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The International Comparative Legal Guide to: Securitisation 2011

A practical cross-border insight
into securitisation work

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1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller, (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a receivable “contract” be deemed to exist as a result of behaviour of the parties?

No formal receivables contract is needed under Swedish law in order to create a debt obligation. Hence an invoice alone (or even an oral agreement) is sufficient. An implied act by a party can also create a contract between parties. It is recommended though that a written agreement is entered into in order to evidence what has been agreed.

As for consumers, there is a requirement that the credit arrangement shall be documented but it does not necessarily have to be documented through an agreement.

1.2 Consumer Protections. Do Swedish laws (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

There are no limitations on rates of interest on consumer credits, loans or other kinds of receivables. Under general contract law, a contractual term or condition may be modified or set aside if such term or condition is unreasonable on the basis of the contents of the agreement, the circumstances prevailing when the agreement was entered into, subsequent circumstances and the circumstances in general. Particular attention is paid to the need to protect consumers. There is also a specific provision in the Swedish Contracts Act prohibiting usury.

Based on the EU Consumer Credit Directive (2008/48/EG), Sweden has implemented a new Consumer Credit Act which came into force on 1 January 2011. A new provision has been implemented in the Act providing that consumers have the right to cancel any credit agreement within 14 days from entering into it. Another noteworthy provision gives the consumer the right to repay the credit before the end of the term of the agreement. Generally the seller is in such situation not entitled to any compensation for any lost interest. It should also be noted that the interest rate may only be altered if it was agreed when the agreement was entered into.

The Swedish Interest Rates Act provides a right to interest on late payments.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

In general, the requirements and laws that apply to the sale or collection of receivables contracts entered into with the government or a government agency are the same as any receivables contract entered into with a commercial entity, see question 1.1 above.

2 Choice of Law - Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in Sweden that will determine the governing law of the contract?

Swedish private international law is, to a large degree, based on the Rome Convention. The EU Rome 1 Regulation (593/2008) converts the Rome Convention into Community regulation and applies to agreements entered into after 17 December 2009. The answers provided for below are based on the assumption that the contract has been entered into after this date.

If no choice of law has been made, a Swedish court would look to Swedish private international law in order to determine which jurisdiction the contract bears the greatest connection to. There is a presumption that the contract is most closely connected to the jurisdiction where the party required to effect the characteristic performance of the contract had his habitual residence at the time of entering into the contract. If that person is a legal entity, one will look to the jurisdiction where the legal entity had its principal place of business.

There are specific rules stipulating which law governs consumers and insurer contracts in the absence of a choice of law clause. As a general rule, consumer contracts are governed by the law of the jurisdiction where the consumer has his habitual residence provided that the consumer contract has been concluded as a result of the professional pursuing his commercial or professional activities in that particular country. Insurance contracts are generally governed by the law of the jurisdiction where the insurer has his habitual residence.

2.2 Base Case. If the seller and the obligor are both resident in Sweden, and the transactions giving rise to the receivables and the payment of the receivables take place in Sweden, and the seller and the obligor choose the law of Sweden to govern the receivables contract, is there any reason why a court in Sweden would not give effect to their choice of law?

No, there is no reason for a Swedish court not to apply Swedish law under these circumstances.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in Sweden but the obligor is not, or if the obligor is resident in Sweden but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in Sweden give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such that between the seller and the obligor under the receivables contract?

Parties to a contract are generally free to choose the law that governs their contracts. Hence, a Swedish court would generally recognise the parties' choice of law regardless of the nationality of the parties. However, there are limitations to this general rule such as if the application of foreign law would be contrary to Swedish public policy.

It is not possible to derogate from the consumer protection provided for by Swedish law. Consequently, a Swedish court would not honour the parties' choice of foreign law if that choice of law would deprive the obligor of its mandatory rights, provided that the obligor is a consumer and habituates in Sweden. Conversely, a Swedish court would not honour a choice of law clause depriving a foreign obligor of applicable mandatory consumer protection provided for by the laws of the jurisdiction where the obligor is habituated.

If all elements relevant to the situation are located in a jurisdiction other than the jurisdiction of the law which the parties have chosen, the choice of the parties will not be honoured by a Swedish court if the application of the chosen law would be contrary to mandatory rules of the law of that other jurisdiction. The same rule applies to mandatory provisions of Community law if all relevant elements of the situation are located in one or more Member States of the European Union.

2.4 CISG. Is the United Nations Convention on the International Sale of Goods in effect in Sweden?

Yes, Sweden is a signatory to and has ratified the United Nations Convention on the International Sale of Goods.

3 Choice of Law - Receivables Purchase Agreement

3.1 Base Case. Does Swedish law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., Swedish laws or foreign laws)? Are there any exceptions to this rule that would apply to receivables sale transactions?

There is no general rule requiring that the law governing the sale of

receivables must be the same as the law governing the receivables themselves, irrespective of which law governs the receivables.

3.2 Freedom to Choose Other Law. If (a) the receivables are governed by one country's laws (whether Swedish laws or foreign laws), (b) the seller sells the receivables to a purchaser located in a third country, and (c) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, will a court in Sweden give effect to their choice of foreign law? Are there any exceptions to this rule that would apply to receivables sale transactions?

The parties to the receivables purchase agreement may choose the law that will govern their agreement irrespective of which law governs the receivables contract.

If Swedish law governs the receivables contract, either by choice or through mandatory Swedish rules being applicable, a Swedish court would take that into consideration when ruling over the receivables purchase agreement. This may become relevant in a securitisation of consumer credits. Mandatory rules of Swedish consumer protection law provides, for example, that a consumer is entitled to make the same claims towards a purchaser of the consumer credit as towards the seller. This rule may not be derogated from by way of a choice of law clause in a receivables purchase agreement. Likewise, if there is applicable mandatory consumer protection provided for by the foreign law governing the receivables, it may not be derogated from through a choice of law clause in the receivables purchase agreement (see further question 2.3).

Furthermore, a Swedish court would not apply foreign law if its application would be contrary to Swedish public policy.

3.3 Freedom to Choose Home Country Law. Conversely, if (a) another country's law governs the receivables (e.g., a foreign obligor's country), and (b) the seller and purchaser are resident in Sweden, will a court in Sweden permit the seller and purchaser to choose the law of Sweden to govern the receivables sale? Will a court in Sweden permit the seller and purchaser to choose the law of Sweden to govern the receivables sale if only one of the seller or the purchaser are resident in Sweden? Are there any exceptions to this rule that would apply to receivables sale transactions?

Yes, a court in Sweden would uphold the parties' choice of law even if only one of the seller or the purchaser is a Swedish resident. However, the same limitations would apply as stated above.

3.4 Recognition of Foreign Law Sales. If (a) both the receivables contract and the receivables purchase agreement are governed by the same foreign law, and (b) the requirements for a true sale have been fully met under that foreign law, will a court in Sweden recognise that sale as being effective against the seller, the obligors and other third parties (such as creditors or insolvency administrators of the seller and the obligors) without the need to comply with Swedish sale requirements? Are there any exceptions to this rule?

In order for the sale to be considered effective between the seller and the purchaser, a Swedish court would look to the sale requirements provided for by the law governing the receivables purchase agreement. As for the obligors, a Swedish court would look to the sale requirements provided for by the law governing the receivables contract.

In order for the sale to be considered effective against third parties, a Swedish court would apply Swedish international private law and the *lex rei sitae*-rule. Hence, a court would look to where the relevant assets are located and then apply the law of that jurisdiction in order to determine if a perfected sale has been achieved. However, in relation to receivables that are claims and not negotiable instruments or book-entry securities there are conflicting views. It could be argued that the court should look to the law governing the receivables or to the law of the jurisdiction where the seller is domiciled. The prevailing view is, however, that the law where the obligor is domiciled should be considered *lex rei sitae* and determine if a perfected sale has occurred.

4 Asset Sales

4.1 Sale Methods Generally. In Sweden what are the customary methods for a seller to sell receivables to a purchaser?

It is customary that a written agreement is entered into when transferring receivables. However, there is no requirement under Swedish law that the transfer should be documented in a written agreement.

4.2 Perfection Generally. What formalities are required generally for perfecting (i.e., making enforceable against other creditors of the seller) a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

The sale of receivables that are claims and not negotiable instruments or book-entry securities is perfected by notifying the debtor that the receivables have been transferred. Since the obligor is being informed about the transfer, no other measures are needed in relation to subsequent good faith purchasers.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

A promissory note and other bearer instruments are perfected by delivery of the promissory note to the purchaser. However, there is an exemption from this rule which applies when a transfer is made by a bank or a credit institution. In such situation the promissory note is seldom delivered and in most cases it remains with the bank. Regardless hereof, the transfer is still considered to be perfected and is enforceable against creditors. Promissory notes that are held by a third party are typically perfected by notification to the third party.

A sale of mortgage loans, consumer loans and other claims that are not negotiable instruments is perfected by notifying the debtor.

For securities registered on owner accounts with Euroclear (Sweden), perfection is accomplished when the new owner is registered. As for securities held on nominee accounts through a custodian, notification to the custodian has the same effect as registration.

In a recent court ruling by the Swedish Supreme Court, the burden of proof of payments made by the debtor in relation to a negotiable promissory note was placed on the creditor. Since the obligors had not confirmed that the debt had not been paid, the transferees were

not in good faith in relation to the payment of the debt. In other words, in order for a purchaser to be in good faith, the purchaser has to investigate whether the debt still exists.

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Does the answer to this question vary if (a) the receivables contract does not prohibit assignment but does not expressly permit assignment; or (b) the receivables contract expressly prohibits assignment? Are there any limitations regarding the purchaser notifying the obligor of the sale of receivables even after the insolvency of the seller or the obligor?

Yes, the seller or the purchaser must notify the obligor of the sale of the receivables, see question 4.2. In order for the obligor to be in good faith in relation to which person or entity payments shall be made, it is usually recommended that either the seller or both the seller and the purchaser notify the obligor.

It is not necessary to obtain the obligor's consent to the sale of receivables in order for the sale to be an effective sale against the obligors. However, if the contract expressly prohibits assignment, consent must be obtained before the receivable can be transferred. It should also be noted that there are certain claims that can never be transferred without the consent of the obligor, for instance, claims of a personal character or where both parties are under an obligation to perform.

The Swedish Consumer Credit Act also provides that the seller shall inform the consumer if the receivable has been transferred. The consumer shall in such situations have the same rights towards the purchaser as the consumer had in relation to the seller.

In general, notification to the obligor must be made before the seller enters into insolvency proceedings. Otherwise, there is a risk that the receivable will become part of the seller's bankruptcy estate.

4.5 Restrictions on Assignment; Liability to Obligor. Are restrictions in receivables contracts prohibiting sale or assignment generally enforceable in Sweden? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If Sweden recognises prohibitions on sale or assignment and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or on any other basis?

Restrictions on the sale or assignment are generally enforceable in Sweden for both consumers and commercial entities. If receivables are transferred despite the fact that it is prohibited and the seller has not obtained the obligor's consent, such transfer will be regarded as a breach of the agreement.

4.6 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells all of its receivables to the purchaser, is this sufficient identification of receivables?

In order to have a protected property right in any asset, including

receivables, the asset must, as a general rule, be identifiable. This requirement has been said to consist of two elements: (i) that the agreement should refer to a specified asset; and (ii) that the asset should be identifiable at all times. If the asset has been exchanged for another asset or is mixed with other identical assets so that it cannot be identified, the property right is generally lost. It is therefore recommended that the purchase agreement specifically identifies each of the sold receivables and that the receivables are identified by specifying the name of the obligor, invoice number, etc. Even if all receivables are sold (and can be identified and separated from the other assets), it is recommended that each receivable is specifically identified.

4.7 Respect for Intent of Parties; Economic Effects on Sale. If the parties denominate their transaction as a sale and state their intent that it be a sale will this automatically be respected or will a court enquire into the economic characteristics of the transaction? If the latter, what economic characteristics of a sale, if any, might prevent the sale from being perfected? Among other things, to what extent may the seller retain (a) credit risk; (b) interest rate risk; and/or (c) control of collections of receivables without jeopardising perfection?

Even if the parties characterise their transaction as a sale and state that this is their intention it will not automatically be respected by a court. Hence, it is possible that a court would enquire into the economic characteristics of the transaction. The interpretation of each transaction document would in such case be based on substance over form. However, as long as the intention of the parties as expressed in the documentation is consistent with the legal requirements of a sale, it is likely that a court would respect the parties' intention.

In order to create a true sale, the transaction must be perfected and the seller must be cut-off from the possibility to exercise ownership rights in the sold receivables. Any retention of credit risk or interest rate risk could result in the transaction being characterised as a security arrangement. Similarly, should the seller have any right or obligation to repurchase the receivables, this could result in the transaction being recharacterised. It is also important that the purchaser is entitled to the proceeds of collection from the purchased receivables and that the purchaser has an unlimited right to dispose of the receivables.

Any collections received by the seller acting on behalf of the purchaser, should be immediately separated and held on a designated account in accordance with the requirements under the Accountable Funds Act.

4.8 Continuous Sales of Receivables. Can the seller agree in an enforceable manner (at least prior to its insolvency) to continuous sales of receivables (i.e., sales of receivables as and when they arise)?

Yes, the seller may agree to continuous sales of receivables. However, in order for the purchase to be exempted from the regulatory requirements under the Swedish Financial Act, acquisitions of receivables (for the purpose of a securitisation) may only be exercised a limited number of times (approximately three times).

4.9 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., "future flow" securitisation)? In that regard, is there a distinction between receivables that arise prior to or after the seller's insolvency?

Yes, it is possible to sell future receivables. However, the requirement for identification still applies, see question 4.6. There is also a distinction between receivables that arise prior to or after the seller's insolvency that needs to be taken into account, see question 6.5.

4.10 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

The sale of receivables that are claims and not negotiable instruments or book-entry securities, is perfected by notifying the debtor that the receivables have been transferred. As for the related security, the perfection requirement depends on the type of asset that the security is granted over, if the security is held by a third party etc., see question 4.3. The transfer of any related insurance, guarantees of payments or rights under other contracts would need to be agreed separately.

5 Security Issues

5.1 Back-up Security. Is it customary in Sweden to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that the sale is deemed by a court not to have been perfected?

No, it is not customary in Sweden to take back-up security over the seller's ownership interest in the receivables and the related security.

5.2 Seller Security. If so, what are the formalities for the seller granting a security interest in receivables and related security under the laws of Sweden, and for such security interest to be perfected?

In order to grant a security interest in the receivables and the related security, the parties would need to enter into a pledge agreement. In addition, the security interest has to be perfected. A security interest in receivables that are claims and not negotiable instruments or book-entry securities, is perfected by notifying the debtors and making sure the pledgor is cut off from dealing with the receivables. As for the related security, the perfection requirement depends on the type of asset that the security is granted over, if the security is held by a third party, etc.

5.3 Purchaser Security. What are the formalities for the purchaser granting a security interest in receivables and related security under the laws of Sweden and for such security interest to be perfected?

See question 5.2 above.

5.4 Recognition. If the purchaser grants a security interest in the receivables under the laws of the purchaser's country or a third country, and that security interest is valid and perfected under the laws of that other country, will it be treated as valid and perfected in Sweden or must additional steps be taken in Sweden?

In order for the security interest to be considered valid and perfected in relation to the obligors, a Swedish court would look to the requirements provided for by the law governing the receivables contract.

In order for the security interest to be considered valid and perfected against third parties such as creditors of the seller, a Swedish court would turn to Swedish international private law and the rule of *lex rei sitae*. A court would look to where the relevant assets are located and then apply the laws of that jurisdiction in order to determine if a valid security interest has been granted. However, as for assets such as receivables that are claims and not negotiable instruments or book-entry securities, there are conflicting views. One could argue that the court should look to the law governing the receivables or to the law of the jurisdiction where the seller is domiciled but the prevailing view is that the law where the obligor is domiciled should be considered *lex rei sitae* and consequently determine if a valid security interest has been granted.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to promissory notes, mortgage loans, consumer loans or marketable debt securities?

In order to create an effective security interest under Swedish law, the parties would need to enter into a pledge agreement and make sure the security interest is properly perfected. Different perfection requirements apply depending on the type of assets that the security is taken over. As for promissory notes and other bearer instruments, perfection is achieved by physical delivery of the instruments to the pledgee. A security interest in loans and other claims is perfected by notifying the debtor. If the relevant asset is held by a third party, perfection is typically achieved by notifying that person. For book-entry securities registered on owner accounts with Euroclear (Sweden), the security interest becomes effective in relation to third parties when it is registered. As for securities held on nominee accounts through a custodian, notification to the custodian has the same effect as registration.

5.6 Trusts. Does Sweden recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller's own assets until turned over to the purchaser?

There is no equivalent legal concept to the trust under Swedish law. However, there are other ways whereby collections received by the seller in respect of sold receivables can be protected from the seller's creditors should the seller become insolvent, for instance by setting up a separate account and holding the collections on behalf of the purchaser in accordance with the requirements under the Accountable Funds Act.

5.7 Bank Accounts. Does Sweden recognise escrow accounts? Can security be taken over a bank account located in Sweden? If so, what is the typical method? Would courts in Sweden recognise a foreign-law grant of security (for example, an English law debenture) taken over a bank account located in Sweden?

Yes, escrow accounts are recognised under Swedish law. Security can thus be taken over a bank account located in Sweden. It should be pointed out though, that in reality, what is created is a security interest in the depositor's claim against the bank. The typical method of creating such security interest is by setting up a separate escrow account and entering into a security agreement in respect of the account. Perfection of the security interest is achieved by notifying the bank that is holding the account. Subject to Swedish mandatory law and public policy (and subject to the answers set out under sections 2-3 above), a Swedish court would recognise a foreign-law grant of security taken over a bank account located in Sweden.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will Swedish insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables ("automatic stay")? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

Provided that there has been a perfected sale prior to the date when the insolvency proceedings are initiated, there are no rules under Swedish insolvency law that automatically prohibits the purchaser from collecting, transferring or otherwise exercising rights over the receivables. If the purchaser is deemed to only be a secured party rather than the owner of the receivables, then any proceeds received or surplus remaining after a sale of the receivables must be returned to the bankruptcy estate. If the transaction is considered to be unperfected, the receivables will form part of the bankruptcy estate and it will be for the insolvency official to collect, transfer or otherwise exercise property rights in the receivables.

6.2 Insolvency Official's Powers. If there is no automatic stay, under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of rights (by means of injunction, stay order or other action)?

Assuming a perfected sale has taken place, the insolvency official is not entitled to challenge the rights of the rightful owner of the receivables unless the transaction falls within the suspect period and otherwise fulfills the legal requirements for it to be recovered.

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a “suspect” or “preference” period before the commencement of the insolvency proceeding? What are the lengths of the “suspect” or “preference” periods in Sweden for (a) transactions between unrelated parties and (b) transactions between related parties?

An insolvency official has the right to reverse transactions under specific circumstances provided for by law. The rules for recovery are detailed and there are different objective and subjective criteria that need to be met depending on the specific provision that apply.

Under the general rule, a legal act such as a sale of receivables can be recovered if (i) the act favoured one creditor to the disadvantage of other creditors, (ii) assets of the debtor have been withdrawn from the creditors, or (iii) debts owed by the debtor have been increased. A prerequisite for the rule to apply is that the debtor was or by the act became insolvent and the other person knew or ought to have known about the debtor’s insolvency and the circumstances making the act improper.

Gifts may *per se* be recovered if completed within the suspect period. Transactions at undervalue may be classified as gifts and recovered if the transaction entails an obvious gift element. Payments of debts may be recovered if the payment was made with uncustomary means of payment, if it was made prematurely or if the payment was made in an amount that considerably caused a deterioration of the financial position of the debtor. The granting of security may be reversed if the security was provided for an already existent debt.

The suspect period varies depending on the rules that apply. As for unrelated parties, the suspect period could amount to five years. An unlimited time period could apply in relation to related parties.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding?

There are no insolvency rules under Swedish law that gives the insolvency official the right to consolidate the assets and liabilities of the purchaser with those of the seller.

6.5 Effect of Proceedings on Future Receivables. What is the effect of the initiation of insolvency proceedings on (a) sales of receivables that have not yet occurred or (b) on sales of receivables that have not yet come into existence?

The insolvency official has the right to replace the insolvent seller in its contractual relationships but is not bound to enter into the contracts. If the insolvency official chooses to enter into the seller’s receivables contract, the insolvency official will be bound to honour the whole agreement.

The question of how a purchaser of receivables that have not yet come into existence achieves a perfected transaction, has not yet been tried by the Swedish courts.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in Sweden establishing a legal framework for securitisation transactions? If so, what are the basics?

There is no special securitisation law in Sweden apart from the law on covered bonds that came into effect in 2004. Instead, general contract, security, company and insolvency law and regulation apply and need to be taken into account.

7.2 Securitisation Entities. Does Sweden have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

Sweden does not have any specific laws providing for the establishment of special purpose entities. Instead general company and contract law and regulation apply and need to be taken into account. Under the capital adequacy regulations provided for by the Swedish Financial Supervisory Authority (“FSA”), there is a requirement that the seller shall not keep any actual or indirect control over the transferred receivables in order for the transaction to be considered an effective securitisation.

7.3 Non-Recourse Clause. Will a court in Sweden give effect to a contractual provision (even if the contract’s governing law is the law of another country) limiting the recourse of parties to available funds?

Subject to Swedish mandatory law and public policy (and subject to the answers set out under sections 2-3 above), a Swedish court would give effect to a contractual provision limiting the recourse of the parties to available funds.

7.4 Non-Petition Clause. Will a court in Sweden give effect to a contractual provision (even if the contract’s governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

Subject to Swedish mandatory law and public policy (and subject to the answers set out under sections 2-3 above), a Swedish court would give effect to a contractual provision prohibiting the parties from taking legal action against the purchaser or another person or commencing an insolvency proceeding against the purchaser or another person.

7.5 Independent Director. Will a court in Sweden give effect to a contractual provision (even if the contract’s governing law is the law of another country) or a provision in a party’s organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

The board of directors of a Swedish company has a statutory duty to safeguard the interests of the company’s creditors and shareholders and to take action should they have a reason to believe

that the equity of the company is less than half of the registered share capital. If the board of directors fail to fulfill those duties, they will be held jointly and severally liable for any obligations incurred by the company under the relevant period after which they have failed to fulfill the duties. It is not possible to limit the obligations of the board of directors through an agreement or otherwise.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in Sweden, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in Sweden? Does the answer to the preceding question change if the purchaser does business with other sellers in Sweden?

The acquisition of receivables by the purchaser will most likely be regarded as financial business which requires the purchaser to hold a licence from the Swedish FSA and to comply with certain regulations, including capital adequacy requirements. There is, however, an exemption from this requirement; provided that the purchaser does not acquire receivables more than a limited number of times (approximately three times) and that financing is not raised from the general public on a regular basis, it does not have to be licensed by the FSA. Notwithstanding, even if the purchaser falls under this exemption, it is recommended that the purchaser register with the FSA.

It should also be mentioned that Sweden is in the process of implementing the Capital Requirements Directives ("CRD II" and "CRD III"), which will have an impact on securitisation transactions. Many of the amendments to the existing legislation will come into force on 30 June 2011 and some will be effective as of 31 December 2011.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

If the seller is a bank or a credit institution, the seller will be under the supervision of the Swedish FSA. Provided that the seller is under the supervision of the FSA and thus licensed to enter into credit agreements, no other licences will be needed in order to enforce and collect sold receivables. If the seller is not under the supervision of the FSA, permission from the Swedish Data Inspection Board is generally required, see question 8.3.

8.3 Data Protection. Does Sweden have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

The Swedish Debt Recovery Act, which applies to both consumers and enterprises, provides that the collection of debts, as a main rule, require a permit from the Swedish Data Inspection Board. The processing of personal data is governed by the Swedish Personal Data Act; it regulates both the use and dissemination of personal data and is applicable to physical persons (regardless if they are consumers or not) but not to legal entities. In general, personal data may only be processed if the individual is informed thereof. As for dissemination

of personal data, there is a general rule that personal data may not be transferred to countries outside the EEA unless such countries have the same level of protection as Sweden or the individual has given its consent to such dissemination. The Act also includes provisions regulating processing and storage of personal data.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of Sweden? Briefly, what is required?

The purchaser of consumer receivables would need to comply with the Swedish Consumer Credit Act. The Act includes protective mechanisms and requires that certain information is provided to consumers. It also regulates the right to increase or alter interest and gives the consumer a right, at all times, to repay the credit in advance. Such repayment will, of course, affect the calculated interest and will have an impact on the purchased receivables (see also questions 1.2 and 4.4).

8.5 Currency Restrictions. Does Sweden have laws restricting the exchange of Swedish currency for other currencies or the making of payments in Swedish currency to persons outside the country?

No, Sweden does not have any laws restricting the exchange of currencies or the making of payments to persons outside the country. However, Sweden is a Member of both the European Union and the United Nations and may impose restrictions based on sanctions issued by either of them.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in Sweden? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located?

No part of payments on receivables by the obligors to the seller or the purchaser is subject to withholding taxes in Sweden. Swedish law does not impose withholding tax on interest payments being made out of Sweden regardless of the nature of the receivables, whether they bear interest or their term to maturity.

9.2 Seller Tax Accounting. Does Sweden require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

No specific accounting policy is required in Sweden in the context of a securitisation.

9.3 Stamp Duty, etc. Does Sweden impose stamp duty or other documentary taxes on sales of receivables?

No, Sweden does not impose stamp duty or other documentary taxes on the sale of receivables.

9.4 Value Added Taxes. Does Sweden impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

According to the general rule, value added tax (VAT) is imposed on sales of goods and services. The Swedish VAT system is based on the Sixth VAT Directive (77/3888/EEC). Generally, the sale of financial assets is exempt from VAT. However, VAT issues are to be analysed in detail in relation to every transaction. Collection agent services are taxable if they are provided in Sweden.

9.5 Purchaser Liability. If the seller is required to pay value added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

The obligation to pay value added tax stays with the seller. The Swedish tax authority is not entitled to make claims for indirect taxes against the purchaser.

9.6 Doing Business. Assuming that the purchaser conducts no other business in Sweden, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in Sweden?

A foreign company is only liable to pay income tax in Sweden if it is considered to have a permanent establishment in Sweden. The Swedish definition of a permanent establishment is based on the OECD Model Tax Convention. The mere ownership and collection of receivables will not constitute a Swedish permanent establishment.

If a Swedish seller would be considered to be a dependent agent of the purchaser, the purchaser would be considered to have a permanent establishment in Sweden. However, a securitisation transaction can normally be structured in such way that the permanent establishment in Sweden of a foreign company (the purchaser) is avoided. Permanent establishment issues are often complex and must always be subject to detailed analysis.



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