

FDI Guide Sweden

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Foreword: A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

	Topic	Explanation/Description of what is expected	Sweden
1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>EU law is applicable in Sweden and guarantees the principle of free movement of capital between Member States of the EU and third countries (Article 65(1) in Treaty on the Functioning of the EU (TFEU)).</p> <p>Pursuant to the EU's international commitments undertaken in, inter alia, the World Trade Organization (WTO), and in the trade and investment agreements concluded with third countries, it is possible for the EU and its Members States to adopt restrictive measures relating to FDI on the grounds of security or public order, subject to certain requirements.</p> <p>Sweden is one of few Member States that does not yet have FDI screening rules in place. This will soon change as a proposal for a Swedish FDI regime has been presented, and a new law is expected to enter into force in the second half of 2023.</p>

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			<p>It should be mentioned that Sweden does have a specific law governing operations related to national security, the Protective Security Act (<i>Säkerhetsskyddslagen</i>), which also includes a form of screening mechanism for investments in targets covered by this act.</p> <p>Under this legislation, a seller of operations, assets or shares in businesses of importance for Sweden's security (ie, security-sensitive activities) must, inter alia, consult with the competent authority before completing the sale. As the proposal for the new FDI rules stand, activities that are covered by the Protective Security Act will also fall under the scope of the new FDI regime. The sale of a business with security-sensitive activities, therefore, will be subject to both sets of rules and would thus be subject to a consultation obligation (to be made by the seller) with the relevant monitoring authority, and an FDI filing (to be made by the investor) under the new regime.</p> <p>The following responses are based on the pending proposal and should therefore be considered preliminary as the legislative proposal may lead to changes to the information stated herein.</p>
2.	Legal regime Authority(ies) in charge	Describe source(s). Name of authority in charge of applying the FDI rules (Minister/Agency/...).	<p>The upcoming Swedish FDI regime will be based on new legislation, not amendments to an already existing law.</p> <p>The competent Swedish authority will be the Inspectorate for Strategic Products (ISP). The ISP is already the competent authority for export control (dual-use and military items) in Sweden, and the Swedish contact point under the EU FDI Regulation (2019/452).</p>
3.	Transactions that may be subject to FDI <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	Describe the nature of the transactions that may be subject to FDI rules. In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.	<p>The current proposal suggests that anyone (whether Swedish or foreign) having the intention to invest in a business in a covered sector must notify the investment to the ISP if:</p> <ul style="list-style-type: none"> • the investor will hold ten per cent or more of the total number of votes in the company after the investment; • if the investor together with others will hold ten per cent or more of the total number of votes in the company after the investment; or

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			<ul style="list-style-type: none"> the investor has influence over the management of the company through other means (articles of association, shareholders' agreements, etc). <p>In addition, there are corresponding thresholds for other forms of legal entities (limited partnerships, trusts, etc).</p> <p>Certain investments will be exempt from the notification requirements, including transfers due to division of property, wills or succession, and the issuance of new shares pro rata to the number or shares previously owned by the investor.</p> <p>It should be noted that every investment resulting in ownership of ten per cent or more of the total number of votes must be notified and potentially reviewed, even if a prior investment by the same investor in the same Swedish target was previously reviewed and approved by the regulator (unless the exemptions mentioned in the previous paragraph apply).</p> <p>For investments in Swedish listed entities, this implies that an investor who has already been subject to an FDI review but wishes to increase its ownership – even by one share – must file a new notification.</p> <p>Notifications must also be made if a company in the covered sectors wishes to issue new shares on a non-pre-emptive basis, and this leads to either a new investor becoming the owner of more than ten per cent of the total number of shares in the company or an investor owning more than ten per cent of the shares increases its ownership.</p>
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p>	<p>Indirect acquisitions</p> <p>The proposal does not explicitly state that the new law will also cover indirect investments, but it is generally understood to be the case. The proposal provides one example of a party who through an investment indirectly gains influence of a company and is therefore to be considered as the actual investor, but this example is in relation to a Swedish holding company.</p>

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		<p>Are share transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>Intra-group restructurings</p> <p>Intra-group restructuring is not dealt within the proposal. However, the general expectation is that such activities would be considered as an indirect investment if another legal entity gains influence over the Swedish target in a covered sector.</p> <p>Greenfield investments</p> <p>The proposal explicitly states that greenfield investments will be covered.</p>
		Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.	The proposal suggests that the ISP may ex officio initiate reviews.
4.	Sectors falling under the FDI scope	Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.	<p>The proposed law would cover the following sectors:</p> <p>Essential services (<i>samhällsviktig verksamhet</i>)</p> <p>This broad sector is likely to trigger notification in many transactions, covering areas like energy, financial services, healthcare, information and communication, food supply and transportation. The Swedish Civil Contingencies Agency (<i>Myndigheten för samhällsskydd och beredskap</i> or MSB) will be empowered to issue administrative regulations that define the activities that are deemed essential services. The MSB shall consult with the Swedish Armed Forces, ISP, National Board of Trade, Swedish Security Service and other public authorities prior to issuing such regulations.</p>
		Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?	<p>Security-sensitive activities</p> <p>As mentioned, activities that are covered by the Swedish Protective Security Act will fall directly under the scope of the new FDI screening rules. The sale of a business with security-sensitive activities will thus be subject to both sets of rules and two different authorities would need to be notified.</p>

			<p>Critical raw materials, metals and minerals</p> <p>Businesses that prospect for, extract, enrich or sell raw materials that are critical for the EU, or other metals and minerals that are critical to Sweden are to be covered by the new FDI screening rules. Critical raw materials for the EU are listed in accordance with the EU framework for Critical Raw Materials Resilience and, in relation to Sweden, a list will be prepared by the Geological Survey of Sweden.</p> <p>Sensitive personal or location data</p> <p>Businesses whose main activities include the processing of sensitive personal data or location data will be covered by the new FDI screening rules. The proposal mentions insurance and healthcare as sectors that are particularly prone to processing sensitive personal data. Because certain employers regularly process sensitive personal data, the proposal notes that data processing within the employment context generally should be excluded from the FDI screening rules. Businesses that gather location data extensively will, however, be covered.</p> <p>Emerging technologies and other strategic protected technologies</p> <p>Activities related to emerging technologies and other strategic protected technologies will be covered by the new rules. The scope of this sector shall be defined in an ordinance issued by the ISP and other defence agencies. A draft list of said technologies is enclosed with the proposal.</p> <p>Dual-use items</p> <p>Businesses that manufacture, develop, conduct research into or supply dual-use items or supply technical assistance for such items will be covered by the new rules. Dual-use items are products, software and technology as defined in the EU Dual-Use Regulation (2021/821).</p> <p>Military equipment</p> <p>Businesses that manufacture, develop, conduct research into or supply military equipment or supply technical support for military equipment will be covered by the new rules. Military equipment and technical assistance are specified in the Swedish Military Equipment Act.</p>
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			<p>The proposal leaves open whether the media sector should be covered by the FDI screening rules. It is suggested that if the media sector were to be included, the scope should be limited to public news media (<i>allmänna nyhetsmedier</i>) as defined in the Media Subsidies Act.</p> <p>As regards scope, because the proposal uses a terminology that differs from the EU FDI Regulation, some degree of uncertainty may arise as the ISP is required to apply both the FDI screening rules and the EU FDI Regulation. In particular, this uncertainty may arise when the ISP has to assess whether to trigger the intra-EU consultation mechanism under the EU FDI Regulation when it has decided to initiate a review of a notified investment (eg, if investments from EU investors should be notified).</p>
5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	<p>The proposed legislation suggests that a notification shall be made by all investors irrespective of their nationality. In other words, Swedish, EU and foreign investors must all file notification of their investments in the covered sectors.</p> <p>The investments that may be screened in accordance with the proposed rules are those where the investor is either: (1) a natural person with citizenship(s) in countries other than Sweden; or (2) an entity ultimately owned or controlled by a foreign government or natural person(s) with citizenship(s) in countries other than Sweden. The scope of investors thereby includes not only third-country investors but also investors from other EU Member States, and potentially also certain Swedish investors (eg, those with two nationalities).</p> <p>The stated rationale is to prevent circumvention of the screening system, for example, that the exclusion of intra-EU investments from the scope could entail circumvention risks, for example, if an investor makes an investment through EU nationals or companies based in EU Member States with less strict rules, which in turn may result in the assets being transferred outside the EU.</p> <p>For similar reasons, investments by Swedish investors will also be subject to notification. The rationale is that in order to prevent circumvention, investments by Swedish-owned companies or Swedish citizens acting as</p>

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			<p>vehicles for other parties should not automatically be exempt from FDI screening. When the investor has only Swedish citizenship or is ultimately owned or controlled only by such persons, the notified investment will be approved, unless there is a risk of potential circumvention.</p> <p>The proposal suggests that the great majority of investments from both Swedish and EU investors will be cleared quickly in the first stage, that is, not proceed to formal FDI screening.</p>
6.	Procedure 6.1 Before or post-closing filing		A notification must be submitted before the investment is completed, that is, before the investor can exercise influence over the target. The exact time for when such influence is deemed to arise may vary but should in any case be considered to have arisen when some form of transaction is carried out between the parties. For most investments, this will mean that the investment documentation can be signed, provided appropriate closing conditions allowing for an FDI filing are included.
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	Filing is suggested to be mandatory. If the investment is completed without notification or before approval has been received, the investment may be declared prohibited and therefore null and void, and an administrative fine may be imposed. The onus for filing a notification will be on the investor.
8.	6.3 In the case of post-closing, what are the powers of the authority?		As mentioned above, it is suggested that the ISP may ex officio initiate reviews.
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	Suggestions have been made for pre-ruling or a similar process but dismissed in the proposal.

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10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	Not applicable, subject to practical experience.
11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist de facto or <i>de jure</i> .	A two-step process is suggested. As a first step, the ISP shall, within 25 working days of receiving the notification, decide to either leave the notification without further action or initiate the second step of the procedure, meaning the opening of an in-depth review. If the ISP decides to initiate an in-depth review, such a review shall be completed within three months unless there are special grounds, in which case the time limit may be extended to up to six months.
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	Not applicable, subject to practical experience. Based on experience, however, the ISP is usually very cooperative and open to dialogue with business. However, it is a small authority (only 40 persons at present) and will expand by around 30 persons to cater for the FDI rules. The willingness to cooperate and have a dialogue will thus depend on the workload.
		Are there any guidelines issued by the authority?	No. However, it is suggested that the ISP will be able to issue further administrative regulations and guidance.
13.	(iv) Filing fees	Is there a filing fee?	No, the filing is suggested to be free of charge.
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	The proposal suggests that the ISP will issue regulations specifying what a filing must contain. However, as a minimum, a filing must contain the information listed in Article 9.2 of the EU FDI Regulation. This includes the following: <ul style="list-style-type: none"> • ownership structure of the foreign investor and the company in which the FDI is planned or has been completed, including information on the ultimate investor and capital participation; • approximate value of the FDI;

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			<ul style="list-style-type: none"> • products, services and business operations of the foreign investor and the company in which the FDI is planned or has been completed; • EU Member State(s) in which the foreign investor, and the company in which the FDI is planned or has been completed, conducts relevant business operations; • funding of the investment and its source; and, • date that the FDI is planned to be completed or was completed. <p>The target of the investment will be obliged under the FDI screening rules to inform the investor that the FDI screening rules apply. A similar rule also applies in relation to the Swedish Protective Security Act where a company must inform a potential investor if said act applies to the company's business.</p>
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	<p>As mentioned above, the ISP shall, within 25 working days of receiving a notification, decide to either leave it without further action, or initiate the second step of the procedure. If the ISP decides to initiate an in-depth review, such a review shall be completed within three months unless there are special grounds, in which case the time limit may be extended to up to six months.</p> <p>The proposal does not suggest any consequences if the ISP does not issue a decision within the suggested timeframe.</p>
16.	Conditionality of approval (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	<p>If the ISP finds that the notified investment poses a risk to Sweden's security or public order or security, it will have the powers to prohibit the investment, or approve it subject to conditions.</p> <p>A decision to prohibit or condition an investment may also include the imposition of a conditional administrative fine. An investment made in violation of a prohibition is to be considered null and void.</p>

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			<p>An investment may also be approved with conditions, which may relate to the following:</p> <ul style="list-style-type: none"> • certain operations of the target, for example, the part of the business that is critical to Sweden's security, public order or security are not to be included in the investment; • the target's governance and management, for example, the board and/or chief executive officer (CEO) must be Swedish citizens and residents of Sweden; • certain circumstances concerning the investor, for example, that one or more investor must be excluded from the transaction; • extent of the investment, for example, that the foreign owner, directly or indirectly, will not receive controlling influence; and/or, • possible resale, for example, that a future resale must be notified.
17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	Not applicable, subject to practical experience. However, based on experience, the ISP will have substantial discretionary powers (Swedish governance model is based on a principle that competent authorities shall be independent and free from political influence).
18.	(iii) Risk of veto	Describe a topical case. Statistics	Not applicable, subject to practical experience.
19.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	If the ISP decides to initiate a formal FDI review (ie, the second step of the process), it must consult with the Swedish Armed Forces, MSB, Swedish Security Service and National Board of Trade Sweden, and, where appropriate, other authorities.

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20.	Sanctions	<p>Describe the type of sanctions that may be imposed by the authority in the case of:</p> <ul style="list-style-type: none"> • breach of conditions and/or commitments attached to the approval; and 	<p>According to the proposal, the ISP shall be allowed to impose an administration fine of a minimum of SEK 25,000 and a maximum of SEK 50m if the investor:</p> <ul style="list-style-type: none"> • does not file a notification for a notifiable investment; • carries out the investment before the ISP has reached a final decision; • carries out the investment in violation of a final decision; and/or, • acts in violation of a condition imposed in connection with a final decision. <p>An administrative fine may also be imposed if the investor or target provides incorrect information to the ISP or fails to provide information that they were obliged to provide.</p>
		<ul style="list-style-type: none"> • investment carried out without prior approval. 	See the above response.
21.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic.	Not applicable.

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