



EURAVOCAT LAW HANDBOOK

DEBT COLLECTION IN SWEDEN

From our member in Stockholm



1. General Information

Type of companies

There are several types of corporate structures under which commercial business may be conducted in Sweden, but the far most common type is the limited company ("Aktiebolag" abbreviated "AB"). Other rather common types are the

partnerships ("Handelsbolag" and "Kommanditbolag" abbreviated "HB" and "KB"). Some small businesses are run by a person in his own name ("Enskild firma").

Aktiebolag - No personal responsibility for the shareholders apart from their share capital. Directors might be held personally liable for the debts of the company in exceptional cases. The minimum share capital is SEK 25,000. For companies who want to be able to offer shares to the public, the minimum share capital is SEK 500,000.

Handelsbolag - No limitation of liability. All the partners are liable for all undertakings and obligations of the partnership. Limited companies may however be partners.

Kommanditbolag - Only one of the partners, "komplementären", is liable for all undertakings and obligations of the partnership. The other partners, "kommanditdelägarna", are only liable up to the invested capital. Limited companies may be partners of both types.

Enskild firma - No limitation of liability.

Terms of payment and interest

Terms of payment in general are not regulated by Swedish law but are decided between the contracting parties. The most common term of payment is 30 days from the date of the invoice. If the matter has not been agreed by the parties in advance, the buyer is obliged to pay on demand.

If no specific interest has been agreed, penalty interest may be charged as from one month after the date of the invoice at a rate

that is the official interest rate of the Bank of Sweden ("referensränta") with an addition of 8%.

Limitation of actions

A claim by a company against a consumer is barred under the statute of limitations after three years. All other claims fall under the statute after ten years. If the debtor is reminded of the debt, acknowledges the claim, makes a part payment or is declared bankrupt, the limitation period is interrupted and a new period, the same length as the first one, starts to run. If a creditor has lost his right to claim payment from the debtor due to limitation of actions, this limitation is also effective in relation to a guarantor or other third party that could have been liable to pay the debt.

Retention of title

According to Swedish law goods delivered to a buyer are normally regarded as the property of the buyer although payment has not yet been made. The seller may, in the purchase agreement, stipulate retention of title to the goods until full payment is made, but such a clause is not valid if the seller has accepted that the goods may be resold, processed, incorporated with other goods or consumed before payment. This means that only suppliers delivering machinery, furniture and other assets aimed to be used by the buyer, but not sold or consumed, may use retention of title as an effective tool.

2. Amicable Collections (UNDISPUTED CLAIMS)

Reminders

At least one reminder needs to be sent before legal action of any kind may be initiated. The reminder shall be in writing and contain a clear description of the claim and the basis for it. The debtor shall be given a reasonable time frame to pay or present any objections against the claim.

If reminders have been sent and the debt is still unpaid and no payment plan has been agreed, the next step should be to analyse whether further action is motivated or not.

Sources of information

Apart from the Swedish Company Register where all companies are registered there are several databases functioning on a fee basis and providing information about companies such as general company information, legal representatives, financial statements, risk evaluation, credit limits etc.

As these tools normally are not allowed to use if the debtor is a person, information may be gathered by contacting the Swedish Tax Authority ("Skatteverket") and the Swedish Enforcement Office ("Kronofogden").

Undisputed claims

If payment is not made within the time frame set out in the reminder and the assessment is that the debtor should be able to pay, the creditor may apply for an Injunction ("Betalningsföreläggande") with the Swedish Enforcement Office. The application must be in writing and the claim, the due date, the interest claim and the claim for compensation of costs must be specified. The application is served to the debtor, who is given the opportunity to object to the claim within two weeks from serving. If the debtor does not answer the Injunction is issued to the debtor to pay immediately to the creditor the claimed amount together with interest and compensation for costs.

If the claim is disputed by the debtor, the creditor must decide whether the matter should be transferred to the Court or if it should be dropped. When the matter is transferred to the Court, the proceedings described below will be applicable.

Costs

The application fee for an Injunction is SEK 300, a cost that the creditor is entitled to compensation for from the debtor. The creditor may also claim compensation for a reminder with SEK 180 or, if the debtor is a company, a delay compensation ("förseningsersättning") with SEK 450 and for his (or his debt collector's) work with the application with SEK 380. Costs exceeding these amounts may not be subject to compensation.

3. Legal Collections (DISPUTED CLAIMS)

Court proceedings

If the creditor knows or finds it likely that the claim will be disputed it is generally a good idea to file a lawsuit to the relevant District Court, which normally is the Court where the debtor has its domicile. If an application for an Injunction is transferred to the Court, the case will be handled in the same way as if the case had started with the Court.

In order to start Court proceedings, the lawyer would need a power of attorney as well as copies of invoices and of all other relevant documents.

The Court proceedings are normally both oral and in writing, but sometimes only in writing. The length of the proceedings varies depending on the complexity of the case and the workload of the Court but is normally at least one year. The judgement from the District Court may be subject to appeal to a Court of Appeal, but to be tried by the Court of Appeal the case needs to be granted a trial permit ("prövningstillstånd"). Such permits are granted in about 40% of all civil cases that are subject to appeal. If the case is tried by a Court of Appeal, the judgement may be subject to appeal to the Supreme Court, but they only grant trial permit if the case has precedential value.

Security measures

If the creditor has evidence that the debtor by alienating himself from important assets or in some other way will try to avoid paying his debt once an enforceable judgement is issued, the creditor may file a request for sequestering the debtor's property ("kvarstad"). Such a request may be presented prior to or in connection with filing a lawsuit and normally requires that the creditor issues a guarantee for the damages that the sequestering might cause the debtor, should the claim ultimately be denied by the Court.

Costs

The application fee for a lawsuit is SEK 2,800. If a case is transferred from the Enforcement Office to the Court an additional fee of SEK 2,500 is charged, giving a total fee of SEK 2,800 also in these cases.

If the disputed amount is less than SEK 25,000 (approximately) there are only limited possibilities to get compensation for lawyer's costs etc. In all other cases, the winning party should get full compensation for all costs in connection with the case but only up to an amount that the Court deems reasonable.

The Court may also rule that each party should bear his own costs.

4 ENFORCEMENT

If the Enforcement Office has issued an Injunction to pay immediately, this is automatically handed over for enforcement unless the creditor has waived this possibility.

When a judgement from the Court is issued, the creditor must send an application for enforcement to the Enforcement Office. They may seize assets, tangible assets as well as real estate, claims or bank accounts, and if the debtor is a person also seize part of his salary.

There are however some limitations as regards personal and intellectual property.

5. INSOLVENCY PROCEEDINGS

Application

A creditor can apply for the bankruptcy of the debtor. The application shall be filed with the District Court with jurisdiction in civil proceedings. A bankruptcy decision is conditional upon the debtor being insolvent. Insolvency arises when a debtor cannot pay its debts when they fall due, provided that the inability to pay is not temporary.

As insolvency can be difficult to prove, the Swedish Bankruptcy Act contains presumption rules. The debtor is considered insolvent, should the conditions of either of these rules be fulfilled. When a creditor applies for bankruptcy after having applied for enforcement without success, the debtor is considered insolvent during a period of six months following a declaration from the Enforcement Office that the debtor lacks assets to cover the full amount of the debt at issue. A debtor which is required to maintain accounts is also considered insolvent if the debtor has been instructed to pay a debt which is clear and overdue and has failed to pay its debt within a week. The creditor can request the debtor to be declared bankrupt within four weeks from the debtor's receipt of the payment request, provided that the debt is still not paid. If no presumption rule can be applied, the creditor must prove that the debtor is insolvent.

The bankruptcy trustee is appointed by the Court, but the applicant may suggest a certain insolvency practitioner as trustee and in general the Court listens to such a suggestion.

General information

A bankruptcy means that all the debtor's attachable assets are seized to satisfy the debtor's debts, to the extent possible, in one single bankruptcy proceeding. One of the most important duties of the bankruptcy trustee is therefore to manage the assets and ascertain that they are sold as swiftly and beneficially as possible

and that any surplus is allocated to the creditors. The disposal of the debtor's assets can be carried out in different ways, for example by maintaining the debtor's business operations during a period, by selling the entire business, or by selling specific assets at auction or by direct agreement. It is important that the bankruptcy trustee, while performing its duties, always safeguards the interests of the creditors above all.

Besides the overall duty to transform the assets into money, a bankruptcy trustee also has an investigative task. He or she shall investigate whether there are assets which can be clawed back, if any illegal value transfers have been carried out or if the representatives of the debtor could become liable for damages towards the company. The duty to investigate also includes the issue of whether the debtor has fulfilled its bookkeeping obligation and whether there is suspicion of crime.

Clawback

The clawback rules mean that time is reversed, and a principally valid transaction is reverted. The purpose is to restore the situation as it was before the recoverable transaction was made and to neutralise the effects of the recoverable transaction. The clawback rules can apply to all acts that are taken before the bankruptcy, such as payment of debt, gifts, settlements arising out of matrimonial relationships, salary payments, fees, pension or seizure etc. However, payment of overdue taxes cannot generally

be clawed back. One basic requirement for clawback is that the debtor has taken a measure which is to the detriment of at least one creditor. In this context, detriment means that the creditor's prospect of obtaining payment is deteriorated in relation to what the prospect for payment had been if the recoverable measure had not been taken. In addition to the requirement of detriment, there are other requirements which vary depending on the different measures which may be subject to clawback.

The possibility of clawback is generally an important factor when a creditor decides whether to apply for bankruptcy of the debtor or not.

State wage guarantee

A bankruptcy trustee also has an administrative executive role since decisions on state wage guarantees are made by the bankruptcy trustee. Employees with claims against a bankrupt employer are generally entitled to state wage guarantee. The claim could consist of salaries due, vacation pay, severance pay, overtime allowance or compensation for employee benefits. However, the right to wage guarantee is limited both in time and to certain amounts. Wages covered by a wage guarantee are paid by the state through the County Administrative Board.

The employee's corresponding claim against the employer is subsequently taken over by the State which claims it in the bankruptcy proceedings.

Distribution

Some creditors, preferred creditors, have a priority right according to law, either in specific assets (securities) or in general, and will receive payment ahead of the unpreferred creditors. Dividend to unpreferred creditors is distributed in proportion to their claims.

As a starting point, there are no formal requirements for notifying the bankruptcy trustee of the claims against the debtor. If the assessment is made that there will be dividend to unpreferred creditors, the trustee however normally applies to the Court to initiate a formal filing process. All known creditors are then required to file their claims within the timeframe set forth in the decision from the Court. The trustee, as well as other creditors, may then object to the filed claims. If an objection is made and the dispute cannot be settled it will be tried by the Court.

A bankruptcy that ends with distribution to the creditors will normally last for 1-2 years but in certain cases they may last longer than that, i.e. if the bankruptcy estate is involved in litigation.

Cost

The application fee is the same as for a lawsuit, SEK 2,800. The cost for a bankruptcy, including the fees to the trustee, is primarily paid from the bankruptcy estate. Should the cost exceed the available amount, the difference is paid by the state. If a

creditor applied for the bankruptcy, he will however be liable for the cost up to an amount of SEK 5,000 (approximately).

Company reorganization

Theoretically, a creditor may also apply for company reorganization of the debtor but in practice this is not feasible.

July 2023

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