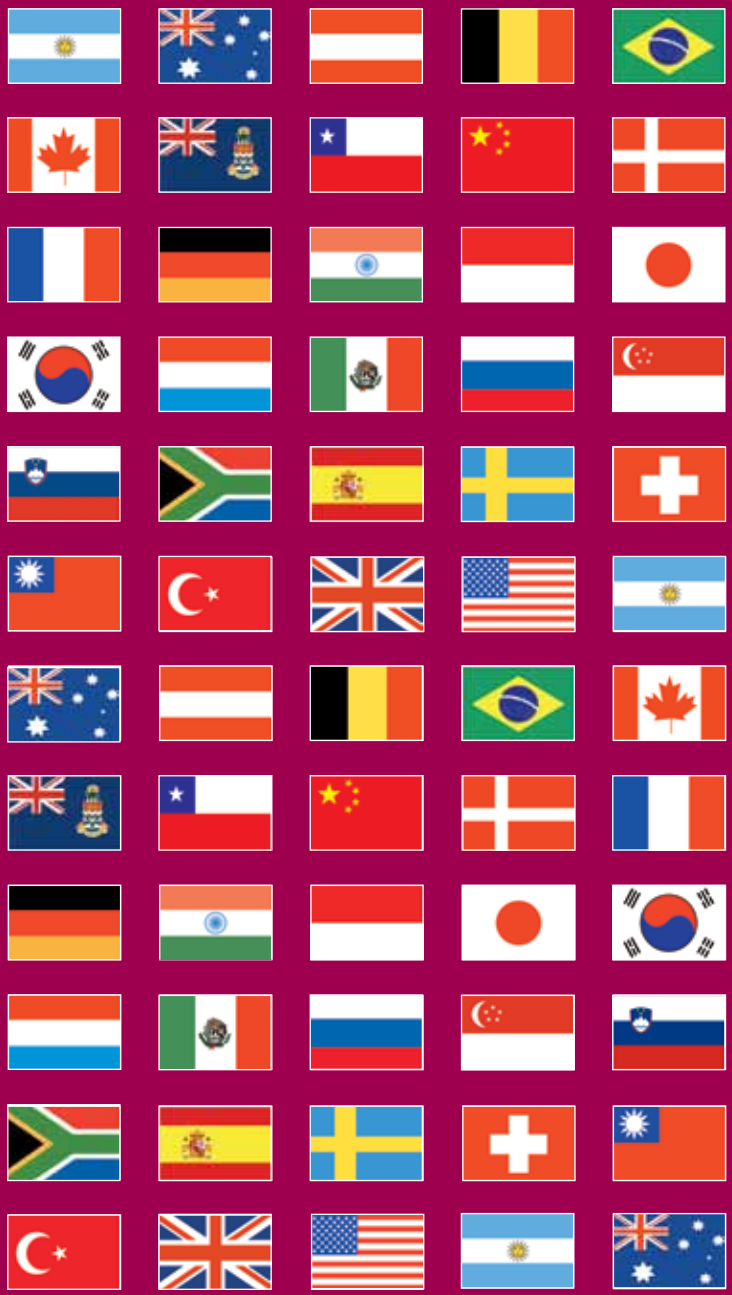
GETTING THE DEAL THROUGH

Private Equity

in 29 jurisdictions worldwide

2014

Contributing editors: Casey Cogut and William Curbow



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10th anniversary edition

Private Equity 2014

Contributing editors: Casey Cogut and William Curbow Simpson Thacher & Bartlett LLP

Getting the Deal Through is delighted to publish the fully revised and updated 10th anniversary edition of *Private Equity*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 29 jurisdictions featured. New jurisdictions covered this year include Argentina and Slovenia. The report is divided into two sections: the first deals with fund formation in 19 jurisdictions and the second deals with transactions in 27 jurisdictions.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. ***Getting the Deal Through*** publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. ***Getting the Deal Through*** would also like to extend warm and heartfelt thanks to contributing editor Casey Cogut who has recently retired from Simpson Thacher & Bartlett LLP. Casey has held the position of contributing editor of *Private Equity* since its inauguration 10 years ago, and Casey and his colleagues at Simpson Thacher & Bartlett LLP have been instrumental in the success of the publication. The publisher would like to welcome William Curbow, also a partner at Simpson Thacher & Bartlett LLP, as current and future contributing editor of *Private Equity*. We are delighted to have William on board, and we look forward to future editions in his very capable editorial hands.

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CONTENTS

Sweden

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Formation and terms operation

1 Forms of vehicle

What legal form of vehicle is typically used for private equity funds formed in your jurisdiction? Does such a vehicle have a separate legal personality or existence under the law of your jurisdiction? In either case, what are the legal consequences for investors and the manager?

The two main legal entities that are used as vehicles for LBO funds in Sweden are limited liability companies and limited partnerships. The limited liability company is a legal form that is governed by the Companies Act, while the limited partnership is governed by the Partnership Act.

A limited partnership is in its simplest form founded by two incorporators – a limited partner and the general partner. The normal structure for limited partnerships used for LBOs is that a limited liability company will be registered as the general partner and the investors, being one or several entities, each with legal personality, are registered as limited partners.

Following changes in the Swedish Holding Company Tax regime (see question 17), more and more limited liability companies are used as LBO funds. However, such funds rarely include any large foreign investors due to, inter alia, tax reasons, as well as unfamiliarity with the limited liability structures.

Each of a limited partnership and a limited liability company has legal personality and as such it will be separated from the partners with respect to liabilities and may be party to judicial proceedings as either claimant or defendant. The limited partnership will also be the owner of the assets that it acquires.

A person or company who wants to invest in the limited partnership will normally join as a limited partner and will only be held liable for the entity's debts and obligations to the extent of its capital commitment. The minimum commitment for a limited partner in a limited partnership is 1 krona, although generally the LBO funds have minimum thresholds for its investors equal to five to 50 million kronor. Should the limited partnership accept a new partner at a later stage that new partner will, with its invested capital, be held liable for debts accrued earlier by the limited partnership.

The general partner solely represents a limited partnership, thus a limited partner cannot per se act on behalf of the limited partnership. It is possible, however, to provide the limited partner with a power of attorney or similar so that proper representation can be made.

In the event that a structure is chosen where the general partner is in the form of a limited liability company, the managing director (or any other person appointed to act on behalf of the limited liability company) will be the representative for the limited partnership. The managing director thus has to comply with the provisions in the Companies Act and the Partnership Act regarding competence and authority. Basically, the limited partnership will be responsible for any acts taken by the managing director as long as he or she acts within the competence and authority placed on him or her by the limited partnership and the limited liability company.

2 Forming a private equity fund vehicle

What is the process for forming a private equity fund vehicle in your jurisdiction?

A limited partnership is formed through a partnership agreement between the limited and general partners, and the partnership is deemed to have been established once the agreement has been executed.

There is no minimum capital, apart from the 1 krona mentioned in question 1, required for registering a limited partnership. For limited liability companies, being the general partner in a limited partnership or the LBO fund vehicle itself, it is mandatory to have a registered share capital amounting to at least 50,000 kronor.

The actual registration process for a limited partnership is fairly simple and comprises the filing of a standard sheet stating, among other things, the names and addresses of the partners and their capital commitments, the name and address of the limited partnership and, if applicable, the name and address of the accountant. A registration fee of around 1,200 kronor is to be paid. Should a change in the partnership, or any other formal change in the limited partnership, occur, an amendment to the registration has to be filed and completed.

To register a limited liability company is very similar to a registration of a limited partnership, although you will not register any information about the investors, such as name, capital commitment, etc.

Registrations with the Swedish Companies Registrations Office usually take two to four weeks.

3 Requirements

Is a private equity fund vehicle formed in your jurisdiction required to maintain locally a custodian or administrator, a registered office, books and records, or a corporate secretary, and how is that requirement typically satisfied?

An LBO fund vehicle is required to have a registered office at its principal place of business in Sweden. However, a c/o address can be used and there is no requirement that the entity maintains a physical office or staff. The partnership shall keep written books and records, and is required to issue annual financial reports. The books and records are subject to inspection by tax authorities.

An LBO fund vehicle would typically have the same registered office as the general partner or the managing limited partner, who would also be responsible for keeping the books and records of the LBO fund vehicle. The fund is also generally required to appoint an auditor.

4 Access to information

What access to information about a private equity fund formed in your jurisdiction is the public granted by law? How is it accessed? If applicable, what are the consequences of failing to make such information available?

The Freedom of Press Act, one of Sweden's constitutional laws, provides, as a fundamental rule, that the right of public access to official documents entitles the public to full access to documents that have been received or drawn up by a public authority. As indicated by the wording, the general rule is that secrecy does not apply and that the information may be disclosed. However, to a limited extent the public authority may restrict access to information should its disclosure be detrimental to the authority's business.

As a consequence thereof, upon request the authorities will disclose annual reports of the LBO funds, income statements of the individuals of the fund manager and other similar documents. Capital commitments of the investors in an LBO fund will be filed with the Swedish Companies Registration Office and, hence, such information will be available upon request. In addition, a principle under Swedish Companies Law is that the share ledgers of all Swedish limited liability companies that, inter alia, shall include names and current addresses of the shareholders, are official documents, and shall be freely accessible from the companies. Failure to make the share ledger available is punishable by law and may lead to fines or imprisonment of up to one year.

In addition, it may be relevant for a potential investor to a Swedish LBO fund to investigate which other investors the LBO fund will have. To a certain extent it may also be good to know what information the LBO fund will provide to its investors, since such information, in some cases, may be accessible by the public. The right to public access to information may, however, under chapter 6, section 1 of the Swedish Secrecy Act, be restricted to protect the public economic interest and economic circumstances of private subjects. In order to protect the government's commercial activities the general rule is that secrecy shall apply to information in matters concerning a public authority's commercial activities, if it can be assumed that disclosure of the information would impair the competitiveness of the authority in relation to its business competitors. The decision to classify information or not is vested with each authority. Should an authority reject a request to review or obtain a document, the applicant is generally entitled to appeal against the decision.

5 Limited liability for third-party investors

In what circumstances would the limited liability of third-party investors in a private equity fund formed in your jurisdiction not be respected as a matter of local law?

In principle, third-party liability for an investor in a limited partnership LBO fund is limited to the capital commitment subscribed for by each respective investor. Since the capital commitments of the limited partners are registered with the Swedish Companies Registration Office, third-party creditors can easily access information on the capital commitments. Generally, the limited liability of limited partners is respected under Swedish law. However, should an investor take an active part in the management of the fund, then the limitations of liability may be set aside by the Swedish courts.

As regards limited companies, Swedish law recognises the concept of 'lifting the corporate veil' under special circumstances, especially if a company has been under-capitalised in relation to its business undertakings and in reality has been run by its parent company.

6 Fund manager's fiduciary duties

What are the fiduciary duties owed to a private equity fund formed in your jurisdiction and its third-party investors by that fund's manager (or other similar control party or fiduciary) under the laws of your jurisdiction, and to what extent can those fiduciary duties be modified by agreement of the parties?

Various fiduciary duties may apply under Swedish law, partly depending on the structure of the fund. The board of directors and the management of a limited company have a general obligation to always act in the best interest of the company and its shareholders (namely, all shareholders). However, as the legal entities within the fund and the investors are normally not shareholders, these fiduciary duties may be less relevant from the perspective of an LBO fund.

From a general perspective, other standards will also apply to the fund manager's activities. As a general rule, the fund manager would under Swedish law be regarded as holding the role of a trustee and will have an obligation to perform its tasks diligently and to act in the best interest of the fund and its investors. The duties and obligations of the fund manager will primarily be governed by the fund agreement. However, under Swedish contract law the terms and conditions of an agreement may be modified or set aside by a court, for example, to the extent that such terms and conditions are deemed to create unreasonable results, even if the circumstances giving rise thereto have arisen after the agreement was entered into.

7 Gross negligence

Does your jurisdiction recognise a 'gross negligence' (as opposed to 'ordinary negligence') standard of liability applicable to the management of a private equity fund?

The general standard of care that applies for the management of an LBO fund is 'ordinary negligence'. However, the Swedish courts recognise the concept of gross negligence and gross negligence is included as the standard of care applicable in several fund agreements. Nevertheless, it should be noted that gross negligence is a very high threshold under Swedish law and if the fund agreement does not specifically elaborate on the circumstances under which the negligence conducted should be considered gross, the courts are likely to interpret gross negligence as bordering on intentional actions or at least close to intentional risk-taking.

8 Other special issues or requirements

Are there any other special issues or requirements particular to private equity fund vehicles formed in your jurisdiction? Is conversion or redomiciling to vehicles in your jurisdiction permitted? If so, in converting or redomiciling limited partnerships formed in other jurisdictions into limited partnerships in your jurisdiction, what are the most material terms that typically must be modified?

Under Swedish law there is a possibility for the partners to agree on conditions for transfers, withdrawals, removal of management, information rights, etc. There are very few specific requirements under Swedish law. Should the partnership agreement not address a certain matter, management or a partner (or both) will need to rely on specific legislation or the consent of all the partners to take a specific action. Transfers of partnership interests are therefore not possible without full consent of the other partners. However, the partnership agreement usually provides that partnership interests are transferable with the general partner's consent, which shall not be unreasonably withheld.

To convert a foreign partnership into a Swedish partnership one will need to establish a partnership in Sweden as a newly established entity (see question 1) and possibly amend the fund agreement to comply with Swedish law; for example, forfeiture of partnership interests from a limited partner in default is generally not accepted in Sweden.

9 Fund sponsor bankruptcy or change of control

With respect to institutional sponsors of private equity funds organised in your jurisdiction, what are some of the primary legal and regulatory consequences and other key issues for the private equity fund and its general partner and investment adviser arising out of a bankruptcy, insolvency, change of control, restructuring or similar transaction of the private equity fund's sponsor?

This situation is typically provided for in the partnership agreement, whereby the remaining partners, by a qualified majority vote, would be entitled to invoke dissolution of the fund in cases of default, bankruptcy or insolvency.

If the matter is not addressed in the agreement, it is necessary to distinguish between limited liability companies and limited partnerships. For a limited liability company the insolvency or bankruptcy would not lead to dissolution or liquidation of the LBO fund vehicle. The other shareholders would, subject to a pre-emption clause in the articles of association, be entitled to purchase the shares (of the party in bankruptcy) and control of the LBO fund vehicle from an official receiver.

For limited partnerships (where the agreement does not address the situation) the LBO fund vehicle shall be liquidated unless the parties unanimously agree that an insolvent or bankrupt party should be excluded from the partnership instead. In cases of such exclusion, the excluded party shall be compensated with an amount corresponding to the appreciated market value of the excluded party's share in the partnership.

Regulation, licensing and registration

10 Principal regulatory bodies

What are the principal regulatory bodies that would have authority over a private equity fund and its manager in your jurisdiction, and what are the regulators' audit and inspection rights and managers' regulatory reporting requirements to investors or regulators?

The Swedish Financial Supervisory Authority oversees AIFMD registration and filing. Save for the aforementioned there is no regulatory body that has authority over an LBO fund or its manager under Swedish law. However, the entities within the LBO fund need to be registered with the Swedish Companies Registration Office as either limited liability companies or as limited partnerships as addressed further in question 11. Being registered with the Swedish Companies Registration Office does not, however, entail an inspection right or audit right for said authority or impose reporting requirements on these companies.

11 Governmental requirements

What are the governmental approval, licensing or registration requirements applicable to a private equity fund in your jurisdiction? Does it make a difference whether there are significant investment activities in your jurisdiction?

Save for applicable registration and filing requirements under AIFMD, there are no specific obligations put on an LBO fund regarding registration under Swedish jurisdiction, irrespective of the volume of the fund's investment activities in Sweden. It is quite common that the LBO fund is established as a limited partnership of foreign investors due, inter alia, to tax-related issues, but limited liability company funds are being increasingly used, especially for Swedish investors. For other types of businesses it is more common to use a limited liability company.

The main differences when it comes to registrations of a limited liability company versus a limited partnership is that the owners of a limited partnership will be registered with the Swedish Companies Registration Office and thus shown in the registration documentation. When it comes to the limited liability company, the owners are not registered with the authority but their respective ownership of shares are listed in the company's share ledger, which under Swedish law is an official document to be made available to anyone requesting it.

No other licensing or governmental approvals are required for registering an LBO fund, regardless of whether or not significant investment activities will be made within the fund.

12 Registration of investment adviser

Is a private equity fund's manager, or any of its officers, directors or control persons, required to register as an investment adviser in your jurisdiction?

There is no requirement under Swedish law to register the LBO fund's manager, officer or other persons as an investment manager.

13 Fund manager requirements

Are there any specific qualifications or other requirements imposed on a private equity fund's manager, or any of its officers, directors or control persons, in your jurisdiction?

There is no obligation to obtain any licence or similar for the LBO fund's manager (see question 12), nor are there any requirements for any licences or qualifications of its officers, directors or control personnel under Swedish law.

14 Political contributions

Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure of, political contributions by a private equity fund's manager or investment adviser or their employees.

In general, there are very limited opportunities for political contributions in Sweden. Governmental or municipal entities do not accept funding except from open contributions to specific projects (scientific research, sports arenas, etc). Contributions from companies to political parties are allowed and without disclosure. The latter is due to the fact that 90 per cent of party activities in Sweden are publicly financed.

15 Use of intermediaries and lobbyist registration

Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure by a private equity fund's manager or investment adviser of, the engagement of placement agents, lobbyists or other intermediaries in the marketing of the fund to public pension plans and other governmental entities. Describe any rules that require a fund's investment adviser or its employees and agents to register as lobbyists in the marketing of the fund to public pension plans and governmental entities.

Although there have been several discussions about whether to restrict the intermediary's role in Sweden, there is still no general Swedish legislation that restricts the engagement of intermediaries such as lobbyists or placement agents in Sweden and, hence, these intermediaries can operate relatively freely in Sweden. However, there are several examples of public and governmental entities establishing their own internal policies on how their respective employees shall act in relation to such intermediaries.

16 Bank participation

Describe any legal or regulatory developments emerging from the recent global financial crisis that specifically affect banks with respect to investing in or sponsoring private equity funds.

Sweden has not adopted any material legal or regulatory provisions that specifically affect banks with respect to investing in or sponsoring private equity funds as a direct consequence of the financial crisis. However, in practice the market's interpretation of the provisions already in place may very well have narrowed the banks' willingness to invest in private equity funds.

Taxation

17 Tax obligations

Would a private equity fund vehicle formed in your jurisdiction be subject to taxation there with respect to its income or gains? Would the fund be required to withhold taxes with respect to distributions to investors? Please describe what conditions, if any, apply to a private equity fund to qualify for applicable tax exemptions.

In Sweden, a limited partnership's income and gains are not taxed separately; under current rules it is not a taxable entity and instead it is the partners of the limited partnership that are liable to tax. Accordingly, distributions of funds from the LBO to the partners do not trigger any tax for the partnership.

As a result of the introduction of the participations rules in Sweden it has become common that the fund vehicles are formed as limited liability companies instead of partnerships. The main reason for shifting from partnership structures to limited liability companies was the fact the partnerships could not take advantage of the participation regime from the beginning. However, from 1 January 2010 the participation regime is normally also available for partnership structures if the partners themselves qualify for the participation exemption rules.

A Swedish LBO fund, packaged in the form of a limited liability company, will be taxed in Sweden on its taxable income with a tax rate of 22 per cent. However, an exemption applies generally for capital gains in most shareholdings made by the LBO and dividends received. Furthermore, distributions out of the fund vehicle would normally also be exempt from Swedish withholding tax.

The LBO fund vehicle is required to impose and withhold a 30 per cent tax with respect to interest and dividend distributions, if they are made to resident individuals.

The general rule under domestic Swedish tax law is that Sweden imposes withholding tax on dividends distributed to a foreign corporate shareholder unless the foreign company performs business activities through a permanent establishment in Sweden. However, no withholding tax will be imposed if the receiving shareholder is an EU company or if the foreign shareholder qualifies as a 'foreign company' under Swedish law. The requirements are deemed to be met if the company is resident in a country with which Sweden has signed a tax treaty or if the company is resident in a country with similar corporate taxation as the taxation Sweden levies on Swedish companies.

There are no other rules under which an LBO fund vehicle formed as a Swedish limited liability company may apply for tax exemptions.

18 Local taxation of non-resident investors

Would non-resident investors in a private equity fund be subject to taxation or return-filing requirements in your jurisdiction?

If the LBO fund vehicle is formed as a limited liability company the non-resident corporate investors will only be taxed for dividend distributions with a 30 per cent withholding tax if the company is not comparable to a Swedish limited liability company and does not reside in a country that has entered into a double taxation treaty with Sweden or is not subject to comparable taxation as Swedish limited liability companies at a corporate tax rate of at least 15 per cent. To be considered comparable to a Swedish limited liability company:

- the company must be liable to tax;
- the company must have an equity capital that cannot be freely used by the shareholders of the company;
- its profit must be allocated to the shareholders with reference to their participation in the share capital; and
- it must have legal competence and the formal capacity to act as a party before courts and authorities.

If the investors are individuals residing abroad, the 30 per cent withholding tax will apply but will be reduced under the applicable tax treaty.

If the LBO fund vehicle is formed as a limited partnership, the non-resident investors will not be subject to withholding tax in Sweden. If the limited partnership carries out business in Sweden from a permanent establishment, the investors will be liable to Swedish income tax on the profit generated. If the purpose of the LBO fund is limited to hold shares in companies in which it has invested it will most likely not be subject to Swedish income tax. Having a registered address in Sweden does not normally constitute a permanent establishment, while having an office or place of management does.

If such a partnership has employees in Sweden it must also register for and pay payroll tax.

Return-filing is only required for non-resident investors liable to taxes in Sweden due to a permanent establishment in Sweden.

19 Local tax authority ruling

Is it necessary or desirable to obtain a ruling from local tax authorities with respect to the tax treatment of a private equity fund vehicle formed in your jurisdiction? Are there any special tax rules relating to investors that are residents of your jurisdiction?

It is possible to obtain advance private binding rulings from the Swedish National Board on Advance Rulings regarding income tax matters that exclude withholding tax issues. In very complex structures, applying for an advance ruling may be considered, although it may be difficult to obtain a tax ruling should the board find the structure tax-driven. It is time consuming to obtain a ruling from the National Board on Advance Tax Rulings, it will take at least 6 months and if the decision is appealed against it may take another 12 months to get a verdict from court. It is, of course, also possible to get comments or 'acceptance' from the local tax authority; however, such statements are not binding on the tax authority.

Special rules apply for resident individual investors if the LBO fund vehicle or a company holding shares in the vehicle should be considered as a closely held company. The rules only apply if there are not more than four owners and the owners' shares are considered to be qualified. A share is qualified if the owner or one of the owner's close relatives actively generates the company gains. However, it is unlikely that an LBO fund vehicle is considered to be a closely held company, since there are usually more than four owners and these owners are themselves normally not closely held companies. If several partners actively generate the company gains, these partners will be deemed as a single owner. Should these rules apply, dividend distributions will partly be taxed as employment income, which imposes a tax rate of approximately 57 per cent. Finally, if the non-closely held shareholders will hold more than 30 per cent of the shares or votes, the company will not be deemed to be a closely held company for the purposes of dividend distribution to the shareholders.

20 Organisational taxes

Must any significant organisational taxes be paid with respect to private equity funds organised in your jurisdiction?

An LBO fund vehicle that has employees in Sweden will impose a payroll tax, regardless of whether it is a limited liability company or a limited partnership. Uncapped social security charges are levied upon salary at a tax rate of 31.42 per cent payable by the employer. Lower rates apply if the employees are not older than 26 years (15.49 per cent) or older than 65 years (10.21 per cent) or if the fund vehicle does not have a permanent establishment in Sweden (21.54 per cent).

21 Special tax considerations

Please describe briefly what special tax considerations, if any, apply with respect to a private equity fund's sponsor.

The taxation of the fund sponsors will greatly depend on the legal forms of the fund, the sponsor and their domiciles. A Swedish sponsor's (limited liability company) income deriving from the management of the fund (carried interest, management fees) has until recently been viewed as ordinary business income and taxed as such with the ordinary tax rate of 22 per cent. It has been discussed whether the carried interest could be considered as income from employment and taxed as such (at a rate of up to 57 per cent) for Swedish individual partners in the sponsor company and, in a number of judgments given by the Administrative Court in December 2012 regarding the classification of carried interest, the court found that carried interest shall be taxed as income from employment and thus form the basis for payroll taxes for the Swedish advisory company in which the individuals are employed. The tax landscape may however change and in December 2013 the Administrative Court of Appeal overruled a previous verdict and concluded that there were no grounds for reclassification of carried interest to employment income. The verdict from the Court of Appeals is currently a milestone of huge importance and a major problem for the approach taken by the Swedish Tax Agency where they claim that carried interest is employment income. It remains to be seen whether the Supreme Administrative Court will grant a leave of appeal on the matter. Furthermore, it cannot be ruled out that new legislation will be introduced going forward, but there are currently no white paper on the matter.

From 1 January 2013, the Swedish government has introduced a new regulation which implies limitations regarding deductions for interest payments to affiliated companies. The limitations do not apply if the interest is paid to an affiliated company in a country where the interest would be subject to an income tax rate of at least 10 per cent provided that the debt relation has not been created mainly in order for the group to obtain a significant tax benefit. Further, the limitations will not apply if the taxpayer can prove that the debt relation is mainly motivated by business reasons and the interest is paid to an affiliated company in an EEA country or in a state which has signed a tax treaty with Sweden. If the limitation applies, the interest will not be tax-deductible. Due to the new regulation, a higher level of caution is required when planning to issue intra-group loans from Swedish companies. As a result of the limitations for intra-group interest deductions, the Swedish corporate income tax rate has been reduced to 22 per cent.

22 Tax treaties

Please list any relevant tax treaties to which your jurisdiction is a party and how such treaties apply to the fund vehicle.

Sweden has entered into double tax treaties with more than 80 countries including the US, the Nordic countries and all member countries of the EU. Tax treaties usually regulate in which country business income shall be taxed. When it comes to fund vehicles formed as limited partnerships most income, namely interest, dividends and capital gains, will be taxed in the country in which the partners reside unless there is a permanent establishment in the investment company. If there is a tax treaty, dividend distribution to a fund in the form of a limited liability company may, under certain premises, be tax-exempt regardless of whether comparable taxation of the receiving entity is made or not.

23 Other significant tax issues

Are there any other significant tax issues relating to private equity funds organised in your jurisdiction?

All LBO fund vehicles, whether limited liability companies or limited partnerships, must be registered with the Swedish Companies Registration Office, and as a consequence thereof, there are a number of registration issues that sometimes are difficult to deal with.

Any fund vehicle having employees in Sweden or performing services in Sweden must withhold preliminary tax and monthly pay payroll tax based on the compensation paid to these employees, as well as annually filing reports to the tax authorities regarding this.

Selling restrictions and investors generally

24 Legal and regulatory restrictions

Describe the principal legal and regulatory restrictions on offers and sales of interests in private equity funds formed in your jurisdiction, including the type of investors to whom such funds (or private equity funds formed in other jurisdictions) may be offered without registration under applicable securities laws in your jurisdiction.

Partly because it is significantly burdensome to comply with the Swedish prospectus regulations, LBO funds are usually marketed to a very limited number of qualified investors through private placements and the interests in the fund are normally not freely tradable after fund formation. There are no other material restrictions in these respects.

25 Types of investor

Describe any restrictions on the types of investors that may participate in private equity funds formed in your jurisdiction (other than those imposed by applicable securities laws described above).

In a Swedish LBO fund, the investors are generally to large extent institutional investors, such as insurance companies, pension funds, financial institutions, governmental investment entities and different types of trusts. Several of these have internal restrictions on investments, for example, they expect special reporting requirements, a possibility to transfer their investments without the general partner's consent or similar.

26 Identity of investors

Does your jurisdiction require any ongoing filings with, or notifications to, regulators regarding the identity of investors in private equity funds (including by virtue of transfers of fund interests) or regarding the change in the composition of ownership, management or control of the fund or the manager?

For a limited liability company only the individuals on the board of directors and the managing director of the LBO fund vehicle need to be registered at the Swedish Companies Registration Office.

Any changes in management, but not in ownership, in a limited liability company thus require registration. However, the new shareholder will be registered in the company's share register, which the regulators can access.

The identities of investors in a limited partnership must be registered at the Swedish Companies Registration Office. Any changes in ownership, but not in management, in a limited partnership thus require registration.

Update and trends

To the relief of Swedish private equity houses, a recent ruling by the Administrative Court of Appeal held that carried interest shall not be reclassified from income of capital to employment income (which would impose a significantly higher tax bracket for certain recipients of carried interest). This highly contested issue has been a prime concern for private equity professionals and the industry as a whole for some time, and although the matter is still subject to final appeal the general notion seems to be that if the Administrative Court of Appeal's ruling reflects the final outcome of the tax courts it will provide a sound foundation for the Swedish private equity industry for the future.

It shall be noted that the identity of investors is often disclosed in the annual financial report of the LBO fund vehicle. Such disclosure is not mandatory.

Lastly, anti-money-laundering provisions apply as set forth in question 28.

27 Licences and registrations

Does your jurisdiction require that the person offering interests in a private equity fund have any licences or registrations?

Currently, there are no licence or registration requirements in respect of a person offering interests in an LBO fund under Swedish law.

28 Money laundering

Describe any money laundering rules or other regulations applicable in your jurisdiction requiring due diligence, record keeping or disclosure of the identities of (or other related information about) the investors in a private equity fund or the individual members of the sponsor.

The Swedish Money-laundering Act (MLA) contains extensive 'know your customer' (KYC) requirements. In a normal LBO fund structure none of the fund entities would directly be subject to the MLA. However, an LBO fund will in its business activities be in contact with, for example, banks, lawyers and others who are subject to the MLA. In principle, anyone who is subject to the MLA will have an obligation to establish basic customer knowledge, including the identity or identities of the actual principals of their customers. Primarily, actual principal means the person or persons who directly or indirectly control at least 25 per cent of a company. The MLA states that actual principal also means a person who has 'a decisive influence over the customer', which means the right to appoint or remove more than 50 per cent of the board members in a company.

As no person normally holds or controls 25 per cent or more of an LBO fund or has the right to appoint or remove more than 50 per cent of the board of a company within the fund structure, there is in most cases no need to disclose the identity of the investors.

There are also a number of exemptions from the obligations to perform KYC procedures. For example, KYC procedures are not necessary regarding companies that are listed on a regulated market within the EEA.

Information collected during KYC procedures shall be kept on record for at least five years.

Exchange listing

29 Listing

Are private equity funds able to list on a securities exchange in your jurisdiction and, if so, is this customary? What are the principal initial and ongoing requirements for listing? What are the advantages and disadvantages of a listing?

There are no rules that would prevent an LBO fund from being listed on a Swedish stock exchange. However, such listings are not customary, although there are examples of private equity houses set up as limited companies, such as Ratos AB.

There are two regulated markets in Sweden, NASDAQ OMX (Nordic list) and NGM (NGM Equity). NASDAQ OMX is the largest regulated market. In addition, there are also three Swedish multilateral trading platforms (MTFs). These are First North (run by NASDAQ OMX), Nordic MTF (run by NGM) and Aktietorget.

The requirements on companies listed on MTFs are less burdensome and the MTFs are, for example, not subject to the Swedish Takeover Act (however, the MTFs have adopted 'self-regulatory' takeover rules similar to those applicable to the regulated markets). On the other hand, companies listed on an MTF do not have the same rights as companies listed on a regulated market and may not, for example, purchase their own shares.

The initial and ongoing listing requirements of NASDAQ OMX, Stockholm are mainly the following.

The initial listing requirements comprise that the company shall possess documented earnings capacity on a business group level or have sufficient working capital available for its planned business for at least 12 months after listing and that the expected aggregate market value of the shares shall be at least 1 million kronor.

The ongoing listing requirements comprise mainly the following areas:

- incorporation of the company;
- validity of listed shares;
- negotiability of listed shares;
- entire share class must be listed;
- liquidity of listed shares;
- the management and the board of directors (requirements regarding, for example, composition and competence);
- capacity for providing information to the market; and
- suitability.

NASDAQ OMX has adopted specific listing requirements for acquisition companies (ACs), which may be applicable to an LBO fund. An AC is defined as 'a company whose business plan is to complete one or more acquisitions within a certain time period'. According to these rules, an AC has to deposit at least 90 per cent of the gross proceeds from the initial public offering and any other sale by the company of equity securities in a blocked bank account until the AC has completed one or more business combinations having an aggregate fair market value of at least 80 per cent of the funds deposited on the blocked bank account. When these requirements have been fulfilled, the company is no longer considered an AC and shall, to the extent applicable, initiate a new listing procedure and fulfil all listing requirements for listed companies.

NASDAQ OMX has also recently adopted specific listing requirements for closed-ended investment companies, defined as limited liability companies whose primary object is investing and managing its assets in property of any description with a view to spreading investment risk and whose board of directors must be able to act independently of any investment manager. Closed-ended investment companies are exempt from the listing requirements regarding accounts and operating history, but are subject to specific listing requirements regarding permitted investments (especially investments in other closed-ended investment companies and 'master funds'), the obligation to publish the investment policy, restrictions on material changes of the investment policy and certain specific disclosure requirements.

The listing process requires due diligence of the company by a law firm, approval by the stock exchange's listing committee and a listing prospectus.

The main advantages of being listed on a stock exchange are access to capital from the public and that a listing provides a market in the LBO fund. The main disadvantages of a listing are the disclosure and reporting requirements to which listed companies are subject.

30 Restriction on transfers of interests

To what extent can a listed fund restrict transfers of its interests?

No restrictions of transferability on listed securities generally apply on the Swedish market in addition to a customary lock-up period following initial listing. However, it is not unusual in Sweden that a company may have separate classes of shares of which only one class is listed and that selling restrictions, such as pre-emption rights, apply to the non-listed shares.

Participation in private equity transactions

31 Legal and regulatory restrictions

Are funds formed in your jurisdiction subject to any legal or regulatory restrictions that affect their participation in private equity transactions or otherwise affect the structuring of private equity transactions completed inside or outside your jurisdiction?

LBO funds established in Sweden are generally not subject to statutory legal restrictions to the extent that by being an LBO, a fund cannot participate in certain LBO transactions, or otherwise. The limitations applicable to the fund's investments are included in the LBO fund's investment guidelines, which outline the geographical scope of the fund, restrictions in terms of diversification, restrictions on investments on certain sectors, etc. Such investment guidelines are normally part of the fund agreement.

32 Compensation and profit-sharing

Describe any legal or regulatory issues that would affect the structuring of the sponsor's compensation and profit-sharing arrangements with respect to the fund and, specifically, anything that could affect the sponsor's ability to take management fees, transaction fees and a carried interest (or other form of profit share) from the fund.

No material issues in relation to the sponsor's right to compensation and profit apply in Sweden. However, there could well be several tax issues that need to be dealt with, to a large extent dependent on the type and entity of the sponsor and its domicile.

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