

Mediation Country Report

Sweden

by
Peter Adamsson

1) Definitions

What are the definitions for mediation and conciliation in the legal framework of your jurisdiction?

Mediation – There is no statutory definition of mediation in Sweden. The Grotius MARC 2000 defines mediation in Sweden as “any intervention from a third party to settle with the specification that the third party has powers to enforce the decision.”

There is no acknowledgement of distinction between mediation and conciliation in Sweden.

2) Legal Framework

- *What are the Statutes, procedural rules and case law that demonstrate how intertwined mediation is with the legal system in your jurisdiction?*

- *What is the protections provided to confidentiality of mediation proceedings under the law?*

- *Are the commercial contracts and mediation settlement agreements enforceable in your jurisdiction?*

- *Are the parties bound by terms of contracts that require mediation and is a settlement agreement they may reach enforceable?*

1. Sweden does not have any statutory law on conciliation or mediation and conciliation is conducted on *ad hoc* basis.

2. The Swedish Code of Judicial Procedure contains one single provision relating to the conduct of conciliation (mediation) which states that if, considering the nature of the case, it is more appropriate that special mediation occur, the court can direct the parties to appear at a mediation session before a mediator appointed by the court (Chapter 42, Section 17 Par 2)

3. Existing rules on conciliation include the Rules of the Mediation Institute of the Stockholm Chamber of Commerce (SCC Mediation Rules).

Confidentiality requires an agreement to that effect as between the parties. Article 3 of the SCC Mediation Rules contains a duty for the conciliator, the SCC Mediation Institute and the parties to respect the confidentiality of the mediation. In addition, article 3 stipulates that the need for appropriate confidentiality undertakings should be taken into consideration.

An undertaking of confidentiality does not entail that a conciliator is precluded from testifying in court as a witness. However, according to the Swedish Code of Judicial Procedure (Chapter 36, sections 5(2)), members of the Swedish Bar Association, who are obliged to observe confidentiality under the Code of Conduct of Members of the Swedish Bar Association, may not testify concerning matters entrusted to, or discovered by, them in their professional capacity unless such disclosure is mandatory or the person for whose benefit the duty of secrecy is imposed consents thereto.

A **settlement agreement** is no different from any other commercial agreement. To be enforced, a settlement agreement would have to be confirmed by court or by an arbitral tribunal in the form of a final award. Swedish Procedural Code, Chapter 17, Section 6: “If the parties agree on a settlement of the dispute, the court, upon request of both parties, shall enter a judgment confirming the settlement”. Incorporation in a judgment or arbitral award is necessary for enforcement.

Swedish Arbitration Act, Section 27 (2): “Where the parties enter into a settlement agreement, the arbitrators may, at the request of the parties, confirm the settlement agreement in an arbitral award.”

According to Article 12 of the SCC Mediation Rules, upon reaching a settlement agreement the parties may, subject to the approval of the mediator, agree to appoint the mediator as an arbitrator and request him or her to

confirm the settlement agreement in an arbitral award.

According to Chapter 3, Section 13 of the Swedish Enforcement Code, a settlement that is confirmed by a court is enforced as a judgment that has entered into final legal force, unless otherwise ordered as a result of an action against the judgment or an action for a declaration of invalidity of the settlement agreement.

3) Mediation Schemes and Providers

- *What is the basis and the procedure for court-annexed schemes?*
- *Who are the major mediation providers in your jurisdiction?*

There are no official court-annexed commercial mediation schemes in Sweden. The Code of Judicial Procedure Chapter 42, Section 17 enables judges to attempt to settle the dispute themselves or refer it to mediation. This gives rise to a form of judicial mediation.

The primary mediation provider in Sweden is the Institute of the Stockholm Chamber of Commerce (SCC Mediation Institute).

4) Regulation of Mediators

- *What training courses and accreditations are required for to be an accredited mediator in your jurisdiction?*
- *How many training hours are required for accreditation?*

There are no training or accreditation requirements for mediators in Sweden. Mediators tend to come from a legal background, usually being judges or lawyers.

5) Uptake and Future Developments

- *What is the success rate of mediation? Please reference statistics, where available.*
- *Is there any potential future legislation, plans or court-annexed schemes? If so, please discuss in detail.*

There are no statistics available for either judicial or private mediation in Sweden.

6) Costs

What are the costs of mediation? Please assume that the duration of the procedure is one day for a dispute valued at 100.000 €.

Approximately 3000 €.

7) Mediation Advocacy Training

Training schemes and providers are outlined, including the distinction between mandatory and optional training, length of the training and percentages of lawyers who have completed the courses.

SCC Mediation Institute occasionally provides training courses for interested individuals.
Mediation Training Institute offers training courses and certification.