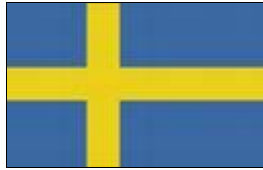


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DOING BUSINESS IN SWEDEN

ABSTRACT

Our purpose with this brochure is to provide basic information to readers about the legal frame of business, conditions and practices in Sweden. The brochure does not aim to exhaustively cover all the legal aspects of Swedish business practice. It is intended to shed light on rules, regulations and important information on four major themes that are necessary to know in advance of planning and negotiating a business venture in Sweden: company law, taxation, labor law and legal professions. When dealing with specific problems, it will of course be necessary to refer in detail to specific laws, regulations and decisions or precedents applicable under Swedish law.

Sweden is a very attractive land for foreign investments. Strong international trade ties, a highly skilled and efficient workforce, low corporate tax rates (28%) and an absence of bureaucracy are some of the many advantages that make the country very attractive for investors.

The Swedish company law offers various legal entities for a foreign company wishing to do business in Sweden. The most common business forms for foreign companies establishing a business in Sweden are either a subsidiary in the form of a limited liability company (*aktiebolag*) or a branch office (*filial* in Swedish). There is also other forms of legal entities such as sole trader (*enkelt bolag*), trading partnership (*handelsbolag*), limited partnership (*kommanditbolag*), but these are of no interest to this study. All those types of companies except sole trader are registered with both the Swedish Companies Registration Office (*Bolagsverket*) and the Swedish Tax Authority (*Skatteverket*).

Sweden's tax system offers several features highly valued by foreign investors: efficiency, transparency and easily accessible information. Income from employment is taxed between 29 percent to 35 percent by the municipality of residence with an additional national income tax for the highest income. Incomes from capital interest, dividends and capital gains are generally taxed at 30 percent. Companies in Sweden only pay a national corporate tax based on its annual income: The corporate tax is 28 percent. The normal rate of the Value Added Tax (VAT) known in Swedish as "*moms*" is 25 percent.

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The Swedish labour market has a highly skilled and competitive workforce with a developed communication infrastructure. It is stable and the labour force is well-organised with a high rate of unionization. A central area of the Swedish labour law are the so-called *collective agreement* and the rules concerning *rights and obligations of the employee(s)*. The most important pieces of legislation here are the Act on Co-Determination at Work (*Lagen (1976:580) om medbestämmande i arbetslivet*) and the Act on Employment Protection (*Lagen (1982:80) om anställningsskydd*).

The legal professions in Sweden are mainly the judges, the lawyers, the prosecutors and the bailiffs. All these professions require extensive knowledge of Swedish law and working experience. They also require Swedish citizenship except for the lawyers. In contrast to many foreign legal systems, there is no monopoly in Sweden concerning legal consultancy and representation of clients. However, lawyers (*advokater*), that is to say the members of the Swedish Bar Association, are privileged. Indeed, members must satisfy formal requirements and have the necessary competence, experience and qualifications — the title of “Advokat” admitted at the Bar is a guarantee of quality — and confidentiality as in all European countries. Each profession has strict rules governing their professional practice, such as confidentiality.

NB: Please note that the contents of this brochure should be regarded as an overview of current conditions in Sweden. These may change and thereby render descriptions of laws and other frameworks inaccurate. In all individual cases we request that advice always be sought with relevant authorities, organizations and businesses on specific issues.

I. COMPANY LAW

There are five basic legal forms for business ventures in Sweden, viz.: limited liability company (*aktiebolag*), branch of a foreign company (*filial*), trading partnership (*handelsbolag*), limited partnership (*kommanditbolag*) and sole trader (*enkelt bolag*). All the types of companies except sole trader are registered with both the Swedish Companies Registration Office (*Bolagsverket*) and the Swedish Tax Authority (*Skatteverket*).

A. Limited Liability Company

The limited liability company (*aktiebolag*, *abbreviated AB*) is regulated mainly by the Companies Act of 2005 (*Aktiebolagslagen*, SFS 2005:551)

A distinguishing characteristic of a limited company is that the business is run without the partners (shareholders) having personal responsibility for the company’s debts. Instead, the company is required to have a certain amount of share capital as security for its debts. In a private limited company there must be share capital of at least SEK 100 000:- (11 000 Euros); in a public limited company, it must be at least SEK 500 000:- (53 000 Euros).

The Swedish limited company need to have a General Meeting of Shareholders and a Board of Directors and very often a Managing Director: The General Meeting of the Shareholders must be held once a year and decides on, among others, statutory and consolidated accounts.

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Members of the Board and/or the Managing Director are normally appointed by the General Meeting and handle the management of the day-to-day business of the company. The board has a fiduciary responsibility toward the company in matters regarding management of the company and may be held liable toward the company for any intentionally or negligently caused losses. More frequently the Board members could be responsible for debts and specifically debts to the State or Municipalities (unpaid taxes). This is more or less now a strict responsibility (personal liability of board members) for unpaid taxes.

Since the shareholders only are liable to the extent of the capital invested, the *Companies Act* contains rules for the protection of creditors. One basic rule is that the share capital must be kept intact. Dividends may not be paid in excess of retained, taxed profit as shown by the approved statutory accounts. If the amount of share capital falls beneath a certain level, the company will be faced with mandatory liquidation.

A limited liability company must, according to the Act, have at least one chartered or, depending on company size, authorized/certified auditor, who is appointed by the General Meeting of Shareholders.

A limited liability company is liable for income tax on all retained earnings. The tax rate is currently 28%. Dividends paid to the shareholders are regarded as income retained by the shareholder and will be taxed accordingly.

B. Branch

A foreign company may, according to the Branches of Foreign Companies Act (Lagen om Utländska Filer, SFS 1992:160), establish a branch in Sweden. This is more and more frequent due to European regulations and the free market where the establishment of a subsidiary is not necessary anymore. A branch is not regarded as an independent legal entity but rather as a part of the foreign company that owns the branch. The branch is subject to Swedish law and rulings by Swedish authorities. The branch must be administered by a managing director who has normally to be domiciled within the EEC.

C. Trading partnerships

Trading partnerships are governed by the Trading Partnership Act of 1980 (lagen 1980:1102 - om handelsbolag och enkla bolag). An unlimited trading partnership is created through an agreement between two or more persons or legal entities to jointly pursue business operations. The trading partnership will be a legal entity. Trading partnerships have no minimum capital requirements and (consequently) all partners are jointly and severally liable for all obligations of the partnership. Each of the partners is authorized to participate in the management of the partnership and to represent the partnership with regard to third parties.

D. Representative office

The option of setting up a representative office is rarely used in Sweden, because of its obvious limitations. The representative office may not engage in any commercial activities such as acting on its own behalf by using the employees or the office for any kind of trading or business, except for pure marketing. Neither may it be granted a power of attorney to act on behalf of the parent company.

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II TAXATION

A. Income from Employment

Tax on income from employment is levied as follows:

- Municipal tax on all income, approximately 29-35%
- State tax, in addition to the municipal tax, 20-25% on income above approximately SEK 340 600:- (year 2008).

Typical forms of income that fall within the employment category are:

- Salaries, pensions, periodic payments and other similar cash payments
- All types of benefits; e.g., meals, free use of a company car and free travel
- Compensation for expenses, daily allowances, travel allowances etc.

Deductions within the income from employment category are quite limited; there must be a very strong link between the costs and the income: mainly travel to and from work, and business travel.

B. Net Income from Capital

Net income from capital interest, dividends, capital gains, etc. is generally taxed at 30 percent. Interest payments are fully deductible. Up to 100 percent of capital losses may be deducted from capital gains, but in some cases only 70 percent of the losses are deductible. A deficit in the calculation of net capital income results in a tax reduction of 30 percent of the deficit up to SEK 100 000:-. On deficit above SEK 100 000:-, the tax reduction is 21 percent.

The new Government in 2007 has phased out the wealth tax (which touched personal wealth above a fiscal value of SEK 1.5 million for single people and SEK 3.0 million for a couple taxed jointly).

C. Company Income from Business Activities

Companies in Sweden only pay a national corporate tax, based on its annual income. Sweden has a competitive corporate tax rate of 28 percent. Possibilities to defer taxation of profit, by allocating up to 25 percent of net profit to so-called tax allocation reserves, create even lower effective rates. However, as of January 1, 2005, a deemed interest income is calculated on the tax allocation reserve. (The deemed interest is calculated as 72 percent of the government loan interest rate at the end of November of the previous fiscal year, multiplied by the opening balance of the accumulated tax allocation reserve.) Taxable income is calculated according to accepted international auditing standards. Swedish annual reports and financial statements are noted for a high degree of informative disclosure. Such reports and statements are based on universally accepted principles of historic costs, actual accounting, immediate recognition of loss risks and not creating income until actually earned. Capital gains on sales of business assets are taxed as regular business income. A Swedish company is generally taxable for its worldwide net profit. Losses in a company can be carried forward indefinitely.

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D. Value Added Tax

VAT, is a state sales tax that is levied at all stages in the production and distribution chain on the value added at each stage and is then reported to the state. The sale of certain goods and services is free of tax.

The general tax rate is 25%, which is exacted on the turnover of all goods and services, with the exception of foodstuffs, hotels, campsites and passenger transport (12%) and newspapers available to the general public and certain goods and services within the cultural sector (6%). All persons/entities liable for tax are obliged, regardless of the size of the tax base, to apply for registration and to declare and pay VAT to the Tax Authority.

E. Social security contributions

Social security contributions are debited as employer's contributions or personal contributions. The employer's contributions are paid by the employer and calculated on the total salary, other remuneration and any taxable benefits for work done that the employer pays to employees. Personal contributions are paid mainly by persons who carry on business activities. The employer's contributions are approximately 31,42% (2009) of the underlying taxable amount, a reasonable level compared with other EU countries.

F. Real estate taxation

The State real estate tax is levied on single-family houses (1%), industrial buildings (0,5%) residential dwellings on agricultural land, and rented residential buildings. The real estate tax is calculated on the taxable value. The Government has announced plans to abolish the present real estate tax, and replace it by a low local government property-related charge. The aim for this to happen is 2008.

G. Wealth Tax, Gift and Inheritance tax

Since 2007 there is **no wealth tax** and **no inheritance** and **no gift tax** in Sweden.

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III LABOUR LAW

The Swedish labour market has a highly skilled and competitive workforce with a developed communication infrastructure. It is stable, and the labour force is well-organised. Approximately 85 % of the blue-collar wage-earners and 75% of the white-collar salaried workers are organised in unions.

A central area of the Swedish labour law are the so-called *collective labour law* and the rules concerning *rights and obligations of the employee(s)*. The most important pieces of legislation here are the Act on Co-Determination at Work (*Lagen (1976:580) om medbestämmande i arbetslivet*) and the Act on Employment Protection (*Lagen (1982:80) om anställningsskydd*).

A. Collective Labour law

The employers and employees negotiate through their union the “collective agreements,” which largely regulate relationship, in accordance with the Act on Co-Determination at Work. The Act is to a large extent mandatory and aims to protect the right of the employees to organise. Further, under the Act the employer is obligated to negotiate with the union(s) on a number of issues, e.g., before making decisions that materially affect the working conditions of the employees.

When concluded, the collective agreement(s) will lay down general rules and norms for the individual contract of employment. The agreement can cover issues such as wages, planning of work hours and dispute settlement procedures in case of a conflict between employer and employees. The employer is under no legal obligation to actually conclude a collective agreement with the union(s). However, the union(s) is, if no agreement is reached or if the employer refuses to negotiate, free to utilize conflict measures, such as strike action etc. to try to bring about the conclusion of an agreement. This may prove to be extremely costly though.

On the other hand, the parties will, if a collective agreement is reached, be obligated not to engage in conflict or to resort to conflict measures. This so-called “peace obligation” only covers matters regulated by the agreement in question. The parties are still free to “fight” over issues not dealt with in the agreement. A party in breach of the “peace obligation” will be liable for any and all damages that result from the breach. An employer will be in breach of the agreement if he or she contracts an employee on worse conditions than what is stipulated in the agreement. It is usually allowed to contract employees on better terms, but not always, all depending on the agreement in question.

According to the Act on Employee Representation on the Board of Directors (*Lagen - 1987:1245-om styrelse representation för de privatanställda*), the employees of larger corporations (above 25 employees) have a right to nominate a member to the board of directors.

It should be noted that Collective Agreements are most common within the basic industries and governmental and municipal administration.

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B. Conditions of Employment

The wage of an employee is to a large extent regulated by the collective agreements. However Employees with higher education who work in the private sector usually negotiate their conditions of employment individually. However the employer is always obligated to provide sick pay. The employees have a legal right to a certain amount of paid vacation each year (4-6 weeks, depending on age). Employees also have a right to maternal/paternal leave in connection with childbirth. Finally, an employer must have a valid reason for terminating a contract of employment. Basically, an employer can terminate a contract of employment for *personal reasons*, i.e., personal reasons on the part of the employee, or for *economic reasons* (lack of appropriate work for the employee(s)). These grounds for terminating a contract of employment are set by law.

In addition to the above, there are regulations on, inter alia, discrimination (between genders and races), vacation, working environment, working hours and equal pay. It is not possible here to comprehensively describe all the obligations that rest upon the employer.

IV LEGAL PROFESSIONS

A. Judges

A.1 Generalities

The majority of judges (*domare*) work within one of the two ordinary court structures. These are, on the one hand, the ordinary courts (*allmänna domstolar*), which consist of a large number of district courts (*Tingsrätter*), six courts of appeal (*Hovrätter*) and the Supreme Court (*Högsta domstolen*), and, on the other hand, the ordinary administrative courts (*allmänna förvaltningsdomstolar*), which consist of a large number of county administrative courts (*länsrätter*), four administrative courts of appeal (*kammarrätter*) and the Supreme Administrative Court (*Regeringsrätten*). A judge other than the President of a Court or a division of a Court is called a *rådman* in the district courts and the county administrative courts, a *hovrättsråd* in the ordinary courts of appeal, and a *kammarrättsråd* in the administrative courts of appeal.

A judge who presides over a division is called a *chefsrådman* in the district courts and the county administrative courts, a *hovrättslagman* in the ordinary courts of appeal, and a *kammarrättslagman* in the administrative courts of appeal. The president of the court is called the *lagman* in the district courts and the county administrative courts, and the *president* in the

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ordinary courts of appeal and administrative courts of appeal. The judges of the Supreme Court are called *justitieråd*.

A judge must be a Swedish citizen and must hold one of the Swedish degrees of bachelor of laws (*juris kandidatexamen*) or master of laws (*juristexamen*). In Sweden would-be judges usually train specifically for the profession and there's a specific educational program for would-be judges. Persons trained as judges make up the main base for recruitment of professional judges.

Such training takes at least 4 years (3 years as reporting clerk and one year as assistant judge) but it is not formally required. Anyone with a legal qualification may apply for a position as judge. Applicants who have trained as judges are, however, normally considered to be at an advantage.

On certain conditions, legal training in another Nordic country is considered equivalent to these degrees. A person who is bankrupt or whose affairs are in the hands of an administrator may not become a judge.

A.2 Judge's duties:

The legal rights of the individual and public confidence in the legal system require that judges decide the cases before them without regard to extraneous considerations. The rules for judges set out a number of general principles governing the way judges should conduct themselves in their daily duties, and reflect the different demands placed on a judge, such as objectivity, impartiality and the ability to treat everyone equally. They also make specific provision for the disqualification of judges from particular cases.

A.3 The independence of the Judge:

Judges are appointed by the Government through an applications procedure. The system does not apply to the highest judicial offices. Judges are appointed essentially on the basis of ability and suitability for the profession. In making its choices the Government is assisted by a special judicial appointments commission. The commission's main function is to make recommendations to the Government for the filling of appointments. Judges have also the status of public servants. They may be removed from office only if they show themselves unfit for the appointment by seriously or repeatedly neglecting their duties or by committing a criminal offence, or when they reach retirement age. The constitution guarantees judges independence in the performance of their duties.

B. Lawyers, Advocate and Business Lawyers

B.1 Generalities

All lawyers (*advokater*) in Sweden are in private practice. In contrast to many foreign legal systems, it is permissible in Sweden for individuals to plead their own cases in court, it is never obligatory to use a legal representative. A party is under no obligation to be represented

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or to engage a lawyer. A person wishing to represent another in court is subject to certain requirements, but they do not include possession of the professional title of lawyer: they relate rather to such things as residence, language proficiency and suitability. Lawyers are, however, privileged in some respects. With certain exceptions, for example, it is only lawyers who can act as court-appointed counsel for the defence.

A “lawyer” (*advokat*) in Sweden is a person who is a member of the Swedish Bar Association (*Sveriges Advokatsamfund*). A person wishing to become a lawyer, or in other words to be admitted to the Bar Association, must:

- be resident in Sweden, the EU, the EEA or Switzerland;
- hold a bachelor of laws or master of laws degree;
- have completed five years of legal work and practice since taking their law degree, at least three of which must have been spent either as an assistant lawyer (associate) in a law firm or running the prospective member’s own legal practice;
- have passed a lawyers’ examination; and
- be of good character and suitable in all respects for the profession of lawyer (the prospective member must not be a judge, prosecutor or other public servant) and be financially sound (a person who is bankrupt or whose affairs are in the hands of an administrator will not be admitted).

Anyone who calls improperly himself or herself an authorised lawyer commits an offence carrying a fine.

Swedish citizenship is not required in order to practise in Sweden. A foreign lawyer may work in Sweden under the professional title of his or her home country, but to practise the profession on a permanent basis he or she must register. The first foreign person to be admitted to the Swedish Bar was the French Lawyer Jean-Jacques Zander from Eurolawyers in 1991, since then there has been no citizenship requirement for admission to the Swedish Bar Association.

Anyone may set up a law firm. No specific training or experience is required in order to call oneself legal adviser (*jurist*), and to offer legal advice on a professional basis. The only statutory prohibition against acting as a legal adviser is a ban that may be imposed on persons who have committed a criminal offence, other than a minor one, in the course of providing legal assistance (10 years prohibition) (Section 3 of Act (1985:354) prohibiting legal or financial assistance in certain cases).

B.2 Lawyer's duties

The work of lawyers is regulated primarily by law (Chapter 8 of the Code of Judicial Procedure). The legislation regulates the requirements for admission to the Bar Association, registration, how the work is to be carried on, joint ownership in partnerships, supervision etc. In addition to the legislation, good practice is also governed by the Charter (*stadgar*) of the Bar Association and the Code of Conduct it issues. The charter of the Bar Association is laid down by the Government, which means that the Association is a private-law body with a public-law character, and not a public authority as such. The charter has the status of a Government order (*förordning*).

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One of the cornerstones of the rules governing legal practice is loyalty towards the client and in particular the strictest professional secrecy (Section 18 and 19 of *the Code of Conduct for Members of the Swedish Bar Association*). There are extensive requirements governing ethical behaviour; lawyers are subject to disciplinary supervision in order to maintain the high ethical requirements that have been set. The rules for lawyers exercising their profession – particularly the rules for organisation, qualifications, professional ethics, control and liability – ensure that they have the independence, the integrity and the experience which consumers of legal services are entitled to demand, and which are necessary conditions for the sound administration of justice.

B. 3 Business lawyer in Sweden

a- Organisation of Law firms

The Swedish legal profession numbers approximately 3 200 members of the Swedish Bar Association, one of the lowest ratio per inhabitant in the world, although there has been an increase in this figure since the beginning of the '80s when there were no more than 2 000 members. The members are organized into law firms, mainly small- and medium-size.

80% of Swedish law firms are small firms with 1, 2 up to 5 lawyers. Business law firms are situated in Stockholm, Gothenburg and Malmö.

b- The lawyer's fees in Sweden (International Business Law)

Sweden does not have an official tariff scale for lawyers. The fee is, however, expected to cover expenses and include a reasonable amount for the services provided. Contingency fees are not allowed. Most Swedish business lawyers bill on an hourly basis, which in 2009 lies between 300€ to 350€ for senior partners, 200€ to 300€ for partners and 150€ to 200 € for associates.

c- Professional conduct

The Swedish Code of Judicial Procedure contains a code of ethics for lawyers. The Bar Association also has a Rule of Conduct. The disciplinary committee of the Association supervises so that lawyers practice in accordance with the standards. According to these standards, lawyers are allowed to advertise their services, including in the new medias and use web sites. Clients are also often transferred to the law firm by audit firms. The Bar Association has also adopted the Code of Conduct for Lawyers in the European Community. A Member is under a duty to keep money and other assets belonging to his clients separate from his own property.

The Bar Association's Accounting Regulations contain provisions governing the obligation to submit annual accounts in certain cases.

New rules regarding a lawyer's obligation with regard to a client's money laundering activities or activities suspected as such are following applicable rules in the EU, have been

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adopted in Sweden and are very much like the rules in all EU countries, with an obligation of disclosure.

d- Cost of Litigation

The ordinary civil courts are divided in two levels, with a Supreme Court to review matters of special judicial importance (see above). There are no court costs in Sweden, apart from a symbolical application fee. The procedure of a commercial case is largely performed in an oral form and is very similar to an arbitration. The litigation costs are mainly a result of the amount of work performed by the lawyer. It is difficult to determine these in advance. As an indication, proceedings in the first instance can cost from 7 000 € - 10 000 €. The unsuccessful party must also bear the litigation costs of the successful party.

Arbitration in Sweden is very common and with the new *Swedish Arbitration Act*, which entered into force on 1 April 1999, the numbers of cases are predicted to be on the rise. Sweden is also home for the renowned Arbitration Institute of the Stockholm Chamber of Commerce.

e- Professional liability and insurances

Lawyers have insurance policies with the Bar Association and therefore provide liability guarantees for lawyers . All legal services fall under this guarantee. The unlimited liability also applies when the law firm is a public limited company. Other professionals who are active in the field of legal consultancy cannot provide this service.

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