MALL FÖR IBOR FALLBACKVILLKOR FÖR VISSA FÖRETAGSOBLIGATIONER

 *Arbetsutkast för konsultation september 2021*

1. Definitioner

# Definitions and construction

## Definitions

“**Base Rate**” means [STIBOR]/[EURIBOR] or any reference rate replacing [STIBOR]/[EURIBOR] in accordance with Clause 19 (*Replacement of Base Rate*).

“**Base Rate Administrator**” means [Swedish Financial Benchmark Facility AB (SFBF) in relation to STIBOR] /[European Money Markets Institute (EMMI) in relation to EURIBOR] or any person replacing it as administrator of the Base Rate.

 “**Interest Rate**” means the Base Rate plus [●] per cent. *per annum* as adjusted by any application of Clause 19 (*Replacement of Base Rate*). [For the avoidance of doubt, if any such total rate is below zero then the Interest Rate will be deemed to be zero][[1]](#footnote-1).

[[[2]](#footnote-2)“**STIBOR**” means:

1. the Stockholm interbank offered rate (STIBOR) administered by the Base Rate Administrator for the offering of deposits in Swedish Kronor and for a period equal to the relevant Interest Period, as displayed on page [STIBOR= of the Refinitiv screen] (or through such other system or on such other page as replaces the said system or page)) as of or around 11.00 a.m. on the Quotation Day;
2. if no rate as described in paragraph (a) is available for the relevant Interest Period, the rate determined by the Issuing Agent by linear interpolation between the two closest rates for STIBOR fixing, as displayed on page [STIBOR= of the Refinitiv screen] (or any replacement thereof) as of or around 11.00 a.m. on the Quotation Day for the offering of deposits in Swedish Kronor;
3. if no rate as described in paragraph (a) or (b) is available for the relevant Interest Period, the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Issuing Agent at its request quoted by the Reference Banks, for deposits of SEK 100,000,000 for the relevant period; or
4. if no rate as described in paragraph (a) or (b) is available for the relevant Interest Period and no quotation is available pursuant to paragraph (c), the interest rate which according to the reasonable assessment of the Issuing Agent best reflects the interest rate for deposits in Swedish Kronor offered in the Stockholm interbank market for the relevant period[, and

if any such rate is below zero, STIBOR will be deemed to be zero[[3]](#footnote-3)].]

1. Operativa bestämmelser

# REPLACEMENT OF BASE RATE

## General[[4]](#footnote-4)

Any determination or election to be made by an Independent Adviser, the Issuer or the Noteholders in accordance with the provisions of this Clause 19 shall at all times be made by such Independent Adviser, the Issuer or the Noteholders (as applicable) acting in good faith, in a commercially reasonable manner and by reference to relevant market data.

If a Base Rate Event has occurred, this Clause 19 shall take precedent over the fallbacks set out in paragraph (b) to (d) of the definition of [STIBOR]/[EURIBOR].

## Definitions

In this Clause 19:

“**Adjustment Spread**” means a spread (which may be positive, negative or zero) or a formula or methodology for calculating a spread, or a combination thereof to be applied to a Successor Base Rate and that is:

* + - * 1. formally recommended by any Relevant Nominating Body in relation to the replacement of the Base Rate; or
				2. if (a) is not applicable, the adjustment spread that the Independent Adviser determines is reasonable to use in order to minimise any transfer of economic value from one party to another as a result of a replacement of the Base Rate.

“**Base Rate Amendments**” has the meaning set forth in Clause 19.3.4.

“**Base Rate Event**” means one or several of the following circumstances:

1. the Base Rate (for the relevant Interest Period) has ceased to exist or ceased to be published for at least [five (5) consecutive Business Days] as a result of the Base Rate (for the relevant Interest Period) ceasing to be calculated or administered;
2. a public statement or publication of information by (i) the supervisor of the Base Rate Administrator or (ii) the Base Rate Administrator that the Base Rate Administrator ceases to provide the applicable Base Rate (for the relevant Interest Period) permanently or indefinitely and, at the time of the statement or publication, no successor administrator has been appointed or is expected to be appointed to continue to provide the Base Rate;
3. a public statement or publication of information in each case by the supervisor of the Base Rate Administrator that the Base Rate (for the relevant Interest Period) is no longer representative of the underlying market which the Base Rate is intended to represent and the representativeness of the Base Rate will not be restored [in the opinion of the supervisor of the Base Rate Administrator][[5]](#footnote-5);
4. a public statement or publication of information in each case by the supervisor of the Base Rate Administrator that it is unlawful for the Issuer or the Issuing Agent to calculate any payments due to be made to any Noteholder using the applicable Base Rate (for the relevant Interest Period) or it has otherwise become prohibited to use the applicable Base Rate (for the relevant Interest Period):
5. a public statement or publication of information in each case by the bankruptcy trustee of the Base Rate Administrator or by the trustee under the bank recovery and resolution framework (Sw. *krishanteringsregelverket*), or in respect of EURIBOR, from the equivalent entity with insolvency or resolution powers over the Base Rate Administrator, containing the information referred to in (b) above.

“**Base Rate Event Announcement**” means a public statement or published information as set out in paragraph (b) to (e) of the definition of Base Rate Event that any event or circumstance specified therein will occur.

“**Independent Adviser**” means an independent financial institution or adviser of repute in the debt capital markets where the Base Rate is commonly used.

“**Relevant Nominating Body**” means, subject to applicable law, firstly any relevant supervisory authority, secondly any applicable central bank, or any working group or committee of any of them, or thirdly [the [Financial Stability Council (*Finansiella stabilitetsrådet*)][[6]](#footnote-6)/[Financial Stability Board][[7]](#footnote-7) or any part thereof].

“**Successor Base Rate**” means:

* + - * 1. a screen or benchmark rate, including the methodology for calculating term structure and calculation methods in respect of [Notes][[8]](#footnote-8), which is formally recommended as a successor to or replacement of the Base Rate by a Relevant Nominating Body[[9]](#footnote-9); or
				2. if there is no such rate as described in paragraph (a), such other rate as the Independent Adviser determines is most comparable to the Base Rate.

For the avoidance of doubt, in the event that a Successor Base Rate ceases to exist, this definition shall apply *mutatis mutandis* to such new Successor Base Rate.

## Determination of Base Rate, Adjustment Spread and Base Rate Amendments

Without prejudice to Clause 19.3.2, upon a Base Rate Event Announcement,[[10]](#footnote-10) the Issuer may, if it is possible to determine a Successor Base Rate at such point of time, at any time before the occurrence of the relevant Base Rate Event at the Issuer’s expense appoint an Independent Adviser to determine a Successor Base Rate, the Adjustment Spread and any Base Rate Amendments for purposes of determining and calculating the applicable Base Rate. For the avoidance of doubt, the Issuer will not be obliged to take any such actions until obliged to do so pursuant to Clause 19.3.2.

If (i) a Base Rate Event has occurred or (ii) a Base Rate Event Announcement has been made and the announced Base Rate Event will occur within [six (6)][[11]](#footnote-11) months, the Issuer shall use all commercially reasonable endeavours to, as soon as reasonably practicable and at the Issuer’s expense, appoint an Independent Adviser to determine, as soon as commercially reasonable, a Successor Base Rate, the Adjustment Spread and any Base Rate Amendments for purposes of determining and calculating the applicable Base Rate.

If the Issuer fails to appoint an Independent Adviser in accordance with Clause 19.3.2, the Noteholders shall, if so decided at a Noteholders’ Meeting or by way of Written Procedure, be entitled to appoint an Independent Adviser (at the Issuer’s expense) for the purposes set forth in Clause 19.3.2.

The Independent Adviser shall also determine any technical, administrative or operational changes required to ensure the proper operation of a Successor Base Rate or to reflect the adoption of such Successor Base Rate in a manner substantially consistent with market practice (“**Base Rate Amendments**”).

Provided that a Successor Base Rate, the applicable Adjustment Spread and any Base Rate Amendments have been determined no later than prior to the relevant Quotation Day in relation to the next succeeding Interest Period, they shall become effective with effect from and including the commencement of the next succeeding Interest Period, taking into account any technical limitations of the CSD and any calculations methods applicable to such Successor Base Rate[[12]](#footnote-12).[[13]](#footnote-13)

## Interim measures

If a Base Rate Event has occurred but no Successor Base Rate and Adjustment Spread have been determined prior to the relevant Quotation Day in relation to the next succeeding Interest Period, the Interest Rate applicable to the next succeeding Interest Period shall be:

1. if the previous Base Rate is available, determined pursuant to the terms that would apply to the determination of the Base Rate as if no Base Rate Event had occurred; or
2. if the previous Base Rate is no longer available or cannot be used in accordance with applicable law or regulation, equal to the Interest Rate determined for the immediately preceding Interest Period.

For the avoidance of doubt, Clause 19.4.1 shall apply only to the relevant next succeeding Interest Period and any subsequent Interest Periods are subject to the subsequent operation of, and to adjustments as provided in, this Clause 19.

## Notices etc.

The Issuer shall promptly following the determination by the Independent Adviser of any Successor Base Rate, Adjustment Spread and any Base Rate Amendments give notice thereof to the Agent, the Issuing Agent and the Noteholders in accordance with Clause [25] (*Communications and press releases*) and the CSD, the notice shall also include information when the amendments will become effective.

## Variation upon replacement of Base Rate

No later than giving the Agent notice pursuant to Clause 19.5, the Issuer shall deliver to the Agent a certificate signed by the Independent Adviser and the CEO, CFO or any other duly authorised signatory of the Issuer confirming the relevant Successor Base Rate, the Adjustment Spread and any Base Rate Amendments, in each case as determined in accordance with the provisions of this Clause 19. The Successor Base Rate the Adjustment Spread and any Base Rate Amendments (as applicable) specified in such certificate will, in the absence of manifest error or bad faith in any determination, be binding on the Issuer, the Agent, the Issuing Agent and the Noteholders.

Subject to receipt by the Agent of the certificate referred to in Clause 19.6.1, the Issuer and the Agent shall, at the request and expense of the Issuer, without the requirement for any consent or approval of the Noteholders, without undue delay effect such amendments to the Finance Documents as may be required by the Issuer in order to give effect to this Clause 19.

The Agent and the Issuing Agent shall always be entitled to consult with external experts prior to amendments are effected pursuant to this Clause 19. Neither the Agent nor the Issuing Agent shall be obliged to concur if in the reasonable opinion of the Agent or the Issuing Agent (as applicable), doing so would impose more onerous obligations upon it or expose it to any additional duties, responsibilities or liabilities or reduce or amend the protective provisions afforded to the Agent or the Issuing Agent in the Finance Documents.

## Limitation of liability for the Independent Adviser

Any Independent Adviser appointed pursuant to Clause 19.3 shall not be liable whatsoever for damage or loss caused by any determination, action taken or omitted by it under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct. The Independent Adviser shall never be responsible for indirect or consequential loss.

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1. Vissa följdändringar

# 17. DECISIONS BY NOTEHOLDERS

## 17.4 Majority, quorum and other provisions

### 17.4.2 The following matters shall require the consent of Noteholders representing at least [sixty-six and two thirds (66 2/3)] / [seventy-five (75)] / [[●] ([●])] per cent. of the Adjusted Nominal Amount for which Noteholders are voting at a Noteholders’ Meeting or for which Noteholders reply in a Written Procedure in accordance with the instructions given pursuant to Clause 17.3.2:

[…]

1. a change to the Interest Rate (other than as a result of an application of Clause 19 (*Replacement of Base Rate*) or the Nominal Amount [(other than as a result of an application of Clause 10.4 ([*Voluntary/Mandatory*] *partial redemption*))];

# Amendments and waivers

The Issuer[, any other relevant Group Company] and the Agent (acting on behalf of the Noteholders) may agree in writing to amend and waive any provision in a Finance Document or any other document relating to the Notes, provided that the Agent is satisfied that such amendment or waiver:

[…]

1. is made pursuant to Clause 19 (*Replacement of Base Rate*);

# Communications and press releases

## Press releases

Any notice that the Issuer or the Agent shall send to the Noteholders pursuant to Clauses [5.4], [10.3 (*Voluntary total redemption*),] [10.4 (*[Voluntary/Mandatory] partial redemption*),] 10.5 (*Early redemption due to illegality [or tax event]*), [12.1.2,] 14.3, 17.2.1, 17.3.1, 17.4.13, 18.2 and 19.5 shall also be published by way of press release by the Issuer.

1. Detta är ett totalräntegolv, som alternativ till räntegolv på endast IBOR. [↑](#footnote-ref-1)
2. Emittenter som står under tillsyn i enlighet med förordning 2016/2011 om index som används som referensvärden (Benchmark regulation) kan vara skyldiga att tillämpa särskilda regler avseende tillämplig basränta. [↑](#footnote-ref-2)
3. Huruvida räntegolv ska inkluderas är en kommersiell fråga. Vid inkludering, överväg om räntegolvet är kompatibelt med eventuell räntehedge. Alternativt totalräntegolv framgår av definitionen Interest Rate. [↑](#footnote-ref-3)
4. Ytterligare överväganden kan behöva göras i förhållande till regulatoriskt kapital (t.ex. AT1 och förlagslån). [↑](#footnote-ref-4)
5. *Kommentar*: Att överväga om det ska vara ett beslut som ligger hos tillsynsmyndigheten. [↑](#footnote-ref-5)
6. Om obligationerna är denominerade i SEK. [↑](#footnote-ref-6)
7. Om obligationerna är denominerade i EUR. [↑](#footnote-ref-7)
8. Beräkningsmetod med hänsyn till produkttyp. [↑](#footnote-ref-8)
9. [Per datumet för färdigställandet av detta dokument har Svenska Bankföreningen den 9 juli 2021 publicerat en konsultation avseende rekommendation om ersättningsränta till STIBOR. Av den rekommendationen framkommer att den ränta som ersätter STIBOR om någon triggerhändelse utlöses rekommenderas vara SWESTR. Per datumet för färdigställandet av detta dokument har en arbetsgrupp initierad av bl.a. Europeiska Centralbanken den 11 maj 2021 publicerat en rekommendation om ersättningsränta till EURIBOR. Av den rekommendationen framkommer att den ränta som ersätter EURIBOR om någon triggerhändelse utlöses rekommenderas vara €STR.] [↑](#footnote-ref-9)
10. Ytterligare rekvisit för att frivilliga åtgärder ska få vidtas bör övervägas. Sådana rekvisit kan t.ex. bestå i krav på att tillämplig *Successor Base Rate* inte får medföra materiella ekonomiska fördelar för emittenten, en begränsning avseende under vilken tidsperiod frivilliga åtgärder får vidtas och/eller att bytet endast får ske i anledning av övergång till annan referensränta under emittentens derivatkontrakt. [↑](#footnote-ref-10)
11. Lämplig tidsperiod bör övervägas. [↑](#footnote-ref-11)
12. *Kommentar*: Synpunkter på mekaniken när ändringarna ska tillämpas tas tacksamt emot. Skrivningen är formulerad med syfte att skapa flexibilitet. [↑](#footnote-ref-12)
13. Om byte ska ske dessförinnan, t.ex. på grund av byte under emittentens derivatkontrakt, ska det klargöras här. [↑](#footnote-ref-13)