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# Insolvency/bankruptcy



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European Judicial Network  
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## INTRODUCTION

In Sweden, bankruptcy, business reorganisation and debt restructuring are covered by the Insolvency Regulation. Some aspects of the Swedish rules governing these procedures under Article 86(1) of the revised Insolvency Regulation are explained in brief below. The description does not set out to be exhaustive.

## BANKRUPTCY

### *General*

Bankruptcy (*konkurs*) is a form of general enforcement of claims whereby all of a debtor's creditors jointly take the debtor's total assets, on a compulsory basis, to pay off their respective claims. During bankruptcy, the assets form a bankruptcy estate (*konkursbo*) which is administered for the benefit of the creditors. The estate is managed by one or more bankruptcy administrators (*konkursförvaltare*). The administrator's only task is to manage the estate. The bankruptcy application is assessed, the bankruptcy decision is taken, and the bankruptcy itself is processed in bankruptcy proceedings before the district court (*tingsrätt*). During the bankruptcy proceedings the court decides a number of issues: it determines how to distribute the estate, for example, or whether debts must be proved. The district court also holds certain meetings, such as an oath administration meeting at which the debtor takes an estate inventory oath. The administrator is monitored by the Enforcement Authority (*Kronofogdemyndigheten*).

## BUSINESS REORGANISATION

### *General*

Following a decision by a court, a trader in financial difficulties may start a special procedure to reorganise his or her commercial activity (business reorganisation). During a business reorganisation (*företagsrekonstruktion*), the business reorganisation officer appointed by the court investigates whether the business run by the debtor can continue, in whole or in part, and, if so, how this can be achieved, and whether the circumstances allow the debtor to enter into a financial settlement with his or her creditors. In carrying out his or her duties, the business reorganisation officer must act in such a way as to ensure that the creditors' interests are not disregarded. A decision to reorganise a business does not formally restrict the debtor's control of his or her property. However, certain issues require the business reorganisation officer's consent.

## DEBT RESTRUCTURING and BUSINESS DEBT RESTRUCTURING

### *General*

Debt restructuring (*skuldsanering*) releases a debtor from all or part of his or her liability to pay the debts that fall within the scope of the restructuring operation. There are two forms of debt restructuring: debt restructuring under the Debt Restructuring Act (*skuldsaneringslagen*) and business debt restructuring (*F-skuldsanering*) under the Business Debt Restructuring Act (*lagen om skuldsanering för företagare*). Both kinds are explained below.

# 1 Who may insolvency proceedings be brought against?

## *BANKRUPTCY*

Bankruptcy proceedings may be opened in respect of both legal and natural persons (including natural persons who do not engage in commercial activity).

## *BUSINESS REORGANISATION*

Business reorganisation proceedings may be opened in respect of both legal and natural persons, provided that the person in question is a trader. Some legal persons are excluded from the Act, such as banks, credit market firms, insurance companies, and securities trading companies.

## *DEBT RESTRUCTURING*

Debt restructuring may be permitted for natural persons whose main interests are in Sweden (including natural persons who run an individual commercial activity).

Debt restructuring applications are handled by the Enforcement Authority at first instance.

## *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

Business debt restructuring may be permitted for a natural person whose main interests are in Sweden and who is:

1. a trader who has been engaged in a commercial activity, if his or her debt burden arises for the most part from that activity;
2. a trader who is engaged in a commercial activity, if the debts arising from that activity can be properly paid off, or if the inability to pay off those debts is only temporary; or
3. a member of the family of an entrepreneur, if that family member's debt burden arises for the most part out of the entrepreneur's commercial activity.

'Member of the family' (*närstående*) means a spouse, cohabiting partner, parent, sibling or child, or the children of the spouse or cohabiting partner.

Business debt restructuring applications are handled by the Enforcement Authority at first instance.

# 2 What are the conditions for opening insolvency proceedings?

## *BANKRUPTCY*

For bankruptcy proceedings to be opened the debtor must be in default. 'Default' (*obestånd, insolvens*) means that the debtor cannot duly pay his or her debts and that the inability to pay is not merely temporary. A statement by a debtor to the effect that he or she is insolvent will be accepted if there is no particular reason for not doing so. There are also certain presumptions regarding proof of default. For example, in the absence of proof to the contrary, the debtor is considered to be insolvent when an enforcement under Chapter 4 of the Enforcement Code (*utsökningsbalken*), which is made within the six months preceding the bankruptcy application, has shown that he or she did not have sufficient assets to pay the attachment claim in full. The same applies if the debtor has declared that he or she has suspended payments.

A bankruptcy application may be submitted by the debtor or by a creditor.

If there are probable grounds for approving the bankruptcy application, and there is reason to believe that the debtor might remove some property, the court may order sequestration (*kvarstad*) of the debtor's property pending assessment of the application. The court also has power to impose a travel ban.

The district court must publish the decision declaring bankruptcy immediately. The decision takes effect at once, in that the debtor loses control of his or her property as soon as the decision is announced, but there is some

protection for the legitimate expectations of third parties. Please also see the information provided under the heading 'What powers do the debtor and the insolvency practitioner have, respectively?'

A decision by the district court declaring a bankruptcy or dismissing a bankruptcy application may be appealed against to a higher court.

### *BUSINESS REORGANISATION*

An application for business reorganisation may be submitted by the debtor or by a creditor. A decision allowing the reorganisation of a business can be taken only if it can be assumed that the debtor cannot pay debts that are due or will soon be unable to pay them or that the debtor is experiencing financial difficulties of some other kind which involve the risk of insolvency. Business reorganisation decisions may not be taken unless there are justifiable reasons for assuming that the business reorganisation can ensure the viability of the business. An application by a creditor can be approved only if the application has been accepted by the debtor.

If the application by the debtor is considered admissible, the court must assess it immediately. If an application by a creditor is considered admissible, the court must set a date for a hearing to examine it. The hearing must be held within two weeks of the application being made to the court. It may be held at a later date if there are special grounds for doing so, but in any event within no more than six weeks.

If the application is approved, the court must appoint a business reorganisation officer at the same time. More than one business reorganisation officer may be appointed if there are special grounds for doing so. Within one week of the business reorganisation decision being taken, the business reorganisation officer must notify all the known creditors about the decision. A business reorganisation decision applies immediately unless otherwise determined by the court.

### *DEBT RESTRUCTURING*

An application for a restructuring of debt may be submitted by a debtor. If the application is not dismissed as inadmissible or unfounded, a decision initiating the debt restructuring must be taken as quickly as possible. An application may be dismissed as unfounded, for example, if it emerges from the application or from another available report that the conditions for debt restructuring are not fulfilled.

A restructuring of debt may be allowed if:

1. the debtor is a natural person whose main interests are in Sweden;
2. the debtor is insolvent and so indebted that, taking into account all the circumstances, he or she cannot be presumed to have the means to pay his or her debts within a foreseeable period; and
3. it is reasonable to do so in view of the debtor's personal and financial circumstances.

The following restrictions apply:

1. a debt restructuring may not be allowed if the debtor is under an order disqualifying him or her from carrying on a business (*näringsförbud*);
2. if the debtor is a trader, a debt restructuring may be allowed only if the financial circumstances of the business can be investigated easily; and
3. if the debtor has previously been allowed a debt restructuring, a fresh debt restructuring may be allowed only if there are special grounds for doing so.

If a decision is taken to initiate the business debt restructuring process, a notice to that effect must be published immediately in the official gazette, *Post- och Inrikes Tidningar*. Notice must also be sent to the known creditors within one week of publication. These notices must invite the creditors *inter alia* to submit their claims against the debtor, usually in writing within one month of the date of publication, giving details of their claims and any other information relevant to the assessment of the case, and details of the account into which any payments are to be made during the debt restructuring process.

A decision initiating the business debt restructuring process may be appealed against within three weeks of the decision date.

Following the initiating decision, no attachment of property is possible to enforce claims that arose prior to that decision, until the question of debt restructuring has been determined by a decision that has final effect. This does not, however, apply to claims that are not covered by the restructuring. Nor does it apply if, on appeal, a court decides at the request of a creditor that the attachment should be allowed.

#### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

An application for a restructuring of business debt may be submitted by a debtor. If the application is not dismissed as inadmissible or unfounded, a decision initiating the business debt restructuring must be taken as quickly as possible. An application may be dismissed as unfounded, for example, if it emerges from the application or from another available report that the conditions for business debt restructuring are not fulfilled.

A restructuring of business debt may be allowed if:

1. the debtor's main interests are in Sweden;
2. the debtor is insolvent and so indebted that, taking into account all the circumstances, he or she cannot be assumed to have the means to pay his or her debts within a foreseeable period; and
3. it is reasonable to do so in view of the debtor's personal and financial circumstances.

The following restrictions apply:

1. a business debt restructuring may not be allowed if the debtor is under an order disqualifying him or her from carrying on a business;
2. a business debt restructuring may not be allowed if the debtor is a trader who is conducting or has conducted his or her business in an irresponsible fashion;
3. a business debt restructuring may not be allowed if the debtor has a quarterly margin for payment of less than one seventh of the price base amount (*prisbasbeloppet*) under Chapter 2, Sections 6 and 7 of the Social Insurance Code (*socialförsäkringsbalken*) (approximately SEK 8 200 in 2024);
4. if the debtor has previously been allowed debt restructuring, a business debt restructuring may be permitted only if there are special reasons for doing so.

If a decision is taken to initiate the business debt restructuring process, a notice to that effect must be published immediately in the official gazette, *Post- och Inrikes Tidningar*. Notice must also be sent to the known creditors within one week of publication. These notices must invite the creditors *inter alia* to submit their claims against the debtor, usually in writing within one month of the date of publication, giving details of their claims and any other information relevant to the assessment of the case, and details of the account into which any payments are to be made during the business debt restructuring process.

A decision initiating the business debt restructuring process may be appealed against within three weeks of the decision date.

Following the initiating decision, attachment of property is not possible for claims that arose prior to that decision, until the question of business debt restructuring has been determined by a decision that has final effect. This does not, however, apply to claims that are not covered by the restructuring. Nor does it apply if, on appeal, a court decides at the request of a creditor that the attachment should be allowed.

### 3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the

## opening of the insolvency proceedings?

### *BANKRUPTCY*

Unless otherwise provided for in special exemption rules for legal acts performed by the debtor or any other party immediately following the decision opening the bankruptcy, the bankruptcy estate includes all property that belonged to the debtor when the bankruptcy decision was published, or which accrues to the debtor during the bankruptcy process, and which is of capable of serving for the enforcement of claims. Any property that may be added to the bankruptcy estate by means of recovery of claims is also included. For natural persons, there are special rules that apply to wages and other property that the debtor requires for his or her subsistence. The debtor may retain some of this property.

### *BUSINESS REORGANISATION*

All the debtor's assets are covered by the proceedings. Within one week of the business reorganisation decision being taken, the business reorganisation officer must notify all the known creditors about the decision. Among other things, a preliminary inventory of the debtor's assets and liabilities must be enclosed with the notification. The proceedings do not lead to the liquidation of the debtor and, in principle, the debtor retains control of his or her property. This means that the assets may change during the proceedings. As explained below, the consent of the business reorganisation officer is required if, for example, the debtor intends to fulfil obligations arising prior to the business reorganisation decision.

Under certain circumstances, claims based on an agreement concluded by the debtor during a business reorganisation process with the business reorganisation officer's consent enjoy a general preference (*allmän förmånsrätt*).

### *DEBT RESTRUCTURING*

A decision approving a debt restructuring must set out a payment plan. The payment plan runs for five years unless there are substantial grounds for setting a shorter duration. The payment plan starts to run on the date of the decision approving the restructuring. But the debtor starts to make payments from the date of the decision initiating the process, and the period for which the initiating decision has applied must usually be deducted from the duration of the payment plan.

The amount that the debtor has to pay is determined in such a way that the debt restructuring applies to all the debtor's assets and revenues following deduction of what must be retained for the subsistence of the debtor and the debtor's family. A reservation may also be made for the payment of a claim not covered by the debt restructuring.

If the debtor's financial circumstances improve considerably following the debt restructuring decision, and this is due to unforeseen circumstances, the creditors and the debtor may apply to have the decision reassessed.

### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

A payment plan must be laid down in a business debt restructuring case. The payment plan runs for three years. It starts to run on the date of the decision approving the restructuring. But the debtor starts to make payments from the date of the decision initiating the process, and the period for which the initiating decision has applied must usually be deducted from the duration of the payment plan.

The amount that the debtor has to pay is determined in such a way that the business debt restructuring applies to all the debtor's assets and revenues following deduction of what must be retained for the subsistence of the debtor and of the debtor's family. A reservation may also be made for the payment of a claim not covered by the business debt restructuring.

If the debtor's financial circumstances improve considerably following the business debt restructuring decision, the creditors and the debtor may apply to have the decision reassessed.

## 4 What powers do the debtor and the insolvency practitioner have, respectively?

### *BANKRUPTCY*

Once a bankruptcy decision is announced, the debtor loses control of any property pertaining to the bankruptcy estate. The debtor may not enter into any obligations that might be invoked during the bankruptcy. There are some exemptions. During the bankruptcy process the bankruptcy estate is represented by the administrator. The administrator is appointed by the district court, and must have the special knowledge and experience required for the task, and be suitable for the task in other respects. A person employed by a court may not be appointed as an administrator. A person may not be appointed as an administrator if they have a conflict of interest.

### *BUSINESS REORGANISATION*

The business reorganisation officer must have the special knowledge and experience required for the task and must be suitable for the task in other respects. The business reorganisation officer must have the confidence of the creditors. The business reorganisation officer may engage expert assistance.

The business reorganisation officer must investigate whether the business run by the debtor can continue, in whole or in part, and, if so, how this can be achieved. In addition, the business reorganisation officer must help the debtor to draw up a reorganisation plan which includes the measures necessary to address the debtor's financial difficulties and to ensure the continuation, in whole or in part, of the business run by the debtor. The plan must be accepted by the creditors and those with a participating interest in the debtor.

The debtor is required to provide the business reorganisation officer with all information concerning his or her financial circumstances that is relevant to the restructuring of the business. The debtor must follow the business reorganisation officer's instructions concerning the manner in which the business is to be run. The debtor retains control of his or her property. There are some legal acts that the debtor cannot perform without the business reorganisation officer's consent. These include paying debts that arose prior to the decision, undertaking new obligations, and transferring or pledging property of substantial importance for the debtor's business. If the debtor fails to comply with these obligations, the business reorganisation officer may request that the legal act is reversed.

### *DEBT RESTRUCTURING*

No administrator is appointed. During the debt restructuring process the debtor retains control of his or her property.

### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

No administrator is appointed. The debtor retains control of his or her property during the business debt restructuring process.

## 5 Under which conditions may set-offs be invoked?

### *BANKRUPTCY*

A creditor who has a claim on the debtor that can be asserted during the bankruptcy can set that claim off against a claim that the debtor had on the creditor at the time when the bankruptcy decision was announced. This does not apply if the set-off has been excluded owing to the nature of the claims in question. There are special rules that apply to conditional claims. There are also exemptions among other things for recently acquired claims (largely corresponding to the provisions on recovery to the estate).

With regard to financial markets, there are special provisions to the effect that netting agreements and similar arrangements relating inter alia to financial instruments will apply with respect to the bankruptcy estate and the creditors.

## *BUSINESS REORGANISATION*

Anyone who had a claim on the debtor at the time of the business reorganisation decision, even if the claim has not fallen due for payment, may set that claim off against a claim that the debtor had on the creditor at that time. This does not apply if the set-off is excluded owing to the nature of the claims in question or is otherwise excluded by provisions of the Business Reorganisation Act. There are also exemptions among other things for recently acquired claims (largely corresponding to the provisions on recovery of payments).

With regard to financial markets, there are special provisions to the effect that netting agreements and similar arrangements relating, inter alia, to financial instruments will apply to the debtor and those creditors whose claims are covered by an accepted business reorganisation plan.

## *DEBT RESTRUCTURING*

There are no special rules concerning set-off.

## *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

There are no special rules concerning set-off.

## 6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

### *BANKRUPTCY*

The Bankruptcy Act does not contain any general rules on whether the bankruptcy estate is bound by agreements entered into by the debtor. In principle, the bankruptcy estate, as a legal person in its own right, is not liable for any obligations that may arise from such an agreement. A bankruptcy estate may choose to perform agreements entered into by the debtor if doing so is conducive to the winding up of the estate. This will usually be conditional upon the consent of the counterparty.

There are special provisions in other legislation, such as the Sales Act (*köplagen*) and the Act on Trade in Financial Instruments (*lagen om handel med finansiella instrument*). According to the Sales Act, the bankruptcy estate may choose to perform an agreement if one of the parties has been placed in bankruptcy. The counterparty may ask the estate to notify it in good time if it wishes to perform the agreement.

## *BUSINESS REORGANISATION*

Once an application for business reorganisation has been made, a counterparty to an agreement with the debtor may not terminate the agreement due to a delay in payment or performance in some other respect, if the delay occurred or is likely to occur before the decision on business reorganisation. The debtor may, with the consent of the business reorganisation officer, request that the agreement be performed. At the request of the counterparty, the debtor must notify the counterparty in good time as to whether the agreement is to be performed. If an agreement is to be performed, there are special rules governing the manner of performance. Under certain circumstances, the counterparty may obtain security for the performance of the debtor. The counterparty may also have the right to terminate the agreement if the debtor fails in the performance of the agreement. There are special provisions in the Sales Act and concerning, inter alia, employment contracts and financial instruments.

## *DEBT RESTRUCTURING*

There are no special rules concerning the effect of a debt restructuring on a current contract.

Please also see 'What are the conditions for, and the effects of closure of insolvency proceedings?'

## *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

There are no special rules concerning the effect of a business debt restructuring on a current contract.

Please also see 'What are the conditions for, and the effects of closure of insolvency proceedings?'

## 7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

### *BANKRUPTCY*

Once a decision on bankruptcy has been taken, property belonging to the bankruptcy estate may not, as a rule, be attached in order to enforce any claim against the debtor. This applies automatically once the bankruptcy has been opened. There are some exemptions that apply to claims that have a certain level of preference. Any attachment (*utmätning*) that takes place contrary to this ban is null and void. Property may be attached irrespective of the bankruptcy if there is a right of pledge (*panträtt*) over the property in question for the satisfaction of the claim.

### *BUSINESS REORGANISATION*

While the business reorganisation is in progress, no attachment or other enforcement under the Enforcement Code may take place against the debtor. A creditor may also not realise the debtor's assets, for example by selling pledged property. There are exceptions, for example where the creditor has a right of pledge or a right of retention (*retentionsrätt*) for the satisfaction of the claim. No assistance can be given under the Act on Hire-Purchase Agreements between Traders (*lagen om avbetalningsköp mellan näringsidkare m.fl.*) (1978:599). During the business reorganisation process, no decisions may be taken imposing sequestration (*kvarstad*) or lien (*betalningssäkring*).

During the business reorganisation process, a creditor's application to declare the debtor bankrupt must be suspended if the debtor requests this and there are no special grounds for assuming that the creditor's rights are seriously compromised.

### *DEBT RESTRUCTURING*

Following the initiating decision, no attachment of property is possible to enforce claims that arose prior to that decision, until the question of debt restructuring has been determined by a decision that has final effect. This does not, however, apply to claims that are not covered by the restructuring. Nor does it apply if, on appeal, a court decides at the request of a creditor that the attachment should be allowed.

If the debtor is declared bankrupt, the debt restructuring application lapses.

If an application for a plan hearing as part of the business reorganisation is considered admissible after the debtor has applied for debt restructuring, the debt restructuring case must be suspended. If a business reorganisation decision is taken, the application for debt restructuring lapses.

### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

Following the initiating decision, attachment of property is not possible for claims that arose prior to that decision, until the question of business debt restructuring has been determined by a decision that has final effect. This does not, however, apply to claims that are not covered by the restructuring. Nor does it apply if, on appeal, a court decides at the request of a creditor that the attachment should be allowed.

If the debtor is declared bankrupt, the business debt restructuring application lapses.

If an application for a plan hearing as part of the business reorganisation is considered admissible after the debtor has applied for business debt restructuring, the business debt restructuring case must be suspended. If a business reorganisation plan is accepted, the application for business debt restructuring lapses.

## 8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency

## proceeding?

### *BANKRUPTCY*

If attachment has taken place before the bankruptcy decision is announced, enforcement may as a general rule continue irrespective of the bankruptcy process. There are some exemptions.

If a lawsuit is ongoing between the debtor and another party concerning property belonging to the bankruptcy estate, the bankruptcy estate may take over the debtor's action. If the estate does not take over the debtor's action, the property is considered to fall outside the bankruptcy estate. If an action is brought against the debtor concerning a claim that can be asserted in the bankruptcy proceedings, the bankruptcy estate may join the lawsuit alongside the debtor. There are further provisions concerning this procedure.

### *BUSINESS REORGANISATION*

Enforcement of claims is in principle prohibited during the business reorganisation process, but this does not prevent an ongoing lawsuit between the debtor and another party from continuing and indeed from being concluded.

### *DEBT RESTRUCTURING*

Please see under 'What effect does an insolvency proceeding have on proceedings brought by individual creditors?'

### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

Please see under 'What effect does an insolvency proceeding have on proceedings brought by individual creditors?'

## 9 What are the main features of the participation of the creditors in the insolvency proceeding?

### *BANKRUPTCY*

The creditors have no formal role in the bankruptcy procedure. However, on more important issues, the administrator must consult creditors that are particularly affected if there is nothing to prevent this. The creditors are also entitled to receive information from the administrator and to attend the oath administration meeting, for example. A creditor can request the appointment of a supervisor (*granskningsman*) to oversee the administration of the bankruptcy estate on behalf of the creditor.

Please also see 'What are the rules governing the lodging, verification and admission of claims?'

### *BUSINESS REORGANISATION*

When a court decides in favour of a business reorganisation, it must set a date for a creditors' meeting, which takes place before the court. The meeting must be held within three weeks of the date of the business reorganisation decision, or within a longer period, if necessary.

At the creditors' meeting, the creditors must be given the opportunity to express their views on whether the business reorganisation should continue. If a creditor so requests, the court must, at the meeting, appoint a creditors' committee from among the creditors. The committee consists of no more than three members. In some cases, employees will also have the right to appoint a representative as an additional member of the committee. The court may appoint further members if there are particular grounds for doing so. The business reorganisation officer must consult the creditors' committee with regard to matters of importance if there is nothing to prevent this.

If a plan hearing is held, the creditors whose claims arose prior to the business reorganisation decision must take part in the hearing, provided that their claims are directly affected by the business reorganisation plan. This may be the case, for example, if a proposal is made to reduce the claims. The creditors must then vote on the

adoption of a business reorganisation plan at a plan meeting before the court.

#### *DEBT RESTRUCTURING*

Creditors must lodge their claims. Please see 'What are the rules governing the lodging, verification and admission of claims?'

A creditor may request that a debt restructuring decision be cancelled or amended.

#### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

Creditors must lodge their claims. Please see 'What are the rules governing the lodging, verification and admission of claims?'

A creditor may request that a debt restructuring decision be cancelled or amended.

## 10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

#### *BANKRUPTCY*

During bankruptcy, the assets form a bankruptcy estate which is administered for the benefit of the creditors (see above). The estate is managed by one or more bankruptcy administrators. As a general rule, property from the estate must be sold off as quickly as reasonably possible. If the debtor has been operating a business, the administrator may under certain conditions keep the business running on behalf of the bankruptcy estate.

#### *BUSINESS REORGANISATION*

During business reorganisation, the debtor does not lose control of his or her assets.

#### *DEBT RESTRUCTURING*

No administrator is appointed.

#### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

No administrator is appointed.

## 11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

#### *BANKRUPTCY*

During bankruptcy, the assets form a bankruptcy estate which is administered for the benefit of the creditors (see above). The estate is managed by one or more bankruptcy administrators. As a general rule, property from the estate must be sold off as quickly as reasonably possible. If the debtor has been operating a business, the administrator may under certain conditions keep the business running on behalf of the bankruptcy estate.

#### *BUSINESS REORGANISATION*

During business reorganisation, the debtor does not lose control of his or her assets.

#### *DEBT RESTRUCTURING*

No administrator is appointed.

#### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

No administrator is appointed.

## 12 What are the rules governing the lodging, verification and admission of claims?

### *BANKRUPTCY*

In general, only those claims that arose before the bankruptcy decision was announced may be asserted during bankruptcy. A claim may be asserted during bankruptcy even if it is conditional or has not fallen due for payment.

For those cases where no proof of debts takes place, there are no rules requiring the creditor to submit his or her claim in any particular way. In a bankruptcy without a proof-of-debt procedure, the administrator must on his or her own initiative ensure that any claim with a right of preference receives its proper share in the distribution. There is nothing in principle to prevent a creditor from asserting his or her claim in vague terms until the time-limit for objecting to the proposed distribution.

If it can be assumed that the assets are sufficient for payment to creditors who do not enjoy preference, there must be a proof of debts (please see above regarding proof of debts). Where the district court decides on a proof-of-debt procedure, it will set a period of between four and ten weeks for the submission of proof. The decision to call for proof of debts is published. Creditors must lodge their claims in writing within the set period. If a creditor holds a right of pledge or retention right over property, they do not need to submit proof of the debt as part of this procedure in order to obtain payment from the property. If the proof-of-debt procedure has taken place, any creditor who wishes to lodge a claim or exercise a right of preference after the time limit for the submission of proof may submit proof in writing *ex post* (*efterbevakning*). This must be done no later than the date on which the administrator establishes the proposed distribution, in other words before the proposal is submitted to the court and published. If a creditor does not submit proof of his or her claim, the creditor loses the opportunity to receive payment from the assets covered by the distribution decision. In principle, the creditor can subsequently receive payment in respect of his or her claim only if new funds become available (*ex post* distribution, *efterutdelning*).

### *BUSINESS REORGANISATION*

As indicated above, there is no general obligation for creditors to lodge claims in the event of business reorganisation, but the creditor may need to lodge his or her claim in a plan hearing if the business reorganisation officer has not taken it up on his or her own initiative.

If a plan hearing is to be held, the debtor must draw up a reorganisation plan with the support of the business reorganisation officer. The plan may propose a debt settlement whereby the creditors' claims are written down or the payment terms are amended.

The reorganisation plan must be accompanied by a list of the assets and liabilities of the estate drawn up by the business reorganisation officer. The list must, *inter alia*, indicate whether a creditor has a right of preference and the grounds for it. The business reorganisation plan must divide creditors and shareholders and others with a participating interest in the debtor (parties concerned) into groups, based on preference and degree of priority of claims. Only creditors whose claims arose prior to the business reorganisation decision and who are directly affected by the business reorganisation plan – for example because it is proposed to reduce the creditor's claim – are involved in a plan hearing.

If the request for a plan hearing is considered admissible, the court must give its decision to allow a plan hearing immediately. At the same time, the court must set a date for a meeting with the parties concerned, to take place in court (plan meeting), issue a summons to that meeting, and publish the decision. At the plan meeting, the court must examine the selection of the parties concerned and their division into groups. The court then has the opportunity to change the selection of parties and the division into groups. After this, the parties concerned vote on the restructuring plan.

Before the plan meeting, the business reorganisation officer, the debtor and the parties concerned, such as creditors, have the opportunity to object to a claim that would be covered by the business reorganisation plan.

Objections must be submitted in writing to the business reorganisation officer as early as possible and, in any event, before the vote at the plan meeting.

An objection made against a claim or a right does not prevent the party concerned from taking part in the vote with the claim or the right. If the outcome of the vote depends on whether or not an objection is accepted, at the meeting the court must investigate the disputed issue and attempt to reach an amicable settlement. If an amicable settlement cannot be reached, the court must assess the objections.

A business reorganisation plan is considered to have been accepted by the parties concerned if, in each group, at least two thirds of the voters have approved it and their claims or rights amount to at least two thirds of the claims or rights that are accompanied by voting rights. If the business reorganisation plan is accepted, the court will approve it, unless there are any obstacles to doing so. Under certain special conditions, the court may approve a business reorganisation plan even though it has not been accepted by the parties concerned.

An approved business reorganisation plan is binding on the debtor and all the parties concerned, as well as on the debtor's counterparty in an agreement concerning new funding.

#### *DEBT RESTRUCTURING*

If a decision is taken to initiate the debt restructuring process, a notice to that effect must be published immediately in the official gazette, *Post- och Inrikes Tidningar*. Notice must also be sent to the known creditors within one week of publication. These notices must invite the creditors *inter alia* to submit their claims against the debtor, usually in writing within one month of the date of publication, giving details of their claims and any other information relevant to the assessment of the case, and details of the account into which any payments are to be made during the debt restructuring process.

After the initiating decision, once sufficient information has been gathered, a debt restructuring proposal is drawn up. This is sent to all known creditors whose claims are covered by the proposal, with an invitation to them to submit their comments within a certain period. Failure by a creditor to submit comments does not prevent a decision to approve a debt restructuring.

#### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

If a decision is taken to initiate the business debt restructuring process, a notice to that effect must be published immediately in the official gazette, *Post- och Inrikes Tidningar*. Notice must also be sent to the known creditors within one week of publication. These notices must invite the creditors *inter alia* to submit their claims against the debtor, usually in writing within one month of the date of publication, giving details of their claims and any other information relevant to the assessment of the case, and details of the account into which any payments are to be made during the debt restructuring process.

After the initiating decision, once sufficient information has been gathered, a business debt restructuring proposal is drawn up. This is sent to all known creditors whose claims are covered by the proposal, with an invitation to them to submit their comments within a certain period. Failure by a creditor to submit comments does not prevent a decision to approve a business debt restructuring.

## 13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

#### *BANKRUPTCY*

If the assets of the bankruptcy estate are insufficient to pay the bankruptcy costs and debts incurred by the estate itself, the bankruptcy must be written off (see above for information about bankruptcy costs and debts of the estate). If the bankruptcy is written off (*avskrivs*), there is in principle no distribution to the creditors.

If the bankruptcy is not written off, the money in the bankruptcy estate that is not used to pay the bankruptcy costs and debts of the estate is distributed to the creditors. The money must, in principle, be distributed in accordance with the provisions of the Preference Act.

The Preference Act regulates the reciprocal entitlements of the creditors to receive payment in the event of

bankruptcy. The following summarised information can be provided regarding the Preference Act.

A preference in relation to payment is either special or general. A special preference relates to certain property (examples being a right of pledge, a right of retention, or a mortgage (*inteckning*) on immovable property). A general preference relates to all property included in the debtor's bankruptcy estate (such as the costs incurred by creditors in order to place the debtor in bankruptcy, and the remuneration of a business reorganisation officer if the bankruptcy in question was preceded by a business reorganisation). A special preference takes precedence over a general preference. Any claims that do not enjoy a preference have the same rights among themselves. It may also have been provided in an agreement that a creditor is entitled to payment only after all other creditors have been satisfied (a subordinated claim, *efterställd fordran*).

A preference continues in being even if the claim is transferred or attached or otherwise passes to another party.

If a claim enjoys a special preference with respect to certain property, but the property in question is insufficient to satisfy the claim, the remainder is treated as a claim without preference.

### ***BUSINESS REORGANISATION***

No distribution is made as part of a business reorganisation, unless a debt settlement is provided for in the business reorganisation plan.

A debt settlement may, for example, take the form of a debt reduction or a modification of the terms of payment. The business reorganisation plan may only be established if the creditors within the same group are treated equally in proportion to their claim. Since the debt reduction and the terms of payment otherwise follow what is decided in the business reorganisation plan, these may vary.

If the business reorganisation plan contains a debt settlement, a creditor whose claim was not known at the time the business reorganisation plan was established is entitled only to payment corresponding to what the group of creditors to which the creditor would have been assigned, had he or she been known, received.

A creditor who has accepted a business reorganisation plan that includes a debt settlement does not lose his or her rights in relation to a guarantor or anyone else who is liable for the claim in addition to the debtor.

Claims that are included in an accepted business reorganisation plan and which constitute new funding under the provisions of the Business Reorganisation Act (*Lagen om företagsrekonstruktion*) have a right of preference to the extent and for the time period specified in the plan.

### ***DEBT RESTRUCTURING***

In a decision to allow debt restructuring, the Enforcement Authority determines, among other things, which claims are covered, which payment plan applies to the debtor and how much of each claim is to be paid.

All claims covered by a debt restructuring have equal rights. A claim may, however, be given less favourable rights with the consent of the creditor in question, or may be paid out before other claims if the sum available at distribution is small and it is reasonable to do so having regard to the scale of the debts and other circumstances.

Provisions governing claims are laid down in the decision to allow the debt restructuring.

### ***BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT***

In a decision to allow business debt restructuring, the Enforcement Authority determines, among other things, which claims are covered, which payment plan applies to the debtor and how much of each claim is to be paid.

All claims covered by a business debt restructuring have equal rights. A claim may, however, be given less favourable rights with the consent of the creditor in question, or may be paid out before other claims if the sum available at distribution is small and it is reasonable to do so having regard to the scale of the debts and other circumstances.

Provisions governing claims are laid down in the decision to allow the debt restructuring.

## 14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

### *BANKRUPTCY*

If the debtor agrees on the payment of his or her debts or has otherwise reached a settlement with the creditors (voluntary settlement), the district court must decide to close the bankruptcy. In bankruptcies where proof-of-debt procedures take place, the bankruptcy may also be closed by a decision on a composition with creditors. Otherwise, the bankruptcy is closed by means of a write-off (if the assets are not sufficient to pay the bankruptcy costs and the debts of the estate) or by a distribution to the creditors.

Bankruptcy does not release a natural person from liability to pay their debts (the rules on debt restructuring are different). The debts that have not been paid will therefore remain following the bankruptcy (but not if they are covered by a voluntary agreement or composition with creditors).

A legal person is dissolved following bankruptcy (the provisions governing this can be found in the legislation on the right to form associations). This means that, in principle, the creditors are not able to assert any outstanding claims against the legal person after the bankruptcy.

### *BUSINESS REORGANISATION*

Under certain conditions, the court must decide that a business reorganisation is to end. This is the case, for example, if the purpose of the business reorganisation is considered to have been achieved or if it is not considered possible to achieve it.

In addition, the court must decide that the business reorganisation must end three months after the date on which the decision on the reorganisation was made. The business reorganisation may be extended for a further period of three months at the request of the debtor, the business reorganisation officer or a creditor if there are special reasons for doing so. Exceptional reasons are needed for a further extension to take place.

A business reorganisation may not last for longer than a total period of 12 months unless the court has previously decided on a plan hearing. In this case, the business reorganisation must end no later than fifteen months after the date on which the decision on the reorganisation was made.

If the business reorganisation ends, the debtor's protection against enforcement measures, such as attachment and bankruptcy, no longer applies. The protection also comes to an end 12 months after the decision on the business reorganisation was made, even if the reorganisation is continuing at that time.

If the business reorganisation ends, an accepted business reorganisation plan will continue to apply. It remains binding on the debtor and the parties concerned. The court may decide that an accepted business reorganisation plan must be cancelled. This may be the case, for example, if the debtor is in material breach of his or her obligations under the plan.

### *DEBT RESTRUCTURING*

A debt restructuring decision releases the debtor from liability to pay the debts covered by the debt restructuring in so far as they are reduced. Debt restructuring also releases the debtor from liability to pay unknown debts in the case, unless they are debts that cannot be covered by debt restructuring. A debt restructuring means that entitlement to interest or penalties on arrears in respect of a claim covered by the restructuring lapses in respect of the period after the date on which the initiating decision was announced. A debt restructuring has no impact on the rights of a creditor in relation to a guarantor or anyone else who is liable for the debt in question in addition to the debtor.

A decision approving a debt restructuring must set out a payment plan. The payment plan runs for five years unless there are substantial grounds for setting a shorter duration. The payment plan starts to run on the date of the decision approving the restructuring. When the expiry date of the payment plan is being set, the period for which the decision initiating the process has applied has usually to be deducted from the duration of the plan, unless there are grounds for deducting a shorter period in view of the debtor's actions following the initiating decision.

When the decision on debt restructuring takes final effect, the debtor's protection against enforcement measures comes to an end.

A debt restructuring decision may be amended or cancelled in certain circumstances. At the request of a creditor whose claim is covered by the debt restructuring, the decision may be cancelled, inter alia, if the debtor has provided incorrect information, if the debtor does not comply with the payment plan and the deviation from the plan is substantial or if the debtor's financial situation has significantly improved.

In the event that a debt restructuring decision is amended, the duration of the payment plan may be set at a maximum of seven years.

#### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

A business debt restructuring decision releases the debtor from liability to pay the debts covered by the debt restructuring in so far as they are reduced. Business debt restructuring also releases the debtor from liability to pay unknown debts in the case, unless they are debts that cannot be covered by business debt restructuring.

A business debt restructuring means that entitlement to interest or penalties on arrears in respect of a claim covered by the restructuring lapses in respect of the period after the date on which the initiating decision was announced.

A business debt restructuring has no impact on the rights of a creditor in relation to a guarantor or anyone else who is liable for the debt in question in addition to the debtor.

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In the event that a business debt restructuring decision is amended, the duration of the payment plan may be set at a maximum of five years.

## 15 What are the creditors' rights after the closure of insolvency proceedings?

### *BANKRUPTCY*

As explained above, bankruptcy does not release natural persons from liability for their debts, while legal persons are dissolved after bankruptcy.

If resources should become available for distribution following bankruptcy, there is provision for ex post distribution.

### *BUSINESS REORGANISATION*

See above for information on the effect of an accepted business reorganisation plan with a debt settlement. If a business reorganisation plan has not been accepted and the debtor has not agreed with the creditors on a voluntary debt settlement, the claims remain outstanding after the business reorganisation has been completed.

Creditors with claims arising from agreements entered into by the debtor with the consent of the business reorganisation officer during the business reorganisation enjoy a general preference. The general preference ceases to apply if a business reorganisation plan is accepted or, where a business reorganisation plan is not

accepted, it ceases to apply three months after the business reorganisation is cancelled, unless an application for bankruptcy against the debtor has been submitted within that period.

Creditors with claims that are included in an accepted business reorganisation plan and that constitute new financing under the provisions of the Business Reorganisation Act have a right of preference to the extent and for the time period specified in the plan.

#### *DEBT RESTRUCTURING*

Debt restructuring reduces the claims covered by the debt restructuring. It also releases the debtor from liability to pay unknown debts in the case, unless they are debts that cannot be covered by debt restructuring. A debt restructuring has no impact on the rights of a creditor in relation to a guarantor or anyone else who is liable for the debt in question in addition to the debtor.

A creditor may, under certain circumstances, have a debt restructuring reassessed after the debtor has complied with the payment plan, if the payment plan expires less than five years after the initiating decision.

For more information, see 'What are the conditions for, and the effects of closure of insolvency proceedings?'

#### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

Business debt restructuring reduces the claims covered by the debt restructuring. It also releases the debtor from liability to pay unknown debts in the case, unless they are debts that cannot be covered by business debt restructuring. A business debt restructuring has no impact on the rights of a creditor in relation to a guarantor or anyone else who is liable for the debt in question in addition to the debtor.

A creditor may, under certain circumstances, have a business debt restructuring reassessed after the debtor has complied with the payment plan, if the payment plan expires less than three years after the initiating decision.

For more information, see 'What are the conditions for, and the effects of closure of insolvency proceedings?'

## **16 Who is to bear the costs and expenses incurred in the insolvency proceedings?**

#### *BANKRUPTCY*

The administrator's remuneration and other similar costs (bankruptcy costs) and other debts incurred by the bankruptcy estate must be taken out of the bankruptcy estate before the distribution to the bankruptcy creditors. The bankruptcy costs in turn take precedence over the other claims on the estate itself.

If the bankruptcy has been initiated at the request of a creditor other than the State, any bankruptcy costs that cannot be taken out of the estate must be paid by the creditor subject to certain limits. In other cases, they must be paid by the State.

#### *BUSINESS REORGANISATION*

The costs of the proceedings before the court and the remuneration of the business reorganisation officer and of any representative of a supervisory authority must be paid by the debtor.

The remuneration may not be set at a level higher than can be regarded as reasonable remuneration for the task, given the work required by the task, the care and skill with which it has been carried out and the extent of the business activity.

The business organisation officer's entitlement to compensation must be assessed by the court at the request of the supervisory authority, the business organisation officer or the debtor. Until the restructuring plan has been completed, any interested party whose claim or right is covered by the plan may also request an evaluation of this kind.

The remuneration is subject to a general preference in the event of bankruptcy, to the extent that the amount is

reasonable in the circumstances.

### *DEBT RESTRUCTURING*

During the debt restructuring process, the debtor usually makes payments to the Enforcement Authority, which then passes on the money to the creditors. The Enforcement Authority levies an annual fee on the debtor for its management of his or her payments.

### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

During the debt restructuring process, the debtor usually makes payments to the Enforcement Authority, which then passes on the money to the creditors. The Enforcement Authority levies an annual fee on the debtor for its management of his or her payments.

## 17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

### *BANKRUPTCY*

The rules on recovery to the bankruptcy estate (*återvinning till konkursbo*) are laid down in the Bankruptcy Act. The starting point for calculating the time limits laid down in the rules on recovery is generally the date of the application for bankruptcy.

An act can be reversed if it improperly favoured a certain creditor over others, if the creditors have been deprived of the debtor's property, if the debtor's debts have increased, if the debtor was insolvent or became insolvent as a result of the proceedings alone or as a result of the proceedings in combination with other factors and if the other party knew or should have known that the debtor was insolvent and what the circumstances were that rendered the legal act improper. The debtor's family members are deemed to have had the knowledge referred to in the first sentence unless there is convincing evidence to show that they did not and could not have had such knowledge. If the act was performed more than five years before the reference date, it can be reversed only if it related to one of the debtor's family members.

Payment of a debt later than three months before the reference date using a method other than the customary means of payment, or in advance, or of an amount that appreciably worsened the debtor's financial status, can be reversed unless it can be regarded as ordinary in the circumstances. If the payment was made to one of the debtor's family members prior to that date but later than two years before the reference date, it can be reversed unless it is shown that the debtor was not insolvent and did not become insolvent as a result of the act in question.

There are special rules that govern things such as gifts, home-sharing and wages. Certain payments to the State are exempt from the recovery rules, such as tax payments.

The administrator may seek recovery by bringing an action before the ordinary courts or by objecting to debts that are being proved during the bankruptcy procedure. If the administrator chooses not to seek recovery and there is no amicable settlement, a creditor may seek recovery by bringing an action before the general court.

In the event of recovery, the property that the debtor has disposed of reverts to the bankruptcy estate.

### *BUSINESS REORGANISATION*

After a decision on business reorganisation is taken, the provisions of the Bankruptcy Act concerning recovery in bankruptcy apply, if a reorganisation plan that includes a debt settlement is accepted (see the section on bankruptcy).

If an action for recovery concerns a preference or a payment obtained by means of attachment, the court may decide that there must be no continuation of the enforcement in the enforcement proceedings until further notice.

An action for recovery is brought by the business reorganisation officer or by a party concerned. The action must

be brought before the plan meeting and may not be finally assessed until the restructuring plan has been accepted. A party concerned who wishes to bring an action must inform the business reorganisation officer. If the party concerned has not done so, the action is inadmissible.

The action for recovery must be dismissed if the business reorganisation ends without a reorganisation plan being accepted and if the debtor is not declared bankrupt following an application made within three weeks of the business reorganisation ending.

Once the plaintiff's costs have been reimbursed, the proceeds of an action for recovery must be allocated in accordance with the grounds for the debt settlement, unless otherwise specified in the reorganisation plan. A defendant who, as a result of the plaintiff's action, may have a claim against the debtor can participate in the plan hearing on the basis of that claim and has the right to deduct the amount due to him or her at distribution from the amount that he or she would otherwise have paid.

The court may order special administration of what is to be assigned to the parties concerned pursuant to the first subparagraph, if one of them or the debtor so requests in the recovery proceedings. Any property placed in such special administration may be attached only if the business reorganisation plan has been cancelled.

### *DEBT RESTRUCTURING*

There are no special provisions regarding recovery.

### *BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT*

There are no special provisions regarding recovery.

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■ Last update: 08/10/2025

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