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BAKER & McKENZIE

Breaking New Ground in Sweden

Legal Aspects

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General Introduction

This updated and fourth 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, and Swedish business law has since then been successively conformed to the standards of the EU. Many changes were already made under the European Economic Area, i.e., the European Union as well as Norway, Iceland and Liechtenstein, ("EEA") agreement, which came into force on 1 January 1994. The legislation accounted for in this booklet is current as of 1 March, 2006. 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. 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. The branch office must have a registered name, containing the name of the "parent" company with addition of the word "*filial*" (branch) and a clear indication of the "parent" company's nationality. The branch must be under the management of a general manager 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 general manager 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 general manager 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 Companies Act (2005:551). The name of the company must contain the word "*aktiebolag*", or AB, to indicate limited liability.

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. 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 is SEK 100,000 for private companies 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 general manager 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 who, without special permission from the Companies Registration Office, must be residents of a Member State of the EEA. The incorporators 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.

The subscription for shares is made on the certificate of incorporation or on a separate subscription list containing a copy of the certificate. The subscribers officially form the company at an organisational general meeting. 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. The general manager and at least half the number of directors must, without special permission from the Companies Registration Office, be resident in the European Economic Area, i.e., the EU Member States, Norway, Iceland and Liechtenstein. 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 general manager. 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. A prerequisite for board representation, however, is that there is a collective agreement in force between a trade union and the employer.

For registration purposes, the company must report the names, addresses and civic registration numbers of board members, deputies, the general manager 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 general manager 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 general manager. The general manager, 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 or certified by the chairman. The minutes shall be taken in numerical order and preserved safely.

Each board having more than one member 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. Each board is further required to draft written instructions to the general manager, 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 shall adopt written instructions regarding the reporting of the company's financial situation. These instructions may be combined with the instructions to the general manager. 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 general manager has been appointed, he is in charge of day-to-day management of the company, subject to guidelines and instructions set forth by the board. He 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 will not enable the general manager to bind the company as to long term liabilities 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 general manager 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

General on Takeovers

The relevant regulations with respect to takeovers are found primarily in the Companies Act (2005:551). Shares quoted on a stock exchange or an authorised marketplace are also governed by the Financial Instruments Trading Act (1991:980) (the "FI-Trading Act") and the Act (1992:543) on Stock Exchange and Clearing Activities. Furthermore extensive regulations issued by the Financial Supervisory Authority ("FSA") and rules issued by the Swedish Industry and Commerce Stock Exchange Committee ("NBK") apply for such shares.

Swedish takeovers, including those made by foreign entities, are usually negotiated with the majority owners, because of the ownership restrictions imposed by the two-tier share system still employed in many Swedish listed companies. Hostile takeovers are less common, but do occur.

A takeover of a company listed on a stock exchange or an authorised marketplace may be initiated by an acquisition on the open market of the issuer's securities. It may also be initiated by a single purchase from one or several majority shareholders. In both cases, the disclosure rules set forth below must be complied with.

The FI-Trading Act provides for disclosure of acquisitions or divestitures made in a Swedish limited liability company registered at a stock exchange located or active within the EEA or which, without being registered, is listed at a stock exchange or authorised marketplace in Sweden. The rules are generally equivalent to those under the EC Directive on Substantial Acquisitions of Shares. Regarding acquisitions, disclosure is mandatory if the acquisition results in the acquirer's share of the votes for all shares in the company reaching or exceeding thresholds of 10, 20, 33 1/3, 50, and 66 2/3 percent or if the seller's share of the votes for all shares in the company thereby falls under one of the said thresholds.

For the purposes of determining whether a natural person or a legal entity is required to make a declaration, voting rights held by certain other persons are to be regarded as voting rights held by that person or entity and thus aggregated. The list of these persons and legal entities includes a third party holding voting rights in its own name

but on behalf of that person or entity. As an example of such a situation, the preparatory works for the amendment of the FI-Trading Act specifically mention the right to purchase shares pursuant to an option contract.

The disclosure must be made in writing to the company and to the stock exchange or authorised marketplace in Sweden where the shares are listed within seven days of the acquisition, and shall contain the following information:

1) the name, registration number or other identification number of the declarant and its address;

2) the number and class(es) of shares that the declarant has at its disposal;

3) the size of the increase or reduction of the holding; and

4) the time for the change(s), i.e., the time the acquisition was made.

The information will normally be made public within nine days from the date of the disclosure, unless the stock exchange, the authorised marketplace or the FSA, under certain very limited circumstances, decides that it should not be published. Should a required disclosure not be made within the time frame provided, the FSA may order the acquirer under penalty of a fine to comply with the rules of disclosure. However, no criminal penalties are available.

In addition, as mentioned above, several of the main issues concerning the trading of shares on the Swedish stock market are covered by NBK-rules, e.g., the Disclosure of Acquisitions and Transfers of Shares, etc. (1994) and Public Offers for the Acquisition of Shares (2003). The NBK-rules on Public Offers, which originally was issued in 1971, is essentially based on the voluntary "Rules Governing Substantial Acquisitions of Shares" in effect in England. All rules are available in English translation. Since all NBK rules form part of the Listing Agreement of the Stockholm Stock Exchange (Stockholmsbörsen, "SB"), they are binding to the companies quoted under such agreement. SB is the largest and most important of the marketplaces offering listing and trading of shares in Sweden. In case of violation, SB can suspend or cancel the registration of shares registered on the exchange or suspend the trading privileges on shares traded at, but not registered with, the SB. No formal sanctions are, however, presently available against violators whose shares are not listed or traded at SB.

Some of the most important rules of the 1994 Disclosure rules concern disclosure upon the acquisition of shares. Disclosure is mandatory at a threshold of five percent of the votes or the share capital, and thereafter of each acquisition or divestiture passing successive thresholds of five percent. Disclosure is not required where a shareholder, before or after the transaction in question, holds more than 90 percent of the shares and voting rights of the company; nor is disclosure required for shares acquired in the course of a public offer. The disclosure is made through a statement to an established news agency and at least one Swedish daily newspaper with national circulation, and should be made no later than 9 a.m. on the first day of stock exchange trading after the date of the transfer. Disclosure is deemed to have taken place when the statement has reached the news agency. At the same time a statement should also be made to the stock exchange or to the authorised market where the company's in question shares are listed as well as to the company itself.

In addition to the above mentioned disclosure rules, a listed company may have certain contractual reporting obligations set forth in, e.g., the agreement with the SB or a market maker agreement.

Public Offer

If the vehicle of public offer is employed, the NBK Rules require the prospective acquirer to initiate the offer by making a public announcement, in the form of a press release. The press release shall include certain information, such as the principal terms and conditions of the offer, the number of shares controlled by the prospective acquirer, how the offer is financed and a time schedule for the completion of the offer. Furthermore, the buyer must prepare a prospectus free of charge to all shareholders of the target company, as well as to the SB and the media. The prospectus is subject to detailed regulations as to contents and form, as a result of the fundamental aim of the Rules to provide prospective sellers with complete and reliable information to enable them to make a meaningful assessment of the offer. The offer must remain open for at least three weeks, and may not be withdrawn except as provided in the prospectus. The buyer may reserve the right to withdraw, and an offer for the entire share capital of a company is frequently made subject to the acquisition of more than ninety percent of the voting rights and shares of the target.

The requirement to provide certain information by public offers is also stated in the FI-Trading Act. According to the new Chapter 2 a, if compensation is made in cash and the total amount of the compensation that may be paid exceeds EUR 100,000, the offering company must prepare an offer document regarding the offer. The offer document shall contain all information required to make a well founded assessment of the offer. The offer document shall be filed with the FSA together with an application for registration. After registration, the bidder shall announce the offer document publicly. If compensation is made by issuance of new shares, the rules of chapter 2 of the FI-trading Act regarding obligation to prepare a prospectus become applicable.

For the implementation of the Directive 2004/25/EC on takeover bids, the Government intends to submit a proposal to the Parliament concerning a new Act on public offers. The Act is *inter alia* proposed to introduce an obligation for a bidder to comply with the rules of the stock exchange or authorised marketplace that the latter has issued in accordance with the EC-directive. In this way, the NBK rules will be mandatory regarding public offers.

When buying shares through a public offer it is possible to pay a different price for different classes of shares (i.e., A shares and B shares), but within a class of shares all shareholders must be treated equally.

Furthermore, according to the Rules on Public offers, in cases where the buyer's holding following an acquisition of shares amounts to or exceeds 30 percent of the number of votes in the company, the buyer is obliged to make an offer to acquire the remaining part of the shares including other financial instruments issued by the target company. This, however, does not apply if the buyer has acquired the shares through a public offer. Exemptions from this obligation are granted by the Securities Council (Sw. Aktiemarknadsnämnden).

Antitrust and Competition Aspects

Under the Swedish Competition Act (1993:20), 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.

A merger or acquisition (a concentration) must be notified to the Competition Authority if the parties to the transaction have a combined aggregate worldwide annual turnover in excess of SEK 4 billion (approximately USD 400 million) and at least two of the companies involved have a separate annual turnover of SEK 100 million (approximately

USD 12 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. 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 it:

(a) creates or strengthens a dominant position which significantly impedes, or is liable to impede, the existence or development of effective competition in the Swedish market as a whole, or a substantial part of it; and

(b) if a prohibition can be issued without significantly setting aside national security or essential 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 on a Swedish or foreign stock exchange, a recognised market or any other regulated market 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.

Insider Trading

The Penal Act on Market Abuse by Financial Instrument Trading (2005:377) and the Act on Reporting Obligations for Certain Holdings of Financial Instruments (2000:1087) govern insider trading in Sweden. They apply to dealings on the securities market, defined to include trading on a stock exchange or another organised market place and trading through securities institutions. The regulations cover practically all kinds of instruments in the financial markets. A person who has received information which has not been made public, which is likely to influence materially the price of financial instruments on the securities market may not trade in such financial instruments, on his own behalf or on behalf of another person or entity before that information has become generally known or ceased to be price sensitive.

The Penal Act on Market Abuse by Financial Instrument Trading consolidates the prohibitions against insider trading and price manipulation. Possible sanctions are fines and imprisonment. The Act on Reporting Obligations for Certain Holdings of Financial Instruments regulates the reporting obligation for insiders and a trading prohibition for persons with insight positions 30 days before an interim statement is made public.

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 Act on Security of Employment (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. It is, however, possible to hire an employee for seasonal work, for a specific project, or at production peaks for no more than an aggregate of six months during a two-year period. Moreover, employees may be hired for a trial period of up to six months. An employer may also hire up to five persons for a maximum period of one year (during a three-year period) without having to negotiate with the relevant trade union. Newly started businesses may employ five persons for a period of eighteen months. The minimum period of employment is one month. The possibility of employing substitutes is also restricted. Accordingly, an employment period exceeding three years within a 5-year period is automatically converted into an employment for an indefinite term. Part-time employees have a right of priority to extended employment. However, the Government intends to submit a proposal to the Parliament which includes changes to the variety of temporary employments.

The Act further restricts termination of an employment contract. Basically, termination must be based on objective reasons, which may be attributable to the employee personally, such as absenteeism and mismanagement, 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 not be invoked unless 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. In every case, the employer must 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. Basically, 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 rehiring priority of an employee must occur within nine months after the end of the employment.

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

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

Holidays

The right to paid holidays is regulated by the Holidays Act (1977:480), which provides an annual minimum of twenty-five days' paid holidays. Holidays 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 holidays as compensation. Calculation of holiday pay is complicated but generally equals twelve to fourteen per cent of the employee's total earnings during the year.

Parental Leave

Under the Act on Parental Leave (1995:584), parents have a right to an 18- month leave of absence upon the birth of a child. The 18 months may be allocated between the parents as they see fit. No employer may terminate an employee because the employee exercises this right. A prerequisite for the leave of absence is that the employee shall have worked for the employer either for the past six consecutive months, or for a total of 12 months within the past two years. However, the Government has proposed this qualification period to be rescinded. The Act also entitles parents to reduced working hours (75%) until the child has reached eight years of age.

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 and limits the amount of overtime that may be required of an employee to 48 hours over a four week period, and no more than 200 hours per year. Some collective bargaining agreements further limit regular work time and overtime.

Discrimination

As of April 1999, Sweden implemented several new laws against discrimination that broadening the scope of employees. The new legislation consists of acts against discrimination in employment on the basis of ethnic origin, disablement and sexual orientation.

The Act on Measures Against Ethnic Discrimination in Employment (1999:130)

The Act on Measures Against Ethnic Discrimination in Employment forbids employers from discriminating against job applicants or employees on the basis of race, skin colour, religion, nationality, or ethnic origin. The Act covers both direct and indirect discrimination and applies whether or not the employer discriminates intentionally. Any employment agreement prescribing or allowing discrimination is also prohibited.

Under the Act, employers that discriminate against an applicant or employee are liable to pay general damages. An employee may also be entitled to damages for the economic loss. The Government has appointed an Ombudsman against Ethnic Discrimination (*Sw. Ombudsmannen mot etnisk diskriminering*), who is entrusted with the task of supervising and enforcing the Act. In addition, the employer is obliged to carry on his/her business in a way that promotes equal possibilities for employees regardless of ethnicity or religion. The employer is further obliged to investigate ethnic harassment by other employees and take any necessary measures to ensure such harassment stops.

The Act Against Discrimination of Disabled in Employment (1999:132)

The Act Against Discrimination of Disabled in Employment protects disabled job applicants and employees from either direct or indirect discrimination. Direct discrimination generally involves situations in which a disabled person is treated less favourably than a non-disabled person has. The prohibition against indirect discrimination means an employer may not use a rule, criterion, or procedure that seems neutral, but when examined more closely, leads to a disadvantage for persons with a particular disability.

A job applicant and an employee may be awarded general damages for the violation of his or her personal integrity due to discriminatory treatment. In addition, the employer who discriminates against an employee may also be required to pay damages for economic loss an employee may suffer. The Government has appointed a Disability Ombudsman (*Sw. Handikappsombudsmannen*), who is entrusted with the task of supervising and enforcing the Act.

The Act Against Discrimination in Employment on the Basis of Sexual Orientation (1999:133)

The Act Against Discrimination in Employment on the Basis of Sexual Orientation forbids employers from discriminating, directly or indirectly, against job applicants and employees on the basis of their sexual orientation. Discrimination does not necessary require an employer to have discriminatory intent - meaning wilful intent to cause injury to the detriment of the job applicant or the employee. Both conscious and unconscious discrimination fall within the scope of the law if the other prerequisites are fulfilled. An employer who discriminates against a job applicant or an employee can be required to pay damages for the infringement of the applicant's or employee's personal integrity and the economic loss that may have been caused. The Government has appointed an Ombudsman Against Discrimination on the Basis of Sexual Orientation (*Sw. Ombudsmannen mot diskriminering på grund av sexuell läggning*), who is entrusted with the task of supervising and enforcing the Act.

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 has a final say in all matters, the Co-Determination Act cannot 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 taken place. The right of consultations merely gives the trade union an opportunity to influence the way decisions are made, not a veto right and not 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 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. 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). The Act enters into force on 31 March 2006 and replaces a previous act with the same name. However, the provisions regarding work permit principally remain unaltered. The following refer to the new Act.

Entry into Sweden requires a valid passport. However, a foreigner who is a citizen in a state which is a member of the Schengen Agreement of 14 June 1985 and entries into Sweden directly from such a state, does not need a valid passport for entry or stay in Sweden. In addition, nationals of most African, Asian and East-European nations must have visas.

Citizens of the Nordic countries are excempted from the requirements of passport, residence permit and work permit. EEA citizens and Swiss citizens are entitled to stay and work in Sweden without a residence permit provided the intended period of employment does not exceed three months. For periods longer than this, an application for a residence permit must be submitted to the Swedish Migration Board (*Sw. Migrationsverket*). No work permit is required. To obtain a residence permit, the applicant must be able to show:

- a valid passport or identification document; and
- an employment certificate

Residence permits normally remain effective for five years and can thereafter be renewed. The applicant can commence to work before the permit has been granted.

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 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. Residence permits for next of kin are valid for five years and are applied for at the Swedish Migration Board if the person already stays in Sweden; otherwise the application shall be submitted at a Swedish diplomatic mission. 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 obtain a residence permit before entering Sweden.

On 30 April 2005, Directive 2004/38/EC will be implemented in Sweden. The Directive implies a right for EEA-citizens to stay and work in Sweden for an indefinite period of time (residence right). If the stay exceeds three months, the person must register with the Migration Board and must also be able to support him/herself.

Non-Nordic and non-EEA citizens need a work permit to be able to work in Sweden. Generally, non-Nordic and non-EEA citizens will only be awarded work permits in exceptional cases where it has proved impossible to obtain labour in any other way. Transfer of employees between companies in an international group is possible if the applying company shows that the positions cannot be filled by persons in the Swedish labour market. As a practical matter, few applicants are turned down, provided the applicants have an employer-sponsor.

However, *inter alia* the following persons are exempted from the requirement of a work permit:

- tourist bus drivers;
- carers of persons visiting Sweden for medical or recreational reasons;
- researchers with higher education;
- persons resident and employed in, but not citizens of, an EEA Member State may, without work permit, work occasionally for the origin employer in Sweden, for example in connection with a 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. Completion of the work must be possible within two months of entry;
- persons occasionally engaged by the Swedish radio or television;
- musicians including their staff (for maximum of 14 working days within a 12 month period);
- athletes (for a maximum of three months within a 12 month period);
- persons employed in professional transportation;

- foreign students at Swedish universities; and
- employees possessing key skills within an international group (for a maximum period of one year).

There are two principal categories for the award of work permits in Sweden. The first category consists of work permits for a limited contract. These permits can be awarded to cover an acute shortage of qualified personnel in the Swedish labour market on a temporary basis. Work permits for limited contracts are restricted both as to duration and occupation, and are limited to a specified employer. These permits are only renewed in exceptional and justified cases. The second category, work permits for international exchanges, includes managerial and specialized personnel employed by multinational companies who, as part of their normal activities, have a legitimate need for temporarily employing aliens in Swedish business. This category also includes research scientists and trainee employees under exchange agreements or programs.

Application Procedure

Applications for work permits must be filed with a Swedish diplomatic mission in the applicant's country of domicile or another foreign country before entering and commencing employment in Sweden. Normally, the application will be sent to the Migration Board for processing. The processing time is normally 6-10 weeks.

A special procedure has been established to grant work permits for qualified applicants. The simplified procedure is available mainly for top-level managerial staff of multinational firms with operations in Sweden which need to employ aliens from the corporate group on a temporary basis. Employment must be confirmed on a special form signed by the Swedish employer. Moreover, the employee must receive a certain minimum monthly salary and housing accommodation must be confirmed in advance. The processing time for this category of work permits is normally shorter than for other work permit applications. For non-EEA citizens the ordinary work permit is granted only for one year at a time and for not more than four consecutive years. In addition, no permit will be issued for a longer duration than the validity of the applicant's passport unless special circumstances exist.

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 Board.

A work permit exceeding a period of six months entitles the spouse of that work permit recipient person to obtain a work permit for the same period without any labour market assessment.

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 (Contract 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, 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 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/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 conforms to the EC Directive on Commercial Agents of 18 December 1986, and is substantially similar to implementing 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). 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.

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 that the defect was not present when the product was put into the stream of commerce. The liability is strict, i.e., the plaintiff 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 a defect.

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. After the exchange control liberalization in 1991, 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 Central Bank (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 (1993:20) essentially implements the substantive competition rules of the EU. 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. The Act's provisions as concerns 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

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 prevent, 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).

However, the prohibition does not apply to agreements which:

(a) contribute to improving the production or distribution or to promoting technical or economic progress;

(b) allow consumers a fair share of the resulting benefit;

(c) only imposes on the undertakings concerned restrictions which are indispensable to the attainment of the objective referred to in (a) above; and

(d) 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 EC case law. The Competition Authority has in its general guidelines concerning agreements of minor importance (KKVFS 2004:1) 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 percent of the relevant market for horizontal agreements or 15 percent 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 percent can be accepted. Some types of agreements (e.g. horizontal price-fixing agreements) fall outside the scope of the guidelines.

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. However, exemptions granted before 1 July 2004 will be 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 legal providing 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) motor vehicle distribution and servicing agreements;

2) technology transfer agreements;

3) insurance sector agreements;

4) agreements on certain co-operation between taxi services;

5) vertical agreements;

6) specialisation agreements; and

7) agreements on research and development.

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 three: voidness (nullity) of prohibited agreement or provisions, administrative fines and the ability of injured parties to claim damages.

The judicial review of decisions is undertaken by the Stockholm City Court with the Market Court as last 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.

Violations of the prohibitions may lead to administrative fines of no less than SEK 5,000 and a maximum of SEK 5,000,000 or a higher amount not exceeding 10% 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.

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 first company that 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

On 1 January 1999 the new Swedish Environmental Code (SFS 1998:808) was enacted. The code contains some 33 chapters comprised of almost 500 sections. Thus, only the most fundamental environmental rules are included. More detailed provisions are written into ordinances primarily by the Government.

The code amalgamates numerous different statutes that, prior to the Code, regulated activities in the environmental area. With the enactment of the Code, 16 acts were annulled.

The provisions of the Environmental Code are aimed at promoting a 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. All operations must be conducted in a manner that minimises harm to the health of humans and the environment

Rules of Consideration

Chapter 2 of the Code contains general rules of consideration applicable to all measures except those of negligible significance. The party exercising an activity is, through the consideration of permits and similar procedures and supervision, responsible for proving that the general rules of consideration of the Environmental Code are complied with. Thus, the burden of proof is reversed. The fundamental rule of consideration means that everybody who takes any measure must do so in a protective manner, observe limitations and take such required precautionary measures that no harm will come to the health of humans and the environment. The Code contains a special rule concerning knowledge. The rule states that a party intending to commence an activity must first acquire the knowledge required to determine the environmental effects that may arise. The location is of great importance due to the environmental disturbances that may arise. Except when temporary, the location chosen for operations and measures concerning land or water areas must be suitable in relation to the objectives and resource management provisions of the Environmental Code. Anyone so engaged must take measures which conserve raw materials and energy and also utilise opportunities for reuse and recycling. In the first instance renewable sources of energy should be utilised. Further, anyone so engaged must also avoid using or selling chemical products or biotechnical organisms that can harm human health or the environment, if these can be replaced with such products or organisms that are assumed less hazardous. The

requirement of consideration applies to the extent that measures taken are reasonably satisfied. When making this assessment, the benefit of a precautionary measure is weighed in relation to the expense of such a measure.

Everyone who has caused environmental damage is liable to remedy the damage. This applies regardless of whether the operation has been discontinued or transferred. The liability applies until the nuisance has ceased. (The scope of the liability is regulated in detail in chapter 10 of the Environmental Code, see below.)

Regulated Areas

The Code regulates the following areas:

- fundamental provisions for management of land and water areas;
- special provisions for management of land and water for certain areas of Sweden;
- environmental quality norms;
- environmental impact statements and other basis for decisions;
- protection of areas;
- special provisions for the protection of fauna and flora species;
- environmentally hazardous activity and health protection;
- polluted areas;
- water undertakings;
- agriculture and other operations;
- genetic engineering
- chemical products and biotechnical organisms
- waste and producer responsibility;
- penal provisions and forfeiture;
- environmental sanction charges;
- compensation and damages;
- environmental damage insurance and clean-up insurance; and
- permits, supervision and fees.

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

Environmentally hazardous activity and health protection

Environmentally hazardous activity means all use of land, buildings or fixed installations that involve an emission to land, water or the atmosphere. The same applies to use that entails other nuisance to human health or the environment, for example by noise, vibration, light or radiation. To be considered an environmentally hazardous activity, the activity does not need to be hazardous to the environment in that individual case. The Government has in accordance with the Environmental Code issued an ordinance (1998:899) concerning Environmentally Hazardous Activities and Health Protection under which permit or notification is required for in principal all environmentally hazardous activities. Even if an activity is not subject to a permit obligation, the supervisory authority may, in a particular case, require that the party conducting the operation apply 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

Chapter 10 of the Environmental Code clarifies the liability for investigation and remediation of polluted land, water areas, buildings and structures. 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 conducted past activities. Secondarily, the landowner is responsible. This depends on whether an activity operator exists who can perform or pay for the remediation and whether the landowner, at the time the property was purchased, knew about the pollution or ought to have discovered it. Primary liability of remediation rests upon the present activity operator if such operator has contributed to the pollution. If the present activity operator can not fulfil those obligations, parties who have conducted past activities should bare such liability. The administrative authorities are, however, free to charge any of the above mentioned parties in any order. This makes it easier for authorities to concentrate on the party who has the major responsibility. The authorities can also charge several parties at once. The parties will then be jointly responsible for the remediation.

Remediation liability requires that the responsible party reasonably performs or pays for remediation necessary to counteract damage or nuisance to human health or environment.

The transitional provisions of the Environmental Code indicate that the remedy for damages and the performance of remediation is applicable to environmentally hazardous activity that has continued after 30 June 1969. Besides the reference to this particular provision, there is no time limitation.

Waste and producer responsibility

Waste is defined as any object, material or substance, included in a waste category and which the holder disposes of, intends to dispose of, or is obligated to dispose of. The appendix to the Waste Ordinance (2001:1063) lists defines the categories of waste corresponding to the EU Waste Directive.

Regulations about producer responsibility may be issued under the Environmental Code. Producer responsibility intends for the producer to ensure that the waste is collected, removed, recycled, reused or disposed of as necessary to ensure that such waste is handled in a healthy and environmentally sound manner. In this context the term “producer” includes a party who imports or sells goods or packages.

To date, the Government has enacted rules on producer responsibility in six areas, namely recycled paper, tires, packages, automobiles, electric light fittings and electrical products. The producers’ obligations as regards waste are often fulfilled by material companies that collect fees from associated producers for providing this service.

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 is specifically protected under the Copyright Act. As of 1 July 1994, photography, which used to fall under a separate act, is protected under the Copyright Act. As a consequence of Sweden's EU membership a number of amendments have been made to the Copyright Act. As of 1 January 1996 the period of copyright protection was extended from 50 years to the above-mentioned 70 years. A new rule concerning so called "droit de suite", i.e., a right to economic compensation amounting to 5 percent of the purchase price every time a protected work is sold commercially, has been inserted. Only an organisation representing several Swedish authors in the field has the right to collect such compensation. Moreover, the Copyright Act has been amended to conform to a number of EC Directives concerning, e.g., satellite and cable transmissions duration of protection and databases.

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 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. The employee has the right to the invention, but the employer is given a certain right of disposal over it. 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 Trademarks Act (1960:644), trademarks can be protected either through registration or by becoming established in the market. Any object may serve as a trademark. The protection is valid from the date of filing to ten years after registration, and can be renewed for additional ten year periods. Non-registered trademarks that have achieved protection through establishment on the market are protected as long as they are generally known by those to whom they are addressed as the symbol of the

goods or services of the proprietor. On 1 December 1995 Sweden acceded to the Madrid Protocol of 1989, stipulating an international system for the registration of trademarks. In 1993, an EC regulation concerning a European trademark registration was adopted. Trough an application to the European Trademark Agency in Alicante, it is possible to acquire a registration covering the whole of Europe.

Models and Designs

Designs for functional products are protected under the Design Protection Act (1970:485) from the day the application was filed for a period of five years. The proprietor may renew the registration for two additional five-year periods.

9 Real Property

All real estate in Sweden is recorded in a publicly accessible real property and land register maintained by the land registration authorities. 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 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.

Foreign ownership of real estate used to be restricted according to the Act on Permission for some Property Acquisions (*Sw. Lagen om tillstånd till vissa förvärv av fast egendom*). However, the Act was abolished as from 1 January 2000 due to the Swedish membership in the EU.

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 (*hyr*a). 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. Originally enacted in 1907 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. The maximum period is, with two exceptions of minor importance, 25 years 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 cause.

Tenants of commercial premises have no such protection, but are under certain circumstances 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 agreement must be approved by the Rent Tribunal, a special judicial body which handles disputes regarding matters covered by the Rent Act. This compensation right may, however, be forfeited in case of breach of contract of the tenant. The amount of the rent is frequently made subject to adjustment each year according to changes in the consumer price index (CPI).

10 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.