



ICLG

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2015

8th Edition

A practical cross-border insight into litigation and dispute resolution work

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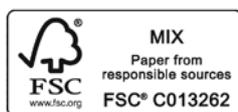
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EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Litigation & Dispute Resolution*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of litigation and dispute resolution.

It is divided into two main sections:

One general chapter titled *Freezing Injunctions in Support of Foreign Proceedings & Arbitration*.

Country question and answer chapters. These provide a broad overview of common issues in litigation and dispute resolution in 42 jurisdictions, with the USA being sub-divided into five separate state-specific chapters.

All chapters are written by leading litigation and dispute resolution lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Greg Lascelles of King & Wood Mallesons LLP, for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk.

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Sweden got? Are there any rules that govern civil procedure in Sweden?

Sweden is governed by the civil law tradition. The rules that govern civil procedure are found in the Code of Judicial Procedure (the “Code”, *Sw. Rättegångsbalken*).

1.2 How is the civil court system in Sweden structured? What are the various levels of appeal and are there any specialist courts?

There are three types of courts in Sweden:

- the general courts, consisting of district courts, courts of appeal and the Supreme Court;
- the administrative courts, i.e. administrative courts, administrative courts of appeal and the Supreme Administrative Court; and
- certain specialised courts, or specialised units within courts, which try various matters such as the Labour Court, the Market Court, the Environmental Court and the Patent Appeal Court.

This chapter will only cover the rules on litigation in the general courts, i.e. not the rules in the administrative and special courts, and only commercial dispute resolution, i.e. not family law or criminal law.

1.3 What are the main stages in civil proceedings in Sweden? What is their underlying timeframe?

Civil proceedings are initiated by the claimant submitting a claim form to the court. Thereafter, the court orders the respondent to reply to the claim. Following exchange of pleadings between the parties, the court holds a preliminary hearing in order to analyse any uncertainties and investigate the possibilities of reaching an amicable agreement. If no agreement is reached, the court normally orders the parties to submit their final schedule of evidence within a certain timeframe and sets a date for the final hearing. After the final hearing, the court delivers a judgment which can be appealed.

The proceedings in the district court last for approximately one year if the case is less complex, and two or more years if it is a complex case. If the court of appeal grants permission to appeal, it will decide the case within approximately another two years.

1.4 What is Sweden’s local judiciary’s approach to exclusive jurisdiction clauses?

The parties could enter a written agreement to settle a current or future dispute in a certain court or enter into an arbitration agreement. Such agreement is binding if one of the parties, normally the defendant, makes reference to it and if there are no peremptory regulations on jurisdiction in the Code (such as exclusive jurisdiction for claims assignable to real estate). As regards parties in the European Union Member States, there are specific rules on jurisdiction clauses in the Brussels I Regulation (EC) No. 44/2001 (“Brussels I”).

1.5 What are the costs of civil court proceedings in Sweden? Who bears these costs? Are there any rules on costs budgeting?

The parties are not responsible for the court’s costs, save for the application fee of approximately €50, which must be paid by the claimant. As a general rule, Sweden applies the costs in the cause rule in civil proceedings. However, there are exceptions, e.g. if the winning party has litigated negligently or brought an action which is unnecessary. There are no rules on costs budgeting in Sweden.

1.6 Are there any particular rules about funding litigation in Sweden? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

There are no particular rules concerning funding litigation in Sweden. According to the Code of Conduct of the Swedish Bar Association (the “Code of Conduct”), contingency fees/conditional fees are not permitted in Sweden. Examples of certain cases where contingency fees could be allowed are group actions and other cases where access to justice may be denied if contingency fees are not allowed. However, exceptions are very seldom allowed in practice.

There are no rules regarding obtaining security for future litigation costs in Sweden. Nevertheless, if a party wins a case in the district court, the losing party is required to pay the costs in accordance with the judgment. The winning party can apply for execution of the judgment or obtain security for the judgment even if the judgment is appealed to the court of appeal.

However, a defendant may order a claimant domiciled outside the EU or the EEA to provide security for future litigation costs that might be awarded to the defendant.

1.7 Are there any constraints to assigning a claim or cause of action in Sweden? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

If a party assigns a pending claim to another party, the assignor must notify the other party about the assignment. It is permitted for a non-party to finance litigation without being a party to the proceeding, although in such an event, the winning party might not be able to recover its litigation costs from the losing party since those costs have already been secured through the non-party financier.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

The Code does not contain any such formalities. However, there is a requirement under the Code of Conduct that proceedings cannot be initiated unless the opposite party has been given a reasonable time to consider the claim and has also been given an opportunity to enter into an amicable agreement. An undisputed claim should be pursued via the Enforcement Service (Sw. *Kronofogdemyndigheten*) through summary proceedings in order to obtain an enforceable decision.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Time limits are treated as a substantive law issue in civil proceedings. The limitation period is calculated from the date of the origin of the claim. As a general rule, a 10-year limitation period applies to a claim if the limitation period is not postponed by limitation termination actions. As regards consumer claims, the limitation period is limited to three years if the claim is held by a trader in the course of his professional activities.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in Sweden? What various means of service are there? What is the deemed date of service? How is service effected outside Sweden? Is there a preferred method of service of foreign proceedings in Sweden?

The claimant must submit a claim form to the court. If the claim form fulfils the legal requirements stated in question 3.3 below, the court will issue a summons against the defendant. Subsequently, the claim form, along with the order for preparatory proceedings, will be served on the defendant.

Most commonly, documents are served by mail with a return receipt. Due to a recent amendment, there is now the possibility to serve documents electronically, but this method of service is at the court's discretion. The deemed date of service is when the recipient receives the documents. When regular service is unsuccessful, service can be made by a process server or by public notice. When the recipient is a legal person, service can be made by sending a message to the legal person's registered address, with a control message being sent the next day.

If the recipient is not domiciled in Sweden, service will take place according to the applicable law in the recipient's country, assuming that such is not contrary to Swedish general principles of law. There are various international agreements on service, e.g. Regulation (EC) No. 1393/2007 and the 1974 Nordic Convention.

3.2 Are any pre-action interim remedies available in Sweden? How do you apply for them? What are the main criteria for obtaining these?

Pre-action interim remedies are available in Sweden. Upon application by the claimant, the court may order a provisional attachment of so much of the opponent's property that the claim may be assumed to be secured on execution. The main criteria is that the claimant can show probable cause to believe that there is a money claim or a superior right to certain property that either is, or can be made, the basis of judicial proceedings. Furthermore, it must be reasonable to suspect that the opposing party will evade payment of the debt.

The application for such an order is submitted to the court that has jurisdiction over the dispute. When no proceedings are pending, an application will be made in writing. In principle, the defendant will be ordered to answer the application. However, if any delay would jeopardise the applicant's claim, the court may immediately impose an interim order. As a main rule, the applicant must deposit security with the court for the loss that the opposing party may suffer.

The court may also order other measures deemed necessary to secure the applicant's right, for example, through a prohibition order.

3.3 What are the main elements of the claimant's pleadings?

The written claim form must include a distinct claim, a detailed description of the material facts invoked as the basis of the claim and the circumstances rendering the court competent to hear the case. The claim form must also include a preliminary statement of evidence, stating what is to be proven by each item of evidence. Written evidence should be enclosed with the application. Finally, the claim form should include details required to effect service, such as the names and addresses of the parties.

3.4 Can the pleadings be amended? If so, are there any restrictions?

The general rule is that the action, once instituted, may not be amended. The claimant may, however, amend his claim in light of a circumstance that occurred during the proceedings or of which he only became aware subsequent thereto. The claimant may also request a declaration of the existence or non-existence of a certain disputed legal relationship.

Additionally, the claimant may claim interest or other ancillary obligations dependent upon the principal obligation, and present a new claim based essentially on the same ground. Such a claim may be dismissed if it is raised after the main hearing has commenced if such cannot be considered without inconvenience, and may not be presented for the first time in a superior court.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

The defendant's statement of defence must contain any objections regarding procedural impediments that the defendant desires to make and to what extent the claimant's claims are admitted or contested. If the claimant's claim is contested, the defendant is required to provide the basis for contesting the claim and give his position to the circumstances in the case, and a preliminary schedule of evidence and what will be proven by each item of evidence.

A counterclaim is advanced through a claim form. The counterclaim can be joined in one proceeding with the original claim if the two claims concern the same or a related issue. A defence of set-off can be brought by the defendant without having to issue a separate claim form.

4.2 What is the time limit within which the statement of defence has to be served?

The Code states that the statement of defence must be served immediately. However, there is no specific time limit. The court usually orders the defendant to submit his response within 14 or 21 days from the date of service, but the defendant could request an extension if more time is needed.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

A party who wishes to claim rescission, damages or joint responsibility in a similar claim from a third party may institute proceedings against the third party for joint adjudication with the main claim.

4.4 What happens if the defendant does not defend the claim?

If a defendant fails to comply with a court-sanctioned judgment in default order within the prescribed time limit, the court can deliver a default judgment based on the claimant's submissions.

The defendant may seek reversal of the default judgment before the same court within one month after the judgment has been delivered.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant must object to the court's jurisdiction in his first submission to the court. In the absence thereof, the court will normally be considered competent. However, if there are preemptory regulations on jurisdiction, the court will try its own jurisdiction. If another court is seized with jurisdiction, the court will note the claimant accordingly. In these cases, the court could, with the claimant's consent, submit the claim to the relevant court.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

A third party can either be brought into a pending trial upon his request, or by the request of one of the parties. Should the request be made by one of the parties in the pending trial, the third party cannot object to having the proceedings that he has become a party to being adjudicated on a consolidated basis with the other proceedings.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Two or more proceedings may be consolidated according to the provisions in the Code. In order for the court to consolidate different proceedings, they need to be based on substantially the same circumstances. The consolidated proceedings can be aimed at the same defendant or different defendants, or by different claimants against the same defendant.

5.3 Do you have split trials/bifurcation of proceedings?

When several claims that could be separated are joined in one proceeding, the court may give a separate judgment on any of the claims. When a single claim is accepted, a separate, partial judgment may be given regarding that part.

If adjudication of one claim depends on the adjudication of another claim joined in the same proceeding, a separate intermediate judgment may be given for that other action. A separate judgment on a circumstance of immediate importance to the outcome of the case or on how the application of law is to be judged when determining the matter at issue may also be delivered when it is appropriate in regards to the investigation. It is not unusual that the court delivers a separate judgment on liability. The court may order a stay of proceedings on the remaining issues in the case until the separate judgment becomes final.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in Sweden? How are cases allocated?

All civil cases are allocated to the district court as first instance, regardless of the value of the claim. Expedited claims (Sw. *FT-mål*) have certain specific procedural rules, e.g. concerning legal costs. In some exceptional cases, special tribunals have sole jurisdiction (e.g. in relation to environmental law and labour law).

The court has an internal case allocation system. The general rule is that cases should be randomly allocated. There are exceptions, e.g. claims pertaining to a specific kind of subject-matter can be handled in the same division.

6.2 Do the courts in Sweden have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The court decides on the time frames for the case with due consideration for what is suitable for every specific case and usually after communication with the parties. If it is of benefit for the case, the court will provide the parties with a specification of the issues which should be dealt with during the course of the proceedings. The court will also make a written summary of the parties' positions as understood by the court. The court may order the parties to submit material for the summary.

The court may, in the exercise of its inherent discretion, direct a party to finally determine the claim or defence and to state the evidence invoked in support thereof. Due to a recent amendment, such an order can also be given to set a cut-off date to the preparation of the case before a final hearing. After expiration of the time for such a statement, the party may only invoke a new circumstance or new evidence under specific, limited circumstances.

A party which negligently fails to comply with any interim orders will be penalised in costs, irrespective of whether that party is ultimately successful. The costs are determined by the court in connection with the final judgment.

6.3 What sanctions are the courts in Sweden empowered to impose on a party that disobeys the court's orders or directions?

If a party fails to respond to a court order or direction or refuses to answer a relevant question, the party's behaviour can have evidentiary consequences. The court is empowered to issue a penalty for non-compliance if a party disobeys the court's order in a hearing, but this is unusual in commercial trials.

6.4 Do the courts in Sweden have the power to strike out part of a statement of case or dismiss a case entirely? If so, in what circumstances?

If the claimant's statement of case does not constitute a legal basis for the purported cause of action or if it is otherwise clear that the case is unfounded, the court may exercise its inherent discretion and give judgment.

The Code offers no means to disregard a submission that is submitted to the court after the date set by the court (with the exception stated under question 6.2 above).

6.5 Can the civil courts in Sweden enter summary judgment?

There is no specific application for summary judgment that the parties can make. However, the court can deliver a judgment without having a main hearing, provided that none of the parties requests a main hearing and it is not necessary considering the circumstances in the case. A judgment can also be delivered in connection with the preparatory hearing, either if both parties agree and it is otherwise suitable, or if the outcome of the case is obvious.

6.6 Do the courts in Sweden have any powers to discontinue or stay the proceedings? If so, in what circumstances?

If it is of extraordinary importance for the adjudication of a case that an issue pending adjudication in another proceeding should be determined first, the court may stay the proceedings pending removal of the impediment. The same applies if another impediment of considerable duration to trial is encountered.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Sweden? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure?

As a general rule, all documentary evidence that a party invokes must be provided to the counterparty and the court during the pre-trial procedures following commencement of an action but pre-action disclosure is not possible under Swedish procedural law.

The Code contains rules regarding the possibility to obtain an order for discovery prior to the judgment.

Parties are not required to disclose all documentary evidence in their possession unless the counterparty makes an application for disclosure of a specific document or item of evidence. Such a request may only be granted if the document or item of evidence in question is deemed by the court to be of significance for adjudication of the case.

7.2 What are the rules on privilege in civil proceedings in Sweden?

The Code contains rules on when, e.g. a lawyer or a doctor can refuse to disclose certain documents. The court will not grant the party's request to provide the specific document if such conditions apply.

7.3 What are the rules in Sweden with respect to disclosure by third parties?

On request by any of the parties, the court may order a third party to provide a written document either without, or subject to, a penalty for non-compliance. Such request may only be granted if the specific document or evidence is assumed by the court to be of importance as evidence. Before the court issues such an order, the third party will be afforded an opportunity to state its views and is entitled to compensation for its costs and any inconvenience caused thereby.

7.4 What is the court's role in disclosure in civil proceedings in Sweden?

As stated under questions 7.2 and 7.3 above, the court's main role is to determine whether the requested piece of information is of evidentiary significance.

If the court assumes a public document to be of importance as evidence, the court may also, on the application of a party, order the document to be placed at the court's disposal. However, some exceptions apply, such as documents containing information subject to secrecy pursuant to the Secrecy Act or documents containing trade secrets.

7.5 Are there any restrictions on the use of documents obtained by disclosure in Sweden?

No, there are no restrictions.

8 Evidence

8.1 What are the basic rules of evidence in Sweden?

The basic rules of evidence in Sweden consist of the following three principles:

- the free evaluation of evidence;
- the principle of orality; and
- the principle of immediacy, which means that all evidence must be put forward at the main hearing.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

In accordance with the principle of free evaluation of evidence, the main rule is that all evidence is admissible. It is up to the court to determine the significance of each item of evidence and what has been proved in the case.

The court may reject evidence if a circumstance that a party offers to prove is immaterial to the case, or if an item of evidence is unnecessary or of no evidentiary value. The court may also reject an item of evidence if it can be presented in a less costly or troublesome way.

Expert evidence is generally accepted.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

According to the principle of orality, a witness is required to give his testimony orally. However, in some cases, the witness may give evidence over the telephone or via video link. A written statement of witnesses may not be invoked. However, a witness may use written notes to support his memory with the court's consent.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Does the expert owe his/her duties to the client or to the court?

There are no specific rules regarding instructing expert witnesses. An expert may either be appointed by the court or called by a party. Before the court appoints an expert, the parties should be invited to state their views thereon. The expert is always required to take an oath before giving evidence. The same principle of orality as for witnesses of facts applies, with the exception that an expert can present a written statement of opinion with the court's consent.

Unless the court prescribes otherwise, experts are required to submit a written opinion within a prescribed period set by the court. The opinion must state the reasoning and circumstances upon which the conclusions in the opinion are founded and the opinion may be viewed by the parties.

8.5 What is the court's role in the parties' provision of evidence in civil proceedings in Sweden?

The court has a passive role in the parties' provision of evidence. The court may ask a witness questions, although usually this is to clarify uncertain and ambiguous statements.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in Sweden empowered to issue and in what circumstances?

When the court rules on the merits of the matter at issue, it delivers a judgment. A settlement of the dispute can be confirmed by a consent judgment if the parties so request. The court can also issue decisions or orders in relation to procedural or interim issues, and final decisions.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The district courts have the power to make rulings on damages, interest and litigation costs. Rules governing damages are found in the Tort Liability Act (Sw. *Skadeståndslagen*). Interest is determined either contractually or in accordance with the Interest Act (Sw. *Räntelagen*).

9.3 How can a domestic/foreign judgment be enforced?

Foreign judgments can be enforced by application to Svea Court of Appeal, which is the only court competent to hear matters involving recognition and enforcement of foreign judgments. The general rule is that foreign judgments are not recognised or enforced in Sweden. However, there are many exceptions to this rule since Sweden has acceded to numerous international conventions regarding enforcement, e.g. Brussels I.

A domestic or enforceable foreign judgment can be enforced by the Enforcement Authority (Sw. *Kronofogdemyndigheten*) through seizure. The Enforcement Authority enquires with relevant authorities and/or companies, such as banks, or visits the debtor's property to investigate whether he has assets to seize. Seized property is then sold. The debtor's salary can also be subject to an attachment of earnings order whereby part of the debtor's salary is paid directly to the Enforcement Authority.

9.4 What are the rules of appeal against a judgment of a civil court of Sweden?

A judgment and a decision can normally be appealed within three weeks after being rendered. Certain decisions have specific rules governing appeal. A first instance district court judgment or decision is appealed to the relevant court of appeal. The court of appeal either allows or dismisses the appeal. Normally, a court of appeal judgment or decision can be appealed to the Supreme Court. However, the rules governing permission to appeal are quite strict.

II. ALTERNATIVE DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of alternative dispute resolution are available and frequently used in Sweden? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

Arbitration is widely used in Sweden. The arbitration board's competence is based upon an arbitral agreement between the parties. Arbitration is common since the parties have a greater degree of control over the proceedings than in the general courts and since the proceedings are prompt, flexible and confidential.

Mediation has become increasingly important over the last few years in Sweden. The parties mediate because of a mediation agreement or mediation can be ordered by the court, with both parties' consent, during the course of pending litigation.

Tribunals, Ombudsmen and Expert Determination are available in certain areas of law, e.g. regarding consumers.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Ad hoc arbitration proceedings are based on the Arbitration Act (Sw. *Lagen om skiljeförfarande*). Institutional arbitration proceedings are based on the Stockholm Chamber of Commerce ("SCC") Arbitration Rules. The SCC also provides Rules for Expedited Arbitration, which have been tailored for minor and less complex disputes. The SCC rules are available in different languages on the Institute's website – www.sccinstitute.se.

Mediation is now a statutorily recognised means of dispute resolution following the entry into force of the Mediation Act (Sw. *Lagen om medling i vissa privaträttsliga tvister*) on 1 August 2011.

1.3 Are there any areas of law in Sweden that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Alternative dispute resolution is subject to the parties' agreement. In some cases, it has been considered unreasonable for a company to enter an arbitration agreement with a consumer if the consumer risks bearing the arbitration costs.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to Sweden in this context?

An arbitration clause is an impediment to an action. Hence, if the claimant initiates a claim in court, the defendant can object to the

court's competence. However, if both parties agree on settling the dispute in court, they can disregard their arbitration agreement.

Mediation is not compulsory. However, the court has an obligation to investigate the possibilities of reaching an amicable agreement. Experience suggests that some judges are more vigorous and willing than others to pursue this avenue of dispute resolution.

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to Sweden in this context?

An arbitration award is enforceable and may only be challenged on formal grounds by a party on application to the Court of Appeal in Stockholm (Sw. *Svea hovrätt*).

An agreement reached through mediation can be rendered enforceable by the court after application from the parties, provided that all parties that entered into the agreement consent thereto.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in Sweden?

The SCC provides dispute resolution services for both national and international disputes. The SCC also provides a Mediation Institute.

3 Trends & Developments

3.1 Are there any trends or current issues in the use of the different alternative dispute resolution methods?

The use of arbitration as a means of alternative dispute resolution is constantly increasing. Mediation is not yet as widely used.

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