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RISKS AND CONSEQUENCES FOR BOARD MEMBERS AND SHAREHOLDERS IN BANKRUPTED COMPANIES

November 2008 - Finance. Legal Developments by [Wistrand](#).
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The aim of this article is to outline the possible consequences for the shareholders and board members of a Swedish limited company in case of bankruptcy.

Duty to provide information

The representatives of the bankrupted company are liable to render the Court or the bankruptcy receiver all information that is requested as being of potential significance to the bankruptcy investigation. The obligation to provide information also covers assets that are not included in the estate because they are located abroad. At the request of the bankruptcy receiver, the representatives must attend the estate inventory meeting, which is held in the offices of the bankruptcy receiver.

Estate inventory oath

After the bankruptcy estate inventory has been drawn up by the bankruptcy receiver, the members of the board are summoned to swear an estate inventory oath before the court. By swearing the oath, the members of the board affirm that all the assets and debts of the bankrupted company have been listed in the inventory. The oath is taken under liability to punishment. A member of the board may not, following the issue of the bankruptcy decision and before he has sworn an estate inventory oath, travel abroad without the consent of the court.

Personal liability (shortage of capital)

It is familiar that the general purpose of conducting business in a limited company is to avoid personal responsibility for the shareholders and/or the members of the board in relation to the debts of the company. However, the general rule of the Swedish company law states that if the business of a limited company is continued - i. e. the company is not put in to liquidation or bankrupted - even though the equity capital falls below half of the (registered) share capital and a balance sheet for liquidation purposes is not promptly drawn up and handled at a shareholder's meeting, personal liability arises for future incurring of debts. In a bankruptcy situation, the bankruptcy receiver will investigate the possible existence of such personal liability and report his conclusion to the Court. If it is the opinion of the bankruptcy receiver that personal liability has arisen, it is possible that legal measures will be taken by the bankruptcy receiver or by a creditor.

General liability to damages

In a bankruptcy scenario, the bankruptcy receiver will also investigate the possible existence of liability for under Swedish company law for founders, shareholders, members of the board and/or the managing director and report his conclusion to the court. In general such liability arises if someone in the performance of his or her duties intentionally or negligently causes damage to the company or to a shareholder. If the bankruptcy receiver believes that such liability has arisen, it is possible that legal measures will be taken by the bankruptcy receiver or by a creditor.

Claw-back

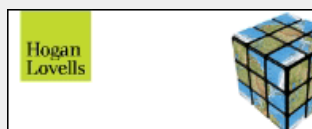
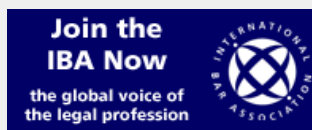
A payment made by the bankrupted company can be clawed back (recovered) from the recipient party by the bankruptcy receiver if the payment for example was made in connection with the date of bankruptcy or was deemed to prefer a certain creditor over another. Relevant circumstances for constituting a claim for claw-back are for example if the payment has been made in advance, with a substantial amount, with other means than money or to an affiliated company or a related person.

Guarantee commitments (surety warrants)

If someone - for example a shareholder or a group company - has made a guarantee commitment for the benefit of the bankrupted company, it is to be expected that the bank (or any other extender of credit) will demand payment from the guarantor immediately after the declaration of bankruptcy has been issued.

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