Divorce and legal separation

Σουηδία

1 What are the conditions for obtaining a divorce?

One of the spouses or both of them together may apply for a divorce. The divorce must be preceded by a six-month period for reconsideration in certain circumstances. This is the case:

if both spouses request it;

if one of the spouses lives permanently with a child of theirs who is under the age of 16 and is in that spouse's custody; or

if only one of the spouses wishes for the marriage to be dissolved.

In certain exceptional cases, however, couples covered by the above points also have the right to divorce without a period for reconsideration. This is the case if the couple has been living apart for two years. One spouse also has the right to a divorce without first having a period for reconsideration if it is found to be likely that the spouse was forced to enter into the marriage, or if the spouse entered into the marriage before the age of 18 without the proper official licence. If the marriage was entered into even though the spouses are closely related to one another, or if the marriage was entered into even though one of the spouses was already married or a partner in a registered partnership and the previous marriage or partnership had not been dissolved, each of the spouses has the right to a divorce without first having a period for reconsideration.

2 What are the grounds for divorce?

A spouse always has the right to obtain a decree for divorce and does not need to rely on any special grounds for such a decree.

3 What are the legal consequences of a divorce as regards:

3.1 the personal relations between the spouses (e.g. the surname)

If one of the spouses took the other spouse's surname, that spouse has the right to revert to the surname that he or she last used before the marriage.

3.2 the division of property of the spouses

After a divorce, the couple's property is to be distributed between them. The general principle is that the property is shared equally. The reason for dissolution of the marriage is of no importance for the division of the couple's property.

3.3 the minor children of the spouses

After a divorce, the spouses automatically continue to have joint custody of their children. Joint custody may, however, be terminated by a court:

on the court's own initiative, if the court finds that joint custody is manifestly incompatible with the best interests of the child; or

at the request of one of the spouses, if the court finds that it is in the best interests of the child for one of the spouses to have sole custody.

If both spouses request that joint custody be terminated, the court is obliged to comply with the request.

Both parents are responsible for the maintenance of their child. The parent who does not live with the child fulfils the maintenance obligation by paying maintenance contributions for the child to the other parent.

3.4 the obligation to pay maintenance to the other spouse?

After the divorce, each spouse is responsible for providing for themselves. Exceptions only apply in certain special situations, e.g. where one spouse has difficulty providing for themselves after a long marriage has been dissolved or if there are other special grounds.

4 What does the legal term "legal separation" mean in practical terms?

There are no rules governing legal separation in Swedish law.

5 What are the conditions for legal separation?

There are no rules governing legal separation in Swedish law.

6 What are the legal consequences of legal separation?

There are no rules governing legal separation in Swedish law.

7 What does the term "marriage annulment" mean in practice?

There are no rules governing marriage annulment in Swedish law. A marriage can be dissolved either if one of the spouses dies or if a court issues a decree for divorce.

8 What are the conditions for marriage annulment?

There are no rules governing marriage annulment in Swedish law.

9 What are the legal consequences of marriage annulment?

There are no rules governing marriage annulment in Swedish law.

10 Are there alternative non-judicial means for solving issues relating to the divorce without going to court?

Only the court can decide to dissolve a marriage by divorce. There are, however, alternative options for resolving the various issues that may arise in connection with a divorce.

The spouses may obtain what is known as 'family mediation', which aims to deal with cohabitation conflict. In this way, couples can seek help with resolving problems and conflict so that they can continue their marriage. If there is already a de facto separation, family mediation can instead help to alleviate the conflict and make it possible for the adults to work together in their parental role. Family mediation is provided by the public sector (local authorities), church bodies, and other individuals. Local authorities are responsible for ensuring that family mediation is offered to anyone who requests it.

The spouses also have the right to what are known as 'cooperation discussions'. These discussions are not geared to the relationship between the adults, but to the children. Cooperation discussions seek primarily to reach agreement on issues relating to custody of the children, where the children will live, and access to the children. Cooperation discussions are supervised by experts. Local authorities are responsible for ensuring that cooperation discussions are offered to anyone who requests them.

If the spouses wish to make a change with regard to the custody of their children, where the children will live, or access to their children, this can be done by concluding an agreement on the matter. Such an agreement must be approved by the local authority's social welfare committee.

11 Where should I lodge my application (petition) for divorce/legal separation/marriage annulment? Which formalities must be respected and which documents should I attach to my application?

There are no rules governing legal separation or marriage annulment in Swedish law.
The first condition for filing a petition for divorce with a Swedish court is that the Swedish court must have the jurisdiction to hear the case. In addition to the provisions of the Brussels II Regulation, the following cases are also covered according to autonomous rules of Swedish court jurisdiction:
where both spouses are Swedish nationals;
where the petitioner is a Swedish national and is resident in Sweden or has previously been resident in Sweden since he or she reached the age of 18;
where the petitioner is not a Swedish national, but has been resident in Sweden for at least one year; or
if the respondent is resident in Sweden.
If it is demonstrated that a Swedish court has jurisdiction to hear the divorce proceedings, the case is heard by the district court (*tingsrätt*) in Sweden within the circuit of which one of the spouses is resident. If neither of them is resident in Sweden, the case is heard by Stockholm District Court (*Stockholms tingsrätt*).
There are two different ways of bringing a divorce case to the district court. If both spouses wish to be divorced, they may file a joint petition. However, if only one of them wishes to obtain a divorce, the spouse who wishes to be divorced must submit a summons application to the district court. In both cases, copies of both spouses' birth certificates must be enclosed. These can be requested from the Swedish Tax Agency (*Skatteverket*).

12 Can I obtain legal aid to cover the costs of the procedure?

In a case that concerns divorce and related issues, legal aid may only be granted where there are *special grounds*.

13 Is it possible to appeal against a decision relating to divorce/legal separation/marriage annulment?

There are no rules governing legal separation or marriage annulment in Swedish law.
Yes, an appeal may be lodged against a decree for divorce.

14 What should I do to have a decision on divorce/legal separation/marriage annulment issued by a court in another Member State recognized in this Member State?

According to
Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (the Brussels II Regulation)
, a judgment given in a Member State shall be recognised in the other Member States without any special procedure being required. There are, however, certain grounds for non-recognition.
The main rule in the Brussels II Regulation is therefore that a decree for divorce or legal separation or marriage annulment that has been issued in any other Member State must automatically be treated in the same way and have the same legal effects as an equivalent Swedish decision. Even though the regulation is therefore based on the principle of automatic recognition, it is still possible for an interested party to obtain a declaration that the foreign judgment is or is not recognised in Sweden. Such an application is made to the Svea Court of Appeal (*Svea hovrätt*), which at this stage makes a decision on the application without consulting the opposite party.

15 To which court should I turn to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another Member State? Which procedure applies in these cases?

An application must be made to the Svea Court of Appeal in order to use the opportunity provided for in the Brussels II Regulation for obtaining a declaration that the foreign judgment is recognised in Sweden (please see question 14 above). If the Svea Court of Appeal has declared in such proceedings that the judgment in question is to be recognised in Sweden, it is possible for the other party to apply for a review of that decision. An application for such a review is submitted to the Svea Court of Appeal, which will hear both parties in the remainder of the proceedings. An appeal can then be lodged with the Supreme Court (*Högsta domstolen*) against the decision on the application for review by the Svea Court of Appeal.

16 Which divorce law does the court apply in a divorce proceeding between spouses who do not live in this Member State or who are of different nationalities?

A petition for divorce that is heard by a Swedish court must always be examined under Swedish law (the lex fori principle).
In certain cases, however, regard must also be had to the provisions of foreign law. This applies in the following cases:
where both spouses are foreign nationals and neither has resided in Sweden for at least one year, a decree for divorce may not be issued against the wishes of one of the spouses if there are no grounds to do so under the law in the State of which one or both of the spouses is a national;
where both spouses are foreign nationals and one of them claims that there are no grounds for dissolution of the marriage under the law of the State of which he or she is a national, a decree for divorce may not be issued if, having regard to the interests of the spouse or the children of both spouses, there are particular grounds for not doing so.
Where both spouses are foreign nationals and one of them claims that there are no grounds for dissolution of the marriage under the law of the State of which he or she is a national, a decree for divorce may not be issued if, having regard to the interests of the spouse or the children of both spouses, there are particular grounds for not doing so.

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