

MERGERS AND ACQUISITIONS IN SWEDEN

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This guide provides an overview of the Swedish process for mergers and acquisitions (M&A).

FRAMEWORK FOR M&A ACTIVITY

In general, legal agreements for M&A processes in Sweden are relatively straightforward by international standards.

Information on a target company's share capital, articles of association, real property and floating charges is readily available from public registers.

LOW TRANSACTION COSTS

Transaction and legal costs are competitive and lower than in many countries. Lawyers and other advisors are typically involved throughout the transaction process. This is standard practice and merely reflects a desire for professional certainty and accuracy. It is not considered as a sign of mistrust or implicit conflict.

Swedish contracts and agreements are usually considerably shorter than US or UK equivalents, for example. Business dealings in Sweden are marked by willingness on both sides to achieve consensus.

An effective arbitration and courts system provides for rapid settlement of disputes and conflicts. Arbitration is the general route for solving any M&A related disputes.



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OPENNESS AND TRANSPARENCY

Freedom of information is widespread in Sweden. Company financial data is available in public registers and is easy to access. For instance, all companies must submit the company's annual report to the Swedish Companies Registration Office and this information is available to the public. Sweden's high standards of transparency are also reflected in accounting practices. A robust regulatory framework comprises the regulations of the Swedish Accounting Standards Board (Bokföringsnämnden) and the Institute for the accountancy profession in Sweden (FAR). All listed Swedish companies are also required to apply the International Financial Reporting Standards (IFRS).

Together, these frameworks create a high degree of transparency and certainty in financial reporting.

LEGAL REQUIREMENTS

Swedish regulations do not discriminate foreign investors. Shareholders may reside in any country however, the managing director and at least half of the board members of the acquired Swedish company, must be resident in the EEA.

For private M&A, no specific regulations exist regarding share or asset purchases other than general contract law and the Companies Act. For businesses that require specific licenses, for exam-

ple financial companies, the owner must follow certain regulations regarding ownership assessments etc. Competition rules must also be complied with and there are rules in place for when a purchaser must apply for approval from the Swedish Competition Authority (Konkurrensverket) before completing the purchase.

Public M&A deals are, as a general rule, governed by the Takeovers Act and the takeover rules (also known as the Takeover Code) issued by the exchange where the target company's shares are listed, for example Nasdaq Stockholm. Other important rules are, inter alia, the statements and rulings by the Securities Council (Aktie marknadsnämnden), the general rules in the Companies Act and the notification obligations in the Financial Instruments Trading Act concerning changes to major holdings.

ACQUIRING SHARES OR ASSETS

An alternative to acquiring the shares, and thereby becoming owner of the company, is to purchase the assets of the target company. An asset purchase may include everything from equipment and stock to clientele and agreements entered into as well as taking over liabilities.

It is advised that a tax lawyer is consulted when an asset transfer is structured since there are tax aspects to consider, such as the potential payment of VAT.



THE M&A PROCESS IN SWEDEN- AN EXAMPLE

Acquiring a limited liability company (Aktiebolag) can be as easy as signing a short contract note but can also involve a multi-step process that starts with a strategic evaluation, continuing with a preliminary analysis and a feasibility study, and ends with due diligence and completion of the deal. The process can also be a structured bidding process initiated by the seller to attract several bidders/buyers.

The time it takes to complete a share transfer in Sweden is very much dependent on the type of process and its therefore difficult to give any indication on how many months it will take.

Below is a summary of how an M&A process in Sweden can be structured and the steps it may involve.

1. LETTER OF INTENT

Once the seller and the buyer have expressed their desire to conclude the transaction, it is common for the parties to enter into a letter of intent. This letter sets out the process going forward and often includes confidentiality undertakings, details of the due diligence process and exclusivity for the buyer to evaluate the target and its business. It may also include some of the key terms that the parties have agreed on, inter alia the purchase price and the mechanism for calculating the purchase price.

2. DUE DILIGENCE

Before acquiring a company (i.e. the shares in a company) or its assets, it is advisable that a due diligence investigation is performed.

The due diligence involves the buyer's professional advisors, including lawyers and accountants, completing a due diligence review of the target company – a process that includes a review of all financial records plus anything else deemed material to the purchase. A review of public registers is standard practice.

The seller's data is summarised in a due diligence report containing the advisers' conclusions on legal and financial risks relating to the transaction and other matters of interest to the buyer.

3. MANAGEMENT PRESENTATION

It is customary that the buyer and its advisors are invited to management presentations as part of the due diligence process.

4. PREPARATIONS FOR OFFICIAL APPROVAL

There is no general requirement for authority approvals or for registering a purchase of shares or assets in Sweden, nor do the transaction documents need to be notarised.

Some businesses and transactions will, how-



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ever, require approvals and part of the due diligence process is to identify which approvals will be needed in order to complete the transaction. Depending on the business of the target (as well as the business of the buyer) this may include approvals from the Swedish Competition Authority (Konkurrensverket) and the Swedish Financial Supervisory Authority (Finansinspektionen).

5. SHARE PURCHASE AGREEMENT (SPA)

In parallel with the due diligence review, a share transfer agreement is drafted to include the terms for the transfer of shares. If the transaction is structured as a purchase of the assets of the target company, an asset purchase agreement is drafted.

If certain approvals are needed before the buyer can become the owner of the target company, the SPA will be signed with a condition that such approvals are obtained before closing. If approvals are not needed, signing and closing can take place simultaneously on the same day.

6. M&A INSURANCE

Using M&A insurance, or reps. and warranty insurance as it is also known, has become increasingly common in Sweden. If the parties intend to use an insurance, a broker is involved at an early stage in the process to find a suitable underwriter for the deal. Having an insurance put in place will affect the process to some extent as it will require a review by the underwriting insurance company of the due diligence work performed as well as the relevant sections in the share purchase agreement.

7. OFFICIAL APPROVAL

If required, applications are submitted for official approval from regulatory bodies such as the Swedish Competition Authority (Konkurrensverket) and the Swedish Financial Supervisory Authority (Finansinspektionen).

8. CLOSING

Once clearance and any required approvals have been obtained, the transaction is ready to be concluded. Closing involves finalisation of the purchase/sale and the delivery of the shares in exchange for receiving the purchase price.

A closing memorandum is usually drawn up to outline the final steps that need to be taken in order to consider the deal completed. Apart from the transfer of shares from the target company and payment of the purchase price, these steps usually include the buyer holding a shareholder's meeting as soon as the shares have been transferred, in order to elect new board members and thereby seize control of the target company's operations.

The SPA may also include post-closing actions such as finalisation and adjustment of the purchase price (depending on the purchase price model).

NEW FDI ACT

On 1 December 2023, a new law establishing the FDI regime in Sweden entered into force. The purpose of the new FDI Act is to scrutinize investments in Swedish companies that carry out, or will carry out, protected activities. If an investor, someone in its ownership structure or someone on whose behalf the investor is acting, through the investment exceeds any of the thresholds of 10, 20, 30, 50, 65 or 90 per cent of the votes in the target company, a notification has to be made by the investor to the Inspectorate of Strategic Products (ISP). The investor must also make a notification if the investment would otherwise enable direct or indirect influence in the management of the target company. Failure to comply with the law can lead to penalties of at least SEK 25,000 and up to SEK 100 million.



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USEFUL CONTACTS

INDUSTRY ASSOCIATION

Swedish Companies Registration Office

(Bolagsverket)

SE-851 81 Sundsvall

+46 60 18 40 00

www.bolagsverket.se

The Swedish Companies Registration Office is the government agency that registers new companies as well as changes in established companies and receives annual accounts, etc.

Swedish Tax Agency

(Skatteverket)

SE-171 94 Solna

0771 567 567 (from Sweden)

+46 8 564 851 60 (from abroad)

www.skatteverket.se

The Swedish Tax Agency is the government agency for taxation, tax collection and national registration of residents.

Swedish Competition Authority

(Konkurrensverket)

SE-103 85 Stockholm

+46-8-700 16 00

www.konkurrensverket.se

The Swedish Competition Authority is a state authority working to safeguard and increase competition and supervise public procurement in Sweden.



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