

## INTRODUCTION

In Sweden, the Insolvency Regulation (*insolvensförordning*) provides for bankruptcy, business reorganisation and debt restructuring. 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. There are other steps that take place in court, such as the administration of an oath whereby the debtor swears to the inventory of the assets. The administrator is monitored by the Enforcement Authority (*Kronofogdemyndigheten*).

## BUSINESS REORGANISATION

### General

A trader who is experiencing payment difficulties may be permitted by a court decision to undergo a special procedure in order to reorganise his or her business (*företagsrekonstruktion*). A business reorganisation officer (*rekonstruktör*) is appointed by the court to investigate whether some or all of the debtor's operations can continue and, if so how, and whether the conditions are right for the debtor to reach a financial settlement (*uppgörelse*) or composition (*ackord*) with the 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.

## 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. Since November 2016, there have been two kinds of debt restructuring in Sweden: debt restructuring (*skuldsanering*) under the Debt Restructuring Act (*skuldsaneringslagen*); and business debt restructuring (*Fskuldsanering*) under the Business Debt Restructuring Act (*skuldsaneringslagen för företagare*). Both kinds are explained below.

## BUSINESS DEBT RESTRUCTURING UNDER THE BUSINESS DEBT RESTRUCTURING ACT

### 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 granted to natural persons (including natural persons who engage in private commercial activity (*enskild näringsverksamhet*)).

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 granted to a natural person 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 is 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, the debtor must be regarded as insolvent, unless the contrary is shown, if enforcement proceedings have been brought under Chapter 4 of the Enforcement Code (*utsökningsbalken*) and have resulted in a finding, within the six months prior to the bankruptcy application, that the debtor did not have sufficient assets to make full payment of the claim being enforced. 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 accepted that the debtor cannot pay debts that have fallen due or will soon be unable to pay them. A decision allowing business reorganisation may not be taken if there are no reasonable grounds for supposing that the objective of business reorganisation can be achieved. An application submitted by a creditor may be approved only with the consent of the debtor.

If an application by a debtor is considered admissible, the court must assess it immediately, unless the debtor's application was submitted following an application by a creditor and the court has decided that a hearing must be held to examine it. 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 decision to allow the reorganisation, the business reorganisation officer must notify all known creditors of 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 cannot duly pay his or her debts and it can be accepted, having regard to all the circumstances of the case, that this inability to pay will continue into the foreseeable future (the debtor must be considered insolvent); 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 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 debt restructuring process may be appealed against within three weeks of the decision date.

Following the initiating decision, no attachment of property (*utmätning*) 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 cannot duly pay his or her debts and it can be accepted, having regard to all the circumstances of the case, that this inability to pay will continue into the foreseeable future (the debtor must be considered insolvent); 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*) laid down in Sections 6 and 7 of Chapter 2 of the Social Insurance Code (*socialförsäkringsbalken*) (approximately SEK 6 300 in 2016); and
4. 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 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**

The business reorganisation officer must notify all known creditors of the business reorganisation decision within a week of the decision date. Among other things, a preliminary inventory of the debtor's assets and liabilities must be enclosed with the notification. It follows that all assets are covered by the process. It should, however, be emphasised that a business reorganisation may conclude with a public composition with creditors, but this is not compulsory. Any 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*). An example of such an agreement might be an agreement concerning the financing of the business that is concluded with the business reorganisation officer's consent during the reorganisation process.

#### **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. 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 business debt restructuring applies to all the debtor's total 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**

A business reorganisation officer must have the special knowledge and experience required for the task, must have the confidence of the creditors, and must be suitable for the task in other respects.

The business reorganisation officer investigates the debtor's financial standing and, in consultation with the debtor, draws up a plan setting out how the aims of the reorganisation are to be achieved. The plan must be supplied to the court and to the creditors. The business reorganisation officer may engage expert assistance.

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. 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 fulfil these obligations, however, the legal act in question remains valid.

#### **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. During the debt restructuring process the debtor retains control of his or her property.

### **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 from the bankruptcy 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 when the application for business reorganisation was submitted may set that claim off against a claim that the debtor had on the creditor at that time, even if the claim has not fallen due for payment. 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 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 those creditors whose claims are covered by a public composition with creditors.

#### **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 estate is an independent legal person, and has no liability for any obligations that might 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**

If, prior to the decision on business reorganisation, the debtor's counterparty had the right to cancel an agreement owing to the occurrence or prospect of a dispute relating to payments or performance in some other respect, the counterparty is prevented from cancelling the agreement by reason of that dispute once the decision has been taken, if the debtor requests in good time and with the consent of the business reorganisation officer that the agreement in question be performed. At the request of the counterparty the debtor must notify the counterparty in good time whether the agreement is to be performed. If an agreement is to be performed, there are special rules governing the manner of performance. There are also special provisions in the Sales Act, and special rules governing matters such as contracts of employment 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 the bankruptcy decision has been announced, property belonging to the bankruptcy estate may not generally be attached (*utmåta*) in order to enforce any claims 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.

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 exceptions.

#### **BUSINESS REORGANISATION**

While the business reorganisation is in progress, no attachment or other enforcement under the Enforcement Code may take place against the debtor. 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 (1978:599) om avbetalningsköp mellan näringsidkare m.fl.*). During the business reorganisation process, no decisions may be taken imposing sequestration (*kvarstad*) or lien (*betalningsåkring*).

#### **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 the negotiation of a public composition with creditors is admitted for consideration after the debtor has applied for a debt restructuring, the debt restructuring proceedings must be suspended. If the composition is confirmed, the debt restructuring application lapses.

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

Following the initiating decision, no attachment of property is possible to enforce 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 the negotiation of a public composition with creditors is admitted for consideration after the debtor has applied for a business debt restructuring, the debt restructuring proceedings must be suspended. If the composition is confirmed, the business debt restructuring application 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 there is an ongoing lawsuit between the debtor and another party concerning property belonging to the bankruptcy estate, the estate may pursue the proceedings in the debtor's place. If the estate does not take the debtor's place, the property is considered to fall outside the estate. If the proceedings have been brought against the debtor to satisfy a claim that can be asserted in the bankruptcy proceedings, the bankruptcy estate may join the lawsuit on the debtor's side. 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. The administrator must consult creditors that are particularly affected if there is nothing to prevent this. The creditor are also entitled to receive information from the administrator, and to attend the taking of the oath, for example. A creditor may request that a supervisor (*granskningsman*) be appointed to monitor the administration of the bankruptcy estate on the creditor's behalf.

#### **BUSINESS REORGANISATION**

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

At the creditors' meeting, the creditors have the opportunity to express their opinions as to whether the business reorganisation should continue. If a creditor so requests, the court will 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.

#### **DEBT RESTRUCTURING**

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

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

### **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**

Swedish bankruptcies can be divided into two categories, bankruptcies without proof of debts (*bevakning*) and bankruptcies with proof of debts. There is no proof of debts unless otherwise determined. This is because creditors without a preferred claim do not usually receive anything in the event of bankruptcy. The district court may, upon request by the administrator, decide that debts are to be proved. This will be done if it can be assumed that claims without preference will receive some payment upon distribution during the bankruptcy procedure. Where it is decided that the proof-of-debt procedure should take place, claims that can be asserted during the bankruptcy proceedings must generally be proved in order for the creditor to receive anything from the distribution. Any entitlement to preference also has to be proved. Where a creditor has a right of pledge or retention over property, however, there is no need to prove the debt for the creditor to be entitled to payment from the property in question.

The fact that the debtor loses control of his or her property means that the debtor is prevented from entering into any obligations that could be asserted during the bankruptcy proceedings. If the debtor undertakes or incurs any obligations following the start of the bankruptcy proceedings, those obligations cannot generally be proved during the bankruptcy. The established case-law is that, in some cases, the debtor may resume control over a certain asset if the administrator expressly refrains from claiming it.

The bankruptcy estate, represented by the administrator, may assume rights and responsibilities, for example by entering into an agreement. These give rise to claims against the estate itself (*massafordringar*). In principle, claims on the estate itself have preference over the ordinary bankruptcy claims (*konkursfordringar*). The administrator's remuneration and other similar debts (known as bankruptcy costs, *konkurskostnader*) must, however, come out of the bankruptcy estate before any other debts that the estate has incurred. If the bankruptcy costs cannot be taken out of the bankruptcy estate, they must generally be paid for by the State. In principle, the bankruptcy claims are satisfied only after the bankruptcy costs and the claims on the estate itself have been paid.

#### **BUSINESS REORGANISATION**

There are no general rules for the notification of claims in the event of business reorganisation. In a business reorganisation case, however, the court may, at the request of the debtor, decide to allow negotiations for a public composition with creditors (*offentligt ackord*). The creditor may need to submit his or her claims within the framework of the composition negotiations (please see below). Only those creditors whose claims arose before the application for business reorganisation was submitted participate in the composition negotiations. Nevertheless, not all creditors participate in these negotiations: for example, a creditor whose claim can be satisfied by set-off or who has a preferred claim does not participate. The business reorganisation officer draws up an inventory of the estate's assets and liabilities. If a person has a claim that has not been listed in the estate inventory or come to light in the meantime, and wishes to participate in the composition negotiations, they should submit the claim in writing to the business reorganisation officer no later than one week prior to the creditors' meeting.

Claims based on agreements entered into by the debtor with the consent of the business reorganisation officer during the business reorganisation enjoy a general preference.

#### **DEBT RESTRUCTURING**

A debt restructuring essentially covers all money claims against the debtor that arose before the date on which the initiating decision was announced. Creditors should therefore submit any claims that arose before the initiating decision and which are covered by the debt restructuring, because otherwise there is a risk that the debtor will be released from his or her liability to pay the debts in question (please see under 'What are the conditions for, and the effects of closure of insolvency proceedings?').

A debt restructuring does not, however, cover the following:

1. a claim for family maintenance, provided that the Social Insurance Agency (*Försäkringskassan*) or a foreign public body has not taken over the right of the eligible party to receive maintenance;
2. a claim in respect of which the creditor has a right of pledge or other right of preference pursuant to Section 6 or 7 of the Preference Act (*förmånsrättslagen (1970:979)*), or a right of retention, in so far as the security is sufficient to allow the claim to be satisfied;
3. a claim in respect of which the creditor obtained a right of preference pursuant to Section 8 of the Preference Act before the initiating decision was announced in respect of property on which the claim was to be enforced;
4. a claim which has not fallen due for payment and which is conditional upon the creditor providing consideration; or
5. a claim that is disputed.

If a claim is conditional, is not of a defined amount, or has not fallen due for payment, it may be decided that it falls outside the debt restructuring. If it can be accepted that a claim is groundless, it must be decided that it will not be covered by the debt restructuring.

Claims that arose following the initiating decision are not covered by the debt restructuring.

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

A business debt restructuring essentially covers all money claims against the debtor that arose before the date on which the initiating decision was announced. Creditors should therefore report any claims that arose before the initiating decision and which are covered by the business debt restructuring, because otherwise there is a risk that the debtor will be released from his or her liability to pay the debts in question (please see 'What are the conditions for, and the effects of closure of insolvency proceedings?').

*A business debt restructuring does not, however, cover the following:*

1. a claim for family maintenance, provided that the Social Insurance Agency or a foreign public body has not taken over the right of the eligible party to receive maintenance;
2. a claim in respect of which the creditor has a right of preference pursuant to Section 5 of the Preference Act (1970:979), in so far as the security is sufficient to allow the claim to be satisfied;
3. a claim in respect of which the creditor has a right of pledge or other right of preference pursuant to Section 6 or 7 of the Preference Act, or a right of retention, in so far as the security is sufficient to allow the claim to be satisfied;
4. a claim in respect of which the creditor obtained a right of preference pursuant to Section 8 of the Preference Act before the initiating decision was announced in respect of property on which the claim was to be enforced;
5. a claim which has not fallen due for payment and which is conditional upon the creditor providing consideration; or
6. a claim that is disputed.

*If a claim is conditional, is not of a defined amount, or has not fallen due for payment, it may be decided that the claim falls outside the business debt restructuring. If it can be accepted that a claim is groundless, it must be decided that it will not be covered by the business debt restructuring.*

*Claims that arose following the initiating decision are not covered by the business debt restructuring.*

## **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 the event of bankruptcy without proof of debts, the administrator must on his or her own initiative ensure that any preferred claim 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 timelimit 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 that debts are to be proved, it will set a period of between four and ten weeks time for the submission of proof. The decision to call for proof of debts is published. The creditors must submit 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 debts have been proved, and a creditor wishes to submit a claim or exercise a right of pledge after the timelimit for the submission of proof, they may submit proof *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 may subsequently receive payment in respect of his or her claim only if fresh resources become available (*ex post* distribution, *efterutdelning*).

### **BUSINESS REORGANISATION**

As has been mentioned above, there is no general obligation for creditors to submit claims in the event of business reorganisation, but the creditor may need to submit his or her claims as part of any composition negotiations that take place. The business reorganisation officer must produce a business reorganisation plan. The plan usually shows how the financial situation of the debtor company can be resolved and how its operating results are to be improved. The content of the plan may, however, be adapted to the circumstances in individual cases.

In certain circumstances, there may be a public composition with creditors in the context of a business reorganisation. A request for composition negotiations is submitted by the debtor.

A request for composition negotiations must contain a composition proposal stating how much the debtor is offering by way of payment and when the payment is to be made, and whether any security has been lodged in respect of the composition and, if so, what it comprises. An inventory list of the estate's assets and liabilities must be attached.

If the request for composition negotiations is considered admissible, the court must give its decision to allow composition negotiations immediately. At the same time, the court must set a date for a meeting with creditors, to take place in court, issue a summons to that meeting, and publish the decision.

The debtor, the business reorganisation officer and the creditors have the opportunity to object to a claim that is to be covered by the composition. There are special rules governing the opportunity to participate in the composition negotiations on the basis of a claim not included in the estate inventory.

Only creditors whose claims arose before the application for business reorganisation was submitted may participate in the composition negotiations.

Creditors whose claim may be satisfied by set-off or whose claim enjoys preference do not participate in the negotiations. Creditors who in the event of bankruptcy would have been entitled to payment only after other creditors do not participate either, unless the other creditors participating in the negotiations permit this.

At the request of any creditor the debtor must swear to the estate inventory at the creditors' meeting.

The creditors vote on the proposed composition at the creditors' meeting. A composition proposal that satisfies at least 50 % of the sum of claims is regarded as having been approved by the creditors if three fifths of those voting are in favour and their claims amount to three fifths of the total sum of claims carrying voting rights. If the percentage is lower, the composition proposal is approved if three quarters of those voting are in favour and their claims amount to three quarters of the total sum of claims carrying voting rights.

### **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 bankruptcy estate's assets are insufficient to pay the bankruptcy costs and the debts of the state itself, the bankruptcy must be written off (please see above regarding bankruptcy costs and debts of the estate). If the bankruptcy is written off (*avskrivnas*), 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. In principle, this distribution must be 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**

There is no distribution in the event of business reorganisation, unless there is a public composition with creditors.

A public composition may provide that claims are to be reduced and paid out in a specific way. The composition must give all creditors equal rights, and at least 25 % of the sum of the claims, unless a lower percentage is approved by all known creditors who would be covered by the composition, or if there are particular grounds for accepting a lower percentage. The prescribed minimum distribution must be paid out within one year following the approval of the composition, unless all known creditors accept a longer payment period. A composition may also provide that the debtor is only given respite in payments or other special remission.

#### **DEBT RESTRUCTURING**

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**

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 to pay his or her debts, or has reached another agreement with the creditors (a voluntary agreement, *frivillig uppgörelse*), the district court must decide to discontinue the bankruptcy. In cases of bankruptcy with proof of debts, a bankruptcy may also be concluded by a decision approving a composition (*ackord i konkurs*). In other cases, the bankruptcy is concluded by writeoff (*avskrivning*, if the assets are insufficient to pay for the bankruptcy costs and claims on the estate itself) or by 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 cannot assert any outstanding claims against a legal person following bankruptcy.

#### **BUSINESS REORGANISATION**

If a public composition is concluded, it is binding upon all creditors, both known and unknown, who were entitled to participate in the composition negotiations. A creditor who in the event of bankruptcy would have been entitled to payment after the other creditors loses his or her entitlement to payment from the debtor, unless all creditors who were entitled to participate in the composition negotiations are satisfied in full by the composition. A creditor with a preference in respect of certain property is bound by the composition in respect of amounts that cannot be taken out of that property.

#### **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. The 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.

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 debt restructuring decision may be cancelled or, in the cases referred to in points 6 and 7, amended, if:

1. the debtor has been dishonest to the creditor;
2. the debtor has deliberately obstructed the bankruptcy procedure or an enforcement measure;
3. the debtor has secretly favoured a certain creditor in order to influence the decision relating to the debt restructuring;
4. the debtor has deliberately submitted incorrect information in his or her debt restructuring application or at another point in the processing of the case, to the detriment of the creditor;
5. the debtor has submitted incorrect information resulting in a decision by a public authority in relation to tax or duties covered by the debt restructuring, or has not submitted information despite having been required to do so and this has resulted in the taking of an erroneous decision or no decision at all;
6. the debtor does not comply with the payment plan and the deviation therefrom is substantial; or
7. the debtor's financial circumstances have improved considerably following the debt restructuring decision, and this is due to circumstances that could not have been foreseen when the decision was taken.

In the cases referred to in point 7, the application must be submitted within five years of the date of the initiating decision or, if a payment plan is to expire later, by no later than the plan's expiry date. 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. The 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 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 business debt restructuring must set out a payment plan. The payment plan runs for three years. It starts to run on the date of the decision approving the restructuring.

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 debt restructuring decision may be cancelled or, in the cases referred to in points 6 and 7, amended, if

1. the debtor has been dishonest to the creditor;
2. the debtor has deliberately obstructed the bankruptcy procedure or an enforcement measure;
3. the debtor has secretly favoured a certain creditor in order to influence the decision relating to the debt restructuring;
4. the debtor has deliberately submitted incorrect information in his or her debt restructuring application or at another point in the processing of the case, to the detriment of the creditor;
5. the debtor has submitted incorrect information resulting in a decision by a public authority in relation to tax or duties covered by the business debt restructuring, or has not submitted information despite having been required to do so and this has resulted in the taking of an erroneous decision or no decision at all;
6. the debtor does not comply with the payment plan and the deviation therefrom is substantial; or
7. the debtor's financial circumstances have improved considerably following the debt restructuring decision.

In the cases referred to in point 7, the application must be submitted within three years of the date of the initiating decision or, if a payment plan is to expire later, by no later than the plan's expiry date. 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 is mentioned above, bankruptcy does not release a natural person from liability to pay his or her debts, while legal persons are dissolved following bankruptcy.

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

##### **BUSINESS REORGANISATION**

For the effect of a public composition with creditors please see above. If a public composition has not been concluded and the debtor has not reached a voluntary agreement or other arrangement with the creditors, the claims remain outstanding following the end of the business reorganisation.

##### **DEBT RESTRUCTURING**

In certain circumstances, a creditor may have a debt restructuring reassessed after the debtor has completed the payment plan. Please see under 'What are the conditions for, and the effects of closure of insolvency proceedings?'

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

In certain circumstances, a creditor may have a business debt restructuring re-assessed once the debtor has completed the payment plan. Please see under '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 remuneration of the administrator and other similar debts (the bankruptcy costs), and other debts incurred by the bankruptcy estate itself, must come out of the bankruptcy estate before anything is distributed to the creditors. The bankruptcy costs in turn take precedence over the other claims on the estate itself. If they cannot be paid out of the estate, the bankruptcy costs are generally paid for by the State.

##### **BUSINESS REORGANISATION**

The business reorganisation officer (and the supervisor if any) is entitled to compensation for his or her work and for the expenditure required for the task. Their remuneration may not be higher than that which can be considered reasonable compensation for the task. At the request of the business reorganisation officer or of the debtor, the court will assess the business reorganisation officer's entitlement to compensation. A creditor whose claim is covered by a composition may also request such an assessment until the composition is implemented. The court costs and compensation for the business reorganisation officer and supervisor must be paid by the debtor.

##### **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 reference date for calculating the periods laid down in the recovery rules is usually the day before the day of the bankruptcy application.

An act can be reversed (*går åter*) if it improperly favoured a certain creditor over others, or if the creditors have been deprived of the debtor's property, or if the debtor's debts have increased, and if the debtor was insolvent or became insolvent as a result of the proceeding alone or as a result of the proceeding in combination with other factors, and 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 in the ordinary courts.

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

#### *BUSINESS REORGANISATION*

Once a decision on business reorganisation is announced, the provisions of the Bankruptcy Act concerning recovery in the context of bankruptcy will apply if a public composition has been concluded with creditors (please see the section on bankruptcy).

In the event recovery of a right of preference or a payment obtained by means of attachment is sought, the court may decide not to continue with the enforcement proceedings until further notice.

An action for recovery will be brought by the business reorganisation officer or by a creditor whose claim would have been covered by a public composition. The action must be brought before the creditors' meeting takes place, and no final decision can be taken on it until the question of public composition has been decided. A creditor who wishes to bring an action must notify the business reorganisation officer. If this has not been done, the creditor's case will not be heard.

In the event that a business reorganisation process ends without a public composition having been concluded, and the debtor is not placed in bankruptcy after an application is made within three weeks of the date on which the business reorganisation procedure ended, the application for recovery that has been brought must be dismissed.

Once the plaintiff's costs have been reimbursed, the proceeds of recovery accrue to the creditors covered by the public composition. A defendant who as a result of the plaintiff's action may have a claim against the debtor can participate in the composition negotiations 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.

At the request of a creditor covered by a public composition or of the debtor, the court hearing recovery proceedings may order that assets due to the creditor under the preceding sentence be placed in special administration (*särskild förvaltning*). Any property placed in such special administration may be attached only if the composition has lapsed.

#### *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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