

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. 8 / Circular Letter No. 8

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

Der henvises til cirkulæreskrivelse nr. 7 af 6. januar 2010 indeholdende indkaldelse til skiftesamling den 2. februar 2010. Det væsentligste dagsordenspunkt under skiftesamlingen var stillingtagen til en mulig aftale mellem konkursboet og (Ny) Roskilde Bank A/S om sidstnævntes iværksættelse af en erstatningssag mod den tidligere ledelse og revision mv. i CVR nr. 50020010 (tidligere Roskilde Bank A/S).

Der vedlægges på baggrund heraf kopi af retsbogsudskrift vedrørende mødet i Skifteretten i Roskilde den 2. februar 2010. Af udskriften fremgår det, at skiftesamlingens majoritet godkendte og meddelte fuldmagt til, at "*kurator indgår fornødne aftaler med Ny Roskilde Banks bestyrelse om konkursboets medvirken til gennemførelse af påtænkt erstatningssag efter aktieselskabslovens § 140 mod Gl. Roskilde Banks tidligere ledelse m.v.*".

Ud fra debatten har undertegnede efterfølgende forhandlet med advokat Henrik Lind m.fl., der repræsenterer Ny Roskilde Bank. Forhandlingerne er resulteret i, at der den 5. februar 2010 med supplerende påtegning af 22. februar 2010 er indgået en procesaftale mellem konkursboet/Gammel Roskilde Bank på den ene side og Ny Roskilde Bank på den anden side. Den under skiftesamlingen efterlyste opstramning af bestemmelserne om omkostninger er delvist imødekommet i denne aftaletekst (aftalens punkt 7 og 8).

Kopi af aftalen vedlægges.

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Bemærk i øvrigt venligst at retsbogens referat af kurators bemærkninger side 2, 2. nye afsnit, 1. sætning efter kurators opfattelse bør omformuleres således:

"Ny Roskilde Bank A/S' bestyrelse har efter dialog med Erhvervsministeriet truffet beslutning om at gennemføre og finansiere en advokatundersøgelse forestået af advokaterne Mogens Skipper-Pedersen og Henrik Stenbjerre. Undersøgelsesrapporten, der er offentliggjort, har bevirket, at bestyrelsen i Ny Roskilde Bank A/S har truffet beslutning om at indlede en erstatningssag mod den tidligere ledelse. Advokat Henrik Lind er engageret af bestyrelsen til at anlægge denne sag."

Det efterfølgende forløb efter indgåelsen af procesaftalen af 5. og 22. februar 2010 er herefter, at Ny Roskilde Bank den 24. februar 2010 har udtaget stævning på vegne af Ny Roskilde Bank og tillige på vegne af Gammel Roskilde Bank mod den tidligere ledelse mv. i Gammel Roskilde Bank. Påstanden under sagen går ud på, at de sagsøgte in solidum skal betale DKK 1 mia. med tillæg af procesrenter.

De sagsøgte i sagen er: tidligere bankdirektør Niels Valentin Hansen, tidligere bankdirektør Arne Gotlieb Wilhelmsen samt tidligere underdirektør Allan H. Christensen (fra den tidligere banks direktion) samt følgende bestyrelsesmedlemmer fra den tidligere bank: tidligere bestyrelsesformand Peter Müller, tidligere næstformand for bestyrelsen Niels Erik Qvist Krüger, Peter Holm, Asger Ib Mardahl-Hansen og (filialdirektør og medarbejderrepræsentant) Ove Flemming Holm. Endvidere er bankens tidligere revisor, Ernst & Young samt de statsautoriserede revisorer Tommy Nørskov Rasmussen og Palle Valentin Kubach sagsøgt.

Retssagens førelse forestås af advokaterne Henrik Lind og Christian Alsøe, Gorrissen Federspiel, der instrueres af Ny Roskilde Bank. Gl. Roskilde Bank vil løbende blive holdt underrettet om sagens nærmere bestemmelser. I overensstemmelse hermed vil kurator tilsvarende orientere kreditorerne om forhold af væsentlig interesse for kreditorerne i forbindelse med, at kurator bliver orienteret herom.

For så vidt angår spørgsmålet om, hvorvidt det alene er Ny Roskilde Bank eller helt eller delvist Gammel Roskilde Bank, der er "materiel ejer" af erstatningskravet, er dette fortsat uafklaret. Der henvises til bestemmelsen i procesaftalens punkt 8, der regulerer mulighederne for, hvorledes der senere kan gennemføres en afklaring vedrørende ejendomsretten til dette krav.

Herefter følger en engelsk version af ovenstående vedlagt oversættelse til engelsk af såvel retsbogsudskriften som procesaftalen.

**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**

Reference is made to Circular Letter No. 7 of 6 January 2010 with notice convening a meeting of creditors on 2 February 2010. The most important item on the agenda at the said meeting of creditors was the resolution to conclude a potential agreement between the bankrupt estate and (the new) Roskilde Bank A/S on the commencement of legal proceedings by (the new) Roskilde Bank A/S raising a claim for damages against the former management and auditors etc. of CVR No. 50020010 (the former Roskilde Bank A/S).

Against this background, I enclose a copy of transcript of the court records regarding the meeting in the Bankruptcy Court of Roskilde on 2 February 2010. From the transcript it appears that the majority of creditors approved the granting of a power of attorney to the trustee *"authorising the trustee to conclude necessary agreements with the board of directors of the New Roskilde Bank on the estate's contribution to the commencement of legal proceedings raising a contemplated claim for damages against the former management etc. of the Old Roskilde Bank under section 140 of the Danish Public Companies Act."*

On the basis of the discussions, I have subsequently negotiated with attorney Henrik Lind and others representing the New Roskilde Bank. The negotiations resulted in the conclusion of a litigation agreement on 5 February 2010 with additional endorsement of 22 February 2010 between the bankrupt estate/the Old Roskilde Bank of the one party and the New Roskilde Bank of the other party. The requirement of tightening the stipulations on costs put forward at the above meeting of creditors has partly been complied with by way of this litigation agreement (items 7 and 8).

Enclosed please find copy of the litigation agreement.

In addition, please note that the summary of the trustee's comments entered in the court records, page 2, the second new paragraph, first sentence, in the opinion of the trustee should be reworded as follows:

"Following dialogues with the Danish Ministry of Economic and Business Affairs, the board of directors of the New Roskilde Bank A/S decided to conduct and finance a legal investigation lead by attorneys Morgens Skipper-Pederen and Henrik Stenbjerre. The outcome of the report on the legal investigation, which has been published, was that the board of directors of New Roskilde Bank A/S decided to take legal action for damages against the former management. The board of directors has engaged attorney Henrik Lind to commence such legal proceedings."

After conclusion of the litigation agreement dated 5 and 22 February 2010, the New Roskilde Bank issued a writ of summons on behalf of the New Roskilde Bank and also on behalf of the Old Roskilde Bank against the former management etc. of the Old Roskilde Bank on 24 February 2010 claiming joint payment from the defendants of DKK 1 billion plus litigation interest.

The defendants of the case are: former bank manager Niels Valentin Hansen, former bank manager Arne Gotlieb Wilhelmsen and former assistant manager Allan H. Christensen (of the management of the former bank) and the following board members of the former bank: former chairman of the board of directors Peter Müller, former vice-chairman of the board of directors Niels Erik Qvist Krüger, Peter Holm, Asger Ib Mardahl-Hansen and (branch manager and employee representative) Ove Flemming Holm. Moreover, legal proceedings have been initiated against the former auditors of the bank, Ernst & Young, and the state-authorized public accountants Tommy Nørskov Rasmussen and Palle Valentin Kubach.

The attorneys Henrik Lind and Christian Alsøe of Gorrissen Federspiel have been engaged by New Roskilde Bank to conduct the legal proceedings. The Old Roskilde Bank will currently be kept updated on the course of the proceedings. Accordingly, the trustee will keep the creditors informed of any matters of paramount interest to the creditors as soon as the trustee is informed to that effect.

The question remains unsolved as to whether it is solely Ny Roskilde Bank or the Old Roskilde Bank, wholly or in part, which is "the legal owner" of the claim for damages. Reference is made to the stipulation of item 8 of the litigation agreement governing the possibilities of how to decide on the ownership of the said claim at a later point in time.

Med venlig hilsen / *Yours sincerely*

Jørgen Holst

Kræver ingen underskrift / No signature required

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