This country-specific Q&A provides an overview of blockchain laws and regulations applicable in Sweden.

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1. Please provide a high-level overview of the blockchain market in your jurisdiction. In what business or public sectors are you seeing blockchain or other distributed ledger technologies being adopted? What are the key applications of these technologies in your jurisdiction?

Although an increasing amount of prototypes have been developed and tested by Swedish companies in recent years, our view is that the adoption of blockchain and other distributed ledger technologies in Sweden has not yet fully taken off. A number of initiatives and collaborations have been initiated with the purpose of utilising and commercialising the technology, but the market is still in its early stages. Our opinion is that so far, the technology is most commonly seen in the fintech sector and public sector, with an increased interest shown from other sectors.

One of the most noted non-financial applications of blockchain technology in Sweden is the collaboration between the Swedish Mapping, Cadastral and Land Registration Authority (Sw. Lantmäteriet) and a number of companies from the private sector, which used blockchain technology to successfully carry out a real estate transaction in 2018.

In addition, in September 2021, the Swedish Companies Registration Office (Sw. Bolagsverket) was commissioned by the Swedish government to build a verification service for company information based on blockchain technology. The stated purpose is for companies to be able to collect and share verified and current information about their company.

We are also aware of attempts to create electronic negotiable promissory notes using blockchain solutions (which carries specific legal issues under Swedish law, that technology could potentially resolve). There are also established businesses in Sweden dealing with virtual currencies mining and businesses that offer trading venues for virtual currencies and tokens.

2. To what extent are tokens and virtual assets in use in your jurisdiction? Please mention any notable success stories or failures of applications of these technologies.

According to the Swedish Financial Supervisory Authority (the “SFSA”) there are transactions in Sweden involving virtual assets, although virtual currencies are not considered a common or well-functioning method of payment in Sweden. There are also established businesses in Sweden dealing with virtual currencies mining and businesses that offer trading venues for virtual currencies and tokens. The SFSA has issued warnings for trading in virtual assets due to the risks identified, e.g. the lack of price and trade transparency as well as the absence of adequate consumer protection regulation.

As far as we are aware non-fungible tokens are not yet used in any significant scale in Sweden. There have, however, been some high-profile cases where digital artworks, presented as non-fungible tokens have been auctioned out by public figures.

3. To what extent has blockchain technology intersected with ESG (Environment, Social and Governance) outcomes or objectives in your jurisdiction?

There are several examples where blockchain technology has been practiced in ways consistent with ESG objectives, both in the public and private sector.

In 2020, on behalf of the Swedish government, the Swedish Mapping, Cadastral and Land Registration Authority, together with the Agency for Digital Government (Sw. Myndigheten för digital förvaltning (DIGG)), investigated how blockchain technology could be utilized to increase transparency in the increasingly digitalised public administration.

In 2021, the Karolinska University Hospital in Stockholm
initiated an investigation on how blockchain technology could be used for safer and simplified handling and sharing of personal health data in highly specialized care. The aim is to develop a prototype for a technical solution that gives individuals full control and ownership of their own health data.

Also, in 2021, the Swedish Companies Registration Office presented a prototype system, based on blockchain technology, intended to collect company information (e.g. permits, tax registration information, financial records etc.) from authorities and other publishers and make that information available to third parties. The information available in the system is owned by the companies and is updated in real time, thus creating reduced administration while increasing security and transparency. The Swedish government has since commissioned the Swedish Companies Registration Office to further develop the service and conduct a proof of concept test. In addition, the Swedish Companies Registration Office is looking into using various technologies, including blockchain technology, to facilitate the exchange of information between countries.

In addition, we see companies using blockchain technology in order to secure sustainable supply chains. Volvo, for example, has implemented blockchain technology in its operations to secure the traceability of conflict minerals used in the batteries of Volvo's new electric cars.

4. Has COVID-19 provoked any novel applications of blockchain technologies in your jurisdiction?

To our knowledge there has been no new applications of blockchain technologies developed solely due to the Covid-19-pandemic. In 2020, the Swedish Government, as a measure to reduce the spread of the Covid-19 virus, decided on a new temporary act making it easier for companies to conduct digital general meetings. This has raised interest for technical solutions securing the shareholder’s voting rights and authenticity of votes when conducting general meetings online. In this context, Nasdaq Stockholm has developed a solution called e-voting based on blockchain technology, aimed at securing the rights of shareholders while voting in digital general meetings. However, we are not aware of any Swedish companies using blockchain technology, such as e-voting, when conducting digital general meetings at this stage.

5. Please outline the principal legislation and the regulators most relevant to the use of blockchain technologies in your jurisdiction. In particular, is there any blockchain-specific legislation or are there any blockchain-specific regulatory frameworks in your jurisdiction, either now or envisaged in the short or mid-term?

There are no blockchain technology specific regulations as to this date, and as far as we are aware, there is no such legislation envisaged in the short or mid-term either. This is of course one of the main challenges with blockchain technology. It is a novel technology which in many ways does not fit in with the current legal framework, and the absence of new legislation specifically addressing it creates a legal vacuum. This means one often must use the existing legal framework and force blockchain to fit within that framework, which of course is not ideal.

In our view, the principal supervisory authorities likely to make inroads in the blockchain space are the SFSA and the Swedish Authority for Privacy Protection.

6. What is the current attitude of the government and of regulators to the use of blockchain technology in your jurisdiction?

The Minister of Finance has declared in a public answer to the Swedish parliament that the Swedish government is positive towards technical innovations and that blockchain technology creates opportunities in a variety of sectors where the technology could be used to improve the keeping of records. In relation to the European Commission’s proposal for a new regulatory framework for crypto assets (known as the Markets in Crypto Assets Regulation, or MiCA) the Swedish government has stated that it welcomes a regulation that promotes responsible innovation, development and competition in the present field. Hence, the attitude towards the use of blockchain technology should be regarded as positive.

7. Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox)?

In 2017, the Swedish government assigned a special committee to investigate the needs for legislative changes in order to eliminate barriers for digital
Blockchain: Sweden

The Swedish Central Bank (Sw. Riksbanken) is currently investigating the potential launch of an “e-krona”, a digital version of the Swedish krona which would be issued by Swedish Central Bank. The technical solution of the test environment is based on blockchain technology and in April 2021 the first phase of the test was completed. Conclusions from the initial tests were that the examined technology provides opportunity to create uniquely identifiable “e-kronor”, although further testing is necessary to ensure, inter alia, that mass payments can be handled in the magnitude and with the requirements that a digital central bank currency demands. This, among other issues, such as the technology’s compatibility with bank secrecy, will be examined in the next phase of the investigation. To date, there is no formal decision on whether an e-krona will be issued or not, how a potential e-krona will work or, which technology will be used in the final technical solution. It should also be noted that whether or not an e-krona will be issued is ultimately a political decision. In December 2020, the Swedish government appointed an inquiry chair to, inter alia, investigate and take a position on the need for the Central Bank to issue an e-krona.

No regulatory sandbox has yet been introduced in Sweden to encourage the use of blockchain technology. The government, larger financial institutions and private equity firms asked the SFSA to consider the need for a regulatory sandbox in Sweden. The SFSA decided against creating a regulatory sandbox with the argument that innovations in the financial sector are already strong in Sweden and that a regulatory sandbox could adversely affect competition in the market. For the same reason the SFSA decided not to consider any regulatory changes.

Upon instruction by the Swedish government, the SFSA has established a fintech-specific innovation centre with the purpose of creating a designated space where fintech companies can engage in dialogue with the SFSA and receive information on the regulations applicable to their business, thus facilitating fintech companies’ regulatory compliance. The innovation centre is not, however, a regulatory sandbox allowing companies to test their innovations in the market under the SFSA’s supervision.

8. Have there been any recent governmental or regulatory reviews or consultations concerning blockchain technology in your jurisdiction and, if so, what are the key takeaways from these?

So far there has been few governmental reviews and consultations regarding the use of blockchain technology in Sweden. However, as the interest in blockchain technology has increased from both the public and private sector, we will hopefully see more reviews in the near future.

In 2019, the Swedish Competition Authority issued a report which analysed blockchain technology from a competition perspective. It looked into whether blockchain technology could have potential anti-competitive effects, but also whether it could facilitate the Competition Authority’s supervisory work. Mainly, it found that while risks exist that blockchains are used for anti-competitive practices, today such risks are mostly of a theoretical nature. It pointed out however, that whatever risks there are could be reduced by giving competition authorities insight into private blockchains which are developed within consortia of companies, either voluntarily or through legislative measures.

9. Has any official guidance concerning the use of blockchain technology been published in your jurisdiction?

To our knowledge, no official guidance has been published concerning the general use of blockchain technology per se. Whatever guidance have been published so far mainly concern the use of cryptocurrencies and financial instruments with crypto assets as underlying asset. Such guidance has been published by the SFSA and the Swedish Tax Authority, for instance.

10. What is the current approach in your jurisdiction to the treatment of cryptocurrencies for the purposes of financial regulation, anti-money laundering and taxation? In particular, are cryptocurrencies characterised as a currency?

As for blockchain technology in general, Sweden has not adopted any specific laws to regulate the use of cryptocurrencies or other crypto assets. However, laws of a more general nature may be applicable depending on the use and character of the crypto asset at hand.

From a financial regulatory perspective, the SFSA has
not provided any conclusive guidance on the treatment of cryptocurrencies or crypto assets for the purposes of financial regulation. It has been indicated that a cryptocurrency or crypto assets may be treated as a currency if it constitutes a means of payment. The determination of whether a crypto asset meets the definition of a financial instrument and whether the services or activities provided should be treated as a regulated investment service or activity must be made on a case-by-case basis. According to the SFSA, this assessment should take into account, inter alia, how the cryptocurrencies are electronically registered, their transferability and whether they entail any rights or obligations on behalf of the holder and issuer respectively. However, due to the lack of guidance the classification of cryptocurrencies and other crypto assets are uncertain. The SFSA has issued a report stating that, depending on the design of the crypto asset, it may fall within the scope of the Electronic Money Act (2011:755), or the Financial Instruments Trading Act (SFS 1991:980), but most crypto assets are outside the scope of both. Authorization may thus be required from the SFSA prior to conducting certain activities with crypto assets in Sweden. However, according to the SFSA the majority of crypto assets are not subject to their regulation.

Furthermore, the SFSA as well as certain EU regulators have recently issued public reports on consumers’ investments in cryptocurrencies, crypto assets and financial instruments related thereto, highlighting, inter alia, difficulties relating to valuing the crypto assets and the lack of adequate consumer protection regulation. In this context the SFSA has declared investments relating to cryptocurrencies unsuitable for most, if not all, consumers.

For AML purposes, business involving exchange of cryptocurrencies that is conducted professionally and not ancillary to the business is, in general, within the scope of the AML regulations. The applicability of the AML regulations to other businesses must be made on a case-by-case basis. Effective from 1 January 2020, EU’s Fifth Anti-Money Laundering Directive is implemented through, inter alia, amendments in the Certain Financial Operations Act (1996:1006). The Amendments bring all business involving exchange of cryptocurrencies as well as wallet providers within the scope of the AML regulations. It should be noted that the definition of exchange services in the Certain Financial Operations Act goes beyond the definition in the directive, as it also includes exchange services between different virtual currencies.

For income tax purposes, cryptocurrencies are generally not characterised as a currency. In a ruling regarding the classification of bitcoins (HFD 2018 ref. 72), the Supreme Administrative Court held that currency generally refers to a payment instrument issued and guaranteed by a central bank or similar institution of a state. Bitcoin lacks a formal publisher. Its value is not based on any claim on the issuer but is determined based on market availability and demand. A bitcoin is also not generally accepted as a means of payment. Against this background, a bitcoin cannot be regarded as a currency within the meaning of the income tax legislation. A sale of a bitcoin should therefore be taxed in accordance with the provisions for “other assets” in the income tax legislation, meaning that upon disposal, such as a sale or an exchange if used as payment for goods or services, capital gains are taxed as capital income at a rate of 30 per cent and capital losses are deductible with 70 per cent. The Swedish Tax Agency has in a statement held that the same applies for other equivalent cryptocurrencies.

If transactions in cryptocurrencies are carried out as a business or if a person carries out so-called “mining” of cryptocurrencies, the tax rules for business income or employment income (hobby) will also be relevant to consider.

For VAT purposes, the provision of exchange services relating to bitcoins has, however, been considered to fall within the scope of the VAT exemption for currency transactions based on the ECJ ruling C-264/14, Hedqvist (HFD 2016 ref. 6).

11. Are there any prohibitions on the use or trading of cryptocurrencies in your jurisdiction?

There are currently no specific prohibitions on the use or trading of cryptocurrencies in Sweden. However, several restrictions may apply depending on the business and services provided and, as such, the business and services must always be reviewed in light of, primarily, the general regulatory framework on financial services and consumer protection.

As mentioned, authorisation may be required from the SFSA prior to conducting certain activities in Sweden. If the business of an entity entails offering bitcoin or other cryptocurrencies and digital currencies used as a means of payment from its own books (i.e. already existing assets), the entity must apply for registration as financial institution with the SFSA. Also, businesses for which the Certain Financial Operations Act applies, must register at the SFSA before commencing its operations.

12. To what extent have initial coin
offerings taken place in your jurisdiction and what has been the attitude of relevant authorities to ICOs?

As far as we are aware, only a few ICOs have taken place in Sweden (for example by Starflow AB and Chromaway AB).

As regards the attitude of relevant authorities, the SFSA and the European Securities and Markets Authority (ESMA) has issued warnings for investing in ICOs and crypto assets in general, highlighting that the purchase of a token in ICOs does not necessarily entail any rights for the consumer, that the price of tokens issued does not have to be set by an independent party and that there is no guaranteed access to secondary markets.

13. If they are permissible in your jurisdiction, what are the key requirements that an entity would need to comply with when launching an ICO?

The requirements when launching an ICO depend on whether the actual cryptocurrency is considered a financial instrument or not. As described above the SFSA has not provided any conclusive guidance on how cryptocurrencies in general should be classified. The assessment must instead be made on a case-by-case basis. If the cryptocurrency is considered a financial instrument, it will be governed by the Swedish securities regulations (such as MiFID, the Prospectus Regulation, the Swedish Financial Instruments Trading Act and the Swedish Securities Act etc). If the cryptocurrency is not considered a financial instrument, there are no such rules when launching an ICO.

Please note that Swedish regulated markets as well as multilateral trading platforms ("MTFs"), including the rules and regulations governing these trading venues and their issuers, are not adapted to the listing/trading of cryptocurrencies. No cryptocurrencies are therefore admitted to trading at Swedish regulated markets or MTFs. However, Nasdaq Stockholm has admitted to trading certificates issued by financial institutions with cryptocurrencies as underlying instruments.

14. Is cryptocurrency trading common in your jurisdiction? And what is the attitude of mainstream financial institutions to cryptocurrency trading in your jurisdiction?

Trading in bitcoin and other cryptocurrencies is possible through certain marketplaces by purchasing a variety of financial instruments. However, we would not consider cryptocurrency trading "common" in Sweden and there has not been any significant growth in the number of Swedish consumers trading with cryptocurrencies in recent years.

Financial institutions are receptive to the long-term development of cryptocurrencies, but are generally advising customers to be cautious in relation to cryptocurrencies as an investment. Several Swedish banks are restrictive with allowing customers to purchase cryptocurrencies.

In addition, the Swedish Enforcement Agency (Sw. Kronofogdemyndigheten) held its second bitcoin auction in October 2019.

15. Are there any relevant regulatory restrictions or initiatives concerning tokens and virtual assets other than cryptocurrencies (e.g. trading of tangible property represented by cryptographic tokens)?

There are no specific regulatory restrictions or initiatives concerning tokens and virtual assets other than what is mentioned in the answer to question 10 above. Again however, it should be noted that different rules may apply depending on the character and use of the virtual assets at hand.

16. Are there any legal or regulatory issues concerning the transfer of title to or the granting of security over tokens and virtual assets?

Under Swedish law, the pledgor must not have the right to dispose of the secured asset for a security interest or a transfer of title to be valid in relation to third parties. If tokens or virtual assets are held by a third party, a notification to that party should be sufficient to perfect the security, similar to the granting of security over dematerialised shares. If the tokens or virtual assets are not held by a third party and provided that it is technologically possible, the security may be perfected by letting the blockchain network know that the assets are pledged and that the secured assets may not be transferred without the consent of the pledgee. If such notification is not possible there might be an issue with the perfection of the security. As regards transfers of title, the blockchain technology would typically automatically meet the customary requirements for a valid transfer of title without the need of further actions by either party.
17. How are smart contracts characterised within your legal framework? Are there any enforceability issues specific to the operation of smart contracts which do not arise in the case of traditional legal contracts?

Swedish law concerning formation of contracts is technology neutral, meaning that entering into agreements electronically does not pose a problem per se. However, under Swedish law the formation of a contract in principle requires that the parties exchange declarations in some form. This requirement may cause problems where the agreement is concluded electronically automatically without or with very limited human influence, meaning that certain types of smart contracts may not meet the definition of a binding agreement.

Moreover, all electronically concluded contracts are seen as distance contracts since the parties do not meet when the agreement is concluded. This is in turn entails that the distance contract consumer protection legislation will be applicable where one of the parties is a consumer. Similarly, given that smart contracts are not specifically regulated, general principles regarding, for instance, consumer protection will apply.

18. To what extent are smart contracts in use in your jurisdiction? Please mention any key initiatives concerning the use of smart contracts in your jurisdiction, including any examples relating to decentralised finance protocols.

Smart contracts are not yet used in any significant scale in Sweden. To our knowledge, no key initiatives concerning the use of smart contracts, such as decentralised financial protocols, have been launched.

19. Have there been any governmental or regulatory enforcement actions concerning blockchain in your jurisdiction?

In 2015, the Supreme Administrative Court of Sweden requested a preliminary ruling from the ECJ (C-264/14) concerning the interpretation of Articles 2(1) and 135(1) of directive 2006/12/EC on the common system of value added tax (the "VAT Directive"). The request had been made in proceedings between the Swedish Tax Authority and an individual concerning a preliminary decision given by Skatterättsnämnden (the "Swedish Revenue Law Commission") on whether transactions to exchange traditional currency for bitcoin or vice versa, which the individual wished to perform through a company, were subject to value added tax. The ECJ ultimately found that the exchange of traditional currencies for units of bitcoin, at least under the specific circumstances at hand, should be exempt from VAT within the meaning of Article 135(1)(e) under the VAT Directive.

20. Has there been any judicial consideration of blockchain concepts or smart contracting in your jurisdiction?

We are not aware of any judicial consideration of blockchain concepts or smart contracting.

21. Are there any other generally-applicable laws or regulations that may present issues for the use of blockchain technology (such as privacy and data protection law or insolvency law)?

Forms of contract prescribed by law may limit the use of smart contracts and blockchain technology for certain types of contracts, such as purchase agreements relating to real estate.

As for privacy laws, the transparency and immutability traits that accompanies blockchain solutions, makes it very hard to develop a blockchain that complies with all requirements of the GDPR. Data subjects right to rectification and the right to be forgotten may be especially hard to comply with when personal data is published on the blockchain. Also, in relation to the potential launch of an e-krona, the Swedish central bank has expressed concern that the tested technical solution, based on blockchain technology, would not comply with applicable bank secrecy regulation.

Furthermore, the Swedish Enforcement Code requires an original negotiable promissory note to be handed in to the Enforcement Authority, as proof of the claimant being the rightful beneficiary, in order for the authority to collect the debt represented by the promissory note in question. There is currently no established practice in place which allows for this to be done with electronic documents, and the Enforcement Authority has previously stated that it will not accept or collect debts on electronic negotiable promissory notes (as identifying which electronic file is the original would not be possible, in the authority’s view). Thus, the Enforcement Code does present issues in this regard. However, a Swedish Supreme Court ruling from 2017 has, obiter dicta, stated that this may be resolved through new technological means. It may therefore be that a robust blockchain
solution (which demonstrates the ownership chain of the promissory note) could prove to be acceptable to the Enforcement Authority. However, this is yet to be seen.

22. Are there any other key issues concerning blockchain technology in your jurisdiction that legal practitioners should be aware of?

Legal practitioners should be aware of the fact that Swedish law has generally not been adapted for this rather new technology. As highlighted above, this means that the use of blockchain technology must be forced into existing laws, making the framework fragmented and complex.

It should also be noted that there are still uncertainties under Swedish law as to how virtual currency should be classified. The SFSA currently says that bitcoin and other similar currencies should be seen as “means of payment”, but the classification may not necessarily be the same for all virtual currencies, which in turn can affect the type of financial regulation applicable.

Contributors

Anders Bergsten
Partner
anders.bergsten@msa.se

Julian Kaijser
Associate
julian.kaijser@msa.se