



**FOLKETINGET  
STATSREVISORERNE**



**FOLKETINGET  
RIGSREVISIONEN**

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**Extract from Rigsrevisionen's report  
submitted to the Public Accounts Committee**

# **The probate courts' inspection of bankruptcy estates**

# 1. Introduction and conclusion

## 1.1. Purpose and conclusion

1. This report concerns the Danish probate courts' inspection of bankruptcy estates.

2. Persons or companies that are unable to pay their debts on time can be declared bankrupt – unless their inability to pay is temporary. The debtor and the creditor (a person, company or public authority) to whom the debtor owes money can both file a bankruptcy petition with a probate court.

When the probate court commences bankruptcy proceedings, it initially appoints one or several trustees. The role of a trustee is to act in the interests of the creditors by securing and maximising the value of the assets of the bankruptcy estate. Proceeds are distributed among the creditors when the assets have been realised.

3. According to the Danish Bankruptcy Act, the probate courts have an obligation to oversee that the trustees bring the administration of bankruptcy estates to a conclusion without undue delay and that each step in the process is taken and completed when possible and proper. Additionally, the Danish Ministry of Justice has laid down rules governing probate courts' inspection of the trustees' administration of the cash and securities of bankruptcy estates. According to these rules, the inspection carried out by the probate courts must include the following:

- **Sample-based checks** of the trustees' administration of cash and securities through sampling of bankruptcy estates for checking.
- **Ongoing inspection** to ascertain that the trustees bring the administration of bankruptcy estates to a conclusion without undue delay. All bankruptcy estates are subject to this type of inspection.

### **Bankruptcy estate**

A bankruptcy estate consists of the assets and liabilities of the person or company in bankruptcy.

### **Trustee**

A trustee acts in the interests of the creditors. Trustees are not required to have a particular degree, but often they are lawyers.

### **Realisation of assets**

Assets can be buildings and machinery. Realisation of assets means the selling of assets by the trustee.

### **Payment of dividend**

The proceeds from the realised assets are distributed to the creditors in a specific order. This order is referred to as the order of priority of creditors, and it is laid down in part 10 of the Danish Bankruptcy Act. The order of priority operates with different levels, and creditors ranked at the same level are treated equally. This means that creditors ranked at the same level are paid the same percentage of their total claim. This percentage is also referred to as a dividend. All creditors ranked at the same level must be paid a dividend of 100% before the creditors on the next level can be paid.

4. Rigsrevisionen initiated the study in March 2022 at the request of the Danish Public Accounts Committee, see appendix 1. The study answers the following questions:

- Has the probate courts' sample-based checks of the trustees' administration of cash and securities of bankruptcy estates been adequate?
- What is the extent and nature of the probate courts' inspection of the degree to which the trustees bring the administration of bankruptcy estates to a conclusion without undue delay?
- What is the processing time, how much time do the trustees spend on the administration of bankruptcy estates, and how much are the trustees paid for their services?
- To what extent have dividends been paid to creditors on different levels of the order of priority?



## Main conclusion

**Rigsrevisionen assesses that the sample-based checks of the trustees' administration of cash and securities in bankruptcy estates carried out by some probate courts has been inadequate. On average, 33% of the sample-based checks led to comments on the performance of the trustees; for some of the probate courts, the percentage was even higher. Still, the extent of the inspection carried out by some of the probate courts is limited, and one probate court has not carried out any checks. The limited inspection carried out by some of the probate courts entails a risk that trustees who fail to observe current rules and, for instance, keep the funds of the bankruptcy estate segregated from their own funds are not detected.**

The rules laid down by the Ministry of Justice concerning sample-based checks of the trustees' administration of cash and securities of bankruptcy estates are not specifying the extent of the inspection. As the study found that a relatively high percentage of the sample-based checks lead to comments on the performance of the trustees, Rigsrevisionen recommends that the probate courts that only on occasion or not at all select bankruptcy estates for checking increase the frequency. Rigsrevisionen also recommends that the probate courts that checked a relatively small number of bankruptcy estates select more for checking in the future.

The probate courts must regularly check that trustees bring the administration of bankruptcy estates to a conclusion without undue delay. All bankruptcy estates must be checked. The probate courts had comments to the trustees' administration of 18 of the 170 bankruptcy estate cases reviewed by Rigsrevisionen. Rigsrevisionen is not in a position to assess whether the scope of the supervision is satisfactory because the probate courts are not consistently documenting their inspection.

Approx. 2/3 of the 170 bankruptcy estates reviewed by Rigsrevisionen are relatively small. The trustees spend less than 30 hours on these estates and charge a fee of less than DKK 60,000. A few of the bankruptcy estates are relatively large, and the trustee of the largest estate spent close to 1,000 hours on the case and charged a fee of approx. DKK 2 million. On average, the trustees spent 54 hours administering a bankruptcy estate and charged a fee of approx. DKK 115,000.

In the 138 bankruptcy estate cases that included information about dividend payments, the claims of creditors on the highest level of the order of priority had been paid. The dividend covers the costs of managing the estate, including the fee for the trustee. On average, the creditors with the highest priority received 99.5% of their claims. In a few cases, creditors with a lower ranking had also received dividend payments.