

The Foundation of the International Association of Defense Counsel
SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE

*This document is a resource tool only. The information was compiled in 2014, and this survey was updated in 2016.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

SWEDEN

Responses submitted by:

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1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Sweden is a civil code jurisdiction.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

Swedish procedural law is based on adversarial adjudication.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

Judges are appointed by the Swedish government. Lay judges, which sit in criminal cases, are nominated by political parties and appointed by municipal councils or county councils. First- and second instance courts may also appoint prosecutors, law professors and associate professors, members of the Swedish Bar Association or other experienced lawyers as adjunct judges for a particular case or limited period of time. Furthermore, the special courts such as the Swedish Labour Court and the Swedish Patent and Market Courts include expert adjudicators appointed by the Swedish Government.

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

Yes, there are several specialized courts with jurisdiction over certain types of cases. The Swedish Patent and Market Court and Patent and Market Court of Appeals, which will be established on September 1st 2016, will inter alia handle cases related to the Swedish Competition Act, the Swedish Marketing Act, as well as cases regarding brand protection, brand registration and patent infringement.

The Swedish Labour Court handles employment-related disputes if the claim is lodged by an employer organization, by an employee organization, or by an employer who has entered into a collective agreement on an individual basis. In addition, the case must concern a dispute arising from a collective agreement, a dispute relating to the law concerning the right to participation in decision-making (such as disputes relating to the freedom of association or the right to negotiate), a dispute between parties who are bound by a collective agreement, or a dispute relating to a place of work where a collective agreement is in force.

There are also five Land and Environment Courts, which hear cases that concern, for example, environmental and water

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issues, property registration, as well as planning and building matters.

5. Is arbitration an option and when? If so, what rules are typically used?

Yes, all disputes which the parties are legally entitled to conclude by settlement may be adjudicated by arbitration if the parties agree thereto. The most commonly used rules, other than those of the Swedish Arbitration Act itself, are the Stockholm Chamber of Commerce (SCC) Arbitration Rules, the SCC Rules for Expedited Arbitrations, the ICC Arbitration Rules, and the UNCITRAL Arbitration Rules.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

Yes, the courts will not hear cases which are subject to arbitration agreements, however only if a party invokes the arbitration agreement as a procedural impediment the first time it presents a motion to the court.

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

No, mediation is not mandatory.

8. What is the process for pre-hearing fact discovery (if any)?

Swedish procedural law does not recognize a discovery procedure. However, a party may motion for the court to order the other party or a third party to present certain documentation. In order to successfully obtain such a court order, the requesting party must clearly identify what piece of evidence it seeks to obtain. The seeking party must also specify what it wishes to prove by the sought-after evidence, as well as to present convincing reasons as to why the sought-after evidence is of importance to the party's plea.

(a) Are there provisions for mandatory document disclosures?

No.

(b) Is there provision for oral examinations of the parties or others?

No.

(c) Are there limits on the length of oral examinations?

Not applicable.

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(d) Are witness statements or summaries to be provided before the hearing?

Not applicable.

9. What is the process for pre-hearing expert disclosure (if any)?

Swedish law does not recognize a disclosure procedure, either for experts or otherwise.

(a) Are expert reports or written summaries required to be exchanged?

Not applicable.

(b) Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?

Not applicable.

(c) Are there provisions requiring experts to meet and narrow issues before the hearing?

Not applicable.

10. Are there other notable discovery rules?

Not applicable.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

Yes. In civil cases, the District Court will call the parties to an oral preparatory hearing, conducted by one judge. The purpose of the preparatory hearing is usually to outline and make clear which matters are in dispute between the parties, to plan and schedule continued submission of written briefs between the parties, as well as to plan and schedule the main hearing. The judge usually also seeks to inquire whether a settlement is possible, and leads the settlement negotiations if the parties show a favorable attitude to settle the dispute.

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

Yes. If adjudication of one claim depends on the adjudication of another claim joined in the same proceeding, a separate judgment may be given for that other claim. Furthermore, if it is appropriate having regard to the circumstances of the case, the court may give a separate judgment on one of several circumstances that are each individually of immediate importance to the outcome of the case. When rendering a separate judgment, the court may order a stay of proceedings on the remaining issues in the case until the separate judgment enters into final force.

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Upon receiving a motion for separate judgment from a party, the court itself decides whether or not to pursue in adjudicating the separate judgment based on its own assessment of whether such judgment is appropriate, taking into account the complexity of the case at hand, as well as the expected legal costs for the case. The purpose of giving such separate judgments is that they may make it unnecessary to pursue full adjudication of the entire case, which may limit legal costs in complex cases. A typical example of a situation where a separate judgment may be issued may be a case which relies heavily on complex technical considerations, but where the defendant makes it probable that the plaintiff's action is time barred. In this circumstance, the court may decide to try the time bar-defence in isolation before the rest of the case, since the plaintiff will likely drop the action if the court indeed finds the claim to be time barred.

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

Given that the Swedish Code of Judicial Procedure is very liberal with respect to admitting and examining evidence, pre-hearing rulings on admissibility of evidence is rather rare. Nevertheless, the court may dismiss evidence at its own discretion or upon the motion of a party, if the circumstance that the party wishes to prove is without significance in the case, if the evidence at hand is unnecessary, if it is clear that the evidence at hand would have no effect, if the evidence at hand can be presented in another way with considerably less trouble or costs, or if the item of evidence cannot be presented in time despite reasonable efforts if the final judgment cannot be delayed any further. The court may also dismiss so called "witness attestations", evidence consisting of a written statement by person by reason of a pending or contemplated proceeding, or a record of a statement that, by reason of such a proceeding, a person has rendered to a prosecutor or a police authority or else outside court.

Furthermore, there are also rules which limit invocation of new evidence in the courts of appeal, which apply if the invoking party cannot present a justifiable reason for not invoking the evidence in the first-instance procedure.

14. What is the standard for admissibility of expert evidence?

There is no particular standard of admissibility for expert evidence invoked by the parties.

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

The court may appoint experts, but only if it is necessary in order to adjudicate a certain issue which requires expert knowledge.

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16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

Yes, full legal privilege applies in attorney-client relations where the attorney is a member of the Swedish Bar Association, unless the attorney is under statutory obligation to provide confidential information. Limited privilege, encompassing only client information related to litigation or criminal cases, applies for attorney-client relations where the attorney is not a member of the Swedish Bar Association.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

Not applicable.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The applicable court determines whether information is privileged and therefore not admissible.

19. Briefly describe the trial process?

(a) *Are there opening submissions, in what form and of what length?*

Yes, each party begins by presenting its claims and positions in the case, followed by a presentation of all the relevant facts and documentary evidence in the case. The length of the opening submissions varies widely depending on the complexity of the case, from a few minutes to several hours.

(b) *What is the order of presentation of witnesses?*

Usually the plaintiff's (or prosecutor's) witnesses will be heard first, followed by the defendant's witnesses.

(c) *Who conducts examination and in what order?*

It is up to the court to decide the order of examination, although the party which has invoked the witness will begin the examination in the great majority of cases. This is followed by cross-examination by the other party, and then usually a redirect examination by the invoking party. The court is free to ask questions to the witness at any time during examination.

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(d) *What is the process for closing submissions?*

After the opening submissions and the witness examinations, each party presents its closing submissions, the purpose of which is to present legal argumentation and to persuade the court on how to decide the case.

20. Please identify any other notable trial procedures.

Not applicable.

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

The main rule is that the plaintiff bears the burden of proof for all circumstances required to establish liability, including causation. The plaintiff also bears the burden of proof for the claimed damages. As a main rule, the applicable standard of proof is that plaintiff must be able to *prove* all essential elements of its claim.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

The main rule in Swedish tort law is that all damages are compensatory in nature. A successful plaintiff is also entitled to receive pre-judgment interest on the awarded damages in accordance with the Swedish Interest Act. However, Swedish law does not recognize punitive or exemplary damages.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Not applicable.

24. Are there time limits for bringing claims? Responding to claims? Please describe.

According to the main rule in the Swedish Statute of Limitations Act, there is a ten-year time bar for most monetary claims, such as damages. However, the time bar can be discontinued by means of a written notification at any point within the ten year period. If this is done, a new ten-year period begins.

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25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

Rules with respect to jurisdiction of the Swedish courts are set out by chapter 10 of the Swedish Code of Judicial Procedure and international legal instruments, most importantly the Brussels Ia Regulation. The main rule is that a defendant shall be sued in the state where it is domiciled. There are however a number of exceptions to this main rule, for example in matters relating to immovable property in Sweden, matters related to torts where the harmful event occurred in Sweden, or matters related to contracts where the place of performance is located in Sweden. A foreign defendant may request that the court decline jurisdiction if the action has been lodged contrary to applicable statutory or international rules, or a valid contractual forum agreement.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

Yes. If a party, in the event that an unfavorable judgment is issued against it, wishes to present a claim for rescission, damages or similar claim against a third party, then it may institute proceedings against that third party for joint adjudication with the main claim.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

Yes, the losing party is normally ordered to pay the winning party's legal fees and expenses. However, the court may examine and sometimes reduce the winning party's claimed costs and fees if the losing party does not accept the claimed amount when presented with the bill of costs at the end of the main hearing.

28. Are contingency fees allowed?

There are no legal restrictions towards applying contingency fees or "no win no fee" arrangements in Sweden. However, members of the Swedish Bar Association are generally prohibited from entering into such fee arrangements in accordance with the Code of Professional Conduct for Members of the Swedish Bar Association. An important exception to this main rule applies to class actions. In such cases, the attorney may share the risk of litigation by means of risk agreements with the group representative.

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29. Is third party funding of claims permitted? Under what circumstances?

Third party funding is permissible without restriction in Sweden. It is also very common since insurance companies will often fund the parties' legal costs and expenses throughout the proceedings.

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Multi-party actions may be brought when more than one party is entitled to pursue a claim, for instance in cases of joint ownership of real estate. Multi-party actions may also be brought when the two parties have separate claims against a defendant, if those claims substantially arise out of the same set of circumstances.

Class actions may be brought under the Swedish Class Action Act. Class actions may be initiated for all civil claims which may otherwise be adjudicated in accordance with the Swedish Code of Judicial Procedure.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

Yes, class actions may be brought by representative bodies such as trade unions, consumer organizations, government authorities as well as non-governmental organizations. Furthermore, trade unions and employers' organizations may lodge labour dispute actions at the Swedish Labour Court.

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

It entirely depends on the nature and complexity of the case. Although most cases will get to the first-instance main hearing within one or two years, complex cases may take even longer to reach the main hearing.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

All judgments and most decisions (including procedural orders) in civil cases may be appealed to the competent court of appeal. In order for the court of appeal to hear the case, the appellant must be granted a review permit. Judgments and decisions by the court of appeal may be appealed to the Supreme Court, where the appellant must likewise be granted a review permit.

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Judgments in criminal cases may also be appealed to the court of appeal and the Supreme Court, although no review permit is needed for the great majority of appeals in the court of appeal.

Cases heard by the Swedish Labour Court may not be appealed, as it is the final instance for cases within its jurisdiction.

Court of appeal judges are appointed by the government in the manner described in the answer to question 3 above. Supreme Court judges are also appointed by government, and are chosen for proven legal expertise as lower instance judges, governmental counsel, law professors, or attorneys. Patent and Market Court of Appeals judges and Labour Court judges, including experts, are appointed in the manner described in the answer to question 3 above.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

Yes, all Swedish courts have court rooms with electronic equipment where documents and transcripts can be presented on screens, and where testimonies can be given by video conference.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

The use of graphics, power point presentations, etc. is allowed and increasing in usage in all Swedish courts.

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

There is no solicitor-barrister distinction in Sweden. The trial lawyer will be the same as the one responsible for the pre-trial procedures unless the instructing party changes lawyers.

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

Negligence on part of the defendant is assessed individually, applying the same principles as for a party who has caused damage unto others. If the court finds that the plaintiff has acted negligently and contributed to its own loss, it may reduce the awarded damages at its own discretion, usually to 1/2, 1/3, or 2/3 of the claimed amount depending on the negligent action on part of the plaintiff. In cases where there are various tortfeasors, the main rule is that liability is joint and severable between them.

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38. Is service of a complaint issued outside your country permitted in your country by “informal” means, or must the Hague Convention be followed?

The main rule is the service of complaints in Sweden is allowed also by informal means. However, Sweden also applies the Hague Convention, although there are several intra-Nordic and intra-European service regulations which take precedence over the Hague Convention, for instance the EU Parliament and Council Regulation (EG) n. 1393/2007 and the Nordic Agreement on Mutual Assistance in Service and Evidence Matters (SÖ 1975:42).

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

Export of documents for the purpose of litigation is permitted, and the Swedish Personal Data Act accepts exportation of personal data if it is necessary for the purposes of assessing, exercising or defending a legal claim.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

Not applicable.

41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

No.

42. Are there legislative efforts under way that address any of the litigation practices in your country?

Yes, the government has decided to establish two new courts, the Patent and Market Court, and the Patent and Market Court of Appeals, on September 1, 2016. The new courts will have jurisdiction over, inter alia, patent cases, competition cases and marketing cases.