



VINGE BRIEF

Swedish FDI Act: *the first six months*

The Swedish Foreign Direct Investment Review Act (the “FDI Act”) has now been in force for six months. Investments in a wide range of Swedish companies may not be completed until they have been notified to and approved by the FDI authority. The FDI Act has a very broad scope and a large number of transactions are caught. Since the FDI Act entered into force on 1 December 2023, more than 550 transactions have been notified to the FDI authority. No transaction has yet been prohibited.

Purpose of the FDI Act

The FDI Act is intended to prevent foreign direct investments that may have a detrimental effect on Sweden's security or on public order or public safety. A foreign direct investment may be prohibited or made subject to conditions if this is necessary to protect these interests. The Act is designed to cover even relatively small investments in a broad range of sectors.

Investors in scope

The FDI Act applies to all transactions in scope, irrespective of the investor's country of residence or nationality. In other words, even Swedish investors and investors from other EU countries need to notify investments in companies that fall within the scope of the FDI regime. However, only investments by investors from outside the EU can be prohibited or made subject to conditions for approval. According to the FDI Act, an investor is considered "foreign" as soon as the investor is partly owned (directly or indirectly) by non-EU persons.



Sectors in scope

The FDI Act applies to investments in Sweden-domiciled companies engaged in certain so-called protected activities. A target company that conducts protected activities has a duty to inform a potential investor that the FDI Act applies. However, the target company is exempt from this obligation in the event that the transaction concerns an acquisition on a regulated market or a multilateral trading facility.

The following activities constitute protected activities under the FDI Act:

ESSENTIAL SERVICES

Activities, services or infrastructure which maintain or ensure societal functions that are necessary for the basic needs, values or safety of society. The Swedish Civil Contingencies Agency (the “**MSB**”) has published regulations in which a very large number of activities are classified as essential services and thus covered by the FDI Act. Essential services are the most common type of protected activity under the FDI Act. MSB's regulations are expected to be expanded during 2024 to include additional activities that will be deemed essential services.

SENSITIVE PERSONAL DATA OR LOCATION DATA

Large scale processing of sensitive personal data (as defined in Article 9(1) of GDPR) or location data through a product or service.

MILITARY EQUIPMENT

The manufacture or development of, research into, or provision of military equipment under the Military Equipment Act, or the provision of technical assistance relating to military equipment.

DUAL-USE ITEMS

The manufacture or development of, research regarding, or provision of dual-use items, or the provision of technical assistance for such items. The items covered are set out in Annex I of [Regulation \(EU\) 2021/821](#) setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items.

SECURITY-SENSITIVE ACTIVITIES

Security-sensitive activities covered by the [Protective Security Act](#). Many companies supply goods and services to operators who conduct security-sensitive activities and may have entered into so-called protective security agreements with such operators. However, such suppliers are not thereby covered by the [Protective Security Act](#).

EMERGING TECHNOLOGIES AND OTHER STRATEGIC TECHNOLOGIES

Research or the supply of products or technologies relating to emerging technologies or other strategic technologies or activities involving the ability to manufacture or develop such products or technologies. A list of emerging technologies or other strategic technologies can be found in Annex 2 of [the Government's regulations](#) on the review of foreign direct investments.

CRITICAL RAW MATERIALS, METALS AND MINERALS

Prospecting, extraction, enrichment or sale of critical raw materials, metals or minerals that are strategically important to Sweden. A list of critical raw materials, metals and minerals can be found in Annex 1 of [the Government's regulations](#) on the review of foreign direct investments.

FDI authority

The **Swedish Inspectorate for Strategic Products (the “ISP”)** is the screening authority under the FDI Act. The ISP must inform the Swedish Armed Forces and the Swedish Security Service of the investments notified to the ISP. If the ISP initiates an in-depth review, the ISP must consult with the Swedish Armed Forces, the Swedish Security Service, the MSB, the Swedish Defence Materiel Administration and the National Board of Trade. In addition, the ISP may consult with other authorities that may have relevant knowledge about the activities of the target.

The ISP may, on its own initiative, initiate a review of a transaction (regardless of whether the transaction is subject to an obligation to notify).

Obligation to notify

An investment must be notified to the ISP if:

- (i) the target company, or any subsidiary of the target company, is domiciled in Sweden;
- (ii) the target company, or its subsidiary, carries out protected activities; and
- (iii) the investor will, through the notified investment, acquire votes in the target company equal to or exceeding 10, 20, 30, 50, 65 or 90 percent of the voting rights in the company.

An investment must be notified to the ISP each time a threshold is reached or exceeded. The Act also applies if the investor acquires direct or indirect influence in the management of the

target company in any other way (for example by having the right to appoint a board member) and in the case of asset transfers.

The Act also covers indirect acquisitions – for example, in the case of an acquisition of a foreign company with a subsidiary in Sweden, or an acquisition of a Swedish parent company that is not covered by the FDI Act but which has a subsidiary that conducts protected activities. Investments in listed companies are also covered by the FDI Act.

The FDI Act only applies to companies and other entities which conduct protected activities *and* which are domiciled in Sweden. If the protected activity is not conducted by a company or an entity domiciled in Sweden, the investment does not need to be notified to the ISP, regardless of whether the group’s foreign entities conduct protected activities under the FDI Act. A non-Swedish company that has a registered branch in Sweden is not covered by the FDI Act.

Investments in legal persons and entities other than limited liability companies, such as partnerships and trusts, as well as *greenfield investments*, are subject to the notification obligation. Share issuances made pro rata to the number of shares already owned by the investor are exempt.

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tions are covered by the notification obligation if the transaction leads to a change in the ownership structure of a Swedish entity which conducts protected activities. This may be the case, for example, if a business conducting a protected activity is transferred through an asset transfer from a Swedish limited liability company to a foreign company within the same group, even when the ultimate owner remains the same.

Standstill obligation

A notifiable investment may not close prior to the ISP's approval of the investment. The standstill obligation applies regardless of whether the investor is from Sweden, another EU country or a non-EU country.

Notification to the ISP

The obligation to notify an investment within the scope of the FDI Act lies with the investor. There is no filing fee. In the filing, the investor must accurately disclose the ownership structure of the target company before and after the transaction, and the investor's ownership structure, all the way up to the investor's ultimate owner(s). The investor must also describe, among other things, the transaction structure and the protected activities of the target company.

A notification to the ISP should be made when the investment is "imminent". Filings are commonly submitted shortly after the signing of the share purchase agreement, or the announcement of a public takeover offer. However, it is possible to notify a transaction at an earlier stage, for example on the basis of a letter of intent or a term sheet. Since the filing needs to

include details of the post-closing ownership structure of the target company, it may in practice be difficult to notify at too early a stage.

Review periods

Phase 1 – The ISP must decide, within 25 business days of the notification being deemed complete, whether to "leave the notification without action" (i.e., approve) or to initiate a review of the investment.

Phase 2 – The ISP must approve (with or without conditions) or prohibit the investment within three months from its decision to initiate a review. This period may be extended to up to six months if there are special circumstances.

The ISP's review

In each individual case, the ISP makes an overall assessment of the potential risks that an investment may entail. The ISP takes into account the identity of the investor and the importance of the target company's activities to Sweden's security, public order or public safety. Consideration is given to whether the investor, wholly or partially, is controlled by a state outside the EU. The assessment under the FDI Act of whether an investment should be approved or prohibited is ultimately a security policy assessment.

Investment thresholds

10%, 20%, 30%, 50%, 65%, 90%



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When can an investment be prohibited?

A foreign direct investment (made by a direct or indirect investor from a non-EU country) will be prohibited if it is necessary to prevent adverse effects on Sweden's security or on public order or public safety in Sweden. ISP cannot make such a decision if the (direct *and* indirect) investor is incorporated in Sweden or another EU country.

Approval with conditions

The ISP may couple the approval of a foreign direct investment with conditions. Such conditions may, for example, relate to the investor, the operations of the target company or the management and control of the target company. Conditions may not be imposed on investments made by an investor from Sweden or any other EU country.

Fines

The ISP may impose fines of up to SEK 100 million (approx. EUR 8.7 million) for breaches of the FDI Act. Such fines can be imposed on an investor who fails to notify an investment. Similarly, a fine can be imposed on an investor who completes an acquisition prior to the ISP's approval, or if an acquisition is carried out in violation of conditions decided by the ISP. An investor and/or target company that has provided incorrect information or failed to provide

requested information to the authority may also be subject to a fine. No fine can be imposed on the seller.

Confidentiality and access to documents

At the ISP, confidentiality applies to information in the notification and other documents concerning the parties' business and operating conditions. In addition, secrecy for the protection of national security applies to certain information that the ISP obtains when assessing a notification. Our experience to date is that the ISP maintains a relatively high level of confidentiality for commercially sensitive information. In addition, the ISP has so far been very restrictive in giving investors insight into the assessment process and regularly refuses to disclose information about its handling of the notification, such as the ISP's own notes and opinions from other authorities.

Appeals

The ISP's decision to prohibit an investment or to approve an investment with conditions may be appealed to the Swedish Government. The ISP's decisions on fines may be appealed to the Administrative Court in Stockholm.

The FDI Act is applied in parallel with the Protective Security Act

The FDI Act applies in parallel with the review system set out in the Protective Security Act when transferring a business conducting security-sensitive activities. The Protective Security Act applies to activities that are of importance to Sweden's security. For example, certain activities may be covered if they are crucial for Sweden's defence, democracy, critical infrastructure, energy supply or electron-

ic communications. The review system under the Protective Security Act has a considerably more limited scope than the FDI Act, as fewer activities and types of transactions are covered by the Protective Security Act. In some cases, however, the same acquisition may trigger both a notification obligation under the FDI Act and a consultation obligation for the transfer of security-sensitive activities under the Protective Security Act.

Read more about Vinge's advice on foreign direct investment at vinge.se/en/fdi.

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