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ESTABLISHING A BUSINESS ENTITY IN SWEDEN



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ESTABLISHING A BUSINESS ENTITY IN SWEDEN



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1. INTRODUCTION TO THE VARIOUS AVAILABLE LEGAL ENTITY TYPES

The most common form of legal entity to start a newco in Sweden is through a Limited Liability Company (Sw. Aktiefbolag). There are, however, other types of legal entities available that may be better suited for your business. This first section will provide a short introduction to the various entity types.

Limited Liability Company

A Limited Liability Company is a form of legal entity where the responsibility of any given shareholder, normally, is limited to the capital invested in the company, i.e., the shareholders are not personally liable for the debts of the company. Under Swedish law, the board of directors and, where applicable, the managing director, are legally responsible for the organisation of the company and the management of the company’s affairs. The share capital of a private Limited Liability Company shall be a minimum of SEK 25 000 and the share capital of a public Limited Liability Company shall be a minimum of SEK 500 000. The company shall use SEK or EUR as its accounting currency. One key advantage to a Swedish limited liability company compared to

many other jurisdictions throughout Europe is that there is a possibility to have different share classes with different capital and voting powers (e.g., “A” and “B” shares).

Sole Trader

If you are considering starting a small business (managed by one person and on your own), a Sole Trader (Sw. Enskild firma) could be a suitable form of business, although not possible in a cross-border context. As a Sole Trader, you are personally responsible for all the company’s obligations, such as debts and agreements. No investment of capital is required.

Trading Partnership

If at least two natural persons and/or legal entities are considering starting a business together a Trading Partnership (Sw. Handelsbolag) is an alternative. The Trading Partnership is an independent tax unit, but the partners are personally, jointly, and severally liable for the company’s debts. No investment of capital is required. A Trading Partnership exists where two or more persons have agreed to engage in business jointly and the partnership has been registered in the trade register.

Limited Partnerships

A specific form of Trading Partnership is Limited Partnership (Sw. Kommanditbolag). A Limited Partnership must have two or more partners, one of which must be a General Partner and one of which must be a Limited Partner. A Limited Liability Company may be the General Partner in a Limited Partnership. For the General Partner, no investment of capital is required. For the Limited Partner, an investment or undertaking of investment is required, however, it can be a purely symbolical amount (such as SEK 1).



The Limited Partner is not responsible for obligations of the partnership in excess of the capital they have contributed or undertaken to contribute, whereas the General Partner is liable for all the obligations in the partnership.

2. BRIEF OVERVIEW OF STEPS TO CONSIDER FOR ESTABLISHING EACH BUSINESS ENTITY TYPE

Limited Liability Company

Firstly, it should be noted that almost all legal entities that Hellström Law establishes for our clients are Aktiebolag, i.e., Limited Liability Companies. It is the predominant way forward for all businesses in Sweden and a very flexible and well-regulated form of association.

To establish your Aktiebolag it is possible to either form the company or to acquire an “off-the-shelf” company, sometimes referred to as a “ready to use company” and, depending on the intended use, a “BidCo” or “SPV.” The preferred method of establishing your business depends on your needs, e.g., the need to enter into contracts with short notice. During office hours it is, generally speaking, possible to acquire an off the shelf company with authority to sign on behalf of the company within a day.

Formation

To form an Aktiebolag, the founders (shareholders) must initially draw up a memorandum of association and articles of association. One or more of the founders subscribe for the chosen number of shares in the company. The shares are paid for by making a payment into a bank account which the company needs to set up in advance of the Aktiebolag being registered. The board of directors (normally 1-3 persons with or without deputies – please refer to the section on viable board compositions below) thereafter applies

for registration of the Aktiebolag with the Swedish Companies Registration Office within six months of the signing of the memorandum of association. Under certain conditions, shares may also be paid for by means of a non-cash consideration.

The application to form the Aktiebolag shall include the articles of association and either a bank statement noting the share capital has been paid in full, or a statement from an auditor, if the shares have been paid for by a non-cash consideration.

Legal requirements

In the following section we will introduce various legal requirements on, e.g., the composition of the board of directors. Should you not be able to satisfy one or more of the following criteria, Hellström Law are generally able to provide assistance, e.g., by providing virtual office services.

An Aktiebolag must have an authorized representative residing in Sweden who can accept service of process on behalf the company (a “Process Agent,” Sw. Särskild Delgivningsmottagare). If the company has no authorized representative who is a Swedish resident the board of directors shall authorize a person who is a Swedish resident to act as Process Agent. The company must also be registered at an address which may be the home of a director, for example, should the company not have the need for an office building.

Residency requirements

Regarding residency (note, not citizenship), the managing director and any deputy managing director of a limited company must reside within the European Economic Area (EEA).

Half of the company’s ordinary directors must also reside within the EEA and the same rule



applies separately for the deputy directors, i.e., having one EEA resident ordinary member and one non-EEA resident deputy director is not a viable board composition.

By law, the board of directors represents the company and is authorized to sign on behalf of the company. In addition, the managing director, which is an optional appointment, has the right to sign on behalf of the company concerning the day-to-day management of the company, pursuant to guidelines and instructions that may be issued by the board of directors.

For practical reasons, it is common that signatory powers are vested in one or more individuals solely or jointly. The appointed signatory may, but does not have to be, a member of the board or the managing director.

Sole Trader

Sole Traders are not required to register with the Swedish Companies Registration Office, however if you choose to do so, the name of the business enjoys protection in Sweden. Furthermore, you must register your business with the Swedish Tax Agency. You need to apply for F-tax and VAT registration. If you are going to have employees, you also must register as an employer with the Swedish Tax Agency.

If you are not registered in the Swedish population register, a coordination number, which is an identity number, is required to be able to register as a Sole Trader. A coordination number is obtained from the Swedish Tax Agency and is used in your registration application with the Swedish Tax Agency. Furthermore, you must provide a copy of your passport or other identity documentation and the minimum age limit is 16 years.

If you are registered in a country outside the European Economic Area (EEA) you must

appoint a manager for your business to be able to establish as a Sole Trader in Sweden. Regardless of whether your business has been registered with the Swedish Companies Registration Office or not, you must register the manager with the Swedish Companies Registration Office. The manager must be resident in Sweden, have a Swedish identity number and be at least 18 years old.

As a Sole Trader, you are the one that is authorized to sign on behalf of the company.

Trading Partnership

To be able to establish a Trading Partnership, the partners must enter into an agreement to jointly conduct business activities. If the agreement is in writing it must be signed by all the partners. Since it is not considered as a public document, the agreement should not be filed for registration. The Trading Partnership shall be registered with the Swedish Companies Registration Office. Each partner is jointly and severally responsible for all obligations of the Trading Partnership.

Each partner is authorized to sign on behalf of the Trading Partnership unless otherwise agreed. An outside party can be appointed to sign on behalf of the Trading Partnership, however this party cannot be registered as the only person who is authorized to sign on behalf of the Trading Partnership. This means that at least one partner must always be authorized to sign on behalf of the Trading Partnership.

As stated previously, a legal entity can be a partner in a Trading Partnership.

Limited Partnership

A Limited Partnership is a special form of Trading Partnership where the Limited Partner is not responsible for obligations of the Limited Partnership in excess of the sum they have



contributed or undertaken to contribute, whereas the general partner is responsible for all obligations of the Limited Partnership. Whereas the minimum is one General Partner and one Limited Partner there is no maximum number of partners for either category.

The General Partner is authorized to sign on behalf of the company. If there is more than one General Partner, each General Partner is authorized to sign on behalf of the company solely unless otherwise agreed. A Limited Partner is not authorized to sign on behalf of the company. Furthermore, a Limited Partner is, normally speaking, not allowed to participate in the management of the Limited Partnership

3. GOVERNANCE, REGULATION AND ONGOING MAINTENANCE

3.1 Brief summary of regulation of each type and ongoing maintenance, reporting requirements

Private Limited Liability Companies

Shareholder's rights are exercised at the general meeting of the supreme governing body of the company. The board of directors is responsible for the organisation of the company and the management of the company's affairs. It is the board of directors that convene the general meetings. Where applicable, the managing director is responsible for the day-to-day management of the company.

Depending on number of employees, the reported balance sheet and the reported net turnover for the previous two financial years the company may need to appoint an auditor. This means newly started companies, generally speaking, do not need to appoint an auditor. We advise all clients to appoint an accountancy firm to ensure that taxes are properly filed, and

annual reports are properly drafted, since tax filings and annual reports must be filed even where the company is dormant.

Public Limited Liability Companies

In addition to what is stated about private limited liability companies, public limited companies must appoint an authorized public accountant.

Trading Partnerships and Limited Partnerships

Trading Partnerships and Limited Partnerships are governed and managed by the partners based on the agreement to engage in business jointly.

Reporting requirements

Limited Liability Companies, Trading Partnerships and Limited Partnerships that perform business activities in Sweden must maintain accounting records according to the Swedish Accounting Act and in accordance with the Swedish Annual Reports Act. The requirements on when an annual report shall be filed differ between entities, e.g., Aktiebolag shall file the annual report no later than one month after the annual general meeting has adopted the balance sheet and the profit and loss account.

The annual general meeting in an Aktiebolag shall be held no later than six months after the expiry of the financial year, meaning the annual report of a company with the calendar year as its financial year may be filed in July provided the annual general meeting has been held in June. If, however, the annual general meeting has been held in April, the annual report must be filed no later than May.



3.2 Requirements for local shareholding / directors

Private Limited Liability Companies

There are no restrictions regarding the nationality of a shareholder or the number of shareholders.

It is a requirement for a Private Limited Liability Company to have a board of directors.

The board of directors must consist of one or more directors. The number of directors and deputy should be stated in the articles of association. It is common to note a minimum of 1 and a maximum of 10 ordinary directors and a minimum of 0 and a maximum of 10 deputy directors.

If the board consists of less than three ordinary directors at least one deputy director shall be appointed. If the board has more than one ordinary director, a chairman of the board must be appointed.

A managing director may be appointed. The managing director may, but does not have to be, a member of the board of directors. If the managing director is appointed as a member of the board of directors they may also be appointed chairman of the board of directors.

Public Limited Liability Companies

The rules on Public Limited Liability Companies differ from those of the Private Limited Liability Companies, e.g., Public Limited Liability Companies must appoint a managing director. The chairman of the board must not be the managing director of the company.

3.3 Minority shareholders' rights and protection

Private/Public Limited Liability Companies

The basic principle is that company decisions are made by a majority vote, unless otherwise

is specified in the articles of association. There are, however, a set of rules protecting the rights of minority shareholders.

The fundamental principle as stated in the Swedish Companies Act (2005:551) is that all shareholders must be treated equally. This is supplemented by several rules protecting minority shareholder's rights. These include, amongst other rules which may provide protection for a shareholder, the following rights.

- Amendments to the articles of association are valid where they are supported by shareholders holding not less than two-thirds of both the votes cast and the shares represented at the general meeting. In rare cases, support is required by nine-tenths of the shareholders represented.
- Neither the general meeting, nor the board of directors or any other authorized representative of the company may adopt any resolution which is likely to provide an undue advantage to a shareholder or another person to the disadvantage of the company or another shareholder.
- The board of directors shall convene an extraordinary general meeting where an auditor of the company or owners of not less than one-tenth of all shares in the company demand in writing that such a meeting be convened to address a specific matter.
- A shareholder and/or a member of the board of directors may be liable for damages caused to the company, a shareholder, or any other person, in some circumstances.



4. FOREIGN INVESTMENT, THIN CAPITALISATION, RESIDENCY AND MATERIAL VISA RESTRICTIONS

4.1 Any significant barriers to entry for an offshore party?

There are no significant barriers to entry for an offshore party. Restrictions may apply to certain types of businesses, e.g., some non-EU companies may need to seek approval before forming or acquiring a Swedish legal entity.

4.2 Any special business or investment visa issues?

Citizens of EU and EEA countries who intend to stay in Sweden longer than three months need to be employed, self-employed, students or have sufficient means to support themselves to have the right to live and work in Sweden after the three months have passed without the need for a residence permit.

Swiss citizens who wish to stay in Sweden longer than three months need to obtain a residence permit.

Citizens of other countries who intend to live and work in Sweden may need to apply for a visa. Advice should be sought regarding each specific case prior to travelling to Sweden.

4.3 Any restrictions on remitting funds out of the jurisdictions (withholdings, etc.)?

General anti money laundering rules would apply meaning potential restrictions depend, inter alia, on the receiving jurisdiction. There are some restrictions on value transfers from the company, e.g., distributions of profit, that may limit the possibility of remitting funds out of the jurisdiction in some cases, depending, inter alia, on the type of legal entity that would be remitting funds. Please consult us in advance of establishing your Swedish business if you have any questions on potential restrictions.