



KASTELL

The Swedish Foreign Direct Investment (FDI) Screening Act

A transactional perspective

December 1, 2023



The Swedish FDI Act at a glance

Legislation enters into force 1 December 2023

Mechanism for screening, and potentially blocking, investments in activities which are sensitive from a security perspective

- Purpose of screening is to protect national security, public safety and public order

The scope of the screening mechanism is extensive, both in terms of targeted activities and types of transaction

- However, for non-complex transactions, the filing process is expected to be relatively straightforward

Applies in parallel with the National Security Protection Act (*sw. säkerhetsskyddslagen*), but has a broader scope

- Investments may be subject to screening under both Acts

The screening mechanism covers both domestic and indirect investments



Broad scope for screening

- a wide array of activities covered

Investments include

- purchases of shares in any existing legal entity (further below)
 - Including new share issues and IPO:s
- greenfield investments
- purchases of assets & liabilities
- internal corporate restructurings

Targets investments in "activities worth protecting", consisting of 7 subcategories

Activities worth protecting

Essential services

Security-sensitive activities

Inputs and raw materials critical to Sweden and EU

Processing of sensitive personal or location data

Emerging technologies & other strategic technologies

Related to dual-use products

Military equipment

Activities worth protecting

Essential services

Extensive category, covering activities in numerous industries

For example:

- infrastructure
- energy
- health
- food chains
- public transport
- construction, trade and industry

First draft of list published by the Civil Contingencies Agency (MSB)

[Here](#)

Security-sensitive activities

Of importance to Swedish security interests, e.g.

- military activities
- airports
- power plants
- electronic comm.

May be subject to dual processes under the National Security Protection Act

Inputs and raw materials critical to Sweden and EU

Prospecting, extracting, refining and sales activities

Current list of inputs and raw materials covered published as annex I to the Swedish Regulation on Foreign Direct Investments [Here](#)

Processing of sensitive personal or location data

Activities with the principal purpose of processing sensitive personal or location data, via goods or services. Fact-specific assessment

- For example
- providers of cloud services
 - data brokers

Emerging technologies & other strategic technologies

Certain types of technology in fields such as nuclear power extraction, electronics, avionics, software, aerospace, and extraction of materials

Current list of technologies covered in annex II to the Swedish Regulation on Foreign Direct Investments [Here](#)

Related to dual-use products

Products with both civil and military areas of use, incl. software and technology

List of covered products can be found in Annex I to Regulation (EU) 2021/821 [Here](#)

Military equipment

Manufacturing, research, development, supply and technical support

List of covered materials in annex A to the Swedish Regulation on Military Equipment [Here](#)

Subject matter of the screening

Nature and scope of the activity

Examples:

- sensitivity?
- importance to Sweden?
- local, regional or national activities?
- number of people dependent or affected by the business today?

Circumstances around the investor

Examples:

- controlled by 3rd country?
- history of involvement in activities harmful to public security or public order in Sweden/EU member states?
- other circumstances of importance

Decisions are ultimately made from a security policy perspective, hence no legal or economic assessments

Filing obligation trigger

- non existent or very low transaction thresholds

Applicable to legal entities

Limited liability companies

- sw. *Aktiebolag*

European companies

- sw. *Europabolag*

Economic associations

- sw. *Ekonomisk förening*

Trading partnerships

- sw. *Handelsbolag*

Non-registered partnerships

- sw. *Enkla bolag*

Foundations/trusts

- sw. *Stiftelser*

Sole traders

- sw. *Enskild näringsverksamhet*

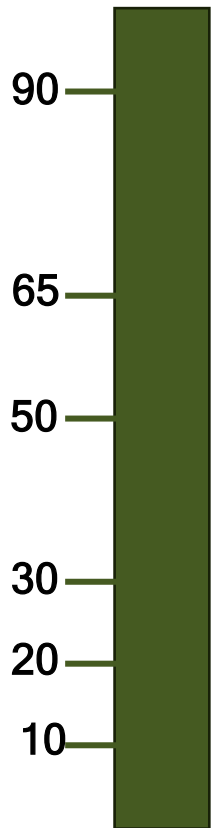
- Each time the investment triggers any of the voting rights thresholds; or
- Investment resulting in acquisition of 10% in greenfield investment; or
- When control or influence over the entity is achieved in any other manner (case-by-case assessment)

- The investor becomes a partner in the legal entity; or
- The investment is made in a legal entity where the investor already is a partner; or
- When control or influence over the entity is achieved in any other manner (case-by-case assessment)

- By the creation of the foundation/trust

- When control or influence over the entity is acquired (case-by-case assessment)

Voting rights thresholds (%)

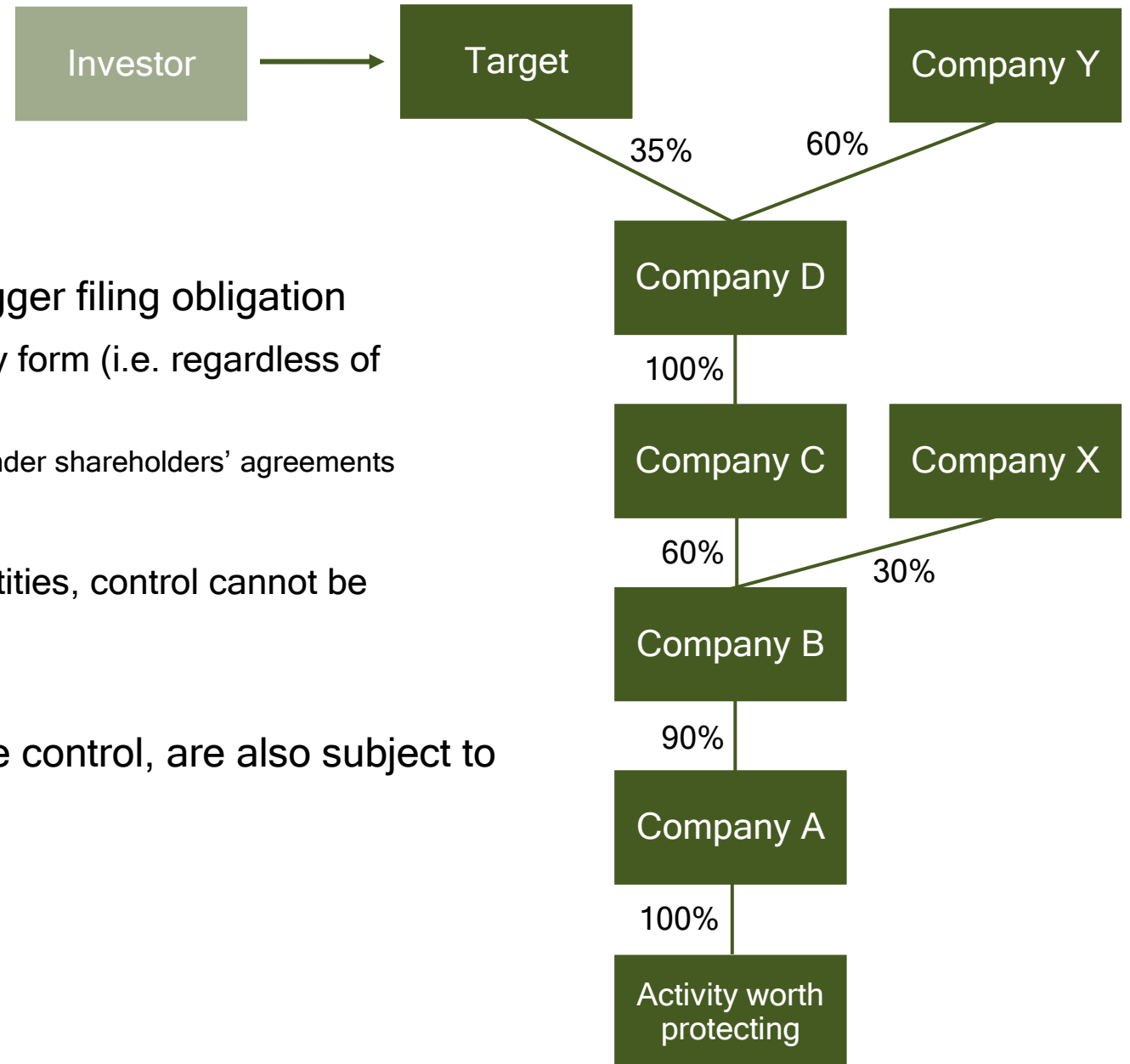


Indirect investments

Acquisitions of indirect influence or control may trigger filing obligation

- The vital element is the acquisition of *influence* in any form (i.e. regardless of how it is or may be exercised), for example
 - board seats
 - contractual rights with existing owners or under shareholders' agreements
 - veto rights
 - rights under the articles of association
- As a result, when acquiring rights in a structure of entities, control cannot be calculated by multiplying ownership shares

Internal restructurings, without a change in ultimate control, are also subject to screening



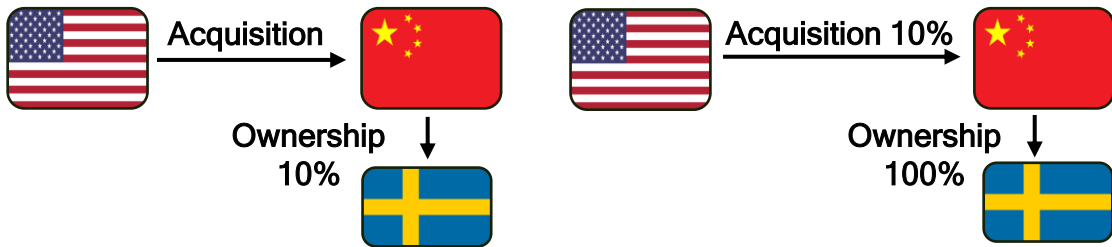
Nationality of the investor irrelevant

Screening tool targets investments made within Sweden, from other EU member states and from outside EU ("3rd countries")

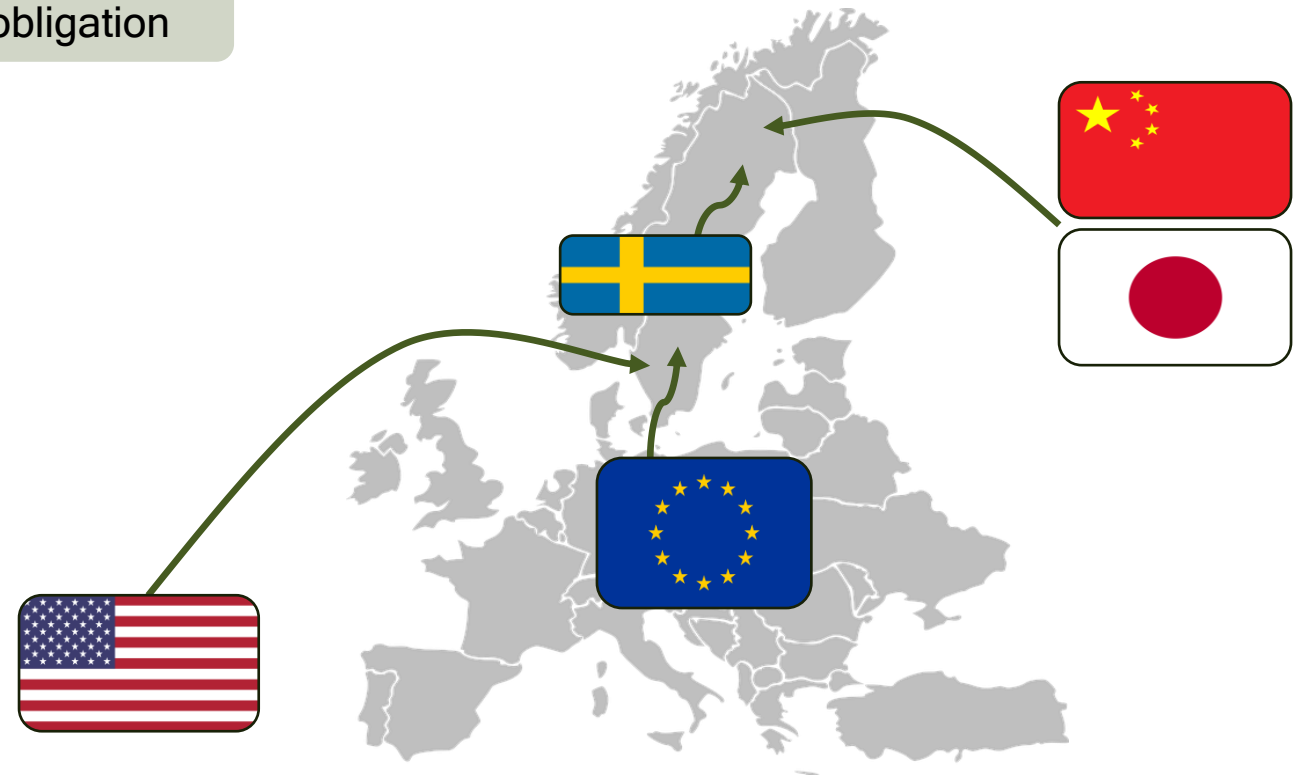
Applies to investments in companies with Swedish subsidiaries (indirect investments)

- Location or place of incorporation of parent company is irrelevant

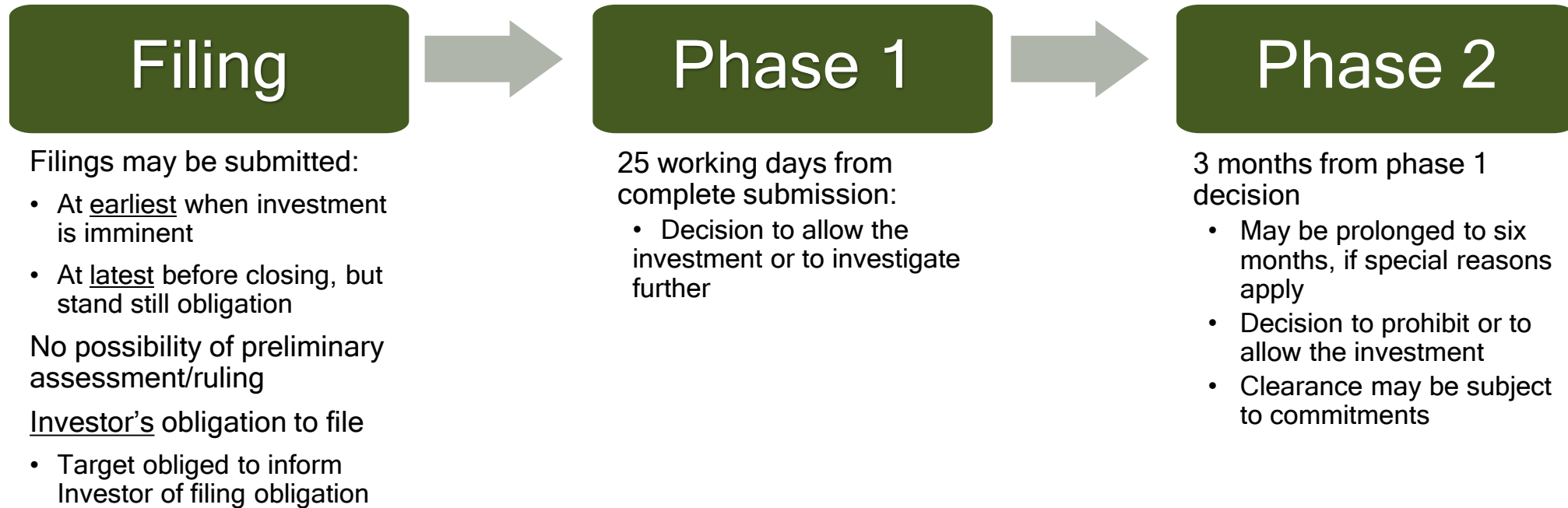
Examples of 3rd country transactions which may trigger filing obligation



Only investments from 3rd countries may ultimately be prohibited!



Practical issues



Transaction implications



Miscellaneous

The screening mechanism does not apply to

- preferential shares issues
- investments in media companies covered by the Freedom of the Press Act (*sw. tryckfrihetsförordningen*) and the Fundamental Law on Freedom of Expression (*sw. yttrandefrihetsgrundlagen*)

Screening will apply to public procurements, where

- the procurement concerns one or more "activity worth protecting", and
- the performance of the procured services requires some kind of investment by the awarded supplier, triggering filing obligation (e.g. setting up of a new entity, greenfield investment, or acquiring the equipment needed to be able to supply the services)



Questions?

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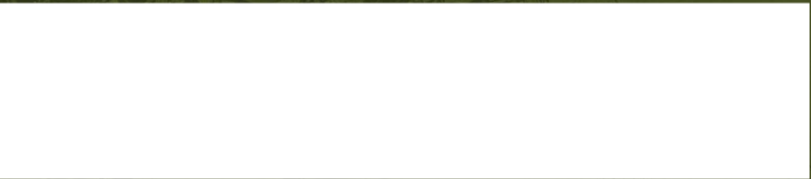


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