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1 Procurement Processes

1.1 Is the private sector procurement of technology products and services regulated? If so, what are the basic features of the applicable regulatory regime?

There are certain provisions to consider in the Swedish Electronic Communications Act (2022:482). The Act aims to ensure that individuals and public authorities have access to secure and efficient electronic communications and to maximise the benefits for all electronic communications services in terms of choice, price, quality and capacity. There is also sector-specific legislation, for example within the financial sector, see, e.g., question 7.1 below.

The EU Digital Services Act ("DSA") and the Digital Markets Act ("DMA") regulate online platforms (such as social media platforms and marketplaces) and since 17 February 2024, both Acts are applicable and need to be considered in Sweden.

1.2 Is the procurement of technology products and services by government or public sector bodies regulated? If so, what are the basic features of the applicable regulatory regime?

In Sweden, public procurement is regulated through several laws and regulations. It depends on the activities of the government or public sector body and what is to be procured as to which law is applicable. Most public contracts are regulated through the Swedish Public Procurement Act (2016:1145). The Swedish Act on System of Choice in the Public Sector (2008:962), the Swedish Act on Procurement in the Utilities Sector (2016:1146), the Swedish Act on Procurement of Concessions (2016:1147) and the Swedish Defence and Security Procurement Act (2011:1029) may instead be applicable in certain situations.

There are five principles which are applicable on public procurement stemming from EU law, which governs public procurement processes in Sweden. These are the principles of proportionality, transparency, mutual recognition, non-discrimination and equal treatment. Overall, the entire procurement process must thus be made in a manner which is proportionate and transparent and also objective and neutral.

Even though public procurement of technology products and services is not regulated through a specifical law, Chapter 6, Section 14 of the Swedish Public Procurement Act (2016:1145) should be noted. The provision states that a contracting authority may use a negotiated procedure without prior advertising if the goods to be procured can only be provided by a particular supplier because no other player on the market is capable of providing the product or the service in question. The rule corresponds to Article 32(2)(b)(ii) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

2 General Contracting Issues Applicable to the Procurement of Technology-Related Solutions and Services

2.1 Does national law impose any minimum or maximum term for a contract for the supply of technology-related solutions and services?

In Sweden there is a general freedom of contract. This also applies for technology-related solutions and services contracts. Specific rules apply for business-to-consumer relationships.

For public procurement, the maximum term allowed for a framework agreement in accordance with the Swedish Procurement Act (2016:1145) is four years, unless specific reasons for an extension applies. Under the Swedish Act on the Procurement in the Utilities Sector (2016:1146), there is a maximum term for a framework agreement of eight years.

2.2 Does national law regulate the length of the notice period that is required to terminate a contract for the supply of technology-related services?

There is no maximum length of the notice period regulated in the Swedish Contracts Act (1915:218) as the parties are free to agree on a notice period of their choice. If there is no notice period stipulated in a contract, the applicable notice period should, according to case law, be determined in accordance with what is reasonable. The telecom industry is an exception, being distinctly regulated in the Swedish Electronic Communications Act (2022:482), in which the maximum length of the notice period is set to a month for consumers. Competition law rules may also have to be considered, especially if relationships are exclusive.

2.3 Is there any overriding legal requirement under national law for a customer and/or supplier of technology-related solutions or services to act fairly according to some general test of fairness or good faith?

The Swedish Contracts Act (1915:218) contains a general clause applicable to all contracts, stating that any provisions in a contract can be dismissed if found "unreasonable". The provision is seen as a test of fairness.

The terms of contracts that businesses use for consumers must be fair in accordance with the Swedish Act (1994:1512) on Contract Terms in Consumer Relationships. Fair implicates that the terms comply with applicable laws and regulations and that they do not favour the business at the expense of the consumer.

2.4 What remedies are available to a customer under general law if the supplier breaches the contract?

There are a variety of remedies available under general law. Different types of claims depend on the current contract (e.g., purchase contract or service contract). If a supplier breaches the contract, a customer can demand rectification (e.g. repair), a replacement of a product, cancellation of the purchase or withhold the payment. If the breach is severe, damage claims can be filed against the supplier.

The National Board for Consumer Complaints ("ARN") is a Swedish authority that examines disputes between consumers and businesses. A decision from ARN is a recommendation on how the dispute should be resolved.

2.5 What additional remedies or protections for a customer are typically included in a contract for the provision of technology-related solutions or services?

Such remedies can include liquidated damages in case of any delays from the service provider or step-in rights if the service provider needs to be replaced with a third party. If there is a major breach from the service provider, specific terms for termination usually apply.

2.6 How can a party terminate a contract without giving rise to a claim for damages from the other party to the contract?

Often the parties have agreed upon a specific notice period. If a party wants to terminate the contract without observing such a notice period, that party may be in breach of contract, unless there are clauses in the contract stipulating the right to terminate the contract due to specific mentioned circumstances such as, e.g., delays of supplies, etc., and such circumstances have occurred. Such clauses are often included in contracts. Provisions giving a right for a party to terminate the contract, to cease to be applicable immediately and paying a termination fee may also be included. As regards consumers, special rules may apply, such as e.g. the rules regarding telecommunications contracts and that it is only permitted to set a period of 24 months as the maximum contractual commitment. If the consumer would like to end the contract even though, e.g. five months remain on it, the provider of the services may require the consumer to pay an early termination fee which may amount to the remaining five months in one lump sum.

2.7 Can the parties exclude or agree additional termination rights?

Yes, the parties may generally agree on additional termination rights since there is a general freedom of contract in Sweden.

2.8 To what extent can a contracting party limit or exclude its liability under national law?

In the private sector, the parties may fully limit or exclude their liability in the agreement.

For public procurement, the terms stated in the contract must align with the principle of proportionality, meaning that the terms of the procurement must be proportionate in relation to the service performed. Some procurements procedures do not allow any negotiation of contract terms. Once the public procurement process is complete, the finalised contract must adhere to rules of the Swedish Contracts Act (1915:218) and general contract principles.

2.9 Are the parties free to agree a financial cap on their respective liabilities under the contract?

Yes; however, the financial cap can be found unreasonable under the previously mentioned Section 36 of the Swedish Contracts Act (1915:218) and be dismissed.

2.10 Do any of the general principles identified in your responses to questions 2.1–2.9 above vary or not apply to any of the following types of technology procurement contract: (a) software licensing contracts; (b) cloud computing contracts; (c) outsourcing contracts; (d) contracts for the procurement of AI-based or machine learning solutions; or (e) contracts for the procurement of blockchain-based solutions?

No, the principles apply on all the above; however, there may be exceptions in the form of regulations concerning specific areas.

3 Dispute Resolution Procedures

3.1 What are the main methods of dispute resolution used in contracts for the procurement of technology solutions and services?

The parties may agree on a specific dispute resolution method of their choice, as well as the governing law. In business-to-business relationships, arbitration is the most common method, and for the public sector, court litigation is often the preferred choice.

4 Intellectual Property Rights

4.1 How are the intellectual property rights of each party typically protected in a technology sourcing transaction?

The intellectual property of each party is often protected in such transactions, with certain clauses pertaining to intellectual property rights. These often include clauses of specific ownership determination.

4.2 Are there any formalities which must be complied with in order to assign the ownership of Intellectual Property Rights?

Assignment of intellectual property rights can be done through written or oral agreements or, in some cases, through implication. Some intellectual property rights must be registered with the Swedish Patent and Registration Office. For EU-trademarks, e.g., the assignment of Intellectual Property Rights must be done in writing, unless it is a result of a judgment in accordance with Article 20(3) of the European Union Trademarks Regulation (2017/1001).

The Swedish Patent Act (1967:837) should be considered when applying for patents. If an employee invents something that is patentable, there are certain rules that apply for such invention in the Swedish Act (1949:345) on the Right to Employee Inventions.

4.3 Are know-how, trade secrets and other business critical confidential information protected by national law?

Trade secrets are protected in the Swedish Act on Trade Secrets (2018:558), which is applicable on information on business or operating conditions and know-how, as long as: (1) the information is not generally known or easily applicable; (2) the holder has taken reasonable steps to keep the information secret; and (3) the disclosure of the information is likely to cause damage in terms of competition for the holder.

5 Data Protection and Information Security

5.1 Is the manner in which personal data can be processed in the context of a technology services contract regulated by national law?

Yes, processing of personal data is regulated by the General Data Protection Regulation (EU) 2016/679 (GDPR), supplemented by the Swedish Data Protection Act (2018:218) and the Swedish Ordinance (2018:219), with supplementary provisions to the EU General Data Protection Regulation. There is also sector-specific legislation impacting data protection, for example the Swedish Camera Surveillance Act (2018:1200), the Swedish Credit Information Act (1973:1173) and the Swedish Criminal Data Act (2018:1177) implementing directive (EU) 2016/680 on data protection for law enforcement authorities.

5.2 Can personal data be transferred outside the jurisdiction? If so, what legal formalities need to be followed?

Within the EU/EEA, personal data can flow freely but personal data can only be transferred outside of the EU/EEA if certain criteria are met. Such transfer can be permitted if there is a so-called adequacy decision by the European Commission, ensuring that a non-EU/EEA country upholds an adequate level of protection. A transfer can also be permitted if appropriate safeguards are in place, such as Binding Corporate Rules ("BCRs") or Standard Contractual Clauses ("SCCs"). Specific situations and individual cases may also affect the possibility of a third country transfer. Overall, high standards are required to be fulfilled if private and public actors want to transfer personal data outside of the EU/EEA.

A data protection assessment can also be deemed necessary in accordance with Article 35 of the GDPR, depending on the personal data being transferred. It is worth noting that the European Commission adopted its adequacy decision for transfers from the EU/EEA to the United States on 10 July 2023.

5.3 Are there any legal and/or regulatory requirements concerning information security?

The Swedish Protective Security Act (2018:535) and the Act on Information Security for Essential and Digital Services (2008:1174) contain important legal requirements concerning information security. The latter implements the NIS directive (EU) 2016/1148, which is an EU-directive aiming to ensure the overall cyber-security within the region. The Protective Security Act contains legal requirements for both private and public actors who conduct activities classified as security sensitive.

6 Employment Law

6.1 Can employees be transferred by operation of law in connection with an outsourcing transaction or other contract for the provision of technology-related services and, if so, on what terms would the transfer take place?

Yes, there is a right for employees to be transferred to the new entity in case of a transfer of either the whole or a part of the business where the employee is based. The right is stated in the Swedish Employment Protection Act (1982:80). The right is an implementation of Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. To determine whether a transaction counts as a transfer of business, an overall assessment is required. The transferred business shall constitute an economic entity and the economic entity shall have retained its identity.

The employees concerned have the right to object to the transfer of their employment. In such case, the current employment shall stay with the current employer. It is then likely that the employment is terminated due to redundancy if that entity no longer conducts any business.

Certain rules and procedures apply if one of the parties is bound by a collective bargaining agreement. The transferring party is obliged to negotiate with the parties which the employer is bound by a collective agreement with, in accordance with the Swedish Employment (Co-Determination in the Workplace) Act (2021:1114). Prior to the transfer, the transferring party must ask the employees affected by the transfer if they are members of an employee organisation, and must then negotiate with any and all organisations concerned.

6.2 What employee information should the parties provide to each other?

The transferring party should inform the new employee regarding the applicable terms and conditions of the employment relationship. In some cases, the new employer is obliged to apply the transferring party's collective bargaining agreement in a transitional period of up to one year, making it a requirement to provide such information before the transaction takes place.

6.3 Is a customer or service provider allowed to dismiss an employee for a reason connected with the outsourcing or other services contract?

No, neither party can dismiss an employee solely based on a transfer of business. However, an employer is not prevented from terminating employees based on economic, technical or organisational reasons that entail changes in the labour force.

6.4 Is a service provider allowed to harmonise the employment terms of a transferring employee with those of its existing workforce?

As a starting point, the employees being transferred keep the

current salary and terms of employment. The employment contract does not need to be rewritten to be valid with the new employer. There is nothing preventing the new employer from offering a transferring employee new terms, but the employee must agree to such offer.

The period of employment from the previous employer is added to the period with the new employer. It is important to consider when it comes to the priority rules of the new employer. In Sweden, businesses need to consider a principle of "first in last out" when it comes to redundancy, making it important to keep track of employees' total period of employment.

6.5 Are there any pensions considerations?

The Swedish Employment Protection Act stipulates an exception for the new employer regarding pensions considerations. This means that the employee cannot direct claims against the new employer when it comes to unpaid pension contributions prior to the transfer of activities.

6.6 Are there any employee transfer considerations in connection with an offshore outsourcing?

Yes, employee transfer considerations are applicable when it comes to offshore outsourcing.

7 Outsourcing of Technology Services

7.1 Are there any national laws or regulations that specifically regulate outsourcing transactions, either generally or in relation to particular industry sectors (such as, for example, the financial services sector)?

Yes, the Swedish Professional Secrecy Act (2020:914) is applicable when a public authority entrusts a company or a private service provider with the task of solely processing or storing technical data. According to the Act, any person that engages in a service provider's business with the task of processing or storing technical data has a secrecy obligation and must not disclose or use any information without authorisation. Entities falling under the scope of the Swedish Protective Security Act (2018:585) must enter into a so-called security protection agreement before a counterparty can gain access to any of the security sensitive information of the entity. Therefore, the act must be considered for security sensitive entities before an outsourcing transaction takes place.

Financial actors (e.g. banks, investment funds, security market companies) that wish to make an outsourcing transaction for a party to perform certain financial services, must notify the Swedish Financial Supervisory Authority and submit the outsourcing agreement, before making the transaction in order to obtain approval. The Authority's application for such transfers is considered equivalent to the European Banking Authority's ("EBA") guidelines on outsourcing.

7.2 What are the most common types of legal or contractual structure used for an outsourcing transaction?

Usually, the contractual structure of such a transaction consists of a master service agreement with several appendices covering, e.g. data processing agreement, pricing and the service levels. The structure and details of each transaction must of course be assessed on a case-by-case basis.

7.3 What is the usual approach with regard to service levels and service credits in a technology outsourcing agreement?

Service levels and service credits are often included in such an agreement. Such terms state the availability of the services and response times. A breach of the service level can have a bearing on the validity of the main service agreement.

7.4 What are the most common charging methods used in a technology outsourcing transaction?

Usually, the charging method consists of a basic fee and variable fees based on variables such as usage or other criteria.

7.5 What formalities are required to transfer third-party contracts to a service provider as part of an outsourcing transaction?

It depends on what is stated in the third-party contract. If it is not regulated or not accepted, the approval of the third-party is usually needed. Data protection requirements such as data processing agreements need to be completed if any contracts are to be transferred to a third party, as personal data often is handled regarding an outsourcing transaction. Usually, the main parties have already agreed the process of how the data controller should be notified if a third-party contract needs to be transferred.

7.6 What are the key tax issues that can arise in the context of an outsourcing transaction?

For tax advice and tax-related questions, we recommend seeking specific tax advice. From our experience, value-added tax ("VAT") may be applicable for an outsourcing transaction if it only involves transferring of specific assets. However, VAT is usually not applicable if the transaction is defined as a transfer of business.

8 Software Licensing (On-Premise)

8.1 What are the key issues for a customer to consider when licensing software for installation and use on its own systems (on-premise solutions)?

On-premise solutions can help reduce risks regarding handling of personal data and sensitive information relating to the customer's business. Key issues for a customer often relate to integration possibilities, maintenance, security solutions and costs.

8.2 What are the key issues to consider when procuring support and maintenance services for software installed on customer systems?

Key issues to consider are the description of the services, service levels, processing of personal data and security, secrecy-regulations, penalties, right of termination, rights of use, remuneration and term of the contract. For public authorities there are public procurement regulations to consider before procuring such service. The key issues also depend on the customer's need and the industry in which the customer is active and therefore the need for updates, bug-fixes and continuous support may vary.

8.3 Are software escrow arrangements commonly used in your jurisdiction? Are they enforceable in the case of the insolvency of the licensor/vendor of the software?

It is difficult to estimate how common such arrangements are, but they can be used. The Stockholm Chamber of Commerce ("SCC") provides a model escrow agreement for such arrangement. However, the model does not consist of any clause relating to bankruptcy. The SCC also offers companies a service for secure storage. The offered depositing protects the party procuring the services if something unexpectedly happens to the licensor of the software.

9 Cloud Computing Services

9.1 Are there any national laws or regulations that specifically regulate the procurement of cloud computing services?

No, in Sweden there are no such specific laws. However, in July 2023, legislative changes were introduced in the Public Access to Information and Secrecy Act (2009:400) to simplify the process for outsourcing, such as cloud computing services, for the public sector.

9.2 How widely are cloud computing solutions being adopted in your jurisdiction?

Such solutions are widely adopted, both for the private and public sector.

9.3 What are the key legal issues to consider when procuring cloud computing services?

In addition to what has been mentioned in the answer to question 8.2, the following shall be observed. As it is common that cloud computing services providers are based outside of the EU/EEA (i.e. the USA), the transfer of personal data to a third country has for a long time been an issue. On 10 July 2023, the adequacy decision EU-U.S. Data Privacy Framework was adopted by the EU Commission. However, all recipients in the USA do not adhere to that regime. Further transfer measures may need to be taken. Also, other measures may have to be taken to ensure a safe transfer of personal data to third countries. Furthermore, it is likely that the adequacy decision will be held invalid by the EU court. As regards the public sector, despite the legislative changes mentioned in question 9.1 above, the public sector must still consider issues relating to information subject to statutory obligations of secrecy.

10 AI and Machine Learning

10.1 Are there any national laws or regulations that specifically regulate the procurement or use of AI-based solutions or technologies?

No; however, it shall be noted that the AI-Act was finally approved on 21 May 2024. The next step is publication in the Official Journal of the EU. The Regulation will enter into force 20 days after its publication and will apply after a certain period thereafter, generally, after 24 months. The Act involves a definition of AI-systems which will likely have a big impact on the legislative landscape in the EU/EEA and Sweden. The Act classifies AI according to different risks, and it also includes definitions of AI systems that are prohibited (e.g. social scoring systems and manipulative AI). There are also certain obligations that fall on providers of high-risk AI systems, and such providers will be subject to additional requirements.

The AI Act will be complemented by provisions in Swedish law, including which authorities will be competent within the meaning of the Act.

10.2 How is the data used to train machine learning-based systems dealt with legally? Is it possible to legally own such data? Can it be licensed contractually?

The legal implications of training such systems depend on the type of data being used. If the data involves trade secrets of businesses, personal data or other sensitive information, specific legislation must be taken into consideration. There is no Swedish legislation preventing contractual arrangements of the ownership and right to "training data". However, personal data can never be owned by anybody other than the data subject her/himself; agreements regarding other sensitive information will be limited by the applicable law or other agreements taking precedence.

10.3 Who owns the intellectual property rights to algorithms that are improved or developed by machine learning techniques without the involvement of a human programmer?

The Swedish legislation regarding intellectual property is written with the assumption that property is created by a physical person, meaning that what applies when it comes to development without human interaction is still unclear.

11 Blockchain

11.1 Are there any national laws or regulations that specifically regulate the procurement of blockchain-based solutions?

There are no specific Swedish laws or regulations that regulate procurement of such solutions. The EU Commission has launched a so-called regulatory sandbox for blockchain, offering businesses the chance to try their products and services in a safe and confidential environment.

11.2 In which industry sectors in your jurisdiction are blockchain-based technologies being most widely adopted?

Blockchain-based technologies are most common in financial services relating to cryptocurrencies.

11.3 What are the key legal issues to consider when procuring blockchain-based technology?

The lack of regulation makes it hard to regain potential losses if valuable data is stolen from a storage using a blockchain-based solution. There is also uncertainty of the security-aspects of blockchain-based technology, since the technology is based on transparency. Therefore, some businesses should be careful before opting for such technology, for example when it comes to operators handling record-keeping or personal data on a large scale.

The relationship with personal data processing overall is also a big issue. It can be hard to determine the ownership of the data and subsequently the data controller, making it difficult to hold businesses accountable for any wrongdoing. The GDPR contains important principles such as the right for data subjects to have their personal data erased or to be forgotten once there is no legitimate purpose to process the data any longer. Data controllers should also ensure that personal data is up to date and accurate, as well as not processing more data than necessary for a specific purpose. The above-mentioned principles can be hard to combine with blockchain since such technology is considered eternal.

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- Procurement Processes
- General Contracting Issues Applicable to the Procurement of Technology-Related Solutions and Services
- Dispute Resolution Procedures
- Intellectual Property Rights
- Data Protection and Information Security
- Employment Law
- Outsourcing of Technology Services
- Software Licensing (On-Premise)
- Cloud Computing Services
- AI and Machine Learning
- Blockchain

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