The Restructuring Review

Third Edition

Editor
Christopher Mallon

Law Business Research

THE RESTRUCTURING REVIEW

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EDITOR'S PREFACE

We are very pleased to present this third edition of *The Restructuring Review*. As with the first and second editions, our intention is to help general counsel, government agencies and private practice lawyers understand the conditions that have been prevailing in the global restructuring market in 2009/2010 and to highlight some of the more significant legal and commercial developments and trends during that period.

The global economy is still struggling to emerge from the worst financial crisis since the Great Depression. The past year has seen credit conditions improve in many areas and global asset prices generally start to stabilise. Government support for the banking system and the economy generally, however, continues to be a key factor in maintaining the relative stability. The effects of the global recession, however, continue to be felt. Unemployment figures are still following an upwards trend and economic growth is still, despite some bright spots, generally uninspiring. Considerable uncertainty remains as to how best to remedy the current weaknesses in our economic system that has made the downturn so severe.

The main stock markets have continued their rally but there still remain no consensus as to how long this surge can continue and the risk of a double dip recession is still there. Banks have generally made a good recovery, but with national economies continuing to face fiscal tightening, talk of a full recovery in the short to medium term remains premature.

I would again like to extend my gratitude to all the contributors for the support and cooperation they have provided in the preparation of this work, and to our publishers, without whom this would not have been possible.

Christopher Mallon
Skadden, Arps, Slate, Meagher & Flom (UK) LLP
London
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Chapter 21

NORWAY

Ylva Cornelia Daniëls[*]

I OVERVIEW OF RECENT RESTRUCTURING AND INSOLVENCY ACTIVITY

i Liquidity and state of the financial markets

The pessimism that characterised the Norwegian economy following the international credit crunch declined substantially through 2009. In light of what seems to be a continuing recovery, the downturn of the economy has been relatively mild compared to that of Norway's main trading partners.

Norges Bank's sharp cuts in the key policy rate – by 450 basis points in total through the second half of 2008 and first half of 2009 – substantially contributed to stimulation of economic growth, and furthermore eased the debt burden of private households. The interest rate reductions were complemented with strong fiscal policy stimulus and extraordinary liquidity measures. The establishment of the State Finance Fund (supply of core capital to banks), the Government Bond Fund (credit supply in the bond market) and the 350 billion kroner financial rescue package (covered bonds swap against treasury bills) revitalised the Norwegian financial market within a relatively short period of time. Norges Bank began phasing out its anti-crisis measures during the summer of 2009.

Following the moderate recovery in production and employment, and to reduce inflation risk, the key policy rate was increased from 1.75 per cent to 2 per cent on 5 May 2010. Norges Bank has recently stated that further increases in the key policy rate will occur later than previously indicated due to the continued uncertainty in the global financial markets (please see Section I, *ii*, *infra*). As of 23 June, Norges Bank expects the key policy rate to be in the range of 1.5 to 2.5 per cent by the year-end.

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Norges Bank reports that The Norwegian Government Pension Fund Global returned 3.9 per cent (103 billion kroner) in the first quarter of 2010, helped by gains in global equity and fixed-income markets. The result was 0.4 percentage points higher than the return on the fund's benchmark portfolio. The market value of the fund rose 123 billion kroner to 2,763 billion kroner in the first quarter of 2010 as a result of capital inflows, returns and exchange rates. Inflows of government petroleum revenue to the fund totalled 19 billion kroner in the first quarter, the lowest since the fourth quarter of 2003. On 1 March 2010, Norges Bank Investment Management received a mandate to invest in real estate, following which the fund will consist of 60 percent equities, 35 to 40 per cent fixed-income securities and as much as 5 per cent real estate.

No Norwegian banks have so far been forced to close down as a result of the financial crisis. Over recent years, the banks have developed solid systems for surveillance of the liquidity risks. A proactive approach to securing additional long-term financing has also been essential to the banks' stability. Furthermore, the banks have issued redeemable bonds, reducing the liquidity risk. The increased costs for deposits and refinancing have largely been passed on to customers through higher net interest margins.

The capital level of the largest Norwegian banks has not been affected as adversely as predicted by Norges Bank early in 2009, both due to the issuance of new core capital and the banks' relatively strong financial results, which again largely can be ascribed to losses being more moderate than expected. According to Norges Bank, high equity ratios during 2007, high oil prices and no more than a moderate rise in unemployment rates may have contributed to the debt service capacity of both private and commercial borrowers staying relatively constant through the economic slowdown. Income from share dividends and securities and foreign exchange trading also contributed positively to the banks' capital cover over the past 12 months. In fact, the banks' tier 1 capital has been strengthened by 1.5 to 2 percentage points by the end of 2009.

ii Impact of specific regional or global events

The financial market turbulence flared up as the government bond yields in the PIIGS countries[1] peaked just after Easter 2010. To the extent this negatively affects long-term bank funding and the supply of dollar liquidity in Europe, and the growth and inflation of Norway's trading partners declines, Norwegian export businesses are likely to experience lower demand and reduced prices. Consumption and investment may be curbed by increased money market premiums. However, a depreciation of the Norwegian krone following prolonged financial instability could soften the effect of declining output and inflation. On the assumption that the most recent turmoil in the financial markets will gradually pass, but that interest rates abroad could remain low for a fairly long period, Norges Bank has adjusted the forward interest rate curve, whereby the key policy rate is predicted to rise more slowly than previously estimated.

1 Portugal, Ireland, Italy, Greece and Spain.

iii Market trends in restructuring procedures and techniques employed during this period

Being spared the most severe consequences of the blows to the international financial markets, most participants on the Norwegian markets have still not been forced to take comprehensive restructuring actions. The general recourse for the Norwegian companies that are hit by the financial crisis has so far been the more traditional methods of restructuring. On a general level, the ripple effects of the credit crunch have not been severe enough to create any new trends or techniques within restructuring or insolvency-related proceedings in Norway.

The financial instability is giving rise to a wave of workforce reductions, both through temporary lay-offs and permanent dismissals. The commodity trade sector and the building and construction industry is considered to be the most exposed at present, and the small and medium-sized companies have been the first ones being forced to take action. This has resulted in various out-of-court negotiations and debt rearrangements, and in certain cases the continuation of business after the opening of bankruptcy proceedings through agreements with, and funding from, main stakeholders or creditors.

Notwithstanding the general slowdown of transaction-based activity, the credit crunch has forced certain participants to sell off substantial assets in order to reduce their debt, stabilise the companies' situations and to comply with covenants under their loan agreements. This has been evident within real estate and property markets, where the financial turbulence noticeably levelled out the sales price curves, which prior to 2008/2009 had been continuously rising for several years.

Number of formal procedures entered into during this period

From 2005 to 2008, the number of debt reorganisation procedures and registered debt compositions dropped. The number of compulsory debt compositions was reduced by almost 43 per cent.

On the other hand, the number of bankruptcies continuously increased during 2008 and the first quarter of 2009, recently reaching the highest numbers since the beginning of 2003; 88 per cent more bankruptcies were registered in the first quarter of 2009 than in the same period of 2008.

An increasing number of registered foreign companies (with or without a separately registered branch) are subject to Norwegian bankruptcy proceedings. During 2009, such bankruptcies increased by 118 per cent compared to the previous year.

In the first quarter of 2010, a total of 1,568 bankruptcy proceedings were instituted; this is a 15 per cent drop compared to the same quarter in 2009. Seventy per cent of the proceedings are corporate entities, and within this group, about one-third fall within commodity trade and the car repair business.

The positive trend continued throughout May 2010. The number of bankruptcies and forced liquidations compared to the same month of 2009 was down 34 per cent.

For sole proprietorships and personal estates, the number of bankruptcies is up by 6.5 per cent over the past year. More than a third of sole proprietorship bankruptcies in the first quarter of 2010 were related to the building and construction industry. Registered bankruptcies in foreign business entities in Norway were down by 15 per cent in the first quarter of 2010 compared to the first quarter of 2009.

II GENERAL INTRODUCTION TO RESTRUCTURING AND INSOLVENCY LEGAL FRAMEWORK

i Formal procedures and main legislation

Under Norwegian law there are two main types of formal procedures applicable to a debtor in financial difficulties; debt reorganisation procedures and bankruptcy procedures. Each type of procedure takes place under the supervision of the Probate Court, and involves a court-appointed board, whose tasks are strongly influenced by creditor protection.

The primary insolvency legislation that largely governs both the aforementioned procedures is the Debt Reorganisation and Bankruptcy Act ('the DRB') and the Creditor's Recovery Act ('the CRA', together 'the Acts'). The Acts were passed in 1984 and have been in effect since 1986.

Both individuals and companies are as a rule subject to the provisions of the aforementioned Acts. In cases of corporate insolvency the board of directors has the position of an individual debtor. The role of the directors is addressed in more detail in Section 2, *vi*, *infra*.

Norwegian insolvency terminology is based on two main assessments of the debtor's situation. Through a 'cashflow test' it must be determined whether the debtor is unable to pay debts as they fall due and that this inability is not temporary. A 'balance sheet test' determines whether the debtor's liabilities exceed its assets. If these two conditions are met, the debtor is classified as insolvent. For the opening of full bankruptcy proceedings in Norway it is required that the debtor is insolvent (DRB Act, Section 61).

ii Debt reorganisation procedures

Statutory debt reorganisations procedures in Norway are initiated by the debtor filing an application for opening of debt reorganisation proceedings to the Probate Court. If the debtor fails the cash flow test, but can prove to the Probate Court that it is not unlikely that a composition with the creditors can be obtained, debt reorganisation procedures can be initiated. The court decision is normally publicised.

For the following three-month period, bankruptcy proceedings may only be opened on certain conditions. In this period it is also a limited possibility to levy distraint or carry out compulsory sale of collateral.

For the administration of the debt negotiation proceedings the Probate Court appoints a Supervisory Committee ('the SC'), who will assess the debtor's financial situation together with an auditor. These preparations are normally internal and non-public, and the debtor remains *prima facie* authorised in all respects of the business. As a main rule, all current operating costs during a debt negotiation process must be paid in cash. Upon approval by the SC, assets may be sold or used as security for new debt, provided that this does not significantly impair the position of the secured creditors.

Based on the internal assessment and audit and with the assistance of the SC the debtor prepares a composition proposal. The proposal may contain a moratorium, a percentage reduction of the debt, full or partial liquidation or a combination of the foregoing.

The proposal may offer less than 25 per cent coverage to the creditors, but in such cases a composition requires the unanimous acceptance by all the unsecured creditors. Such voluntary composition is not binding for unknown creditors, as opposed to a compulsory composition.

A proposal offering 25 per cent or more coverage can through a compulsory composition be made binding for all the creditors by a majority vote. If the proposition offers 25 to 50 per cent coverage to each creditor, the proposition may be passed with 75 per cent approval from the unsecured creditors (calculated by numbers and claims). If the proposition offers 50 per cent coverage or more, 60 per cent approval is sufficient.

Debt secured within the sales value of the security will not be reduced. A creditor with sufficient security through collateral may be excluded from the debt negotiation proceedings, and if included he or she may vote over a compulsory composition proposal for the unsecured part of the claim on equal basis with other unsecured creditors.

Preferential debt (including claims for pensions and wages, outstanding income tax, VAT and employers' national insurance contributions) must be paid in full. Claims with lower priority than the claims of unsecured creditors will be disregarded.

If the debt negotiation proceedings are not completed within six months of opening and the Probate Court has not prolonged the proceedings at the SC's request, the Probate Court will open bankruptcy proceedings in the estate of the debtor.

iii Bankruptcy procedures

Application for bankruptcy proceedings against a debtor may be filed with the Probate Court by any creditor, including employees. A secured creditor cannot file for bankruptcy if the security can be considered 'adequate'.

The debtor itself may also apply to the Probate Court for a voluntary liquidation, a process largely governed by the same set of rules as the bankruptcy procedures initiated by a third party.

Bankruptcy procedures may also be opened on the initiative of the Probate Court following an unsuccessful application for debt reorganisation proceedings.

Provided the Probate Court finds that the debtor is insolvent, bankruptcy proceedings are opened. The order of the Probate Court is published electronically and in local newspapers. The Probate Court also appoints an estate board, normally consisting of a practising lawyer as the administrator, one or more representatives of the creditors as members and, if requested by the labour union, an employee representative. An auditor might also be appointed for the auditing of the debtor's previous business and the auditing of the estate. From the time of the opening of proceedings, the debtor is deprived of all influence over the business, but is obliged to assist the estate board and the Probate Court during the process.

The main function of the estate board is to seize and realise the debtor's assets and to make a monetary distribution to the creditors.

Certain claims are given priority, including the costs related to the bankruptcy proceedings, certain claims for pensions and wages, and outstanding income tax, VAT and employers' national insurance contribution. The dividend to unsecured creditors is calculated on a *pro rata* basis. Certain claims, like interests after the cut-off date, are given lower priority than the aforementioned groups of claims.

iv Informal methods of restructuring

Informal reorganisation of debt is mainly governed by the ordinary laws of contract. A debtor is free to enter into agreements with any of its creditors regarding for example, debt reduction, the rate of payments of the debt or the timing for such payments. In cases of debt negotiations with several creditors, where the debtor's assets are considered valuable, it is not unusual to appoint a trustee for the administration of the negotiations. The procedure will often follow the formal rules of composition proceedings, although there are no such legal requirements.

Restructuring by way of workforce reductions must comply with the 2005 Working Environment Act. According to the rules of the Act a dismissal must be fair to be lawful. A dismissal based on rationalisation or reductions is only deemed fair if the employer has no other work to offer the employee, and as part of the fairness evaluation the employer's needs will be held up against the disadvantages the dismissal constitutes for the employee (Section 15-7(2)). Further, procedural rules both of the Act and of the tariff agreements must be complied with, and includes involving the employee representatives at the earliest possible stage and holding meetings with the employees in question prior to the dismissals. Certain mass dismissals or lay-offs are subject to specific procedures, for example, if notice of dismissal is given to 10 employees or more within a period of 30 days and the dismissals are not based on reasons related to each of the employees (Section 15-2).

v Taking and enforcement of security

Under Norwegian law security rights may be obtained through statutory provisions, through contract or by execution or court order. The central legislation is the 1984 Mortgages and Pledges Act. According to the Act, a contractual security right covering all the current and future assets of a debtor is not valid, but on certain conditions a limited floating charge over, for example, the operating assets or the stock of the business of the debtor can be established. The Act also states that a right of retention of ownership as security for unpaid purchase can not be validly established by contract if the goods are purchased for resale.

A limited floating charge over operating assets or stock is perfected by registration in a central register, as are security rights in real estate, vessels, aircraft, motor vehicles, all of the debtor's current and future receivables ('factoring'), and bonds and shares in public limited companies. Contractual security in private companies' shares owned by the debtor will be perfected upon written notice of the security right to the board of the company whose shares are being charged. Similarly, a security right over specific receivables obtains perfection by notification to the debtor. For assets other than the aforementioned, and which cannot be registered, the act of perfecting a contractual security may require the divesting of possession from the pledger.

Contractual security rights often includes a conditional right of the secured creditor to take direct enforcement steps, for example, by direct payments to the same from the debtors under pledged receivables. In such cases the enforcement of the security is effected without the intervention of official enforcement authorities.

Official enforcement procedures may be initiated when a claim is overdue and the debtor is in default. The details of an official enforcement procedure depend on the

security object in question and the basis for execution. The procedures are governed by the 1992 Enforcement Act.

If the debtor enters into compulsory debt negotiations or bankruptcy proceedings the secured creditor may require realisation of the security object regardless of the original maturity date of the secured claim (the 1984 Mortgages and Pledges Act, Section 1-9).

vi Duties of directors of companies in financial difficulties

According to Norwegian company legislation the directors have a duty of action in situations where the equity ratio of the company falls below a sound level – based on the normal business activity of the company and the risks such activity involves – and in any case where the equity falls below 50 per cent of the nominal issued share capital. The duty of action includes convening a general meeting and in such meeting to give a statement of the financial situation of the company and to propose means to strengthen the company's equity ratio (the 1997 Companies Act, Sections 3-4 and 3-5). The proposal shall be based on the board of directors' consideration of the appropriateness and effectiveness of the various alternatives at hand, for example, bringing in capital from existing or new shareholders, selling assets, negotiating or refinancing existing debts or reducing costs by cutting operational or workforce-related expenses. A general meeting's resolution will normally instruct the board to carry out such actions considered necessary.

Parallel to taking necessary actions to strengthen the financial situation, the board of the company must consider the grounds for a continuation of business. Relevant elements would be the requirements from existing creditors, the capital need, the likelihood of a voluntary debt composition, potential tax implications and the need for a general meeting's resolution on the matters. The board must furthermore revise the company's budgets, especially the cash budget, with the current financial situation in mind. It falls within the scope of the duties of the board to make sure that the company has sufficient funds to pay VAT, taxes and national income contribution during debt negotiations, and if the company is granted public permissions or concessions to make sure that it will be able to meet requirements of such during the further process.

The duty to act does also comprise a duty to file an application for voluntary liquidation and striking off when there are no longer reasonable grounds to expect that the financial situation can improve on more than a short-term basis.

The company's auditor and legal advisers are often involved in informal reorganisation proceedings as a breach of the duties of the directors of the board may be sanctioned both with civil law liability for damages and penal sanctions.

The scope of the directors' liabilities has been tried in a number of court cases over the past few years. For some recent case law examples, please see Section III, *infra*.

In formal debt negotiation proceedings the board of directors is subject to specific restrictions set out in the DRB Act and the instructions of a court-appointed supervisory panel (please see Section II, *ii*, *supra*). However, as the board of directors remains outwardly authorised in all aspects of the business, and a third person in good faith will obtain rights based on the board's actions, liability issues involving a director as such may still arise.

If essential parts of the company's assets are used as collateral, the board is responsible for contacting the secured creditors in order to obtain agreements regarding

continuation of business. Also other creditors should be informed on an equal basis. The board's duty of action does also comprise informing and involving the employees or union representatives in the process.

In bankruptcy proceedings the directors have no powers in respect of the business. The directors are obliged to assist the estate board with the process of confiscating assets, provide necessary information, etc. Failure to oblige to these rules may give rise to criminal liability.

During bankruptcy proceedings the estate board will investigate the conduct of the board members. If the conduct is found to have been negligent, board members can personally be held jointly and severally liable for the loss caused by the negligent actions (the Companies Act, Section 17-1). Claims may be filed by the estate board representing the creditors' joint interests, or it can be filed by one or several creditors as such. Claims will normally be determined by the ordinary courts on basis of general principles of the law of damages.

Following a recommendation from the estate board, the Probate Court may also on certain conditions disqualify a board member from board positions for a period of up to two years, including the removal from existing board positions.

The estate board will scrutinise and report potential criminal offences to the relevant police authorities. A board member may face criminal prosecution for financial crimes like balance sheet offences or attempting to withhold assets, or for exposing the creditors to excess losses, for example, by failing to initiate debt reorganisation procedures or bankruptcy procedures in due time after reaching a state comprised by the legal definition of the term 'insolvent' in Section 61 of the DRB.

Notwithstanding the rules of law, a study with the prosecuting authorities in Oslo show that from 1 January 2006 to 30 June 2007 nearly half of all bankruptcy-related cases concerning financial crime were not prosecuted due to capacity limitations. Lack of funds for the administration of bankruptcy estates may also in fact prevent potential issues of civil or criminal liability from being discovered.

vii Claw-back actions

Section 5-2 and Sections 5-5 to 5-9 of the Creditors Recovery Act form the main legal basis for the setting aside of transactions in bankruptcy. These rules of law establish a 'look-back period' within which transactions involving the debtor may be clawed back by the estate board. It is mainly transactions that may reduce the joint values of the estate or transactions that favour one creditor over the others that are covered by the rules.

Transactions may be set aside based on objective standards (Section 5-2 to 5-8) or based on a subjective assessment of the transaction and the parties involved (Section 5-9). The latter rule aims at fraudulent preference in the way that the beneficiary must have been acting negligently based on the beneficiary's knowledge of the debtor's financial situation. The objective rules set out certain specific transactions that are considered detrimental to creditors, such as gifts, payments of salary or wages to related persons, payment of certain debts, set-offs, establishment of new security for incurred debt, and distraint. The subjective rule is more general in its wording and to some extent overlaps with the objective rules, but the former specifically requires that the creditors have suffered an economic loss due to the transaction in question.

The look back period for the objective claw-back rules is generally three months, whereas the subjective rule may be applied for transactions up to 10 years prior to the cut-off date.

From these general rules there are certain exceptions regarding financial securities based on Directive 2002/47/EC of the European Parliament, implemented in Norwegian law through the 2004 Financial Collateral Arrangements Act.

III RECENT LEGAL DEVELOPMENTS

i Short selling

On 1 June 2010, Parliament passed amendments to the provisions in the Securities Trading Act on short selling, whereby the prohibition on naked short selling through investment firms is expanded to a general prohibition on naked short selling directed at the seller (investor). Further, the Financial Supervisory Authority may temporarily restrict all forms of shorting in situations where the effects of such sales may disrupt financial stability or market integrity.

ii Shipowners' tax

In 1996, Norway was one of the pioneers of a taxation system for the shipping industry under which shipping companies paid a set tax on the tonnage of their ships each year, rather than paying tax on turnover, and shipowners were allowed to defer paying tax on profits as long as they were not paid out in dividends.

When the system was adjusted in 2007 to reflect the standard European models of tonnage tax, the Norwegian government demanded shipping companies pay all the deferred tax.

On 12 February 2010, the Supreme Court overturned nearly 21 billion kroner in back taxes imposed on the shipping companies on the grounds that such measures were in violation of Section 97 of the Norwegian Constitution, whereby no law must be given retroactive effect.[2] As a result of the decision, various legislative amendments have been passed and the shipping companies may also choose an alternative model whereby the final tax is about 6.7 per cent on the calculated untaxed capital as per 1 January 2007.

iii Claw-back actions

On 24 April 2008, the Supreme Court gave a judgment on the claw-back rights of a bankruptcy estate in relation to property transactions made by way of the sale of shares in a company holding title to real estate. Structuring property transactions as the sale of single-purpose companies with title to real estate has been quite commonly applied to circumvent stamp duty of 2.5 per cent of the property value. The Supreme Court held that the seller's bankruptcy estate may claw back the property if the successor (buyer of the shares) has not registered its right of ownership through registration of a deed of conveyance in the Land Register at least one day prior to the opening of the seller's bankruptcy in accordance

2 The decision is published in the Supreme Court Report 2010 p143.

with the Section 23 of the Land Registration Act. The claw-back right applies even if the seller's title has not been registered in the Land Register, as long as the seller has in fact had ownership to the property (through ownership of shares).[3]

iv Director's duties and liabilities

In 2006, the Norwegian company European Insurance Agency AS was declared bankrupt. The company was acting as agent for insurance portfolios covering assets with a total value of nearly 22 billion kroner. For the majority of the portfolio, there was no valid underlying agreements with insurers. The managing director was convicted for misappropriation of funds in the amount of 19.5 million kroner. A separate claim for damages was filed against the board director by the bankruptcy trustee on behalf of the bankruptcy estate. In a decision of 24 April 2009, the Borgarting Court of Appeal upheld the first-instance court decision and the board director was found personally liable for a loss of 22 million kroner suffered by the company due to gross negligence of the director's statutory duties of supervision and control. The decision gives concrete examples of in which situations and to what extent a board director must supervise and control financial information, contractual relations and other key matters to the business. The liability was mitigated to 9 million kroner by the court.[4]

v Legal capacity of trustees

Close to 95 per cent of the issuing of bonds in Norway is organised through a trustee administering the interests of the creditors, Norsk Tillitsmann, ('NT'). In a decision of 30 September 2009, the Borgarting Court of Appeal found that NT did not have legal capacity as set out in Section 1-3 of the Civil Procedure Act of 2005 to represent the bondholders in proceedings against the bond issuer. The decision was overturned by the Supreme Court on 7 April 2010 (Supreme Court Report 2010, p402) based on the 'substantial practical need' for NT to be vested with such capacity.

However, in a decision of 25 May 2010, the Asker og Bærum District Court found that the Supreme Court decision does not entail the capacity of NT to file for bankruptcy on behalf of the bondholders due to the distinctions between the criteria for having legal capacity under Section 1-3 of the Civil Procedure Act and the criteria for being considered a creditor under Section 60 of the DRB Act, and with reference to the potential irreversible effects of bankruptcy proceedings being opened. The decision has been appealed.

The Ministry of Finance is currently assessing legislative amendments that will grant representatives in the bond market an explicit right of action on behalf of bondholders in proceeding before Norwegian courts.

vi Costs of bankruptcy proceedings

In the majority of bankruptcy proceedings the debtor does not have sufficient assets to cover even the costs of the bankruptcy proceedings, including the administrative

3 The decision is published in the Supreme Court Report 2008, p586.

4 Case reference LB-2008-120826.

fees to the Probate Court and the fees to the administrator. Following amendments to Section 6-4 of the 1984 Mortgages and Pledges Act, the bankruptcy estate is given a statutory first priority security for the necessary costs of the bankruptcy proceedings at the expense of the existing security holders. The security right of the estate is a secondary right in the sense that it may only be invoked if there are no unencumbered assets comprised by the seizure of the estate.

The security granted in favour of the estate is a form of a limited floating charge over the existing security assets of the debtor, limited upwards to the lesser of 5 per cent of the total realisation value of the assets or 700 times the ordinary court fees (currently the court fee is 860 kroner). The bankruptcy estate is also given a claw-back right for the said amount in the sales sum of secured assets that has been sold within the three months prior to the opening of the bankruptcy proceedings. The statutory security right has from 1 July 2008 been fully in force, covering also securities created by agreements prior to the latter date. The Ministry of Justice has in a letter of 1 July 2009 stated that Section 6-4 of the Mortgages and Pledges Act 1984 should be interpreted to also comprise a Norwegian debtor's assets registered in a foreign assets registers (e.g., ships). Whether it is possible to realise the asset will depend on the applicable rules of the jurisdiction of the register in matter.

vii Special funds (securities fund)

Amendments to the Securities Fund Act 1981 allows for the incorporation of 'special funds' in Norway and marketing and selling units of such funds to Norwegian based investors. Special funds may include hedge funds and private equity funds. The Securities Fund Act is based on the fund concept of the EU UCITS Directive. Nearly all amendments have been in effect from 1 July 2010; however, the Finance Ministry has issued transitional provisions whereby shares in special funds may only be offered to and sold to professional market participants.

IV SIGNIFICANT TRANSACTIONS AND MOST ACTIVE INDUSTRIES

i Bankruptcy cases

Petromena ASA and Petrojack ASA

On 21 December 2009, Petromena ASA, a company listed on Oslo Axess, was declared bankrupt by Oslo Bankruptcy Court. The bankruptcy is considered significant on a Norwegian scale based on the total debt liabilities of approximately 5.5 billion kroner. At the time of bankruptcy, Petrolia Drilling ASA was the majority shareholder, holding 51.47 per cent of the issued shares.

Petromena ASA held 100 per cent of the shares in Petrorig I Pte Ltd, Petrorig II Pte Ltd, Petrorig III Pte Ltd (Singapore) and Petromena Ltd (Cyprus). The acquisition and building of four drilling rigs owned by these subsidiaries were financed by bond loans of 3.6 billion kroner and $300 million administered by the trustee Norsk Tillitsmann ('NT') on behalf of the bondholders. On 27 April 2009, the bond loans were accelerated by NT, and by exercising its share pledgee rights new board members were appointed in the three Petrorig companies, following which these companies filed for Chapter 11

proceedings in New York on 17 May 2009. The three rigs under construction or building contracts were sold during the second half of 2009.

Petromena ASA's subsidiary Petromena Ltd was the owner of the drilling rig SS Petrolia, administered by Larsen Oil & Gas Ltd. Based on security rights in earnings under the relevant rig contracts, NT filed proceedings before the City Court of Bergen against the rig administrator, seized earnings of approximately $23 million in Scotland and approximately 26 million kroner in Norway. The administrator of Petromena ASA has now taken up a position in the board of directors of Petromena Ltd.

Petrojack ASA, a company listed on the Oslo Stock Exchange held 24.99 per cent of the shares of Petrolia Drilling ASA, and it entered bankruptcy proceedings in Norway on 8 March, 2010. At that time, it had two wholly owned subsidiaries, Petrojack II Pte Ltd (in liquidation) and Petrojack IV Pte Ltd (owning the jack-up rig Petrojack IV). At the time of bankruptcy, Petrojack ASA had around 475 million kroner and $110 million in bond loans, administered through NT.

Petrojack ASA was the majority shareholder of the Cayman Islands-based company PetroProd Ltd. On 9 April, 2009, the Grand Court of the Cayman Islands appointed provisional liquidators for the company, which at the time had two bonds loans administered by NT for a total of $335 million. The company in liquidation later filed a claim against Larsen Oil and Gas Pte Ltd based on allegations that certain payments made pursuant to a management agreement constituted unfair preferences or undervalued transactions and that certain payments were made with fraudulent intent. Applications to stay the proceedings were dismissed by the Singapore Supreme Court in June 2010.

During 2009, parts of the bond loans in Petromena ASA and Petrojack ASA were acquired by Seadrill ASA. One of the ultimate beneficiary owners of these two companies, Petrolia Drilling AS, carried out a reverse split of shares on 30 June 2010, following which the market value of the company plunged from over 300 million kroner to around 184 million kroner. In 2010 the market value of the company's shares has dropped by more than 50 per cent.

The Norwegian bankruptcy proceedings of Petromena ASA and Petrojack ASA are still ongoing.

Terra Securities ASA

From 2001 to 2007, eight Norwegian municipalities invested a total of about 1.4 billion kroner in complex and high-risk structured products linked to unspecified municipal bonds in the US. The products were offered by Citibank and sold by Terra Securities ASA, an investment banking arm of a group of 78 local savings banks in Norway. Subsequent market movements linked to the US credit crunch reduced the value of the investment products to less than 55 per cent of its par value, and Terra Securities ASA was unable to meet Citibank's requirement for further guarantees related to additional security.

The investments were assessed by Kredittilsynet, and it was found that the information given by Terra Securities ASA to the municipalities regarding the financial products was inadequate and misleading, and at the end of September 2007 a notice was given that Terra Securities ASA's licences granted under the Securities Trading Act

would be withdrawn. Terra Securities ASA was taken under bankruptcy proceedings the 28 November 2007 following a petition from the company's board of directors. Citibank then required that the financial products be sold, a sale from which the bankruptcy estate received about 430 million kroner.

In July 2008, the Bankruptcy Court of Oslo found that the nature of the municipalities' claims gave them first priority rights over the sales proceeds received by the bankruptcy estate following the sale of the financial products, following which about 530 million kroner were paid out to the municipalities.

On 10 August 2009, the bankruptcy estate and seven of the Norwegian municipalities filed action against Citigroup Inc., Citigroup Global Markets Inc. and Citigroup Alternative Investments LLC before the United States District Court for the Southern District of New York. The claim, amounting to more than $200 million, is based on the allegation that Citigroup violated US security law by material misrepresentations and omissions in the description of its securities, misleading Terra and the municipalities into purchasing notes linked to a tender option bond fund managed by Citigroup. The defendants filed a motion to dismiss based on jurisdictional and forum non-convenience deficiencies, but the motion was denied by the court's decision of 16 February 2010.

The Terra Securities ASA bankruptcy is considerable in Norwegian terms, both in complexity and financially. On 30 November 2009, claims for approximately 1.2 billion kroner had been filed with the bankruptcy estate.

Norges Velforbund

On 3 March 2010, the voluntary umbrella organisation Norges Velforbund was declared bankrupt on a petition from the board of the organisation, directly initiated by a report filed with the Norwegian police authorities for potential misappropriation of funds amounting to 28 million kroner. The organisation's activities were immediately discontinued, affecting more than 8,500 local member organisations in Norway and nearly a million individuals related to the organisation's work. The first voluntary organisation of this kind in Norway was founded in 1774, whereas the umbrella organisation (in bankruptcy) was founded in 1974.

ii General market developments

The Norwegian consumer price index rose by 3.3 per cent from April 2009 to April 2010 but the year-on-year growth then decreased to 2.5 per cent from May 2009 to May 2010, mainly due to a reduction in the electricity prices.

Unemployment rates are still low in Norway, with only 3.7 per cent of the labour force being unemployed in April 2010, compared to the EU average rate of 10 per cent. However, Norwegian unemployment rose by 0.3 percentage points from January to April 2010.

The overall turnover in the Norwegian oil and gas industry was approximately 495 billion kroner over the first four months of 2010. This is an increase of about 3.2 per cent compared to the same period last year.

Oil prices have gradually recovered during 2009 and this trend has continued into 2010 after the dramatic fall following the credit crunch in the second half of 2008. Although the current oil prices in May/June 2010 are only slightly above 50 per cent of

the peak levels during summer 2008, general investment forecasts are a record high, at an estimated 146.3 billion kroner for 2011 (oil and gas industry including pipelines).

Key figures show that Norway exported a total value of 323 billion kroner (excluding ships and oil platforms) in the period from January to May 2010, which is 2.1 per cent higher than in 2009. The oil and gas sector accounted for more than half of the export with 209 billion kroner, which is about equal to same period in 2009. It is worth noting that crude oil exports showed an increase of 29.8 per cent, while natural gas was down 30.9 per cent. In May 2010, Norway exported commodities for 26.4 billion kroner, an increase of 4.9 billion kroner on the same month in 2009.

The total import value for January to May 2010 was 174.8 billion kroner, up 1.4 per cent from the 2009 figures of 172.4 billion kroner. Norway's trade surplus for May 2010 was 26.6 billion kroner.

The construction and building industry slowed down noticeably during the second half of 2008 and through 2009. The first quarter figures for 2010 reflected a moderate drop in construction activity with the construction production index dropping 5.5 per cent from the fourth quarter of 2009 to the first quarter of 2010. However, the total of new orders increased with 15 per cent for first quarter of 2010 compared to the same period in 2009, with civil engineering showing the strongest growth.

Norwegian manufacturing output went up by 3 per cent from April 2009 to April 2010, with major factors being growth in production of basic metals, basic chemicals, paper and paper products.

Producer price index rose by 18.4 per cent from May 2009 to May 2010 as most industries experienced price increases. However, the producer price index decreased by 0.5 per cent from April 2010 to May 2010, mainly due to lower prices on electricity and oil.

V INTERNATIONAL

Norway participates in the Nordic Bankruptcy Convention of 1933 together with Sweden, Denmark, Finland and Iceland. Norway has not adopted the 1997 UNCITRAL Model Law on Cross-Border Insolvency.

Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings is not open to Norway as an EEC member. A majority of the principles reflected the Regulation is similar to those traditionally applied under Norwegian law, however, Norwegian courts will as a main principle consider non-Nordic bankruptcies in the light of the domestic rules of private international law.

Over the last few years the number of branches of foreign companies registered in Norway has increased significantly. Norwegian insolvency case law shows that bankruptcy proceedings will be instituted in Norway if the debtor's actual business or main centre of interest is within the territorial jurisdiction of the court, even if the company as such is registered under the laws of a foreign jurisdiction. 80 per cent of these branches are branches of UK limited liability companies. As one of the first European registers of business enterprises, the Norwegian Business Register will, during the course of 2010, establish a procedure for aligning its electronic archive and routines in respect of Norwegian branches of UK entities with data from Companies House.

Upon notice from Companies House of striking off or deregistration of an entity, the Norwegian Business Register will initiate the deregistration process of the Norwegian branch accordingly.

On 16 December 2008, the Supreme Court ruled that a branch of a foreign company does not as such have capacity as a party to a legal action under the laws of Norway, as it is not an independent legal entity. This capacity remains with the foreign company.

In cross-border insolvency cases the lack of international regulations is remedied by Section 161 of the DRB Act , which gives the authorities the option of entering into agreements on bankruptcy and similar terms of insolvency and the right to deviate from the rules of the Act in order to reach necessary agreements. Such agreements have not been uncommon in cases where Norwegian courts have been involved.

VI FUTURE DEVELOPMENTS

Seeing the Norwegian market recovering, it has been argued that the extraordinary fiscal and monetary policy measures need to be withdrawn sufficiently early to avoid an overheating of the economy. Fiscal policy was expansionary in 2009; the Norwegian National Budget for 2010 provides a further, albeit milder, expansionary impulse in 2010.

New and stricter regulations for salaries and remuneration is expected to come into force in 2011. These changes will apply to brokerage houses, banks and financial institutions, and will apply to all employees. For key employee categories, the main element of the total remuneration must be a fixed salary, and at least half of any bonus payable annually shall be rewarded in the form of shares or share purchase options in the company that is only made available to the employee after a certain period of time or disbursed in equal portions over at least three years. The framework for the new rules has already been passed by parliament, and the Finance Department has drafted regulations that are expected to take effect from 1 January 2011.

On a larger scale, there are currently no major developments or extraordinary financial policy measures in the pipeline in Norway directly attributable to the international credit crunch or the continuing financial instability.

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