COUNTRY COMPARATIVE GUIDES 2021

The Legal 500 Country Comparative Guides

Sweden

LITIGATION

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Sweden.

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SWEDEN
LITIGATION

1. What are the main methods of resolving commercial disputes?

The main methods in Sweden for resolving commercial disputes are litigation and arbitration, with arbitration being the preferred method for major commercial disputes. Both are adversarial processes. The use of mediation is possible but not common.

2. What are the main procedural rules governing commercial litigation?

The Swedish Code of Judicial Procedure almost exclusively governs the procedural aspects of litigation, including commercial litigation. Certain legal areas (e.g. employment law and competition law) have specific procedural rules found in other legislation.

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

Commercial disputes are administered by general courts, which are organised in a three-tier system; district courts, courts of appeal and the Supreme Court. The Supreme Court is the final national court to which a commercial case can be appealed. All 48 district courts deal with commercial claims. Some commercial disputes have specific fora; most importantly those relating to maritime matters, IP matters, competition and certain labour related matters.

4. How long does it typically take from commencing proceedings to get to trial?

The timeline for the duration of commercial litigation varies. Roughly estimated, it takes approximately 18 months to two years from the commencing of proceedings to the ruling in the first instance. Large cases may, however, well exceed two years. If the case is appealed and the court of appeal gives leave to appeal (which is typically the case in commercial cases) it usually takes another year.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

Sweden employs the principle of public access. The general public are able to attend hearings and has access to documents sent to and by the courts. However, there are exceptions to this principle. Upon request by a party, and after decision by the court, secrecy can apply under the Swedish Public Access to Information and Secrecy Act to information that concerns a private party's business or operations if it can be assumed that disclosure would cause harm to that party. In practice, this means that the general public is not allowed to take part of such information and that, if any such information, including testimonies, is to be presented during a hearing, that particular part of the hearing will be held without public access.

6. What, if any, are the relevant limitation periods?

Limitation is a part of Swedish substantive law. The general limitation period is ten years from the occurrence of a claim unless otherwise agreed upon by the parties or specifically regulated elsewhere, according to the Swedish Limitations Act. For claims on consumers, the general limitation period is three years. Some areas of law are subject to specific limitation periods. The limitation period can be interrupted if the debtor offers payment, pays interest or instalment(s) or otherwise acknowledges the claim. The creditor may also interrupt the limitation period by presenting a written demand to the debtor or commencing legal proceedings. If the limitation period is interrupted a new limitation period begins from that day. Also, a new limitation period begins when the legal proceeding is concluded.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

Generally there are no pre-action conduct requirements in commercial disputes. One notable exception is employment matters, where a party may not commence court proceedings unless the party has negotiated with his or her counterparty. Also, members of the Swedish Bar Association must not take legal action unless the counterparty is given reasonable time to consider the client's claim and to reach an amicable settlement, although legal action may be taken without prior notice if a delay would entail a risk of loss of the legal rights or other harm, or if there are other special reasons for taking such action.

8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Commercial disputes are initiated by the filing of a statement of claim to the district court and payment of the registration fee, SEK 2,800 for the year of 2021. The claimant can either chose to bring an action for enforcement to obtain an order requiring a defendant to fulfil an obligation to act (Sw. fullgörelsetalan) or to bring an action for a declaration of whether or not a particular legal relationship exists (Sw. fastställelsetalan). The latter action may be examined by the court if, as to the legal relationship, there is uncertainty which is prejudicial to the claimant.

Service of process is necessary in litigation and it is essentially the court's responsibility to serve the defendant. Courts have efficient serving possibilities and are generally expedient at serving. However, a party may serve its counterparty where permission has been granted by the court.

9. How does the court determine whether it has jurisdiction over a claim?

The court will ex officio determine whether it has jurisdiction as soon as the registration fee is paid. Generally, the court will examine the statement of claim to establish if anything therein indicates that the court does not have jurisdiction. If in doubt, the court would normally issue a remedial injunction to the claimant to provide opportunity to argue on the jurisdiction issue. Eventually, the court will rule on its jurisdiction based on international legislation or treaties applicable or, in the absence thereof, national sources of law.

10. How does the court determine what law will apply to the claims?

Issues regarding applicable law are questions pertaining to substantive law and consequently the court will not ex officio inquire what law is applicable in a commercial dispute. The parties can agree on applicable law. The court will rule on the choice of law based on the international legislation or treaties applicable or, in the absence thereof, national sources of law. If the issue is at dispute, the court may render an interlocutory judgement regarding what law is applicable.

11. In what circumstances, if any, can claims be disposed of without a full trial?

Claims can be disposed of pre-trial in several ways. Procedural impediments shall be considered ex officio by the court unless specifically regulated otherwise. There are various procedural impediments such as the court lacking jurisdiction or the claim being timebarred/precluded (res judicata). A claim may also be disposed, inter alia; if the parties reach a settlement; if the defendant concedes the claim; if the claim is manifestly unfounded; or by default judgement (which applies inter alia where the defendant is served but fails to submit a statement of defence).

12. What, if any, are the main types of interim remedies available?

The main types of interim remedies include freezing orders and other orders for measures that are suitable to secure the applicant's right in a dispute or potential dispute. The latter measures may, inter alia, include orders that prevent or require the defendant to take certain actions. The applicant has a strict liability for any losses that the defendant may suffer due to the interim measures. Therefore, interim measures are, in general, only granted if the applicant provides security.

13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

Court proceedings are initiated through the submission of an application for a summons. The application shall include the requested relief as well as the dispositive facts and evidence on which the claimant relies

(although it is quite common that the claimant requests that evidence be submitted at a later stage). If the application meets the requirements, it will be served to the defendant who will be ordered to file a written statement of defence, typically within three weeks. Thereafter, the court will, generally, invite the parties to a preparatory hearing, during which the facts of the case are discussed and a time plan for the continued proceedings is established. In most disputes, further submissions are made by the parties and it is up to the parties to decide what documents to submit and rely upon. It is quite common that the court decides on a cut-off date after which no new facts or evidence can be invoked closely before the main hearing.

14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

A party has an extensive right to request that a court orders the counterparty or a third party to disclose documents. In brief, a request for document production should be granted if (i) it concerns an identified document or a category of documents that can be identified through their connection to a specific evidentiary theme, (ii) the document can be assumed to be of importance as evidence (this is a low threshold), (iii) the document is in the possession of the party against which the request is made, and (iv) a proportionality assessment by the court weighs in favour of the applicant. In addition, in order to identify if a party possesses a certain document or if a person has documents that may be assumed to be of importance as evidence, a party may request that witnesses be heard on the matter. There are several exceptions to the rules on production of documents. The exclusions include legal privilege, trade secrets and personal notes. As regards, trade secrets and personal notes, an order for production may be granted if there are extraordinary reasons therefor.

Lastly, upon a party's request, the counterparty is required to state which documentary evidence it possesses that have not yet been submitted.

15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

A person who is summoned as a witness is required under law to appear before the court and give oral testimony under oath. Written witness statements are very unusual and only allowed under certain circumstances. Generally, witnesses testify during the main hearing but may, under some circumstances, give their testimony at a separate hearing or prior to the commencement of court proceedings. Following the examination in chief, which is, as a main rule, handled by the party who invoked the witness, the opposing party may cross-examine the witness. Thereafter, the first party may re-examine the witness. The court may also ask questions and request clarifications, although it is quite unusual. Leading questions are not allowed during the examination in chief. Deposition is not used in Sweden.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

Expert evidence is permitted. Experts may be appointed by the court (extremely unusual) or a party (very common). Party and court appointed experts typically submit written opinions and give oral testimonies. Party appointed experts are treated as witnesses as regards duties and in terms of compensation.

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

A distinction is made between judgments, final decisions and non-final decisions. A court's determination on the merits of the matter at issue is made in a judgment, a separate judgment or an interlocutory judgment. Judgments and separate judgments by a district court can be appealed to the relevant court of appeal within three weeks from the date of the judgment. Judgments and separate judgments by a court of appeal can be appealed to the Supreme Court within four weeks from the date of the judgment. When a district court or court of appeal renders an interlocutory judgment, it shall decide whether such judgment can be appealed separately or only in connection with the final judgment.

A court's determination of other matters is made by a decision. A decision that disassociates a court from the matter at issue is a final decision, e.g., a decision to dismiss an application for a summons. All other decisions are non-final. Swedish courts rarely provide elaborate reasons for their decisions.

As a general rule, only final decisions can be separately appealed, i.e., appealed separately from a judgment, to a court of appeal or the Supreme Court, as the case may be. However, there are exceptions to this rule and several non-final decisions may also be separately appealed.

Appealed judgments and decisions will only be assessed by the superior court if such court grants leave to appeal. A court of appeal shall grant leave to appeal if (i) there is reason to believe that the district court has come to an erroneous conclusion, (ii) it is not possible to assess the correctness of the district court's judgement or decision, (iii) it is of importance for the guidance of the application of law that a superior court considers the appeal, or (iv) there are extraordinary reasons to entertain the appeal. The Supreme Court shall only grant leave to appeal if item (iii) or (iv) is at hand.

18. What are the rules governing enforcement of foreign judgments?

As a general rule, foreign judgments are enforced if it follows from law (including EU law) or an international convention to which Sweden has acceded. Judgments originating from EU member states are tantamount to Swedish judgments in relation to enforcement if the Brussels I Regulation is applicable to the judgment. Commercial judgments originating from states that are contracting parties to the Brussels Convention or the Lugano Convention and judgments subject to the Brussels I Regulation can be enforced in Sweden following an exequatur proceeding, which is initiated by the submission of an application to an authorised district court. This is a formal procedure and the district court shall not reassess the merits of the case. Furthermore, through EU, Sweden is bound by the 2005 Hague Convention. Sweden is a contracting party to the New York-Convention.

In some instances, enforcement may be denied, e.g., if the foreign judgment contradicts Swedish ordre public.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?

As a general rule, the party that loses a litigation shall compensate the opposing party for its costs. Such compensation shall fully cover the costs that are reasonably required to safeguard the winning party's interest. This includes costs of instructing lawyers, party-appointed experts and other professionals, e.g., translators, forensics, etc. The assessment of whether a cost was reasonably required shall be made on a case-to-case basis and the court usually considers the complexity of the case, the duration of the proceeding and the amount in dispute. Furthermore, the allocation of costs is affected by the outcome of the case. Therefore, if a request for relief is only partially granted, the court may decide that only part of the costs should be recoverable.

20. What, if any, are the collective redress (e.g. class action) mechanisms?

There are various mechanisms for bringing a class action before Swedish courts of general jurisdiction. However, class actions are very rare. Class actions are governed by the Swedish Group Proceedings Act, which contains special procedural rules that, to some extent, deviate from the rules in the Swedish Code of Judicial Procedure.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

If a party to an ongoing proceeding wishes to make a claim, which is dependent on the outcome of the ongoing proceeding, against a third party, such party may apply for a summons against the third party and request that the proceedings should be handled jointly. Similarly, a third party may bring an action against the parties (or a party) to an ongoing proceeding and request that the proceedings should be handled jointly.

If one claimant simultaneously brings several actions against one and the same defendant and the actions are based on essentially the same ground the actions shall be consolidated. This also applies if one or several claimants simultaneously bring an action against one or several defendants and the actions are based on essentially the same ground. In addition, a defendant in an ongoing proceeding may bring an action against the claimant through an application for a summons and request that the two proceedings be consolidated.

Moreover, proceedings between the same or different parties may be consolidated in other cases if it would benefit the handling of the proceedings. However, such consolidation is not mandatory and the proceedings may be separated at a later stage.

Lastly, a third party may intervene in an ongoing proceeding if it can make it probable that the ongoing

proceeding has an impact on his or her legal rights or obligations.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Third parties may fund litigation. The concept has historically been very rare in Sweden. However, a number of litigation funders have emerged in recent years. The funding arrangement requires special consideration in order to avoid potential conflicts of interests for the counsel (if counsel is a member of the Swedish Bar Association) and to preserve the right to compensation for litigation costs from the opposing party. According to a precedent from the Supreme Court, the corporate veil can be pierced if a party to a dispute has been established for the purpose of avoiding liability for litigation costs. It cannot be excluded that such principle could also extend to a third party funder, depending on the circumstances.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?

Swedish courts have continued their operations and have not suspended any part of their judicial operations. The courts have, however, been forced to cancel or postpone hearings due to illness or travel restrictions for parties, counsel, witnesses or judges. The need to cancel or postpone hearings has been mitigated by the possibility to allow testimonies to be taken over phone or through video conferencing. In particular, the courts have been more willing to allow for remote testimonies and for parties and their counsel to participate remotely through video conferencing. Overall, the equipment and systems used for these purposes have functioned well.

24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

Sweden is praised and recognised globally for its transparency and for its consistent adherence to the rule of law. Litigating in Sweden is safe, stable and predictable. The procedure is adversarial and highly driven by the parties, i.e., quite similar to the principles that typically govern international arbitration. The procedure is also expedient and non-formalistic.

Most commercial disputes are handled by the larger courts in Stockholm, Gothenburg and Malmö, and the judges maintain high integrity and, at least in the courts of Sweden's largest cities, possess the competence to deal with large and complex commercial disputes.

A disadvantage could be that Sweden lacks special commercial courts for commercial disputes, meaning that the general courts will handle also large and complex commercial cases.

25. What, in your opinion, is the most likely growth area for disputes for the next five years?

Regulatory disputes are expected to increase, especially disputes regarding banks and other financial institutions, much as a result of the increasing regulation and an increased activity from the Swedish regulator within these fields.

We also expect to see an increase in disputes resulting from COVID-19 effects. For example insurance disputes, tenancy disputes and other disputes emerging from the fact that many business have faced difficult times over the last year.

26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

The Swedish courts have had a positive stance towards new technology for several years. Most submissions, court correspondence and decisions are filed entirely electronically without hard copies, the courts will accept electronic power of attorneys and witnesses are frequently allowed to give testimony by phone or through video conferencing. Most courtrooms are also equipped with up-to-date technology for video conferencing, equipment to show PowerPoint-presentations, etcetera. We expect this trend to continue.

Technology – particularly automation and artificial intelligence – will continue to streamline the litigation process. For example, some law firms have started to utilise artificial intelligence to assist in reviewing documents for discovery, a development necessitated by the rise of massive electronic productions.

27. What, if any, will be the long –term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

As remote virtual court hearings have gained acceptance during the COVID-19 pandemic, we anticipate that law firms' and courts' reliance on and utilisation of technology in areas of litigation will increase in the coming years.

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