

Insolvency & Restructuring - Sweden

Courts Rule on Jurisdiction in Insolvency Proceedings

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The Court of Appeal recently ruled that when applying Article 3(1) of the EU Insolvency Regulation (1346/2000) in order to establish the international jurisdiction of Swedish courts, a natural person who is not a businessman shall be considered as having his or her prime interests in the country in which he or she is civil registered, unless that natural person can demonstrate that his or her prime interests lie elsewhere.

The issue before the Supreme Court was whether the Swedish court had jurisdiction over a bankruptcy regarding a natural person filed by the state. The appellant contended that the court should sustain his plea of procedural hindrance and declare the application to be inadmissible or unfounded. As a basis for his claim, the man argued that the Swedish court had no jurisdiction to initiate insolvency proceedings against him since he had been living and working in Spain since the beginning of 2005. However, at the time of the bankruptcy petition, the appellant was civil registered in Stockholm and had been so since 1988.

The court found that according to the regulation, the decisive criterion when determining international jurisdiction is the location of the debtor's prime interests. The right to initiate insolvency proceedings therefore belongs to the courts in the state where those interests are situated. Thus, in the case at hand, the Swedish court was considered competent to examine the bankruptcy petition, given that the man's prime interests had been in Sweden on the date on which the proceedings were filed.

The court stated that a natural person's prime interests will be considered to be the place where he or she is registered, unless it can be demonstrated that these interests lie elsewhere. Thus, in this case, the burden of proof was on the appellant to rebut this presumption. The appellant asserted he had moved his prime interests from Sweden before the time of the bankruptcy petition, even though he had not notified the change of address until later. Although the court to some extent acknowledged this objection, it dismissed the appeal, finding that the appellant had been unable to demonstrate that his prime interests were in Spain.

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