choose to enter into or disregard any of the debtor's contracts. As for tenancy agreements and employment contracts, the bankruptcy estate automatically becomes a party unless it explicitly declares to the contractual parties within four and three weeks, respectively, that it does not want to become a party to the contract.

## 27 Intellectual property assets

**May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?**

In insolvency proceedings, IP agreements are treated as most of the debtor's contracts: the estate has a right to enter into the contract as a party. This means that the IP licensor or owner may not terminate the debtor's right to use it if the estate enters into the contract as a party. If the estate does not want to become a party to the contract, however, the debtor's contractual party may terminate the agreement.

## 28 Personal data

**Where personal information or customer data collected by a company in liquidation or reorganisation is valuable, are there any restrictions in your country on the use of that information or its transfer to a purchaser?**

An insolvency estate in Norway will have the same rights and obligations as the debtor, and in general, the estate has the opportunity to use or transfer personal information or customer data collected by the debtor to the same extent as the debtor.

## 29 Arbitration processes

**How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?**

If arbitration is used in insolvency proceedings, it is never used for the actual insolvency proceeding, but, for example, in an ancillary proceeding or in a dispute concerning a contract of the debtor with an arbitration clause.

If the debtor was party to an arbitration proceeding when the insolvency proceedings were opened, the estate may choose to continue those proceedings. A bankruptcy estate may agree to arbitrate a case where the estate is the plaintiff or defendant; however, it will most likely never do so because it is often far more expensive than having the case brought before a regular court.

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**Creditor remedies**


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**30 Creditors' enforcement**

**Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?**

Besides a bankruptcy estate's automatic seizure of assets, there are no processes by which some or all of the assets of a business may be seized outside of court proceedings.

**31 Unsecured credit**

**What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?**

Unsecured creditors can attempt to recover their undisputed claim through a regular debt collection procedure, by attaching an execution lien in the debtor's assets, or by filing for bankruptcy in the debtor, or all of the above. A disputed claim cannot be subject to regular debt collection, but the creditor may seek an execution lien or file for bankruptcy of the debtor, or both. A disputed claim will be heard by either an execution officer or the court before an execution lien is allowed or bankruptcy proceedings opened.

The process of obtaining an execution lien might take months to complete. An execution lien gives the creditor a lien comparable to a pledge or mortgage, and serves as a foundation for requesting a forced sale of the asset in question. The process is usually fairly straightforward and is not expensive.

It will normally take at least one to two months from when the creditor sends notice of a bankruptcy petition to the debtor until bankruptcy proceedings are opened. The difficulty of the process depends on the claim and whether it is disputed by the debtor. An unsecured creditor has to pay a fee upon delivering the petition to the court, which at the moment is 56,500 kroner, as security for the costs of the bankruptcy proceedings.

If an unsecured creditor is worried that the debtor will dispose of assets and reduce the creditor's chances of obtaining coverage for their claim, it may file an injunction petition. The court then decides whether or not to grant the petition and issue an order preventing the debtor from, for example, disposing of one or more assets.

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**Creditor involvement and proving claims**


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**32 Creditor participation**

**During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are the liquidator's reporting obligations?**

In compulsory judicial debt negotiation proceedings, the debt negotiations committee shall hold a meeting for the creditors; no earlier than four weeks and no later than eight weeks after proceedings are opened.

The court-appointed administrator in a bankruptcy case shall inform all known creditors of the bankruptcy proceedings. In liquidation proceedings, the court usually schedules a creditors' meeting within two to four weeks after proceedings are opened. In that meeting, the court-appointed administrator delivers a report regarding the status and findings of the proceedings so far, which is also made available to all creditors. Unless there are special circumstances that necessitate a second or more creditors' meetings, no further such meetings are held. The date and time of the first creditors' meeting is stated in the court's decision to open proceedings. If the proceedings last longer than a year or for several years, the court-appointed administrator and creditors' committee shall each year prepare an annual report to the court. The report is also made available to all creditors. A creditor may ask for, but has no specific right to receive, further information regarding the estate and the proceedings. A request for transparency is considered and decided on in each separate case. Creditors may pursue claims against third parties after the insolvency proceedings have been finalised (see question 34).

**33 Creditor representation**

**What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?**

When liquidation proceedings are opened, the court often, but not always, appoints one or more individuals to form a creditors' committee. The committee more or less functions as a 'board of directors' for the estate, with the trustee as chairman and other members as directors. The committee makes decisions for the estate, for example deciding when and how to realise assets and whether or not to pursue claims, and is responsible for testing claims filed in the estate before carrying out any distribution to the creditors. Usually the trustee suggests to the court one or more creditor representatives to appoint as members of the creditors' committee. A creditor who is interested in being on the committee may notify the trustee.

In larger cases, the committee usually has at least two creditor representatives, and often also a representative for the employees. The creditors' committee's members' expenses are paid from the estate provided that the estate has sufficient funds to do so. In smaller bankruptcy estates, the members of the creditors' committee might not receive any remuneration. The committee may retain advisers; however, it can only do so if it is pro bono or if there are sufficient funds in the estate.

A creditors' committee in judicial debt negotiation proceedings has more of a supervisory function. See questions 20 and 22.

**34 Enforcement of estate's rights**

**If the liquidator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong? Can they be assigned to a third party?**

If the liquidator has no assets to pursue a claim, it is not uncommon that a creditor provides funding to the estate in order to pursue the claim through an agreement between the estate and the creditor. The fruits of the remedy will under such circumstances belong to the estate, but since the funding creditor takes a risk by financing the estate's pursuit, the agreement will often provide the funding creditor with a percentage of the outcome in addition to a mere refund of costs as well as any regular dividend payment from the estate.

If the liquidator (or the creditors' committee where one has been appointed) is in doubt regarding whether or not to pursue a claim, the question shall be decided on by the creditors in a creditors' meeting. If the creditors then decide that the estate shall not pursue the claim, any creditor who voted against the decision may pursue the claim on behalf of the estate within a deadline set by the court, unless the matter is settled between the estate and the opposite party. The creditor must fund such a pursuit, however if the pursuit results in increased gross assets in the estate, the creditor may request that its reasonable costs are covered from the estate's share before the balance falls to the estate.

**35 Claims**

**How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Can claims for contingent or unliquidated amounts be recognised? Are there provisions on the transfer of claims and must transfers be disclosed? How are the amounts of such claims determined?**

When the court opens insolvency proceedings, it sets a time limit for filing claims in the estate. The time limit shall be within three and six weeks from when the opening of proceedings was announced in The Bronnoysund Register Centre. The time limit is, however, not preclusive, and claims filed after the time limit has expired, but before the proceedings are finalised, will be registered in the estate.

Claims filed in the estate will only be tested if there are sufficient funds in the estate to give distribution to the class of claims in which the respective claims belong. The trustee tests the claims by assessing documentation provided by the creditor, and decides whether or not to recommend to the creditors' committee to allow the claim. If a claim is

disallowed, and the creditor and estate do not reach an amicable agreement, the trustee informs the court of the matter, and the court sets a deadline of three weeks for the creditor to take legal action in order for the court to decide on the matter. If the creditor does not take legal action within the deadline, the claim will be treated in accordance with the trustee's recommendation, without any possibility of appeal.

A claim filed in the estate may be transferred, and it is sufficient to give notice to the estate of such a transfer. Contingent claims may be recognised and recommended. However, such claims will only receive dividend payment to the extent that the condition has occurred. If the condition has not occurred at the time of distribution to the creditors, the dividend payment for the contingent claim shall be preserved on account by the trustee and only paid out to the creditor if and when the condition occurs.

A claim acquired at a discount may be enforced for its full face value. Interest accrued after insolvency proceedings were opened may be filed as a claim in the estate; however, it will rank last in priority.

### 36 Set-off and netting

**To what extent may creditors exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?**

The general rule is that a creditor may exercise its right to set-off its claim after insolvency proceedings have been opened against the debtor, provided that the general terms of set-off are fulfilled and a set-off, therefore, was possible before proceedings were opened. However, if the debtor's claim against the creditor fell due before proceedings were opened, and the creditor's claim does not fall due until after proceedings were opened, the creditor is permanently deprived of the right to set-off.

### 37 Modifying creditors' rights

**May the court change the rank (priority) of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?**

If the trustee finds that the creditor has filed its claim in a different priority than it should have, but the creditor disagrees, the trustee shall report the matter to the court (see question 35). If the creditor takes legal action within the three-week deadline set by the court, the court may change the priority of the creditor's claim if the court agrees with the trustee. If the creditor does not take legal action within the deadline, the claim and its priority will be treated in accordance with the trustee's recommendation.

### 38 Priority claims

**Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?**

Claims that have arisen after the opening of bankruptcy proceedings (eg, payment for a service requested by the estate) shall be covered before any creditors with dividend claims receive any distribution.

Employees' claims for unpaid wages, with certain limitations, rank first in priority. With mainly the same limitations and up to a certain maximum amount, outstanding wages will, in the event of a bankruptcy, be paid out to the employees by the Norwegian Wages Guarantee Fund (the Fund). The Wages Guarantee Fund then subrogates the employee's claim and becomes a creditor in the estate for the same amount that was paid by the Fund to the employee.

Certain tax and VAT claims rank second in priority. Remaining claims have no priority, except for interest accrued after the bankruptcy proceedings were opened and certain other claims, which have priority below all other claims.

Creditors with security for their claims will have priority to the assets in which they have security. Any part of a secured creditor's claim that is not covered by the realisation of such assets will be an unsecured claim in the estate and thus have no priority.

### 39 Employment-related liabilities

**What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)**

In a liquidation proceeding, the bankruptcy estate automatically becomes a party to all employment contracts, unless it, within three weeks, expressly declares to the employees that it does not want to be a party to the respective contract. There are no bankruptcy specific employee claims that arise where employees are terminated during a restructuring or liquidation.

The procedures for termination in a restructuring are the same as outside a restructuring. The termination rules for employment contracts are more or less the same as outside a liquidation proceeding, and the estate must issue termination notices to each and every one of the employees.

### 40 Pension claims

**What remedies exist for pension-related claims against employers in insolvency or reorganisation proceedings and what priorities attach to such claims?**

Pension-related claims against an employer in insolvency proceedings are subject to more or less the same rules as claims for salary. Pension-related claims rank first in priority, with certain limitations, and will to an extent be covered by the Fund (see question 38).

### 41 Environmental problems and liabilities

**Where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator personally, secured or unsecured creditors, the debtor's officers and directors, or on third parties?**

Any environmental problems that arose prior to the opening of insolvency proceedings are usually left with the debtor, and no liabilities are imposed on the insolvency administrator or estate. There could, however, be grounds for liability for the debtor's officers and directors. If environmental problems are caused by the bankruptcy estate, the estate or the insolvency administrator could be held liable, depending on the circumstances.

### 42 Liabilities that survive insolvency or reorganisation proceedings

**Do any liabilities of a debtor survive an insolvency or a reorganisation?**

Liabilities of personal debtors (ie, debtors that are not limited liability companies or other structures with limited liability), survive an insolvency or a reorganisation. This entails that the debtor's debt and liabilities do not go away when the proceedings are finalised. The debt may, however, be reduced or waived by the creditors as part of the process, or the debtor and its insolvency estate may carry out a compulsory composition, forcing a reduction of debt.

### 43 Distributions

**How and when are distributions made to creditors in liquidations and reorganisations?**

Distributions to creditors may be carried out both during the proceedings and after the proceedings have been finalised. The main prerequisite for distributing dividend payments to creditors during the proceedings is that there must clearly be sufficient funds in the estate to make such payments. Prior to any distribution, the claims are tested (see question 35).

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**Security**


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**44 Secured lending and credit (immovables)****What principal types of security are taken on immovable (real) property?**

The principal type of security taken on immovable (real) property is a mortgage. Ownership, encumbrances and certain other information about real estate is registered in public national registers, and a mortgage registered in such a register obtains legal protection and extinguishes any argument from a third party claiming to have been in good faith in assuming that the property was not encumbered upon purchase.

Standard forms (in Norwegian) are being used to register mortgages, pledges, etc, and the entire registration process can usually be done in a few days if urgent and handled by a professional. The fees for registering a security interest are very modest, ranging from approximately 500 to 2,000 kroner per asset. If a creditor has an adequate legal basis for legal enforcement, he or she can deliver a petition for an execution lien in the debtor's property.

With a few exceptions, any asset belonging to the debtor may be encumbered with an execution lien (see question 31).

**45 Secured lending and credit (movables)****What principal types of security are taken on movable (personal) property?**

One cannot generally pledge 'everything that one owns or will own'. It is, however, possible to get a floating charge over certain categories of assets, including 'machinery and plant', 'inventory and stock', 'motor vehicles and construction machines' and 'trade receivables'. A floating charge is registered with a fixed maximum amount and includes all the company's assets within that category. Legal protection is obtained by registering the floating charge in the Norwegian Register of Mortgaged Movable Properties, which will also give protection against alleged bona fide acquirers. This public register also includes a registration of pledges in specified vehicles.

Pledges in assets that are registered in national registers have to be registered in the relevant register to obtain legal protection. The registration costs are low, and the process of registering the security interest usually takes from a few days to one or two weeks. As described in question 31, a creditor might be able to attach an execution lien to the debtor's assets. An execution lien may also be effectuated as attachment of earnings.

A vendor's fixed charge or retention of title may be agreed in more or less all types of movable property, to secure the purchase price and any interest and expenses related to the purchase of that specific asset. If the buyer finances the purchase with a loan that is paid directly from the lender to the seller as settlement of the purchase price, a vendor's fixed charge may also secure such loan. Such security cannot be agreed for assets registered in an assets register or assets that the buyer has a right to resell before they are paid. To obtain legal protection, a vendor's fixed charge or retention of title must be agreed between the seller and the buyer for that specific asset before the asset is handed over to the buyer. In a transaction between two professional parties, it is sufficient that such agreement is confirmed in writing without undue delay after the asset was handed over to the buyer. The agreement must state the purchase price and hence the size of the security.

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**Clawback and related-party transactions**


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**46 Transactions that may be annulled****What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?**

There are several provisions regulating different kinds of transactions that may be annulled (eg, transactions considered to be extraordinary payments, gifts, security for old debt and certain cases of set-off). In general, the transaction in question must have been performed within three months prior to the date on which the court received the bankruptcy petition (for gift transactions, the general time limit is one year). However, older transactions may also be annulled if the beneficiary and the debtor were closely related parties (applying a two-year time limit), or if the beneficiary has not acted in good faith with regard to the

poor economic state of the debtor and the unfairness of the transaction (applying a more subjective element of assessment and a 10-year time limit).

The estate has one year from the opening of bankruptcy proceedings to forward an annulment claim. Such claims may only be attacked by a bankruptcy (liquidation) estate or by the debt negotiations committee in compulsory debt negotiation proceedings.

Generally, if a transaction is annulled, the receiving party of the transaction in question must return to the estate what was received from the debtor, or any enrichment it has obtained. If the receiving party is considered to have been in bad faith when the annulled transaction was carried out, the receiving party might have to indemnify the estate for the economic loss or any damages suffered as a result of the transaction.

Annulment may only be claimed by the administrator or trustee of either compulsory reorganisation proceedings or liquidation proceedings, and not by the creditors themselves.

**47 Equitable subordination****Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?**

In general, there are no restrictions on such claims.

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**Groups of companies**


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**48 Groups of companies****In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?**

Norwegian insolvency rules do not provide specific rules for insolvency in groups of companies. Each company is treated as a separate legal entity, and the proceeds of assets of the company are divided between the creditors of that legal entity.

**49 Combining parent and subsidiary proceedings****In proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?**

In insolvency proceedings involving a corporate group, the proceedings in the parent and its subsidiaries are often combined in the sense that the same administrator is appointed for the separate proceedings. However, the decision of who to appoint as trustee is subject to the discretion of the court that opens the proceedings, and there is no automatic appointment of the same trustee for the insolvency proceedings of all companies in a group.

The assets and liabilities of companies in the same company group and under insolvency proceedings may not be pooled for distribution purposes; each estate handles its own assets, and distribution or dividend payment is done individually from each estate.

Specific legislation applies to banks and financial institutions (see question 2).

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**International cases**


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**50 Recognition of foreign judgments****Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?**

In April 2016, the Ministry of Justice and Public Security published a legislative proposal to add a chapter to the Norwegian Bankruptcy Act, with new provisions on cross-border insolvency matters. The chapter was added by an amending act dated 17 June 2016, but has not yet entered into force and as of mid-September 2018, no date has been set for when the new chapter will enter into force. The chapter includes provisions on both territorial and factual jurisdiction, choice of law rules, as well as recognition of foreign insolvency proceedings and the impact foreign proceedings shall have in Norway. When the new rules enter into force, the legislation on international matters, and especially those discussed in questions 50, 53, 54 and 55, will be somewhat different.

An insolvency proceeding in another country is in general not recognised by Norwegian courts unless that country has a mutual agreement with Norway. A Supreme Court decision from 2013, however, implies that although a foreign insolvency proceeding does not impose a stay on creditors' debt recovery proceedings against any assets the foreign debtor has in Norway, a foreign bankruptcy estate will be acknowledged in Norwegian courts as a representative for the common interests of the debtor's creditors. In other words, the foreign bankruptcy estate might, according to the decision, be treated equal to and have the same debt recovery possibilities as any other unsecured creditor of the debtor.

Foreign judgments or orders are recognised to the extent that they are subject to either the Lugano Convention or another convention or agreement between Norway and that state. In addition to the Lugano Convention, Norway is a party to the Nordic Convention on Bankruptcy, which, inter alia, regulates cross-border insolvencies within Norway and the other member states: Denmark, Sweden, Finland and Iceland. The Nordic Convention also has rules on recognition and enforcement as well as choice of law in various situations.

#### 51 UNCITRAL Model Law

**Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?**

The UNCITRAL Model Law on Cross-Border Insolvency has not been adopted by Norway. There are, however, legislative changes in motion that to a large extent will implement elements from the UNCITRAL Model Law.

#### 52 Foreign creditors

**How are foreign creditors dealt with in liquidations and reorganisations?**

Foreign creditors in a Norwegian insolvency proceeding are generally not treated differently from national creditors.

#### 53 Cross-border transfers of assets under administration

**May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?**

Norwegian law does not allow for a mere transfer of assets from an administration in Norway to an administration in another country.

#### 54 COMI

**What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?**

Under Norwegian law, a company's COMI is generally where the company has its registered main office or business address. However, if the company has its actual centre of business elsewhere, the COMI may be decided to be where the actual business is performed, instead of where the company has its registered address.

#### 55 Cross-border cooperation

**Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?**

Norway does provide for recognition of foreign insolvency proceedings where there is a mutual agreement in place between the states (see question 50). Domestic and foreign courts rarely cooperate. While lower courts in Norway have accepted the recognition of foreign proceedings, the Supreme Court refused recognition in a 2013 decision and ruled that acknowledgement of insolvency proceedings in another state must primarily be in accordance with mutual agreements or legislation.

#### 56 Cross-border insolvency protocols and joint court hearings

**In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?**

We are not familiar with cases where the Norwegian courts have communicated or held joint hearings with courts in other countries.



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<b>NORWAY</b>	<b>Applicable insolvency law, reorganisations: liquidations</b>
	Main statutes: The Bankruptcy Act of 8 June 1984 No. 58. The Satisfaction of Claims Act of 8 June 1984 No. 59.
	<b>Customary kinds of security devices on immovables</b>
	Mortgages and execution liens.
	<b>Customary kinds of security devices on movables</b>
	Pledges, either in each asset or floating charges, and execution liens.
	<b>Stays of proceedings in reorganisations/liquidations</b>
	Yes.
	<b>Duties of the insolvency administrator</b>
	Handle all aspects of the proceedings; more or less functions as the chairman of the board and CEO if compared with a limited liability company.
	<b>Set-off and post-filing credit</b>
	Set-offs may be allowed. Post-filing credit is not allowed.
	<b>Creditor claims and appeals</b>
	Claims may usually be filed in the estate throughout the proceedings; there is no preclusive deadline. Claims are subject to a set order of priorities. Claims are tested by the administrator/creditors' committee, and potentially the court. The court's decisions may in general be appealed within one month from passing.
	<b>Priority claims</b>
	Employees' claims for wages rank first in priority, and certain VAT and tax claims rank second in priority. The next class of priority is unsecured claims.
	<b>Major kinds of voidable transactions</b>
Transactions of a certain size within last three months before proceedings were opened, covering old debt, gifts, transactions beneficial to closely related parties.	
<b>Operating and financing during reorganisations</b>	
Operations continue as usual during debt negotiation proceedings. Financing during debt negotiation proceedings is not allowed unless accepted by the administrator/creditors' committee.	
<b>International cooperation and communication</b>	
Little or no cooperation between Norwegian and foreign courts.	
<b>Liabilities of directors and officers</b>	
May potentially be held criminally or financially liable.	
<b>Pending legislation</b>	
Changes in the Bankruptcy Act, providing new legislation on cross-border cases. It is not yet decided when the changes will enter into force.	

## *Getting the Deal Through*

Acquisition Finance  
Advertising & Marketing  
Agribusiness  
Air Transport  
Anti-Corruption Regulation  
Anti-Money Laundering  
Appeals  
Arbitration  
Art Law  
Asset Recovery  
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Aviation Finance & Leasing  
Aviation Liability  
Banking Regulation  
Cartel Regulation  
Class Actions  
Cloud Computing  
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Competition Compliance  
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Corporate Reorganisations  
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Ports & Terminals  
Private Antitrust Litigation  
Private Banking & Wealth Management  
Private Client  
Private Equity  
Private M&A  
Product Liability  
Product Recall  
Project Finance  
Public M&A  
Public-Private Partnerships  
Public Procurement  
Rail Transport  
Real Estate  
Real Estate M&A  
Renewable Energy  
Restructuring & Insolvency  
Right of Publicity  
Risk & Compliance Management  
Securities Finance  
Securities Litigation  
Shareholder Activism & Engagement  
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