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INTERNATIONAL FINANCIAL LAW REVIEW

INSOLVENCY AND CORPORATE REORGANISATION SURVEY 2014



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INTERNATIONAL FINANCIAL LAW REVIEW

Norway



Stine Snertingdalen and Ingrid Tronshaug, Kvale Advokatfirma

Section 1: CREDITORS' RIGHTS

1.1 When may a company seek relief from creditors? Must a company be insolvent?

There are three main forms of bankruptcy proceedings in Norway, all regulated by the Norwegian Bankruptcy Act: judicial debt negotiation proceedings; either voluntary or compulsory composition proceedings; and winding-up proceedings. The debtor may also suggest a compulsory composition while under winding-up proceedings.

It is a requirement to file for judicial debt negotiation proceedings that the company is illiquid (in a position where it cannot meet its financial obligations as they fall due). It is, however, not a requirement that the company is insolvent (both illiquid and with negative net assets).

It is a requirement for the opening of winding-up proceedings that the company is insolvent.

1.2 Does an automatic stay against creditor action arise upon filing of a bankruptcy case?



There is an automatic stay of any bankruptcy petitions upon the filing of judicial debt negotiation proceedings. The stay lasts three months from when the proceedings are opened, but may be prolonged at the discretion of the court upon request from the debtor. If compulsory composition proceedings are opened, the automatic stay lasts throughout the proceedings.

The stay is not effective against a bankruptcy petition filed by at least three creditors who together represent at least 40% of all claims entitled to dividend payment.

Furthermore, there is an automatic stay of enforcement proceedings from any creditor during the first six months after judicial debt negotiation proceedings are opened or winding-up proceedings are filed.

1.3 Who administers the estate following commencement of a voluntary bankruptcy case?



In Norway, the court-appointed administrator or liquidator is in practice always a lawyer. In judicial debt negotiation proceedings, the administrator has a supervisory function, while the board of directors maintains their duties and the company retains legal powers over its assets.

In winding-up proceedings, the bankruptcy estate is established as a separate legal entity with automatic seizure of all the debtor's assets. The administrator controls and has legal powers over the bankruptcy estate and over the debtor's assets and rights.

A creditor committee may be appointed with one or a few members from the creditors, with a function comparable to a board of directors with the administrator or liquidator as chairman.

Section 2: DEBTORS' RIGHTS

2.1 Does the debtor have an exclusive right to propose a reorganisation plan?



Winding up proceedings: The debtor has no right to propose a reorganisation plan while under winding-up proceedings, but may request the administrator to propose a compulsory composition.



Judicial debt negotiation proceedings: The debtor has an exclusive right for a period of time to propose a reorganisation plan while under judicial debt negotiation proceedings. The administrator or creditor committee shall assess the plan and declare to the court and all creditors whether they recommend the proposed plan.

2.2 What are the voting requirements for approval of a plan?



In a voluntary judicial debt negotiation proceeding, the reorganisation plan must be accepted by all the creditors. However, if proceedings for a compulsory composition are opened, all creditors must respect the plan if a certain minimum of creditors accept it.

The main requirements for a compulsory composition to be legally binding to all creditors are (the numbers referring to creditors and claims that are granted voting rights): (i) if the dividend payment is at least 50%, the plan must be accepted by at least 60% of the creditors with altogether at least 60% of the total debt (ii) if the dividend payment is less than 50% but at least 25%, the plan must be accepted by at least 75% of the creditors with altogether at least 75% of the total debt.

2.3 May a plan be approved over the objection of a creditor or a class of creditors (ie does the concept of a cram-down exist)?



In a successful compulsory composition, the minority voters are crammed down by the majority voters. However, claims ranking in priority and claims that are fully secured may not be crammed down as they are entitled to full payment.

2.4 Is post-petition financing able to receive super-priority status?



There is no authority to grant super-priority status to post-petition financing

2.5 Can the debtor sell all or a portion of its assets through a going concern reorganisation plan or otherwise?



The debtor may under judicial debt negotiation proceedings sell assets through a going concern reorganisation plan, subject to the approval of the administrator or liquidator and the creditor committee as well as from any security holder in such asset.

In winding-up proceedings, the administrator has sole power to sell assets that are not encumbered. With a few exceptions, including going-concern sales, the administrator and the buyer must respect any security right in the asset. The administrator may transfer ownership of a secured asset to the security holder against payment with the secured debt, reducing the security holder's claim in the estate (comparable to credit-bidding).

The bidding process upon the sale of assets during a bankruptcy proceeding is not specifically regulated.

2.6 What are the duties of directors of an insolvent company?

The directors of an insolvent company must ensure that all creditors are treated equally and that the company must not incur debt it is unable to pay. Furthermore, the directors should take prompt action if the company's equity is deemed insufficient considering the size and risk of the business operations, or if the equity capital is lower than half of the share capital. Such actions include taking steps to better the economic situation, calling for a shareholder's meeting to discuss the situation and, if it is unlikely that the economic problems may be solved, to file for bankruptcy proceedings.

After judicial debt negotiation proceedings are opened, the directors maintain their roles and duties, but they have to adhere to the administrator or creditor committee and the legal framework regulating the proceedings.

After winding-up proceedings are opened, the directors are stripped of their powers, and their duties are no longer to manage the company, but to assist the bankruptcy administrator with information.

Section 3: CONTRACTS AND SUBORDINATION

3.1 How are executory contracts treated?



Under winding-up proceedings, the bankruptcy estate is a separate legal entity from the debtor and thus not a party to the debtor's contracts. At the sole discretion of the liquidator or creditor committee, the estate may choose whether or not to become a party to any of the debtor's contracts, practicing cherry-picking by continuing only profitable contracts. Upon entering into any of the debtor's contracts as a party, the estate is with few exceptions only bound by the debtor's rights and duties with respect to future contractual obligations.

There are no similar rights for a debtor in judicial debt negotiation proceedings.

3.2 Is contractual subordination enforceable?



A valid and binding contract in which a creditor declares their debt to be subordinated to all other debt may be enforced in a bankruptcy.

Section 4: OTHER MATERIAL CONSIDERATIONS

4.1 What other major stakeholders (eg governmental or regulatory institutions) could have a material impact on the outcome of the reorganisation?

While under judicial debt negotiation proceedings, the debtor and the administrator or creditor committee must respect the interest of the secured creditors and not lessen their position.

A compulsory composition must involve full payment to claims ranking in priority (that is, mainly wages and recent tax claims). With regard to tax claims not ranking in priority, the tax authorities have strict guidelines as to which elements of a reorganisation plan they may accept, and such requirements are often stricter than the requirements of the Bankruptcy Act.

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About the author

Stine Snertingdalen is a partner at Kvale Advokatfirma DA. She gives legal aid to some of the largest banks in Norway in the area of banking and finance, insolvency regulation, refinancing, credit assurance and credit recovery. Furthermore, she assists clients with restructuring, and is also frequently appointed as bankruptcy administrator by the Oslo Bankruptcy Court. In this way, Snertingdalen has experience looking at a case from both sides of the table when working with refinancing, restructuring and debt recovery. She regularly holds lectures for Norwegian lawyers and financial institutions, and she is highly ranked both in Norwegian and international rankings; quoting from *Chambers and Partners*, “Sources admire the ‘outstanding and very efficient’ Stine Snertingdalen, who has developed an impressive reputation in the insolvency field. ‘She is one of the brightest talents I have ever seen at such a young age,’ enthuses one interviewee”.

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About the author

Ingrid Tronshaug is a senior associate at Kvale Advokatfirma DA, specialising mainly in insolvency law, including restructuring, bankruptcy and mortgage law, but has also experience with real estate and construction law. She has several years of experience with various insolvency proceedings, including working on some of the largest bankruptcy proceedings and judicial debt negotiation proceedings in Norway. Further, she assists clients with various acts of enforcement of Norwegian and foreign claims.

Tronshaug has an LLM in Corporate and Commercial law from the University of Southampton in addition to a Master's degree in Law from the University of Oslo. She wrote her Master's thesis on European cross-border insolvencies.

Key  Generally favourable to creditors  Neutral or neither favourable to creditors or debtors  Generally favourable to debtors  Creditors' rights  Debtors' rights  Contracts and subordination	CREDITORS' RIGHTS		DEBTORS' RIGHTS					CONTRACTS & SUBORDINATION	
	Automatic stays	Administrator	Reorganisation plan	Voting requirements	Cram-downs	Post-petition financing	Asset sales	Executory contracts	Contractual subordination
Austria Binder Grösswang									
Brazil Felsberg Advogados									
Croatia Macesic & Partners									
Cyprus Andreas Neocleous & Co									
Czech Republic BBH									
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