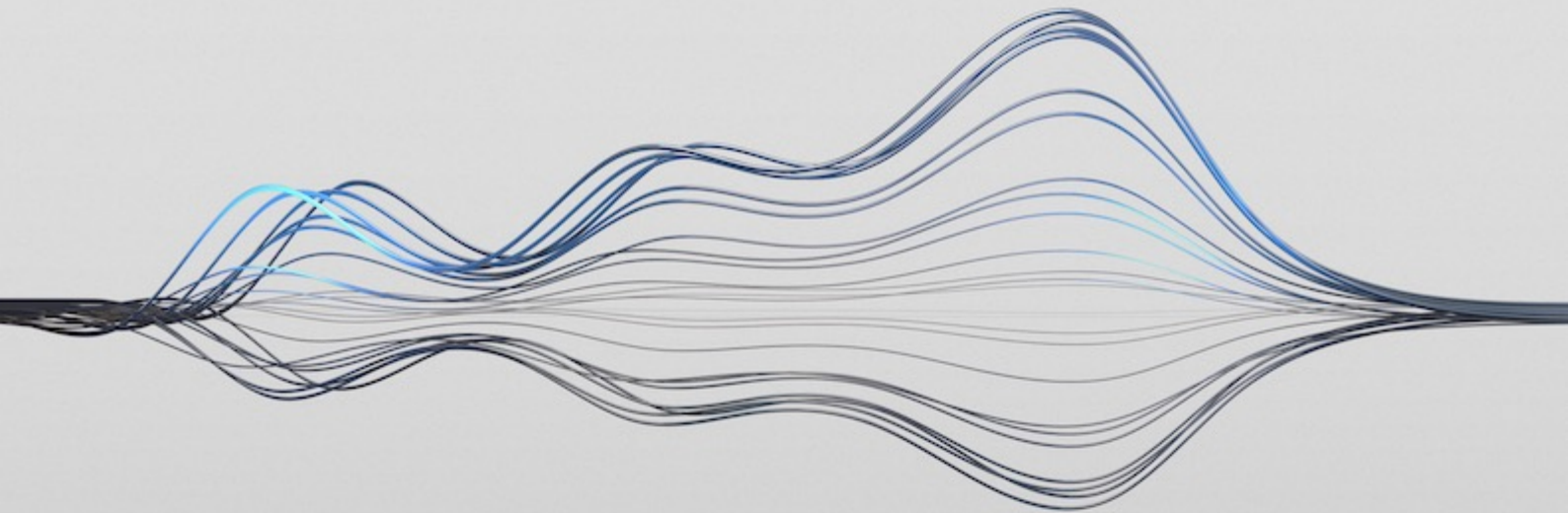


SWEDEN

Global Guide to Directors' Duties





Sweden

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Corporate entities

What type of company is typically used in group structures?

In Sweden, the most common type of company used in group structures is the private company limited by shares. This guide therefore focuses on the management of private limited companies.

Types of director

What is a "director"?

There is no complete definition of the term "director" under Swedish company law. However, a director can be a member of a company's board of directors who is responsible for the organisation of a company and management of the company's affairs and/or managing director of the company.

What are the different types of director?

There are two types of directors: a board of directors whose members usually are appointed by a shareholders' meeting and are duly registered with the Swedish Companies Registration Office, and a managing director who must be appointed by the board of directors and be duly registered with the Swedish Companies Registration Office. For a private limited company, it is not mandatory to have a managing director.

In companies bound by a collective bargaining agreement, the unions have a right to appoint employee representatives to the board of directors in the following circumstances:

- If the company during the previous financial year has employed at least 25 employees, the employees in the company shall have the right to appoint two (2) union-appointed directors and one (1) deputy director for every appointed director.
- If the company is active in various fields of business and has at least 1,000 employees, the employees shall have the right to appoint three (3) union-appointed directors and one (1) deputy director for every appointed director.

However, the number of union-appointed directors may never exceed the regularly appointed board members. Accordingly, if the board of directors has one (1) director, which is possible in a private company, there can only be one (1) union-appointed director.

Eligibility

Who can be a director?

Each member of the board of directors and the managing director (if appointed) must be at least 18 years old. They must not be declared bankrupt, be prohibited from carrying on business or have a guardian. It is not possible to have a legal person (e.g. a company) serving as a member of the board of directors or as a managing director. There are no nationality restrictions.

At least half the members of the board of directors, at least half of the deputy board members and the managing director (if appointed) must reside within the European Economic Area. Exemptions to these residency requirements can be granted by the Swedish Companies Registration Office.

Minimum / maximum number of directors

A private company must have at least one director and one deputy director. There is no maximum. The company's articles of association may, however, specify a greater minimum number and/or specify a maximum.

For a private limited company, it is not mandatory to have a managing director (but it is mandatory for public companies).

Appointment and removal

How are directors appointed?

Shareholders, in a general meeting, have the right to appoint members of a company's board of directors. In addition, the company's articles of association may provide that one or more directors are to be appointed in another manner (e.g. a bank providing debt financing to the company). However, the right to appoint directors may not be delegated to the board of directors or to an individual director. (In a public company, at least half of the board of directors shall be appointed by the general meeting.)

The appointment must be duly registered with the Swedish Companies Registration Office. For the registration, a verified copy of the minutes of the shareholders' meeting and a notification form must be filed with the Swedish Companies Registration Office. If a director is not registered in the Swedish population register, a certified passport copy of that director is required for the registration. The appointment becomes effective from and including the date on which notification of appointment has been received by the Swedish Companies Registration Office or the later date stated in the decision on which the notification is based.

A managing director can be appointed by the company's board of directors (but it is not mandatory for a private company to appoint a managing director). If appointed, the appointment must be duly registered with the Swedish Companies Registration Office. For the registration, a notification form must be filed with the Swedish Companies Registration Office. If the managing director is not registered in the Swedish population register, a certified passport copy of the director is required for the registration. The appointment becomes effective from and including the date on which notification of appointment has been received by the Swedish Companies Registration Office or the later date stated in the decision on which the notification is based.

How are directors removed?

Members of a company's board of directors must be removed by the same person or party who has appointed such director, i.e. normally by a shareholders' meeting. The removal decision shall be duly registered with the Swedish Companies Registration Office. For the registration, a verified copy of the minutes of the shareholders' meeting and a notification form must be filed with the Swedish Companies Registration Office. The removal decision becomes effective from and including the date on which notification of the removal has been received by the Swedish Companies Registration office or the later date stated in the decision on which the notification is based.

An employee representative may at any time be dismissed from the board on the same grounds as any ordinary board member. However, it is up to the local trade union, which appointed the employee representative, to decide upon any such dismissal (rather than the shareholders in a general meeting who can decide to remove ordinary board members).

A managing director must formally be removed by the company's board of directors, however the general meeting would in practice have the authority to remove the managing director by instructing the board to do so. The removal decision shall be duly registered with the Swedish Companies Registration Office. For the registration, a notification form must be filed with the Swedish Companies Registration Office. The removal decision becomes effective from and including the date on which notification of the removal has been received by the Swedish Companies Registration Office or the later date stated in the decision on which the notification is based.

A director may also resign at any time. A director who wishes to resign from office must notify the company's board of directors and file a notification form at the Swedish Companies Registration Office. The same applies to the managing director.

Board / management structure

Typical management structure

A Swedish private limited company has, at a management level, a system consisting of a board of directors and a managing director.

The board of directors is responsible for the organisation of a company and management of the company's affairs. Each member of the company's board of directors has the same obligations and accountability to the company. The directors are responsible (on a collective basis as a board) for the management and operations of the company and for ensuring that the company's organisation is arranged so that the company's accounts, asset management, and finances in general are satisfactorily monitored.

A managing director is responsible for the day-to-day management of a company in accordance with guideline and instructions issued by the board of directors. In addition, a managing director may, without being authorised by the board of directors, take measures of an unusual nature or of great significance in view of the scope and nature of the company's operations under certain circumstances.

A managing director must take any measures necessary to ensure that the company's accounts are maintained in accordance with the law and that its asset management is conducted satisfactorily.

If a managing director is not appointed, these responsibilities and obligations fall to the board of directors.

How are decisions made by directors?

Unless the company's articles of association stipulate otherwise, the directors usually have the flexibility to determine between themselves how decisions are made - whether by physical meeting, telephone meeting or a written resolution.

Other than single director companies, a board of directors is quorate if more than half of the total number of directors or a higher number as provided by the company's articles of association is present at the board meeting (however, the notice of the board meeting must be given to all). Unless the company's articles of association stipulate a specific voting majority, resolutions of the board of directors are passed by a simple majority of those present. In the event of a tied vote, the chair has the casting vote. However, if not all directors are present at the board meeting, those voting in favour of a resolution must constitute more than one-third of the total number of directors, unless otherwise provided by the articles of association. When resolutions are made in writing, the unanimous agreement of all directors is usually required, although the articles of association may specify otherwise.

Authority and powers

The board of directors is responsible for the organisation of the company and the management of the company's affairs. The management of the company's affairs includes all matters where the shareholders' meeting does not have the exclusive right to make decisions. The board of directors represents a company and signs its name. Further, the board of directors may resolve that the right to represent the company and sign its name may be exercised by two or more persons acting jointly or be exercised by some or each director individually. The managing director may represent the company and sign its name as required for the day-to-day management of the company.

As far as third parties are concerned, a board of directors and a managing director are able to bind the company and enter into contracts on its behalf even if there are internal limits on their power to do so (e.g. in the company's articles of association or in internal policies and protocols). However, a legal act may be considered void as against the company if the company, under certain circumstances, shows that the third party realised or ought to have realised that authority had been exceeded.

Delegation

The board of directors can delegate certain duties to one or more directors in the board or to other persons. However, the board of directors must act with care and regularly check that delegation can be maintained.

Once a duty has been delegated, the person who has been entrusted with a duty is primarily responsible for the duty, while the board of directors who has delegated the duty has a supervisory responsibility. The same rule applies to a managing director when delegating a duty.

Duties and obligations of directors

What are the key general duties of directors?

The board of directors is responsible for the organisation of the company and management of the company's affairs. The management of the company's affairs includes all matters where the shareholders' meeting does not have the exclusive right to make decisions.

The key general duties consist of:

- **The duty to ensure the organisation of the company and management of the company's affairs.** The board of directors shall ensure that the company's organisation is structured in such a manner that the company's accounts, asset management, and finances in general are monitored in a satisfactory way.
- **The duty to regularly assess the company's financial position.** The board of directors shall regularly assess the company's financial position and, if the company is the parent of a group, the group's financial position. The board of directors is also responsible for ensuring that the company's taxes and fees to the relevant authorities are paid. A failure by the company to pay taxes may entail personal liability for the board of directors.
- **The duty to act in the event of capital deficiency or insolvency.** The board of directors shall immediately prepare and cause the company's auditor to examine a balance sheet for liquidation purposes where (Sw. *kontrollbalansräkning*):
 - there is reason to assume that the company's equity is less than half of its registered share capital; or
 - in conjunction with execution pursuant to the enforcement code (Sw. *utmätning*) it has been found that the company lacks attachable (Sw. *utmättningsbara*) assets for the full payment of the relevant claim.

Where the balance sheet for liquidation purposes shows that the company's equity is less than half of its registered share capital, the board of directors shall, as soon as possible, undertake a number of actions, including convening a shareholders' meeting which shall consider whether the company shall enter into liquidation (initial meeting for liquidation purposes). The balance sheet for liquidation purposes and an auditor's report on such balance sheet shall be presented at the shareholders' meeting. If the general meeting does not resolve that the company shall go into liquidation, the general meeting shall, within eight months of the initial meeting for liquidation purposes, reconsider the issue again (second meeting for liquidation purposes). However, if the company undergoes an in-court company reorganisation proceeding (Sw. *företagsrekonstruktion*), the second meeting for liquidation purposes does not have to be held earlier than two months after the reorganisation procedure is completed. Where the board members have failed to act in this regard, the members of the board of directors shall be jointly and severally liable for such obligations as are incurred by the company during the period of such failure to act.

- **The duty to act in good faith to promote the success of the company for the benefit of its shareholders as a whole.** When discharging this duty, directors must have regard to a number of factors including (amongst other things) the long term consequences of their decisions; the interests of the company's employees; the need to foster the company's business relationships with customers, suppliers and others; the impact of the company's operations on the community and the environment; and the desire to maintain a reputation for high standards of business conduct.

What are directors' other key obligations?

The board of directors shall ensure that:

- The annual report is prepared and filed at the Swedish Companies Registration Office within the prescribed time limits.
- A share register is maintained, stored and made available in accordance with the Swedish Companies Act.
- A meeting of the board of directors be convened when requested by a board member or the managing director. The chair of the board (if any) shall ensure that meetings are held when necessary. There are no statutory requirements for a certain number of board meetings. In practice, at least one inaugural board meeting is held in connection with the annual shareholders' meeting. However, the company's articles of association may contain requirements for the number of board meetings that must be held annually.
- An annual shareholders' meeting be held within the prescribed time limits.
- The company complies with its other statutory and legal obligations, for example under environmental and health and safety laws, employment laws, consumer protection laws, competition laws and bribery/anti-corruption laws.

Transactions with the company

There are certain restrictions on a board member's (and such board members' affiliates) ability to transact with the company, including conflicts of interest and loans from the company.

Conflicts of interest

A board member of a Swedish limited liability company may not participate in any stage of the decision process (preparation or decision-making) where there is a conflict of interest. The following situations, among others, constitute conflicts of interest: (i) an agreement between the board member and the company; (ii) an agreement between the company and a third party, where the board member in question has a material interest which may conflict with the interests of the company; or (iii) an agreement between the company and a legal person which the board member is entitled to represent, whether alone or together with another person.

However, there is no conflict of interest where the board member owns all of the shares in the company, whether directly or indirectly through a legal person; and in relation to the situation described at (iii), there is no conflict where the party contracting with the company is an undertaking in the same group as the company or in a group of undertakings of a corresponding nature.

Loans from the company

A Swedish limited liability company may not lend money to any board member of the company or a board member of another company within the same group. Certain affiliates of the board member are also included in this restriction, as well as legal entities controlled by the board member.

Liabilities of directors

Breach of general duties

If directors neglect any of their duties, they are personally and jointly liable to the company for the damages caused by the neglect.

A director may also be liable towards shareholders and third parties in case of breaches of the Swedish Companies Act, the company's articles of association or the Swedish Annual Reports Act, for damages caused due to negligence or intent.

Shareholders are able to bring an action for breach of duty either on behalf of the company or in their own name in certain circumstances. Broadly, it requires that the majority or a minority comprising owners of at least one-tenth of all shares in the company has supported a general meeting resolution intending to bring an action for damages or has voted against a resolution on discharge from liability.

A company may seek a range of remedies against a director for breach of duty including damages, recovery of misapplied property (including the payment of unlawful dividends), accounting for profit made in breach of duty, an injunction to prevent breach and rescission of a contract.

In addition, the management of a company may be held personally liable for unpaid taxes in certain situations. A board member or managing director who intentionally or through gross negligence has failed to pay the company's taxes may, jointly with the company, be held liable for the company's taxes and the interest accrued. In these circumstances, gross negligence is not a particularly high standard; it is more akin to a negligence standard.

Liabilities on insolvency

Insolvency as such does not trigger personal liability for the directors. However, directors who knowingly or negligently allow a company to carry on trading when it is, or becoming, insolvent may be held liable for fraudulent or wrongful trading. The directors may also be held liable for failing to prepare a balance sheet for liquidation purposes.

Personal liabilities can be avoided if the director is able to show that they took every step they ought to have taken in accordance with the requirements imposed by the Swedish Companies Act, including the preparation of a balance sheet for liquidation purposes and convening a first and a second general meeting for liquidation purposes. See further the section "[What are the key general duties of directors?](#)".

Other key risks

Personal liability for directors may, in certain circumstances, arise under Swedish legislation including that relating to environmental and health and safety, tax and bribery/anti-corruption.

In certain cases, criminal liability may arise. When a crime is committed within a business operated by a legal entity, the legal entity may be subject to corporate fines (Sw. *företagsbot*), while individuals (such as members of the board of directors or the managing director) may be held personally liable for criminal offences under the Swedish Penal Code (Sw. *brottsbalken*). A precondition for an individual being held liable for criminal acts committed by the legal entity is that the criminal course of events have taken place within the scope of the company's business, that the violation has an objective connection to the company's business and that the individual has a responsibility for the criminal acts having taken place. Furthermore, criminal liability usually requires that the perpetrator must have acted with intent.

Furthermore, violation of certain provisions in the Swedish Companies Act may constitute a criminal act. Such provisions cover (among others) the inaccurate maintaining of the share register, negligence in convening a board meeting upon the request of a member of the board of directors, the provision of inaccurate information to the members of the board of directors, and participation in an unlawful loan. Furthermore, certain instances of the provision of false information may constitute criminal acts. Finally, a board member or managing director may naturally also be held liable for their own criminal behavior, where they do not act on behalf of the company, including for fraud and breach of trust against a principal.

If a director or managing director has been declared bankrupt, has had a guardian appointed under the relevant legislation, or has been banned from trading, the Swedish Companies Registration Office must remove the representative from the Companies Register.

Protection against liability

How can directors be protected from liability?

- **Ratification.** Shareholders can ratify conduct by a director which is negligent or in breach of duty by a majority resolution (excluding the votes of the director concerned or their connected persons). Ratification by shareholders does not, however, discharge a director from any liability to a third party in relation to the matter concerned (eg creditors in an insolvency/pre-insolvency situation).
- **Insurance.** Directors' and officers' (D&O) liability insurance is common in Sweden. It typically provides both cover for individual directors against claims made against them in their capacity as director, including defence costs. The insurance also provides a cover for those entitled to compensation, which often is the company itself. Policy exclusions typically include claims in respect of a board member's fraud, dishonesty, wilful default or criminal behaviour.

What practical steps can directors take to avoid liability?

Directors should:

- Keep informed about the affairs of the company, particularly its financial position and ensure that the company's taxes are duly paid. Directors should have access to up to date financial information, prepare thoroughly for and regularly attend board meetings and familiarise themselves with key legislation affecting the business.
- Make full disclosures to the board and shareholders if they have outside positions or interests which may give rise to a conflict of interest and/or if they have a personal interest in any proposed or existing transaction or arrangement with the company.
- Keep records and take advice – directors should ensure that board meeting minutes are prepared, which preferably setting out a full record of the board proceedings and the reasoning behind key decisions. This should include any alternative courses of action considered. Minutes should also record any disagreement amongst the board and the reasons for that. In addition, directors should ensure that the company's annual report is filed promptly and take professional advice for decisions based on areas outside their personal expertise, for example from legal professionals and accountants.
- Be aware of, and compliant with, any group-wide governance policies. These may cover areas such as health and safety, ethics, bribery /anti-corruption, and human rights. Compliance with them is designed to help directors (and employees) fulfil their duties and obligations and minimise the risk of liability.
- In a group situation, keep in mind that directors must act in the best interest of their company as the interests of a corporate group are not recognized as such. Whilst the interests of a corporate group and the interests of an individual company in the corporate group are usually aligned, this may not always be the case (e.g. when their group company's solvency is adversely impacted). It is important to keep communication and reporting lines as open and clear as possible between parent and subsidiary companies when issues may arise and seek appropriate advice.

- Monitor the financial situation of the company, and immediately prepare a balance sheet for liquidation purposes where there is reason to believe the shareholders' equity is less than one-half of the registered share capital. If the balance sheet evidences that the shareholders' equity is less than one-half of the registered share capital, the board shall immediately take further actions, see [What are the key general duties of directors?](#).
- Ensure that all transactions are made on arms' lengths terms.

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