



New Swedish FDI regime

The Swedish Parliament has adopted the new law on foreign direct investments (sw. *lag (2023:560) om granskning av utländska direktinvesteringar*) (FDI Act), which enters into force on 1 December 2023. The law introduces a notification requirement which will cover a wide range of transactions and the legislation will have significant implications for mergers, acquisitions and other investments in Sweden.

Which target companies and activities are covered: The FDI Act applies to investments in protected activities in limited companies, European companies or partnerships, economic associations and foundations with registered offices in Sweden. The law also applies to investments in protective activities carried out in Sweden in other legal entities. The FDI Act applies to companies in all sectors engaged in the following activities:

- Essential services.
- Security-sensitive activities as set out in the Protective Security Act.
- Activities related to critical raw materials, e.g. investments in companies that prospect for, extract, enrich or sell critical raw materials, metals or minerals that are strategically important for Sweden.
- Processing large amount of sensitive personal data or location data.
- Manufacturing, developing, conducting research into or supplying military equipment or providing technical support for military equipment.

- Manufacturing, developing, conducting research into or supplying dual-use products or supplying technical assistance for such products, and
- Emerging technologies and other strategic protected technologies.

In each individual case, an assessment must be made to determine whether the business operations are covered.

Investment thresholds: The FDI Act covers direct and indirect investments that result in the acquisition of voting rights of, or exceeding 10%, 20%, 30%, 50%, 65%, or 90% in eligible companies including carve-outs. Notably, there are no turnover or deal value thresholds, as seen in merger control procedures, and no obligatory transfer of control to the buyer is mandated; instead, it suffices to acquire, for instance, 10% of the voting rights.

Investors: All investors, including those from Sweden and other EU countries, are subject to the screening mechanism, but a thorough assessment is only applied to non-EU investors.

Notifying party: The investor is responsible for the notification to the screening authority. However, the target company must inform the buyer that the transaction is notifiable.

Screening authority: The Inspectorate of Strategic Products (ISP).

Statutory review periods: In Phase I, ISP will decide, within 25 working days, either to take no further action or to initiate a Phase II-investigation. In a Phase II-investigation, ISP has up to three months (extendable to six months) for an in-depth assessment and to make a decision.

Substantive assessment: Assessment of risks is based on the target company's activities, the characteristics of the investor, and whether the transaction may have a detrimental impact on Sweden's security, public order or public safety.

Standstill: Investments cannot be completed until they have been approved by the ISP.

Commitments: Similar to merger control, the ISP can approve investments under certain conditions and reservations related to the target company's activities and the investor's behavior.

Sanctions: Administrative fines of up to SEK 100 million can be imposed for violations, including failure to notify.

Appeal: Decisions can be appealed to the government or to the administrative court, depending on the type of complaint. The ISP's decision to prohibit an investment may be appealed to the Swedish government. Other decisions including administrative fines may be appealed to the Stockholm Administrative Court.

Relation to the Protective Security Act and the Competition Act:

The FDI Act is applied in parallel with the Protective Security Act and the Competition Act, and a transaction may trigger filing obligations under all three legislations as well as the regulations on dual use products and military equipment.

Status and next steps: The FDI Act enters into force on 1 December 2023, and is applicable to transactions closing on or after this date.

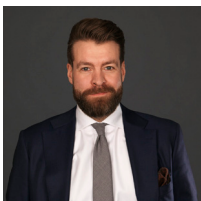
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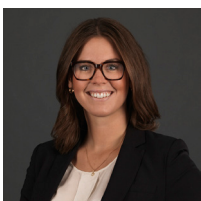
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