

## **The Swedish Supreme Court gives leave to appeal case about the exclusion of partners from an unregistered partnership.**

- Claes Ottosson, LL.M, and Elaine Gylling, LL.M, Independia Law Firm AB

The Supreme Court has, as one of 3% of all cases appealed to the court yearly, granted leave to appeal in a case that may have great significance for the interpretation of certain provisions for Partnership and Non-Registered Partnership Act. In the case, Claes Ottosson and Elaine Gylling represent two of the four partners who together run an unregistered partnership. The legal process may bring clarity, not only regarding the future of the partners' partnership, but also the future interpretation of the Partnership and Non-Registered Partnership Act regarding whether it is possible to exclude more than one (1) partner at the same time.

### Background

The provision in chapter 2 section 30 in the Partnership and Non-Registered Partnership Act reads:

"If there are grounds for liquidation according to §§ 24-27, instead of the Partnership going into liquidation, exclusion can take place of the partner to whom the grounds for liquidation can be attributed or his right holder. For exclusion to take place, the following must be observed. The other partners must agree on the exclusion. The person who is requested to be excluded must receive a redemption amount that can be assumed to correspond to what he would have received if a liquidation of the Partnership had taken place instead. The person who is requested to be excluded has the right to demand that security be provided so that his responsibility for the Partnerships relations is not claimed to a greater extent than can be assumed to have been the case if, instead of exclusion, a liquidation of the Partnership had taken place." According to the second paragraph, it appears that the provision is dispositive.

The grounds for liquidation, very summarized, are; a partner terminates the Partnership (§24), a partner disregards his obligations to a significant extent or another important reason (§25), a partner dies (§26) and a partner is declared bankrupt (§27).

It was with the support of this section that Independia Law's clients wanted to exclude two partners from the joint simple company as a result of the dishonest actions of the partners. The partners objected to the exclusion. It was decided that the question of whether two partners can be excluded at the same time would be tried by the local district court. The intermediate theme was "Can in a non-registered partnership with four partners - when nothing else has been agreed - two of the partners, with the support of chapter 2 Section 30 Partnership and Non-Registered Partnership Act (1980:1102), exclude the other two partners when they oppose the exclusion of each other?"

The district court's ruling.

The district court ruled in favor of the defendant and considered that exclusion could not take place by two members of the company at the same time. The assessment was mainly based on the district court's interpretation that this followed from the wording, that the preparatory work does not speak for a way that shows that the situation with the simultaneous exclusion of two members of the company was taken into account when drafting the legislation and that the law in this part is dispositive,

so that members of the company could agree on a different exclusion procedure if desired.

The Court of Appeal's assessment.

The Court of Appeal changed the district court's verdict and declared that it was possible to exclude two members of the company in the manner suggested in the interlocutory appeal.

To reach that conclusion, the Court of Appeal began by stating that there was reason to see how German law treated such a situation as the one in question in the case, since the provision in question was added in connection with the introduction of the 1980 Act, which replaced the previous Partnership and Non-Registered Partnership Act from 1895. When introducing the law, the law committee proposed, following the German pattern, that the exclusion of partners could take place despite the absence of an agreement, provided that a ground for liquidation could be attributed to the relevant partner. The reason why the law committee turned to German law when introducing the section was because German law at the time was a model for the 1895 law on Partnership and Non-Registered Partnership Act. After a closer examination of German law, the Court of Appeal found that there was room in German law to exclude more than one (1) partner if the reason for the exclusion was the same for all partners. Thus, given that the legislator had German law as a model when introducing the law, this meant that the provision could be applied in the same way as the German equivalent.

Furthermore, the Court of Appeal emphasized that the provision in question had not been designed so that the wording in any way limited how many members of the company could be subject to exclusion at one and the same time. The limitation that existed was the requirement that there should be a ground for liquidation attributable to the particular person to be excluded. According to the Court of Appeal, it would appear to be unjustified both for legal and practical reasons that exclusion could only be done by one (1) partner at a time, as it would not be a completely unusual situation that in a simple company with several partners situations arise where a ground for liquidation can be attributed to more than one (1) partner at one and the same time, for example as in the situation in the present case.

The leave to appeal to the Supreme Court.

The Supreme Court now has the opportunity to expand practice both in the meager area of non-registered partnership and to provide guidance on how legal text should be interpreted.

The Supreme Court tentatively plans to issue a verdict in the spring of 2025 and the article will be updated.