The Swedish Court System and the Swedish Litigation System

AN OVERVIEW

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As the newly added, exclusive commercial litigation member of the IR Global[1] in Sweden in January 2020, I am[2] proud to present this overview of the Swedish court system and the Swedish litigation system.

Larger commercial disputes, however, are often settled via arbitration and that system will be covered from a Swedish angle in another article.

1. Structure of the Civil Court System

Sweden has three different court systems. General courts, special courts, and administrative courts.

General courts handle criminal and civil cases, including family-related cases and commercial disputes as well as some labour law cases. The hierarchy of the general courts is (i) district courts, (ii) appeal courts, and (iii) the Supreme Court.

The competence of the special courts is restricted to cases where the dispute relates to limited parts of the substantive law; labour law, patent and trademark law, competition and market law, and environmental law.

The administrative courts primarily handle cases relating to disputes between a public authority and a private party, e.g. are taxes and forced care for drug addicts. These courts are also structured in a three-tier system with administrative courts, administrative courts of appeal and the Supreme Administrative Court.

2. Role of the Judge in Civil Proceedings

There are no juries in Swedish civil proceedings. However, in family cases, the court consists of lay judges together with the ordinary judge with the same votes and competence as the ordinary judge.

Civil proceedings are adversarial, and judges have, in general, a passive role. This phrase means that the parties are responsible for presenting the material and evidencecases that they wish the court to consider in its ruling and the judge should not consider any circumstance that has not been invoked by the parties.

In Swedish civil proceedings, the judge managing the case is obliged by law to work for a settlement between the parties.

3. Time Limits for Bringing Civil Claims

The principal statutory limitation under Swedish law, namely that a claim is time-barred if not invoked within ten years from its accrual.

In some cases, there is a formal requirement to instigate litigation in order to interrupt the time bar. In contrast, in other cases, it may be sufficient with written notification to the opposing party.

Please note that exceptions exist. Some rules stipulate a shorter period of limitation. For example, there is a time limit of three months to challenge a shareholders' meeting and a three-year limit in consumer-to-business relationships. The Swedish labour law has short time limits and important formal proceedings that have to be considered.

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In commercial relationships, the parties are free to agree on amendments of the stipulated limitation rules, such as to agree on a shorter period of limitation, to change the criteria for interrupting the time bar or amending the subject of limitation.

4. Pre-action Considerations Parties Should Take into Account

There are no rules in the Swedish Code of Judicial Procedure stipulating any requirements before the commencement of formal proceedings. Procedural agreements do not, in general, preclude the parties from bringing an action to court, unless there is an explicit exception stated in the law. One such exception stated in law, which precludes court proceedings, is an agreement between the parties to resolve the dispute by arbitration.

Under a legal action against an opposing party must, as a general rule, not be taken unless the opposing party is given a reasonable period to either settle the claim or state its position. This main rule is usually met through a letter requesting fulfilment of the opposing party's obligations under an agreement, payment of an amount due, or claim for damages, with the notification that legal actions may be taken otherwise.

If a party initiates an action in court without the opposing party having given cause for it, this circumstance may have consequences regarding the responsibility for litigation costs.

5. Commencing Civil Proceedings

Proceedings are commenced by an application in writing to the court for a summons. The writ of summons shall be signed and state a distinct claim, a detailed account of the circumstances relevant to the claim, a specification of the evidence offered and what shall be proved by each piece of evidence (in practice, however, this procedure is commonly deferred to a later stage of the proceedings) and the circumstances rendering the court competent, unless these details are apparent from what is otherwise stated.

If the plaintiff has any requests regarding the management of the case, the plaintiff should state such requests in the application.

When a competent court issues a summons, it will be served upon the defendant together with the complete lawsuit. The issuance of a writ by the court constitutes the formal commencement of the proceedings, even though an application of a lawsuit shall be deemed to have arrived on the date it was filed (which, for example, will be the decisive date for assessing whether a claim has been brought within the limitation period).

In recent years, Swedish courts have been criticised for not being able to adjudicate disputes promptly, mostly because of a heavy caseload. There are, for the time being, no proposals to ease any such capacity issues. However, the district courts could fulfil the quorum requirement using only one legally qualified judge (instead of three) when the court considers it sufficient because of the extent and difficulty of the case. This step could make court proceedings more efficient and enables the parties to reach a judgment more quickly.

6. Procedure and Timetable for a Civil Claim

The defendant shall be afforded a reasonable time to provide a statement of defence - often two to three weeks. The defendant can apply for a longer period, and the statement of defence must contain any procedural objections, information to what extent the plaintiff's claims are admitted or contested and the grounds therefor, together with the preliminary evidence invoked. If the defendant fails to submit a statement of defence within the time stipulated by the court, the plaintiff may, on request, have the claim granted in a default judgment. Such a default judgment can be regained once.

Failure by the defendant to raise objections to certain procedural impediments, such as lack of jurisdiction of the court, in the first statement of defence, precludes the defendant from invoking such objections later on in the proceedings.

The main steps to finalize a trial is usually an issuance of a lawsuit by the court, preparation, which normally is affected by the exchange of written submissions and one preparatory hearing, main hearing. Finally, the court renders its judgment.

In order to speed up the proceedings, the court is responsible for setting a trial timetable together with the parties. However, during the preparation stage, procedural issues for the court to decide may arise, e.g. requests for production of documents, interim measures, allowance of claims and evidence.

The time for a case to reach trial depends on the complexity of the case and the workload of the court. Usually, a commercial case will take approximately 12 to 18 months to reach trial in the first instance.

7. The Procedure and the Timetable

The parties have limited influence on the procedure and the timetable.

If, on the other hand, a party in a commercial dispute delays the proceedings, the court may direct a party to determine its action or defense finally and to state the evidence that the party finally invokes within a short period. After the set time for such statement has expired, the party may not invoke new circumstances or new evidence unless the party can reasonably prove that there was a valid excuse for its failure to invoke the circumstances or evidence before the end of the time limit.

If no oral evidence is invoked, it is possible to request a judgment over the complete case without a main hearing. Generally, these types of judgments finalise the proceedings and can be used to cut costs and have the case finalized earlier.

8. Documents and Other Evidence in the Trial

Parties are not normally obliged to retain documents before the start of litigation. However, if there is a risk that evidence may be lost or difficult to obtain and no trial is pending, a request may be made to a court, under limited conditions, to preserve evidence for the future. A person obliged to produce documents may be compelled to do so by a fine.

Destroying, rendering unserviceable, or concealing documents after a request for preservation of evidence has been made are actions sanctioned with a fine or up to four years imprisonment. Such a sanction is only possible concerning electronic documents when the document has a sign of origin that can be reliably controlled.

As a general rule, the parties are not obliged to share relevant documents or information. However, a party may request the court to order its counterparty to provide documents if the counterparty has documents that it is assumed to be of importance as evidence in the particular case. The request is limited to certain documents, a certain category of documents, or to all documents that are relevant to a clearly described and specified theme of proof.

In addition, the court shall consider the importance that the documents might have as evidence about the counterparty’s interest in not disclosing the documents. Thus, a request for documents will be granted if the court finds the request proportionate having considered the parties’ opposite interests.

The court may also order the production of documents with third parties.

9. Privileged Information

Documents covered by legal privilege can be withheld from the opponent and the court.

Legal privilege applies to documents that originate from, for example, physicians, dentists, midwives, and trained nurses, and that contain information entrusted to, or discovered by, these professionals in their professional capacity. Advice from in-house lawyers is not protected by privilege.

A party can withhold documents that would involve the disclosure of trade secrets unless there is an extraordinary reason requiring disclosure of the document. It is a general rule that personal notes produced exclusively for private use are excluded. This principle has been declared in court practice also to include notes prepared exclusively for a company's internal use.

10. The Principle of Orality

The Swedish Code of Judicial Procedure is based on the principle of orality. This principle means that the main rule is that witnesses appear in person in front of the court and do not provide a written witness statement. Written witness statements are only allowed under special circumstances.

In addition, written witness statements may be allowed if the parties so agree, and the court does not find this practice inappropriate. The courts tend to give written witness statements less value than oral testimony before the court. In case of an application for interim measures written witness statements are allowed and often impacts the court.

The parties are required to state in their submissions which witnesses they invoke, what the witness will testify about and what circumstances the witness shall prove. The detailed content of the witness evidence does not have to be exchanged before the examination of the witness at the main hearing.

Experts shall, as a main rule, submit a written opinion to the court. After the opinion is submitted, it shall be accessible to the parties. The expert's evidence shall cover the assignment given to him or her by the court or a party. There are no restrictions regarding what type of evidence the expert may give. Of course, the expert report must contain information that is relevant to the case.

11. How Evidence is Presented at Trial

Witnesses give evidence orally at trial where they will be subject to cross-examination. At the trial, the witness has to take an oath. The examination is left in the hands of the parties, starting with the party who has invoked the witness, followed by a cross-examination by the opposing party. The party who has invoked the witness may, thereafter, ask additional questions for clarification purposes. The court may ask additional questions to the witness, too, preferably only for clarification purposes.

It is possible to hear a witness via phone or videoconference if the court, the parties, and the witness consent to this procedure.

An expert shall give evidence orally at trial if a party requests it and the examination of the expert is not without importance, or if the court otherwise finds it necessary. If an expert gives evidence at trial, the same rules apply as for witnesses.

12. Interim Remedies

If a party shows probable cause that a monetary claim is, or can be, the basis of judicial proceedings or determined by another similar procedure. It is reasonable to suspect that the opposing party will circumvent payment of the debt, by disappearing, removing property, or other action the court may order that the opponent's property (e.g. real estate, money in bank accounts) shall serve as security for the monetary claim.

If the claim concerns a superior right to certain property, and it is reasonable to suspect that the opposing party will conceal, deteriorate, or in other ways dispose of the property to the detriment of the applicant, the court may order provisional attachment to that property. The court may also order the immediate restoration of possession or other immediate redresses in a pending proceeding concerning the superior right toa certain property if it is shown that one of the parties has unlawfully disturbed the opposing party's possession or has taken any other unlawful measure regarding the property.

If the claim is other than monetary, and the plaintiff shows probable cause for the claim in the dispute, the court may order measures suitable to secure the applicant's right. Such an order requires that it is reasonable to suspect that the opposing party - either by proceeding with a certain activity, performing or refraining from performing a certain act or by other conduct - will hinder or render more difficult the exercise or realisation of the applicant's right or substantially reduce the value of that right. Such interim measures may include the prohibition of proceeding with a certain activity or performing a certain act or an order to respect the applicant's claim in other aspects. The court order may be sanctioned with a fine.

Applications for security measures are normally not granted unless the opposing party has been given an opportunity to respond, but may be granted immediately, *ex parte* if a delay would place the applicant's claim at risk.

A prerequisite for a court to grant interim measures is that the applicant provides sufficient security (e.g. a bank guarantee) for the loss the opposing party may suffer if the applicant's main claim be denied when the case is finalised.

In many cases, it is also possible to obtain injunctions. The detailed conditions for such remedies are regulated separately in the different fields of material law.

Following case law, an interim measure must also meet a test of proportionality between the potential results of the security measure or injunction and the consequences it has for the opposing party.

13. Substantive Remedies

In civil proceedings, the court may either give a judgment of performance or a declaratory judgment. The judgments of performance available are orders to, among other things, pay a specified amount (such as a contractual sum) or to pay damages for breach of contract, or decrees of specific performance compelling the defendant to perform an act (for example, to comply with contractual obligations) or refrain from it.

As regards declaratory judgments, a party may request for declaratory relief regarding whether or not a certain legal relationship exists between the parties. For example, the court may assess the validity of an agreement between the parties. However, it is within the court's discretion to allow a claim for declaratory relief. There are also certain prerequisites under Swedish law that must be at hand for the court to be able to allow such a claim. If a party can request a judgment of performance, declaratory relief is in principle not available, subject to certain exemptions.

Interest is payable on monetary awards only if the plaintiff has requested interest to be awarded and it is included in the judgment. However, interest payments on litigation costs

are always payable from the date of the judgment until payment has been made, without the requirement for request by the parties.

Punitive damages are not recognized as a remedy under Swedish law.

14. Means of Enforcement

If a party fails to comply with a judgment voluntarily, the counterparty can apply for enforcement at the Swedish Enforcement Authority. The enforcement can comprise both monetary claims and specific performances.

The court may, in its judgment, order that the judgment is enforceable before it has gained legal force if the court finds that there are reasons to do so. However, in such case, the court may require the favoured party to provide a guarantee for the damage for which the favoured party may be liable if the court of appeal reverses the judgment. A judgment can also be enforceable before it has gained legal force by default, because of a specific provision in the substantive law.

15. Publicity

Court hearings in civil proceedings are usually held in public. Exceptions can be made, for example, if it can be assumed that information presented or disclosed during the hearing is covered by secrecy under the Public Access to Information and Secrecy Act or the Act on the Protection of Trade Secrets.

All court documents and documents produced and submitted in litigation are accessible to the public unless the court decides otherwise. Documents submitted in the proceedings that, for example, fall under the Act on the Protection of Trade Secrets are usually covered by secrecy. The court may also decide that secrecy should only apply to certain parts of an otherwise public document. If covered by secrecy, the document (or parts thereof) can be withheld from the public.

16. Costs

The main rule under the Swedish Code of Judicial Procedure is that the losing party shall reimburse the winning party for all of its litigation costs. These costs include, among other things, costs for counsel, witnesses and experts, as well as the party's own costs. Litigation costs always have to be reasonable and fair (see section 17). Thus, the court may, at its own discretion, decrease the costs claimed by the winning party. However, this is usually done only upon request by the opposing party. As a general rule, the allocation of litigation costs between the parties is made pro-rata to the outcome of the case. However, in certain circumstances, a deviation from the general rule is made, and the winning party is ordered to cover the litigation costs of the losing party. Such may be the case if, for example, the winning party has acted carelessly in the legal proceedings or if the legal proceedings were initiated without cause (for instance, if the defendant would have complied with the plaintiff's request, had the defendant requested initiating the claim).

The rules of allocation of litigation costs may not be circumvented by the use of a limited liability company that is deliberately underfunded to bear the opposing party's litigation costs. If the limited company has no other business operations than the litigation, this can be reason enough for piercing the corporate veil and make the shareholders personally responsible for the litigation costs.

If a foreign legal person or a foreign citizen that does not have a residence in the EU or the EEA wants to bring legal action before a Swedish court against a Swedish citizen, resident or legal person, the plaintiff shall provide security for the opposing party's future litigation costs.

For the court to determine such an order, the defendant has to request for it in its first pleading. The security shall cover the costs the defendant can be expected to be awarded if the plaintiff's claim is rejected.

Furthermore, a general prerequisite applicable to applicants requesting interim measures is that the applicant provides sufficient security.

17. Contingency or Conditional Fee Arrangements Between Lawyers and Their Clients etc

Under the rules of the Swedish Bar Association, a lawyer must charge clients a reasonable and fair amount. These rules are in line with what the court may establish in a judgment under the Swedish Code of Judicial Procedure. Moreover, payment can only be made with normal methods of payment, and not by, for example, stock shares in a company.

Swedish lawyers usually charge their clients on an hourly basis. Under the rules of the Swedish Bar Association, 'contingency fees' are not allowed. The amount that the lawyer charges the client must not unless specifically agreed upon, be higher than the amount requested before the court. The rules of the Swedish Bar Association also forbid conditional fee agreements, unless there are special circumstances (e.g. class action suits, cross-border cases with procedures outside of Sweden, and if it is necessary in order for the client to be able to have 'access to justice').

It is permissible for a lawyer to accept compensation from a third party, and it is common for litigation to be funded by, for example, insurance companies as a consequence of the party being insured. Although not prohibited, third-party funding in the sense of particular 'funds' or 'investors' is still rarely used in Swedish litigation. Neither is it prohibited per se for a third party financing the proceedings to take a share of any proceeds of the claim.

18. Insurance Available to Cover a Party's Legal Costs

There are certain company and liability insurance policies that may come into play in funding litigation. It often depends on the scope of the insurance policy and the type of claim at hand. In order to utilize such funding, notice must as a general rule be given to the insurance company before, or in connection with, the commencement of the proceeding. Most insurance policies also have a maximum ceiling and charge excess. Failure to notify the insurance company before the commencement of the proceeding may result in the party not being able to utilize the insurance.

19. Collective Redress

A class action proceeding under the Swedish Class Action Act occurs when a plaintiff represents several persons for whom the prejudicial case will have legal consequences. Class action suits may be individual class action cases, actions by organisations or public class actions. A class-action case may cover claims that can be addressed by a general court under the rules of the Swedish Code of Judicial Procedure.

An individual class action can be invoked by anyone who has a legal claim that is comprised of the class action. An unincorporated association can invoke an organisation class action represents and protects consumers' and wage earners' interests. A public class action can be invoked by an authority that, depending on the subject of the dispute, is suitable to represent the group. A group trial may also be initiated under the specific provisions in the Swedish Environmental Code.

A class action can be filed if:

a) the claims are based on circumstances that are mutual for the members in the class;

b) a class action does not seem inappropriate because some group members' claims differ significantly from other group members' claims;

c) a majority of the claims are not equally suitable to be invoked by each of the group members;

d) the group is deemed appropriate concerning size, delimitation and other circumstances; and

e) the plaintiff is deemed suitable to bring a class action concerning the plaintiff's interest, economic conditions and other circumstances.

A class action involves all group members that, within a certain period, have notified the court that they want to be included in the group (an 'opt-in' proceeding). The court is responsible for notifying and informing about the class action suit.

In general, the same rules apply for ordinary civil claims and class actions as regards the procedure. However, a class action can differ from ordinary proceedings in a few aspects. For instance, the court may designate a person as plaintiff, if the original plaintiff is no longer deemed to be suited for the task. A person that has been designated as a plaintiff to bring a class action has the right to receive compensation from public funds for litigation costs. The group members have no responsibility for the litigation costs in the proceedings. Exceptions to this main rule can be made about a group member who negligently inflicts costs. In addition, contrary to ordinary litigation, the plaintiff's counsel may enter into a 'risk agreement' with the plaintiff in respect of costs. The risk agreement may include a success fee, but it may not be based entirely on the value of the dispute. In order for a risk agreement to be valid, it must be in writing and be ratified by the court.

20. Appeal

A judgment (final) by the district court may be appealed. A party wishing to appeal a district court judgment in a civil case shall do so in writing within three weeks from the date the judgment was rendered. The appeal shall be submitted to the district court, which forwards it to the appellate court. The appellate court must grant a leave of appeal for it to hear the case. Leave of appeal shall be granted if:

a) there is reason to question the rightness of the judgment of the district court;

b) it is not possible to evaluate the rightness of the district court's judgment;

c) it is of importance regarding the future application of the law that a higher court hears the case; or

d) there are other reasons to grant the leave of appeal.

Subject to a leave of appeal, judgments of the appellate court can be appealed to the Supreme Court within four weeks from the date of the judgment. Such leave of appeal shall be granted only if:

a) it is of importance concerning the future application of the law that the Supreme Court hears the case; or

b) there are other particular reasons to grant the leave of appeal.

In addition to judgments, the court may also render decisions. Final decisions (i.e., decisions by the court that end the proceeding without examination of the merits of the case) may

always be appealed. As regards non-final decisions (i.e., decisions by the court during the proceedings), the court may decide that the decision cannot be appealed or only appealed after the proceedings (i.e., along with the appeal of the final judgment).

21. Recognition and Enforcement of Foreign Judgments

The enforcement of a foreign judgment in Sweden requires an applicable treaty in this matter between Sweden and the foreign state. Such treaties exist between the EU and EFTA member states. The most common treaties and regulations that Sweden is a party or subject to are the following:

a) Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I-Regulation of 2000);

b) Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I-Regulation of 2012);

c) the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968 (the Brussels Jurisdiction Convention);

d) the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 (the New Lugano Convention); and

e) the EFTA Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1988 (the Lugano Convention).

In order for a judgment to be enforceable in Sweden, it must involve a matter of civil law. In most cases, a formal decision of a competent authority (a court, or in the case of judgments governed by the Brussels I-Regulation of 2012, the Swedish Enforcement Authority) is required before a judgment may be enforced.

A judgment that conflicts with Swedish public policy can never be enforced in Sweden.

If the state where the foreign judgment was rendered is not part of a treaty of enforcement with Sweden and is not a party to the conventions mentioned above and regulations, the judgment is not enforceable in Sweden. However, such foreign judgments may still be recognised and enforced de facto, if the parties have an exclusive jurisdiction agreement. In such a case a Swedish court may simply accept the foreign judgment (to the extent it does not violate Swedish public policy) and deliver a judgment that replicates the foreign judgment, which then would be enforceable as any other domestic judgment. In addition to the above, it should also be mentioned that a foreign judgment that is not enforceable can be invoked as evidence in a domestic claim (i.e., the foreign judgment is admissible as documentary evidence). Foreign judgments cannot be enforced under the principle of reciprocity in Sweden.

22. Obtaining Oral or Documentary Evidence for Use in Civil Proceedings in Other Jurisdictions

EC Regulation No. 1206/2001 on cooperation between the courts of the member states of EU in the taking of evidence in civil or commercial matters applies in Sweden in civil or commercial matters where a court in one member state, under the national legislation, requests that a competent court in another member state takes evidence, or when it requests permission to take evidence directly in another member state. Swedish courts that take evidence on behalf of a court in another member state shall as a main rule apply the

regulations in the Swedish Code of Judicial Procedure. The direct taking of evidence may only take place if it can be performed voluntarily without the need for coercive measures.

If the EU as mentioned earlier regulation and procedure for taking evidence is not applicable, the provisions in the Swedish Act on the taking of evidence for a foreign court of law governs the taking of evidence for a foreign court. The foreign court submits a request for the taking of evidence in a civil case or matter to the central authority in Sweden, which forwards it to the competent Swedish court that is to perform the taking of evidence. However, a request from one of the other Nordic states is sent directly to the competent Swedish court. The measures that may be required concerning taking evidence are listed in the Act. The list of measures is, however, not exhaustive.

If the foreign court has specific wishes concerning the procedure, they will be accommodated insofar as they are not contrary to Swedish law. Heed must also be paid to restrictions in procedural law in the foreign state. Foreign judges have the right to be present when the evidence is being given.