Overview of Swedish Adoption Law

Sweden has the highest per capita rate of international adoptions in the world. One out of every 50 children is an adoptee. The upward trend of international adoptions in Sweden was triggered by the sharp drop in domestic adoptions, which correlated with the changing status of unmarried women in Swedish society. Previously, bearing a child out of wedlock had been synonymous with loose moral behavior and it was, therefore, very difficult for single mothers to survive economically. Accordingly, such children were given up for adoption. In the 1960s, social attitudes began to change. At the same time, the Welfare State began to take root in Swedish society, women enjoyed a greater role in the labor market, and the government supplied childcare for single mothers required to work. These developments made it considerably easier for unmarried women to keep and look after their children rather than giving them up for adoption. In 2000, only 113 adoption cases concerned children born in Sweden.

Since the rapid growth of international adoptions began in the late 1960s, over 40,000 foreign-born children have been adopted in Sweden. In recent years they have been arriving at the rate of 800-1,000 a year, the vast majority from Asia and Latin America. The rapid growth of international adoption in Sweden in the last 30 years has had such a positive effect on the public’s perception of adoption that an adopted child enjoys the same rights as children born within a biological family.

The Swedish National Board is responsible for regulating intercountry adoptions and the procedure relating thereto. Persons resident in Sweden who wish to adopt abroad must have their eligibility and suitability established before they travel abroad, if their adoption order is to be recognized under Swedish law. The responsibility for making adoption orders is vested in the district courts of Sweden. Before a final adoption order is made, a child may be placed with the future adopter(s) by one of the registered adoption societies. This temporary “placement for adoption” does not have the legal effect of the final adoption order.

I. General Acts and Regulations Governing the Adoption Process in Sweden:

A. Domestic law (both primary and secondary legislation)

Domestically, the following govern adoption in Sweden:

1. Social Services Act (2001:453)
5. Code of Parenthood and Guardianship

This memorandum is for general informational purposes only and does not represent our legal advice as to any particular set of facts, nor does this memorandum represent any undertaking to keep recipients advised as to all relevant legal developments.
6. Foreign Adoption Orders (Approval) Ordinance (1976:834)

B. International conventions

Sweden is no longer a party to the European Convention on the Adoption of Children. Sweden ratified the Convention on January 25, 1968, and it entered into force on April 26, 1968 (although the only implementing measure was made to regulate the time of the mother’s consent which is now embodied within Section 5a of the Code of Parenthood and Guardianship). Sweden decided in July 2002 to withdraw from the Convention following changes in its national adoption laws allowing for adoption by homosexual couples in a registered partnership. Sweden determined that this aspect of its new national adoption laws conflicted with Article 6(1) of the European Convention, which states that Member States’ national adoption laws “shall not permit a child to be adopted except by either: two persons married to each other, whether they adopt simultaneously or successively; or by one person.”¹ Accordingly, Sweden formally “denounced” the Convention effective January 4, 2003,² since which date Sweden no longer has been bound by the Convention.


II. Substantive Conditions for the Making of an Adoption Order

A. Who may be adopted?

A “child” for the purposes of adoption is any person under the age of 18 years. An adoption agency cannot place a child for adoption unless the child has attained the age of four weeks.³ The legally relevant adoption order cannot be made until the child is at least six weeks old and not earlier than three months after the application for adoption.⁴

B. Who may adopt?

1. Civil status requirements

Married couples may not adopt a child unless they adopt jointly. However, one spouse may adopt a child separately when the other spouse is living in an unknown place or is suffering from a serious mental disturbance. One spouse may also adopt the second spouse’s child, with the consent of the other spouse.⁵ There is no formal objection to a single person adopting a child.

¹ *European Convention*, at Article 6(2).
² Under Article 27(2) of the European Convention, any Contracting Party may denounce the Convention by means of a notification addressed to the Secretary General of the Council. Sweden notified its denunciation on 3 July 2002. Article 27(3) of the Convention states that such denunciation takes effect six months after receipt by the Secretary General of the Notification, in this case, January 4, 2003.
³ Adoption Act 1998, Section 7B.
⁴ Adoption Act 1974, Section 15(1)
⁵ Code of Parenthood and Guardianship, Section 3.
In Sweden, homosexual couples are allowed to register and create a legal partnership. Homosexual couples that are legally registered may adopt children both within the country and from abroad.\(^6\)

2. Age requirements

Any man or woman over 25 years of age may, with the permission of the court, adopt a child. Any man or woman under 25 years of age but who has attained the age of 18 years may adopt, if the adoption relates to his or her own child or the adoptive child of his or her spouse or if other special circumstances exist.\(^7\) While there is no statutorily specified upper age limit, the courts may require more persuasive arguments as to suitability in the case of applicants aged over 45 years.

3. Religious / racial / other requirements

Early commentators noted that adoptees from traditional adoption countries of origin such as South Korea, India, Colombia and others are quite visible in a country where the standard physical characteristics are blond hair and blue eyes. This has, of course, changed as barriers to social integration have eased. A holistic approach is taken to determining suitability and there are no specific requirements relating to religion or culture, although it may be taken into account.

C. Adoption authorities

The first port of call for domestic adoption is the local child welfare authority, from which families seeking to adopt a child must secure consent.\(^8\) Every effort is made to place children in the same district ("kommun") as the one in which they were born. The local social welfare authority carries out a careful investigation of conditions in the prospective adoptive family before such consent can be granted.

In 1973, the Government set up the Swedish National Board for Intercountry Adoptions ("NIA") as the central public agency overseeing adoptions from other countries. A Government resolution of July 1, 1981, gave the NIA the status of a national board: The National Board for Intercountry Adoptions (NIA) – an executive body under the Ministry of Health and Social Affairs which includes representatives from parties represented in the Parliament, representatives of the National Board of Health and Welfare and the Swedish Association of Local Authorities, together with a pediatrician. The Government appoints the president and members of the NIA and the Board has at its disposal a secretariat, the head of which is also appointed by the Government. The NIA was appointed the Central Authority in accordance with the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.

The Intercountry Adoption Intermediation Act ("LIA"), which came into force on July 1, 1997, prescribed that authorized voluntary organizations are responsible for taking the various

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\(^6\) The Partnership and Adoption Act became law on February 1, 2003. None of the countries that cooperate with Sweden's adoption organizations have so far agreed to send children to homosexual households.

\(^7\) Code of Parenthood and Guardianship, Section 1.

\(^8\) Social Services Act, Section 25.
practical steps in relation to adoptions in Sweden. Guidelines for these activities are issued by the NIA from time-to-time, which also decides questions of authorization. A Swedish organization authorized by the NIA receives a certificate indicating that the NIA has authorized it to give such adoption assistance. The principal condition for authorization is that the organization concerned must work on a non-profit basis and give absolute priority to the children's best interests.

D. What is the Standard Applied Before Making an Adoption Order?

The fundamental principle underlying the Swedish regime is that adoption should be "to the best interest of the child." A decision as to whether an adoption should take place or not is conditional and is very highly premised on whether the proposed adoption serves the best interest of the child. In order to determine this, an overall holistic view is taken and assessed on a case-by-case basis.

III. Adoption Procedure

A. Who Makes the Adoption Order?

Final decisions on adoption are made by an ordinary court of law, following the receipt of a formal application. The court heeds a written report by a local social welfare committee following a careful investigation of conditions in the prospective adoptive family as well as a review of the success of any temporary placement. The results of such an investigation are presented in a home study, which should include the following concerning the prospective parents:

- Previous conditions: their childhood and adolescence, education, occupations, and relations to parents, brothers and sisters.

- Present living conditions: home environment, school condition, work, income and wealth.

- Previous and present state of health.

- Personality: any distinctive characteristics and interests, membership of clubs and associations, leisure pursuits, and friends and acquaintances.

- Religious affiliation and/or attitudes.

- Marriage and marital relationships: The view they take of their own and any previous relationships. Attitude of the people around them to their plans for adoption. Intention or otherwise to have more children. Any other children in the family.

- Motives for adoption.

- Knowledge and experience of children, ideals of upbringing.

- Expectations and preparations as to parenthood.
• References from at least two persons who know the applicants well.

• Assessment of the resources of the applicants as adoptive parents and their ability to take care of children of a certain age and with certain needs.

If the applicants obtain consent from the court, the consent is valid for two years within which time the adoption must be finalized. If the adoption is completed in the child’s country of origin, the adoptive parents must apply to the NIA in order to have the adoption order declared valid in Sweden.

B. Consents required for making of adoption order

1. Who has to consent?

A person who has not reached the age of 18 years may not be adopted without consent of the biological parents. The biological mother’s consent must have been given after she had sufficiently recovered after the birth. In the case of adoption of a child that has been previously adopted, any subsequent adoption must be consented to by the first adoptive parents, who shall be treated for this purpose as the biological parents. Consent is not required from a person who is suffering from a serious mental disturbance, who has no share in custody, or whose whereabouts are unknown. In such cases, consent shall instead be obtained from the child’s guardian.9

A person who has attained the age of 12 years may not be adopted without his or her own consent. However, a person under the age of 16 years may be adopted notwithstanding that his or her consent has not been given if it can be presumed that it would be to his or her detriment to be asked, or if the child is permanently prevented from consenting by a mental disturbance or by some other circumstance of a similar nature.10

2. Formal requirements regarding consent

In deciding whether it is appropriate for the adoption to take place, the court, even where the child’s consent is not needed, shall take the child’s wishes into account, having due regard for the child’s age and maturity.

3. Circumstances under which the required consent can be dispensed with

The application must not be granted if on either side there is a question about the financial support for the child. The only exception is where the question concerns the contribution of a certain amount to be paid once and for all, and the amount has been paid to the child welfare committee in the parish where the adopter is registered or there has been given to the committee a guarantee of the amount and this guarantee has been approved by the applicant and the committee.11

9 Code of Parenthood and Guardianship, Section 5a.
10 Code of Parenthood and Guardianship, Section 5.
11 Code of Parenthood and Guardianship, Section 6.
C. Secrecy and anonymity of adoption procedure; possibility of origin tracing

Sweden does not prevent adult adoptees from accessing their own birth records. In fact, a child over 18 has absolute right to discover the identity of his biological parents. The child’s right will always prevail over the parents’ right to anonymity. The records are kept and maintained at the central social registry.

IV. Legal Effect of an Adoption

Once the process of adoption has been completed, the child acquires the same status as if he or she had been born into the family. The parents by adoption become the child’s guardians and custodians and as such are bound to make provision for the child’s upkeep and upbringing. The legal relations between the adopted child and its biological relatives no longer apply. The child acquires the family name of its parents by adoption although it can also be given permission to retain its former family name in combination with the new name if so desired.

The child becomes a Swedish citizen in connection with the completion of adoption formalities in Sweden. Swedish law does not allow the cancellation of an adoption.

V. Recognition of Foreign Adoptions

NIA is responsible for approving orders made abroad concerning the adoption of a Swedish citizen or a person domiciled in Sweden. If approval is given and NIA has ordered that it is to apply in Sweden, all parties shall be notified accordingly. As for adoption orders made in foreign states, they are recognized without further process in Sweden provided that the applicant or applicants were citizens of (or were domiciled in) the foreign state when the relevant adoption order was made.

VI. Resources

Useful contact details and information can be found on the following websites:

- http://www.nia.se/frameset.htm
- http://travel.state.gov/adoptionsweden.html
- http://www.dom.se/dom/DVhemsida/Informationsmaterial/Familjeratt/adoptions.htm

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12 Laws of Confidentiality.
13 Adoption (International Legal Relations) Act, Section 3 (1).
14 Such shall be effected in accordance with Section 2 of the Ordinance (1949:661) requiring Courts of Law to Furnish Particulars in Proceedings and Transactions Pursuant to the Code of Parenthood and Guardianship.
15 Act on International Legal Relations Concerning Adoption, Section 3.