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HELLSTRÖM LAW ESTABLISHING A BUSINESS ENTITY IN SWEDEN



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ESTABLISHING A BUSINESS ENTITY IN SWEDEN



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1. TYPES OF ENTITIES AVAILABLE IN SWEDEN THROUGH WHICH TO CONDUCT BUSINESS AND MATTERS TO BE CONSIDERED WHEN CHOOSING A BUSINESS ENTITY TYPE

The most common form of business association in Sweden is a Limited Liability Company (Sw. Aktiebolag). However, there are different types of entities available for starting up a business. In the following the different types of entities among with the advantages and disadvantages associated with them will be described.

Limited Liability Company

A Limited Liability Company is a form of business enterprise in which the responsibility of the shareholders is normally limited to the capital invested in the company, i.e., the shareholders are not personally liable for the debts of the company. It is the overriding principle under Swedish law that the directors of the board and the managing director are legally responsible for the company and its business under the applicable laws. The share capital of a private Limited Liability Company must be at least SEK 25 000 and the share capital of a public limited company must be at least SEK 500 000. The company shall use SEK or EUR as its 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 (“A” and “B” shares). Please contact Hellström Law’s contact persons for more information about this.

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 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.

Limited Partnerships

A specific form of Trading Partnership is Limited Partnership (Sw. Kommanditbolag). A Limited Partnership must have two or more partners and at least one general partner and one limited partner. A Limited Liability Company may be the general partner in a Limited Partnership. For the limited partner, no investment of capital is required. For the general partner investment of capital is required, however it can be as small as SEK 1.



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

Limited Liability Company

Firstly, it should be noted that almost all businesses that Hellström Law establishes for a client 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 form a Limited Liability Company, the founders (shareholders) must initially draw up a memorandum of association and articles of association. One or more of the founders subscribe for all the shares in the company and the shares are paid up by making a payment into the bank account of the company which corresponds to the initial share capital. The board of directors (normally 1-3 persons with or without deputies) then applies for registration of the company with the Swedish Companies Registration Office, within six months of the signing of the memorandum. Shares may also be subscribed for and paid for by means of a capital contribution in kind (property other than cash). In the application, the following documents must be attached; articles of association, bank statement of the share capital if shares have been paid for with cash, or a statement from an auditor, if the shares have been paid for with assets other than cash.

Off the shelf company: The more common and faster way of starting up a business in Sweden in the form of Limited Liability Company is by acquiring an already formed empty “off the shelf company”. It is an “empty” limited company ready for business after some compulsory registration changes have been made according to the required business needs.

As the founder, you must have a representative residing in Sweden, who can accept service of process on behalf the company. 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. Hellström law has a register of professional Swedish residents who might accept such authorization. Hellström Law may also assist with a virtual office.

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

Half of the company’s board members must also reside within the EEA and the same rule applies for the deputy board members.

A company is always legally represented by the board of directors (jointly) meaning half or more of the directors. In addition, the managing director (if one is chosen, it is optional) has the right by law to sign for the company within matters concerning the day-to-day business.

For practical reasons, it is common that signatory powers are assigned to one or more individual board member that is authorized to sign for the company alone or jointly together with another board member (especially if you have not registered a managing director). However, a person outside the board, usually the managing director, may also be authorized to sign for the company, alone or jointly (if such a person will be appointed you need to provide the same information as applies for board members).

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 co-ordination number, which is an identity number, is required to be able to register as a Sole Trader. A co-ordination 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 carry out 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. However, note that it is not a requirement that the agreement is in writing, an oral agreement is also valid (but less advisable).

The Trading Partnership must be registered with the Swedish Companies Registration Office.

A partner that is not registered in the Swedish population register, must submit a certified copy

of his/her passport or other official identity document with the application, in order to be registered with the Swedish Companies Registration Office.

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

As stated in the foregoing, a legal entity can be a partner in a Trading Partnership. If the partner is a foreign legal entity, in addition to the aforementioned, it is also required to file a certificate of registration that is not older than six months and that states the authorized signatory/-ies together with the application.

Limited Partnership

As applies to Trading Partnerships, partners who wish to establish a Limited Partnership must enter into an agreement to jointly carry out business activities. If the agreement is in writing it must be signed by all partners. Since it is not considered a public document, the agreement should not be filed for registration. As also applies to Trading Partnership, it is not a requirement that the agreement is in writing, an oral agreement is valid (however normally not advisable).

The Limited Partnership must be registered with the Swedish Companies Registration Office.

A partner that is not registered in the Swedish population register, must submit a certified copy of his/her passport or other official identity document with the application to be registered with the Swedish Companies Registration Office.



A partner can be a legal entity. If the partner is a foreign legal entity, a certificate of registration that is not older than six months, that states the authorized signatory/-ies of the company, must be filed together with the application.

As stipulated above, there must be at least one general partner and one limited partner in a Limited Partnership. It is important to be aware of that general partners have unlimited liability for the company's debts whilst the limited partners are only liable for the capital (if any) that they have contributed with.

The general partner is authorized to sign on behalf of the company. If there is more than one general partner, each partner is authorized to sign on behalf of the company unless otherwise agreed. A limited partner is not authorized to sign on behalf of the company.

As also applies to Trading Partnerships, an outside party can be appointed to sign on behalf of the company, however this party cannot be registered as the only person who is authorized to sign on behalf of the company.

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 (AGM or EGM), the supreme governing body of the company. The board of directors is responsible for the organization and management of the company. The managing director (if one is appointed) is responsible for the day-to-day management of the company. It is the board of directors that convene the general meetings.

Companies of a certain size must appoint an approved accountant (this applies to rather small companies). Some large companies must appoint an authorized public accountant.

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 jointly carry out business activities and any other agreements that they enter.

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 Bookkeeping Act. Annual reports consisting of a profit and loss account, a balance sheet, notes on the accounts and a directors' report must be filed with the Swedish Companies Registration Office within eleven months of the end of the financial year or the company may be liquidated. Failure to submit the annual report within seven months from the end of the financial year may result in a fine.



3.2 Requirements for local shareholding /directors

Private Limited Liability Companies

There are no restrictions regarding the nationality of a shareholder or to 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, or the lowest and highest number, of directors in the board shall be regulated in the articles of association. If the board consists of less than three ordinary directors, at least one deputy director shall be appointed. At least half of the board members and at least half of the deputy board members must be resident within the EEA.

If the board has more than one ordinary director, a chairman of the board must be designated.

A managing director may be appointed. The managing director is normally not a member of the board of directors; however it is possible. The principal rule is that the managing director must be domiciled within the EEA. However, there is a possibility to be granted an exemption by the Swedish Companies Registration Office. The managing director is responsible for the day-to-day management of the company. If a managing director is appointed, he/she, by law, has authority to sign for the company in day-to day matters.

Detailed rules regarding requirements for the appointment of board members and the managing director as well as rules relating to the responsibilities of these, terms of office and the remuneration of board members can be found in the Swedish Companies Act (2005:551) (Sw. Aktiebolagslagen).

Public Limited Liability Companies

A Public Limited Liability Company is used for listed companies and companies seeking to offer shares to a wider public. The board of directors in a Public Limited Liability Company must consist of at least three members.

Public Limited Liability Companies must appoint a managing director. The chairman of the board must not be the managing director of the company.

Specific rules relating to the board of directors and managing director of Public Limited Liability Companies can be found in the Swedish Companies Act (2005:551).

Trading Partnership and Limited Partnership

Trading Partnerships are managed by the partners to it. The partnership agreement sets the limits for the management of the company. There is no legal requirement for Trading Partnerships to have a board of directors.

The partners represent the company and acts for it.

Every partner can act in the day-to-day management of the company unless another partner prohibits it. If any measure departs from the purpose of the company, as stated in the partnership agreement, all the partners must agree on it.

Detailed rules regarding the partnership's management can be found in the Swedish Partnership and Non-Registered Partnership Act (1980:112).

Limited Partnerships are managed by the partners to it, as is the case for unlimited Trading Partnerships. However, the general partner represents the partnership.



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. 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 requires support from at least two thirds of the votes cast and shares represented at a general meeting. In some cases, support is required by nine tenths of the shareholders represented.
- Acts that grant improper benefits to a shareholder or a third party to the detriment of the company or any another shareholder may not be resolved or performed by the shareholder's meeting or the board.
- Shareholders representing at least one tenth of the total numbers of shares in a company may require notice of an extraordinary general meeting.
- Under some circumstances, if a shareholder has abused his influence in the company, a court may, on application by the shareholders of one tenth of all shares, order that the company enters into liquidation.

- A shareholder may be liable for damages caused to the company, a shareholder, or any other person, under some circumstances.
- If shareholders representing at least one tenth of the total number of shares in the company support a proposal for a minority auditor at a general meeting and any shareholder asks the Swedish Companies Registration Office to appoint one, they must do so.

Trading Partnerships and Limited Partnerships

As stated above, Trading Partnerships and Limited Partnerships are managed by the partners to it. Measures undertaken regarding the company management require the consent of all partners. If the partners have agreed that management measures may be undertaken without the consent of the other partners, it may still not be allowed in case one partner prohibits it.

If any partner decides to transfer his/her part of the partnership without the consent of the other partners, the Swedish Partnership, and Non-Registered Partnership Act (1980:112), contains rules limiting the new partner's rights in relation to the partnership.

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.



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 (right of residence) 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.)?

Dividend payments beneficially owned by non-residents are liable to a 30 % non-resident withholding tax. However, depending on the customer's residency, it may be possible to reduce the rate of tax payable in accordance with the provisions of a double taxation treaty. Some approved international organizations may benefit exemptions from withholding tax on dividend payments in accordance with special Swedish legislation.