Cross-border fraud scheme: a growing international challenge

This article explores the rise of invoice factories in cross-border fraud schemes using fictitious invoices to facilitate money laundering. Typically, a European supplier delivers goods to a purchaser in a sanctioned country, that is, in the Middle East, with payment routed through a third party it has domicile in, that is, Denmark. When the third party becomes insolvent, bankruptcy trustees are increasingly pursuing claims against the supplier for alleged negligence and failure to adequately investigate the payment.

Danish case law confirms that there is no general obligation to investigate third-party payments. Such a duty arises only when specific circumstances or inconsistencies in documentation give rise to reasonable suspicion. Liability is assessed based on whether the supplier knew or ought to have known about the criminal origin of the funds and whether reasonable steps would have revealed this. Regarding jurisdiction, the Eastern High Court in U.2025.5029 Ø interprets the exception in Article 7(2) of the Brussels I Regulation narrowly, concluding that financial loss in Denmark alone does not establish jurisdiction in Denmark.

The growing challenge of invoice factories in cross-border fraud

To understand the practical risks now seen in Danish bankruptcy administration, it is necessary to situate invoice factories within the broader context of fraud and money laundering. Fraud and money laundering have been persistent issues for many years, including in the context of handling insolvent companies. In recent years, however, a new and large-scale cross-border fraud scheme has been identified involving so-called 'invoice factories'. In these fraud schemes, multiple companies operate across different countries and collaborate to commit fraud through a complex chain of transactions. The companies involved in these set-ups are typically based in various jurisdictions, including countries subject to international sanctions, which further complicates the subsequent legal proceeding.

In Denmark, this new fraud scheme has led to an increased challenge in the administration of bankruptcy estates. Several cases have been identified in which the bankrupt company has, in fact, functioned as an invoice factory. In these instances, the bankrupt company based in Denmark has made multiple third-party payments to legitimate European businesses on behalf of companies based in sanctioned countries, often in the Middle East, without the bankrupt company having received any traceable goods in return.

The issue does not concern the mere fact that third-party payments have been made, but rather that the transferred funds can be traced back to criminal activities with the payment transactions forming part of, or facilitating, the laundering of proceeds from criminal conduct.

In practice, we have seen an increasing number of cases where bankruptcy trustees in Danish bankruptcy estates are bringing claims for damages against the European recipient company, alleging that the recipient company has failed to comply with a duty to investigate the paying company and the origin of the funds, or that the recipient company acted in bad faith when receiving payments from the third-party payer (later the bankrupt company). It has been argued that the recipients should have investigated the third-party payment they received.

Recent cases demonstrate that it is primarily Southern European companies that have become involved as suppliers of goods when receiving payments from insolvent companies. Furthermore, this issue most frequently arises in sectors trading bulk goods.

As counsel for the affected European companies, it is therefore essential to be prepared for the legal issues that may arise in connection with such claims from Danish bankruptcy estates. Ultimately, the objective must be to ensure that the client's interests are effectively protected when faced with a claim for damages from the bankruptcy estate. It is also crucial for legal counsels to be professionally equipped to handle these types of cases, as the area remains subject to significant legal and practical developments.

The characteristics of an invoice factory

An invoice factory is a company, typically with either no or very little actual activity, that is set up with the primary purpose of issuing fabricated invoices for goods or services that have not actually been supplied. Although the supporting documentation may appear authentic, the underlying transactions are fictitious. The invoice is issued to an actual company with real activity, and in return for the amount being paid in accordance with the invoice, the paying party typically receives a cash amount minus a fee. Such arrangements are primarily employed to disguise the proceeds of criminal activities as legitimate funds, thereby facilitating money laundering. Additionally, these fraud schemes are used to introduce illicit funds into legitimate businesses for covert or fraudulent purposes and to obtain tax benefits.

The cross-border A-B-C-D structure
Invoice factories are often involved in the following cross-border fraud scheme:

- Company A buys fictitious invoices from Company B;
- Company B issues fictitious invoices to Company A;
- Company C is the legitimate supplier and receives funds from Company B; and
- Company D is the buyer of goods from Company C, located in a sanctioned country.

Company A wishes to obtain a cash holding that can be used for cash salaries or private consumption. Company A therefore approaches Company B (the invoice factory), which issues a fictitious invoice that Company A pays. In return, Company A receives cash from criminal backers with connections to Company B. The cash originates from criminal activities carried out by the backers. Generally, Company A will pay more for the invoice than the amount handed over in cash. Company B derives no profit from the transactions, but the criminal backers behind the scheme are likely to be the beneficiaries.

At the same time, Company C (a supplier) is engaged in legitimate commercial transactions with Company D (the buyer). Company C is established in a European country, while Company D is based in a sanctioned country, often in the Middle East. In this arrangement, Company C supplies goods to Company D. However, as Company D is based in a sanctioned country, and therefore is unable to make a direct payment to Company C for the goods, a third-party payment is established with Company B as an intermediary.

Subsequently, Company B goes bankrupt and the bankruptcy trustee brings a claim for damages against Company C, based on the assertion that Company C is liable for the loss in Company B (due to payment without receiving goods), as Company C acted in bad faith with regards to the payment from Company B on behalf of Company D.

Danish case law

Liability and jurisdictional issues arise within a clear, though evolving, case law framework and have been pivotal for Company C in the context of invoice factories. In the first case, the Supreme Court of Denmark established that Company C's duty to investigate a third-party payment arises only where special circumstances are present that may trigger such a duty, which in turn determines whether Company C incurs liability in damages.1 Subsequent district court judgments have refined the understanding of this duty, including when special circumstances may be triggered. However, Danish case law has not defined what constitutes special circumstances. Some argue that special circumstances are present when payment is received from a third party that does not ordinarily engage in third-party payments.

In addition, U.2025.5029 Ø confirms that there is no jurisdiction in Denmark if there is no connection beyond a pure financial loss, and that the mere failure to return or reject payments is insufficient to establish Danish jurisdiction.2 This resolves prior debate in Danish law about jurisdiction under Article 7(2) of the Brussels I Regulation, reaffirming the general rule that jurisdiction follows the defendant's domicile.

Danish case law on tort liability

As mentioned beforehand, the trustee in Company B's bankruptcy estate asserts that Company C is liable in damages, as Company C has acted negligently by accepting the payment arrangement in question, which involved a clear risk of abuse, including money laundering, and thereby a risk of loss. A review of Danish case law in this area demonstrates that certain general factors are consistently taken into account when assessing Company C's liability.3

According to Danish case law, Company C does not have a general duty to investigate the paying company when receiving third-party payments from Company B. An obligation to investigate the payment further only arises when there are special circumstances that should warrant a reasonable suspicion that the transaction is not commercially justified or may be part of money laundering. What specifically constitutes such a special circumstance depends on a concrete assessment of the facts in each individual case; therefore, it is difficult to establish general criteria for when the duty to investigate arises.

However, Danish case law generally indicates that the duty to investigate is particularly triggered in situations where there are specific indicators of money laundering or discrepancies between business documents, such as contracts, invoices and payment instructions. Thus, Company C will normally not be required to conduct further investigations if there is a legitimate and long-standing customer relationship and the payment is made in accordance with industry practices, for example, partial payments or third-party payments in international trade, and where Company C is also made aware of the reason for the payment structure.

In assessing whether there has been negligent conduct, it is therefore crucial whether Company C knew or ought to have known that the funds originated from criminal activities, and whether reasonable investigations, if they ought to have been carried out, could have revealed such circumstances. If Company C fails to respond in situations where there are clear risk signals, this may result in Company C being regarded as acting in bad faith and thus incurring liability, including for involvement in money laundering. However, it is not a requirement that Company C must detect money laundering if this has not been identified by the relevant authorities, and Company C is only obliged to carry out a general review of the payment if there are special circumstances that should warrant an investigation. As mentioned, what constitutes special circumstances has not been concluded in Danish case law; this is yet to be decided.

Therefore, there is not a general duty to investigate when receiving third-party payments. This obligation only applies when there are special circumstances that should warrant a reasonable suspicion that the transaction is not commercially justified or may be part of money laundering. However, it is advisable to investigate a payment if in doubt.

Danish case law on jurisdiction

Regarding jurisdiction, in cases where a bankruptcy estate in Denmark brings a claim for damages against a supplier (Company C) domiciled in another EU country, the question of jurisdiction arises. The general rule is that jurisdiction lies with the defendant's domicile, as stated in Article 4(1) of the Brussels I Regulation (1215/2012). Previously, it has been debated whether Danish courts could claim special jurisdiction in tort under Article 7(2) of the Brussels Regulation, which provides: 'in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur'.

However, in case U.2025.5029 Ø, the High Court of Eastern Denmark clarified this issue in the context of a Danish bankruptcy estate bringing a claim for damages against a Company C. The High Court held that the exception to the general rule of jurisdiction at the defendant's domicile, as set out in Article 7(2) of the Brussels Regulation, must be interpreted restrictively. The High Court stated that the place where the damage occurred does not include the claimant's residence or bank merely because the claimant suffered financial loss there. There must be specific connecting factors that establish jurisdiction in Denmark. The High Court found that if the alleged wrongful act consists of a failure to return or reject payments, and no actions have been taken in or directed towards Denmark, jurisdiction in Denmark cannot be established. The case was therefore dismissed.4

As a result, for Company C, claims from Danish bankruptcy estates must, in general, be brought before the courts of the supplier's domicile, unless there are specific connecting factors to Denmark, such as actions directed towards Denmark or damage that is realised there. The mere failure to return or reject payments is not sufficient to establish jurisdiction in Denmark if there are no other connections to Denmark.

When advising companies that receive third-party payments

Due to the increased focus on, and prosecution of, especially companies based in European countries that receive third-party payments, it is important for legal advisers to be familiar with the measures that the company should take when receiving such payments, both to avoid participating in these large-scale fraud schemes and to avoid potential tort liability.

First, in cases involving third-party payments, the company should conduct a general review of the third-party payer to identify any indicators of money laundering. This includes assessing whether there are any unusual circumstances or inconsistencies in the transaction that may warrant further investigation. Second, Company C should ensure coherence between the contract, invoice and payment instructions, and obtain explicit written acceptance from Company D confirming that payment will be provided from a third party. In addition, Company C must obtain an explanation of the payment structure. If clear risk signals emerge, such as unexplained changes to payment instructions or mismatches in documentation, Company C should respond proportionally by pausing and requesting further information. It is not required to detect money laundering where authorities have not identified it, and the obligation extends only to a reasonable general review when special circumstances warrant it. As Danish case law does not clearly define what constitutes 'special circumstances', it is advisable to conduct a review when receiving third party payments that were not previously agreed.

If contacted by a Danish bankruptcy estate, case U.2025.5029 Ø confirms that, where there is no further connection to Denmark beyond a purely financial loss and mere failure to return or reject payments, this is not enough to establish Danish jurisdiction. In such situations, Article 4(1) of the Brussels I Regulation applies, and jurisdiction remains with the defendant's domicile. Accordingly, the case should not be filed or pursued in Denmark.

Notes

1 The Supreme Court of Denmark, U.2006.2079 H, judgment of 4 April 2006.

2 The High Court of Eastern Denmark, U.2025.5029 Ø, judgment of 24 September 2025.

3 Kolding City Court, BS-59285/2023-KOL, judgment of 22 January 2025, City Court; BS-50011/2023-KOL, judgment of 8 January 2025, Copenhagen City Court; BS-14669/2023-KBH, judgment of 21 October 2024, Copenhagen City Court; BS-14669/2023- KBH, judgment of 10 October 2024 Kolding City Court; and BS-35980/2023-KOL, judgment of 11 September 2024.

4 The High Court of Eastern Denmark, U.2025.5029 Ø, judgment of 24 September 2025.

About the authors

Lars Berg Dueholm is an attorney and partner at NJORD Law Firm, Copenhagen, specialising in insolvency law and civil litigation. He is a certified insolvency attorney and has great experience with handling bankruptcy estates and lawsuits involving fraudulent circumstances. He can be contacted at lbd@njordlaw.com.

Helene Damgaard Braad is an assistant attorney at NJORD Law Firm in Copenhagen. She can be contacted at hdb@ njordlaw.com.

This article first appeared in the April 2026 issue of Insolvency and Restructuring International (Vol 120, No 1), and is reproduced by kind permission of the International Bar Association, London, UK.

LARS BERG DUEHOLM
ATTORNEY AT LAW, PARTNER

(+45) 77 40 10 05
LBD@NJORDLAW.COM

HELENE DAMGAARD BRAAD
ASSISTANT ATTORNEY

(+45) 20 36 26 93
HDB@NJORDLAW.COM