

IBA Stockholm 19 May 2008

Denmark on cross-border insolvency and other matters (by honourable judge Jeanette Melchior)

The legal framework:

Danish legislation on insolvency

The Danish Insolvency Act (Konkursloven) no 118 of 4 February 1997 applies with minor changes in 1998, 2004, in 2005 and 2007.

Denmark and the UNCITRAL Model Law on Cross-Border Insolvency

Denmark has not (yet) adopted the Model Law.

Denmark and the EU regulation on bankruptcy

As the only member state of the EU, Denmark does not participate in the judicial cooperation between the EU Member States. Consequently, the EU Insolvency Regulation does not apply for Denmark.

Denmark and the other Nordic Countries (Sweden, Norway, Finland and Iceland)

Insolvency issues between citizens and/or companies domiciled in any of the Nordic Countries (Sweden, Norway, Finland, Iceland and Denmark) are ruled by the Nordic Bankruptcy Convention of 7 November 1933. Consequently, there is full recognition between the five countries of bankruptcy decrees from another Nordic Country. Property belonging to a debtor in either of the countries will be included in the estate no matter in which of the countries the debtor has been declared bankrupt.

Denmark and the rest of the world

Since Denmark has not adopted the Model Law and is not part of the EU legal framework, a foreign insolvency order – except from one of the other Nordic Countries – will not be recognised in Denmark. The same goes for suspension of payments, debt rescheduling etc. It will, of course, be possible to obtain assets in Denmark with a power of attorney from the debtor. And of course a foreign parent company can file for bankruptcy on a Danish subsidiary company which is insolvent.

Foreign creditors can file for bankruptcy against a Danish person or company on equal terms with Danish creditors. The foreign creditor may however, be asked to provide security for costs.

Where to file for bankruptcy?

Bankruptcy cases are a matter for the county courts. However, in the area of Copenhagen bankruptcies are handled by the Bankruptcy Division of the Maritime and Commercial Court. You file at the court where the debtor is domiciled or has permanent address or where he was last known to be so. Assets or other property located in Denmark can establish domicile for legal proceedings.

Even though Denmark is not a part of the EU legal framework or of Model Law, judgements from a foreign court in accordance with the EC Convention or the Nordic Judgement Convention are directly enforceable. Other foreign judgements are still some times recognised in Denmark as a basis for insolvency proceeding. It is however, looked upon by the court from case to case. Even if the debtor refuses to recognize the judgement the Danish court can still after hearing the parties decide to recognise the claim and rule the debtor bankrupt.

A little statistics

The bankruptcy division of the Maritime and Commercial Court in Copenhagen handles between a third and half of all the insolvency cases in Denmark.

In 2007 the Danish Courts received a total of 4,016 petitions for bankruptcy.

Out of these 4,016 petitions the Maritime and Commercial Court had received 1,459 (36.3 %). The same year 2,410 companies and other legal bodies were declared bankrupted in Denmark. 1,092 (45.3 %) of these cases were handled by the Maritime and Commercial Court.

The Danish courts also received 3,254 cases from the Commerce and Companies Agency with orders for winding-up the companies, typically because of lack of accounts or management. Out of these cases, 1,293 (39.7 %) were handled by the Maritime and Commercial Court.

The insolvency hearing at the Maritime and Commercial Court

The Bankruptcy Division of the Maritime and Commercial Court has a legal staff of about nine lawyers incl. a judge, two senior deputy judges and a number of deputy judges.

Court hearings are held as soon as possible after receiving a petition for bankruptcy whether it is filed by the company itself or a creditor. When the company itself files for bankruptcy the case will typically be heard already the next day or if necessary the same day. According to the Insolvency Act all bankruptcy petitions should – if possible - be heard within three days on receipt at the court. However, a petition from a creditor usually needs to be validly served to the company in question and the court will therefore need more time to prepare before the first hearing.

The trustee/liquidator

According to the bankruptcy Act a trustee or liquidator has to be appointed. The Bankruptcy Act does not specify whether this person has to be a lawyer or an accountant or something else. However, in practice the trustee or liquidator is always a lawyer. The creditors have influence on the choice and can demand a vote.

The language in court

The official language in the Danish court is Danish (and of course Greenlandic and Faroese). However, according to the Nordic Language Convention of 17 June 1981 also other Nordic languages (Swedish, Norwegian, Finnish and Icelandic) are accepted in court without translating. Whether the court will accept other languages used during a hearing depends on the individual judge.

Practical information

Information on Danish companies can be obtained from the register of companies called the Commerce and Companies Agency (Erhvervs- og Selskabsstyrelsen) Kampmannsgade 1, 1780 København (Copenhagen) V, tel. +4533307700 www.eogs.dk, ckk@eogs.dk

Information on people living in Denmark (with an official Danish address) can be obtained at a cost from the national register (Det Centrale Personregister/CPR) Slotsholmsgade 10-12, 1216 København K, tel. +4572 26 97 35, fax +4572 26 97 42, cpr@cpr.dk.

Information on where to file for bankruptcy can be found through the Court Agency (Domstolsstyrelsen) at Store Kongensgade 1-3, 1264 København K, tel. +4570103322, fax +4570104455, post@domstolsstyrelsen.dk.

Information on lawyers specialized in insolvency can be obtained from the Danish Bar & Law Society, Kronprinsessegade 28, 1306 København K, tel. +4533969798, fax +453369750 www.advokatsamfundet.dk