



## **NEW BILL AMENDING THE RULES ON RESTRUCTURING**

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### **Introduction**

The Danish Government has introduced a bill amending the current rules on restructuring based on recommendations by the Danish Bankruptcy Council. The bill is being processed and is not expected to be passed until 2021.

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Under the current regime, failed attempts at restructuring automatically result in bankruptcy proceedings commencing. Further, when commencing restructuring proceedings today, a security must be provided for the introduction of any subsequent bankruptcy proceedings, and a reconstruction accountant must be appointed, which in itself is costly to the restructuring process.

For these reasons among others, the current rules on restructuring do not necessarily offer an attractive or applicable solution to companies that are experiencing temporary financial difficulties, and an amendment must therefore be viewed as a positive step that may make the restructuring process more useful and less costly for the companies.

With its recommendations, the Danish Bankruptcy Council aims at making the rules on restructuring more smooth and less costly. Despite the fact that the recommendations were made in the wake of COVID-19 and its consequences, the bill is, however, not limited, in content or in time, to the current COVID-19 pandemic and will also apply to companies that find themselves in financial difficulties due to reasons other than COVID-19.

### **Proposed Amendments to the Rules on Restructuring**

The purpose of the bill is to improve the possibilities of continuing viable companies that experience temporary financial difficulties. The amendments consist in, inter alia, facilitating the option to transfer companies subject to restructuring proceedings, including by equating restructuring with bankruptcy in regard to employee claims during transfer of a company, as well as making the process of restructuring less costly.

In general terms, the Government's bill includes the following amendments to the current rules on restructuring:

- No obligation to appoint a reconstruction accountant on commencement of the restructuring proceedings, thus making it optional to the debtor whether or not such reconstruction accountant is to be assigned on commencement of the restructuring proceedings.
- The meeting at which voting on the restructuring plan takes place may be postponed by up to four weeks, without further motivation, following the administrator's request.
- Failed attempts at restructuring will not automatically result in the debtor's bankruptcy, provided that the restructuring proceedings are ceased before the adoption of a restructuring plan.

- No mandatory security will be required on commencement of restructuring proceedings for any subsequent bankruptcy proceedings.
- The implementation of a “fast-track” procedure for transfers of companies subject to restructuring which does not require the adoption and affirmation of the restructuring proposal.
- In connection to transfers, restructuring will be equated with bankruptcy in regards to the Danish Transfer of Undertakings Act, meaning that the buyer of a company subject to restructuring proceedings will be liable only for the employee claims relating to the period after commencement of the restructuring process.
- The restructuring process must constitute a basis of payment from the Employees’ Guarantee Fund, meaning that the claims of employees who have been terminated and made redundant prior to or during the restructuring proceedings will be covered by the Employees’ Guarantee Fund.

The Bankruptcy Council’s proposal to amend the rules on company charge is not included in the introduced bill, due to considerations on a broader assessment on the potential amendment to the rules on company charge are currently pending.

It is our opinion that the bill is likely to contribute to making the rules on restructuring smoother as well as making restructuring proceedings a more useful and relevant option to viable companies experiencing temporary financial difficulties.

**If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:**



Thomas Weitemeyer Bendtsen

Partner

[thomas.weitemeyer@moalemweitemeyer.com](mailto:thomas.weitemeyer@moalemweitemeyer.com)



Louise Dolmer

Associate

[louise.dolmer@moalemweitemeyer.com](mailto:louise.dolmer@moalemweitemeyer.com)

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