

Til de efterstillede kreditorer mv. i
Selskabet af 1. september 2008 A/S under konkurs –
CVR nr. 50020010 (tidligere Roskilde Bank A/S)

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*To the subordinated creditors etc. of
Selskabet af 1. september 2008 A/S in bankruptcy –
CVR No. 50020010 (formerly Roskilde Bank A/S)*

Our ref. 039560-0002 JHO/JGE

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Cirkulæreskrivelse nr. 13 / Circular Letter No. 13

SKS 21-354/2009 – Selskabet af 1. september 2008 A/S under konkurs – CVR nr. 50020010 (tidligere Roskilde Bank A/S), Algade 14, 4000 Roskilde

Under skiftesamlingen i Selskabet af 1. september 2008 A/S under konkurs afholdt ved Retten i Roskilde, Skifteretten, mandag den 2. maj 2011, kl. 14.45 gennemførtes følgende dagsorden:

1. Kurators redegørelse for boets forhold (generelt)

Redegørelsen gav ikke anledning til særskilte bemærkninger.

1. Prøvelse af anmeldelse fra Taberna Europe CDO II PLC ved advokat Anders Aagaard

Under dette punkt indstillede kurator anmeldelsen til afvisning. Med Skifterettens tilslutning havde kurator bevilliget udsættelse til anmelderen for at anlægge retssag ved Skifteretten mod konkursboet med påstand om at anerkende anmeldelsen, således at fristen for et sådant søgsmål blev fastsat til udgangen af august 2011. Anmelderen var indforstået med denne frist, der herefter blev godkendt af Skifteretten.

2. Evt. stillingtagen til henvendelse fra (ny) Roskilde Bank A/S, CVR nr. 31633052 om endelig afklaring vedrørende "earn-out modellen" i henhold til overdragelsesaftale af august 2008 vedrørende den daværende samlede bankvirksomhed – hvorved bemærkes, at ny bank anmoder konkursboet om at bekræfte, at man er enig i, at der ikke kan gøres yderligere krav gældende i henhold til denne betingede reguleringsklausul

Under dette punkt redegjorde kurator nærmere for baggrunden for reguleringsklausulen, der oprindeligt var indeholdt i den omtalte overdragelsesaftale. Direktør Henrik Bjerre-Nielsen, Finansiell Stabilitet A/S, der i dag er 100% aktionær i (ny) Roskilde Bank A/S, CVR nr. 31633052, uddybede det tidligere fremsendte skriftlige materiale om baggrunden for, at der ifølge Finansiell Stabilitet A/S ikke er nogen som

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helst udsigt til, at earn-out modellen kan tænkes at blive aktuel. På forespørgsel fra tilstedeværende under skiftesamlingen oplyste Finansiell Stabilitet A/S, at man gerne ville uddybe baggrunden for disse beregninger yderligere, hvis man modtog konkrete spørgsmål herom.

Under skiftesamlingen var der ikke repræsenteret så mange kreditorer, at skiftesamlingen som sådan var kompetent til at træffe beslutning om, hvorvidt reguleringen kunne frafaldes af konkursboet. Kompetencen til at træffe en sådan afgørelse er herefter ifølge konkursloven overladt til kurator. Kurator oplyste i overensstemmelse med sin anbefaling og forelæggelse over for skiftesamlingen, at kurator under de foreliggende omstændigheder, og herunder navnlig redegørelsen fra (ny) Roskilde Bank A/S, kunne godkende, at konkursboet frafaldt krav om at håndhæve købereguleringsklausulen fremadrettet.

Kurator begrundede navnlig dette med de fremlagte økonomiske oplysninger, men samtidig det af (ny) Roskilde Bank A/S oplyste væsentlige behov for at kunne reducere omkostningerne ved fortsat afvikling ved ikke længere at være bundet af den oprindelige reguleringsklausuls bestemmelser om regnskabsafklæggelse mv.

Under hensyntagen til en samlet vurdering af den særlige situation henlede kurator skiftesamlingen og Skifterettens opmærksomhed på reglen i konkurslovens § 137, der har følgende ordlyd:

"Opgives et muligt krav, uden at der er sluttet forlig, kan enhver fordringshaver inden for en af skifteretten fastsat frist på egen hånd anlægge sag Anmodning om fastsættelse af frist skal fremsættes over for skifteretten uden ugrundet ophold efter bostyrets beslutning om opgivelsen."

Skifteretten var enig i, at kreditorerne skulle have en sådan mulighed for at anlægge sag, når konkursboet for sit vedkommende var indstillet på at opgive et muligt krav (i henhold til reguleringsklausulen i overdragelsesaftalen fra august 2008). Skifteretten fastsatte fristen for, at kreditorerne anlægges en sådan sag, til udgangen af juni 2011. Hvis der ikke inden for denne frist anlægges sag, er tilsagnet over for (ny) Roskilde Bank A/S om, at konkursboets rettigheder ifølge reguleringsklausulen opgøres, endeligt.

3. Eventuelt

Ingen bemærkninger

Denne cirkulæreskrivelse udsendes på nuværende tidspunkt forud for modtagelsen af Skifterettens referat fra skiftesamlingen. Dette sker for at sikre, at kreditorerne i så god tid som muligt orienteres om fristen for eventuelle indsigelser i medfør af konkurslovens § 137, som omtalt foran. Referat fra skiftesamlingen vil blive sendt til kreditorerne, når kurator har modtaget dette fra Skifteretten.

**File no. SKS 21-354/2009 - Selskabet af 1. september 2008 A/S in bankruptcy –
CVR No. 50020010 (formerly Roskilde Bank A/S), Algade 14, DK-4000 Roskilde**

At the creditors' meeting of Selskabet af 1. september 2008 A/S in bankruptcy held in the offices of the Court of Roskilde, Bankruptcy Division, last Monday (2 May 2011) at 02:45 pm, the following agenda was carried through:

1. Trustee's report on the general state of affairs of the estate.

The report did not give rise to any specific comments.

2. Examination of claim filed by Taberna Europe CDO II PLC represented by attorney Anders Aagaard.

The trustee recommended that the claim filed was rejected. Backed by the Bankruptcy Court, the trustee had granted an extension to Taberna Europe CDO II PLC making it possible to commence proceedings against the estate before the Bankruptcy Court claiming that the relevant claim should be allowed. The timelimit for commencing such proceedings was fixed at 31 August 2011. Taberna Europe CDO II PLC accepted this timelimit which was subsequently approved by the Bankruptcy Court.

3. Assessment and position (if any) with respect to approach received from (New) Roskilde Bank A/S, CVR no. 31633052 regarding a final clarification of the "earn-out-model" provided for in the transfer agreement dated August 2008 regarding the overall banking activities existing at the time; the new bank has requested that the bankrupt estate confirms and agrees that no further claims can be raised under the said conditional adjustment clause.

The trustee provided a detailed account of the background for the adjustment clause originally contained in the transfer agreement. Henrik Bjerre-Nielsen, manager of the Financial Stability Company (Finansiel Stabilitet A/S), presently the sole shareholder of (new) Roskilde Bank A/S, CVR no. 31633052, elaborated on the material previously circulated which described why, in the opinion of the Financial Stability Company, there are no prospects whatsoever of the earn-out model becoming relevant. In reply to inquiries made by attendees of the meeting, the Financial Stability Company stated that it would be willing to elaborate further on the calculations and the outcome thereof if so specifically requested.

A sufficient number of creditors did not attend the meeting in order for the creditors' meeting to pass a formal resolution as to whether the adjustment clause should be waived by the estate. According to the Danish Bankruptcy Act, the trustee was then authorised to make such decision. In accordance with his recommendation and presentation at the meeting, the trustee stated – in the given circumstances and especially based on the report prepared by (new) Roskilde Bank A/S - that he was willing to accept that the estate waives any future claims in respect of the adjustment clause.

The trustee based his decision primarily on the financial data submitted in the report, but also on (new) Roskilde Bank A/S' reported desire to be able to reduce its costs by no longer being bound by the adjustment clause and its stipulations with respect to presentation of accounts etc.

Based on an overall assessment of the specific circumstances, the trustee further pointed out to the creditors present and the Bankruptcy Court the rule laid down in s. 137 of the Danish Bankruptcy Act which reads as follows:

"Where a claim has been abandoned without any settlement having been arrived at, any creditor may, within a timelimit fixed by the bankruptcy court, on his own behalf institute a legal action.... Request for fixing of the period allowed shall be submitted to the bankruptcy court without undue delay after the managers of the estate have decided to abandon the claim."

The Bankruptcy Court agreed that the creditors should be given an opportunity to institute such actions, seeing that the estate had expressed that it was willing to abandon the claim (under the adjustment clause set out in the transfer agreement of August 2008). The Bankruptcy Court fixed the timelimit for the institution of any such creditors' actions at 30 June 2011. If no action has been instituted before this date, the commitment made by the estate via-à-vis (new) Roskilde Bank A/S to liquidate any and all rights held by the estate under the adjustment clause will be deemed final and valid.

4. Any other business.

No comments.

This Circular Letter will be circulated before I have received the minutes of the creditors' meeting prepared by the Bankruptcy Court in order to notify all creditors, at the earliest possible stage, of the timelimit fixed for the institution of any legal action under s. 137 of the Bankruptcy Act, cf. above. The minutes of the creditors' meeting will be circulated as soon as I have received the document from the Bankruptcy Court.

Med venlig hilsen / *Yours sincerely*

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Kræver ingen underskrift / *No signature required*

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