

A vertical stack of Euro coins of various denominations, including 1 Euro, 2 Euro, and 5 Euro, shown in a close-up, slightly blurred perspective. The coins are stacked on top of each other, with the edges and some embossed details visible.

# THE STRATEGIC **VIEW**

Expert perspectives on international law

## Corporate Restructuring 2016

Legal analysis, forecasts and opinion by  
leading legal experts in key jurisdictions

# THE STRATEGIC VIEW

## Corporate Restructuring 2016

Contributing Editor  
**Tom Vickers,**  
Slaughter and May

**glg** global legal group

Published by  
**Global Legal Group Ltd.**

59 Tanner Street  
London SE1 3PL, UK  
Tel: +44 20 7367 0720  
Fax: +44 20 7407 5255

Email: [info@glgroup.co.uk](mailto:info@glgroup.co.uk)  
Web: [www.glgroup.co.uk](http://www.glgroup.co.uk)

**Head of Business Development**  
Dror Levy

**Sales Director**  
Florjan Osmani

**Sales Support Manager**  
Toni Hayward

**Editor**  
Rachel Williams

**Senior Editor**  
Suzie Levy

**Group Editor**  
Fraser Allan

**Publisher**  
Mark Eaton

**Group Consulting Editor**  
Alan Falach

**Group Publisher**  
Richard Firth

**Cover image, chapter images**  
[iStock.com](http://iStock.com)

All other images courtesy  
of the authors

**Printed by**  
Stephens & George Print Group  
February 2016

Copyright © 2016  
Global Legal Group Ltd.

All rights reserved  
No unauthorised reproduction

**ISBN** 978-1-910083-84-0  
**ISSN** 2397-2971

*Further copies of this  
publication and others can be  
ordered from the publisher -  
please call +44 20 7367 0720*



- 3  **PREFACE**  
**Tom Vickers** Slaughter and May
- 5  **AUSTRALIA**  
**Dominic Emmett & Jessica Arscott** Gilbert + Tobin
- 11  **AUSTRIA**  
**Florian Philipp Cvak & Martin Abram** Schindler Rechtsanwälte GmbH
- 17  **BRAZIL**  
**Luiz Fernando Valente de Paiva & Andre Moraes Marques** Pinheiro Neto Advogados
- 23  **CANADA**  
**Robert Chadwick & Brendan O'Neill** Goodmans LLP
- 28  **DENMARK**  
**John Sommer Schmidt & Morten L. Jakobsen** Gorrissen Federspiel
- 33  **ENGLAND & WALES**  
**Tom Vickers & Megan Sparber** Slaughter and May
- 38  **FRANCE**  
**Nicolas Laurent & Olivier Puech** Bredin Prat
- 43  **GERMANY**  
**Daniel Kress & Torsten Göcke** Hengeler Mueller
- 49  **HONG KONG**  
**Mark Reed & Alexander Tang** Stephenson Harwood
- 54  **IRELAND**  
**David Baxter** A&L Goodbody
- 59  **ITALY**  
**Vittorio Lupoli & Lucio Guttilla** BonelliErede
- 64  **JAPAN**  
**Shinichiro Abe** Kasumigaseki International Law Office
- 68  **MEXICO**  
**Antonio Franck & Fernando Ballesteros Cameroni** Jones Day
- 72  **NETHERLANDS**  
**Claudine Maeijer & Daniëlle Hack** Eversheds B.V.
- 78  **NORWAY**  
**Stine D. Snertingdalen** Kvale Advokatfirma DA
- 83  **POLAND**  
**Andrzej Wierciński & Jakub Jędrzejak** WKB Wierciński, Kwieciński, Baehr Sp.k.
- 89  **RUSSIA**  
**Artem Kukin** INFRALEX
- 94  **SOUTH AFRICA**  
**Riza Moosa** Norton Rose Fulbright South Africa Inc
- 97  **SPAIN**  
**Alberto Núñez-Lagos Burguera & Álvaro Font Trancho** Uría Menéndez
- 103  **SWEDEN**  
**Carl Hugo Parment & Michael Gentili** White & Case LLP
- 108  **SWITZERLAND**  
**Thomas Rohde & Till Spillmann** Bär & Karrer
- 113  **TURKEY**  
**Ufuk Yalçın & Deniz Peynircioğlu** Hergüner Bilgen Özeke
- 119  **USA**  
**Alan Kornberg & Brian Hermann** Paul, Weiss, Rifkind, Wharton & Garrison LLP

#### Disclaimer

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.



**Stine D. Snertingdalen**  
Kvale Advokatfirma DA



## NORWAY

Stine D. Snertingdalen considers the consequences of Norway's insolvency legislation against the current economic crisis, and proposes an introduction of restructuring tools to contribute to a more practical and flexible legal framework.

**1. What trends, in terms of activity levels, affected industries or investor focus, have you seen in the restructuring and insolvency market in your jurisdiction over the last 12 months?**

A substantial part of Norwegian industry and economy evolves around the offshore, oil and gas industries. In the past, this has helped us keep a stable economy through financial and industry based crises, compared to other western economies. However, Norway now seems to be heading into a crisis hitting these very industries hard.

Following a drastic drop in oil prices in November 2014 and the following months, the profitability of projects has worsened, resulting in fewer new projects and ongoing contracts being

cancelled, as well as cost reduction measures being carried out by a large part of the market participants. As the oil prices have stayed low all through 2015, cost reduction measures have intensified and there are fewer and fewer new projects. At the same time parties attempt to get out of existing contracts. This is resulting in an overcapacity in the market, *i.a.* with regard to supply vessels, rigs and seismic projects. In the previous year, approx. 25,000 jobs in the Norwegian oil industry have been lost. The situation is already critical for many market participants, but so far the situation has been contained through an "amend, extend, pretend" approach by the financiers. The question is, however, whether this is containing the situation, or only postponing a crisis.

“ Many businesses now aim to stay afloat through 2016 and 2017, with the hope of a normalised market sometime in 2017 or 2018 ”

## 2. What is the market view on prospects for the coming year?

Unless the oil prices increase significantly from today's levels of around USD 40 per barrel or lower (as of December 2015), many companies will run out of cash in 2016 and 2017. Both bond financing and syndicated loans fall due in 2016, 2017 and 2018, and will need to be extended or refinanced for those companies who cannot meet such payment obligations. It is expected that many companies will encounter serious difficulties with raising new capital or credit in a market in crisis.

The financiers within the offshore and oil-related industries are typically banks, bank syndicates, Eksportkreditt/GIEK (providing Norwegian export credit) and bondholders with high yield bonds operating through Nordic Trustee. While the banks, bank syndicates and Eksportkreditt/GIEK are expected to continue to seek solutions in an attempt to reduce the crisis' overall effect on the market, the bond holders might have a shorter horizon for their investments. Bond holders often have diverse individual purposes with their investments. They are a shifting mass of creditors as the bonds are traded, and they are often anonymous and may therefore be difficult to understand in negotiations. As of December 2015, several high yield bonds in the offshore and oil businesses are being traded on levels way below 50% of face value.

Prospects of oil prices increasing considerably or returning to the same levels as before the drastic drop last fall seem dim. Many businesses now aim to stay afloat through 2016 and 2017, with the hope of a normalised market sometime in 2017 or 2018.

However, despite refinancing negotiations between the largest stakeholders and efforts to conduct out-of-court restructuring, overcapacity in the market and serious liquidity problems will probably result in several large bankruptcy proceedings in Norway in 2016 and 2017. In some cases, international businesses based in Norway may opt for U.S. Chapter 11 proceedings, British Scheme of Arrangements or other foreign proceedings.

3. What are the key tools available in your jurisdiction to achieve a corporate restructuring – are they primarily formal, court-driven processes, or are informal out-of-court restructurings possible? Do you feel that the tools you have available are effective in terms of providing speedy, fair and predictable outcomes?

While Norway has regulation on both judicial debt restructuring proceedings and winding-up proceedings, out-of-court restructuring is by far the most applied approach to corporate restructuring. In the current crisis in offshore and oil businesses, the large stakeholders and the market participants must all work together to find livable solutions. The question may in many cases no longer be what the parties are obligated to under a written contract, but how the contract can be amended in order to ensure the survival of the parties. Therefore, at its presently early stage, the crisis has triggered high refinancing and renegotiation activity between contract parties and between companies and their creditors. However, as mentioned above, this might not be sufficient in the long run. If the overcapacity in the market stays high, some businesses will probably have to be wound up for others to survive, and we will probably see situations where amicable solutions cannot be reached with all the necessary stakeholders, necessitating judicial restructuring processes.

The key judicial debt restructuring tools in Norway are the *voluntary* debt restructuring process, and the *compulsory* debt restructuring process; the latter having provisions of cram-down. Both are regulated by the Norwegian Bankruptcy Act of 1984.

In both processes, there is an automatic stay against bankruptcy petitions and against unsecured creditors obtaining execution liens, and for the first six months there is also a stay on the enforcement of security interests. Furthermore, a standstill is introduced for debt accrued prior to the opening of proceedings.

Judicial debt restructuring proceedings may only be opened upon a petition from the debtor. The debtor must show that the company is unable to meet its payment obligations as they fall due (*i.e.* is illiquid), but there is no requirement that the company is insolvent (*i.e.* is both illiquid and has negative net assets). Once proceedings are opened, the court appoints an administrator (in practice, a lawyer) and normally 2-3 creditors forming a creditors' committee – together forming a debt restructuring committee.

The debtor's business continues as usual under the supervision of the debt restructuring committee, with full disclosure of the debtor's economy to the committee. The committee shall oversee that the security holders' interests are

- protected if the business continues, meaning, *e.g.*, that the security holders' economic interests shall not deteriorate from the company selling encumbered assets, such as inventory/stock.

The main differences between *voluntary* and *compulsory* debt restructuring processes are that in the former process, one creditor voting against the restructuring plan will overturn the whole plan, while in the latter process a majority of creditors will cram-down any minority voting against the plan. Further, in *compulsory* proceedings the stay against new bankruptcy petitions lasts throughout the proceedings, while in *voluntary* proceedings the stay needs to be extended every three months by the court upon request from the debtor. Only in *compulsory* proceedings may the debt restructuring committee launch claw-back claims, and they shall make a more thorough report to accompany the debtor's suggestion for a rescue plan than what is the case in a *voluntary* process.

The Norwegian judicial restructuring scheme is mainly designed for providing a stay on creditor actions while attempting to reduce a too heavy baggage of unsecured debt. It lacks the necessary flexibility and tools to ensure an efficient restructuring of complex and large businesses.

**4. In terms of intercreditor dynamics, where does the balance of power lie as between shareholders and creditors, and as between senior lenders and junior/mezzanine lenders? In particular, how do valuation disputes between different stakeholders tend to play out?**

A company is allowed to pose close to all its assets as security under Norwegian law, and Norwegian financial institutions traditionally demand security in all of their customers' assets of any value. Thus, upon the default of any credit agreement, the security holders will normally have a powerful position in negotiations arising out of a distressed situation in a company, leaving little leeway for the company and unsecured creditors to find solutions not agreed to by the financial institutions.

**5. Have there been any changes in the capital structures of companies based in your jurisdiction over recent years caused by the retreat of banks from loan origination? In particular, have you found that capital structures now increasingly comprise debt governed by different laws (such as New York law governed high yield bonds)? If so, how do you expect these changes to impact on restructurings in the future?**

Norwegian loan documentation is normally governed by Norwegian law, though the contracts are ever more often based on the LMA standards

“ Norway is in need of more internationally focused insolvency legislation to enable a proper handling of international restructurings and winding-up proceedings ”

or “light versions” of the LMA documentation. High yield bonds in Norwegian companies are usually regulated by Nordic Trustee's standard documentation which is governed by Norwegian law, and Eksporkredit's loan documentation also applies Norwegian law as governing.

**6. Is there significant activity on the part of distressed debt funds in your jurisdiction? How successful have they been in entering the market, and how much has market practice (or law) evolved in response? If funds have not successfully entered the market, can you identify reasons why?**

The Norwegian economy has been stable for the last few years, with little activity from distressed debt funds. However, with the crisis currently hitting the offshore and oil industries, distressed debt funds show an increasing interest in Norwegian debt within these industries.

**7. Are there any unusual features of your insolvency or restructuring law that an external investor should be aware of (such as equitable subordination, or substantive consolidation)?**

The ground principles of Norwegian insolvency regulation are not so different from other Scandinavian and European countries. It is worth mentioning, however, that quite often businesses pledge all of their assets as security for their financiers. Furthermore, the bankruptcy estate in insolvent winding-up proceedings is given a super-priority statutory lien in all assets posed as security for the debtor's obligations, securing necessary handling costs of the bankruptcy estate though limited to 5% of the gross value of those assets.

**8. Are there any proposals for reform of the legal framework that governs insolvency and restructurings in your jurisdiction?**

The judicial restructuring scheme in Norway is currently under review. The Ministry of Justice has mandated Mr. Leif Villars-Dahl, presiding as Judge with the Oslo Court of Probate and Enforcement, to evaluate the current judicial restructuring legislation.

The report shall, *inter alia*, analyse current restructuring legislation and evaluate whether or not this is sufficiently effective, and discuss whether the current legislation can be made more flexible. The aim is to save businesses and preserve jobs to a larger extent than under the current legislation. Judge Villars-Dahl shall evaluate the creditor voting system, whether a debt for equity swap should be an option to dividend payment and whether the employees' protection should be somewhat reduced to facilitate downsizing and other cost reduction measurements. If deemed sensible, he shall suggest legislative amendments.

The Ministry of Justice has appointed a reference group of three lawyers and one economist to support Judge Villars-Dahl in his work: attorneys Knut Ro, Staale Gjengseth, Stine D. Snertingdalen (the author), and Professor Nils-Henrik von der Fehr. The report is to be submitted by 1 March 2016.

In October 2010, Professor Mads Henry Andenæs submitted a report on Norwegian international insolvency law to the Ministry of Justice. However, more than five years later no changes have been made, even though Andenæs

suggested several amendments in Norwegian international insolvency law. Further, there have been discussions and written hearings on whether or not Norway should implement the EC Insolvency Regulation, but there are no prospects of such implementation taking place anytime soon.

#### 9. If it was up to you, what changes would you make?

The main purpose of insolvency law is to facilitate a value preserving restructuring process by providing a transparent procedure, ensuring equal treatment of and visibility for creditors, and a tool for the debtor to find solutions in the best interest of all stakeholders while at the same time preserving the ongoing business and jobs. Winding-up proceedings will almost always give a lower dividend payment – if any – to the unsecured creditors than if the company is restructured.

The current Norwegian restructuring legislation is often not a realistic option for businesses in financial difficulty, since there is a lack of financing options such as DIP-financing or similar super-priority financing, and the possibility of debt/equity swap being part of a plan (unless all creditors and the shareholders agree). When filing for judicial restructuring proceedings, the businesses usually do not have access to new money. Furthermore, the businesses will often have difficulties in obtaining an operating profit after restructuring proceedings have been opened. ➔



- Without tools such as those mentioned above, it is difficult for businesses to finance the proceedings while working out a plan to propose to the creditors, and to satisfy classes of creditors in other ways than through dividend payments. Implementing such and other tools could contribute to more practical and flexible restructuring legislation.

In order to expand the scope of the restructuring legislation from more or less only facilitating a composition of unsecured claims, possible amendments include (in addition to the ones mentioned above) the introduction of creditor classes and reducing the minimum dividend required to

carry out a composition. These changes would presumably, in the author's opinion, contribute to larger flexibility and a more holistic restructuring approach under Norwegian law.

Further, in order to obtain effective international debt restructuring legislation, Norwegian law will need to achieve a satisfactory set of rules on international insolvency law, *cf.* question 8 above.

Norway is in need of more internationally focused insolvency legislation to enable a proper handling of international restructurings and winding-up proceedings.



**Stine D. Snertingdalen** [ss@kvale.no](mailto:ss@kvale.no)

Stine D. Snertingdalen is a partner in Kvale Advokatfirma DA, specialised within banking and finance, insolvency and restructuring, and investigations. Snertingdalen assists financial institutions and companies in insolvency cases, and is frequently appointed as bankruptcy trustee.

Ms. Snertingdalen is highly ranked both in Norwegian and international rankings such as *The Legal 500* and *Chambers*. In 2015, Snertingdalen was appointed as member of an expert group set to evaluate Norwegian judicial restructuring law on assignment of the Norwegian Ministry of Justice.



Kvale is an Oslo-based business law firm with approximately 65 lawyers, assisting private individuals, small or medium-sized businesses, as well as large national and international companies. Kvale advises on most corporate law matters and has many recognised specialists within several practice areas, including insolvency and corporate restructuring, banking and finance, corporate, tax, employment, competition and oil and gas law, as well as dispute resolution.

[www.kvale.no](http://www.kvale.no)



# THE STRATEGIC VIEW

**glg** global legal group

59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

[www.thestrategic-view.com](http://www.thestrategic-view.com)