The bill containing a redraft of the Business Restructuring Act (expected to be adopted by Parliament spring 2022 and entering into force from 1 August 2022) is made to implement the Directive (EU) 2019/1023 on restructuring and insolvency which in its turn is inspired by the different US/English formats of restructuring regimes. Creditors, restructuring administrators and debtors are provided new tools within the scope of a restructuring procedure, which adds new opportunities in the Swedish restructuring market but also entails a more complex risk assessment for secured creditors and shareholders. The bullet points below summarise the most important amendments compared with the legislation in place:

A new restructuring plan – the most critical change

All concerned parties will vote on the adoption of all legal implications of the restructuring plan (as opposed to the current order where the creditors only vote in a judicial composition to reduce unsecured cash claims down to 25 per cent). There are no boundaries as to what the restructuring plan may contain as long as the actions or undertaking can be legally verified. The restructuring plan may bind and have an impact on:

- Shareholders, who may lose their ownership in a debt-to-equity swaps or be diluted by actions set out in the restructuring plan (directly enforceable under the Companies Act).
- Secured creditors, who may have the terms and conditions of their agreements and claims altered by the restructuring plan.
- The debtor, who may be bound to follow the actions set out in the restructuring plan.
- Contractual parties, whereas terms of agreements may be altered. An extraordinary right of termination for all long-term agreements is also introduced.
- New financing, which is part of the adopted restructuring plan gaining super-priority (with priority rank over the business mortgage).

All concerned parties will be divided into different voting classes determined by the criteria of similar interest (for example secured creditors, suppliers, state creditors, subordinated creditors and shareholders). The restructuring plan will be approved if a majority of 2/3 within each group votes in favour of the plan (both capital/interests (in absolute numbers) and in number of creditors/parties (only counting active votes)).

The plan may also be approved by way of a cross-class cram down even if one or more groups have voted against the plan provided that a majority of groups support the plan and:

- One of the groups supporting the plan holds secured debt, or
- At least two concerned groups that would receive payment in a bankruptcy have voted in favour of the restructuring plan, and
- Any class with higher ranking debt always, with some exceptions for extraordinary reasons, receives full payment before a group with lower ranking debt receives any payment at all (the absolute priority rule).

The end result of the restructuring plan for all concerned parties involved must always be better than in an insolvent liquidation , also called the “the best-interest-of-creditors test”, which may be tested by court if the restructuring plan is challenged by a creditor.

The debtor submits the restructuring plan and proposes what actions should be included. If the plan is rejected, the administrator is entitled to present an alternative plan for voting (where effective changes on the shareholder level are more likely). However, if the debtor has less than 250 employees and a turnover below 50 million euro, or a balance sheet total not exceeding 43 million euro the debtor must always approve the plan before the court can confirm it.

Other major changes

Pledges may not be enforced during the restructuring proceeding if it is likely that the restructuring thereby is jeopardized, unless the creditor

otherwise would be harmed in an inequitable way. *The administrator must approve of any enforcement measure.* This is expected to have great impact on the secured creditors' negotiation position during the restructuring proceeding.

The current "cash principle" is not being upheld in the redrafted act and the debtor may take on new debt during the restructuring proceeding.

Number of courts handling all restructuring case will be reduced to one per region.

The circuit of professionals that may be appointed as administrator will be narrowed. Only lawyers appointed official receivers in bankruptcy on a regular basis may be appointed as restructuring administrators. The Swedish Enforcement Agency will supervise the proceedings and the administrators.

The super-priority right (which ranks above the business mortgage) *for temporary restructuring loans* will be amended. The super-priority right for temporary restructuring loans will require the consent from the administrator. The super-priority right will automatically cease if a) a reconstruction plan is adopted or, b) no reconstruction plan is adopted and i) three months have passed after the reorganisation proceeding has been terminated and ii) no application for insolvent liquidation is filed with the court within that time.

The required actions from the board of directors and CEO *upon critical capital shortage* according to the Swedish Companies Act (when the equity falls below 50 per cent of the registered share capital) is changed to extend the time for restoring the equity level until at least two months after the restructuring proceeding has been finalised (with some exceptions).

The act is proposed to enter into force 1 August 2022.

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