
Circular Letter No. 15

8 July 2011

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

Biannual Report in pursuance of section 125(3) of the Danish Bankruptcy Act

1. Introduction

In the first half of 2011, I have prepared and circulated the following circular letters:

- Circular Letter No. 10 of 12 January 2011, including Biannual Report
- Circular Letter No. 11 of 11 April 2011
- Circular Letter No. 12 of 28 April 2011
- Circular Letter No. 13 of 6 May 2011
- Circular Letter No. 14 of 16 June 2011

2. General administration of the estate

In the first half of 2011, I have been engaged in the following activities:

- Continuing processing of inquiries made by creditors regarding claims transferred to the new bank.
- Continuing (extensive) processing of trustee's approvals/confirmations regarding transfers (e.g. in respect of leases and especially charges), including various investigations and correspondence by e-mail and telephone with the "applicants" and (new) Roskilde Bank.
- Continuing drafting of responses to inquiries made by subordinated creditors and their agents.
- Correspondence by mail and telephone with the State Prosecutor for Serious Economic Crime regarding the State Prosecutor's request for potential access to miscellaneous documents for the purpose of a police

investigation instigated by the Danish Financial Supervisory Authority and in connection with an outstanding account with a named creditor, including discussions with (new) Roskilde Bank.

- Legal investigations regarding the transfer of charges.
- Telecons regarding inquiries made by other creditors.
- Continuing telecons with Ole Reinholdt.

- Follow-up on inquiry made by the Danish Consumer Ombudsman via the Legal Adviser to the Danish Government ("*Kammeradvokaten*") regarding the conclusion of time-barring suspension agreement to the benefit of certain shareholders/potential creditors.
 - Supplementary correspondence by e-mail and telephone with *Kammeradvokaten* and representatives of (new) Roskilde Bank, respectively.
 - Discussions with *Kammeradvokaten* regarding the matter of proper defendant in relation to any legal proceedings commenced by Roskilde Bank and the Danish Consumer Ombudsman.

- Claims filed
 - Correspondence with parties having filed claims against the estate requesting such claims to be ranked under s. 97 of the Danish Bankruptcy Act regarding the date for commencement of examination of such claims.
 - Recording of claims in the register of debts.

- Claims filed by Taberna Europe CDO II Plc in the amount of EUR 27 million ranking as an unsecured claim (under s. 97)
 - Drafting of recommendation of 13 April 2011 to the Court of Roskilde regarding examination of claim filed by Taberna Europe CDO II Plc.
 - Supplementary correspondence with attorney Anders Aagaard regarding his indication of question to be raised with Finansiell Stabilitet A/S in continuation of creditors' meeting held on 2 May 2011.
 - Review of letter of 23 May 2011 from attorney Anders Aagaard regarding Taberna's possibility of invoking clause 5.1 of the Transfer Agreement of 24 August 2008 between the old bank and the new bank.
 - Drafting of letter of 31 May 2011 with preliminary response to the above letter of 23 May 2011.
 - Continuing correspondence by e-mail and telephone with Taberna Europe CDO II Plc's legal advisor, Anders Aagaard.

- Inquiry from (new) Roskilde Bank A/S represented by Finansiell Stabilitet A/S regarding the bankrupt estate's potential waiver of the purchase price adjustment clause set out in the Transfer Agreement.
 - Review of letter of 14 June 2011 from Finansiell Stabilitet A/S.
 - Review and forwarding to (new) Roskilde Bank's legal advisors of inquiries made by subordinated creditors regarding the potential waiver of the purchase price adjustment clause.
 - Review and commenting of letter of 27 April 2011 from Finansiell Stabilitet A/S including memorandum of 26 April 2011 from KPMG regarding the financial status of the purchase price adjustment clause.
 - Review of letter of 2 May 2011 from Finansiell Stabilitet A/S regarding restructuring of the group structure and the fulfilment of obligations to Selskabet af 1. september 2008 A/S in bankruptcy, including translation into English of the letter and notification to the creditors' committee.

As at 1 July 2011, it could be concluded that no creditors had filed requests or indicated that they intended to assume the right to raise a potential claim for adjustment under s. 137 of the Danish Bankruptcy Act. Against this background, the conditional commitment made by me that the adjustment clause could be abandoned should now be regarded as final, cf. Circular Letters No. 13 of 6 May 2011 and No. 14 of 16 June 2011 for further details.

- Creditors' meeting
 - Drafting of letter of 21 February 2011 to the Bankruptcy Court requesting the convening of a creditors' meeting for examination of claim ranking as unsecured claim filed by Taberna Europe CDO II Plc, and position on the potential waiver by the bankrupt estate of the purchase price adjustment clause set out in the Transfer Agreement.
 - E-mail correspondence with the Bankruptcy Court regarding practicalities of the creditors' meeting.
 - Preparations for and participation in the creditors' meeting held on 2 May 2011 in the offices of the Bankruptcy Court of Roskilde.

3. Access to documents

- Review of rulings regarding access to documents.
- Drafting of memorandum of 7 February 2011 to the Bankruptcy Court of Roskilde regarding requests for access to documents and drafting of legal background memo of the same date.
- Review of submission made by New Roskilde Bank on 13 April 2011.

- Drafting of supplementary submission of 30 May 2011 to the Bankruptcy Court of Roskilde.
- Review of various inquiries regarding access to documents and drafting of preliminary responses thereto, including telecons.

4. Assessment of stock option agreement originally entered into on 7 February 2003 with the former Roskilde Bank A/S

- Witness examination of former member of the board of directors.
- Preparations for and participation in court meeting held on 28 March 2011 in Copenhagen, including witness examination of former member of the board of directors.
- Review of transcript from the court records regarding the above witness examination.
- Drafting of response to request regarding former member of the management board.
- Preparations for and participation in main hearing on 9 and 10 May 2011 before the Arbitration Tribunal (held in the offices of the Eastern Division of the Danish High Court in Copenhagen).
- Follow-up regarding arbitration award.

It should be noted that the arbitration award was made on 8 June 2011. The claimant – a former member of the management board – had raised a specific claim and argued in details that the bankrupt estate should:

"be ordered to acknowledge that, in connection with the claimant's exercising of his rights under the option agreement of, an agreement has been entered into between the parties on the application of the rules laid down in s. 7H of the Danish Tax Assessment Act"

(including the consequences further described in the claim according to which the bankrupt estate was to waive the reservation made by the bankrupt estate to the tax authorities as to whether s. 7H of the Danish Tax Assessment Act was in fact applicable to this specific case).

The arbitration tribunal ascertained that despite the practice previously adopted by the board of directors, namely that employees with uniform working conditions were to be given the same treatment, it had not been possible for the board of directors to formally form an opinion on the specific agreement and thus form an opinion on the application, if any, of s. 7H of the Danish Tax Assessment Act on the claimant's affairs. Moreover, irrespective of any option available to the chairman of the board and any practice applied with respect to regular negotiations with the managers regarding their working conditions, the arbitration award ascertains that the company (now the

bankrupt estate) could not act on behalf of the bank in the specific situation. The award concludes that:

"....it is a precondition, however, for a promisee to be entitled to rely on an authorisation derived from actions that such promisee was in good faith, at the time when the promise was made, with respect to the promisor's competencies.

The assessment of whether or not the claimant was in good faith should take into account the special circumstances in which the bank was placed and which the claimant was aware of, including the fact that the board of directors had been changed and that, four days prior thereto, the bank had been "taken over" by the Danish National Bank. In addition, it appears from the claimant's own explanation that he had agreed with that such person would take up the matter of s. 7H at a board meeting on which would not be necessary if the claimant was of the opinion that the chairman of the board alone could enter into the agreement ... Consequently, the arbitration tribunal finds for the respondent."

Consequently, the arbitration tribunal decided in the bankrupt estate's favour, and the award made is final.

5. Fee requests etc.

I have submitted a request for an on-account fee of DKK 395,000 excl. VAT to the Bankruptcy Court. This fee pertains to approximately the same period covered by this Biannual Report and is based on approx. 160 hours spent on this case by the legal professionals of my office. In addition, certain minor costs have been incurred in respect of translation work etc.

Aarhus, 8 July 2011

Jørgen Holst

No signature required