A&O SHEARMAN

Restructuring across borders
Sweden

CORPORATE RESTRUCTURING AND INSOLVENCY PROCEDURES | MAY 2025

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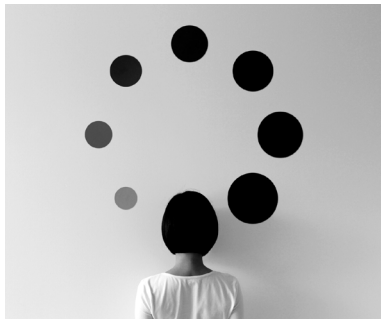


Introduction

In Sweden there are two formal types of insolvency proceedings available for companies in financial distressed.

The legal consequence of a bankruptcy is that the debtor is wound-up through a bankruptcy proceeding (insolvent liquidation), where all of the assets of the debtor are liquidated, and the proceeds are distributed to the creditors in the order of the relevant priority of the respective claim under the Priority Act (*förmånsrättslagen*).

A company reorganisation aims to give a debtor, who experiences economic difficulties, the possibility to reorganise its business (provided that the underlying business is viable), clean up its balance sheet, through a composition and other available measures, and save the debtor from entering into bankruptcy. The purpose is that the debtor should continue its operations in the same legal entity.

Both proceedings must be initiated in court. The bankruptcy proceeding is led by a court appointed administrator who is in charge of the estate. The formal restructuring is led by the debtor itself but under supervision and counsel of an administrator (an accredited lawyer with knowledge and experience as an official receiver).

The Swedish market has traditionally seen a larger number of bankruptcy proceedings compared with company reorganisation proceedings, and that is still the case although the number of company reorganisations have increased in number.

This may be partially down to the fact that the Company Reorganisation Act recently underwent some major changes which have made the proceeding a lot more flexible.

It should be noted that Sweden does not have any joint and coordinated proceedings for groups, instead each group company must apply on an individual basis. From a practitioner perspective, this is a weakness of the Swedish system as it can create practical issues and the district courts have been known to deny business reorganisation applications for group companies which will be passive during the proceeding but are in need of the stay of all payments and protection against enforcement that reorganisation grants during the reorganisation of other group companies.

When considering what route to take when a company is facing financial distress, the options of solvent liquidation and informal restructuring should also be examined.

Solvent liquidation is a formal proceeding for winding up a company. As it presupposes the company is solvent, it will only be an option for companies in which a shareholder(s) is prepared to insert sufficient funds, or the creditors are willing to write off or write down debts.

An informal restructuring is a voluntary work-out and as such assumes that all or some of the creditors are willing to write down or write off debts.

Bankruptcy (konkurs)

Bankruptcy is a formal proceeding, and an application is filed with the District Court. An application can be made by either the debtor itself or any of its creditors. An application made by the debtor will normally be approved within one or two days time or within hours of application. A creditor application however, demand that the debtor is summoned to a hearing which may take several weeks or months.

The court will appoint a receiver and both debtor and creditors may make suggestions for who should be appointed. Only accredited lawyers who are approved as receivers may be appointed.

The appointed receiver immediately assumes control over all of the debtor's assets, with the main objective (and responsibility) to maximise value and the dividend to the creditors. The receiver may in its discretion decide to continue business operations for some time if this is deemed to be necessary to secure and maximise the value of assets, contracts or the business as such. The standard period is to continue business for a period of one month as the first month is free rent free for lease of property and salary guarantee would take care of the cost for employees during the same period irrespective of the employees performing work for the estate or not. The sale of movable property that does not take place through the continuation of the debtor's business must be made in a way that secure the most favourable alternative for the estate. In most cases, assets or the complete business in its entirety will be sold within the first month after the bankruptcy order.

The cash generated by the liquidation of the assets are distributed amongst creditors by the receiver, after the bankruptcy costs (which are receiver's fees and other costs in the bankruptcy) have been deducted. A proof of claims proceeding will be held by the court to determine who is a creditor, the amount of the debts, as well as the order of priority between debts.

The receiver will also review the debtors accounts and may take claw back action towards related parties or creditors who have received payments which supersede the priority order.

The entire bankruptcy proceeding generally takes more than a year to complete.

Company reorganisation (företagsrekonstruktion)

A company reorganisation process is initiated by an application to the court. The application may be submitted by either the debtor or a creditor. Creditor applications are nearly unheard of. This is because a company reorganisation must be approved by the debtor as the reorganisation requires that the debtor takes an active part.

The court will appoint an administrator who acts as an advisor to the debtor and supervisor of the reorganisation proceeding. The application must include a proposal for a specific administrator, the administrator must meet the requirements set out for official receivers in the Bankruptcy Act and be trusted by the creditors.

As the aim of a company reorganisation is to ensure the debtor can continue their business, the decision to open a proceeding involves a viability test. To pass such test, the application must include specific suggestions and measures to get the economic difficulties of the company in check and that the business is viable coming out of the proceedings.

During a company reorganisation, the board of directors is still in charge of the debtor. An administrator is appointed which will make sure that the business of the debtor is run in accordance with the requirements of the law. In practice, the administrator has great influence over the proceeding and whether the restructuring is successful or not.

The court will approve the opening of a reconstruction process for an initial term of three months, but this period may be extended three months at a time and up to a year in total.

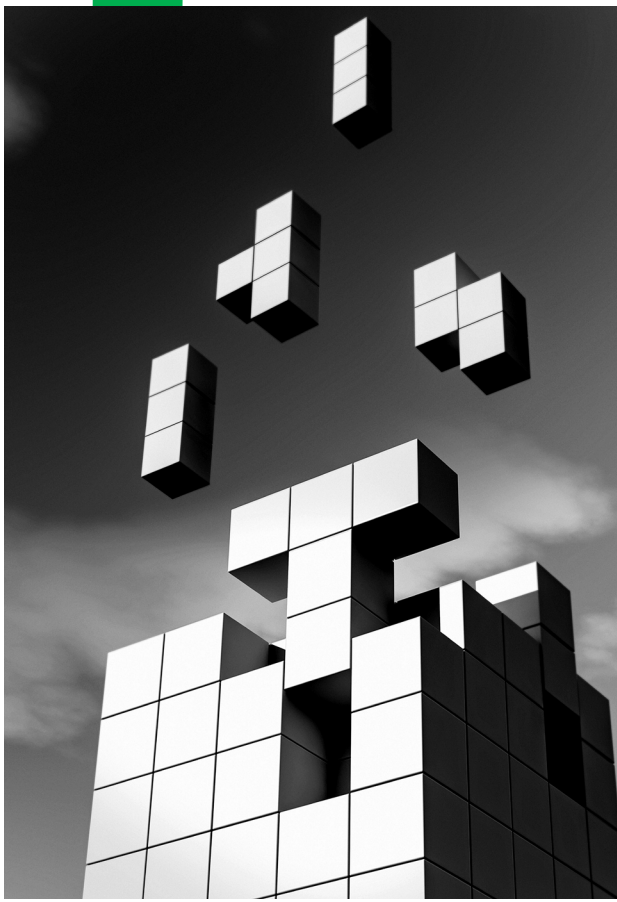
A reorganisation procedure provides the debtor with protection against enforcement actions/bankruptcy (with certain limited exceptions) and protects contracts from termination by counterparties to the debtor.

The debtor has a number of options to reorganise agreements (extraordinary termination, discontinuing of obligations, partial continuation of obligations).

A reorganisation enables debt settlement and restructuring of operations and balance sheet by adopting a restructuring plan that may affect both secured and unsecured creditors as well as contractual counterparties and shareholders. There are no limits to what a plan may contain as long as measures do not conflict mandatory law and can be legally enforceable. Affected parties are divided into voting classes. A plan is adopted with a 2/3 majority vote in each class. Cross-class cram-down is available under certain conditions. Debt-to-equity swaps are possible. The absolute priority rule applies (with some exceptions).

There is a possibility to grant super preferential right for DIP financing during the procedure.

The outcome of the reorganisation must always be expected to be better than the outcome of a bankruptcy in order to be possible.



Out-of-court restructuring

In an informal restructuring, (a structured negotiation with the creditors), there are no formal restrictions or limitations for creditors to initiate enforcement measures. Relevant agreements and mandatory law would set the frame for negotiations. In an informal business restructuring it is therefore key to have control over actions taken by creditors, which normally requires direct contact on an individual basis to build up comfort and legitimacy of the process. Further, an informal business restructuring includes no protection for ongoing agreements and a contractual party may without limitation terminate a contract due to payment defaults. In an informal restructuring a composition is completely agreement-based and cannot be forced upon a creditor, which is the case when a public composition is part of a formal business reorganisation.

As the proceeding is strictly voluntary the debtor will engage their own counsel.

In most cases the debtor and/or creditors will engage lawyers and financial counsel to facilitate the negotiations.

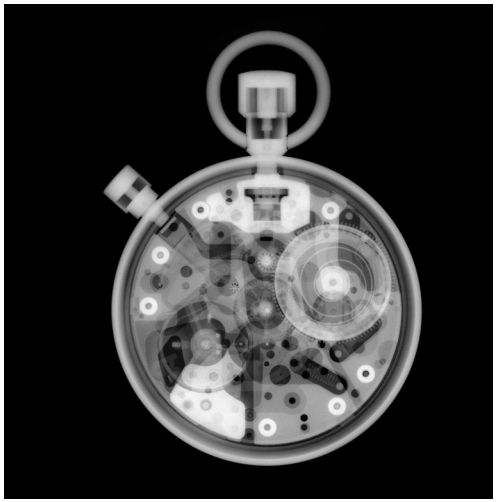
Solvent liquidation (likvidation)

A liquidation is a wind-up of a company, it does presuppose that all debts can be paid in full (unless agreements can be made with individual creditors) but for companies where the majority of debt is intra group debts it a quite common proceeding to wind-down a company even where funds are lacking. In these cases, the shareholder, and possibly other group companies, will normally write-down debts or insert cash by way of a shareholder contribution.

A liquidation is initiated by decision of the company and is registered with the Swedish Companies Registration Offices. When a liquidation is initiated, a liquidator will be appointed, if the company has not named a liquidator the Swedish Companies Registration Offices will make an appointment from a list of accredited lawyers.

The liquidator will replace the board of directors and is the sole person with signatory rights for the company.

The liquidation proceeding will take a minimum of approximately 7 months as it is mandatory to issue a notice for all unknown creditors to make themselves known. From the time such summons is published, creditors have a period of six months to make themselves know. The liquidation can not be finalised until this time period has passed.

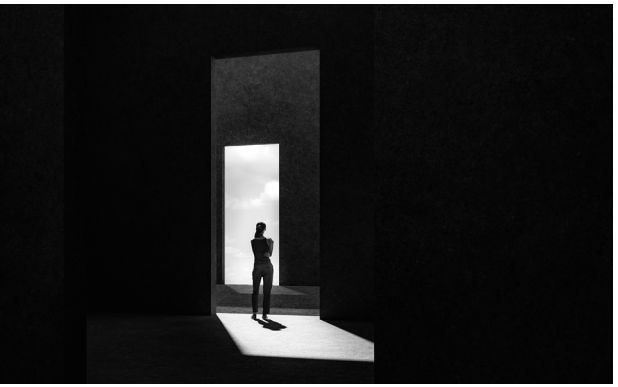


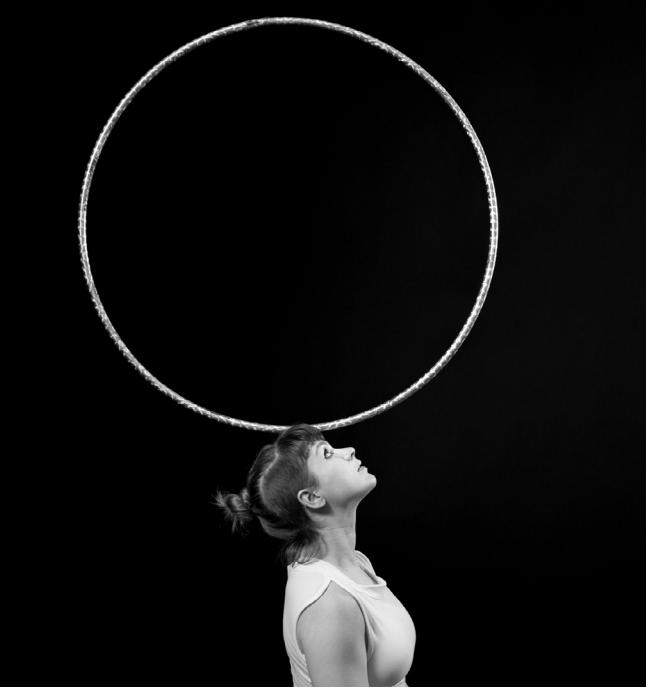
European insolvency regulation

Regulation (EU) 848/2015 of the European Parliament and the Council of 20 May 2015 on insolvency proceedings (the Recast Regulation) as amended by Regulation (EU) 2021/2260 of the European Parliament and of the Council of 15 December 2021) (the Recast Regulation) applies to bankruptcies and formal business reorganisations which are listed as insolvency proceedings in the Annex. Listed proceedings also include debt restructuring (*Skuldsanering*) but this is available only to individuals.

The regulation provides for the coordination of cross-border insolvency proceedings within the European Union and contains provisions regarding the recognition and enforcement of judgments in such proceedings.

Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 has been implemented in Sweden through the Company Restructuring Act (SFS 2022:964) which applies to business reorganisations opened after 1 August 2022.





Other international aspects

Swedish insolvency laws are universal to the extent that a Swedish bankruptcy (under Swedish law) would reach out to all assets of the debtor globally. On the other hand, Swedish courts would not recognise insolvency proceedings opened in other jurisdictions than the Nordics or jurisdictions, being part of the EU Insolvency Regulation.

One effect of this is that competing insolvency proceedings can be opened in Sweden, although an insolvency proceeding has been opened in a jurisdiction outside the European Union if there are legal grounds to open insolvency proceedings in Sweden.

Key contacts

If you require advice on any of the matters raised in this document, please contact any of our partners or your usual contact at A&O Shearman, or email **rab@aoshearman.com**.

This fact sheet has been prepared with the assistance of Cirio Advokatbyrå AB. Any queries under Swedish law may be addressed to the key contacts listed below:

CIRIO ADVOKATBYRÅ AB

Lars-Henrik Andersson
Partner

Tel +46 76 617 08 22
lars-henrik.andersson@cirio.se

Pierre Pettersson
Partner

Tel +46 76 617 08 55
pierre.pettersson@cirio.se

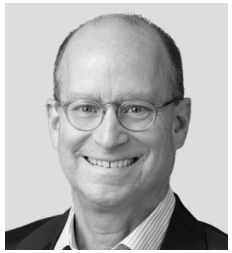
Karl Björlin
Partner

Tel +46 76 617 09 45
karl.bjorlin@cirio.se

A&O SHEARMAN

Katrina Buckley
Global Co-Head of Restructuring

Tel +44 20 3088 2704
katrina.buckley@aoshearman.com



Fredric Sosnick
Global Co-Head of Restructuring

Tel +1 212 848 8571
FSosnick@aoshearman.com

Lucy Aconley
Counsel

Tel +44 20 3088 4442
lucy.aconley@aoshearman.com

Christopher Poel
Senior Knowledge Lawyer

Tel +44 20 3088 1440
christopher.poel@allenovery.com

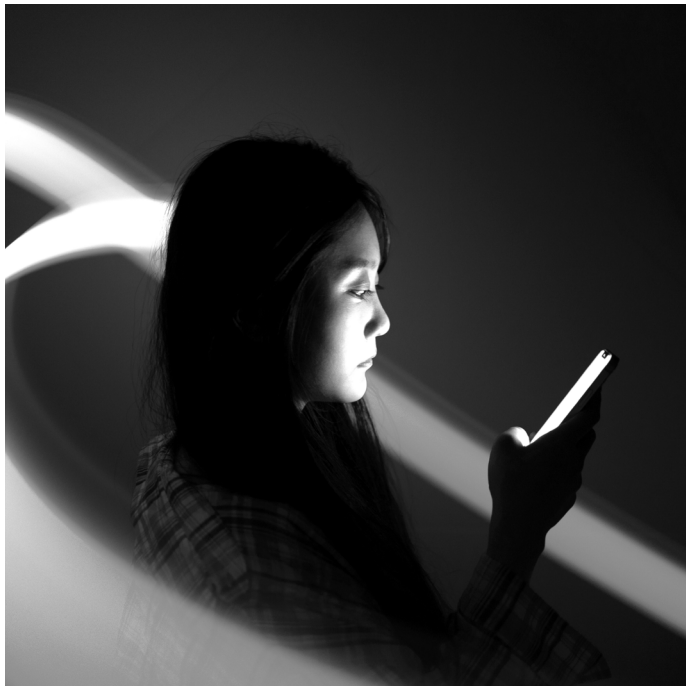
Ellie Aspinall
Associate

Tel +44 20 3088 1124
elena.aspinall@aoshearman.com

Further information

Developed by A&O Shearman's market-leading Restructuring group, "**Restructuring Across Borders**" is an easy-to-use website that provides information and guidance on all key practical aspects of restructuring and insolvency in Europe, Asia, the Middle East and the U.S.

To access this resource, please **click here**.



For more information, please contact:

LONDON

Allen Overy Shearman Sterling LLP
One Bishops Square
London
E1 6AD
United Kingdom

Tel +44 20 3088 0000
Fax +44 20 3088 0088

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