

MEMORANDUM

Date April 25, 2019

Regarding Swedish law comments to typical US style Term Sheets

INTRODUCTION

US style term sheets are generally based on the usage of convertible, often redeemable, preference shares. These term sheets normally include provisions on conversion, anti-dilution, etc. The overall aim is to provide the investor with adequate protection against anti-dilution.

The table set out below describes whether such provisions can be inserted in the articles of association of a Swedish limited company (*Sw. aktiebolag*) or whether they should instead be dealt with in a shareholders' agreement. In addition, certain other typical term sheet provisions are commented upon.

NB1: Certain foreign investors incorrectly believe that a preference share in a Swedish company is a kind of a loan. This is not correct. A holder of preference shares is, from a corporate perspective, a shareholder and not a lender.

NB2: There are alternatives to using (convertible) preference shares, to attain anti-dilution protection when making an investment in a Swedish limited company. One alternative is to use convertible debt notes (*Sw. konvertibla skuldebrev*) and/or warrants (*Sw. teckningsoptioner*). Although such instruments usually provide for protection against anti-dilution only in connection with securities issues to existing shareholders, they can be tailored to provide for anti-dilution also in case of directed issues of securities to third parties. Such securities can also be combined with a "Golden Share" in order to provide the investor with a certain degree of influence over the business of the target company.

Term	Articles of Association	Shareholders' Agreement
1 TERMS DEALING WITH PREFERENCE SHARES		
Conversion Rights		
<p>Comment: Two common alternatives are:</p> <ul style="list-style-type: none"> • "Right to convert to ordinary shares 1:1" • "Right to convert to ordinary shares 1:1 <u>at a conversion price which is subject to anti-dilution adjustments.</u>" <p>See also box below on anti-dilution adjustments.</p>	<p>Can be inserted in the Articles.</p> <p>Not possible to include anti-dilution provisions in the Articles since it would affect the registered share capital.</p>	<p>Anti-dilution can be achieved by other shareholders undertaking to (a) transfer their shares (exchange agreement) or (b) compensate by allowing investor to participate in a new share issue at a price below market value. In the latter case (b), such decisions should be taken by all shareholders by a unanimous decision, since an issue at a price below market value could be regarded as contravening the so called general clause of the Swedish Companies Act.</p>
Automatic Conversion		
<p>Comment: Provides for automatic conversion at certain events, e.g. at the earliest of:</p> <ul style="list-style-type: none"> • IPO • Merger • latest date <p>NB: It is generally in the interest of the company (not the investor) to include such a clause.</p> <p>Price, see above regarding anti-dilution.</p>	<p>Possible to provide for automatic conversion in (in principle) all situations. It is preferable to carefully define such situations so that these can be objectively ascertained rather than being subject to discretion (of the Company).</p> <p>Not possible to provide antidilution protection, see above.</p>	

Term	Articles of Association	Shareholders' Agreement
Anti-dilution Adjustments		
<p>Comment: Often provide for adjustment of "conversion price" in the event of a combination (<i>Sw. sammanläggning</i>), split, new issue of securities below conversion price, "merger", etc.</p>		
<ul style="list-style-type: none"> • Adjustment in case of share issues. 	<p>As pointed out above, not possible to include antidilution provisions in Articles since it would affect the registered share capital.</p> <p>May, however, provide for supermajority in case of directed share issues and/or floor (high nominal value for the shares= minimum issue price) to protect in case investor does not participate.</p>	<p>Yes. May for example provide for right to participate or floor.</p>
Mandatory Redemption		
<p>Comment: May provide that investors' shares shall be redeemed at a certain price at certain events, e.g. at the earliest of:</p> <ul style="list-style-type: none"> • IPO • Merger • Certain date unless it has been converted prior to such date 	<p>Swedish companies may issue redeemable shares. The redemption may not lead to the registered share capital falling below the minimum share capital according to the Articles, which sets certain limits. Furthermore, after the redemption, the company must have full coverage for the restricted equity (<i>Sw. bundet eget kapital</i>). Unless certain conditions are met, the redemption must be approved by a court, which makes the procedure time-consuming.</p>	<p>May for example provide for a put option to the other shareholders in the specified events. Risk however that they cannot afford to purchase. Alternatively provide that the company shall be liquidated.</p>

Term	Articles of Association	Shareholders' Agreement
Senior Ranking / Liquidation Preference		
Comment: Provides that preference shares shall have preference in case of payment of dividends and liquidation.		
<ul style="list-style-type: none"> Preference may give right to repayment of initial investment plus interest and to decided but unpaid dividends. 	Articles may provide for preference to dividends and in case of liquidation.	
<ul style="list-style-type: none"> Sometimes provided that preference shares shall be entitled to participate (in dividends and liquidation) with preference and (thereafter) on an "as if converted basis". 	<p>Yes, Articles may provide that preference shares shall receive SEK X and the remaining assets shall be divided equally among all shares.</p> <p>Two common alternatives are to provide either that preference shares shall receive SEK X per share and that the remaining assets shall be distributed to ordinary shares or that preference shares shall receive SEK X, thereafter ordinary shares shall receive SEK X and finally the remaining assets shall be divided equally among all shares.</p>	
<ul style="list-style-type: none"> Merger: Sometimes provided that preference shares shall have right to receive same payment as in liquidation in case of "mergers". 	Technically this is possible to solve, however impractical. However, possible to issue redeemable shares, see above.	
Voting Rights		
Comment: Often stated that preference shares shall have voting rights "on an as if converted basis".	Applies automatically. No need to provide for in Articles.	
2 OTHER TERMS		
Registration Rights		

Term	Articles of Association	Shareholders' Agreement
<p>Comment: Public trading of securities in the US may only take place if the securities are registered. There are two kinds of provisions dealing with this: "demand rights" and "piggyback rights".</p>		
<p>2.1 Demand Rights</p>		
<p>Comment: This is a right for a shareholder (in a (US) company) to demand the board of the company to register the shareholder's shares with the SEC (US), in order to allow the shareholder to sell the shares on the securities market.</p>	<p>Possible to provide for in Articles. However: the target company is generally unwilling to accept a demand right for the following reasons. Besides the fact that the company may be unwilling to take this cost, it may be prevented to do so under Swedish company law. This may be the case if it is not in the interest of the company (but only of one of the investors) to be registered on a US market. If it is not in the interest of the company, then costs related to the registration are not regarded as costs which should be paid by the company. Investors often tend to accept that a target company, whose shares are not traded on the US market, is unwilling to include demand rights in the Articles.</p>	
<p>2.2 Piggy-back Rights</p>		
<p>Comment: This is a right for a shareholder (in a (US) company) to demand the board of the company to register his shares with the SEC (US), in connection with the registration of other company shares in order to allow the shareholder to sell the shares on the securities market.</p>	<p>Possible to provide for in Articles.</p>	

