

OH, THE PLACES YOU'LL GO!

Forum shopping and filing insolvency proceedings in a global legal world

Insolvency Commission

LONDON 2015 WORKSHOP B

National Report of Sweden

Niklas Körling and Kristin Kull

**Wistrand Lawfirm
Regeringsgatan 65
Box 7543
10393 Stockholm**

Tel. No. + 46 8 50 72 00 53 (Niklas Körling), +46 8 50 72 00 46 (Kristin Kull)

E-mail: niklas.korling@wistrand.se, kristin.kull@wistrand.se

1. Proper place for commencement of insolvency proceedings and centre of main interests.

- a) In your jurisdiction which is the proper place for commencement of insolvency proceedings? Is the applicable law determined separately than the venue?

The initial question that has to be answered is whether a Court in Sweden has competence (jurisdiction) to handle a petition in bankruptcy. If the debtor has its main interests in Sweden or in any other of the member states of the EU that question is exclusively regulated in the Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings (below the “Council Regulation on Insolvency Proceedings”), which constitute applicable law in the member states.

In accordance with the Council Regulation on Insolvency Proceedings Swedish courts may open insolvency proceedings if the debtor’s centre of main interests is situated in Sweden.

If the debtor has its main interests situated within the territory of another member state, Swedish courts may also open insolvency proceedings against the debtor only if he has an establishment in Sweden. The effect of those proceedings shall be restricted to the assets of the debtor situated in Sweden.

The proper place for commencement of insolvency proceedings in Sweden is the court where the debtor should answer in a civil case relating to liability to pay in general. (Chapter 2, Section 1 of the Swedish Bankruptcy Act (1987:672), below the “**Bankruptcy Act**”).

If an insolvency proceeding is opened in Sweden, Swedish law shall be applicable in accordance with the principle of *lex fori concursus*.

- b) Is there in your country a notion or definition of the debtor’s centre of main interests (“COMI”)?

No.

It is stipulated in Chapter 10, Section 1, of the Swedish code of civil procedure that the competent court in general is the court where the defendant has domicile.

In regard to natural persons the national registration is the deciding factor when determining at which Swedish court insolvency proceedings shall be opened .

Concerning legal persons the registered principal place of business is the deciding factor when determining at which Swedish court insolvency proceedings shall be opened.

- c) Which are the factors relevant to the determination of centre of main interests?

There is no particular factors relevant determining centre of main interests in accordance with Swedish law. As stated above the Council Regulation on insolvency proceedings is recognised as law in Sweden. Article 3.1 states that the place of registered office for a legal entity shall be presumed to be the centre of its main interest in the absence of proof of the contrary. The Swedish Supreme Court has in a legal case, NJA 2009 s. 383, established a corresponding

principle for natural persons when interpreting the Council Regulation on insolvency proceedings. Hence, a natural person is presumed to have centre of main interests on the place for national registration.

- d) Is this essential in determining the jurisdiction?

- e) Are there international or supranational regulations regarding the proper place for commencement of insolvency proceedings and/or the determination of the centre of main interest applicable in your country?

Yes, the Council Regulation on Insolvency Proceedings is a part of Swedish legislation. In addition to that, the Nordic bankruptcy convention is applicable to Sweden, Denmark, Finland, Iceland and Norway.

- f) Is the debtor's centre of main interests the place where an insolvency proceeding concerning the debtor is likely to commence? Why or why not?

Yes normally since the centre of main interests most often fall together with the registered place of business. However, if the registered office is elsewhere than the real centre of main interests, there is a risk that the court does not take notice of the centre of main interests in accordance with the Council Regulation.

- g) Please discuss the issues of timing and procedure with respect to the determination of centre of main interests, including when or if a judicial determination on this issue is required or made?

If a debtor hands in a voluntary petition for bankruptcy to the court, the court normally decide on bankruptcy within a few hours. The court's consideration of the petition will involve a control of the registered office with the Companies Registration Office. However, if a creditor files a petition for bankruptcy against a debtor the court will summon the parties to a hearing at the court. In our opinion, it is probably so that a party who wants to argue that the debtor's centre of main interests should be somewhere else will not be able to do so before the court decision if the insolvency proceedings is opened in a debtor's application as the decisions is taken in a few hours.

2. Movement of the place of registration (or habitual residence) of centre of main interest.

- a) It is possible for the debtor to move its place of registration (or habitual residence) prior or after the commencement of insolvency proceedings? Will such a move affect the decision as to centre of main interests and the determination about the commencement of the proceedings?

From a general point of view, it is in Sweden possible for a debtor to move its place or registration (or national registration) prior and after the commencement of insolvency proceedings. However, if the debtor's place of registration or national registration established competence for the court when the petition was filed with the court, it does not matter if the domicile thereafter is moved. If the court was competent when petition was filed with the court, the court will be competent in the case for time forward irrespective of the future registration.

- b) Is it possible to move a debtor's centre of main interests prior to commencement of insolvency proceedings?

In accordance with Swedish law the question shall be decided in accordance with the Council Regulation on insolvency proceedings.

- c) Is it possible to move a debtor's centre of main interests between the time of the application for commencement and the actual commencement of those proceedings?

In accordance with Swedish law the question shall be decided in accordance with the Council Regulation on insolvency proceedings.

- d) If there is evidence of such a move in close proximity to the commencement of the commencement, in determining whether to recognize those proceedings, will the court scrutinize more closely such a move?

In accordance with Swedish law the question shall be decided in accordance with the Council Regulation on insolvency proceedings.

- e) Is forum shopping allowed under domestic or supranational law which applies in your jurisdiction?

Within Sweden it is allowed to change forum by changing registered office or national registration before commencing an insolvency proceeding.

- f) What are factors in your country that may influence a debtor to choose one forum over another, e.g. judges, favourable laws, case law precedent, etc.?

A debtor may for instance want its insolvency proceeding to be handled by a certain District Court since that particular District Court allows debtors to request an official receiver. There may also be geographical factors that create a desire for a certain District Court. If for instance the debtor has its registered principal place of business in Gothenburg and its main creditor in Stockholm, the board of directors may decide to choose another forum. However it shall be noted that it, within the Bankruptcy Act is possible to move the proceedings from one District Court to another if it is suitable.

- g) Is it possible for a creditor or other party to force or cause a debtor's insolvency proceedings to be moved (rather than dismissed), as a result of a challenge to the debtor's definition of its centre of main interests?

If a petition for bankruptcy is filed with the "wrong" District Court in Sweden, the court will notice that and autonomously forward the petition to the correct court.

3. Recognition of foreign proceedings, main and secondary proceedings

- a) Is the recognition of foreign proceedings allowed in your country? What are the requirements? Is this recognition affected by the notion of centre of main interests?

Yes, within the European Union insolvency proceedings are recognised as set forth in the Council Regulation.

Out of the European Union there is an uncertain situation. There is no Swedish legislation that regulates these questions. From old case law we may presume that for instance an American official receiver would be recognised in Sweden. However, if that also would give the official receiver right of disposition of property in Sweden is more uncertain.

- h) Does your relevant domestic or supranational legislation have the notions of main and secondary proceedings or otherwise distinguish between the concepts?

In accordance with Swedish law the question shall be decided in accordance with the Council Regulation on insolvency proceedings.

- i) Does your legislation permits secondary proceedings to be opened to run in parallel with the main proceedings? Are the effects of secondary proceedings limited to the assets located in that State where secondary proceedings are opened?

In accordance with Swedish law the question shall be decided in accordance with the Council Regulation on insolvency proceedings.

- b) Does your jurisdiction allow a challenge to proceedings being designated as secondary? If so, please explain in greater detail.

4. Abuse of process

- a) In your jurisdiction, is a court able to take account of abuse of its processes as a ground to decline recognition?

Within Sweden there is in principle not possible to abuse the rules since all legal entities are registered with the Official Companies Office and all natural persons in the national registration.

- b) What happens if the applicant falsely claims the centre of main interests to be in a particular State

- c) Are those issues governed by international or supranational regulations or only by domestic law?

Within Sweden, Swedish law and within the European Union the Council Regulation on insolvency proceedings.