

Newsletter Insolvency and Restructuring

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Restructuring rules eased



On 23 March 2021, the Danish Parliament adopted Bill no. 65. The Bill contains amendments that relaxes the Bankruptcy Act's rules on restructuring.

THE AMENDMENT OF THE RESTRUCTURING RULES

The aim of amending the rules on restructuring is to make the legislation more flexible and less costly.

Under the new rules, it is no longer necessary that an accounting officer (in Danish “regnskabskyndig tillidsmand”) be appointed when filing for or initiating restructuring proceedings. It is therefore optional for the debtor company to appoint an **accounting officer**. If no accounting officer is appointed, the restructuring administrator will perform the tasks previously carried out by the accounting officer.

The new rules also introduce an extended time-out regime in relation to the 4-week meeting, where until now the restructuring plan had to be agreed by the creditors as a condition for the restructuring process to continue. Under the new rules, the court will have to postpone the 4-week meeting for a further four weeks if the restructuring administrator so requests. The rule gives the company up to eight weeks to reflect, during which time the company is protected from bankruptcy petitions and most forms of individual pursuit by the company's creditors.

The extended time-out scheme also includes the abolition of the automatic bankruptcy of the company, if the attempt to restructure the company proves unsuccessful. Hence, a company can now withdraw from the restructuring proceedings until a restructuring plan has been adopted, without the company automatically being placed in bankruptcy. Under the previous rules, this could only happen if the company had become solvent.

Under the previous rules, the petitioner had to provide security for a later bankruptcy procedure as a condition for the opening of the restructuring process. The amount of the security was typically DKK 40 000. The adoption of the Bill abolishes the requirement for security, irrespective of who files for restructuring.

The rules amending the restructuring rules entered into force on **29 March 2021**.

In addition, the new rules also create the possibility for a business transfer to take place before a restructuring plan has been drawn up and adopted - a so-called fast-track procedure. This can be

done if the restructuring administrator considers it appropriate in order to preserve the value of the debtors' business.

In order to increase the incentive for the acquirer of a company under restructuring, the rules are now also amended so that the legal position in restructuring is similar to the legal position in bankruptcy as far as employee claims are concerned. The starting point is now that the transferee is not, as before, subrogated into the obligations of the company with regard to employee claims from the time the restructuring proceedings were initiated. **The LG Law and the Law on the Legal Status of Employees in the Event of Transfer of Undertakings** are amended accordingly, so that the Wage Earners' Guarantee Fund (in Danish: "Lønmodtagernes Garantifond") now acts for the undertaking for this period vis-à-vis the employee.

The new rules on transfers of undertakings during restructuring have not yet entered into force. The rules will enter into force when the Minister of Justice and the Minister of Employment so decide. This is due, among other things, to the fact that the change requires administrative re-organisation of the Danish Business Authority's IT system.

Overall, the rules on restructuring are relaxed and it will be easier and quicker - and probably cheaper - to undergo restructuring proceedings.

LEAD Rödl & Partners specialists in this field are ready to advise on the bankruptcy law's rules on restructuring.



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