

# Guidelines for starting a limited liability company

*Foreign companies establishing a business in Sweden most commonly form subsidiaries in the form of limited liability companies (corporations).*

A limited liability company is a legal entity, with a clear distinction between the company and the owners. The limited company can enter into agreements and be the owner of property (for example real estate) or other assets. The limited liability company can also be a party in a legal proceeding. The limited liability company must always have a minimum of 100,000 SEK in share capital.

### **Requirements to become a founder**

One or more founders form a limited liability company. Since one individual or legal entity may own all the shares in a limited liability company, only one founder is required. Founders (one or more) must subscribe for all the shares in the company.

A founder may be an individual resident in the European Economic Area (EEA), a Swedish legal entity or a legal entity which is incorporated pursuant to the laws of a member state of EEA and which has its registered office, its headquarters or its principal place of business within the EEA.

A partnership, which is formed pursuant to the laws of a member state of the EEA, may also act as a founder, if each partner with unlimited liability is resident within the area. Residents from outside the EEA may act as founders only after obtaining approval from the Swedish Companies Registration Office (*Bolagsverket*).

A founder must be an adult (18 years of age) and must not have a custodian pursuant to Chapter 11, Section 7, of the Parental Code (*Föräldrabalken*), nor be in a state of bankruptcy. Nor may a person who has been declared subject to a trade prohibition pursuant to Section 6 of the Trading Prohibition Act (*Lag om näringsförbud*) be a founder.

### **Characteristics**

A limited company has three important parts:

- shareholders
- board of directors
- approved or authorized public accountant

The shareholders invest capital and decide on the basic rules for the company, the so called articles of association. They elect the management and the auditor. The risk for the shareholder lies in losing their own invested share capital. There are, however, some obligations that are of a personal character, for example the board has to prepare an annual report and an auditor report once a year, and when adopted by the shareholders' meeting, file them with the Swedish Companies Registration Office (*Bolagsverket*).

### **Private and public limited liability companies**

A limited liability company can be either private or public. There are some differences between the two where regulation is concerned.

#### *Public limited liability companies*

A public limited liability company can offer shares and other securities to the public, for example by advertising in media for new shareholders (e.g. new capital).

In a public limited liability company there must be at least 3 board members and an optional amount of deputy members. It is also compulsory to appoint a managing director and that must not be the same person that holds the title of chairman of the board.

The minimum of share capital is 500,000 SEK.

#### *Private limited liability companies*

In a private limited liability company there must be at least 1-2 members of the board and at least 1 deputy member or alternati-

vely 3 members of the board. In the latter case the appointment of one or more deputy members is optional. A managing director is not compulsory in a private limited liability company, but in case a managing director is appointed it may very well be the chairman. A chairman can only be appointed if the board consists of more than one member.

The minimum of share capital is 100,000 SEK.

A private limited liability company may not introduce its shares on the stock exchange or any other organized market.

### **Forming a limited liability company**

When forming a limited liability company the following steps must be taken:

- The founders must draw up a memorandum of association
- One or more founders subscribe for all the shares in the company
- The shares are paid up
- The founders complete, date and sign the memorandum of association
- The board of directors files the company with the Swedish Company Registration Office

In the memorandum of association the founders shall specify:

- How much is to be paid for each share
- Complete names, personal identification number, or if not available, dates of birth and postal addresses of the member(s) of the board and the auditor(s).
- Articles of association
- Where relevant is must also be stated whether shares may be subscribed for and paid for by means of a capital contribution in kind.

If the shares are to be paid for in cash, the entire amount subscribed for must be paid. The amount must be put into a bank, a credit market enterprise or a credit institute within the EEA in an account specially opened for the limited company under formation. If any founder is to be entitled to subscribe for shares by a capital contribution of property other than money (contribution in kind), special mention must be made of this in the memorandum of association. An aut-

horized public accountant or an approved accountant must issue a certificate confirming that the capital in kind is, or can be, advantageous for the company's business, in order for it to be accepted as payment.

The articles of association must contain information of the number of shares or the lowest and highest number of shares that there may be in the company. The previous rules regarding nominal amount of the shares has been removed.

As of January 1, 2006, when the new Swedish Companies Act came into force, it has become possible to include two new clauses in the articles of association: a reservation of consent, stipulating that shares can only be transferred after consent of the company; a clause regarding pre-emptive options which stipulates the right for shareholders or others to get an offer to buy a share before it is transferred to a new owner. The reservation for consent and reservation for pre-emptive options may not be used by VPC-registered companies (VPC = Swedish Securities Register Center).

The company is formed when the memorandum of association has been signed by all founders. However, the company does not become a legal entity until the date has been registered at the Swedish Companies Registration Office.

### **Board of directors and managing director**

The duties of the board vary depending on the size of the company and whether a managing director has been appointed. The board is in charge of everyday business. The managing director is appointed by the board of directors. In public limited companies the board must always appoint a managing director. In private limited companies the board, if it wishes, may appoint a managing director. The board decides who is authorized to represent the company (signatory power) and convenes the general meeting of shareholders. If the board comprises more than one member, the board shall always elect one of the members as chairman. This person is to lead the work of the board and ensure that the board performs its duties.

The name of the chairman of the board must be reported to the Swedish Company Registration Office (*Bolagsverket*).

If the board has appointed a managing director, it must adopt instructions for a division of work between the managing director and the board. The board must also adopt rules of procedure for its own work. A company where the board has only one member does not need rules of procedure.

The board is responsible for ensuring that taxes are paid in due time and that annual accounts are prepared and filed with the Swedish Company Registration Office. The board must also report any changes in the company. The board's responsibilities are extensive and its members can under certain circumstances be held personally liable for the debts of the company.

If no particular is registered as having signatory power then the board is entitled to sign on behalf of the company. In such case more than half of the board members shall jointly sign documents.

The managing director, at least half of the board members, at least half of the deputy board members and at least one of the persons with special signatory power must be resident within the European Economic Area (EEA). If these requirements are not met, the company may apply to the Swedish Company Registration Office for special permission.

If the company has no authorized representative resident in Sweden, the board of directors must authorize a person resident in Sweden to receive service of process on behalf of the company. The person so authorized must be reported to the Swedish Company Registration Office for registration.

#### **Accounts and audits**

All companies carrying on a business activity are under an obligation to maintain accounting records under the Book-keeping Act (1995:1078) and are required by the Act to adhere to generally accepted accounting principles. The annual accounts must be

sent to the Swedish Companies Registration Office, no later than 7 months after the end of the financial year or the company will be fined for late filing. If the annual report and auditor's report have not been filed within 11 months after the end of the financial year the Swedish Company Registration Office may liquidate the company.

Only approved public accountants, approved public accountants who have passed the examination for professional competence as a public accountant, authorized public accountants and public accounting firms (registered by the Supervisory Board of Public Accountants) may audit limited companies. Companies of a certain size, at present those with annual net turnover amounting to more than 1,000 times the price base amount pursuant to the National Insurance Act (SFS 1962:381) applicable at the end of each financial year (2006: SEK 39.7 million) the two latest consecutive years, or with more than 200 employees as an average the two latest consecutive years, or companies listed on the stock exchange, must appoint an accountant that have passed the examination for professional competence as a public accountant (chapter 9, section 13 Companies Act). The auditor is obliged to ensure that the company's management follows the provisions in the Companies Act and the articles of association. The auditor may never keep the accounts of the company.

Following documents must be filed with the Swedish Company Registration Office:

- The annual report, consisting of balance sheet; profit and loss statement; director's report; additional notes to the director's report and the financial statement; and in large companies, a statement of source and application of funds (cash flow analysis).
- Auditor's report
- Minutes of general meeting of shareholders, if the meeting has adopted a resolution of payment of dividends
- Consolidated accounts and auditor's report for the majority of parent companies, if the company is part of a group.

All documents must be written in Swedish. The annual report must be signed by all board members and, if the board has appointed one, the managing director.

The financial year of a limited company must cover twelve months. The first financial year begins on the day the company is registered. This applies even if the company does not engage in active business until a later date. The company's financial year is stated in the article of association. A financial year may be identical with a calendar year, or it may be a so-called split financial year. Financial years covering the following periods are also permitted.

- 1 January – 31 December
- 1 May – 30 April
- 1 July – 30 June
- 1 September – 31 August

When a company is formed and when a company changes its financial year it is permitted to have a financial year that is shorter than twelve months or to extend it to a maximum of eighteen months.

#### ***Buying an “off the shelf company”***

Some foreign companies may feel that registration of a limited liability company may be too complicated or take too much time. Therefore, the easiest and most common way of setting up a subsidiary in Sweden is to purchase a so-called “off-the-shelf company” from a company agent or law firm. Many law firms in Sweden have “off-the-shelf companies” available to enable a fast start-up process. Buying an “off-the-shelf company” means that many of the registration procedures at the Swedish Companies Registration Office described above already has been taken care of and the company can start its business immediately. However, the company still has to register a new name (see below). The cost of buying a company is approximately SEK 10,000.

#### ***Registration of a limited liability company***

The company must be registered with the Swedish Companies Registration Office. Before registration the company is non-existent and can therefore not enter any agreements whatsoever or start any business activities. When the registration is finalized, the Swedish Companies Registration Office must immediately make an announcement of these entries in the Swedish Official Gazette (Post- och Inrikes Tidningar). When the registration procedure is complete the limited liability company will receive a registration number, which is used as the company's identification number and remains as long as the company exists. The registration number must appear on the company's letterhead, invoices and order forms.

#### ***Registration of name***

The company name must be registered with the Swedish Companies Registration Office in order to be protected. The name protection for a limited liability company is valid for Sweden and for the business activity that the company has registered. There are certain rules to be adhered to, such as the company name not being similar to any other registered company name or trade mark, not to be misleading or to describe only the activity of the company. The company's name must include the Swedish word for limited liability company, aktiebolag, or the abbreviation AB.

#### ***Registration for taxes***

Employers must register as such by filling in the form Skatte- och avgiftsanmälan (Notification of Tax and Contributions Liability (SKV 4620) and send it to the Swedish Tax Agency. On registration the employer will automatically be sent all the documents, VAT and PAYE returns and information required to account for and pay in VAT, income tax and social contributions.

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The Swedish Companies Registration Office is a government agency that registers new companies as well as changes in established companies, receives annual accounts, registers corporate mortgages, makes decisions regarding liquidation and makes the information in the trade and industry register publicly available. Furthermore the agency offers information services based on their company data base (the agency can also provide information from a number of official registers in Europe, via the web service European Business Register), helping companies to conduct safer business.

Its website provides information concerning various business forms and regulations for establishing a business in Sweden. Most of the information is in both Swedish and English.

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### Summary of the tax obligations

- Income tax for legal entities

Legal entities are subject to corporate tax of 28 percent of their taxable income. This tax is calculated on a preliminary basis by the tax authority and is charged regularly throughout the fiscal year.

- Obligation to submit tax returns

The company is liable to submit a tax return for the income derived from the business activity once a year.

- Employee's contributions, payroll tax and special wage tax on pension costs

Employers are expected to pay employee's contributions, payroll tax and special wage tax on pension costs on behalf of their employees. Charges are calculated on the basis of the total gross wage and other taxable benefits.

- Tax deductions

Employers are expected to deduct tax at source on behalf of their employees in the percentage specified in the current tax table.

- Value Added Tax (VAT)

VAT is to be paid on supplies of taxable goods and services supplied within the country from a business and on taxable intra-community acquisitions of goods which are movable property, unless the supply was effected within the country. The principal rule is that the seller is liable to pay tax, but there are exceptions.

### Insurances

Insurances are normally optional, but some basic insurance coverage is normally called for. Contact an insurance company for any insurance – property insurance, consequential loss insurance, liability insurance, legal expense insurance or life and accident insurance.

### Licenses

It is important to make sure if a special license is needed in order to carry out the operation. The requirement for a license is most often regulated by law and can be issued on a local, regional or national level. Police authorities, municipality and county councils are often involved in the licensing activities.

Please note that the contents of this fact sheet should be regarded as an overview of current conditions in Sweden. These may change and thereby render descriptions of laws and other frameworks inaccurate. In all individual cases we request that advice always be sought with relevant authorities, organizations and businesses on specific issues.