Litigation in Sweden
A summary legal guide
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1. Introduction, disclaimer and copyright notice

The purpose of this booklet is to provide a general overview of certain relevant aspects of litigation in Sweden. The idea is not to give answers to all questions related to Swedish litigation issues, but something that is easily accessible and gives an answer to the most fundamental issues.

The materials in this booklet are up to date as of September 2015 (except where noted otherwise), and are designed to provide a convenient reference for clients to Nyman Rudenstam Advokatbyrå AB. It goes without saying that this booklet contains advice of a general nature only; the booklet is not legal advice or a substitute for legal advice with respect to any particular factual circumstance, and cannot be relied upon in lieu of legal advice. The reader should consult with qualified counsel in Sweden for legal advice with respect to particular situations.
2. Swedish court structures

2.1 Courts of general jurisdiction

Commercial disputes are in general dealt with in the courts of general jurisdiction. These courts handle commercial cases which have not expressly been made subject to the jurisdiction of exclusive jurisdiction (See exclusive jurisdiction courts below). The jurisdiction of the exclusive jurisdiction courts is limited to matters listed under the relevant statute.

The courts of general jurisdiction form part of a three-tiered system:

a) District courts (Sw. tingsrätter), of which there are 48.
b) Six Courts of Appeal (Sw. hovrätter).
c) The Supreme Court (Sw. Högsta domstolen).

2.1 Exclusive jurisdiction courts

Certain cases can only be referred to certain courts, by way of example:

a) Certain lease matters are subject to exclusive jurisdiction of courts appointed as “Rent Tribunals”.

b) Cases regarding patents or infringement of community trade marks are subject to exclusive jurisdiction of the Stockholm District Court.

c) Cases regarding maritime matters are subject to exclusive jurisdiction of seven district courts appointed as “Maritime Courts”.

d) Certain employment matters are subject to exclusive jurisdiction of the Labour Court.

e) The Market Court handles cases related to the Competition Act as well as cases involving the Marketing Act and other consumer and marketing legislation.
3. Legal counsels, funding etc

3.1 Use of counsel

There is no requirement to retain local counsel, but if a counsel is engaged it must speak Swedish as court proceedings are in Swedish.

A party can retain any counsel not deemed unsuitable by the court; the requirement of suitability is low and the counsel need not be a lawyer. In practice, however, parties to large commercial disputes normally conduct their cases through a lawyer who is qualified by, and a member of, the Swedish Bar Association (Sveriges Advokatsamfund).

3.2 Fees

In general, a lawyer is free to agree on any legal fee or fee structure with the party he represents. However, an advokat is bound by the rules adopted by the Bar Association, which provide that all fees charged by an advokat must be reasonable. Fees are normally charged on the basis of several factors such as the importance and difficulty of the matter, the time spent, the responsibility of the advokat and the outcome.

Contingency fees are generally prohibited.

3.3 Founding

Litigation is in general funded by the party itself. If the party’s counsel is an advokat, that advokat cannot fund the litigation. There is however no general restriction against third party funding of litigations, although such arrangement is uncommon in Sweden.

An unsuccessful party must reimburse the successful party for the latter’s litigation costs. If a party succeeds partially, the compensation may be adjusted. If the conclusive circumstance in the case was unknown to the unsuccessful party, the court may decide that each party must bear its own costs.
The compensation ordered corresponds to reasonable costs of counsel, the party’s own work, loss of time and production of evidence. Even the costs of settlement negotiations will be compensated to the extent that the negotiations have been of importance for the party’s claim.

3.4 Security for litigation costs

If the claimant is domiciled in a non-EU or EFTA member state, the court will, on the application by the defendant, order the claimant to provide security for the defendant’s litigation costs. The security must comprise either a pledge or a surety. The defendant must apply for security when he makes his first appearance.
4. Court proceedings

4.1 Introduction

Court proceedings in Sweden are in general public. This applies to all briefs and other documents (for example, documents submitted as evidence by a party) filed with the court, all hearings, and decisions and judgments made by the court. However, documents submitted as evidence that contain trade secrets may be protected as confidential by the court on a party’s request. If it can be assumed that information to which such confidentiality applies will be presented at a hearing, the public can be barred from attending the hearing.

4.2 Starting proceedings

Judicial proceedings start with the claimant submitting a written summons application to the district court. A summons application must comply with certain requirements provided by law. For example, a summons application must set out a distinct claim and a detailed account of the material facts relied on as the basis of the claim, among other things. If a summons application does not comply with those requirements or is otherwise incomplete, the court must direct the claimant to remedy the defects within a time limit set by the court. If the direction is not complied with and the application is so incomplete as to be unfit for service as the basis for legal proceedings, the case is dismissed. Dismissal will also occur if it is obvious that the case cannot proceed because of a procedural bar. If the action is otherwise manifestly unfounded (as a matter of law) the court can deliver a judgment against the claimant without serving the summons application on the defendant.

Proceedings are considered commenced when the summons application has been received by the court. The time of the commencement of proceedings is important in many respects, for example, for the purposes of statutory limitation periods and lis pendens.
4.3 Notice to the defendant and defence

When the court is satisfied that the summons application meets the stipulated requirements as to form and content and is not manifestly unfounded, the court issues a summons requiring the defendant to respond to the claim within the time limit set by the court (normally two to four weeks from when the summons was served on the defendant). The summons must be served on the defendant. If the defendant fails to submit a statement of defence with the court in a timely manner, a default judgment may be rendered against the defendant.

4.4 Subsequent stages

The claimant is normally ordered to submit a reply to the statement of defence and the defendant subsequently submits a rejoinder to the reply. In general, the court will then request the parties to appear at a pre-trial hearing. The purpose of the pre-trial hearing is to clarify the basis for the trial. If possible, the preparation of the case for the main hearing should be concluded at the pre-trial hearing. If necessary, the court can order the continuation of the preparation through an exchange of briefs. Also, the court is under a duty to investigate whether there are possibilities for an out-of-court settlement during the pre-trial hearing.

At the pre-trial hearing, the court, together with the parties, sets a date for the main hearing. At the main hearing, the parties present their respective case and any written evidence. After that, any witnesses or experts are examined, cross-examined and re-examined. Finally, the parties present their closing arguments and submit their respective statement on costs.

After the main hearing, the court determines the case and renders a written judgment. The judgment is normally delivered within two to six weeks of the main hearing.

If a party fails to appear at the pre-trial hearing or the main hearing, a default judgment may be rendered if requested by the appearing party.
4.5 Appeals

The judgment of a District Court in a civil action can be appealed in the Court of Appeal. In almost all cases leave to appeal is required. If there is reason to believe that the Court of Appeal would come to a different conclusion to that of the District Court, the Court of Appeal will grant leave to appeal. Leave to appeal will also be granted if it is important to establish a judgment that may provide guidance for Swedish district courts, or if there are other extraordinary reasons.

The Court of Appeal is the highest instance in the majority of the cases. The Supreme Court can examine cases which have been appealed before the Court of Appeal, but leave of appeal is only granted if a judgment or decision of the Supreme Court is important and required to establish guidance on how similar cases are to be adjudicated in lower courts. An assertion that the Court of Appeal has adjudicated the case incorrectly is, therefore, not normally sufficient reason for leave to appeal to be granted.

An appeal of a district court judgment must be submitted within three weeks of the judgment date. If a party makes an appeal, the other party is then entitled to also appeal the judgment within one week of the expiration of the initial three weeks’ time limit.
5. Remedies available

At the full trial stage, the court may order the defendant to:

a) pay damages;

b) carry out specific performance; and

c) follow a declarative order (for example, that claimant is owner of a certain property).

By law, damages are just compensatory and not punitive. However, the parties can agree that penalties can be awarded as a consequence of, for example, a breach of contract and such claims are generally awarded (unless unreasonable). Further, under certain legislation (for instance labour legislation), moral damages which may be viewed to have punitive elements, can be awarded. However, the amounts awarded under such statutes are typically rather modest.
6. Evidence

The presentation of evidence is the responsibility of the parties. The parties are free to invoke any evidence they deem necessary. The court may, however, dismiss evidence if the circumstance the evidence is invoked to prove does not have importance in the case, or if the evidence is not necessary or evidently should be of no effect. The court may also dismiss evidence that can be presented in another way with considerably less trouble or costs. If an item of evidence cannot, despite reasonable efforts, be raised and the case cannot be delayed any further the court may also dismiss the item as evidence.

There is no compulsory disclosure. However on request by a party, the court may order another party to produce to the court and the requesting party documents in its possession that can be assumed to be of importance as evidence in the case. For the court to order a party to produce documents, the party seeking production must identify the document to be produced. This does not apply to (i) attorney-client privilege documents, (ii) trade secrets and (ii) private notes.

A witness of fact must give his testimony orally and, as a rule, under oath. A witness is not required to submit a written witness statement. On the contrary, the use of affidavits is restricted and is admitted as evidence only under certain circumstances.
7. **Enforcement of judgment**

**7.1 Enforcement of local judgment**

The winning party can apply for enforcement of the judgment if the unsuccessful party does not voluntarily perform. The application for enforcement will be handled, decided and enforced by the Swedish Enforcement Authority (*Sw. Kronofogdemyndigheten*).

A judgment comprising a payment obligation can be enforced even if it has not obtained full and final legal force (that is, an appeal is pending), but the debtor can avoid enforcement by providing security covering the judgment amount pending the final decision.

**7.2 Enforcement of a foreign judgment**

For a foreign judgment to be enforced in Sweden, a treaty on enforcement between Sweden and the foreign state is required. Such treaties exist between EU and EFTA member states; Sweden is a party to the Brussels Regulation, Brussels Convention and Lugano Conventions.

Countries that are parties to an applicable treaty can in general (unless against the Swedish ordre public) enforce their judgments in Sweden under certain circumstances. The enforcement of a judgment requires a formal decision of a competent authority, which in Sweden is the Svea Court of Appeal in Stockholm. The exact procedure to obtain recognition differs depending on the requirements of an applicable instrument.

If a country has no treaty on enforcement with Sweden and is not party to the Brussels Regulation, Brussels Convention and Lugano Conventions, the foreign judgment is not enforceable in Sweden. However, a foreign judgments may still be recognised and enforced in Sweden if the parties have agreed that claims shall be subject to litigation in a foreign jurisdiction. In such case, a Swedish court will simply accept the foreign judgment (to the extent it does not violate the Swedish public order) and deliver a
judgment that replicates the foreign judgment. The Swedish judgment can then be enforced as any other local judgment.

Under the Swedish Arbitration Act, foreign arbitral awards can be recognised and enforced in Sweden. Sweden is a party to the New York Convention.
8. Cross-border litigation

The parties’ autonomy with regard to applicable substantive law is one of the main principles of Swedish law. Thus, the parties can normally agree on any law to be applied to a specific matter or agreement. However, there are some Swedish mandatory rules that apply despite the choice of law, for example, competition and real estate rules.

In a commercial matter, an exclusive submission to the courts of a specific country are in general held valid and binding by a Swedish court and thus bar proceedings in Swedish courts. This is subject to certain exceptions, for example, in a case of bankruptcy.

In addition, if a civil claim is instituted in Sweden by which a foreign state seeks to enforce its public laws, for example, tax, currency or confiscation laws, the claim will generally be dismissed except in cases where Sweden must entertain such claims under an applicable treaty.
9. Alternative dispute resolution

The use of alternative dispute resolution (ADR), such as mediation and arbitration, has increased over the years in the resolution of commercial disputes in Sweden. Arbitration is the most common form of dispute resolution between commercial parties, and many commercial contracts contain arbitration clauses. These arbitration clauses do not always specify a particular arbitration institute. Instead, the clauses provide for independent arbitration. However, when an institute is chosen, The Arbitration Institute of the Stockholm Chamber of Commerce (SCC Institute) is a very popular choice. Mediation has also become a more frequently used form of ADR.