
THE ASSET MANAGEMENT REVIEW

FOURTH EDITION

EDITOR
PAUL DICKSON

LAW BUSINESS RESEARCH

THE ASSET MANAGEMENT REVIEW

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EDITOR'S PREFACE

Following several challenging years in the wake of the global financial crisis of 2007–2008, recent years have seen a more sustained economic recovery take hold. However, despite significant improvements in the global economic landscape, 2014 was marked by significant geopolitical events, which have taken their toll on financial markets outside the US and Japan. In the UK, both the Scottish referendum and predictions of a close general election outcome in May 2015 created an uncertain political environment. At a European level, markets have been faced with continuing tensions in Eastern Europe, as well as the ongoing sovereign debt issues, with the Greek crisis featuring heavily in news headlines over the past 12 months. The collapse of oil prices, the spread of the Ebola virus in West Africa and the ongoing conflict in the Middle East have also had a significant impact on the global economy.

Nevertheless, the importance of the asset management industry continues to grow. Nowhere is this truer than in the context of pensions, as the global population becomes larger, older and richer, and government initiatives to encourage independent pension provision continue. By way of example in the UK, changes to the rules governing what retirees can do with their pension benefits look set to open up a new section of the market to discretionary managers and product providers.

The activities of the financial services industry remain squarely in the public and regulatory eye, and the consequences of this focus are manifest in ongoing regulatory attention around the globe. Regulators are continuing to seek to address perceived systemic risks and preserve market stability through regulation. In Europe, major changes to the regulatory landscape were introduced by the Alternative Investment Fund Managers Directive, which has applied in full since July 2014, and this trend is set to continue in other areas of the asset management industry with the implementation of changes to the UCITS regime and the revised Markets in Financial Instruments package. In the UK, the Financial Conduct Authority has announced plans for a market study on the asset management industry and the charges it levies on investors.

It is not only regulators who continue to place additional demands on the financial services industry in the wake of the financial crisis; the need to rebuild trust has led investors to call for greater transparency around investments and risk management from those managing their funds. Investors and regulators' demands for greater clarity on fees and commissions charged by fund managers for services provided also remain a constant presence.

This continues to be a period of change and uncertainty for the asset management industry, as funds and managers act to comply with regulatory developments and investor requirements and adapt to the changing geopolitical landscape. Despite the challenges outlined above, confidence has begun to return across a number of areas, buoyed by increasingly positive assessments of the global economic outlook, which raises the prospect of increased investment and returns. Although the challenges of regulatory scrutiny and difficult market conditions remain, a return of risk appetite has also evidenced itself. The industry is not in the clear but, prone as it is to innovation and ingenuity, it seems well placed to navigate this challenging and rapidly shifting environment.

The publication of the fourth edition of *The Asset Management Review* is a significant achievement, which would not have been possible without the involvement of the many lawyers and law firms who have contributed their time, knowledge and experience to the book. I would also like to thank Gideon Robertson and his team at Law Business Research for all their efforts in bringing this edition into being.

The world of asset management is increasingly complex, but it is hoped that the fourth edition of *The Asset Management Review* will be a useful and practical companion as we face the challenges and opportunities of the coming year.

Paul Dickson
Slaughter and May
London
September 2015

Chapter 29

SWEDEN

*Emil Boström and Jonas Andersson*¹

I OVERVIEW OF RECENT ACTIVITY

The global economic situation in 2014 was characterised by reduced uncertainty and moderate economic growth. Financial markets in developed countries performed well. The overall return on investments by the major Swedish asset managers, such as insurance companies and the public pension funds (AP funds), was positive in 2014, in particular due to investments in equity. In addition, alternative investments, including real property and private equity, have in general continued to create a positive return in the past year. As to private equity, there has been an increased interest among private equity fund managers for establishing structures in Sweden. From a legal perspective, the implementation of the Directive on Alternative Investment Fund Managers (AIFMD)² has been the most significant change to the regulatory framework governing the Swedish asset management industry. For further details on recent trends, see Section V, *infra*.

II GENERAL INTRODUCTION TO THE REGULATORY FRAMEWORK

There is no comprehensive legal regime governing asset management activities in Sweden. Instead, depending on the type of activity, specific or general rules will apply.

Below is a summary of the most important Swedish statutes and regulations relevant for asset management:

- a* The Insurance Business Act (IBA), which addresses insurance companies' investments. The Directive on the Activities and Supervision of Institutions

1 Emil Boström is a partner and Jonas Andersson is a senior associate at Mannheimer Swartling Advokatbyrå AB.

2 Directive on Alternative Investment Fund Managers (2011/61/EU).

- for Occupational Retirement Provision³ has been implemented in Swedish law through the IBA.
- b* The Public Pension Funds Act (AP Funds Act), which governs the operations of the first to fourth and the seventh AP funds (AP1, AP2, AP3, AP4 and AP7, respectively) and the Sixth Public Pension Fund Act (Sixth AP Fund Act), which governs the operations of the sixth AP fund (AP6).
 - c* The Act on the Securing of Pensions Commitments, which, *inter alia*, sets out the rules for securing employees' pensions through private pension foundations.
 - d* The Securities Funds Act (SFA), which implements the Directive on the Coordination of Laws, Regulations and Administrative Provisions relating to Undertakings for Collective Investment in Transferable Securities (UCITS IV Directive).⁴ The SFA governs UCITS-compliant funds and management companies of such funds.
 - e* The Alternative Investment Fund Managers Act (AIFMA), which implements the AIFMD. The AIFMA entered into force on 22 July 2013 and governs managers of alternative investment funds, as well as special funds (i.e., funds exempted from certain restrictions applicable to UCITS funds) and management companies of special funds.
 - f* The Securities Market Act (SMA), which implements the Markets in Financial Instruments Directive.⁵ The SMA governs, for instance, the provision of investment services and the conduct of investment activities in Sweden.
 - g* The Swedish Financial Instruments Trading Act (Trading Act) provides for disclosure requirements where holdings reach, exceed or fall below certain thresholds.
 - h* General company law, primarily the Companies Act and the Partnership and Non-registered Partnership Act, which provide rules in relation to the establishment and operations of limited liability companies and limited partnerships, respectively.
 - i* Regulations issued by the Swedish Financial Supervisory Authority (SFSA). The SFSA's regulations supplement and elaborate the above-mentioned financial statutory laws. The SFSA is the Swedish financial regulator and supervises, *inter alia*, banks, insurance companies, securities funds (including their management companies), managers of alternative investment funds and securities business in Sweden. In the event of non-compliance with the applicable financial law or regulations, the SFSA may penalise the relevant financial service provider (e.g., by imposing fines or, in cases of material non-compliance, revoking its authorisation).

3 Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision (2003/41/EC).

4 Directive on the Coordination of Laws, Regulations and Administrative Provisions relating to Undertakings for Collective Investment in Transferable Securities (2009/65/EC).

5 Markets in Financial Instruments Directive (2004/39/EC).

III COMMON ASSET MANAGEMENT STRUCTURES

Under Swedish law, a number of different structures may be used for asset management activities. The following structures are the most common:

- a* insurance companies, which are normally established as limited liability companies or mutual companies;
- b* AP funds, which are specific legal entities formed as independent Swedish governmental authorities;
- c* pension foundations, which are legal entities that employers may establish to secure their pension liabilities towards their employees;
- d* securities funds: as to funds targeting retail investors, they are normally established as open-ended investment funds (UCITS funds or special funds) under the SFA or the AIFMA, respectively, whereas Swedish fund managers of such funds are established as limited liability companies; and
- e* real property and private equity funds: as further detailed in Section VI, *infra*, there are no specific structures or regimes used for real property funds or private equity funds. Such funds are normally closed-ended and set up as limited liability companies or limited partnerships. The managers of real property and private equity funds will typically be subject to the provisions of the AIFMA. It should be noted that the trust concept is not recognised under Swedish law.

IV MAIN SOURCES OF INVESTMENT

The domestic Swedish asset management market is dominated by insurance companies (in particular life insurance companies) and the AP funds.

At the end of the first quarter 2015, Swedish insurance companies managed approximately 4,232 billion kronor of assets. They have mainly invested in Swedish and foreign equity, investment funds, bonds, real property and infrastructure.

At the end of 2014, the assets managed by the AP funds totalled approximately 1,438 billion kronor. The assets of the AP funds primarily comprise Swedish and foreign equity, bonds and alternative investments (the sixth AP fund, which is the smallest AP fund, only invests in small-cap and mid-cap companies through private equity funds or investment companies).

At the end of the first quarter of 2015, Swedish investments in retail funds (securities funds and special funds) amounted to approximately 3,203 billion kronor. These funds invest mainly in equity or fixed-income assets.

Activity within the Swedish private equity sector slowed significantly in 2012. In 2014, the investments made in the Swedish private equity market increased somewhat as compared with 2013 and totalled approximately 14.5 billion kronor (predominantly within buyouts). There was a decrease in fundraising. In total, Swedish private equity funds raised approximately 29.2 billion kronor in 2014.

Swedish commercial real property transactions to a value of approximately 150 to 160 billion kronor⁶ were made in 2014. The transactions mainly involved Swedish

6 *Fastighetsvärlden* online article dated 12/01/2015.

institutional investors, listed and unlisted property companies, and real property funds. Considering, *inter alia*, the continued low interest rate, which contributes to sustaining a good financing climate together with good yield opportunities, the prognosis for 2015 suggests continued high transaction volumes.

V KEY TRENDS

A common trend among Swedish insurance companies and the AP funds is to obtain a better balance in their strategic asset allocation and to reduce the long-term risk of their portfolios. As a reaction to the highly volatile global stock markets, several asset managers have decreased their share of equity investments in favour of fixed-income investments and alternative investments (e.g., real property, hedge funds and private equity). In particular, the AP funds have indicated an intention to allocate more assets to alternative investments. Furthermore, the AP funds have indicated a stronger focus on sustainable value creation. For example, AP1 has conducted an assessment of the sustainable work of private equity funds. There is also growing interest in corporate bonds in the Swedish market.

Resulting from a lack of supply and increasing demand, there is a continuous trend in real estate for office demand in major cities to shift from central prime locations (i.e., Stockholm inner city) to secondary locations and city development areas. The favourable investment climate in Sweden tends to increase the presence of foreign investors. The shortage of housing in larger cities, in particular Stockholm, continues to entail increased focus on residential properties and office buildings with potential to be converted for residential use. The demand for health-care properties is continuously high.

As regards the Swedish insurance industry, in recent years, there has been a strong focus on worsening solvency levels. However, over the past few years, the insurance companies have slowly improved their solvency levels and ratios and, at least for a significant part of the industry, the solvency levels are currently stable. Having said that, a few companies continue to struggle, especially captives (which to some extent are ceasing their business), and the deteriorating solvency ratio has forced them to, for example, cease writing new policies or, contrary to the above-mentioned trend, to decrease their investments in alternative investments.

The operations of the AP funds have been under review for about three years, and a governmental committee report was presented in June 2015. The committee has suggested that the management of the AP funds is reorganised and made more flexible. In brief, the committee has proposed that the current five funds are restructured into three funds, and that certain quantitative restrictions (see Section VI.ii *infra*) are removed. The AP funds shall also to a larger extent be able to invest in unlisted shares and real estate. Further, it has been proposed that a 'prudent person rule' and new principles for sustainable investments are introduced. The intention is that the new rules will take effect as from July 2017.

VI SECTORAL REGULATION

i Insurance

General

Under the IBA, insurance companies are obliged to maintain investment guidelines. The guidelines must specify the insurance company's total assets as well as the assets used for technical reserves.

As for insurance companies that do not conduct business related to occupational retirement insurance, the IBA contains a general rule on diversification of risks for investments of all assets used for debt coverage. Assets used for technical reserves are subject to investment restrictions, and must be invested to achieve appropriate spreading of risks and to ensure that the company maintains a sufficient short-term liquidity. The investment restrictions provided for in the IBA contain detailed limits on allowed assets for investment and the amount of single investments.

The assets matching the technical reserves must be invested in accordance with the investment restrictions set out in the IBA. In addition, these assets, like all of the insurance company's assets, must be invested in accordance with the insurance company's own investment guidelines. Therefore, it is essential that any transaction involving an insurance company's assets does not violate the restrictions in the insurance company's investment guidelines.

Insurance companies conducting occupational retirement insurance business shall also ensure that there is a diversification of risks for investments of assets used for debt coverage. In addition, there is a requirement that the investments shall be made in a prudent manner. Although these businesses also must follow investment restrictions provided for in the IBA, the applicable investment restrictions are not as far-reaching as the restrictions for other insurance business.

As mentioned above, all insurance companies must maintain investment guidelines. If an insurance company does not act in accordance with its guidelines, or if the SFSA otherwise considers that an unlawful deviation from the IBA has occurred, the SFSA may make remarks to the insurance company's board of directors, and also order the board of directors to comply with the investment guidelines or the IBA, or both. In addition, the SFSA has the authority to limit, or even prohibit, the company's management of its assets. The SFSA may also make alternative arrangements for the management of the assets.

Trends and developments

The Solvency II Directive⁷ is expected to be implemented in Sweden in 2016, although some of its reporting provisions are already being used. The implementation of the Solvency II Directive will influence insurance companies' investments, although the details are still unclear. First, according to the proposed bill for a new Insurance

7 Directive on the Taking-up and Pursuit of the Business of Insurance and Reinsurance 2009/138/EC.

Business Act that shall implement the Solvency II Directive,⁸ it is suggested that the investment restrictions provided for in the IBA concerning allowed assets to be used for debt coverage be removed. Instead, insurance companies may themselves decide which assets to invest in and the appropriate limits for the investments based on, for example, the risks involved in the insurance companies business. Second, since an insurance company will have to take into consideration different risks involved in its investments and asset management (e.g., different market risks, operational risks and liquidity risks), insurance companies may be forced to change investment strategies. Where such change of investment strategies may end, however, is difficult to assess, since companies have different risks involved in their business.

Currently, occupational retirement business is largely conducted by insurance companies. However, a possible future regime is being considered under which occupational retirement business may also be conducted by specific institutions for occupational retirement provision.

ii Pensions

The AP funds

The Swedish public pension system is divided into two parts. One part is financed by contributions from today's employees. These assets are managed by five of the AP funds, AP1, AP2, AP3, AP4 and AP6. The second part of the pension system is the premium reserve pension system that is financed by funds built up from premium reserve contributions. The premium reserve pension funds are managed by private securities funds and AP7.

Each of the AP funds may establish its own investment policy and strategy, but they are subject to certain restrictions set out in the AP Funds Act, the Sixth AP Fund Act and the SFA.

Under the AP Funds Act, the same restrictions apply to the AP1, AP2, AP3 and AP4. For instance, there is a general requirement that at least 30 per cent of the fund's assets must be invested in low-risk fixed-income assets, and the fund may not own more than 10 per cent of the votes in a single listed company and not more than 30 per cent in an unlisted venture capital company.

The investment rules governing AP6 reflect the fund's objective to invest in small and mid-cap companies, and also in a selection of private equity funds and investment companies.

AP7 is governed by the investment restrictions under the SFA. The investment rules of the Seventh AP fund are further set out in the respective fund rules of the funds managed by AP7.

Private pension foundations

In Sweden, there are no private pension funds that an individual may invest in. Instead, pension funds are generally organised as pension foundations that employers may establish to secure their pension liabilities towards their employees. These pension foundations are

8 Government official report SOU 2011:68.

governed by the Swedish Act on the Securing of Pensions Commitments. As a result of Sweden implementing the Directive on the Activities and Supervision of Institutions for Occupational Retirement Provision, the pension foundations are in many ways treated in the same manner as a life insurance company conducting occupational retirement schemes (see Section VI.i, *supra*).

In general, a pension foundation shall invest its assets in a satisfactory manner and to achieve the foundation's purpose as stated in the founding documents. In addition, for pension foundations securing pensions for more than 100 individuals, the investments shall be made to spread the risks and otherwise in a prudent manner. Similar to the rules governing insurance companies, investments made by pension foundations securing pensions for more than 100 individuals are subject to certain limits concerning allowed assets to be used for debt coverage and the amount of single investments. These rules are, however, more general and not as detailed as those for insurance companies.

Furthermore, pension foundations securing pensions for more than 100 individuals must also have investment guidelines, which shall be submitted to the SFSA no later than when the guidelines come into force. The SFSA's regulations on investment guidelines for institutes conducting occupational pension business apply to some extent to these pension foundations.

Trends and developments

As mentioned in Section V, *supra*, the rules governing the operations of the AP funds have been subject to a thorough review. It is likely that the investment restrictions applicable to the AP funds will be amended as a consequence of this review in the future but, as the committee report has received some criticism, it remains to be seen to what extent the proposals finally will be implemented.

iii Real property

Legal structure

No specific legal or regulatory rules apply to real property fund management in Sweden, and Swedish real property funds are most often organised as Swedish limited liability companies or limited partnerships.

For an overview of the general rules governing real property funds, see Section VI.v, *infra*. The notes on private equity funds also apply to real property funds.

Trends and developments

The Swedish real property market increased in 2014, and both investors and banks providing financing have become positive regarding properties in central locations. There is a continued focus on residential, retail and community service real property. Financing is still relatively cheap for high-yield properties, but as stricter conditions are applied by the banks, there is a trend towards corporate bond issuance or joint venture structures to finance acquisitions without any debt financing. It is expected that the volatility of the property market will also remain low on a long-term basis. Large asset managers, such as the AP funds and insurance companies, are, in the light of their targeted asset allocation and low interest rates on (investment grade) bonds, likely to increase their asset allocation to real property.

See Section VI.v, *infra*, regarding the implementation of the AIFMD into Swedish law.

iv Hedge funds

General

There is no definition in Swedish law as to what constitutes a hedge fund and, accordingly, there are no specific rules targeting hedge funds only. Most hedge funds will be considered as alternative investment funds under the AIFMA, and their managers therefore are regulated by the AIFMA. A Swedish hedge fund may come in different legal forms, but many Swedish hedge funds are special funds under the AIFMA. While UCITS funds must meet all the requirements of the UCITS IV Directive, special funds may be granted exemptions by the SFSA from the restrictions applicable to UCITS funds. Due to the characteristics of hedge funds, such funds must commonly be granted exemptions from the detailed investment restrictions applicable to UCITS funds.

Being a regulated special fund under the AIFMA means that fund units may only be marketed in Sweden subject to an approval by the SFSA of the fund rules. Further, a full prospectus and a key investor information document must be prepared pursuant to the AIFMA and SFSA Regulations for Securities Funds (FFFS 2013:10), and Regulation (EU) 583/2010 implementing Directive 2009/65/EC, respectively. The turnaround time for SFSA approval of fund rules is two months.

The AIFMA also governs management companies of special funds, stating that fund operations must only be carried out pursuant to the AIFMA and subject to a licence by the SFSA. Licences to manage special funds may be granted to Swedish limited liability companies. Similar to other regulated businesses, obtaining a licence is subject to, *inter alia*, management and ownership assessments, initial and continuing capital requirements, and organisation requirements. The turnaround time for a licensing application to the SFSA is three months. Licence to manage a special fund may also be granted to an EEA-based AIFM subject to, *inter alia*, the SFSA obtaining a notification from the AIFM's home Member State authority and the licence granted to such AIFM in its home Member State covering the management of an alternative investment fund, the nature of which corresponds to the special fund in question.

Stake building disclosure requirements

The Trading Act provides for disclosure requirements for anyone who acquires or disposes of shares or voting rights⁹ in a listed issuer such that the percentage that he or she holds (alone or together with any concert party) reaches, exceeds or falls below

9 Holdings of financial instruments that result in an entitlement to acquire, on the holder's initiative, existing issued shares of the relevant issuer to which voting rights are attached, are also included for this purpose. Whereas derivatives that only carry a right to cash settlement are currently excluded for this purpose, pursuant to Directive (2013/50/EC) (Amending Directive), amending the Transparency Directive (2004/109/EC), such derivatives shall be included. The Swedish implementation of the Amending Directive is expected to enter into force on 1 February 2016.

certain thresholds. A notification must be made to the SFSA and the relevant issuer no later than the trading day¹⁰ following the acquisition or disposal that caused the notification requirement to arise.

Securities lending and borrowing transactions are generally treated as a transfer of title under Swedish law, and notifications may therefore be required under the Trading Act as if the lender had sold and the borrower had purchased the relevant securities. The thresholds in the Trading Act shall be assessed on a day-by-day basis and, subject to certain restrictions, it is possible to 'set off' trades made in the same instruments during the same day.

The Swedish rules regulating takeovers requires anyone who (alone or together with any concert party) acquires shares in a listed issuer to the extent that the percentage that he or she holds reaches or exceeds 30 per cent of the voting rights to immediately announce his or her shareholding.¹¹ Unless the shareholding has been reduced below the 30 per cent threshold within a four-week period, a public offer for the remaining shares¹² must be made (mandatory bid).¹³ In addition, certain disclosure requirements are set out in the AIFMA.

Trends and developments

Notable recent regulatory developments relevant for hedge funds include the AIFMD and Regulation (EU) No. 236/2012 on short selling and certain aspects of credit default swaps.

The AIFMD was implemented into Swedish law as of 22 July 2013; please refer to Section VI.v, *infra*.

Regulation (EU) No. 236/2012 on short selling and certain aspects of credit default swaps has applied across the EU since 1 November 2012. A domestic Act, containing supplementary provisions to the Regulation, came into effect on 1 January 2013. The Act includes supervisory and investigatory powers for the SFSA, and empowers it to impose fees of up to 5 million kronor for non-compliance with notification and

10 By virtue of the Amending Directive mentioned in footnote 8, the notification time will be extended from one trading day to three trading days following the acquisition or disposal that caused the notification requirement to arise. If the stakeholder is a legal entity, the notification is to be done no later than 12.00 am CET on the third trading day.

11 Although not a strict requirement, holdings of other financial instruments giving a financial exposure equivalent to a shareholding (this includes, for example, cash-settled equity swaps) would also often be included in the announcement.

12 The mandatory bid must also include all other financial instruments that may be significantly affected by the fact that the issuer's shares are being delisted.

13 The mandatory bid rules do not apply to the mere holding of rights to acquire shares, effectively excluding acquisitions of call options, warrants or convertible debt instruments for these purposes. Although holdings of contracts for difference do not trigger a mandatory bid, the creation of arrangements for the purpose of achieving what in practice is a change in control may contravene good stock market practice.

disclosure obligations under the Regulation and fees of up to 10 million kronor for non-compliance with transaction bans under the Regulation.¹⁴

v Private equity

Introduction

Management of Swedish private equity funds will normally be governed by the AIFMA. Swedish private equity funds have historically been established offshore (for instance, incorporated under Guernsey or Jersey law), but in recent years it has become more common to establish funds as Swedish limited partnerships or Swedish limited liability companies. In addition to the AIFMA, the provisions applicable to the specific legal structure used for the private equity fund in question will also be important for its operations.

The AIFMA

The content of the AIFMA is very similar to the AIFMD and generally goes no further than the AIFMD, except for certain stricter provisions regarding the marketing of alternative investment funds to non-professional investors.

Swedish managers managing alternative investment funds that are below certain thresholds (€100 million, if leveraged, or €500 million, if unleveraged and there are no redemption rights for five years) are exempted from the authorisation requirements under the AIFMA. They are only required to register and comply with certain reporting requirements.

In addition to the passporting rights under the AIFMD, both EEA and non-EEA managers may, in certain cases subject to an authorisation by the SFSA, market EEA and non-EEA based funds to professional investors, special funds or listed funds to non-professional investors, and private equity funds to professional and semi-professional investors (investors investing at least €100,000).

14 The background to the EU's interest in restrictions and disclosures on short-selling activities is interesting from a Swedish perspective, as criticism in the media and by regulators of hedge funds for causing (or at least fuelling) the 2008/2009 financial turmoil was allegedly less fierce in Sweden than in many other European countries. When the debate on the role and impact of hedge funds' short-selling activities became heated in many European countries, in several cases resulting in short-selling bans in publicly traded financial institutions, the SFSA confined itself to requesting more frequent statistics on stock lending and short selling from the relevant market participants, and increasing its controls for the purpose of discovering whether short-selling activities were in any way used for illegal market manipulation purposes. Interestingly, the SFSA conducted its own investigation into the effects of the short-selling bans on banks imposed by France, Germany, the UK and the US in September 2008, and concluded that such bans did not have the intended long-term effect of reducing market volatility.

Limited liability companies

A private equity fund established as a Swedish limited liability company will be regulated by the Swedish Companies Act, which includes provisions on, for example, corporate governance and protection of shareholders' rights, such as restrictions on value transfer, equity protection and protection of minority stakeholders. The shareholders of the company will not be personally liable for the liabilities of the company.

Limited partnerships

If a Swedish private equity fund is set up as a Swedish limited partnership, it will be subject to the Partnership and Non-registered Partnership Act. The general partner has an unlimited liability for the debts and liabilities of the partnership, whereas the limited partners' liability is limited to the amount of their committed capital. Under the Partnership and Non-registered Partnership Act, the partners may to a great extent agree in the partnership agreement on how to regulate their internal relations. Given the unlimited liability of the general partner, the partnership may normally only be represented by the general partner in relation to a third party.

Certain financial regulations

In addition to general company law, there are several financial regulations governing investment activities in Sweden.

As mentioned in Section VI.iv, *supra*, the UCITS IV Directive was implemented into Swedish law through the SFA. The SFA governs both the marketing of securities funds in Sweden and the operations of fund management companies. However, private equity funds are often not classified as securities funds under the SFA and therefore are not covered by the SFA. In such cases, neither the marketing of private equity funds nor the operations of management or advisory companies require any approval or licence from the SFSA under the SFA.

The Markets in Financial Instruments Directive has been implemented into Swedish law primarily through the SMA. Under the SMA, the provision of investment services and the conduct of investment activities (securities business) on a professional scale require an authorisation of the SFSA (unless certain exemptions apply). The definition of securities business includes investment advice to clients in respect of financial instruments. However, given the way the operations of private equity funds normally are organised, private equity funds, including their advisory or management companies, normally do not need any authorisation under the SMA.

The marketing of fund units in Sweden may in certain circumstances be considered as securities business and thus require a licence from the SFSA under the SMA (e.g., if the marketing activities would include receipt and transmission of orders in respect of one or more financial instruments or the execution of orders in respect of financial instruments on behalf of clients). However, this is not the case for most private equity funds and their advisory or management companies, as they normally do not assist or advise investors in connection with the marketing in such a manner that this would be deemed as activities that would constitute securities business.

Prospectus requirements

The revised Prospectus Directive¹⁵ was implemented into Swedish law on 1 July 2012 primarily through the Trading Act. In respect of offerings and marketing of private equity funds, an obligation to prepare and publish a prospectus would only be triggered where the fund units offered are deemed transferable securities and only where an offer is made to the public. Fund units in a private equity fund would normally not be deemed transferable securities due to the transfer restrictions under the fund's investment agreement (typically, a shareholders' agreement or a limited partnership agreement). The offering of such units will normally therefore not trigger any prospectus requirements. Even if the fund units are deemed transferable securities, marketing of private equity funds will often be exempted from prospectus requirements on the basis that the offer normally is directed to qualified investors only or to fewer than 150 prospective investors in Sweden.

Trends and developments

It remains to be seen how the AIFMA will affect the Swedish private equity industry. Many domestic managers manage funds that fall below the thresholds will thus only be subject to a lighter regime. However, given that the AIFMA is a new legal framework, it can be expected that certain practical issues will arise when managers start applying the new provisions.

VII TAX LAW

As described in Section III, *supra*, several different legal forms can be used for asset management in Sweden.¹⁶ Generally, under Swedish domestic tax law all corporate income falls under one single income tax schedule. All income (including capital gains, if taxable) is subject to corporate income tax at a flat rate of 22 per cent.

There are, however, some specific tax regimes for certain legal entities and business activities. Those most relevant within the scope of this chapter are briefly described below.

Swedish securities funds (including hedge funds formed as special funds – see Section VI.iv, *supra*) are transparent for tax purposes and thus not subject to corporate income tax. Instead, 0.4 per cent of the value of the holding is taxed annually as capital income in the hands of the investors. This tax, however, only applies to investors subject to tax on a worldwide basis in Sweden (i.e., Swedish tax residents). Capital gains and dividends on the fund units are also taxable as capital income for Swedish tax-resident investors, whereas non-tax residents are only taxed for dividends.

Private equity funds are not subject to any special tax regime. Instead, they are most often formed as regular limited liability companies or limited partnerships (see Section VI.v, *supra*). Limited liability companies are taxable persons, while limited partnerships are tax transparent. Generally, Swedish-based private equity funds benefit

15 Prospectus Directive 2010/73/EU, as amended by Directive 2010/78/EC.

16 Depending on the legal form used, different tax rules apply, and the tax consequences in an individual case can only be determined after an assessment of all relevant circumstances.

from a participation exemption for capital gains and dividends that apply to holdings of non-listed shares irrespective of the level of holding and without any holding period requirement (as long as the shares are not held as stock in trade).

Swedish life insurance companies and private pension funds are, as a general rule, exempt from corporate income tax. Instead, they are subject to a special yield tax in accordance with the Special Yield Tax on Pension Funds Act of 1990. The yield tax is levied on a notional return on the value of the assets held at the beginning of the income year. The tax rate for insurance classified as pension insurance is 15 per cent, and for other life insurance 30 per cent.

The AP funds are exempt both from corporate income tax and special yield tax.

Private pension foundations are exempt from corporate income tax, but are liable to pay a similar yield tax that private pension funds pay.

Real estate funds are not subject to any special tax regime; hence, there is no equivalent to a real estate investment trust or similar under Swedish tax law. Instead, these funds are most often formed as limited liability companies or limited partnerships, and may benefit from the participation exemption described above for private equity funds.

VIII OUTLOOK

In light of the financial turmoil of recent years, it is likely that large Swedish institutional investors will seek to restrict the risk levels of their portfolios and allocate more assets to alternative investments.

In coming years, there will be a strong focus on the implementation into Swedish law of important EU directives, including the Solvency II Directive. The details of the rules implementing this Directive into Swedish law are yet to be revealed, but they are likely to affect the Swedish asset management industry. The Solvency II Directive will, for instance, affect insurance companies' risk management.

Further, the review of the operations of the AP funds will probably result in a revision of the rules that govern them (such as those regarding investment restrictions).

Appendix 1

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