

# Corporations in Sweden

A summary legal guide

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# **1. Introduction, disclaimer and copyright notice**

There are often quite substantial differences in the various legal systems concerning corporation laws and these differences sometimes cause confusions in cross-border transactions or first time investments in a foreign country. However, we have learned that these differences can normally be overcome if the parties involved have a better understanding of the legal status of the entities included in the transaction.

The idea with this booklet is not to give answers to all questions related to legal entities in Sweden, but something that is easily accessible and gives an answer to the most fundamental issues in connection with transactions or investments in Sweden.

The materials in this booklet are up to date as of July 2014 (except where noted otherwise), and are designed to provide a convenient reference for clients to Nyman Rudenstam Advokatbyrå AB. It goes without saying that this booklet contains advice of a general nature only; the booklet is not legal advice or a substitute for legal advice with respect to any particular factual circumstance, and cannot be relied upon in lieu of legal advice. The reader should consult with qualified counsel in Sweden for legal advice with respect to particular situations.

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## 2. General overview

Business activities in Sweden are normally conducted in any of the following legally recognised forms:

**(i) limited liability company (“aktiebolag”, abbreviated “AB”);**

**(ii) general or limited partnership (“handelsbolag” or “kommanditbolag”, abbreviated “HB” or “KB”);**

**(iii) branch of foreign company (“filial”); or**

**(iv) individually by a person as sole trader (“enskild firma”).**

No. (i)-(iii) must be registered by the Swedish Companies Registration Office (“Bolagsverket”) while no. (iv) normally can conduct business without being registered.

There are also other legal forms under which you can conduct business activities in Sweden. Co-operatives (“ekonomisk förening”, abbreviated “Ek. för.”) have for instance traditionally been used for this purpose within the food industry. Also, a foundation (“stiftelse”) can conduct business activities (a foundation is a Swedish legal entity which to some extent shows similarities to the UK trust institute). Two or more partners can also conduct business through a trading partnership (unincorporated partnership) (“enkelt bolag”), which under certain circumstances must be registered. However, an unincorporated partnership can never be considered a legal entity. As a consequence, each and everyone of the partners are responsible for debts incurred and agreements entered into under the name of the partnership.

Foreign investors in Sweden have traditionally favoured the limited liability corporate form or a branch office. Partnerships are seldom used by foreign investors. However, occasionally foreign investors encounter Swedish general or limited partnerships, for instance if they are parties to joint ventures or if they invest in Swedish private equity funds. Bearing that in mind, this summary concerning Sweden will only describe limited liability companies, branch offices and general and limited partnerships.

## **3. Limited Liability Company**

### **3.1 Introduction**

A company limited by shares (“Aktiebolag” or abbreviated “AB”), is the most common form of business association in Sweden. In a Swedish limited liability company, the shareholders are, with only a few exceptions, not personally liable for the obligations of the company. Limited liability companies are divided into public and private companies. Only public companies may issue or offer shares or other securities to the public. A public company’s name must in letters be accompanied by the addition “(publ)” unless the company name contains the word “publikt” (public).

### **3.2 Formation**

A limited liability company is formed by one or more founders, who must meet certain qualification requirements. A founder must be

- a natural person resident in the European Economic Area (“EEA”);
- a Swedish legal entity, or;
- a legal entity established in accordance with the laws of a state within the EEA and having its domicile and head office or its main activities within the EEA.

A general partnership or equivalent legal entity which has been formed pursuant to the laws of a state within the EEA may, however, be a founder but only if each partner with unlimited liability is domiciled within the EEA.

Notwithstanding the above, it is quite easy and inexpensive to establish a limited liability company in Sweden. The most common way of starting up business in a Swedish limited liability company is by acquiring an already formed “off-the-shelf company”.

### **3.3 Minimum Share Capital**

Public companies must have a share capital of at least SEK 500,000 (or equivalent in EUR) and private companies must have a share capital of at least SEK 50,000 (or equivalent in EUR).

### **3.4 Shareholders and Shares**

There are no restrictions regarding the number or the nationality of shareholders. Shareholders are entitled to regulate their relations by non-public shareholders' agreements and/or, to a certain extent, in the company's articles of association.

The shareholders' rights are exercised at the shareholders' general meetings. Most resolutions can be passed by simple majority (more than half of the casted votes) but certain resolutions, such as a resolution to amend the articles of association, require qualified majority (two thirds of the casted votes and represented shares) or even higher number of votes.

All shares carry equal rights unless otherwise provided for in the articles of association. The articles of association may prescribe different classes of shares, i.e., different rights to take part of the assets or profits of the company or different voting rights.

Limited liability companies may only under certain conditions repurchase or sell their own shares. The rules are stricter regarding private companies compared to public companies.

The board of directors, or a central securities depository (if the company's shares are registered with such depository), shall maintain a share register of all of the company's shares and shareholders and is responsible for any updates of the share register.

### **3.5 Articles of Association**

The articles of association must be in Swedish and must include certain information described by law, by way of example (i) the name of the company, (ii) the location in Sweden where the registered office of the company shall be situated, (iii) the objects of the company, (iv) the share capital of the company and number of shares (minimum and maximum), and (v) number of board members (minimum and maximum).

The articles of association shall not typically regulate the relationship between the shareholders. However, as long as the wording is clear and not contrary to what is stipulated by law, it is possible to regulate a number of other items in the articles of association, such as for instance veto rights for certain shareholders.

The articles of association may also contain clauses that restrict the transfer of shares, (i) consent clause (Sw. “Samtyckesförbehåll”), i.e., a clause pursuant to which one or more shares may be transferred to a new owner only upon the company’s consent, (ii) right of first refusal clause (Sw. “Förköpsförbehåll”), i.e., a clause pursuant to which a shareholder or other party shall be offered to purchase a share before it is transferred to a new owner and (iii), post-sale purchase right clause (Sw. “Hembudsförbehåll”); i.e., a clause pursuant to which a shareholder or other person shall be entitled to purchase shares which have been transferred to a new owner.

### **3.6 The Board of Directors**

The board of directors of public companies must consist of at least three directors, which all have to be natural persons. In private companies the board of directors may consist of less than three directors, provided that at least one deputy director is appointed. A majority of the directors must reside in the EEA, unless an exception is granted by the Swedish Companies Registration Office (Sw. “Bolagsverket”).

If the board of directors consists of more than one director, one of them must be appointed chairman. The chairman shall ensure that board meetings are held when necessary or at the request of a director or the managing director. The board of directors must also, once a year, adopt rules of procedures that shall set forth, e.g. the manner in which the work shall be allocated among the members of the board of directors.

In the private sector there are statutory requirements on board representation for employees, giving such employees, through their trade unions, the right to appoint two directors and two deputy directors in companies with more than 25 employees, and three directors and three deputy directors in certain companies with more than 1,000 employees.

The board of directors is responsible for the organisation of the company and for the management of the company’s affairs. In particular, it must ensure that the company’s accounting records, fund management and financial matters are properly organised. Directors have a fiduciary duty to act in good faith and in the best interests of the company.

Any member of the board of directors, or the managing director, may be liable for damages towards the company where, in the performance of his/her duties, he/she wilfully or negligently causes the company to suffer damage. The members and the managing director can also be liable if damages have been caused to a shareholder or a third party. However, in order for such liability to arise, the responsible member/director must be in violation of the Swedish Companies Act (Sw. "Aktiebolagslagen"), the Swedish Annual Report's Act (Sw. "Årsredovisningslagen"), or the articles of association. The liability stated in the Swedish Companies Act is though not exhaustive and other regulations, such as the Swedish Tort Liability Act (Sw. "Skadeståndslagen"), could be applicable.

The board of directors, or any person authorised by the board of directors, represents the company and signs on behalf of the company in external matters.

In order to constitute a quorum a majority of the directors - or a higher number if stipulated in the articles of association - must be present. Unless the articles of association require qualified majority, the board of directors may adopt resolutions by simple majority. Should not all members of the board of directors be present at the meeting, at least two thirds of all members of the board of directors have to vote in favour of the decision.

### **3.7 Managing Director**

A managing director must be appointed in public companies and may be appointed in private companies.

In public companies, the managing director cannot be chairman of the board. The managing director shall be in charge of the day-to-day management of the company according to the directions issued by the board of directors and is always authorised to represent and sign on behalf of the company in relation to the day-to-day management.

The managing director of a Swedish limited liability company must reside in the EEA unless an exception is granted by the Swedish Companies Registration Office. If none of the representatives of the company reside in Sweden, the board of directors shall appoint a person resident in Sweden authorised to accept service on behalf of the company.

### **3.8 Financial Reporting and Auditing Requirements**

An audited annual report, comprising a director's report, profit and loss accounts and a balance sheet, must be submitted to the Swedish Companies Registration Office no later than one month after the annual accounts have been adopted by the annual general meeting of the shareholders, which shall be held within six months of the expiry of each financial year.

For minor companies, defined by a specific regulation in the Accounting Act (Sw. "Bokföringslagen"), it is sufficient to close the accounting for the financial year with an annual account (Sw. "årsbokslut") instead of an annual report. A private company can also, if fulfilling certain conditions, be exempted from the requirement to appoint an auditor.

### **3.9 Taxation**

Swedish limited liability companies are required to pay an income tax on net profits. The tax rate is flat at 22 per cent. Unless there exists a capital gain exception, the general rule is that all (worldwide) business income is taxable, while any costs incurred when obtaining, maintaining or securing taxable income are deductible. To qualify for capital gains tax exemption, the shares must either be non-listed or, if listed, must represent at least 10 per cent of the voting rights and must have been held for a period of at least one year. Shares held in foreign companies can also qualify for tax exemption. This applies if the foreign company can be regarded being the foreign equivalent of a Swedish limited liability company. The tax exemption means that capital losses on shares held for business reasons are not deductible. The tax exemption applies equally to dividends received by a Swedish company.

The effective rate can be even lower as companies have the option of making deductible annual appropriations to a tax allocation reserve of up to 25 per cent of their profit. Losses in a company can be carried forward indefinitely and deducted from taxable profit. Restrictions may however apply on a change of ownership.

## **4. General and Limited Partnership**

The various forms of partnership are governed by legislation which is partly non-mandatory, taking effect where the relationship and/or specific issue is not governed by a partnership agreement.

Two or more parties (natural persons or legal entities) may jointly conduct business through a general partnership Sw. (“Handelsbolag” or “HB”) where all partners are jointly and severally liable for the partnership’s obligations. A limited partnership (Sw. “Kommanditbolag” or “KB”) is a partnership where at least one partner must assume unlimited liability. The remaining partners’ liabilities are limited to the amount of their registered contributions, which could be as little as SEK 1.

### **4.1 Financial Reporting and Auditing Requirements**

If one or more of the partners in a HB or KB are legal entities, the annual year has to be closed with an annual report. If the partners are natural persons, the annual year shall be closed with an annual report unless the partnership is defined as a minor company according to the Accounting Act, upon which it is sufficient with annual accounts. An auditor shall also be appointed if the HB/KB is not considered to be a minor company in accordance with the Auditing Act (Sw. “Revisionslag”).

### **4.2 Taxation**

Neither general nor limited partnerships as such pay income taxes. Instead, taxes are assessed on and paid by the partners (owners). However, when calculating the net income (before distribution amongst the partners), the partnership is the calculation unit. The partners (owners) pay income tax on the net profits. The general rule is that all business income, capital gain and capital income is taxable and that any costs incurred to obtain, maintain or secure taxable income are deductible.

## **5. Branch Office**

A foreign company, lawfully registered in its home country, may also operate through a Swedish branch office for which there is no capital requirement.

The branch office must be registered with the Swedish Companies Registration Office and its name must include its status as a branch of a foreign company and its nationality (i.e., the name followed by “filial”). A company may only have one branch office in Sweden.

A managing director, resident in the EEA, must be appointed for the branch. The foreign company shall issue a proxy empowering the managing director to deal with all matters concerning the Swedish operations. If the managing director is not resident in Sweden, the foreign company must also appoint a person resident in Sweden who shall accept service of process on behalf of the foreign company.

### **5.1 Financial Reporting and Auditing Requirements**

All branches in Sweden must keep their own accounting records which shall be separate from the accounts of the foreign business enterprise. The accounts shall be reviewed by an accountant unless the branch is considered to be a minor company in accordance with the Auditing Act (Sw. “Revisionslag”). Further, all branches are to prepare at least annual accounts (Sw. “årsbokslut”). Some branches are required to submit an annual report, prepared or translated into Swedish, to the Swedish Companies Registration Office. The annual reports are to be submitted at the latest three months after the accounts and auditor’s report have been presented to an annual general meeting or the equivalent, although at the latest seven months after the end of the financial year of the branch.

### **5.2 Taxation**

From a tax point of view, branches are permanent establishments of non-resident companies and a Sweden branch is not a separate legal company from its parent.

Branch tax rules are similar to those for limited liability companies (aktiebolag), see above.

## **6. European Corporations**

Sweden has implemented the European Councils regulations concerning European Economic Interest Grouping (EEIG) (Sw. "Europeisk ekonomisk intressegemenskap") and Societas Europaea (SE) (Sw. "Europabolag") and Co-operative Society (SCE) (Sw. "Europakooperativ").

## **7. Public Records**

Information about Swedish corporations (and European corporations registered in Sweden) can be found on the Swedish Companies Registration Office's (Sw. "Bolagsverket") website, [www.bolagsverket.se](http://www.bolagsverket.se).



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