



Real Estate Investment in Sweden

THE LEGAL PERSPECTIVE

Introduction

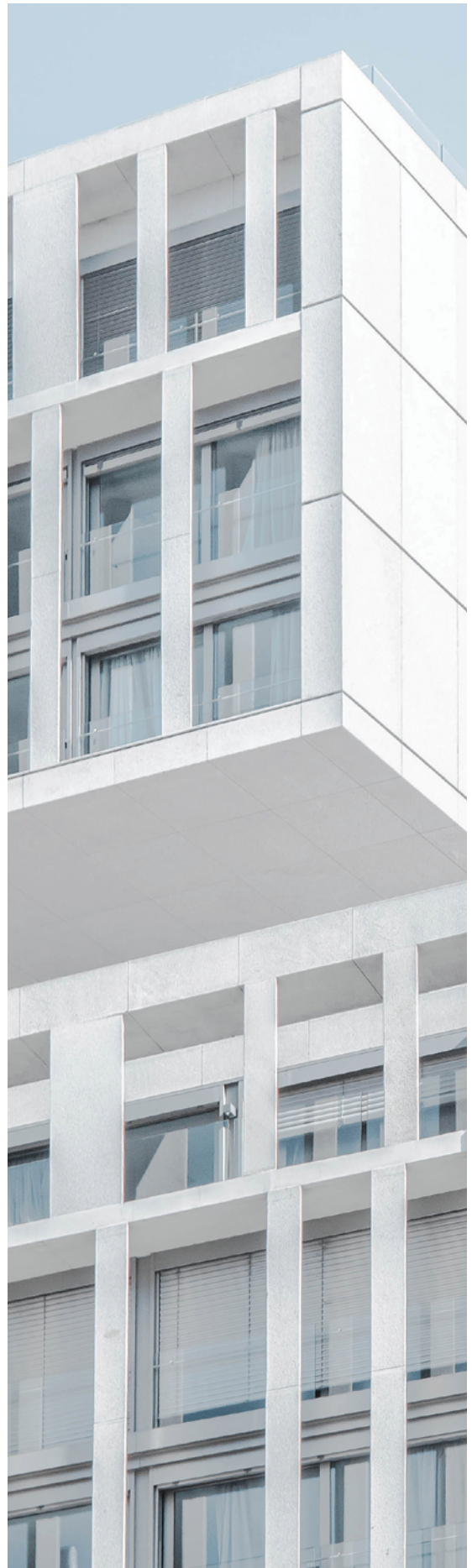
Sweden has for some years now experienced an increase in foreign investment in the real estate sector. Interest rates at historically low levels combined with available finance have meant that Sweden has proven itself to be an attractive playing field for international investors, particularly with regard to international retailers, who view Stockholm, Gothenburg and Malmö as the most attractive Nordic locations.

From a legal perspective, Sweden can provide a non-discriminatory climate with reliable sources of property information through the Land Registry (*Fastighetsregistret*), as well as a stable set of laws regulating the real estate market. A well-established market practice similar to international standards also makes transactional work easy for a foreign investor.

Through being a part of DLA Piper, with one of the largest and most reputable global real estate

practices, our Swedish office based in Stockholm with some 80 years' of experience and full-service offering, is able to represent international investors across all real estate matters on a daily basis. The Swedish team is widely regarded as a comprehensive practice. The team is passionate about providing dedicated and commercially tailored advice in all real estate matters and transactions.

This document is intended to give a brief overview of the relevant aspects of real estate law which a commercial real estate investor should consider. Bearing in mind, however, that each investment is unique, there is no such thing as an exhaustive guide to real estate law. Our Swedish team is at hand to provide further advice with reliable and quality service, which is the trademark of the DLA Piper real estate practice.



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1. Ownership of real estate

1.1 Full ownership

The only form of complete and absolute ownership of a property in Sweden is freehold ownership. As a general rule, all constituent parts of the property (fixtures) are included in the ownership, including buildings and underground structures, unless someone other than the owner of the land has placed the object in question onto it. Mineral rights are not included in the ownership of the property. Ownership of property and questions relating thereto are governed by the Swedish Land Code (*jordabalken*). Ownership can be acquired by one or many persons, companies and/or other legal entities, individually or by co-ownership.

1.2 Site-leaseholds

A property may also be held by a site-leasehold (*tomträtt*), a form of leasehold which is common in urban areas. A site-leasehold may only be granted for a property owned by the state, a municipality or other public body. Site-leaseholds are in principle granted for an indefinite period of time and may only be terminated in very specific situations. In return, the site-leaseholder pays a fixed annual fee which can only be renegotiated every ten years or more. A site-leaseholder is therefore considered to be in a similar legal position to a freehold owner of the property. Site-leaseholds may be transferred and a site-leaseholder can also mortgage the property.

1.3 Housing cooperatives

Around 20% of the people living in Sweden live in so-called housing cooperatives (*bostadsrätt(er)*). A housing cooperative is an economic association, its purpose being to convey occupancy rights in residential or commercial properties. The members of the housing cooperative are members of the economic association and are entitled to a share in the association, corresponding to the size of the apartment or commercial space to which the member holds a special right. The right associated with membership of a housing cooperative is not considered real property, although the rules of mortgaging are quite similar.

1.4 Restrictions

The use of a real property may be limited by public laws and decrees (e.g. development plans, environmental rules, rules regarding the preservation of monuments, and the right to be protected against emissions).

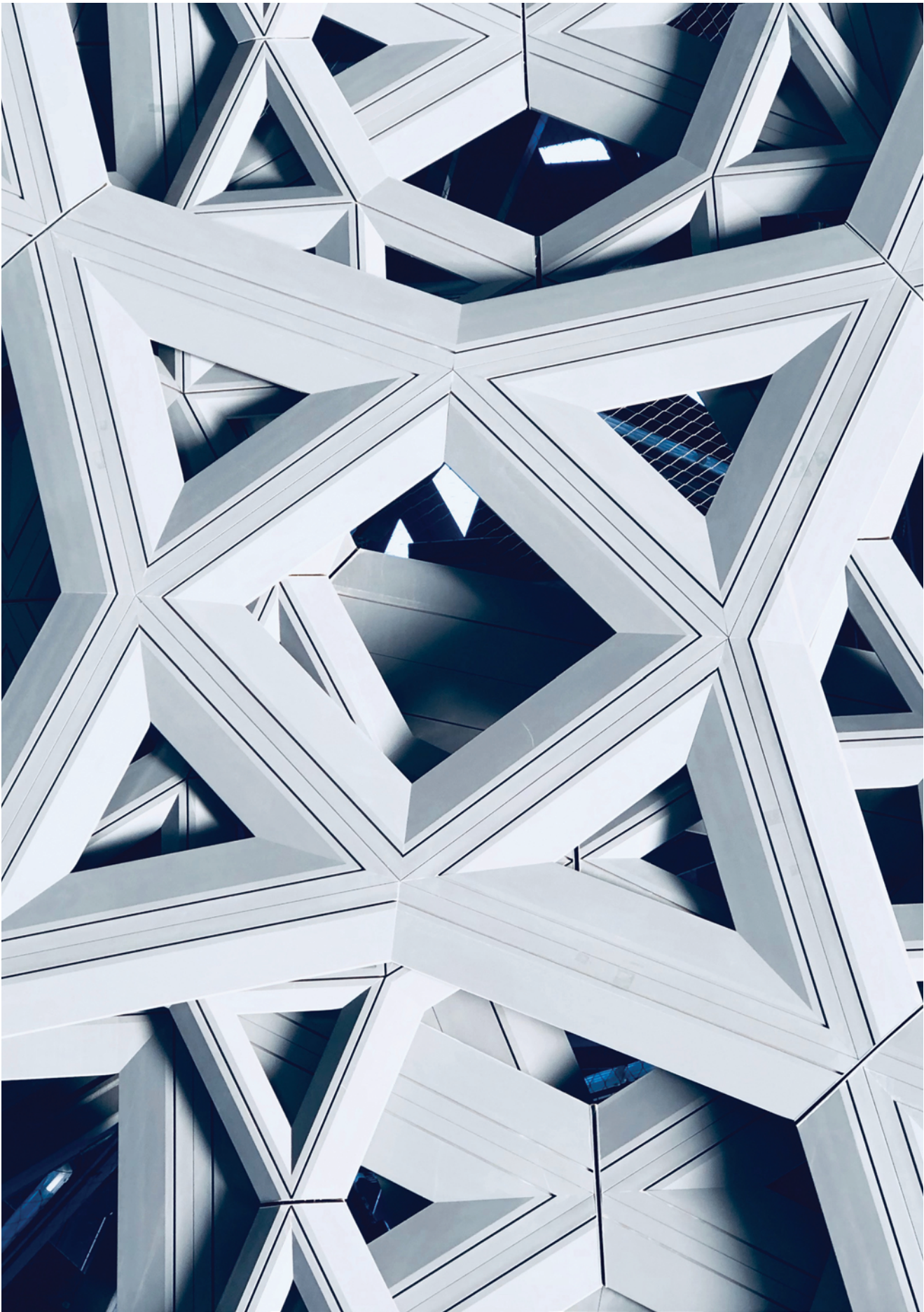
There are no restrictions on foreign ownership of real estate, other than such restrictions which may apply to national investors.

Agricultural real property may require a public permit authorizing its transfer.

Expropriation of a real property is governed both by the Instrument of Government (*Regeringsformen*) and the Expropriation Act (*expropriationslagen*). As a general rule, expropriation may only be carried out if necessary to satisfy a compelling public interest. A right of compensation is guaranteed.

There are also restrictions, similar to those of expropriation, in connection with larger developments where detailed development plans may restrict the use of part of a property for the benefit of the public and, in some cases, include a right for the municipality or a third party to demand the transfer of such part of the property.

A type of restriction to ownership of a property is the Swedish principle of the Right of Public Access (*allmansrätten*). The principle, which is generally exercised in rural parts of the country rather than in urban areas, is constitutionally protected and aims to give the public access to nature.



2. Acquisition of ownership

2.1 Formal requirements

The transfer of property is generally governed by the Swedish Land Code (*Jordabalken*). As a formal requirement, any agreement for the transfer of property must be made in writing. There is no formal demand for a notarial deed, which means that anyone can draft the contract. However, in order for the contract to be valid, the contract must:

- identify the property;
- identify the buyer and the seller;
- contain a clear statement of the seller's intention to sell the property;
- contain the sale price; and
- be signed by both parties.

If the seller's spouse is not signing as a co-owner, written consent from the spouse is needed. If the contract does not meet the formal requirements, the contract is void and there is no remedy. In addition to the contract, it is customary that the parties issue a deed of purchase (*köpebrev*). The deed of purchase is primarily used for registration of the title (see below) and therefore, in general, only includes the conditions set out above. The deed of purchase must meet the same formal requirements as the purchase contract. If the transfer of a property is conditioned upon a certain event or condition in the purchase contract, such provision must be repeated in the deed of purchase in order to remain valid. The seller's signature on the deed of purchase must be witnessed by two people. The same requirements for

validity in relation to the purchase contract are applicable to the deed of purchase.

In general, transfers of site-leaseholds are treated in the same way as freeholds.

2.2 Registration

The buyer must file an application for registration of ownership (*lagfartsansökan*) at the Land Registry (*Fastighetsregistret*) within three months of the purchase in order to obtain a certificate of registration of title. The purchase agreement or the deed of purchase must be attached to the application. Since the registration process is public, it is common to only attach the deed of purchase instead of the entire purchase agreement. The buyer is considered to be the rightful owner of the property as soon as the transfer has been registered. Since the deed of purchase must contain the purchase price, this will be made public when the transfer has been registered. The government guarantees the accuracy of the Land Registry. Hence, no title insurance is needed and, because of this, title insurance does not exist in Sweden.

2.3 Asset deals

Investment in commercial real estate in Sweden is made either as a direct investment/asset deal or as an indirect investment/share deal, where the real estate is the asset of a limited liability company, or a trading or limited partnership.

The buyer generally carries out due diligence before the acquisition, typically after signing a letter of intent or a similar pre-contractual

agreement, providing the buyer a period of exclusivity. Bidding contests are also frequent, with several potential buyers carrying out limited investigations of the real estate and, where applicable, the company owning the real estate before submitting their bids. Both the buyer and the seller are normally assisted by professional legal, financial, commercial and technical advisors.

Pre-contractual arrangements include non-disclosure agreements, covering negotiations and the due diligence process. Letters of intent or term sheets are commonly used to establish the commercial terms of the intended purchase. The documents usually contain an explicit statement describing which provisions are legally binding in the letter of intent/term sheet. Binding provisions usually include confidentiality and exclusivity, while material terms are subject to due diligence or not binding at all. In Sweden, options to purchase real estate do not fulfil formal requirements, and therefore are not binding.

The conclusion of the sale and purchase agreement is often subject to the outcome of the buyer's due diligence. The buyer's due diligence usually covers all legal aspects, such as title to property, easements, agreements with neighboring owners, environmental aspects, zoning law, building law, previous contracts, lease agreements etc. It is worth noting that in Sweden information is more easily accessible via official records than might normally be the case in Central and Eastern Europe. For example,

all real estate is registered at the Land Registry kept by the Swedish Mapping, Cadastral and Land Registration Authority (*Lantmäteriet*). The Land Registry contains details of, among other things, owners (present and former), mortgages, tax assessment value, registered easements etc. In principle, it is also possible to obtain information about the purchase price paid by the present and former owners of the real estate. This easily accessible information facilitates a secure, reliable, timely and cost-efficient part of the due diligence process.

It is recommended that the buyer uses a specialist for particular environmental aspects and environmental investigations and technical consultants for examination of the state of existing buildings and any permissible future development. The extent of the due diligence depends on the specific transaction. However, technical and legal due diligence is normally conducted in relation to title, building permits, leases and other contracts relating to the real estate. In the case of a direct transfer of real estate (asset deal), no notarization or similar requirements are necessary under Swedish law to complete the transfer. The buyer becomes the recognized owner according to civil law once the terms and conditions of the transaction set out in the sale and purchase agreement are met, although the buyer must also apply to the Swedish Land Registry to register legal title to the real estate. This triggers a transfer tax (stamp duty). The stamp duty is 1.5% unless the purchaser is a legal entity, in which case the stamp duty will be 4.25% (with some exceptions, for instance housing cooperatives) of the transfer price or tax assessment value of the real estate, whichever is greater.

2.4 Share deals

Due to Swedish tax regulations, most sellers prefer to sell shares in limited liability companies instead of conducting a straight asset deal. On the transfer of shares in a corporate entity no new registration is required since the ownership of the real property is unchanged and therefore no transfer tax is payable. The pre-contractual arrangements and due diligence process are the same as for an asset deal, with the addition of the due diligence of the target company including corporate, tax, employment, insurance, disputes and other historical matters as is usual with the acquisition of a company.

The content of the sale and purchase agreement is subject to negotiation and the parties are free to agree upon guarantees etc., for example in respect of the seller's liability for defects. There are of course essential elements which include the identity of the parties; the identity of the real estate and its official designation; the seller's declaration regarding the transfer; the date when the buyer will assume title and ownership; the purchase price and how payment is going to be made, including details of any down payments; insurance; conditions relating to the sharing of risks and benefits; the seller's representations and warranties; and approval from the County Administrative Board (*Länsstyrelsen*) where applicable.

In the absence of any specific agreement between the parties concerning the condition of the real estate, the seller may be liable to compensate the buyer (by means of a reduction in the purchase price) if the condition of the property proves to be different from what the buyer might reasonably have expected. In some cases the buyer may be

entitled to annul the purchase agreement. However, under Swedish law, a buyer of real estate has a far-reaching obligation to examine property prior to purchase. This is very important since a buyer may not claim compensation (a reduction in the purchase price) if the buyer ought to have detected the defects when conducting its due diligence. Claims must be made by the buyer within a reasonable time of detecting any defects or of the date it is deemed that the buyer ought to have detected the defects. Claims relating to the purchase of real estate are ultimately subject to a limitation period of ten years. In the case of commercial transactions it is common for the parties to agree to limit the seller's liability for defects.

Contrary to asset deals, options to purchase the shares in a property owning company are legally binding.

2.5 Transactions by means of cadastral procedures

While most real estate transactions in Sweden are made as direct transfers or through special purpose vehicles, it may in some cases also be possible to transfer whole or parts of a real property by means of cadastral procedures, such as reallocation (*fastighetsreglering*) and partitioning (*klyvning*). In recent years, Sweden has experienced an increase to some extent with regards to partitioning. The trend is apparent in the greater Stockholm area and the Öresund region. However, the method is not common in other parts of Sweden, mainly due to lower property values. The main benefits from structuring a transaction as a cadastral procedure is avoiding stamp duty. As this consequently leads to a loss in revenue for the Swedish government, the method is currently under investigation

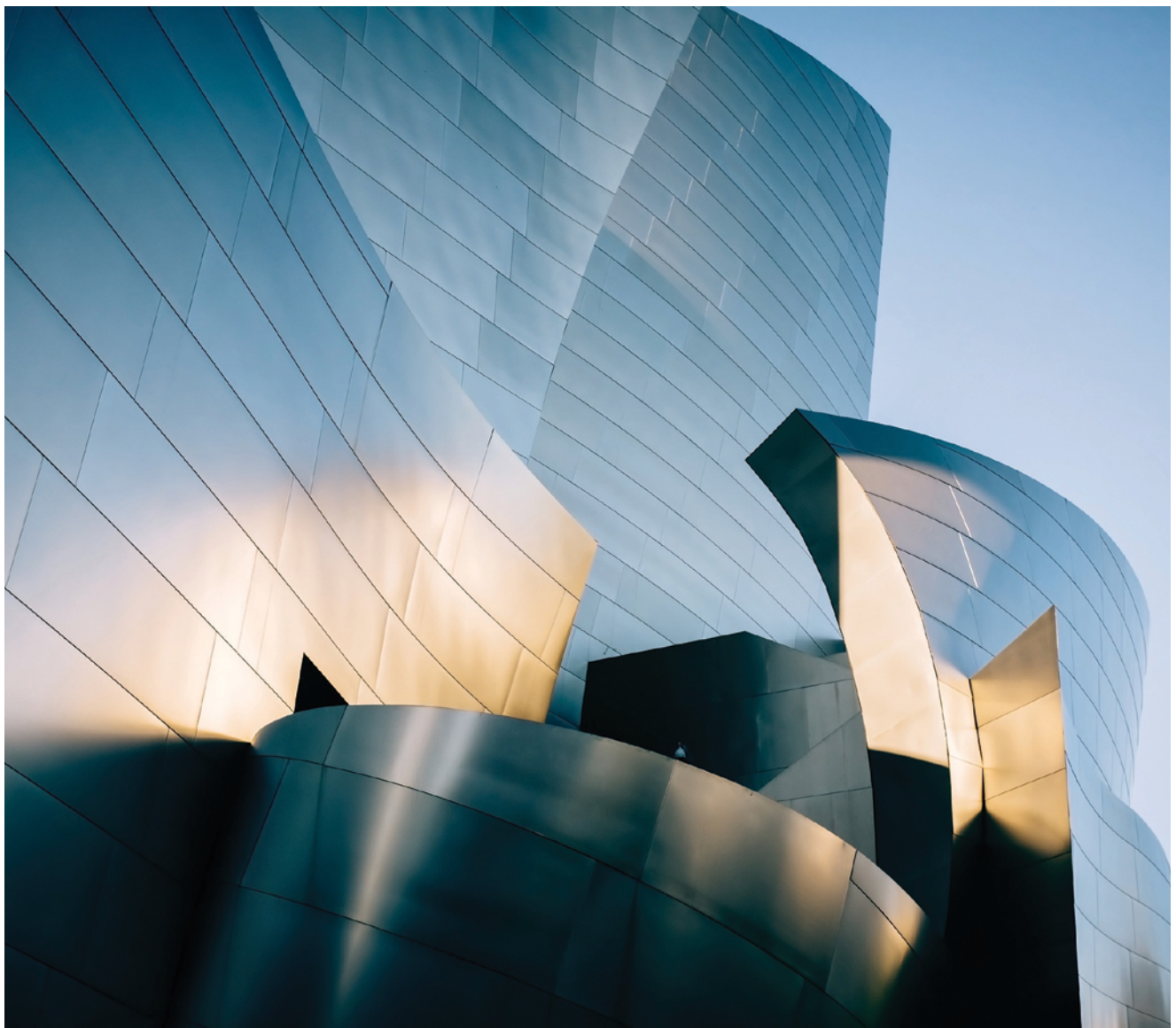
and it is possible that the laws regulating cadastral procedure, mainly the Swedish Land Parcelling Act (*fastighetsbildningslagen*) and the Swedish Stamp Duty Act (*stämpelskattelagen*), may be altered as a consequence thereof. It should be noted that cadastral procedures are often both time consuming and expensive and require specialist legal advice. However, for properties of a higher value, structuring a deal by means of a cadastral procedure can be a great method of saving stamp duty. In certain situations, a cadastral procedure may even be necessary, e.g. when creating a three-dimensional property,

which is common in larger building complexes comprising both retail and residential premises.

2.6 Public auctions

Property sale by public auction is usually an enforced sale due to bankruptcy or default of credit facilities. It may also be a way to dissolve joint ownership of a property. It is uncommon to have public auctions for a commercial property. A public auction is led by officers from the Enforcement Authority (*Kronofogdemyndigheten*) and the properties are assessed by evaluation specialists prior to the auction. Mortgagees

and other claim holders will be summoned to a meeting to set out the principles and terms for the auction. The parties usually agree upon a minimum purchase price to be accepted at the auction. Buying property at a public auction is associated with several risks compared to an ordinary purchase. The most evident risk is that the property is being sold as is and there are no representations or warranties from the seller. Furthermore, the risk of any damage to the property from the period between winning the auction and the day of taking possession lies with the buyer.



3. Other rights to property

3.1 Mortgages and charges

In Sweden, mortgages are created upon application to the Land Registry (*Fastighetsregistret*) from the owner of the real property, i.e. the title holder. There is a stamp duty of 2% (of the face value of the mortgage) for all new mortgages.

Registrations of mortgages in real property (*inteckning*) are created through mortgage certificates (*pantbrev*) which are available in both physical and electronic form and registered in the Mortgage Certificate Register (*pantbrevsregister*), which is only accessible to a limited number of parties, including banks. Priority between mortgages is decided with reference to the date each mortgage was registered at the Land Registry.

A new owner of a real property is entitled to use previously issued mortgage certificates as the certificates follow the real property, not the person or legal entity who issued it.

3.2 Easements

There are several ways in which a property may be encumbered under Swedish law by a third party, inter alia by establishing rights of way, specific rights of use (or prevention of use), easements, rights of electrical power etc. In order for easements to be valid against a bona fide purchaser of a real property, the easement needs to be entered at the Land Registry.

Many easements to a real property are created by means of contractual agreements between the owner of the real property and the holder of the right. However, it is also possible to create easements by way of a cadastral procedure under the Swedish Mapping, Cadastral and Land Registration Authority (*Lantmäteriet*). It is important to note that while contractual easements require a mutual understanding between the parties, a cadastral easement can, in some circumstances, be created against the will of the owner of the real property.

There are also other forms of perpetual rights to real property, such as right of cable (*ledningsrätt*) governed by the Utility Easements Act (*ledningsrättslagen*). Right of cable is a right granted to a party to draw cables, lines or pipes, for instance, through a property to which the party is not the owner. The Swedish Mapping, Cadastral and Land Registration Authority is the authority responsible for granting such rights, and the right is generally only awarded if it serves a public interest.

In the northern parts of Sweden, certain rights to land apply to the Sami population (*samer*). The rights of the Sami include the right to reindeer grazing as well as hunting and fishing, and the areas of land where such rights may be enforced are large. Although the rights of the Sami are under constant debate, it is important to keep in mind that the rights of the Sami are strong and that it is, to a certain extent, acknowledged by Swedish legislation.

3.3 Pre-emption rights

Mandatory pre-emption rights no longer apply in Sweden. It should be noted however, that a cooperative building society may have a right of pre-emption over certain real estate. A tenant of land may also have a right of pre-emption if the tenancy is in the form of a residential ground lease, or certain types of agricultural ground lease.

3.4 Options

It is important to note that as a general principle, options to sell or buy real property (through asset deals) are not valid under Swedish law. There are only a few minor exceptions to this principle. Conditions to prevent selling can be accepted in deeds of gifts, and have effect against a third party if such a condition is registered at the Land Registry. It is also possible in some situations for tenants to form and register a cooperative association entitling the cooperative association to make an offer to purchase the real property, should the owner of the real property, i.e. the landlord, wish to sell it.

3.5 Joint facilities

A joint facility (*gemensamhetsanläggning*) is an arrangement which grants an easement jointly to several properties. It may be a shared use of a road, sewage pipes, parking lots etc. and is created by way of a specific cadastral procedure. The costs of creating and maintaining a joint facility are borne by the participating properties in proportion to its use and benefit of the facility. Administration of the joint facility is often managed by a facility management association,

governed by the participating properties. The joint facility follows the transfer of a property.

3.6 Mining rights

In Sweden, mineral rights are not included in real property. Consequently, rights to property with regard to minerals can be granted to a third party under the Swedish Minerals Act (*minerallagen*). Such rights can be quite extensive and ultimately include expropriation.

Particularly in the northern parts of Sweden, the interest of mining is given a strong position in relation to

the right of ownership of a property. One example being the city of Kiruna, where the whole city is being moved in order to expand the mining of one of the world's largest resources of iron.

3.7 Coastal protection

Emanating from the right of public access, as guaranteed by the constitution, as well as a public interest to protect wildlife and nature in coastal areas, use of land up to 300 m from the shore is restricted in larger parts of Sweden. Consequently, the coastal area must be kept open, enabling the public

to exercise its right of public access, thus restricting the ownership of the property.

In many cases, coastal protection (*strandskydd*) results in the owner of the property being prohibited to develop their land, and dispensation from coastal protection is restrictive, unless the development is desirable from a public point of view. For these reasons, coastal protection has been constantly debated in recent times, particularly in relation to the right of ownership of properties.



4. Zoning and planning law

The main statute regulating planning of land in Sweden is the Planning and Building Act (*plan-och bygglagen*), which regulates both planning and building permits. Planning is generally carried out by the municipalities by means of a detailed development plan (*detaljplan*). The principle of local self-government is strong in Sweden with regard to planning of land and, although planning is regulated by the Planning and Building Act, it is ultimately a municipal privilege to decide on the use of land. This is important to keep in mind, and advice with regard to new establishments is as much about political strategy as it is about legal advice.

A detailed development plan sets out the designated use of the land, may it be residential, industrial or something else. It also regulates the volume of buildings and, to some extent, the construction method and design. In order to produce a detailed development plan, the area in question is studied from a variety of perspectives, and the impact on the environment and factors relating to cultural heritage are often important parts of the planning process.

Most new construction, as well as significant alterations of existing buildings, requires a building permit (*bygglov*). Depending on whether there is a detailed development plan or not, the restrictions on building may be more or less strict. Although detailed development

plans usually contain restrictions in volume and designated use, they also serve as a great tool for envisaging future developments. The process of obtaining a building permit generally takes ten weeks but, depending on the complexity of the matter at hand, the turnaround time may be up to six months.

The relevant board of the municipality has the power to serve an enforcement notice for a breach of planning control, requiring cessation of unauthorized development or use. Liquidated damages may be payable for non-compliance and ultimately, an injunction may be obtained against the owner of the relevant land to enforce compliance.



5. Environmental liability

The Swedish Environmental Code (*miljöbalken*) sets out the liability for remedial treatment of polluted land and water areas. According to the principle of the polluter pays, each and every person or legal entity conducting, or having conducted activities, or taken measures which have caused contamination or pollution, is responsible for investigating the effects of such pollution and rectifying the damage or other inconvenience caused by the activities. However, in the second instance, if the person or legal entity responsible cannot be found, or cannot perform or pay for remedial measures, the current or previous owner of the real property can be held responsible.

The property owner may also be held liable if they change the use of the property in a way that increases the risk of previous contamination of the land to spread. When a real property changes owner, the buyer and the seller may agree on the environmental liability. Such an agreement is, however, only binding between the parties and does not eliminate liability for either party, should one not be able to perform its obligations. Thus an agreement of the said kind can never be referred to as an argument to avoid responsibility in relation to the relevant environmental supervisory authority.

The legal risk of environmental liability never really ceases for anyone who has either acted as an activity operator or who has owned real property where such activity has been pursued. However, in order to quantify the actual risk of environmental liability, a proper investigation of the real property in question must be performed by, for instance, an environmental technical consultant. Whether or not such investigation is necessary depends on the sort of activity that has been conducted on the real property.



6. Leases

The Swedish Rental Act (*hyreslagen*) of 1970, which is incorporated as Chapter 12 of the Swedish Land Code (*jordabalken*), regulates both commercial and non-commercial leases. However, there are some differences between the rules governing these two different categories of lease. Where statutory provisions are in force, restrictions limit the parties' ability to contract out of them. The same provisions apply to offices, warehousing, industrial and retail premises. All leases are governed by the Swedish Rental Act. Unless expressly permitted, it is not possible to agree on terms and conditions less favorable to the tenant than those provided for in the Rental Act. The lease normally states the purpose for which a tenant may use the premises, and prohibits the tenant from using the premises for any other purpose without the landlord's consent. However, if the landlord refuses consent without reasonable cause, the Rent Tribunal (*hyresnämnden*) can give the tenant permission for the use.

Leases generally restrict a tenant's right to alter or improve the premises without the landlord's consent. Normally, alterations to the interior of the premises are permitted. However, on termination, tenants are frequently required to restore the premises to their original condition.

6.1 Duration

Commercial leases are normally valid for a specified period of time. There is no limit on their minimum term; however, a term of more than 50 years is not legally

binding (25 years within zoning plan areas). Leases can also be valid for an indefinite period until terminated by one of the parties. Residential leases are normally entered into for an indefinite period of time, whilst commercial leases mostly have fixed terms ranging from three to ten years. Hotel leases are often longer than other leases, and also often grant the tenant more comprehensive rights and responsibilities (particularly concerning maintenance and the interior) than other leases.

6.2 Rent

Rent is usually calculated on the basis of a figure per m² of usable space. For commercial leases, rent is most often due on a quarterly basis and is paid in advance.

The rent can also be based on the landlord's investment in the premises. Generally, commercial rent is adjusted according to the changes in the Consumer Price Index. Variable rental arrangements do exist in a retail context, and in this case, rent may be linked to the turnover of the tenant's business.

6.3 Rent review

Unless the rent is subject to annual review under an index clause or an agreed fixed increase or decrease, it is not possible to change, increase or decrease the rent during the term of the contract.

6.4 Operating expenses

In a commercial lease, the tenant is generally obliged to pay most of the operating expenses, including costs of maintaining common facilities, real estate tax and insurance.

In a residential lease, the landlord may not charge the tenant for management or administration costs, or the costs of repairs of communal areas.

6.5 Maintenance, repair and renovation at end of lease

Typically, the landlord is responsible for the building and the tenants are responsible for the business activities in the premises. In general, basic building insurance policies are designed to compensate landlords for damage to the property, loss of rent due to damage, and claims for damages to property or person. In addition to this basic coverage, additional insurance can be taken out.

6.6 Assignment/transfer

Leases often restrict the right of tenants to transfer the lease without the landlord's consent. However, according to statute, the tenant in a commercial lease that has lasted more than three years has a right to transfer the lease in connection with the sale of a business of which the lease is a part. If the landlord refuses, without reasonable cause, the Rent Tribunal can give permission to transfer the lease.

6.7 Subleases

Leases also often restrict a tenant's right to sublet the premises without the consent of the landlord. According to statute, the tenant may, under certain conditions, sublet part of the premises without the landlord's consent, but a sublet of the whole of the premises requires the landlord's approval or permission from the Rent Tribunal.

6.8 Termination

The landlord has a right to terminate the lease immediately if the tenant does not pay the rent, breaches the contract in certain ways set out in the Rental Act, or forfeits the contract by breaching certain provisions of that Act. However, the tenant can rectify rent arrears by paying the landlord within two weeks of receiving notice. If the tenant refuses to leave the premises, the landlord must seek an eviction order, either in court or through the Enforcement Authority. It can take several months for the landlord to regain possession of the premises.

In order to renegotiate the rent, either the landlord or the tenant must terminate the lease in

accordance with the provisions of the Rental Act. If the landlord terminates with a view to seeking a new rent which exceeds the market value, this may be deemed a wrongful termination. The procedure to terminate a lease in order to renegotiate rent is very formal. Therefore, it is important to seek legal advice prior to terminating a lease to avoid the risk of having to pay damages.

To ensure that a tenant leaves on the agreed date, the landlord must terminate the lease in due time in accordance with the contract, or on the date stipulated by law the Rental Act, whichever is more favourable to the tenant (since tenants in Sweden benefit from a statutory minimum notice period).

Landlords must also terminate a lease in accordance with a highly formal procedure. Therefore, to avoid the risk of legal action, it is important to seek legal advice before terminating a lease. If the tenant refuses to leave the premises, the landlord will have to seek an eviction order, either in court or through the Enforcement Authority. It can take several months for the landlord to regain possession of the premises.

6.9 Sale of leased property

A sale of a leased property does not affect the lease in any way. The new owner of the property will step into the lease as landlord on the same terms as the previous landlord.



7. Tax

In this section we summarize the main tax rules applicable to real estate investment in Sweden. As usual, an understanding of the tax rules is necessary for determining the profitability of an investment, and for structuring an investment in a tax efficient manner.

An investment can, as mentioned above, be made directly in real estate or indirectly in a company (or partnership) which owns real estate (so-called packaging) and the tax consequences will differ significantly depending on the choice.

This publication is based on the tax rules applicable as per August 1, 2021.

7.1 Stamp duty

Stamp duty is generally levied on the sale of real estate or site leaseholds in Sweden and is based on the higher of the purchase price or the tax value of the property. The stamp duty is 1.5% unless the purchaser is a legal entity, in which case the stamp duty will be 4.25% (with some exceptions, for instance housing cooperatives). The sale of shares in corporations or partnerships is not subject to stamp duty. A transfer of property in a merger procedure of companies is exempt from stamp duty.

Stamp duty is also not levied when a property is merged into another property pursuant to the rules of property formation under the Swedish Land Parcelling Act. Thus, it is possible to merge a larger property into a smaller property in order to avoid stamp duty. However, there is a pending process of a law change that stamp duty should apply also on transfers performed by property formation under the Swedish Land Parcelling Act.

It is only possible to use real estate as direct collateral for debts if the Land Registry (*Fastighetsregistret*) has issued mortgage certificates. When a mortgage certificate is first issued it is subject to a stamp duty of 2% of the face value of the mortgage.

7.2 Value added tax

The transfer of real estate is exempt from value added tax (VAT), as is the sale of shares.

Rental income from leasing real estate is generally exempt from VAT. However, the landlord can waive this exemption if, and to the extent that the real estate is leased to a taxable person who uses the real estate in its operations. In such case 25% VAT should be reported on the rental income, and the landlord can deduct input VAT on expenses for the property.

If a taxable person invests in real estate and deducts input VAT on the investment, it must adjust (i.e. repay) 1/10 of the VAT per year for a ten-year period if the use of property is changed to not being subject to VAT, or if the property is sold. If a property is subject to a merger or a business transfer, the new owner will assume the old owner's obligation to adjust the input VAT. If a property that is subject to voluntary VAT is sold, the seller and the buyer of the property can agree that the duty to make adjustments is to be assumed by the buyer.

In a similar way input VAT can be refunded on investments in real estate in cases where the input VAT has not been deducted when investment was made but the property later is used in a VAT liable business.

7.3 Municipal property fees and property tax

For properties containing buildings for housing purposes, a municipal property fee is to be paid. The property fee is maximized to an indexed amount. For the income year 2017 the property fee for residential properties is SEK1,429 for each apartment; however, not more than 0.3% of the tax value.

New apartment blocks and family houses that were built in or after 2012 are exempt from property tax for 15 years.

A state property tax of 0.4% of the tax value is levied on land that has been zoned for residential tenants but has not yet been built on, and properties that are taxed as residential buildings under construction and the land belonging thereto. A state property tax of 1% of the tax value is levied on non-residential commercial buildings with land belonging thereto.

On regular industrial properties, the state property tax is 0.5% of the tax value. For properties that produce electricity the tax varies between 0.2% and 2.2% of the tax value depending on the use of the property.

7.4 Taxation of rental income from real estate

The rental income is subject to Swedish income tax or corporate income tax. The individual income tax is progressive with a maximum rate of approximately 51% (depending on the municipal tax rate) and the income is also subject to (deductible) social security fees (normally 28.97%) or special wages tax (*särskild löneskatt*, 24.26%).

The special wages tax applies when the holding of the real estate is of a passive character.

The corporate income tax rate is a flat rate of, as from 2021, 20.6% when real estate is owned through a corporation. Partnerships are not taxable entities, but the owners will be taxed for the amount.

The tax basis for income tax and corporate income tax is generally net income, i.e. gross income less expenses such as amortization, maintenance, administrative expenses and financial costs such as interest on loans. This applies to both individuals and corporations. Special rules apply to small houses that are used as a private residence.

Interest on intra-group loans is as a main rule non-deductible. This applies regardless of the reason for the loan. As from 2019 the main rule has the following exemptions.

Interest deduction on such debt should be granted if the beneficial owner of the interest income within the group (i) is resident within the EEA, (ii) is resident of a state with which Sweden has a tax treaty not limited to certain income or (iii) is subject to a corporate tax of at least 10%. However, no tax deduction should in any case be granted if the underlying purpose with the loan exclusively or as good as exclusively (90-95% or more) is to obtain a substantial tax benefit for the group.

As from January 1, 2019 interest deductions are generally limited to an amount corresponding to 30% of EBITDA (applicable on interest surviving from non-deductible intra-group loans described above). This limitation applies on both internal and external loans. The

interest limitation corresponding to 30% of EBITDA applies only if negative net interest exceeds SEK5 million (simplification rule). The free amount is measured on a group level. Excess non-deductible interest expense (negative net interest) may be carried forward and used within a six-year period.

Negative net interest may also be divided between companies in a group, provided that the companies are entitled to equalize taxable profit by means of group contribution.

Depreciation on buildings is based on the purchase price, or the construction cost plus acquisition costs. Generally depreciation is assessed under the straight-line method, and varies between 2% and 5% depending on the use of the property. Land cannot be depreciated. As from 2019 accelerated depreciation on newly constructed tenement buildings is introduced. This means, in short, that an additional deduction of 2% is granted during the first five years from the completing of the building. A transition rule allows for a primary deduction also for a building that is completed during the period January 1, 2017 to July 1, 2018.

Sweden has entered into double taxation treaties with a large number of other countries. Most treaties are in accordance with the OECD Model Convention. Under these treaties income from real estate in Sweden may be taxed in Sweden, as may income from permanent establishments in Sweden. The method for avoiding double taxation may vary depending on the treaty. However, the credit of tax method is the most frequent following the Swedish policy on tax treaties.

7.5 Taxation of dividends from a company owning real estate

Dividends from companies owning real estate are taxed as ordinary dividends.

Resident individuals normally pay a flat rate of 30%. If the shares are not listed, only 5/6 of the dividend is taxable, i.e. the effective tax rate is 25%. However, for individuals who have so-called qualified shares in closely held companies, part of the dividends may be taxed as income of employment with a marginal tax rate as high as 51% (depending on the municipal tax).

Non-resident individuals have to pay a withholding tax on dividends. The statutory tax rate is a flat 30%, but that rate is often lowered by double tax treaties.

Swedish corporations pay ordinary corporate tax on dividends, unless the Swedish holding regime applies. The holding regime applies to shares held as a capital asset (and thus not classified as inventory) and applies to:

- unlisted shares; and
- listed shares where the shareholding is at least 10% of the votes and the shares are owned for at least one year; and
- the holding is motivated by business performed by the holder or a related party to the holder.

As a main rule, foreign companies have to pay a withholding tax on dividends. The tax rate is a flat 30%, but that rate is often lowered or eliminated by double tax treaties. Companies resident in other EU states do not pay withholding tax, provided that the company

receiving the dividend owns at least 10% of the shares in the company paying the dividend, and is such a company that is covered by the parent/subsidiary directive. Furthermore, foreign companies which are legal entities, and which are taxed in a similar manner as Swedish companies or subject to a double tax treaty with Sweden, can receive tax free dividends. This applies when the dividend would have been exempt from tax under the Swedish holding regime, if the receiving company had been a Swedish company (and, in case of dividends on listed shares, that the shares had been owned for at least one year when the dividend was paid). This means that dividends to a foreign company normally is exempt from withholding tax unless the foreign company is resident in a tax haven jurisdiction.

7.6 Taxation of capital gains on real estate

If a company realizes a capital gain on Swedish real estate, the capital gain is subject to Swedish corporate income tax regardless of where the company is tax resident. The capital gain equals the sale price less the book value for tax purposes (which may differ from the book value for accounting purposes) and costs. Capital losses that companies incur on real estate are normally deductible only against capital gains on real estate.

Such losses may be carried forward or be used by other group companies.

If an individual realizes a capital gain on Swedish real estate, the taxation of the capital gain differs, depending on whether the real estate qualifies as a business asset or as private

residential property. If the real estate is part of the individual's business, 90% of the capital gain is taxable as capital income at a 30% rate. Furthermore, all depreciation on the buildings is to be declared as taxable business income at a progressive rate and subject to social security contributions or the special wages tax. In contrast, 22/30 of the capital gain on private residential property is taxed as capital income at a flat 30% rate. Part of the capital gain may be deferred if the property sold is the home of the seller and a new home is purchased.

A capital gain generated by a partnership is in principle subject to tax at the level of its partners. Accordingly, the same rules as set out above apply depending on the legal status of the partner concerned.

Under most Swedish double tax treaties, capital gain from a sale of real estate in Sweden is taxable in Sweden.

7.7 Taxation of capital gains from the disposal of shares in a company owning real estate

Capital gain on shares in companies owning real estate is taxed as ordinary capital gain on shares.

The gain is calculated as the sale price less the purchase price and costs for purchasing and selling the shares.

Resident individuals normally pay a flat rate of 30% on the capital gain. If the shares are not listed, only 5/6 of the capital gain is taxable, i.e. the effective tax rate is 25%.

However, for individuals who have so-called qualified shares in closely held companies, part of the capital gain may be taxed as income of employment with a marginal tax rate as high as 51% (depending on the municipal tax) but not subject to social security fees.

Non-resident individuals do not pay tax on capital gain on shares in Swedish companies. Special rules apply to persons who previously were Swedish residents but have moved abroad or if the shares are connected to a permanent establishment in Sweden.

Swedish corporations pay a corporate tax as from 2021, 20.6% on capital gain unless the Swedish holding regime applies. The holding regime is applicable when shares are held as a capital asset (and thus not classified as inventory) and applies to:

- unlisted shares; and
- listed shares where the shareholding is at least 10% of the votes and the shares are owned for at least one year; and
- the holding is motivated by business performed by the holder or a related party to the holder

If a capital gain would have been tax free on a transaction, a capital loss cannot be deducted.

Foreign companies do not pay tax on capital gains on Swedish shares unless such shares are attributed to a permanent establishment in Sweden. If the shares are attributed to a permanent establishment in Sweden, the same rules apply as for Swedish companies.



8. Real estate finance

Sweden has a highly competitive and liquid real estate finance market, where the four major local banks dominate. There used to be a number of foreign institutions active in the Stockholm market but many left due to the financial crisis. In the last few years we have seen some of those (predominately German) institutions making a comeback, but in terms of volume and number of deals they remain niche institutions. A trend in recent years has been for deals in the lower-to mid-market being financed by alternative capital funds (debt funds).

In general, Sweden is considered to be a very (senior) lender-friendly jurisdiction (perhaps not on a par with the UK but more so than many continental European jurisdictions). Sweden is also a small open economy, with a very welcoming climate for foreign investors seeking to pick up assets here. At the same time, though, it is an extremely relationship-driven market and, depending on market conditions, it may prove hard to get attention from the local banks if you are not a longstanding customer. A presence on the ground is advisable in order to be able to prove that you are in Sweden to stay.

8.1 Interest rate risks

Generally, commercial banks require borrowers to hedge the interest rate risk on a senior loan in the range of 50-75% of the total loan amount. Other capital providers usually do not require hedging. Where required, hedging must be in place on the date of utilization and maintained up to the final termination date. In some instances, the borrower may enter into the relevant arrangements sometime

after utilization in accordance with an agreed hedging policy prior to utilization. Interest rate risk is usually hedged by way of a customary interest rate swap and on a standard ISDA form document.

In the current low interest rate environment, fixed interest rate deals become more common in the market. This is especially so where an alternative capital provider is the lender. The rationale for choosing a fixed rate deal become more common in the may vary but many borrowers want to avoid the often substantial costs associated with terminating or closing out a swap prior to maturity in connection with a disposal or refinancing. A fixed rate deal brings its own problems, and the break costs associated with prepayment may prove to be equally substantial.

8.2 Assets held as security

Prior to entering into discussions, or executing a term sheet, a borrower should contemplate the effects of providing certain security under Swedish law. As a general principle, the perfection requirements under Swedish law sometimes limit assets available as collateral. Swedish law imposes a general requirement that a pledgor should be entirely deprived of its right and ability to control, or have recourse against, the pledged assets or rights. To the extent that the pledgor retains any control or recourse, the security interest will not become effective and enforceable (the Non-Recourse Principle).

The Non-Recourse Principle means, inter alia, that any pledged asset (or any instrument representing such asset) must be physically

surrendered to the pledgee.

In cases where the relevant asset or right is in the possession, or otherwise under the control, of a third party (e.g. a bank in the case of a bank account), notification must be given to the third party with a stipulation that the pledgor may not dispose of, or be granted access to, the pledged asset or right.

As a result, the Non-Recourse Principle may cause difficulties with regards to perfection of security under Swedish law, as removing any assets from the pledgor's control would cause obvious operational disruption to the pledgor's business and its continuation. This would, in real estate financing, typically impose constraints or resistance with respect to security over rental and operation accounts, lease agreements and other contracts relevant for the property.

8.3 Further collateral agreements

For smaller transactions or blue chip clients, the lending institution would generally prefer security on real property (c.f. below) over the relevant property and a share pledge over the shares in the property owning company. Lately, certain institutions have, in instances where no mortgage certificates have been issued over the property, agreed to fund with only security over the shares of the PropCo.

In order to create security on real property, the pledger creates a mortgage with the Land Registry. The mortgage represents a specified amount of the real property, registered as available to be pledged as security. The document evidencing the mortgage is referred

to as a mortgage certificate. The creation of security is perfected by the pledgor pledging and handing over the mortgage certificates to the pledgee as security for the relevant debt.

In larger transactions or current market conditions, though, banks normally require security over all of the borrower's assets and cash flow and thus, in addition, take pledges over inter alia:

- each bank account in which the borrower has an interest;

- all rights under insurance contracts;
- all rights in respect of rents under any occupational lease; and
- all rights to payments under all investor loans and/or notes.

Banks may also take a security assignment of rights under acquisition agreement(s) (if any).

8.4 Taxation on the creation of security

In general, no taxes are applied to security provided to a lender. However, a stamp duty of 2% (of

the face value of the mortgage) will be levied on the issuing of most mortgages and of 1% (of the face value of the mortgage) on floating charges. This is however a one-time stamp duty and will not be applied in the event the mortgages and/or floating charges are provided as security to a new lender upon a refinancing.



Glossary

TERM	EQUIVALENT
Allemansrätten	Right of Public Access
Bostadsrätt	Housing Cooperative
Bygglöv	Building Permit
Detaljplan	Detailed Development Plan
Expropriationslagen	Expropriation Act
Fastighetsbildningslagen	Swedish Land Parcelling Act
Fastighetsreglering	Reallotment
Fastighetsregistret	The Land Registry
Gemensamhetsanläggning	Joint Facility
Hyseslagen	Swedish Rental Act (Chapter 12 of the Swedish Land Code)
Hysesnämnden	Rent Tribunal
Inteckning	Registration of Mortgages Over Real Property
Jordabalken	Swedish Land Code
Klyvning	Partitioning
Kronofogdemyndigheten	Enforcement Authority
Köpebrev	Deed of Purchase
Lantmäteriet	Swedish Mapping, Cadastral and Land Registration Authority
Ledningsrätt	Right of Cable
Ledningsrättslagen	Utility Easements Act
Länsstyrelsen	County Administrative Board
Miljöbalken	Environmental Code
Minerallagen	Swedish Minerals Act
Pantbrev	Mortgage Certificate

Pantbrevsregistret	Mortgage Certificate Register
Plan - och bygglagen	Planning and Building Act
Skatteverket	Swedish Tax Agency
Strandskydd	Coastal Protection
Stämpelskattelagen	Swedish Stamp Duty Act
Tomträtt	Site-leasehold

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About DLA Piper

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team's global resources, regional strength and local delivery, and include private and public companies, institutional investors and government entities.

In Sweden, DLA Piper offers a large team of lawyers based in Stockholm with some 80 years of experience within the Swedish real

estate market. Our core real estate team has adopted a cross-sector approach and covers all fields of law from tax to financing. The Swedish practice is known for providing commercial advice on both a national and international level, advising both national and international clients on a daily basis since joining DLA Piper in 2001.

This guide was written predominantly by Johan Forsling, Mats Eriksson and Gustaf Ström of our Real Estate practice group, Magnus Hagevi of our Tax Practice Group and Björn Sjöberg of our Banking and Finance Practice Group. This guide was prepared in September 2021. Subsequent changes in law are therefore not taken into account.

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