

## Debt Relief in Sweden

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### 1. Background

Influenced by the rapidly increasing number of indebted individuals in the late 1970s and early 1980s, and inspired in particular by the recently adopted legislation on 'gaeldssanering' in Denmark, the Swedish government appointed, in 1988, the Insolvency Commission. The commission's task was, *inter alia*, to investigate the possibility of introducing regulated debt relief for individuals. By the end of 1989 Swedish households had debts totalling 600,000 Million SEK, and many of them could not even pay the interest on their loans.<sup>15</sup>

### 2. The 1994 Debt relief Act

In the early 1990s, debt relief legislation was adopted in Norway and Finland as well, and the Swedish Debt Relief Act came into force in 1994.

#### 2.1. Procedure

The procedure consists of the following steps:

- Step 1 – efforts by the debtor, assisted as appropriate by the relevant municipal bodies, to reach an amicable arrangement with his or her creditors (not regulated);
- Step 2 – scrutiny by the Enforcement Authority, which could end up in a debt relief scheme being adopted, provided that it is accepted by all creditors concerned;
- Step 3 – if one or more of the creditors are opposed to the pro-posed scheme it may still be adopted by the District court.

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<sup>15</sup> The rules at that time relating to composition and bankruptcy did not provide sufficient help to individuals with large debts to find a way out of their economical misery. (Private compositions were only possible if all the creditors agreed to accept the debtor's proposal. When a bankruptcy is not terminated by a composition the debtor is still liable for all his unpaid debts).

## 2.2. What is debt relief?

Debt relief means that the debtor under certain circumstances will be discharged, wholly or in part, from liability for payment of the debts covered by the decision to grant debt relief. Debt relief aims at giving the debtor a new start, without any old debts. In this respect, the rules of debt relief are quite similar to the rules in England concerning discharge after a bankruptcy. Since debt relief is an exceptional and final solution, it is in principle not to be granted more than once.

The main purpose of debt relief is financial rehabilitation of the debtor, but it is also intended to serve the purpose of prevention – i.e. to provide an incentive for presumptive creditors to make a cautious assessment of the debtor's ability to pay. Furthermore, it's intended to improve the chances that creditors will get at least something, rather than nothing at all. An indirect effect of rehabilitation is to alleviate the burden on social welfare systems, as more debtors will remain at the disposal of, or return to, the regular labour market.

## 2.3. Criteria for debt relief

Two general conditions must be fulfilled before a decision of debt relief can be granted. First of all, the debtor must

*"be insolvent and so in debt that he cannot be regarded as having the capacity to pay his debts within a foreseeable time"* (Section 4 paragraph 1 item 1).

The act does not specify in absolute terms level of debt that would qualify the debtor for debt relief. The criteria mentioned above mean that it isn't enough for the debtor to be insolvent, but his inability to pay must be considered more or less permanent (the 'qualified insolvency criterion'). The scrutiny of the case therefore includes a forecast that the applicant's inability to pay is quite certain. If the applicant is unemployed or still studies, the forecast may be too uncertain and the appeal will be rejected. It goes without saying that the forecast cannot be made without putting the applicants' ability (or inability) to pay in relation to the total amount of debt. Ever since the act came into force there has been a discussion about the term 'foreseeable future' and what is meant by it.

Secondly, it has to be

*"reasonable with regard to the debtor's personal and financial circumstances that he should be granted debt relief"* (Section 4 paragraph 1 item 2).

Section 4 paragraph 2 specifies circumstances to be taken into account under paragraph 1 item 2: the age of the debts, the circumstances under which they arose, the efforts the debtor has made to perform his obligations and of his own accord to reach a settlement with his creditors, as well as the way in which the debtor has co-operated in the handling of the matter of debt relief (i.e. in the regulated procedure).

It's for the debtor to prove that his position is such that debt relief should be granted. The Enforcement Authority will, together with the debtor submit a proposal for liquidation of the debts.

This proposal can state either complete debt relief (zero scheme) if the debtor lacks ability to pay or debt relief in part, where the debtor will have a payment plan that runs for normally five years. This proposal is notified to the creditors, who are asked to give their opinion. As already mentioned, the Enforcement Authority will adopt the scheme if all creditors accept the proposal. In about 50 percent of the cases, however, some creditor object to the proposal and the application will be transferred to the District court, where the final decision will be made.

Debt relief is based on the principle that all the creditors – known as well as unknown – are treated alike.

## **2.4. Statistics**

In 2005, approximately 4 000 applications for debt relief were made. Due to extensive information campaigns, and increased consciousness in society in general, the number has increased over the years. About 60 percent, or 2 500 of the applicants last year were granted debt relief.

## **3. A new Debt Relief Act**

The procedure has for years been criticized as being unnecessarily lengthy and complicated. First of all, an attempt to reach an amicable arrangement has been a requirement when applying to the Enforcement Authority for debt relief. If the application goes all the way to the District court, the procedure may well last for more than a year, sometimes even longer.

Last year the Debt Relief Inquiry presented a proposal for a new Act, which contains considerable changes as compared to the present procedures. The new Act was adopted earlier this year and will take effect as from 1 January 2007. The most important changes are:

1. The personal attempt requirement will be abolished.
2. Municipal budgetary and debt counselling services will be given a more important role in that the debtor will receive counselling and support not only when applying for debt relief, but also after such a decision.
3. The Enforcement Authority will be empowered to grant debt relief even if one or more creditors are opposed to the proposal. The case will be turned over to the District court only upon appeal against the Enforcement Authority's decision.
4. Also applications for reconsideration/review of the scheme – from debtors as well as creditors – will be examined by the Enforcement Authority. It is possible to modify the debt relief decision if the debtor's financial situation improves or deteriorates.

## 4. Some key issues

The following are examples of key issues that were discussed in the course of the preparations for the 1994 Debt Relief Act.

### 4.1. Relief at once or after the scheme has been complied with?

In some foreign systems, debt relief is granted once the obligations under the scheme have been fulfilled. Although this isn't very clear stated, neither in the Insolvency Commission's report nor in the Government Bill, the Swedish system with immediate relief is based on the consideration that only this solution will give the debtor sufficient mental incentive to comply with the tough requirements of the scheme (i.e. focus on the rehabilitation aspect).

### 4.2. Costs

The Insolvency Commission discussed the pros and cons of levying a fee for the debt relief procedure, and came to the conclusion that a fee should not be levied because the debtors are already financially overburdened. The Commission admitted, though, that a fee could have served the purpose of avoiding applications in hopeless cases.<sup>16</sup>

### 4.3. Persons covered by the system

Originally, debtors were excluded as soon as they had, at the time of the debt relief procedure, any business income whatsoever. This was soon modified so that debtors with only a minor amount of business income, e.g. persons running a kiosk part time, were covered by the system.

### 4.4. Organisation

The Insolvency Commission had suggested a system where an administrator (normally a solicitor or other insolvency practitioner) was to be commissioned by the District court to carry out the investigation of the debtor's economy. The court was then to decide whether to grant debt relief or not. However, it was felt that a better way of using the resources at the disposal of the public administration would be to let the Enforcement Authorities (24, at that time) decide in the second step. This was based on the assumption that most of the information required was already available to the Enforcement Authorities, as the creditors had filed applications for enforcement of their claims.

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<sup>16</sup> Another argument in favour of a fee would have been that at least at a rather substantial level, a fee could be an incentive for creditors to accept an amicable arrangement.

#### 4.5. Categories of debt to be explicitly excluded from the system

The general rule is that all claims that have arisen before the decision to start the debt relief procedure are covered by the scheme, and treated alike. There are a few exceptions, though. Alimony (i.e. the obligation to pay alimony in the future) is excluded, and students' loans may be excluded, based on the circumstances in a particular case.

### 5. Criticism against the system and suggested alternative solutions

For natural reasons, the introduction of the debt relief system was initially much criticised by groups that feared it would undermine the position of creditors too much. Later on, though, critics have been mainly those who feel that it is too difficult to get debt relief. Others, again, accept the results of the system but argue that it could be achieved in a simpler and more cost-effective way.

There have always been advocates of a system with definitive limitation of claims under private and commercial law. Today, the original period of limitation is 10 years for claims in general and 3 years for consumer claims (i.e. a trader's claim against a consumer). The period can be interrupted, and a new period of the same length brought to run, an unlimited number of times, meaning that civil debts are in principle lifelong. Tax claims, on the other hand, are normally statute barred after a period of 5 years.

In a report to the Ministry of Finance late 2004, the National Tax Board (at that time also the headquarters of the enforcement service) discussed a few other possible measures aimed at reducing the number of "eternal debtors":

- more effective IT support for targeted information to debtors,
- definitive limitation, by way of compromise only for purposes of enforcement,
- crediting payments to the principal in the first place, not to interest.

A number of non-governmental organisations have also formulated ideas in this area. One of them is to oblige banks to offer loans on favourable conditions to over-indebted persons, possibly with a Government guarantee. Today, the banking sector isn't involved in a regulated manner, but some banks do lend their assistance in the form of favourable conditions based on agreements with trade unions.