

CLASS ACTION IN SWEDEN – A BRIEF INTRODUCTION

Advokatfirman Delphi

The legislation making class action lawsuits possible in Sweden was launched during the year 2002. Despite the modest restrictions regarding the initiation of such actions, the procedure has not (yet) been commonly utilized. However during the last years some interesting lawsuits have been pending. As a consequence, this may result in an increase of class actions in Sweden.

Class action lawsuits can be brought into specially appointed Swedish District Courts. Any person or company that has a potential claim in the class action lawsuit is entitled to initiate the proceeding. The proceeding may also be initiated by non-profit associations protecting the rights of either consumers or employees. As a general rule, however, the dispute in such cases must concern the protection of rights typically connected to these groups. Finally, a class action may be initiated by an authority if the object of the dispute is appropriate (i.e. the Consumer Ombudsman is entitled to initiate a class action under certain circumstances).

Once the case is before a proper court, the court must determine if the case is indeed appropriate for certification as a class action. Factors that may be included in this determination are: the similarities of identity among the various class members' claims; whether justice would be better served if the class members brought their suits before the court individually; whether the size and/or assembly of class is appropriate for the purposes of class action; and finally, whether the claimant is able to carry out the class action. There is no defined minimum or maximum number of class members required by law. Moreover, there are no limits regarding the amount of the dispute.

In the summons application the class members shall be appointed or the scope of the class defined. As an example, the class may be defined as all individuals and entities living within a certain distance of a pollutant industry. All class members appointed or defined in the summons application are to be notified of the application. Only the persons who file a written consent of participation with the court will be included in a judgment or court settlement arising from the class action lawsuit ("OPT-in").

Only lawyers who are members of the Swedish Bar Association may act as attorneys in class action lawsuits. Despite the general prohibitions declared by the Bar Association, the principal and its attorney in a class action case may agree on additional incentive payment of the attorney upon success.

Finally, any of the class members are entitled to appeal against the judgement. Such appeal shall be made to the applicable Court of Appeal. Upon receiving an appeal, the court must determine if the appeal is appropriate for certification as a class action (the same determination made by the first instance). If the court determines that the appeal is not appropriate to be certified as a class action, the appeal is processed as an individually made appeal.

Generally, the ordinary rules of commercial litigation concerning litigation expenses are applicable to class action lawsuits. Thus only the claimant and/or the defendant will be required to pay litigation expenses. However, in some cases other class members may be liable for such expenses. This may occur when the defendant is the losing party and lacks financial capacity to compensate the claimant for the litigation expenses or if any class members have acted negligently throughout the procedure.

Gothenburg, Sweden April 2008

Rolf Karlsson
rolf.karlsson@delphi.se

Erik Kjaer
erik.kjaer@delphi.se