

Sweden

International Estate Planning Guide

IBA Private Client Tax Committee

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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 signed and witnessed by two persons who at the same time are present at the signing and 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. It is in practice 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 and signed 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 they must do so within six months after they receive a certified copy of the will. Formal and material faults with the will are otherwise irrelevant; a will is valid even if, for instance, one witness is missing.

Concerning the content of the will, a testator can no longer leave 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 drastically changed with the introduction of the European Union regulation from 2012 on matters of succession (650/2012, 'Brussels IV'). The regulation applies to the successions of persons who died on or after 17 August 2015. For inheritance from persons that deceased before that day, older and different rules apply.

Swedish international private law is rather liberal concerning the enforceability of foreign wills. The rules are founded on the Hague convention of 1961. 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, domiciled 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 the testator was either a resident, domiciled or a citizen when they died. Finally, if the will concerns real estate, a will is valid if

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.

made in accordance with the law of the country where the property is located. This is not changed for Sweden by the new EU regulation.

The capacity, including mental capacity, to make a will is, according to the EU regulation, 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 they had died on the day they wrote their will. This will normally be the law of the state in which they had their habitual residence unless they were manifestly more closely connected with another state, since then the law of that state will apply. Under certain conditions, they may choose to have their capacity ruled by the law of their citizenship. The same applies to the question as to whether a testamentary disposition is invalid on account of its contents, and 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.

B. Will substitutes (revocable trusts or entities)

The concept of the Anglo-Saxon trust is not recognised under Swedish law. In some cases, instructions for a trust can be treated as an entity called *Stiftelse*, generally with unfavourable tax effects. A 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 their lifetime. One advantage of life insurance is that the donor is still free to change the beneficiary, which they cannot do with assets donated during their lifetime. The rules concerning forced heirship are also less strict for insurance policies than for wills.

C. Powers of attorney, directives and similar disability documents

There are rules that limit the legal capacity for persons who no longer have their full mental capacities. The local administrative council or a court can appoint a person to assist, or in extreme situations take over, the management of assets and also take care of the wellbeing of an incapacitated person. The appointed person, (technical term: 'god man') is to be controlled by the local authority. Since 2017, new law has made it possible to appoint a special power of attorney in case of disability (*Framtidsfullmakt*). A power of attorney, including the special power of attorney for disability, is in principle valid after death. How far this authority carries is not clear.

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 *bouppteckning*. 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 their title to the assets that they claim to have inherited.

If an heir suspects that something is not legally appropriate, they can legally intervene in any of the three steps. For example, the *bouppteckning* document 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 the 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, they have very wide authority to dispose of the assets and convert them to more easily divided and distributed assets. Their duties are not just to look after the interest of the heirs, but to see to it 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, within a certain time, appeal to the court to have the decision revoked.

2. INTERNATIONAL ESTATES

From 17 August 2015, there is under Swedish private international law no longer any mandatory rules that require a court-appointed administrator with exception for one very special situation when a provisional administrator will be appointed by the court. The need for an administrator is regulated according to the EU regulation, with special provisions for inter-Nordic situations.

If the deceased died before 17 August 2015, different rules apply.

B. Intestate succession and forced heirship

The intestate succession rules are governed by two different principles which often collide. The first 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. Their right is however limited: a surviving spouse may not dispose through a will of property they inherited intestate from a spouse. What is left when the widow(er) dies is then distributed not just between their 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 situations: 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 their rights with regard to rules of forced heirship, they must do so within six months after they receive a certified copy of the will. Otherwise they 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 of whether or not these gifts should be deducted from the inheritance.

III. Marital property

A. 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 their assets, although spouses can agree to own property together. When the marriage is ended, the standard situation is that through their marital rights a spouse is entitled to half of the mutual assets, irrespective of whether 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. They can opt to keep their own possessions and forego division of the net assets. A surviving spouse may choose this option if they have 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 their assets. Such an agreement must be registered with an official register.

B. Swedish international rules

Sweden is one of the parties to 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, and 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 rules on applicable law apply only to spouses who marry or who specify the law applicable to the matrimonial property regime after 29 January 2019. The prior Swedish rules can thus be expected to be relevant for many years on.

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 most money in the account, the dead spouse will be seen as an owner of a part of the account. This part will in due course be divided in accordance with applicable rules on marital regime and inheritance.

IV. 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 over 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 statutes 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* are now often 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 old. The parent will then, in their will, appoint someone whom they trust to manage the assets until the child has reached the prescribed age. Such restrictions are legal, but there is a risk that this may in certain conditions lead to unfavourable income tax effects. These arrangements are often combined with instructions that, if the testator dies while the beneficiary is a minor, the appointed guardian will then come into force immediately. This 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 sceptical of 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 most likely accept that there are other legal entities than those used in Sweden. They 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 trusts 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 assets held in trust. 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.

V. Taxation

A. Domicile and residency

In very general terms, the relevant question is whether a person lives in Sweden, or alternatively if they have previously lived there and still have a strong connection to Sweden. A person will then be subject to unlimited tax liability and in principle be taxable in Sweden for all their income. Otherwise they 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 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 income from capital, typically in the form of interest, but also through gains of sold stocks and shares. Income tax is progressive and varies from 30–55 per cent, but capital tax is in principle never more than 30 per cent: 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.