



The new Companies Act of Sweden - Streamlining and simplifying the old act

There are about 307 000 limited companies in Sweden out of which approximately 1 000 are public limited ones. The basic regulations are set forth in the 1975 Companies Act (aktiebolagslagen). Due to the many changes in business life and the requirements of making the rules for limited companies clear and lucid a complete revision has been made, the result of which is the new Companies Act which will come into force by 1st January 2006.

The new act is a result of new requirements of the modern international business world and the changes in conditions for cooperation, obtaining capital and decision-making in limited companies. The new act entails a requirement to make certain changes in many companies' articles of association in order to bring them in compliance with the new act.

GENERAL POINTS

The guiding principle behind the new act has been to make the rules of limited companies as clear and easily accessible as possible; the changes made are generally not substantial ones but are rather intended to clarify and simplify the existing rules as well as to make some editorial changes to create a better overview. In the new act the number of cross-references has been reduced and a table of content has been added. Some of the differences in relation to the old act may require changes in the articles of association. This summary is not exhaustive but intends to present the central novelties of the new act.

COMPANY FORMATION

In terms of company formation the new act provides a simplified procedure which is more in line with the

actual practice of companies today. With the new act the company formation can be executed by a single process, "simultaneous formation". Those wishing to form a company ("the founding members") draw up a memorandum containing the articles of association. One or more of the founding members then subscribe for all the shares in the memorandum of association and pay for them after this memorandum has been finalised and signed. Finally, the founding members submit details of the company to the Swedish Companies Registration Office for registration. It should be noted that the introduction of "simultaneous formation" in the new act does not affect companies formed under the old act.

SHARES

A Swedish limited company must have share capital. For private companies this amount must be at least SEK 100 000 whereas the minimum requirement for public limited companies is SEK 500 000. These levels will remain unchanged under the new act. If the capital is divided into several shares each share will represent an equally large value of the capital (ratio value of the share). The method of calculating the ratio value is a novelty which means that the system of nominal value for shares is dropped. The new method intends i.a. to make it easier to change the accounting currency from Swedish Kronor to Euros which is common among Swedish companies; there are a limited number of other similarly practical differences following this new method.

If shares are issued for a sum exceeding the ratio value, the premium must be allocated to a special fund, (the premium fund). Shares may not be issued to a sum below the ratio value. Under the new act the

premium fund will constitute non-restricted equity in the company. This means that funds allocated to the premium fund can be distributed to shareholders in the same way as profits.

In the new act the option of companies to give out different types of shares in terms of voting rights (A and B shares) and different rights in the company's profit (ordinary shares and preference shares) will remain unaffected.

FINANCING OF A LIMITED COMPANY

Under the old act the financing of a company can be done through either shareholders equity or borrowed capital. The methods available to increase the equity under the new act are:

- The share capital is boosted by amounts taken from other items under the heading "equity" in the balance sheet (bonus issue),
- The company issues new shares in exchange for immediate payment (new share issue)
- Owners of share warrants issued by the company subscribe for shares in the company in exchange for payment and
- Owners of convertibles issued by the company exchange the convertibles for shares in the company.

The requirement under the old act that convertibles and share warrants always have to be associated with a promissory note will be dropped and share warrants without such a link will also be allowed, these are called "naked warrants". Another novelty in the new act is the possibility to issue convertibles which entails an *obligation* instead of a *right* to convert the convertible into shares.

The new act creates a new method for borrowing from the company in the form of participating debentures. This is a loan where the amount that the company is required to pay back depends on the financial position or the dividend paid to shareholders by the company. As has been the case formerly, loans where the interest paid depends on

the abovementioned factors, known as participating loans will continue to be permitted.

REDEMPTION OF MINORITY SHARES

The new act entails more extensive regulation on mandatory redemption of shares than was the case with the old one. The proposed rules mean that those who hold over 90 per cent of the share capital in a limited company should be entitled to redeem remaining shares. One important novelty is that this right depends only on the proportion of share capital and not on the votes held. With the new act the redemption right will be expanded from being only applicable to Swedish limited companies to be enjoyed also by other Swedish and foreign legal and natural persons. These persons whose shares are subject to mandatory redemption will also be entitled to demand redemption by majority shareholders.

VALUE TRANSFERS FROM THE COMPANY

The new act brings together the ways and extent through which assets can be transferred from the company to shareholders or to other parties. The rules on these transactions are collectively called "value transfer" and will specifically refer to:

- Acquisition of own share,
- Dividends,
- Reduction of the share capital or statutory reserve fund for repayment to shareholders, and
- Other business transactions of a non-commercial nature that entail a reduction in the company's assets.

The rules on value transfers represent a major feature of the new act. Value transfers that leave the restricted equity without full coverage after the transfer will continue to be prohibited (the "monetary barrier"). When the scope of the value transfer is decided, an examination must also be made of whether or not the planned value transfer is justifiable bearing in mind the amount of equity required

As have been the case under the old act decisions on dividends will remain an issue for the general meeting of shareholders to address.

THE GENERAL MEETING OF SHAREHOLDERS

The new act adapts the requirements of the new technical environment in acknowledging the general meeting to be attended by shareholders through means of telecommunication and not only by physically being present. It was clear several years ago that such a practice did not constitute any principal legal problems but with the new act this practice is clarified and brought into the law itself.

The new acts also gives an option for shareholders wishing to attend the general meeting but for some reason are prevented to do so to issue a letter of mandate for the board to collect under certain situations.

HOW TO BRING THE ARTICLE OF ASSOCIATION UP TO DATE

In all there are several changes in the new act and some of them entail a need for many companies to make amendments to their articles of association. Many of the abovementioned changes does not necessarily affect the articles of association but in all there may be a need for Swedish limited companies, especially public ones to do an overview of the articles of association on the first general meeting of 2006. The option of making these changes has been available from the first of September 2005 but should at latest be made by the first meeting of 2006 to be continuously effective. If a company fails to make these changes in time the relevant provisions of the article of association will be void and may not constitute a legal basis for general meetings or decisions by the board of the company.

BRIEF SUMMARY

The new act is primarily an adaptation to modern business life and aims at making the new act more easily accessible and clear to understand. As a result

of the new act changes in the articles of association must however be done in order for all parts of the same to remain valid and in force and an overview is recommended.

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