Global Restructuring and Insolvency Guide - Sweden

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*This content was last reviewed around October 2021.*

**Remark:** Sweden is a member of the European Union. Please refer to the section "European Union" under Quick Links below to learn more about the implications with respect to the European rules that apply in the field of restructuring and insolvency. The European Restructuring Directive has not yet been implemented in Sweden. The government appointed a commission concerning the European Restructuring Directive, which presented its proposal to the government in a report on 3 March 2021, published in a series known as the Swedish Government Official Reports (SOU 2021:12). The report was referred for consideration on 12 March 2021, asking for consultation comments by 4 June 2021, at the latest. The government has not yet submitted any proposal for new legislation for the Riksdag (i.e., the parliament, which is the highest decision-making assembly in Sweden). The proposed new legislation in the report is proposed to enter into force on 1 July 2022, but nothing has yet been decided.

# Initial Considerations

## Can you take security over all types of assets, including accounts receivable?

**Bankruptcy process**

In principle, security can be taken over all types of assets. Security over immovable real estate and over ships and aircraft is created by way of a mortgage. This security is perfected by the possession of a mortgage deed and registration in public registers. Security can also be created over practically all moveable assets, either in the form of a pledge over specific property or a floating charge over the assets in a business (a floating charge will not include cash and shares).

**Company reorganization process**

In principle, security can be taken over all types of assets. Security over immovable real estate and over ships and aircraft is created by way of a mortgage. This security is perfected by the possession of a mortgage deed and registration in public registers. Security can also be created over practically all moveable assets, either in the form of a pledge over specific property or a floating charge over the assets in a business (a floating charge will not include cash and shares).

## What is the nature of the insolvency process?

**Bankruptcy process**

Court process leading to: (1) the distribution of the debtor's assets, ending in the dissolution of the company; (2) if there is a surplus of assets after the bankruptcy, the liquidation of the company

The bankruptcy can be ended through distribution, an agreement between the debtor and the creditors according to which they reach a settlement or the writing-off of the bankruptcy.

**Company reorganization process**

Court proceedings where the assigned restructurer is to examine if it is possible during a period of three months and up to a maximum of one year to absolve the debts within the company. This includes abatement of debts/creditors. At the end of the restructuring process, the debtor is either viable to continue its business operations or needs to commence bankruptcy proceedings instead.

## What is the solvency requirement for a company to file a case in this jurisdiction?

**Bankruptcy process**

The debtor must be proven to be insolvent. A debtor is considered to be insolvent if it cannot pay its debts when due and this incapacity is not merely temporary.

**Company reorganization process**

Two conditions must be fulfilled to obtain an order for a company reorganization. First, the debtor must be deemed to be unable to pay its debts as they become due, or such inability will likely exist within a short time. In other words, there must be a lack of liquidity or risk of future lack of liquidity. Second, there must be reasonable cause to assume that the purpose of a company reorganization can be achieved. In this regard, the court does not carry out any detailed assessment, rather, the aim is to prevent abuse where the conditions for a successful company reorganization do not exist. The assessment is thus of a more general and formal nature.

## Is there a requirement to demonstrate COMI ("centre of main interests") for a company to file a case in this country?

**Bankruptcy process**

Yes.

**Company reorganization process**

Yes.

## Is restructuring of both secured and unsecured claims possible?

**Bankruptcy process**

Yes.

**Company reorganization process**

Yes.

## Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?

**Bankruptcy process**

Yes. Creditors have either priority claims or nonpriority claims. Generally, a specific right of priority has precedence over a general right of priority and all priority claims have priority over nonpriority claims, i.e., nonpriority claims will not be paid at all until the priority claims have been settled.

**Company reorganization process**

Not generally. However, if the reorganization process transcends into bankruptcy proceedings, the claims during the restructuring might be relevant in the bankruptcy proceedings.

## Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?

**Bankruptcy process**

No.

**Company reorganization process**

No.

## Is there an ability to bind minority dissenting creditors (i.e., cramdown)?

**Bankruptcy process**

N/A

**Company reorganization process**

N/A

# Commencing the Process

## Who can commence?

**Bankruptcy process**

Bankruptcy proceedings may be initiated on the debtor's own application or on the application of a creditor.

**Company reorganization process**

Reorganization proceedings may be initiated on the debtor's own application or on the application of a creditor.

## Is shareholder's consent required to commence proceeding?

**Bankruptcy process**

No.

**Company reorganization process**

No.

## Is there an ability to consolidate group estates?

**Bankruptcy process**

No. However, the same administrator will often be appointed for all group entities involved for the purpose of coordination and efficiency.

**Company reorganization process**

No. However, the same administrator will often be appointed for all group entities involved for the purpose of coordination and efficiency.

## Is there any court involvement?

**Bankruptcy process**

Proceedings are supervised by the court, which will include, among other things: determining the petition; determining insolvency; appointing an administrator and summoning debtor, administrator, supervisory authority (the Enforcement Authority, Kronofogdemyndigheten) and creditor that presented the bankruptcy petition to the meeting for the administration of oaths.

**Company reorganization process**

Proceedings are supervised by the court, which will include, among other things: determining the petition; determining the ability for the debtor to pay its debts; appointing an administrator; and setting a time for a creditor's meeting.

## Who manages the debtor?

**Bankruptcy process**

The assets of the bankruptcy estate are taken into the possession of an administrator on behalf of the creditors, which will assume full and sole control over the business.

**Company reorganization process**

The debtor keeps its right to dispose of its assets during the company reorganization. The debtor has to observe the administrator's instructions regarding the operations of the business and provide the administrator with information regarding its financial position.

## What is level of disclosure of process to voting creditors?

**Bankruptcy process**

N/A

**Company reorganization process**

N/A

## What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?

**Bankruptcy process**

In principle, bankruptcy proceedings may be commenced by or against any natural person or legal entity. However, bankruptcy proceedings cannot be commenced against (1) the Swedish State or (2) municipalities.

**Company reorganization process**

The Swedish Reorganization Act (SFS 1996:764) (Lag om företagsrekonstruktion) is not applied to: (1) bank shares companies; (2) savings banks; (3) member banks; (4) credit market companies; (5) insurance companies; (6) securities companies; (7) clearing organizations; and (8) securities centers.

The provisions do not apply to such debtors whose activities the municipality, county council, municipal council, assembly or church community have a controlling influence.

The provisions of this law concerning debtors will apply to a financial institution or holding company that is included in a resolution in accordance with the Swedish Resolution Act (SFS 2015:1016) (Lag om resolution).

## How long does it generally take for a creditor to commence the procedure?

**Bankruptcy process**

A creditor can apply for the bankruptcy procedure. If a creditor makes the petition, the creditor should then provide information in the petition about its claim and the circumstances upon which it bases the claim. The creditor should also enclose the original or copies of those documents to which it wishes to refer.

The court will make an evaluation of the debtor's financial position in order to decide if the debtor is insolvent.

In the event that a debtor's bankruptcy petition is lodged, the court will immediately determine the petition. However, under some circumstances, the bankruptcy application of the debtor is determined at a hearing, e.g., if there are special reasons not to accept the information regarding the insolvency of the debtor.

If the debtor disputes a creditor's bankruptcy petition, the court lists a hearing for determination of the petition to be held within two weeks of the petition being submitted to the court. If the debtor consents to the bankruptcy petition of a creditor prior to the hearing, the court will immediately consider the petition.

When a decision on bankruptcy is made, the district court will decide on the date for a meeting at which the debtor confirms the estate inventory under oath ("meeting for the administration of oaths"). This meeting will be held, at the earliest, within one month of the bankruptcy decision and, at the latest, two months after the decision.

The court will also appoint an administrator, a specialist lawyer and summon the debtor, administrator, supervisory authority and creditor that presented the bankruptcy petition to the meeting for the administration of oaths. Furthermore, a public notice of the bankruptcy decision — through which other creditors are summoned to the meeting for the administration of oaths — is published immediately.

**Company reorganization process**

The general rule is that an application filed by the debtor will be tried immediately. An application filed by a creditor will be tried within two weeks and no later than after six weeks from the date when the application was made. When an application filed by a creditor is tried, special procedures involving meeting sessions with both creditor and debtor are applied.

# Effect of Process

## Does debtor remain in possession with continuation of incumbent management control?

**Bankruptcy process**

No. An administrator runs bankruptcy proceedings. The assets of the bankruptcy estate are taken into the possession of the administrator on behalf of the creditors, which will assume full and sole control over the business.

**Company reorganization process**

During the company reorganization, the debtor keeps its right to dispose of its assets. Nevertheless, the debtor has to observe the administrator's instructions regarding the operations of the business and provide the administrator with information regarding its financial position. If the debtor does not observe the administrator's instructions, the administrator, or a creditor, may apply to the court that the company's reorganization procedure shall be discontinued.

The debtor may not, without the administrator's consent, (i) pay any debts that occurred after the District Court's decision to approve the company reorganization, (ii) enter into new obligations, or (iii) assign, pledge or grant any other right of significant importance to the debtor's business. However, it should be noted that the lack of the administrator's approval for such actions does not affect the legal validity of the actions and they are hence binding between the parties and, if applicable, against third parties.

## What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?

**Bankruptcy process**

There is no specific stay regime in bankruptcy proceedings, but if there are special reasons for it, then the commencement of the bankruptcy proceedings may be suspended for up to four weeks (longer if necessary). Moreover, once bankruptcy proceedings are opened, no creditors may enforce their claims against the debtor. The only exception to this would be a creditor with security in the form of a pledge over specific property, which may be enforced even during bankruptcy proceedings as long as realization is coordinated with and accounted for by the bankruptcy receiver.

**Company reorganization process**

With the decision to initiate a corporate reorganization procedure, the debtor with payment difficulties gets a stay to take action to improve the performance of the business and initiate negotiations with the creditors for an agreement. Without reasonable room, a reorganization of the business would not be possible. During the reorganization, the debtor is protected against specific actions of the creditors. This is motivated by common creditor interest and an individual creditor should not be able to jeopardize the possibilities for a successful reorganization. The main rule during the procedure is that debts arising before the start of the reorganization are not paid.

According to the Swedish Enforcement Code (1981:774) (Utsökningsbalk) execution measures must not be performed and an application for the debtor company to be placed in bankruptcy must not be approved but must be rescinded at the debtor's request in order to give the reorganization a chance. The debtor company's contractual counterparties may not, after a decision on the company's reorganization, cancel agreements on the grounds of occurrence or fearful delay, even though the cancellation grounds have arisen before the decision. However, the prohibition on the cancellation of the agreement exists only if the debtor, with the consent of the reformer, requests that it be completed and provides security for the debtor's performance or fulfills the same.

## Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?

**Bankruptcy process**

The administrator can choose to take up new debt, which will have a specific priority. This is primarily relevant in situations where the administrator has chosen to continue the business operations of the bankrupt debtor.

**Company reorganization process**

During a company reorganization, the company can take up new debt if approved by the administrator.

## Can procedure be used to implement a debt-to-equity swap?

**Bankruptcy process**

No.

**Company reorganization process**

No.

## Are third party releases available?

**Bankruptcy process**

Yes.

**Company reorganization process**

Yes.

## Are the proceedings recognised abroad?

**Bankruptcy process**

Yes. Within the EU, according to Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (Insolvency Regulation). Swedish law recognizes insolvency procedures initiated in other jurisdictions based on, and in accordance with, the Insolvency Regulation and the Nordic Bankruptcy Convention.

**Company reorganization process**

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## Has the UNCITRAL Model Law been adopted?

**Bankruptcy process**

No.

**Company reorganization process**

No.

## Can a debtor continue to carry on business during insolvency proceedings?

**Bankruptcy process**

No. The debtor is not permitted to enter into obligations or control property belonging to the bankruptcy estate. However, if it is beneficial for the bankrupt estate to continue the business, the administrator can continue the business for a limited period.

**Company reorganization process**

During a company reorganization, the debtor will carry on its business as usual but under the supervision of the administrator, as appointed by the court.

# Other Factors

## Are there any wrongful or insolvent trading restrictions and what is the directors' liability?

**Bankruptcy process**

Yes.

The Swedish Companies Act (2005:551) (Aktiebolagslagen) provides that the directors of a Swedish limited liability company must take certain actions if the directors have reason to believe that the equity of the company is less than half of the registered share capital. These measures include, among other things, promptly preparing a balance sheet for liquidation purposes (kontrollbalansräkning) and presenting it at a shareholders' meeting. If the shareholders decide to continue the business, they have eight months to restore the capital of the company. If the equity is not restored within eight months, the directors must file for mandatory liquidation. If the directors fail to take these measures, they can become liable for any debts and obligations of the company that arises during the period that they do not comply with the relevant rules.

Furthermore, the directors may become subject to criminal liability under the Swedish Penal Code (1962:700) (Brottsbalken). This is if they continue trading and spend considerable resources without obtaining corresponding benefits to the company, when the company is insolvent or when there is a danger of immediate insolvency.

Finally, directors may be held liable for any taxes and fees that are not duly paid by the company. In many cases, the potential personal liability for tax obligations is what causes the directors to submit a bankruptcy application in respect of an insolvent company.

**Company reorganization process**

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## What is the order of priority of claims?

**Bankruptcy process**

The general order of priority of claims is as follows:

Specific priority claims (e.g., possessory liens, mortgages in real property, etc.)

General priority claims (e.g., credits bankruptcy costs, employees' wages, etc.)

Unprioritized claims

**Company reorganization process**

N/A

## Do pension liabilities have any priority over other unsecured claims?

**Bankruptcy process**

Yes, for pension liabilities that accrue to the employee or their survivor for a maximum of six months before the bankruptcy application and the following six months.

**Company reorganization process**

N/A

## Is it possible to challenge prior transactions?

**Bankruptcy process**

Yes. It is possible to challenge prior transactions through recovery.

Recovery means that property or payment, which the debtor has distributed or made to someone else, is restored or repaid to the bankruptcy estate. Such recovery may, under the Bankruptcy Act, take place in certain cases. For instance, a gift is annulled if it has been completed up to six months before the day upon which the petition to declare the debtor bankrupt was filed with the district court ("the day of grace"), and payment of wages, fees or pension, made up to six months before the day of grace and that obviously exceeded what could be regarded as reasonable having regard to the work performed, the profitability of the operation and circumstances in general, is to be annulled. The same goes for payment of a debt to specific creditors to the detriment of other creditors or the sale or distribution of any asset below market price.

As a rule, any legal action by the bankrupt company six months prior to the bankruptcy decision to the detriment of the creditors as a wholeis recoverable to the estate. If the beneficiary is related to the bankrupt entity or person, this period can, as a rule, be as long as five years prior to the bankruptcy.

**Company reorganization process**

Yes. It is possible to challenge prior transactions through recovery if public composition takes place.

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