

# DEBT RECOVERY IN SWEDEN – A BRIEF INTRODUCTION

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## Introduction

The following paper sets out the basic features of debt collection in Sweden. The most common and, in most cases, best way to commence debt collection is to contact the debtor by making a telephone call or by sending a demand letter to the debtor.

If the debtor remains silent or does not show any intention of paying or even outright denies owing anything, a number of judicial avenues may be taken.

## Prior to initiating legal action

### *Prescription*

The general rule in Sweden is that claims are barred by a prescription period after ten years from the date giving rise to the claim. However, there are some exceptions to this rule, the most important of which shortens the prescription period to three years if the claim springs from the relationship between an ordinary consumer and a tradesman.

There are a number of ways to stop the prescription period from running. If the prescription period is stopped, a new prescription period will start to run from that date.

### *Injunction to pay under the Summary Process Act*

This is a cheap and rather effective way of obtaining an injunction to pay against a debtor, which is as good as an ordinary judgment and can be used in relation to almost any debts. The application fee is SEK 300 (approx. € 35) and will be included in the injunction if the application is granted. The application can be made by submitting a pre-printed form that is quite easy to fill out.

The application is sent to the Debt Enforcement Authority (sometimes called "Bailiff"). The Authority will then serve the debtor with the application. The debtor will be given two weeks to pay the creditor or contest the application. If the debt remains unpaid and the Bailiff does not hear anything from the debtor or if the application is not contested, the Bailiff will issue an injunction to pay in accordance with the application.

The debtor thereafter has four weeks to appeal against the injunction. If the debtor does so, the application will be transferred to the Court of first instance (District Court) and handles the matter as an ordinary case at that court.

However, if the application is contested on any grounds the Bailiff will inform the creditor that the application has been contested and ask the creditor if he wishes the Bailiff to transfer the matter to a court of first instance. If the creditor does not wish to take the matter further, the application will be dismissed. However, if the creditor so wishes, the matter will be transferred to the court.

An application for an injunction to pay is not recommended if the creditor knows, or has good reason to believe, that the debtor will contest the claim because there will be a loss of time and no gain. A creditor has the right to choose if he wants to apply for an injunction to pay or to initiate ordinary proceedings at a court of first instance. As a matter of ethics, a member of the Bar Association is not entitled to apply for an injunction to pay if he knows that the debtor denies the claim.

This process may sound a bit meaningless considering how easy it is for the debtor to contest the application. However, a surprisingly high percentage of the debtors do pay as soon as they receive a copy of the application from the Bailiff. Most debts in Sweden are collected in this fashion.

### **Legal proceedings**

Ordinary court proceedings which have not been transferred to the court by the Debt Enforcement Authority start with a written application by the creditor to the court to summon the debtor to answer the claim in writing (the application fee is SEK 450, approx. € 50). The applicant has to state his claim and the legal facts he wishes to invoke in support of his plea. If the summons application fulfils the prescribed requirements, the court will issue a summons against the debtor.

If the debtor does not answer the summons, the court will, in most cases, deliver a judgment in favour of the creditor in accordance with his application. This default judgment can be appealed within four weeks from the date of the judgment; if so, since the case has not been tried on its merits, the same court will then summon the debtor to answer the claim again within a specified time limit. However, if the debtor does not answer, and another default judgment is issued against him, his right to appeal will be forfeited.

Assuming that the debtor has answered the claim, legal briefs will be exchanged and once the court finds that the facts in the case are reasonably clear it will summon the parties to appear before the court for a preliminary hearing. At the preliminary hearing the court will try to make the parties settle the dispute. If a settlement cannot be reached, the court will set a timetable for the main proceeding.

The procedural order in these proceedings is quite similar to the proceedings in most of the other European countries.

In principle, the preparatory proceedings must be oral – the parties and their representatives will be summoned to a meeting at the court, and non-attendance may lead to a judgment by default. During the preparatory proceedings, the parties have

to state what evidence they intend to produce and give details of their respective positions.

The same procedural rules apply to all kinds of cases that involve the issue of a debt. However, there are some differences regarding the award of litigation costs and fees. These differences come into play depending on whether it is a small claims or ordinary case.

### *Litigation costs*

In general, the losing party must reimburse the opposing party for litigation costs unless otherwise provided.

Compensation for litigation costs must also fully cover the costs of preparation for trial and presentation of the action including fees for representation and counsel so long as the costs were reasonably incurred to safeguard the party's interest. Compensation shall also be paid for the time and effort expended by the party related to the litigation. Negotiations aimed at settling the case or an issue in dispute that bears directly on the outcome of a party's action are deemed to be measures for the preparation for trial. Compensation for litigation costs shall also include interest under the Interest Act, running from the date of the court's judgment until the date of payment.

If the case is deemed to be a small claims case (currently below SEK 21,000, approx. € 2,200, including counter claims) there are limitations regarding compensation for litigation costs. Chapter 18 § 8a of the Swedish Code of Judicial Procedure (the "Code") states that compensation for litigation costs may not, in small claims cases, include costs for anything except:

1. counselling limited to one hour per occasion for each instance and at an amount that corresponds with, at most, the remuneration paid for advice under the Legal Aid Act for one hour (currently SEK 1,320 incl. VAT, approx. € 145);
2. the application fee;
3. travel and subsistence for the party or legal representative for appearance at a court session, or, when personal attendance is not required, travel and maintenance for the attorney;
4. costs for witness testimony;
5. translation of documents.

If the amount claimed exceeds SEK 21,000, i.e. an ordinary case, the losing party shall reimburse the opposing party for all litigation costs, including attorney fees, provided, however, that the costs were reasonably incurred to safeguard the party's interests.

However, if several claims are contained in the same case and the parties win in different parts respectively, each party shall be required to bear his own costs, or one of the parties shall be awarded an adjusted compensation for his costs, or, if

the costs attributable to different parts of the case can be separated, the liability to compensate for costs shall be determined accordingly. However, if the part which a party has lost is only of minor importance, he may still receive full compensation for costs. If only a part of a party's claim is granted, the same as stated above shall apply correspondingly.

A party seeking reimbursement for litigation costs must present a demand for his costs before the end of the proceedings. If he fails to make such demand within the prescribed time, he may not subsequently present a claim for costs incurred in the same court.

#### *Some procedural differences between small claims and ordinary claims*

There are two significant procedural differences between small claims and ordinary claims, namely, the composition of the court and the right of appeal.

Chapter 1 § 3a of the Code states that any main hearing of a civil case held in the court of first instance shall consist of three judges, unless otherwise prescribed. However, one judge constitutes a quorum if the court considers it sufficient and the parties consent thereto, or if the case is simple in character. Chapter 1 § 3d of the Code states that the district court shall consist of a single judge in small claims cases.

A judgment of a district court may be appealed against unless otherwise provided. Appeal shall be made within three weeks from the pronouncement of the judgment.

Leave to appeal is required for the Court of appeal to review the District court's judgment in cases which have been dealt with by one judge in small claims cases. Leave to appeal is not required in ordinary cases.

### **Execution and bankruptcy**

#### *Execution*

In most cases a successful party may enforce an execution (up to selling the property which has been taken in execution) even before the judgment has become final, provided naturally that the losing party has not paid voluntarily in accordance with the judgment.

An application for execution is made to the Debt Enforcement Authority. Personal property and real property, and even wages and salaries, may be taken in execution. Today, a consequence of rather far-reaching provisions concerning prohibition against taking household goods, furniture etc., in execution, the taking of wages and salaries is probably the most important form of execution as far as personal property is concerned.

Matters concerning execution will be decided and enforced by local execution officers at the Debt Enforcement Authority.

### *Bankruptcy*

All physical and legal persons that cannot pay their debts may – after an application by creditors or by the debtor himself – be declared bankrupt. The court that is competent to deal with civil actions against the debtor will issue the receiving order. The bankruptcy petition may be approved even if the petitioner does not have a “title of execution”. It may be enough that the claim is due and has not been denied. After a bankruptcy, the creditor will still have a right to attempt to extract that part of his claim, which was not covered by the dividend, provided that the debtor is a physical person. Legal persons, however, are extinct after the bankruptcy.

### *Foreign judgments and arbitral awards*

Some - but not all - foreign judgments and arbitration awards may be executed in Sweden. It is necessary to obtain a Swedish recognition of the judgment or the arbitration award, via a procedure of exequatur. Once exequatur has been obtained, the judgment or award may be executed in Sweden against the debtor.

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