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Breaking New Ground in Sweden

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General introduction

This updated and tenth edition of Breaking New Ground in Sweden is an introduction to the main legal issues that arise when doing business in Sweden. Sweden has been a member of the European Union (EU) since 1 January 1995. The legislation accounted for in this booklet is current as of 1 May 2016. This booklet does not purport to be an exhaustive description; local legal advice should always be obtained before entering into any business transaction.

1 Business organisations

Introduction

A foreign company setting up operations in Sweden has a variety of choices as to the form of organisation to use, including a representative office, a branch office (*filial*), a subsidiary in the form of a limited liability company (*aktiebolag*, AB), or a general or limited partnership (*handelsbolag*, HB, or *kommanditbolag*, KB). The two principal legal vehicles used by overseas clients to establish a business in Sweden are the limited liability company and the branch. This chapter examines the different forms of organisation, identifying the advantages and disadvantages of each.

The representative office

A representative office represents the most limited presence of a foreign business in Sweden. Since representative offices are normally not permitted to enter into commercial agreements, this form of establishment is rarely used in Sweden and was historically most commonly used by foreign banks, which were not previously allowed to set up branches or subsidiaries in Sweden, and foreign airlines.

Generally, no prior authorisation is required to set up a representative office except that the establishment of a representative office for a foreign bank requires notification to the Financial Supervisory Authority (*Finansinspektionen*). Such representation office may however not provide any banking- or finance services. The office will generally not be taxed in Sweden provided it does not engage in any commercial activities other than pure marketing. The requirement of no commercial activity in Sweden precludes invoicing for services and renting an office.

The branch office

Foreign enterprises may carry on business activities in Sweden through a branch office. The primary advantage of establishing a branch office rather than a subsidiary in Sweden is that start-up losses frequently associated with a new business venture can often be deducted from the profits in the foreign company's jurisdiction for tax purposes, and no capitalization of the branch is needed. When the branch starts making profits, it can be replaced by a subsidiary.

Under the Act (1992:160) on Foreign Branches etc., the establishment of a branch office in Sweden is subject to a registration procedure. Under the Act, a foreign company which supplies certain required information to the Companies Registration Office will be registered in the branch register maintained by the Companies Registration Office and may thereafter conduct business in Sweden, subject to the Act.

The Act on Foreign Branches sets out the requirements for doing business in Sweden through a branch office, whose registered name must contain the word "filial" (branch). The branch must be under the management of a managing director who must be a resident (but not necessarily a citizen) of a Member State of the EEA. The foreign company is required to issue a power of attorney authorising the manager to

handle all business in Sweden on its behalf and to be an agent for service of process. If the managing director is not resident in Sweden, the foreign company must authorise a resident to receive service of process on its behalf. If no such person has been notified to the Companies Registration Office, the branch may under certain circumstances be de-registered. The branch must keep its own books and fiscal records independently of the foreign company. Each year, the managing director must submit to the Companies Registration Office a certified copy of the branch's books and its profit and loss statement for the most recent fiscal year, along with the corresponding documents for the foreign company, provided these have been made public in its jurisdiction. If the foreign company is a limited liability company subject to the legislation of a Member State of the EEA, filing of the branch's books is not required.

Branches of foreign banks, securities firms, finance companies and insurance companies are regulated in separate legislation covering these areas.

The limited liability company

The most frequently used business organisation in Sweden is the limited liability company, the AB, which is governed by the Swedish Companies Act (2005:551). The Swedish Government has in the recent years initiated efforts to revise the Companies Act in certain aspects, mainly aiming at reducing the administrative burden on smaller companies.

The Companies Act provides for two forms of limited liability companies, private and public. The distinction is based on whether a company may offer shares and other securities to the general public. Companies wishing to offer such securities must be public limited liability companies, while other companies are called private companies. The name of the company must contain the word "*aktiebolag*", or AB, to indicate limited liability. If the registered name of a public company does not contain the word "*publikt*" the name must be followed by the designation "*publ*". A private company's registered name must not contain that word. The minimum share capital for private companies is SEK 50,000 and SEK 500,000 for public companies.

The main reason for choosing the corporate form over the partnership for investments in Sweden is the limited liability of the shareholders. The shareholders of the AB are generally not liable for its obligations beyond their share in the equity, and are thus shielded from unforeseen liabilities. Another advantage is that only the board and managing director of the company can bind the AB in relation to third parties. Absent authorisation by the board, no shareholder can enter into contracts on behalf of the AB or divest it of its assets.

Registering changes in existing limited liability companies will take at least a couple of weeks, depending on the workload of the Companies Registration Office. The registration of a new company normally takes somewhat more time, approximately five weeks, provided that the application documents are complete and no impediment to the registration of the company name is identified. A limited liability company is a Swedish entity and may be owned by a single shareholder, even if that shareholder is a foreign citizen or entity.

A limited liability company is formed by one or more founders. The founders write the certificate of incorporation and the articles of association of the company, which have to contain certain information, such as the name of the company and its domicile, the business activities of the company, the share capital, and the number of directors authorised etc.

The subscription for shares is made on the certificate of incorporation or on a separate subscription list containing a copy of the certificate. The board may represent the company under formation in matters concerning the formation of the company and otherwise act to obtain payment for subscribed shares.

If any obligations are entered into on behalf of the company before registration, the persons participating in such an act are jointly and severally liable for its performance. Upon registration of the company, the responsibility will be shouldered by the company if the obligation has been incurred pursuant to the certificate of incorporation or incurred after the formation of the company.

Swedish limited liability companies are managed by a board of directors. The role and powers of directors in a Swedish limited liability company generally are regulated in Chapter 8 of the Swedish Companies Act, captioned "Management of the Company". Under these provisions, public limited liability companies must have a board of directors consisting of at least three persons. The board of a private limited liability company may consist of one or two directors, if at least one deputy director is appointed. The shareholders elect the directors at the general meeting. However, the articles of association may provide for election of directors in another manner. A public limited liability company, but not a private, must have a managing director, who is designated by the board. The managing director and at least half the number of directors must be resident in the European Economic Area, i.e., the EU Member States, Norway, Iceland and Liechtenstein. The Companies Registration Office may however, if particular grounds exists, grant an exemption from this provision. A person who is under age, or in bankruptcy, or has a custodian appointed for him, or has an injunction against carrying on a business may not be a director or a managing director. Furthermore, no person, who does not intend to take part in the activities of the board, may be appointed as a director without good cause.

A director is elected for one year or any longer period, maximum four years as is set forth in the articles of association. The term of office shall be fixed so that it expires at the end of the annual general meeting, at which election of board members shall take place. The provisions of the Companies Act relative to directors apply also to deputy directors, where such are appointed.

Under the Act (1987:1245) on Board Representation for Privately Employed, the employees of a business employing at least twenty-five persons may appoint two members and two deputy members to the board of directors, with certain limited exceptions. A decision to organize employee board representation, however, can only be made by a trade union which is bound to a collective bargaining agreement with the employer.

For registration purposes, the company must report the names, addresses and civic registration numbers (or date of birth when civic registration number is missing) of board members, deputies, the managing director and persons authorised to sign on behalf of the company to the Companies Registration Office's Companies Register. If a board member or deputy has been appointed in accordance with the Act on Board Representation for Privately Employed, this must be indicated in the report.

Unless the company's articles of association or the shareholders provide otherwise, the members of the board of directors elect a chairman from amongst themselves. The managing director of a public limited liability company may not be chairman of the board. The chairman calls board meetings and shall ensure that they are held when necessary. In addition, the chairman shall convene the board on the request of another director or the managing director. The managing director, even if not a director, is entitled to be present and state his opinion at the board meetings. The proceedings of the board are to be recorded in minutes, which must be signed by the one keeping the minutes. The minutes must also be certified by the chairman, unless he is the one keeping the minutes, and another board member if the board consists of more than one board member. The minutes shall be taken in numerical order and preserved safely.

In public limited liability companies, the board shall each year adopt written rules of procedure for its work. These rules of procedure shall state, as the case may be, how the work is to be allocated between the members of the board, how often the board shall meet and to what extent the deputies are to take part in the work of the board of directors and be called to its meetings. Also other issues may form part of the rules of

procedure. Boards in public limited liability companies are further required to draft written instructions to the managing director, if any, and any other organs established by the board, for example an audit committee, management committee and a department management board. Finally, each board in public *and* private limited liability companies shall adopt written instructions regarding the reporting of the company's financial situation. The instructions regarding the reporting of the financial situation are, however, not mandatory if such instructions would be unnecessary considering the size and operations of the company.

Authority to bind the company

Under the Companies Act, the board of directors is responsible for the organisation of the company and the management of its affairs. If a managing director has been appointed, he or she is in charge of day-to-day management of the company, subject to guidelines and instructions set forth by the board. The managing director may also sign for the company and bind it with regard to such measures. The notion of day- to-day management is usually considered to be quite wide; but it depends on the size, the business activities etc. of the company. It will, however, generally speaking, not enable the managing director to bind the company as to matters of an unusual nature or great significance without the prior approval of the board.

Accordingly, acts of a more material nature to be done by the company must normally be authorised by the board, which represents the company and has the right to sign on its behalf. Also, the board may authorise a director, the managing director or someone else to represent the company and sign for it unless such delegation of authority is prevented by the articles of association. At least one of the persons so authorised, if any, must be resident within the European Economic Area, unless the Companies Registration Office otherwise permits. The board may prescribe that the right to represent the company and to sign for it may only be exercised by two or more persons jointly. Persons who have the right to bind the company are listed in the company's registration certificate, available from the Companies Register. Registration certificates can be procured in English.

The partnership and the limited partnership

Under the Act (1980:1102) on Sole Proprietorships and Partnerships ("Partnership Act"), a general partnership (*handelsbolag*, HB) is constituted by an agreement between two or more individuals and/or legal entities to do business in association, and registration in the Trade Register. The HB's most frequently cited advantage is its flexibility. Partners are free to organise their relations as they see fit without the restraints of the corporate form. Within the framework of an HB, complex structures can be set up to allow for many different characteristics and circumstances.

A drawback of the partnership structure is the unlimited joint and several liability of the partners for debts incurred by the HB. The risks can be reduced by adequate insurance, or by vesting the partnership in the HB in limited liability companies created especially for that purpose. The unlimited liability is, nonetheless, frequently a reason for not using the HB structure.

No special form is required to create a partnership but, as indicated above, the partnership must be registered in the Trade Register. Further, the name of the HB must indicate the existence of a partnership.

One way to avoid unlimited liability is to form a limited partnership (*kommanditbolag*, KB). Under the Partnership Act, a KB 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 an HB, including unlimited liability for all debts and obligations of the KB. The liability of the limited partner is limited to its contribution to the KB. A limited liability company may be the general partner of a KB.

Joint ventures

Swedish law provides no definition of the term "joint venture", and there is no legislation specifically aimed at joint ventures. Instead, this type of cooperation between companies is regulated by the laws applicable to the particular legal entity form the joint venture has, if it is an equity joint venture, and by general contract and commercial law if it is a contractual joint venture.

2 Mergers and acquisitions

Private transactions

Acquisition of shares

Shares in a Swedish company constitute personal property. Thus, the Swedish Sales of Goods Act (1990:931) (the "Swedish Sale of Goods Act") is, *prime facie*, applicable to their sale and purchase. However, it is not entirely clear to what extent the Swedish Sales of Goods Act is pre-empted by the Act on Debt Instruments (1936:81) (the "Act on Debt Instruments"). The issue is relevant because if the Swedish Sales of Goods Act applies, then (in the absence of express agreement between the parties) a number of provisions of the Swedish Sales of Goods Act detailed below would be applicable to a sale of shares. If not, then the Act on Debt Instruments provides that the seller is not responsible for the solvency of the transferred goods unless it has been warranted or represented by him.

Case law indicates that the Swedish Sales of Goods Act applies if all the shares in a company or a majority thereof are sold, while the Act on Debt Instruments is applicable if only a small portion of shares are sold. It is not clear, however, at what percentage one act takes over from the other. In light of this, purchasers of shares normally require warranties and representations from the seller.

Acquisition of assets

In the case of an acquisition of assets, the Swedish Sales of Goods Act will, however, apply. This act establishes strict requirements and, accordingly, the purchaser should seek extensive indemnifications and the seller should be wary of giving extensive representations and warranties. The Sales of Goods Act regulates the relationship between a seller and a purchaser. The act contains provisions concerning the determination of the price, the place of delivery of the goods and the time for the performance of the purchase contract, the right of retention of goods or withholding of payment, the risk of loss of the goods, the yield on the goods, delays on the part of the seller or the purchaser, defects and deficiencies in the goods, interest payable on the price and insolvency rules. Furthermore, the Act regulates the rejection of goods and the repudiation of contracts of purchase, and title to the goods. However, the Act is not mandatory and may be excluded by agreement between the parties.

Mergers

Under the Companies Act, a merger may take place:

- between an acquiring company on the one hand and one or more transferring companies on the other hand, where the acquiring company remains in existence (*absorption*); or
- between two or more transferring companies which form a new, acquiring company, where none of the existing companies remain in existence (*kombination*).

Holders of convertible debt instruments, debt instruments with a right to subscribe for new shares, participating debentures or other securities carrying special rights in the transferring company are required

to have at least equivalent rights in the acquiring company as they had in the transferring company unless they are entitled, according to the merger plan, to have their securities redeemed by the acquiring company.

The Companies Act also provides for the division of companies. Under these rules, division may either be effected (i) by the acquisition of all rights and obligations of the company being divided by one or more companies, where after the company being divided is dissolved without prior liquidation proceedings; or (ii) by one or several companies acquiring the rights and obligations from the company being divided without dissolving it. In both cases consideration shall be paid to the shareholders of the company being divided, either in the form of cash or in the form of shares.

The Merger Process

To initiate the merger process, the board of directors of the transferring company or companies and, in the case of absorption, the acquiring company, prepare a joint merger plan specifying certain information required by law. In the case of a combination, this plan serves as the certificate of incorporation of the new company. The merger plan must be examined by the authorised or approved auditors of the transferring company and, in the case of absorption, by the auditors of the acquiring company. The examination must be as comprehensive and detailed as required by generally accepted auditing standards. The auditors must submit a written report on their examination of each of the companies.

Within one month of the preparation of the merger plan, the acquiring company (or in the case of combination, the oldest of the transferring companies) must submit the plan for registration to the Companies Registration Office (the "Registration Office"). Along with submitting the merger plans for registration, the merger plan must also be made public, through publication in the official Swedish gazette.

The merger plan must be submitted for approval at a general meeting of the shareholders in all the assigning companies. Such a meeting may not be held until one month after the registration has been made public unless all merging companies are private, in which case it may be held no earlier than two weeks after that date. If owners of at least 5 per cent of all shares in the acquiring company so require, the merger plan must also be submitted to a general meeting of the shareholders of the acquiring company. Such a request must be made within two weeks of the registration of the merger plan being made public. Shareholders representing two thirds of both the votes cast and the shares represented at the meeting, must approve the plan in order for it to be adopted. In certain public transactions, an approval of the merger plan requires support by 90 per cent of all shares in the transferring company.

When the merger plan has been adopted by the companies, each of them must notify this in writing to its known creditors. The creditors of the acquiring company need not, however, be informed if the auditors have stated in their report on the merger plan that they do not see the merger as entailing any risk for these creditors. The acquiring company or, in the case of a combination, the oldest of the assigning companies, must apply for permission to the Registration Office to implement the plan.

Having examined the application and found no bar to it, the Registration Office must then summon all creditors of each company involved in the merger. The summons will instruct those who wish to contest the application to state this in writing by a fixed date, failing which, they will be deemed to have consented to the application. If no such objection is made, the Registration Office will give its consent to the merger plan. However, if a creditor contests the application within the prescribed time, the Registration Office will refer the matter to the court where the registered office of the acquiring company is located. The court will grant permission for the merger if it is shown that the creditors who have contested the application have been fully satisfied or have received adequate security for their claims.

Upon the Registration Office's or the court's approval (as the case may be), the board of directors in the acquiring company may report the merger for registration to the Registration Office. The board must also, in the case of absorption, report the increase in the share capital of the acquiring company for registration and, in the case of a combination, the election of the board of directors and auditors. On registration, the transferring company or companies are dissolved.

Merger of a subsidiary

The board of directors of a wholly-owned subsidiary and its parent company may resolve that the parent company shall absorb the subsidiary. The boards are then required to prepare a merger plan, which must be examined by the auditors of both the parent and the subsidiary. The plan must then be submitted to the Registration Office for registration and publication in the official Swedish gazette.

Unless owners of at least 5 per cent of all shares in the parent require that the merger is submitted to the general meeting for approval, the merger plan needs no approval at a general meeting of either company, and each company can proceed to notify its known creditors that the plan has come into force. The creditors may then contest the merger in the same manner as described above.

In the period between one month and two years after the announcement of the registration of the merger plan, the parent company must apply to the Registration Office for permission to implement the plan.

Once the Registration Office has registered the resolution to permit the implementation of the merger plan, the subsidiary is dissolved.

Demerger/Division

Division is achieved by the registration of draft terms of division in writing with the Registration Office within one month of having been drawn up by the company being divided and each recipient company. The draft terms of division shall also be made public through publication in the official Swedish gazette and must be submitted to a general meeting of the company being divided for approval. If shareholders holding more than 5 per cent of the shares in each recipient company so requires, a general meeting of this company to approve the draft terms must also be held. The draft terms require the approval of a two-thirds majority of votes and shareholders present at the respective general meetings. In certain public transactions, an approval of the merger plan requires support by 90 per cent of all shares in the transferring company.

When the terms have been adopted, the company being divided must apply for permission to execute the terms. The draft terms shall be declared pending if the division is subjected to a merger filing and shall be rejected if the merger filing leads to a negative decision by the relevant competition authority.

If any of the company's creditors objects to the division, the terms may not be executed unless the creditor receives full payment or satisfactory security.

If permission for the execution of the terms of division is granted, the division must be registered, and is effective from such registration. The effect of a registration is that the recipient company will assume the liabilities and the assets transferred and that the shareholders in the company being divided will become shareholders in the recipient company if shares form a part of or all the consideration. The company being divided will also be dissolved. Any complaint must be made within six months from the date of the general meeting, failing which the right to file suit is lost.

Public transactions

There are presently two regulated markets in Sweden; Nasdaq Stockholm (Nasdaq) and Nordic Growth Market (NGM). If the shares in the Swedish target company are listed on a regulated market, special rules apply to the acquisition of shares in the target company.

Public offers

According to the Act on Public Takeovers (2006:451) (the "Takeover Act"), a public offer for all or part of the shares in a listed company may only be made by a person who has undertaken towards the exchange who runs the regulated market where the shares in the target company are listed to (i) follow the rules that the exchange has adopted for the regulated market for such offers and (ii) abide by any sanctions imposed by the exchange if the rules of the exchange are breached. Both Nasdaq and NGM have adopted special rules for takeover offers, which become binding for the bidder through the written undertaking towards the exchange. In connection with the announcement of the offer, the bidder shall inform the Swedish Financial Supervisory Authority (*Finansinspektionen*), the "SFSA") about the offer and the undertaking towards the exchange. If the bidder does not make the abovementioned undertaking towards the exchange, the SFSA may forbid the public offer and any announcement of the offer. In addition, the SFSA may impose a penalty on the bidder in an amount of SEK 50,000–100,000,000. The SFSA may also prohibit the bidder from representing its shares in the target company.

When the public offer has been announced the bidder shall within four weeks thereafter prepare an offer document and submit it to the SFSA for approval. Rules regarding the contents of the offer document are set out in the Financial Instruments Trading Act (1991:980) (the "Trading Act") and the rules adopted by the respective exchange. The SFSA may grant an extension of the period for submission of the offer document if there are special reasons.

Mandatory bid rules

There are mandatory bid rules in Sweden. According to the Takeover Act, a shareholder holding less than 30 per cent of the total number of votes in a listed company (the target company), who thereafter acquires, alone or together with related or concert parties, 30 per cent or more of the total number of votes in the target company as a result of a purchase, subscription, conversion or any other form of acquisition of shares in the target company, shall make a public offer for the remaining shares in the target company. The public offer for the outstanding shares shall be made within four weeks from the date when the mandatory bid requirements were triggered. It is not required to announce a mandatory bid if the person triggering the mandatory bid requirement, within four weeks from the date when the obligation arose, disposes of so many shares (its own and/or those of a related or concert party) that the holding thereafter represents less than 30 per cent of the votes in the company. Furthermore, under certain circumstances, a purchaser of shares may be granted an exemption from the mandatory bid requirement by the Swedish Securities Council, acting on delegation from the SFSA.

If the mandatory bid rules are not complied with the SFSA may, *inter alia*, order the non-complying shareholder under a penalty of a fine to make a mandatory bid or to dispose of so many shares that the mandatory bid requirement no longer is triggered. In addition the SFSA may prohibit the non-complying shareholder from representing its shares in the target company.

Disclosure of shareholdings

Pursuant to the Trading Act, a shareholder is required to disclose its holding of shares in a Swedish listed company to the SFSA and the listed company the first time the shareholding reaches or exceeds 5 % of the

shares or votes in the company, and thereafter every time the shareholding reaches or exceeds 10, 15, 20, 25, 30, 50, 66 2/3 and 90 % of the shares or votes in the listed company. The shareholder must also report every transaction which results in the shareholding falling below any of the aforementioned thresholds. The Trading Act contains aggregation rules for the shareholdings of certain closely related parties or parties acting in concert. The shareholder must fulfil the reporting obligation no later than three trading days following the date of the relevant transaction.

When determining whether or not a reporting threshold has been reached or passed, not only holdings of shares but also holdings of depository receipts and financial instruments which entitle the holder to acquire already issued and outstanding shares in the listed company, such as call options, shall be taken into account.

The information will normally be made public by the SFSA immediately when the filing is made. The information will also be made public within the EEA. If a required disclosure is not made within the prescribed time frame, the SFSA may order the relevant person under penalty of a fine to comply with the disclosure rules. However, no criminal penalties are available.

Antitrust and competition aspects

Under the Swedish Competition Act (2008:579), the Competition Authority (*Konkurrensverket*) and the Stockholm City Court (*Stockholms tingsrätt*) are the authorities responsible for the supervision and control of mergers. The Market Court (*Marknadsdomstolen*) is the court of appeal. The Market Court will cease to exist 1 September 2016, and cases will be adjudicated by the new Patent and Market Court.

A merger or an acquisition (a concentration) must be notified to the Competition Authority if the parties to the transaction have a combined aggregate annual turnover, for the previous fiscal year, in excess of SEK 1 billion (approximately USD 118 million) in Sweden and at least two of the companies involved have a separate annual turnover, for the previous fiscal year, of SEK 200 million (approximately USD 23.7 million) in Sweden. However, the Competition Authority always has the ability to demand notification of an acquisition, if the first threshold is met and there are special reasons at hand. Even if a notification of a merger is not required under the present rules, i.e. if no thresholds are met; the Competition Authority may also request a notification and review the merger if there are special reasons for such a course. The Competition Authority has chosen to do so in some recent cases during the last years. The Competition Act contains a specific regulation concerning multiple transactions between the same persons or companies. Such transactions carried out within two years are to be treated as one concentration. Voluntary notification is always possible if the first threshold is met.

A merger or acquisition so notified may be prohibited, or the acquirer may be required to dispose of a business or part thereof, if the merger or acquisition is liable to significantly impede the existence or development of effective competition in the Swedish market as a whole, or a substantial part of it. However, doing this test the Competition Authority will particularly take into account if the concentration creates or strengthens a dominant position. A prohibition may only be issued without setting aside essential national security or supply interests.

In consequence of a decision to prohibit a concentration, a transaction which constitutes a part of a concentration shall be void. This does not, however, apply to such transactions constituting an acquisition which has taken place at a regulated market, as defined in the Securities Market Act (2007:528), at a market outside of the EEA similar to a regulated market or a Multilateral Trading Facility or by a bid at an executive auction. In such cases, the undertaking making the acquisition may be ordered to divest the assets acquired. The Competition Authority has 25 working days after receiving a complete notification of a

transaction to decide whether to initiate a special investigation of the transaction. Before the end of that period, the parties may take no action to complete the transaction. If no such decision is issued within that period, the transaction is automatically cleared. The normal procedure is, however, that the Competition Authority issues an approval or objection decision as the case may be.

To take action against the acquisition, the Competition authority must initiate proceedings at the Stockholm City Court within three months from the date of the decision to initiate a special investigation. The Stockholm City Court must normally issue a decision concerning the transaction within six months after action is brought by the Competition Authority. If the judgment of the Stockholm City Court is appealed, the Market Court must make its decision within three months from the end of the time to appeal the City Court's decision. The above mentioned time-limits may, however, be stopped by the Competition Authority if, for example, an acquirer does not provide documents upon request by the Competition Authority. As of 1 September 2016 a new Patents and Market Court and Supreme Patents and Market Court will be established in Sweden which will have exclusive jurisdiction over amongst others competition law cases. The new courts will take over the responsibility of Stockholm City Court and the Market Court but from the draft legislation currently available the change of judicial system will not effect the procedures, timings etc. currently applicable.

Insider trading

The Penal Act on Market Abuse in Trading in Financial Instruments (2005:377) (the "Market Abuse Act") criminalizes insider trading and improper market manipulation. Possible sanctions are fines and imprisonment.

Under the insider trading prohibition, a person who has received insider information, i.e. information that has not been made public and that is likely to influence materially the price of financial instruments, may not trade in such financial instruments, on his or her own behalf or on behalf of another person or entity until that information has become generally known or ceased to be price sensitive. In addition, a person with insider information may not, through advice or in any other manner, cause any third party to trade in financial instruments to which the insider information relates. There are some exemptions to this prohibition such as that financial instruments may be acquired where the insider information is intended to reduce the price of the instrument and the financial instruments may be sold when the information is intended to increase the price of the instrument. It is also prohibited for a person to intentionally disclose information which he or she realises or should realise constitutes insider information except if the disclosure occurs as a normal part of the performance of a service, activities or obligations.

3 Employment law

Introduction

The relation between employers and their employees is highly regulated in Sweden. In addition to a number of laws affecting employment, many aspects of labour relations, such as salaries and terms of employment, are regulated by collective agreements, negotiated by the trade unions on the one hand, and the Confederation of Swedish Enterprise on the other. Therefore, an investigation of the employment law applicable to any particular area of industry and commerce would not be complete without a study of the relevant collective bargaining agreements.

Terms and conditions of employment

Swedish law does not require a written contract of employment. However, the employee has a right to receive written information about the conditions of the employment within a month of the start of the employment term. Moreover, the Employment Protection Act (1982:80) provides certain minimum requirements for the terms of employment. The Act applies to all categories of employees, except top-level management, household staff, and members of the employer's family.

Generally, employment is entered into for an indefinite term. However, employees may be employed for a probationary period of up to six months. Moreover, an employer is to some extent entitled to enter into employment agreements concerning fixed-term employments. There are four different kind of fixed-term employments, namely the so called general fixed-term employment (Sw*: allmän visstidsanställning*), for a position as a substitute, for seasonal work and for a fixed term when the employee has attained the age of 67. Employments that are entered into for a general fixed term employment or on a substitute agreement is automatically transformed into an employment valid for an indefinite time if the aggregate term of employment on that type of employment exceeds two years within a five-year period.

As of 1 May 2016, general fixed term employments are also transformed into indefinite term employments if the employee has had "consecutive" fixed term employments (regardless of type of fixed term employments) for more than two years. Two fixed term employments are treated as consecutive if the interval between the two employments is less than six months.

The Act further restricts termination of an employment contract and states that terminations must be based on just cause. Just cause may be attributable to the employee personally, such as severe absenteeism and gross misbehaviour, or to the employer, such as redundancy.

In case of termination for personal reasons, the employer must act within two months of the offence committed by the employee; occurrences older than two months may be invoked together with more recent occurrence or if there are special reasons for the delay or the employer has delayed termination in accordance with the employee's wishes or with the employee's consent. Moreover, the employer normally has an obligation to attempt to relocate the employee within the company.

Except where an employee has acted highly egregiously, employees are guaranteed a period of notice which may range from one month to six months depending on the term of employment. The corresponding period for notices of resignation is one month. Specific employment agreements may include longer notice periods or periods when employee resigns.

In principle, the priority order for lay-offs is based on the employee's seniority of employment with the company. Temporary lay-offs are permitted in case of work shortage, but the employees are entitled to unchanged employment benefits unless otherwise stipulated in an applicable collective bargaining agreement. The Act also regulates rehiring once the work shortage ceases under generally the same priority rules. The employees' right to re-employment applies during their notice periods and for nine months thereafter.

As indicated above, the Act may be supplemented by collective bargaining agreements or individual employment contracts.

In a redundancy situation, a list of priority based on seniority of employment should be drafted. However, an employer with a maximum of ten employees may exclude two employees from the list of priority whom, according to the employer's opinion, have a particular importance for the continued business.

Salary

In Sweden, there is no statutory minimum salary that must be paid to an employee. However, minimum salaries are often included in collective bargaining agreements, which the employer may have to consider.

Under Swedish law, all compensation given to an employee is normally taxed as income, with a maximum marginal tax rate of approximately 57 per cent (income year 2016). The employer does not deduct national insurance contributions from the gross salary, but pays employer's contributions of 31.42 per cent (income year 2016) of the whole salary and on all other employment benefits except for pension premium contributions. For foreign employers without a permanent establishment in Sweden, the contributions are reduced. The employer's contributions are tax deductible in the business of the employer for Swedish tax purposes.

Salary is normally paid on the 25th each month and vacation pay (please see below under Vacation) normally has to be paid on salary and any bonus / commissions awarded.

The standard for stating the size of the employee's salary is in Swedish crowns (SEK) per month.

Insurance

If not bound by a collective bargaining agreement, there is no obligation for the employer to provide insurance to the employee. However, it is common that the employer provides a group accidental and invalidity insurances.

Pension

If not bound by a collective bargaining agreement, there is no obligation for the employer to pay pension contributions exceeding the mandatory pension obligations in the Social Insurance Code (2010:110) (which is included in the employer's contributions). However, it is common and in collective bargaining agreements required that the employer, at least for white-collar staff, pays an extra pension premium. It is possible to agree that the pension contribution shall correspond to a set percentage of the employee's salary.

Payroll tax on pension costs is payable by 24.26 per cent (income year 2016) (Act 1991:687).

Vacation

The right to paid vacation days is regulated by the Annual Leave Act (1977:480), which provides an annual minimum of twenty-five days' paid vacation days or a maximum of 5 vacation days if the employment is commenced after 31 August in the year for which the vacation days are accrued. Vacation days may, however, be extended by collective bargaining agreements or individual employment agreements. Personnel who do not receive overtime pay frequently receive an extra three – five days of vacation days as compensation. Calculation of vacation pay is complicated but generally equals twelve to fourteen per cent of the employee's total earnings during the year.

Parental leave

Under the Parental Leave Act (1995:584), parents are entitled to full parental leave for the care of their child until the child reaches one and a half years of age, regardless of whether they receive parental leave benefits or not. Parental leave benefits in connection with childbirth are provided for a total of 480 days per child. 90 days are reserved for the father and 90 days for the mother, if the child was born in 2016 or later. The rest can be shared freely between the parents. No employer may terminate an employee because the

employee exercises this right. The Act also entitles parents to reduced working hours with 25 per cent until the child has reached eight years of age or, if later, until the child has finished its first year of school.

Working hours

Hours worked are regulated by the Working Hours Act (1982:673). This Act, which applies to all employees except employees who work out of their homes, managerial level employees, household workers, certain road transportation workers and ships crews, provides for a work week of no more than 40 hours. Moreover, the Act states that the maximum overtime is 48 hours during a period of four weeks or 50 hours during a calendar month, normally with a maximum of 200 hours of overtime per year. Some collective bargaining agreements further limit regular work time and overtime.

Discrimination

On 1 January 2009, a new Discrimination Act (2008:567) entered into force in Sweden, replacing a number of other acts with respect to discrimination in different areas. According to the new Discrimination Act, direct or indirect discrimination on the basis of, *inter alia*, gender, ethnic origin, religious belief, disablement, sexual orientation and age are prohibited. Furthermore, limited accessibility which puts disabled persons at a disadvantage may constitute unlawful discrimination if the employer is reasonably expected to adapt the workplace to accommodate for the specific needs arising from the disability. Smaller businesses are exempt from the requirement of accessibility.

Co-determination in the workplace

The Act (1976:580) on Co-Determination at Work (the "Co-Determination Act") affords the labour unions a certain measure of influence over decisions affecting their members. However, since the employer normally has a final say in all matters, the Co-Determination Act cannot generally be said to restrict operation of the business unduly.

The first part of the Co-Determination Act affirms the right of employers and employees to belong to employers' associations and trade unions and prohibits any direct or indirect restriction of this right.

The main part of the Act focuses on the right of the trade union with which the employer has signed a collective bargaining agreement to be informed of and allowed to consult about important changes in the business. The employer is prohibited from implementing any significant changes in the business, such as the appointment of a general manager, new investments, or changes in the workplace or personnel, before consultations have been conducted and concluded. The right of consultations merely gives the trade union an opportunity to influence the way decisions are made and not a veto right or the power to decide the future course of the business. The employer is not required to reach any agreement with the union and has the exclusive competence to determine its own actions. However, the Act may delay a decision by the employer up to a couple of months.

Moreover, the employer shall keep the trade union with which it has a collective bargaining agreement continually informed about developments in the economy of the business, matters of production and staff policy. Before any reductions in the workforce are made based on redundancy or work shortage, the employer is required to consult the union. If the employer is not party to any collective bargaining agreement, a similar obligation to consult and inform then exists with every union that has a member employed with the employer.

The Co-Determination Act gives trade unions the ability to veto the hiring of independent contractors under certain conditions.

Employee board representation

As stated above, under the Act (1987:1245) on Board Representation for Privately Employed, the employees of a business employing at least 25 persons may appoint two members and two deputy members to the board of directors. For employees with 1,000 employees, three ordinary and three deputy directors can be appointed. However, a prerequisite for board representation is that there is a collective bargaining agreement in force between a trade union and the employer.

4 Immigration and work permits

Regulations concerning immigration and foreign nationals in Sweden are principally found in the Aliens Act (2005:716) and the Aliens Ordinance (2006:97). Entry into Sweden requires a valid passport and nationals of most African and Asian nations must have visas. However, as of March 25 2001, Sweden has been an operative member of the Schengen cooperation. In order to deepen their cooperation, many of the European Union (EU) member states have entered into a convention, with the purpose of achieving free movement of persons, regardless of their citizenship, within the exterior borders of all member states. The member states have thereby harmonized their visa rules and the rules regarding the customs of the exterior borders.

As of 5 April 2010, the EU's Visa Code applies in Sweden. A visa granted by one of the Schengen countries is also valid for visits to the other Schengen countries. However, in exceptional cases, such as if the holder's passport is not approved by all Schengen countries, the visa may only be valid for entry into the issuing country or only for certain countries.

Citizens of the Nordic countries are exempted from the requirements of passport, residence permit and work permit.

A residence permit, which is mandatory if the alien stays in Sweden for more than three months, must in principle be applied for and granted before the alien enters Sweden.

However, EU and European Economic Area (EEA) citizens and their family members no longer need residence permits for staying in Sweden for more than three months. EEA citizens must instead register their right of residence, and family members who are not EEA citizens must apply for residence cards.

An alien who does not have a permanent residence permit or who is not an EEA citizen must have a work permit to be able to work in Sweden, regardless of whether the work is carried out for an employer in Sweden or abroad.

Close relatives or next of kin of an EEA citizen working in Sweden are also entitled to take up residence in Sweden. Close relatives or next of kin are in this context defined as follows:

- husband/wife or common-law spouse;
- a child or children (of either or both spouses) under twenty-one or dependent on the parent(s); and
- parents (of either or both spouses) dependent on the spouse(s).

In addition to a passport or identification document, relatives or next of kin will require some form of document issued by the appropriate authorities in their country of domicile certifying that they are closely related to, or dependent upon, the employee. An EEA citizen's husband/wife/common-law spouse or children, who are themselves entitled to take up residence in Sweden, may work in Sweden without having to apply for a work permit. However, common-law spouses or next of kin from a country outside the EEA must apply for a residence card (Sw. *uppehållskort*) at the latest after three months from the arrival to Sweden.

Non-Nordic and non-EEA citizens need a work permit to be able to work in Sweden. As of 15 December 2008, new rules for labour immigration to Sweden entered into force. This has resulted in a more effective and flexible system that has made it easier for people to come to Sweden to work and for companies to recruit labour from outside of Europe. An employer who is not able to meet its labour needs through recruitment in Sweden or in other EU/EEA countries may recruit labour from a third country if certain fundamental conditions, such as, for example terms of employment, are met.

As is the case with EU/EEA citizens and their family members (regardless of citizenship), the following persons also are exempted from the requirement of a work permit:

- persons employed in professional transportation and tourist bus drivers (for up to three months from entry);
- carers of persons visiting Sweden for medical or recreational reasons (for up to three months from entry);
- researchers with higher education called here to conduct research, teach or give lectures (for up to three months during a 12 month period);
- persons resident and employed in, but not citizens of, an EEA Member State, who are temporarily working in Sweden for the original employer in connection with the performance of a tender agreement or similar contract;
- aliens holding a permanent residence permit;
- fitters or technical instructors who will carry out work of an emergency nature relating to the assembly or repair of, e.g., machinery, (for up to two months from entry);
- persons occasionally engaged by certain parts of the Swedish radio or television;
- musicians including their staff (for maximum of 14 working days during a 12 month period);
- professional athletes and officials in connection with international sports events (for up to three months during a 12 month period); and
- aid personnel, in the event of a catastrophe or accident in Sweden.

Furthermore, there is an exemption from the requirement of a work permit for employees employed by an international group that will undergo practical training, on-the-job training or other in-service training at a company in Sweden which is part of the group (totalling a maximum of three months covering a twelve-month period). The same applies to employees who will undergo training, conduct tests, prepare or finish deliveries, or participate in similar activities in Sweden as part of a business deal (totalling a maximum of three months covering a twelve-month period).

Work permits are issued by the Swedish Migration Agency. To obtain a work permit, an alien must have been offered employment and the employment must enable the alien to provide for himself/herself in Sweden. Moreover, the salary, level of insurance and other terms and conditions of the employment must be equal or more favourable than corresponding terms and conditions in relevant Swedish collective bargaining agreements or such terms and conditions that are customary within the relevant profession.

The work permit is limited to a specific employer and to a specific employment. A granted work permit will cover the relevant period; however, maximum validity period for the permit is two years at a time. The alien will receive a shorter permit if it is difficult to decide the period of the employment, for instance if his or her assignment is to set up a new branch of the company. The aggregate maximum period to be granted a temporary work permit is 4 years. After this period, the alien may apply for a permanent residence permit. A

residence and work permit in Sweden is always temporary. If a person loses his/her job and do not receive a new one within three months, the Swedish Migration Agency may cancel his/her residence permit. If the person receives a new job, he/she must submit a new application for a work permit unless the permit also covers the new job.

Application procedure

Applications for work permits must be filed online or with a Swedish diplomatic mission in the applicant's country of domicile or another foreign country before entering and commencing employment in Sweden. However, if the applicant already resides in Sweden, the application may in certain cases be filed with the Migration Agency. According to the current information by the Migration Agency, the decision-making officials' work load is currently higher than usual with a processing time of approximately 5-8 months when the application is complete when submitted to the Migration Agency and the application is made online.

The work permit must be obtained at the diplomatic mission where the application was filed unless the applicant has requested that it be sent to another diplomatic mission. Employment may not commence before the work permit is obtained. Once granted, a work permit may be renewed through the Migration Agency.

5 Commercial law aspects of business activities

Standard terms and conditions

Standard terms and conditions are widely used in the sale of goods and services in Sweden. Their validity and enforceability are governed mainly by contract (Contracts Act (1915:218)) and sales law (Sale of Goods Act (1990:931), Consumer Sales Act (1990:932) and various other consumer protection laws). In addition, standard terms in transactions of an international character may be affected by the Act (1964:528) on Applicable Law in International Purchases of Goods, the Rome I Regulation (EC/593/2008) and by the Act (1987:822) on International Sales, which implements the 1980 United Nations Convention for the International Sale of Goods (CISG). Generally to be binding, standard terms and conditions must be clearly referred to in and attached to the contract in question. Standard terms and conditions which are unfair may be overturned or modified by the courts. Ambiguous terms are generally interpreted against the party formulating them.

Agency and distribution in Sweden

Most international commercial transactions involve the sale of goods in some form. Included under this broad heading are "straight" export and import sales, but also arrangements such as international agency and distributorship. These contractual relationships involve the sale of personal property across international boundaries, with varying degrees of involvement by the principal.

Agency

Under Swedish law, an agent is a person who has agreed with another person (the principal), independently and enduringly to engage in the sale or purchase of goods on behalf of the principal by procuring offers to the principal, or by concluding agreements in the principal's name.

The commercial agent is in many ways similar to the distributor. One important difference lies in the manner in which the agent conducts his or her business. The agent works on behalf of the principal, on a *commission* basis. The principal pays the agent in relation to the volume of sales he or she procures, while the distributor profits from the difference between the price of the goods and the price charged to the end-

user. Moreover, the agent normally does not handle the goods, which are delivered directly to the buyer. Similarly, payment is usually made to the supplier directly, and the agent does not collect the funds. A *del credere* agency is a form of agency where the agent guarantees the customer's ultimate payment to the principal.

The Act (1991:351) on Commercial Agency (*Sw. handelsagentur*) conforms to the Council Directive (86/653/EEC) on self-employed commercial agents, and is substantially similar to implemented legislation of the other EU Member States.

Many provisions of the Commercial Agency Act are mandatory to the benefit of the agent, i.e., the parties may agree on terms more advantageous to the agent, but not less. The act also contains discretionary rules in case no agreement has been made on certain points.

With regard to agreements entered into before 1 July 1998, the parties to an agency agreement could not evade the provisions of the Act by providing in the agreement that a foreign law should govern their relation. This provision, Article 3 of the Act, is no longer in force. Since 1 July 1998 Sweden is part of the Rome Convention on the law applicable to contract obligations (19 June 1980) and is from 2009 obliged to comply with the EC Regulation No. 593/2008 on the law applicable to contractual obligations (Rome I). The parties may therefore now choose another law than Swedish to govern their relation. It is therefore now possible to evade the provisions in the Act, by an agreement entered into after 1 July 1998. However, if the agreement was entered into before 1 July 1998, the old rules shall apply and the parties may not evade these rules by choosing another law. Nevertheless, Community law imposes that if the parties have contracted out of the law of a Member State and chosen the law of a third country, the minimum protection rules in the EC Directive on Commercial Agents may be applied in protection of the agent. The rules below apply if the Agreement shall be governed by Swedish law.

If the agent or his/her principal so requests, the agency agreement shall be documented in writing and signed by the parties. A party cannot waive this right to receive, on request, such a document.

In performing his/her activities, the agent shall safeguard the principal's interests and act loyally and honestly. The agent shall make reasonable efforts to procure offers and, if it is part of his/her activities, to conclude agreements as to matters that are covered by the agency agreement as well as inform the principal concerning such offers and agreements. These requirements may not be varied by the parties. The agent shall further take good care of goods and other items which belong to the principal and which are in the agent's possession, and keep these separate from other goods. The agent shall carry requisite property insurance. If the agent is entitled to receive payment for goods sold, he/she is obliged to keep the funds received separate and to render an account of his/her activities.

The principal shall act loyally and honestly towards the agent. The principal shall supply the agent with samples, descriptions, price-lists and other necessary material in respect of the goods to which the agreement pertains and with the information required for implementation of the agent's activities. The principal shall also inform the agent, without undue delay, that an offer forwarded by the agent has been accepted or rejected or that an agreement brokered by the agent has not been fulfilled or if the scope of the business is expected to be substantially less than that reasonably assumed by the agent. These requirements may not be varied by the parties.

If the agent and the principal have not agreed upon the agent's remuneration, the agent shall be paid "according to what is customary where the agent conducts his business". If there is no such custom, the agent shall be paid according to what is "reasonable in view of all the circumstances involved in the activities". The agent is entitled to commission on a transaction concluded during the term of the agency agreement if the transaction may be considered to have arisen through the participation of the agent, if the

transaction has been concluded with a third party belonging to the territory or circle of customers assigned to the agent or if, without the agent's participation, the transaction has been concluded with a third party procured earlier as a customer by the agent, provided that the agreement is of the same type. Moreover, the agent is entitled to commission on a transaction concluded *after* the agency agreement has ceased under certain conditions. Commission shall generally be paid no later than one month after the end of the calendar quarter in which the commission was earned.

Under Swedish law, agency agreements not concluded for a fixed period may be terminated by a notice of cancellation by the agent or the principal. Advance notice of one month, counted from the end of the calendar month during which it is given, is required during the first year of the period of the agency agreement. The notice period is then extended by one month for each year, or part thereof, of the agency agreement period that has elapsed, up to a maximum notice period of six months. The parties may not agree in advance on a shorter period of notice than this. However, they may agree that the agent (but not the principal) shall be able to terminate the agreement by three months' notice even though the period of the agency agreement has been three years or more. If the parties agree to a longer period of notice of termination, the principal's notice period may not be shorter than the agent's.

An agency agreement concluded for a fixed period expires at the end of the period. If the parties continue their relationship after that, the agreement is regarded as an agreement without a fixed period.

Either party may terminate the agreement with immediate effect if the other party has failed to fulfil its obligations in accordance with the agreement and if the breach of contract by the opposite party is sufficiently important to the party concerned, and if the opposite party has realized or should have realized this. The agency agreement generally also terminates upon the bankruptcy of one party.

Upon termination of the agency agreement, the agent may be entitled to a severance payment which shall amount to a sum not exceeding one year's commission, calculated on the basis of the average for the past five years or the shorter period for which the agreement has lasted. The agent must claim the severance payment to which he/she is entitled within one year of termination of the agreement. The parties cannot agree to terms concerning severance payment that are less favourable to the agent.

Distribution

The distributor is a commercial entrepreneur, a buyer of goods, who enters into a contract with a manufacturer or wholesaler which governs the conditions of sales made by him/her for a fixed period of time, or indefinitely. Although the distributor usually sells products bearing the supplier's trademark, the distributor is independent from the supplier, and does not act as its agent. The nature of the relationship between the distributor and the supplier is arms-length, and the distributor is compensated by the profit on the resale of goods to customers. A distributor bears all the risks associated with sales, including non-payment by a customer. The distributor is normally required to maintain an inventory and warehousing facilities at its own cost, and to deliver the goods to the customers. The distributorship or distribution agreement generally imposes other obligations on the distributor such as marketing, minimum sales and after-sales support. Accordingly, most distributors must have marketing, sales and support personnel.

No specific legislation on distributors exists in Sweden. The distributor's rights are governed mainly by the distribution contract, but also by some general principles of Swedish contract law.

Swedish law contains no special term of notice for the termination of a distributorship contract. Thus, it is in principle possible to terminate such agreements with immediate effect. However, general principles of law apply, most notably section 36 of the Contract Act. Under this section, unfair contractual terms can be modified or set aside in court partially or entirely if they lead to unjust and inequitable results for a party to

the contract. Section 36 might be invoked to attack a short termination period, especially if the relationship of the parties spans over many years. In cases where the contract was entered into for an unlimited duration, the predecessor to the Act on Commercial Agency has been applied by analogy. That rule stipulated not less than three months notice before termination of the agreement. It is possible that the rules in the Act on Commercial Agency concerning termination, notice periods and severance payments could again be applied by analogy, especially if the distributor is a small business and dependent on the principal for a significant part of its income.

Franchising

Franchising is a popular way of co-operating in Sweden, especially within the retail sector, but also many service companies are organised in franchising chains. Franchising in Sweden is not regulated in any specific way, with one exception, the Act on Franchisors' Disclosure Requirements (2006:484). The Act came into effect on 1 October 2006 and contains several key provisions concerning pre- contractual information duties for franchisors operating in Sweden. The Act defines the minimum amount of information that must be disclosed by the franchisor to the franchisee before entering into a franchise agreement. The disclosed information has to be clear and intelligible, and handed over to the franchisee in writing well in advance (according to the government bill, 14 days prior to entering into the agreement is considered to be "well in advance" in most cases).

If a franchisor (or someone representing them) fails to comply with the provisions, the Market Court may impose an injunction, plus a fine for non-compliance.

Product liability

The Product Liability Act (1992:18), which entered into force on 1 January 1993, covers personal injuries caused by all products that are defective. In addition, the Act prescribes liability for damage that a defective product may cause to property intended mainly for consumer use, but not to any other property. The Act establishes a presumption of liability for the manufacturer, seller or importer of products which were defective when put into the stream of commerce. The presumption of liability can only be overturned if the seller can identify the producer or supplier, or demonstrates that the defect was not present when the product was put into the stream of commerce. The liability is strict, i.e., the claimant does not need to show any fault on the part of the producer, nor any contractual relationship between the claimant and the producer, only that the product causing the damage was not as safe as reasonably could have been expected.

The Act is mandatory to the benefit of the claimant. A standard provision limiting the seller's liability for injuries or damages caused by the product can therefore not prevent the end-user from suing the manufacturer and the distributor of a defective product. However, if the general negligence rule of the Torts Act (1972:207) is more advantageous, the claimant may base a claim on that act. The rules of the Torts Act concerning adjustment of damages are also applicable to liability arising under the Product Liability Act.

The statute of limitations on product liability claims is three years from the time when claimant became aware or should have become aware of the existence of the claim.

Exchange control

A foreign investor will, to the extent it does not wish to reinvest its profits, want to bring those profits home. It is therefore important that there will be no significant legal or fiscal impediments to the repatriation of capital from Sweden. Sweden has a liberal investment climate, and there are virtually no restrictions on the flow of capital over the borders. Profits may be freely repatriated, subject to withholding tax (which is varied by

different double taxation treaties) and to a requirement of reporting to the Swedish Customs (for statistical and monitoring purposes).

Business Reorganisation Act

On 1 September 1996, the Act (1996:764) on Business Reorganisation came into force. Under this Act, a company that is unable to pay its debts can apply for a special procedure in order to reorganise its business activities, possibly by reaching an agreement with creditors. A trustee, called a "reconstructor", who is in charge of finding ways in which the company in question can carry on its business, is appointed by the local district court with jurisdiction over the company. During the reconstruction procedure the company in question cannot be subject to bankruptcy procedures or other executive procedures.

Antitrust and competition issues

The Competition Act (2008:579) essentially implements the substantive competition rules of the EU. Title VII, chapter 1 of the Treaty on the Functioning of the European Union lays down the basis for the EU rules on competition The Act has two main material provisions, a prohibition against agreements and concerted practices that restrict competition and a prohibition against abuse of a dominant position. Provisions regarding mergers and acquisitions have been discussed above. The Competition Act does not apply to agreements between employers and employees on salary and other conditions of employment.

6 Prohibition against competition restrictions

A main focus of the Swedish Competition Act is to enforce the provisions against cartels. The Competition Act prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may *appreciably* affect trade in the Swedish market and which have as their object or effect to impede, restrict or distort competition, and in particular those that:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development or investment;
- divide markets or sources of supply;
- apply different conditions to equivalent transactions with different trading parties, thereby placing them at a competitive disadvantage;
- make the conclusion of contracts subject to acceptance by the other party of additional obligations which, by their nature or according to commercial usage, have no connection with the subject matter of the main contract.

Agreements or terms of agreement that are prohibited according to the above are void, and may subject the offender to administrative fines and an obligation to pay damages (see below). The offender may also be subject to a trade prohibition.

However, the prohibition does not apply to agreements which:

- contribute to improving the production or distribution or to promoting technical or economic progress;
- allow consumers a fair share of the resulting benefit;
- only imposes on the undertakings concerned restrictions which are indispensable to the attainment of the objective referred to in (a) above; and

- do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the utilities in question.

Inherent in the requirement that a competition restraint must *appreciably* affect trade on the Swedish market is a de *minimis* rule conceptually similar to the one developed in EU case law. The Competition Authority has in its general guidelines concerning agreements of minor importance (KKVFS 2009:1) stated that the term "appreciable extent" shall be defined in line with the document 2001/C 368/07 of the European Commission. In terms of this definition cooperation is not regarded as affecting competition to an appreciable extent, providing the undertakings have a joint market share of a maximum of 10 per cent of the relevant market for horizontal agreements or 15 per cent for vertical agreements. As regards cooperation between small undertakings, i.e., where each undertaking has an annual turnover of less than SEK 30 million, an aggregate market share of 15 per cent can be accepted.

Before 1 July 2004, the Competition Authority could grant individual exemptions or negative clearance as regard agreements and practices. This procedure is no longer available. Exemptions granted before 1 July 2004 are nonetheless valid until the date of expiry contained in the exemption decision but no extended exemption will be granted. Companies must henceforth themselves assess whether their agreements and practices are in accordance with the competition rules or not. The agreement, decision or practice is lawful provided that the undertaking can show that it fulfils the conditions mentioned above (self assessment).

Block exemptions

General exemptions from otherwise prohibited agreements and practices, so called block exemptions are available. Currently, the following seven block exemptions are available:

1. agreements on certain co-operation between taxi services;
2. vertical agreements;
3. specialisation agreements;
4. agreements on research and development;
5. motor vehicle distribution and servicing agreements;
6. insurance sector agreements; and
7. technology transfer agreements.

Each block exemption is, with exception for territorial application and threshold values, generally identical to its equivalent under EU rules. Some adjustments to the Swedish block exemptions have been made, mainly with regard to thresholds and market definition.

Prohibition against abuse of a dominant position

As stated above, the prohibition against abuse of a dominant position is the second main rule of the Competition Act. Under this rule, any abuse by one or more undertakings of a dominant position is prohibited. Such abuse may in particular consist of:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the prejudice of consumers;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or

- making the conclusion of contracts subject to acceptance by the other party of additional obligations which, by their nature or according to a commercial usage, have no connection with the subject matter of the main contract.

Enforcement procedures and sanctions

The Competition Authority has broad investigatory powers to carry out its supervision under the Competition Act.

In case of infringements, the Competition Authority and the Stockholm City Court may under penalty of a fine require an undertaking to cease its prohibited activities. Subject to certain conditions, the Stockholm City Court may impose such a requirement for an interim period until the issue has been finally settled.

The sanctions under the Competition Act are principally four: avoidance (nullification) of prohibited agreement or provisions, administrative fines, the ability of injured parties to claim damages and the offender may also be subject to a trade prohibition.

The judicial review of decisions is undertaken by the Stockholm City Court with the Market Court as second instance and final appeals court. However, appeals against decisions of the Competition Authority concerning, *inter alia*, injunction orders shall be brought to the Market Court. As the Competition Authority's activities also are subjected to the Administrative Act certain procedural matters may be handled by the administrative courts.

As of 1 September 2016 a new Patents and Market Court and Supreme Patents and Market Court will be established in Sweden which will have exclusive jurisdiction over amongst others competition law cases. The new courts will take over the responsibility of Stockholm City Court and the Market Court but from the draft legislation currently available the change of judicial system will not effect the procedures, timings etc. currently applicable.

Violations of the prohibitions may lead to administrative fines not exceeding 10 per cent of the undertaking's annual world wide turnover in the preceding financial year. For purposes of determining the amount of this fine, the annual turnover of the undertaking within the group of companies which is directly concerned is used. Fines may only be issued if the summons application has been serviced within five years from the termination of the infringement. If the undertaking concerned during these five years is notified of a decision by the Competition Authority to initiate investigation or is given opportunity to comment on the Competition Authority's draft summons application, the five year limitation period shall be calculated from the day when that occurred.

In case of intentional or negligent violations of the Competition Act's prohibitions against agreements restricting competition or abuse of a dominant position, the offending undertaking may be required to pay damages to injured third parties or contract partners. Actions for damages must be brought within ten years from the date when the damage occurred.

Companies that cooperate with the Competition Authority in its investigation of cartel activities may be granted full immunity or lower fines (leniency). It is only the company that first reports the infringement and comes forward with sufficient evidence that is granted full immunity. Other subsequent companies may receive reduced fines. To receive leniency, companies must provide all information at their disposal, fully cooperate with the Competition Authority throughout its investigation and cease all involvement in the illegal activities.

7 Environmental protection

The Swedish Environmental Code (1998:808) aims to promote sustainable development whereby present and future generations will be guaranteed a healthy and safe environment. Sustainable development is based on the insight that nature is worthy of protection and that the right of humans to alter and utilise nature is linked to the responsibility of managing nature efficiently.

The Code applies to all undertakings, from major industrial projects to minor individual measures. Its general rules of consideration are relevant for all activities and measures with the exception of measures which are of negligible significance. The fundamental rule of consideration states in principal that when activities or measures are pursued actions must be taken to prevent or counteract them from causing damages to or inconvenience for the health of humans and the environment. Other rules of consideration concern i.e. the location of specific activities and measures, the use of raw material or energy and which knowledge that shall be obtained. When applications for permits are examined and in other similar procedures, and also in connection with supervision, the responsibility for proving that the rules of consideration are in compliance with the Swedish Environmental Code lies with the party exercising the activity or measure. Thus, the burden of proof is reversed, meaning that the party exercising the activity or measure has the burden of proof regarding contamination.

Though it is impossible to comment on all the areas regulated in the Code in this summary, a few of the more interesting areas are commented on below.

Environmentally hazardous activity and health protection

Environmentally hazardous activity means a use of land, buildings or fixed installations that may entail a nuisance to human health or the environment by emission or pollution of land, water or the atmosphere. The same applies to use that causes emissions in some other situations or that may entail nuisance to the surroundings, for example by noise, vibration, light or radiation. Under the ordinance (1998:899) concerning Environmentally Hazardous Activities and Health Protection a permit or notification is required for, in principle, all environmentally hazardous activities. Even if an activity is not subject to a permit obligation, the supervisory authority may, in particular cases, require that the party conducting the operation applies for a permit if there is a risk of significant pollution or another substantial nuisance. Even alterations of existing activities may require a permit. In such cases the provisions require that an overall assessment be conducted of the entire operation.

Liability for remediation

The Code clarifies the liability for remediation of environmental damage caused by pollution to land, water areas, buildings and structures and some additional forms of environmental damage. The rules are based on the Polluter Pays Principle: Liability for remediation rests primarily with the party conducting the activity. This also applies to parties who have conducted past activities or contributed to the damage. Secondarily the landowner may be responsible. If more than one activity operator contributed to the damage the parties are jointly responsible, with some limitations, for the remediation. The transitional provisions of the Code indicate that the remedy for damages and the performance of remediation is applicable to environmentally hazardous activities which have continued after 30 June 1969. Besides the reference to this particular provision, there is no time limitation.

8 Intellectual property

Intellectual property is protected in Sweden to an extent corresponding to other west European countries.

Copyright

Sweden is a party to the Bern Convention and the Universal Copyright Convention. Therefore, the Copyright Act (1960:729) protects works made or published in most countries of the world. No registration is required or available for copyright protection. Protection arises at the moment that the work is created and continues until the end of the 70th year after the (last surviving) author's death. Computer software and photographs are protected under the Copyright Act. The Copyright Act also protects applied art i.e. functional products having an element of distinctive design. Further, during 2009 the EU Intellectual Property Rights Enforcement Directive (2004/48/EC) was fully implemented in Sweden and these provisions are mainly found in the Copyright Act.

Patents

Sweden is a party to the revised International Patent and Trade Mark Convention of 1934, the Patent Cooperation Treaty of 1970, and the European Patent Convention of 1973. Under the Patents Act (1967:837), patents may be granted for new inventions concerning products or processes with a commercial utility. The Act also includes provisions for obtaining a European patent under the Convention on the Grant of European Patents. A patent is valid for 20 years from the date the patent application was filed, provided that annual fees are paid. An additional period of patent protection may be granted for up to five years for certain pharmaceutical products.

Inventions by employees

The right to inventions made by employees is governed by the Act (1949:345) on the Right to Employees' Inventions. This Act is applicable only to inventions which may be patented and contains an exception regarding inventions made by teachers. The employee has the right to the invention, but the employer is given a certain right of disposal over it and sometimes to succeed as right holder. The scope of the employer's right and the size of compensation to be paid to the employee for the use is determined by the connection between the invention and the employee's field of employment. In the private sector, the rights of employees to their inventions are generally regulated in collective bargaining agreements or in the employment agreement. No collective bargaining agreements in the public sector include provisions in this field.

Trademarks

Under the Swedish Trademark Act, trademarks can be protected either through registration or by becoming established in the market. Almost any object may serve as a trademark. A registered trademark is valid from the date of application and for a period of ten years from the registration of the trademark. Thereafter it can be renewed every ten year by payment of the renewal fee. Non-registered trademarks that have obtained protection through establishment on the market are protected as long as they are generally known by the relevant group of customers as the trademark of the goods and/or services of the proprietor. Sweden is a party to the Madrid Protocol, stipulating an international system for the registration of trademarks. As a member of the European Union, Sweden has also adopted an EC regulation concerning EU trademark registrations, also known as EUTM. Hence, through an application to the European Union Intellectual Property Office (EUIPO) in Alicante, it is possible to acquire a registration covering the whole of the European Union including Sweden.

Models and designs

Under the Design Protection Act (1970:485), designs can be protected through registration. The registered design is valid from the date of application and for a period of five years from the registration. The proprietor may renew the registration for four additional five-year periods, except for spare parts where the aggregative time of registration is fifteen years.

European Community registered designs provide a single right enforceable throughout the European Union, including Sweden. Unregistered designs are protected in Sweden by the Community unregistered design right, which offers protection for a period of a maximum of three years (after first public disclosure).

9 Real estate

All real estate in Sweden is recorded in a publicly accessible real property and land register maintained by the Land Registration Authorities (*Lantmäteriet*). The records include information concerning ownership, mortgages, easements, etc. Lease agreements may be but are generally not recorded in the land register. The records and the documents submitted to the land registration authorities are public and the register is computer based.

A direct conveyance of real estate must be made in writing, signed by both the seller and the buyer. The sale and purchase agreement shall include the amount of the purchase price and a proclamation by the seller that the property is conveyed to the buyer. The agreement is void if the sale and purchase agreement does not include this information. Notarization is neither required nor available.

Real estate lease agreements are subject to a number of statutory provisions and administrative regulations. Swedish law distinguishes between land leases (*arrende*) and floor space leases (*hyra*). The former focuses on the use of the land, for example for agriculture, the latter on commercial and residential use of a building. The following remarks concern floor space leases. The main legislation governing such leases is Chapter 12 (the "Rent Act") of the Code of Land Laws (1970:994). Originally enacted in 1970 and amended numerous times, the Rent Act regulates substantially the entire relationship between the tenant and the landlord. As a result, a normal lease is entered into on the basis of a lease agreement of a few pages.

The term of a lease may be as short as the parties agree. An agreement to lease real property is, with two exceptions of minor importance, only binding up to maximum of 25 years if it concerns real property within an area subject to the zoning regime (a detailed plan area). If the parties fail to specify duration, the lease agreement will apply for an indefinite term. The Rent Act stipulates certain minimum periods of notice for termination, depending on whether the lease agreement has been entered into for a fixed term or for an indefinite term and also depending on whether the agreement concerns commercial premises or a residential apartment. A lease agreement applying for an indefinite term shall always be terminated in order to cease to apply. A lease agreement which has been concluded for a fixed term ceases to apply at the expiry of the term of lease unless otherwise agreed. If, however, the tenancy has lasted for more than nine consecutive months, notice of termination shall always be given in order for the agreement to cease to apply. If the parties agree upon a shorter period of notice than the period stated in the Rent Act, it is not valid vis-à-vis the tenant. Office premises are generally let for a period of three to five years with a period of renewal of three years. Residential apartments are generally let for an indefinite term with three months period of notice.

Tenants of residential premises generally have a strongly protected right of tenure and such leases may only be terminated for specific cause.

Tenants of commercial premises have no such protection, but may be entitled to compensation for damages incurred if the lease is terminated, or the landlord refuses to renew it on marketable conditions upon the expiration of the term unless otherwise agreed upon in a separate agreement. If the separate agreement is entered into before the tenancy has lasted for more than nine consecutive months, the separate agreement must with certain exemptions be approved by the Rent Tribunal (a special judicial body which handles disputes regarding matters covered by the Rent Act, (*Sw. Hyresnämnden*)), to be valid and enforceable. This right to compensation may, however, be forfeited in case of breach of contract of the tenant. If the tenant is entitled to compensation, the landlord always has to pay at least one year's rent. The compensation will be even greater if the damage can be proven to be greater.

The amount of the rent is frequently made subject to adjustment each year according to changes in the consumer price index (CPI). Turn-over based rent is frequently used for commercial premises in e.g. shopping centres.

10 Construction

Traditionally, construction contracts have not been subject to any separate legislation in Sweden. On the contrary, this is an area where the parties have had considerable freedom to regulate their relationship as they find suitable. Also, the Swedish legal system, which is mainly statutory, has not provided any permissive regulation on construction contracts. This has resulted in the wide use of standard forms of contract such as the series of forms for consultancy agreements and building contracts published by the Construction Contracts Committee (Sw. *Byggandets kontraktskommitté*), with representatives from both employer and contractor organizations. It is fair to say that these standard forms of contract are so widely used that it is of little, if any, practical interest to discuss the rights and obligations of the parties in the absence of these standard contracts.

There are main execution contracts and turn-key contracts and the main difference between these relates to whether the employer or the contractor is to perform the design. In an execution contract the principal provides the design from which the construction works are to be carried out by the contractor, and thus takes the design risk. In a turn-key contract on the other hand the contractor, in addition to carrying out the construction works, also performs the design based on functions described by the employer. The design risk in turn-key contracts therefore belongs to the contractor. The choice between using an execution contract or a turn-key contract often depends on the extent of control that the employer wishes to have over the design process and of which party is best suited to carry out the design.

The execution contracts and the turn-key contracts can be subdivided into divided contracts and general contracts. In a *divided contract*, contracts with consultants and contractors are concluded directly by the employer. Thus, consultants and contractors all have agreements with the employer but not with each other. With a divided contract the employer accepts a significant amount of responsibility for organizing, supervising and co-ordinating the activities on the site. In the strict form of the *general contract*, the employer does not enter into any agreements other than with the general contractor and he has no influence on the choice of sub-contractors.

11 Conclusion

As indicated in the beginning, this booklet is only a general introduction to the more important areas of the laws affecting business in Sweden. Certain topics have been covered in some detail, others very briefly or not at all. It is important that a full investigation be made of the appropriate area of the law before reaching any conclusions as to how a particular business should be conducted in Sweden.

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