

# International Comparative Legal Guides



## Lending & Secured Finance 2020

A practical cross-border insight into lending and secured finance

**Eighth Edition**

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# Denmark



Thomas Melchior Fischer



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## 1 Overview

### 1.1 What are the main trends/significant developments in the lending markets in your jurisdiction?

Interest rate levels continue to fall. General market conditions for doing business in Denmark continue to improve. Particularly, the Danish real estate market is attractive to foreign investors. Pension funds are in pursuit of a reasonable yield on investments, showing an increased interest in funding large infrastructure projects and corporations, including other alternative investments. Crowdfunding is also increasing as an alternative source of financing.

### 1.2 What are some significant lending transactions that have taken place in your jurisdiction in recent years?

The Danish market has been characterised by acquisition finance of M&A transactions rather than significant lending transactions.

## 2 Guarantees

### 2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

As a general rule, Danish private and public limited companies may guarantee borrowings of one or more other members of its corporate group provided, in particular, that the corporate benefit requirement is adequately observed (see question 2.2), and that Danish legislation on financial assistance is complied with (see question 4.1).

### 2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

Under Danish law, it is the directors' duty to ensure that corporate transactions and positions are in the best interest of the company; which often, but not always, mirrors the interest of the shareholders. Put differently, each action of the company must be financially, commercially, or strategically justified. The corporate benefit must accrue to the individual Danish company rather than the corporate group as a whole. In addition to the

duty to continuously ensure that the available capital resources are adequate, the corporate benefit requirement entails, for example, that the directors must establish a reasonable balance between the corporate benefit and the risk assumed pursuant to the guarantee.

Under certain circumstances, e.g., in the event of bad faith of the beneficiary, and if the corporate benefit requirement is not duly observed, the guarantee granted by the company may be invalid and unenforceable and the directors may be subject to personal liability for damages and criminal sanctions. Especially in case of a Danish company's granting of upstream or cross-stream guarantees in favour of direct or indirect parent or sister companies, the directors may find it desirable to include limitation language in the guarantee addressing the fulfilment of the corporate benefit requirement.

### 2.3 Is lack of corporate power an issue?

Lack of corporate power is generally not an issue. In addition to satisfaction of the company's signing powers, lenders usually require a board resolution of the guarantor to minimise potential doubt about lack of corporate power and corporate benefit concerns. Lenders' diligent examinations also include a review of the guarantor's articles of association and publicly available corporate information to ensure, among other things, that the guarantor's corporate objectives are wide enough to cover the issue of a guarantee.

### 2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

No; generally, under Danish law, guarantees are not subject to specific formalities.

Broadly speaking, while granting a guarantee is not in the nature of an extraordinary matter to be transacted at the general meeting, in special circumstances the board of directors may find it desirable – even merely as a gesture – to refer such a matter to the general meeting, thereby alleviating disagreement between the shareholders and minimising subsequent shareholder criticism.

### 2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

No; however, the directors must at all times ensure that the financial resources of the company are adequate, i.e. that the

company has sufficient liquidity to meet its current and future liabilities as they fall due. The duty implies that the directors must assess the company's financial position and ensure that the available capital resources justify the granting of the guarantee. To accommodate directors' liability concerns, limitation language concerning the scope of guarantee is often included.

#### 2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

No.

Naturally, it is good practice to examine whether *non-Danish* exchange control or similar obstacles apply.

Denmark enforces 'freezing of funds' and similar financial restriction measures adopted by the UN and the EU.

### 3 Collateral Security

#### 3.1 What types of collateral are available to secure lending obligations?

Lending obligations may be secured by a number of different types of security under Danish law, including by way of a pledge, security assignment, mortgage, general floating charge covering specific groups of assets and retention of title. In general, any type of asset may be validly pledged. Furthermore, it is possible not only to agree a negative pledge over certain assets *inter partes* but also to register the negative pledge in the Personal Register, whereby it will also have legal effect towards third parties.

#### 3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Danish law does not recognise the concept of a general security agreement covering all assets of the security provider. Each type of asset must be regulated in an individual security agreement or in a combined security agreement incorporating the necessary regulation of each type of security and clearly identifying each individual asset granted as security.

However, a Danish company may provide security by way of a general floating charge over a number of specifically allowed classes of its assets, including trade receivables, inventory, vehicles not previously registered in Denmark, operating equipment and machinery, intellectual property rights and goodwill, which is perfected by registration in the Personal Register.

Further, a company operating from a leased property may mortgage its operating equipment, including machines and technical installations.

#### 3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

Security may be taken over real property by way of real estate mortgages, which are perfected by registration in the Land Register. On properties permanently fitted for a specific business, such mortgage will also cover technical installations, machinery and operating equipment, unless otherwise agreed.

Provided that assets are not covered by a real estate mortgage, security can be taken separately over machinery and operating equipment in the form of a chattel mortgage, which is perfected

by registration in the Personal Register or by physical removal of the assets from the pledgor. Similarly, operating equipment and machinery may be mortgaged under a general floating charge. See question 3.2 with respect to granting security over operating equipment and machines of a company operating from a leased property.

#### 3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Security over receivables can be created by way of a floating charge covering all of the security provider's trade receivables; or by a separate assignment of specific, identified receivables. A floating charge is perfected via registration in the Personal Register and does not require individual notice to the debtors. An assignment on the other hand must be notified to the relevant third party debtor(s); such notice must include an instruction to pay the security holder directly in order for the assignment to be duly perfected.

#### 3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Security may be taken over cash deposited in a bank account by establishment of a pledge over the bank account. Due perfection requires notification of the pledge to the bank and that the account holder is deprived of all disposal rights to the bank account. Consequently, pledges over bank accounts are impractical with respect to accounts used in a company's day-to-day operations.

#### 3.6 Can collateral security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Can such security validly be granted under a New York or English law-governed document? Briefly, what is the procedure?

Shares in unlisted companies can be pledged unless otherwise set out in the company's articles of association. Shares need not be in certificated form in order to be pledged. Provided that the company has not issued negotiable share certificates, the pledge of shares (regardless of whether the shares are certificated or not) is perfected by a written notice to the company stating that the share(s) are pledged. Such notice must be provided no later than the time of disbursement of the loan proceeds to avoid risk of clawback in case of bankruptcy.

If negotiable share certificates have been issued, perfection requires that the pledgor is deprived of its physical share certificates. However, physical share certificates are in practice never issued by Danish companies.

If the company's shares are issued in dematerialised form through a central securities depository ("CSD"), the pledge is perfected by registration in a Danish CSD (there is currently only one CSD in Denmark: VP Securities A/S).

A share pledge agreement may be governed by the laws of a foreign jurisdiction, including New York or English law. However, Danish law would still apply in respect of perfection requirements. Furthermore, Danish law contains certain mandatory duty of care provisions aimed at protecting a pledgor in connection with the enforcement of the security; *cf.* question 7.4. It is therefore advisable and in accordance with market practice in Denmark to have the share pledge agreement governed by Danish law.

### 3.7 Can security be taken over inventory? Briefly, what is the procedure?

Security over inventory can be created by way of a general floating charge or a separate pledge. A general floating charge is perfected by registration in the Personal Register. A pledge over inventory or stock is perfected by the pledgor being physically prevented from freely disposing of the pledged assets (in Danish: *noglepant*).

### 3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

Yes, subject to the limitations described under questions 2.1, 2.2 and 4.1.

### 3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

There are no notarisation requirements.

As of 1 July 2019, stamp duties have been reduced slightly so that registration of charges and mortgages with the Land Register is subject to stamp duty calculated at 1.45 per cent of the nominal value of the mortgage (to be further reduced to 1.25 per cent by 2026) plus a filing fee of DKK 1,640. Registration of charges and mortgages with the Motor Vehicle Register and the Personal Register are subject to stamp duty calculated at 1.5 per cent of the nominal value of the mortgage plus a filing fee of DKK 1,660. As part of promoting and strengthening maritime activities in Denmark, as of 1 May 2018 the stamp duty of 0.1 per cent of the secured amount in connection with registration of a mortgage over commercial vessels has been abolished.

### 3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

No, it involves only limited time and expense, save for security involving registration with the Land Register, the Personal Register or the Motor Vehicle Register, which is subject to stamp duty; see question 3.9.

Registrations with the Land Register, the Personal Register and the Motor Vehicle Register are carried out online, and most often it is possible to obtain a final registration the very same day the filing is made.

### 3.11 Are any regulatory or similar consents required with respect to the creation of security?

In general, no regulatory consents are required. Third-party consents pursuant to underlying contracts may need to be considered.

### 3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

No, there are not.

### 3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

If a mortgage requires registration with, for example, the Land Register or the Personal Register, and the digital filing is signed by a person pursuant to a power of attorney, such power of attorney must be prepared in the mandatory format of the Danish Registers and the signature(s) of the principal(s) must be witnessed by two persons.

No other documentary or execution requirements apply.

## 4 Financial Assistance

### 4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company which directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

- (a) Shares of the company  
According to the general rule set forth in the Companies Act, a private or public limited company may not, directly or indirectly, advance funds, grant loans, or provide security (including guarantees) for a third party's acquisition of (or subscription for) shares of that company or of its parent company (i.e. a prohibition against financing of purchase of own shares).  
This general prohibition does, however, not apply if certain requirements concerning the following matters are met: (i) shareholder approval; (ii) the proposed transaction is advisable considering the company's financial position or, if it is a parent company, its consolidated financial position; (iii) a report by the central management body to be publicly registered with the Danish Business Authority; and (iv) the proposed transaction is entered into on market terms including preparation of a credit rating of the purchaser and, if relevant, the financier.  
Furthermore, the general prohibition does not apply to banks or mortgage loans granted by mortgage credit institutions or to transactions for the acquisition of shares to or from the employees of the company or any subsidiary. Certain post-financing situations regarding acquisition of companies have been held to be unlawful by the Danish Business Authority, although such matters in themselves could be seen as justified corporate actions.
- (b) Shares of any company which directly or indirectly owns shares in the company  
The general prohibition, including exceptions referred to under question 4.1 (a), also apply to a company's, direct or indirect, purchase of (or subscription for) shares in a parent company and presumably also in an indirect parent company.
- (c) Shares in a sister subsidiary  
Danish law does not stipulate any prohibition on financial assistance provided for the purchase of (or subscription for) shares in a sister subsidiary.

## 5 Syndicated Lending/Agency/Trustee/Transfers

**5.1 Will your jurisdiction recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?**

Yes. Lenders may appoint agents, including security agents under the loan documentation, and such agents may enforce the rights of the lenders and apply the proceeds from the security to the claims of all the lenders; *cf.* chapter 4 of the Danish Capital Markets Act.

**5.2 If an agent or trustee is not recognised in your jurisdiction, is an alternative mechanism available to achieve the effect referred to above, which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?**

See question 5.1.

**5.3 Assume a loan is made to a company organised under the laws of your jurisdiction and guaranteed by a guarantor organised under the laws of your jurisdiction. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?**

The guarantee will often be granted in favour of the lenders from time to time and state that the guarantor's obligations are not reduced or discharged as a consequence of any transfer by a lender of its rights, in which case the loan and guarantee are enforceable by Lender B without further notice to the guarantor or other actions.

In the absence of such provisions in the guarantee, Lender B's enforcement of any rights under the loan requires that the borrower is notified of the transfer. In general, a guarantee in respect of a loan obligation will continue to apply and may be called upon by any new lender that has validly acquired the loan that is being guaranteed. However, the guarantor must be notified of the transfer in order to avoid the risk of the guarantor fulfilling its guarantee obligation by payment to the initial lenders or third parties.

## 6 Withholding, Stamp and Other Taxes; Notarial and Other Costs

**6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?**

Apart from the obligation of a Danish borrower to withhold tax at source from interest payments to a foreign lender, *cf.* question 6.3, there are no requirements to deduct or withhold tax under Danish law.

**6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?**

No tax incentives or other incentives are provided preferentially to foreign lenders.

Provided that no permanent establishment in Denmark exists with which the income from the loan, guarantee or security interest is effectively connected, no taxes apply to foreign lenders in such cases; *cf.* question 3.9 with respect to applicable stamp duties.

**6.3 Will any income of a foreign lender become taxable in your jurisdiction solely because of a loan to, or guarantee and/or grant of, security from a company in your jurisdiction?**

No. Tax liability requires, as a general rule, that the foreign lender has a permanent establishment in Denmark. Similarly, loan interest income secured on real property does not in itself lead to tax liability.

Interest payments and capital gains received by a foreign lender deriving from a loan to a Danish borrower may, however, be subject to withholding tax at source regarding certain intra-group loans (22 per cent of the total interest amount) if not otherwise provided by, for example, applicable double taxation agreements, or EU Directive 2003/49 on a common system of taxation applicable to interest and royalty payments made between associated companies of different EU Member States.

**6.4 Will there be any other significant costs which would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?**

See question 3.9.

**6.5 Are there any adverse consequences for a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for purposes of this question.**

Danish tax law includes a number of deductibility limitation rules to be applied in the order given below: (1) the 'thin capitalisation' rule; (2) the 'interest-rate ceiling' rule; and (3) the 'EBITDA' rule.

### The 'thin capitalisation' rule

The thin capitalisation rule entails that thin capitalised companies' ability to deduct interest and capital loss on controlled loans is limited. The thin capitalisation rule only kicks in if the controlled debt exceeds DKK 10 million and the lender(s) is/are not a natural person. It includes back-to-back structures involving third-party lenders, e.g. banks. The thin capitalisation rule presupposes (i) a debt-to-equity ratio of four to one at the end of the income year, i.e. that the debt of the company exceeds the equity of the company by more than four times, (ii) that the company does not prove that a similar financing can be obtained between independent parties, and (iii) that the interest costs are not covered by interest withholding tax at source. Any interest on debt to related parties in excess of this ratio will be subject to deductibility reduction. A recent amendment of the 'thin capitalisation' rule adopted by Danish legislators to rectify



EU law conformity took effect on 1 January 2019 and applies to the income year 2018 and onwards. According to this amendment, interests and capital gains are not included in the statement of the taxable income of a Danish company (or of permanent establishment in Denmark) if the debtor is resident in another EU or EEA Member State and could not deduct corresponding amounts under the ‘thin capitalisation’ rule had the debtor been subject to Danish tax. Furthermore, it is a condition for the ‘thin capitalisation’ rule to apply that the debtor under the ‘thin capitalisation’ rule in the other country has not obtained a deduction for similar amounts.

### The ‘interest-rate ceiling’ rule

The ‘interest-rate ceiling’ rule entails that a company’s access to deduct net financing expenses is reduced. Unlike the thin capitalisation rule, this rule also has an impact on debt to independent lenders. The deductibility reduction caused by the ‘interest-rate ceiling’ entails that the net financing expenses are only deductible to the extent that they do not exceed the tax value of the company’s assets multiplied by a standard rate of return. This deductibility reduction rule only applies to the net financing expenses exceeding DKK 21.3 million.

### The ‘EBITDA’ rule

Applicable to financial years commencing as of 1 January 2019, the new EBITDA rule replaces the existing EBIT rule. According to the new EBITDA rule, companies may not deduct so-called ‘exceeding borrowing costs’ exceeding 30 per cent of the company’s taxable income before ‘exceeding borrowing costs’ and deductions (EBITDA). ‘Exceeding borrowing costs’ are defined as the amount by which the deductible borrowing costs exceed taxable interest revenues and other economically equivalent taxable revenues, i.e. similar to the definition of the net financing expenses; *cf.* the ‘interest-rate ceiling’ rule. The ‘EBITDA’ reduction rule applies only to deductible interest amounts exceeding DKK 22,313,400 (EUR 3,000,000). Net financing expenses restricted under the EBITDA rule may be carried forward for tax deduction in the following years. Special rules apply to affiliated companies and financial companies.

## 7 Judicial Enforcement

**7.1 Will the courts in your jurisdiction recognise a governing law in a contract that is the law of another jurisdiction (a “foreign governing law”)? Will courts in your jurisdiction enforce a contract that has a foreign governing law?**

Danish courts will generally recognise the law of a foreign jurisdiction as the governing law in a contract and enforce the provisions of such contract with the exception of any provisions contrary to Danish public policy.

Although the ‘Brexit’ situation is now clarified, legal uncertainty still remains in respect of contractual relations involving parties based in Denmark and the UK concerning choice of law and jurisdiction issues. Consequently, parties affected by this may with good reason circumvent this by entering into a choice-of-law agreement specifying the relevant applicable laws.

**7.2 Will the courts in your jurisdiction recognise and enforce a judgment given against a company in New York courts or English courts (a “foreign judgment”) without re-examination of the merits of the case?**

A foreign judgment rendered in the courts of a country which is not a contracting state under: (i) the Council Regulation (EC)

No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended, and implemented in Danish law; (ii) the Brussels Convention of 27 September 1968; (iii) the revised Lugano Convention of 30 October 2007; or (iv) the Hague Convention of 30 June 2005 on Choice of Court Agreements, would not be recognised or enforceable in Denmark without a retrial on the merits. Accordingly, a judgment rendered by a New York court would not be enforceable in Denmark.

A foreign judgment rendered by a court in any EU Member State, or any country that is a party to the abovementioned conventions, will be recognised and enforceable by the Danish courts in accordance with the provisions of the Council Regulation, the Brussels Convention, the revised Lugano Convention and The Hague Convention, respectively.

As a consequence of the UK now having left the EU, parties affected may in the circumstances agree on arbitration in order to mitigate the legal uncertainty as to recognition and enforcement of a judgment.

**7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in your jurisdiction, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in your jurisdiction against the assets of the company?**

The duration of the legal proceedings will depend on which Danish court determines the case. If the Copenhagen City Court is the court of first instance, we estimate that it will take approximately nine to 12 months to obtain an enforceable judgment. If the loan agreement satisfies the requirements for a debt instrument (in Danish: *galdsbrev*) and includes a clause of immediate enforceability, claims under the loan agreement may be enforced directly by the lender by application to the Bailiff’s Court (in Danish: *fogedretten*) without having to obtain a judgment beforehand; *cf.* question 8.4.

Unless otherwise stated in the judgment and subject to the debtor’s appeal of the judgment which may suspend the lenders’ right to enforce the judgment, a judgment will become enforceable 14 days after the date of the ruling. Enforcement is carried out through the Bailiff’s Court under the relevant district court by written application to the Bailiff’s Court with the objective to seize the assets of the debtor and sell these via a forced sale. This procedure will likely take two to three months.

A similar duration of the enforcement process should be expected with respect to enforcement of foreign judgments if the Council Regulation applies, i.e. with respect to judgments rendered by a competent court of another EU Member State (see question 7.2).

**7.4 With respect to enforcing collateral security, are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction, or (b) regulatory consents?**

In general, a creditor is free to enforce a pledge in accordance with the enforcement provisions of the pledge agreement without having to obtain a judgment provided that the pledgor is given one week’s prior written notice to satisfy the claim and the loan agreement satisfies the requirements for immediate enforceability.

Notwithstanding the above, enforcement of certain types of security, for example, real estate mortgages, floating charges and dematerialised shares issued through a CSD, must be carried out in accordance with specific, statutory procedures set out in the Administration of Justice Act and the Capital Markets Act, including certain provisions regarding public auctions that may impact the timing of the enforcement. Further, a secured creditor is subject to a general duty of care obligation and obliged to look after the interests of the pledgor when enforcing security interests. No regulatory consents are otherwise required; see, however, section 8 regarding bankruptcy proceedings.

**7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in your jurisdiction, or (b) foreclosure on collateral security?**

If required by an EU or EFTA defendant (i.e. including a Danish defendant), a foreign plaintiff not domiciled in an EU or EFTA country must furnish security for the legal costs that he might be obliged to pay as a result of the proceedings, unless such plaintiff resides in a country having entered into a bilateral treaty with Denmark permitting a plaintiff residing in Denmark to bring a legal claim against a person in that country without having to furnish security.

In general, no restrictions apply to foreign lenders in the event of foreclosure on security.

**7.6 Do the bankruptcy, reorganisation or similar laws in your jurisdiction provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?**

The Bankruptcy Act contains certain limitations on secured creditors' access to enforce security during the period when an insolvent company is taken under reconstruction proceedings. Reconstruction proceedings may be initiated by the insolvent company or any of its creditors. However, if more than 50 per cent of the creditors (based on the amounts owed to these) present at the first creditors' meeting do not support the proposed reconstruction plan and the opposing creditors constitute no less than 25 per cent of the company's total known debt, the reconstruction proceedings will immediately be terminated. See also question 8.1.

**7.7 Will the courts in your jurisdiction recognise and enforce an arbitral award given against the company without re-examination of the merits?**

Yes. Foreign awards based on an arbitration agreement are recognised and enforced in Denmark in accordance with the New York Convention as ratified by Denmark in 1972.

## 8 Bankruptcy Proceedings

**8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?**

Secured claims are covered prior to the statutory ranking of creditors. To the extent the value of the asset granted as security does not cover the secured claim, any uncovered part of the claim will be subject to the statutory ranking of creditors.

If the lender's claim is secured by way of a pledge (in Danish: *håndpant*) or other corresponding security interest, including a floating charge on claims (in Danish: *virksomheds pant*) or receivables charge (in Danish: *fordrings pant*), the secured lender is entitled to enforce its claim independently of the bankruptcy estate.

As for other claims secured by real estate mortgage or chattel mortgage, such ordinary claims are enforced in cooperation with the bankruptcy estate. Where the estate has not made a petition for a forced sale within six months from the date of the bankruptcy order, any mortgagee with an overdue claim may demand that the estate conducts a forced sale without undue delay.

Effective as of the time of the decree of the bankruptcy proceedings, unsecured creditors cannot levy execution on the property of the insolvent debtor.

**8.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?**

The Bankruptcy Act includes clawback provisions which effectively set aside certain transactions executed during the period leading up to the bankruptcy proceedings, provided, among other things, that:

- The transaction was made to the detriment of the creditors or results in fraudulent preference of some creditors over other creditors (e.g. in the form of presents, renunciation of inheritance, wages and other remuneration for work, early repayment of debt, provision of security without new credit being granted, etc.).
- The transaction took place after or within a specified period before the commencement of bankruptcy; i.e. within three months, six months, or – in case of related parties and provided that the burden of proof of solvency at the time of the transaction is not met or if the recipient of a gift cannot prove that the debtor undoubtedly kept sufficient assets to cover its liabilities – up to one or two years.
- The relevant point in time to be considered when assessing if a security interest may be avoided is the time of perfection of the security interest.

In addition, the clawback provisions include an avoidance rule, not limited in time, applicable in the event that the debtor was or became insolvent as a consequence of the transaction and the preferred party knew or should have known of the debtor's insolvency and the circumstances causing the transaction to be fraudulent.

Under the Bankruptcy Act, presents which are grossly disproportionate to the debtor's financial situation can be set aside even if the present was granted prior to the specified periods described above.

**8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?**

No. All natural persons and legal entities may be subject to bankruptcy proceedings.

Public authorities such as municipal authorities are excluded from bankruptcy proceedings.

As for enterprises the debts of which members are personally liable, e.g. a partnership (in Danish: *interessentskab*) or a limited partnership (in Danish: *kommanditselskab*), a bankruptcy procedure may only be initiated if *all* such members have been declared bankrupt.

#### 8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

If a creditor is in possession of a basis of enforcement (in Danish: *eksekutionsgrundlag*), e.g. a judgment, settlement, or certain mortgages, the creditor may take the claim directly to the Bailiff's Court, without the need to obtain prior judgment, in order to enforce the security through the Bailiff's Court.

## 9 Jurisdiction and Waiver of Immunity

#### 9.1 Is a party's submission to a foreign jurisdiction legally binding and enforceable under the laws of your jurisdiction?

In general, a party's submission to a foreign jurisdiction will be legally binding and enforceable under Danish law, subject to certain exceptions regarding consumers and employees.

#### 9.2 Is a party's waiver of sovereign immunity legally binding and enforceable under the laws of your jurisdiction?

Yes, save for matters specifically protected by international law, e.g. diplomatic immunity and assets protected by diplomatic immunity or other provisions under international law.

## 10 Licensing

#### 10.1 What are the licensing and other eligibility requirements in your jurisdiction for lenders to a company in your jurisdiction, if any? Are these licensing and eligibility requirements different for a "foreign" lender (i.e. a lender that is not located in your jurisdiction)? In connection with any such requirements, is a distinction made under the laws of your jurisdiction between a lender that is a bank *versus* a lender that is a non-bank? If there are such requirements in your jurisdiction, what are the consequences for a lender that has not satisfied such requirements but has nonetheless made a loan to a company in your jurisdiction? What are the licensing and other eligibility requirements in your jurisdiction for an agent under a syndicated facility for lenders to a company in your jurisdiction?

There are no licensing or other eligibility requirements in Denmark for Danish or non-Danish lenders. Granting loans without receiving deposits from the public does not in itself require authorisation. This also applies to Danish and non-Danish (security) agents under a syndicated facility. If other categories of financial activities are to be conducted, this may be subject to authorisation/licence and supervision by the Danish FSA. A financial institution, e.g. a bank or a mortgage credit institution, which is subject to the Financial Business Act, may by way of example not carry out activities until it has obtained a designated authorisation/licence from the Danish FSA.

## 11 Other Matters

#### 11.1 Are there any other material considerations which should be taken into account by lenders when participating in financings in your jurisdiction?

No, there are no other material considerations which should be taken into account.



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