

Which law will apply? - Sweden

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1 Sources of the rules in force

1.1 National rules

Private international law in Sweden is codified only in part, and consists of a combination of statute and case law. The statute law is for the most part aimed at giving effect to international conventions to which Sweden is a party. The main legislation is as follows:

Marriage and children

- Chapter 3, Sections 4 and 6 of the Act on certain International Legal Relationships in respect of Marriage and Guardianship (*Lagen (1904:26 s. 1) om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap*, also known by the Swedish abbreviation 'IÄL')

- Sections 9, 12 and 13 of the Ordinance on certain International Legal Relationships in respect of Marriage, Adoption and Guardianship (*Förordningen (1931:429) om vissa internationella rättsförhållanden rörande äktenskap, adoption och förmynderskap*, 'NÄF')
- Section 2 of the Act on International Legal Relationships in respect of Adoption (*Lagen (1971:796) om internationella rättsförhållanden rörande adoption*, 'IAL')
- Sections 2, 3 and 6 of the Act on International Paternity Questions (*Lagen (1985:367) om internationella faderskapsfrågor*, 'IFL')
- Sections 3-5 of the Act on certain International Questions relating to Property Relations between Spouses or Cohabitants (*Lagen (1990:272) om internationella frågor rörande makars och sambors förmögenhetsförhållanden*, 'LIMF')
- Section 1 of the Act concerning the 1996 Hague Convention (*Lagen (2012:318) om 1996 års Haagkonvention*) and Articles 15-22 of the same 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children
- Article 15 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance and the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations

Inheritance

- Articles 20-38 of Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession

Contracts and purchase

- Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ('the Rome I Regulation')
- Sections 79-87 of the Bills of Exchange Act (*Växellagen 1932:130*)
- Sections 58-65 of the Cheques Act (*Checklagen 1932:131*)
- The Act on the Law Applicable to Sales of Goods (*Lagen (1964:528) om tillämplig lag beträffande köp av lösa saker*, 'IKL')
- Sections 25a, 31a and 42a of the Act on Co-determination in the Workplace (*Lagen (1976:580) om medbestämmande i arbetslivet*, 'MBL')
- The Act on the Law Applicable to certain Insurance Contracts (*Lagen (1993:645) om tillämplig lag för vissa försäkringsavtal*)
- Chapter 13, Section 4, and Chapter 14, Section 2, of the Shipping Code (*Sjölagen 1994:1009*)
- Section 14 of the Consumer Contracts Act (*Lagen (1994:1512) om avtalsvillkor i konsumentförhållanden*)
- Chapter 1, Section 4, of the Act on Consumer Protection in Agreements concerning Residential Timeshares or Long-term Holiday Products (*Lagen (2011:914) om konsumentskydd vid avtal om tidsdelat boende eller långfristig semesterprodukt*)
- Chapter 3, Section 14, of the Act on Distance Contracts and Doortodoor Selling (*Lagen (2005:59) om distansavtal och avtal utanför affärslokaler*)
- Section 48 of the Consumer Sales Act (*Konsumentköplagen 1990:932*)

Compensation for injury

- Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations ('the Rome II Regulation')
- Sections 8, 14 and 38 of the Road Traffic Injuries Act (*Trafikskadelagen 1975:1410*)
- Section 1 of the Act in connection with the Convention of 9 February 1972 between Sweden and Norway on Reindeer Grazing (*Lagen (1972:114) med anledning av konventionen den 9 februari 1972 mellan Sverige och Norge om renbetning*)
- Section 1 of the Act in connection with the Environmental Protection Convention of 19 February 1974 between Denmark, Finland, Norway and Sweden (*Lagen (1974:268) med anledning av miljöskyddskonventionen den 19 februari 1974 mellan Danmark, Finland, Norge och Sverige*)

Insolvency law

- Articles 4, 8-11, 14, 15, 28 and 43 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings ('the Insolvency Regulation') (the European Parliament and the Council have adopted an amended regulation which is to enter into force in summer 2015)
- Sections 1, 3 and 5-8 of the Act laying down Rules governing Insolvencies involving Property in Denmark, Finland, Iceland or Norway (*Lag (1934:67) med bestämmelser om konkurs, som omfattar egendom i Danmark, Finland, Island eller Norge*)
- Sections 1, 4-9 and 13 of the Act concerning the Effects of Insolvencies occurring in Denmark, Finland, Iceland or Norway (*Lag (1934:68) om verkan av konkurs, som inträffat i Danmark, Finland, Island eller Norge*)
- Sections 1, 3-8 and 12 of the Act on Insolvencies involving Property in another Nordic Country (*Lag (1981:6) om konkurs som omfattar egendom i annat nordiskt land*)
- Sections 1, 4-9, 13 and 14 of the Act on the Effects of Insolvencies occurring in another Nordic Country (*Lag (1981:7) om verkan av konkurs som inträffat i annat nordiskt land*)

1.2 Multilateral international conventions

Sweden is a party to the following multilateral international conventions that lay down rules determining the applicable law. Sweden takes a 'dualist' approach to international treaties, meaning that multilateral conventions also have to be incorporated into Swedish domestic law: see above.

The League of Nations

- The 1930 Convention for the Settlement of certain Conflicts of Laws in connection with Bills of Exchange and Promissory Notes
- The 1931 Convention for the Settlement of certain Conflicts of Laws in connection with Cheques

Hague Conference on Private International Law

- The 1955 Convention on the Law Applicable to International Sales of Goods
- The 1961 Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions
- The 1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children
- The 2007 Hague Protocol on the Law Applicable to Maintenance Obligations

European Union

- The 1980 Convention on the Law Applicable to Contractual Obligations (the Rome I Regulation replaces the Convention for contracts entered into after 17 December 2009)

Nordic Conventions

- The 1931 Convention between Denmark, Finland, Iceland, Norway and Sweden laying down Rules of Private International Law on Marriage, Adoption and Guardianship (last amended by an amending convention of 2006)
- The 1933 Convention between Sweden, Denmark, Finland, Iceland and Norway on Insolvency ('the Nordic Insolvency Convention')
- The 1934 Convention between Denmark, Finland, Iceland, Norway and Sweden on Succession, Wills and the Administration of Estates (last amended by an amending convention of 2012)
- The 1974 Convention on the Protection of the Environment between Denmark, Finland, Norway and Sweden

1.3 Principal bilateral conventions

- The 1972 Convention between Sweden and Norway on Reindeer Grazing (*1972 års konvention mellan Sverige och Norge om renbetning*)

2 Implementation of conflict of law rules

2.1 Obligation of the judge to apply conflict of law rules on his own initiative

There is no rule in Swedish law requiring a court to apply foreign law on its own initiative. The question has been addressed mainly in caselaw, and there seems to be a division between proceedings on matters that the parties would be free to settle out of court (*dispositiva mål*) and proceedings on matters that can be determined only by a court (*indispositiva mål*). In civil litigation cases where

the parties would be entitled to reach a settlement between themselves, it would seem that the foreign law will be applied only if one of the parties invokes it. There have been many cases with a clear foreign element in which Swedish law has been applied without question because no party invoked the foreign law. In proceedings where an outofcourt settlement would not be possible, on the other hand, involving the establishment of paternity, for example, there have been cases where the courts have applied foreign law of their own motion.

2.2 Renvoi

Swedish private international law does not as a general rule accept the doctrine of renvoi. There is an exception, however, in Section 79(2) of the Bills of Exchange Act and Section 58(2) of the Cheques Act, regarding the capacity of foreign nationals to enter into transactions involving bills of exchange or cheques. The reason is that these provisions are based on international conventions. There is another exception in Section 9(2) of the Act on the Effects of Insolvencies occurring in another Nordic Country. Lastly, on the formal validity of a marriage, renvoi is recognised in Section 1(7) of the Act on certain International Legal Relationships in respect of Marriage and Guardianship.

2.3 Change of connecting factor

Swedish private international law has no general rule for the effect of a change in the connecting factor: the matter is regulated specifically in each separate statute. For example, Section 4(1) of the Act on certain International Questions relating to Property Relations between Spouses or Cohabitants states that 'If the applicable law has not been determined by agreement, the applicable law shall be the law of the state in which the spouses took up habitual residence (*hemvist*) when they married', and Section 4(2) of the same Act says that 'If both spouses subsequently took up habitual residence in another state and lived there for at least two years, the law of that state shall apply'.

2.4 Exceptions to the normal application of conflict rules

It is regarded as a general principle of Swedish private international law that a provision of foreign law should not be applied if its application would be manifestly incompatible with the fundamentals of the legal system in this country. Provisions to that effect can be found in much private international law legislation, but it is not to be inferred that a public policy restriction requires a basis in legislation. There have been very few judgments finding that foreign law could not be applied on grounds of public policy.

Determining which rules of Swedish law are internationally mandatory is usually a matter for the judiciary.

2.5 Proof of foreign law

If the court finds that a foreign law is applicable, and the court is not acquainted with the substantive provisions of the foreign system of law, there are two courses open to it. Either it conducts an investigation itself, or it asks a party to produce the necessary information. Which alternative is chosen is a question of what is more expedient. If the court decides to investigate the matter itself, it can secure the assistance of the Ministry of Justice. In general, the court will play a more active role in proceedings that can be decided only by a court (see above); in proceedings where the parties would be free to reach a settlement between themselves, the court can leave the investigation largely to the parties.

3 Conflict of law rules

3.1 Contractual obligations and legal acts

Sweden is a party to the 1980 Rome Convention on the Law Applicable to Contractual Obligations. Other rules of law apply in some areas. The Rome I Regulation replaces the Convention for contracts entered into after 17 December 2009.

The **sale of goods** is governed by the Act on the Law Applicable to Sales of Goods, which incorporates into domestic law the 1955 Hague Convention on the Law Applicable to International Sales of Goods. The Act takes precedence over the rules in the Rome I Regulation. It does not, however, cover consumer contracts. Section 3 allows the buyer and the seller to determine the applicable law by agreement. Section 4 states that if the parties have not chosen the applicable law the law that applies is that of the seller's country of habitual residence. There are exceptions to this rule if the seller accepted the order in the buyer's country of habitual residence, and for purchases on an exchange or at an auction.

There is another exception from the rules of the Rome I Regulation for some **consumer contracts**. There are special rules aimed at protecting consumers from choiceoflaw clauses in Section 48 of the Consumer Sales Act, Section 14 of the Consumer Contracts Act, Chapter 1, Section 4, of the Act on Consumer Protection in Agreements concerning Residential Timeshares or Long-term Holiday Products, and Chapter 3, Section 14, of the Act on Distance Contracts and Doortodoor Selling. They provide that under certain circumstances the law of an EEA country is to be applied if it offers better protection for the consumer.

There are specific rules for **bills of exchange and cheques** in Sections 7987 of the Bills of Exchange Act and Sections 5865 of the Cheques Act. These are based on the 1930 Geneva Convention for the Settlement of certain Conflicts of Laws in connection with Bills of Exchange and Promissory Notes and the 1931 Geneva Convention on the Settlement of certain Conflicts of Laws in connection with Cheques.

Some **indemnity insurance** contracts are governed by the Act on the Law Applicable to Certain Insurance Contracts.

3.2 Non-contractual obligations

The question of the law applicable to non-contractual obligations is governed by the Rome II Regulation.

3.3 The personal status, its aspects relating to the civil status (name, domicile, capacity)

In Swedish private international law the decisive connecting factor for establishing personal status has traditionally been nationality. But there now are so many cases in which nationality has had to give way to habitual residence as the main connecting factor that it is doubtful whether one can still speak of a single main connecting factor for personal status. In Swedish private international law, 'personal status' is understood to comprise essentially questions of legal capacity and name.

Under Chapter 1, Section 1, of the Act on certain International Legal Relationships in respect of Marriage and Guardianship, **capacity to marry** before a Swedish authority is in principle to be established in accordance with Swedish law if either party is a Swedish national or is habitually resident in Sweden. Similar rules apply in the Nordic framework under Section 1 of the Ordinance on certain International Legal Relationships in respect of Marriage, Adoption and Guardianship.

There are special rules on **guardianship and trusteeship** in Chapters 4 and 5 of the Act on certain International Legal Relationships in respect of Marriage and Guardianship and in Sections 1421a of the Ordinance on Certain International Legal Relationships in respect of Marriage, Adoption and Guardianship.

As regards the question of the law applicable to **capacity to contract**, a partial answer is provided by Article 13 of the Rome I Regulation. The capacity to enter into transactions involving bills of exchange or cheques is governed by special rules in Section 79 of the Bills of Exchange Act and Section 58 of the Cheques Act.

There is a special rule on the **capacity to sue and be sued** in Chapter 11, Section 3, of the Code of Judicial Procedure (*rättegångsbalken*), which states that a foreigner who in his or her own country is unable to conduct legal proceedings may nevertheless do so in Sweden if he or she has capacity in accordance with Swedish law.

Swedish private international law regards **questions of name** as belonging to the law of personal status. This means, for example, that the taking by one spouse of the other spouse's name is not classified as a matter of the legal effects of marriage in the personal sphere. According to Section 50 of the Personal Names Act (*namnlagen*, 1982:670), the Act does not apply to Swedish nationals who are habitually resident in Denmark, Norway or Finland; it may be concluded *a contrario* that it does apply to Swedish nationals elsewhere. Section 51 states that the Act also applies to foreign nationals who are habitually resident in Sweden.

3.4 Establishment of parent-child relationship, including adoption

Swedish substantive law does not distinguish between **legitimate and illegitimate children**, and Swedish private international law has no specific conflict of law rules for determining whether a child is to be regarded as born inside or outside wedlock, or whether a child can be legitimated subsequently.

As regards the law applicable to the establishment of **paternity**, there are different rules for the presumption of paternity and for the establishment of paternity by a court of law. The presumption of paternity is governed by Section 2 of the Act on International Paternity Questions. This provides that a man who is or has been married to the mother of a child is deemed to be the child's father if that is the consequence of the law of the state in which the child became habitually resident at birth, or, where that law does not consider anyone to be the father, if it is the consequence of the law of a state of which the child became a national at birth. If the child's habitual residence at birth was in Sweden, however, the question will always be decided in accordance with Swedish law. If paternity has to be established in court, the court will apply the law of the country in which the child was habitually resident at the time of the judgment at first instance.

Under Section 2(1) of the Act on International Legal Relationships in respect of Adoption, a Swedish court considering an application for **adoption** is to apply Swedish law. Section 2(2) directs, however, that if the application relates to a child under the age of 18, the court must consider whether the applicant or the child is connected with a foreign state by nationality, habitual residence or otherwise, and whether this can be expected to cause difficulty for the child if the adoption is not recognised in that country.

As regards the legal effects of adoption, when a foreign adoption order is valid in Sweden the adopted child is regarded as the adoptive parent's child in a Swedish marriage for purposes of custody, guardianship and maintenance. In the case of succession, however, the law requires equal treatment of adopted children and the adoptive parent's own children only if the adoption took place in Sweden. If the adoption took place abroad, the adopted child's entitlement to inherit will be considered in accordance with the law that generally governs entitlement to inherit, that is to say the law of the country of nationality.

The question of the law applicable to **child maintenance** is governed by the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations. The general rule is that maintenance obligations are governed by the law of the state where the child is habitually resident. If the child is unable to obtain maintenance from the party who is obliged to provide it under that law, the law to be applied is the law of the country where the court is located. If the child is unable to obtain maintenance from the party who is obliged to provide it under either of those laws, and both parties are citizens of the same state, the law to be applied is the law of that state.

3.5 Marriage, unmarried/cohabiting couples, partnerships, divorce, judicial separation, maintenance obligations

As regards **capacity to marry**, see point 3.3 above. The general rule is that a marriage is considered to be valid as to form if it is valid in the country in which it was celebrated (Chapter 1, Section 7, of the Act on certain International Legal Relationships in respect of Marriage and Guardianship).

The legal effects of marriage can be divided into two main categories, those in the personal sphere and those relating to the spouses' property (see point 3.6 below). The main effect of the marriage in personal terms is that the spouses have a mutual obligation to maintain one another. In Swedish private international law, questions of the spouses' entitlement to inherit, their acquisition of the other spouse's name or their duty to maintain the other spouse's children are not regarded as legal effects of the marriage, and the law applicable is determined by the conflict of law rules that govern inheritance, personal names etc.

The issue of the law applicable to the **maintenance of a spouse** is regulated by the 2007 Hague Protocol on the Law Applicable to Maintenance Obligations. The general rule is that maintenance obligations are governed by the law of the state where the party with the obligation to provide maintenance is habitually resident. If either of the spouses objects to the application of that law, and the law of another state has a closer connection to the marriage (especially the law of the state where they most recently had a joint habitual residence), the law of that other state is to be applied.

In questions of **divorce**, Chapter 3, Section 4(1), of the Act on certain International Legal Relationships in respect of Marriage and Guardianship directs that the Swedish courts are to apply Swedish law. Section 4(2) makes an exception if both spouses are foreign nationals and neither has been habitually resident in Sweden for at least one year.

Swedish substantive law does not contemplate the legal institutions of **legal separation** or **annulment of marriage**, and there are no generally applicable conflict of law rules that might apply to such cases. As far as Nordic countries are concerned, Section 9 of the Ordinance on certain International Legal Relationships in respect of Marriage, Adoption and Guardianship states that in cases of legal separation the court is to apply its own law.

3.6 Matrimonial property regimes

The law applicable to married people's property is regulated in the Act on certain International Questions relating to Property Relations between Spouses or Cohabitants. Section 3 of the Act permits married people or couples contemplating marriage to conclude a written agreement providing that their matrimonial property regime is to be governed by the law of a country of which one of them is a habitual resident or a national at the time the agreement is concluded.

If the spouses have not entered into a valid choice of law agreement, Section 4 of the Act states that the applicable law is the law of the country in which they take up habitual residence after marriage. If both spouses subsequently take up habitual residence in another country, and live there for at least two years, the law of that country will be applied instead. But if both spouses have already been habitually resident in that state during the marriage, or if both of them are nationals of that state, the law of that state will be applied from the moment they take up habitual residence there.

Section 5 of the Act states that a choice of law agreement is valid if it is consistent with the law applicable to the spouses' property when the transaction takes place. If the choice of law agreement is concluded before the wedding, it is valid if it is consistent with the law that becomes applicable when the spouses marry. A choice of law agreement is valid as to form if it satisfies the formal requirements of the law in the state in which it is concluded or in which the spouses are habitually resident.

For Nordic cases there are special rules laid down in the Ordinance on certain International Legal Relationships in respect of Marriage, Adoption and Guardianship.

3.7 Wills and successions

The question of conflicts of laws regarding wills and successions is regulated by Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. The conflict of law rules in the Regulation apply irrespective of whether the international connection is with a Member State or any other state.

For a will's validity as to form, however, there are special provisions in Chapter 2, Section 3, of the Act on Succession in International Situations (*Lagen (2015: 417) om arv i internationella situationer*), which incorporates into domestic law the 1961 Hague Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions. A will is considered valid as regards form if its form complies with the law of the place where the testator made it, or otherwise of the place in which the testator had his or her habitual residence, or of a place where the testator was a national, either at the time the will was made or at the time of death. A disposition relating to immovable property is valid as regards form if its form complies with the law of the place where the property is situated. The same rules apply to the revocation of wills. A revocation is also valid if it complies with any one of the laws according to the terms of which the will was valid as to form.

3.8 Real property

In the law of property there are written conflict of law rules only for certain cases concerning ships and aircraft, financial instruments and unlawfully removed cultural objects, and for certain situations regulated in the Nordic Insolvency Convention and the Insolvency Regulation.

The effects in property law of a purchase or mortgage of movable or immovable property, for example, are to be determined in accordance with the law of the country in which the property is situated at the time of the purchase or mortgage. That law will determine the nature of any property rights, how any property right begins and ends, what formal requirements there may be and what rights the property right confers against third parties.

As regards foreign security rights, it is established in the caselaw that if at the time a security right arose the seller knew that the property was to be taken to Sweden, and the security right was not valid in Sweden, the seller ought instead to have obtained a security that would satisfy the requirements of Swedish law. In addition, a foreign security right is not to be given legal effect if time has passed since the property was brought to Sweden. It is considered that the foreign creditor has had time either to obtain fresh security or to recover the debt.

3.9 Insolvency

In a Swedish insolvency Swedish law is applicable to the proceedings themselves and to other questions of insolvency such as the conditions for instituting proceedings.

In cases involving another Nordic country there are special rules determining the applicable law which are based on the 1933 Nordic Insolvency Convention and which were incorporated into Swedish law by legislation enacted in 1981. In relation to Finland, however, the Insolvency Regulation applies (see below); and in relation to Iceland, the rules are those of earlier legislation dating from 1934. The general rule of the Nordic Insolvency Convention is that an insolvency proceeding in a contracting state embraces property belonging to the debtor which is situated in another contracting state. Issues such as the debtor's right to control his or her property and what is to be included in the insolvency estate are generally governed by the law of the country where the insolvency proceeding takes place.

There are special rules for matters involving other EU Member States in the Insolvency Regulation.

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Last update: 24/01/2017