Sweden

International Estate Planning Guide

Individual Tax and Private Client Committee

Contact:

Torgny Lebenberg

LEBENBERG ADVOKATBYRÅ AB
Stockholm, Sweden

torgny.lebenberg@lebenberg.se

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I. Wills and Disability Planning Documents

A. Will Formalities and Enforceability of Foreign Wills

1. Swedish Wills

Anyone who is 18 years or more can make a will. A testator who is 16 years and is or has been married can make a will concerning assets that people who are under 18 are allowed to handle personally.[1] As in most jurisdictions, the will may be declared invalid if the testator has a restricted mental capacity.

Swedish law requires that a will is made in the right form. The main rule is that a will must be in writing and it must be witnessed by two persons who confirm the will by signing the document. There are certain technical restrictions on who can witness a will. Swedish law also contains a practical rule concerning the burden of proof that the prescribed form has been used. The general Swedish procedural rule is that the person who claims that the right form has been used must prove this fact. By using certain phrases for the witnesses, the burden of proof concerning the form for wills is transferred to the person who contests the will. Because most wills contain the relevant phrases it is difficult to contest a will on its form.

In cases of emergency, the will may however be drawn in other forms. The will can then be made either verbally in front of two witnesses or in writing without witnesses. Such a will is only valid for a restricted time depending on if there is a later opportunity to draw a regular will in writing with witnesses.

If an heir wants to contest a will he must do so within six months after he receives a certified copy of the will. Formal and material faults with the will are otherwise irrelevant and a will will be valid even if for instance one witness is missing.

Concerning the content of the will, a testator can no longer devise property to a recipient who has not been born or conceived at the time of the death of the testator. However, an exception is made as to the children of those who are born or conceived at the testator's death. In a situation involving this exception, a testator may not make any distinctions between siblings. The reason for this rule is that under previous law, wills were made under which large estates should continually be transferred to the eldest son, leading to problems with financial management.

2. Enforceability of Foreign Wills

The Swedish private international inheritance law is presently in a state of transition due to the fact that Sweden is bound by the EU regulation from 2012 on matters of succession, (Brussels IV). The regulation shall apply to the successions of persons who die on or after 17 August 2015.

Swedish international private law is rather liberal concerning the enforceability of foreign wills. The rules are founded on the Hague convention of 1961. The capacity to make a will has so far been governed by the law of the country of which the testator was a citizen at the time when the will was made. This rule also applies to mental capacity. The EU regulation states however that the question of capacity is a matter of substantive validity and shall be governed by the law which under the regulation would have been applicable to the succession of the testator who made the will if he had died on the day he wrote his will. This will normally be the law of the state in which he had his habitual residence unless he was manifestly more closely connected with another state, since then the law of that state will apply. He may however still under certain conditions choose to have his capacity ruled by the law of his citizenship.

A will shall be considered made in legal form if it has been made in accordance with the law of the place where the act was performed or in accordance with the law of the country of which the testator was either resident or a citizen at the time of making the will. It is also acceptable if the will is drawn up in accordance with the law of the country of which testator was either a resident or a citizen when

[1] ´Until you are 18 you are a minor and in principle not allowed to handle your assets personally. Exceptions to this can be assets that you have received through wills or gifts.

he died. Finally, if the will concerns real estate, a will is valid if made in accordance with the law of the country where the property is located. This will not be changed for Sweden by the new EU regulation.

The question as to whether a testamentary disposition is invalid on account of its contents shall be judged according to the law of the country of which the testator was a citizen at the time of his death if he dies before 17 August 2015; provided, however, that in the case of immovable property, a disposition in favour of an unborn person shall not be valid if such disposition is at variance with the law of the place where the property is situated. For persons who die on or after 17 August 2015 the applicable law will normally be the law of the state in which he had his habitual residence when he died unless he was manifestly more closely connected with another state, since then the law of that state will apply. He may however still under certain conditions have chosen to have this ruled by the law of his citizenship.

The question as to whether the making of a will is invalid on account of the state of mind of the testator or on the grounds of fraud, error, duress or other undue influence shall until 17 August 2015 be determined according to the law of the country of which the testator was a citizen at the time when it was made. According to the new EU regulation these matters shall be governed by the law which under the regulation would have been applicable to the succession of the testator who made the will if he had died on the day he wrote his will. This will normally be the law of the state in which he had his habitual residence unless he was manifestly more closely connected with another state, since then the law of hat state will apply. He may however still under certain conditions have chosen to have his capacity ruled by the law of his citizenship.

Special rules apply for inter-Nordic[2] relations, but this will be less important from 17 august 2015.

B. Will Substitutes

The concept of the Anglo-Saxon trust is not recognized under Swedish law. In some cases, instructions for a trust can be treated as an entity called “stiftelse,” generally with unfavorable tax effects. The most common alternative in Sweden to a will, besides a regular direct gift, is the use of a life insurance policy with directives concerning a beneficiary. The problem is that the assets are in the possession of the insurance company. This means that life insurance is mostly used only on assets that the donor does not expect to need personally during his lifetime. One advantage of life insurance is that the donor is still free to change the beneficiary, which he cannot do with assets donated during his lifetime. The rules concerning forced heirship are also less strict for insurance policies than for wills. Because life insurance policies are also marketed rather aggressively by the insurance companies, they are very popular in practice.

C. Powers of Attorney, Directives, and Similar Disability Documents

Sweden has no established legal authority on private disability documents. There are rules that limit the legal capacity for persons who no longer have their full mental capacities. The local administrative council can appoint a person to assist or in extreme situations take over the management of assets and also take care of the well-being of an incapacitated person. The appointed person[3] is to be controlled by the local authority.

Powers of attorney are very seldom used as an alternative to a will because there often is an uncertainty whether a power of attorney is valid after death. If it to its content is a will it would with all certainty be treated as such. Powers of attorney may however in some cases be used for instructions in case of sickness and senility. Their legal effects have still not been tested in any court and it is unclear if the delegate can act on more matters than his principal. A general power of attorney intended to be used in case of sickness or disability will probably not be accepted.[4]

[2] Denmark, Finland, Iceland and Norway.
[3] Technical term: God man.
[4] SOU 2004:112, p 475.

II. Estate Administration

A. Overview of Administration Procedures

1. Swedish National Administration

When someone dies in Sweden all the assets and debts of the deceased person are taken over by a new subject or entity with rights and liabilities. This entity is called dödsbo, translated to “estate” in English. This entity is handled either by the heirs together or by a court-appointed administrator.

The probate procedure in Sweden seems relatively simple compared to other jurisdictions, at least as long as the concerned parties do not complicate the process.

There are three mandatory steps. The first step is a document called “boupptеckning”. It is a privately produced document that in most cases consists of filling out and signing a form from the authorities. It is in practice an inventory of assets and debts, but also informs the authorities of the identities of the representatives of the estate. It is registered by the authorities and the authorities keep a copy of the document.

The next step is to decide the validity of the will if such an instrument is presented. If it is approved by the heirs, all that is necessary is that the approval is made in such a form that it later can be proven to authorities, banks or whoever is concerned with the will. For practical purposes, most approvals are in writing.

The third step is necessary only if there is more than one heir or beneficiary. When there are two or more heirs or beneficiaries they must produce a document signed by them stating how the assets should be distributed between them after the debts have been paid. This is a private document, but depending on the character of the assets, an heir must show this to authorities or banks in order to prove his title to the assets that he claims to have inherited.

If an heir suspects that something is not legally appropriate he can legally intervene in any of the three steps. As an example the document called boupptеckning shall legally be founded on a meeting that must be arranged by the widow or whoever is the closest heir. All the heirs must be given notice of the meeting in sufficient time that they can arrange for their presence at the meeting. At the meeting there is often an opportunity to ask questions concerning the assets, debts, gifts and wills. This gives an heir a chance to understand facts that otherwise may seem disturbing, but also to discover facts for future legal court actions.

If an administrator is appointed by the court he has a very wide authority to dispose of the assets and convert them to more easily divided and distributed assets. Among his duties are however not just to look after the interest of the heirs, but to see to that the creditors are paid before the inheritance is distributed to the heirs. If the heirs cannot agree on the distribution, the administrator can also decide the distribution. The disappointed heir can then appeal to the court to have the decision revoked within a certain time.

2. International Estates

If the deceased had assets and debts abroad the same rules apply.

If the deceased died before 17 August 2015 and did not have residence in Sweden but still was a Swedish citizen, the same rules will also apply, but a court-appointed administrator is then mandatory, at least in principle. The administrator is supposed to administer not just assets in Sweden, but all the deceased´s assets worldwide. In practice, fulfilling this duty is often difficult. If property was left within Sweden by a deceased person who died before 17 August 2015 and neither was a Swedish resident nor a citizen at the time of death, the standard rule is that an administrator is mandatory. The administrator shall however in that situation only handle assets in Sweden and debts to Swedish creditors. These rules are supplemented with rules providing that under certain conditions, assets can be transferred to a foreign administration, without Swedish distribution to the heirs.

From 17 August 2015 there is under Swedish private international law no longer any mandatory rules that requires a court-appointed administrator with exception for a very special situation when a provisional administrator will be appointed by the court. The need for an administrator will now be regulated according to the EU regulation. Even if it still is to early to know how the regulation will work in practice, it is the author´s understanding that the previous need for an administrator for foreign estates will in the future in most cases be solved by the introduction of the European Certificate of Succession.

B. Intestate Succession and Forced Heirship

The intestate succession rules are governed by two different principles which often collide. The former rule is the general western rule that the children inherit and if there are no children other relatives take the inheritance. The relatives must however be closer than cousins since cousins do not inherit intestate under Swedish law. If cousins are the closest relatives and there is no will, the inheritance is taken over by a Swedish state authority.

Parallel with this idea of the closest relative´s rights, there are now also an intestate right for the surviving spouse to inherit. His or her right is however limited and a surviving spouse may not dispose through a will of property he or she inherited intestate from a spouse. What is left when the widow(er) dies is then distributed not just between his or her relatives but also between the relatives of the spouse that died first. This solution generally works well in a typical family. However, in Sweden as in many other countries, there are families that have gone through a divorce that have children with different parents. Intestate succession can get very complicated in these situation and it is this author's opinion that it is a source for legal battles.

In addition to intestate succession rules there are rules concerning forced heirship. Half of the estate is reserved by the rules of forced heirship. Only children enjoy the benefits of forced heirship. If a child wants to contest a will on the grounds that it limits his rights with regard to rules of forced heirship he must do so within six months after he received a certified copy of the will. Otherwise he may lose the inheritance that the rules are intended to protect. In certain situations, these heirship rules restrict inter vivos gifts in addition to wills. In the case of a gift, the time in which to contest a gift begins to run when the inventory is completed rather than when the recipient receives a copy of the will. Often there are also other problems concerning gifts given by the deceased and the question whether or not these gifts should be deducted from the inheritance.

The general rule concerning international intestate inheritance has for a long time been that the citizenship determines the applicable law (lex patriae) with exceptions for inter-Nordic (Denmark, Finland, Iceland and Norway) relations where the matter is mostly decided by the residence of the deceased (lex domicilii). For inheritance that occurs on 17 August 2015 and afterwards it will however normally be the law of the state in which the deceased had his habitual residence when he died unless he was manifestly more closely connected with another state, since then the law of that state will apply. He may however still under certain conditions have chosen to have this ruled by the law of his citizenship.

Marital Property

1. Swedish Internal Rules

Before the intestate succession rules or a will can apply, the widow´s marital rights must be identified and handled. The Swedish principle is that during the marriage each spouse has individual rights to his or her assets, although spouses can agree to own property together. When the marriage is ended the standard situation is that through her marital rights a spouse is entitled to half of the mutual assets, irrespective of whether this the marriage is dissolved due to divorce or death. This principle often means that in practice it is less important to identify the owner of an asset, because at the termination of the marriage it will be equally distributed between the spouses.

In the death situation the surviving spouse has a choice. He or she can opt to keep her own possessions and forego division of the net assets. A surviving spouse may choose this option if she has a larger part than the deceased and especially if the spouses have children from previous marriages. The spouses can choose not to use the standard rules and instead agree that in case of

divorce or death each spouse will keep some or all of his assets. Such an agreement must be registered with an official register.

2. Swedish International Rules

The main principle is that, unless otherwise agreed, the law of the country where spouses have their residence shall govern their marital regime. The practical result of this rules is that if a married Swedish couple moves abroad they can after some time find themselves ruled not by the Swedish marital regime, but by a marital regime that does not have the division of the net assets, but divides assets according to ownership. To avoid this result, spouses can make an agreement on which marital regime shall govern their marriage and its dissolution. They can choose the law of any country of which one of them is at the time of the agreement a resident or a citizen. The agreement must be in writing but need not be registered according to Swedish law. However, registration is a requirement in some jurisdictions, so it may be advisable to combine a marital regime agreement with a document that must be registered under Swedish law, for example an agreement that when the marriage ends each spouse keeps his own assets.

C. Tenancies, Survivorship Accounts, and Payable on Death Accounts

Swedish law is very restrictive concerning agreements that intend to have effects not sooner than when one of the parties dies. Although it is possible for spouses to have a bank account together, this will not automatically give the surviving spouse the right to the whole account. Depending on who has put in most money in the account the dead spouse will be seen as an owner to a part of the account and this part will in due course be divided in accordance with applicable rules on marital regime and inheritance.

III. Trusts, Foundations, and Other Planning Structures

A. Common Techniques

The idea of the Anglo-Saxon trust is legally unknown in Swedish law. There is however a concept under Swedish law called Stiftelse. This is a legal entity that has no special owner. It is created by someone who transfers assets, normally of a specified value, to persons who are expected to use these assets for certain purposes under a long time. Although most Stiftelse are established to promote charity, the purpose can for example be the benefit of a certain family. A Stiftelse is ruled by its statues and board of directors. A Stiftelse for a family was more popular in the past. They fulfilled several different ambitions for the testator, but since payments from the Stiftelse now often are taxed as regular income they have become less popular.

B. Fiduciary Duties (Trustees, Board Members, Directors, etc.)

Quite often parents do not want their children to have full and free access to inherited assets at the legal maturity age of 18 years. To avoid this they prescribe in their wills or gift-deeds that their children will not have full rights to their inheritance immediately, but they must wait for example until they are 25 years. The parent will then in his will appoint someone who he trusts to manage the assets until the child has reached the prescribed age. Such restrictions are legal, but there is risk that this may in certain conditions lead to unfavorable income tax effects. These arrangements are often combined with instructions that in case testator dies while the beneficiary is a minor, the appointed guardian will then come into force immediately and supersedes the default legal rules concerning inheritance to minors.

C. Treatment of Foreign Trusts and Foundations

As indicated before, Swedish authorities can be expected to be very skeptical to trust arrangements. Trusts have been involved in Swedish tax cases, but there is no clear civil case on the matter. The author’s opinion is that a Swedish judge would likely accept that there are other legal entities than those used in Sweden. He would then try to establish whether there has been a legally binding transfer of the assets to the trust. The first issue in that inquiry is which law should apply to the transfer. Should the validity of the transfer be decided by Swedish law or by the law where the trustee is resident?

Even if the trust may be upheld in a Swedish court the use of trust containing assets in Sweden is not something that can be recommended for practical reasons. It is in practice an invitation for litigious heirs to start proceedings concerning the validity of ownership for the trust (or trustee). Additionally, the legal explanations would need to be dealt with every time the ownership is checked. If for example a settlor put real estate in Sweden into the trust, there will probably be discussions with the authorities that register real estate. If the settlor or trustee in the future wished to mortgage the real property, there may be difficulties with the lawyers at the bank, etc.

IV. Taxation

A. Domicile and Residency

In very general terms, the relevant question is whether a person lives in Sweden, or alternatively if he has previously lived here and still has a strong connection to Sweden. A person will then be subject to unlimited tax liability and in principle be taxable in Sweden for all his income. Otherwise he will only be required to pay tax in Sweden for certain incomes with strong connections to Sweden. The British distinction between domicile and residence is irrelevant for Swedish tax liability.

Sweden has of course made many tax agreements with other states in order to limit double taxation as a result of the rules concerning unlimited tax liability.

B. Gift, Estate, and Inheritance Taxes

There is no longer any gift or inheritance tax in Sweden. Similarly, private persons no longer pay wealth tax, in the meaning of tax that is paid yearly as a percentage of the taxpayer's wealth.

C. Taxes on Income and Capital

Swedish tax laws make an important distinction whether income is produced by work or actions as a professional on one hand and on the other hand if it income from capital, typically in the form of interest, but also through gains of sold stocks and shares. The income tax is progressive and varies from 30-55%, but the capital tax is in principle never more than 30%, so of course there is an incentive for taxpayers and their lawyers to classify income as interest or capital gain rather than salary.

Since a decedent's estate is regarded as a separate legal entity it is also treated as a tax subject. However four years after the death certain tax rules come into effect that are intended to eliminate the tax advantages that may be obtained by keeping assets within the estate.

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Torgny Lebenberg

Born: 1943
Education: Stockholm University, LLM 1968
Membership: Swedish Bar Association 1982
International Bar Association
British-Nordic Lawyers Association
Experience: After training at court and a short period with the Enforcement Service, Torgny worked at the Legal, Financial and Administrative Services Agency where his specialization in inheritance issues was founded. He then worked at the Government Offices of Sweden (the ministries) for

several years. He started his own practice in 1980 and since then inheritance law has been his main area of specialization.
E-mail: torgny.lebenberg@lebenberg.se
Telephone: +46(0)8-661 14 14