

Legal Aspects of Doing Business in Sweden

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Introduction

Sweden is a parliamentary democracy with a monarch as the representative head of state. Sweden has been a member of the European Union (EU) since 1995 and is a signatory to the Agreement on the European Economic Area (EEA) and a member of the Organization for Economic Cooperation and Development (OECD).

Sweden is the largest Nordic country located on the Scandinavian Peninsula in northern Europe. Sweden has common borders with Norway in the west, Finland in the northeast, and is connected to Denmark in the south by the Öresund Bridge. Sweden is bordered by the Baltic Sea in the east and the North Sea in the west.

Sweden is the third largest country in the EU in terms of area and has a population of 10 million. Approximately 85 per cent of the population lives in the urban areas constituting Sweden's three largest cities: Stockholm, Göteborg, and Malmö. Stockholm, which is Sweden's capital and its metropolitan area, has 2.3-million inhabitants in the metropolitan area. Göteborg is the second largest city, with a population of 1-million in the metropolitan area. Malmö's metropolitan population is 710,000. Although a modest country in terms of population, Sweden is famous for its many world-leading enterprises, such as Ikea, Ericsson, H&M, Volvo, Scania, Sandvik, Vattenfall, Skanska, SKF, Electrolux, Atlas Copco and Tetra Pak. Stockholm, not only being the financial capital of the Nordics, has grown into one of Europe's tech hotspots, with start-ups born here becoming Unicorns as Skype, Spotify, King (parent to Candy Crush), Minecraft and Fintech companies as Klarna and iZettle.

Sweden has a long tradition of collaborating closely with the other Nordic countries. This collaboration manifests itself in the legislation. The Nordic countries have many similar laws, enacted in the same, or virtually the same, form. Today, EU law is the most important source of law for Sweden, aside from domestic legislation. In harmonized areas (i.e., matters which are regulated at the EU level), EU law is the basic source of both statutory and case law. Thus, Sweden's membership in the EU has influenced and reshaped Swedish legislation to a significant extent.

Sweden's trade relates very much to Europe. In 2020, exports to European countries accounted for approximately 70 per cent of Sweden's total exports. EU countries represented close to 60 per cent of exports from Sweden and 70 per cent of imports to Sweden. Germany and Norway constitute Sweden's largest trading markets and accounted each for approximately 10 per cent of the exports in 2020. Other major export markets for Sweden are Finland, Denmark, the United Kingdom, and the United States. Sweden's major export product is machinery (16 per cent), followed by automotive (14 per cent) and electrical and telephone communication products (10 per cent). In 2018, 2019, the Swedish gross domestic product (GDP) increased by each year 2.0 per cent but due to the pandemic there was a reduction of 2.9 per cent for 2020. This puts Sweden in good economic shape compared to many other OECD countries.



Company Law

Corporate Structures

Foreign companies or individuals usually conduct business in Sweden through a Swedish subsidiary or a branch. The prevailing corporate form in Sweden is the company limited by shares (aktiebolag). There are, however, three other kinds of company recognized under Swedish law: non-trading partnerships (enkla bolag), trading partnerships (handelsbolag), and limited partnerships (kommanditbolag).

Limited-Liability Companies

Companies limited by shares (limited-liability companies) are primarily regulated by the Companies Act (Aktiebolagslagen SFS 2005:551). There are two kinds of limited-liability companies: private and public. This distinction emerged following a revision of the Companies Act to comply with relevant EU Directives in 1995.

The fundamental difference between a private company and a public company is that the shares of a private company may not be publicly offered, which means that the general public may not subscribe for or purchase shares or other securities in such companies. Consequently, private companies do not have the option of raising capital through public offerings. The minimum share capital required for a private company is SEK 25,000. The minimum share capital for a public company is SEK 500,000. There is no restriction on foreign ownership of Swedish companies limited by shares. Specific rules apply to some extent to limited-liability companies engaged in special activities, such as banks, insurance providers, and financial services companies.

Formation Procedure

Swedish limited-liability companies are established by way of a single procedure, known as ‘simultaneous formation’, which involves a fair amount of paper work. The founder or founders first draft a deed of formation containing the articles of association and subscribe and pay for all the shares, after which they must date and sign the final deed of formation. Finally, they must submit an application for registration to the Companies Registration Office (Bolagsverket).

Although the company is legally formed on signing the final deed of formation, this status will lapse if no application for registration of the company is submitted within six months of signing the deed. The company only becomes a legal entity after registration.

Purchase of “Off-the-Shelf” Company

In most cases, a faster alternative is to purchase a company “off the shelf”. This entails purchasing a company which is already incorporated but not carrying out any business and which is ready for immediate trading. The purchase of a standardized “off-the-shelf” company usually costs approximately SEK 20,000 to SEK 25,000 (in addition to the minimum share capital) and can be completed within a few days. The company may commence business as soon as the payment has been made. The purchase will be immediately followed by the appointment of a new board of directors.



Post-Formation Acquisitions

If, within two years of the registration date, a public company enters into an agreement with a founder or shareholder regarding acquisition by the company of property in exchange for consideration equal to at least one-tenth of the share capital, the board of directors must submit the agreement to the shareholders' general meeting for approval. The validity of such an agreement is subject to approval by the shareholders' general meeting within six months of the execution of the agreement. However, this rule does not apply when the acquisition takes place on a stock exchange or as part of the company's regular business activities.

Corporate Governance

Shareholders' Meetings

The general meeting is the supreme body of a company and the appropriate forum for shareholders to exercise their rights of influence over the company's affairs. Although the general meeting generally may not decide on a higher dividend than the board of directors has proposed or approved, this is the only really important exception to the general meeting's right to exert influence in all matters relating to the company.

Under Swedish law, any registered shareholder may attend and vote at general meetings, either in person or by proxy. A proxy is valid for a maximum of one year and is always revocable. In general, every person that is entered in the company's share register on the day of the general meeting is allowed to attend the general meeting. However, if the company's register is not kept by the company but by a central securities depository, the right to attend the general meeting is based on the shareholdings according to a transcription of the share register printed five days before the general meeting.

There are no general quorum requirements for general meetings; resolutions may be passed by a simple majority of the votes cast. There are, however, some resolutions requiring special quorums whereby a statutory majority of the votes cast at the meeting and/or a statutory majority of the shares represented at the general meeting is required. It is possible for the number of votes cast at a general meeting to exceed the number of shares represented, due to super-voting rights associated with preference shares or other special classes of share.

An annual general meeting must be held no later than six months after the end of each financial year. The annual general meeting must pass resolutions on adoption of the income statement and the balance sheet and disposition of the company's profit or loss. The annual general meeting of a public company listed on a stock exchange or an authorized marketplace must determine the guidelines for remuneration of the managing director and other members of the company management on the basis of a proposal prepared by the board of directors.

In accordance with the Companies Act, the annual general meeting also must determine whether or not the board of directors and the managing director should be discharged from liability for their management of the company during the previous year. Such discharge from liability prevents the company from taking further legal action for damages



against them, unless the discharge from liability was based on information later found to be materially incorrect or incomplete. The discharge from liability cannot, under any circumstances, prevent actions for damages brought on the basis of criminal liability. All shares in a limited-liability company must carry voting rights, although different classes of shares with different voting rights may be issued. No share may be issued with more than 10 times the voting rights of another.

Board of Directors

The board of directors is in charge of and responsible for the organization and structuring of the company and the management of the company's operations. The board of directors may appoint a managing director to manage the day-to-day matters of the company, while the board of directors is in charge of the company's overall business. In a larger company, the board of directors may only be involved in the most important matters. However, there are some matters, such as the preparation of annual reports, which will always be dealt with by the board itself. The board also may use its power to instruct the managing director on how to handle certain matters that fall within his authority.

The quorum rule for the board of directors of a company states that the board has a quorum when more than half of the elected board members are present. Simple majority voting applies, with the chairman having the casting vote in the event of a tied vote, unless the articles of association state otherwise. Nothing prevents the managing director from also formally being a board member. According to the Board Representation Act (*lagen om styrelserepresentation för de privatanställda*), employees are given the right to elect two (or, in some cases, more) ordinary representatives and two deputy representatives to the board of directors in limited-liability companies with more than 25 employees. The representatives thus elected have essentially the same role as the board members chosen by the shareholders.

If the board of directors consists of more than one board member, one of the directors must serve as chairman of the board. The chairman leads the work of the board and monitors the board's fulfillment of its duties. The chairman must ensure that board meetings are held at the request of a member of the board or the managing director or when he otherwise deems a meeting to be necessary.

The Companies Act requires that at least half of the board members must be resident in the EES, unless an exception is granted by the Companies Registration Office. However, this requirement is met by residence, and citizenship within the EES is not required. The company must have a duly appointed representative in Sweden on whom notice can be served.

Supervision

Unlike several other jurisdictions, Sweden has no supervisory board. The board of directors is responsible for supervisory functions. Public companies must have a board of directors consisting of at least three members. In a private company, the board of directors may consist of only one or two board members, provided that at least one alternate director is appointed.



The board is responsible for the existence of satisfactory controls in relation to accounting, management of funds, and the company's general financial position. Depending on the size and kind of business, the board may adopt corporate governance documents, such as written instructions for the managing director, specifying the distribution of duties between the board and the managing director and/or any other bodies established by the board. Furthermore, it is common that the board adopt written working procedures for the board, stating the internal distribution of duties among the different board members, the frequency of board meetings, and the extent to which the alternate directors are to participate in the board's work and receive notice to attend meetings.

Regular assessment of the company's financial position is included in the board of directors' responsibilities. The board of directors could also issue written instructions as to financial reporting, stating when and how the information necessary for financial assessment is to be compiled and reported. Such instructions will usually take the form of the company's Finance and Administration Manual.

Liability for Board Members, Managing Director, and Controlling Shareholders

Pursuant to the Companies Act, liability arises for a board member or the managing director when the concerned individual, in the performance of his duties, intentionally or negligently causes loss to the company. Liability for loss may arise not only toward the company, but also to a shareholder or a third party as a consequence of a violation of the Companies Act, the applicable legislation on annual reports, or the bylaws.

A board member who contravenes the provisions of the Companies Act by an act of commission or omission may incur criminal liability, civil liability, or a combination of both. A director's liability in Sweden is individual in nature, even though the board acts as a single entity. Collective or mutual liability is not legally possible, although several board members or the whole board may become liable. An individual board member who wishes to avoid liability for a particular board decision is required to object formally to the decision and to request that such objection is recorded in the minutes of the board meeting.

Board members are required to act in accordance with the general principles of Swedish company law, under which board members and the managing director have a general duty to act in the best interest of the company and all its shareholders. The management body is obliged to act in accordance with the instructions issued by the board. The board is under an obligation to treat all shareholders equally and may not undertake any act or a measure which is likely to cause unjust enrichment to a shareholder or a third party at the expense of the company or its shareholders.

Even when the board of directors has delegated administrative duties to another person or body, such as the managing director, it is still liable to supervise the delegated activity. The duty of supervision cannot be delegated. In public tender offers, the takeover rules adopted by the security exchanges require the board of directors to render a recommendation to the shareholders as to whether a public tender for the shares in the company is to be accepted or not.



The legislator has provided sanctions to protect the interests of the company, the shareholders, or third parties. Liability toward shareholders arises primarily under the provisions on annual reports and the provision on wrongful information in a prospectus. Such liability may arise, for example, when individuals have been induced to subscribe for shares on the basis of incorrect information regarding the company's financial position as provided by the board. Thus, in Sweden, a board member can be held liable for third-party losses resulting from incorrect information in accordance with the EU Regulation implementing the Prospectus Directive. Controlling shareholders do not have any particular duties toward the company or the shareholders.

Mergers and Acquisitions

In General

Since the early 1980s, the Swedish economic and political environment has undergone a series of important changes which have substantially improved the investment climate. Some of the most significant changes were effected by extensive deregulation and privatization. These changes include the abolition of currency exchange controls, the elimination of clauses in corporate bylaws that limited foreign stock ownership, as well as a major tax reform in 1991. Taxable income is subject to corporate tax at a flat rate of 20.6% applying from 1 January 2021. In Sweden, no tax is payable on the issue of shares, on an increase in capital, or on the transfer of shares.

From the Lehman collapse 2008 to 2012, the merger and acquisition climate in Sweden felt the impact of the Eurozone crisis. In 2013, a rise in merger and acquisition activity took place in Sweden connected to the good condition of Sweden's economy, including the stability of the Swedish banks. From 2014, with positive macro-economic factors, such as low interest rates and large amounts of money to invest in private equity funds, transaction activity in Sweden increased significantly. In 2017 Sweden reached the highest annual transaction value and the highest transaction count ever. In addition, the initial public offering window has opened up and an initial public offering is now inter alia again a viable exit opportunity for the private equity funds. Strong gross domestic product (GDP) growth is boosting Sweden's initial public offering and merger and acquisition activity all since 2017.

Acquisitions of non-listed companies are not subject to any specific rules, with the exception of the general rules in the Companies Act and specific provisions in the articles of association or in shareholders' agreements. There is no specific requirement as to the form of an agreement to acquire shares or a company's assets. A share transfer must be registered in the share register of the target company. For a buyer to gain protection from the seller's creditors, it is necessary to transfer the share certificates, duly endorsed, to the purchaser.

Acquisitions of listed companies are regulated in part by the law on takeover bids on the securities market and in part by the Takeover Rules which are issued by the two exchanges in Sweden, Nasdaq Stockholm AB, and Nordic Growth Market NGM AB (NGM). The law requires the exchanges to issue such rules, and the offeror's adherence to the rules is based on an undertaking from the offeror in relation to the exchange. Corresponding rules with



respect to companies which are listed at an MTF (Nasdaq First North Growth Market, Nordic SME and Spotlight Stock Market) are issued by the self-regulatory body Swedish Corporate Governance Board.

Approval and Notification Periods

Mergers

A merger must be approved by the general shareholders' meeting of each of the merging companies. The merger must be approved by shareholders holding at least two-thirds of the votes cast and of the shares represented at the meeting. However, if the merging company is a public company and the transferee company is a private company, the merger is only valid if it is supported by all the shareholders who are present at the meeting and these together represent at least 90 per cent of all shares in the company.

In the transferee company, the merger must be approved by the board of directors. However, shareholders holding at least five per cent of the shares in the company may request that the merger also should be approved by the shareholders' general meeting. The same rule applies to the merger of a subsidiary with its parent company. The merger plan must be registered with the Companies Registration Office within one month from signing. When the merger requires approval by the shareholders' meeting, that meeting may be held no earlier than one month following the publication of the Companies Registration Office's resolution to register the draft merger plan; the time limit is two weeks if all participating companies are private companies.

The draft merger plan must be made available to the shareholders at least one month prior to the shareholders' meeting approving the merger (two weeks if all participating companies are private companies). After approval by the shareholders' meeting, the company must notify all its known creditors of the merger and of the creditors' right to file a complaint against the merger being effected.

However, notice to the creditors of the merging company is not necessary if the auditor has issued a statement that the merger poses no risk to the creditors of the merging company. The merging company must apply to the Companies Registration Office for approval to effect the merger within one month of the merger plan becoming valid in all companies participating in the merger (the merger plan becomes valid when approved by the relevant corporate bodies).

After receipt of the request for permission to effect the merger plan, the Companies Registration Office will issue a notice in the Swedish Official Gazette, informing all the companies' creditors about the proposed merger. However, such a notice is not required if the auditor in the merging company has issued a statement that the merger poses no risk to the creditors of the merging company. If no creditor objects to the merger within the time frame set by the Companies Registration Office, the Companies Registration Office will grant clearance to the merger following the expiration of the notice period, after which the merger can be completed.



Acquisition of Shares and Assets

The articles of association and the shareholders' agreement may contain provisions which give existing shareholders approval rights over the planned acquisition. Furthermore, asset transactions pursuant to which a substantial part of the target company's business is disposed of may require the approval of the shareholders' general meeting of the target company.

Merger Control

In Sweden, the parties to a concentration (typically a share purchase transaction) are required to submit a merger filing to the Competition Authority (Konkurrensverket) if two thresholds are met: the parties' combined Swedish turnover in the preceding financial year exceeded SEK 1,000,000,000 and each of at least two of the parties concerned had a Swedish turnover exceeding SEK 200,000,000 in the preceding financial year.

In some cases, the Competition Authority may require a notification to be submitted when the first threshold is met but not the second one if it is called for by special reasons. Such special reasons include but are not limited to situations where an already strong undertaking acquires smaller competitors on the same market and thus establishes very high market shares or when a strong undertaking acquires a newly established undertaking which had the potential to challenge the position of the acquirer.

The turnover of the parties must be adjusted for any acquisitions or divestments made during or after the previous financial year. Furthermore, the turnover must typically be allocated geographically to where the company's customers are located; services or products sold to customers outside of Sweden may not be included in the turnover.

After receipt of a complete notification, the Competition Authority must complete its initial investigation (Phase I) within 25 working days and make the decision on whether to clear the notification or enter into Phase II. This period may be extended to 35 working days if the parties agree to offer commitments. In a few cases, the Competition Authority also may decide to initiate an in-depth investigation (Phase II), which can last for up to three months from the date of such a decision and may be prolonged if the parties agree to offer commitments. If the Competition Authority decides to prohibit the concentration, it must submit an application to the Stockholm City Court during Phase II. The court must issue a decision within six months from the date of receiving the application, although this period may be prolonged under certain circumstances.

Stock Exchanges and Unregulated Markets (MTFs)

Only shares in public companies may be offered to the public and listed on a stock exchange. In 2006, the Nordic List (now Nasdaq Nordic) was introduced on NASDAQ OMX Stockholm (now Nasdaq Stockholm) and the Nasdaq exchanges in Copenhagen and in Helsinki. Swedish, Danish, and Finnish companies (as well as foreign companies listed on the respective exchange) are now presented on one common list with common listing requirements. However, the companies are from a formal point of view still listed at the respective exchange.



Companies are presented in three segments based on market value – large cap, mid cap, and small cap – and in sectors according to industry affiliation. Since 2007, Icelandic companies also have become a part of the Nasdaq Nordic. Each of the exchanges within Nasdaq Nordic also has a multilateral trading facility (MTF) called Nasdaq First North Growth Market, which is an unregulated marketplace for small growth companies. There is a special segment within Nasdaq First North Growth Market, called Nasdaq First North Premier Growth Market, which is designed for companies that plan to be listed on the main list.

Another regulated marketplace in Sweden is Main Regulated (operated by Nordic Growth Market NGM AB). NGM also offers issuing and trading opportunities for financial instruments such as ETP's, structured products, and bonds at the exchange under the trade mark NDX, with instruments issued by the more well-known European financial institutions. NGM has also an MTF called Nordic SME. Beside these markets, there is also another MTF called Spotlight Stock Market (former: AktieTorget), where companies can be both listed and traded.

All listed companies, both those on the regulated markets and on the MTFs, have far-reaching obligations to disclose key information and to make public announcements regarding important decisions and events.

Pre-Completion Risks

Liability for Pre-Acquisition Trading

In a share acquisition, the target company retains all rights and obligations under pre-acquisition contracts throughout the transaction, as there is no change in the contracting party. On the other hand, when assets are acquired, the seller is not released from its contractual liabilities unless consent is given by the purchaser.

Insider Dealing

Concerning pre-acquisition trading, insider dealing is an offense in Sweden under the Act on Penalties for Market Abuse at the Securities Market (lagen om straff för marknadsmissbruk på värdepappersmarknaden). The Act prohibits dealings in financial instruments on the securities market by any individual who has insider information (i.e., information that may materially influence the price of the securities) as defined in MAR. It also prohibits improper influence on share prices or other conditions and unauthorized disclosure of insider information.

MAR does also contain rules regarding different kinds of market abuse which are directly applicable in Sweden. It is a task for Finansinspektionen (the Swedish Financial Supervisory Authority, the SFSA) to take actions against persons who have breached these rules.

Reporting Obligations

The Act on Reporting Duty for Certain Holdings of Financial Instruments (lagen om anmälnings skyldighet för vissa innehav av finansiella instrument) formerly stated that persons, who beforehand were defined as insiders in a listed company, were obliged to report their holdings of equities or equity-related financial instruments in the company, and



any changes in their holding of such instruments, to the SFSA. These rules are now replaced by rules in MAR. These rules are applicable to persons discharging managerial responsibilities and persons closely associated with them.

Persons discharging managerial responsibilities, as well as persons closely associated with them, must notify the issuer and the Financial Supervisory Authority of every transaction conducted on their own account relating to the shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto. The reporting obligation applies with respect to any subsequent transaction once a total amount of €5,000 has been reached within a calendar year. Such notifications must be made promptly and no later than three business days after the date of the transaction.

Furthermore, a person discharging managerial responsibilities within an issuer may not conduct any transactions on its own account or for the account of a third party, directly or indirectly, relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked to them, during a closed period of 30 calendar days before the announcement of an interim financial report or a year-end report which the issuer is obliged to make public.

The SFSA maintains a register of such notifications, and this register is a public document. Holdings and changes in holdings by legal entities that are owned directly or indirectly by the person subject to a reporting duty, and holdings by persons closely associated to the insider person, are also covered by the duty to report. Notwithstanding these provisions, shares may be sold in compliance with the terms of a public offer.

Governmental Approval

With regards to banking, insurance, securities, mutual funds management companies, and credit market companies, the law requires that an acquisition resulting in a qualified holding of shares in such a company is subject to approval by the SFSA. The authority will allow the acquisition only when it cannot be assumed that the buyer will obstruct the sound development of the target company's business.

Public Offers

When an offer to acquire shares is directed to the public, a prospectus must be drafted and submitted to the SFSA in accordance with the EU prospectus regime. There are a number of exemptions from this rule, such as when:

- The offer concerns units issued by collective investment undertakings other than the closed-end type;
- The offer concerns securities unconditionally and irrevocably guaranteed by a state within the EEA or by one of a member state's regional or local authorities;
- The offer is directed solely to qualified investors;
- The offer is addressed to fewer than 150 natural or legal persons per EEA country, other than qualified investors;



- The offer relates to a purchase of transferable securities for a sum equivalent to not less than €100,000 for each investor;
- Each of the transferable securities has a nominal value equivalent to not less than €100,000; or
- The aggregate sum which investors within the EEA will pay during a 12-month period does not exceed the equivalent of €2.5-million.

Sweden has implemented the Takeover Bids Directive through the Act Concerning Public Takeover Bids in the Stock Market (lagen om offentliga uppköpserbjudanden på aktie-marknaden). In order to meet the requirements of the Act, the two exchanges, Nasdaq Stockholm and NGM, have issued Rules Concerning Public Offers for the Acquisition of Shares (the Takeover Rules).

The purpose of the Takeover Rules is to ensure the non-discrimination and equal treatment of shareholders in the target company. These rules are binding on all companies listed on Nasdaq Stockholm's Main List and the NGM Main Regulated List. In addition, as mentioned above, the Swedish Corporate Governance Board (Kollegiet för svensk bolagsstyrning) has issued similar rules, which are applicable to companies listed on First North Growth Market, the Nordic SME and on Spotlight Stock Market.

The Takeover Rules stipulate that a public offer to acquire shares may only be made by a company that has made a commitment in relation to the exchange where the target company's shares are listed, to adhere to the rules issued by that exchange. So, before a public offer is made, the bidder must formally undertake to comply with the rules of that exchange and to submit to any sanction of the disciplinary committee of the exchange.

The bidder must also notify the Financial Supervisory Authority of its undertaking to the exchange. Furthermore, the bidder is required to draw up and make public an offer document containing the information necessary to enable the holders of the shares in the target company to reach a properly informed decision on the bid. As soon as the offer has been made public, the bidder and the target company must inform their employees about the offer.

When a person or legal entity, regardless of nationality, acquires or sells equities or some other kinds of financial instruments assignable to shares in a company listed on a Swedish stock exchange, the market must be informed when the aggregate holding of such a person reaches, exceeds, or falls below certain thresholds. Notice is required by law if the shareholding amounts to, exceeds, or falls below the five per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent, 66.66 per cent, and 90 per cent thresholds of the total number of shares or voting rights in a company. The information must be provided to the Financial Supervisory Authority and to the company in question as soon as possible and no later than three trading days after the change of the holding. The Financial Supervisory Authority will then make this information public.



Conditional Offers

In a public takeover, the bidder may make consummation of the offer conditional. In practice, a standard set of conditions has been developed. According to the takeover rules adopted by the stock exchanges, any condition for the consummation of the offer must be such that it can be objectively assessed whether the condition has been fulfilled or not.

The only exemption from the requirement of objectivity is in relation to government approval, typically approval from the Competition Authority. Such approval can be made conditional on the fact that it is obtained on terms satisfactory to the bidder. The bidder may only withdraw an offer if the non-fulfillment of a condition is of material importance for the bidder's acquisition of the target company. An offer cannot be conditioned on obtaining financing for the offer; financing must be in place before the launch of the offer. However, an offer that is debt-financed can be conditioned on payment of the debt financing. The same requirement of objectivity also is applicable in relation to a condition on payment of financing.

Consequently, if the offer is made conditional on payment of debt financing, the condition for the payment in the credit agreement must be objectively verifiable in the same way as a condition for the consummation of the offer itself. If the takeover offer is conditional, an accepting shareholder may, during the acceptance period, withdraw its acceptance of the offer up to the time the bidder declares the offer unconditional.

Breakup Fees

Breakup fees are not expressly regulated under Swedish law and there is no case law on the subject. Consequently, it is not entirely clear how such fees are perceived under Swedish law. Such fees will be assessed pursuant to the general principles of company law, contractual law, and the Act Concerning Public Takeover Bids in the Stock Market.

An agreement on a breakup fee is tested against the principle that agreements entered into by a company must be in the best interests of both the target company and its shareholders. A breakup fee that limits the management's and the board's ability to fulfill their fiduciary duty toward the company and the shareholders in a takeover would most likely be viewed as disproportionate and potentially unenforceable in Swedish courts. The Corporate Governance Board has expressed its view that restrictivity should be observed with respect to so-called "deal protection." However, there has not been a problem to such an extent that the Board has had cause to issue specific rules in this issue.

Reverse breakup fees do not raise the same issues, but also could be difficult to enforce in Swedish courts if seen as unreasonable. Under the Companies Act, the Swedish rules on financial assistance prohibit the target company's funds from being used for financing acquisition of shares in the target company. The same rules also prohibit the target company from providing security for loans used by the purchaser to acquire shares in the company.

Minority Squeeze-Out/Sell-Out

A shareholder that (together with certain affiliated persons) holds more than 90 per cent of the shares in a company is entitled to acquire the remaining shares in that company.



Minority shareholders have a corresponding right to require a majority shareholder to purchase their shares. The process can be initiated at any time after the precise moment where the 90 per cent threshold has been passed. This right also is available where the majority shareholder is a foreign natural or legal person.

If the majority shareholder and the minority shareholders cannot agree on the terms for the transaction, the terms are settled by arbitration. The time frame for the arbitration process varies depending on the complexity, but the proceedings are usually finalized within one or two years from the request to acquire the shares. The majority shareholder can request advance vesting of title to the minority shares in order to gain control of the company prior to finalization of the arbitration proceedings. The parties involved may appeal the arbitration award to the public courts, in which case the final outcome of the proceedings may be delayed by several years.

Pre-Contractual Documents

It is common to draft pre-contractual documents, such as a letter of intent or memorandum of agreement. These documents are intended to address issues relating to negotiations, exclusivity, and confidentiality. If a document is not intended to be legally binding, this should be expressly stated, as good faith obligations follow from both Swedish law and the substance of the document. Other circumstances also may trigger binding obligations.

Under Swedish case law and doctrine, a party to negotiations that prevents a final agreement by acting in a disloyal and negligent manner (such as breaking off negotiations without cause) may, in certain circumstances, be liable to pay compensation for loss (*culpa in contrahendo*).

Tax Issues

Share Transfers

According to the Swedish participation exemption rules, a capital gain from the sales of shares in Swedish or foreign companies is normally tax-exempt for a Swedish company. Consequently, a corresponding capital loss is not deductible. One condition for the tax exemption is that the shares are not listed or, if listed, the company holds shares which represent at least 10 per cent of the voting rights. The participation exemption rules also provide for tax exemption on dividends.

Asset Transfers

In the case of an asset transfer, the capital gain is normally subject to corporate income tax at a rate of 20.6 per cent. The capital gain is the difference between the acquisition price and the residual tax value of the transferred assets. Under certain conditions, a transfer of assets is exempt from value-added tax (VAT).

When consideration for the transferred assets consists of shares in the purchasing company, the asset transfer can be executed without triggering any taxation, under certain conditions. The purchaser of the assets will be allowed to use the acquisition cost of the assets as the basis for depreciation. The difference between the acquisition cost and the



value of the assets is treated as goodwill and is depreciated in the same way as other inventories.

Mergers

The Swedish tax rules regarding mergers cover both national and transnational mergers. If the conditions for a merger are met, the transferring company will not be taxed as a result of a merger and the receiving company will assume the tax position of the transferring company.

Losses carried forward in the transferring company that relate to the income year prior to the merger are deductible only to a certain extent. Losses carried forward in the transferring company as well as in the receiving company that relate to the income year prior to the merger are not deductible until the sixth year after the merger.

Filings and Fees

Companies Registration Office

No filing of a share or asset purchase transaction with the Companies Registration Office is required, and no stamp tax is applicable. In the case of a merger or demerger involving one or more public companies, the merger or demerger plan must be submitted to the Companies Registration Office for registration. Public notice of the registration must be given.

In all mergers and demergers, regardless of whether they involve private or public companies, the transferor must apply for the Companies Registration Office's authorization to implement the merger or demerger plan. On completion, a notification of the merger or demerger must be submitted to the Companies Registration Office for registration. Registration fees are applicable when applications are filed or information is registered in accordance with the registration rules.

Financial Supervisory Authority

In the case of mergers involving at least one public company, in addition to the requirement to register the merger plan, documents containing information on the transferor must be prepared and submitted to the Financial Supervisory Authority for review. In the case of takeover bids, the offer document must be submitted to and approved by the Financial Supervisory Authority.

Competition Authority

A business combination may be subject to notification to the Competition Authority, largely depending on the aggregate turnover of the companies involved in the preceding financial year. A business combination which is subject to notification may be prohibited if it is deemed to be intended to significantly impede the existence or development of effective competition.



Disclosure Requirements for Unlisted Companies

Acquisition of Shares and Assets

The acquisition of shares or assets in non-listed companies does not, as such, obligate the parties to make public any information in respect of the transaction. However, in the case of a notification submitted to the Competition Authority, the information filed will eventually become public (with the exception of trade secrets).

Mergers and Demergers

Due to the registration requirements for mergers or demergers involving public companies, the information contained in the merger or demerger plan will become public. Public notice must be given when the merger or demerger plan is registered. When a merger or demerger plan has been approved, notice must be given to the known creditors of the companies involved.

Extent of Seller's Warranties and Indemnities

The extent to which warranties and indemnities are required is dependent on the size of the acquisition and the risk connected to it. Nevertheless, it is customary for the seller to provide warranties for the accuracy of annual and interim reports, titles to assets, taxation, intellectual property rights, and employee matters.

In addition to warranties, it is advisable to conduct a due diligence in respect of the target company. The legal significance of a due diligence must be considered in the light of the Sale of Goods Act (Köplag). According to the principles of the Act, the target should conform to the buyer's reasonable expectations, after the buyer has fulfilled his duty under Swedish law to "examine" the target. In practice, a deviation from those expectations ought to entitle the buyer to claim compensation for any defects the buyer had not noticed.

In this context, it is important to take legal advice on the matter, as the provisions of the Sale of Goods Act could be set aside by the sale and purchase agreement. Furthermore, if limitations of liability – or, more specifically, the effects of such clauses – are held to be unreasonable, they may be mitigated or set aside in accordance with Section 36 of the Contracts Act (Avtalslagen).

Restrictions and Requirements for Transferring Shares

Restrictions and requirements for transferring shares may be found in the target company's bylaws or in shareholders' agreements. There are no statutory requirements or restrictions in this respect.

Requirements for Transferring Intellectual Property Rights

The seller can, in principle, assign any intellectual property right in his possession; however, in the case of copyrights, an author's moral rights cannot be assigned. Moreover, assignment of a license often requires the licensor's permission. Trade marks that are in use in a transferred business are presumed to be included in the transfer of that business.



In the case of a business or asset transfer, trade mark rights must be explicitly assigned to the purchaser. In order to be able to enforce trade marks and patents, it is necessary to notify all assignments to the Patent and Registration Office (Patent- och registreringsverket).

Requirements for Transferring Business Contracts

A contract can only be transferred in accordance with its terms. When a contract is transferred in conjunction with an asset acquisition, it is mandatory to obtain the third party's consent in order to release the seller from his liabilities.

On the other hand, rights and accrued claims may, as a principle, be transferred without the debtor's consent, but a debtor is not entitled to unilaterally transfer his obligations. With reference to transfers of real property, tenants and leaseholders are provided extensive legal protection. A transferor of real property also is obliged to include a provision in the transfer contract regarding the rights of tenants and leaseholders.

Non-Competition Clauses

In principle, non-competition clauses are legal and binding under Swedish law. However, as such clauses restrict competition, it is essential to ascertain whether or not they violate the Competition Act (Konkurrenslagen). The Competition Authority must be notified if an acquisition falls within the scope of the Competition Act by giving the buyer a decisive influence over the acquired business.

Target Companies Subject to Bankruptcy, Restructuring, or Liquidation

There are three distinctive ways of dealing with a corporate restructuring in relation to a bankrupt company: bankruptcy, restructuring (reorganization), and voluntary liquidation. When the target company is declared bankrupt, it will be administered by a bankruptcy administrator appointed by a court. The bankruptcy administrator will be the only competent representative of the company's assets in bankruptcy. The administrator's assignment will be the winding up of the company's operations entailing the conversion of the assets into liquid funds.

All decisions regarding the bankrupt company are taken by the administrator alone, although the administrator is obligated to consult the Swedish supervisory authority and the creditors concerned before deciding on important matters. When the target company is declared bankrupt, only the net assets may be bought.

When the target company is under restructuring (reorganization), the company is still represented by the board of directors, but also advised by an administrator appointed by a court. A restructuring plan must be decided on and presented by the company to its creditors and to the court. This plan is publicly available. The restructuring plan, which may be revised, sets out the overall purpose of the restructuring. Usually, the purpose of a restructuring is to strengthen the company's capital through the infusion of capital together with the composition with creditors. All negotiations with third parties are carried out by the ordinary legal representatives of the company acting with the administrator's consent.

When the target company is under restructuring, the net assets or the shares may be bought. This is normally conducted in connection to the buyer's infusion of capital to the



company. When the target company is in voluntary liquidation, the company is represented by one or more liquidators. The purpose of a liquidation is to wind up the company's operations and entails the conversion of the assets into liquid funds.

A company in liquidation must always be able to pay all its debts and must not be insolvent. When a company in liquidation becomes insolvent, the liquidator has the duty to apply for the company's bankruptcy. When the target company is in liquidation, the net assets may be bought. The shares also may be bought, provided that the company's registered share capital is intact and the shareholders decide to resume the business.

Competition Law

Prohibition against Anticompetitive Cooperation

Agreements and cooperation between companies that have as their object or effect the prevention, restriction, or distortion of competition in the market to an appreciable extent are prohibited under Chapter 2, Section 1, of the Competition Act. An agreement or concerted practice is considered to restrict competition if it limits the possibility of one or more undertakings to act independently of each other.

The prohibition covers cooperation between two or more undertakings. Cooperation may take place through an agreement, a decision by an association of undertakings, or through concerted practices of undertakings. One example of such a decision by an association of undertakings would be when a trade association, by virtue of its rules of association, is able to determine or change the behavior of other undertakings in the market.

Concerted practices refer to those situations where undertakings apply a form of joint behavior without having a formal agreement. For this to be regarded as a concerted practice, some form of communication must have taken place between the undertakings. Natural parallel behavior, where a number of undertakings act in the same way without having either a direct or indirect agreement, is not prohibited.

For cooperation agreements to be prohibited, they must appreciably affect competition. When making this assessment, the market share and size of the cooperating partners must be determined. Cooperation between small and medium-sized undertakings, where the products regulated by the agreement cover only a small part of the relevant market, normally falls outside the scope of the prohibition.

In its general guidelines regarding none-hardcore restrictions, the Competition Authority defines the term "appreciable extent". Under this definition, cooperation is not regarded as appreciably affecting competition when the undertakings have a joint market share of a maximum of 10 per cent of the relevant market for horizontal agreements or 15 per cent for vertical agreements. As regards cooperation between small undertakings (i.e., where each undertaking has an annual turnover of less than SEK 30,000,000), an aggregate market share of 15 per cent is generally accepted. Some types of agreement, such as horizontal price-fixing agreements, fall outside the scope of the guidelines.



Examples of Prohibited Cooperation

The Competition Act provides examples of cooperation which are regarded as being particularly restrictive in terms of competition. The list, which is not exhaustive as there are other forms of anticompetitive cooperation, contains the following examples of prohibited cooperation:

- Directly or indirectly fixing purchase or sales prices or any other trading conditions;
- Limiting or controlling production, markets, technical development, or investment;
- Sharing markets or sources of supply;
- Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations, which by their nature or according to commercial usage have no connection with the subject of such contracts (tie-in clauses).

The Competition Act is particularly strict regarding price cooperation. Agreements in which there is direct price cooperation and those in which prices are indirectly regulated are prohibited. Cooperation between undertakings may either be direct (such as through a purchase agreement) or indirect (such as through membership in a trade association).

Agreements that may be deemed to limit production are, for example, specialization agreements and agreements on joint production, such as exclusive dealing agreements and patent licensing agreements. Market sharing agreements are anticompetitive by their very nature. Examples of such types of agreements are the allocation of quotas, sales territories, or customers between competitors. Manufacturers and wholesalers also are prohibited from making sales agreements that limit production, the geographical sales area, or the customers to be supplied.

Applying dissimilar conditions to equivalent transactions with other trading parties to place them at a competitive disadvantage is a form of discrimination, such as when a supplier enters into an agreement with its retailers to the effect that a specific customer will not be supplied.

Tie-in clauses occur, for example, when a buyer purchasing a product or service is forced to purchase an additional product or service which has no natural connection to the main product or service. In principle, tie-in clauses are only accepted when they can be justified on technical or quality grounds.

Abuse of Dominant Position

The Competition Act prohibits any abuse of a dominant position by one or more undertakings. Having a dominant position in the market is not prohibited. The prohibition only applies to abuse by an undertaking of its dominant position. A dominant position means a strong economic position making it possible for the undertaking in question to prevent effective competition by acting independently of its competitors and customers and, ultimately, its consumers.

A dominant position is based on a number of factors, each of which is not in itself decisive. Examples of important factors are financial strength, barriers to entry into the market, and the undertaking's access to input patents and industrial property rights as well as technology and other knowledge-oriented advantages. An important factor is the market share of the undertaking in the relevant market. A market share exceeding 40 per cent is an indication of a dominant position. The undertaking's market share is not, however, the decisive factor. Chapter 2 of the Competition Act contains a number of examples of practices that can be regarded as abuse of a dominant position. The list is not exhaustive and includes:

- Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- Limiting production, markets, or technical development to the prejudice of consumers;
- Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

An example of imposing unfair purchase or sales prices is when excessive prices are set. Another example is a dominant undertaking setting prices that are lower than prices that would normally be needed to cover costs and to provide a profit, when the aim is to eliminate competitors or make market entry more difficult.

Exclusive dealing agreements and similar practices that tie up suppliers and distribution networks and limit production also are examples of abuse of a dominant position. Discrimination may take place when a dominant undertaking unjustifiably uses prices, discounts, and other commercial conditions to treat undertakings differently. Refusal to supply also may be a form of discrimination. Tie-in clauses occur, for example, when a dominant undertaking uses its position to obligate a purchaser to purchase an additional product which does not have a natural or reasonable connection with the first product.

Actions against Restrictions on Competition

Injunctions

The Competition Authority may require an undertaking to cease violation of the provisions of the Competition Act regarding anticompetitive cooperation or abuse of dominant position. If the Competition Authority decides not to impose such an obligation, an undertaking which is affected by the infringement may petition the Market Court to issue an injunction to cease the violation.

Administrative Fines

If an undertaking intentionally or negligently violates the provisions of the Competition Act or Article 101 or Article 102 of the Treaty on the Functioning of the European Union



(TFEU), the Competition Authority may petition the District Court of Stockholm to order the undertaking in question to pay an administrative fine.

Before the Competition Authority institutes proceedings against an undertaking regarding an administrative fine, the undertaking must be given an opportunity to express its views on the Authority's summons application. The amount of the administrative fine may not exceed 10 per cent of the annual turnover of the undertaking in the preceding business year.

Leniency

According to Chapter 3 of the Competition Act, an undertaking may be exempted from fines if it discloses its participation in an illegal anticompetitive cooperation to the Competition Authority.

The Competition Authority may grant an undertaking immunity from a fine if the undertaking is the first one to notify the Competition Authority of an anticompetitive cooperation and the information contains facts which enable the Competition Authority to conduct an investigation. To be granted immunity, the undertaking also must satisfy the cumulative conditions set out in Chapter 3, Section 14, of the Competition Act. The concerned undertaking must:

- Provide all information concerning the infringement (i.e., the illegal anticompetitive cooperation);
- Fully cooperate with the Competition Authority;
- Refrain from destroying any evidence or hindering the Competition Authority's investigation; and
- Cease its involvement in the illegal cooperation after it has applied for leniency.

However, immunity from fines will not be granted if the undertaking has coerced another undertaking to participate in the illegal anticompetitive cooperation. If the Competition Authority lacks sufficient evidence to take action against the anticompetitive cooperation and no undertaking has met the conditions for immunity, the Competition Authority may still grant an undertaking immunity from a fine which would otherwise have been imposed if an undertaking is the first to submit evidence which, in the Competition Authority's view, enables the discovery of a violation (i.e., an illegal anticompetitive cooperation) or if the undertaking provides significant assistance to the investigation of the violation.

Reduction of Fines

Under Chapter 3 of the Competition Act, undertakings that do not qualify for immunity may benefit from a reduction in a fine that would otherwise have been imposed.

In order to qualify for such a reduction, the undertaking must provide the Competition Authority with information on the alleged illegal anticompetitive cooperation, which constitutes much stronger evidence than that already in the possession of the Competition Authority at the time of the application. To qualify for a reduction in fines, the undertaking must meet the same conditions as those for being granted leniency.



Damages

The Competition Act also contains provisions regarding damages. An undertaking that has violated the competition rules in the Competition Act regarding anticompetitive cooperation, or abuse of dominance, or Article 101 or Article 102 of the Treaty on the Functioning of the European Union (TFEU), must pay compensation for the damage thus caused.

Real Estate Law

In General

The current Swedish system is based on the Land Code, enacted in 1972. The property aspects of land law are technical due to the variety of effects that are achieved by registration of real estate and different cadastral procedures. All Swedish land and adjoining water areas, apart from the sea and the four major lakes (for which instead the governmental body Kammarkollegiet acts as the property owner), are divided into property units (*fastigheter*) registered with the National Land Survey (*Lantmäteriet*).

A property unit may be demarcated horizontally as well as vertically, making the creation of three-dimensional property units not only possible, but also increasingly common (however the vast majority of the approx. 3,300,000 properties in Sweden are only demarcated horizontally). In the case with two-dimensional properties, buildings at the property is regarded as “accessories” to the property, meaning that the property owner must have a decision from the National Land Survey in order to alter the boundaries of the property, but not to divest buildings and other thing erected at the property (provided that the objects are also moved away from the property).

The National Land Survey is responsible for land registration and the registration of land titles. All property units are registered in the property register (*fastighetsregistret*). That provided information is registered correctly is guaranteed by the State.

Ownership of land is always connected to a registered property unit. Ownership entails, amongst others, a right to own, occupy and (in most cases) dispose of the property unit. The owner’s right to use his property unit is, however, limited. For instance, the right to develop or exploit a property is limited by planning and building legislation. Any natural or legal person has the right to hold land. Restrictions on foreign ownership of real property were repealed during the 1990s.

Acquisition of Real Property

Signing of Contract

Acquisition of Swedish real property requires a written contract, signed by both buyer and seller. The contract must set out the sales price and contain a declaration by the seller by which he conveys the correctly designated, registered, object to the buyer.

A duly signed contract protects the buyer from the seller’s bankruptcy and, in principle, hinders the seller to sell the property to a third party, pledge or grant usufructs. Unless the seller has reserved the right to repossess the object in the event of default in payment on the due date (which is, by a large margin, the most common), a duly signed contract also defeats the seller’s right of repossession in the event of the buyer’s bankruptcy. A duly



signed contract also protects a buyer if the real property is subject to enforcement measures from the seller's creditors, although such protection is subject to limitations.

Registration of Title

Ownership of the property is transferred on the signing of the contract, but the contract in itself does not entitle the buyer to successfully sell the real property from a rights-in-rem perspective. The buyer also should gain a registered title (lagfart) to the real property by submitting the contract to the National Land Survey. Without the registered title, the buyer would be subordinated to a bona fide owner that may have purchased the real property from the registered owner. Applying for a registered title also is necessary for the purpose of taking out new mortgages the real property.

If the seller's signature on the contract is not confirmed in writing by two witnesses, the National Land Survey will condition the registration of full title upon that the seller does not sue the buyer over the ownership to the property within a certain time frame. If the seller of real property is married, written consent from the seller's partner is required for the disposal of the property. Written consent also is required from a "cohabitee" as regards real property used as joint habitation for unmarried couples.

The sale of real property may be conditional; for instance, in regard of payment of the purchase price, if all the conditions for a full title have not been fulfilled, the buyer will only receive provisional title (vilande lagfart) and is only entitled to obtain the actual title on completion of the conditional payment. A provisional title is sometimes useful, as it prevents the seller from reselling or taking out new mortgages in the property.

On final payment, the seller issues a bill of sale (köpebrev), which conforms to the written contract and in which the seller confirms that the condition has been satisfied and thereby grants the buyer full title to the real property. Consequently, registration of the title is necessary for the buyer to enjoy all benefits of owning the real property. On registration, any creditor or buyer can assure himself of the owner's title by inspection of the property registry, which also shows the priority status of the various mortgages.

Extinctive Acquisition

Extinctive acquisition of a real property is by way of a bona fide purchase from a person whose title was imperfect. Extinctive acquisition does not apply, save for when the situation in the end of this paragraph is at hand, if the title was imperfect due to forgery or sale by a minor or by a bankrupt. If a rightful owner should lose his right due to an error in the register, he is entitled to indemnification by the State. Extinctive acquisition also can occur through adverse possession (hävd), normally 20 years, and in some cases then years, after registration. The rules on adverse possession are of little practical importance in Sweden.

Mortgages

Mortgages (inteckningar) represent a credit potential of a specific amount and order of priority in the event of foreclosure of the property in question. On the registered owner's application, mortgages are entered into the register and a deed of mortgage (pantbrev) that is delivered to the owner representing the mortgage. When the owner receives the



deed of mortgage, he has security in his property (ägarhypotek). The owner may use this document to provide security for a creditor according to the rules of ordinary property. In doing so, the owner must deliver the deed of mortgage to the pledgee.

The pledge of a mortgage is perfected by the delivery of the mortgage deed by the property's owner and by a declaration of pledging the mortgage in the property for a certain debt. A creditor holding the mortgage deed (the mortgagee) is protected merely by his possession of the document. In the event of a forced sale of the mortgaged property, creditors are paid according to the priority of their mortgages. The owner also may be paid if he also holds any mortgage deed. Stamp duty is charged on a mortgage deed at the rate of two per cent of the face value of the deed. No stamp duty is charged when pledging a deed of mortgage as security for a liability.

The mortgages can be used over and over again. Hence when the first debt for which a mortgage is pledged is fully repaid and the mortgage deed is handed back to the owner, the owner may use the mortgage ones more as a security for a new debt.

Leases

Normally, if real property is transferred to a new owner, the leases associated with the property remain valid and binding on both the new owner and the tenants. However, this presupposes that:

- The lease was entered into by and between the owner of the property (at the relevant time) and the tenant, the lease is in writing; and the premises were occupied by the tenant prior to the transfer;
- The lease is registered in the property register;
- The seller has reserved the existence of the lease when conveying the property; or
- The buyer is in bad faith over the existence of the lease.

Nevertheless, a lease will always remain effective if the new owner fails to give the tenants notice of termination within three months of the transfer.

Stamp Duty

Purchases of real property and site leasehold rights (tomträtter) trigger stamp duty, which is normally paid by the purchaser and falls due when the purchaser's title to the property is registered in the property registry. The basis for the stamp duty is either the purchase price (or the value of the real property) or the tax assessment value of the property for the year prior to the year of registration of ownership, whichever is higher. The rate of stamp duty for transfers is 1.5 per cent of the value if the purchaser is an individual or a tenant-owner association and 4.25 per cent if the purchaser is a legal entity. No stamp duty is charged on rent or lease agreements.

Taxation

In General

The principal direct taxes in Sweden are corporate income tax (bolagsskatt) levied on companies, national income tax (statlig skatt), and municipal income tax (kommunal



skatt). The most important indirect tax is VAT, known as mervärdesskatt or moms. Other taxes include real estate tax on certain real estate, social security contributions, and various selective purchase taxes.

Sweden no longer has inheritance, gift, or wealth tax. The tax on real estate has recently been abolished for privately held real estate, but has been replaced by a lower “real estate fee”. Sweden has a modern tax system with a well-organized tax authority, the Tax Agency (Skatteverket), which is responsible for the operation of the Swedish tax legislation. Advance rulings on specific proposed transactions can be obtained from the Board for Advance Tax Rulings (Skatterättsnämnden).

The Swedish tax system distinguishes between employment income and capital income for individuals. The maximum tax rate on earned income for individuals is approximately 57 per cent (with a municipal tax rate of approximately 31.5 per cent). The tax on capital income is levied at a flat rate of 30 per cent. The allocation of income to either earned income or capital income is an important part of the Swedish tax system.

Resident companies and Swedish branches of non-resident companies are liable to pay corporate income tax at a flat rate of 20.6 per cent. However, the effective tax rate would be slightly lower, as companies are allowed to create a profit reserve through an allocation to a reserve of up to 25 per cent of the net profit. The reserve must, however, be dissolved (i.e., added to income) no later than the sixth year after the year in which the allocation was first made. There are no municipal income taxes levied on companies in Sweden.

Following Sweden’s accession to the EU, the tax system has been brought into line with EU law in some areas, particularly the VAT system. Furthermore, there have been many cases from the European Court of Justice, of both indirect and direct importance for Swedish tax jurisprudence, based on the free movement of goods, persons, services, and capital, and the non-discrimination rules.

Limited Companies

The most important Swedish corporate entity that is liable to pay corporate income tax is the limited-liability company. Comparable entities incorporated abroad may be liable to pay Swedish corporate income tax. The extent of this liability depends on whether they are regarded as resident or non-resident in Sweden for tax purposes.

Resident Companies

A company resident in Sweden is liable to pay corporate income tax on its worldwide profits. Any company incorporated in Sweden is considered to be resident in Sweden for tax purposes, including foreign companies if the seat of the board of the company is situated in Sweden.

Non-Resident Companies

Non-resident companies are only liable to pay corporate income tax on certain types of income: business income from a permanent establishment in Sweden, income from real estate situated in Sweden, income from the sale of a tenant-owner’s right to use a house in Sweden, and income from dividends on interest in a Swedish cooperative association.



Payments in the form of royalties and other periodical payments for the use of tangible or intangible assets will be considered income from a permanent establishment in Sweden if the payment arises from a business with a permanent establishment in Sweden.

Partnerships

Under Swedish law, partnerships are considered to be legal entities, but not separate entities for tax purposes. Once the taxable income of a partnership has been determined, it is allocated among the partners, who are liable to pay personal income tax or corporate income tax on the amount allocated, depending on whether the partner is an individual or a company.

Taxable Income

When determining the taxable income of a company, all business expenses incurred in obtaining, securing, or maintaining the income are deductible from the gross income of the entity. Swedish company taxation is based on the entity's statutory financial statements prepared in accordance with Swedish generally accepted accounting principles (GAAP) and with adjustments provided by law, such as exempt income, disallowable expenditure, and losses brought forward.

All the company's income is categorized as business income and is taxed at a flat rate of 22 per cent. Capital gains, including gains on sale of real property, are treated as business income and form part of the taxable net income of the company.

Tax-Exempt Dividends

In 2003, Sweden implemented a new tax regime according to which dividends are tax-exempt under certain circumstances. This exemption from taxation only applies to business-related shares (näringsbetingade andelar) that are fixed capital assets. Business-related shares comprise shares in a limited-liability company and in a cooperative association (ekonomisk förening) owned by, for example, a Swedish limited-liability company, a Swedish cooperative association, a Swedish foundation (stiftelse), or a non-profit association (ideell förening).

In 2010, Sweden extended these rules so that a dividend received by a partnership is exempt from taxation if the share in the partnership is owned by one of these Swedish companies and if the dividend would have been exempt from taxation if the company had received the dividend directly.

An unquoted share is generally considered business-related. A quoted share is considered business-related if the shareholding represents at least 10 per cent of the voting rights or if the share is held for sound business reasons, in that it is considered necessary for the business conducted by the shareholding company or any of its affiliates. Quoted business-related shares must be held for at least 12 months to qualify for tax exemption. There is no minimum holding period for unquoted shares.



Tax Treatment of Losses

Losses may be carried forward indefinitely to be set off against profits earned, with some exceptions, such as after changes in control of the company. Certain capital losses are only deductible from income deriving from transactions of a kind similar to the transactions leading to the loss.

Stock-in-Trade Valuation

According to the Annual Accounts Act (Årsredovisningslagen), current assets should be valued at the lower of the acquisition value and the net realizable value on closing day, according to the “lower of cost or market” rule (lågsta värdets princip). By law, the acquisition value may be calculated according to the “first in, first out” (FIFO) method, the weighted average value method, or according to a method similar to either of these methods, with specific exceptions.

Groups of Companies

Swedish tax law does not provide for consolidated taxation, which means that companies within the same group are not taxed on a consolidated basis. However, provisions allow for the transfer of income between Swedish entities by way of a group contribution, provided certain conditions are met.

The group contribution constitutes taxable income for the receiving entity and a tax-deductible item for the providing entity. This means that the losses of one company may be offset against the profits of another company within the same group. One of the conditions for group contributions is that both the providing and the receiving entities are resident within the EEA and are subject to tax in Sweden. Furthermore, the actual shareholding of the parent company in the group must exceed 90 per cent. Provided certain conditions are met, a Swedish company is allowed to deduct final losses in foreign subsidiaries within the EU/EEA.

As of January 2013, deductions for interest costs related to loans from associated companies are not allowed unless certain conditions are met. The restrictions apply when the company receiving the interest does not pay at least 10 per cent tax on the income or if the reason for incurring the debt was to receive a substantial tax benefit. Deductions may be allowed even if the interest income is not taxed with 10 per cent by the receiving company, if the receiver is resident within the EEA and the incurrence of the debt was mainly commercially motivated. There are no thin capitalization rules in Sweden.

Controlled Foreign Companies

Sweden has controlled foreign companies (CFC) rules, which have been applicable since 2004. The CFC legislation is applicable to companies and individuals who, at the end of the fiscal year, directly or indirectly hold or control at least 25 per cent of the capital or the voting rights in certain low-taxed foreign legal entities. The Swedish rules apply if the foreign company is not taxed at all or taxed at a rate of less than 12.1 per cent.



In Sweden, income from foreign companies in certain jurisdictions is put on a white list (vita listan) and, according to a complementary rule (kompletteringsregeln), is not subject to CFC taxation, even if the effective tax rate is below 12.1 per cent.

Even if a country is placed on the white list, certain types of income can be excluded from this list and hence be subject to CFC taxation. This is often the case with income originating in banking and financing businesses, because experience has shown that this type of income frequently derives from tax-avoidance transactions.

If the CFC rules apply, the owner of the shares in the foreign company will be taxed for the foreign company's income, pro rata to his shareholding in the company. In the case of indirect ownership, the shareholding is deemed to be the product of all shareholdings in the holding chain.

In 2007, the Parliament decided to implement a new complementary rule in the CFC legislation. This complementary rule involves a new possibility of avoiding CFC taxation even if the income of the foreign company is low-taxed. This rule is only applicable if the pre-existing complementary rule does not apply. The rule covers foreign legal entities within the EEA and states that CFC taxation can be avoided if the owner is able to show that the foreign company constitutes a real establishment in the country where it is located and from which it operates a genuine business.

An indication of real establishment is when the foreign company has resources, such as premises and equipment necessary for the business to be run, in the jurisdiction in which the company is located. Another indication is when the personnel of the foreign company have an independent right to make decisions on behalf of the company and are in charge of cash and other movable property of the company. Some changes in the pre-existing white list also have been implemented.

Reorganization and Liquidation

Swedish tax legislation includes several rules which aim to facilitate corporate reorganizations. The rules cover both national and transnational mergers as well as mergers between independent companies. According to the business continuity principle, the transferring company will not be taxed as a result of a merger, and the receiving company will assume the tax position of the transferring company.

The Swedish regulatory framework largely follows the EC Merger Directive, which aims to facilitate transnational mergers and other business reorganizations within the EU. In addition to national mergers, the Merger Directive also regulates transnational mergers, demergers, partial demergers, transfers of business, and the exchange of shares.

Rules regarding the transfer of business regulate situations where all assets of a company, or all assets attributable to a certain line of business, are transferred to another company for a consideration consisting of shares in the buyer. For the rules to be applicable, the consideration must correspond to the market price. These rules cover both national and international transfers, and the transferring company may not report the consideration (i.e., the shares in the buyer) as income. Instead, the taxable value of the business assets will be reported as income resulting in a nil return. Accordingly, no capital gain or capital



loss will be reported. The shares received are deemed to be acquired for the net of the tax values assumed and the value of debts and other liabilities assumed.

The buyer is deemed to have purchased the assets at a price corresponding to the transferring company's tax values; in other aspects, the buyer assumes the tax position of the transferring company. Hence, the taxation of the transfer is postponed until the buyer sells the acquired assets and the transferring company sells the shares received.

There are certain rules regarding the exchange of shares (andelsbyten) which cover both national and international exchanges. The rules regulate a company's transfer of shares in another company to a third company in exchange for shares in the buyer, when the seller can postpone the taxation of capital gains deriving from the transfer of shares, provided that certain conditions are met. The actual capital gain is instead allocated to the shares received and thus will not be taxed until these shares are sold.

There also are rules regarding the exchange of shares between an individual and a company. According to the rules, the new shares received are deemed to have been purchased for a price corresponding to the acquisition cost of the old shares. Accordingly, the latent capital gain will automatically be taxed when the owner sells the shares received. Furthermore, the latent capital gain will be taxed if the conditions for deferred taxation are no longer met. In this case, the rules regarding the exchange of shares function as exit tax.

In addition to these provisions regarding reorganization, certain rules regarding transfer of assets for a consideration below market price (underprisöverlåtelse) are noteworthy. Normally, the transfer of assets below market price leads to taxation of the seller; however, if certain conditions are met, the assets can be transferred for a consideration that falls below the market price without any tax consequences.

According to Swedish tax law, a company which is liquidated is deemed to have been subject to a transfer of its shares. A loss cannot, however, be deducted until the fiscal year in which the loss is definite. Accordingly, a loss is normally deducted at the end of the liquidation.

Transfer Pricing

Under Swedish tax law, the fixing of prices in business transactions between related companies (i.e., transfer pricing issues) must be in compliance with the arm's-length principle. According to this principle, related companies will be treated as if they were independent entities when it comes to business transactions.

Payment of Taxes

Legal entities operating a business are liable to pay preliminary tax (F-skatt) to the Tax Agency every month. The intention is that this tax will correspond as far as possible to the final tax. The preliminary tax for one month will normally be paid no later than the twelfth day of the following month.

At the same time, a special tax return reporting the actual taxes will be submitted to the Tax Agency. The preliminary tax paid every month is based on the amounts stated in the application made to the Tax Agency regarding F-skatt (skatte- och avgiftsanmälan).



At the end of the year, after the tax return has been filed with the Tax Agency, the preliminary tax is reconciled against the final assessed tax. If the assessment shows a difference between the tax paid in advance and the final tax, the difference will be repaid to the taxable person or, alternatively, to the Tax Agency.

Penalties

If an incorrect fact is stated in an income tax return or if a material fact has been omitted from the tax return, the taxable person may be ordered to pay a special tax penalty. As a primary rule, this penalty amounts to 40 per cent of the tax evaded. The penalty can, in certain cases, be reduced to 10 per cent of the tax evaded. If an income tax return is not filed in time, extra charges for delay also may be levied.

Unilateral Relief

As different countries apply different methods when determining whether a certain type of income will be taxed in the specific country, the same income can be subject to taxation in more than one country (i.e., be subject to double taxation). Swedish tax legislation comprises unilateral arrangements that aim to mitigate the effect of double taxation. This mitigation is accomplished through one of two methods: the exemption method or through the tax credit method.

According to the exemption method, the income is taxed in either one of the countries. When the tax credit method is applicable, the foreign tax is deductible from the Swedish tax on the same income. The right to deduct the foreign tax is limited to the Swedish tax on the foreign income (spärrbelopp). Sweden applies the “overall principle” according to which only one limited amount will be calculated for all foreign income during one year. This principle is often beneficial from the taxpayer’s point of view.

Tax Treaties

Sweden has an extensive network of tax treaties with more than 80 countries. Relief from double taxation under most of the treaties is provided by a credit in the country of residence for tax paid on income in the country of source (the tax credit method) or exemption in the country of source (the exemption method), depending on the type of income.

A universally recognized principle is that a tax treaty may only limit, and not extend, a country’s right to levy tax on a certain income according to that country’s domestic law. For example, as the Swedish domestic tax rules, in contrast to most tax treaties, prescribe the often more favorable overall principle when deducting foreign tax against Swedish tax, this principle can be used instead of the less advantageous rules in the treaties.

Furthermore, the methods of avoiding double taxation in the tax treaties can only be used for taxes covered by the treaties. Taxes excluded from a tax treaty can, however, be deducted according to the Swedish unilateral domestic tax rules, if the other conditions are met in accordance with these rules.



Intellectual Property Rights In General

The Swedish intellectual property rights legislation is greatly harmonized with the legislation of the EU. Hence, the protected subject matter and the scope of protection largely follow the same principles as in other EU member states. In Sweden, the Patent and Registration Office is the competent authority designated for granting national protection and exclusive rights for technical ideas, trade marks, and designs. The European Union Intellectual Property Office, located in Spain, is the EU agency for registering trade marks and designs valid in Sweden as well as in the other countries of the EU.

In Sweden, a new national court solution has been implemented with effect from 1 September 2017. As a result of this solution, almost all intellectual property, market, and competition law cases have been concentrated to the new Patent and Market Court, which is a part of the Stockholm District Court.

Patents

On the submission of an application, Swedish patents are granted for inventions that are novel, inventive, and industrially applicable. Computer programs, business methods, and other ideas that are not technical in nature are not patentable. A patentable invention may, however, incorporate computer programs or business methods.

The Patents Act (patentlag) also includes special provisions concerning microbiological processes, biological material, and inventions relating to the human body; for example, genetically modified products may be patentable. However, inventions which are contrary to public morality or public order, such as inventions for the cloning of humans, may not be patented. A patent may normally be kept in force until 20 years have passed from the date when the patent application was filed. While in force, the patent provides a right to prevent others from commercial exploitation of a product or process which is protected by the patent or a product which has been produced by the patented process.

Exemptions apply to non-commercial or experimental use. Moreover, compulsory licenses may be granted by the court under certain circumstances, such as the holding of a related patent or the non-use of the patent by its holder. The most recent news regarding patents in Sweden relate to EU-legislations that were presented in December 2012. The regulations imply that European patents granted by the European Patent Office (EPO) should bring patent protection in all participating Member States without any action in each country. These patents are called “European patents” with unitary effect. Due to the unitary patent, a number of amendments in the Patents Act have been made, including amendments for a Unified Patent Court. The amendments have for the time being not yet entered into force.

Trade Marks

Trade marks in Sweden are governed by the Trade Mark Act (varumärkeslag). Protection of trade marks in Sweden may be obtained either by registration or use. Protection by use requires the mark to be established in the market. All signs that can be represented graphically, such as words, shapes, letters, numbers, slogans, and even sound signals and colors,



may be protected, provided that the sign is distinctive, in that it is capable of distinguishing goods or services.

However, a trade mark may not be registered nationally if it is confusingly similar to another person's protected trade mark or if it is likely to convey the impression of being another person's protected family name, artistic name, or infringing on a protected literary or artistic work.

A Swedish trade mark registration is valid for 10 years and may subsequently be renewed for 10 years at a time. A trade mark means that no other person may use confusingly similar symbols in relation to goods or services similar to those for which the trade mark has been registered. However, if a registered trade mark has not been used for an uninterrupted period of five years, the registration may be declared null and void. Sweden has implemented the 2008 EU Trade Mark Directive. The government is preparing national trade mark legislation with effect from January 2019 based on the new EU Trade Mark Directive. Also applicable in Sweden is the Regulation on the European Union trade mark.

Industrial Designs

Industrial designs in Sweden are governed by the Design Protection Act (lagen om mönsterskydd). The appearance of the whole or a part of a product, in particular, lines, contours, colors, shapes, textures, or materials, may be protected through registration if the design has individual character and is new. The design is new if no identical design has been made available to the public prior to the filing date. However, a grace period of 12 months is provided from the date of publication by the designer.

Design rights may not be obtained for features of a product which are solely technical or functional or designs which violate another person's trade mark, copyright, or trade name. The registration of a design is valid for five years and may be renewed at five-year intervals for a maximum period of protection of 25 years. The exclusive right provided by the registration implies that no other person may use the design for commercial exploitation without permission. The Regulation on Community designs applies in Sweden.

Copyright

Copyright in Sweden is governed by the provisions of the Act on Copyright in Literary and Artistic Works (lagen om upphovsrätt till litterära och konstnärliga verk), known as the Copyright Act. Copyright protection arises automatically when a literary or artistic work is created.

A work must attain a certain measure of originality or individuality to be eligible for copyright protection. There is no registration procedure for copyrights. The Copyright Act also governs protection of related rights, such as performance rights, production rights, and database protection. Copyright protection for the work remains for 70 years after the death of its creator. The protection includes economic rights as well as moral rights (i.e., a right to attribution and integrity). Certain limitations apply to the economic rights, such as quotations from the work, copies for private purposes, and educational uses. The related rights vary in scope and length of protection. Under Swedish law, the application of a copyright symbol has no bearing on whether or not copyright applies.



Trade Secrets and Confidential Information

The Trade Secrets Act (lagen om företagshemligheter) governs willful and negligent unauthorized access to trade secrets and the use of trade secrets obtained through acts of espionage. Such actions may result in criminal and civil liability. This Act also regulates the exploitation of past employers' trade secrets, although it is customary to use non-disclosure agreements as supplements to the legislation on trade secrets.

Through the Act on Special Protection for Workers against Reprisals for Whistleblowing Concerning Serious Irregularities (lag om särskilt skydd mot repressalier för arbetstagare som slår larm om allvarliga missförhållanden), also known as the Whistleblower Act, and provided that certain conditions are met, workers are granted protection against reprisals when they whistleblow on serious irregularities which may be punishable by imprisonment.

Labor Law In General

Swedish labor law is characterized by a high degree of regulation by statutory law and/or collective bargaining agreements. These two important features dominate labor law in Sweden. Individual rights for employees in respect of vacation benefits, working hours, and the requirement for employers to have cause for dismissal follow from generally applicable labor laws.

Collective rights vest with trade unions, which have a strong position in Sweden. The legal relationship between employers and their employees is primarily regulated by collective bargaining agreements. Considering that several non-compulsory statutory provisions may be overridden by collective bargaining agreements, the importance of the latter in Swedish labor law should not be underestimated. In addition, Swedish membership in the EU has had a significant substantive effect on Swedish labor law.

Trade Unions

The Employment (Co-Determination in the Workplace) Act (lagen om medbestämmande i arbetslivet), known as the Co-Determination Act, regulates the relationship between employers and employee organizations (trade unions). Based on the fundamental principle of freedom of organization, the Co-Determination Act gives both employers and employees the right to organize and to act collectively without interference. Infringement of these rights entails a liability to pay damages on the part of the infringing party.

The Swedish labor market is heavily organized and union activity has, by tradition, a strong position. Trade union activity exists not only at national level and industrial level, but also at company (local) level. One important part of trade union activity is entering into collective bargaining agreements.

Negotiations are conducted between the respective confederations and provide a framework for the different national unions and associations of employers to conclude detailed agreements. As a result of the collective bargaining system, Sweden has a labor market with relatively few open conflicts, although parties are free to embark on industrial action,



such as strikes or lockouts, as a remedy when collective bargaining is unsuccessful. However, these rights lapse on conclusion of a collective agreement (obligation to observe peace), and there also are some exceptions to this rule. The “established trade unions” (i.e., trade unions that have entered into collective agreements with an employer or employers’ association) have a favored status in the labor field.

Co-Determination

The relationship between employers and trade unions is largely regulated in the Co-Determination Act. According to the Act, employers who are bound by collective agreements have a “primary duty to initiate negotiations” with established trade unions prior to making more comprehensive or otherwise important changes to their organizations.

Such employers are thus required to enter into negotiations with the local trade union, such as before taking measures that could affect the operations of the company in question. Such measures include major investments, changes in corporate organization, sale of the company, use of subcontractors, appointment of managers, or implementation of new technologies or processes. The obligation includes a duty to notify the union in advance, provide information, consult with labor representatives, and initiate and carry out negotiations before making a final decision.

Employment Protection

The Employment Protection Act (lagen om anställningsskydd) is a statute that protects employees against unfair dismissals. In principle, the Act covers all employees and excludes only top managers.

Forms of Employment

The general rule is that a contract of employment will continue until further notice. Fixed-term employment is recognized in specified cases, such as for seasonal employment, substitute employment, and probationary employment. General fixed-term employment is allowed for a maximum period of two years, provided that such fixed-term employment is recognized by any applicable collective bargaining agreement(s).

Dismissal

Dismissal by the employer must be based on reasonable grounds, in that the employer must show just cause for any dismissal. Just cause is either personal reasons/misconduct or redundancy/restructuring. Just cause does not exist if it would be reasonable to offer a vacancy or a position held by an employee with a shorter period of service (according to a “last in first out” principle) in the case of redundancy.

A dismissed employee is entitled to a notice period varying between one month and six months, depending on the employee’s period of service. During the notice period, the employee is entitled to receive his ordinary salary and other benefits. The dismissal must be in writing and include certain information as to how to bring claims against the employer for unfair dismissal.



Summary Dismissal

The employer may terminate an employment contract by summary dismissal (the termination of employment is effected immediately) when the employee has “grossly neglected” his obligations toward the employer.

Remedies and Claims

If a contract of employment is terminated without reasonable grounds or just cause, the employer may be liable not only to pay salary and other benefits during the court proceedings, but also to pay general damages and damages corresponding to loss of income. The amount of any damages depends, to a large extent, on the employee’s period of service.

Discrimination

The Discrimination Act (Diskrimineringslagen) came into force in 2009 and was amended in 2011. Claims under this Act can be brought by a national ombudsman who supervises compliance with the Discrimination Act. The Discrimination Act addresses all areas of society. Discrimination is divided into several categories: direct discrimination, indirect discrimination, inadequate accessibility, harassment, sexual harassment, and instructions to discriminate.

The Act covers discrimination on the grounds of age, sex, ethnicity, religion or other beliefs, disability, sexual orientation, and transgender identity or expression. Regarding discrimination in employment under the Discrimination Act, an employer may not discriminate against a person who is an employee or applicant for work or traineeship or a person available to perform work as temporary or borrowed labor. An employer also has an obligation to investigate and take measures against harassment against an employee.

If an applicant has not been employed or selected for an employment interview, the potential employer is, at the request of the applicant, obligated to provide the applicant with information regarding education, work experience, and other qualifications of the person who was selected for employment or otherwise selected for an interview.

Annual Leave and Working Hours

An employee is entitled to certain nightly and weekly rest in accordance with the Working Hours Act (Arbetstidslagen). The Working Hours Act also contains regulations regarding ordinary working hours of 40 hours per week and regulations regarding maximum hours of overtime work. An employee is entitled to paid vacation according to the Annual Leave Act (Semesterlagen). The Annual Leave Act covers all employees and distinguishes between an employee’s entitlement to annual leave and paid vacation.

An employee is entitled to five weeks (25 days) of annual paid leave. The annual leave is measured only in working days, excluding Saturdays, Sundays, and public holidays. The key rule is that employees are to receive their ordinary salary during the leave. In addition, the employee will be entitled to supplemental holiday pay at a rate of 12 per cent of the employee’s annual income. Certain types of absence, such as sick leave, absence due to military service, and parental leave, also may qualify as paid leave.



Parental Leave

An employee's rights to certain types of leave to provide child care are regulated in the Parental Leave Act (Föräldraledighetslagen). Parents are entitled to full-time leave from work for 18 months after the birth of a child.

In order to be entitled to leave under the Parental Leave Act, a person must have been employed by the same employer for at least six months or for a total of at least 12 months in the past two years. A person wishing to use his right to parental leave must notify the employer two months before the start of the leave. The Parental Leave Act also is generally applicable to adoption.

Social Security

Employees' rights also include a safety net in the form of statutory and contractual insurance cover (through collective agreements). The fundamental principle of the Swedish insurance system is that any loss of income should be compensated on the basis of the individual's earned income.

The social insurance system, also referred to as national insurance, originates from the National Insurance Act (lagen om allmän försäkring), which theoretically covers the entire Swedish population. The National Insurance Act represents an important part of employees' rights. For instance, in various situations, many of the schemes compensate at the rate of 80 per cent of earned income, up to 7.5 "basic amounts", for national social security purposes. The social insurance system — which includes unemployment insurance, the national pension system, and national occupational insurance — is vast and is therefore beyond the scope of this chapter. Currently, social security contributions amount to 31.42 per cent of the gross salary.

The social insurance system functions as a lower limit of security for Swedish employees. However, the level of compensation is supplemented by additional occupational pension plans according to collective bargaining agreements or by private (optional) pension plans.

Financial Services

In General

The three largest categories of companies in the Swedish financial market are banks, mortgage credit institutions, and insurance companies. Investment firms, mutual fund companies, Alternative Fund Managers (AIFs), and the State-administered pension funds (AP funds) are also important market operators. There are four main types of banks operating in the Swedish financial market:

- Swedish commercial banks (joint-stock banks);
- Foreign banks;
- Savings banks; and
- Cooperative banks.



Banking Laws

The Banking and Financing Business Act (lagen om bank- och finansieringsrörelse) is the fundamental act regulating the activity of banks and credit market companies. The Act contains rules on the requirements to obtain a license to conduct banking and financing business (oktroj) and governs the kind of financial operations these companies may perform.

The Act has a set of provisions on credit assessment, specifies the rules for crossborder operations, and stipulates the kind of property credit institutions may hold. It also contains rules on ownership and management assessment, supervision, and intervention by the relevant authorities. The Act on Special Supervision of Credit Institutions and Investment Firms (lagen om särskild tillsyn över kreditinstitut och värdepappersbolag) and the Act on Capital Buffers (lagen om kapitalbuffertar) regulate capital and risk management issues, based on the Capital Requirements Directive (CRD IV).

The former Act also is intended to be a Swedish complement to the Capital Requirements Regulation (CRR), which per se already contains binding provisions also for the Swedish market. The Acts aim to regulate the ratio of capital base and the level of risk that the banks may take, as well as to ensure that banks have a satisfactory risk management system and an adequate internal control system in place. The Act on Special Supervision also contains rules regarding some corporate governance matters.

The Acts contain requirements on credit risks, market risks, and operational risks and how capital requirements are to be calculated according to the type of assets, commitments, and investments of financial institutions. They also specify limits to the level of exposures that a financial institution may have with a customer or a related group of customers. The Acts are supplemented by binding provisions issued by the SFSA.

Through the Consumer Credit Act (Konsumentkreditlagen), as amended in 2012 and 2014, Sweden implemented the Consumer Credit Directive. The Act sets out the rules applicable to credit institutions when granting loans to consumers. It contains the information that the institution is required to provide, the rules on how the credit agreement should be drafted, and the conditions that must be fulfilled in order to allow a change in the interest rate to the disadvantage of the customer and for repaying a loan prematurely. The Act is completed through binding provisions issued by the Consumer Agency (Konsumentverket) and to some extent by the SFSA. In 2014, an Act on Special Activities with consumer credits entered into force.

The Covered Bond Issuance Act (lagen om utgivning av säkerställda obligationer) regulates bank and credit market institution issuance of covered bonds with preferential rights over the assets of the issuing institution. The Payment Services Act (lagen om betaltjänster) is based on the Payment Services Directive 2 (PSD 2). The Act regulates the conditions under which authorized payment service providers may legitimately provide payment services.

The Act on Deposit Guarantee Scheme (lagen om insättningsgarant) is based on the Deposit Guarantee Schemes Directive. The Act covers losses in connection with the



bankruptcy of a bank and guarantees each customer an amount of up to SEK 950,000 on their deposit in a bank.

The Act on Measures against Money Laundering and Terrorist Financing (lagen om åtgärder mot penningtvätt och finansiering av terrorism) is based on the Fourth Money-Laundering Directive.

The Act applies to all types of financial institutions and a number of designated non-financial business and professions. The Act prohibits taking part in money laundering and obliges the entities to conduct extensive KYC examinations and to file a police report on any transactions that are suspected to involve money laundering or terrorism financing. These laws are supplemented with more detailed provisions in the regulations and general guidelines issued by the SFSA.

Most Swedish banks are international banks which therefore also conduct securities trading, asset management, and corporate finance activities requiring conformity with further legislation. For example, the Securities Market Act (lagen om värdepappersmarknaden) has implemented the Markets in Financial Instruments Directive II (MiFID II), governing the organization and operation of securities companies, stock exchanges, clearing organizations, and other providers of financial services.

Supervision

The primary functions of the financial system are to accept deposits and provide credit, mediate payments, and diversify risks. These functions are regulated by the banking laws. The SFSA and the Central Bank (Riksbanken) have the principal responsibility of supervising compliance with these laws and regulations and maintaining financial stability.

The SFSA also has a direct responsibility to supervise all the other separate institutions in the financial market. The central bank has the overall responsibility to promote the stable functioning of the financial system. The task of promoting stability in the financial system is shared between the two authorities. The SFSA is a public authority under the jurisdiction of the Ministry of Finance. The primary task of the SFSA is the supervision of the institutions in the financial market to grant authorizations and licenses and to issue more detailed rules. The overall objective is to contribute to the stability and efficiency of the financial system and to promote consumer protection.

The supervision is performed through reporting requirements for the companies, information requests, on-site inspections, or through supervision by the SFSA's own accountants. Regular analysis of the institutions' risks and financial performances also is conducted. Within the framework of the relevant laws, the SFSA issues detailed binding provisions and general guidelines concerning various types of financial activity. The SFSA may also decide different kinds of sanctions for institutions that have breached applicable rules for their activities and for individual persons who have breached applicable rules. In worst case, the SFSA has a possibility to revoke a license for an institution.



Investment Incentives

In General

Foreign companies planning to establish or expand business operations in Sweden can obtain information and assistance free of charge from “Business Sweden” (the Trade and Invest Council) at www.business-sweden.se.

Financial Incentives

Although Sweden does not have a wide range of financial incentives, employment grants or regional investment grants for regional development are available to assist foreign companies to establish a business in certain regions in Sweden.

Tax Incentives

Sweden offers an attractive tax package for foreign corporate investors by having a favorable holding regime with the following advantages:

- No taxation of capital gains on business-related shares;
- No taxation of dividends received on business-related shares;
- No stamp duty;
- No thin capitalization rules; and
- No withholding tax on interest paid.

In addition to a competitive corporate tax rate and the tax rules that apply for Swedish companies, Swedish tax legislation offers favorable taxation to foreign key personnel, such as executives, experts, researchers, and others with sought-after skills that are difficult to find in Sweden. These personnel may qualify for a special tax regime that reduces their income tax by 25 per cent and lowers the employer’s social security costs by the same percentage. The legislation creates incentives for companies to retain or establish top executive functions in Sweden rather than choosing another country.

Foreign experts help to strengthen Swedish technology and research and development, and tax incentives enable companies to offer salaries and compensation that are competitive with European levels. The reduction in taxes applies to the first three years of employment in Sweden, although key personnel may reside in Sweden for up to five years. Furthermore, foreign key personnel also can receive tax-exempt contributions from employers for traveling to the home country and for moving to and from Sweden, as well as for school fees for children.

Notably, the tax relief applies only to employees of a Swedish company, either Swedish or foreign-owned, or a Swedish operation. The tax reduction does not apply for Swedish citizens or individuals who have been resident in Sweden during a five-year period prior to the start of their employment. If a qualified foreign employee changes jobs, the tax authorities will make a new assessment.



Currency Regulation

In Sweden, the free movement of capital applies through the implementation of the corresponding EC Directive. The provisions of the Directive prohibit all restrictions in the movement of capital and payments across borders. The free movement of capital also applies between EU Member States and non-EU countries. This prohibition does not prevent the control or intervention by authorities that may require declarations of movement of capital. The authorities also are allowed to intervene to prevent crimes regarding taxation or money laundering.

The Act on Measures Against Money-Laundering and Terrorist Financing also is applicable to lawyers and associates at law firms when assisting in carrying out financial transactions and real property transactions. The Act stipulates requirements with regard to controlling the identity of the person who wishes to engage in a business relation, to monitor ongoing business relations, and a duty to examine and provide information.

The Act is supplemented through provisions issued by the Swedish Bar Association. The conditions and requirements of the Act differ in relation to companies within the EEA and companies outside the EEA. According to the Act on Exchange Control and Regulation of Credit (lagen om valuta- och kreditreglering), the government may, after consulting with the central bank, order exchange regulation if Sweden is at war, or in danger of war, or in other extraordinary conditions.

Customs Regulation

In General

Customs regulation in Sweden is carried out by the Customs (Tullverket). Customs issues the permits that are required for certain goods and performs risk analyses of the flow of goods. Customs strives to provide for smoother trading at both the national and international levels and to simplify the rules and legislation applicable to foreign trade.

Sweden belongs to the EU customs union, which means, in principle, that Swedish customs regulations are the same as those in the EU. From a trading perspective, membership also means that Sweden's frontiers now extend to Norway in the west, Russia in the east, and Africa in the south. Within the EU, duties and other trade barriers have been removed and common duties have been introduced for trade with countries that are not part of the EU.

Therefore, in principle, duty and other charges on goods only apply to goods brought into Sweden from countries outside the EU. The Authorized Economic Operator (AEO) was introduced in 2008, which means that Sweden can issue and use the same certification program as all the other EU Member States and thereby ensure both high-quality customs processing and security.

Special Rules on Imports

One of the principles of EU legislation involves the free movement of goods within the EU, effectively making it a single territory. Import restrictions apply to certain products. These rules and regulations are imposed due to Sweden's trade policy, for environmental



protection, or for health and security reasons (such as to prevent the spread of plant and animal disease). Special regulations are applicable to the import of:

- Firearms and ammunition;
- Alcoholic beverages;
- Chemical products;
- Medical products and narcotics;
- Plants;
- Food products;
- Living animals and animal products; and
- Endangered species of animals and plants.

When importing goods from countries outside the EU, there are import quantity limits. Import licenses must be applied for at the authority in charge. The National Board of Trade (Kommerskollegium) is in charge of iron, steel, textile, and clothing. The Board of Agriculture (Jordbruksverket) is in charge of foodstuffs.

Special Rules on Exports

According to the EU rules on the free movement of goods, almost all goods can be exported without any restrictions from Sweden to countries within the EU. No customs declaration or payments of import fees are required. There are, however, special rules for certain goods that may not be exported or that may require an export license. Special rules are applicable to:

- Military equipment;
- Dual-use products (products which have civilian and military uses);
- Nuclear material and equipment;
- Objects of cultural value;
- Endangered species of animals and plants;
- Dangerous products and products with high content of polychlorinated biphenyl (PCB);
- Animal products and other foodstuffs;
- Used refrigerants, such as refrigerators, freezers, or air-conditioning units containing ozone-depleting substances;
- Radioactive waste; and
- Mercury and goods containing mercury.

Requirements for licenses or equivalent authorization do not, however, legitimize any border control within the European customs union. When exporting goods to countries outside the EU, Community rules apply. This means that it is necessary to notify exports to



the customs authorities, to follow special rules on exports that require permits, and to issue certificates of origin, all in accordance with the various EU agreements on free trade.