
Sweden

International Estate Planning Guide

Individual Tax and Private Client 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 old or older can make a will. A testator who is 16 years old 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, a 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 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. 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 whether there is a later opportunity to draw a regular will in writing with witnesses.

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

Concerning the content of a will, a testator can no longer devise property to a recipient who was not born or conceived at the time of the death of the testator. However, an exception is made as to the children of those who were 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 shall apply to succession for persons who died on or after 17 August 2015. For inheritance regarding persons that died before that day, older and different rules apply.

Swedish international private law is rather liberal concerning the enforceability of foreign wills. The rules were founded on the Hague Convention of 1961. A will shall be considered to be made in legal form if it was 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 was drawn up in accordance with the law of the country of which the testator was either a resident, domiciled or a citizen when he or she died. Finally, if a will concerns real estate, the will is valid if made in accordance with the law of the country where the property is located. This was 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 that, under the regulation, would have been applicable to the succession of the testator who made the will if he or she had died on the day he or she wrote the will. This will normally be the law of the state in which the testator had his or her habitual residence, unless the testator was manifestly more closely connected with another state because then the law of that state will apply. However, under certain conditions, the testator may still choose to have

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.

his or her capacity ruled by the law of his or her citizenship. The same applies to the question as to whether a testamentary disposition is invalid on account of its content and 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. 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 or her lifetime. One advantage of life insurance is that the donor is still free to change the beneficiary, which he or she cannot do with assets donated during his or her 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. However, since 2017, Sweden has had a new law that makes it possible to appoint a special power of attorney in the 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 will carry is, however, not entirely 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*, which is translated as 'estate'. This entity is handled either by the heirs together or 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*, which 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 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 or her title to the assets that he or she claims to have inherited.

If an heir suspects that something is not legally appropriate, he or she can legally intervene in any of the three steps. As an example, the document called *bouppteckning* 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, he or she has very wide authority to dispose of the assets and convert them to more easily divided and distributed assets. Among the administrator's duties are, however, not just to look after the interest of the heirs, but to see 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, under Swedish private international law, there are no longer any mandatory rules that require a court-appointed administrator, with the exception of a very special situation in which a provisional administrator will be appointed by the court. The need for an administrator is now regulated according to the EU regulation, with special provisions for inter-Nordic situations.

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

B. Intestate succession and forced heirship

Intestate succession rules are governed by two 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 because cousins do not inherit under Swedish law regarding intestate succession. 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 is 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 of property he or she inherited intestate from a spouse through a will. What is left when the widow(er) dies is then distributed not only 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 situations and, in the author's opinion, is a source of 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 or her rights with regard to rules of forced heirship, he or she must do so within six months after he or she received a certified copy of the will, otherwise, the child 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 these gifts should be deducted from the inheritance.

C. 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 a 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 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. He or she can opt to keep his or her own possessions and forego the division of net assets. The surviving spouse may choose this option if he or 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 the case of divorce or death, each spouse will keep some or all of his or her assets. Such an agreement must be registered in an official register.

2. 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 shall, however, apply only to spouses who marry or who specify the law applicable to the matrimonial property regime after 29 January 2019. Old Swedish rules can thus be expected to be relevant for many more years.

D. 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 the owner of 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 for a long time. Although most *stiftelse* are established to promote a charity, the purpose can, for example, be to benefit a certain family. A *stiftelse* is ruled by its statutes and board of directors. *Stiftelse* for a family were more popular in the past. They fulfilled several ambitions for the testator; however, because payments from *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 old. To avoid this, in their wills or gift deeds, they prescribe that their children will not have full rights to their inheritance immediately, but must wait, for example, until they are 25 years old. Then, in their wills, parents appoint someone who they trust to manage the assets until the children have 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, in the case in which the testator dies while the beneficiary is a minor, the appointed guardian then comes into force immediately and supersedes the default legal rules concerning inheritance by minors.

C. Treatment of foreign trusts and foundations

As indicated before, Swedish authorities can be expected to be very sceptical towards trust arrangements. Trusts have been involved in Swedish tax cases, but there has been no clear civil case on the matter. In the author's opinion, a Swedish judge is likely to accept that there are legal entities other than those used in Sweden. The judge would then try to establish whether there has been a legally

binding transfer of the assets to the trust. The first issue in the inquiry is which law should apply to the transfer. Should the validity of the transfer be decided by Swedish law or that of the country where the trustee is resident?

Even if the trust may be upheld in a Swedish court, the use of a trust containing assets in Sweden cannot 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, legal explanations would need to be dealt with every time ownership is checked. If, for example, a settler put real estate in Sweden into the trust, there would probably be discussions with the authorities that register real estate. If the settler or trustee wished to mortgage the real property in the future, there may be difficulties with lawyers at the bank, and so on.

IV. Taxation

A. Domicile and residency

In very general terms, the relevant question is whether a person lives in Sweden, or alternatively, if he or she 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 or her income, otherwise, he or she will only be required to pay tax in Sweden for certain income 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 sense 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 between whether income is produced, on the one hand, by work or actions as a professional, and on the other hand, 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 gains tax is, in principle, never more than 30 per cent, so, of course, there is an incentive for taxpayers and their lawyers to classify income as interest or capital gains rather than salary.

Because a decedent's estate is regarded as a separate legal entity, it is also treated as a tax subject. However, four years after a 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.