

While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Executive Order no. 674 of 24 June 2004. Only the Danish document has legal validity.

October 2004

Executive Order on Choice of Law, etc., with regard to suspension of payments, compulsory composition, compulsory dissolution or bankruptcy of banks, mortgage-credit institutions and electronic money institutions¹⁾

Executive Order no. 674 of 24 June 2004

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The following shall be laid down pursuant to section 248 of Consolidated Act no. 1268 of 19 December 2003:

Part 1

Scope

1. This Executive Order shall regulate questions related to choice of law etc. in matters of commencement of suspension of payments, compulsory composition, compulsory dissolution and bankruptcy of banks, mortgage-credit institutions and electronic money institutions and their branches established in a country within the European Union or in a country with which the Community has entered into an agreement for the financial area other than the country where the bank, mortgage-credit institution or electronic money institution has its registered office, and for branches of a credit institution with a registered office in a country outside the European Union with which the Community has not entered into an agreement for the financial area, if the relevant credit institution has branches in no less than two of the Member States.

2.-(1) Parts 2-3 and 5-6 of this Executive Order shall apply to banks, mortgage-credit institutions and electronic money institutions and branches hereof in countries within the European Union or countries with which the Community has entered into an agreement for the financial area.

(2) Part 4 shall apply to branches of credit institutions with registered offices in a country outside the European Union or countries with which the Community has entered into an agreement for the financial area, if said credit institution, apart from the branch in Denmark, has at least one branch in another country within the European Union or countries with which the Community has entered into an agreement for the financial area.

(3) Part 5 shall apply to credit institutions from other countries within the European Union or countries with which the Community has entered into an agreement for the financial area, and branches hereof.

Part 2

General provisions

3.-(1) Suspension of payments, compulsory composition, compulsory dissolution and bankruptcy shall be carried out in accordance with legislation in the country in which the bank, mortgage-credit institution or electronic money institution has its registered office, unless otherwise provided by this Executive Order, cf. part 6 of this Executive Order.

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(2) The regulations in part 3 of this Executive Order shall apply to suspension of payments, compulsory composition, compulsory dissolution and bankruptcy for banks, mortgage-credit institutions and electronic money institutions with registered offices in Denmark.

(3) If a bank, mortgage-credit institution or electronic money institution does not have its registered office in Denmark, the regulations in parts 4 and 5 of this Executive Order shall apply to suspension payments, compulsory composition, compulsory dissolution and bankruptcy unless otherwise provided by this Executive Order, cf. part 6 of this Executive Order.

Part 3

Notification, lodgement of claims and publication

4. Notification of intention to suspend payments, petition for opening of negotiations for a compulsory composition, petition for compulsory dissolution or petition for bankruptcy for banks, mortgage-credit institutions and electronic money institutions and branches hereof in countries within the European Union or countries with which the Community has entered into an agreement for the financial area shall be made to a bankruptcy court in Denmark in accordance with the Bankruptcy Act.

5.-(1) The bankruptcy court shall immediately notify the Danish FSA when receiving notification of intention to suspend payments from a bank, mortgage-credit institution or electronic money institution; when negotiations are opened for a compulsory composition in a bank, mortgage-credit institution or electronic money institution; when a bank, mortgage-credit institution or electronic money institution becomes subject to compulsory dissolution; or when a bankruptcy order is issued for a bank, mortgage-credit institution or electronic money institution, and the bank, mortgage-credit institution or electronic money institution has branches in other countries within the European Union or countries with which the Community has entered into an agreement for the financial area. The Danish FSA shall notify the supervisory authority of the host country in this respect.

(2) The bankruptcy court shall immediately notify the Danish FSA when receiving notification of intention to suspend payments for a branch in Denmark of a credit institution with its registered office in a country within the European Union or countries with which the Community has entered into an agreement for the financial area. The Danish FSA shall notify the supervisory authority of the home country in this respect.

6.-(1) If a notification of intention to suspend payments may affect the rights of a third party in a host country, the bankruptcy court shall immediately publish an excerpt of the decision in the Official Journal of the European Communities and in two national daily newspapers in each host country.

(2) This excerpt of the decision shall, in the official languages of the countries affected, contain the following information as a minimum:

- 1) object and legal basis for the suspension of payments,
- 2) time limits for lodging complaints, including the date of expiry of the time limits,
- 3) name and address of the Danish High Court to which appeal from an interlocutory order made in the bankruptcy court lies, and
- 4) name and address of the appointed supervisor.

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7.-(1) When negotiations for a compulsory composition are opened; a decision of compulsory dissolution is made; or a bankruptcy order is issued, the bankruptcy court shall immediately ensure that the decision to this effect be duly notified to the public by publishing an excerpt of the decision in the Official Journal of the European Communities and in no less than two national daily newspapers in each host country.

(2) This excerpt of the decision shall, in the official language(s) of the country affected, contain the following information as a minimum:

- 1) object and legal basis for the decision,
- 2) time limits for lodging complaints, including the date of expiry of the time limits,
- 3) name and address of the Danish High Court to which appeal from an interlocutory order made in the bankruptcy court lies, and
- 4) name and address of the nominees, liquidator or trustee.

(3) For such publication, a form shall be used which is in all the official languages of the European Union with the heading "Opfordring til anmeldelse af fordringer. Angivne frister skal overholdes." (Invitation to lodge a claim. Time limits to be observed.)

8.-(1) When suspension of payments, compulsory composition, compulsory dissolution or bankruptcy proceedings have been commenced, the appointed supervisor for the debtor, the nominees, the liquidator or the trustee shall immediately and individually notify those ascertained creditors, which have their habitual domicile or registered office in another country within the European Union or countries with which the Community has entered into an agreement for the financial area, to this effect.

(2) The notification under subsection (1) shall, in particular, contain information about:

- 1) time limits,
- 2) penalties if time limits are not respected,
- 3) where claims are to be lodged, and
- 4) whether creditors with preferential claims or privileges as secured creditors or other preferential rights are to lodge their claims.

(3) For such publication, a form shall be used which is in all the official languages of the European Union with the heading "Opfordring til anmeldelse af fordringer. Angivne frister skal overholdes." (Invitation to lodge a claim. Time limits to be observed.)

9.-(1) Creditors that have their habitual domicile or registered office in another country within the European Union or countries with which the Community has entered into an agreement for the financial area shall be entitled to lodge their claims in writing.

(2) Claims from creditors mentioned in subsection (1) shall be treated in the same manner and with the same ranking as corresponding claims that may be lodged by creditors with their habitual domicile or registered office in Denmark.

(3) The creditor shall send a copy of any proof of the claim and state the nature of the claim, when the claim accrued, the size of the claim and whether the creditor relies on a preferential claim, a privilege as secured creditor, an ownership reservation or other preferential right, and the creditor shall also state which assets are covered by such security.

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(4) Lodgement of claims under subsection (1) may be made in the official language or languages of the country in which the creditor has its habitual domicile or registered office. The document lodging the claim shall, however, contain the heading "Anmeldelse af fordring" (lodgement of claim) in Danish. Moreover, a translation into Danish of the document lodging the claim may be required.

10.-(1) Appointment of the appointed supervisor for the debtor, nominees, liquidator or trustee shall be documented using a certified copy of the decision in accordance with which said appointed supervisor for the debtor, nominees, liquidator or trustee has been appointed, or by any other certificate issued by the bankruptcy court. A translation may be required into the official language or one of the official languages of the country within the European Union or countries with which the Community has entered into an agreement for the financial area, in the territory of which the appointed supervisor for the debtor, the nominees, liquidator or the trustee wishes to act.

(2) The appointed supervisor for the debtor, the nominees, the liquidator and the trustee shall be authorised to exercise all the powers that the appointed supervisor, the nominees, the liquidator or the trustee is authorised to exercise in Denmark, in all countries within the European Union or countries with which the Community has entered into an agreement for the financial area, cf. however subsection (3). The exercise of such powers shall be carried out with due respect for legislation in the countries in whose territories the persons mentioned wish to act.

(3) The powers of the appointed supervisor, the nominees, the liquidator and the trustee shall not cover the use of coercive measures nor the right to settle issues by arbitration nor to settle disputes.

11. The appointed supervisor for the debtor, the nominees, the liquidator or the trustee shall have a suspension of payments, compulsory composition, compulsory dissolution or bankruptcy proceedings registered in the land register, the trade register and any other relevant public register in the other countries within the European Union and countries with which the Community has entered into an agreement for the financial area.

Part 4

Branches of credit institutions from third-party countries

12. When submitting a notification of intention to suspend payments for a branch of a credit institution, when negotiations are opened for a compulsory composition for a branch of a credit institution, when a credit institution becomes subject to compulsory dissolution of a branch, or when a bankruptcy order is made for a branch of a credit institution, the bankruptcy court shall notify the Danish FSA immediately. The Danish FSA shall notify the supervisory authorities in the other countries within the European Union or countries with which the Community has entered into an agreement for the financial area where the relevant credit institution has branches.

Part 5

Credit institutions with registered office outside Denmark

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13.-(1) Decisions made by foreign courts or authorities with regard to winding-up procedures or reorganisation measures, cf. Article 2 of the Credit Institutions Reorganisation and Winding Up Directive, against credit institutions from other countries within the European Union or countries with which the Community has entered into an agreement for the financial area, and branches hereof, shall have binding effect and be enforceable in Denmark if they have such effect in the country where the decision was made.

(2) In cases of winding-up procedures or reorganisation measures, cf. Article 2 of the Credit Institutions Reorganisation and Winding Up Directive, for credit institutions from other countries within the European Union or countries with which the Community has entered into an agreement for the financial area, and branches hereof, which, under subsection (1), have effect in Denmark, the liquidator and administrator, cf. Article 2 of the Credit Institutions Reorganisation and Winding Up Directive, shall be able to exercise the same powers as are vested in them under legislation in the country in which said liquidator and administrator, cf. Article 2 of the Credit Institutions Reorganisation and Winding Up Directive, have been appointed. Exercise of such powers shall be carried out with due respect for Danish legislation.

(3) The powers of the liquidator and the administrator, cf. Article 2 of the Credit Institutions Reorganisation and Winding Up Directive, shall not cover the use of coercive measures, such as imposition of a duty to disclose information or access to demand inspection of business premises etc., nor shall they cover the right to settle issues by arbitration or to settle disputes.

Part 6

Choice of law

14.-(1) The effects of suspension of payments, compulsory composition, compulsory dissolution or bankruptcy on:

- 1) contracts of employment and working relationships shall be determined under legislation in the Member State whose legislation applies to the contract of employment or the working relationship,
- 2) agreements that give somebody a right of use or option to buy real property shall be determined under legislation in the Member State where said real property is situated, and
- 3) the rights to real property, a ship or an aircraft which are required to be registered in a public register shall be determined under legislation in the Member State where such register is kept.

(2) The legislation of the Member State where the real property is situated shall determine whether it is in fact real property or movable property, cf. subsection 1, nos. 2 and 3.

15. Suspension of payments, compulsory composition, compulsory dissolution or bankruptcy shall not affect the rights of a creditor or third party to physical or intangible assets, including movable property and real property, belonging to the bank, mortgage-credit institution or electronic money institution and, at the time of commencement of the suspension of payments, compulsory composition, compulsory dissolution or bankruptcy, appearing in a public register in the territory of another Member State and which are enforceable to a third party.

16.-(1) A suspension of payments, compulsory composition, compulsory dissolution or bankruptcy shall not affect the rights of a vendor in respect of an ownership reservation when

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the asset in which such ownership reservation has been made, at the time of commencement of the suspension of payments, compulsory composition, compulsory dissolution or bankruptcy, is situated in another Member State than the one in which said suspension of payments, compulsory composition, compulsory dissolution or bankruptcy has been commenced.

(2) A suspension of payments, compulsory composition, compulsory dissolution or bankruptcy shall not warrant termination or repudiation of a sale of an asset which has been delivered, nor shall it prevent the buyer from taking ownership of said asset when it, at the time of commencement of the suspension of payments, compulsory composition, compulsory dissolution or bankruptcy is situated in another Member State than the one in which said suspension of payments, compulsory composition, compulsory dissolution or bankruptcy has been commenced.

17. Suspension of payments, compulsory composition, compulsory dissolution or bankruptcy shall not affect a creditor's right to require a claim to be set off against the claim of the bank, mortgage-credit institution or electronic money institution when legislation applicable to the claim of said bank or institution permits such set-off.

18. The enforcement of ownership of instruments mentioned in Section B of the annex to the Directive on investment services in the securities field¹⁾, or of any other rights to such instruments, the existence or transfer of which requires registration in a register, an account, or at a central securities depository operated by or situated in a Member State shall be determined under legislation of the Member State in which the register, account or central securities depository which contains the registration of said rights is operated or situated.

19. Agreements regarding netting shall be determined under legislation applicable to such agreements.

20. Repurchase agreements shall be determined under legislation applicable to such agreements, cf. however section 18.

21. Notwithstanding section 15, the effects of a suspension of payments, compulsory composition, compulsory dissolution or bankruptcy as regards the rights and obligations of the participants in a regulated market as defined in the Directive on investment services in the securities field¹⁾ shall be determined under legislation applicable to the relevant transactions, cf. however section 18.

22. Avoidance of legal transactions that would be to the detriment of all creditors shall not be determined under Danish law when the person who has benefited from said legal transaction can prove that

- 1) said legal transaction is covered by legislation in another Member State, and
- 2) such legislation in no way provides an opportunity to avoid the legal transaction in the relevant situation.

23. If a bank, mortgage-credit institution or electronic money institution - in a legal transaction entered into after filing for suspension of payments or opening negotiations for a compulsory composition, after a decision for a compulsory dissolution or after the date of the bankruptcy order - sells the following against consideration

- 1) real property,
- 2) a ship or an aircraft which is required to be listed in a public register, or

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- 3) instruments as mentioned in Section B of the annex to the Directive on investment services in the securities field⁾ or any rights to such instruments, the existence or transfer of which requires registration in a register, an account or in a central securities depository owned by or situated in a Member State,

the validity of the legal transaction shall be determined under legislation of the Member State in whose territory the real property is situated or where the register, account or central securities depository is operated.

24. The effects of a suspension of payments, compulsory composition, compulsory dissolution or bankruptcy on pending legal proceedings regarding an asset or a right to the assets of the estate shall be determined under legislation in the Member State where said legal proceedings are pending.

Part 7

Entry into force

25. This Executive Order shall enter into force on 27 June 2004.

26. This Executive Order shall not extend to the Faeroe Islands and Greenland.

The Ministry of Economic and Business Affairs, 24 June 2004

Bendt Bendtsen

/Henrik Bjerre-Nielsen

[Links to EEC and EC directives, cf. note 1](#)

[Directive 2001/24/EC](#) Celex no. 32001L0024