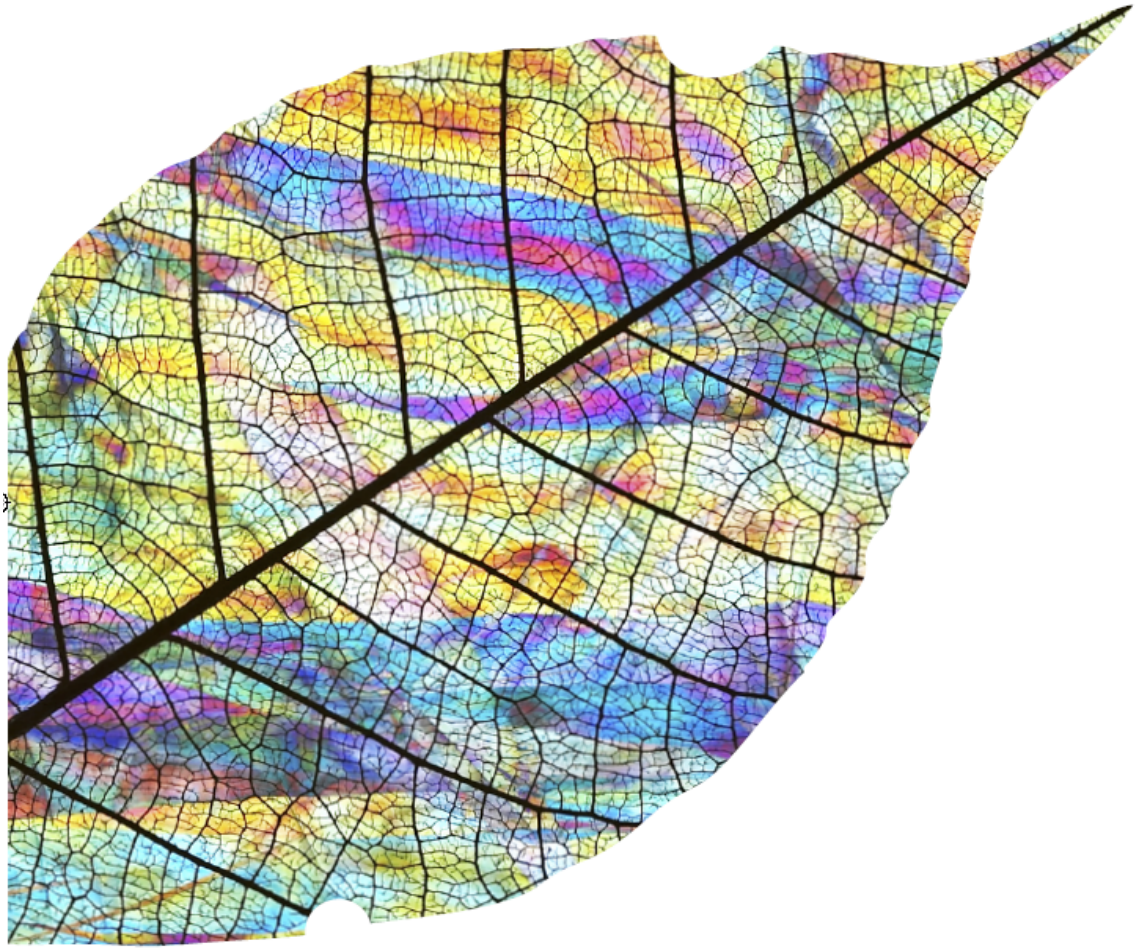
World Universities Comparative Law Project
Legal rating of Sweden

carried out by students at the University of Stockholm

A production of the Allen & Overy Global Law Intelligence Unit



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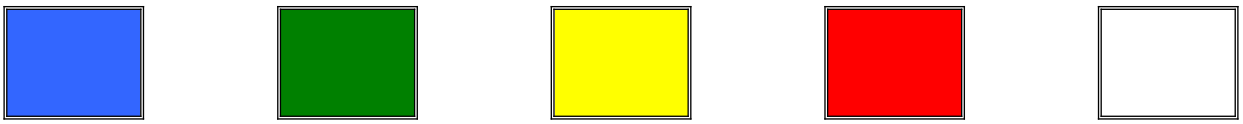

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World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Sweden was carried out by students at the University of Stockholm.

The members of the Faculty of Law at the University of Stockholm who assisted the students were:

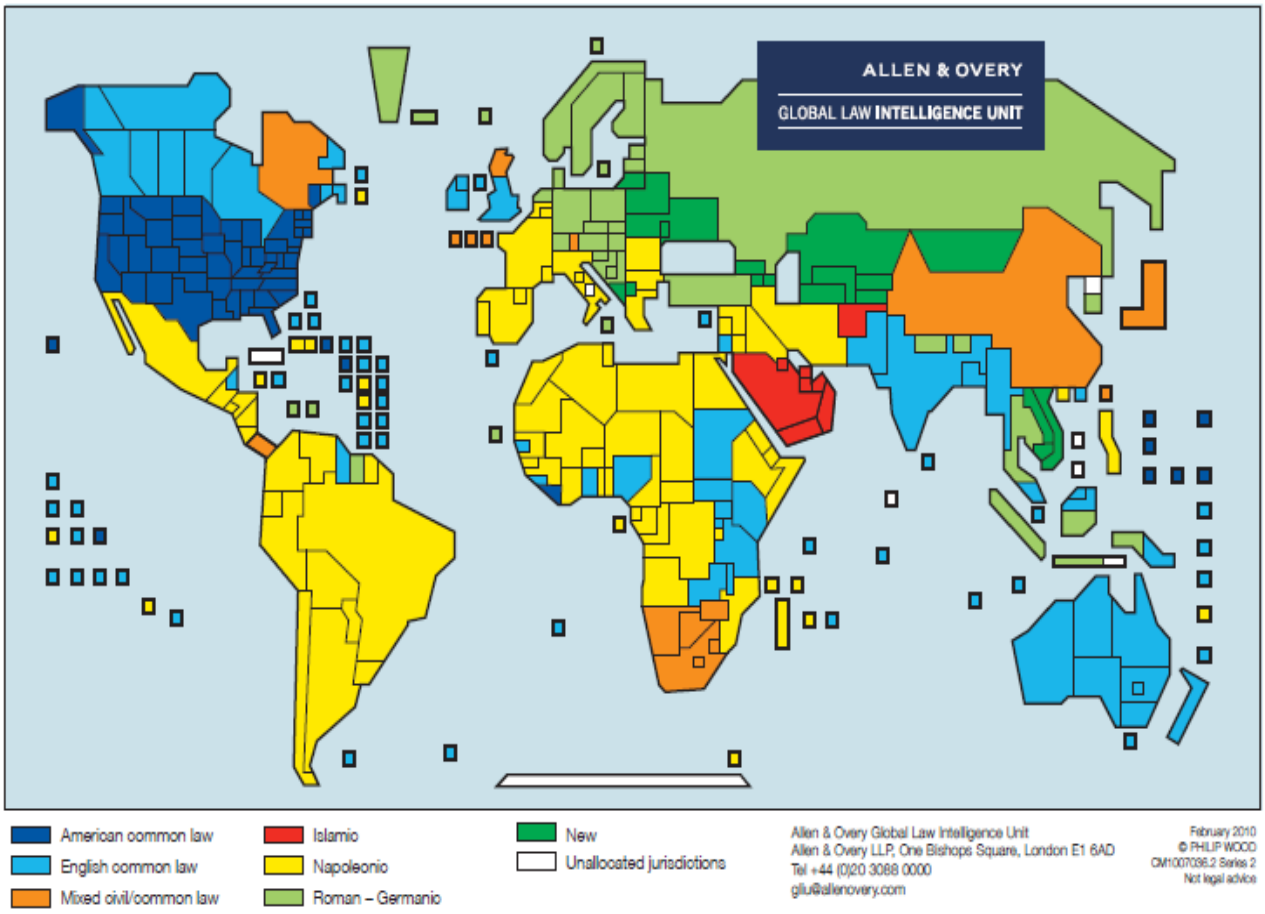
Professor Lars Gorton

Professor Göran Millqvist

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

The Scandinavian law group to which Swedish law belongs, forms part of the continental law family as far as private law is concerned. However, Swedish law has no civil code like in French law or German Law but legislation is more specific and related to particular subjects, such as contract law, sale´s law, the law related to promissory notes etc. Sometimes Swedish law is characterized as a mixture of continental law and common law, but Swedish legislation is more general than English. There was up to the 1960´s much Nordic cooperation within private law. Property law, the law related to real estate, bankruptcy law, company law and administrative law have developed on a more internal Swedish basis but these areas are today also influenced to some, but generally rather limited, extent by civil law and/or common law.

There is a development following the legislative work carried out in the European Union, and some legal areas covered by international conventions, such as the International Sale´s Convention (CISG). This means that Swedish law in certain areas is much influenced by other factors than those stemming from its "own" legal culture. Swedish courts in a number of instances have also appreciated and taken into consideration a European/international legal development, e.g. the Unidroit Contract Principles of International Commercial Contracts (PICC), Principles of European Law (PECL) and the DCFR (Draft European Frame of Reference), not by applying the principles directly but by considering them when determining the interpretation of Swedish law.

May 2014

Lars Gorton
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Description of the legal rating method

Introduction

This paper assesses aspects of the law in Sweden with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

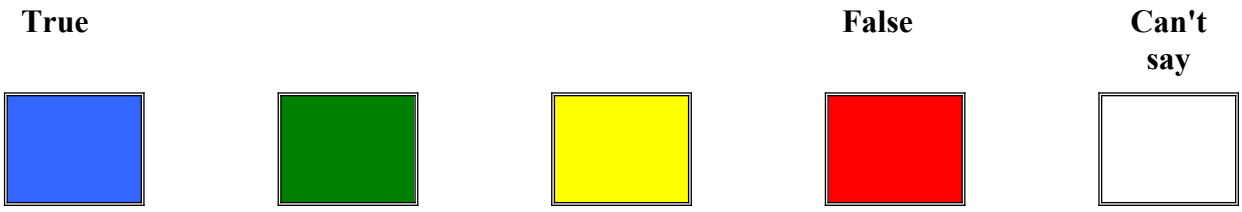
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at Stockholm University. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of, the University of Stockholm, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Sweden. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Sweden, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True			False	Can't say
X				

Comment: The main insolvency law in Sweden, the Bankruptcy Act (konkurslagen, 1987:672), allows set-offs on the insolvency of a debtor if the debt incurred before the court declared the debtor to be bankrupt. For set-off in insolvency to be allowed, both the general set-off requirements, which apply regardless of insolvency, and the special requirements, which apply only in the case of insolvency, must be considered. The general requirements for set-offs are that the debts must be measurable to each other (a set off can be made due for payment with respect to another claim due for payment but not to a claim for delivery of goods), the parties must be the same (the creditor for one of the debts must be the debtor for the other) and the nature of the main debt must not rule out set-off (you can not set off certain social claims such as child support). The counter claim must also be valid (enforceable) and due to payment. The special requirements, which apply only on the insolvency of a creditor, are that the counter claim no longer need to be due to payment in order to be used for set-off against an insolvent debtor's main claim but on the other hand one can not use a debt as counter claim if received from a third party later then three month before the court declared

the debtor to be bankrupt. The insolvency set-off rules in Sweden are considered to be quite favourable to a creditor with a counter claim.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Sweden, the law offers a security interest which is highly protective of the secured creditor.

True			False	Can't say
	X			

Comment: Swedish law offers security interests that are protective of individualised items for a secured creditor (such as pledge of individual items). It is also possible to have security over the assets of a company. The security model for such a security is called "företagshypotek"/chattel mortgage and gives the creditor priority over most of the company's property at the time of default. However, the priority does not include cash, bank assets, shares or other financial instruments intended for trading (e.g. registered on a trading list) or property that can be used as security interest by registration in a public register (for example ships and aircraft). The "företagshypotek" gives the creditor priority over the property included but does not protect the creditor from the risk that the debtor, before the default, sells most of the company's property or uses them for sale and lease-back transactions.

Swedish law also offers a model with secured bonds that are highly protective of the creditor but it requires a stable security mass (e.g. real estate, land) that several companies, except the largest ones, may not be able to provide.

For individualised items of chattel type Swedish law offers a highly protective security interest with respect to sale and lease-back of certain property (security transfer), "Trade in Chattels, which the Buyer Leaves in the Seller‘s Care Act”, (lösöreskköplagen 1845:50). This security interest can be described as a registration of the owner in a public registry, which gives the owner priority.

Regarding the enforcement of security interests in Sweden, public authorities will often have to assist. Private enforcement is generally not allowed over real property but can be agreed upon for personal property.

Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Sweden has a universal trust for all assets.

True			False	Can't say
		X		

Comment: In Swedish law there is no universal trust for assets. The closest thing Sweden has is a "foundation", "stiftelse" in Swedish, governed by the Foundation Act (stiftelselagen, 1994:1220). A foundation in Sweden is a legal person of its own and the similarity to trust is that the creator of the foundation may from the outset (but not later) decide on the use of the property of the foundation (for example that certain amounts shall be paid out for specific purposes). Since a foundation in Swedish law is self-owned (not owned by any outside person), the possessions in the foundation are protected from anyone else’s insolvency. A Swedish foundation resembles a common law trust in a number of respects, but the differences are quite substantial and it is worth pointing out that the foundations in Sweden are mainly used for different kinds of charity and sometimes also for advanced tax planning. Foundations may also be used to maintain over time ownership and decision power in companies.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market

abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Sweden the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True			False	Can't say
			X	

Comment: The Swedish Company Act (aktiebolagslagen, 2005:551) sets out certain rules regarding the duty of the directors to act in case there is a risk of insolvency of the company. In short, the board members of a company must act at an early stage of risk of insolvency to avoid personal liability. If there is reason to believe that the actual share capital of the company is less then half of the registered share capital, the board must make sure that a "balance sheet for liquidation purposes" (in Sw. kontrollbalansräkning) is made up and that a shareholders meeting is called. If these particular balance sheets show that the actual share capital is in fact less then half of the registered share capital, the shareholders meeting must either vote to liquidate the company or take action to restore the share capital before a second shareholders meeting shall be held within eight months from the first one. If the control balance sheets show that the share capital is not restored fully, the company must be liquidated. The board members may avoid personal liability if they act in time and make sure that the particular balance sheets are made up, a first shareholders meeting is held and that the company applies for liquidation if needed. Otherwise the board members as well as the president of the company who knowingly fail to act, may be personally liable for all the company's debts generated from the time of their failure to act. It is worth mentioning here even a shareholder with knowledge that the company is obligated to seek liquidation and who still continues to take part in discussions to keep the company going may be personally liable along with the board members. Furthermore board members may be personally liable for tax debts of the company.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

Q5 Sweden permits a company to grant financial assistance for the purchase of its own shares.

True			False	Can't say
			X	

Comment: Sweden has relatively strict financial assistance rules. In the Swedish Companies Act there is a prohibition that states that companies are not allowed to give "loans" in advance, lend money or secure or guarantee "loans" to "others that have" the intention to obtain shares in the company. In "practice", that means that a company should not in any way provide funds for acquisitions of its own shares. The same rules apply for "the" acquisition of shares in another company within the same group. The prohibition is intended to protect the equity of the company and its creditors.

Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Sweden is open and has few restrictions.

True			False	Can't say
			X	

Comment: Following EU regulation mandatory bids apply when anyone, alone or together with a related party, becomes the owner of 30% or more of the votes in a listed company. The bidder must immediately disclose the size of his ”shareholdings” in the company and within four weeks make a public mandatory bid for the remaining shares in the company. The purpose of the regulation regarding public takeover is to protect minority shareholders in listed companies and enable a healthy restructuring in industry. This is regulated both by the provisions contained in the Stock Market (Takeover Bids) Act (lagen om offentliga uppköpserbjudande på aktiemarknaden, 2006:451) and through self-regulation by standards issued by the Swedish Industry and Commerce Stock Exchange Committee, the Swedish Securities Dealers Association, The NASDAQ OMX Group and The Swedish Securities Council.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Sweden, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True			False	Can't say
	X			

Comment:

Freedom of negotiation and contract is generally upheld in B2B relations. The Swedish contract act is based on an offer being binding on the offeror and the acceptance being binding on the offeree. Together offer and acceptance make up for a binding contract. Oral agreements are binding, and both parties may agree that a contract shall be binding only upon the signing of it or upon other agreed events occurring. The label of an agreement is of some, but not of vital importance to evaluate binding legal force. A method of interpretation is applied where the label is considered less important than the text of the agreement and the conduct of the parties. If the intention is not to agree on binding rules to the intended agreement until both parties have signed the final documents, there should be expression for this by wording that no rights or obligation shall arise until signing. When the intention is clear that no binding agreement with rights and obligation between the parties occur before any written contract is signed, so called agreed written form, there is no valid contract. The Swedish contracts act chapter one is non-mandatory, meaning that parties can agree on certain negotiation, e.g. written form is a prerequisite for a valid contract. Case law suggest that courts may be obliged to accept a “subject to contract clause” if it appears that a binding contract was intended. Also, in Swedish law pre-contractual liability is not regulated in law, but has arisen in case law. A duty to act in good faith is generally recognized in Swedish law.

Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Sweden, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True			False	Can't say
				X

Comment: Freedom of contract is a fundamental principle and the right to determine the content of the contract is up to contracting parties. If the agreement contains a clear termination clause for termination of the contract, provided that certain events occur, even though trivial, a party is generally entitled to rely on such right to terminate the agreement. If a party does not fulfil what "he or she promised" there is a breach of contract (unless there is an accepted exemption clause in the contract). Courts, however, seem to be cautious when allowing trivial events to terminate a contract.

Exclusion clauses

Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In Sweden, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True			False	Can't say
	X			

Comment: Exclusion of liability in contracts between sophisticated companies is usually upheld. In Sweden there is freedom of contract and party autonomy, which is a general legal principle and means that you are required to meet your contractual obligations. There are exceptions, such as unfairness, coercion, deceit, etc. There is an uncodified principle to the effect that a clause in which a party disclaims liability for wilful misconduct or gross negligence is unfair. There is also a "general clause", 36 § in the Contracts Act (avtalslagen 1915:218), which may be applied to limit the effect of an exclusion clause, but it is used cautiously in B2B relations.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Swedish courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Swedish public policy and mandatory statutes.

True			False	Can't say
X				

Comment: Following EU rules an in this context in particular the Rome I Regulation No. 593/ 2008 in art. 3 sets out that at least in B2B relations parties are free to agree on applicable law. This regulation is binding upon Sweden. In regard of sales contracts there is also The Hague Convention. The Hague Convention has been made into Swedish law through the particular Act on the law applicable to international sales of goods (lagen om tillämplig lag beträffande internationella köp av lösa saker, 1964:528).

The parties' choice of law is not limited to laws relating to the parties or the contract. The Convention imposes no requirement that the chosen law shall have a natural connection to the parties' legal relationship. It is common that the parties choose the governing law where there is a connection or where any of them are domiciled in. The reasons the party may have for its choice of law is not relevant, the convention imposes no requirement that the parties shall state the reasons for its choice of law. They cannot waive the conflict of law in the Swedish mandatory rules.

A choice of a foreign law in an otherwise national agreement has the effects of substantive law. This reference permits the parties to waive mandatory rules. With this choice of foreign law, the parties do not achieve more than what was already possible under the agreed law

Foreign jurisdiction clauses

Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Swedish courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True			False	Can't say
X				

Comment: In EU law, jurisdiction, recognition and enforcement of judgments in civil and commercial matters are regulated in the Brussels I regulation. If a court in a country is designated as authorized by the regulation, the country has to offer a court. As for Sweden Stockholm's District Court has been identified as a reserve forum. Stockholm's District Court is applicable within the area of general private law if the parties have the right of disposal over the dispute. The prorogation agreement cannot be contrary to an enactment, the subject matter may not be based in a public interest and the subject matter may not be covered by a states exclusive competence.

Arbitration recognition

Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Sweden, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Swedish courts.

True			False	Can't say
X				

Comment: When parties choose to resolve their dispute through arbitration, the involvement of courts is restricted. The arbitration agreement excludes the jurisdiction of a court in favour of a foreign arbitral tribunal. Swedish courts may not rule on a question that is subject to an arbitration agreement but if the

foreign arbitral tribunal considers an issue that according to Swedish law, may not be settled by arbitrators, the ruling is considered invalid.

Class actions

Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In Sweden, class actions where the class is bound if they do not opt out are generally not allowed.

True			False	Can't say
X				

Comment: Swedish procedural law is based on opting in instead of an opt out regime. A plaintiff may bring an action to potential group members without a power of attorney therefore; the opt-in assignment is committed to the group. The courts may not force potential members to opt in, and they will not need to participate in the process or be responsible for any legal costs which will affect the group members. The so-called opt-in approach states how the final group is to be determined. It is up to each member to decide whether he or she wants to be covered by the class action or not. Only those who report to the court that they wish to become members of the group will be bound.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Sweden nationals and local corporations are entitled to own land absolutely.

True			False	Can't say
X				

Comment: Legal persons, like corporations, can own land in Sweden. It does not matter if the corporation is Swedish or of any other nationality, the same right to own land applies. The right to own is one of the basic principles of law in Sweden. It is worth mentioning that the fact that one owns a piece of land does not necessarily mean that one may do whatever one wants on the land. To build on the land necessitates a building permit, to run an industry you may require a particular concession permit and so on. There are environmental rules as well to take in to consideration.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Sweden is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True			False	Can't say
X				

Comment: There is a public registry administered by the Swedish public agency "Lantmäteriet" that registers most things on land and real estate in Sweden such as ownership, mortgages, leases etc. The law that regulates this is the Land Code (jordabalken, 1970:994). The registry is very accurate and to make sure the system can be trusted, the Swedish government is liable for any failure due to wrongful registration and will compensate anyone who has acted on incorrect registered information.

Land development restrictions

Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Sweden, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True			False	Can't say
		X		

Comment: The answer to this question may differ in various geographical areas. In highly populated areas, almost all land is part of a long-term development plan that states the purposes for the use of land. The land is for example divided in areas to be used for living, offices, industries, schools, recreation, sports, nature and so on. If one wants to change the use of one area from e.g. living to industry, one has to go through a very complex process that often will require the municipality (which is in charge of the development plans) to take political decisions and let the inhabitants have a say. If one only wants to change from one type of industry to another in an area set for industries it is much easier and the hardest part is to get a building permission from the municipality.

Outside of highly populated areas much of the land is either not part of any development plan at all, in which case it is much easier to get a permission for the development, and also only part of an overview plan can be changed much easier then a detail plan in the highly populated areas.

Although this survey is supposed to be about black letter law, it is worth mentioning that Sweden is a country where large areas and many municipalities have a rather low population and in general it is considered much easier to get permission for development in one of those municipalities then in a highly populated municipality.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Sweden, there are few controls on hiring and firing employees or on the terms of employment.

True			False	Can't say
			X	

Comment: Swedish labour law is regulated both by law and collective labour agreements. It can be divided into five parts: collective labour law, rules on employee involvement, the employment relationship right, health and safety law and labour market regulation. Characteristic for Swedish conditions is that union membership is high which gives great influence, using the collective labour agreements as a regulatory instrument, e.g. Wages are not entirely fixed, but will be negotiated between employee and employer's unions. In Sweden employee protecting rules are relatively strong.

Environmental restrictions

Q18 In Sweden the rules governing the environment and liability for clean-up are very light and relaxed.

True			False	Can't say
			X	

Comment: The Swedish Environmental Code (miljöbalken, 1998:808) is based on the concept of sustainable development and requires the protection of the environment and health in each case. Assessing the benefit of protective measures should be weighed against the costs. The Environmental Code applies to both individuals and businesses.

Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

Foreign direct investment

Q19 In Sweden foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True			False	Can't say
X				

Comment: According to the Swedish Constitution (regeringsformen, 2010:1408), foreigners have the same basic rights, including the right to own property, as Swedish citizens unless express law states otherwise. Since there is no law in Sweden prohibiting foreign ownership of companies outside protected industries, the quote above is fully correct. Regarding this subject it is also worth pointing out that EU law often gives a wider field of rights to the benefit of citizens from other EU member states then to foreigners from outside the union.

Exchange controls

Q20 In Sweden, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True			False	Can't say
X				

Comment: There is a Swedish law, the Currency Act (valuta- och kreditregleringslagen, 1992:1602), stating that the Swedish government only may enact exchange control legislation in times of war or threats of war. The law has not been used so far and since the late 1980 no other exchange control laws exist in Sweden. Since Sweden is a member of the European Union, we also have to respect the union's fundamental right to free movement of capital, which makes it hard or almost impossible to have exchange controls in relation to other member states.

Alien ownership of land

Q21 In Sweden, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True			False	Can't say
X				

Comment: As of today, Sweden has no regulation prohibiting foreign ownership or lease of land. Sweden did have various kinds of laws in this area but after Sweden had joined the European Union the laws where suspended in the late 1990s. Both companies based in or controlled by other member states of the European Union as well as from countries outside the union have the same rights as Swedish based or controlled companies to own or lease land without a permit in Sweden.

Application of the law

Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Sweden, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True			False	Can't say
X				

Comment: Swedish courts are known for their high degree of impartiality and professionalism. It is of course very hard to determine if big businesses and foreign interests really get the same treatment as small businesses and local interests here but we would not feel too worried being the owners of a big foreign company running a case in Swedish courts. It is possible however that the lower courts could be a bit influenced by "the deep-pocket syndrome", especially in a case about compensatory damages.

Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Sweden are not considered materially greater than in other comparable countries.

True			False	Can't say
	X			

Comment: Perhaps the costs and delays in the Swedish higher courts are not materially greater than in other developed countries but that does not mean the Swedish system is fast. If a judgement is appealed, it may often take several years from the lower courts to the highest and cost a great deal of money. In our personal opinions, the high costs are not the main issue but the time. It often takes up to five years before the high courts finally either decide to try or not try the appealed case. At this time, it is not uncommon that one of the parties has gone bankrupt just because of the slow system.

Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	can't say
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

True			False	Can't say
X				

Profiles of the contributing students

The survey was carried out by the following students:

Niklas Forslund is a fourth year student in the master law program at Stockholm university. During his last year at the university, Niklas has specialised in the areas of banking, financial markets and insolvency law participating in a special program led by professor Lars Gorton and professor Göran Millqvist at the university of Stockholm and the Stockholm Centre of Commercial Law. The current project is a part of Niklas final thesis concerning proposed changes in the Swedish insolvency proceedings and their economic consequences. Niklas can be reached at niklas_forslund@hotmail.com.

Sofie De Besche is also a forth year student at the master law program at Stockholm university. Sofie specialises in financial markets law and her final thesis is about investment advice concerning endowment insurance. Besides from being a successful law student, Sofie is also a professional football player in the highest Swedish division. Sofie too is participating in the program lead by professor Gorton and professor Millqvist. Sofie can be reached at sofie_debesche@hotmail.com.

Project directors

Lars Gorton is a professor emeritus in banking law at the university of Lund but currently active at Stockholm Centre for Commercial law. Lars is considered to be one of the leading experts in banking law in Sweden and he has over the years taught classes in several of the highest ranked universities in Sweden. Lars is also a distinguished writer and several of his books are used as course literature at the Swedish universities today. Lars can be reached at lars.gorton@juridicum.su.se.

Göran Millqvist is a professor in civil law at Stockholm University and active at the Stockholm Centre of Commercial Law. Görans area of expertise is broad but he is best known for his work in the area of property law where he is regarded as one of the leading Swedish experts. Besides from being active at the university, Göran is frequently asked to give expert statements in advanced lawsuits. Göran can be reached at goran.millqvist@juridicum.su.se.

Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenovery.com or Melissa Hunt, melissa.hunt@allenovery.com.

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Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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