

Strona główna>Wszczęcie postępowania sądowego>Gdzie i jak>Prawo którego kraju zostanie zastosowane?

Which country's law applies?

Szwecja

## 1 Sources of the rules in force

### 1.1 National rules

Private international law is now largely regulated by EU legislation. The Swedish national rules for this area are laid down by statute and case-law. The legislation mainly gives effect to international conventions to which Sweden is a party. The main legislation in this area is as follows:

#### Marriage and children

- Sections 4 and 6 of Chapter 3 of the Act (1904:26, p. 1) on Certain International Legal Relationships in Respect of Marriage and Guardianship (*lagen om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap*) (hereinafter *IÄL*);
- Sections 9, 12 and 13 of the Ordinance (1931:429) on Certain International Legal Relationships in Respect of Marriage, Adoption and Guardianship (*förordningen om vissa internationella rättsförhållanden rörande äktenskap, adoption och förmynderskap*) (hereinafter *NÄF*);
- Section 3 of the Act (2018:1289) on Adoption in International Situations (*lagen om adoption i internationella situationer*);
- Sections 2, 3, 3a, 5, 5a, 6 and 6a of the Act (1985:367) on International Paternity Questions (*lagen om internationella faderskapsfrågor*) (hereinafter *IFL*);
- Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes;
- Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships;
- The Act (2019:234) on Property Relations between Spouses or Cohabitants in International Situations (*lagen om makars och sambors förmögenhetsförhållanden i internationella situationer*);
- Section 1 of the Act (2012:318) on the 1996 Hague Convention (*lagen om 1996 års Haagkonvention*), and Articles 15-22 of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children concluded at The Hague on 19 October 1996 (hereinafter *1996 Hague Convention*);
- 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 obligations (hereinafter *Maintenance Regulation*), 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 purchases

- Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (hereinafter *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 (1964:528) on the Law Applicable to Sales of Goods (*lagen om tillämplig lag beträffande köp av lösa saker*) (hereinafter *IKL*);
- Sections 25a, 31a and 42a of the Act (1976:580) on Co-Determination in the Workplace (*lagen om medbestämmande i arbetslivet*) (hereinafter *MBL*);
- The Act (1993:645) on the Law Applicable to Certain Insurance Contracts (*lagen om tillämplig lag för vissa försäkringsavtal*);
- Section 4 of Chapter 13 and Section 2 of Chapter 14 of the Shipping Code (*sjölagen*) (1994:1009);
- Section 14 of the Consumer Contracts Act (1994:1512) (*lagen om avtalsvillkor i konsumentförhållanden*);
- Section 4 of Chapter 1 of the Act (2011:914) on Consumer Protection in Agreements Concerning Residential Timeshares or Long-Term Holiday Products (*lagen om konsumentskydd vid avtal om tidsdelat boende eller långfristig semesterprodukt*);
- Section 14 of Chapter 3 of the Act (2005:59) on Distance Contracts and Remote Sales Agreements (*lagen 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 (hereinafter *Rome II Regulation*);
- Sections 8, 14 and 38 of the Road Traffic Injuries Act (*trafikskadelagen*) (1975:1410);
- Section 1 of the Act (1972:114) on the Convention of 9 February 1972 between Sweden and Norway on Reindeer Grazing (*lagen med anledning av konventionen den 9 februari 1972 mellan Sverige och Norge om renbetning*);
- Section 1 of the Act (1974:268) on the Environmental Protection Convention of 19 February 1974 between Denmark, Finland, Norway and Sweden (*lagen med anledning av miljöskyddskonventionen den 19 februari 1974 mellan Danmark, Finland, Norge och Sverige*).

#### Insolvency law

- Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (hereinafter *2015 Insolvency Regulation*);
- Sections 1, 3 and 5-8 of the Act (1934:67) Laying Down Rules Governing Insolvencies Involving Property in Denmark, Finland, Iceland or Norway (*lag med bestämmelser om konkurs, som omfattar egendom i Danmark, Finland, Island eller Norge*);
- Sections 1, 4-9 and 13 of the Act (1934:68) on the Effects of Insolvencies Occurring in Denmark, Finland, Iceland or Norway (*lag om verkan av konkurs, som inträffat i Danmark, Finland, Island eller Norge*);
- Sections 1, 3-8 and 12 of the Act (1981:6) on Insolvencies Involving Property in Another Nordic Country (*lag om konkurs som omfattar egendom i annat nordiskt land*);

• Sections 1, 4-9, 13 and 14 of the Act (1981:7) on the Effects of Insolvencies Occurring in Another Nordic Country (*lag 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. Since Sweden adopts a dualist approach to international treaties, these multilateral conventions have also been transposed into Swedish national law. Please 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 has replaced the Convention for contracts entered into on or 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 the 2006 amendment convention);
- The 1933 Convention between Sweden, Denmark, Finland, Iceland and Norway on Insolvency (hereinafter *Nordic Insolvency Convention*);
- The 1934 Convention between Denmark, Finland, Iceland, Norway and Sweden on Succession, Wills and the Administration of Estates (last amended by the 2012 amendment convention);
- 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

In general terms, where a dispute has international connections, a court should address on its own initiative the question of which law is applicable. Several rules of Swedish private international law stipulate that the contracting parties' choice of law for matters relating to the agreement must be respected. Where a dispute is amenable to out-of-court settlement, it is also possible for the parties to agree upon the applicable law when the dispute is examined by the court. Where a case concerns a legal relationship for which conciliation is permitted under Swedish national law, a unanimous declaration of subjection to Swedish law should be approved by the court, provided that there is a connection to Sweden (please see New Law Archive (NJA) 2017 p. 168).

### 2.2 Renvoi

Swedish private international law does not as a general rule accept the doctrine of renvoi. There is, however, an exception 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 (1981:7) 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 Chapter 1 of the Act (1904:26 p. 1) on Certain International Legal Relationships in Respect of Marriage and Guardianship.

### 2.3 Change of connecting factor

There are no general rules governing the effect of a change of connecting factor. For example, the European Union Regulations on the property regimes of spouses and registered partners are based on the principle of immutability. This means that the applicable law determined for the connecting factor that existed when the marriage took place, or when the partnership was registered, will be changed only by way of exception and following an application, under certain conditions laid down in the relevant European Union Regulation.

The principle of mutability, on the other hand, applies to matrimonial property regimes in Nordic contexts. This means that, if the spouses have not entered into an agreement on the choice of applicable law, and if they have both subsequently been domiciled in another Nordic country and have resided there for at least two years, the law of that country will apply instead. If, however, both spouses were domiciled in that country previously during their marriage, or if the spouses are nationals of that country, the law of that country will apply from the time when they became domiciled there. A similar principle applies to cohabitation. (Please see Section 9 of Chapter 3 and Section 6 of Chapter 5 of the Act [2019:234] on Property Relations between Spouses or Cohabitants in International Situations.)

### 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 fundamental basis of the legal system in Sweden. Provisions to that effect may also be found in much private international law legislation, but it cannot be inferred from this 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 binding is usually a matter for the judiciary.

### 2.5 Proof of foreign law

If the court finds that a foreign law is applicable but is not acquainted with its substantive content, it has two options to choose between. It can either investigate the matter itself or request a party to provide the necessary information. The option chosen will be a matter of expediency. If the court investigates the matter itself, it can seek assistance from the Ministry of Justice. In general, the court should play a more active role in disputes that are not amenable to an out-of-court settlement, whereas in disputes that are amenable to an outofcourt settlement it can delegate more of the investigative work to the parties themselves.

## 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. There are separate rules relating to the choice of law in some areas. The Rome I Regulation has replaced the Convention in respect of contracts entered into on or after 17 December 2009.

Agreements concerning the **sale of goods** are governed by the Act (1964:528) on the Law Applicable to Sales of Goods, which transposes the 1955 Hague Convention on the Law Applicable to International Sales of Goods into Swedish law. That Act takes precedence over the rules laid down in the Rome I

Regulation. It does not, however, cover consumer contracts. Section 3 of the Act 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, then the law of the country where the seller is domiciled shall apply. Exceptions are made to this rule if the seller accepted the order in the country where the buyer is domiciled, and for purchases at a stock exchange or auction.

There is another exception to 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 (1990:932), Section 14 of the Consumer Contracts Act (1994:1512), Section 4 of Chapter 1 of the Act (2011:914) on Consumer Protection in Agreements Concerning Residential Timeshares or Long-Term Holiday Products, and Section 14 of Chapter 3 of the Act (2005:59) on Distance Contracts and Remote Sales Agreements. According to these provisions, the law of an EEA Member State must apply under certain circumstances 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 (1932:130) and Sections 5865 of the Cheques Act (1932:131). 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 (1993:645) 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 that of nationality. There are now so many cases where nationality has had to give way to domicile as the main connecting factor that it is questionable whether it can still be said that there is a single main connecting factor for personal status. In Swedish private international law, personal status is mainly understood to concern one's legal capacity and name.

Under Section 1 of Chapter 1 of the Act (1904:26 p. 1) on Certain International Legal Relationships in Respect of Marriage and Guardianship, **capacity to marry** before a Swedish authority must in principle be established in accordance with Swedish law if either party is a Swedish national or is domiciled in Sweden. Similar rules apply within the Nordic framework under Section 1 of the Ordinance (1931:429) 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 (1904:26 p. 1) on Certain International Legal Relationships in Respect of Marriage and Guardianship, and in Sections 1421a of the Ordinance (1931:429) on Certain International Legal Relationships in Respect of Marriage, Adoption and Guardianship.

The question of the law applicable to **capacity to contract** is regulated in part 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 laid down 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 Section 3 of Chapter 11 of the Code of Judicial Procedure (*rättegångsbalken*), which states that a foreigner who is unable to conduct legal proceedings in his or her own country may 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 31 of the Act (2016:1013) on Personal Names (*lagen om personnamn*), the Act does not apply to Swedish nationals who are domiciled in Denmark, Norway or Finland. It may be concluded *a contrario* that it does apply to Swedish nationals elsewhere. According to Section 32, the Act may also apply to foreign nationals who are domiciled 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 choiceoflaw rules to determine whether a child is to be regarded as having been born in or out of wedlock, or whether a child born out of wedlock can be legitimised.

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 (1985:367) on International Paternity Questions. According to that provision, 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 domiciled 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, however, the child became domiciled in Sweden at the time of birth, the question will always be decided in accordance with Swedish law. If paternity has to be established in court, the court will generally apply the law of the country in which the child was domiciled at the time of the judgment at first instance.

According to Section 3 of the Act (2018:1289) on **Adoption** in International Situations, a Swedish court considering an application for adoption must apply Swedish law.

A foreign adoption decision that is valid in Sweden has the same legal effect as a Swedish adoption decision.

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 domiciled. If the child is unable to obtain maintenance from the party who is obliged to provide it under that law, the law of the country where the court is located must be applied. 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 of that state must be applied.

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

As regards **capacity to marry**, please 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 entered into; please see Section 7 of Chapter 1 of the Act (1904:26 p. 1) 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 (please see point 3.6 below). The main legal 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 relating to 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 choiceoflaw rules that govern inheritance, personal names, etc.

The question 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 domiciled. 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 were most recently domiciled together), the law of that other state must be applied.

With regard to **divorce**, Section 4(1) of Chapter 3 of the Act (1904:26 p. 1) on Certain International Legal Relationships in Respect of Marriage and Guardianship provides that the Swedish courts must apply Swedish law. Section 4(2) makes an exception if both spouses are foreign nationals and neither of them has been domiciled in Sweden for at least one year.

Swedish substantive law does not include the legal institutions of **legal separation** or **annulment of marriage**. The rules governing the division of property following legal separation are laid down in Section 6 of Chapter 2 and Section 13 of Chapter 3 of the Act (2019:234) on Property Relations between Spouses or Cohabitants in International Situations.

### 3.6 Matrimonial property regimes

Questions relating to the law applicable to matrimonial property regimes are governed by Chapter III of Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. There are similar rules for registered partners in Chapter III of Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships. Chapter 2 of the Act (2019:234) on Property Relations between Spouses or Cohabitants in International Situations lays down provisions that supplement the European Union Regulations (please see *inter alia* Sections 4 and 5 of Chapter 2).

There are special provisions on the law applicable to matrimonial property regimes within the Nordic context in Chapter 3 of the Act (2019:234) on Property Relations between Spouses or Cohabitants in International Situations (please see *inter alia* Sections 8–11 of Chapter 3).

### 3.7 Wills and successions

The question of the choice of law for 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 choice of law rules in that Regulation apply irrespective of whether the international connection is with a Member State or with any other state.

There are, however, special provisions concerning a will's validity as to form, according to Section 3 of Chapter 2 of the Act (2015: 417) on Succession in International Situations (*lagen om arv i internationella situationer*), which transposes the 1961 Hague Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions into Swedish law. A will must be considered valid if it fulfils the requirements relating to its form under the law of the place where the testator made it, or under the law of the place where the testator was domiciled or a national when the will was made or at the time of death. A disposition relating to immovable property must also be considered valid as regards its form if it fulfils the requirements relating to its form under the law of the place where the property is situated. The same rules apply to the revocation of a will. A revocation must also be considered valid if it fulfils the requirements relating to the form of such revocation under any of the laws under which the form of the will was valid.

### 3.8 Real property

In the area of property law, codified choice of law rules only exist for certain cases concerning ships and aircraft, financial instruments and unlawfully removed cultural objects, and for certain situations regulated by 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, must 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, the manner in which any property right arises and ceases to exist, any formal requirements that may apply, and the rights that a given property right confers against third parties.

As regards foreign security rights, the caselaw has established 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. Furthermore, a foreign security right should not be given legal effect if some time has passed since the property was brought to Sweden. In such cases, the foreign creditor will have had the time either to obtain a new security or to recover the debt.

### 3.9 Insolvency

The 2015 Insolvency Regulation lays down rules governing the applicable law in relation to other Member States of the European Union (excluding Denmark).

With regard to those Nordic countries that are not subject to the 2015 Insolvency Regulation, there are separate provisions concerning the applicable law which are based on the 1933 Nordic Insolvency Convention and which were transposed into Swedish law by legislation enacted in 1981 (however, the provisions of earlier legislation dating from 1934 apply in relation to Iceland). The general rule of the Nordic Insolvency Convention is that an insolvency procedure in a contracting state (the country in which the insolvency procedure takes place) must also encompass property belonging to the debtor which is situated in another contracting state. As a general rule, the law of the country where the insolvency procedure takes place must be applied to matters concerning such property, such as the debtor's right to control his or her property and what is to be included in the insolvent estate.

The majority of Swedish international insolvency law is not laid down in legislation, other than the rules mentioned above. The fundamental assumption is that the law of the country in which the insolvency procedure takes place (*lex fori concursus*) is applied. This means *inter alia* that, for a Swedish insolvency, Swedish law will apply both to the procedure itself and to any other matters relating to insolvency law.

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