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Sweden

Lending & Secured Finance

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

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Sweden: Lending & Secured Finance

1. Do foreign lenders (including non-bank foreign lenders) require a licence/regulatory approval to lend into your jurisdiction or take the benefit of security over assets located in your jurisdiction?

Lending to Swedish entities or taking security over assets in Sweden as such is not subject to any license or regulatory approval.

However, foreign credit institutions (i.e. banks and credit market companies), established in the European Economic Area (EEA) may conduct their business from a branch in Sweden only if a notification from the institution's country of establishment has been received by the Swedish Financial Supervisory Authority (SFSA).

An authorisation must be obtained from the SFSA by foreign credit institutions, established outside the EEA, conducting their banking or financing business from a branch in Sweden. Conducting business from an office or other permanent establishment (i.e. representative office) by foreign credit institutions in Sweden requires a notification to the SFSA.

2. Are there any laws or regulations limiting the amount of interest that can be charged by lenders?

The Swedish Penal Code prohibits the charging of high interest that is deemed manifestly disproportionate (i.e. unreasonably high). The assessment of whether the interest is unreasonably high is made in relation to the specific transaction with regard to the credit terms, the lender's type of business activity and the borrower's financial situation.

The Consumer Credit Act includes specific interest rate and cost ceilings for certain types of consumer loans.

3. Are there any laws or regulations relating to the disbursement of foreign currency loan proceeds into, or the repayment of principal, interest or fees in foreign currency from, your jurisdiction?

There are no Swedish laws or regulations specifically regulating (or distinguishing between) the disbursement of loan proceeds, the repayment of principal, interest or fees, in domestic or foreign currency.

4. Can security be taken over the following types of asset: i. real property (land), plant and machinery; ii. equipment; iii. inventory; iv. receivables; and v. shares in companies incorporated in your jurisdiction. If so, what is the procedure – and can such security be created under a foreign law governed document?

Yes, security can be granted over each listed asset, either in the form of a pledge or a security transfer. The perfection steps set out below are required in order to obtain a perfected and enforceable security.

Security over real estate is perfected by the delivery of written mortgage certificate(s) or the transfer of electronic mortgage(s) (the transfer of electronic mortgages requires that the mortgagee or its agent has access to the electronic mortgages system of the Land registry).

Security over moveable assets such as plants, machinery, equipment, and inventory can be taken either in the form of floating charges (a general security over moveable assets of the pledgor), by way of a registered security transfer of the specific asset (if the asset shall be left in the custody of the transferor), or by a pledge and delivery of the specific asset (if the asset is not to be left in the custody of the pledgor).

The registration of floating charges is made in the floating charges register kept by the Swedish Companies Registration Office, and the chargee can either receive a written charge certificate or an electronic charge certificate (provided the chargee or its agent has access to the electronic charges title register).

A perfected security transfer of movable assets in the form of chattels (to be left in the custody of the transferor) requires that (i) the asset is purchased by the transferee (typically for the consideration of SEK 1), (ii) the purchase has been proclaimed in a local daily paper accepted by the Enforcement Authority, and (iii) the purchase is registered with the Enforcement Authority.

Security (in the form of a pledge) over receivables is

perfected by notification to the debtor of the pledge and instructed to only make payments to the pledgee (or that payments may be made to the creditor until otherwise instructed by the pledgee, in which case the pledge is not perfected until such instruction has been provided to the debtor), and that the pledge will be deemed released only when the pledgee so instructs.

Perfection requirements for shares depend on whether or not the relevant limited liability company is a CSD-registered company (Sw. *avstämningsbolag*). Security over shares in a private company (not CSD-registered) is perfected by delivery of the original share certificates to the pledgee. While not being formal perfection requirements, the pledgee typically also requires that the share certificates are endorsed in blank, that the company (which shares are subject to the security) is notified, and that the pledge is reflected in the share register of the company.

Perfection over shares in CSD-registered companies (public companies) is made by notification to the custodian of the securities account on which the relevant shares are registered.

While not being common, there is no restriction prohibiting security agreements over Swedish assets from being governed by foreign law. Enforceability would however require fulfilment of the relevant perfection steps in order to create a valid security interest.

5. Can a company that is incorporated in your jurisdiction grant security over its future assets or for future obligations?

Yes, security may be provided in relation to future obligations (such as interest and damages) and future assets, but such security is perfected only when the relevant assets are existing and subject to relevant perfection measures.

6. Can a single security agreement be used to take security over all of a company's assets or are separate agreements required in relation to each type of asset?

There is no restriction on including various types of security in one single security agreement. Agreements combining different assets must however include relevant perfection steps in relation to each specific asset in order to ensure a perfected security interest. Combined security agreements are rare in practice.

7. Are there any notarisation or legalisation requirements in your jurisdiction? If so, what is the process for execution?

Swedish law does not provide any notarisation or legalisation requirements relating to the granting of security.

8. Are there any security registration requirements in your jurisdiction?

Security registration requirements applies in respect of security transfers of chattels and for security over intellectual property rights, such as patents and trademarks, and security over dematerialized financial instruments. The issuance of floating charge certificates, mortgage certificates and mortgages in ships and aircraft requires registration.

9. Are there any material costs that lenders should be aware of when structuring deals (for example, stamp duty on security, notarial fees, registration costs or any other charges or duties), either at the outset or upon enforcement? If so, what are the costs and what are the approaches lenders typically take in respect of such costs (e.g. upstamping)?

Stamp duties apply in respect of the issuance of floating charge certificates, real estate mortgage certificates and mortgage certificates in ships and aircraft. Applicable stamp duties are 1 per cent (floating charge certificates), 2 per cent (real estate mortgage certificates), 0.4 per cent (ship mortgages) and 1 per cent (aircraft mortgages) of the face value (which is a fixed amount) of the relevant certificate. These stamp duties are always carried by the borrower, however lenders would (when possible) require security in a manner which does not cause more stamp duty than necessary.

Minor registration fees also apply.

10. Can a company guarantee or secure the obligations of another group company; are there limitations in this regard, including for example corporate benefit concerns?

Yes, provided that the grantor and the group company belongs to same group of companies with a parent company established within the EEA. However, it must also be assessed whether the guarantee or security

(below together referred as "security") is permitted under the rules regulating the distribution of assets set out in the Swedish Companies Act.

A security, as a consequence of which the company's assets are reduced and which is not of a purely commercial nature for the company, may be unlawful.

Thus, it needs first to be assessed whether the assets of the company are reduced as a consequence of the security. Factors to consider are e.g.;

- the ability of the debtor to repay the debt (and therefor the ability to pay the subrogation right of the security provider if the security is enforced),
- if the value of the shares in the company shall be taken into account if owned by the debtor, and
- the consideration (if any) paid by the debtor to the company.

If the conclusion is that the security reduces the company's assets, such security may still be permitted if it is provided by the grantor for purely commercial reasons. Factors to consider are e.g.;

- if the security is made in the ordinary course of business, and
- the difference in market value between the security and the consideration (if any) provided by the debtor.

The legal doctrine and case law give a somewhat ambiguous picture in respect of which factor(s) that should be decisive, and the above assessment should always be made on a case by case basis.

Even if a security would be considered unlawful as per above assessments, the granting thereof may still be in compliance with the Companies Act if the company had freely distributable equity corresponding to the value of the security at the time it was provided.

As the above assessments can be complex, it is common that the parties agree in the finance documents that the validity of any cross stream or upstream security shall be limited to the extent necessary to comply with the mandatory provisions in the Companies Act regarding distribution of assets (the so called "limitation clause").

11. Are there any restrictions against providing guarantees and/or security to support borrowings incurred for the purposes of acquiring directly or indirectly: (i) shares of the company; (ii) shares of any company which directly or indirectly owns shares in the company; or (iii) shares in a related company?

(i) Shares of the Company

Yes. The prohibition of providing financial assistance (the "prohibition"), outlined in the Companies Act means that such security may not be provided by the Company for the purpose that the debtor shall acquire shares in the Company. The prohibition covers also situations where the shares are acquired by any natural or legal person connected to the debtor. This applies also in relation to the examples in (ii) and (iii) below.

(ii) Shares of any company which directly or indirectly owns shares in the Company

Yes. The prohibition covers also acquisition of shares in any parent company of the Company in the same group. Please note that this only applies if the parent company is a limited liability company established in Sweden.

(iii) Shares in a related company

The prohibition does not cover acquisition of shares in subsidiaries to the Company but there is a complementary restriction in the Companies Act that, depending on the circumstance, could be applicable.

In the preparatory work to the prohibition, it is stated that the prohibition also covers the acquisition of shares in companies that are owned by the same parent company as the Company. However, this statement has been criticized in legal doctrine and the situation is therefore somewhat uncertain.

(iv) Post-closing merger

In order to provide security in the assets of the target company for the acquisition financing, but to avoid being in breach of the prohibition, it is quite common in the Swedish market that a merger between the target and acquiring company is initiated post-closing.

12. Can lenders in a syndicate (or, with respect to private credit deals, lenders in a club) appoint a trustee or agent to (i) hold security on the lenders's behalf, (ii) enforce the lenders' rights under the loan documentation and (iii) apply any enforcement proceeds to the claims of all lenders in the syndicate?

Yes, the appointment of agents/trustees is commonly used in the Swedish market. The agent/trustee can have

the function as described in (i)-(iii), provided that this is outlined in the underlying finance documentation.

13. If your jurisdiction does not recognise the role of an agent or trustee, are there any other ways to achieve the same effect and avoid individual lenders having to enforce their security separately?

N/A

14. Do the courts in your jurisdiction generally give effect to the choice of other laws (in particular, English law) to govern the terms of any agreement entered into by a company incorporated in your jurisdiction?

Yes, the parties may choose the governing law (including English law) subject to and in accordance with the provisions of EU Regulation 593/2008 (Rome I) of the European Parliament and of the Council on the law applicable to contractual obligations.

15. Do the courts in your jurisdiction generally enforce the judgments of courts in other jurisdictions (in particular, English and US courts) and is your country a member of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (i.e. the New York Arbitration Convention)?

Court judgments given by the courts of other EU member states or the courts of the member states of the EEA are enforceable in Sweden pursuant to the recast EU Regulation No 1215/2012 on judgments rendered in EU Member States in Civil and Commercial Matters (the Brussels 1a Regulation) and the new 2007 Lugano convention (Lugano II) respectively.

Court judgments obtained from the courts in other countries (such as England and the US) are not enforceable in Sweden and new proceedings will need to be initiated in Sweden. There is one exception to this however and that is if the court judgement falls within the applicable scope of the Hague Convention of 30 June 2005 on the Choice of Court Agreements (or within the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters of 2 July 2019) when applicable between Sweden and the country whose court have issued the judgment. It is the intention that the Hague 2019 Convention become applicable between England and Sweden on 1st July 2025. Since Sweden is a signatory to both Hague Conventions, a judgment rendered in accordance with the rules of the convention is enforceable in Sweden subject to certain procedural requirements. If the foreign judgement is not enforceable in Sweden it may nevertheless be used as evidence in the Swedish proceedings.

On 27 February 2025 the CJEU issued its judgment in the case known as *Societá Italiana Lastre SpA (SIL) v Agora SARL* (Case C-537/23). The case concerned the validity and enforceability of asymmetric jurisdiction clauses, whereby an exclusive jurisdiction is chosen for both parties but under which one of the parties is entitled to file writs in the courts of any other jurisdiction. Within the context of the Brussels 1a Regulation the court determined that only asymmetric clauses providing for the courts of another EU Member State or a state party to the Lugano II Convention was acceptable and that the choice of court agreement should identify the objective factors which are "sufficiently precise to enable the court seised to ascertain whether it has jurisdiction…". The judgment has created several uncertainties, including in relation to choice of court agreements under which e.g. English courts are the exclusive forum but where one of the parties may also file writs in the courts of other jurisdictions and in relation to the application of the 2019 Hague Convention.

Sweden is a member of the New York Arbitration Convention providing for the enforceability in Sweden of foreign arbitration awards (as provided for under the convention).

16. What (briefly) is the insolvency process in your jurisdiction?

Bankruptcy

A condition for the court to grant a bankruptcy petition is that the debtor is considered insolvent, i.e. that the debtor cannot pay its debts when due, and that this incapacity is not merely temporary. Proof of insolvency may be that an unsuccessful seizure attempt was made within six months of the bankruptcy petition. Another proof may be that the debtor has been requested to pay a clear and due debt, but has not done so within a week, and the bankruptcy petition is submitted within three weeks thereafter, provided that the debt is still unpaid.

Under certain circumstances, a bankruptcy petition will be denied. For instance, if the creditor applying for bankruptcy has a sufficient security in the assets of the

debtor, the petition will be denied. However, that creditor may instead apply for a seizure of assets.

The administrator is appointed by the court and has the duty to liquidate the bankruptcy estate as soon as possible and as beneficial as possible to the creditors.

When the debtor's assets have been converted into liquid funds, these shall be distributed to the creditors, and the Swedish Rights of Priority Act (Sw. *förmånsrättslagen*) regulate the order of priority of the creditors. The administrator must submit the distribution proposal to the court, which will examine and decide upon the proposal.

Company reconstruction

A debtor in financial difficulties can obtain a court order for the reconstruction of its business. Both the creditor and the debtor may apply for such order, but an application of a creditor will be rejected if denied by the debtor. A reconstructor appointed by the court shall then investigate whether the business of the debtor can be continued (in whole or in part) and whether it is possible for the debtor to reach a financial settlement with its creditors, i.e. a write-down of debts (composition). Every three months the court considers whether or not the reconstruction shall continue and, as a general rule, the reconstruction may not continue for more than one year.

A New Swedish Restructuring Act (Sw. *lag om företagsrekonstruktion*) came into force on 1 of August 2022 which aims to, inter alia, improve the quality of the reconstruction procedures. A new feature is that the secured parties are prohibited to enforce the possessory liens during the restructuring procedure, unless (subject to a prior approval of the re-constructor) the enforcement is not likely to jeopardise the restructuring procedure or, the creditor would otherwise be unfairly harmed. This legislation change may contribute to the secured parties' willingness to enforce the security assets earlier (i.e. before a court's decision on corporate restructuring), or lead to new requirements by the secured parties to provide other form of collaterals than possessory liens. The New Swedish Restructuring Act introduces a "cram-down" mechanism which enables, amongst others, the secured and unsecured creditors to adopt the restructuring plan under certain conditions stipulated in the law, even if certain concerned parties have not approved the restructuring plan.

17. What impact does the insolvency process have on the ability of a lender to enforce its rights as a secured party over the security?

Bankruptcy

In general, after a court decision on bankruptcy, assets belonging to the bankruptcy estate may no longer be seized separately for a claim with the debtor. However, a creditor with a perfected security interest (other than in the form of a floating charge) can request a seizure of the security assets, even if the debtor has been declared bankrupt. If a seizure has been decided prior to the bankruptcy, the main rule is that such seizure procedure may continue irrespective of the bankruptcy (and regardless of whether the creditor has a security interest or not).

Company reconstruction

The same general rule against seizure applies as in bankruptcy but the exception for any seizure decided on prior to the decision on company reconstruction does not apply.

As in bankruptcy, exceptions are made for assets covered by certain type of security interests (e.g. a share pledge and right of retention, but not a mortgage in real property or certain other security interests). However, the application of such exceptions has been limited due to the recent changes in the company reconstruction legislation.

During a company reconstruction, there are certain restrictions on the right for a creditor to terminate an agreement due to payment default by the debtor.

18. Please comment on transactions voidable upon insolvency.

Below are some typical situations briefly described, where recovery may be relevant in a bankruptcy or company reconstruction. If the relevant transaction was made with a related party, the recovery periods mentioned below are generally longer.

Transactions in general

A transaction or legal act that took place within five years of the bankruptcy petition and in which a particular creditor has in an unfair manner been favored, or the debtor's assets been reduced or the debts increased, will be annulled if the debtor was, or by the transaction or act became insolvent, and the other party knew or should have known about the debtor's insolvency and the circumstances that made the transaction or legal act improper.

Payments

The payment of a debt which has been made later than three months prior to the bankruptcy petition, and which was made through other than customary means of payment, prematurely or in an amount that has considerably deteriorated the debtor's financial position, will be annulled unless the payment is nevertheless regarded as ordinary.

Security

Security granted by the debtor later than three months prior to the bankruptcy petition and which was not provided when the debt was created or which has not been transferred without delay after the creation of the debt, will be annulled unless the security is nevertheless regarded as ordinary.

19. Is set off recognised on insolvency?

The general rule is that a creditor may set off against a claim that the debtor had against the creditor when the debtor was declared bankrupt (in the case of a company reconstruction, the corresponding rules applies).

However, there are certain limitations in the right to set off, e.g. if the creditor was aware of the insolvency when the receivable was acquired, or if the bankruptcy was imminent when the receivable was acquired.

20. Are there any statutory or third party interests (such as retention of title) that may take priority over a secured lender's security in the event of an insolvency?

A retention of title right might give such priority ahead of a secured lender. There are a number of conditions in order for a retention of title to be valid against the buyer's creditors. For example, it is required that the retention of title is made no later than when the property is transferred to the buyer. A retention of title will not be valid if it is clear from the circumstances that the buyer has the right to sell the goods, or to consume them, before being fully paid.

Certain other third-party rights give priority ahead of a lien, e.g. a buyer's right to certain movable property that has remained in the seller's possession and has been registered in accordance with the same requirements as for registered security transfers (discussed earlier). Other examples are the right to accounting funds and goods received on behalf of another person for sale (commission).

21. Are there any impending reforms in your jurisdiction which will make lending into your jurisdiction easier or harder for foreign lenders?

The new regulation on Foreign Direct Investment Screening Act (2023:560) (Sw. *Lagen om granskning av utländska direktinvesteringar (2023:560)*) entered into force on 1 December 2023 and has been introduced in order to prevent certain strategic acquisitions by foreign investors of companies whose operations, information or technology are important for Sweden's security or for public order or public safety in Sweden. The regulation applies mainly to investments pursuant to which an entity acquires more than ten (10) per cent of the shares or votes in a target entity involved in a security sensitive business, such as infrastructure, central functions, critical primary products, new technologies, munitions and products that may be used for both military and civil purposes. The regulation has caused some uncertainty in the market and may have an impact on a lender's decisions to finance assets that may fall under the regulation, mainly due to that a sale of pledged assets could be subject to approval of the competent authority. As of 31 December 2024, one investment was forbidden and 5 were conditionally approved out of 1 377 applications.

22. What proportion of the lending provided to companies consists of traditional bank debt versus alternative credit providers (including credit funds) and/or capital markets, and do you see any trends emerging in your jurisdiction?

According to a report from the Swedish Financial Supervisory Authority (SFSA) in November 2024, the total lending to non-financial companies from monetary financial institutions (MFIs) has been decreasing, particularly in the trade and service sectors. The annual growth rate of lending to non-financial companies have been negative and may continue to decrease, and the trend is comparable to the period following the global financial crisis of 2007-2008. Meanwhile, real estate companies continue to constitute a significant portion of the non-financial corporate sector's debt, and have, for the first time since 2021, notably increased their market financing through the issuance of bonds. Many real estate companies are focusing on reducing their debt levels and refinancing existing loans. Some companies have opted to repurchase outstanding bonds to manage their financing costs better.

23. Please comment on external factors causing changes to the drafting of secured lending documentation and the structuring of such deals such as new law, regulation or other political factors

Please see regarding the new CJEU judgement on assymetric jurisdiction clauses under section 15, which may have an impact on the drafting of jurisdiction clauses in e.g. finance documents.

As referred to in section 15, it is also expected that the application of the Hague 2019 Convention (from 1st July 2025) between England and Sweden will have a positive impact on the enforcement of English judgements in Sweden (which could be the case in cross-border transactions with English law documents).

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