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Acquisition Finance

Sweden
Roschier

chambers.com

2019

Law and Practice

Contributed by Roschier

Contents

Roschier is a leading Nordic law firm with offices in Stockholm and Helsinki, and a total of 525 employees. Roschier's Swedish finance and restructuring team of 28 lawyers has a strong presence in the market and long experience giving strategic advice in structuring deals and negotiating transactions. The team is frequently involved in the development of the Swedish financial market and closely monitors current market trends, political initiatives and legislation issues. The practice focuses on: (i) bank lending, (ii) capital market debt, (iii) insolvency and restructuring, (iv) structured finance, (v) asset-backed projects, (vi) regulatory and derivatives, (vii) direct lending, and (viii) fund finance. The firm provides clients a high degree of specialisation within all these categories and is a one-stop shop for legal advice within finance. The clients include Swedish and international banks, insurance companies, pension funds, securities dealers, bond arrangers, large listed companies, private equity houses and property investors.

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1. Market

1.1 Major Lender-side Players

The market for acquisition finance, particularly for leveraged buy-outs, in Sweden was busy after the 2008/09 crisis. A major factor appears to have been the number of sizeable private equity funds present and active in Sweden and the Nordic region more generally.

The region's dominating players lending-side have traditionally been the Nordic commercial banks (primarily Danske Bank, DNB Bank, Nordea, SEB, Svenska Handelsbanken, Swedbank). The lending market for, in particular, small and mid-sized transactions has long been dominated by these banks. Usually, they also participate in a sizeable slice of big-ticket deals, but face competition from international banks in this space.

The emergence and growth of "direct lending" as a viable alternative to traditional bank lending and high-yield bond financing has been a salient feature of recent years. Insurance companies, debt funds, hedge funds, asset management companies and pension funds have all provided alternative sources of debt financing. The introduction of these alternative credit-providers has been fuelled by the bank's increasingly tight regulatory capital constraints, opening up a funding gap in traditional bank financing. Alternative credit-providers step in to fill this gap by offering, in particular, long-term financing on commercially attractive terms.

Traditionally, the Nordic finance market has been relationship-driven to a significant degree, and a majority of transactions tend to be arranged as club deals among Nordic banks. Larger transactions may involve broader international market syndications, even if local banks still take up large parts of the market. Less visibly, the acquisition finance market in Sweden includes a number of providers of junior and mezzanine debt, typically for small and mid-sized transactions, where more senior lenders (such as the banks) may find leverage challenges. These lenders tend to provide more flexible structures to bridge the funding gap (with or without equity kickers).

In recent years, a prominent debt component has been the non-amortising term loan B (TLB) tranche, also in the Nordic LBO market where the TLB tranche in larger transactions is typically widely syndicated to institutions.

1.2 Corporates and LBOs

As elsewhere in much of Europe, the main players on the borrowing side are private equity sponsors. Key players include Nordic incumbent private equity houses EQT, Nordic Capital, IK, Triton, Altor and Herkules. International powerhouses such as CVC, Permira and KKR are also involved in some larger deals.

A relatively large number of multinational corporates are domiciled in the Nordic region, often with significant levels of M&A activity. Although the need for acquisition financing varies between companies and deals, corporates retain a substantial position in the acquisition finance market.

2. Documentation

2.1 Governing Law

In the most common club deal scenario, the predominant choice of governing law is Swedish. If the intention is to syndicate to a wider group of investors internationally, Swedish law is widely used but English law may sometimes be preferred.

Direct lending transactions involving local lenders are predominantly governed by Swedish law.

2.2 Use of LMA or Other Standard Loans

Market-standard documentation used in Swedish acquisition finance transactions is typically drafted in English and based on the LMA-recommended standards. Most law firms active in the Swedish market draft in-house precedents based on LMA documents. Exceptions are made for small to mid-size transactions offered on a bilateral basis, where agreements are individually tailored to local market practices.

In corporate acquisition finance transactions, the documentation standard is often more tailored to the specific situation. Typical market documentation is based on LMA standards, but there is some crossover between LMA standards for investment grade borrowers and leveraged transactions. Corporate borrowers with strong credit standing and with a moderate overall leverage tend to be offered documentation more like LMA investment grade standards; more highly leveraged corporate borrowers would be expected to borrow on LMA leverage standard documentation.

Generally, the mezzanine debt is documented on a stand-alone basis, typically following senior loan documentation closely. The security package will be shared with senior lenders through intercreditor arrangements.

Documentation used for direct lending tends to be more transaction-specific and tailored to lenders' preferences. The typical documentation follows normal LMA standards, but there are some direct lending transactions for which the documentation is more similar to that used for bonds.

A fairly condensed Nordic-style document is widely used in the Swedish bond market. It is based on market practice from each of the Nordic jurisdictions, Norwegian market practices having proved particularly influential. Strong influence, however, has been exerted by international bond markets as well as by local organisations such as the Swed-

ish Securities Dealers Association. Non-Nordic investors may find ancillary documentation in Sweden less definitive than, for example, English law trust deeds or New York law indentures. Also, bonds are generally sold on long-form term sheets only (where all material terms are included), with investors agreeing to be subject to final terms and conditions based on the agreed term sheet (but where deviations from the long-form term sheet would be limited to non-material matters).

2.3 Language

Documentation used in Swedish acquisition finance transactions is typically drafted in English. Also, on request, Nordic banks offer English language documentation for most of its ancillary banking services (such as account agreements and other cash management services).

Security documents are predominantly drafted in English. However, applications to Swedish authorities – eg, to obtain real estate mortgage or business mortgage certificates – must be made in Swedish.

It should be noted that if a finance document would be subject to proceedings before a Swedish court, a translation of the document into Swedish might have to be provided.

2.4 Opinions

Legal opinions given in connection with acquisition finance transactions in Sweden follow the format typically encountered in international finance transactions. According to local market practice, lenders' counsel renders the opinion covering both legality and enforceability of the finance documents, as well as the capacity and authority of the obligors.

3. Structures

3.1 Senior Loans

The main source of acquisition finance is senior secured bank lending. Primarily depending on the size of the debt package, senior debt will be provided on a bilateral, club or syndicated basis.

Senior debt will typically be composed of one or more term loan tranches for acquisition and refinancing purposes, together with appropriate working capital facilities. Term loan tranches could be either amortising or non-amortising with bullet repayment at maturity. The bank lending market has been highly liquid and competitive in recent years, giving a clear trend towards non-amortising TLB term for Nordic market debt structures.

Where a structure includes amortising term loan tranches, both these tranches and working capital facilities are primarily held by banks, whereas non-bank lenders have shown growing appetite to offer and hold non-amortising TLB tranches.

The latest and most significant development on the Swedish acquisition finance market is the arrival of direct lending. This may be offered in direct competition with commercial banks or jointly with them. As mentioned under **1.1 Major Lender-side Players**, direct (or alternative) lenders include insurance companies, debt funds, hedge funds, pension funds and transaction-specific special lending vehicles.

Typically, direct lenders provide higher leverage and more flexible terms than banks. They tend to provide longer-term loans and are often very competitive in terms of the speed of process. In the Swedish market, direct lending in the acquisition finance space has taken the form of senior loans, "unitranches", TLB capital, second lien capital and profit-participation loans.

3.2 Mezzanine/PIK Loans

In addition to the senior secured bank debt, the Swedish market also sees junior debt offered by debt funds as second lien or mezzanine products, in addition to the senior package. Second lien or mezzanine debt would usually be secured and participate in at least parts of the senior security package, although ranking behind senior debt.

Mezzanine or second lien debt is typically non-amortising, with a mix of cash pay and roll-up interest. Mezzanine debt could be structured as a pure debt product or with an equity kicker. In Sweden, the equity kicker is usually warrants (*teckningsoptioner*).

3.3 Bridge Loans

In most leverage buy-outs in Sweden high-yield debt is not issued at the time of completion of the buy-out, but will be put in place as soon as possible after completion; at which point the proceeds of the high-yield debt are used to refinance the bridge loan. The reason for not financing a buy-out with high-yield debt is a function of the complexities of co-ordinating the timing of the process of bond issuance with that of the buy-out itself.

The bridge loan will usually be provided under separate documentation, usually on the basis of LMA leverage transactions. The maturity is likely to be approximately one year but could also be longer or shorter depending on the deal specifics. The interest margin would usually reflect the high-yield debt to be issued or at least be higher than that for a term loan A.

A handful of buy-outs have been financed with high-yield debt. The bond proceeds have been held in escrow pending satisfaction of the conditions precedent to completion of the acquisition. As the interest under the high-yield debt would accrue from the date when the proceeds are paid to

the escrow account, this would not always be an attractive solution for issuers. To accommodate certain-funds acquisition requirements, certain arrangers have recently agreed to underwrite the bond issuance.

3.4 Bonds/HYB

The adoption by local sponsors of high-yield bonds in recent years demonstrates the ability of Swedish high-yield bonds to compete with conventional leverage financing products. As a result of investors' appetite for participating in more aggressive LBOs, high-yield bonds have challenged not only senior secured loans but also junior financing arrangements.

There are several reasons why bond financings have become an attractive option for some local sponsors. Benefits include easily executed bond issues, non-amortisation terms, competitive costs, incurrence-based covenants (rather than maintenance-based covenants), and bond-term flexibility. The ability to have a relatively wide base of investors providing local currency capital to local businesses further increased the attraction. Also, search for yield in the low interest rate environment following the financial crisis fuelled growth.

Although the market for high-yield bonds has grown considerably since its inception, certain-funds acquisition finance structures incorporating bonds as the principal source of funding have been used only in a handful of transactions (see further under **3.3 Bridge Loans**).

3.5 Private Placements/Loan Notes

The term "private placement" is commonly used to describe a restricted offer of securities to professional investors that is exempted from the duty to publish an approved prospectus.

An issuer may sometimes wish that the terms of its bonds are kept confidential and/or that it does not have to comply with the rules of a regulated market or other regulated trading venue, the terms of the bonds are bespoke and not appropriate for public trading, the risk profile of the issuer is high and/or there is a request from the issuer to limit the possibility to transfer and purchase the bonds. Although it is common to have high-yield bonds traded on various venues, not all high-yield bonds in Sweden are issued into a public market. Many high-yield bond issues qualify under one or several of the Prospectus Directive 2017/1129 exemptions (Article 1(4)) and are exempt from the requirement to publish an approved prospectus. This is the case, for instance, where bonds are issued to qualified or a limited number of investors.

4. Intercreditor Agreements

4.1 Typical Elements

Where an acquisition finance structure is comprised of several layers of debt, it is common for contractual subordination to be arranged through an intercreditor agreement. In a typical leveraged buy-out environment, the intercreditor agreement would follow the LMA recommended form. In bilateral transactions, short-form subordination agreements are sometimes, depending on the deal specifics, used instead.

Much as in the case of other European countries, typical Swedish acquisition financing intercreditor agreements are based on the LMA recommended standard. As with the facilities agreement, the intercreditor agreement is drafted in English. The choice of law follows that of the facilities agreement and is therefore typically Swedish law (which is likely to be the applicable insolvency law if the borrower or issuer is domiciled in Sweden).

Payment of Principal

Swedish transaction structures usually follow the order of priority laid down in the LMA ICA. Hence, repayment of investor debt is not permitted, whereas repayment of intercompany debt is usually permitted until acceleration or an event of default of the senior debt.

Where the structure includes a mezzanine component, repayment of mezzanine principal is normally not permitted until the senior debt has been discharged in full.

Payment of Interest

Payment of interest on investor debt are treated essentially in the same way as payment of principal. For junior debt, interest payments are usually permitted until senior default occurs, after which cash payments on junior debt would be blocked and instead be capitalised as junior debt.

Fees

It is generally permitted to pay fees to junior lenders unless a senior default has occurred, upon which such payments would be blocked in the same way as cash interest payments.

Sharing of Security

The various secured creditors would normally share the same security package under the terms of an intercreditor agreement.

The concept of "trust" does not exist as such under Swedish law, but very similar results, however, are achieved by mandate (agency) or power of attorney. In a Swedish secured financing transaction, the security package is typically held by a security agent as agent on behalf of the secured parties. The security agent is normally appointed and authorised through specific provisions in the intercreditor agreement. In the absence of an intercreditor agreement, the appoint-

ment and authorisation would be included in the loan agreement or the security agreement. Occasionally there may be a separate agency agreement.

Subordination of Equity/Quasi-equity
The senior lenders normally seek to create a structure whereby deeply subordinated debt (such as shareholder debt) is contractually subordinated through intercreditor agreement, and sometimes also structurally and treated as equity. This means that subordinated debt would be subject to the same contractual restrictions regarding payments as pure equity or dividends. There is usually a leverage trigger for permitted payments, which means that payments on subordinated debt or equity are generally not permitted unless leverage has come down below certain pre-agreed levels. Deeply subordinated debt is usually subordinated both structurally and contractually.

4.2 Bank/Bond Deals

Swedish high-yield bond issues sometimes contain intercreditor agreements. In a typical scenario a super-senior revolving credit facility (super-senior RCF) would be added to a bond structure.

The typical structure of such intercreditor arrangement would include the following main features.

Ranking as to Proceeds Following Enforcement Action
Super-senior debt (ie, the super-senior RCF and indebtedness owed under hedging arrangements, if any) will rank in priority and ahead of senior debt (ie, debt owed in relation to the high-yield bonds and any new debt incurred in accordance with the terms and conditions for the bonds, often subject to the satisfaction of an incurrence test) with respect to proceeds from an enforcement action. Hence, proceeds from an enforcement action would be applied first against the super-senior debt and then against the senior debt. Enforcement action would typically include acceleration of debt, enforcement of security and/or guarantees and petition for insolvency or similar proceeding.

Intercompany debt and shareholder debt would, as contemplated in the LMA recommended form for intercreditor agreements, be subordinated to super-senior debt and senior debt, and be unsecured.

Security and Guarantees
Any security or guarantees would be shared between super-senior creditors and the senior creditors, and any enforcement proceeds would be applied in accordance with the waterfall set out above (Ranking as to Proceeds Following Enforcement Action).

Payment Block Event
Intercreditor agreements often include a payment block whereby the super-senior creditors, upon a material event of default (eg, non-payment, breach of financial covenants, non-compliance with major obligations, cross-default, insolvency and similar proceedings) may block payments of principal and interest to senior creditors until the earlier of (i) the taking of an enforcement action and (ii) notice from the super-senior creditors that the block has ceased to apply.

Purchase Option
In exceptional circumstances, where bondholders are able to provide a super-senior RCF and/or hedging, bondholders may have a right to purchase the super-senior debt in full and at par following an acceleration of senior debt or enforcement of security.

Cancellation of Super-senior RCF
Most intercreditor agreement would include a provision to the effect that, should the issuer purchase or redeem bonds whereby the nominal amount of the bonds outstanding falls below a certain threshold (usually between 75% and 85% of the initial nominal amount), any debt outstanding under the super-senior RCF would be repaid and cancelled pro rata to the amount by which the outstanding nominal amount under the bonds falls below the initial nominal amounts, if super-senior creditors so request.

Enforcement Actions
Intercreditor agreements will contain provisions regulating secured parties' respective rights to take enforcement actions and to vote and instruct the security agent to enforce the transaction security, according to the following principles.

The senior creditors (or their representative) may only instruct enforcement action if the proceeds to be received from the proposed enforcement actions are expected to equal or exceed the amount of super-senior debt.

Both super-senior creditors and the senior creditors may give enforcement instructions to the security agent. If the security agent receives conflicting instructions, the security agent will notify the super-senior creditors and the senior creditors and they should then consult with each other and the security agent in good faith for a period of usually not more than 30 days.

In the absence of agreed joint enforcement instructions between super-senior creditors and senior creditors during the consultation period, the security agent will act in accordance with the enforcement instructions from senior creditors. However, if (i) no enforcement action has been taken by the security agent within three months from the end of the consultation period, or (ii) the super-senior debt has not been repaid within six months from the end of the consultation period, then the super-senior creditors will be entitled to give enforcement instructions.

4.3 Role of Hedge Counterparties

One of the standard requirements of senior lenders in private equity-backed transactions with higher leverage, would be that the borrower enter into interest rate – and possibly currency exchange rate – hedging in relation to a substantial portion of the senior debt.

The role of hedge counterparties in a typical buy-out transaction would follow the LMA recommended form. The exposure of the borrower under the hedging arrangement will therefore constitute senior debt and rank pari passu with senior debt. Hedge counterparties will therefore benefit from the guarantee and the security package provided to the senior lenders. In return, hedge counterparties will be required to agree to certain obligations and restrictions relating to the hedging provided by it, such as:

- restrictions on termination rights for hedging agreements or to take enforcement actions under it against the borrower;
- the obligation to ensure hedging agreements are documented on standard market terms (usually the ISDA master agreement or another master agreement with similar effect) and that the preferred elections contemplated under the relevant agreement are made in relation to payment and early termination; and
- restrictions on the right to amend the terms of hedging agreements.

5. Security

5.1 Types of Security Commonly Used

Senior lenders aim for comprehensive security packages covering revenues and assets of the target group. However, deals should take into consideration that certain types security-interests are more practical – and less costly – to perfect and deal with than others. Also, it is important to identify assets that are crucial for enabling the borrower to conduct business uninterruptedly, as there would be a more restricted choice of perfectible security interests in respect of such assets.

The extent of security is also relevant from a ring-fencing perspective, with both the target group and its owner providing security as a supplement to contractual constraints (such as negative covenants).

Generally speaking, security over a company's real estate, shares, chattels (by way of a business mortgage or registered title transfer), patents or trade marks do not cause practical obstacles to the borrower's business and would therefore be preferred.

Shares

The pledge of a share is perfected when the share certificate corresponding to the share has been transferred to the pledgee's possession or, if the share certificate is held by a third party, when the third party is notified of the pledge. Depending on the contractual agreement between the pledgor (the owner of the shares) and the pledgee, dividends on pledged shares may be paid to its owner, despite perfection of pledge. The right to vote for pledged shares remains with the pledgor unless the pledgee is appointed a voting proxy.

In practice, a pledge over shares is perfected through the delivery of share certificates duly endorsed in blank by its owner (as shares in Swedish companies are bearer shares, endorsement in blank facilitates enforcement). The pledge is notified to the company by the pledgor. The company should then, for evidentiary purposes and to reduce the risk for competing claims to the shares, have the pledge noted in its register of shareholders. In addition, the pledgor is sometimes requested to appoint the pledgee as voting proxy on closing, this right to be exercisable only after default or event of default has occurred.

A pledge over dematerialised shares (primarily in listed companies) is perfected by way of registration on the pledgor's account with Euroclear Sweden (in case the shares are registered as directly held by the pledgee) or by notice to the pledgor's nominee (in case the shares are indirectly registered through a nominee).

Inventory

Depending on whether certain inventory is affixed to land or a building (such inventory is treated for legal purposes as a species of real estate), machinery, equipment and inventory could either be regarded as real estate or a chattel. To the extent machinery, equipment and inventory are not considered real estate, it will be regarded as a chattel. Pledges over chattels are perfected when the chattels have been transferred from the possession of the pledgor to the pledgee or, if the chattels are held by a third party, when the third party is notified of the pledge ("possessory security"). The fundamental prerequisite for the creation of a perfected security interest over chattels is that the property is no longer either in the possession or under the independent control of the pledgor. Consequently, it is not feasible to create this type of security interest if the machinery, equipment or inventory needs to be used in the pledgor's day-to-day business.

However, there are two ways of creating security over chattels that cannot be removed from the security-provider's possession or control ("hypothecary security"). One way is for the security-provider to grant a "business mortgage" (*företagshypotek*), similar in many ways to a floating charge and the procedure for which resembles that for real estate mortgages – see below. The other way is to register a "title-transfer".

Business Mortgages
It is not possible under Swedish law to take security over a business as a whole, with the effect that the lenders upon enforcement can sell the business as a going concern. The only way to achieve this is in practice is to have security over the shares in the company which conducts the business. It is, however, possible to create security over almost all chattel of an entity in the form of a business mortgage. A business mortgage comprises all chattel belonging to the company to the extent that the chattel is part of the company's business and to the extent that it does not include, for example, cash or bank funds, shares or property that cannot be subject to either attachment or included in the company's bankruptcy estate. The business mortgage can also be restricted to merely a part of the business.

The registration authority will register the business mortgage as a sum certain (in principle, in any currency). Registrations rank in terms of the date and time of day they have been effected. A business mortgage certificate is issued by the registration authority against the registration; the certificate can be either physical or electronic. A security interest is created by contractual grant of the business mortgage and the delivery of the certificate(s) as security for an obligation and to the mortgagee or someone acting for the mortgagee. The certificates may be reused any number of times. They are not specific to any particular transaction. The registration of the mortgage and the issuance of the corresponding business mortgage certificates will incur one-time ad valorem stamp duty.

With respect to rolling stock such as trains, the normal way of taking perfected security would be though a registered title transfer. It is possible to perfect a transfer of ownership through registration with the execution authorities, even if chattel remains in the transferor's possession. This form of title transfer includes an element of publicity since the arrangement has to be announced in daily newspapers of general circulation.

Bank Accounts
In order to create a security interest over balances on a bank account, the account bank maintaining the account must be notified of the security interest. In order for the interest to be perfected, the pledgor must in principle be deprived of the right to exercise control over the monies credited to the bank account in its own interest. Consequently, it is usually not feasible to create a perfected security interest over bank accounts for which the balances need to be used in the pledgor's day-to-day business.

Sometimes, pledges over bank accounts are granted on an unperfected basis so that the pledgor can continue to have access to the account. The pledge will then be perfected by means of notification to the account bank on the occurrence of certain perfection triggers, such as an event of default. However, this type of "delayed perfection" could be vulnerable to claw-back in the event of the pledgor's insolvency.

Receivables
A pledge over a contractual claim, such as the right to receive customer payments, is perfected by means of notification to the payment debtor by the pledgor or the pledgee. For the pledge to be perfected, the pledgor must also be deprived of any control over the collateral (eg, the contractual right to receive payments). The debtor must thus be instructed to make any payments to an account that the pledgor does not control, normally to an account controlled by the security agent.

Furthermore, pledges over receivables are sometimes granted on an unperfected basis so that the pledgor can continue to collect payments under the receivables. The pledge will then be perfected by means of notification to the relevant debtor upon the occurrence of certain perfection triggers, such as an event of default. It should be noted that this type of delayed perfection could be vulnerable to claw-back in the event of the pledgor's formal insolvency.

Intellectual Property Rights
Patents, or patent applications, may be used as security by way of pledge. The perfection of the pledge requires the execution of a pledge agreement. The security agreement must then be registered (in its original) with the Swedish Patent and Registration Office. Essentially, the same rules and procedure apply in relation to security over trademarks.

Real Estate
There is a two-step procedure to follow in order to create a mortgage security over real estate.

First, the owner of the real estate applies for a registration of a sum certain (in principle, in any currency). Registrations rank in terms of the date and time of day they have been effected. Second, the owner applies to the registration authority for a mortgage certificate to be issued against that registration. The authority issues a standardised mortgage certificate, which represents a certain amount in respect of the property's value. The certificates may be "reused" any number of times. They are not specific to any particular transaction. The issuance of the mortgage certificates will incur a one-time ad valorem stamp duty.

Third, as the mortgage certificate is treated as chattel, a security interest is created when the owner of the property delivers the certificate as collateral for a loan pursuant to a pledge agreement. In the case of digital mortgage certificates, the time of delivery occurs when the mortgagee has been registered as mortgagee in the mortgage certificates register.

5.2 Form Requirements

Other than relevant documents that may have to be sent to Swedish authorities (such as mortgage applications), there are no formal requirements in respect of the security documentation. Swedish courts and public authorities may ask for documents to be translated into Swedish, but there is case law to suggest that the courts and authorities are expected to be able to deal with documentation in English.

5.3 Restrictions on Upstream Security

Providing downstream security (ie, where a parent company provides security for the indebtedness of a subsidiary) is normally considered to give corporate benefit to the parent. Providing cross-stream or upstream security may be harder as there is no established method to determine that corporate benefit has been given to the security provider. Therefore, each case has to be to be analysed individually. However, if increments of a loan are on-lent to a security provider, the provider would most probably be considered to have received corporate benefit up to the corresponding amount.

5.4 Financial Assistance

Swedish law rules on financial assistance apply to both private and public companies, and apply to acquisition financing structures. The provisions restrict lenders from accessing assets of a target group, to the extent such lenders' financing is extended to fund the acquisition of shares in the target company or its parent company. This effectively prevents the target company from granting loans, guarantees or providing security for acquisition debt relating to the acquisition of shares in itself or in its parent company.

The financial assistance prohibition under Swedish law applies to any form of assistance by a company to anyone who intends to buy shares in the company or its parent. The prohibition does not explicitly extend to post-closing refinancings, although such assistance may be challenging from a corporate benefit perspective.

5.5 Other Restrictions

Swedish companies are subject to a set of constraints regarding the provision of security. If a company does not obtain adequate corporate benefit when providing security, it will be considered to constitute a "transfer of value" from the company. Such transfers are subject to the same restrictive rules as (other) dividend distributions. Accordingly, the security will only be enforceable if the restricted equity of the pledgor is fully covered.

5.6 General Principles of Enforcement

The enforcement procedure differs depending on the nature of the collateral. Below is a brief summary of the enforcement procedure for each of the relevant categories. For the purposes of the following description, shares, bank accounts and receivables are considered to be chattel.

Under Swedish law, a pledge may only be exercised by the pledgee to the extent it covers the debt or other monetised obligation for which the pledge serves as security. The pledgor will benefit from any overvalue that is not required to satisfy the debt or obligation. Thus, if upon realisation the proceeds from the security exceeds the amount of the secured debt, the pledgee would have to account for the balance to the pledgor.

Chattel

The Commercial Code of 1734 (*Handelsbalken*) contains an archaic, complicated and opaque provision for the sale of pledged chattels. As the provision is not considered to be mandatory, most pledge agreements give the pledgee the right to sell the pledged property by using a less complicated out-of-court procedure by explicitly excluding the provisions of the Commercial Code. As a general principle of law, a pledgee is obliged to sell the pledged property with due care. The property could, for example, be sold at a public auction or through a private sale. Where the security comprises of bank accounts or receivables, that pledgee may also enforce the pledge by making withdrawal from the account or collect the receivable.

If equipped with an enforceable judgment or other enforceable judicial decision, a pledgee may also demand that the pledged property be seized. In such case, the property will be sold by the local enforcement authority (*Kronofogdemyndigheten*) at a public auction. This procedure is more time-demanding as the pledgee first has to obtain a judgment or court decision before the property can be seized and sold.

If the pledgor enters bankruptcy, the provisions in the Swedish Bankruptcy Act (*Konkurslagen*) apply, regardless of what the parties have agreed in the pledge agreement. Pursuant to the Bankruptcy Act the pledgee may sell pledged property at a public auction. Before the pledged property can be sold, the pledgee must offer the bankruptcy administrator an opportunity to redeem the property. The bankruptcy administrator may sell the property if the pledgee itself chooses not to sell the property. In such case the proceeds of the sale will, after payment of costs incurred for the sale, firstly be used to pay the secured obligations. However, for certain categories of assets, such as transferable securities (other than shares in the pledgor's subsidiaries), currency and certain other assets, these restrictions do not apply. In these cases, the pledgee can sell or appropriate (value of) the assets in a "commercially reasonable manner".

Real Estate

A creditor that holds security in real estate may be granted "special priority" in the real estate by a court. In such case, the real estate is considered to be seized immediately. The creditor may also obtain an enforceable court judgement and thereafter demand seizure of the piece of real estate. After

the real estate has been seized, it will be sold by the local enforcement authority at public auction.

If the pledgor has been declared bankrupt, the bankruptcy administrator may demand that real estate that belongs to the bankruptcy estate is sold at auction. The bankruptcy administrator may, however, sell the real estate in any other manner if this is deemed to be more favourable for the bankruptcy estate. The bankruptcy administrator will distribute the funds from the sale to the mortgage holders in relation to their priority.

Business Mortgage
A creditor whose claims are secured by a business mortgage is entitled to payment out of the pledgor's assets in connection with its bankruptcy or a seizure of assets. In case of a seizure of assets, the creditor is entitled to payment pursuant to the Debt Enforcement Act (*Utsökningsbalken*) notwithstanding that the claim is not due for payment.

Intellectual Property Rights
In respect of pledges of patents and trademarks, a pledgee may sell the patent/trade mark in order to settle the pledgor's debt. However, the pledgee may not sell the patent/trade mark unless the pledgor has been notified and been given reasonable time to discharge the debt by other means than by the sale of the patent/trade mark.

If the pledgor is in formal bankruptcy, the same rules as was discussed in respect of chattel above will apply also in respect of pledges of patents.

6. Guarantees

6.1 Types of Guarantees
The guarantee provided by a guarantor would in most acquisition finance transactions be a guarantee where the guarantor guarantees, jointly and severally, as principal obligor (*proprieborgen*) the punctual performance by each other obligor of all that obligor's payment obligations under the finance documents. The guarantor would further undertake, whenever any other obligor does not pay any amount when due under or in connection with any finance documents, to immediately on demand pay that amount as if it was the principal obligor.

The guarantee would usually be documented in a separate chapter of the facilities agreement and reflect standard LMA wording.

6.2 Restrictions
Under Swedish law, a guarantee is a contractual liability which a Swedish limited company would normally have the power and capacity to contract. A guarantee would be subject to the same restrictions as regards corporate benefit as any other transaction undertaken by the company. In an acquisition finance structure where upstream guarantees and security are taken, the corporate benefit and financial assistance analysis are very important components of the structuring.

The rules in the Swedish Companies Act governing the provision of guarantees and security by Swedish companies are similar.

6.3 Requirement for Guarantee Fees
There is no explicit requirement for guarantee fees under Swedish law. In fact, such fees are rarely encountered in the context of secured acquisition finance structures. However, since any guarantee granted by a Swedish limited liability company would be subject to a corporate benefit test, whether or not a guarantee fee is charged by the guarantor company would be part of that analysis (tending to support corporate benefit).

7. Lender Liability

7.1 Equitable Subordination Rules
There is no concept of equitable subordination under Swedish law.

7.2 Claw-back Risk
In renegotiating or providing new financing to a borrower facing financial difficulties, lenders often require that new or additional security and guarantees are granted. The lender in this scenario should pay close attention to the risk of such security and guarantees could become subject to claw-back in the formal insolvency proceedings of the security provider. Under the claw-back rules, a security interest granted after the security provider incurred the secured obligations may be subject to claw-back unless the granting of the security can be considered as "ordinary" – that is, essentially, that the security interest would have been granted without regard to impending insolvency and that the security interest has been consistently enforced and maintained.

8. Debt Buy-back

8.1 Conducting a Debt Buy-back
Provisions restricting debt buy-backs are commonly included in facilities agreements, in accordance with LMA standards. In practice, debt buy-backs rarely occur in the Nordic loan market as many deals are structured as club deals with minimal secondary trading.

9. Tax Issues

9.1 Stamp Taxes

Business mortgages and real estate mortgages attract ad valorem stamp duty if created de novo. In either case, existing mortgage certificates may be reused without attracting stamp duty.

When a company applies for registration and issuance of new business mortgage certificates a stamp duty of 1% is charged on the face amount of the new certificates. The actual granting and perfection of the business mortgage by handing over the mortgage certificates to the creditor or security agent is not subject to stamp duty. A business mortgage certificate is perpetual and once released and handed back to the company it can be reused as security for new debt.

When a company applies for registration and issuance of new real estate mortgage certificates against a certain property, a stamp duty of 2% is charged on the face amount of the new certificates. The actual granting and perfection of the mortgage by handing over the mortgage certificates to the creditor or security agent is not subject to stamp duty. A real estate mortgage certificate is perpetual and once released and handed back to the company it can be reused as security for new debt.

9.2 Withholding Tax/Qualifying Lender Concepts

Payment of interest is not subject to withholding tax in Sweden.

9.3 Thin Capitalisation Rules

As soon as the board of directors has reason to believe that the equity of the company has fallen below 50% of the registered share capital, the board of directors is obligated to request that the auditor of the company prepare a balance sheet for liquidation purposes in order to establish whether this is the case. Should the auditor's report show that the registered share capital is below the critical level, the board of directors must immediately convene a general meeting of shareholders, in which the shareholders are informed of the situation and the shareholders resolve whether to continue the business of the company or place the company into liquidation. If it is decided that the company will continue to conduct business, a second general meeting must be held within eight months from the first meeting, at which an audited report must be presented that shows that the registered share capital has been restored. Should the second general meeting not be held within the stipulated time period, or should the board of directors not present an audited report showing that the share capital has been restored, the company must enter into liquidation.

10. Takeover Finance

10.1 Regulated Targets

Acquisitions of Swedish entities which require authorisation from the Swedish Financial Supervisory Authority (SFSA) often require SFSA approval of the acquirer. Examples of such entities are banks and other credit institutions, insurance companies, asset managers, clearing houses and securities exchanges. In the energy sector, "unbundling" rules apply, preventing joint ownership of certain natural monopoly operators and energy-generation facilities.

SFSA authorisation may have timing implications, but approvals are usually obtained within customary intervals between signing and closing.

10.2 Listed Targets

In respect of a tender offer for a Swedish company listed on a stock exchange in Sweden, the Swedish Takeover Act (*lag (2006:451) om offentliga uppköpserbjudanden på aktiemarknaden*), the Swedish Financial Instruments Trading Act (*lag (1991:980) om handel med finansiella instrument*) and the Swedish Takeover Rules issued by Nasdaq Stockholm or another relevant Swedish marketplace (the Rules), will govern the offer. The SFSA supervises compliance with the Takeover Act, and the Swedish Securities Council (SSC) – the Swedish equivalent of the UK Takeover Panel – may grant exemptions from certain of the Takeover Act's provisions. The SSC may also grant exemptions from, as well as interpret, the Rules.

Prior to making its offer, the Offeror must provide a written undertaking to Nasdaq Stockholm (or another relevant Swedish market) that it will comply with the Rules and the SSC's rulings on the interpretation and application of the Rules, and that it will accept any sanctions imposed in the event of a breach of the Rules.

The offeror would normally make an offer for all shares in the target, and offers are typically made conditional upon acceptance of more than 90% of the share capital, which corresponds to the shareholding required to initiate minority squeeze-out proceedings pursuant to the Swedish Companies Act.

Once the offer is completed (having regard, inter alia, to the 90% threshold having been reached), the takeover is finalised by the completion of minority squeeze-out proceedings, whereby the outstanding minority shares (if any) will be acquired compulsorily for cash consideration. Disputes over pricing are referred to compulsory arbitration for resolution.

According to the Rules, prior to launching the offer the offeror must have certain funds available to complete the offer. The offer announcement should include information about

any third-party financing available to fund the offer and any conditions to which the financing may be subject.

A shareholder that owns more than 90% of the shares in a limited liability company may acquire the minority shares through a compulsory squeeze-out procedure. This procedure is formally constituted as arbitration proceedings and would normally take somewhere between 18 and 24 months to complete.

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However, the majority shareholder may, as part of the proceedings, request and be granted "advance title" (*förhandstillträde*) to minority shares. Advance title means that the majority shareholder becomes the legal owner of the shares and may be registered as legal owner in the company's share register. This requires that the majority shareholder provides collateral in favour of the minority shareholders as security for the purchase price (including interest) that will be determined in the proceedings. The collateral is ultimately subject to the approval of the arbitral tribunal and must be delivered to a representative of minority shareholders. Advance title would typically be granted within four to eight months of the initiation of the squeeze-out proceedings.