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Sweden: Rescue procedures in insolvency

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Sweden

Phase:

Management

Type:

Rescue procedures in insolvency

Last modified: 10 December, 2021

Native name:

Konkurslag (1987:672); Lag (1996:764) om företagsrekonstruktion

English name:

Bankruptcy act (1987:672); Company reorganisation act (1996:764)

Article

Chapter 2, paragraph 10 in the Bankruptcy act; All chapters in the Company reorganisation act

Description

The Bankruptcy act (1987:672) defines insolvency as a situation where the debtor is not able to duly pay his or her debts, and this inability is not of a temporary nature. Both natural and legal persons who are insolvent can be declared bankrupt. Both natural and legal persons are also able to enter into voluntary arrangements with creditors with the intention of reducing their debts and in this way avoiding bankruptcy.

In addition to bankruptcy, legal persons can apply for reorganisation, which is regulated in the Company reorganisation act (1996:764), while natural persons can only apply for debt restructuring. Reorganisation (*rekonstruktion*) is an option for companies which are under a severe financial strain, but for which continuing operations is still considered a feasible option. Either the debtor, that is the company, or a creditor can apply for reorganisation proceedings. An administrator is appointed by the court to review the company's situation, to determine whether continuing operations is a viable option, and to determine whether an agreement could be reached between the debtor and the creditors.

The administrator supervises the company during the reorganisation period and must give the debtor permission for certain activities, such as payment of debts or transfer of any substantial assets. The debtor retains the rights of disposition of his/her assets under the reorganisation procedure. However, the disposition of assets cannot be used to pay debts, to make new commitments or to transfer ownership of assets of substantial importance without the administrator's consent. No distribution to creditors may take place while the procedure is ongoing. The goal of the reorganisation proceedings is to come to an agreement with the creditors on how much of the outstanding debts it would be feasible for the debtor to pay while avoiding bankruptcy. An agreement can be reached both through voluntary and compulsory means. If a voluntary settlement (*ackord*) is not achieved, the court can enforce a public settlement.

Public settlement is a legally regulated procedure which can be initiated by the debtor submitting a settlement proposal to the court. The creditors subsequently vote on the proposal. A proposal which awards the creditors 50% or more of their claim is accepted, if 60% of the creditors vote in favour of it. A proposal which awards the creditors less than 50% of their original claim is accepted, if 75% of the creditors vote in favour of it. If the proposal is accepted, it is binding for all creditors.

Reorganisation proceedings take place over a three-month period, after which the proceedings can be extended for another three months at a time. However, reorganisation proceedings are limited to a maximum period of one year. As long as proceedings are ongoing, the debtor cannot be declared bankrupt. However, if there is a reason to believe that the creditors' rights are being threatened to a substantial degree, this may warrant declaring the debtor bankrupt in the midst of reorganisation proceedings.

Workers employed by an employer undergoing business restructuring are sometimes eligible for [wage guarantee](#). The maximum amount per employee for 2021 amounts to around €18,600 (SEK 190,400). The administrator determines if the company is able to pay wages. If it is, employees are not entitled to wage guarantee.

Comments

The Swedish Agency for Growth Policy Analysis publishes monthly statistics on the number of bankruptcies in Sweden. In June 2021, insolvency proceedings were initiated for 706 companies in Sweden (increased by 11% from June 2020). The number of employees in the companies affected amounted to 819 in June 2021 (decreased by 62% from June 2020) (Tillväxtanalys, 2021).

During 2020, 310 Swedish companies with around 9,200 employees were granted reorganisation (increased by 50% from the previous year) (Ekonomifakta, 2021). Between 2011 and 2015, 1,045 companies applied for reorganisation proceedings, of which 48% were successful, meaning that the company was not declared bankrupt and was instead reorganised (Creditsafe, 2019). Due to the EU Directive on restructuring and insolvency, an inquiry was commissioned in order to analyse how Swedish law on company reorganisation relates to the

provisions in the Directive and to propose the amendments that are necessary or otherwise appropriate so as to implement the Directive in Swedish law. The proposal includes substantial changes to the regulations that govern how company restructuring is carried out. The principal new feature is that not only the financial settlement but also necessary measures to address a company's financial problems can be confirmed in a restructuring plan, whereby they become binding. A series of additional changes are also proposed concerning, for example, who is to have access to the procedure, what rules are to apply to debtor contracts during the procedure, and what requirements are to be placed on administrators. The proposed changes are deemed so extensive that the inquiry thinks the current company restructuring act should be repealed and replaced by a new act. The proposal has been sent out for consultation. If it is adapted into a legal proposal that passes through the Parliament, the new law would enter into force on 22 July 2022.

Cost covered by

Not applicable

Involved actors other than national government

Other








Involvement others

Court, creditors, court-appointed administrator

Thresholds

No, applicable in all circumstances

Sources

-  [Insolvency/bankruptcy - Sweden](#)
-  [Konkurslag \(1987:672\)](#)
-  [Lag \(1996:764\) om företagsrekonstruktion](#)
-  [Ackord \(composition\)](#)
-  [The Swedish Agency for Growth Policy Analysis \(Tillväxtverket\)](#)
-  [Ekonomifakta - Företagsrekonstruktion](#)
-  [SOU 2021:12. Andra chans för krisande företag – En ny lag om företagsrekonstruktion. Betänkande av Rekonstruktionsutredningen.](#)

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