
Circular Letter No. 7

6 January 2010

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 my capacity as trustee of the bankrupt estate of Selskabet af 1. september 2008 in bankruptcy, CVR no. 50020010 (the former Roskilde Bank A/S – herein the "Old Roskilde Bank"), please find below my biannual report made pursuant to section 125(3) of the Danish Bankruptcy Act to the Bankruptcy Court and the creditors of the estate.

By way of Circular Letter no. 5 of 1 July 2009, my report and balance statement made pursuant to section 125(2) of the Danish Bankruptcy Act was submitted. To the extent possible, the structure of this Circular Letter no. 7 will be identical to that of Circular Letter no. 5, and the purpose of this report will be to provide supplementary and updated information to the creditors as compared to the information provided by way of Circular Letter no. 5.

2. General administration of the estate

In the period after 1 July 2009, the trustee has been engaged primarily in the following activities:

- Participation in meetings with the creditors' committee on 9 October 2009 (telephone conference) and 12 November 2009.
- Participation in meetings with the chairmanship of (the new) Roskilde Bank A/S (CVR no. 31633052) (hereinafter referred to as the "New Roskilde Bank") on 3 August 2009 and with the Financial Stability Company

("Finansiel Stabilitet") on 12 November 2009 (together with the creditors' committee).

- Review of certain reports in order to assess liability issues etc., including report on the Danish FSA ("Finanstilsynet") made by the Audit of the State Accounts ("Rigsrevisionen") and report on legal investigation into certain matters pertaining to Roskilde Bank dated 24 July 2009 prepared by attorneys Mogens Skipper-Pedersen and Henrik Stenbjerre (at the request of the New Roskilde Bank).
- Reviews and correspondence exchanged for the purpose of filing claims under the directors' liability insurance.
- Extensive and on-going efforts to respond to inquiries made by the creditors and a former collaborator of the Old Roskilde Bank regarding practical follow-up on the transfer of all activities to the New Roskilde Bank.
- On-going responses provided to creditors' inquiries.
- Dialogue with the Danish tax authorities ("SKAT"), also in respect of section 14 of the Danish Bankruptcy Tax Act.
- Recording of claims filed against the estate, including the handling of supplementary information and mail correspondence with creditors.
- Examination of claim filed by the former bank manager Niels Valentin Hansen (and subsequent exchange of correspondence regarding arbitration proceedings initiated by the same Niels Valentin Hansen under section 7H of the Danish Tax Assessment Act).

As stated in Circular Letter no. 5, all of the old bank's assets and liabilities – except for subordinated claims - were transferred to the New Roskilde Bank as stipulated in the Transfer Agreement reviewed in Circular Letter no. 5.

As also stated in Circular Letter no. 5 and previously stated in Circular Letter no. 2 of 9 January 2009, there are no prospects (whatsoever) of the adjustment clause set out in the Transfer Agreement becoming relevant. Consequently, there are (still) no prospects of the estate receiving any assets that may form the basis for any distribution of dividend among the subordinated creditors. For this reason, claims filed as unsecured claims will be subject to examination only if the relevant creditors so demand and refuse to accept that their claims must be handled by the New Roskilde Bank.

At present, the last-mentioned scenario will only become relevant if such creditor is also of the opinion that the dispute between the parties is governed by an arbitration clause. The formal matter of arbitration is expected to be settled shortly, so that a final decision regarding the claim raised can be made either as part of a potential pursuit of the arbitration proceedings or by way of examination via the Bankruptcy Court.

In the period after issuing of the bankruptcy order on 3 March 2009 and until the end of 2009, approx. 350 hours have been dedicated to this work by our legal professionals, primarily attorneys and partners.

In December 2009, a trustee's fee of DKK 690,000.00 excl. VAT was approved and awarded to the trustee.

3. Potential managerial liability etc.

In the period after the drafting of Circular Letter no. 5, the board of directors of the New Roskilde Bank published a report on a legal investigation into certain matters pertaining to the Old Roskilde Bank on 6 August 2009 (hereinafter referred to as the "Legal Investigation"). Please also see circular Letter no. 6 of 2 September 2009. The Legal Investigation was made at the request of the board of directors of the New Roskilde Bank, but certain aspects of the Legal Investigation are similar to those to be included in a trustee's investigation, cf. section 125(2) of the Danish Bankruptcy Act.

The trustee had been notified of the request made by the board of directors of the New Roskilde Banks to have such legal investigation conducted, and the trustee was informed of the outcome thereof immediately after completion of the report. It was not possible for the trustee, however, to make an independent advance assessment of the report.

After completion of the report, the board of directors of the New Roskilde Bank announced that attorney Henrik Lind of Gorrissen Federspiel, H.C. Andersens Boulevard 12, DK-1553 Copenhagen V, has been engaged to draft a writ of summons with a view to raising a claim for managerial liability based on the conclusions drawn from the Legal Investigation.

Sections 5.5, 6.1 and 6.2 of Circular Letter no. 5 outline in detail the possibilities for the bankrupt estate to raise a claim for managerial liability etc. against the former management of the bank. In addition, section 5.4.2 describes that the New Roskilde Bank is of the opinion that any claims for damages under section 140 of the Danish Public Companies Act to be raised against the former management and auditors have been transferred to the New Roskilde Bank from the Old Roskilde Bank by way of Transfer Agreement of 24 August 2008.

Moreover, section 5 of Circular Letter no. 5 includes an assessment by the trustee as to whether such transfer has in fact been made, and any other legal matters of relevance to the bankrupt estate arising out of this issue.

In this connection, the trustee accounted for the provision of section 137 of the Danish Bankruptcy Act stipulating that *"Where a claim has been abandoned without any settlement having been arrived at, any creditor may, within a time limit fixed by the bankruptcy court, on his own behalf institute a legal action...."*

In the autumn of 2009, the trustee was approached by attorney Henrik Lind on behalf of the New Roskilde Bank in order, irrespective of the said viewpoint on the transfer of the claim and if possible, to lay down the framework for the estate's contribution/consent to initiating proceedings against the former management and auditors etc. of the Old Roskilde Bank. The trustee recommends to the estate that, if possible through negotiation, an agreement should be made with the New Roskilde Bank in order to ensure that the contemplated claim for damages under section 140 of the Danish Public Companies Act is brought against the former management of the Old Roskilde Bank without prejudicing the estate's legal position in relation to the question of whether any net proceeds have been transferred to the New Roskilde Bank, or whether such proceeds should still be regarded as the property of the Old Roskilde Bank. In 2009, the trustee presented this recommendation to the creditors' committee. Subsequently, the trustee – following dialogues with the creditors' committee – provided its preliminary answer to the New Roskilde Bank, as the creditors' committee recommended to the trustee that the bankrupt estate should not presently make any decisions as to whether any future cooperation between the estate and the New Roskilde Bank to establish the basis for the contemplated proceedings would be possible.

I am of the opinion, however, that the bankrupt estate needs to take a formal and explicit position on this matter, seeing that any failure to take such position may be construed so as to mean that the bankrupt estate has in fact abandoned any potential claim. There is also a risk that the New Roskilde Bank might take the position that any non-participation by the estate would, in any case, serve as a confirmation of the New Roskilde Bank's interpretation of the Transfer Agreement, i.e. that the claim has in fact been transferred. Consequently, I request that the creditors of the bankrupt estate approve – at a future creditors' committee meeting – that I conclude an agreement, on behalf of the Old Roskilde Bank, with the New Roskilde Bank on the estate's contribution/consent to the commencement of legal proceedings raising a claim for managerial liability, cf. section 140 of the Danish Public Companies Act. I find that this matter must be addressed at a creditors' committee meeting or by the Bankruptcy Court, cf. section 137 of the Danish Bankruptcy Act compared with section 127 of the same Act. It should be noted that the bankrupt estate of the Old Roskilde Bank does not have sufficient funds for conducting such legal proceedings on its own.

Against this background, I hereby convene a creditors' committee meeting to be held in the offices of the Bankruptcy Court of Roskilde, Helligkorsvej 3, DK-4000 Roskilde, on Tuesday 2 February 2010 at 01:30 pm.

The agenda for this creditors' committee meeting will be as follows:

1. Statement by the trustee regarding the negotiations engaged in with the New Roskilde Bank concerning any involvement by the bankrupt estate in the contemplated legal proceedings to be commenced against the former management etc. of the Old Roskilde Bank under section 140 of the Danish Public Companies Act.
2. Approval (and authorisation) of the trustee's conclusion of the agreements required to that effect with the board of directors of the New Roskilde Bank, cf. item 1 above.

4. Future administration of the estate

Please also see section 4.5 of Circular Letter no. 5. Depending on the future role to be played by the bankrupt estate of the Old Roskilde Bank in the contemplated proceedings regarding managerial liability on the part of the former management etc. of the Old Roskilde Bank, the administration of the estate may extend to several years. As stated in section 4.5 of Circular Letter no. 5, however, the future administrative tasks are expected to be of a limited extent and scope.

Århus, 6 January 2010

Jørgen Holst
(no signature required)