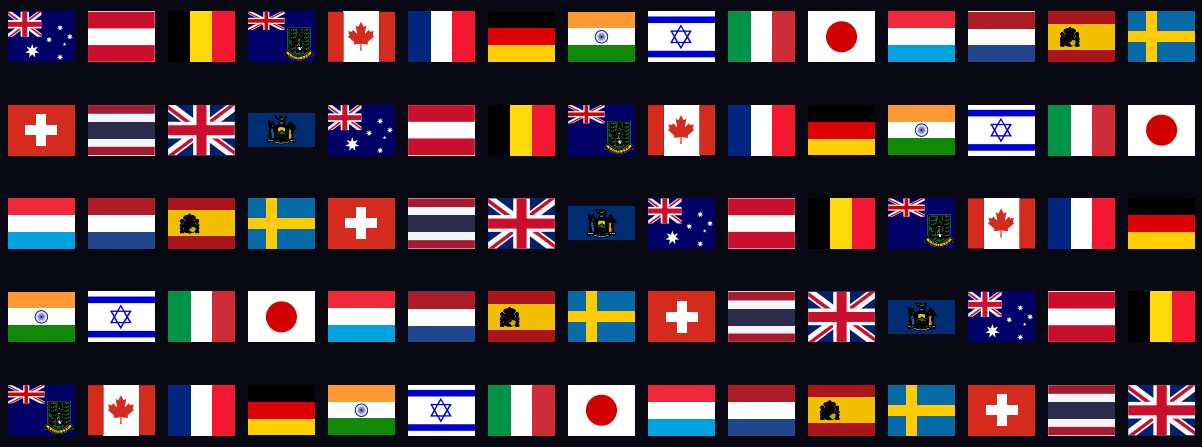
LITIGATION FUNDING

Sweden



LEXOLOGY
Getting The Deal Through

Consulting editor
Woodsford

Litigation Funding

Consulting editors

Jonathan Barnes, Steven Friel

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Quick reference guide enabling side-by-side comparison of local insights, including regulation and regulators; funders' rights (choice of counsel, participation in proceedings, veto of settlement and funding termination rights); conditional and contingency fee agreements; judgment, appeal and enforcement; collective actions; costs and insurance; disclosure and privilege; disputes between litigants and funders; and recent trends.

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REGULATION

Overview

Is third-party litigation funding permitted? Is it commonly used?

Third-party funding (TPF) is not subject to regulation under Swedish law. Thus, the use of TPF is permitted.

Although it is known that arbitral proceedings in Sweden from time to time have been funded by third parties, TPF is still considered a relatively new phenomenon in Sweden. Considering the confidential nature of arbitration, it is difficult to comment on how frequently TPF is used. However, the increase in the number of cases, internationally, that are funded by a third party, indicates that this is also the case in Sweden (SCC Spotlight Talk: Pros and Cons of Third-Party Funding). The number and presence of international as well as local funders has increased on the Swedish market, indicating that the number of funded disputes has increased as well. Considering that Stockholm is one of the world's leading venues for international arbitration, the potential market for TPF in Sweden is large.

Law stated - 28 September 2022

Restrictions on funding fees

Are there limits on the fees and interest funders can charge?

There are no specific rules under Swedish law that impose restrictions on the fees and interest funders can charge for their services.

Law stated - 28 September 2022

Specific rules for litigation funding

Are there any specific legislative or regulatory provisions applicable to third-party litigation funding?

TPF is not subject to any specific legislative or regulatory provisions.

With respect to disclosure of a funder's involvement in a dispute, the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) adopted a policy in 2019 addressing disclosure of third parties with an interest in the outcome of the dispute. The policy aims to encourage a party to disclose the identity of any funder in its first written submission. It should, however, be noted that the policy is not obligatory. Consequently, the parties are not formally obliged to disclose the existence of funders.

Law stated - 28 September 2022

Legal advice

Do specific professional or ethical rules apply to lawyers advising clients in relation to third-party litigation funding?

There are no professional or ethical rules in Sweden governing the duties of legal counsel (in Swedish advokat – namely, lawyers registered with the Swedish Bar Association) specifically in regard to TPF.

Nonetheless, if a third-party funding arrangement involves a Swedish advocate, the Code of Professional Conduct for Members of the Swedish Bar Association (CPC) must be considered, as it governs the financial interests of advocates

in disputes in which they act as counsel. Section 4.2.1 of the CPC prohibits advocates from working for a contingency fee. There are, however, a few narrow exceptions to this general rule, but a third-party funding arrangement is typically not attributable to any of them, unless it is a group action. Consequently, funders who engage Swedish counsel must accept that advocates utilise traditional fee models.

Notably, it is advisable for an advocate to exercise caution when agreeing to an obligation to disclose information to the funder. If the obligation is too extensive, the advocate runs a risk of ending up in a conflict of interest in relation to his or her client. It is conceivable, in certain situations, that the disclosure of information to the funder is not necessarily in the client's best interest. Therefore, an advocate should insist that he or she is given a right to continuously test, in each individual situation, whether a disclosure is compatible with his or her fiduciary duty towards the client.

Law stated - 28 September 2022

Regulators

Do any public bodies have any particular interest in or oversight over third-party litigation funding?

No public bodies have been assigned responsibility to monitor or supervise TPF. Further, TPF does not qualify as a lending or insurance business and is therefore not subject to the regulations and supervision applicable to banks and insurance companies.

Law stated - 28 September 2022

FUNDERS' RIGHTS

Choice of counsel

May third-party funders insist on their choice of counsel?

The funder is not a party to the dispute and therefore has no rights or obligations in the proceedings. The procedural rights and obligations belong to the party in the proceedings.

One of the principal rules of legal professional conduct is independence when acting on behalf of the client. It happens, however, that funders require some level of influence as a precondition for financing the dispute. For understandable reasons, it is of vital importance for the funder that the advocate is sufficiently qualified for the dispute in question. On a contractual basis, it is possible to include a clause in the funding agreement where the funder is given authority to appoint an advocate. It should be noted that such a contract is not procedurally valid under Swedish law and is therefore not possible to enforce. A contract granting the funder a right to appoint an advocate is nevertheless contractually binding and there is nothing preventing the parties to the funding agreement from including a liquidated damages clause in their contract, applicable if the funded party acts in a way that is not acceptable to the funder.

In a situation where the funder is being granted a contractual right to appoint an advocate, the advocate has to be independent of the funder and only accept instructions from the party to the dispute. This is necessary for the advocate to avoid a conflict of interest and to avoid, unintentionally, entering into a client-attorney relationship with the funder. It should also be noted that an advocate has an obligation to show fidelity and loyalty towards his or her client according to section 1 of the Code of Professional Conduct for Members of the Swedish Bar Association. An advocate does not have a corresponding obligation towards the funder.

Law stated - 28 September 2022

Participation in proceedings

May funders attend or participate in hearings and settlement proceedings?

A funder is not a party to the dispute and consequently has no rights or obligations in regard to the proceedings. Accordingly, a funder does not have a procedural right to attend or participate in hearings and settlement proceedings. It is, however, possible for the litigant and funder to stipulate in the funding agreement that the funder shall have the right to attend and participate in hearings and settlement proceedings. Nevertheless, the funder's attendance at a hearing before an arbitral tribunal (or a settlement discussion) will require the opposing party's approval.

If the hearing takes place in the general court, a funder has the right to attend, as proceedings in general courts are open to the public. There are, however, exceptions to this general rule, where a court may decide that the hearing shall not be made public. For example, in cases where it can be assumed that information presented or disclosed in the proceeding is covered by secrecy, the court can order that the hearing shall not be public. Settlement discussions moderated by the court (or even mediation) are very rare in commercial cases in Sweden. If the judge were to invite the parties to deliberations (in private meetings), the funder would be excluded.

Law stated - 28 September 2022

Veto of settlements

Do funders have veto rights in respect of settlements?

A funder has no 'default' veto right in regard to settlements. It is, however, common practice to include in the funding agreement a clause giving the funder a veto right in relation to settlement propositions. Such a clause is contractually valid but cannot be enforced to prevent the litigant from entering into a settlement agreement with the opposing party. A veto clause could, however, be combined with a liquidated damages clause taking aim at a situation where the funded party decides to accept or propose a settlement without the funder's consent.

Law stated - 28 September 2022

Termination of funding

In what circumstances may a funder terminate funding?

The parties to a funding agreement are at liberty to agree on grounds for termination, as well as the consequences of such a termination. Therefore, it is difficult to give a general and conclusive answer as to the circumstances in which a funder may terminate funding. However, the following are some examples of termination grounds:

- a change of circumstances significantly reducing the chance of success in the dispute;
- a change of circumstances that renders the dispute no longer commercially viable;
- a funded party's material breach of contractual obligations;
- the insolvency of the funded party; and
- the insolvency of the opposing party.

Law stated - 28 September 2022

Other permitted activities

In what other ways may funders take an active role in the litigation process? In what ways are funders required to take an active role?

A funder is not required to take an active role in the litigation process. The level of involvement on the part of the funder varies: some funders prefer to be significantly involved while others prefer to remain in the background. However, if the funding agreement prescribes that the funder has an obligation to take an active role in the proceedings, such a clause is binding between the parties.

Notably, if a funder takes a more active part in the litigation process, including assisting the funded party to instruct the advocate, this might create a conflict of interest for the law firm acting on behalf of the funded party.

Law stated - 28 September 2022

CONDITIONAL FEES AND OTHER FUNDING OPTIONS

Conditional fees

May litigation lawyers enter into conditional or contingency fee agreements?

Section 4.2.1 of the Code of Professional Conduct for Members of the Swedish Bar Association (CPC) provides that advocates are not, unless in extraordinary circumstances, allowed to work with contingency fee arrangements. Funders who engage Swedish advocates must consequently accept that Swedish advocates utilise traditional fee models.

When it comes to conditional fee arrangements, the situation is not equally clear, as the CPC (along with its commentary) does not provide a conclusive answer in this regard. According to section 4.2.2 of the CPC, an agreement where the advocate assumes a financial risk in relation to the outcome of the case does not necessarily lead to a situation where the lawyer's interest in the matter becomes disproportional or otherwise has an adverse effect on the lawyer's performance of its mandate. Conditional fee arrangements can therefore be allowed, provided that the risk and the reward are reasonably balanced.

Law stated - 28 September 2022

Other funding options

What other funding options are available to litigants?

Besides third-party funding, there are other funding options available to litigants in Sweden. However, some of these funding options are only available to natural persons. The following options are available:

- business insurance policies are widely available and commonly include coverage of litigation costs, up to a capped amount, in certain types of disputes. As a general rule, the claimant must notify the insurance company prior to the commencement of the proceeding, to be able to successfully claim compensation for the litigation costs;
- legal expense insurance (LEI) is included in all household insurance policies and covers litigation costs. The terms of LEI vary between the insurance companies offering it. LEI normally covers certain types of dispute in general court and usually excludes disputes handled by administrative courts;
- legal aid is available to natural persons whose gross income does not exceed 260,000 krona, according to section 6 of the Legal Aid Act of 1996. An application for legal aid must be submitted to the competent authority. Legal aid may not be granted if the claimant has LEI or any other similar legal protection that covers the matter;

- loan agreements, where a party obtains a loan from a creditor to fund the litigation of a claim. This type of arrangement differs from third-party funding as the debtor is obliged to repay the loan regardless of the outcome of the dispute; and
- assignment of claims, where the original creditor assigns the claim to an assignee who then becomes the holder of the claim and consequently a party to the proceedings.

Law stated - 28 September 2022

JUDGMENT, APPEAL AND ENFORCEMENT

Time frame for first-instance decisions

How long does a commercial claim usually take to reach a decision at first instance?

According to statistics from the Swedish National Courts Administration, referring to data from 2021, a claim at first instance (in 75 per cent of the submitted claims) has a processing time of 7.7 months, following the submission of the claim for a decision to the competent court. However, the data does not specifically refer to commercial claims but to civil claims in general. In our experience, the processing time for complex commercial disputes is generally much longer than seven months (and closer to one-and-a-half years).

More than half (56 per cent) of the ordinary arbitration proceedings administered under the Arbitration Rules of the Stockholm Chamber of Commerce (SCC) have a processing time of six to 12 months; and 19 per cent of ordinary SCC arbitrations have a processing time of less than six months. The majority of expedited SCC arbitration procedures have a processing time of less than three months; and 29 per cent of expedited SCC arbitrations have a processing time of three to six months. The time indications are based on information from the SCC.

Law stated - 28 September 2022

Time frame for appeals

What proportion of first-instance judgments are appealed? How long do appeals usually take?

According to statistics from the Swedish National Courts Administration, referring to data from 2021, 5 per cent of first-instance judgments in civil claims are appealed. However, the data does not specifically refer to commercial claims, but to civil claims in general.

Most civil cases under Swedish law require leave to appeal to obtain the right to get the matter tried at a higher instance. It takes two months, on average, to get a decision on leave to appeal (in 75 per cent of the requests for leave to appeal). In addition, the proceedings at second instance take 13 months, on average. The data do not specifically refer to the appeal of commercial claims, but to the appeal of civil claims in general.

An arbitral award cannot be challenged on material grounds. It is, however, possible for a party to challenge the award on procedural grounds, in accordance with sections 33 and 34 of the Swedish Arbitration Act of 1999. There are no official statistics on what proportion of arbitral awards are challenged or data that specifically refer to the processing time of challenge proceedings before the Swedish courts.

Law stated - 28 September 2022

Enforcement

What proportion of judgments require contentious enforcement proceedings? How easy are they to enforce?

There are no official statistics regarding the proportion of judgments that require contentious enforcement proceedings.

If a party fails to voluntarily comply with a domestic court judgment, the opposing party can apply for enforcement at the Swedish Enforcement Authority (SEA). An application for enforcement can be made for both monetary claims and specific performance. Following the application, the SEA will contact the other party and stipulate a period within which that party is compelled to perform what is required. If the other party fails to comply within the time set out by the SEA, the party's assets may be seized.

For judgments rendered by courts in other EU member states, Regulation (EU) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters will be applied.

To enforce a judgment rendered by a foreign court outside the European Union, there has to be an applicable treaty between Sweden and the foreign state in question. If no treaty between Sweden and the foreign state exists, the judgment cannot be enforced in Sweden, unless the parties have an exclusive jurisdiction agreement. Further, for a foreign court judgment to be enforceable, the judgment is required to involve a matter of civil law and must not be in conflict with Swedish public policy.

An arbitral award made by a tribunal seated in Sweden is considered a Swedish award and is enforceable in Sweden as of the day on which it is rendered. This is so even if none of the parties is Swedish, the underlying contract has no relation to Sweden and Swedish law does not govern the substance of the case. A Swedish award may be enforced by the SEA following the application of a party. For the SEA to be able to enforce an award, the award must be compliant with the formal requirements, namely, be in writing and signed by the arbitrators.

An award made by a tribunal with its seat outside Sweden is considered a foreign award and cannot be enforced until it has passed an exequatur procedure. For foreign arbitral awards to be enforced in Sweden, a party is required to file an application of recognition and enforcement at the Svea Court of Appeal. The applicable provisions in sections 54 and 55 of the Swedish Arbitration Act mirror the requirements in article V of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. An exception applies to International Centre for Settlement of Investment Disputes awards, for which no exequatur procedure is required.

Law stated - 28 September 2022

COLLECTIVE ACTIONS

Funding of collective actions

Are class actions or group actions permitted? May they be funded by third parties?

Under Swedish law, group actions are permitted. Group actions are regulated by the Swedish Group Proceedings Act of 2002. The Swedish Group Proceedings Act has been in force since January 2003, but has not yet been utilised to a particularly high extent. In the absence of rules that restrict third-party funding, there are no legal obstacles to using third-party funding for a group action.

Swedish advocates are not normally allowed to work with contingency fee arrangements, according to the rules set out in section 4.2.1 of the Code of Professional Conduct for Members of the Swedish Bar Association (CPC). There are, however, specific situations where it might be allowed. In the commentary to section 4.2.2 of the CPC it is stated that contingency fee arrangements are permitted in situations where an advocate is representing the interests of a collective action; however, under no circumstances may the Swedish advocate accept a quota litis. Consequently, funders who engage Swedish advocates when funding a group action are allowed to apply contingency fee arrangements as regards the remuneration of counsel.

Law stated - 28 September 2022

COSTS AND INSURANCE

Award of costs

May the courts order the unsuccessful party to pay the costs of the successful party in litigation? May the courts order the unsuccessful party to pay the litigation funding costs of the successful party?

The philosophy under Swedish law, when it comes to the issue of allocation and the contents of litigation costs, is that a winning party that has not been at fault should not suffer any loss in asserting or defending its right. Consequently, a party that wins in full is entitled to be reimbursed for its costs relating to the proceedings, according to Chapter 18, section 1 of the Swedish Code of Judicial Procedure (Code of Procedure) of 1942. An unsuccessful party, on the other hand, is liable for its own expenses as well as those of the opposing party. If a party succeeded in part, reimbursement can only be sought in relation to the specific issues, and the extent of those, on which the successful party won. There are, however, exceptions to this general rule that apply in certain situations (Chapter 18, section 3 of the Code of Procedure).

The winning party shall recover all necessary costs for conducting the litigation, including the court fees (which are relatively low and not related to the amount in dispute), fees for legal representation and costs for expert evidence. The winning party also has the right to be reimbursed for its own time spent working on the case, for example, time spent by its in-house counsel, management or other specialist functions. Such costs are calculated based on the involved employees' salaries or other remuneration. For costs to be recovered they must be deemed to have been reasonably incurred to safeguard the party's interests. The parties usually file their written cost submissions after the end of the hearing and are granted leave to provide comments within one or two weeks. The decision is finally taken by the court as a part of the judgment.

Under Swedish law, funding costs are not deemed to constitute a cost that is attributable to the preparation of the proceedings or the presentation of the case. Nor can it be said to constitute a fee for legal representation or time spent by the party. Due to the definition of recoverable costs in the national legislation, it, therefore, appears highly unlikely that a Swedish court would order a losing party to reimburse the other party's funding costs.

Regarding arbitration proceedings, section 42 of the Swedish Arbitration Act equally provides that the losing party shall compensate the prevailing party for its costs of the proceedings. The provision does not set out which types of costs are recoverable. It is, however, the general understanding that the principles outlined in the Code of Procedure apply unless the parties have agreed otherwise. Thus, the allocation and the content of legal costs are the same in a Swedish ad hoc arbitration as in domestic court litigation, provided that the parties did not agree to allocate the legal costs differently. This also means that it is highly unlikely that the losing party in a Swedish ad hoc arbitration would be ordered to reimburse the other party's funding costs.

However, the situation is somewhat different when it comes to institutional proceedings, according to the Arbitration Rules of the Stockholm Chamber of Commerce (SCC Rules). When it comes to the issue of allocation and recoverability of costs, the SCC Rules are written in a more open and indeterminate way than the Code of Procedure. Article 50 of the SCC Rules provides that 'any reasonable costs incurred' having regard to 'any relevant circumstances' are recoverable, while the Code of Procedure refers mainly to 'costs of preparation for trial and presentation of the claim'. Hence, it may not be ruled out that a successful party in an arbitration under the SCC Rules may be awarded compensation for the funding costs. However, for a funded party to be able to recover its funding costs, most likely special circumstances are required similar to those that existed in Essar Oilfields Services Ltd v Norscot Rig Management Pvt Ltd (Queen's Bench Division (Commercial Court), 15 September 2016). In this case, a claimant was awarded costs for its funding fees. The reason why the funded party was in need of funding was partly due to the opposing party's actions, which had left the funded party impecunious, which, in turn, made financing a prerequisite for the party to be able to pursue

the claim and assert its rights.

Law stated - 28 September 2022

Liability for costs

Can a third-party litigation funder be held liable for adverse costs?

Under Swedish law, a disputing party initiating arbitral proceedings is not required to have the financial resources to be able to compensate the opposing party in accordance with an adverse costs award (except regarding security for costs under the SCC Rules). This is true regardless of whether the party is funded by a third party or not. Further, the general rule is that obligations relating to adverse costs may only be directed at parties to the proceedings. A funder is not a party to the proceedings and, thus, cannot be held liable for adverse costs.

However, in its ruling at NJA 2014, p877 , the Swedish Supreme Court (Supreme Court) held shareholders of an empty 'litigation company' liable for adverse costs. The Supreme Court found that the arrangement had been set up with the intention of avoiding liability for adverse costs and circumventing the rules on reimbursement of costs as set forth in the Swedish Code of Procedure. The case concerned a situation where the claim as such had been assigned to an empty 'litigation company' that had been set up with the sole purpose of acquiring and facilitating the dispute, a situation that is clearly distinguishable from a third-party funding arrangement, where the original claim holder is the party pursuing the claim. However, it cannot be ruled out, although it seems improbable, that a funder in certain special cases may be obliged to reimburse the opposing party for its adverse costs in the event that the funded party is unable to fulfil its adverse costs order. This would in any case require subsequent proceedings, most likely in a domestic court, in which the funder is the defending party.

A funder is not subject to the authority of the arbitral tribunal because the funder is not a party to the arbitration agreement. Hence, the funder cannot be held liable by the arbitral tribunal for adverse costs in relation to a successful opposing party.

Law stated - 28 September 2022

Security for costs

May the courts order a claimant or a third party to provide security for costs? (Do courts typically order security for funded claims? How is security calculated and deposited?)

In domestic court litigation, on the request of the defendant, the court may order a claimant to provide security for the defendant's estimated adverse costs, provided that the claimant is not a national of an EEA country (see section 1 of the Act on the Obligation for Foreign Plaintiffs to Provide Security for Legal Costs of 1980). The court cannot order a third party to provide security for costs. Nonetheless, a third party is permitted to provide security on the claimant's behalf in the form of a guarantee or a deposit. If the claimant is a national of an EEA country (or a company registered in an EEA country), the court may not order a claimant to provide security for costs.

According to the recently introduced article 38 of the SCC Rules, an arbitral tribunal may, in exceptional circumstances and at the request of a party, order a claimant to provide security for costs. In determining whether to order security for costs, the tribunal shall have regard to:

- the prospects of success of the claims, counterclaims and defences;
- the claimant's ability to comply with an adverse costs award and the availability of assets for enforcement of an adverse costs award;
- whether it is appropriate in all the circumstances of the case to order one party to provide security; and

- any other relevant circumstances. Since 2017, this provision has only rarely been applied by SCC tribunals.

Usually, the tribunal will consider the claimant's access to justice argument. It must not become impossible for a claimant, who may have been financially encumbered by the dispute, to enforce its claims in arbitration proceedings. During the public hearings at the SCC in preparation for the new rule, it was noted several times that tribunals should be cautious about applying the provision and seek guidance in the Chartered Institute of Arbitrators' 2015 guidelines ' Applications for Security for Costs '.

The arbitral tribunal may, under section 38 of the Swedish Arbitration Act of 1999 as well as under article 51 of the SCC Rules, request security for its compensation, regardless of the involvement of a funder. The requested security should correspond to the estimated amount of the fees and expenses of the arbitral tribunal and the administrative fee (in institutional arbitrations). Security for costs is usually provided in the form of advance payments by the parties.

Law stated - 28 September 2022

If a claim is funded by a third party, does this influence the court's decision on security for costs?

In domestic court litigation, at the request of the defendant, the court may order a claimant to provide security for the defendant's estimated adverse costs, provided that the claimant is not a national of an EEA country (see section 1 of the Act on the Obligation for Foreign Plaintiffs to Provide Security for Legal Costs). Where the claimant is not a national of an EEA country, the fact that a claim is funded by a third party does not influence the court's decision on security for costs. This is because the existence of a third-party funding agreement is not a criterion for the court to consider when determining whether the request for security should be granted.

In arbitration proceedings, the mere existence of a third-party funding agreement is not in itself a decisive reason for granting a security request. Instead, the deciding factors will be the parties' financial situation, the availability of assets and whether or not the funder has made a commitment to cover adverse costs.

Law stated - 28 September 2022

Insurance

Is after-the-event (ATE) insurance permitted? Is ATE commonly used? Are any other types of insurance commonly used by claimants?

ATE insurance is by all means permitted in Sweden, albeit not commonly used.

Business insurance policies are widely available and commonly include coverage of litigation costs, up to a capped amount and regarding certain types of disputes. As a general rule, the claimant must give the insurance company notice prior to the commencement of the proceeding, to successfully recover the litigation costs.

Legal expense insurance (LEI) is included in all household insurance policies and covers litigation costs. The terms of LEI vary between the insurance companies offering it. LEI normally covers costs up to a capped amount in certain types of disputes in general court and usually excludes disputes handled by administrative courts.

Law stated - 28 September 2022

DISCLOSURE AND PRIVILEGE

Disclosure of funding

Must a litigant disclose a litigation funding agreement to the opposing party or to the court? Can the opponent or the court compel disclosure of a funding agreement?

A litigant has no general obligation to disclose the existence of a litigation funding agreement to the opposing party or to the court, as there are no such rules relating to litigation proceedings. Notably, in the course of the enforcement proceedings in Kazakhstan v Ascom Group SA before the Svea Court of Appeal (The Republic of Kazakhstan v Ascom Group SA and Others , Svea Court of Appeal, Case No. ÖÄ 7709-19, Decision on Production of Documents, 18 March 2020), a party requested that the opposing party, who had received funding from a third-party funder, be ordered to produce the funding agreement. The Svea Court of Appeal denied the request and did not provide any reasoning for its decision. A reasonable inference to be drawn from the decision is that, other than in exceptional circumstances (such as where the funding agreement would be deemed to be of importance as evidence concerning a disputed issue relating to the subject matter of the dispute), neither the opposing party nor the court can compel the funded party to disclose a funding agreement. It can however be strategic, in some cases, to disclose the existence of funding to avoid issues relating to conflict of interest.

With regard to arbitral proceedings, on 11 September 2019, the Stockholm Chamber of Commerce adopted a policy for the disclosure of third parties with an interest in the outcome of the dispute. The policy aims to encourage a party to disclose the identity of any funder in its first written submission to the tribunal. However, the policy is not obligatory. Consequently, the parties are not formally obliged to disclose the existence of funders.

Law stated - 28 September 2022

Privileged communications

Are communications between litigants or their lawyers and funders protected by privilege?

Communications obtained by a Swedish advocate in his or her professional capacity are protected by legal professional privilege. Swedish advocates are also required to maintain confidentiality according to the Code of Professional Conduct for Members of the Swedish Bar Association. Information provided by a client to counsel is consequently safe from having to be disclosed. Advocates cannot be obliged to testify in a national court or in front of an arbitral tribunal in regard to information obtained in their professional capacity.

There is no confidentiality provision or privilege protecting communications between a funded party and the funder. The funder and the funded party may, however, enter into a non-disclosure agreement to protect their exchange of information. To better protect sensitive information shared between the party and the funder, it may be preferable if such communication solely goes through the funded party's advocate.

Law stated - 28 September 2022

DISPUTES AND OTHER ISSUES

Disputes with funders

Have there been any reported disputes between litigants and their funders?

To our knowledge, there have been no reports of disputes between litigants and their funders.

Law stated - 28 September 2022

Other issues

Are there any other issues relating to the law or practice of litigation funding that practitioners should be aware of?

As there is no legislation governing the use of funding and little to no case law, the funding agreement is of central importance. Swedish law takes a liberal approach to contracts. Accordingly, practitioners should draw up the funding agreement making sure that the contract thoroughly regulates the parties' respective obligations and rights.

Law stated - 28 September 2022

UPDATE AND TRENDS

Current developments

Are there any other current developments or emerging trends that should be noted?

Until as late as 2018, it was noted that no domestic market for third-party funding existed in Sweden (Josefsson/ Neway Herrman, 'Extern finansiering av tvister och riskavtal – en möjlighet att stärka Sverige som säte för internationella skiljeförfaranden?' ('External Financing of Disputes and Risk Agreements – A Possibility to Strengthen Sweden as a Seat for International Arbitration?'), Ny Juridik 2018/1, 85–94 (86)). However, international funders such as Burford, Therium and Nivalion have since then increased their presence in Sweden. Local third-party funders such as Kapatens and Litigium Capital have also emerged in the Swedish market.

Law stated - 28 September 2022

Jurisdictions

Australia	Piper Alderman
Austria	Nivalion AG
Belgium	Nivalion AG
British Virgin Islands	Martin Kenney & Co
Canada	Omni Bridgeway
France	Nivalion AG
Germany	Omni Bridgeway
India	Khaitan & Co
Israel	Woodsford
Italy	Fideal S.R.L
Japan	Miura & Partners
Luxembourg	Nivalion AG
Netherlands	De Brauw Blackstone Westbroek
Spain	PLA Litigation Funding
Sweden	Nivalion AG
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