

Sweden

Act (2023:560) on the Screening of Foreign Direct Investments (2023)

Note

The Investment Laws Navigator is based upon sources believed to be accurate and reliable and is intended to be up-to-date at the time it was generated. It is made available with the understanding that UNCTAD is not engaged in rendering legal or other professional services. To confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate. While every effort is made to ensure the accuracy and completeness of its content, UNCTAD assumes no responsibility for eventual errors or omissions in the data.

The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

<https://investmentpolicy.unctad.org>

Contents

Unofficial translation

Unofficial translation

Act (2023:560) on the Screening of Foreign Direct Investments

/Enters into force 1:2023-12-01/

Purpose and scope of application of the Act

Section 1 This law aims to prevent foreign direct investments in Swedish strategically important activities that could have harmful effects on Sweden's security or public order and safety.

Section 2 The law applies to investments in strategically important activities conducted by joint-stock companies, European companies, or partnerships, as well as economic associations or foundations based in Sweden. It also applies to investments in such activities conducted in Sweden by a simple partnership or sole proprietorship.

Definitions

Section 3 For the purposes of this Act In this law, strategically important activities include:

1. Essential activities,
2. Security-sensitive activities according to the Security Protection Act (2018:585),
3. Exploration, extraction, enrichment, or sale of critical raw materials, metals, or minerals that are strategically important for Sweden's supply,
4. Processing on a large scale of sensitive personal data or location data in or through a product or service,
5. Manufacturing or development of, research on, or provision of war material according to the War Material Act (1992:1300) or provision of technical support for such war material,
6. Manufacturing or development of, research on, or provision of products with dual-use capabilities or provision of technical assistance for such products,
7. Research on or provision of products or technology within emerging technologies or other strategically important technology or activities capable of manufacturing or developing such products or developing such technology.

Section 4 For the purposes of this Act, "foreign direct investment" means an investment made by:

1. A natural person with citizenship in a state outside the European Union,
2. A legal person based in a state outside the European Union,
3. A legal person directly or indirectly owned or controlled by a state outside the European Union, or
4. A legal person directly or indirectly owned or controlled by a legal person based in a state outside the European Union or by a natural person with citizenship in such a state.

An investment made by an investor for the benefit of someone mentioned in the first paragraph also constitutes a foreign direct investment.

Section 5 For the purposes of this Act, the following terms are defined:

1. Essential activities: Activities, services, or infrastructure that maintains or ensures functions necessary for the basic needs, values, or security of society,
2. Sensitive personal data: Data as referred to in Article 9.1 of the European Parliament and Council Regulation (EU) 2016/679 of April 27, 2016, on the protection of natural persons concerning the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation),

3. Location data: Data processed in a general mobile electronic communication network indicating the geographical position of an end-user's terminal equipment or data in a general fixed electronic communication network about the physical address of the network connection point,

4. Products with dual-use capabilities: Products listed in Annex I to the European Parliament and Council Regulation (EU) 2021/821 of May 20, 2021, establishing a Union regime for the control of exports, brokering, transit, and transfer of dual-use items and technical assistance for dual-use items.

Reviewing authority

Section 6 The authority determined by the government is the reviewing authority under this law.

Notification

Section 7 Anyone intending to directly or indirectly invest in strategically important activities must, before the investment is implemented, notify the reviewing authority if:

1. the investor, a member of his ownership structure or a person on whose behalf the investor is acting, would, after the investment, directly or indirectly, control votes corresponding to or exceeding any of the thresholds of 10, 20, 30, 50, 65, or 90 percent of the votes in a joint-stock company, European company, or an economic association conducting strategically important activities,
2. The investor, through the investment, would acquire such a joint-stock company or European company or establish such a joint-stock company, European company, or an economic association to conduct strategically important activities. The investor, someone in their ownership structure, or someone acting on behalf of the investor would, directly or indirectly, control 10 percent or more of the votes in that legal entity,
3. The investor, through the investment, would become a partner in a partnership or a participant in a simple partnership where strategically important activities are or will be conducted. Or if the investment is intended to be made in such a partnership, and the investor is already a partner,
4. The investor, through the investment, would establish a foundation to conduct strategically important activities, or
5. The investor, someone in their ownership structure, or someone acting on behalf of the investor would, in a manner other than 1-4, through the investment, gain direct or indirect influence over the management of such joint-stock company, European company, partnership, or simple partnership, or over the management of such economic association or foundation conducting or intending to conduct strategically important activities.

Notification under the first paragraph 1 is not required for the acquisition of shares that are acquired with preferential rights in relation to the number of shares the investor owns.

Section 8 When calculating votes under Section 7(1) 1 and 2, votes that a close associate directly or indirectly controls must be counted.

A close associate refers to a spouse, registered partner, cohabitant, parents and children, as well as the children's spouse, registered partner, or cohabitant.

Section 9 Anyone intending to directly or indirectly invest in strategically important activities must, before the investment is implemented, notify the reviewing authority if the investor or someone else through the investment would gain influence over activities conducted as a sole proprietorship.

Section 10 Anyone intending to invest in strategically important activities in a way other than specified in Section 7 or 9 must, before the investment is implemented, notify the reviewing authority if the investor, through the investment, would take over all or part of the strategically important activity.

Section 11 A company subject to an investment under this law must inform the person intending to carry out the investment that the law applies to the activity, especially regarding their notification obligation.

The obligation to provide information does not apply to acquisitions on a regulated market as referred to in Chapter 1, Section 4 b of the Securities Market Act (2007:528), a corresponding market outside the European Economic Area, or an MTF platform as referred to in Chapter 1, Section 4 b of the Securities Market Act.

Examination initiated by the screening authority

Section 12 If the investor does not notify an investment despite an obligation to do so under this law, the reviewing authority may establish a basis for notification.

Section 13 The reviewing authority may decide to initiate a review of an investment in strategically important activities not covered by the notification obligation under this law if there is reason to believe that the investment may have harmful effects on Sweden's security or public order and safety.

Conditions for Implementation of the Investment and Deadlines

Section 14: The Review Authority shall, within 25 working days from the date a notification is complete, decide either to dismiss the notification without action or initiate an examination of the investment.

Section 15: Within three months of its decision to initiate an examination under Section 13 or 14, the Review Authority shall decide either to prohibit or approve the investment. However, if there are specific reasons, the Review Authority may announce the decision within six months.

Section 16: An investment subject to notification obligations under this law may only be implemented if:

1. The notification of the investment has been dismissed without action, or
2. The investment has been approved during an examination. If the Review Authority has initiated an examination under Section 13, the investment may only be implemented if it has been approved during the examination.

Review authority's review

Section 17: In its assessment, the Review Authority shall consider the nature and scope of the activity, as well as circumstances surrounding the investor.

Section 18: In its assessment, the Review Authority shall consider:

Whether the investor is directly or indirectly, wholly or partially, controlled by a state outside the European Union through ownership structure, significant financing, or otherwise.

Whether the investor or anyone in its ownership structure has previously been involved in activities that have adversely affected or could adversely affect Sweden's security or public order, or public safety in Sweden or another member state within the European Union.

Whether there are other circumstances surrounding the investor that may adversely affect Sweden's security or public order, or public safety in Sweden.

Section 19: A notification shall be dismissed without action if the Review Authority assesses that there is no reason to believe it involves a foreign direct investment that could adversely affect Sweden's security or public order, or public safety in Sweden.

Section 20: A foreign direct investment in protected activities shall be prohibited if necessary to prevent harmful impact on Sweden's security or public order, or public safety in Sweden.

Section 21: If there are no grounds to prohibit an investment that has been reviewed, it shall be approved. Approval of a foreign direct investment in protected activities may be subject to conditions if necessary to prevent harmful impact on Sweden's security or public order, or public safety in Sweden.

Section 22: If a condition imposed under Section 21 is not met, the Review Authority may instruct the investor to fulfill the condition or prohibit the investment if the conditions for a prohibition under Section 20 are met. An instruction may be accompanied by a penalty.

Section 23: A prohibition on an investment under this law means that a legal act that constitutes a part of the investment or aims to carry out the investment becomes invalid. The first paragraph does not apply to acquisitions on a regulated market as referred to in Chapter 1, Section 4 b of the Securities Market Act (2007:528), a corresponding market outside the European Economic Area, or an MTF platform referred to in Chapter 1, Section 4 b of the Securities Market Act. In such cases, the Review Authority may instead instruct the investor to divest what has been acquired. An instruction may be accompanied by a penalty.

Section 24: If a prohibition has been issued under this law, the Review Authority may decide on the instructions against the investor, the company that is or has been the subject of the investment, or the transferor needed to prevent harmful impact on Sweden's security or public order, or public safety in Sweden. An instruction may be accompanied by a penalty.

Powers of the review authority

Section 25: Upon request by the Review Authority, the investor and the company that is or has been the subject of the investment shall provide the information or documents that the authority needs for its review or to verify compliance with imposed conditions.

Section 26: The Review Authority has the right, to the extent necessary for obtaining the information or documents referred to in Section 25, to access areas, premises, and other spaces (excluding residences) used in the operations conducted by the investor or the company that is or has been the subject of the investment.

Section 27: The Review Authority may instruct the investor or the company that is or has been the subject of the investment to provide information or documents under Section 25 and to grant access under Section 26. An instruction may be accompanied by a penalty.

Section 28: The Review Authority may request assistance from the Enforcement Authority (Kronofogdemyndigheten) to carry out an action under Section 26. In the case of assistance, the provisions of the Enforcement Code regarding the enforcement of obligations not related to payment obligations, eviction, or removal shall apply.

Exchange of information and collaboration

Section 29: In connection with its review or monitoring of compliance with imposed conditions, the Review Authority may request information from municipalities, regions, and government authorities. Municipalities and regions, as well as government authorities designated by the government, shall provide information to the Review Authority upon request in the first paragraph, if necessary for the authority to fulfill its mission under this law.

Section 30: In its review under this law, the Review Authority shall collaborate with the government authorities determined by the government.

Administrative fines

Section 31: The Review Authority may decide to impose a sanction fee on anyone who:

1. Has not submitted a notification to the Review Authority despite the obligation to notify under Sections 7, 9, or 10.
2. Has implemented an investment before the Review Authority has made a final decision under Sections 19-21.
3. Has implemented an investment in violation of a prohibition under Section 20.
4. Has acted in violation of a condition imposed in connection with an approval decision under Section 21.
5. Has provided false information in connection with their notification under Sections 7, 9, or 10, or in fulfilling their obligation under Section 25.
6. Has not fulfilled their obligation under Section 25.

Section 32: The sanction fee shall be determined at a minimum of 25,000 SEK and a maximum of 100,000,000 SEK.

Section 33: In assessing whether a sanction fee should be imposed and determining its amount, special consideration shall be given to:

1. The harmful impact on Sweden's security or public order, or public safety in Sweden that has occurred or could have occurred as a result of the violation.
2. Whether the violation was intentional or due to negligence.
3. What the violator has done to cease the violation or limit its effects.
4. Whether the violator has previously committed a violation.
5. The profit gained from the violation.

Section 34: A sanction fee may be fully or partially waived if the violation is minor or excusable, or if it would otherwise be unreasonable to impose the fee considering the circumstances.

Section 35: A sanction fee may not be imposed if the violation is subject to a penalty order, and the violation is the basis for an application for the penalty.

Section 36: A sanction fee may only be imposed if the person subject to the fee has had the opportunity to express their views within two years from the date of the violation. A decision on the sanction fee shall be served.

Section 37: A sanction fee shall be paid to the Review Authority within 30 days from the date the decision to impose the fee becomes legally binding or within the longer period specified in the decision. If the sanction fee is not paid on time, the Review Authority shall refer the unpaid fee for collection. Collection procedures are governed by the Act (1993:891) on the Collection of State Claims, etc. The sanction fee accrues to the state.

Section 38: A sanction fee ceases to apply to the extent that the decision on the fee has not been enforced within five years from the date the decision became legally binding.

Appeal

Section 39: Decisions regarding orders under Sections 22-24 and 27, as well as decisions on sanction fees under Section 31, may be appealed to the Administrative Court in Stockholm. Permission for a review is required for an appeal to the Administrative Court of Appeal. Decisions on prohibitions under Sections 20 and 22, and decisions on approvals with conditions under Section 21, may be appealed to the government. Other decisions under this law may not be appealed.

Regulations on Enforcement

Section 40: The government or the authority designated by the government may, with reference to Chapter 8, Section 7 of the Instrument of Government, issue regulations regarding the enforcement of this law.

Authorization

Section 41: The government or the authority designated by the government may, for the purpose specified in Section 1, issue regulations concerning:

1. Which essential societal activities should be covered by this law.
2. Which critical raw materials, metals, and minerals should be covered by this law.
3. Which emerging technologies and other strategically significant technologies should be covered by this law.

* * *