



Buying and building commercial and industrial property in Sweden

Swedish property law protects the interests of all parties - investors, creditors, tenants and the public. It strikes a good balance between security, reliability, transparency and cost-efficiency. It is well suited for cross-border real estate investments.

THE REGULATION OF PROPERTY

The Land Code (*Jordabalken*) regulates all essential aspects of real estate, such as property fixtures, formal requirements, mortgages, usufructs (the right to use and derive profit from a property), easements, leases and the registration of property rights.

Land is divided into property units individually identified by name and code. A property unit may be demarcated horizontally as well as vertically, thus creating a three-dimensional unit.

Ownership is not only restricted to the land. The property unit also consists of accessories such as buildings or other facilities built above or below ground by the owner for permanent use. Furthermore, fixtures that have been installed in buildings by the property owner and that are intended for permanent use in the building are considered part of the property unit.

In principle, the ownership of land also carries with it the right to the soil below and the airspace above, although the working and extraction of minerals may require permission from the County Administrative Board (*Länsstyrelsen*), and may be granted to someone other than the land owner.

IN BRIEF

- Uncomplicated procedure for investing in commercial and industrial property
- No restrictions on foreign ownership
- Real estate may be demarcated horizontally and vertically

PLANNING (ZONING) AND BUILDING REGULATIONS

It is the responsibility of the local municipality to grant building permits and to adopt plans for the use of land and water as stated in the Planning and Building Act (*Plan- och bygglagen*). The zoning plans are carried out on three levels and consist of; the General Spatial Plan (*Översiktsplanen*), the Area Plan (*Regionplanen*) and the Zoning Scheme (*Detaljplanen*). Only the zoning scheme is legally binding. A zoning scheme applies to a limited part of the municipality and regulates the use to which land may be put. It may also regulate such matters as building height, lot coverage (e.g. residential, trade, industrial or office use), general design of buildings and similar characteristics.

Applications for building permits (*bygglov*) must be sent to the municipal building board and granted before any construction work starts. The property owner is entitled to a building permit if the development conforms to the plan and construction standards. The decision of the municipality building board may be appealed if considered disadvantageous. Permits are compulsory for altering, extending or demolishing buildings and for changed use of a building or part thereof.

An environmental impact assessment (*miljökonsekvens-*

beskrivning) is often part of the permit application process for property developments and infrastructure and similar projects. The assessment must identify and describe the environmental impacts of the projects. It should also include what measures have been taken to reduce negative environmental impacts.

A building considered of great significance due to cultural or historical value may be declared a cultural heritage building (*byggnadsminne*) under the Cultural Heritage Act (*Kulturminnelagen*). The County Administrative Board decides how the building should be protected and cared for and specifies restrictions in respect of changes to the building. The protective regulations must, insofar as is possible, be determined in cooperation with the property owner. Landowners must also take precautions with regard to ancient monuments, remains and finds (*forminnen*). In principal, the landowner must examine whether such finds could be affected by a building project.

ENERGY PERFORMANCE OF BUILDINGS

Sweden has implemented the EC directive on the energy performance of buildings. The directive has been in force since 2006 and essentially means that buildings need to be declared for their energy performance. The declaration needs to be carried out by certified experts.

THE SWEDISH LAND REGISTER

The boundaries of all property units and their ownership are registered in the Swedish Land Register (*Fastighetsregistret*). The register also includes the location of the property unit, the title holder, plans and regulations, mortgages (*inteckningar*), easements (*servitut*), tax assessment values and the purchase price for the last transfer. A buyer must register for title within three months of completing the transfer of property. Although most legal protection for a buyer derives from the sale contract, registration is important for many reasons, for instance when applying for mortgages on the property. There is no need for title insurance in Sweden. Instead, if the registered title holder is proven not to be entitled to ownership of the property and has been granted new mortgages, the Swedish government guarantees compensation for any losses incurred by a creditor who, in good faith, has relied on the information in the register.

SALES PROCESS AND DUE DILIGENCE

There are no restrictions on foreign ownership of property. Share purchase agreements, real estate sale and purchase agreements, and lease agreements are in general less comprehensive than in many other countries.

Most investment property is sold through dedicated real estate consultants, although sales directly by the owner do

occur. Negotiations are often conducted directly with the prospective buyer or through its legal adviser. The sale may also be performed through a controlled auction.

As the liability of the sellers, especially in controlled auctions, is generally limited to the warranties given in contract of sale, the due diligence process is important. In the context of environmental issues, the Swedish Environmental Code (*Miljöbalken*) is primarily based upon the “polluter pays” principle, though it also contains provisions that may lead to a subsidiary liability for the property owner.

THE USE OF SPECIAL PURPOSE VEHICLES

The Land Code stipulates formal requirements that must be observed for a property transfer to be valid. Although direct sales of property have become more common, the majority of transactions concern sales of property through legal entities. The latter structure reduces transaction costs, because the sale of a company does not incur stamp duty. Sellers are also normally exempt from capital gains tax on the sale of shares in a limited liability company. In addition, an option to buy or sell shares in a company is legally binding whereas options on property are not. The property-owning company is often a newly established special-purpose vehicle whose sole function is to own and operate the specific property. This ensures that the company's contingent liabilities are limited.

PROPERTY DEVELOPMENT PROJECTS

No restrictions exist on the acquisition of property development projects, and agreements can be entered into during any phase of the project. The investor generally enters into a conditional sale and purchase agreement with a property developer. At the completion date, the developer is to deliver to the investor a fully developed property, including buildings and tenants. Incentive schemes are often built into the agreement, whereby the purchase price is a factor of the property's rental value. The parties can also agree on a model lease agreement and a model construction agreement that would be used for the development and letting of premises within the property.

CREATING AND PLEDGING MORTGAGE SECURITY

The holder of the legal title to a property may take out a mortgage on the property. Mortgages can be of any amount, but as there is a two percent stamp duty on the face value of the mortgage, the owner and its lender generally limit mortgages to the lower end of the amount of the loan and the market value of the property. Mortgages are given chronological priority in the Swedish Land Register. Each mortgage is evidenced by a mortgage certificate (*pantbrev*). The property owner must en-



ter into a pledge agreement (*pantförskrivningsavtal*) whereby the mortgage certificates are pledged as security for a claim from a creditor, and the mortgage certificate must be delivered to such a creditor. A mortgage certificate can be used and reused without incurring any stamp duty or transaction costs other than the initial stamp duty of two percent when applying for the mortgage.

MORTGAGE FINANCING PROVIDES STRONG SECURITY

The security interest of a creditor holding valid security in a property cannot be extinguished if the property is sold. In the case of bankruptcy proceedings, the creditor has priority and is entitled to an amount up to the face value of the mortgage certificates pledged to the creditor, plus an additional 15 percent of the sales revenue from an executive sale of the property.

PUBLICLY OWNED PROPERTY MAY BE LET AS A SITE-LEASEHOLD

A property unit owned by a municipality or another public entity may be let as a site-leasehold (*tomträtt*). A site-leasehold is

very similar to ownership. The site-leaseholder may transfer, mortgage, let and, in all material respects, use the site-leasehold in the same way as the owner of a property unit may use its property.

In return for the site-leasehold, the site-leaseholder pays a rent based on the property value. The rent is reviewed every ten years, unless a longer period is agreed. If parties fail to agree on a new, revised rent, either party can submit the matter to court for final adjudication. The rent is determined by the market value of the property (taking into account the current use) at the time of review.

The property owner may terminate a site-leasehold only at the end of certain periods of time (which are at least 20 years). The site-leaseholder is normally entitled to compensation for the value of buildings and other accessories to the site-leasehold if it is terminated. Exemptions from the rules that normally apply to site-leaseholds may, in some cases, be made in the agreement, which should therefore be reviewed prior to any site-leasehold purchase.

USEFUL CONTACTS

Government agencies

Swedish land register (Lantmäteriet)
SE-801 82 Gävle
+46 771 63 63 63
www.lantmateriet.se

Lantmäteriet is the Swedish mapping, cadastral and land registration agency.

Lantmäteriet provides professional services for the development and use of geographic information techniques. They also provide a wide range of products including geographic, land and real property information.

Industry and employers' association

The Swedish Construction Federation (Sveriges Byggindustrier)
Box 5054, SE-102 42 Stockholm
+46 8 698 58 00
www.bygg.org

The Swedish Construction Federation (BI) represents the interests of the construction industry in Sweden and is the trade and employers' association of the private construction companies.

FURTHER INFORMATION

at www.investsweden.se

- Starting a limited liability company
- Running a business in Sweden - an introduction
- Corporate taxes
- Commercial leases and rents
- Useful information sources