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**NOTE**

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From: the Swedish delegation  
To: Working Party on Civil Law Matters (Insolvency)

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Subject: Proposal for a Regulation of the European Parliament and of the Council  
amending Council Regulation (EC) No 1346/2000 on insolvency  
proceedings  
- Comments by the Swedish delegation on the Annexes

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Sweden would like to add "*skuldsanering*", debt reconstruction, to Annex A. This means that the following procedures will be included in Annex A as regards Sweden.

- *Konkurs*
- *Företagsrekonstruktion*
- *Skuldsanering*

As explained below, the debt reconstruction procedure falls within the scope of the revised Insolvency Regulation as agreed in the General Approach decided in the Council in June. The final version of the revised Regulation is not yet decided and the scope of the Regulation finally decided may differ from the General Approach. Consequently, this wish to amend Annex A as regards Sweden is only preliminary and we reserve the right to amend our position as the negotiations continue.

For the avoidance of doubt, Sweden would at present not like to see any modifications to Annex C as regards Sweden.

### **Explanation**

Under the Swedish Debt Reconstruction Act SFS 2006:548 (see attached document in Swedish, unfortunately we do not have an English translation), private individuals – debtors – may apply for debt reconstruction. The debt reconstruction process, which is public, is administrated by the Swedish Enforcement Authority ("*Kronofogden*"). Decisions taken by Kronofogden can be appealed to the District Court.

Debt reconstruction requires "qualified insolvency", which means that the debtor cannot pay his or her debts when due and that it can be assumed that this incapacity will continue for the foreseeable future. Further, debt reconstruction is only granted if it is considered fair/reasonable ("*skäligt*") considering the personal and economic situation of the debtor. Special consideration is to be given to the circumstances under which the debts occurred and the efforts that have been made by the debtor to pay the debts.

If the debtor is granted debt reconstruction, a payment plan is normally decided. During the payment plan period, the debtor is to live at subsistence level. After completion of the debt reconstruction process, the debtor is no longer liable for debts that are covered by the debt reconstruction (including unknown claims that are covered by the debt reconstruction). As a main rule, the debt reconstruction covers all monetary claims that have arisen at the time of the decision to initiate the debt reconstruction process. However, certain types of claims are not included in the process, for example disputed claims and certain claims regarding maintenance. When the debt reconstruction proceedings have been initiated, individual enforcement is no longer allowed regarding the claims that can be covered by the debt reconstruction.

## General provisions

Section 1. Debt restructuring means that a debtor is wholly or partly exempted from liability for the payment of debts covered by the debt restructuring.

There are specific provisions on composition and insolvency.

Section 2. The Swedish Enforcement Authority shall examine debt restructuring cases and cases concerning a review of a decision regarding debt restructuring.

Within the framework of the social services or otherwise, the municipality shall provide advice and guidance to indebted persons on budgetary and debt matters. This obligation shall also apply during the debt restructuring procedure and for the duration of a payment plan pursuant to Section 9.

The Consumer Agency shall support and provide guidance on the budget and debt advice for which the municipalities are responsible.

Section 3. In the case of debt restructuring under this Act, no account shall be taken of provisions on remission or reduction in any other statute.

A creditor may, notwithstanding any provisions in any other statute, accept a proposal for debt restructuring under this Act.

## General conditions for debt restructuring

Section 4. Debt restructuring may be granted to a debtor who is resident in Sweden and a natural person, if

1. the debtor is insolvent and so indebted that he or she is unlikely to be able to pay his or her debts within a foreseeable period, and
2. it is reasonable, having regard to the debtor's personal and financial circumstances, that he or she should be granted debt restructuring.

A person who is registered in the population register in Sweden shall be deemed resident in Sweden for the purposes of the first paragraph.

For the purposes of point 2 of the first paragraph, particular attention shall be paid to the circumstances in which the debts arose, the efforts made by the debtor to meet his or her obligations and the manner in which the debtor has cooperated in the handling of the debt restructuring case.

If the debtor is a trader, debt restructuring may be granted only if the financial circumstances of the commercial activity are easy to investigate. Act No 2011:472.

Section 5. Repealed by Act No 2011:472.

Section 6. Ceases to apply on 2 August 2014.

A debtor who is subject to disqualification under the Trading Prohibitions Act (Act No 1986:436) may not be granted debt restructuring.

The same shall apply to a debtor previously granted debt restructuring, unless there are exceptional reasons for debt restructuring.

Section 6. Comes into force on 2 August 2014.

A debtor who is disqualified under the Trading Prohibitions Act (Act No 2014:836) may not be granted debt restructuring.

The same shall apply to a debtor previously granted debt restructuring, unless there are exceptional reasons for debt restructuring. Act No 2014:849.

Debts

Section 7. Unless otherwise provided in this Act, debt restructuring shall cover all monetary claims against the debtor arising before the date on which notification was given of the decision to initiate debt restructuring, as referred to in the second paragraph of Section 14. Debt restructuring shall mean that the right to interest or fees for overdue payment on such a claim lapses in the period thereafter.

When restructuring the debt, it may be decided that a claim which is referred to in the first paragraph and which is subject to conditions, is not fixed as to the amount or is not due, shall not be covered by the debt restructuring. In the case of such a claim, the creditor, notwithstanding the provisions of other statutes, may defer payment during the period the payment plan runs, as referred to Section 9.

Debt restructuring shall not cover

1. a claim for maintenance under family law,
- 2 a claim regarding which a creditor has a mortgage or other right of priority pursuant to Sections 6 or 7 of the Right of Priority Act (1970:979) or a lien, in so far as there is enough security to settle the claim,
3. a claim regarding which a creditor, prior to notification of the decision to initiate debt restructuring, has obtained a right of priority pursuant to Section 8 of the Right of Priority Act in respect of property appropriated during enforcement,
4. a claim that has not fallen due and which is subject to the creditor providing something in return, or
- 5 a claim that is disputed.

The provision in point 1 of the third paragraph shall not apply if the Swedish Social Insurance Fund (Försäkringskassan ) or a public authority abroad has taken action in respect of the entitled person's right to maintenance.

The substance of the debt restructuring

Section 8. All claims which are covered by the debt restructuring under Section 7 shall be equally valid.

Notwithstanding the first paragraph, a claim may

1. be afforded a lower priority, if the creditor agrees, or
2. be paid before other claims if, following distribution pursuant to the first paragraph of Section 9, it concerns a small amount and it is reasonable in respect of the size of the debt and other circumstances.

Section 23 sets out provisions on what shall apply in respect of claims not notified as part of the case.

Section 9. When restructuring a debt, the following shall be determined:

1. which claims shall be covered by the debt under Section 7,
2. what provisions shall apply to those claims under Section 8,
3. which amounts should be distributed to the creditors, and
4. a payment plan showing when and how the outstanding amount in each of the creditors' claims is to be paid.

The amount to be distributed among the creditors shall be determined so that the debt restructuring makes use of all the debtor's assets and income following the deduction to be reserved for the debtor's and his or her family's subsistence. For those purposes, the provisions under Chapter 7, Sections 4 and 5, of the Enforcement Code on reserved amounts shall provide guidance. When restructuring the debt, it may be decided that reservations shall also be made for the payment of a claim which, pursuant to the third paragraph of Section 7 or a decision taken on the basis of the second paragraph of Section 7, does not fall within the scope of the debt restructuring.

Pursuant to the first paragraph of Section 3, it shall be clear from the distribution what percentage of the amount of the claims should remain.

The payment plan determined pursuant to the first paragraph of Section 4 shall run for a period of five years, unless there are specific reasons for a shorter period.

Application for debt restructuring

Section 10. An application for debt restructuring shall be made in writing to the Swedish Enforcement Authority.

The application shall bear the debtor's handwritten signature. Act No 2006:745.

Section 11. The application shall include

1 the information regarding the creditor as set out under Chapter 33, Section 1, first and second paragraphs of the Code of Judicial Procedure along with evidence showing that the debtor is resident in Sweden,

2. a list of the debtor's assets and debts, with an indication of the name, address, personal ID or company registration number, postal address and telephone number of each creditor,

3. information regarding the debtor's income and expenditure,

4. information regarding the circumstances referred to in the third paragraph of Section 4, and

5. information regarding the debtor's and his or her family's personal and financial situation, which is also relevant to determining whether debt restructuring should be initiated.

Pursuant to the first paragraph, the debtor shall submit the information in good faith.

#### Incomplete application

Section 12. If an application is incomplete, the Swedish Enforcement Authority shall instruct the debtor to rectify the fault. The order shall state that the application may be dismissed if the order is not complied with. The order does not need to be served.

The Swedish Enforcement Authority shall dismiss an application for debt restructuring, if the application is so incomplete that it cannot be used as a basis for examining the substance of a case and the debtor has not complied with an order to rectify the fault. Act No 2006:745.

#### Rejection of the application

Section 13. If it appears from the application for debt restructuring or from other available evidence that the debtor does not satisfy the conditions under Section 4 or may not be granted

debt restructuring on account of Section 6, the Swedish Enforcement Authority shall reject the application.

If it is found, following notification of the decision pursuant to the second paragraph of Section 14 to initiate debt restructuring, that the conditions for debt restructuring pursuant to this Act are not met, the Swedish Enforcement Authority shall reject the application. The application may also be rejected if the debtor fails to appear in person at a meeting or if the debtor otherwise does not participate in the handling of the case. Act No 2011:472.

#### Initiating debt restructuring

Section 14. The Swedish Enforcement Authority shall, where necessary, gather information on the debtor's personal and financial situation from other agencies. In specific circumstances, the Swedish Enforcement Authority may also convene a meeting pursuant to Section 17 so as to determine whether debt restructuring should be initiated.

If the Swedish Enforcement Authority does not dismiss an application for debt restructuring under Section 12 or reject it under the first paragraph of Section 13, the Swedish Enforcement Authority shall decide as soon as possible to initiate debt restructuring. Act No 2006:745.

Section 15. After notification of a decision to initiate debt restructuring, the Swedish Enforcement Authority shall immediately, by means of a notice published in the Official Gazette ("*Post- och Inrikes Tidningar*"), invite anyone who has a claim against the debtor to give written notice thereof to the Swedish Enforcement Authority no later than one month from the date of the publication of the said notice. If there are specific reasons, the Swedish Enforcement Authority may also publish the notice in one or more local newspapers. The Swedish Enforcement Authority may also extend the deadline to two months, if there are special reasons to do so. Act No 2006:745.

#### Investigation by the Swedish Enforcement Authority

Section 16. If debt restructuring has been initiated, the Swedish Enforcement Authority shall ensure that the case is investigated as required. Act No 2006:745.

Section 17. The Swedish Enforcement Authority shall summon the debtor to appear in person at a meeting, if this is deemed to be beneficial to the investigation. At the meeting, the debtor shall submit the additional information needed to determine the issue of debt restructuring.

The summons shall be sent to the debtor at the address most recently notified by the latter. The summons does not need to be served.

The summons shall inform the debtor of the purpose of the meeting and state that the application may be rejected if the debtor does not appear in person.

Section 18. Pursuant to Section 17, the Swedish Enforcement Authority may also summon to the meeting a creditor, other authority or any other person who is able to contribute to the investigation of the case. The summons does not need to be served.

#### Decision on debt restructuring

Section 19. When sufficient investigation has taken place, the Enforcement Authority shall in conjunction with the debtor draw up a proposal for debt restructuring that contains the information specified in Section 9. Act No 2006:745.

Section 20. The proposal for debt restructuring shall be sent to all known creditors whose claims are covered by the debt restructuring with an order that they deliver their opinion within a certain period. The order shall state that the non-delivery of an opinion will not prevent a decision on debt restructuring. The order shall be served on the creditors. If a claim submitted in accordance with Section 15 is not covered by the debt restructuring, the creditor shall be informed accordingly.

Section 21. After the expiry of the period referred to in Section 20, the Swedish Enforcement Authority shall consider whether the debtor should be granted debt restructuring.

A decision regarding debt restructuring shall be published immediately in the Official Gazette ("*Post- och Inrikes Tidningar*"). Act No 2006:745.

## Prohibition of enforcement measures

Section 22. After the Swedish Enforcement Authority's decision to initiate debt restructuring, distraint for claims arising previously may not proceed before the issue of debt restructuring is settled unless, on appeal, the Court decides otherwise at the request of a creditor. If distraint does occur, the measure shall have no effect.

The first paragraph shall not apply to claims that under the third paragraph of Section 7 are not covered by the debt restructuring.

The provisions in this paragraph shall also apply in respect of a decision on attachment and on enforcement of that decision. Act No 2006:745.

## Effect of debt restructuring

Section 23. Debt restructuring shall release the debtor from liability for the payment of those debts covered by the debt restructuring in so far as those debts are reduced. Through debt restructuring, the debtor shall be released from liability for the payment of claims that are not known in the case, unless the claim is of the type referred to in the third paragraph of Section 7.

Debt restructuring shall not affect the right a creditor has in respect of a guarantor or any other person other than the debtor who is responsible for the claim.

## Review of debt restructuring

Section 24. Upon application by a creditor whose claim is subject to a debt restructuring decision, the Swedish Enforcement Authority may revoke the decision or, in cases referred to in points 4 and 5, amend what has been determined on matters referred to in points 2 to 4 of the first paragraph of Section 9, if

1. the debtor

- (a) has been guilty of dishonesty to creditors,
- (b) has been guilty of intentionally obstructing bankruptcy or executory proceedings, or
- (c) has secretly favoured any creditor in order to influence the debt restructuring decision,

2. the debtor has knowingly provided incorrect information, in the application for debt restructuring or in some other way during the handling of the case, to the detriment of the creditor,
3. the debtor has provided incorrect information to guide the Authority's decisions regarding tax or duty which is subject to the debt restructuring, or has failed to provide information despite being obliged to do so, and this incorrect information or lack of information has resulted in an incorrect decision or no decision being reached,
4. the debtor does not adhere to the payment plan, unless the discrepancy is only minor, or
5. the debtor's financial circumstances have substantially improved since the debt restructuring decision and this improvement was due to circumstances which could not have been foreseen when the decision was taken.

In cases referred to in point 5 of the first paragraph, the application shall be submitted within five years of the date of the debt restructuring. If the duration of the payment plan has been extended in accordance with Section 26, the new date shall apply.

Where a debt restructuring decision is revoked, any deposit or other security which a third party has provided as payment of an amount referred to in point 3 of the first paragraph of Section 9 becomes invalid, unless the third party knew or should have known about the circumstances referred to in point 1 of the first paragraph, or contributed to the debtor's neglecting their obligations referred to in point 2 of the first paragraph. Act No 2006:745.

Section 25. Upon application by the debtor, the Swedish Enforcement Authority may amend what has been determined on matters referred to in points 2 to 4 of the first paragraph of section 9, if

1. the debtor's financial circumstances have substantially changed since the debt restructuring decision and this change was due to circumstances which could not have been foreseen when the decision was taken, or
2. there are exceptional circumstances. Act No 2006:745.

Section 26. When a debt restructuring decision is amended, the duration of the payment plan may be extended to a maximum of seven years.

Section 27. An application for a decision to be revoked or amended in accordance with Section 24 or 25 shall be submitted to the Swedish Enforcement Authority in writing. The application shall contain information on

1. the decision concerned, and
2. the circumstances invoked as grounds for revoking or amending the decision.

If an application is inadequate, Section 12 shall apply. Act No 2006:745.

Section 28. The provisions of Sections 16 to 18 shall continue to apply as appropriate while the Swedish Enforcement Authority is handling applications for a debt restructuring decision to be revoked or amended. Act No 2006:745.

### Appeal

Section 29. An appeal against the Swedish Enforcement Authority's final decision may be lodged with the district court with jurisdiction for the debtor's place of residence. The same shall apply to the Swedish Enforcement Authority's decision to begin debt restructuring. If the debtor is not resident in Sweden, an appeal against the decision may be lodged with the Stockholm district court. The appeal shall be submitted to the Swedish Enforcement Authority within three weeks of the date of the decision.

The Act on the Examination of Non-Contentious Matters (1996:242) shall apply to the appeal, unless otherwise provided in this Act. The Swedish Enforcement Authority shall not be party to the court proceedings.

It shall not be possible to appeal against a decision through which an application for debt restructuring is stayed. Act No 2006:745.

Section 30. If the district court upholds an appeal from the debtor, the court shall refer the case back to the Swedish Enforcement Authority. However, if the Swedish Enforcement Authority has rejected the debtor's application in accordance with the second paragraph of Section 13 and there is a proper investigation, the district court may rule on the debt restructuring.

It shall not be possible to appeal against the district court's decision to refer a case back to the Swedish Enforcement Authority. Act No 2006:745.

Section 31 was repealed by Act No 2006:556.

#### Other provisions

Section 32. If the debtor goes into bankruptcy, any previous application by the debtor for debt restructuring shall become invalid.

If an application to negotiate an arrangement with creditors is admitted after the debtor has applied for debt restructuring, the debt restructuring case shall be stayed. If an arrangement is made, the debt restructuring application shall become invalid.

If the debtor dies, any application by the debtor for debt restructuring shall become invalid.

Section 33. If the debtor withdraws an application for debt restructuring, further handling of the case shall be immediately cancelled. The same shall apply if the application becomes invalid under Section 32.

Section 34. If an application for debt restructuring is rejected or dismissed or further handling of the case is cancelled after a notice is issued in accordance with Section 15, all known creditors shall be informed immediately.

Section 35. Any agreement which means that the debtor or a third party ensures that any creditor whose claim is subject to the debt restructuring is granted better conditions than those established by the debt restructuring shall be invalid.

Section 36. Upon request, social welfare boards and other authorities shall provide the Swedish Enforcement Authority or the court handling a debt restructuring case in accordance with this Act with any information on the debtor's personal and financial circumstances required for examining the case. Act No 2006:745.

Section 37. A debt restructuring decision which has not become final may nevertheless be implemented.

#### Transitional provisions

2006:548

1. This Act shall enter into force on 1 January 2007, when the Debt Restructuring Act (1994:334) shall be repealed.
2. The earlier provisions on proceedings at the district court shall apply to debt restructuring cases submitted to the district court before the entry into force, and to review cases in which the application for review was received by the district court before the entry into force.
3. If the duration of a payment plan for debt restructuring was set under earlier provisions at longer than five years, the earlier provisions shall apply with regard to the deadline for submitting an application for review.

2006:556

1. This Act shall enter into force on the date determined by the government.
2. The earlier provisions shall apply with regard to the requirements for leave to appeal against a decision taken before the entry into force.

2014:849

1. This Act shall enter into force on 2 August 2014.
2. The earlier provisions shall continue to apply with regard to those who are disqualified from trading in accordance with the Trading Prohibition Act (1986:436).

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