



The Legal 500 Country Comparative Guides

Sweden

BLOCKCHAIN

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

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SWEDEN BLOCKCHAIN



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 (mainly from sectors where there is specific interest in ensuring documents authenticity and archive veracity over time).

One of the most notable 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.

Lastly, there are a few promising initiatives within this sector, for instance Centiglobe AB, focusing on DLT cross-border payment solutions, designed to expedite payments cross border. We also expect the adoption of blockchain and other distributed ledger technologies to take off in the coming years following the EU adoption of regulation 2022/858 on a pilot regime for market infrastructures based on distributed ledger technology (which aims to allow for the development of crypto-assets that qualify as financial instruments and for the development of distributed ledger technology) (the “**Pilot-regime**”) as well as the new regulatory framework for crypto-assets (known as Regulation 2023/1114 on Markets in Crypto-Assets (“**MiCA**”)).

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 assets are not considered a common or well-functioning method of payment in Sweden. There are also established businesses in Sweden dealing with virtual assets mining and businesses that offer trading venues for virtual assets. 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. This initiative has continued throughout 2022, with expanded proof of concept displays and workshops for market input.

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. 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?

Other than the proposed amendments to certain acts due to the recently adopted Pilot-regime, there are no blockchain technology specific regulations as of this date, and as far as we are aware, there is no such other legislation envisaged in the short or mid-term either. However, as of 1 January 2020, a legal or natural person that conducts business in Sweden from a physical location in Sweden (i.e. a branch, an agent or a Swedish company), which includes professional operations consisting of the management of, or trading in, virtual currency, must be registered in accordance with the Certain Financial Operations Act (Sw. *lag om valutaväxling och annan finansiell verksamhet*) (the "CFOA"). Services built upon blockchain technology could fall within the scope of the CFOA.

The lack of specific regulation 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.

5. 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 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.

6. Are there any governmental or regulatory initiatives designed to facilitate or encourage the development and use of blockchain technology (for example, a regulatory sandbox or a central bank digital currency initiative)?

Other than the abovementioned Pilot-regime, which allows for temporary derogations from some specific requirements, there are no national initiatives designed to facilitate or encourage the development and use of blockchain technology.

In 2017, the Swedish government assigned a special committee to investigate the needs for legislative changes in order to eliminate barriers for digital development in the public sector. However, the investigation did not result in any legislative amendments to facilitate the use of blockchain technology.

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 the 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. The Swedish Central Bank has issued several reports on the project and has continued its work in 2023, investigating how the Swedish Central Bank could cooperate with other players in the payment market to give the public access to and the possibility to pay with e-krona, how conditional payments can be designed and whether digital central bank money can simplify cross-border payments.

In September 2022, the Swedish Central Bank Riksbank, the central banks of Israel and Norway, and the Bank for International Settlements (BIS) launched Project Icebreaker, a joint exploration of how Central Bank Digital Currencies can be used for international retail and remittance payments. However, it should be noted that 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 decided to appoint a special investigator with the task of reviewing the government’s role in the payment market and deciding what the role should look like in the future, including looked into the need for a Central Bank Digital Currency. The report issued by the special investigator states that there are not currently sufficiently strong

societal needs for the Swedish Central Bank to issue an e-krona. The special investigator acknowledges, however, that the development is rapid, and thus economic, political and technological changes may prompt a new assessment. Against this background, it is stated in the special investigator’s report that the Swedish Central Bank should continue to evaluate the basis for introducing an e-krona in order to enable an introduction within a reasonable timeframe in the event that the Swedish government makes such a decision.

No regulatory sandbox, other than the Pilot-regime, 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.

7. 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.

8. 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 has been

published so far mainly concerns the use of crypto assets and financial instruments with crypto assets as underlying asset. Such guidance has been published by the SFSA and the Swedish Tax Agency, for instance.

9. 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?

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. However, the Swedish Central Bank, together with other central banks, has stated that crypto asset is a better term than crypto currency since it is mostly purchased as an investment / speculative asset and the SFSA has indicated that they are of a similar opinion.

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.

As mentioned above, a legal or natural person that conducts business in Sweden from a physical location in Sweden, which includes professional operations consisting of the management of, or trading in, virtual currency, must be registered in accordance with the CFOA. The SFSA and the legislator have provided limited guidance in this regard and whether a cryptocurrency/crypto-asset constitutes a virtual currency must consequently be assessed on a case-by-case basis. It may be noted, however, that “virtual currency” is not a defined term in the CFOA, but it has the same meaning as in Directive 2018/84. i.e. *“a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded electronically”* (article 3.18).

Furthermore, depending on the design of the crypto-asset, it may instead fall within the scope of e.g. the Electronic Money Act (2011:755) or the Financial Instruments Trading Act (1991:980). 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. Authorisation 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 such regulations.

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 requiring a registration or licence in accordance with the abovementioned acts or otherwise, falls within the scope of the Swedish Anti-Money Laundering and Financing of Terrorism Act (the “**AML Act**”).

In terms of taxation, cryptocurrency is taxed under Swedish legislation upon disposal or in connection with so-called “mining”. However, 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 Swedish 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, the court concluded that a bitcoin cannot be regarded as a foreign currency within the meaning of the Swedish Income Tax Act (the “**ITA**”). Furthermore, a bitcoin cannot be regarded as an equity-related instrument. A sale or other disposal of a bitcoin (e.g. if bitcoin is used as payment for goods and services) should therefore be taxed in accordance with the provisions for capital gains and losses on the disposal of “other assets” under the ITA. The Swedish Tax Agency has in a statement held that the same should apply for other equivalent cryptocurrencies.

The capital gain on the disposal of a cryptocurrency is generally taxed as capital income at a rate of 30 per cent for individuals who are tax resident in Sweden. Whereas capital losses can only be deducted with up to 70 per cent against other capital income. For Swedish limited liability companies, all income, including taxable capital gains on the disposal of cryptocurrency, is taxed as business income at a rate of 20.6 per cent and any capital losses related to the disposal of cryptocurrency are generally fully deductible. However, if cryptocurrency is held as an asset within a trade of business, for example as stock in trade, specific tax rules may apply.

Bitcoins and other cryptocurrencies that are received when carrying out so-called “mining” of cryptocurrencies shall normally be taxed as employment income (hobby) for an individual, but could under certain circumstances be taxed as business income.

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). The same treatment should reasonably apply also for other equivalent cryptocurrencies

10. 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 or registration may be required from the SFSA prior to conducting certain activities in Sweden. For further information, please see the answer to question 9 above.

11. 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) have 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.

12. 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 (e.g. the Prospectus Regulation, the Swedish Financial Instruments Trading Act and the Swedish Securities Markets Act implementing directive 2014/65/EU (MiFID)).

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, trading venues in Sweden have admitted to trading certificates with crypto assets as underlying instruments.

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

N/A

14. 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.

15. 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.

16. 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 generally 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 in turn entails that the distance contract consumer protection legislation

may 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.

17. 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.

18. 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)(c) and 135(1)(e) of directive 2006/112/EC on the common system of value added tax (the “**VAT Directive**”). The request had been made in proceedings between the Swedish Tax Agency and an individual concerning a preliminary decision given by the Swedish Revenue Law Commission (Sw. *Skatterättsnämnden*) on whether transactions to exchange traditional currency for bitcoin or vice versa, which the individual wished to perform through a company, were subject to VAT. The ECJ ultimately found that the exchange of traditional currencies for units of bitcoin and vice versa, 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.

19. 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.

20. 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.

21. 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 is forced into existing laws, making the framework fragmented and complex.

As mentioned above, it should also be noted that there are still uncertainties under Swedish law as to how virtual currency should be classified which in turn will affect the type of financial regulation applicable. Such uncertainty likely constitutes a key issue in Sweden.

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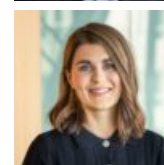
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