# Legal Framework for Swedish Covered Bonds



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### Introduction



### What is a Swedish covered bond?

- Säkerställd obligation
- Full-recourse senior debt security
- Issued by a Swedish credit institution
- Backed by a cover pool of secure assets
- Priority for bondholders and derivative counterparties
- Designed to survive the insolvency of the issuer

#### Legislation-enabled regime

- Covered Bonds Issuance Act (in force since 2004)
- Supplemented by regulations of the Swedish FSA

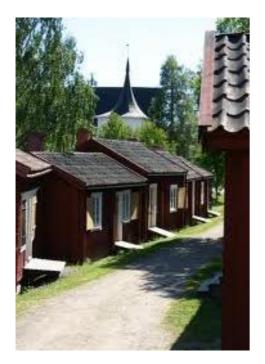
# The cover pool



### **Eligible assets**

- 1. Mortgage loans
- 2. Public sector loans
- 3. Substitute collateral

### The cover pool – Mortgage loans



### Criteria for mortgage loans in the cover pool

- Maximum loan-to-value ratios
  - 75% for residential collateral
  - 70% for agricultural collateral
  - 60% for commercial collateral
- Market valuation of collateral
  - generally: specific valuation by qualified valuer
  - residential collateral: valuation may be based on general price levels
- Maximum 10% commercial collateral in the cover pool
- Only collateral located in the European Economic Area

# The cover pool – Other assets



#### **Public sector loans**

- Public borrower or guarantor, including:
  - The Swedish State
  - Swedish municipalities
  - The European Communities

#### Substitute collateral

- Cash and government bonds with zero-risk weighting
  - FSA may authorize use of certain other collateral
- Maximum 20% (temporarily up to 30%) of cover pool

### **Derivative contracts**



- To hedge interest/currency risk and match cash flows
- Covered Bonds Issuance Act and FSA regulations prescribe:
  - eligible counterparties
  - minimum counterparty ratings
  - collateral posting requirements
  - disapplication of standard ISDA termination provisions

### The cover register



- Issuer to keep an up-to-date register of *inter alia*:
  - cover pool assets
  - covered bonds
  - derivative contracts
- Registration is key:
  - only registered assets form part of the security in favour of bondholders and derivative counterparties
  - only registered covered bonds and derivative contracts benefit from such security
- Cover pool is dynamic, issuer may supplement and substitute assets (pre-bankruptcy)

# **Matching requirements**



### Three matching tests

- 1. <u>Nominal matching</u>: nominal value of cover pool to exceed nominal value of obligations
- 2. <u>NPV matching</u>: net present value of cover pool to exceed net present value of obligations (and withstand certain interest rate and currency exchange rate stress tests)
- 3. <u>Liquidity matching</u>: cash flows from cover pool and derivative contracts such that the issuer is able to meet obligations to bondholders and derivative counterparties
- Non-performing assets more than 60 days overdue are disregarded for the purposes of these tests
- No over-collateralisation prescribed by law (but permitted)

### **Supervision**



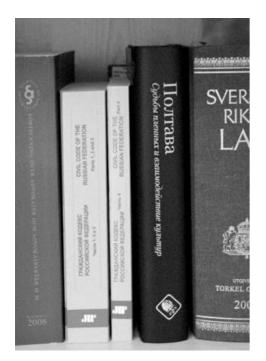
#### **Before issuance**

1. Specific FSA licence required to issue covered bonds

#### After issuance

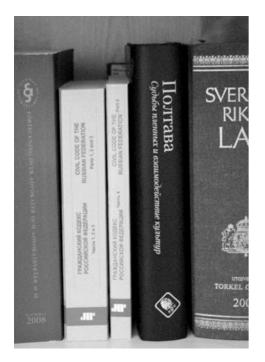
- 2. FSA supervises issuer and monitors compliance
  - sanctions include revocation of licence to issue covered bonds
- 3. FSA also appoints an independent inspector for each issuer
  - monitors cover register, valuations, matching etc.
  - reports to the FSA

## **Insolvency considerations – Security interest**



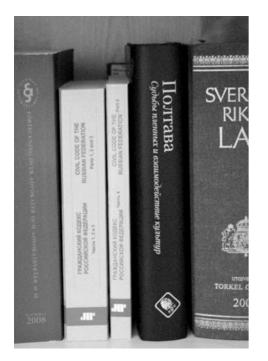
- Before and after issuer bankruptcy, covered bondholders and derivative counterparties benefit from security interest in:
  - cover pool assets
  - cash deriving from cover pool and derivative contracts
- Security interest ranks ahead of all unsecured creditors, including The National Tax Agency
- Bondholders and derivative counterparties rank *pari passu*
- Self-imposed over-collateralisation recognized and upheld

# **Insolvency considerations – Issuer bankruptcy**



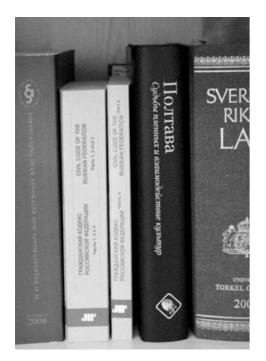
- EU Credit Institutions Winding Up Directive (2001/24/EC)
- Swedish Bankruptcy Act and Rights of Priority Act
- No consolidation in bankruptcy
- If issuer declared bankrupt, bankruptcy administrators appointed:
  - one (or more) by the bankruptcy court
  - one by the FSA
- No separate cover pool administrator

### **Insolvency considerations – Issuer bankruptcy**



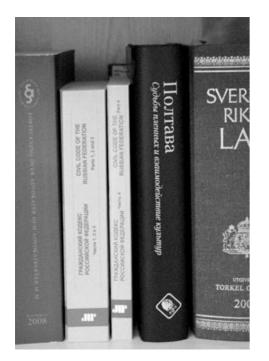
- So long as cover pool continues to meet matching and other legislative requirements:
  - cover pool, covered bonds, derivative contracts and cash are maintained as a unit and segregated from the general bankruptcy estate
  - continued timely payment on covered bonds and derivative contracts
  - → No suspension of payments, acceleration, early repayment or early termination

### **Insolvency considerations – Issuer bankruptcy**



- If cover pool ceases to meet matching requirements and other legislative requirements (and not just temporarily):
  - enforcement of security by liquidation of cover pool
  - repayment of covered bonds
  - early termination of derivative contracts
- Covered bondholders and derivative counterparties also have ultimate recourse to assets of the general bankruptcy estate, *pari passu* with senior unsecured creditors

# **Insolvency considerations – Post-bankruptcy liquidity**



- Covered Bonds Issuance Act amended in 2010 to improve access to liquidity post-bankruptcy
  - explicit mandate for bankruptcy administrators to enter into loan, repo, derivative and other transactions to maintain matching
  - to be used only if deemed to favour covered bondholders and derivative counterparties
  - new counterparties contract with the bankruptcy estate (not the issuer) and benefit from super-senior ranking
- Liquidity may also be raised by bankruptcy administrators selling cover pool assets

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