

Establishing a Branch Office or Presence in Sweden

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A Practice Note discussing how a foreign company can establish a business presence in Sweden. It outlines the key features of a representative office and a branch, including how to establish and close a representative office and a branch, how they operate, and a brief description of the differences between establishing a representative office or a branch and other options for establishing a business presence in Sweden.

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As an alternative to incorporating a new subsidiary, acquiring an existing entity, or entering a new market through a joint venture, a foreign company can often enter a market through less expensive or formal methods, such as establishing a representative office or a branch in the new jurisdiction. Variations of these less formal methods may exist among jurisdictions, and the choice of business presence will usually depend on the type of activities that the foreign company wants to conduct.

A representative office is often available in the new jurisdiction when the activities to be performed are not deemed to generate income (for example, research into or observation of the jurisdiction as a new potential market). If, instead, the activities to be carried out are expected to generate income, the natural alternative to a subsidiary is often a branch.

It may be possible to operate in a new jurisdiction without having a representative office there, for example by means of an agency. If, however, the activities to be carried out are expected to generate income and are more likely to be of permanent and extensive nature, then again the natural alternative to a subsidiary is often a branch.

This Note describes the options available for a foreign company wanting to establish a business presence in Sweden. It describes the different types of business presence, focusing particularly on how to establish and operate a representative office and a branch and how each operates.

Establishing a Presence in Sweden

A foreign company has various options for establishing a business presence in Sweden. It could:

- Set up a representative office (see *Representative Office (Representationskontor)*).
- Set up a branch (see *Branch (Filial)*).
- Incorporate a subsidiary company (see *Subsidiary (Dotterbolag)*).
- Appoint an agent, a distributor, or a franchisee (see *Agent, Distributor, or Franchisee (Agent, Återförsäljare, Franchisetagare)*).
- Co-operate with a local partner and set up a joint venture (see *Joint Venture*).

To better understand the reasons a foreign company might opt to establish a branch or a representative office versus a subsidiary, see *Alternatives to a Representative Office or a Branch*.

For an overview of the key issues in establishing a business in Sweden, including an introduction to the legal system, the available business vehicles and their applicable formalities, see *Country Q&A, Establishing a Business in Sweden*.

Representative Office (Representationskontor)

What Is a Representative Office?

The general rule is that a foreign company wishing to conduct business activities in Sweden must register a branch, unless the business activities are conducted through a subsidiary or an agency (Section 2, *Act on Foreign Branch Offices (Lag om utländska filialer m.m.) (SFS 1992:160)*).

A foreign company may, however, be exempt from the requirement to register a branch in the event that the planned business activities:

- Are not extensive in nature.
- Will not generate any income.
- Will not be performed on a permanent basis.

Foreign companies tend to opt for a representative office when their proposed activities in Sweden will be performed on a temporary basis and will not generate any income. For example, a foreign company with no establishment in Sweden could employ an individual (or several individuals) to carry out prospecting, marketing, and advertising activities during a limited period of time (such as a maximum period of six months or up to a year).

A representative office of a foreign company generally has no authority to exercise a commercial activity on the foreign company's behalf. Unlike a branch, a representative office is not a recognised legal entity under Swedish law. In Sweden, a representative office is the optimal solution when the work is of a purely administrative nature, such as market research, provided that the work will not be substantial in nature and will not be performed on a permanent basis.

For the differences between a representative office, a branch, and a subsidiary, see *Differences between a Branch, a Representative Office, and a Subsidiary*.

Requirements for Establishing a Representative Office in Sweden

The general rule is that a foreign company conducting business activities in Sweden must register a branch, unless the business activities are performed through a subsidiary or an agency. In the event of uncertainties, the foreign company can submit an application for an exemption from the requirement to register a branch. The application should be sent to the Swedish Companies Registration Offices (SCRO).

There is no form for the application. The foreign company will need to write its own exemption application which should describe the planned activities in Sweden, including the following information:

- Type of activity.
- How the business in Sweden will be conducted.
- Turnover.
- Duration.

The SCRO will then examine the application and decide whether the business activities are subject to the requirement to register a branch at all, and if so, whether there are reasons to grant an exemption.

Should an exemption be granted, the foreign company can establish a representative office.

To establish a representative office in Sweden with employees, the foreign company must register the representative office with the Swedish Tax Agency using the Swedish Tax Agency's e-service "Registration of foreign companies in Sweden" or, alternatively, a standard form (Form SKV 4632) ensuring, among other things, the payment of mandatory employer contributions. The following information is required in the form:

- The foreign company's type.
- The foreign company's name, address, and registration number in its home country.
- A copy of a certificate of registration (appended).
- Information on applicable financial year, including the date of the closing of the books.
- The foreign company's address in Sweden.
- The foreign company's contact person in Sweden.
- The foreign company's legal owner.
- The foreign company's contact person in its home country.
- The sector or industry in which the foreign company operates.
- Home country value added tax (VAT) registration number.
- The start date for activities subject to VAT, and the type of VAT registrations.
- If the foreign company imports or exports goods from or to non-EU countries, that it has registered with customs.
- The foreign company's tax liability to Sweden.
- Estimated sales that do not give a right to deduct input VAT (for example, education services, gaming or lottery fees, banking services and healthcare).
- Estimated number of employees and estimated total payroll expenditure for the fiscal year.
- Date of first salary payment and estimated date of last salary payment.
- A certificate that the company has no tax debts in the home country (appended).
- The reason for registration in Sweden, including a description of the business operations in Sweden.

Foreign Investment Regulation

The establishment of a representative office in Sweden is not subject to any foreign direct investment (FDI) approvals.

Filing and Disclosure Requirements

A foreign company conducting business activities in Sweden may, depending on the circumstances, be subject to book-keeping obligations under the *Book-keeping Act (Bokföringslag) (SFS 1999:1078)*, and must in any case ensure that it is possible for the Swedish Tax Agency to check that the correct information has been submitted to the agency by the representative office.

Representative offices which constitute permanent establishments must submit an income tax return to the Swedish Tax Agency. Representative offices which do not constitute permanent establishments may also need to submit an income tax return (for example, due to the business activities performed or the property owned).

Companies registered for VAT in Sweden must declare VAT in a VAT return. Moreover, most companies with employed staff need to pay employer's contributions. These contributions must be declared and paid on a monthly basis.

Executing Contracts

A representative office of a foreign company does not generally have authority to exercise a commercial activity on behalf of the foreign company. This is because the representative office is not recognised as a legal entity and as a result may not execute contracts in its own name. Instead, the representative office relies on the foreign company to enter into and execute an agreement.

To enter into and execute a contract in its own name, it is necessary for the foreign company to establish a branch (see [Requirements for Establishing a Branch in Sweden](#)).

Employment Matters

If an individual employed by a Swedish representative office of a foreign company is residing in Sweden and performs their work from Sweden most of the time, they are covered by mandatory Swedish employment legislation, namely the [Swedish Employment Protection Act \(Lag om anställningsskydd\) \(SFS 1982:80\)](#).

An individual posted to a Swedish representative office on a short-term basis typically remains covered by mandatory employment legislation in the country from which they are posted. During the posting, the foreign company must additionally observe the "core" employment terms and conditions of the Swedish employment legislation.

For a Q&A guide to employment and employee benefits law in Sweden, see [Country Q&A, Employment and Employee Benefits in Sweden: Overview](#).

Closing a Representative Office

When the foreign company no longer wishes to operate in Sweden, it must deregister from the tax register. Deregistration must be done for F-tax, VAT and employer's contributions via the Swedish Tax Agency using the form SKV 4639 for changes.

Branch (Filial)

A foreign company will often set up a branch when the company's activities in Sweden are expected to be performed on a permanent basis and are expected to generate income.

What is a Branch?

A branch is a foreign company's divisional office in Sweden. A branch has its own administration and management in Sweden and its own Swedish corporate identity number. It is, however, part of the foreign company and, unlike a subsidiary, is not a separate legal entity. Consequently:

- A branch has no independent capital, which means that no share capital is required to set up a branch in Sweden.

- The assets of a branch are part of the foreign company's total assets.
- The foreign company is liable without limitation for the obligations of its Swedish branch.

Swedish branches of foreign companies are subject to Swedish law and need to operate in compliance with applicable Swedish legislation, in particular the Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160).

A foreign company may only have one branch in Sweden.

For the differences between a branch and a subsidiary, see [Alternatives to a Representative Office or a Branch](#).

Requirements for Establishing a Branch in Sweden

The requirements for setting up and registering a branch in Sweden are laid down in the Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160) and the Regulation on Foreign Branch Offices (*Förordning om utländska filialer m.m.*) (SFS 1992:308).

Requirements for Establishing a Branch

To be able to set up a branch in Sweden, a foreign company must:

- Make a resolution to set up a branch.
- Resolve on a business name for the branch. The name should include the word "filial", which means branch in Swedish (Section 5 Paragraph 1, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)).
- Appoint a managing director responsible for running the operations and business activities of the branch (Section 8, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)). The managing director must be resident within the European Economic Area (EEA), otherwise the branch must apply for an exemption from the residency requirement (Section 9 Paragraph 1, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)). The foreign company will also need to appoint a person authorised to receive service of process if the managing director is not resident within the EEA (Section 10 Paragraph 2, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)).
- Provide the managing director with a special power of attorney, which evidences that the managing director is authorised to act on behalf of the foreign company in all matters regarding its business operations in Sweden, accept process on behalf of the foreign company and speak and act for the foreign company (Section 10 Paragraph 1, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)).
- Consider whether the branch must have an auditor. In most cases branches do not need to appoint an auditor (Section 12, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)). However, a branch must appoint an auditor if it has met at least two of the following requirements in the last two financial years:
 - it has more than three employees (as an average);
 - it has a balance sheet total of more than SEK1.5 million; or
 - it has a net turnover of more than SEK3 million.

- Apply for registration of the branch with the SCRO. The application is subject to the payment of a fee of SEK2,500 (Section 15, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)).
- The foreign company may also need to register information regarding beneficial ownership in the SCRO's register for beneficial owners.
- Under Swedish law, a beneficial owner is a natural person who, alone or jointly with one or more persons or entities, ultimately owns or controls a company (Sections 3 and 4, *Swedish Act on Beneficial Owner (Lag om registrering av verkliga huvudmän)* (SFS 2017:631)). According to the Swedish Act on Beneficial Owners (*Lag om registrering av verkliga huvudmän*) (SFS 2017:631), it is assumed that a natural person ultimately controls a company if, alternatively, the natural person:
 - controls more than 25 % of the total number of votes in the company through shares, voting rights or ownership interest;
 - is entitled to appoint or remove more than half of the members of the company's board of directors; and
 - can exercise control in the manner described in the previous two paragraphs as a result of an agreement or a provision in the articles of association or a comparable document.
- Once finalised, the application form must be signed by the managing director of the branch (using blue ink) and be submitted in original to the SCRO (together with the documents listed below; see *Documents Required for Registering a Branch with the SCRO*) (Section 1, Regulation on Foreign Branch Offices (*Förordning om utländska filialer m.m.*) (SFS 1992:308)).
- The processing time for applications for registering a branch is normally about one or two weeks. The SCRO will, among other things, examine the power of attorney of the managing director and the proposed business activities of the branch. It will also decide whether the suggested business name of the branch can be approved. Following registration, the branch will receive a Swedish corporate identification number and a certificate of registration.

Documents Required for Registering a Branch with the SCRO

Together with the application for registration of a branch at the SCRO, the foreign company must submit the following documents:

- A certificate (original or certified copy) showing that the foreign company is duly incorporated and registered, in original language and with translation into Swedish (the certificate must not be older than six months).
- A certificate (original or certified copy) proving that the foreign company has not been declared bankrupt, in original language and with translation into Swedish (the certificate must be issued by the registration authority of the jurisdiction where the foreign company is registered and must not be older than six months).
- Current articles of association or similar document for the foreign company, in original language and with translation into Swedish.
- The annual accounts of the foreign company, covering the two most recent financial years, translated into Swedish.
- A power of attorney for the managing director of the branch, in original or certified copy.
- A document verifying the authorisation for the managing director to sign on behalf of the foreign company, such as a registration certificate or a certificate from a notary public, in original language and with translation into Swedish

(the certificate must include information on the registered board of directors of the foreign company and information concerning their signatory powers, and the certificate must not be older than six months).

- A copy of the passport of the managing director, provided that the managing director is not a person who is registered in the Swedish population register (the copy must contain name, date of birth, validity dates, signature, and photo).

(Section 4, Regulation on Foreign Branch Offices (*Förordning om utländska filialer m.m.*) (SFS 1992:308).)

Business Activities of the Branch

A Swedish branch of a foreign company may conduct the foreign company's business activities. For example, a foreign company within retail may set up a branch to open a store in Sweden.

The Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160) does not impose any limitations as to what business activities a branch in Sweden is permitted to carry out. The business activities must, however, comply with Swedish law as the branch and its operations will be subject to Swedish law.

In addition to the Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160), activities carried out by a branch are also subject to the provisions of any other Swedish law applicable to the carrying out of the business activity conducted by the branch in Sweden. This means, for example, that a foreign branch will need authorisation to conduct certain business activities where such authorisation is required under applicable Swedish law (business activities in the hotel, restaurant, and catering sector are examples of business activities which may require separate authorisations under Swedish law).

Foreign banks or financial institutions planning to set up a branch in Sweden must obtain authorisation from the Swedish Financial Supervisory Authority, in addition to registering with the SCRO.

In addition, the Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160) provides that the right of certain foreign companies to conduct business activities in Sweden is governed by separate legislation (for example with respect to credit institutions, securities companies, foreign insurers, and undertakings which provide payment services) (Section 3, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)).

Foreign Investment Regulation

The Swedish legislation on foreign branches does not contain any rules on foreign direct investments (FDI).

The Swedish legislator has proposed new rules on FDIs to adapt and supplement necessary provisions for the implementation of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union. The proposed rules will, however, not apply to investments in Swedish branches, as branches are not considered companies established and registered in Sweden (as a branch is part of the foreign legal entity and constitutes its representative office in Sweden).

Filing and Disclosure Requirements

A branch is subject to the filing and disclosure requirements laid down in the Swedish legislation on accounting and book-keeping, namely the *Annual Accounts Act (Årsredovisningslag) (SFS 1995:1554)* and the *Book-keeping Act (Bokföringslag) (SFS 1999:1078)*.

Swedish accounting legislation includes an obligation for the branch to record, on an ongoing basis, all business transactions and to close the annual accounts with an annual report (*årsredovisning*) or an annual financial statement (*årsbokslut*) (Section 14, Act

on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160) and Chapter 6, Sections 1, 2, and 3a, Book-keeping Act (*Bokföringslag*) (SFS 1999:1078)). The annual financial statements are prepared after the end of a financial year and contain a summary of the current accounts during the year. The purpose of the annual financial statements is to provide an overall picture of the branch's performance and situation at the end of the financial year. An annual report is more comprehensive than the annual financial statements. The annual report consists of the balance sheet and income statement, together with accompanying notes, the management report, and the audit report (Chapter 6, Section 2, Book-keeping Act (*Bokföringslag*) (SFS 1999:1078)).

The managing director of the branch must file at the SCRO:

- The annual report (annual accounts) of the branch.
- The annual report (annual accounts) of the foreign company.

Filing must be carried out annually within three months of the day on which the reports (of the branch and of the foreign company) are presented for approval to the shareholders of the foreign company, or not later than seven months from the end of the financial year of the branch (Section 13, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)). Whether the branch needs to file its own annual report or not depends on whether the foreign company is established within the EEA. The obligation to file the annual report of the branch at the SCRO does not apply in the event that the foreign company is subject to the legislation of a state within the EEA and the foreign company has a legal form comparable to a limited liability company (Section 13, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)). If the foreign company's annual report is not public in the country of origin, an exception applies: the foreign company's annual report does not need to be filed with the SCRO, instead, the branch will need to file a statement in which it certifies that the foreign company's annual report is not a public document in the country of origin. The document must be translated into Swedish (Section 13, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)).

The branch must also file Swedish tax returns with the Swedish Tax Agency.

Executing Contracts

The managing director of the branch can enter into and execute contracts on behalf of the branch. Such contracts will, however, be considered to be entered by the foreign company, since the branch itself is not a separate legal entity. The letterhead, invoices, order forms, and websites of the branch must contain certain information about the foreign company, including the legal form, registered office, and registration number of the foreign company, to enable the identification of the foreign company (Section 5a, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)).

Employment Matters

If the branch employs people in Sweden it will need to register as an employer. The branch will further be obligated to make employer contributions and deduct tax from the salaries and benefits paid to its employees.

If, however, the branch does not employ people in Sweden and, instead, brings employees to Sweden from the country in which the foreign company is established, the employees may be considered to be posted and will, consequently, belong to the foreign country's social security system. In this case the branch may, depending on the circumstances, be exempt from the requirement to make employer's social security contributions for the employees in Sweden.

Swedish labour legislation contains various rules which aim at protecting employees in Sweden. For example, the *Swedish Employment Protection Act* (*Lag om anställningsskydd*) (SFS 1982:80) sets out rules which make it difficult for the employer to terminate an employee's employment if the employee holds a permanent employment (Section 7, Swedish Employment Protection Act (*Lag om anställningsskydd*) (SFS 1982:80)). Employees can, however, be employed on a temporary basis

(according to a fixed-term contract) and a permanent employment can be initiated with a probationary period of a maximum of six months (Sections 5 and 6, Swedish Employment Protection Act (*Lag om anställningsskydd*) (SFS 1982:80)).

There is no requirement for an employment contract to be entered in writing for the contract to be valid under Swedish law. However, the employer must provide the employee with written information about the terms of employment. This information can be provided in the form of a written employment contract (Section 6c, Swedish Employment Protection Act (*Lag om anställningsskydd*) (SFS 1982:80)). It is recommended to regulate the terms of employment in written form to avoid ambiguities and disputes about the terms agreed. An employment contract will be considered invalid to the extent that it revokes or limits employee rights under mandatory Swedish labour legislation (Section 2a, Swedish Employment Protection Act (*Lag om anställningsskydd*) (SFS 1982:80)).

For a Q&A guide to employment and employee benefits law in Sweden, see [Country Q&A, Employment and Employee Benefits in Sweden: Overview](#).

Closing a Branch

The branch must be cancelled (deregistered) from the SCRO in the following cases:

- Following the foreign company's decision to close the branch.
- Should the foreign company enter into liquidation.
- Should the operations of the foreign company be terminated for some other reasons.

(Section 18, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160).)

An application for deregistration must be filed with the SCRO. Following the application, the SCRO removes the branch from its register. The application must be filed by the managing director of the branch or by an authorised representative of the foreign company (Section 19, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)). The SCRO provides a deregistration form on its website.

The obligation of the branch to keep records of its business transactions applies until the day the branch is deregistered by the SCRO. This means that the final financial year of the branch may be shorter than 12 months (provided that deregistration occurs before the end of the financial year).

Accounting Books and Records

A branch registered in Sweden is subject to accounting obligations in Sweden for the part of its business conducted in the country.

The branch must keep its own accounts, which must be separate from the foreign company's other accounts. The accounts must be kept in accordance with the Book-keeping Act (*Bokföringslag*) (SFS 1999:1078) and generally accepted accounting principles. A branch is essentially subject to the same accounting requirements as equivalent Swedish companies (Section 14, Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160)). This means, for example, that the requirements on ongoing bookkeeping, system documentation, and filing are the same as for Swedish companies.

A branch must close the current accounts with either an annual report or an annual financial statement. As a general rule, a branch must close its current accounts in the same way as a Swedish company of the same type. This means that the accounts must be closed with an annual report. However, certain branches of EEA-based companies are exempt from the requirement to

prepare annual reports and may, instead, close their current accounts with an annual financial statement (Chapter 6, Sections 1 and 3a, Book-keeping Act (*Bokföringslag*) (SFS 1999:1078)).

Alternatives to a Representative Office or a Branch

Foreign companies may consider other options for establishing a business presence in Sweden.

Subsidiary (Dotterbolag)

A foreign company may choose to incorporate a subsidiary company in Sweden. The main types of company in Sweden that have limited liability for their share or equity holders are:

- Private limited liability company (*privat aktiebolag*).
- Public limited liability company (*publikt aktiebolag*).
- Limited liability partnership (*kommanditbolag*).

The limited liability company (both public or private) is the preferred type of company as a subsidiary for a foreign company.

For:

- An overview of the key corporate features of different trading vehicles that are commonly used when setting up a business in Sweden, see [Practice Note, Trading Vehicles: Overview \(Sweden\)](#).
- The differences between a branch or a representative office and a subsidiary, see [Alternatives to a Representative Office or a Branch](#).

Agent, Distributor, or Franchisee (Agent, Återförsäljare, Franchisetagare)

When entering a new jurisdiction, a company may need to choose between investing in increased production and sales capacity or contracting with third parties for production or distribution (or a combination of the two).

A foreign company may consider appointing an agent, a distributor, or a franchisee. In these cases, the foreign company does not have a legal presence in Sweden and most of the legal risks are borne by the agent, distributor, or franchisee. This is a means for the foreign company to shift costs and risk to a partner, in return for a share of any profits that may arise. Under Swedish law, special rules apply to agents (see the [Commercial Agency Act \(*Lag om handelsagentur*\) \(SFS 1991:351\)](#)). In Sweden there are no specific legal rules governing the relationship between the distributor and the supplier. The same applies when it comes to franchises. There are no legal rules in Sweden that directly regulate the relationship between the franchisor and the franchisee, except for the [Act on the Franchisor's Obligation to Provide Information \(*Lag om franchisegivares informationsskyldighet*\) \(SFS 2006:484\)](#). The specifics of agents, distributors, and franchisees are, however, outside the scope of this Practice Note.

Joint Venture

The foreign company may also consider co-operating with a local partner and set up a joint venture. The most common forms of joint ventures in Sweden are joint venture companies, which involve the creation of a new legal entity, usually a limited liability company.

Differences between a Branch, a Representative Office, and a Subsidiary

The main differences between a branch, a representative office, and a subsidiary can be summarised as follows:

- **Liability of the shareholders.** The liability of a foreign company as the shareholder of a Swedish subsidiary formed as a limited liability company is limited, whereas the liability of such company for a Swedish representative office or a branch is unlimited. As a representative office and a branch have no separate legal personality, the foreign company is fully liable for all debts and obligations of a Swedish representative office or branch.
- **Setting up and maintaining costs.** Setting up and maintaining a representative office or a branch may be less expensive and time consuming than setting up a Swedish subsidiary in the form of a limited liability company. For example, no contribution of share capital needs to be made when setting up a representative office or a branch. Moreover, limited liability companies need to adopt articles of association and appoint a board of directors consisting of at least one director and one deputy director. Branches only need to appoint a managing director who is competent to act on behalf of the branch (and the foreign company). No local management needs to be appointed for representative offices.

Both limited liability companies and branches are subject to essentially the same accounting and taxation requirements. For example, both are subject to:

- The *Book-keeping Act* (*Bokföringslag*) (SFS 1999:1078).
- The *Annual Accounts Act* (*Årsredovisningslag*) (SFS 1995:1554).
- The *Income Tax Act* (*Inkomstskattelag*) (SFS 1999:1229).

Also, the income of a branch may, depending on the circumstances, be subject to taxation both in the foreign company's country of establishment and in Sweden and, if the foreign company chooses to establish a Swedish subsidiary, all business transactions between the subsidiary and the foreign company must be made at arm's length, as the subsidiary and the foreign company are separate legal entities. Also, a representative office may, depending on the circumstances, be subject to obligations on accounting and book-keeping under Swedish law, and a representative office will also need to file Swedish tax returns with the Swedish Tax Agency.

It is generally less expensive and easier for a foreign company to establish a representative office or a branch than a subsidiary in the form of a limited liability company. The foreign company will, however, be liable for all activities of the representative office or branch, while the liability for a Swedish subsidiary in practice is limited to the share contributed. Whether it is preferable for a foreign company to enter the Swedish market by establishing a representative office, or a branch, or a Swedish subsidiary in the form of a limited liability company must therefore be assessed with due consideration to the circumstances.

Impact of Brexit on the Recognition of UK Entities in Sweden

A "third country" for the purposes of EU legislation is a jurisdiction that is not part of the EEA. Following the departure of the UK from the EU, UK has become a third country for the purposes of EU legislation. This means that UK companies can no longer invoke the freedom of establishment in the EU and are no longer automatically recognised as legal entities in member states. Recognition is now left to national law in each member state.

This entails, among other things, that a UK-based company cannot open a representative office in Sweden without registering a branch or establishing a subsidiary, unless the UK company is exempt from the requirement to register a branch considering the

nature, duration, and scope of the planned business activities of the representative office. The Act on Foreign Branch Offices (*Lag om utländska filialer m.m.*) (SFS 1992:160) lays down a requirement for foreign, non-EEA companies, conducting business activities in Sweden on a permanent basis, to operate through a registered branch (such activities can also be conducted through agencies or subsidiaries). The requirement does not apply where the business activities are subject to the provisions regarding free movement of goods and services in the *Treaty on the Functioning of the European Union* or comparable provisions in the Agreement on the EEA.

Branches of UK companies are subject to the rules for branches of third country companies. This means, among other things, that such branches need to take into account the residency requirement, namely that the managing director of the branch must be resident within the EEA (otherwise the branch must apply for an exemption from the residency requirement and appoint a person authorised to receive service of process). Branches of UK companies also need to file annual accounts for the branch, a requirement which they were previously exempted from.

The EU and the UK have agreed that imports and exports to the UK are treated as imports and exports to a non-EU country. Trade with the UK is therefore now considered export and essentially the same VAT rules apply to the UK as to other non-EU countries. When it comes to trade in services, the agreement provides that the EU countries and the UK will treat services sold from EU countries and the UK, respectively, in the same manner as domestic services. However, the mutual recognition of services no longer applies. Considering this, UK companies wishing to enter the Swedish market may benefit from establishing a market presence, either by setting up a branch or a subsidiary.

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