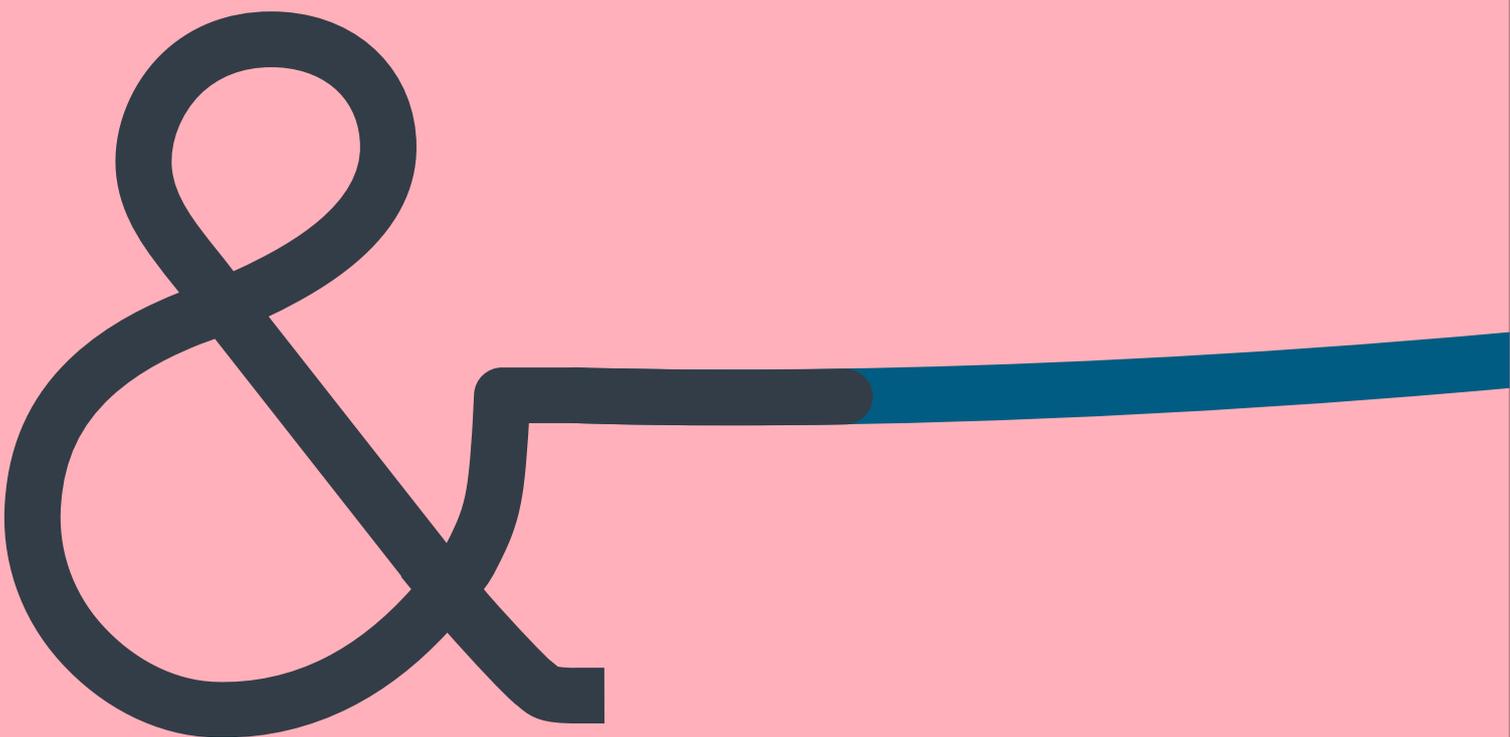


Bird & Bird

Setting up a business in Sweden

2022





“
Bird & Bird LLP provides “very good advice, in particular with regard to understanding the nuances and political climate among the stakeholders to get transactions through.”

Chambers, Global 2022

Choice of legal entity

A foreign company can carry out business in Sweden either by incorporating a Swedish registered subsidiary company in the form of a limited liability company (Sw. *aktiebolag*) or by registering a Swedish branch which is considered an extension of the overseas company (Sw. *filial*).

Subsidiary	Branch
Limited liability for the shareholder up to the share capital invested.	Foreign entity retains direct liability.
Minimum share capital amounting to SEK 25,000 is required.	No capital contribution required (assets and liabilities are a part of the total assets of the foreign-based company).
Business may be carried out immediately when purchasing an “off-the-shelf” company. If a new entity is incorporated, business may be carried on after registration by the Swedish Companies Registration Office (Sw. <i>Bolagsverket</i>) (SCRO) (generally within 1-2 weeks from application).	A notification must be sent by the managing director of the branch to the SCRO prior to the commencement of the business activities of the branch. Business may be carried out when notification is received by the SCRO.
Board of Directors required. The board must comprise of three ordinary members or of one or two ordinary members with at least one deputy member. Appointing a managing director is optional in private limited liability companies, it is however mandatory to appoint a managing director in public limited liability companies. The managing director, at least half of the board members, at least half of the deputy members and at least one of the persons with special signatory power (Sw. <i>särskild firmatecknare</i>) must be resident within the European Economic Area (EEA). If the company has no authorised representative resident in Sweden, a person resident in Sweden must be appointed by the Board of Directors to receive service of process on behalf of the company (Sw. <i>delgivningsbar person</i>).	Board of Directors not required. Branch shall be managed by a managing director, domiciled within the EEA. If the managing director of the branch is not resident in Sweden, the foreign business enterprise must authorise a person who is resident in Sweden to receive service of process on its behalf.
Separate legal entity entitled to contract in its own name and on its own behalf.	Foreign entity retains liability through the branch.
Incorporation fee of SEK 2,200.	Registration fee of SEK 2,000.
Shareholder and Board meetings may be held by telephone or by written resolutions (per <i>capsulam</i>).	Meetings are not required.

Subsidiary	Branch
<p>An authorised or approved public accountant is generally required to review accounting records, depending on the size of the company (small companies, according to certain criteria, are exempt).</p> <p>Annual report to be adopted by the annual general meeting of the shareholder(s) and filed with the SCRO.</p>	<p>An authorised or approved public accountant is generally required to review accounting records, depending on the size of the company.</p> <p>Branch office is to keep its own accounting records which must be held separately from the accounting records of the foreign business enterprise.</p> <p>Annual report is not required for branches of EEA companies which are equivalent to a Swedish limited liability company and records do not need to be filed with the SCRO.</p> <p>Certified copy of the annual report and the auditor's report of the foreign enterprise must be filed if these documents have been made public in the country of the foreign enterprise.</p>
Higher annual filing and accounting costs.	Slightly lower operational costs.
Corporation tax on worldwide profits and gains (tax rate 22 %).	Corporation tax on profits that attributable to the Swedish permanent establishment (tax rate 22 %).
Swedish VAT registrable. Swedish VAT may be due on supplies to group company.	Swedish VAT registrable. Supplies between the branch and the "parent" are generally not subject to Swedish VAT.
Can benefit from double tax treaties.	Can benefit from double tax treaties.
Intra-group transactions require arm's length terms.	Arm's length standard is not applicable. However, the profit allocation between the foreign entity and the branch should correspond to the arm's length standard.
Trading losses can be off set against the profits for the accounting period. Loss carry forwards are possible for an unlimited period.	Trading losses can be off set against the profits for the accounting period. Loss carry forwards are possible for an unlimited period.



Bird & Bird has a highly reputable global brand for its work in developing and regulated industries and a global industry focus on technology and life sciences.

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Setting up a business in Sweden

Employment

An employer in Sweden needs to register as an employer with the Swedish Tax Agency.

The Swedish labour market is regulated by legislation and a vast majority of the labour market is governed by collective bargaining agreements (a “CBA”) entered into by its parties, generally employers’ associations and trade unions. An employer becomes bound by a CBA by joining an employer’s association or by signing an agreement directly with one or several unions. Whether bound by a CBA or not, employers must adhere to rules on consultation with trade unions ahead of dismissal or transfer of an undertaking.

Nevertheless, freedom of contract applies in relation to employment agreements. Mandatory law provides basic terms of employment which are supplemented by CBAs and the individual employment agreements. There are no statutory minimum wages in Sweden. However, CBAs generally set out minimum wage requirements and entitle employees to occupational pension benefits and top-ups on state benefits.

Swedish employees (with the exception of certain managerial employees) are protected against unfair dismissal, the employer having to establish just cause for dismissal (either related to the individual employee or lack of work). An employer, as well as an employee, must also observe the notice periods set out in mandatory law, applicable CBA or individual agreement, unless of course cause for immediate termination exists. In case of unfair dismissal, an employer may be liable to re-instate the unfairly dismissed employee and/or pay damages (both financial and pecuniary) to the employee.

Furthermore, an employer must comply with mandatory legislation within the areas of amongst other work environment, working hours, sick pay, holiday entitlements, non-discrimination and parental leave.

Non-competition clauses for key employees are enforceable, however such clauses must be limited to 18 months post- employment and offer employees compensation of up to 60% of their salary during the restricted period. Post-

employment non-dealing and non-solicitation restrictions do not require compensation in order to be enforceable.

An employer is obliged to make social security contributions on top of salary payments. Currently (in 2022) the contributions amount to 31.42%. For certain age categories a reduced percentage rate may apply. Occupational pension contributions also give rise to reduced contributions, currently (in 2022) to 24.26%. An employer must also make preliminary income tax deductions from an employee’s salary.

Non-EU/EEA nationals are in general required to obtain a work/residence permit to work in Sweden. As a rule, the permit must be applied for, and granted, before entering Sweden.

Commercial Contracts

Swedish contract law is based upon contractual freedom, however several statutes are mandatory, generally with the intention to provide extra protection for weaker parties, such as consumers, sales agents, and residential tenants.

A contract or clause may be adjusted or nullified by a court ruling due to unfairness.

A verbal agreement is binding between the parties pursuant to Swedish law, with a few limited exceptions (e.g., agreements regarding the sale of real estate).

In Sweden statutes regulate, amongst others, consumer protection, sales agents, distance selling, public procurement, direct marketing and personal data, which are based upon EU legislation.

Swedish and EU competition law prohibits anti-competitive behaviour (e.g., price fixing) where there is an appreciable negative effect on trade in Sweden and/or between EU member states.

Setting up a business in Sweden

Real Estate

Most companies setting up in Sweden rent serviced offices or lease their premises rather than buy them. Serviced offices are more flexible and are normally readily available and can be rented for shorter periods of time. There is no capital outlay.

Commercial premises are usually let for periods of 3—5 years, often with a renewal period of 3 years. Notice must be given at least nine months prior to each expiry date (provided

that the term is longer than nine months, otherwise shorter notice periods apply). Notice may be given to terminate the contract or for re-negotiation of the terms and conditions. Where the lease term is for three years or more, the rent may be adjusted, without notice, during the lease term based on changes in any agreed index or in accordance with any other agreed basis for calculation.

Leased premises normally require fitting-out by the tenant at its own cost. The landlord may bear the tenant's fit-out costs but will then normally take out an extra surcharge to the rent.

The tenant will be responsible for reinstating the premises at the end of the lease. The tenant is usually responsible for maintenance of the premises. If the entity taking the lease is a company with little or no trading history in Sweden, the landlord will usually require collateral security, such as a cash deposit of 3—6 months' rent or a bank or parent company guarantee.

Pursuant to (semi) mandatory provisions in the Swedish land code, the tenant normally has security in the form of protection of tenancy giving the tenant a right to economic compensation should the landlord terminate the contract without reasonable cause for expiration at the end of the lease term. The minimum compensation corresponds to one year's rent.

Data Protection/Privacy

As of 25 May 2018, a Swedish company processing personal data (which includes e.g., automated, or structured employee data and business contact data) must comply with the General Data Protection Regulation ("GDPR") and the Swedish Data Protection Act (2018:218). The GDPR is directly applicable in each EU member state and has led to a greater degree of harmonisation across the EU. Notwithstanding this, EU member states retain some rights to legislate in this area, meaning that differences will appear between jurisdictions (e.g., such as within the field of employment law).

In short, personal data may only be "collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes". The processing of personal data for each identified purpose must rely on a legal ground stipulated in the GDPR (such as consent, legitimate interest, performance of contract or legal obligation). Depending on the categories of personal data processed, it may also be necessary to rely on one of the exemptions stipulated in the GDPR for processing special categories of personal data e.g., personal data about health.

When a company collects personal data, the individual in relation to whom the personal data relates must be informed of e.g., the type of information being collected, the reason behind collecting the data, with whom the information will be shared with and how data subject rights can be exercised.

Further, the company must ensure that personal data is not retained for longer than what is necessary for the purpose it was collected. It is very important that the company processing personal data implements and maintains appropriate technical and organisational measures to protect the personal data that is processed.

Under certain circumstances, it is mandatory for the company to appoint a data protection officer ("DPO"). Appointment of a DPO must be notified to the Swedish Data Protection Authority.

It is not permitted to transfer personal data to a third country (i.e. a country that is not included in the EU or part of the EEA) unless the receiving country provides a sufficient level of security for the processing of personal data, e.g. if the EU Commission has decided that the country ensures an adequate level of protection or if the parties have safeguarded the transfer by using e.g. so called Binding Corporate Rules (“BCR”) or Standard Contractual Clauses (“SCC”) approved by the EU Commission.

Intellectual Property

When a company name is registered with the Swedish Companies Registration Office, the company name gains protection against registration of confusingly similar company names, within the same or similar fields of business.

Company names and brand names may also be registered as trademarks. A trademark application covering Sweden may be filed at the Swedish IP Office (PRV), resulting in a Swedish registration, or at the EU IP Office (EUIPO), resulting in an EU registration. Different kinds of graphic or product designs may be granted design protection through a similar procedure.

Company names, brand names and trademarks can preferably have suitable domain names registered, reflecting the respective name.

Patents, protecting technical innovations, have a national scope of protection. A patent application may be filed nationally, or in a number of countries at the same time through the European Patent Office (EPO) or internationally through the Patent Cooperation Treaty (PCT).

Literary and artistic works may be protected by copyright (and/or neighbouring rights). Such right arises automatically when a work is created and does not need to (and cannot) be registered in Sweden.

Business Model Design

Alongside legal challenges, whatever the nature of your international ambitions the planning process requires some key questions to be addressed:

- Is internationalisation a feasible option, and are you ready for it?
- What is your internationalisation strategy, and how will you prioritise which markets to target?
- What business model will be most effective for driving profitable growth?

- Will you require business partners, and how do you plan to find them?
- What will your penetration strategy be for your selected markets?
- How will you build the infrastructure and operating model required to support your move into the new markets?
- How will you execute the plan and implement the business model?

Wherever your starting point, our consultancy arm OXYGY can help you answer these questions and create a fit-for-purpose roadmap to guide your business through its internationalisation journey.

Contact us

If you would like further information on setting up business in Sweden, please e-mail our Set up Desk at new.company@twobirds.com and we will contact you within 24 hours.

This summary gives general information only as of June 2022 and is not intended to give a comprehensive analysis. It should not be used as a substitute for legal or other professional advice, which should be obtained in specific circumstances.



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