

Doing Business in Sweden

*Our expertise in corporate law and thorough understanding
of business environment – your key factors to success*

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FOREIGN COMPANIES AND individuals may set up a limited liability company, a partnership, or open a branch office in Sweden. Swedish legislation does not require any permits or references. This compendium has been prepared by Advokatfirman Lindahl to assist in starting up a business. It is based on the legislation in force May 2009.

Lindahl is one of Sweden's leading corporate law firms, with offices in Stockholm, Göteborg, Malmö, Uppsala, Helsingborg and Örebro. Our legal team possesses expertise spanning all key areas of corporate law. We combine specialised legal skills with a thorough knowledge and understanding of the business environment and sectors in which our clients operate. A central element of our practice is to advise foreign clients on Swedish law.

The compendium is provided for information purpose only. The information is of a general nature and does not purport to be exhaustive. It should not be relied upon as a substitute for legal advice on any specific matters.

Should you have any questions about how to conduct business in Sweden, please feel free to contact Advokatfirman Lindahl or any of our individual lawyers at www.lindahl.se

Introduction

The legal system in Sweden is based on statute law, supplemented by case law. Sweden became a full member of the European Union (EU) on 1 January 1995. European Community law therefore applies in Sweden, either directly or by incorporation. Sweden also adheres to a number of international treaties and conventions, including the UN Convention on the International Sale of Goods.

Foreign investment in Sweden is widely promoted by the Swedish government. The Invest in Sweden Agency (www.isa.se) and the Swedish Trade Council (www.swedishtrade.com) assist foreign companies seeking to invest or conduct business in Sweden.

Sweden has no foreign exchange controls and no currency restrictions. Foreign companies or individuals usually conduct business in Sweden through a Swedish subsidiary or branch. No operating licences are normally required to conduct business in Sweden. However, there are exceptions in specific sectors such as insurance, banking and financial services.

Facts about Sweden

Area: 174,000 sq mi (450,000 km),
the third largest country in Western Europe
Forests: 53 %
Mountains: 11 %
Cultivated land: 8 %
Lakes and rivers: 9 %
Longest north-south distance: 978 mi (1,574 km)
Longest east-west distance: 310 mi (499 km)

Capital: Stockholm

Population: 9.3 million inhabitants

Languages: Swedish,
recognized minority languages: Sami (Lapp),
Finnish, Meänkieli (Tornedalen Finnish),
Yiddish, Romani Chib

Form of government:
Constitutional monarchy, parliamentary democracy

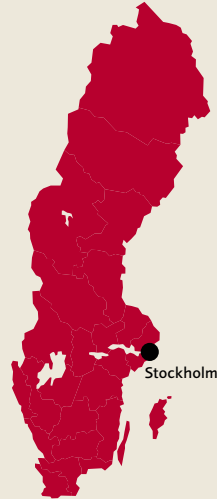
Parliament: The Riksdag, with 349 members
in one chamber

Religion: In practice, Sweden is very secularized. The Church of Sweden
is Evangelical Lutheran; co-exists with many other beliefs

Most important export goods: Electronic and telecom equipment,
machinery, passenger cars, paper, pharmaceuticals, iron and steel

Most important imported goods: Electronic and telecom equipment,
machinery, foodstuffs, crude oil, textile products, footwear and
passenger cars

Life expectancy: 🧑 83 years 🧑 79 years



Company Law

Limited liability company Establishment

Foreign companies establishing a business in Sweden most commonly set up subsidiaries in the form of limited liability companies, (*aktiebolag; AB*). A Swedish limited liability company may have one or more shareholders, who may be individuals or legal entities. A limited liability company is a legal entity and can own property, enter into agreements and employ personnel.

One or more founders form a limited liability company. Since a single individual or legal entity may own all the shares in a limited liability company, only one founder is required. One or more of the founders must subscribe for all of the shares in the company. A founder may be an individual who is resident in the European Economic Area (EEA), a Swedish legal entity or a legal entity that is incorporated under the laws of a member state of the EEA and has its domicile, headquarters or principal place of business in the EEA.

A partnership established in the EEA may act as founder only if each partner with unlimited liability in the founding partnership is resident in the EEA. The Swedish Companies Registration Office (the Registration Office) may grant an exemption allowing persons other than those qualifying under these rules to act as founders. The founders must draw up and sign a deed of formation. This deed must

be submitted for registration to the Registration Office within six months, upon which the company acquires the status of a legal entity. Even though the registration procedure is not too complicated,

**Public companies must
have share capital
of at least**

SEK 500,000
(approx. EUR 50,000)

certain issues must be considered, which takes additional time. The easiest and most common way of setting up a subsidiary in Sweden is therefore to purchase a “shelf” company from a company agent or law firm. Many law firms in Sweden have an arrangement with companies supplying shelf companies to expedite the start-up process. Buying a shelf company means that many of the registration procedures at the Registration Office have already been completed and the company can start its business immediately. However, the company must still register a new name (see below). The cost of buying a shelf company is approximately SEK 5,000–10,000.

It is possible to register a company online via the e-service called Företagsregistrering (in Swedish) at www.bolagsverket.se/in_english/forms/document/pdf/816e.pdf

Private and public limited liability companies

There are two categories of limited liability companies: private and public. A private limited liability company is by far the most common. The major difference between the two is that only public limited liability companies may offer shares and other securities to the general public. A private limited liability company may not introduce its shares on the stock exchange or any other organised market. If a company wishes to convert from a private to a public company or vice versa, it may do so if decided at its general meeting. Public companies must have share capital of at least SEK 500,000 (approx. EUR 50,000) and private companies must have share capital of at least SEK 100,000 (approx. EUR 10,000).

It is possible for limited companies, “economic associations” (*ekonomiska föreningar* – loosely equivalent to a cooperative society) and Swedish branches of foreign enterprises to keep their accounts in euro instead of kronor. The enterprise itself decides whether the accounts should be kept in euros. The change must be registered at the Registration Office.

Shareholders and shares

There are no restrictions on the number or nationality of shareholders. Shareholders are entitled to regulate their relationship by non-public shareholders' agreements and/or, to a certain extent, the company's articles of association. Shareholders' rights are exercised at general meetings of the shareholders. Most resolutions are passed by a simple majority but certain resolutions, such as a resolution to amend the articles of association, require a greater majority, known as a "qualified" majority. All shares carry equal rights unless otherwise provided by the articles of association. The articles of association may prescribe different classes of shares, i.e. different shares of the assets or profits of the company or different voting rights. Under certain conditions, public companies may repurchase or sell their own shares. The board of directors, or a central securities depository (if the company's shares are registered there) must maintain a public share register of all of the company's shares and shareholders.

Board of directors; managing director

Every limited liability company must have its own board of directors. A public company must have at least three directors, whereas a private company may have one or two directors, provided an alternate director is also appointed. In the private sector there are statutory requirements governing employee representation on the board, giving trade unions the right to appoint two employee directors and two alternate employee directors of companies with more than 25 employees, and three employee directors and three alternate employee directors of certain companies with more than 1,000 employees.

At least half of the directors must be resident in the EEA. If no director resides in Sweden, the board must appoint a Swedish resident to accept service on behalf of the company. If there is more than one director, the board must appoint a chairman. The chairman leads the work of the board of directors and ensures that directors meet their

obligations. The board of directors is responsible for the organisation of the company and the management of its operations and is authorised to sign on behalf of the company. In particular, it must ensure that the company's accounting records, asset management and financial matters are properly organised.

In order to constitute a quorum, a majority of the directors – or a higher number if the articles of association so stipulate – must be present. Unless the articles of association require a “qualified” majority, the board of directors may adopt resolutions by a simple majority. If not all directors are present, the directors voting in favour of a resolution must represent more than one-third of all directors unless the articles of association provide otherwise.

Only public companies need to have a managing director. The managing director of a public company cannot simultaneously be chairman of the board. The managing director, who must reside in the EEA (unless special exemption is granted), is responsible for the company's day-to-day management and represents the company in that context. The managing director is often on the board. Even where this is not the case, he or she is entitled to attend meetings of the board and to express opinions, unless the board decides otherwise in relation to a specific issue.

Liability

Directors and the managing director are liable for damages if they wilfully or negligently cause the company loss or damage when performing their duties. Directors and the managing director are also liable if a shareholder or any other person incurs loss or damage because a director or the managing director contravenes the Swedish Companies Act or the articles of association or the Annual Reports Act.

If two or more persons are liable for the same loss or damage, they are jointly and severally liable.

Piercing the corporate veil

A parent company has no liability for the debts and obligations of its subsidiaries. However, in some cases the Swedish Supreme Court has nonetheless held the parent company liable and “pierced the corporate veil”. In these situations the subsidiary has been undercapitalised, involved in business with a high risk of third party liability and controlled by the parent company to such an extent that, to all intents and purposes, the subsidiary has lost its independence from the parent company.

Name and Registered Office

A limited liability company can be given any name that is not too similar to that of an existing company or trademark. The company’s name must include the Swedish word for limited liability company (*Aktiebolag*), or the abbreviation AB. A public company’s name must be accompanied by the addition publ unless the company’s name contains the word publik. The Registration Office reviews the proposed name and determines whether it could be confused with a similar existing company name or trademark or is unsuitable for some other reason.

The registered business name of a limited company is protected throughout the country

The articles of association must specify the place in Sweden where the registered office of the board of directors is located. Any change of address must be notified to the Registration Office. In legal proceedings the company will be subject to the jurisdiction of the district court where the registered office is located, unless otherwise provided by legislation or by agreement between the litigants.

Company letterheads, invoices and order forms must state the name of the company, the place in Sweden where the board of directors is located and the company’s registration number. However, it is not

recommended that any stationery, printed matter, signs, etc. be ordered until the business and the name applied for have been registered.

Accounts and audit

A limited liability company is required to maintain accounting records in accordance with the provisions of the Bookkeeping Act. For each financial year, a limited liability company must submit an annual report consisting of a profit and loss account, a balance sheet, notes on the accounts and a directors' report. The annual report must be sent to the Registration Office not later than 11 months after the end of the financial year or the company may be liquidated. Failure to send in the annual accounts not later than 7 months after the end of the financial year is contrary to Swedish bookkeeping regulations and the company is charged a penalty for delay. Further delays will result in additional penalties.

Only an authorised public accountant or an approved public accountant may be the auditor of a limited liability company. A registered accounting firm may be appointed auditor, with one of the firm's auditors having primary responsibility for the audit. Companies of a certain size must appoint an authorised public accountant.

The auditor is required to examine the annual report and the accounts, as well as the administration of the board of directors and the managing director. Generally speaking, auditors are appointed at a general meeting of the shareholders. If several auditors are appointed, the articles of association may provide that one or several, but not all of them, are to be appointed in a different manner. Although auditors are usually appointed at a general meeting of the shareholders, an auditor does not solely represent the interests of the shareholders. The auditor is also obliged to ensure that the company's management complies with the provisions of the Companies Act and the articles of association.

Financial year

The financial year may be the calendar year or a split financial year.

The following financial years are generally accepted:

The Financial Year

1 January–31 December

1 May–30 April

1 July–30 June

1 September–31 August

Branches

A foreign company may conduct its business in Sweden through a Swedish branch (filial). Branches must operate under a separate trading name registered at the Registration Office. The branch must be placed under the leadership of a managing director. The managing director must be resident in the EEA. However, the Registration Office may grant exemption from this requirement. If the managing director is not resident in Sweden, the foreign company must appoint a person resident in Sweden authorised to accept service on behalf of the foreign company.

Partnerships

Under the Sole Proprietorships and Partnerships Act (Partnerships Act), a partnership (*handelsbolag; HB*) is created by an agreement between two or more individuals and/or legal entities to do business in association. The most frequently cited advantage of partnerships is their flexibility. Partners are free to organise their relationship as they see fit without the constraints of the corporate form. Within the framework of a partnership, complex structures can be set up to allow for widely varying characteristics and circumstances.

No special formalities are required to create a partnership but it must be registered in the trade register. The name of the partnership must indicate the existence of a partnership.

A drawback of the partnership structure is the unlimited joint and several liability of the partners for debts incurred by the partnership. One way of avoiding unlimited liability is to form a limited partner-

ship (*kommanditbolag*; *KB*). Under the Partnerships Act, a limited partnership is made up of at least one general partner and at least one limited partner. The general partner has the same rights and liabilities as a partner in a partnership, including unlimited liability for all debts and obligations of the limited partnership. The liability of limited partners is limited to their financial contribution to the limited partnership. A limited liability company may be the general partner of a limited partnership.

Taxation of Companies

General structure

Companies in Sweden pay corporate income tax on their worldwide income at a flat rate of 26.3 per cent. However, a lower effective tax rate may be achieved by means of a tax adjustment reserve (*periodiseringsfond*). The tax computation is based on the audited annual accounts in compliance with adjustments based on tax legislation. Tax is calculated on a preliminary basis and paid regularly throughout the year. If the preliminary payments result in overpayment, a refund is made. An annual tax return must normally be filed by 2 May (4 May in 2009) of the calendar year following the financial year.

Tax aspects of funding businesses

The Swedish corporate tax system has several interesting features that can be used to reduce the tax burden. The absence of thin capitalisation rules allows the use of highly leveraged structures. A Swedish limited liability company may be financed by equity through shareholders' contributions and/or by loans from a foreign group company or from a foreign bank which could be resident in a low-tax jurisdiction. This results in advantageous taxation of the interest income on the loan. The interest paid will normally be fully tax-deductible for

the Swedish limited liability company (although specific rules apply if the loan is used to buy shares from a related party, for example, and the foreign recipient is taxed at a rate of less than 10 per cent on the interest income). No withholding tax will be levied on the interest payments made to the foreign lender. The loan capital could be used by the Swedish limited liability company to make share investments in Swedish and foreign subsidiaries. The Swedish tax regime allows the combination of no thin capitalisation rules and no capital duty, often together with full tax-deductibility of interest expenses.

»THE SWEDISH CORPORATE TAX SYSTEM HAS SEVERAL INTERESTING FEATURES THAT CAN BE USED TO REDUCE THE TAX BURDEN.«

It is also possible to combine group contributions (*koncernbidrag*) paid to domestic companies with full tax-deductibility of interest payments made to foreign recipients to minimise income and thus reduce corporate taxation, provided that certain requirements are met.

However, even though Sweden has no thin capitalisation rules, there is an obligation to increase the equity of a Swedish limited liability company if its share capital falls below one-half of the registered share capital. If this occurs, the equity must be increased by a capital contribution or a share issue. It should be noted that a subordinated shareholder loan will not suffice.

Withholding tax

A final withholding tax (WHT) of 30 per cent is levied on dividends paid to non-residents, unless dividends are exempt or taxed at a lower rate under a tax treaty. Tax liability may also be eliminated under the EC Parent Subsidiary Directive. In addition, no WHT will be charged if domestic exemption applies.

Under the domestic exemption provisions, dividends paid by a resident company to a foreign company on business-related shares are

exempt from WHT. A foreign company is defined as a foreign legal entity that is subject to taxation in its country of residence similar to the taxation of Swedish resident companies. Dividends on shares held as inventory (current assets) are not exempt from WHT, since these shares do not qualify as business-related shares. This is discussed further below.

Swedish participation exemption rules

Dividends and capital gains received by a company resident in Sweden from another resident company on business-related shares are tax-exempt. Thus, capital losses are not tax-deductible. As mentioned above, participation exemption does not apply to dividends and capital gains received on shares held as inventory and it is required that the shares constitute fixed business assets. Unquoted shares in resident companies are always considered to be business-related. There is no time requirement or any other requirements as to the size of the holding of unquoted shares. Quoted shares in Swedish companies are regarded as business-related if they:

- 1) represent at least 10 per cent of the company's voting rights; or
- 2) are otherwise considered necessary for the business conducted by the share-holding company or any of its affiliates; and
- 3) are held for at least one year.

If shares cease to be business-related or are disposed of within one year of the date on which they qualified as business-related, the dividends become taxable. A capital gain on quoted shares is tax-free if the parent company has held the shares for at least one year. Shares in foreign companies may also qualify as business-related shares and thus fall under participation exemption if the foreign company corresponds to a Swedish limited liability company.

Swedish and foreign limited partnerships are not included in

participation exemption and are treated as tax-transparent entities. Income is taxed in the hands of the partner and Swedish partners are taxed on profits realised by the partnership. It should also be noted that participation by an international investor in a Swedish partnership may create a permanent establishment in Sweden for income tax purposes. Capital losses realised by a limited partnership (Swedish or foreign) on business-related shares are not tax-deductible. Under the current rules, there is an inconsistency in the tax legislation, since the tax-deductibility of losses is restricted, yet the participation exemption rules (tax-exempt dividends and capital gains) do not apply to partnerships.

Incentive schemes

Incentive schemes are normally launched to recruit, retain and motivate key personnel.

Most incentive schemes are related to equity, and the remuneration is normally linked to a rise in the share price. Some examples of instruments used in incentive schemes are stock awards, options, warrants and employee stock options. In general, the employee receives a right to acquire a security in the future on favourable terms, normally presupposing that he or she remains employed by the company or the group.

Swedish tax legislation uses the term “security” generically for shares, call options, warrants, bonds and similar rights. The term is central to the tax treatment of incentive schemes, since it determines whether gains will be taxed as salary or investment income, and thus whether the employer must pay social security contributions.

There are also other types of incentive scheme linked to the profitability of the company, such as synthetic options and bonuses, where the value of the synthetic option depends on the company’s future earnings.

Income under the incentive scheme is either taxed as capital gain

at a flat rate of 30 per cent (security) or treated as ordinary salary and taxed progressively at a rate of up to approximately 56 per cent. The rules are complicated and individual advice should be obtained in each case.

Tax losses

If the business is not profitable, tax losses may be carried forward indefinitely i.e. there is no time limit and losses can be carried forward and offset against business income as long as business is conducted.

A capital gain on the sale of property is taxable as business income. Generally, losses on disposal of real estate can only be deducted from capital gains on real estate. Capital losses on shares and securities can only be offset against capital gains on investments of the same kind. The use of accumulated tax losses carried forward is restricted where the ownership of a company changes.

Transfer pricing

Swedish tax law on transfer pricing is based on the arm's length principle. This means that the Swedish Tax Agency may adjust the income of a Swedish company if its taxable income in Sweden is reduced due to contractual terms differing from those that would have been agreed by unrelated parties. As of 1 January 2007 Sweden has formal transfer pricing documentation requirements.

Property-, stamp- and capital tax

Property tax is paid annually by owners of property located in Sweden. The tax rate is 0.5–1 per cent of the taxable value of the property. The taxable value is normally 75 per cent of the market value. New assessments are made every six years. For residential property a municipal property charge is levied annually, for houses capped at SEK 6,362 (approximately EUR 597) and for apartments capped at SEK 1,272 (approximately EUR 114) for 2009. A stamp tax is levied on the transfer of

real property. The tax is 1.5 per cent for individuals and 3 per cent for legal entities. However, no capital tax is payable on the issue of shares, on an increase in share capital or on share transfers.

VAT – value added tax

VAT is payable on all goods and services commercially supplied in Sweden, unless specifically exempt. Goods imported to Sweden are generally also subject to VAT. The standard VAT rate is 25 per cent and a business liable to VAT may recover input VAT paid on purchases by and for that business.

The standard
VAT rate in
Sweden is

25%

Taxation of branches

Branches are essentially taxed in the same way as Swedish limited liability companies. Branch profits remitted to the head office are not subject to withholding tax. The accounts of a Swedish branch must be kept separate from the accounts of the foreign company.

Acquisitions

Private company acquisitions

There are no requirements as to the form of an agreement to acquire shares or a company's assets. However, acquisitions of this kind may be subject to specific provisions of the articles of association or shareholders' agreements. It is customary to set out the terms and conditions of the transaction in a written agreement. A share transfer must be registered in the share register of the target company. In order for the purchaser to be protected against the seller's creditors, the share certificates must be duly endorsed and transferred to the purchaser.

It should be noted that whatever is agreed between the parties, employees are always entitled to be transferred, together with their rights, to the purchasing entity in the event of an asset sale.

Public company acquisitions

If a person or legal entity, including any related parties, regardless of nationality, acquires or sells shares in a company listed on the NASDAQ OMX Stockholm or any other regulated market in Sweden, the regulated market and the listed company must be informed when the aggregate holding exceeds or falls below certain thresholds. Under the Swedish Financial Instruments Trading Act, notice must be given where the shareholding in a listed company exceeds or falls below 5, 10, 15, 20, 25, 30, 50, 66 2/3 or 90 per cent of the total number of shares or voting rights in the company. Disclosure must be made not later than the trading day following the day of the acquisition or sale that triggered disclosure. The disclosure obligation may also be triggered by actions by the listed company, in which case it must make a press announcement of the change. A shareholder passing a threshold due to a change of this kind must make a disclosure not later than the trading day following the day after the company's disclosure.

Under the Stock Market Takeovers Act, if a person or legal entity,

including any related parties, regardless of nationality, acquires shares in a company listed on NASDAQ OMX Stockholm or any other regulated market in Sweden, so that their shareholding is equal to or exceeds 30 per cent of the voting rights in the company, the purchaser must make a compulsory bid for the remaining shares in the company. The purchaser must immediately disclose its holdings in the company and within four weeks after that make a public offer to purchase all outstanding shares.

Competition law

A new Competition Act (the Act) came into force on 1 November 2008. The Act is more in line with EC regulations than its predecessor.

A company contravening any of the provisions of the Act may be ordered to pay an administrative fine. An administrative fine is determined by Stockholm District Court on an action brought by the Competition Authority.

A new feature of the Act is the concept of a “disqualification order” (or trading prohibition). This penalty may be imposed on individuals having a leading position at the company in question, e.g., its managing director or directors. Price fixing and market sharing are examples of serious infringements of the Competition Act that can result in a disqualification order. A district court may issue a disqualification order on an action brought by the Competition Authority under the Competition Act.

Notification of mergers and acquisitions to the Swedish Competition Authority is compulsory when:

- the combined total annual turnover (sales) in Sweden of the companies involved exceed SEK 1 billion in the preceding financial year;
- and*
- at least two of the companies involved have turnover (sales) in Sweden exceeding SEK 200 million per company in the preceding financial year.

The processing time for mergers is generally 25 working days where the Competition Authority has received a notification from a party to a corporate merger. Notification should be made prior to completion of the merger.

A new merger control test has been introduced to determine whether a merger is designed to substantially impede efficient competition. It is the same as that used by the European Commission and marks an important harmonisation with EC rules. EC case law will become more influential as a result of this test.

The Swedish merger control rules do not apply if the concentration has a Community dimension, i.e. if it meets the thresholds set out in the EC Merger Regulation.

Employment and Labour Law

The Swedish labour system

Characteristic features of the modern Swedish labour system are detailed legislation as well as the key role played by collective bargaining agreements. However, these agreements do not apply to the labour market as a whole, but gain binding effect by agreements between trade unions and employers' organisations or individual companies.

Individual employment law

The Employment Protection Act (the Act) applies to all categories of employees, except for top level management, household staff and members of the employer's family. Most of the provisions constitute mandatory regulations in favour of the employee. Termination of employment is only lawful if there is "just cause".

The Act distinguishes between two main reasons for dismissal with notice. One reason is redundancy, which includes all reasons relating to the business, such as shortage of work or economic or technical

reasons. In such situations, however, the employer must adhere to the “first in-last out” principle. Employees with a longer period of service are entitled to stay longest if they have “sufficient qualifications”.

Although complicated in theory, in practice the system mostly allows fairly flexible solutions. The other reason for dismissal with notice relates to an individual employee. Examples are poor performance, absenteeism or poor health. In serious cases the Act allows employment to be terminated without notice.

Employees are guaranteed from one to six months’ notice, depending on length of service. Pay and other benefits must be paid during the notice period, but there is no statutory requirement to pay any extra severance pay to dismissed employees. An employer must normally complete consultations with the unions concerned before action to terminate employment is taken.

Swedish
employees are
entitled to at least
25 days
of paid annual
vacation

Statutory entitlement to time off work

Swedish employment law includes a number of statutes entitling employees to time off work, such as the Annual Vacation Act, the Parental Leave Act, the Study Leave Act and statutory rules enabling immigrants to study Swedish. Vacation rules are relatively complicated. In short, employees are entitled to at least 25 days of paid annual vacation.

Non-discrimination regulations

As a member state of the European Union, Sweden has implemented several EC directives governing the social functioning of the labour market and the rights of employees. Discrimination of employees and job applicants on grounds such as gender, ethnic origin, religious views, sexual orientation, disability and age is prohibited. Union activities, the right to belong to a union and the right of association also enjoy strong protection.

Transfer of undertakings

The European Transfer of Undertakings Directive has been implemented in Sweden. The legal consequences for employees of a valid transfer of undertaking are generally the same under Swedish law as under the directive. Hence, in principle an employee's employment relationship with a former employer is automatically transferred to a new employer.

Swedish law expressly provides that employees can object to the transfer of their employment relationship. Moreover, a transfer of undertaking does not, in itself, constitute just cause for dismissal. However, this prohibition does not preclude dismissals that are necessary for "economic, technical or organisational reasons". Essentially speaking, any surplus of labour resulting from the transfer should be dealt with by the new employer.

An employer, transferor or transferee, must consult the unions concerned about any issues relating to a transfer of undertaking before any decision regarding the transfer is made.

Posting of workers to Sweden

Workers posted to Sweden temporarily from another country under a public or private service contract are subject to the Swedish Act implementing the European Posted Workers Directive. For the duration of the contract a foreign employer must apply a set of minimum terms and conditions of employment. However, in contrast to other member states, there is no obligation to pay a minimum wage in Sweden. The system instead assumes that Swedish trade unions will start industrial action against foreign employers by sympathy action, thereby forcing them to sign a Swedish collective bargaining agreement covering posted workers. The ECJ has recently held action of this kind to be unlawful.

Real Property

The regulation of land

The Swedish Land Code governs all essential aspects of private real property law, such as real property fixtures, formal requirements, mortgages, usufructs, easements, leases and the registration of real property rights. All Swedish land is divided into property units that are individually identified by a name and a code. A property may be demarcated horizontally as well as vertically, thus creating a three-dimensional property unit. The boundaries of all property units and their ownership are registered in the Swedish Land Register. The Land Register contains information regarding the location of the property unit, the title holder, plans and regulations, mortgages, easements, taxable values and the most recent price paid for the property. A buyer is obliged to register title within three months of completing the transfer of real property.

Acquisition of real property

The Swedish Land Code lays down certain formal requirements for a valid transfer of real property. However, transactions involving indirect sale of property through legal entities dominate the market. They reduce transaction costs, since a sale of shares in a company is not subject to stamp duty or capital gains tax.

Restrictions on transfer of real property

The Pre-emption Act allows Swedish municipalities a right of first refusal in certain cases when real property within their boundaries is sold. This right can be exercised only where land is needed for specified public purposes such as public infrastructure development, refurbishing buildings for housing purposes or preserving buildings for reasons of cultural heritage. The municipality does not have a general right of first refusal when real property is sold and they are not allowed to exercise the right for business purposes. The right may not

be exercised where it would be unfair to the vendor and the purchaser in view of the relationship between them or the terms agreed by the parties (including purchase price) etc.

Transfers of properties taxed as rental housing units do not generally require local authority approval. However, parties involved in the transfer of such properties (and the site leasehold right (*tomträtt*) to such properties), are normally under an obligation to notify the municipality of the agreement within three months. The consent (*förvärvstillstånd*) of the Regional Rent Tribunal (*Hyresnämnden*) must be sought if the municipality, at its own discretion, so demands. Failure to notify the municipality in time and a refusal of consent by the Tribunal will render the whole transfer void.

Commercial leases

The Swedish Land Code includes detailed provisions governing commercial leases so a fairly simple standard contract form can be used. This standard form has been produced and negotiated by the Swedish Federation for Rental Property Owners (*Sveriges Fastighetsägareförbund*) in cooperation with the Swedish Retail Federation (*Sveriges Köpmannaförbund*). A typical lease agreement for an office is therefore only a few pages long.

The term of the lease may be fixed or continuous. Commercial leases are often granted for a fixed term of three to five years. However, there are many examples of shorter and longer terms in the rental market. Industrial buildings are often let for more than three years. In towns and cities the term of the lease may not exceed 25 years, but in rural areas a maximum term of 50 years is permitted. There are no restrictions as to the minimum term of a lease.

The parties may freely agree on the rent for commercial premises. Commercial tenants commonly pay added charges for heating, VAT (if the tenant is liable for VAT) and property tax. Premises for retailers, hotels and others are sometimes let on a turnover (sales) basis, the

rent being set as a percentage of the income generated by the tenant. Usually the rent is linked to changes in the consumer price index from year to year. However, indexation of this kind is not permitted if the term of the lease is less than three years. Value added tax (VAT) in relation to commercial leases is voluntary in Sweden.

Unless the landlord has very good reasons for not renewing the lease, the tenant is essentially entitled to compensation for all of his losses if the landlord terminates the lease and the tenant is thus obliged to leave the premises. The right to compensation is forfeited if the landlord offers the tenant a renewal on fair market terms and the tenant does not accept those terms.

Marketing and Distribution Agreements

Distributors

There is no specific legislation governing distributors and parties are free to negotiate their own terms. However, in some cases the Swedish courts have applied the provisions of the Agency Act by analogy where the relationship between the principal and the distributor has closely resembled an agency relationship. But it should be noted that the Swedish Competition Act may apply; see the “Competition law” section. The block exemption for vertical agreements may apply if the market share of the supplier does not exceed 30 per cent.

Franchising

Franchising is basically self-regulated in Sweden and the Swedish Franchise Association plays an active role. In addition, the Swedish Information Requirements for Franchisers Act provides that a franchiser must provide a prospective franchisee with certain information within a reasonable time before entering into a franchise agreement.

The Swedish Competition Act may apply; see the “Competition law” section. The block exemption for vertical agreements may apply.

Agents

Agents are protected by the Commercial Agency Act, by which the EC Commercial Agency Directive has been implemented.

Agency agreements (non-genuine) may fall under the Swedish Competition Act; see the “Competition law” section. The European Commission guidelines on block exemption for vertical agreements state that a distinction should be drawn between “genuine” and “non-genuine” agency agreements. (The block exemption on vertical agreements applies in Sweden.) Genuine agency agreements fall outside the prohibition in Article 81.1 of the EC Treaty and the corresponding prohibition in the Swedish Competition Act, whereas non-genuine agency agreements may be covered by the prohibition.

Intellectual Property

Designs

Legal protection for designs is governed by the Swedish Design Protection Act and Council Regulation (EC) No 6/2002 on Community designs.

Legal protection of a design under the Swedish Design Protection Act can be obtained for the appearance of a product or a part of a product by registering the design at the Swedish Patent and Registration Office (PRV). The design must be distinctive and new in order to be registered. The requirements for protection under the EC Regulation are the same.

Protection under the Swedish Design Protection Act and the EC Regulation is obtained for a maximum of five consecutive five-year periods, i.e. for a maximum of 25 years.

Sweden is a party to the Paris Convention for the Protection of Industrial Property and the Locarno Agreement Establishing an International Classification for Industrial Designs.

Copyright

Copyright protection of literary or artistic works is governed by the Swedish Copyright in Literary and Artistic Works Act. Protection under the Act requires no registration or other formalities. For a work to enjoy protection it must originate from a human being, be the result of that person's independent creative effort and display a certain level of originality.

Works are protected by copyright immediately upon creation. The author or creator may assign economic rights to a work, but certain moral rights remain with the author or creator. Copyright protection lasts for the lifetime of the author or creator and 70 years after the end of the year of his or her death. Artists enjoy protection for live performances for 50 years after the performance or, if the performance was recorded, for 50 years after the year when the recording was first published.

Sweden is a party to the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention.

Trade marks

Trade mark protection is governed by the Swedish Trade Marks Act and Council Regulation (EC) No 40/94 on the Community trade mark. Exclusive protection may be obtained either by registration at PRV or by consistent use of the mark by the proprietor or its licensee resulting in establishment in the market. Trade marks and related rights may last indefinitely. However, registered trade marks must be renewed every ten years from the date of the original registration.

Sweden is a party to the Madrid Protocol. As a member of the European Union, Sweden applies Council Regulation (EC) No 40/94 on the Community trade mark.

Patents

Legal protection for inventions is governed by the Swedish Patents Act. Patents are granted for inventions that can be used industrially, are new and differ substantially from the state of the art at the time the patent application is filed. Patent applications are submitted to PRV. The maximum validity of a patent is 20 years from the date the patent application is filed. A special supplementary patent may be issued for pharmaceutical products, ensuring the patent extended protection for up to five years.

Sweden is a party to the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty and the Convention on the Grant of European Patents (the European Patent Convention).

Confidential information and trade secrets

Trade secrets are protected under the Swedish Trade Secrets Act. The Act imposes civil and/or criminal liability for unauthorised procurement, use or disclosure of trade secrets.

Infringement investigations

At the request of a proprietor of an intellectual property right or a licensee showing probable cause for an infringement, a court may grant an infringement investigation to secure evidence.

Marketing

The Swedish Marketing Act prohibits unfair marketing in general, as well as specific marketing practices, such as various forms of misleading marketing and unfair/misleading comparisons between products/businesses. The use of unfair marketing practices may result in a court order, subject to a fine for non-compliance, obliging the offending party to cease specific marketing and to pay damages to the right

holders. In addition to the Marketing Act, there are specific provisions and regulations governing the marketing of certain products, such as tobacco, alcohol and pharmaceutical products.

Product liability and product safety

The Swedish Product Liability Act is based on Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products. The Act imposes strict liability on sellers, importers and manufacturers for personal injury and damage to property used by individuals caused by an unsafe product.

In addition, Sweden has enacted the Product Safety Act, based on Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety. The Act provides that marketing and sale of products or services may be restricted or prohibited by a public authority for safety reasons.

Dispute Resolution

Types of dispute resolution

The most common means of settling both domestic and international commercial disputes between legal entities is *arbitration*. Parties choose this option because it offers a speedy, confidential and flexible procedure overseen by highly qualified and specialised experts, and broadly recognised enforceability of arbitral awards.

Courts of general jurisdiction remain a less expensive and preferable alternative for minor disputes and those involving consumers or other individuals.

Judicial system

The Swedish courts are divided into:

- courts of general jurisdiction (the district courts, courts of appeal and the Supreme Court) with jurisdiction in disputes relating to private and criminal law;
- administrative courts with jurisdiction in the field of public law, including taxation;
- special courts for disputes in certain legal areas such as employment law, market regulation and patent registration.

Public nature of litigation

Court proceedings are public, and all related case materials are therefore also a matter of public record, unless there is a particular reason to keep them confidential (e.g., trade secrets or other sensitive information).

Counsel and legal fees

There are no formal requirements governing who may be appointed counsel in Swedish litigation, so foreign lawyers may appear before the court, provided they know Swedish and are otherwise “suitable” to act as counsel. However, in most cases the parties are represented by a member of the Swedish Bar Association.

Legal services in Sweden may not be offered on a contingency basis; billing per hour is most common, although fixed fees may also be charged.

The losing party in civil litigation is generally ordered to pay the successful party’s reasonable litigation costs.

Limitation periods

The general statutory limitation period is ten years, unless otherwise agreed or provided by law. However, there are many exceptions. For example, the limitation period is three years for insurance claims, and only one year for certain claims of trustees etc relating to management of accounts. A payment demand or reminder sent to the debtor

recommences the limitation period. Expiry of the limitation period need only be taken into consideration in legal proceedings if invoked by a party to the proceedings.

Statutory interest

Unless otherwise agreed by the parties, Swedish substantive law provides a statutory interest rate (based on the “reference rate” fixed by Sweden’s Central Bank) that may be charged on arrears for the entire period of delay.

Interim orders

Swedish courts may issue interim orders in both litigation and arbitral proceedings, provided a number of conditions are fulfilled. As a rule, the applicant will have to provide security to compensate the other party for any loss or damage it may incur as a result of the order. If an interim order is requested in arbitration, the arbitral tribunal should first grant the applicant leave to request the order.

Evidence

Each party may rely on any evidence it finds relevant; and the court (or arbitral tribunal) is free to evaluate its value. The scope for disclosure is not as broad as in the US, for example, and there is a duty to disclose in advance all the evidence the party intends to rely on and specify what each document or witness is intended to prove. It is not required to submit witness statements or expert opinions in advance. However, the scope of their testimony must be defined in good time before the hearing. If witnesses or experts are called, the other party should be allowed to cross-examine each of them.

Enforcement of judgments

The Brussels I Regulation (Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement

of judgments in civil and commercial matters) is directly applicable in Sweden as a member of the European Union. Under the Regulation, judgments of courts in EU member states are recognised in Sweden and Swedish judgments are recognised in other member states. Sweden is also a party to the Lugano Convention, which provides similar rules in relation to the EFTA States. Under both the Brussels I Regulation and the Lugano Convention, enforcement is carried out in accordance with expedited enforcement procedure rules.

When it comes to the enforceability in Sweden of judgments delivered outside the EU and of Swedish judgments outside the EU, a bilateral or multilateral treaty must be in place to ensure mutual enforcement.

Expedited enforcement procedure

For collection of debts that Swedish debtors do not contest there is an expedited enforcement procedure conducted by the Swedish Enforcement Authority. The Authority also enforces Swedish judgments and arbitral awards. It also helps to enforce foreign judgements and arbitral awards, provided a declaration of enforceability has been obtained in advance from Svea Court of Appeal.

Arbitration

Arbitration has an exceptionally long tradition in Sweden, and Stockholm is often chosen as a venue for international arbitration. For decades the Arbitration Institute of the Stockholm Chamber of Commerce has distinguished itself in the service it provides to the arbitration community.

Applicable rules and laws

The Swedish Arbitration Act applies to all domestic and international arbitration proceedings taking place in Sweden. The Act is not based on the UNCITRAL Model Law, but there are many similarities.

If the parties have agreed to settle a dispute in accordance with institutional rules, those rules will apply in addition to the Arbitration Act. Rules of this kind include the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) or the SCC Rules for Expedited Arbitrations (which provide speedier and less expensive dispute resolution, usually by a sole arbitrator).

Sweden (most often Stockholm) is also a frequent venue for *ad hoc* arbitration proceedings.

Confidential nature of arbitration

Arbitration proceedings are confidential in the sense that the general public is not allowed to attend the hearings or access the materials of the case. However, in order to ensure non-disclosure by the other parties to a dispute, parties are advised to conclude a confidentiality agreement.

Counsel, rates, allocation of costs and evidence

In general, these issues are governed by principles similar to those for litigation (see above).

Arbitrators

There are no requirements as to the nationality, professional experience or educational background of arbitrators in Swedish proceedings. Arbitrators must possess full legal capacity, be independent and impartial.

Arbitral awards

An arbitral award is final and cannot be reviewed on its merits. Arbitral awards may be challenged on the grounds of serious procedural errors, however. Swedish courts are arbitration-friendly: an arbitration clause invoked in a timely fashion is a bar to litigation; successful challenge of arbitral awards is comparatively rare in

Sweden; courts may assist in arbitration proceedings at various stages (see interim orders under “Litigation”); and very few types of commercial dispute are considered to be non-arbitrable.

Recognition and enforcement

Sweden is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This means that arbitration agreements will be upheld by Swedish Courts and foreign arbitral awards will be recognised and enforced in Sweden. Likewise, Swedish arbitral awards will be recognised and enforced in other signatory states.

Public Information and Useful Links

There are several useful and freely accessible sources of information on companies. These include court records, trade registers and tax registers. Information from these sources may be obtained free of charge or for a small administrative charge. Some of these sources and other useful links are given below.

<i>Invest in Sweden</i>	www.isa.se
<i>Swedish Trade Council</i>	www.swedishtrade.se
<i>Swedish Companies Registration Office</i>	www.bolagsverket.se
<i>Swedish Tax Agency</i>	www.skatteverket.se

