

# **SUEDE**

**Rapporteur**

**Patrik Örnsved,  
Associate Judge of Appeal**



## 1<sup>st</sup> part

### International Jurisdiction

#### A. Sources

**1. International treaties (multilateral and bilateral) that contain rules on jurisdiction concerning successions**

- Convention of 19 November 1934 with Denmark, Finland, Iceland and Norway concerning Inheritance, Testamentary Dispositions and the Administration of Estates of Deceased Persons (*Konvention av den 19 november 1934 med Danmark, Finland, Island och Norge om arv, testamente och boutredning*), see [Appendix A](#)
- Convention of 15 January 1936 with Switzerland on the Recognition and Enforcement of Judgments and Arbitration Awards (*Konvention av den 15 januari 1936 med Schweiz om erkännande och verkställighet av domar och skiljedomar*), see [Appendix B](#)
- Convention of 11 October 1977 with Denmark, Finland, Iceland and Norway on the Recognition and Enforcement of Judgments in the Field of Private Law (*Konvention av den 11 oktober 1977 med Danmark, Finland, Island och Norge om erkännande och verkställighet av domar på privaträttens område*), see [Appendix C](#)

**2. National Law**

- - the Act on Conflict of Laws in Regard to Succession (*lagen om internationella rättsförhållanden rörande dödsbo*, SFS 1937:81), see [Appendix D](#)
- - the Act on Estates left by Danish, Finnish, Icelandic or Norwegian nationals, resident in Sweden (*lagen om dödsbo efter dansk, finsk, isländsk eller norsk medborgare, som hade hemvist här i riket*, SFS 1935:44), see [Appendix E](#)
- - the Act on Estates left by those resident in Denmark, Finland, Iceland or Norway (*lagen om kavarlåtenskap efter den som hade hemvist i Danmark, Finland, Island eller Norge*, SFS 1935:45), see [Appendix F](#)
- - the Act on the Recognition and Enforcement of Judgments given in Switzerland (*lagen om erkännande och verkställighet av dom som meddelats i Schweiz*, SFS 1936:79), see [Appendix G](#)
- - the Act on the Recognition and Enforcement of Nordic Judgments in the Field of Private Law (*lagen om erkännande och verkställighet av nordiska domar på privaträttens område*, SFS 1977:595), see [Appendix H](#)

#### B. Jurisdiction Requirements

Please indicate whether the courts of the state of your report (contentional or voluntary jurisdiction) have jurisdiction because of the following links:

When answering all further questions on the content of Swedish rules on international jurisdiction, it will be assumed that the *extra-nordic* legislation applies.

### 1. deceased person's domicile. How is the term domicile defined in your state?

#### *The meaning of "domicile"*

While there is no definition of the notion of domicile in Swedish conflict of laws relating to matters of succession, there is one in the conflict of laws relating to matters of marriage and guardianship (Chapter 7, section 2 of the Act on Conflict of Laws in Regard to Marriage and Guardianship [*lagen om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap, SFS 1904:26 s. 1*]). In line with this, it is commonly held that a person is to be considered domiciled in a country if he is resident there and if, in light of all the circumstances, in particular the length of his stay, his residence must be regarded as permanent. While this concept includes both an objective element of residence and a subjective test of intention (*animus remanendi*), emphasis is in practice placed on the objective facts pointing to a substantial and durable connection with a country, rather than on the state of mind of the person concerned. The Swedish notion of domicile is in practice hardly distinguishable from the concept of habitual residence currently used, for example, in modern Hague Conventions on private international law.

#### *Jurisdiction on grounds of domicile*

The provisions on jurisdiction are in part addressed to questions pertaining to the administration of the deceased's estate and related matters. The whole *procedure* of administration, ending in the partition of marital property (if any) and the distribution of the estate, is required to take place in accordance with Swedish law if the deceased was habitually resident in Sweden at the time of his death (Chapter 2, section 1 of the Act on the Conflict of Laws in Regard to Succession). In this situation, as a matter of principle, the procedure comprises the estate as a whole, including such assets belonging to it as are situated abroad (*ibid.*).

Any litigation concerning testate or intestate succession or the rights of a surviving spouse in the estate is within the jurisdiction of Swedish courts, if the deceased was habitually resident in Sweden (Chapter 2, section 10 of the Act on the Conflict of Laws in Regard to Succession).

### 2. nationality of the deceased;

Even if the deceased was not habitually resident in Sweden, Swedish courts have jurisdiction to appoint an official estate administrator (*boutredningsman*) in cases where the deceased was a Swedish citizen. Indeed, such an administrator must be appointed, unless the assets of the estate are nominal. The Swedish administration will be concerned with property situated in Sweden as well as abroad and regardless of the nature of that property. (Chapter 2, section 2 of the Act on the Conflict of Laws in Regard to Succession)

Also, any litigation concerning testate or intestate succession or the rights of a surviving spouse in the estate is within the jurisdiction of Swedish courts, if the deceased was a Swedish citizen (Chapter 2, section 10 of the Act on the Conflict of Laws in Regard to Succession).

### 3. the domicile of the defendant

By analogous interpretation of the national rules on jurisdiction (Chapter 10, section 1 of the Code of Judicial Procedure [*rättegångsbalken*]), the habitual residence of the defendant may

also constitute grounds of international jurisdiction. Thus, a Swedish court may be competent to hear the case, if the defendant is habitually resident in Sweden.

**4. the nationality of the plaintiff or the defendant;**

These grounds are irrelevant for jurisdiction purposes.

**5. the application of the substantive law of your state concerning successions (*forum legis*)**

This ground is irrelevant for jurisdiction purposes.

**6. property of the estate being situated in your state (Does this jurisdiction apply only for immovables? Does this jurisdiction depend upon the inaction of the authorities at the deceased's domicile?)**

Swedish courts have jurisdiction to appoint an official estate administrator (*boutredningsman*) in cases where property left by the deceased is situated in Sweden, even though the deceased was neither habitually resident in Sweden nor a Swedish citizen. Indeed, such an administrator must be appointed, unless the assets of the estate are nominal. In cases like these, the Swedish administration will only be concerned with the property situated in Sweden. (Chapter 2, section 2 of the Act on the Conflict of Laws in Regard to Succession)

Any litigation concerning testate or intestate succession or the rights of a surviving spouse in the estate is within the jurisdiction of Swedish courts, if the litigation concerns property situated in Sweden. (Chapter 2, section 10 of the Act on the Conflict of Laws in Regard to Succession).

This jurisdiction applies to all property, regardless of its nature. It does not depend upon any failure to act on the part of the authorities of the deceased's habitual residence.

**7. the choice of law made by the deceased;**

This ground is irrelevant for jurisdiction purposes. (No such choice of law is permitted, cf. C.III of Part 3.)

**8. the choice of law made by the heirs or beneficiaries;**

This ground is irrelevant for jurisdiction purposes. (No such choice of law is permitted, cf. C.III of Part 3.)

**9. specific jurisdiction for urgent measures to preserve the estate;**

This ground is irrelevant for jurisdiction purposes.

**10. the risk that there is no other jurisdiction;**

This ground is irrelevant for jurisdiction purposes.

**C. The scope of application for all the above mentioned judicial jurisdictions**

**1. Does the jurisdiction apply for the whole estate or only for movables or immovables situated within the territory of your state? If your law distinguishes between movables and immovables, please answer, according to which law the distinction between movables and immovables is being made.**

The scope of application of the various grounds of jurisdiction has been indicated above. For present purposes, Swedish law does not distinguish between movables and immovables.

**2. Do the above mentioned jurisdictional bases apply**

**a) for litigation among the heirs/beneficiaries?**

Yes.

**b) for litigation instituted by creditors of the estate?**

Yes.

**c) for litigation concerning the validity and the execution of wills?**

Yes.

**d) for litigation against somebody who claims to be an heir or has possession of part of the estate?**

Yes.

**e) for the possession of the estate?**

Yes.

**f) for the certificate of inheritance?**

Yes (provided that by “certificate of inheritance” is meant the registration of the estate inventory [*bouppteckning*], cf. Part 4, letter N below).

### **D. Proof of jurisdiction**

Please indicate whether there are any specific rules in your state concerning the following questions of the law of successions:

**I. May the court declare that it has no jurisdiction of the matter?**

Yes.

**II. May the court, although it has jurisdiction, declare itself *forum non conveniens*?**

There are no specific rules to this effect. But it is commonly held that Swedish courts do have a right, although fairly strictly limited, to exert a certain discretionary power with a view to “sorting out” such litigation in respect of which there is no particular Swedish interest in the jurisdiction. This possibility is mainly reserved for cases where international jurisdiction is inferred from an analogous interpretation of the national rules on jurisdiction. It would, however, require strong reasons of legal policy for the court to renounce jurisdiction on the grounds of the theory of *forum non conveniens*.

**III. Is there any influence in the scope of jurisdiction, if another state claims exclusive jurisdiction for its own courts (e. g. for real estate)?**

No.

**IV. May the court decide the matter, if the defendant does not appear before the court?**

Provided that the case is such that it may be decided by way of default judgment (*tredskodom*), a judgment in the plaintiff’s favour will be issued if the defendant has been properly served but fails to appear before the court.

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## E. Litis Pendens and Connectivity

### I. **May the courts of your country decide the case, although the case is already pending within a foreign jurisdiction?**

For some cases, it is clearly stated in the law that a Swedish court must not deal with a case which is already pending before a competent foreign court (see, in particular, Section 7 of the Act on the Recognition and Enforcement of Judgments given in Switzerland [*lagen om erkännande och verkställighet av dom som meddelats i Schweiz, SFS 1936:79*], also mentioned under Part 2 below, the scope of which includes matters of succession).

Otherwise, in the absence of any express rule on the subject, the main rule is that a Swedish court may not decide the case, if an identical case is already pending before a foreign court and the judgment of that court is likely to be recognised in Sweden. However, a certain margin of appreciation is accorded to the courts.

### II. **If a case already pending in a foreign jurisdiction bars an action in your state, how does the law of your state define the identity of the claim, of the subject matter and of the parties concerned?**

This is dealt with in Chapter 13, section 6 of the Code of Judicial Procedure (*rättegångsbalken*), which provides the following:

*“While an action is pending, a new action involving the same issue between the same parties may not be entertained”*

There is identity in respect of the issue, if the claims of the first action are wholly covered by the claims of the new action. There is identity in respect of the parties if the parties are identical in both actions. However, they need not be plaintiff and defendant, respectively, in both sets of proceedings. Normally, a party tends to be plaintiff in one action and defendant in the other.

### III. **Do the rules on *litis pendens* also apply to the question of connectivity?**

[I do not fully understand this question. The regulation of connectivity is something else – and subsidiary to – the rules on *litis pendens*.]

## 2<sup>nd</sup> part

### Recognition and enforcement of judgments

#### A. Sources

##### 1. International treaties (multilateral and bilateral) that contain rules on the recognition and enforcement of judgments concerning successions

- Convention of 19 November 1934 with Denmark, Finland, Iceland and Norway concerning Inheritance, Testamentary Dispositions and the Administration of Estates of Deceased Persons (Konvention av den 19 november 1934 med Danmark, Finland, Island och Norge om arv, testamente och boutredning), see Appendix A
- Convention of 15 January 1936 with Switzerland on the Recognition and Enforcement of Judgments and Arbitration Awards (Konvention av den 15 januari 1936 med Schweiz om erkännande och verkställighet av domar och skiljedomar), see Appendix B
- Convention of 11 October 1977 with Denmark, Finland, Iceland and Norway on the Recognition and Enforcement of Judgments in the Field of Private Law (Konvention av den 11 oktober 1977 med Danmark, Finland, Island och Norge om erkännande och verkställighet av domar på privaträttens område), see [Appendix C](#)

Of course, Sweden is also a party to the Brussels Convention of 1968 and the Lugano Convention of 1988 and is also bound by Council Regulation (EC) No. 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. However, none of these instruments apply to successions.

##### 2. National Law

- the Act on Conflict of Laws in Regard to Succession (*lagen om internationella rättsförhållanden rörande dödsbo*, SFS 1937:81), see Appendix D
- the Act on Estates left by those resident in Denmark, Finland, Iceland or Norway (*lagen om kvarlåtenskap efter den som hade hemvist i Danmark, Finland, Island eller Norge*, SFS 1935:45), see Appendix F
- the Act on the Recognition and Enforcement of Judgments given in Switzerland (*lagen om erkännande och verkställighet av dom som meddelats i Schweiz*, SFS 1936:79), see Appendix G
- the Act on the Recognition and Enforcement of Nordic Judgments in the Field of Private Law (*lagen om erkännande och verkställighet av nordiska domar på privaträttens område*, SFS 1977:595), see Appendix H

#### B. Foreign judgments and other decisions concerning successions

When answering all further questions on the content of Swedish rules on recognition and

enforcement of judgments, it will be assumed that the extra-nordic legislation applies.

### **I. Does your state recognise foreign judgments concerning successions *ipso iure* or does the recognition require a special procedure?**

The actual recognition does not require a special procedure to be followed. However, a foreign judgment meeting the conditions of recognition in Sweden can be formally validated in exequatur proceedings, which are instituted in the Svea Court of Appeal (*Svea hovrätt*). While this procedure is optional for most purposes, the grant of an exequatur (declaration of enforceability) is necessary before the foreign judgment can be enforced in Sweden. (This, however, does not apply to the enforcement of Nordic judgments.)

### **II. What are the requirements for recognition:**

#### **1. the judicial jurisdiction of the foreign court?**

In this respect, different solutions have been opted for in the Act on Conflict of Laws in Regard to Succession and the Act on the Recognition and Enforcement of Judgments given in Switzerland, respectively. Needless to say, the former Act is more general in character and hence more frequently applied than the latter.

In the Act on Conflict of Laws in Regard to Succession (Chapter 2, section 12), it is expressly stipulated what factors must constitute the jurisdiction of the foreign court. These factors are either the nationality of the deceased or his habitual residence. If the foreign court has invoked any other ground for its jurisdiction, the judgment will not be recognised in Sweden. The Act on the Recognition and Enforcement of Judgments given in Switzerland, on the other hand, provides that the foreign judgment shall be recognised in Sweden if the foreign court had jurisdiction in the eyes of Swedish law (section 1, section 4 (1) and section 5, subsection 2). The criteria of such indirect jurisdiction are modelled on those determining the direct jurisdiction of Swedish courts.

As regards the question of exclusive jurisdiction of Swedish courts as an obstacle to the recognition of foreign judgments, the following may be reported: Under Chapter 2, section 12 of the Act on Conflict of Laws in Regard to Succession, the recognition of the foreign judgment is conditional on that judgment not being concerned with property belonging to an estate which was then being administered in Sweden or property which should have been taken into account either in a Swedish property division or in the distribution of an estate carried out in Sweden. If this condition is not met, the foreign judgment must not be recognised in Sweden. Obviously, the purpose of this provision is to avoid situations involving a conflict of judgments or a potential such conflict.

#### **2. the law applied by the foreign court?**

To the extent that the foreign judgment concerns property situated in Sweden, that judgment must not be recognised if the law thus applied by the foreign court is at variance with the law designated by Swedish choice of law rules in the field of succession. This follows from Chapter 2, section 12 of the Act on Conflict of Laws in Regard to Succession. There is a similar provision in section 4 (3) of the Act on the Recognition and Enforcement of Judgments given in Switzerland.

#### **3. the public order (*ordre public*)?**

The judgment must not be recognised if doing so would be manifestly incompatible with Swedish public policy (Chapter 2, section 12 of the Act on Conflict of Laws in Regard to

Succession and section 4 [2] of the Act on the Recognition and Enforcement of Judgments given in Switzerland, respectively).

A foreign judgment would most probably be considered incompatible with Swedish public policy in any of the following situations:

- a) there have been fundamental flaws in the proceedings before the foreign court, depriving the defendant of every opportunity to fairly present his case, or
- b) the content of the judgment is deemed to be too much at variance with current Swedish values on justice.

To some extent, the need to apply reasons of *ordre public* as a ground of non-recognition of foreign judgments depends on the actual drafting of the other grounds of recognition or non-recognition available under national law. If the conditions for applying these other grounds are carefully and concretely outlined in the law, there will be much less need to invoke grounds of public policy as a ground of non-recognition.

**4) other grounds for non-recognition of foreign judgments include the following:**

- a) In the case of a default judgment, recognition will be refused if the defendant was not given notice of the institution of the proceedings or if he did not receive such notice in sufficient time to enable him to prepare his defence (Chapter 2, section 12 of the Act on Conflict of Laws in Regard to Succession).
- b) A foreign judgment must not be recognised if any effective remedy available under the relevant national law remains to be exhausted (*ibid.*).

**III. Are there any specific rules concerning the recognition and execution of decisions of voluntary jurisdiction or of administrative authorities concerning successions?**

There are no such special rules. On the contrary, Chapter 2, section 12 of the Act on Conflict of Laws in Regard to Succession applies to decisions of administrative authorities as well as judgments.

## C. Other documents

### I. Wills executed abroad

**1) Is there a specific procedure for the recognition of wills executed abroad?**

There is no such special procedure.

**2) Does this procedure depend upon the form of the will?**

Not applicable

### II. Official documents concerning the position as an heir (e.g. certificate of inheritance or probate).

There are no specific rules on the recognition of such documents. However, if presented to a Swedish court as evidence of someone's position as an heir, there would be little reason for the court to question the veracity or validity of such an official document, if duly issued by a competent foreign authority.

**III. Other official documents concerning successions (if applicable).**

Not applicable

**D. Questions concerning judgments and other official documents equally**

Is a foreign judgment, a will executed abroad, a certificate of inheritance or a certificate on the partition of an estate executed abroad or given by a foreign authority sufficient:

**a) for registration in the land register or similar public registers;**

The mentioning of “land register” implies that the scope of the question is limited to immovable property situated in Sweden. For present purposes it will also be assumed that the deceased was not habitually resident in Sweden.

In these circumstances, none of the documents referred to in the question would be sufficient to obtain a registration in the land register. In fact, provided that the relevant Swedish provisions have been correctly applied, a situation like this could never occur.

In the present case, the application of Chapter 2, sections 2 and 3 of the Act on Conflict of Laws in Regard to Succession leads to the conclusion that the property situated in Sweden (regardless of its nature) must be administered by an official estate administrator (*boutredningsman*), to be appointed by the competent District Court. The whole procedure of administration, ending in the distribution of the property, will be required to take place in accordance with Swedish law.

If, in respect of the property thus situated in Sweden, the land register is presented with a certificate on the partition of the estate or a certificate of inheritance executed abroad, that certificate must not be recognised in Sweden. This follows *a contrario* from Chapter 2, section 11 of the Act on Conflict of Laws in Regard to Succession. From Chapter 2, section 12 it is equally obvious that in these circumstances a foreign judgment, a will executed abroad, a certificate on the partition of the estate or a certificate of inheritance issued by a foreign authority must not be recognised. Subsection 3 of that provision clearly states that, in order for such a document to be recognised, it must not pertain to property which has been or should have been administered and distributed in accordance with Swedish law.

**b) for a bank or another person with whom property of the estate is deposited, to hand over property of the estate.**

See above under a).

## 3<sup>rd</sup> part

### Conflict of Laws/ Private International Law

#### A. Statutory rules, literature

##### Statutory rules

- the Act on Conflict of Laws in Regard to Succession (*lagen om internationella rättsförhållanden rörande dödsbo*, SFS 1937:81), see [Appendix D](#)
- the Act on Estates left by Danish, Finnish, Icelandic or Norwegian nationals, resident in Sweden (*lagen om dödsbo efter dansk, finsk, isländsk eller norsk medborgare, som hade hemvist här i riket*, SFS 1935:44), see [Appendix E](#)
- the Act on Estates left by those resident in Denmark, Finland, Iceland or Norway (*lagen om kvarlåtenskap efter den som hade hemvist i Danmark, Finland, Island eller Norge*, SFS 1935:45), see [Appendix F](#)
- the Act on the Recognition and Enforcement of Judgments given in Switzerland (*lagen om erkännande och verkställighet av dom som meddelats i Schweiz*, SFS 1936:79), see [Appendix G](#)
- the Act on the Recognition and Enforcement of Nordic Judgments in the Field of Private Law (*lagen om erkännande och verkställighet av nordiska domar på privaträttens område*, SFS 1977:595), see [Appendix H](#)

##### Literature

- *Bogdan, Michael*: Svensk internationell privat- och processrätt, 5<sup>th</sup> ed., Stockholm 1999 (ISBN 91-39-20178-3)
- *Dennemark, Sigurd*: Om svensk domstols behörighet i internationellt förmögenhetsrättsliga mål, Stockholm 1961 (ISSN 0491-0516)
- *Pålsson, Lennart*: Svensk rättspraxis i internationell familje- och arvsrätt, Stockholm 1986 (ISBN 91-1-867281-7)

##### Precedent

There are no leading cases indispensable for the understanding of Swedish Private International Law taken as a whole.

#### B. Treaties

##### I. Multilateral treaties

##### a) Which multilateral treaties has your state ratified, which has it signed?

In particular:

1. *Hague Convention of 1.8.1989 on the Law Applicable to Succession to the Estates of Deceased Persons*  
No signature. No ratification
2. *Hague Convention of 5.10.1961 on the Conflicts of Laws relating to the Form of Testamentary Dispositions*  
Signature: 5.10.1961 Ratification: 9.7.1976 Entry into force: 7.9.1976
3. *Hague Convention of 2.10.1973 concerning the International Administration of the Estates of Deceased Persons*  
No signature. No ratification
4. *Hague Convention of 1.7.1985 on the Law Applicable to Trusts and on their Recognition*  
No signature. No ratification.
5. *Washington Convention of 26.10.1973, on a Uniform Form of International Testaments*  
No signature. No ratification.
6. *Basel European Convention of 16.5.1972 on the Establishment of an Organisation for the Registration of Testaments*  
No signature. No ratification.
7. *Hague Convention of 14.3.1978 on the Law Applicable to Matrimonial Property Regimes*  
No signature. No ratification.

**b) Do you have any information whether and how these treaties are being followed in the legal practice of your state?**

Needless to say, the provisions of the treaty which has entered into force in relation to Sweden (no. 2) have been implemented into Swedish law and are followed. There is no information available in respect of the other conventions.

**c) Nordic treaties**

Several treaties have been concluded with the other Nordic countries, i.e Denmark, Finland, Iceland and Norway. These treaties include:

- Convention of 19 November 1934 with Denmark, Finland, Iceland and Norway concerning Inheritance, Testamentary Dispositions and the Administration of Estates of Deceased Persons (*Konvention av den 19 november 1934 med Danmark, Finland, Island och Norge om arv, testamente och boutredning*), see [Appendix A](#)
- Convention of 11 October 1977 with Denmark, Finland, Iceland and Norway on the Recognition and Enforcement of Judgments in the Field of Private Law (*Konvention av den 11 oktober 1977 med Danmark, Finland, Island och Norge om erkännande och verkställighet av domar på privaträttens område*), see [Appendix C](#)

**II. Bilateral treaties with other European states**

**1. What bilateral treaties with other European states has your state ratified, what other has it signed?**

- Convention of 15 January 1936 with Switzerland on the Recognition and Enforcement of Judgments and Arbitration Awards (*Konvention av den 15 januari 1936 med Schweiz om erkännande och verkställighet av domar och skiljedomar*), see [Appendix B](#)

**2. Do you have any information whether and how these treaties are being followed in the legal practice of your state?**

There is no such information available.

**C. National rules on conflict of laws**

**I. Which rules govern the national law on conflict of laws (civil code, statute, non-qualified rules)?**

The Swedish law on conflict of laws is governed by statutory rules. On the one hand, there is a general body of conflict rules (of which the Act on Conflict of Laws in Regard to Succession is a part, see above under A). On the other hand, there is also a fairly extensive body of special statutes and provisions in this field, which originate in international treaties or conventions and which is applicable in relation to particular foreign states only. Of particular importance are the rules based on inter-nordic conventions, which cover most aspects of family conflict of laws.

**II. Applicable law in the absence of a choice of law having been made (intestate and testate succession – excluding the form of testamentary dispositions – cf. VII):**

To begin with, it should be pointed out that Swedish law does not allow a choice of law in this field (cf. C.III below).

**1. Does your law distinguish between the succession to immovables and to movables or is there one single conflict of laws for the whole estate?**

In Swedish law, one single body of conflict rules will apply to the whole of the estate.

**2. If there is a single rule for the whole estate:**

**a) Which is the relevant factor determining the applicable law:**

The Act on Conflict of Laws in Regard to Succession designates the nationality of the deceased as the relevant factor for determining the applicable law (*lex patriae*). Depending on the actual situation, the law thus designated may be the *lex patriae* at a certain point in time (e.g. when a will was drawn up).

The inter-nordic convention on inheritance and the national legislation based upon that convention (the Act on Estates left by Danish, Finnish, Icelandic or Norwegian nationals resident in Sweden and the Act on Estates left by those resident in Denmark, Finland, Iceland or Norway, respectively) designate the domicile (habitual residence) of the deceased as the relevant factor for determining the applicable law (*lex domicilii*). In order for the inter-nordic regulation to apply, it is required that the deceased was a citizen of a Nordic country having

his domicile (habitual residence) in another Nordic country.

When answering all further questions on the content of Swedish rules on conflict of laws, it will be assumed that the extra-nordic legislation applies.

**b) Why has this factor been chosen?**

Traditionally, the following arguments have been invoked in favour of choosing nationality rather than domicile as the connecting factor for the choice of law: Occasionally, it can be difficult to decide whether a person is domiciled in a certain state. Also, people tend to change their domicile more often than they change their nationality. It can be particularly difficult to decide whether a person has changed his domicile. For this to be the case, two requirements must be fulfilled. The first one is that the person concerned must have his principal residence in the new state. The second one is that it must be his intention to remain in the new state for a substantial and indefinite period. His new residence must be habitual. If domicile were to be chosen as the connecting factor instead of nationality, it might be difficult for persons who have moved to other states to know what rules will apply to the various legal dispositions they wish to make. The same difficulties might be experienced by a court, should a court be called on to consider, for example, the validity of a certain disposition. Also, the fact that the law of the new state might prove to be applicable could come as a surprise to the persons concerned.

As elaborated under B.1 of Part 1 above, the Swedish notion of domicile is hardly distinguishable from the concept of habitual residence currently used, for example, in modern Hague Conventions on private international law.

However, it should be pointed out that the predominance of nationality as the connecting factor for the choice of law is by no means total. As we have seen, the Nordic convention on inheritance and the legislation implementing that convention into Swedish law – enacted in the 1930s – are based on habitual residence as the relevant factor for determining the applicable law. And while the general body of Swedish conflict rules relating to matters of family law was in the past generally committed to the principle of nationality, the development over the last few decades does give some examples of a gradual erosion of that principle, although not in the field of succession.

As will be further elaborated upon below (see C.III.3 a), the Family Law Reform Commission presented an extensive report in 1987 (Swedish Government Official Reports [SOU]1987:18) proposing, *inter alia*, that the substantive aspects of succession should generally be governed by the law of the state in which the deceased was habitually resident at the time of his death. No legislation has been introduced on the basis of these particular findings of the Commission.

**c) Are there special rules for stateless persons and asylum seekers?**

The Act on Conflict of Laws in Regard to Marriage and Guardianship (*lagen om vissa internationella rättsförhållanden rörande äktenskap och förmynderskap*, SFS 1904:26 s. 1) provides that – for choice of law purposes – a stateless person shall be considered as a national of the state where his domicile is or, if he does not have such a domicile, where his residence is (Chapter 7, section 3). Similarly, a political refugee shall be considered as a national of the state where his domicile is (*ibid.*).

Although not directly applicable, it is commonly thought that these provisions lend themselves to an analogous interpretation and thus apply also to matters of succession.

- d) **Are there any rules according to which foreign rules on conflicts of law applicable to property situated abroad are being applied, resulting in a different succession according to the law where the property is situated (e. g. art. 3 § 3 of the German EGBGB)?**

Although Swedish law designates the nationality of the deceased as the relevant factor for determining the applicable law (cf. C.II.2 a above), this rule is not without exception. Chapter 1, section 2 of the Act on Conflict of Laws in Regard to Succession provides that if, in respect of immovables, there are special rules in force in the *lex rei sitae*, those rules must prevail. If, consequently, there should be in the *lex rei sitae* a special rule in the shape of a conflict of law rule, designating the *lex rei sitae* as the applicable law in matters of succession to immovables, that rule must be complied with.

- e) **If in principle there is a uniform rule for movables and immovables, are there any other rules which might lead to a distinction in the rules applicable to the succession?**

See C.II.2 d above

**3. If there is a difference between succession to land and the succession to movables:**

- a) – b): Not applicable

**4. Special rules for specific questions**

Are there in your state special rules for the conflict of laws regarding special questions, such as

- a) **the capacity to make a will;**

The applicable law for determining whether a person had the capacity to make (or revoke) a will is the testator's *lex patriae* at the time of the making (or revocation) of the will. (Chapter 1, section 3 of the Act on Conflict of Laws in Regard to Succession)

- b) **testamentary dispositions being made by two or more persons in one document;**

There are no such special rules.

- c) **contracts containing testamentary dispositions or the renunciation of a future inheritance (with or without payment)?**

The applicable law for determining the binding nature of such a contract or a *donatio mortis causa* is the *lex patriae* of the deceased at the time of the disposition (Chapter 1, section 7 of the Act on Conflict of Laws in Regard to Succession). If, at a time when the person leaving the inheritance was still alive, a would-be heir or beneficiary has entered into a contract with a third person concerning the estate not yet devolved on him, such a contract shall never be valid in Sweden (*ibid.*).

- d) **the validity of a testamentary disposition;**

The applicable law for determining the validity of a will as to its contents is the *lex patriae* of the testator at the time of his death (Chapter 1, section 5 of the Act on Conflict of Laws in Regard to Succession).

The possible invalidity of the actual making or revocation of a will – on grounds of, e.g., undue pressure having been exerted on the testator – shall be determined in accordance with the *lex patriae* of the testator at the time of the making or revocation of the will (Chapter 1, section 6 of the Act on Conflict of Laws in Regard to Succession).

**e) the possibility of the testator changing or revoking the will or a contract concerning his estate;**

See C.II.4 a above (Chapter 1, section 3 of the Act on Conflict of Laws in Regard to Succession).

**f) rules on how the estate is being transferred from the deceased to the beneficiaries;**

There are no such special rules.

**g) the administration of the estate (partition, responsibility of the heirs);**

Where the administration of a foreign national's estate is carried out in Sweden, Swedish law shall apply when determining the responsibility of the heirs for the debts of the estate, although the substantive aspects of succession are governed by the *lex patriae* of the deceased (Chapter 2, section 7 of the Act on the Conflict of Laws in Regard to Succession).

**h) succession to the state or the crown;**

If a foreign national leaves property in Sweden, which, under the *lex patriae* of the deceased, shall devolve on the crown, a municipality or a public institution, that property shall instead devolve on the National Inheritance Fund (*Allmänna arvsfonden*). (Chapter 1, section 11 of the Act on the Conflict of Laws in Regard to Succession)

**i) others**

Where the administration of a foreign national's estate is carried out in Sweden, the procedure for contesting a will shall be governed by Swedish law, although the substantive aspects of succession are governed by the *lex patriae* of the deceased (Chapter 2, section 8 of the Act on the Conflict of Laws in Regard to Succession). Also, and under the same circumstances, Swedish law shall govern the period of limitations to be applied in respect of testate and intestate succession (*ibid.*).

**III. Choice of law regarding intestate or testate succession (excluding questions of form, compare VII.)**

**1. Does your law allow any choice of law regarding succession?**

No

**2. If so, please state the details of the choice of law:**

a)–g): Not applicable

**3. If your law does not allow any choice of law:**

**a) are there any proposals in the legislature or is there at least a discussion in legal journals on whether the choice of law should be introduced?**

As pointed out above, the Family Law Reform Commission presented an extensive Report in 1987 (Swedish Government Official Reports [*SOU*] 1987:18), dealing with questions of conflict of laws relating to family law and succession (cf. II.2 b above). We have already seen that the commission proposed that the substantive aspects of succession should generally be governed by the law of the state in which the deceased was habitually resident at the time of his death (*lex domicilii*). In addition, the commission proposed that a choice of law be allowed on the part of the deceased. According to the proposal, it should be possible to make a different law applicable by virtue of a testamentary disposition made by the deceased. Such a

disposition would prevail, though only if the law referred to was that of a state with which, at the time of the execution of the will, the testator was connected either by habitual residence or by nationality or in which he had previously been habitually resident. The designation of the governing law would have to be by express stipulation or arise by necessary implication from the provisions of the will. No legislation has been introduced on the basis of these particular findings of the Commission.

**b) if so: which reasons are being quoted for or against the introduction of a choice of law?**

Pro

- The possibility of designating the applicable law in respect of matters of succession could prove to be valuable where spouses enter into an agreement on the law to be applied to their marital property relations (cf. VI.1 below). This could provide them with an incentive to consider the economic consequences not only of divorce, but also of death.
- However well devised, the general body of choice of law rules cannot be expected to provide suitable solutions for every conceivable situation. For this reason, there is a need for a certain amount of flexibility.
- Allowing a person to designate the applicable law in respect of matters of succession would not lead to results which radically differ from what can be achieved by making a will. On the contrary, allowing such a choice of law would give the testator a possibility to achieve the desired result in a much easier way. Usually, it is considerably more complicated to devise a will in such a way so as to make the provisions of a foreign law applicable to the substantive aspects of succession.

Con

- By choosing the applicable law, the deceased could in his lifetime circumvent the provisions otherwise applicable in respect of the forced inheritance share devolving on his direct heirs. This could be brought about by choosing a law which lacks provisions on forced inheritance shares and then making a will to the effect that no part of his estate shall devolve on his direct heirs, or at least not all of them.
- By making a will, a testator could achieve very much the same effect as that resulting from the application of the desired foreign law.

**IV. Simultaneous application of more than one law**

If it is possible according to the Private International Law of your state that two or more laws are applied to the same estate (e. g. due to a choice of law or due to *renvoi* – compare II 2 e) and II 3.):

Which rules are applied for the relation between the different estates? Do you apply the respective law separately for each estate or is it possible that the application of one law has consequences for the application of another law?

As is obvious from C.II e above, it is indeed conceivable that two or more laws may apply simultaneously to the same estate. In such a case, each law is applied separately to the respective assets falling within its scope of application. There are no rules providing that compensation be paid to an heir if, for example, a forced inheritance share devolves on that heir in one state but not in the other. However, there is a provision to the effect that, where the

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administration of the estate or the distribution of its assets is carried out in Sweden, account should be taken of what has previously devolved on a creditor, a surviving spouse, an heir or a universal legatee as a consequence of a similar procedure carried out in another state (Chapter 2, section 9 of the Act on Conflict of Laws in Regard to Succession).

**V. Compensation for different distribution by the state where the property is situated**

**1. Does the law of your state provide any compensation (being an obligation or a *droit de prélèvement*), if property of the estate is situated abroad and if the foreign law gives a lower share to the beneficiary than according to your law?**

There are no provisions on such compensation.

**2. If so: Does this compensation apply only to beneficiaries who are nationals of your state or to all beneficiaries?**

Not applicable

**VI. Succession and marital property**

**1. What are the rules on conflict of laws regarding marital property in your state?**

The law governing marital property relations is primarily that which has been designated by the spouses, whether before or during marriage. However, the choice made by the spouses will only prevail to the extent that the law thus chosen is that of a state with which, at the time of designation, at least one of them was connected either by habitual residence or by nationality. The designation of the applicable law must be made in writing. (Section 3 of the Act on Certain International Issues relating to Marital Property Relations [*lagen om vissa internationella frågor rörande makars förmögenhetsförhållanden, SFS 1990:272*]).

In the absence of an effective choice by the spouses, the governing law is that of the state in which both spouses establish their first habitual residence after marriage. If both of them subsequently transfer their habitual residence to another state, the law of that state shall apply instead, provided that the spouses have been resident in the new state for at least two years. However, the latter requirement shall not apply if both spouses were previously habitually resident in that state during marriage or if both spouses are nationals of that state, in which case the law of the new state shall apply as soon as the spouses have established their habitual residence there. (Section 4 of the Act on Certain International Issues relating to Marital Property Relations [*lagen om vissa internationella frågor rörande makars förmögenhetsförhållanden, SFS 1990:272*]).

**2. Are the rules regarding succession and marital property coordinated or is it possible that one law is applicable to marital property and another one to matters of succession? If so: In what situations?**

There is no such coordination. Thus, it is possible that marital property rights and succession rights might not be determinable by the same law. In particular, this might occur when the spouses have designated a particular law as the law governing their marital property relations or where the law governing such relations is the law of their habitual residence. It might also occur where one of the spouses or both of them have changed their nationality during marriage.

**3. What are the main problems for the practice due to non-coordinated rules on the conflicts of law?**

Basically, the needs of a surviving spouse can be catered for in three different ways in national law: either by rules on marital property relations or by rules on succession or by a combination of such rules. However, if the succession rights of a surviving spouse are determined by another law than the law governing the spouses' marital property relations at the time of death, this might adversely affect the balance which most laws try to strike between the rights of the surviving spouse and those of other heirs. Thus, the result could be that the surviving spouse receives more property or less property than what would have been the case if the same law had applied to succession as well as marital property relations.

As will be seen under B.III of Part 4 below, Swedish law accords a strong position to the surviving spouse in respect of both succession rights and rights under the marital property regime.

**VII. Law applicable to the form of wills and other testamentary dispositions**

**1. Which law is applicable to the form of wills and other testamentary dispositions? What are the requirements for a will executed abroad to be valid?**

Sweden is a party to the 1961 Hague Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions. Chapter 1, section 4 of the Act on Conflict of Laws in Regard to Succession is intended to give effect to that convention. Under that provision, a will shall be treated as properly executed if its execution conformed to the internal law in force in the state where it was executed, or in the state where, at the time of its execution or of the testator's death, the testator had his habitual residence, or in a state of which, at either of those times, he was a national. To the extent that a will concerns immovable property, it shall also be treated as properly executed if its execution conformed to the internal law of the state where the property is.

**2. Are there special rules for the formal validity of testamentary dispositions executed by more than one person in one document?**

There are no such special rules.

**3. Which legal questions are being considered questions of form (e.g.: capacity to make a will? Prohibition of certain forms due to age or personal disabilities of the deceased?)**

Under Swedish law, questions of form would include, *inter alia*, the following:

- The will must be in writing. It must be signed by the testator in the presence of two witnesses present at the same time. Alternatively, the testator must confirm in the presence of two witnesses present at the same time that it is his signature on the will. In either case, the witnesses must be aware of the fact that the document concerned is a will, but they need not know the contents of the will. (Chapter 10, section 1 of the Inheritance Code). Special rules apply in respect of emergency (oral) wills and holographic wills.
- It is necessary also for the witnesses to sign the will.

There are special provisions on the choice of law in respect of matters relating to the capacity to make or revoke a will (Chapter 1, section 3 of the Act on Conflict of Laws in Regard to Succession), the validity of a will as to its contents (Chapter 1, section 5)

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and the possible invalidity of a will on grounds of, e.g., undue pressure having been exerted on the testator (Chapter 1, section 6). Consequently, these questions would not be considered questions of form.

### VIII. Ordre public regarding successions

#### 1. What are – generally speaking – the requirements of the international *ordre public* regarding successions in your state?

There is no special *ordre public* for succession purposes. And for conflict of law purposes generally, it is hardly possible to pinpoint the exact scope and meaning of Swedish *ordre public*. Generally speaking, however, it means that a foreign law must not be applied if the consequences of its application would be manifestly incompatible with Swedish public policy. Very probably, the strength of the actual connection of the parties with Sweden will be taken into account when determining whether a foreign rule – or rather the result of its application – shall be set aside. The stronger the connection with Sweden, the more reason there is to observe the requirement that the application of foreign law must not entail consequences manifestly incompatible with Swedish public policy.

Precedent is a very scarce commodity in this field, since Swedish courts must be said to be reluctant to openly invoke *ordre public*.

#### 2. Would your law accept the following succession rules of a foreign law?

*It must be underlined that the question of whether a foreign rule complies with Swedish ordre public is entirely in the hands of the courts and that there are very few precedents.*

##### a) a higher share in intestate succession for male than for female heirs?

Most likely, a succession rule to this effect would be considered manifestly incompatible with Swedish public policy.

##### b) the exclusion of children born out of wedlock?

Such a rule would probably not be accepted.

##### c) intestate succession of the unmarried partner or of a homosexual partner?

If the homosexual couple had entered into a registered partnership (cf. B.IV of Part 4 below), intestate succession would entirely reflect Swedish rules on the subject and thus be accepted. It is likely that intestate succession would also be accepted in respect of cohabitants, whether heterosexual or homosexual.

##### d) absence of any forced share or similar protection in a foreign law?

This would probably be accepted.

##### e) statutory or contractual limitations of the testamentary power of disposition?

It is likely that a statutory limitation on the testamentary power of disposition would be accepted. A contractual limitation would not be easily acceptable.

##### f) revocability of a joint will or a contract regarding the inheritance?

Such a rule would be accepted.

##### g) irrevocable renunciation to the intestate succession during the testator's life?

A rule to this effect would probably be accepted.

**h) discriminatory testamentary dispositions?**

If the relevant foreign law were to allow such dispositions, this aspect of the foreign law would probably be accepted.

**IX. Renvoi and applicable law in states with more than one legal system**

**1. According to the conflict of law rules of your state, do you also have to apply the conflict rules of the foreign state? – In other words: does your state apply the *renvoi*?**

The attitude of Swedish private international law towards the doctrine of *renvoi* is on the whole very negative. This follows not so much from actual rules as from legal literature, the *travaux préparatoires* of legislation and, above all, precedent (in particular a 1969 judgment of the Supreme Court, *NJA 1969 s. 163*).

**2. If there is any distinction between movables and immovables (cf. II.3.), is the *renvoi* applicable to both the succession to movables and to the succession to immovables?**

Not applicable

**3. Are there any special rules for intestate or testate succession and/or for the formal validity of testamentary dispositions, if the applicable law consists of several legal systems (such as in the U.K. or in Spain)?**

If the applicable law has been designated by reference to the fact that someone is a national of a certain foreign state and this state has several legal systems, that particular legal system shall apply which is designated by the internal rules of the foreign state. In the absence of such rules, that legal system shall apply, to which the person concerned has the closest connection. This follows from Chapter 3, section 1 of the Act on Conflict of Laws in Regard to Succession.

**4. Is there more than one legal system regarding successions in your state? If so: Which are the rules to decide, which of the different domestic legal systems is applicable?**

Not applicable. There is only one legal system in Sweden.

**X. Applicable law concerning preliminary questions (*questions préliminaires*)**

If succession depends on a preliminary question concerning family law (such as the validity of a marriage, the descent of a child, the validity of an adoption etc.) – how is the applicable law determined:

The main rule is that the law to be applied in respect of the preliminary question is determined by independent application, i.e. following the rules of Swedish Private International Law (*lex fori*).

**XI. Scope of rules on the law applicable to successions**

**1. What legal questions are covered by the rules of your state concerning the law applicable to successions.**

The legal questions covered by the general body of conflict of law rules for succession include, *inter alia*, the following: the circle of persons eligible to inherit, the size of the shares of the estate devolving on the respective heirs and beneficiaries, the possible qualification of a gift as an inheritance advance, the binding or unbinding nature of a gift *mortis causa* or of a contract entered into by the deceased and an heir, the capacity to make or revoke a will, the

possible invalidity of a will on grounds of pressure having been exerted on the testator and the validity of a will as to form and as to content.

**2. Do you apply the Private International Law on succession for the following questions:**

**a) transfer of property and payment of debts?**

If the administration of an estate is carried out in Sweden, the *procedure* to be followed when administering the estate shall be governed by Swedish law. This is so regardless of what law applies to the substantive aspects of succession.

**b) the powers of an administrator concerning property situated abroad?**

See C.XI.2 a above.

## 4th part

### Substantive Law on Successions

#### A. Sources and Literature

##### I. Legal Sources

By way of introduction it may be worth pointing out that the prevailing view of the hierarchy of legal sources is the following:

1. laws and other regulations
2. travaux préparatoires
3. Judicial practice and precedent
4. legal literature

Needless to say, as sources of law *laws and other regulations* are of paramount importance. They fall into four different categories: constitutional acts (*grundlagar*), ordinary acts (*lagar*), ordinances (*förordningar*) and statutory instruments (*myndighetsföreskrifter*). For present purposes the latter category will not be of interest.

Constitutional acts and ordinary acts are enacted by Parliament (*Riksdagen*), whereas ordinances are enacted by the Government.

Laws and other regulations are applied and interpreted in the light of *travaux préparatoires*, *judicial practice and precedent* and *legal literature*.

In the field of Inheritance Law the following laws and regulations are of particular importance: the Inheritance Code (*ärvdabalken*, SFS 1958:637), the Act on the Implementation of the Inheritance Code (*ärvdabalkens promulgationslag*, SFS 1958:638) and the Inheritance and Gift Tax Act (*arvs- och gåvoskattelagen*, SFS 1941:416).

The Inheritance Code is divided into 25 Chapters. All aspects of intestate succession and testamentary succession are covered by the provisions of the Code. In addition, there are provisions on the administration of the estate and on the final distribution of its assets. There are also procedural provisions.

The proper application of the Inheritance Code requires knowledge also of the provisions of the Marriage Code (*äktenskapsbalken*, SFS 1987:230) and the Children and Parents Code (*föräldrabalken*, SFS 1949:381).

##### II. Literature and Judgments

The most important Swedish **text books** on the law of successions would be:

*Walin, Gösta*: Kommentar till ärvdabalken, Del I: arv och testamente, 5<sup>th</sup> ed., Stockholm 2000 (ISBN 91-39-00707-3)

*Walin, Gösta*: Kommentar till ärvdabalken, Del II: boutredning och arvskifte, 4<sup>th</sup> ed.,

Stockholm 2001 (ISBN 91-39-00708-1)

*Beckman, Nils – Höglund, Olle*: Svensk familjerättspraxis (a systematic analysis of the case law in family law matters, ISBN 91-38-55000-8)

*Agell, Anders*: Testamentsrätt: en lärobok om rättshandlingar för dödsfalls skull, 2<sup>nd</sup> ed., Uppsala 1999 (ISBN 91-7678-404-5)

*Saldeen, Åke*: Arvsrätt, en lärobok om arv, boutredning och arvskifte, 2<sup>nd</sup> ed., Uppsala 2001 (ISBN 91-7678-473-8)

**Leading judgments** of the Supreme Court (*Högsta domstolen*) are published in *Nytt juridiskt arkiv (NJA)*. *Avd. I: Rättsfall från Högsta domstolen* (ISSN 0282-9225)

In Sweden, precedent is not formally binding in the sense that a judge not obeying a reported precedent could be prosecuted for a criminal offence. But precedent is of great importance for guidance in the application of the law. Thus, judges in lower courts should accept and do accept such guidance, the aim of which it is to develop a coherent body of judicial practice to be observed by all courts.

A judgment delivered by a Court of Appeal (*hovrätt*) may also be of value for the interpretation of the law. Leading judgments given by Courts of Appeal are published in *Rättsfall från hovrätterna* (ISSN 0349-5272).

## B. Intestate succession

### I. Inheritance of the relatives

#### The first inheritance class

The nearest heirs on the grounds of blood relationship are the issue (direct heirs, *bröst-arvingar*) of the deceased. The children of the deceased take equal shares. If a child has died, the issue of that child shall take his place, and each branch shall take an equal share. (Chapter 2, section 1 of the Inheritance Code)

#### The second inheritance class

If there are no direct heirs, the father and mother of the deceased each take half the inheritance. If the father or mother of the deceased has died, the siblings of the deceased shall share the father's or mother's share. The place of a deceased brother or sister is taken by his or her issue, and each branch shall take an equal share. If there are no siblings or issue thereof, but one of the parents of the deceased is alive, that parent takes the whole of the inheritance. (Chapter 2, section 2, subsection 1 and 2 of the Inheritance Code)

If the deceased leaves siblings of the half blood, they share together with siblings of the whole blood or their issue in such share as would have gone to their father or mother. If there are no siblings of the whole blood, and if both parents of the deceased have died, the siblings of the half blood of the deceased take the whole of the inheritance. The place of a deceased sibling of the half blood is taken by his or her issue. (Chapter 2, section 2, subsection 3 of the Inheritance Code)

#### The third inheritance class

If the father, mother, siblings or issue of siblings of the deceased are not living, the paternal grandfather, paternal grandmother, maternal grandfather and maternal grandmother take the

inheritance. Each shall inherit an equal share. If the paternal grandfather, paternal grandmother, maternal grandfather or maternal grandmother has died, the children of the deceased grandparent shall share that grandparent's share. If the deceased grandparent leaves no children, the other paternal grandparent or maternal grandparent, or, if that grandparent has also died but has left children, his or her children, shall take the share of the deceased grandparent. If there is no heir on that side, the whole of the inheritance shall go to the heirs on the other side. (Chapter 2, section 3 of the Inheritance Code)

Other blood relatives than those stated above are not entitled to take as heirs. This means, e.g., that the cousins of the deceased do not inherit. (Chapter 2, section 4 of the Inheritance Code)

### SKETCH

#### II. Are there any special rules for children born out of wedlock or for adopted children?

Following amendments to the Inheritance Code (SFS 1969:621 and SFS 1971:870, respectively), there are no special rules for children born out of wedlock or for adopted children. Both categories fall within the definition of children and issue. In respect of adopted children this follows from Chapter 4, section 8 of the Children and Parents Code, the relevant parts of which provide the following:

*“For the purposes of any provision of an act or other statute attaching legal significance to consanguinity or affinity, an adopted child shall be regarded as a child of the adopter and not as a child of his or her birth parents. However, if one spouse has adopted a child of the other spouse or has adopted an adopted child of the other spouse, that child shall be regarded as a child of both spouses. - - -“*

#### III. The surviving spouse's share and the influence of marital property

Marriage is dissolved by the death of either spouse or by divorce. In either case, the spouses' property must normally be distributed between them by means of a division of property. If one spouse has died, the property division shall be performed by the other spouse and the heirs and residuary testamentary beneficiaries of the deceased. The scope of the property division is limited to the marital property (*giftorättsgods*) of the spouses. Property which has been designated as separate property (*enskild egen-dom*) by means of a pre-nuptial agreement must not be taken into account, unless the parties specifically agree to do so. When division of property takes place, the spouses' shares in the marital property must first be calculated. When calculating those shares, a deduction shall be made from each spouse's marital property sufficient to cover the debts of that spouse at the time when – as the case may be – proceedings for divorce were commenced or death occurred. The combined balance of the spouses' marital property, after deductions have been made to cover debts, shall then be calculated and the value thereof shall be divided equally between the spouses.

Thus, if one of the spouses has died, one of the equally divided portions of the combined balance of the spouses' marital property will go to the surviving spouse and the other portion will constitute the estate (*kvarlåtenskap*) of the deceased. This is a consequence of the marital property regime and follows, in particular, from Chapters 8–10 of the Marriage Code.

The inheritance rights, then, follow from the rules of the Inheritance Code. If the deceased was married, the estate shall go to the surviving spouse (Chapter 3, section 1 of the Inheritance Code). This means that, normally, the surviving spouse will receive 50 per cent of

the combined balance of the spouses' marital property as a result of the property division to be carried out under the rules of the Marriage Code and the remaining 50 per cent as inheritance. If, however, the deceased leaves any direct heir who is not also the direct heir of the surviving spouse, the spouse's entitlement to the estate shall only include the inheritance share of such an heir if that heir has renounced his right. But in this context there are also rules aimed at protecting the surviving spouse. Thus, the surviving spouse shall always be entitled to receive from the estate of the deceased spouse, as far as the estate suffices, property which, taken together with the property received by the surviving spouse in property division or constituting that spouse's separate property, corresponds in value to four times the base amount (*basbelopp*, currently SEK 37.900) effective under the National Insurance Act at the time death occurred. Also, a will made by the deceased spouse shall be without effect in so far as its provisions encroach on the right of the surviving spouse just referred to.

The inheritance rights of the direct heirs of the first-deceased spouse are regulated in Chapter 3, section 2 of the Inheritance Code. If at the death of the surviving spouse any such heir or – for that matter – the father, mother, sibling or issue of a sibling of the first-deceased spouse is living, half of the property left by the surviving spouse shall normally go to those who then have the best right to take as heirs from the first-deceased spouse. However, if a direct heir received the whole or part of his inheritance from the first-deceased spouse already at the death of that spouse (which is possible if the heir concerned is not also the direct heir of the surviving spouse), that heir's share in the property left by the surviving spouse shall be reduced accordingly.

The surviving spouse may not dispose in a will of property which is to go to the heirs of the first-deceased spouse.

#### **IV. Is there any share for unmarried cohabitants or for homosexual cohabitants?**

No, there are no provisions on shares for cohabitants, be they heterosexual or homosexual. However, if a homosexual couple have entered into a registered partnership under the Registered Partnership Act (*lagen om registrerat partnerskap*, SFS 1994:1117), they shall be looked upon as spouses for *inter alia* inheritance purposes. Thus, registered partners take as heirs in the same way as spouses and have the same rights as spouses in connection with a property division.

#### **V. Under which circumstances does the estate go to the state (or to the crown)?**

The estate goes to the National Inheritance Fund (*Allmänna arvsfonden*) in default of the spouse, issue or other relatives as outlined above and in default of a beneficiary under a will (cf. I). The purpose of the Fund is to work for the promotion of the care and upbringing of children and young persons as well as the care of the disabled.

#### **VI. Examples**

1. Where the deceased leaves a surviving spouse and two joint children, one half of the combined balance of the spouses' marital property (after deductions have been made to cover debts) goes to the surviving spouse as a consequence of the marital property regime and following a property division. The other half constitutes the estate of the deceased, which will go to the surviving spouse as inheritance. At the death of the surviving spouse, half of the property left by that spouse goes to the two joint children or their issue or anyone else who then has the best right to take as heir from the first-deceased spouse. (See also III above.)

2. The deceased has a surviving spouse and one living child of both spouses. Another child of both spouses has died before, but has left an offspring (grandchild). - One half of the combined balance of the spouses' marital property (after deductions have been made to cover debts) goes to the surviving spouse as a consequence of the marital property regime and following a property division. The other half constitutes the estate of the deceased, which will go to the surviving spouse as inheritance. At the death of the surviving spouse, half of the property left by that spouse goes to those who then have the best right to take as heirs from the first-deceased spouse. Provided that they are still living, this would be the joint child and the issue of the deceased child. Each branch would take an equal share. (See also III above.)
3. The deceased is survived by a spouse but no issue, his mother, a brother and a daughter of a deceased sister. - One half of the combined balance of the spouses' marital property (after deductions have been made to cover debts) goes to the surviving spouse as a consequence of the marital property regime and following a property division. The other half constitutes the estate of the deceased, which will go to the surviving spouse as inheritance. At the death of the surviving spouse, half of the property left by that spouse goes to those who then have the best right to take as heirs from the first-deceased spouse. Provided that they are still alive, this would be his mother (who would take one half of the inheritance from the first-deceased spouse) and the brother and the daughter of the deceased sister (who would share the other half of the inheritance). (See also III above)
4. The deceased is survived neither by a spouse nor by issue. His closest surviving relatives are his mother, a brother and a daughter of a deceased sister. - Half of the property left by the deceased will go to his mother. The other half will be shared by his brother and the daughter of his deceased sister and each branch will take an equal share. (See also III above.)

### **C. Execution of a will/testamentary disposition**

#### **I. Which minimum age is required in order to make a will?**

The minimum age for making a will is 18. The only exception to this is that a person who is married or has been married may make a will at a younger age. Also, a person who has reached the age of 16 may make a will if that will is concerned exclusively with property which the testator – despite his age – is free to dispose of independently. (Chapter 9, section 1 of the Inheritance Code).

#### **II. Formal requirements for wills or other testamentary dispositions**

##### **1. Which are the usual forms used in your state for a will or testamentary disposition?**

The normal form used in Sweden is a will attested by two witnesses. The will must be in writing. It must be signed by the testator in the presence of two witnesses present at the same time. Alternatively, the testator must confirm in the presence of two witnesses present at the same time that it is his signature on the will. In either case, the witnesses must be aware of the fact that the document concerned is a will, but they need not know the contents of the will. (Chapter 10, section 1 of the Inheritance Code)

The signature and witnessing requirements are modified in case of emergency (oral) wills and holographic wills. If prevented on grounds of illness or other emergency from making a will in the normal form, a testator may make oral dispositions regarding his estate in the presence of two witnesses present at the same time. Under the same circumstances, a testator may also

dispose of his estate by means of a handwritten will, signed by him but without any witnesses being present. An emergency (oral) will or a holographic will is null and void if, during a period of three months following the making of such a will, there has been nothing to prevent the testator from making a will in the normal form. (Chapter 10, section 3 of the Inheritance Code)

**2. Are there many international testaments in your country?**

Not applicable, since Sweden is not a party to the Washington Convention on a uniform form of international testaments.

**3. Can you estimate, how many per cent of people die intestate or leaving a will – and how many per cent are holographic wills, or wills attested by witnesses etc.?**

No statistics available.

**4. Special forms of testaments – what is the maximum period of validity?**

See II.1 above (An emergency [oral] will or a holographic will is null and void if, during a period of three months following the making of such a will, there has been nothing to prevent the testator from making a will in the normal form.)

**III. Register of testaments**

**1. Is there a (central) register of testaments?**

No, there is no such register.

**2. Is it possible to register also testaments made abroad – and how may foreign persons obtain knowledge of a registered testament?**

Not applicable (see III.1 above).

**D. Wills and testaments**

**I. Does your law distinguish between an heir (who obtains the whole estate) and the beneficiary of a bequest?**

Yes, such a distinction is made. A person who obtains the whole estate or a portion thereof as a result of a will is normally described not as an heir, but as a universal legatee (*universell testamentstagare*). Obviously, the rights of a universal legatee are very similar to those of an heir or a surviving spouse. For this reason, the legislator has provided that both a surviving spouse, heirs and universal legatees become legal owners of the estate (Chapter 18, section 1 of the Inheritance Code). The beneficiary of a bequest is normally referred to as a legatee (*legatarie*).

**II. Bequest: Does it make the beneficiary owner of the property or does it create only an obligation against the heir?**

Under Swedish law the bequest merely creates a claim of the legatee against the decedent's estate. Ownership only occurs after the actual distribution of the property constituting the bequest.

### III. Administration of the estate

#### 1. Is the administration of all estates mandatory?

Some form of administration must be arranged in respect of all estates. Such administration entails the collection of the assets of the estate, the payment of the debts and the distribution of the remainder of the property to those entitled to receive it. Administration may be arranged in one of three ways.

- Joint administration carried out by the legal owners of the estate

Where special administration has not been arranged (see below), the legal owners of the estate (surviving spouse or cohabitant, heirs and universal legatees) shall jointly administer the property of the estate with a view to settling the estate.

- Administration carried out by the executor of the will (testamentsexekutor)

Where the testator has appointed an executor in his will and empowered him to administer the estate instead of the legal owners, the executor shall be the sole administrator of the estate. (Chapter 19, section 20 of the Inheritance Code)

- Administration carried out by an official estate administrator (boutredningsman)

If so requested by one of the legal owners of the estate or, if applicable, the executor designated by the testator, the administration of the estate shall be entrusted to an official estate administrator. Under certain circumstances, such an administrator may be appointed also at the request of a legatee or one of the creditors of the deceased. The decision to appoint an official estate administrator lies with the competent District Court (tingsrätten). (Chapter 19, section 1 of the Inheritance Code)

#### 2. Who may nominate the administrator?

The person or persons lodging an application for the appointment of an official estate administrator are also free to make proposals regarding the choice of administrator. Any such proposal must be communicated to all parties concerned (e.g. other legal owners of the estate), who may make proposals of their own. The decision, however, lies with the District Court.

As indicated above, the testator may himself designate a person to be the executor of his will (see III.1). Such an appointment must be made in the actual will.

#### 3. May the administrator transfer property belonging to the estate? Can the administrator be given the power by the testator to distribute the estate and/or to administer the estate? Is there a maximum period for the administration of the estate?

Regardless of the type of administration arranged, the administrator may always transfer property belonging to the estate.

Where joint administration applies, the legal owners of the estate must decide unanimously on the measures to be taken in respect of the property of the estate. They collectively represent the estate in relation to third parties.

Where an official estate administrator has been appointed, he shall be the sole administrator of the estate and have full powers to dispose of the property of the estate. There is only one exception: Immovable property may not be disposed of unless the legal owners of the estate consent to this or, where there can be no such consent, the District Court permits that the

transfer takes place. (Chapter 19, sections 11–13 of the Inheritance Code)

In case of administration carried out by an executor of a will, the executor is the sole administrator of the estate and has full powers to dispose of the property of the estate. No limitation applies in respect of the transfer of immovable property. (Chapter 19, section 20 of the Inheritance Code)

There is no maximum period prescribed within which the administration as a whole must be completed. However, if the estate comprises immovable property which, for taxation purposes, is to be regarded as a farming unit, that property must not remain in the possession of the estate for more than four years after the year during which death occurred. (Chapter 18, section 7 of the Inheritance Code)

**4. Does the court control the administrator? Does the administrator need the court's permission for alienation of certain property or for other contracts?**

It has already been pointed out that the decision to appoint an official estate administrator lies with the District Court. Consequently, the Court also has certain control over such an administrator. Once a year, as long as the administration continues, an official estate administrator must render an account for his administration, which account is to be served on at least one of the legal owners of the estate. The Court is to be notified of the fact that such an account has been rendered. If the official estate administrator fails to comply with this requirement, the Court may order him on pain of a fine to produce the account (Chapter 19, section 14 a of the Inheritance Code). If so requested by one of the legal owners of the estate, the Court may appoint a person to monitor the administration. The Court may also ex officio order that the administration be monitored (Chapter 19, section 17 of the Inheritance Code). Should an official estate administrator prove to be unfit to properly administer the estate, he shall be dismissed, if this is requested by a person whose rights depend on the settlement of the estate. The Court may also ex officio decide to dismiss an administrator, should there be indications that such a decision is clearly called for (Chapter 19, section 5, subsection 2 of the Inheritance Code).

Moreover, the Court has ultimate control over the administration in the sense that, inter alia, the legal owners of the estate may bring a claim for damages against the administrator. An official estate administrator is liable to pay compensation for damage caused by him, deliberately or through negligence, to the estate or to any person whose rights depend on the settlement of the estate (Chapter 19, section 18 of the Inheritance Code).

As regards the need for the Court's permission to alienate certain property, it has previously been indicated that the official estate administrator must not dispose of immovable property unless the legal owners of the estate consent to this or, where applicable, the Court permits that such a transfer takes place.

When it comes to the control of the administration carried out by an executor of a will, very much the same rules apply (cf., however, III.3 above).

**IV. Which other clauses are being used often in your state in a testamentary disposition or to transfer property upon the death of the testator (such as *ouderlijke boedelverdeling*, *testamentary trust*, *herederos de confianza*)?**

There is nothing to report under this heading.

## **E. Special rules concerning certain types of property**

Are there any special statutory rules for the succession in certain types of property (such as for a farm, for cooperate shares, for copyright etc.)?

There is nothing to report under this heading.

## **F. Limits to the revocation of a will (joint and mutual will)**

A will may be revoked at any time. A promise on the part of the testator not to revoke the will is not binding on him (Chapter 10, section 5 of the Inheritance Code).

Thus, under Swedish law mutual wills do not and cannot imply a contract not to revoke the will. But if the testator unilaterally revokes or changes a mutual will and thereby causes the conditions of the reciprocal provision to be considerably changed, his own rights under the mutual will shall be forfeited (Chapter 10, section 7 of the Inheritance Code).

Under Swedish law, a *donatio mortis causa* is never valid unless made in the form of a will (Chapter 17, section 3 of the Inheritance Code).

## **G. Limits on the testamentary power of disposition (forced share)**

### **I. Legal nature of limitation**

Chapter 7 of the Inheritance Code is devoted to the forced inheritance share, generally referred to as the legal portion (*laglott*). As further elaborated below, this forced share goes to direct heirs (*bröstarvingar*), i.e. children and their issue. Should the provisions of a will encroach on the right of a direct heir to obtain his legal portion, the direct heir shall be entitled to call for the adjustment of the will (Chapter 7, section 3 of the Inheritance Code).

The direct heir need not be in need of support in order to be entitled to his forced share.

A surviving spouse is not entitled to obtain a forced share per se, but as pointed out under B.III above, the surviving spouse shall always be entitled to receive from the estate of the deceased spouse, as far as the estate suffices, property which, taken together with the property received by the surviving spouse in property division or constituting that spouse's separate property, corresponds in value to four times the base amount (*basbelopp*, currently SEK 37.900) effective under the National Insurance Act at the time death occurred. Accordingly, a will made by the deceased spouse shall be without effect in so far as its provisions encroach on the right of the surviving spouse just referred to. (Chapter 3, section 1 of the Inheritance Code)

### **II. Who is entitled to the forced share?**

Direct heirs, i.e. children and their issue (Chapter 7, section 1 of the Inheritance Code).

### **III. How big amount is the forced share?**

Half of the inheritance share falling by law to a direct heir constitutes that heir's forced share (his legal portion). (Chapter 7, section 1 of the Inheritance Code)

**IV. Is there a time limit in order to take court action to claim the forced share?**

A direct heir wishing to claim his forced share need not take court action. To the extent that the provisions of a will encroach on the right of a direct heir to obtain his forced share, the direct heir is entitled to call for the adjustment of the will by notifying the testamentary beneficiary (universal legatee or legatee) of his claim. Such notification must be carried out by the direct heir within six months of being notified of the provisions of the will. (Chapter 7, section 3, subsection 3 of the Inheritance Code)

The direct heir may also call for adjustment of the will by taking court action against the testamentary beneficiary (universal legatee or legatee). In that case, proceedings must be commenced within six months of being notified of the provisions of the will. (ibid.)

**V. Will gifts made by the testator or contracts on marital property be taken into account when calculating the amount of the forced share?**

**Gifts**

Gifts made by the deceased in his lifetime are considered when calculating the amount to be awarded as a forced share. In this respect, a distinction should be made between gifts constituting an inheritance advance (förskott på arv) and gifts which, for all relevant purposes, are to be equated with provisions of a will.

What has been donated by the deceased to a direct heir shall be considered as an inheritance advance and as such be deducted from that heir's inheritance, unless otherwise prescribed or unless the intention of the deceased must be presumed to warrant another conclusion (Chapter 6, section 1 of the Inheritance Code). The deduction shall amount to the value of the donated property at the time it was received by the donee (Chapter 6, section 3 of the Inheritance Code). If the value of the donated property is too high to allow it to be fully deducted from the inheritance of the donee, the latter will not be obliged to account for the residue (Chapter 6, section 4 of the Inheritance Code). Before calculating the amount to be awarded as inheritance shares, the value of the inheritance advance must be added to the value of the estate (Chapter 6, section 5 of the Inheritance Code). The following formula could be used for this purpose:

$$i = (e + a) / n$$

which means that the inheritance share (i) equals the combined value of the estate (e) and the inheritance advance (a) divided by the number of inheritance shares (n).

[Example: The decedent A leaves two children, C and D. He was the survivor of his spouse, B. The value of A's estate is 160. In his lifetime, A donated 40 to C. The inheritance shares of C and D are calculated in the following way:

$(160 + 40) / 2 = 100$ . From C's inheritance share must then be deducted what he received as an advance, i.e. 40. Thus, the shares of C and D will amount to 60 and 100, respectively. Their forced shares ("legal shares") will amount to 30 and 50, respectively.]

Chapter 7, section 4 of the Inheritance Code, then, deals with gifts which are to be equated with the provisions of a will. What is characteristic of such gifts is that, although fully valid and often completed, they do not constitute much of a burden on the donator. This is so, for example, in the case of a gift made by the donator while on his deathbed. The relevant parts of Chapter 7, section 4 of the Inheritance Code provide the following. If the deceased made a lifetime donation of property in such circumstances or on such terms that the purpose of the

gift may be equated with that of a will, a direct heir shall be entitled to call for the adjustment of the gift in order to obtain his forced share (“legal share”), unless there are special reasons to the contrary. And when the gift is abated, a corresponding part of the donated property shall be returned or, if this is not possible, compensation for its value be paid. For the purpose of calculating the forced share, the value of the donated property shall be added to the estate. If a direct heir wishes to enforce a right of this kind against the donee, that heir shall commence proceedings within one year of the inventory of the estate of the deceased being completed. If this time elapses without proceedings being commenced, the right of action shall be lost.

### **Contracts on marital property (pre-nuptial agreements)**

A contract on marital property will also be taken into account when calculating the amount to be awarded as a forced share. Following the death of one of the spouses, there must normally be a property division (see B.III above). The scope of the property division is limited to the marital property (giftorättsgods) of the spouses. If property has been designated as separate property (enskild egendom) by means of a contract on marital property, that property must not be taken into account, unless the parties specifically agree to do so. The decision to include or not include certain property in the property division affects the outcome of that division. Consequently, it also affects the size of the estate.

## **H. Waiver or renunciation of the inheritance or of a forced share etc.**

Can the heir or the beneficiary of a forced share waive or renounce his statutory rights before the testator’s death? Which are the requirements (form etc.)?

It is possible for an heir to renounce his inheritance rights before the death of the testator. Such a renunciation must be made in writing and must be addressed to the testator. Normally, this is brought about by the heir declaring to the testator that he will not contest the will. (Chapter 17, section 2 of the Inheritance Code)

Although there has been a valid renunciation on the part of the heir, a direct heir (i.e. the beneficiary of a forced share) shall always be entitled to receive his forced share, unless he renounces this right in exchange for just compensation or unless property, the value of which corresponds to the value of the forced share, is bequeathed to his spouse or shall go to his issue by operation of law or under the provisions of the will. (Chapter 17, section 2 of the Inheritance Code)

The minimum age for renouncing one’s inheritance rights is 18. (ibid.)

## **I. Transfer of property upon the testator’s death**

### **I. Is there any special procedure where and when the inheritance is being opened?**

There is no special procedure by which succession is opened or by which authority is accorded to the legal owners of the estate to deal with the property of the deceased. Thus, succession is opened at the death of the deceased.

### **II. Is there any rule upon the persons dying at the same time (e. g. in an accident)?**

Only a person who is living at the time of the death of the deceased can take as heir (Chapter 1, section 1 of the Inheritance Code). If the deceased and his heir die closely together and the

order of deaths cannot be proved, the inheritance shall be dealt with as if the heir had not survived the deceased (Chapter 1, section 2 of the Inheritance Code).

**III. Is the property of the estate transferred to the heirs immediately upon death or are there any additional acts required or does the estate go first to an administrator or an executor?**

As pointed out under D.III above, some form of administration must be arranged in respect of all estates. Hence, the estate first goes to an administrator or – where joint administration applies – administrators, who collect the assets, pay the debts and distribute the residue amongst the spouse, issue or other relatives or the beneficiaries under a will. Ownership only occurs after the actual distribution of the property constituting the estate.

**IV. Acceptance and renunciation of the inheritance**

It has already been pointed out (under H above) that it is possible for an heir to renounce the inheritance before the death of the deceased. Such a renunciation will have the result that he is no longer considered as an heir. Unless otherwise stipulated by the heir and the deceased, such a renunciation will be binding also on the descendants of the heir. (Chapter 17, section 2 of the Inheritance Code)

It is also possible for an heir to renounce the inheritance after the death of the deceased. In that case the inheritance devolves on the nearest heirs of the heir renouncing the inheritance. Such dispositions may alleviate the inheritance tax payable under the Inheritance and Gift Tax Act. However, this requires inter alia that the heir renouncing the inheritance must be deemed not to have disposed in any way of the property concerned.

If the deceased leaves any direct heir who is not also the direct heir of the surviving spouse, the spouse's entitlement to the estate shall only include the inheritance share of such an heir if that heir has renounced his right (Chapter 3, section 1 of the Inheritance Code; cf. above under B.III). In the event of such a renunciation being made, the direct heir shall instead be entitled to share in the estate of the surviving spouse (Chapter 3, section 9 of the Inheritance Code).

**V. Are there any limitations on the acquisition of property by foreigners (especially for real estate)?**

There are no limits on the acquisition of property by foreigners.

**K. Payment of claims against the estate – responsibility of the heirs and beneficiaries**

**I. Do the heirs/beneficiaries acquire the estate as well as the debts?**

The estate devolves in its entirety on the heirs/beneficiaries with assets, debts and liabilities of the deceased. However, they will not be personally liable for the debts of the deceased. If the assets of the estate do not suffice for the payment of the debts, the creditors of the deceased cannot compel the heirs or beneficiaries into paying (unless, of course, they have shown such negligence in administering the estate that they must pay damages to those whose rights depend on the settlement of the estate; cf. Chapter 18, section 6 of the Inheritance Code). The estate is a legal entity of its own.

**II. If there is more than one heir/beneficiary, is there a joint responsibility or is every heir responsible only for a certain quota of the debts?**

Not applicable (see K.I above).

**III. Is the heir's responsibility limited to the net amount of the estate or can the creditors of the estate also attach the heir's personal property? How can the heir limit his responsibility?**

Not applicable (see K.I above).

### **L. Plurality of heirs/beneficiaries**

**I. Structure**

**1. If there is more than one heir, do the heirs form a common property or which type of honourship?**

The estate devolves in its entirety on the heirs/beneficiaries and forms a legal entity of its own. The estate is owned jointly by them.

**2. Who administers the estate if there are several heirs?**

See D.III above.

**II. Partition of the estate**

**1. Is there a partition of every single property (partition in nature) or does every heir just obtain a part of equal value of the estate?**

The heirs obtain proportionate shares of the value of the estate, but, eventually, the actual assets of the estate must of course be attributed to the various heirs in satisfaction of their respective shares. In principle, the heirs are entitled to proportionate shares of every kind of property, but, for practical reasons, the partition is rarely carried out in that way.

**2. Is there any form required for the partition?**

The partition shall be made in writing and shall be signed by the heirs (Chapter 23, section 4 of the Inheritance Code).

### **M. Alienation of a share in the inheritance**

**1. Can a share of the inheritance (if there are several heirs) be alienated to a third person?**

An heir or a beneficiary may alienate a share of the inheritance to a third person, provided that this is initiated after the death of the deceased. As long as a person leaving an inheritance is alive, a would-be heir or beneficiary is not allowed to enter into a contract with a third person concerning the estate not yet devolved on him (Chapter 17, section 1 of the Inheritance Code).

An heir or a beneficiary may also have his share of the inheritance seized by the bailiff for debt-collecting purposes.

**2. Is there any form required for the alienation?**

No particular form is required.

**3 Are the other heirs entitled to buy the share first?**

No such arrangement is provided for.

**N. Proof of the position as an heir (or an administrator etc.)**

**I. Is there any special form of proof for the heir or the administrator/executor (in particular letters of probate)?**

In case of joint administration, the legal owners of the estate do not require a grant of probate (or the like) to prove that they have the right to manage the estate of the deceased. The estate inventory (bouppteckning) will serve as such proof, should the need arise to have the competence of the administrators confirmed. Under Chapter 19, sections 2 and 3 of the Inheritance Code, the estate inventory must contain information on the identity of the legal owners of the estate (surviving spouse, issue and universal legatees of the deceased).

Where an official estate administrator has been appointed, the decision of the District Court will serve as proof of the administrator's authority.

In case of administration carried out by the executor of a will, the relevant provision of the will is sufficient to prove the executor's authority.

**II. Which is the content, the consequences and especially the probatory force of such a certificate? Is the certificate valid only in your country or is it meant to be valid also abroad?**

Whatever form of administration applies, the administrator or administrators are competent to take all measures required for the settlement of the estate (Chapter 18, section 1 of the Inheritance Code [joint administration], Chapter 19, section 11 [official estate administrator] and Chapter 19, section 20 [executor of a will]). Needless to say, the presentation by the administrator or administrators of a document of the kind referred to in M.I above has the effect that those contracting with the estate may rest assured that the contract will not be contested on grounds of lack of authority on the part of the administrators. There is nothing to prevent the applicability of such documents in other jurisdictions, though obviously the domestic rules in other jurisdictions may require that additional formalities be complied with.

**III. Which authority makes the certificate? Is it competent for foreigners as well as for nationals? Is it competent also for property situated abroad?**

The origin of the documents proving the authority of an official estate administrator (the decision of the District Court to appoint the administrator in question) and that of an executor of a will (the relevant provision of the will) is self-evident and need not be commented upon.

The estate inventory is drawn up by those responsible for the administration of the estate. It must be registered by a competent Tax Authority (skattemyndighet). Registration shall be denied if the provisions of the Inheritance Code have not been complied with (Chapter 20, section 9 of the Inheritance Code).

There is no territorial limit on the documents bestowing authority on the administrator or administrators of the estate.

## O. Reform

### I. Are there any plans to reform the law of inheritance in your state?

A government committee, the Inheritance Code Commission, published a report in 1998 (Swedish Government Official Reports [SOU] 1998:110, ISBN 91-38-20991-8, ISSN 0375-250X). The report contains certain proposals concerning, inter alia, the inheritance rights of a surviving spouse and the competence of an official estate administrator. No legislation has yet been introduced on the basis of the findings of the Commission. If indeed introduced, such legislation would not entail any significant reform of Swedish Inheritance Law. (The proposals of the Commission are enclosed, see Appendix J.)

### II. What major reforms have been introduced in the field of inheritance law over the last years?

#### 1988

The reform concerned the inheritance rights of a surviving spouse and had the following implications. Where the deceased is survived by a spouse and children of both spouses, only the spouse shall take as heir. This means that, normally, the surviving spouse will receive 50 per cent of the combined balance of the spouses' marital property as a result of the property division to be carried out under the rules of the Marriage Code and the remaining 50 per cent as inheritance. If, however, the deceased leaves any direct heir who is not also the direct heir of the surviving spouse, the spouse's entitlement to the estate shall only include the inheritance share of such an heir if that heir has renounced his right. At the death of the surviving spouse, half of the property left by that spouse goes to the joint children or their issue or anyone else who then has the best right to take as heir from the first-deceased spouse.

#### 1994

The reform concerned registered partnerships. If a homosexual couple have entered into a registered partnership under the Registered Partnership Act (lagen om registrerat partnerskap, SFS 1994:1117), they shall be looked upon as spouses for inter alia inheritance purposes. Thus, registered partners take as heirs in the same way as spouses and have the same rights as spouses in connection with a property division under the Marriage Code.