

Act on Conflict of Laws in regard to Succession

Swedish Code of Statutes
SFS 1937:81

Unofficial translation of: Lagen (1937:81) om internationella
rättsförhållanden rörande dödsbo

Promulgated 5 March 1937

Chapter I

Intestacy and Wills

Art. 1. The right of intestate succession to the property of a deceased Swedish citizen shall be determined by Swedish law, even if the deceased did not have his permanent residence within the Realm. As regards intestate succession to the property of a citizen of a foreign country, the law of that country shall apply.

The above rule shall also apply as to the right of an heir to receive maintenance from the estate in excess of his distributive share.

Art. 2. If in the case of any particular kind of immovable property and its appurtenances special rules of succession are laid down in the law of the place where such property is situated, that law shall apply.

Art. 3. The capacity to make or revoke wills shall be governed by the law of the country of which the testator was a citizen at the time when the will was made or revoked. If a person after having made a will becomes a citizen of another country according to the law of which he did not have the capacity to revoke the will, any revocation made thereafter shall, nevertheless, be valid in Sweden, had the will been revocable under the law of his former country.

Art. 4. A will shall be considered made or revoked in legal form if it has been made or revoked 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 then a citizen.

Art. 5. 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; provided, however, that in the case of immovable property with its appurtenances 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.

Art. 6. The question as to whether the making or the revocation 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 be determined according to the law of the country of which the testator was a citizen at the time of making or revoking the will.

Art. 7. The question of the binding force of an agreement with the deceased as to inheritance, or of a gift to take effect on death (*donatio mortis causa*) shall be judged by the law of the country of which the deceased was a citizen when the act was performed.

No agreement concluded with a third person concerning a right of testate or intestate succession from a person still living, is in any case valid within the Realm.

Art. 8. If the heir of a deceased person has during the latter's lifetime received any property from him, the question as to whether such property is to be considered as an advance on account of the inheritance shall be determined in accordance with the law of the country of which the deceased was a citizen at the time when the gift was made.

Art. 9. The capacity of a person to become heir or legatee shall be judged by the law of the country of which he is a citizen.

Art. 10. The question of forfeiture of testamentary rights shall be determined by the law of the country of which the testator was a citizen at the time of his death.

Art. 11. If an alien leaves property within the Realm which, by the law of the country of which he was a citizen, would pass to the Crown, a municipality or a public fund or institution, such property shall go to the Swedish State Inheritance Fund (Allmänna arvsfonden).

Art. 12. No provision of any foreign law which is manifestly incompatible with the fundamental principles of law in force within the Realm may be applied here.

CHAPTER II

Administration and Distribution

Art. 1. The administration, partition (bodelning)¹ and distribution of property upon the demise of a person who had his permanent residence within the Realm at the time of his death, shall be effected here as provided in the Act concerning Administration and Distribution of Estates and shall include the property of the estate situated abroad.

Upon the conclusion of the administration of a foreign citizen's estate partition and distribution may, however, subject to the consent of all heirs (*dödsbodelägare*)², be effected according to the law of the country of which the deceased was a citizen; for such purpose the property may be taken in charge by a person competent under the law of that country.

Art. 2. Even if a deceased person has had no permanent residence within the Realm, the provisions of Swedish law as to the transfer of property to the management of an administrator shall apply, provided the deceased was a Swedish citizen or possessed property situated within the Realm. The administration, partition, and distribution of property thus transferred shall be effected according to Swedish law subject to the provisions set forth below.

Art. 3. If property is left within the Realm by a deceased person who at the time of death had no permanent residence there and such property has not been transferred to the management of an

¹ Under Swedish law each spouse may own individual property, but most of the property of married persons is usually held as the "giftorättsgods" of either. Such property is not completely at the free disposal of the owner but is subject to certain restrictions in the interest of the other spouse. Upon the death of one spouse the "giftorättsgods" of both have to be divided in equal shares between the deceased's heirs (or legatees) on the one hand, and the surviving spouse on the other, and the latter's share must be set apart as not belonging to the estate (bodelning). This procedure is translated in this Act as "partition".

² The term "*dödsbodelägare*" – literally "*those participating in an estate*" – according to Swedish law includes:

firstly, surviving spouse, provided partition is necessary and has not yet taken place; otherwise the spouse is included only if he or she is an heir or a residuary legatee;

secondly, heirs-at-law, even if excluded by will from sharing in the estate, but only up to the time when the will has acquired legal force and validity;

thirdly, residuary legatees.

In the interest of brevity the term "*dödsbodelägare*" is in this Act translated as "*heirs*".

2 Please note: this translation is not an official, legally binding document. No assessment of quality or accuracy in legal or linguistic terms has been made.

administrator according to Article 2, a report on the matter shall without delay be made to the police by the person in charge of the property or otherwise by relatives, servants, landlord or whoever is nearest thereto. Upon receipt of such a report or whenever the situation indicated above becomes known the police shall, if necessary, take charge of the property.

If the property is of little value and consists mainly of cash, clothing and other personal chattels, the police may, after payment of the expenses incurred within the Realm for the deceased's maintenance, treatment and burial, hand over the property to a relative or, if the deceased was an alien, to a consul for his country, provided such handing over can be effected without prejudice to persons interested in the estate who are Swedish citizens or have permanent residence within the Realm.

In cases other than those mentioned in the second paragraph of this Article, the police shall report to the Court; and the Court shall order the property to be transferred to the management of an administrator, whereupon the procedure provided under Article 2 shall apply.

Art. 4. In cases where the property of a deceased person who at the time of death had no permanent residence within the Realm is transferred to the management of an administrator, no heir nor any other person interested in the outcome of the administration may be appointed administrator, nor may a beneficiary subsequently take over the administration. The statutory period within which an inventory has to be made shall be counted as from the time when the property was ordered to be transferred to an administrator.

Art. 5. When administration, partition and distribution of the property of a deceased Swedish citizen who had no permanent residence within the Realm is effected according to Swedish law, such procedure shall include any property of the estate situated abroad.

The Court may, at the request of the administrator or having consulted him, and provided it is considered feasible without detriment to persons interested in the estate, order that the whole or part of the property be taken in charge for the purposes of administration, partition and distribution by a person competent under the law of the country where the deceased had his permanent residence. Prior to such order persons within the Realm who are known to be interested in the estate shall be given an opportunity to express their views, provided this can be done without serious delay. The order may be conditional upon the administration costs being paid and security furnished that any persons who are Swedish citizens or have their permanent residence within the Realm, will be accorded their rights in the estate. If the administrator in accordance with the present provision ceases to handle the estate or if the Court, upon report from the administrator or from any heir, is satisfied that obstacles exist against the procedure, the Court shall formally discharge the administrator.

Art. 6. The administration, partition and distribution of the property of a deceased foreign citizen who had no permanent residence within the Realm shall include only the property situated here, and, in addition to the deceased's debts to Swedish citizens or persons having a permanent residence within the Realm, only such debts as have been specifically notified to the administrator.

The provisions of the second paragraph of Article 5 shall apply correspondingly, provided, however, that with regard to the taking over of property preference shall be given to a probate administration instituted in the country of which the deceased was a citizen as before an administration instituted in the deceased's country of permanent residence. Upon the conclusion of an administration instituted within the Realm any surplus shall always be placed at the disposal of the foreign administration now referred to, provided there is no obstacle to partition and distribution abroad and provided further that no heir who is a Swedish citizen or a person permanently residing here has demanded that partition and distribution be effected here. Copies of documents executed here in evidence of the administration, partition and distribution shall be forwarded to the said administration.

Art. 7. Whenever administration, partition or distribution takes place within the Realm, the rules of Swedish law shall apply as to the heirs' liability for the debts of the estate. In the case referred to in Article 6 no debts incurred by the deceased to persons who are not Swedish citizens or who have no permanent residence here shall, however, be considered known unless such debt has been specifically notified to the administrator by the creditor.

If in connection with a partition or distribution effected abroad, a person has received a share out of the estate in the manner provided by the foreign law, he shall not on account hereof be liable under Swedish law for the debts of the estate except by the property received or its value.

Art. 8. As regards the testamentary rights of legatees in the case of administration or distribution taking place within the Realm, the provisions of Swedish law concerning the propounding, service and contesting of wills shall apply, with the exception, however, that if the deceased at the time of death had no permanent residence here, the statutory period for propounding a will shall not commence to run until the property of the deceased has been transferred to the management of an administrator.

As regards prescription of rights to testamentary or intestate succession within the Realm, Swedish law shall apply.

Art. 9. In the case of administration, partition or distribution taking place within the Realm, allowance shall be made for any property allotted to creditors, surviving spouse, heirs or legatees by a corresponding procedure instituted in another country; it being therefore incumbent upon the administrator to endeavour to obtain a copy of the inventory or any other document of partition, distribution, etc., drawn up in the course of such procedure in the foreign country. Pending such procedure, the corresponding procedure within the Realm may be kept in abeyance unless serious detriment is caused by the delay to persons interested in the estate.

Art. 10. Any litigation concerning testate or intestate succession or the rights of a surviving spouse in an estate shall be within the jurisdiction of Swedish Courts provided the deceased was a Swedish citizen or had his permanent residence within the Realm or if the litigation concerns property situated within the Realm.

The above rule shall, however, not apply if the litigation concerns property which according to the provisions of the present Act has been handed over to a foreign probate administration and thereunder is subject to a procedure of administration, partition or distribution.

Art. 11. Any procedure of partition on the death of a spouse, or of distribution which, according to the above provisions of this Chapter, has not to be effected in conformity with Swedish law, shall be valid in form provided the procedure has complied with the law of the place where it was performed or with the law of the country of which the deceased was a citizen.

Art. 12. If a procedure of partition on the death of a spouse, or of distribution, has been carried out in a foreign place by an Authority or by an administrator especially appointed for the purpose, or if a litigation concerning such partition or concerning a matter of testate or intestate succession has been judged by a foreign Court, such partition, distribution or judgment shall be valid within the Realm, provided:

- that the deceased at the time of death was a citizen of the country where the partition or the distribution was made or the judgment was rendered or else had his permanent residence there;
- that the partition, distribution or judgment do not concern property subjected to a procedure of administration within the Realm or which should have been the object of partition or distribution there;
- that the partition, distribution or judgment has acquired legal force and validity;

- that the decision brought about by the partition, distribution or judgment, is not, as far as concerns property situated within the Realm at the time of death, founded on a law, the provisions whereof in the matter are in conflict with the law applicable according to Chapter I;
- that the decision is not manifestly incompatible with the fundamental principles of law in force within the Realm; and
- that in the case of judgment by default a citation has in due time been served on the absent party either in person or through a duly authorized representative.

Art. 13. Should anyone wish to obtain execution within the Realm of a judgment as referred to in Article 12 he shall apply to the Svea Court of Appeal (Svea Hovrätt).

Such application may not be granted unless the other party has had an opportunity to express his views thereon. If the Court of Appeal is satisfied that the judgment complies with the requirements of validity set forth in Article 12, the Court shall issue an order of execution; the judgment is thereupon to be executed in the same way as any legally valid judgment unless the Supreme Court upon appeal from the order of the Court of Appeal should otherwise decide.

Art. 14. Property which by a partition or distribution abroad has been allotted to a person residing within the Realm and transferred there through the Ministry for Foreign Affairs may not be subjected to seizure, attachment or injunction while still in the custody of the Ministry or of the Authority charged with its remittance to the beneficiaries entitled thereto according to the decree of partition or distribution.

Art. 15. For the purpose of having property transferred to a foreign probate administration or of obtaining information as stated in Article 9 or for other similar purposes an administrator may have recourse to the good offices of the Ministry for Foreign Affairs. If so required by the Ministry the administrator shall deposit an amount covering the estimated cost of the procedure required or furnish security approved by the Ministry.

Art. 16. The provisions of this Chapter regarding Swedish citizens as heirs, residuary legatees, creditors or persons legally interested in an estate shall apply also to the Crown, a municipality, company, society or other association or foundation within the Realm.

Art. 17. The King-in-Council may issue regulations as to the functions of Consuls in connection with property left abroad by Swedish citizens.

Note. Cf. relevant parts of OLC and ILC.

CHAPTER III

Special Regulations

Art. 1. If, according to the provisions of this Act, the law of the country of which an alien person is a citizen shall be applied and if different laws are in force as to different parts of such foreign country, the question as to which of those different laws is to be applied shall be determined according to the rules which, in this respect, are in force in the foreign country. If there are no such rules, the law of the place of such alien's permanent residence shall be applied or, if he does not have or, at the time of his death, did not have any permanent residence in that country, the law of the place where he last had permanent residence in that country or, if he has not had such residence there, the law of the capital.

Art. 2. If according to the present Act foreign law shall be applied and if the contents thereof are not known to the Court, the Court may order a party to supply information in this respect.

If the King-in-Council has issued regulations as to how the Court may obtain information of the content of foreign law the Court shall be obliged to obtain information thereof in the prescribed way, provided the content of that law is not already known to the Court.

Art. 3. For the purpose of the application of this Act any claim upon money deposited with a Swedish bank and any claim against an insurance office on account of an insurance agreement constituting part of its activities within the Realm shall be considered as property situated there. The same rule shall apply to any other claim against a debtor within the Realm, provided the foundation of the claim is not a document the presentation whereof is necessary for obtaining payment and which is outside of the Realm.

Art. 4. Special regulations apply as to the estates of Danish, Finnish, Icelandic or Norwegian citizens who had their permanent residence within the Realm at the time of death, as to the property of deceased persons having their permanent residence in Denmark, Finland, Iceland or Norway, and also as to the supervision in certain cases of undistributed estates of Danish, Finnish, Icelandic or Norwegian citizens.

Upon agreement with any other country than those mentioned above the King-in-Council may order exceptions from the provisions of Chapter II regarding estates of citizens of a contracting state or of persons who had their permanent residence within such state.

This law shall come into force on July 1, 1937. The provisions of Chapter II shall not apply to estates of persons deceased before that date.