

DOING BUSINESS IN SWEDEN

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1. Establishing a business

1.1. Introduction

The most common ways of establishing a business in Sweden are through a limited liability company or a branch.

We do not herein consider legislation dealing with banks, financial companies, brokerage companies and other companies in the financial sector operating within the EEA under “EU-passports” or companies required to seek license from authorities for their businesses.

1.2. Limited liability company

1.2.1. Formation

A limited liability company is founded by one or more founders. The founder must be either a natural person resident within the EEA or a legal entity formed and domiciled within the EEA.

The founder(s) shall prepare, date and sign a deed of incorporation including inter alia names of the board members and the articles of association of the company. The shares of the company shall be subscribed for by the one or more of founders. The subscription must be made in the deed of incorporation.

The shares may be paid for either in cash or in kind. A payment in kind must be supported by an auditor’s statement confirming inter alia the value of the assets contributed in kind.

The board of directors shall file an application for registration of the company with the Companies Register. In normal circumstances, the registration procedure takes approximately one month.

An alternate route of establishing a business through a limited liability company is to buy an already registered and standardized company. This route facilitates a much faster way to have a company set up for business since it is already founded and registered. However, an application must nevertheless be filed with the Companies Register in respect of changes of the articles of association (e. g. change of name), appointment of new board members and other matters related to the business in question.

1.2.2. Private and public limited liability companies

A limited liability company is either private or public.

There are legal restrictions attached to a private limited liability company and its shareholders in respect of advertising and selling stock, subscription rights, warrants or debentures to the public. Nor can such securities in a private limited liability company be subject to trading on a regulated marketplace or the like.

1.2.3. Capital Requirements

The minimum required share capital in a private company amounts to SEK 50,000 (approximately EUR 9,000).

In a public company the minimum required share capital amounts to SEK 500,000 (approximately EUR 90,000).

The share capital must be paid-up in order to have the company registered. It may be denominated in EUR provided that the company's accounting currency is EUR.

Capital deficiency exceeding fifty per cent of the registered share capital gives rise to a set of rules imposing the board of directors to act and take some specified measures; otherwise at risk of becoming jointly and severally liable for certain obligations incurred by the company.

1.2.4. Board of Directors and Managing Director

In a private limited liability company, the number of board members may be one or more. If there are only one or two members of the board, at least one deputy member must be appointed. The board may, but is not obligated to, appoint a managing director.

In a public limited liability company, the board shall comprise not less than three members. It is mandatory to appoint a managing director.

One board member shall serve as chairman of the board. In a public limited liability company, the chairman of the board may not be the managing director of the company.

A legal entity cannot be a board member.

At least one-half of the board members shall be resident within the EEA. The managing director must be resident within the EEA. The Swedish Companies Registration Office may grant exemptions on a case-by-case basis.

Local labour unions that are bound by collective agreements with the company may be entitled to appoint up to three board members (employee representatives) and three deputy board members. If the average number of employees for the past two financial years equals or exceeds 25, the labour unions may appoint up to two board members and two deputy board members. If the company is operating in different lines of business and has employed more than 1,000 employees during the most recent financial year, the labour unions may appoint up to three board members and three deputy board members. The number of employee representatives may in no event exceed the number of ordinary members.

1.2.5. Duties and Corporate Governance

The company's business is governed by the Companies Act and the articles of association.

The board of directors is responsible for the organisation of the company and the management of the company's affairs. The board shall regularly assess the company's (or the group's) financial position. It shall ensure that the company's organisation is structured in such way that accounting, management of funds and the company's finances in general are monitored in a satisfactory manner.

The board shall, unless deemed unnecessary due to the limited scope of business, issue instructions on the financial reporting in the company.

The board shall each year adopt written rules of procedures governing its work. It shall also issue written instructions on the division of duties between the board on the one hand and the managing director and other corporate bodies established by the board on the other hand.

A limited liability company shall have at least one external auditor to examine the annual report, the accounts and the management of the board of directors and the managing director. Private limited liability companies with a limited scope of business in respect of number of employees, balance sheet total and net turnover are exempt from the obligation to appoint an auditor.

1.3. Branch

1.3.1. Formation

A branch office is by definition a divisional office with independent management. The branch itself is not a legal corporate body. It is instead an integral part of the foreign company. The foreign company is liable for any and all obligations incurred by the branch.

A branch office shall be registered with the Swedish Companies Registration Office.

1.3.2. Capital requirements

There are no legal capital requirements pertaining to a branch office.

1.3.3. Managing Director

A branch must appoint a managing director.

The managing director must be a resident within the EEA. Exemptions here from may be granted by the Swedish Companies Registration Office.

If the managing director is residing outside of Sweden, the branch must appoint an agent residing in Sweden for accepting service of process on behalf of the foreign company.

The managing director must be authorized to act on behalf of the foreign company in all matters relating to the activities of the branch.

1.3.4. Accounts and audit

The branch shall maintain accounts which are separate from the accounts of the foreign company.

The accounts of the branch and the management of the managing director shall be examined by an external auditor.

2. Taxes

2.1. Income tax

2.1.1. Businesses

The current income tax rate for limited liability companies and branches of foreign companies is 26.30 %.

The employer has to pay contributions for social insurance at the rate of approximately 30 %. Lower rates apply to employees under 26 and over 65 years old.

2.1.2. Individuals

Individuals residing in Sweden pay income tax to the local authority (municipality) and to the government. The local authority tax rate is approximately 30 %. Tax to the government is paid on income in excess of SEK 395,600 (income year 2011). The rate is 20 % and 25 % in higher income brackets. Foreign key employees, researchers and experts are granted a tax relief if the following conditions are met:

- (i) the employer is either domiciled or has a permanent business establishment in Sweden,
- (ii) the employee is a foreign citizen
- (iii) the employee has not had his or her permanent residence in Sweden for the past five years prior to commencing the employment and
- (iv) the stay in Sweden is expected to last no longer than five years.

2.1.3. Tax Treaties

Sweden has entered into tax treaties with more than 80 countries (2011).

2.2. **VAT**

Value added tax shall be imposed in the course of sales of goods and services. The rate is 25.00 %. Lower rates – 12.00 % or 6.00 % - apply to certain goods and services. Some businesses are exempt from VAT (e.g. banking and financing services).

3. **Employment issues**

3.1. **Terms of employment**

3.1.1. Types of employment

Employments are, as a main rule, for an indefinite term. Fixed term employments can in certain situations be permitted for up to two years. An employment for an indefinite term may be terminated if (i) the employee hands in his/her resignation, (ii) the employer gives notice of dismissal or (iii) the employer and the employee agree that the employment shall terminate. If the employer gives notice of dismissal, there needs to be objective ground for such dismissal (e.g. material grounds relating to the employee himself/herself or shortage of work/redundancies). The free “hire and fire-principle” is not applicable.

3.1.2. The employee’s resignation

If the employee hands in his/her resignation a notice period of one month applies unless the employer and the employee shall have agreed otherwise or if it is agreed in a collective agreement.

3.1.3. Notice of dismissal

If the employer gives notice of dismissal without objective grounds the dismissal can be declared invalid and the employer can be liable in damages. In case of redundancies a certain order of priority has to be followed (last in-last out applies as a general rule).

3.2. **Labour unions**

3.2.1. The right to negotiate

The labour union has a right to request a negotiation with the employer regarding the conditions between the employer and members of the labour union. If the employer is bound by a collective agreement, there is an obligation to negotiate with the labour union before carrying out major changes in the business.

3.2.2. The right to receive information

The employer has an obligation to keep the labour union informed of the business in terms of financial standing, production and personnel policies.

3.3. **Holiday**

An employee has a right to five weeks holiday per year. As a general rule, if the employee has been employed for a year he/she is entitled to holiday pay for the whole holiday period.

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