



The Legal 500 Country Comparative Guides

Sweden

CONSTRUCTION

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

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SWEDEN CONSTRUCTION



1. Is your jurisdiction a common law or civil law jurisdiction?

Sweden is a civil law jurisdiction.

2. What are the key statutory/legislative obligations relevant to construction and engineering projects?

Sweden has a long tradition of self-regulation regarding construction contracts and has no specific law concerning the contractual terms and conditions between employers and contractors within a construction contract outside consumer relations. The Construction Contracts Committee, BKK, has been given the responsibility to conceive and administer a number of agreed documents, customised to suit the need of regulation for any forms of construction contracts.

As there is no specific legislation for construction and engineering projects, the key statutory obligations, which can be derived from general principles of law, are mainly found in general acts such as the Contracts Act (1915:218) and the Tort Liability Act (1972:207).

When it comes to construction contracts with consumers, the Consumer Services Act (1985:716) is applicable.

3. Are there any specific requirements that parties should be aware of in relation to: (a) Health and safety; (b) Environmental; (c) Planning; (d) Employment; and (e) Anti-corruption and bribery.

The Work Environment Act (1977:1160) contains obligations for inter alia employers to prevent accidents and illness. Furthermore, the act stipulates that a person who orders the execution of building or construction works is responsible for the coordination of the work environment. To comply with this obligation, the employer must prepare a work environment plan and

appoint a work environment coordinator for the planning/design phase as well as the construction phase. It is common and possible to delegate the obligations.

In addition to the above, the Work Environment Act provides that construction works shall be planned and executed with care, in order to make sure that persons or property are not damaged.

According to the Environmental Code (1998:808), the general rules of consideration (Sw. hänsynsreglerna) must be complied with when executing construction works. The rules inter alia provide that the person executing the construction works must possess and use the knowledge required to protect the health of people and the environment. Moreover, the employer is responsible for any negative effects that may come as a result of the construction.

Moreover, the Act on Climate Declarations for Buildings (2021:787) stipulates that developers are obliged to prepare and submit a climate declaration when erecting certain new buildings, inter alia providing information on the climate impact pertaining to the building.

The Planning and Building Act (2010:900) is the main source of legislation in relation to planning in construction projects. When executing construction works, it is necessary to adhere to legislation concerning building, ground or demolition permits, as well as municipal zoning plans.

Sweden has numerous acts on the field of employment. One of the more important ones is the Employment Protection Act (1982:80), which inter alia contains the legal framework for the termination and allowed forms of employment.

In addition to this, Sweden has a long tradition of self-regulation regarding employer conditions and many companies have collective labour agreements. Foreign companies that do not have collective labour agreements or fail to comply with the Employment Protection Act are sometimes subject to blockades etc.

The Penal Code (1962:700) stipulates that bribery is a criminal offence. Sweden is widely considered to be one of the least corrupt countries in the world.

4. What permits/licences and other documents do parties need before starting work, during work and after completion? Are there any penalties for non-compliance?

Most construction projects require a building, demolition or ground permit. If a permit is not needed, it is often necessary to notify the Municipal Building Committee of the project. Before beginning works that require a permit or notification, the parties must await a starting clearance from the Municipal Building Committee. Additionally, works that need a starting clearance also require final clearance before the premises on which the works took place may be used. If the legal framework is not complied with, the owner, the developer, the failing or gaining party may be subject to a substantial construction sanction fee. The calculation of the construction sanction fee is based on the area affected by the works and is limited to 50 price base amounts (1 price base amount = SEK 52,500 for 2023).

5. Is tort law or a law of extra contractual obligations recognised in your jurisdiction?

The Tort Liability Act (1972:207) applies in both contractual and non-contractual contexts. In short, liability in non-contractual situations arises when a person intentionally or negligently causes physical damage or personal injury. Liability for purely economic loss is not covered unless the loss emanates from a criminal offence. In contractual relationships, the Tort Liability Act only applies if the parties have not agreed on deviating provisions.

6. Who are the typical parties to a construction and engineering project?

Typical parties are developers, contractors, sub-contractors and different types of consultants, such as technical and management consultants.

7. What are the most popular methods of procurement?

Public procurement is regulated by the Public Procurement Act (2016:1145), which inter alia stipulates that a public tender invitation must be submitted and

that the cheapest alternative that fulfils all the requirements for the project shall be procured.

In resemblance with public procurement, a vast majority of private procurements are based on competitive tender against a list of requirements presented by the employer. It is arguably most common to procure design and construct contracts.

8. What are the most popular standard forms of contract? Do parties commonly amend these standard forms?

As mentioned in question 1 above, the Construction Contracts Committee, BKK, has the responsibility to conceive and administer a number of agreed standard forms. Since the BKK is comprised of representatives from across the construction sector, the following General Conditions are commonly accepted and their provisions are used in a majority of construction contracts on the Swedish market:

- The General Conditions of Contract for Building and Civil Engineering Works and Building Services, AB 04, which places the responsibility for the performance of the works on the contractor, but with no obligations concerning the design. General Conditions for subcontractors, AB-U 07, is usually annexed as a supplement if the specific contract is between a contractor and a subcontractor.
- The General Conditions of Contract for Design and Construct Contracts for Building, Civil Engineering and Installation Works, ABT 06, which places both the responsibility for the design (or at least parts thereof) and the performance of the works on the contractor. General Conditions for subcontractors in design and building contracts, ABT-U 07, is usually annexed as a supplement if the specific contract is between a contractor and a subcontractor.
- The General Conditions of Contract for Consulting Agreements for Architectural and Engineering Assignments for the year 2009, ABK 09, which usually assigns the responsibility for the design to a consultant.

These three agreed documents are harmonised, regarding, e.g., liability and guarantee commitments, to function side by side in any constellation of parties by which the employer wishes to procure the needed works. Therefore, there is a wide possibility to assign obligations to either one or several contractors, based on

expertise and/or working areas of the contractors and the needed works. Furthermore, the General Conditions allow alterations and additions to ensure an even better harmonisation in each specific construction contract.

9. Are there any restrictions or legislative regimes affecting procurement?

There are no specific statutory rules affecting private procurement. However, as has been noted in question 3 above, it should be noted that e.g. bribery is a criminal offence.

As for public procurement, the Public Procurement Act (2016:1145), provides inter alia that a public tender invitation must be submitted and that the cheapest alternative that fulfils all the requirements for the project shall be procured.

10. Do parties typically engage consultants? What forms are used?

It is market practice for parties to engage technical consultants as well as management consultants. The General Conditions ABK 09 is normally used in those cases.

11. Is subcontracting permitted?

Subcontracting is permitted and very common.

12. How are projects typically financed?

Publicly procured projects are often financed by tax money. Nonetheless, there are a few projects that are both publicly and privately financed.

Private projects can be financed by e.g. banks, investment funds or real estate companies. Some private projects are also crowdfunded.

13. What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?

Bank and parent company guarantees are frequently used. Furthermore, on-demand guarantees, i.e. insurance solutions that are unconditional and independent from the underlying agreement, are being offered by some credit insurance companies, provided

that the contractor has a strong financial position.

14. Is there any specific legislation relating to payment in the industry?

There is no specific legislation relating to payment in the industry. In the context, it is however relevant to mention the newly passed Act on Measures against Money Laundering and Financing of Terrorism (2017:630), which is intended to prevent companies from being used for the labelled problems.

15. Are pay-when-paid clauses (i.e. clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?

Pay-when-paid clauses are permitted but uncommon.

16. Do your contracts contain retention provisions and, if so, how do they operate?

The General Conditions AB 04 and ABT 06 stipulate that the employer may retain 10 % of the value of the invoiced contract works as security for future rectification of defects. However, the retained sum may not exceed 5 % of the contract price.

17. Do contracts commonly contain delay liquidated damages provisions and are these upheld by the courts?

Most construction contracts contain liquidated delay damages provisions. These provisions are in general upheld by Swedish courts in accordance with their terms. However, they are often adjusted if a part of the subject of the construction works has been completed or in use.

18. Are the parties able to exclude or limit liability?

The parties are able to exclude or limit liability to a great extent. These provisions are in general upheld by Swedish courts in accordance with their terms. They may, however, be amended or completely set aside in exceptional cases.

19. Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?

Swedish contract law generally permits the legal ground to terminate a contract if any of the parties commits a fundamental or substantial breach of contract. Termination for convenience is in general not allowed.

Furthermore, the General Conditions AB 04 and ABT 06 stipulate eleven specific grounds for the employer and nine specific grounds for the contractor, according to which the contract can be terminated. These usually emanate from a lack of fulfilment of the parties' obligations according to the construction contract, but also the occurrence of other significant inconveniences, such as bankruptcy or force majeure-like incidents.

20. What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?

Even though third parties in general are not granted rights in contracts, it is, unless otherwise agreed, possible for a party to grant its rights to a third party.

Furthermore, the General Conditions AB 04 and ABT 06 provide that the contractor in some cases is liable for the developer's liability vis-à-vis a third party, e.g. a renter.

21. Do contracts typically contain strict provisions governing notices of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?

The General Conditions AB 04 and ABT 06 contain several provisions governing the procedures concerning the notifications of claims (see question 25 below). Swedish courts will recognise these and other conditions, as long as they are not exceptionally unreasonable.

22. What insurances are the parties required to hold? And how long for?

By default in the General Conditions, the contractor is obliged to have both a third party liability insurance covering potential claims for damages as well as a contractor's all-risk insurance, covering potential damages on the construction works for 10 years counting from the hand-over/completion. Consultants who perform design work according to ABK 09 only need

professional indemnity insurance. In addition to the requirements in the General Conditions, a certain standard negotiated between the Construction Contracts Committee, BKK, and the insurance industry – Appendix 1 to AMA AF 21 (BKK's specification of minimum cover for all risk insurance and liability insurance for construction projects) – is often referred to in construction contracts as the minimum level of insurance cover. There are also compulsory insurances by law that an employer shall hold in relation to its employees.

The employer is advised to obtain insurance that covers the liabilities ascribed through law to either the developer or the owner of a property, most commonly known as a "developer insurance" (Sw. byggherreansvarsförsäkring).

23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?

If the General Conditions AB 04 or ABT 06 are applicable, claims under 150 Swedish price base amounts (1 price base amount = SEK 52,500 for 2023) shall be settled by regular court proceedings. If the claim exceeds said amount, the dispute will be resolved through arbitration instead. In ABK 09, disputes are by default always settled in public court proceedings.

24. How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an award?

Local courts are supportive of arbitration and Swedish awards are enforceable upon applying to the Enforcement Agency. Foreign awards will be upheld by Swedish courts after an application to the Svea Court of Appeal and in accordance with international multi- and bilateral conventions and agreements and EU regulations. Judgements from EU or EFTA jurisdictions are arguably the easiest to enforce.

25. Are there any limitation periods for commencing disputes in your jurisdiction?

Limits in time for producing claims depend on the claim in question. If the General Conditions AB 04 or ABT 06 are implied in the contract, all claims relating to the total works must be presented in writing within six months of

the approved final inspection. This rule is, however, not applicable regarding the contract price, which instead has a separate time limit of two years.

Claims for liquidated damages due to delay must be presented in writing no later than three months after the expiry of the total works period (normally counted from the date of the approved final inspection).

Other claims for damages, if the damage has become apparent during the time for completion or the guarantee period, must be presented in writing to the other party within three months after the expiry thereof. If the damage has become apparent after the expiry of the guarantee period, the claim must be made within three months after the damage has become apparent.

Claims for damages based on claims from a third party with whom a party has an agreement concerning the total works are subject to the same time limitations as in the paragraph above (three months). If a claim for damages arises from a party other than those previously mentioned, it must be presented within three months from when the claim was received.

For claims not emanating directly from the contract or because of damages, the Swedish Act on Limitation (1981:130) is applicable. According to the act, there is a general limitation period of 10 years.

26. How common are multi-party disputes? How is liability apportioned between multiple defendants? Does your jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a "fair and reasonable" proportion of the innocent party's losses), and are these commonly used?

Multi-party construction disputes are relatively uncommon. When multiple defendants are liable, they are, as main rule, jointly and severally liable to the claimant.

27. What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?

A challenge and opportunity for the construction sector is to satisfy the needs for affordable housing in the bigger cities. This is mainly difficult due to high construction and ground costs. Other challenges that

have been recognised by the government are the securing of access to green electricity, skilled labour and that the constructions per se, as well as the buildings and their output, are to be in line with Sweden's goals relating to the reduction of greenhouse gas emissions.

28. What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?

Because of the great demand for housing in the bigger cities of Sweden, especially Stockholm, there have been a lot of investments relating to the construction and renovation of flats in recent years. However, due to insecurity on the market in general, this trend is not as clear anymore. Despite this, the demand is still high and will probably attract even more investments in the future. Naturally, the construction of housing leads to investments in other fields, especially infrastructure, logistics and retail.

Further, construction projects pertaining to the mitigation of climate change and fulfilment of national climate goals have seen, and are likely to see, increased investments.

29. How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?

The technological advancements in general will surely have an effect on the construction and engineering industry in the near future. It is plausible that Building Information Modelling (BIM), Virtual Reality (VR), Augmented Reality (AR) and Prefabricated Buildings (prefab) will be even more used and developed.

30. What do you anticipate to be the impact from the COVID-19 pandemic over the coming year?

The COVID-19 pandemic has impacted the construction industry the past years, e.g. in the shape of adjustment (raise) of already-agreed prices for materials, and prolonged delivery times. This impact is likely to continue, although with a reduced effect. However, at the time of writing, the Russian invasion of Ukraine has a bigger impact on the industry than the COVID-19 pandemic.

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