



How the new law on foreign direct investments will affect the Swedish real estate market



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As many stakeholders in the transaction industry have become aware, Sweden has introduced a new law on reviewing foreign direct investments (the FDI Act). When it entered into force, on 1 December 2023, it changed the rules of the game in the transaction industry. With a focus on strengthening national security, the Act introduces a new element for players in the real estate market.

The new regulatory framework

The introduction of the FDI Act means that Sweden now has a screening system for foreign direct investments to protect Sweden from antagonistic attacks. The Act means that investments in businesses engaged in protected activities will need to be scrutinised by the Swedish screening authority, the Inspectorate for Strategic Products (ISP).

The notification obligation is triggered, inter alia, when an investor acquires influence in a business engaged in protected activities that exceeds 10%, 20%, 30%, 50%, 65% or 90% of the votes. Notably, the notification obligation can also be triggered by asset acquisitions or when the investor is given the right to appoint board members.

The law aims to prevent circumvention, which has resulted in intra-group reorganisations and transactions with only Swedish and EU-based investors being subject to the notification requirement.

Impact on the property sector

The FDI Act has a broad scope of application which affects the real estate sector. The fact that intra-group transfers are covered means that internal transfers of real estate holdings may be subject to notification requirements, forcing real estate market participants to have to balance regulations and considerations.

Understanding the type of activities covered by the FDI Act is essential. To comply with the law, investors must be able to determine whether the target company is engaged in protected activities. These include e.g. essential services and security-sensitive activities. Essential services are, for example, leasing, managing or operating real estate, premises or facilities that house universities, hospitals or data centres. This means that an investment in a real estate company that rents out premises to an operator that conducts, for example, hospital activities or that includes protected objects, may be subject to notification.

Activities in other support services may also be covered, such as operating or maintaining property technology systems in hospital buildings. Moreover, various activities related to infrastructure, such as design, construction, repair or maintenance, are also covered by the Act. It is also important to note that both planned and existing activities are covered by the law, which requires a careful assessment of planned activities, such as the sale of land where solar or wind energy will be installed.

Impact on the transaction process

Before making an investment, investors have to analyse whether the investment is subject to the notification requirement. The assessment requires knowledge of the company's business activities and its customers and tenants. There is also an obligation on the seller, as companies engaged in protected activities have an obligation to inform investors about the law.

The parties to a property transaction need to allow time for the ISP to review the notification. A notification is usually made after a contract has been concluded, but in some cases it can be made earlier. Once a notification has been submitted and deemed complete, the ISP has 25 working days to decide whether to approve the investment or to initiate a review. If the ISP decides to initiate a review, a decision to prohibit or approve the investment must be taken within three (up to six) months.

The FDI Act includes a "stand-still" obligation, which means that the investment cannot proceed until the ISP has approved it. Penalties of up to SEK 100 million may be imposed for violations of the Act. If the investment is prohibited, it becomes null and void.

In conclusion, the property sector is facing new challenges. Investments are now subject to greater scrutiny, and parties to property transactions will need to be aware of the changing rules to ensure that their business transactions run smoothly in this new dynamic and regulated environment.

