INSOL Europe/LexisNexis coronavirus (COVID-19) Tracker of Insolvency Reforms—Sweden

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Restructuring & Insolvency analysis: We look at the reforms to the insolvency law of Sweden prompted by the coronavirus (COVID-19) pandemic. Written by Niklas Körling, partner, lawyer, Wistrand, INSOL Europe member and Marek Keller, specialist counsel, Wistrand.

The Swedish parliament has in response to the crisis caused by coronavirus, implemented a series of legislative reforms aimed at mitigating the economic impact of the ongoing pandemic. Examples include several new rules for state subsidies—'short-time working allowance' to employers who reduce their employees' working hours as an alternative to giving the employees a notice of termination and subsidies—'rent discount subsidies' to landlords giving a temporary discount for fixed rental costs, to tenants with businesses in exposed sectors of the economy. Other examples include a new extended state liability for sick pay costs and state loan guarantees for small and medium-sized companies.

Unlike many other European countries, Sweden has, as-to-date, not introduced any new legislation, relating to the pandemic, regarding insolvency law as such. It is also unclear whether any such legislation will be passed in the near future.

Extensive amendments to the Swedish Bankruptcy Act were proposed in December 2019 (Ds 2019:31 'Konkursfˆrfarandet'). These proposed amendments mainly concerned formal aspects of bankruptcy proceedings, such as the procedure for lodgement of proofs of claim in the bankruptcy, and have no connection to the ongoing pandemic.

New insolvency issues relating to new legislation aimed at mitigating the economic impact of coronavirus—government financing

However, it is interesting to note that the new legislation, aimed at mitigating the economic impact of the ongoing pandemic, gives rise to a number of issues that relate to insolvency.

The new legislation has for example affected the rules regarding credit to companies. A relevant change to this context is, that it has now become possible to obtain government financing, by means of loans from ALMI Fˆretagspartner AB, in respect of continued operations of business during the course of administration proceedings.

The new legislation also relates to insolvency issues due to the fact that financial distress is a perquisite for various types of subsidies and also because companies that are the subject of insolvency proceedings or otherwise insolvent are excluded from several types of subsidies aimed at alleviating the economic impact of coronavirus. The new rules regarding short-time working allowance and Rent-discount subsidies are examples of such subsidies. The new coronavirus legislation thus creates new legal issues.

New insolvency issues relating to new legislation aimed at mitigating the economic impact of coronavirus—tax

Many of the rules that have been introduced relate to issues that are typically raised in connection with providing advice to companies in insolvency situations. Perhaps the most prominent change concerns issues regarding the personal liability of directors and shareholders in limited companies for the company's tax debts.

Under Swedish law, a representative of a limited company can, somewhat simplified, become personally liable for the payment of the company's tax debts that have, for example, fallen due prior to a commencement of bankruptcy proceedings.

The Swedish parliament has (as a to reaction the ongoing pandemic) introduced legislation that allows the Swedish Tax Agency to grant deferral of payment of taxes that fall due between January and September 2020, for example, value added tax. A deferral period may be granted for a maximum of one year.

The directors and shareholders of companies which have been granted a deferment will not be personally liable to pay the companies' tax debts, so far as the taxes that are the subject of a deferment decision are paid before the deferment period ends or measures have been taken to settle the company's debts at the latest of the new due date, after the deferment period. The Swedish Tax Agency has announced that its legal opinion is that personal liability can only become relevant if a company has clearly exploited the opportunities for deferral entirely contrary to the purpose of the relevant provisions of the law.

The right to deferment may be appear to be a rather mild measure, in the light of the many legislative initiatives made by other European countries. However, the change in the law is very significant. Personal payment responsibility for taxes is very strictly implemented in Sweden. It is often described as being close to a no-fault liability. Furthermore, the Swedish Tax Agency is by far the creditor who most often applies for the opening of bankruptcy proceedings.

INSOL Europe/LexisNexis COVID-19 Tracker of Insolvency Reforms

A tracker of insolvency reforms globally produced by Lexis Nexis in partnership with INSOL Europe is now available: Coronavirus (COVID-19) Tracker of insolvency reforms globally.

We look at various countries worldwide which are expediting reforms to their restructuring and insolvency laws, temporarily suspending onerous insolvency law provisions, increasing limits for statutory demands, suspending enforcement powers and introducing other measures to deal with the coronavirus crisis. As the situation is rapidly evolving with more countries adding new measures daily, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.