

~Norway~

Recent amendments to insolvency law and their significance



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Overview

New legislation

- Reconstruction Act 2020
- New Chapter in the Bankruptcy Act

Insolvency climate

- Covid-19 aid and effects



The Reconstruction Act

- enacted on 11 May 2020
- aimed to help viable businesses escape distress caused by the Covid-19 pandemic
- temporary, in force until 1 July, 2023
- permanent act in the future?



The Reconstruction Act

- replaces previous legislation on debt negotiations
- considered improvement; more tools and flexibility
- more comparable to US Chapter 11



The Reconstruction Act

Main elements (part 1):

- lower threshold for petition
- "debtor in possession", appointed reconstructor
- "DIP financing", super priority loan
- better debt to equity conversion possibility



The Reconstruction Act

Main elements (continued):

- tax/VAT claims no priority
- no minimum dividend requirement
- lower cram-down threshold



The Reconstruction Act

Reconstruction plan must be a better alternative than liquidation, and may only include (part 1):

- payment deferrals
- write-off of debt
- debt to equity conversion, in whole or in part



The Reconstruction Act

Reconstruction plan must be a better alternative than liquidation, and may only include (continued):

- a sale of the business operations and assets, in part or in full, without liquidating the company
- a sale of the business operations and assets, in part or in full, with a write-off of excess debt
- a combination of the above, and possibly in combination with other measures



Reconstruction Act

- 44 proceedings opened between 12 May, 2020 and 31 August, 2022
- Experiences



Bankruptcy Act, new chapter

- enacted 1 July, 2021
- recognition and handling of cross-border insolvency matters



Bankruptcy Act, new chapter

- limited legislation previously, only case-law establishing requirement of mutual agreement
- Nordic Convention sole mutual agreement



Bankruptcy Act, new chapter

Key conditions for recognition of foreign main proceedings:

- must be opened in debtor's COMI
- collective
- handled by appointed insolvency practitioner
- debtor deprived of control of means
- reciprocity



Bankruptcy Act, new chapter

Key conditions for recognition of foreign main proceedings (continued):

- must be opened in debtor's COMI
- collective
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- debtor deprived of control of means
- reciprocity



Bankruptcy Act, new chapter

Ancillary proceedings:

- conditioned by location and registration in Norway
- assets in Norway only
- creditor petition only if claim connected to Norwegian business operations



Bankruptcy Act, new chapter

Ancillary proceedings (continued):

- conditioned by location and registration in Norway
- assets in Norway only
- creditor petition only if claim connected to Norwegian business operations



Bankruptcy Act, new chapter

Scope:

- private individuals and financial institutions exempt
- several issues to be solved by Norwegian law
- limitations to enforcement of decisions made in foreign proceeding
- legal protection, announcement



Bankruptcy Act, new chapter

Scope (continued):

- private individuals and financial institutions exempt
- several issues to be solved by Norwegian law
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Bankruptcy Act, new chapter

Experiences so far:

- case law before and after enactment
- expectations



Covid-19 Government Aid

- government payouts
- tax/VAT deferrals
- as of end June, 2022: Tax authorities had approx. 5650 downpayment agreements totalling approx NOK 2,24 billion (USD 227 million)



Covid-19 Government Aid

- Payment deferrals
- New agreements with first instalments 31 May, 2022 and last instalments by 30 December, 2022
- Probable increase in bankruptcies