

New Legislation and Case Law Updates in Sweden

New Swedish Patent Act

The 1967 Swedish Patent Act has been replaced by a new modern version that entered into force on January 1, 2025. The most notable change is that the new law has been made more accessible with linguistic modernization. Patent rights have also been further adapted to international agreements and the processing of a patent application has been simplified. The purpose of the new Swedish Patent Act is, among other things, to streamline the patent process and protect the economic and societal values inherent in innovations and inventions.

New Listing Act Brings Changes to the Prospectus Regulation and Market Abuse Regulation

On December 4, 2024, the EU Regulation No. 2024/2809, the Listing Act, came into force. As a result, the Prospectus Regulation and the Market Abuse Regulation (MAR) are amended in several respects. Among other things, new exemptions from the prospectus requirement, new types of prospectuses, a higher threshold value, changes in the content of existing prospectus types, and changes regarding the language in which a prospectus may be prepared are introduced.

In MAR, the rules for the disclosure of insider information are changed, and a new threshold value for insider reporting is introduced.

Many of the changes in the regulations will be applied starting in 2026, but some will be applied immediately upon the regulation's entry into force.

Case T 7245-23 - "The Redeemed Preference Shares" (Swe: "De inlösta preferensaktierna")

In this case, the Supreme Court addressed a debated issue in the Swedish stock market, namely whether a decided dividend on shares can be claimed even though the shares have been redeemed on the record date. In the case, a CSD-registered company had issued preference shares and decided on dividends to the preference shareholders on certain record dates. Before all dividends had been paid out, the company redeemed the preference shares, rendering them invalid. The dispute concerned whether the company was obliged to pay the already decided dividend to the former preference shareholders despite the redemption.

The Supreme Court concluded that according to the Swedish Companies Act, a shareholder in a CSD-registered company cannot exercise rights against the

company, including the right to dividends, until the shareholder is registered in the share register. Furthermore, it was noted that the possibility of redemption must be stated in the articles of association and that the shareholder has the right to compensation upon redemption. Such compensation is generally intended to compensate for the future returns that can no longer be obtained when the shares are redeemed. According to the court, it is thus difficult to understand the procedure in any other way than that it is based on the premise that the shareholder, in addition to the right to the redemption amount, should not also be able to benefit from dividends for a future record date when the share is invalid.

The court's conclusion was that the claim that arises through a dividend decision is conditional on the share's existence on the record date, and therefore no right to dividends can be asserted if the share is invalid on the record date.

Case T 5171-23 – "Four Gardens"

In this case, the Supreme Court stated that dividends in a company must comply with the so-called prudential rule in Chapter 17, Section 3, second paragraph of the Swedish Companies Act. The board of the company must provide a reasoned statement for its dividend proposal and explain how the proposal meets this requirement. The Supreme Court developed guidelines in the precedent for how the prudential rule should be applied. The court also concluded that a unanimous group of shareholders can determine the extent of the information the board needs to provide for a dividend proposal.

In the case, it was questioned whether the dividend of a wholly-owned subsidiary was justifiable when the company had made losses for several years and had been financially supported by the parent company. The company provided services to several customers (housing cooperatives) under long-term contracts. The company expected the business to be self-sustaining in the coming years, and the parent company sold the subsidiary to a new owner after the dividend. Revenues were roughly as expected, but costs increased beyond the budget. The dividend was deemed justifiable based on the knowledge available when the dividend proposal was prepared. The fact that the dividend proposal did not receive a more detailed justification was not considered to mean that the dividend was made in violation of the Swedish Companies Act.

Case T 2603-23 – "The Leasehold Backa" (Swe: "Tomträtten Backa")

The Supreme Court has established that parties in a leasehold agreement, which does not concern residential buildings, can agree that the leaseholder should remove property without compensation upon termination. This means that contractual terms regarding the clearing of the plot are valid and do not violate the Swedish Tenancy

Act or the Swedish Land Code. The court emphasizes that the parties have significant freedom to design terms for leasehold agreements, including obligations to clear the plot or pay for this.