THE ACQUISITION AND LEVERAGED FINANCE REVIEW

Fifth Edition

Editor
Marc Hanrahan

THE LAWREVIEWS

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CONTENTS

PREFACE

In the early 1980s, leveraged loans and high-yield bonds began to be used to finance leveraged buyouts (LBOs) and other acquisition transactions. Those were simpler times. Back then, leveraged finance was principally a US phenomenon. The annual aggregate amount of leveraged loans and bonds issued in a year was a few tens of billions. Some of today's top-tier private equity shops were just getting started, and were certainly not household names. The documentation and relevant legal issues, while significant, were a fraction of those that are involved in leveraged finance today.

My, how things have changed. While loans and bonds are still a standard feature of the leveraged finance product menu, they have taken on different shapes and flavours, and additional financing products have been developed and are now widely used. The number of participants in leveraged finance has grown massively, and a large number of the players are now based in Europe and Asia. In addition to banks and institutional investors, direct lenders have now joined the party. Standard documentation for most types of leveraged finance has at least doubled in size. The amount of leveraged loans issued in 2017 for M&A exceeded US$300 billion in the US alone,[1] with the LBO M&A subset posting the second-highest year ever of issuances at US$126 billion (a 44 per cent increase compared to 2016).[2]

While there have been ups and downs, of course, for leveraged finance over the past 40 years (most notably during the financial crisis), leveraged finance used to support acquisitions has become a very big business and is almost certainly here to stay (and probably grow).

This volume is intended to contribute to the knowledge base of lawyers who participate, or aspire to participate, in leveraged finance used for acquisitions. It will hopefully provide an overview and introduction for the novice and be a ready resource for an active practitioner who needs to know about relevant laws and practices in jurisdictions around the world.

Thanks to my partners Casey Fleck and Doug Landy, and my associate Gabi Paolini, for their help in editing the volume and preparing the Introduction that follows.

Marc Hanrahan
Milbank Tweed Hadley & McCloy LLP
New York, NY
November 2018

1 *2017 U.S. Primary Loan Market Review*, LSTA Loan Market Chronicle 2018, p. 20.

2 *What's Market: 2017 Year-End Trends in Large Cap and Middle Market Loan Terms*, Practical Law Finance, 1 February 2018.

Chapter 17

SWEDEN

Paula Röttorp and Carolina Wahlby[1]

I OVERVIEW

Bank financing is still the most common source of acquisition finance on the Swedish market. The Swedish leveraged finance market in general has long been virtually dominated by bank finance (sometimes with additional mezzanine financing on top). The big Nordic banks are still the biggest lenders; however, the interest of the other European banks continues to increase as the market has recovered from the banking crisis. In many ways, the market is now very similar to the way the market was prior to the crisis, especially since the market is back to a 'cove-lite/cove-loose' market.

Although bank financing is predominant, during the past 10 years, the market has seen an increase in corporate bonds (high-yield and investment-grade) as well as other alternatives to bank financing, such as shadow lenders, alternative debt providers and financing by preference shares.

The Swedish corporate bond market has, at the same time as it has grown, become increasingly harmonised. For instance, independent agent functions have been established, although the automatic right for the agent to represent the bond holders before court has not been confirmed in any court cases. In 2013, the Swedish Securities Dealers Association published for the first time a draft of harmonised terms and conditions for high-yield corporate bonds. The draft terms and conditions have found general acceptance on the Swedish market as a starting point for mechanical non-commercial terms and conditions for Swedish corporate bonds.

Note that this chapter describes, unless otherwise stated, features with application for unregulated legal entities, primarily limited liability companies, and that other rules may apply for regulated entities, other types of legal entities or natural persons.

II REGULATORY AND TAX MATTERS

i Regulatory matters

Banking and financing services provided in Sweden are regulated by, *inter alia*, the Banking and Financing Business Act.[2] 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

1 Paula Röttorp is a partner and Carolina Wahlby is a managing associate at Hannes Snellman Attorneys Ltd.

2 2004:297.

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.

Special licensing requirements apply to consumer lending, but this chapter will not describe rules applicable to consumer lending or consumer legislation.

Listed corporate bonds are subject to listing requirements (however, it is not a legal requirement to list the bonds) of the Swedish Financial Supervisory Authority and the regulated market where they are listed (if applicable), for example, the rulebook for issuers from Nasdaq Stockholm as applicable on its regulated market, and, *inter alia*, requirements regarding the prospectus for listing and rules regarding market abuse and disclosure obligations.

Since Sweden is a Member State of the EU, banks, investment firms and funds are subject to a growing number of regulations and among the most obvious newer regulations are the CRD IV Directive[3] and the CRR Regulation and PSD2.[4] As has been the case for other European banks, this has led to increased efforts among domestic banks to keep up with the compliance work required by such rules and regulations both from a legal and a financial or structural perspective. This may increase the competitiveness (at least to some extent) and business opportunities for less regulated sources of funding, such as alternative debt providers.

ii Tax

In connection with leveraged financing in general, 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.

Profit repatriation and servicing of debt may be done through dividend distributions. A dividend from a Swedish subsidiary is tax exempt to the extent covered by the participation exemption. These rules exempt gains made on a sale of 'business-related shares' from Swedish capital gains tax (a corresponding loss is not deductible), and a dividend on such a shareholding would not be taxable. Dividends from foreign jurisdictions are generally tax-exempt, provided that the subsidiary is the equivalent of a Swedish limited liability company and covered by the participation exemption rules. This is a key concern to analyse with local counsel in other jurisdictions when structuring an acquisition.

Profit repatriation and servicing of debt may also be done through interest payments on intragroup loans. Interest payments received constitute taxable income. Interest payments made by Swedish companies are tax deductible provided the interest level is set at arm's-length and the debt is not contrary to the interest deduction limitation rules. However, this regime is currently under review in Sweden, and may therefore be subject to change.

3 Directive 2013/36/EU of the European Parliament and the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

4 Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and Directive (EU) No. 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No. 1093/2010, and repealing Directive 2007/64/EC

Swedish tax consolidation

The Swedish tax consolidation system provides for group contributions between group companies as a way of consolidating for tax purpose. The criteria are, *inter alia*, that ownership exceeds 90 per cent of the share capital at each step of the procedure. The group contributions are taxable in the receiving company and tax deductible in the paying company, meaning that profits can be shifted to a loss-making company in the same group and offset against the tax losses. Group contributions require sufficient distributable reserves in the providing company since group contributions are considered to be dividends for company law purposes. In profitable companies with no negative equity, this should not be a problem as long as the amount contributed does not exceed annual profits. However, group contributions are only possible between companies that have been in the same group for the entire financial year, or (much simplified) since the subsidiary began conducting business of any kind.

Withholding tax

There are no withholding taxes on interest payments or domestic dividend distributions (unless paid to physical persons or the estate of a deceased person in Sweden) under Swedish law, but a dividend distribution to a non-Swedish company does, in principle, trigger a 30 per cent withholding tax. In practice, however, such withholding is usually avoided as a result of applicable exemptions under domestic law in which (much simplified) the receiving entity is comparable with a Swedish limited liability company or it is a beneficiary under a comprehensive tax treaty. Furthermore, holding requirements may apply. The domestic rules are more generous than the minimum requirements under the Parent-Subsidiary Directive.[5]

III SECURITY AND GUARANTEES

Leveraged finance transactions are normally backed by a comprehensive security and guarantee package where material group companies provide guarantees as principal obligor as for their own debt in respect of the borrower's and the other guarantors' obligations. As discussed below, financial assistance rules exist that limit the possibilities for Swedish target companies to guarantee and provide security for acquisition debt. Therefore, the guarantees and security provided by the target group would at least initially only cover facilities to refinance existing indebtedness and facilities for general corporate purposes or add-on acquisitions.

i Security packages

Acquisition financing (if leveraged) is commonly secured by (at least) a pledge of shares in the acquiring entity, the target company and other material companies in the target group. The material group companies are also typically guarantors, and provide security together with other group companies needed to fulfil certain guarantor coverage tests. Corporate bonds on the Swedish market are either secured or unsecured. Even fully secured bonds usually do not benefit from a security package as extensive as that for traditional bank financing, and may in this sense be considered a more flexible source of funding.

As mentioned above, two of the most common types of collateral (assets) are shares (security over which is created by pledge, i.e., delivery of share certificates endorsed in blank

5 Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

and notification to the company) and structural intragroup loans, which are contractual rights (if structured as a non-bearer instrument, perfected by notification to the relevant debtor and an instruction that payments can only be made to the pledgee). The reason shares and intragroup loans are seen as 'market standard' to provide as collateral is because security can be granted and perfected immediately on closing, and because they are not associated with any stamp duty or further measures such as registrations with Swedish authorities. Depending on the nature of the business of the borrower group, further types of security may also be provided.

Further examples of security and collateral in Sweden are listed below (this list is not exhaustive):

a real property: a real property mortgage creates a priority in specific real property up to the amount of the mortgage certificate. Any existing mortgage certificates held by a guarantor are typically part of the security package in a leveraged financing, but the issue of new mortgage certificates is often avoided as it entails stamp duty;

b movable property in general: a business mortgage is a kind of floating charge that creates a priority up to the amount of the business mortgage certificate in substantially all movable property (subject to certain limitations) of the mortgagor from time to time. Any existing business mortgage certificates held by a guarantor are typically part of the security package in a leveraged financing, but the issue of new mortgage certificates is often avoided as it entails stamp duty;

c bank accounts: it is possible to pledge bank accounts, but, for the pledge to be perfected (i.e., to be enforceable against third parties such as other creditors), the pledgor cannot dispose over the account or the balance of the account, so the account needs to be blocked. Therefore, it is often of limited value to pledge bank accounts in Sweden;

d invoices, trade receivables and contractual rights: like bank accounts, the security arrangements must exclude the pledgor from collecting or disposing of the receivable, which makes security over receivables tricky to obtain other than for long-term receivables;

e intellectual property rights: patent and trademarks can be pledged by registration in the relevant public registers; and

f pledges over ships and aircraft and mortgages on ships and aircraft.

In addition to the above, security can arise, rather than be created, in certain situations; for example, when a party has assets in its possession, that party may exercise a retention right and hold on to such assets pending payment of an outstanding debt. In many situations, set-off rights can also provide a sort of security.

Second-ranking security is also possible. In cases of enforcement, the first-ranking pledgee can enforce the pledge and apply the monies received against the debt owed. The second ranking pledgee can only receive any surplus once the first ranking debt is paid. Where senior lenders and mezzanine lenders or bond holders or other creditors have entered into an intercreditor agreement, however, it is more common for a security agent to represent all lenders and to follow the order of priority set out in the intercreditor agreement rather than for the mezzanine lenders or other lower-ranking lenders to take a second or third-ranking pledge.

At the moment, chattels are transferred or pledged according to the principle of *traditio* (with the exception for certain registration). Much simplified, chattels have to come into the possession of the new owner or pledgee for the transfer or pledge to be effective against

third parties. However, in 2015 a committee initiated by the Swedish government published a report with a proposal for new laws aiming to change this for chattels.[6] If new laws came into force as proposed in the report, chattels would be transferred by contract and pledged by registration (and certain publication requirements). Should the report result in new legislation, it will be easier to provide security over individual assets of substantial value.

ii Limitations on security and guarantees

There are limitations on the granting of security and guarantees by a Swedish limited liability company. The limitations relate to what is generally referred to as the general loan prohibition, financial assistance and value transfers, respectively, discussed further below. Different provisions apply for regulated entities, state entities, foundations and other legal entities or private persons.

General loan prohibition

Under Swedish law, a limited liability company may not grant loans, or provide security or guarantees, to a natural person or legal entity who is a shareholder, director or managing director (including spouses and close relatives) in the company or in another company within the group, or to legal entities controlled by any such person (general loan prohibition). There are exceptions to the general loan prohibition, two of the most common being as follows:

a when the debtor is an entity within the same group as the company granting the loan or security. This exception is the most common exception, and is applicable when the parent entity is a Swedish or foreign legal entity domiciled within the EEA; and

b a company may grant loans, security or guarantees, or a combination thereof, if the loan, security or guarantee, or a combination thereof, is intended exclusively for the borrower's business operations and the company provides the loan, security or guarantees, or a combination thereof, for purely commercial reasons.

Financial assistance prohibition

A Swedish limited liability company may not grant loans, security or guarantees, or both, for the purpose of a purchaser (hereinafter acquiring entity) acquiring its shares or shares in its direct or indirect parent company (financial assistance prohibition).

The rationale behind the provision is to prevent an acquiring entity without sufficient funds or that is unable to obtain external financing on its own merits from acquiring the company by using the assets of the company to pay (or secure) the payment of the purchase price. The financial assistance prohibition is only applicable if the loan, security or guarantee, or a combination thereof, is made or resolved prior to, or in connection with, the acquisition. In practice, this means that in transactions where the financial assistance prohibition may be applicable, the target companies do not grant security and guarantees (nor do they undertake to do so) until a certain time post-closing, and such guarantees and security are subject to limitation language except in the acquiring entity and its parent companies.

Strictly, the financial assistance prohibition only applies when the acquisition involves shares in the company, or a company above the company with a direct or indirect Swedish

6 SOU 2015:18.

parent company. Hence, if the shares of any other foreign parent company are acquired, the financial assistance prohibition will not strictly apply, but this must be assessed on a case-by-case basis.

Value transfers and corporate benefit

A Swedish limited liability company may not make dividends in excess of its distributable funds (as set out in the latest adopted annual financial statement) less the amount needed to prudently cover the company's restricted equity taking into account the needs of its business and that of its subsidiaries (if any) (the 'prudency rule').

If a Swedish limited liability company guarantees or grants security for another entity's debt and such guarantee or security are not in the corporate (commercial) interest of the company (or if such guarantees or security are in excess of what is in the company's corporate interest), the 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. If the transaction is deemed a value transfer, it is subject to the limitations concerning dividends and requires the consent of shareholders. A value transfer is, therefore, unlawful if it exceeds the amount of the distributable funds after considering the prudency rule.

iii Concerns regarding security before commencement of insolvency proceedings

There are two types of insolvency proceedings in Sweden: bankruptcy and company restructuring. In both proceedings, recovery actions can be taken to claw back certain transactions carried out prior to the start of the insolvency proceedings if such actions have been detrimental to the interest of other creditors. Note that the below only highlights the most commonly used clawback grounds used to challenge or invalidate security.

Security provided by a Swedish entity during a three-month 'hardening' period (calculated backwards from the date on which the entity applied for bankruptcy or company restructuring) is vulnerable to clawback unless it was provided (and perfected) when the debt was created or was transferred without delay after the creation of the debt.

Furthermore, if a lender could be deemed to be a closely related party to a debtor (and pledgor), the hardening period is significantly increased. In relation to security provided after the creation of a debt, as per the example above, and if the security was transferred to a person or legal entity who is a closely related party to the debtor, the recovery period is up to two years before the debtor filed for bankruptcy and may be subject to clawback unless it is shown that the debtor neither was, nor by the action became, insolvent.

Security or other rights of a lender may also be affected by improper actions. Improper actions include, a situation where a creditor has been favoured at the expense of other creditors, assets of the debtor have been transferred beyond the control of the creditors or the debts of the debtor have increased to the detriment of the creditors. The recovery period in the event of improper actions is five years, provided that the debtor was insolvent when the transaction was executed, or became insolvent as a result of the transaction itself or in conjunction with other actions and the counterparty was aware or should have been aware of that and the basis for the action being improper. A closely related party is deemed to be

aware of the above unless it can show on a balance of probabilities that it was neither aware nor should have been aware. There is no limit on the recovery period on actions or transfers in relation to closely related parties.

IV PRIORITY OF CLAIMS

i Legal order of priority

The priority of claims and order of payment in a Swedish bankruptcy are stipulated in the Swedish Rights of Priority Act[7] and the Swedish Bankruptcy Act,[8] the main principles of which are as follows:

a 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));

b claims with specific priority (e.g., pledges over shares in subsidiaries, trademarks, patents and thereafter business mortgages and real property mortgages);

c claims with general priority (e.g., certain employees' claims for wages and other compensation, certain accounting costs);

d claims without priority (which normally rank equal in priority (*pari passu*) and will be satisfied proportionally); and

e subordinated claims.

The concept of equitable subordination does not exist as such in Sweden, but a lender's relation to the debtor can have other implications, in particular in relation to clawback periods (as briefly described above) for security and guarantees.

ii Intercreditor agreements and structure

Structural subordination of mezzanine lenders or bond holders as opposed to 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. 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.

The use of often simplified Loan Market Association-based intercreditor agreements is widespread in the Swedish leveraged finance market, but there are certain national peculiarities that may be noted.

As mentioned above, it is not certain that a Swedish administrator dealing with a bankruptcy or company restructuring in the debtor company would follow the intercreditor agreement rather than applying the legal priority. In this case, the first priority lenders may need to rely on the turnover provisions of the intercreditor agreement.

7 1970:979.

8 1987:672.

Release of intragroup debt or shareholder debt in an enforcement scenario has never been tried by a Swedish court. For this reason, lenders with a share pledge commonly also request a pledge over any material shareholder or intragroup loans going into the pledged entity, so that they will be able to sell the loans and the shares to the same buyer.

Under Swedish law, there is no equivalent to the common law concept of a trust; consequently, there are no provisions under Swedish law that deal specifically with the function of a foreign law trustee. The common assumption, however, is that a trustee would most likely be considered an agent or otherwise an entity with a power of attorney to act on behalf of the lenders.

Under Swedish law, to avoid any potential grounds to challenge the perfection of the security, a pledgor should not be allowed to dispose freely of a pledged asset and the pledgee should not be obliged to release security at the simple request of the pledgor (subject to certain limitations). It is, therefore, often stipulated that Swedish security is not automatically released in connection with permitted disposals, for example, but rather is subject to the security agent's active release, and the security agent should retain a certain discretion as to whether the release is given.

V JURISDICTION

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.

The parties can submit to the jurisdiction of an arbitration institute or a foreign court. However, if an agreement is governed by Swedish law, it would not be advisable to choose a foreign court or a foreign arbitration institute as such institutions may not be accustomed to applying Swedish law. Further, it is not certain that a Swedish court would consider itself to be the appropriate forum at the request of the lenders, for example, if another forum has been agreed but the right has been reserved for the lenders to also bring proceedings before the courts in any country where the obligors may have assets.

A judgment obtained in the courts of any EU Member State or in Norway, Switzerland or Iceland would be recognised and enforceable in Sweden; however, in certain cases administrative actions might have to be taken (e.g., a foreign judgment sometimes needs to be referred to the relevant district court). Sweden is also a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. A judgment obtained in the courts of any other foreign jurisdiction would as a starting point not be enforceable in Sweden; however, such judgment could be used as evidence in a Swedish court.

VI ACQUISITIONS OF PUBLIC COMPANIES

The main body of rules relating to takeover offers regarding companies with their shares or depositary receipts admitted to trading on a regulated market in Sweden is the Act on Public Takeovers,[9] which is based on the EC Takeover Directive,[10] and the takeover rules of the Nasdaq Stockholm.[11] In addition to these 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 Financial Supervisory Authority) and statements by the Swedish Securities Council perform an accessory role in regulating takeover matters.

As regards financing of take-private acquisitions, the Swedish takeover rules stipulate that a takeover bid may only be made after preparations have been made to demonstrate that the offeror is capable of implementing the offer. This includes a form of certain funds requirement, and the offeror must ensure that sufficient financial resources are available throughout the offer period.

Several disclosure requirements in connection with a take-private offer concern the financing, and the offeror must disclose, for example:

a the main terms of the offer, including the price, any premium and the basis for calculating such premium;

b how the offer is financed (in detail, although not the fees);

c conditions for withdrawal of the offer; and

d subscription or underwriting commitments received in respect of a cash issue necessary for completion of the offer.

There are also confidentiality and insider restrictions to consider, as a takeover offer always (up and until it has been made public) constitutes insider information and, for example, a syndication of the loan would then be subject to confidentiality since it could be insider information.

An offer may be made subject to conditions that entitle the offeror to withdraw the offer. The conditions must be described in detail and must be objective (i.e., they must not depend solely on the subjective judgement of the offeror, or the fulfilment of such conditions is in its hands). An offeror may make the offer conditional on a lender disbursing the acquisition loan. A condition to completion of this nature gives the offeror an opportunity not to complete the offer in the event of breach by the lender of a facility agreement (e.g., due to insolvency or refusal to permit drawdown). Conditions for drawdown of the loan under a facility agreement, however, may not be invoked generally as grounds for not completing the offer. To be invoked, such conditions must be set out as specific conditions for completion of the offer (and thereby must comply with the requirement for, for example, objectivity) and not in the loan agreement. As a result, reliance on the conditions will be subject to an assessment of materiality by the Securities Council. The conditions on a lender paying the loan shall be stated in the press release (and the offer document).

9 2006:451.

10 Directive 2004/25/EC of the European Parliament and the Council of 21 April 2004 on takeover bids.

11 The Nordic Growth Market (NGM) has identical rules for its main market. For companies with their shares or depositary receipts listed on the multi-trading facilities First North, Nordic MTF and AktieTorget, similar rules apply.

A shareholder in a listed company may pledge its shares. It may also be noted that certain disclosure requirements may arise in the event that a pledgee must enforce its security, and if it acquires the shares itself and becomes a shareholder. The disclosure thresholds are 5, 10, 15, 20, 25, 30, 50, 66⅔ and 90 per cent of the shares or votes. The 90 per cent threshold (of the shares) is also the threshold for invoking minority squeeze-out. The takeover rules also contain rules on mandatory offers, and the requirement to make a mandatory offer is triggered when a party (or parties acting in concert) acquires shares and thereby reaches or exceeds a threshold of 30 per cent of the votes in a target company. However, it is unlikely in practice that these rules would ever pose a risk that a pledgee would be compelled to make an offer on the entire company, because the rules would not apply unless the pledgee, rather than a third party, would have acquired the shares from a share enforcement.

VII THE YEAR IN REVIEW

The market is back to being a 'cove-lite/cove-loose' market, and companies continue to raise a lot of financing.

The trend for some time has been that the banks promote bond financing to limit the exposure on their own balance sheet and request other banking business to be willing to act as lender. One bond refinancing case worth mentioning is the rated bond issue made by Polygon AB (publ), as rated bonds are not commonly issued in the Swedish high-yield market.

Although the market is booming, we see an increase in the number of defaulting borrowers.

VIII OUTLOOK

As noted in Section I, the Swedish market has long been dominated by bank financing as the main means of acquisition and leveraged financing, and domestic banks have dominated the market. Although alternative means of financing, such as corporate bonds and alternative debt providers, have grown considerably during the past decade, bank financing has remained the primary source of acquisition and leveraged financing.

The banking sector continues to remain subject to regulatory developments, primarily as a consequence of increased regulatory efforts within the EU.

Appendix 1

ABOUT THE AUTHORS

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Paula Röttorp is a partner in the finance group at Hannes Snellman in Stockholm. She advises extensively on acquisition and leveraged finance, but also on project financing of infrastructure, real estate financing and restructuring of existing loans and assets within and outside insolvency situations. She has broad experience of managing large projects and negotiating agreements for private equity investors, and has extensive experience gained from representing lenders and borrowers alike.

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