Sweden

Negotiated M&A Guide 2022

Corporate and M&A Law Committee

Contacts

Mats Dahlberg

Advokatfirman Delphi, Stockholm

mats.dahlberg@delphi.se

1. INTRODUCTION

1.1 M&A transactions and important recent developments

M&A transactions in Sweden are mostly made through an acquisition of all or part of the shares of the target company, which is also how it has been historically. Such transactions will hereinafter be referred to as M&A, M&A deals or deals.

In the last couple of years M&A insurance has become more frequent in Swedish M&A deals, which means that an insurer acts as a third party and assumes certain transaction risks of the seller. In addition to the advantage that the risks of the seller decrease, the advantage of an M&A insurance is that it increases the likelihood for a constructive dialogue between the parties, due to the fact that a third party minimises the obligations of the seller. M&A insurance is well developed and sophisticated in Sweden.

In 2020, there was an immediate impact on the number of Swedish M&A deals when Covid-19 first broke out. However, during the second half of 2020 and throughout 2021, the number of M&A deals has been again at a high level.

1.2 The legal landscape

The most important legislation to observe in a Swedish M&A deal is:

a) The Swedish Companies Act, the provisions of which are, to some extent, mandatory – for example:
   i. how a transfer of title of shares should be made and how the transfer should be recorded into the target company's share register;
   ii. requirements for shareholders' meetings and appointment of board of directors and persons to be authorised to act on behalf of the target company; and
   iii. provisions related to financial assistance to a buyer and other transfer of funds to a shareholder etc.

b) Antitrust laws.

c) Tax laws, especially in respect of structuring the deal.

d) In the event the share purchase agreement is not exhaustive in certain aspects, the Swedish Sale of Goods Act is normally applicable. This means, for example, that if the warranty period is not covered by the share purchase agreement, said period is normally two years.

e) Other legislation such as the Swedish Protective Security Act, which aims to better protect information and activities in order to prevent espionage, cyberattacks etc against Sweden, and environmental laws or laws specifically applicable to the target company, depending on its operations, also often come into play.

f) If the transaction involves a listed company, it is also necessary to consider market abuse rules (MAR) and other stock exchange regulations.

1.3 Is it a seller or buyer friendly M&A market in Sweden?

During 2020 and throughout 2021, it has been a seller-friendly M&A market in Sweden.

2. TYPES OF TRANSACTION STRUCTURES ADOPTED IN PRIVATE M&A TRANSACTIONS

2.1 The structure

As noted above, Swedish M&A deals are mostly made through an acquisition of all or part of the shares of the target company. Mergers under the Swedish Companies Act are more complicated, and the timeframe required for a merger makes this procedure of less interest compared to an acquisition of the shares in a target company. The acquisition of a Swedish private company is generally relatively straightforward and uncomplicated, with very few applicable mandatory rules.

A transaction normally starts by either a bilateral discussion between two parties or with an invitation from the seller(s) to potential buyers, followed by an auction procedure and final negotiations with one or several of the preferred bidders. However, final negotiations are normally only carried out with one preferred bidder. A bidder in an auction process may lean towards not trying to negotiate the terms too much, in order to make it to the next phase in the process and finally be the winning bidder. In this context, M&A insurance could be key to the negotiations. In M&A deals where the seller is a financial sponsor, it is more or less standard that the buyer is required to take out M&A insurance.

A transaction is normally structured as an acquisition of all (or a majority of) the shares in the target company. In the event that there are several shareholders, the buyer has to negotiate the deal with all of the relevant shareholders at the same time. If the sellers are parties to a shareholders' agreement which contains a drag-along provision, a buyer will normally start negotiating with the majority shareholder or shareholders to reach a share purchase agreement. Shareholders' agreements normally contain transfer restrictions, in addition to any such restrictions in the articles of association; accordingly, it is important that all shareholders waive such rights in connection with the deal.

2.2 The process

An ordinary transaction process in an M&A deal in Sweden usually has the following steps:

a) The seller procures M&A insurance (if applicable).
b) Potential buyer (or multiple bidders) is provided with teaser material. This is common practice in auction procedures.
c) Potential buyer (or multiple bidders) signs a non-disclosure agreement.
d) The seller provides the potential buyer (or multiple bidders) with the information memorandum.
e) The potential buyer (or multiple bidders) gives the seller a non-binding indicative bid.
f) In the event there is only one potential buyer (ie, no auction procedure), the parties sometimes agree to enter into a letter of intent or similar pre-agreement. The potential buyer aims to obtain an exclusivity period.
g) In the event of an auction procedure, the seller selects a number of preferred potential buyers.
h) The potential buyer (or multiple bidders) is invited to a management presentation.
i) The potential buyer (or multiple bidders) carries out due diligence. The data room is normally a virtual data room.
j) The potential buyer (or multiple bidders) is asked to provide the seller with a final bid.
k) The seller selects one or several preferred buyer(s).

l) Negotiations begin to reach a share purchase agreement.
m) Underwriting call with the insurer/the insurer's advisers (if applicable).
n) Finalising and signing of the share purchase agreement.
o) Press release to media (normally required when the buyer or seller is a public listed company).
p) If required, filing with the relevant competition authority, and/or any other relevant authorities.
q) Closing of the transaction, payment of purchase price (and insurance policy, if applicable) and actual transfer of the shares.

The above steps may of course not always take place in the sequence set forth above. For example, points (h)–(k) sometimes overlap, and final negotiations can be carried out with multiple bidders. In transactions with bilateral discussions, it is common that an information memorandum and teaser are not prepared; the process can also deviate from the sequence set forth above in other respects. In bilateral discussions it is also common that a buyer requests exclusivity.

2.3 Compliance and tax considerations

In general, the sale of shares or assets of a Swedish private company does not require regulatory or government approvals. In some cases, the company may require industry-specific regulatory or government approvals, and there may also be merger filing requirements (as described below). No stamp tax duties or other similar transfer taxes are payable in connection with the execution, delivery, performance or enforcement of a share acquisition in Sweden.

3. PRE-AGREEMENT DOCUMENTATION

Pre-agreements are often used in Sweden in the form of non-disclosure agreements, letter of intents, term sheets or heads of agreements.

3.1 Non-disclosure agreement

A potential buyer normally must enter into a binding non-disclosure agreement/confidentiality agreement in order to receive an information memorandum or any other information about the target company. A non-disclosure agreement (NDA) may contain provisions regarding:

a) Non-disclosure undertakings.
b) Non-solicitation undertakings in respect of employees, but sometimes also in respect of customers and suppliers.
c) Exemptions from non-disclosure undertakings.
d) Liability (normally damages, but sometimes liquidated damages).
e) Limitation of liability.
f) Term of undertakings/agreement.
g) Arbitration and applicable law provisions.

3.2 Letter of intent

A letter of intent is frequently used in Sweden as a non-binding pre-agreement. Certain provisions of the letter of intent may, however, be legally binding upon the parties. Consequently, the agreement should explicitly state which sections will be binding and which will remain non-binding. A letter of intent normally contains provisions regarding the following, with items (e)–(i) normally being binding:

a) Structure of the transaction.
b) Price indication or range – subject to due diligence and final share purchase agreement.
c) Procedure of due diligence.
d) Time frame for the transaction.
e) Confidentiality/reference to NDA.
f) Non-solicitation.
g) Exclusivity.
h) The term of the letter of intent and the exclusivity.
i) Arbitration and applicable law provision.

3.3 Term sheet

A term sheet is normally a non-binding (although of course morally persuasive), bullet-point document containing the material commercial terms and conditions of a transaction agreement for the contemplated transaction. It is fairly common that a term sheet is attached to the letter of intent as a schedule.

3.4 Heads of agreement

The parties may sometimes use a pre-agreement in the form of a heads of agreement. This, in its substance, is rather similar to a letter of intent and a term sheet, but has the form of an agreement, and is more detailed in respect of the material terms and conditions to be inserted into the share purchase agreement.

4. DILGENCE STAGE

4.1 Points to be cognisant of

A buyer is normally offered the opportunity by the seller to carry out, and normally carries out, legal, financial and tax (and sometimes also commercial) due diligence of the target company prior to completing the deal.

If the seller does not provide the potential buyer with access to a data room containing relevant information regarding the target company at the outset of the deal, the potential buyer normally starts the due diligence with providing the seller with a request list setting out the documentation and information to which the buyer would like to receive access to. This is often the case in a proprietary transaction – ie, one that starts through bilateral discussions. In an auction procedure, the seller usually prepares a data room and invites the bidders to begin the due diligence at a certain point in time.

In light of the increasing use of M&A insurance, it is very important for the potential buyer to scope and conduct the due diligence in a manner sufficient for insurance purposes. If not, the buyer risks ending up without sufficient contractual protection for the deal. Hence, a limited investigation – otherwise commonly used in auctions procedures with many potential bidders and high competition – is normally not an alternative when the deal is structured with an M&A insurance solution, unless the buyer is willing to accept limited insurance cover.

4.2 Typical issues discovered in a due diligence

The issues discovered in a due diligence largely depend on the type of business carried out. However, general findings in relation to the General Data Protection Regulation, change of control clauses in agreements with suppliers and customers, and missing confidentiality clauses/clauses regarding intellectual property are common.

5. MAIN TRANSACTION AGREEMENT

5.1 Formal requirements

There are very few formal requirements under Swedish law.

5.2 An overview of the typical key clauses in the agreements

A Swedish share purchase agreement is normally shorter in length when compared to United Kingdom or United States-style share purchase agreements. Swedish law is a civil law system and consequently general legal principles including *e contrario* interpretation of the law, as well as a 'fall back' on legislation such as the Swedish Sale of Goods Act for issues not expressly covered by the agreement apply. This implies that a share purchase agreement, under Swedish law, does not need to specify in detail all possible circumstances and consequences.

5.2.1 A share purchase agreement in a Swedish transaction will normally contain the following types of provisions:

a) Date.
b) Parties.
c) Definitions.
d) Agreement to sell and purchase.
e) Purchase price, escrow and earn-out.
f) Conditions precedent to closing and closing related items.
g) Closing and closing actions.
h) Closing accounts (depending on purchase price model).
i) Warranties of the seller.
j) Warranties of the buyer.
k) Covenants between signing and closing.
l) Indemnifications and limitation of liability.
m) Specific indemnities.
n) Escrow release provisions.
o) Ancillary agreements (normally as schedules).
p) Transitional agreements (normally as schedules).
q) Escrow agreement (normally as schedule).
r) Financing agreements (eg, loan notes and similar financing arrangement between the seller and the buyer; documents regarding buyer senior debt financing are, however, not made part of the share purchase agreement).
s) Non-competition and non-solicitation undertakings.
t) Announcements.
u) Confidentiality.
v) Entire agreement and amendments.
w) Notices.

x) Assignments.
y) Miscellaneous.
z) Governing law and disputes.

5.2.2 Purchase price and escrow

Regarding the purchase price, a share purchase agreement may stipulate a preliminary purchase price to be paid on the closing day, to be adjusted post-completion based on the closing accounts as of the date of completion (closing). Once the closing accounts are agreed by the seller and the buyer, the preliminary purchase price will be adjusted establishing the final purchase price. The preliminary purchase price to be paid by the buyer on the closing day is very often reduced by (1) an agreed amount to correspond to a potential negative adjustment amount and (2) an escrow amount.

An alternative to a purchase price based on closing accounts is a fixed price mechanism with standard type locked box provisions, including warranties in relation to locked box accounts. The locked box is very common in the Swedish M&A market.

As mentioned above, all or part of the purchase price may be paid by newly issued shares in the buyer or its parent. This is common practice in buyout deals as part of the management equity incentive plans (MIP) and when the buyer is a listed company.

The escrow amount (which is normally paid into an escrow account) is established to cover all or some of the indemnification claims to be paid by the seller in the event of a breach of a warranty, covenant or a specific indemnity. How the funds will be released from the escrow account is normally regulated by an escrow agreement between the parties to the share purchase agreement and the bank holding the escrow account. It should be noted that the know your customer (KYC) procedure to set up an escrow account is time consuming and should be taken into consideration when planning the transaction.

5.2.3 Earn-out models and specific considerations

An earn-out is frequently used as a compromise when the seller and the buyer cannot agree on the valuation. The earn-out serves as a risk share between the seller and the buyer, often related to the target company's future performance.

An earn-out can be described as a deferred portion of the purchase price which is conditional on the target company's achievement of certain predetermined operational or financial goals within a specified timeframe. Earn-outs can be structured according to various models in order to base these goals on different parameters. In most cases, financial parameters such as net income, gross revenue, earnings before interest and taxes (EBIT) or earnings before interest, taxes, depreciation and amortisation (EBITDA) are used. However, other parameters relating to new customers or other business-specific operating parameters may also be used.

Parameters which are easily measurable are used to ensure that earn-out models are simple and transparent. Even so, the buyer and the seller often struggle to agree on how the earn-out is to be calculated. For example, a buyer may argue that the earn-out should be based on EBITDA, while the seller may prefer it to be based on revenue. From the seller's perspective, using revenue as the basis for an earn-out is often seen as advantageous, since a company's revenue cannot be manipulated by the buyer. The EBITDA can be manipulated, for example, by incurring costs which are not in line with past practice. From the buyer's perspective, using EBITDA or net income is often preferable since these parameters say more about the company's performance.

To protect the interest of the seller, the buyer and the seller sometimes agree on a code of conduct during the earn-out period. According to such codes, the buyer, as the new legal owner of the target company, must adhere to certain provisions when operating the company. Irrespective of how the earn-out is structured, it requires the seller to be involved, to some extent, in the company's business during the earn-out period.

The seller and the buyer may agree that the seller's continued engagement in the target company is a requirement for the seller to receive an earn-out. Depending on the circumstances, this may lead to tax consequences for both the seller and the target company (and thus the buyer). This factor should be considered by the parties when negotiating an earnout model. Further, and depending on the structure of the deal and the parties' other operations, an excessively stringent code of conduct for the buyer (effectively a veto for the seller) may have competition law implications.

Earn-out provisions can be an effective tool for taking negotiations forward when a seller and a buyer have difficulties in agreeing on the valuation of a company. However, the parameters on which the financial or operational goals are based upon should be chosen carefully by both the seller and the buyer if the intention is to spread the risk between the parties in a fair and effective manner.

5.2.4 Warranties

The expression 'representation and warranties' often used in Anglo-Saxon share purchase agreements is not an expression used or recognised under Swedish law, except as a collective expression for warranties or 'guarantees'. Under Swedish law, buyer's knowledge prior to signing of a warranty breach is considered to make the buyer unable to put forth a claim, which is also the way Swedish share purchase agreements are drafted.

Thus, if a potential breach or a risk is disclosed to the buyer during due diligence and the buyer would like to reserve its right to claim compensation if the risk or breach materialises, it is important to negotiate a suitable specific indemnity for that particular issue. If a disclosed risk is taken into account during the negotiations, the seller normally will demand an exception from the seller's warranties in the share purchase agreement. Such exceptions are often inserted in disclosure schedule(s) to the share purchase agreement as exceptions from the warranties.

Frequent seller's warranties are related to:

a) Capacity and authority.
b) Incorporation.
c) Ownership (including absence of warrants, convertibles, options and other securities).
d) Solvency.
e) Accounts (including locked box accounts, if applicable).
f) Business agreements.
g) Compliance with laws and material licences, permits and authorisations required to carry on its business.
h) Environmental matters.
i) Real property and leased premises.
j) Disputes.
k) Intellectual property rights.
l) Information technology.

m) Assets.
n) Insurance.
o) Employment matters including pensions.
p) Taxes.
q) Absence of certain events.
r) Information.

5.2.5 Indemnification and limitation of liability

In the case of a breach of a warranty, it is usually stipulated that the seller will compensate the buyer for any loss suffered by the buyer or the target company due to such breach (either through damages or reduction of the purchase price). A topic that is often negotiated is whether the seller should compensate the buyer for direct and indirect losses, or merely for direct losses. A common compromise is that the share purchase agreement stipulates that the seller will be liable to compensate the buyer for any loss suffered by the buyer or the target company that is reasonably foreseeable as a consequence of the seller's breach.

With regard to limitations of liability, share purchase agreements normally include provisions on *de minimis* (ie single claims threshold), a basket (ie, multiple claims threshold) and a cap (ie maximum liability limitation). Both the *de minimis* level and the level of the basket are determined in relation to the purchase price. The cap is normally set to a percentage of the purchase price. The percentage is mostly dependent on the type and size of the deal as well as market conditions and the parties' relative negotiation strength.

The time limit for the seller's warranties is often negotiated between the seller and the buyer. In Swedish share purchase agreements, the warranty period normally varies from nine months to 24 months, but could be longer or shorter (even though that would be uncommon). The aim for the buyer is often to extend the warranty period to a date after the end of the first (or of course preferably second) full financial year after the closing. It will also be provided that the buyer must file a complaint with the seller within 30 to 60 business days of discovery.

Other limitation of liability provisions include, *inter alia*, the seller's right to remedy a breach, the buyer's obligation to mitigate loss, no double recovery, tax benefit, conduct of third party claims etc.

The share purchase agreement normally includes provisions that the warranties are subject to disclosures with reference to all due diligence materials and other disclosures made within the frame of the share purchase agreement (eg, through a disclosure letter). Accordingly, it is very difficult for a buyer to direct a claim against the seller based on circumstances that were known to the buyer when entering into the share purchase agreement (through disclosure or otherwise).

Special considerations must be made when negotiating and drafting share purchase agreements in deals where M&A insurance is used since the mechanics of the insurance need to be interlinked with, and reflected in, the agreement in a correct manner.

5.2.6 Specific indemnities

Specific indemnities often include any specific issues uncovered during due diligence, as well as tax indemnities and risk exposure that may be realised in the future, such as pending disputes or risk exposures in respect of environment. In an insured M&A deal, the seller may take the risk for specific indemnities, which in its turn may influence the purchase price. An alternative is that the parties agree to extend the insurance protection provided by the M&A insurer.

5.2.7 Covenants

Under seller’s covenants, the buyer will normally require that, during the period between signing of the share purchase agreement and closing, the target company will, for example:

a) Conduct its business in the ordinary course consistent with past practice.
b) Not pay any dividends.
c) Not borrow any additional funds from banks or other external sources, except in the ordinary course of business, and not enter into any agreements or purchase any assets with a value exceeding a specified amount.
d) Not increase the rates of compensation (including bonuses) to any employee, independent contractor or consultant.
e) Not terminate any material agreement.
f) Not be dissolved, liquidated or merged into another company.
g) Not change accounting principles or working capital policies or practices.

5.2.8 Escrow release

The conditions for the release of the escrow amount are stipulated in the share purchase agreement. When the parties are in agreement that the conditions are fulfilled, the parties will sign a joint instruction to the bank in accordance with the escrow agreement. In the event of disagreement, the bank will only release the escrow amount upon receiving an arbitration award that indicates which party is entitled to the escrow amount.

5.3 Specific considerations when drafting dispute resolution clauses, if any

A Swedish share purchase agreement is usually governed by Swedish law, although the only mandatory requirement is that the agreement should not violate mandatory Swedish legislation such as mandatory provisions in the Swedish Companies Act (eg, the rules on financial assistance).

In cross-border transactions, the International Sale of Goods Act (CISG) may be applicable and sometimes other choice of law principles may also come into play, unless otherwise agreed. Therefore, it is often stipulated that Swedish substantial law shall apply without reference to any choice of law principles.

Disputes are normally stipulated to be solved through arbitration and often with a reference to the rules of the Arbitration Institute of the Stockholm Chamber of Commerce (www.sccinstitute.se).

6. TYPICAL CONDITIONS TO CLOSING/RELEVANT REGULATORY REGIME

6.1 Typical conditions to closing

The following lists typical conditions that closing may be subject to:

a) Shareholder or board approval (less common).
b) Certain key employees not terminating their employment.
c) Required filings with, and clearances from, relevant regulatory bodies, for example, competition authorities (see section 6.2.1).
d) Buyer having financing in place (less common).

e) Material adverse change (MAC) clauses.
f) Bringdown of warranties (a lot less frequently used in Swedish agreements compared to UK or US agreements).
g) Waivers from change of control provisions that the target company may have in its agreements.

6.2 Relevant regulatory requirements and problems when dealing with foreign investment, competition law, etc

6.2.1 Competition law

The Swedish Competition Act provides for mandatory notifications of transactions and full-function joint ventures when there is a change of control and certain thresholds are met. For notified transactions, there is a standstill obligation prohibiting the implementation of the transaction prior to obtaining a clearance decision from the Swedish Competition Authority.

The thresholds for when a merger is to be notified to the Competition Authority are that the undertakings concerned (typically the buyer group and the target company) must have a joint turnover to Swedish customers of SEK 1bn and at least two of the undertakings concerned (typically the buyer group and the target company) must each have a turnover to Swedish customers of at least SEK 200m.

A significant impediment to effective competition (SIEC) test is applied for the assessment of concentrations. The question of whether a merger creates or strengthens a dominant position on the market is not the sole determining factor. Instead, concentrations which are intended to substantially impede the existence or development of efficient competition within the country as a whole, or a substantial part of it, are to be prohibited. Upon assessment, whether a dominant position will be created or strengthened will be considered.

Under the Swedish Competition Act, the Swedish Competition Authority is competent to try mergers below the mandatory threshold. Where the threshold of a joint turnover to Swedish customers of SEK 1bn is met, the parties to the merger can either choose to notify the merger voluntarily to the Competition Authority; however, the Authority can also order the parties to file a notification up to two years from the transaction. A voluntary notification may be considered if the merger results in high market shares or if there is a risk for complaints from competitors, customers or others. If the Competition Authority decides to investigate, a merger standstill will apply even though the merger is already implemented. Ultimately there is also a risk of the merger being prohibited. This is obviously a risk that one needs to take into consideration when evaluating whether one shall submit an application for merger clearance to the Swedish Competition Authority, even if the thresholds are not met.

In addition, the Commission has recently announced that it will change its previous approach to the referral of concentrations falling below the national thresholds. The Commission announced that national authorities will now be encouraged to refer acquisitions that are not notifiable for review by the Commission. In particular, killer acquisitions in tech and pharma have been identified as industries where it may be relevant that the Commission wants the review of an acquisition to be referred. This means reduced predictability, and that an analysis of the notification obligation needs to take place very early in all transactions, acquisitions and investments.

An examination by the Commission is usually substantially more extensive than that of the national competition authorities: in particular, it affects the timetable for the transaction. A review by the Commission includes a so-called *ex ante* phase that is not timed and often takes several months. In addition, the procedure for a referral to the Commission may take a long time (up to eight weeks) even if the Commission decides not to examine the referred transaction.

In addition to the Swedish legislation, EU law applies and larger deals may need to be notified to the European Commission.

6.2.2 Legislation to prevent espionage etc

The Swedish Protective Security Act may be relevant depending on the type of transaction. The aim of the Act is to better protect information and activities to prevent espionage, cyberattacks etc. against Sweden; the Act requires that a security protection analysis is carried out in order to identify necessary protection measures. Thus, this must be carried out when a security-sensitive activity is being transferred. Examples of activities that are relevant are electronic communication, and energy and water supply.

6.2.3 A potential upcoming foreign direct investment regime

Sweden is one of few EU Member States which does not have a standalone foreign direct investment regime (FDI); however, on 1 November 2021, the Swedish Government published an official report with an inquiry and proposal for a new FDI screening mechanism. The proposal, which is suggested to enter into force on 1 January 2023, significantly expands the Swedish Government's current powers to scrutinise foreign investments: the aim is to protect Sweden's national security as well as public order and public security in Sweden. The proposal *inter alia* provides for/means that:

a) mandatory notification of all kinds of investments in Swedish companies and foundations etc., including public companies, that carry out certain 'protected activities' in a wide range of sectors.
b) investors must obtain a clearance from the screening authority, the Inspectorate of Strategic Products (ISP), prior to closing.
c) the ISP may issue administrative fines up to SEK 50m (€4.8m) for non-compliance with the legislation.

7. CLOSING ACTIONS

7.1 Typical steps to be undertaken for consummation of the proposed transaction

The actions to take place at the closing of the M&A deal are described in the share purchase agreement. Actions that normally take place at closing are (among others):

a) Confirmation of fulfilment of conditions precedent including regulatory approvals if applicable.
b) Payment of the purchase price including transfer of escrow amount to the escrow account.
c) Transfer of shares certificates (if issued) and registration of the buyer as new shareholder in the target company's share register.
d) Signing of ancillary agreements.
e) Other transaction-specific items.
f) Issue by the present board of directors of a general power of attorney in favour of the buyer's representatives, enabling them to act for the target company until the new board of

directors is registered with the Swedish Companies Registration Office.

g) Holding an extra shareholders' meeting by the buyer as a new shareholder, at which a new board of directors is appointed as well as new auditor(s).

At closing, a closing memorandum (or closing minutes) is prepared, verifying that all actions set out in the share purchase agreement have been executed and that the closing has been carried through. The closing memorandum is normally signed by the seller and the buyer.

7.1.1 Closing accounts

The preparation of closing accounts is provided for in the share purchase agreement for several reasons. One reason may be that seller and buyer have agreed on a final adjustment of the purchase price to be based on the closing accounts. Another reason could be that the parties have agreed that the closing accounts should be a 'first check' if there is a breach of the seller's warranties, especially if the seller has warranted a certain minimum financial result for the period from the date of the annual accounts through the date of the closing accounts. The share purchase agreement will describe how the closing accounts will be prepared and as of what date. The agreement will also describe:

a) the party which will prepare the closing accounts;
b) the procedure for establishing the closing accounts; and
c) how disputes between the seller and the buyer concerning the closing accounts should be solved.

Closing accounts are not used when the purchase price is fixed and based on locked box accounts.

7.2 Any additional inputs in case of cross-border M&A

As noted above, a KYC procedure with the banks in Sweden is usually time consuming. If a non-resident needs to open a bank account (for escrow, securities etc) in Sweden due to the M&A deal, it is a good idea to initiate this process well in advance.

8. POST-CLOSING

8.1 General actions for post-closing

It is standard to include the following clauses:

a) *Discharge from liability:* the buyer in its capacity as shareholder of the target company, if the auditor does not recommend against it, shall discharge at the first annual general meeting after closing all of the directors for the period up to and including closing.

b) *Non-competition:* the seller(s) shall not compete with the target's business for a certain period of time (normally two to three years).

c) *Non-solicitation:* the seller(s) shall not solicit employees (and sometimes customers and suppliers) from the target for a certain period of time (normally two to three years).

8.2 Regulatory filings (where required)

New board members, signatory powers, auditor (if applicable) etc will need to be filed with the Swedish Companies Registration Office. Permits generally follow the legal entity, so there is no need to file in this regard. However, there are exceptions. It is therefore important to follow up on this and ensure that permits are in place. If key personnel are being replaced, it is relevant to ensure that the relevant authority approves/is informed about this.