RAISING FUNDS IN

SWEDEN

Raising funds in Sweden

Sweden can offer good opportunities and many ways to raise finance for businesses. The costs of establishing a Swedish limited company are low and there are no restrictions governing the size of equity in relation to debt capital. Sweden is generally considered to be an attractive country to invest in due to low corporate tax rates, good infrastructure and a well-educated workforce. There are few barriers for investors outside of Sweden who are interested in investing in Swedish companies or establish a company in Sweden.

The type of financing needed by a company will depend on its size, type of business and the company's objectives. A company needs to evaluate its financial position and opportunities carefully to decide what type of financing is most suitable.

The Swedish market can offer a wide variety of finance solutions for emerging business as well as for established ones, including equity finance through venture capital and short- to long-term bank finance.

This very brief article, which provides an outline of the opportunities to raise finance in Sweden, is not intended to act as a substitute for proper and detailed advice which we will be happy to provide.

Regulatory Framework

The legal framework concerning raising finance in Sweden is a complex one. The relevant restrictions are contained in a series of legislations and rules issued by regulatory bodies. Central to the framework for limited companies is the Swedish Companies Act and related legislation. Listed companies also need to comply with the terms of the Listing Agreement, which, in most cases has incorporated rules issued by the Swedish Industry and Commerce Stock Exchange Committee.

All companies operating in the financial markets are monitored by the Swedish Financial Supervisory Authority (FI) which also is the authority giving relevant authorizations. Around 3 500 companies are currently under FI's supervision.

Bank finance

Bank finance is the most common source for external capital for businesses in Sweden. The two most common types of bank finance are overdrafts and term loans. An overdraft is a loan facility up to an agreed maximum which can be drawn on by the business when needed. The costs for the overdraft facility is an annual fee, usually around 1-2 % of the agreed credit, plus interest on the amounts of the facility used by the business.

Term loans are for a fixed term. Interest can be either at a fixed rate or a variable or floating rate, both of which will normally be at a lower rate than is charged for overdrafts. Fixed rates obviously provide certainty for the business. However fixed rates tend to be higher over the term of a business cycle than variable rates.

There are also several other financing arrangements offered by banks, some of which are further dealt with below.

When it comes to security, Swedish law recognises the concept of a "floating charge" which is a device for giving the bank security over assets such as stock in trade, machinery, inventory and accounts receivable without restricting the company's ability to deal with and dispose of those assets as long as it remains solvent and is not in breach of the loan agreement. Other forms of security required by a bank could be a fixed charge over real estate, pledge of shares or a guarantee from a person or another company.

The creditor's priority in case of the debtor's insolvency is governed in the Right of Priority Act. In order to facilitate business reorganisations, the act has recently been amended and the new Right of Priority Act came into force 1 January 2004. Perhaps the most significant, and debated, amendments to the act were the supplier's position in the debtor's insolvency being improved at the expense of the holders of a floating charge.

Since the banks are often holders of such floating charge, the new regulation has resulted in the banks being more cautious in their lending often demanding additional security to the floating charge.

Syndicated loans

In case of a very large bank loan, the loan can be structured as a syndicated loan. Such a loan is originally negotiated with one bank (the "lead bank"). The lead bank will then enter into contractual agreements with other banks to share the risk of the loan. The borrower will not be a party to these agreements. The lead bank will contract with the borrower on its own behalf and as agent for the other banks of the syndicate.

Factoring

Factoring allows businesses to raise finance based on the value of their outstanding invoices. There are two kinds of factoring. Firstly, there is sale of the invoices whereby a factoring company ("the Factor") buys the trade debts of a business and pays the business a certain percentage (usually around 80%) of the value of such trade debt as evidenced by an invoice issued by the company. Secondly there is invoice pledging, whereby the business pledges the invoices to the Factor in return for a credit in a certain percentage (also usually around 80 %) of the value of the outstanding invoices. In both cases, the payment by the Factor is usually made on receipt of a valid copy invoice from the company. The full credit risk is transferred to the Factor only in case of invoice sale, while it remains with the business in case of an invoice pledge.

One advantage with factoring is that it releases capital for the business. The business does not have to wait for 30 days or more to get paid. The disadvantage is that it is a fairly expensive alternative for financing for businesses with few invoices. Another problem is that factoring rarely gives room for the business to build up stock.

The factoring market in Sweden has gained a lot of ground in recent years resulting in a lot of companies offering such services. The largest factors in Sweden include the major banks and their subsidiaries. In addition a number of independent firms and some smaller firms offer factoring services as well.

Project financing

Project financing focuses not on the credit status of the business, but on cash flows that will be generated by a specific project. Simply put, the business is lent money on the basis of a contract or an order regarding a certain project. The bank pays 80-90 % of the value of the contract to the business. The business' counterpart is invoiced and pays to the bank. After this the bank and the business makes a final settlement.

Obviously, project financing has much in common with factoring. However, project financing provides financing during the entire duration of the project – from order to delivery, while factoring provides financing from invoicing to the day of payment.

One disadvantage with project financing is that it might be a tough job to convince the bank to lend money since there is no security. Consequently, the bank will probably see risks in the business not being able to fulfil the order. Quality in the delivery process is crucial. The business will have to put in much effort in showing quality in the delivery process. The bank has to be convinced that the business can produce and deliver.

Venture Capital

Venture capital investments can be described as a collective term for various types of investments in the equity of the business and encompasses investments in listed as well as unlisted businesses. Venture capital investments have grown rapidly in Sweden in the last few years. In 2005 Sweden had the largest venture capital investments in Europe measured as a share of GDP, 0.23 per cent, according to the European Private Equity & Venture Capital Association. Out of the various forms of venture capital, this article will only focus on two kinds of venture capital investors – Private Equity investors and Business Angels.

The term Private Equity is normally used to describe venture capital investments in unlisted businesses where the commitment of the investor is active but limited to a rather short period of time. The Private Equity investors are typically companies or funds of various sizes.

A Business Angel can be described as a person investing a relatively small sum in a business to which he has no relationship in form of kinship with the management. Business angels work as a complement to Private Equity investors since they often invest in earlier stages of the business' growth process than the Private Equity investors. Business angels can normally make quicker investment decisions than Private Equity investors since they are investing only their own money. Furthermore business angels normally invest smaller amounts than Private Equity investors.

The main incentives for private equity investors and business angels are i.a.:

- high expected return
- to take part in the entrepreneurial process
- the satisfaction and stimulation of being involved in a business
- commitment to society through the creation of jobs and the development of a business and perhaps a region etc
- portfolio diversification

In addition to that the business does not have to worry about securities, the advantages with allowing private equity investors and business angels as partners in the business could be that the business gets clear objects and aims, greater financial security, faster development, access to competence and a network, a committed management, experience from other business ventures and a tested model for governance.

The disadvantages could be a higher level of risk following high expectations on growth, high expectations on the management which, as an example, could result in replacement of the general manager when the business faces a new stage in its development or an exit.

Prospectuses

In order to implement the EC directive 2003/71/EC, new Swedish regulations regarding prospectuses came into force 1 January 2006. FI is the authority in charge for inspection and approval of prospectuses.

Prospectuses shall be set up when financial instruments are offered to the public. An offer to the public is any offer, regardless of form or medium, which contains sufficient information about the conditions for the offer and the financial instruments for the investor to make a decision whether to subscribe or acquire these financial instruments.

Furthermore, prospectuses shall also be set up when financial instruments are admitted to trading on a regulated market.

There are numerous exceptions from the duty to set up a prospectus. These exceptions can not be described in detail in an article of this size. However, prospectuses are not compulsory in the following situations:

the offer is addressed to so called qualified investors,

the offer is addressed to fewer than 100 persons,

the offer concerns acquisition of financial instruments amounting to €50 ,000 euro or more per investor or offers where the nominal value for each of the financial instruments contained in the offer is €50 ,000 euro or more,

the total amount which shall be paid by the investors during a 12-month period is €1 ,000 ,000 euro or less.

Listing and IPO's

There are two kinds of limited companies in Sweden, private and public limited companies. Only public limited companies can acquire finance from the public market through listing on the Stock Exchange or other trading markets. To be able to offer shares to the public through the stock market the company has to go through a complex listing process.

In most cases a company needs to have at least a few years of financial history before a listing will be accepted. Smaller emerging businesses are often listed on one of the smaller trading markets before a listing on the Stockholm Stock Exchange is done.

An Exchange Auditor will make an assessment as to weather it would be appropriate to list and admit the shares of the company to trading on the Exchange. The assessment will include a number of aspects, such as whether there will be sufficient conditions for appropriate trading in the shares and the company's abilities to comply with the Listing Requirements and provide information to the market etc. The company must publish a prospectus prior to the listing and the prospectus must have been approved by the relevant authorities.

Before listing the company shall obtain a legal opinion from an independent attorney, be approved by the Listing Committee and sign the Listing Agreement.

Listing can be done on one of the lists provided by the Stockholm Stock Exchange, First North, Nordic Growth Market or "Aktietorget". The latter three are mainly for small size companies. The regulations described above are the regulations practiced by the Stockholm Stock Exchange. The other lists and markets mentioned practice similar regulations.

In order to be approved for listing the company must eliminate restrictions on buying and selling shares in the company, adapt and review its control systems and adapt Corporate Governance rules set out in the Listing Agreement.

The Listing Agreement contains detailed regulations on how and when price-sensitive information is to be announced to the market.

The Stockholm Stock Exchange is a member of the newly founded Nordic Exchange which gives access to the Nordic market through the exchanges in Stockholm, Copenhagen and Helsinki.

Additional funding from existing shareholders

Instead of looking for funds from Venture Capital or Private Equity, an existing business can turn to its existing shareholders for additional funding. This is most commonly done either through issuing of new shares or as a contribution from the shareholders.

A shareholders contribution can be conditioned or unconditioned. A conditioned contribution is treated as a form of loan from the shareholder and is subject to the terms set out for the contribution. A conditioned contribution does not increase the company's equity. An unconditioned shareholders contribution is not subject to terms of any form and increases the company's equity.

Issuing of new shares can be done to increase the equity in an existing company. Most commonly issuing of new shares is used to raise capital from existing shareholders but it is also possible to issue new shares to one or more new shareholders, most commonly venture capital or private equity investors. Payment for the new shares can be made with money or, when decided by the company, payment in kind.

Hire Purchase and Leasing

When acquiring expensive assets a company can spread out the cost for the assets. This can be done by a hire purchase agreement or a leasing agreement. The company can then pay for the assets over a longer period of time using its revenue.

Through the agreement the finance company retains legal ownership of the assets in question. This usually gives the finance company a better security than other creditors and the finance company may therefore be able to offer better terms.

Hire purchase

Under a hire purchase agreement the customer acquires ownership of the equipment from the start. Payment for the equipment is then made to the finance company over a fixed period of time. However the customer may not sell or in other ways dispose of the product during the hire purchase agreement. The financial company has security in the sold equipment and may repossess the equipment in case of the customer's failure to pay the instalment.

If the equipment used by the business is exchanged on an irregular basis or if there is a risk the equipments needs to be exchanged before the time set out in the agreement a hire purchase is more suitable for the business than a lease agreement which is normally set over a longer period of time.

Operating Lease

Operating lease is a form of the classic hire agreement. Operational lease includes service and maintenance of the equipment. The lease cost is normally set as a fixed sum per year and the company does not acquire ownership of the equipment. Assets financed in this way are not shown as assets on the balance sheets. The lease cost is treated as a cost in the business.

Finance Lease

Finance lease is an agreement where the customer pays the full value of the equipment plus interest over a period of time. In difference to operating lease the customer under a financial lease agreement is responsible for service and maintenance of the equipment. At the end of the lease period the agreement can usually be renewed with a substantially lower leasing cost. Assets financed in this way are shown as assets on the balance sheet with a notation that the asset is leased. The customer does not acquire ownership of the equipment but may buy it at a reduced cost after the end of the lease period.

The most leased assets in Sweden are automobiles and computer equipment, largely because of tax advantages for both employers and employees, followed by industrial equipment. The leading leasing companies are the suppliers of capital equipment, leading banks and automobile manufactures.

Grants

There are a wide range of investment incentives provided by the European Union, the Swedish Government and regional authorities, e.g. grants such as regional development support. Most of these incentives are available to foreign as well as Swedish investors.

Most incentives are made in the form of grants but can also be made in the form of reduced payroll tax and social security contribution. State agencies can also provide market-rate and soft credits. For companies operating in development areas qualifying projects can be partly financed in soft loans. Grants are available in form of location grants and employment grants in disadvantaged regions, but also for e.g. applied research and development in general.

A fundamental condition for acquiring European Union financing is that the project encompasses cooperation between two or more countries, within the priorities presented in the various European Union programmes. In most cases it is an advantage if public as well as private interests are participating in the project.

CONTACT

MOLL WENDÉN's business concept is to offer high quality legal advice to large or mediumsized corporations. MOLL WENDÉN has its offices in Malmö , Sweden , in the heart of the Öresund region. The Öresund region mainly consists of the southern part of Sweden and Själland (Copenhagen) in Denmark . The region, with its 3.2 million inhabitants, is a transnational region within the EU.

MOLL WENDÉN offers first-rate competence in company law, mergers and acquisitions, financing, real property transactions, litigation, IT and telecom, intellectual property, labour law, competition law and public procurement. The lawyers at MOLL WENDÉN have sector-specific expertise in areas such as the food industry, real property and construction, pharmaceuticals and biotechnology as well as IT and telecom. Therefore, do not be surprised if our lawyers show a particular interest in your line of business and affairs.

MOLL WENDÉN is a newly established law firm with traditions. The partners of MOLL WENDÉN have worked with international clients and assignments for ten to twenty years; first at Lagerlöf & Leman and then at Linklaters. All of the associates at MOLL WENDÉN are experienced in handling international matters. The partners and associates at MOLL WENDÉN are used to working in large organisations and international networks - something that clearly influence our idea of a first-class legal assistance. MOLL WENDÉN has a large number of international clients whose common denominator is the demand for Swedish expert legal advice.

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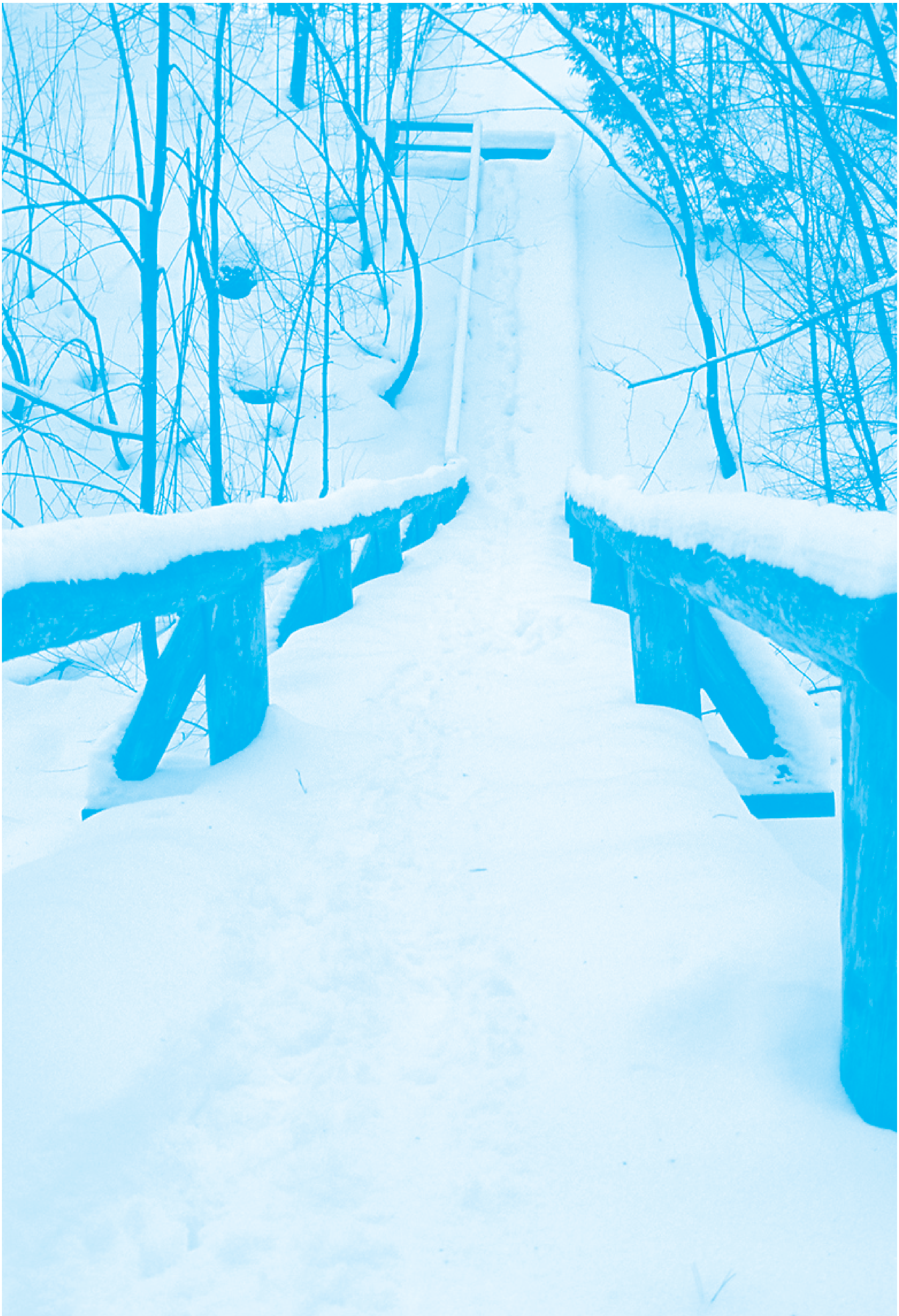

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