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Sweden

ACQUISITION FINANCE

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This country-specific Q&A provides an overview of acquisition finance laws and regulations applicable in Sweden.

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SWEDEN
ACQUISITION FINANCE

1. What are the trends impacting acquisition finance in your jurisdiction and what have been the effects of those trends? Please consider the impact of recent economic cycles, Covid-19, developments relating to sanctions, and any environmental, social, and governance ("ESG") issues.

The continued direct and indirect effect of the financial stresses caused by COVID-19 has led to the financial health of many businesses in Sweden being impacted. Most prominently, perhaps, is the recoil from the expansive monitory and fiscal policies to combat the effects of COVID-19, both domestically and globally, which has been further exacerbated by the direct and indirect effects of Russia's invasion of Ukraine in February 2022. Sweden entered into a recession during 2023. The combined effects of these events have induced significant volatility on the Swedish credit markets and increasing inflation rates. This has caused, among other things, the bond market to become less liquid. This has primarily impacted the high-yield bond market in Sweden, which is all but closed, particularly for real estate companies, although the decreased liquidity and higher interest rates are affecting the primary and secondary markets for higher-quality bonds as well, leading to higher capital costs for banks and other institutions. Banks and debt funds have been more selective during 2023, and the documentation is generally very lender friendly.

Considering the uncertainties relating to the domestic and global economic outlook, the appetite of banks to meet the borrowing needs of companies who normally relies on the debt capital market is potentially insufficient to avoid a more extensive rate of defaults than we have seen in recent years.

For the past years, we have noted an increasing lending activity in Sweden from debt funds or loan originating funds in both acquisition financings and corporate credits. This activity by funds is largely unregulated from a prudential perspective and Union law does not currently prescribe any harmonised rules for funds who originate loans. Although there are rules on liquidity management, use of leverage and valuation for managing risks at fund level, there are not any rules specifically targeting loan origination at Swedish or EU level. This may come to change as the Commission has delivered a proposal for changes to the Alternative Investment Fund Managers Directive (AIFMD 2) that are intended to mitigate matters of "incomplete or inefficient" regulation in this space.

As regards trends within the ESG space, greenwashing remains a priority of the Swedish FSA, having been one of the specifically designated focus areas of the authority's supervision during 2023. In addition, greenwashing is similarly highlighted at the EU level where the area is continually subject to regulation, most recently exemplified by a statement by Esma on the updated guidelines on the use of terms relating to sustainability when naming funds. We expect that greenwashing will remain a supervisory focus point in the EU and Sweden in the near and medium-term future.

2. Please advise of any recent legal, tax, regulatory or other developments (including any reforms) that will impact foreign or domestic lenders (both bank and non-bank lenders) in the acquisition finance market in your jurisdiction.

There has not been any regulatory development in Sweden specifically targeting lending or acquisition financing for foreign or domestic lenders more recently. However, Sweden is no exception to the continuing wider trends within the development of the legal landscape for the financial industry, including with regards to, among other things, AML-related requirements and supervisory measures. Another focus point is the measures, including by the Swedish Financial Supervisory Authority, to meet the changing economic environment, including a scheduled increase of the Swedish countercyclical buffer and maintained systemic

risk buffer levels, as well as other macroprudential measures that may continue to affect the competitiveness of Swedish banks. We also note the proposed changes to the European Market Infrastructure Regulation (EMIR 3.0), which is particularly relevant to participants in the Swedish derivatives market, who houses the central counterparty for, among other markets, Nasdaq Commodities, potentially adding to the current challenges of utilities to meet the margin requirements relating to their hedging positions in relation to energy prices. Considering the volumes of margin involved, depending on the reliance of the utilities on funding provided by banks in Sweden and the continued development of energy market prices and other economic and prudential uncertainties, it is conceivable that this may further negatively affect the appetite of Swedish banks to participate in other markets, such as the leveraged lending market, in a near or medium-term perspective.

3. Please highlight any specific high level issues or concerns in your jurisdiction that should be considered in respect of structuring or documenting a typical acquisition financing.

Swedish law entails financial assistance regulations, limiting the target entities ability to provide loans for the purpose of acquisition debt, but the same applies also for granting security and/or guarantees for acquisition debt. Security and guarantee are however taken after some time has passed from the acquisition. In some cases, the Swedish financial assistance regulations will not apply.

From a practical perspective, when taking security over an account in Sweden, an important feature of Swedish law provides that the security will not be validly perfected in relation to any amount that the pledgee may dispose of, for example, by way of withdrawals as permitted by the terms of the finance documents. Another high-level consideration in relation to lending documentation governed by English law, includes that a judgment relating to such documentation by an English court against a Swedish borrower would be recognised and enforceable in Sweden in accordance with the 2005 Hague Convention on Choice of Court Agreements. For non-exclusive and exclusive choice of court agreements concluded prior to 1 January 2021, this means that a judgment rendered by an English court would not be enforceable nor recognised in Sweden. However, the judgment may be submitted as evidence of the outcome of the relevant dispute and the Swedish court would still have full discretion to rehear the dispute in its entirety.

4. In your jurisdiction, due to current market conditions, are there any emerging documentary features or practices or existing documentary provisions/features which borrowers or lenders are adjusting or innovating their interpretation of, or documentary approach to?

The documentation has moved more and more towards a lender friendly direction, and the interest coverage covenant is now a common feature in loan agreements. For those entities that have had difficulties, a liquidity covenant have often been inserted.

In the bond market, the number of deals having maintenance covenants (rather than just incurrence-based covenants) tend to increase.

5. What are the legal and regulatory requirements for banks and non-banks to be authorised to provide financing to, and to benefit from security provided by, entities established in your jurisdiction?

Banks in Sweden are subject to a wide variety of banking and financial services laws and regulations as well as supervision by regulatory and enforcement authorities, such as the Swedish Financial Supervisory Authority and the Swedish Resolution Authority. As with banks in other jurisdictions, Swedish financial institutions face continuously increasing regulation, which carries costs and affects their operations. Notable changes to the regulatory landscape in Sweden now and going forward include the Sustainable Finance Disclosure Regulation and Taxonomy Regulation, the General Data Protection Regulation (GDPR), MiFID II, AML 4 and AML 5, the Insurance Distribution Directive and Payment Services Directive 2.

The CRD V Directive and CRR II were published in June 2019, providing for extensive changes to the EU regulatory framework for banks and other credit institutions, including the fundamental review of the trading book, the net stable funding ratio, the minimum requirements for own funds and eligible liabilities (MREL) and the Pillar 2 framework. The CRD Directive is largely implemented by the Swedish Banking and Financing Business Act, which marks the key piece of legislation for banking and financing operations in Sweden.

Under this act, licensing requirements are imposed on lending entities who are financed by repayable funds from the public (e.g., in the form of deposits or transferable debt). Banks having a licence in one

Member State of the EU can passport the licence they have in their home country into Sweden and register for cross-border services or open a Swedish branch. However, a foreign company does not need a licence or to be incorporated locally solely to lend to Swedish entities (unless combined with accepting deposits from the public) or to obtain security over assets located in Sweden, including acting as a security agent on behalf of other lenders. As a result of the implementation of the European AML regime, however, a domestic or foreign non-licensed lender (or a lender who does not rely on the aforementioned passporting regime) may need to register with the Swedish Financial Supervisory Authority as a so-called financial institute and satisfy local KYC and other AML-related requirements. Under Swedish law, also investment firms may provide credit and take deposits under certain conditions, as well as provide crowdfunding services. Additional licensing and other requirements apply to consumer lending.

6. Are there any laws or regulations which govern the advance of loan proceeds into, or the repayment of principal, interest or fees from, your jurisdiction in a foreign currency?

In addition to the licensing and registration requirements under Swedish law, and the related passporting regime for EU-based institutions, there are no specific restrictions for such activities. In relation to branches and subsidiaries established in Sweden, as well as firms registered in Sweden as financial institutes, Swedish AML requirements apply, which may add to the compliance costs of such operations. Furthermore, although Swedish law does not impose specific sanctions rules, EU sanctions are enforced in Sweden, meaning that lenders who comply with such rules for other reasons will not be required to implement additional measures because of their activities in Sweden.

7. Are there any laws or regulations which limit the ability of foreign entities to acquire assets in your jurisdiction or for lenders to finance the acquisition of assets in your jurisdiction? Please include any restrictions on the use of proceeds.

Sweden's foreign direct investment screening regime entered into force on 1 December 2023. The screening regime obligates investors to submit a filing to the Swedish Inspectorate for Strategic Products and obtain authorisation before implementing the investment. The screening regime encompasses investments into legal entities seated in Sweden which conduct protected activities.

Protected activities is a broad concept encompassing several subcategories, including: (a) essential services, i.e., activities, services or infrastructure which maintain or assure societal functions necessary for the fundamental needs, values, and safety of society, (b) security-sensitive activities as defined by the Swedish Protective Security Act, (c) critical raw materials, metals and minerals, (d) processing of sensitive personal data or location data on a large scale via a product or service, (e) military equipment, (f) dual-use items, and (g) emerging technologies and other strategic protected technologies.

Investments are subject to prior authorisation where the investor post-investment will hold voting rights equal to at least 10, 20, 30, 50, 65, or 90 % of the voting rights in the entity. Breaches of the regime, such as implementing a transaction without filing, may result in fines of up to SEK 100 million (corresponding to approx. EUR 8.8 million).

8. What does the security package typically consist of in acquisition financing transactions in your jurisdiction and are there any additional security assets available to lenders?

The typical security package in an acquisition financing consists of share pledges over material companies, material intra-group loans, SPA and W&I insurance pledge, business mortgages (Sw. *företagshypotek*) to the extent business mortgages are already issued, real estate mortgages (Sw. *fastighetsinteckning*) to the extent such mortgages are already issued (to the extent mortgages are not issued or not already issued up to the required amount, stamp duties applies). Further, security can be taken over bank accounts (if so, unperfected) and IP rights (which are only taken as security if there are any of a significant value).

9. Does the law of your jurisdiction permit (i) floating charges or any other universal security interest and (ii) security over future assets or for future obligations?

Swedish law allows for business mortgages, which are similar to a floating charge. A business mortgage comprises all chattels belonging to the company's business however excluding, for example, cash or bank funds, minority shares or property that cannot be subject to either attachment or included in bankruptcy.

Issuance of new business mortgages will trigger a stamp duty, currently in the amount of 1% of the face amount of the relevant business mortgage certificate. However, that is a one-off cost, and the mortgage certificates are perpetual and can be reused upon release. The business mortgage is considered a very good security to have, should the mortgagor go bankrupt.

10. Do security documents have to (by law) include a cap on liabilities? If so, how is this usually calculated/agreed?

There is no legal requirement that a security document must include a cap. However, the pledgors ability to pledge its assets may be limited by law.

11. What are the formalities for taking and perfecting security in your jurisdiction and the associated costs and timing? If these requirements are different for different asset classes, please outline the main points to note for each of these briefly.

There are different types of collateral and security interests that can be made available under Swedish law, the most common ones used in financing are the pledge and the mortgage.

Chattels are transferred or pledged according to the principle of *tradition*. Much simplified, chattels have to come into the possession of the pledgee for the transfer or pledge to be effective against third parties, or be with a third party that is notified of the pledge. Once the pledge is perfected, the debtor may not dispose of the pledged asset in any way, and although not finally confirmed in court, the general view is that this prevents any sort of pre-agreed release unless the funds for a release in relation to a disposal is applied towards prepayment of the secured debt.

Registration matters comes with a minor administrative fee, but generally taking security in Sweden is not expensive. However, issuance of new business mortgage certificates or real estate mortgage certificates comes with a stamp duty (see Section 8 above).

(i) **Security over shares of a company**: If materialised shares: (a) the share certificates shall be endorsed in blank delivered to the security agent, (b) the pledged company shall be notified of the pledge, and (iii) the pledge shall be noted in the share register of the company. If the shares are dematerialised, the account bank of the securities account shall be notified of the pledge and (depending on the type of securities account) the account bank will then notify the CSD.

(ii) **Security over bank accounts**: The account bank is notified of the pledge and (for a perfected security), instructed to block the account.

(iii) **Security over receivables / SPA rights / insurance rights**: notification to the relevant payor in respect of the claim and (for a perfected security) an instruction to make any payments to an account that the pledgor does not control, normally to an account controlled by the security agent.

(iv) **Security over business mortgage certificates or real estate mortgage certificates**: If materialised certificates: (a) transfer of the certificates, and (b) notice to the authority. If dematerialised certificates: transfer of the certificates in the computerised system.

(v) **Security over most IP rights**: Registration of pledge with the relevant authority.

The most common practical issue is that the issuance of share certificates requires that at least half of the board members signs the share certificates using wet ink, and as a share certificate is bearer document it must be on the same page, which might cause some logistical concerns if there is a time shortage and the various board members are to be found with a geographical distance from each other. Delayed perfection is a potential cause for a future claw-back, and share certificates are therefore generally delivered on the same day of the pledge agreement (and so are other perfection measures as well).

12. Are there any limitations, restrictions or prohibitions on downstream, upstream and cross-stream guarantees in your jurisdiction? Please also provide a brief description of any potential mitigants or solutions to these limitations, restrictions or prohibitions.

The ability of a Swedish limited liability company to grant dividends are limited. For that reason, a Swedish company is also limited when granting security for another entity's debt and the guarantee or security are not in the corporate (commercial) interest of the company (or if the guarantees or security are in excess of what is in the company's corporate interest) and such transaction constitutes a value transfer comparable with a dividend. Thus, when a company is providing a guarantee or a security for a third party's obligation, whether the company gains any benefit from the transaction must be taken into consideration. The issue

of corporate benefit is a business decision, and is ultimately a question for the board of directors of the company to determine before entering into a transaction. This issue is mitigated by the insertion of a limitation language, however, the concept of limitation language has not been tested in court.

Upstream and cross-stream loans, guarantees and security are also restricted and the provisions are very technical and must be reviewed on a case by case basis.

13. Are there any other notable costs, consents or restrictions associated with providing security for, or guaranteeing, acquisition financing in your jurisdiction?

Generally, the costs associated with granting and taking security in Sweden is range between none and small administrative fees, provided that no new mortgage certificates need to be issued, in which case a stramp duty will be triggered.

Save for a few pledges that are perfected through registration, Swedish security seldom require the involvement of any notary, court or authority.

14. Is it possible for a company to give financial assistance (by entering into a guarantee, providing security in respect of acquisition debt or providing any other form of financial assistance) to another company within the group for the purpose of acquiring shares in (i) itself, (ii) a sister company and/or (iii) a parent company? If there are restrictions on granting financial assistance, please specify the extent to which such restrictions will affect the amount that can be guaranteed and/or secured.

Financial assistance for the purpose of acquisition of shares in the company itself or a shareholder within the same group of companies is prohibited and criminalised. Anyone involved in a transaction which constitutes financial assistance (advisors included) can be sentenced to prison if deemed guilty by a court. Notwithstanding the aforesaid, it is possible for the relevant entity to grant security and guarantees in relation to facilities and/or tranches not constituting acquisition debt, eg. an RCF, refinancing of its own existing debt or a capex facility made available for future need.

15. If there are any financial assistance issues in your jurisdiction, is there a procedure available that will have the effect of making the proposed financial assistance possible (and if so, please briefly describe the procedure and how long it will take)?

Sweden does not have a “white wash”-procedure or similar. However, the general view in Swedish legal doctrine is that the financial assistance issue is problematic when security and guarantee is granted in relation to closing, but that security and guarantees can be granted after the lender having been exposed to a “real credit risk”. Hence, it is customary to have a security take-up 60 – 120 days after closing, in relation to which the target entities accede to the financing arrangement.

16. If there are financial assistance issues in your jurisdiction, is it possible to give guarantees and/or security for debt that is not pure acquisition debt (e.g. refinancing debt) and if so it is necessary or strongly desirable that the different types of debt be clearly identifiable and/or segregated (e.g. by tranching)?

Yes, it is necessary that the different type of debt is identifiable and/or segregated as financial assistance is criminalised.

17. Does your jurisdiction recognise the concept of a security trustee or security agent for the purposes of holding security, enforcing the rights of the lenders and applying the proceeds of enforcement? If not, is there any other way in which the lenders can claim and share security without each lender individually enforcing its rights (e.g. the concept of parallel debt)?

Under Swedish law, there is no equivalent to the legal concept of trust under for example English law, but the security agent concept is generally used and accepted.

18. Does your jurisdiction have significant restrictions on the role of a security agent

(e.g. if the security agent in respect of local security or assets is a foreign entity)?

No, but the Swedish view is that perfection should take place according to the laws in which the assets are located which is worth considering in this respect.

19. Describe the loan transfer mechanisms that exist in your jurisdiction and how the benefit of the associated security package can be transferred.

Firstly, the two must be transferred jointly from a Swedish law perspective as a valid security require that there is a debt (or a potential future debt).

Swedish law does not have the concept of novation, so transfer of debt is made by a assignment of rights, benefits and obligations. If it is a bilateral deal, the debtor must be notified of the transaction, while a syndicated or club deal will require that the agent is notified, in order to get *rights in rem* for the transfer.

20. What are the rules governing the priority of competing security interests in your jurisdiction? What methods of subordination are used in your jurisdiction and can the priority be contractually varied? Will contractual subordination provisions survive the insolvency of a borrower incorporated in your jurisdiction?

Structural subordination between lenders, e.g., between debt funds and a super senior RCF lender or between mezzanine lenders and the senior lenders has been quite common in the Swedish leveraged finance market, but it has never been the only method used. Senior lenders sometimes agree not to have structural seniority but rely instead on intercreditor agreements or subordination agreements to ensure their priority. In principle, two parties should be free to decide that one will receive payment first after the other one has been paid in full. It is unclear, however, to what extent a bankruptcy administrator would abide by the intercreditor agreement when making payments from the bankruptcy estate. The first-priority creditor may, therefore, need to rely on the turnover provisions rather than the general priority in cases of bankruptcy of the debtor.

21. Is there a concept of “equitable subordination” in your jurisdiction whereby loans provided by a shareholder (as a creditor) to a company incorporated in your jurisdiction are subordinated by law upon insolvency of that company in your jurisdiction?

Debentures (Sw. *förlagslån*) can be used, where the relevant lender will declare that the loan will be subordinated to all unsubordinated lenders, having the effect that the lender to the debenture will only rank ahead equity and therefore being deeply subordinated. This contractual subordination has been widely used, especially by banks in relation to their capital instrument issuances. More recently, following the implementation Article 48(7) of the BRRD (Directive 2014/59/EU) in June 2021, the insolvency ranking of capital instrument (such as additional tier 1 and tier 2 instruments) will track their recognition as regulated capital.

The implementation in Sweden of the Creditor Hierarchy Directive (Directive (EU) 2017/2399) introduced a new asset class of “non-preferred” senior debt (ranking below ordinary unsecured claims). There is also a preferential treatment of insured deposits and preferred deposits (by, most notably, natural persons and SMEs).

22. Does your jurisdiction generally (i) recognise and enforce clauses regarding choice of a foreign law as the governing law of the contract, the submission to a foreign jurisdiction and a waiver of immunity and (ii) enforce foreign judgments?

Generally, Swedish courts will recognise and apply a foreign choice of law clause unless, for example, it would be contrary to Swedish public policy or mandatory rules of Swedish law to do so. However, if security is to be provided over assets situated in Sweden, our recommendation would be to have the security perfected in accordance with Swedish law in addition to such chosen foreign law because, under Swedish international private law rules, Swedish law would be applicable to *in rem* rights. Swedish courts may recognise the validity of a security interest created under a non-Swedish law security document, assuming it is valid under the law of the security documents, but the enforceability in Sweden is nevertheless subject to the requirement that necessary actions were taken under Swedish law to create the relevant form of security.

23. What are the requirements,

procedures, methods and restrictions relating to the enforcement of collateral by secured lenders in your jurisdiction?

It depends on the type of collateral, but key will always be that there will be an event of default in relation to which an acceleration notice has been sent, declaring the debt immediately due and payable. The reason for enforcement will therefore always be payment default.

When enforcing, the security agent must abide by the duty of care (Sw. *vårdplikt*) that will apply, in addition to what has been agreed in the relevant pledge agreement. It should be noted that the duty of care will supersede what is stated in the pledge agreement, so even if it has been agreed in writing that the security agent can take certain actions, the security agent should always question the provisions in the pledge agreement on the basis of duty of care. Any surplus after an enforcement must always be paid to the security provider.

Business mortgages and real estate mortgages may only be enforced though the Swedish Enforcement Authority, other assets may be sold by the security agent, preferably though a public auction as this makes it easier to argue that the collateral was sold to a market value. It is often to recommend that a reputable third party generally engaged in valuation assignments, are engaged making a valuation of the assets.

In bankruptcy, it will not be possible to enforce without consultation with the administrator. The administrator can under some circumstances delay an enforcement, if the assets are needed by the bankruptcy estate. More often, the administrator will often assist with the sale of assets if requested.

24. What are the insolvency or other rescue/reorganisation procedures in your jurisdiction?

The two insolvency processes used are bankruptcy, and business reorganisation for businesses trying to avoid bankruptcy.

The business reorganisation provides a company protection from bankruptcy and gives a grace period in respect of payments of debts that had arisen before the reorganisation was initiated and the most often sought after outcome of business reorganisation is to make the majority of the creditors accept a write-down of debt without the consent of all creditors. Since a change in law taking effect on 1 August 2022, it may also protect the company from enforcement of security by a secured creditor as the law now states that the consent of the administrator will be required in order for a secured creditor to be entitled to enforce.

A bankruptcy is a procedure aiming to liquidate the business of the company, and to distribute the available means, after selling off all assets, fairly between the creditors. An administrator is appointed by court at the start of the bankruptcy, and he or she will make all decisions after that point – which may include a decision to continue to carry out some or all business if that can maximise the value to the bankruptcy estate,

25. Does entry into any insolvency or other process in your jurisdiction prevent or delay secured lenders from accelerating their loans or enforcing their security in your jurisdiction?

On 1 August 2022, the new Swedish Business Reorganisation Act (2022:964) entered into force, including provisions that may limit the possibility to enforce as an enforcement during a business reorganisation will always require the consent of the business administrator.

26. In what order are creditors paid on an insolvency in your jurisdiction and are there any creditors that will take priority to secured creditors?

Swedish law provides a statutory order of priority of claims, which entails the following (shortened) waterfall:

- claims against the bankruptcy estate (such as fees or costs of the bankruptcy administrator, and also costs accrued by the estate during the bankruptcy proceeding (e.g., VAT claims or claims from third parties due to agreements that they have entered into with the bankruptcy administrator));
- claims with specific priority (e.g., pledges over shares in subsidiaries, trademarks, patents and thereafter business mortgages and real property mortgages);
- claims with general priority (e.g., certain employees' claims for wages and other compensation, certain accounting costs);
- claims without priority (which normally rank equal in priority (pari passu) and will be satisfied proportionally); and
- subordinated claims.

In relation to the new Swedish Business Reorganisation Act, a concept was introduced whereby rescue financing

provided for the purpose of supporting a company being in a business reorganisation will rank before the business mortgages (but after pledges granted over specific assets) if the company would go bankrupt.

27. Are there any hardening periods or transactions voidable upon insolvency in your jurisdiction?

A three month hardening period will apply under all circumstances, but the hardening period may in certain cases be longer.

28. Are there any other notable risks or concerns for secured lenders in enforcing their rights under a loan or collateral agreement (whether in an insolvency or restructuring context or otherwise)?

In most cases will the previous shareholder and/or pledgor just having been subject to an enforcement believe that the security agent has sold the assets for a value being much less than what it is worth, and there is always a risk of facing a dispute as a result of the enforcement. The risk is less notable if done during an enforcement, as the administrator will then often assist with the enforcement.

An enforcement process should always be structured carefully, and the enforcing party should do its very best to try to maximise the value obtained through the enforcement. Preferably, the value should also be evidenced by third party valuations.

29. Please detail any taxes, duties, charges or related considerations which are relevant for lenders making loans to (or taking security and guarantees from) entities in your jurisdiction in the context of acquisition finance, including if any withholding tax is applicable on payments (interest and fees) to lenders and at what rate.

Sweden does not impose withholding tax on interest payments.

30. Are there any other tax issues that foreign lenders should be aware of when lending into your jurisdiction?

From a borrower group's perspective, profit repatriation and servicing of debt by the target group are arguably the two central tax considerations together with the rules concerning tax consolidation. These must be analysed in detail in each specific case.

31. What is the regulatory framework by which an acquisition of a public company in your jurisdiction is effected?

The main body of rules governing public offers in Sweden are the Act on Public Takeovers, which is based on the European Union's Directive on Takeover Bids (2004/25/EC), and the self-regulatory takeover rules issued by the Swedish Corporate Governance Board (jointly the "**Takeover Rules**").

The regulatory framework differs somewhat between regulated markets, such as Nasdaq Stockholm and NGM Main Regulated Equity, and multilateral trading facilities (MTFs), such as Nasdaq First North Growth Market, Nordic SME and Spotlight Stock Market, where the latter is not subject to the Act on Public Takeovers. Different types of public offers may also trigger certain additional and/or different rules, the most common types being mandatory offers (i.e., when a bidder obtains 30% or more of the votes in the target) or management buyouts (i.e., if a board member or senior executive of the target makes or participates in the public offer or if the bidder is a parent company).

In addition to the Takeover Rules, the Swedish Companies Act, Swedish securities legislation (e.g., with respect to disclosure requirements of substantial holdings, insider dealing and reporting requirements to the Swedish Financial Supervisory Authority (the "SFSA")), and statements by the Swedish Securities Council, a self-regulatory body, perform an accessory role in regulating takeover matters.

32. What are the key milestones in the timetable (e.g. announcement, posting of documentation, meetings, court hearings, effective dates, provision of consideration, withdrawal conditions)?

As an initial key milestone in a takeover process, the bidder often wants to interact with the target for the purpose of a due diligence review and seeking a recommendation from the target board to be made public when launching the offer. The initial formal contact with the target is typically made by sending a non-binding indication of interest letter, so-called offer letter, to the target board. Additionally, during this

confidential and preparatory phase of the public offer, a bidder also secures financing of the offer (as described further below) and often strives to secure irrevocable undertakings to accept the offer from major target shareholders.

The public announcement of the offer, which is formally made through a press release, constitutes the next key milestone. At the announcement of the offer, all preparations, such as the due diligence review and the securing of "certain funds" (as described further below), should be complete.

Following the announcement of the offer, a formal offer document is prepared by the bidder, normally in co-operation with the target. The offer document should be filed with the SFSA within four weeks from the offer announcement and contain all relevant information pertaining to the public offer. The information requirements for the offer document are regulated by the Financial Instruments Trading Act and the Takeover Rules.

After having published the offer document, the acceptance period for the public offer can commence. The acceptance period of the offer must be at least three weeks (in management buyouts, four weeks) and initially not more than ten weeks. An extension of the acceptance period may be made, either where the bidder has reserved such a right or where payment to those who have accepted the offer is not delayed as a result of such extension.

At the end of the acceptance period, the bidder must as soon as possible disclose the outcome of the offer, including whether the conditions for completion of the offer have been met. This is normally done within approximately up to three business days. In connection with this, the offer is either declared unconditional and completed, or withdrawn. If the offer is completed, delivery of consideration for the shares (settlement) is normally effected within 5-7 business days thereafter.

In connection with the offer being accepted by shareholders to such extent that the bidder holds more than 90% of the shares in the target, a squeeze-out procedure regarding any remaining minority shares may be initiated, constituting the final key milestone in the public offer process. Simultaneously, the bidder normally will ask the target's board to give notice to an extraordinary general meeting to elect new board members and submit an application for de-listing of the target shares from the relevant trading venue where the shares are listed.

33. What is the technical minimum acceptance condition required by the regulatory framework? Is there a squeeze out procedure for minority hold outs?

Any condition of minimum acceptance level in a public offer is made at the discretion of the bidder and there is no minimum acceptance condition required by the regulatory framework. However, the most common acceptance level condition is that the bidder becomes the owner of more than 90% of all shares in the target since this enables the bidder to initiate a squeeze-out procedure to compulsory purchase the remaining shares in the target and de-list the target. The squeeze-out procedure is governed by the Swedish Companies Act.

34. At what level of acceptance can the bidder (i) pass special resolutions, (ii) de-list the target, (iii) effect any squeeze out, and (iv) cause target to grant upstream guarantees and security in respect of the acquisition financing?

Under Swedish law, a bidder will be able to direct the outcome of resolutions such as amendments to the target's articles of associations, issue securities without regard to the pre-emptive rights of target shareholders and reduce the share capital, at an acceptance level resulting in an ownership for the bidder of two-thirds (66 2/3%) of the shares and votes in the target, as these resolutions require a two-third majority of the votes cast and shares represented at the shareholders' meeting. At an acceptance level resulting in an ownership for the bidder of more than 50% of the votes, the bidder will be able to direct the outcome of resolutions to elect board members, as the board candidates who receive most votes at the shareholders' meeting are elected, and resolutions to allocate the company's profits and losses, as such resolutions require more than 50% of the votes cast at the shareholders' meeting.

At an ownership level of more than 90% of the shares, the bidder can initiate a de-listing process of the target shares without contravening good stock market practice and also initiate a squeeze-out procedure, as described above.

With an ownership of more than 50%, the financial assistance group company exemption under the Swedish Companies Act is applicable, enabling loans from the target (i.e., the subsidiary) to be made to the bidder (i.e., the parent company).

35. Is there a requirement for a cash confirmation and how is this provided, by who, and when?

The Takeover Rules explicitly state that an offer should be made only when the bidder has every reason to believe that the bidder is able and will continue to be able to implement and complete the offer. This includes also being able to pay the cash consideration for the target shares, meaning that the bidder must have secured the cash financing for the offer by way of binding and fundable debt and/or equity financing arrangements on a "certain funds" basis as from the public announcement of the offer, to the extent that the bidder does not have own available cash funds. There is no requirement of a cash confirmation from an external party. However, the Takeover Rules stipulate that the bidder's advisors have the responsibility to make themselves comfortable that the bidder has the financial resources available as set out above.

36. What conditions to completion are permitted?

The completion of the offer may be made subject to conditions, which entitle the bidder to withdraw the offer in case the conditions are not met. Such conditions must be included in the press release announcing the offer and in the offer document. The conditions must be described in detail and must be objectively verifiable, i.e., they cannot depend on subjective judgements by the bidder, and the fulfilment of the condition may not be within the bidder's control. The philosophy underlying these requirements is that the target shareholders should be able to assess the prerequisites for completion of the offer.

The bidder may make the completion of the offer conditional on a lender disbursing the acquisition loan. However, such a condition gives the bidder the possibility not to complete the offer only if the lender, in breach of the loan agreement, fails to disburse the loan (e.g., due to the lender's insolvency or breach of contract). Conditions for payment of the loan under the loan agreement may not be invoked by the bidder as grounds for not completing the offer. To be invoked as grounds for not completing the offer, such conditions must be set out as conditions for completion of the offer and meet the requirements set out above. For these and for commercial reasons, conditions for completion of the offer relating to the disbursement of the loan financing are uncommon.

Common conditions for completion of the offer include:

- the bidder becoming the owner of a certain level, usually more than 90%, of the shares in the target;
- the passing of necessary shareholder resolutions by the bidder (typically relevant only in exchange offers);
- the bidder obtaining necessary regulatory approvals;
- the target not taking any defence measures;
- the absence of force majeure (limited in scope);
- no undisclosed material information and no misleading information having been publicly disclosed; and
- the absence of any material adverse change with respect to the target.

The bidder normally also retains the discretionary right to waive any of the above conditions.

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