Guide to Private Credit in Europe

Austria, Belgium, France, Germany, Italy, Luxembourg, The Netherlands, Poland, Spain, Sweden, Switzerland, Türkiye, UK and Ukraine

TRANSACTIONAL POWERHOUSE

Leading and closing complex deals – every day

Welcome to the fourth edition of our Guide to Private Credit in Europe.

The European market for sub-investment grade corporate credit is now a permanent feature of the financial landscape. This has been driven in large part by the increased prominence of direct lenders as an alternative source of debt financing. A wide array of private debt products are now available to borrowers in addition to, or as an alternative to, traditional bank lending.

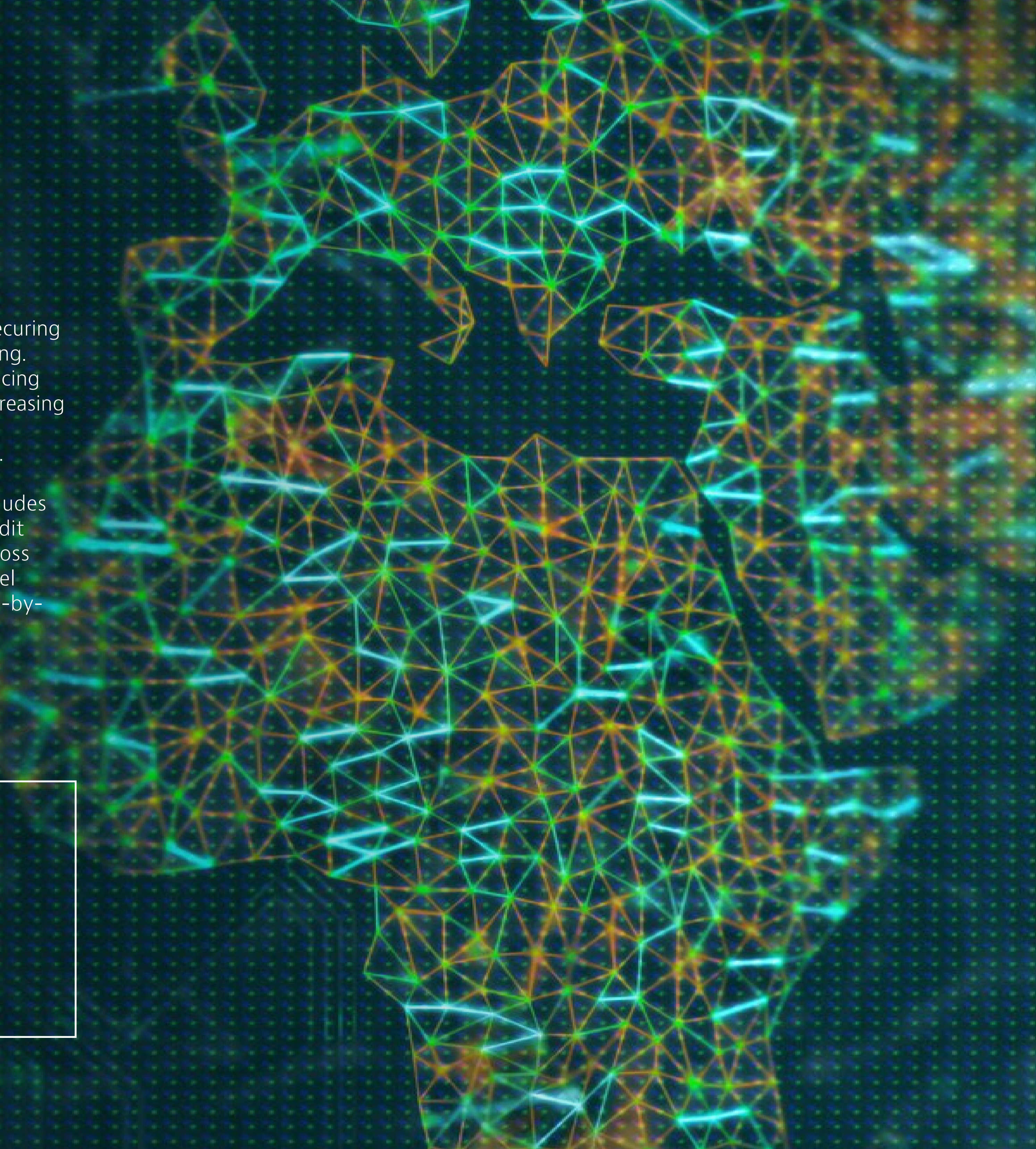
This dynamic looks set to continue against a backdrop of instability and uncertainty in the economic and political landscape which creates a challenging environment for the capital markets participants. Additional factors include legislative changes in domestic insolvency processes and ongoing moves toward further deregulation. Well advised corporates are encouraged to recapitalize or restructure without using traditional funding sources. With private capital lenders raising larger funds and having the flexibility to deploy across the credit spectrum on bigger transactions, they continue to challenge the traditional place of the capital markets by presenting sophisticated borrowers with a stable source of capital when more traditional lenders may be looking to retrench.

At a pan-European level, the recast European insolvency regulation overlay continues to seek to regulate forum shopping and to rebalance the interests of creditors and debtors in securing certainty of outcome when things go wrong. At the same time, political pressure is reducing flexibility to mitigate tax liabilities and increasing demand for regulatory transparency from counterparties across the capital structure.

This Guide to Private Credit in Europe includes key issues for consideration in private credit transactions and cross-border lending across 14 jurisdictions, providing both a high-level overview and a more detailed jurisdiction-by-jurisdiction analysis

Abbreviations

AIF	Alternative Investment Fund
DTT	Double Taxation Treaty
EU	European Union
RJ	Relevant Jurisdiction
UK	United Kingdom
WHT	Withholding Tax



Private Credit overview

Level of Materiality High Medium Low

Issue / Question	Austria	Belgium	France	Germany	Italy	Luxembourg	The Netherlands	Poland	Spain	Sweden	Switzerland	Türkiye	UK	Ukraine
Can a fund make a new loan to a borrower incorporated in this jurisdiction without a banking license?	No (with limited exceptions)	Yes	Yes (in certain circumstances)	No (with possible exceptions)	Only certain harmonised funds and under certain conditions	Yes (subject to limitations)	Yes	Yes (With conditions)	Yes	Generally yes (however exceptions may be applied)	Yes	Yes (with exceptions)	Yes	Yes (in certain circumstances)
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in the RJ?	No (with possible exceptions)	No (with possible exceptions)	No (with possible exceptions)	No (with possible exceptions)	In some cases	No	No (with possible exceptions)	No (With conditions)	No (with possible exceptions)	No	Yes	Yes	No	Yes
Could loans from a fund that owns the borrower of that loan incorporated in this jurisdiction be equitably subordinated?	Yes	No	No	Yes (subject to exceptions)	Yes	No	No	No (With conditions)	Yes	No	Yes	Yes (with exceptions)	No	Yes
Can interest, fees and remuneration be agreed freely between a lender and a borrower in this jurisdiction?	Yes (with limited exceptions)	Yes (except default interest)	Yes (with limited exceptions)	Yes (with limited exceptions)	No	Yes (except default interest)	Yes (with limited exceptions)	Yes (With conditions)	Yes (with limited exceptions)	Yes	Yes (with exceptions)	Yes (except compounded interest)	Yes (except default interest)	Yes (with exceptions)
Can a fund directly hold security granted by a security provider incorporated in this jurisdiction?	Yes	Yes	Yes (with limited exceptions)	Yes	Yes (with limited exceptions)	Yes	Yes (with limited exceptions)	Yes (With conditions)	Yes (with exceptions)	Yes (with limited exceptions)	Yes (with exceptions)	Yes	Yes	Yes
Can a company incorporated in this jurisdiction provide credit support for the acquisition of its or its holding companies' shares?	No (with limited exemptions)	Yes (with limited exceptions)	No (with limited exemptions)	Yes (except stock corporations)	No (with limited exceptions)	Yes (subject to using a SARL)	Yes (except public companies)	Yes (With conditions)	No	No	Yes (with exceptions)	Yes (with exceptions)	Yes (except public companies)	Yes
How strong in relative terms is credit support given by a company in this jurisdiction likely to be?	Weak to medium	Strong	Weak	Medium	Weak to medium	Strong	Strong	Strong	Weak to medium	Relatively weak	High in the case of direct security, low in the case of upstream or cross-stream security	Strong	Strong	Medium
Is the enforcement regime in this jurisdiction relatively lender friendly?	In most respects	Yes (except for security on real estate)	No	In most respects	No	Yes	Yes	Yes (With conditions)	No	Yes (with some exceptions)	Medium	No	Yes	Yes

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Austria

Can a fund make a new loan to a borrower incorporated in Austria without a banking licence?	No. The granting of a loan on a commercial basis to a borrower incorporated in Austria requires either an Austrian banking license or an EU passport. Therefore, unlicensed funds frequently consider: (i) acquiring fully funded term loans provided by a licensed entity; (ii) entering into a sub-participation; or (iii) using a licensed fronting bank. However, an unlicensed fund may provide a loan to a borrower incorporated in Austria if (besides the incorporation of the borrower) no nexus to Austria exists (i.e., negotiations, execution, payments and payment accounts are all outside of Austria, no security interests are created over assets located in Austria, and the business relationship was established by the borrower ("reverse solicitation")). Nevertheless, even in this case, there is a risk that the Austrian regulator could deem this an unlicensed lending activity carried out in Austria, which would violate Austrian licensing requirements and would have certain negative consequences, such as significant fines being imposed on the lending entity, loss of entitlement to interest/fees, and credit support being unenforceable. Given these undesirable consequences, lenders tend to adopt the more conservative approach outlined at the beginning of this section.
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in Austria?	Generally, no. There is no withholding tax for interest payments received by the fund, if the fund is either: (i) nontransparent from an Austrian tax perspective (i.e., the fund itself is subject to Austrian income tax); or (ii) transparent (i.e., the individuals who have invested in the fund are subject to Austrian income tax, but not the fund itself), but no individuals have invested in the fund. Further, if the interest is not subject to an effective tax rate of at least 15% at the level of the fund (or its shareholders, if the fund is qualified as transparent), the borrower may be prevented from deducting the interest payments for Austrian tax purposes. The assignment of a loan from the initial licensed lender to a fund generally triggers Austrian stamp duty of 0.8% of the purchase price for the transferred loan, which may be avoided by structuring the transaction appropriately. As for security interests, registration fees in relation to a mortgage over real estate are payable (1.2% of the registered amount), and de minimis notarial fees may apply to certain security interests. The tax authorities may reclassify debt into equity for tax purposes when they suspect an "abusive" situation, e.g., a level of equity far below the average of the relevant industry, and the debt is concluded on non-arm's length terms.
Could loans from a fund that owns the borrower of that loan incorporated in Austria be equitably subordinated?	Yes. Subject to certain exceptions, loans granted to a company by its shareholder that: (i) has a direct or indirect controlling interest in the company; (ii) owns at least 25% of the shares of the company; or (iii) otherwise has a dominant influence on the company while the company is in a "crisis" (as defined under the Austrian Equity Replacement Act (EKEG)), (a) may not be repaid until the company is reorganized, and (b) in case of an insolvency of the company having its center of main interests in Austria, are subordinated to the repayment claims of any other creditors of the company.
Can interest, fees and remuneration be agreed freely between a fund and a borrower in Austria?	Yes, unless such an amount is excessive and therefore violates certain mandatory provisions of Austrian law (gute Sitten). Whether this is the case has to be assessed on a case-by-case basis. However, case law suggests that an interest rate of 10% per annum should not violate these principles.
Can a fund directly hold security granted by a security provider incorporated in Austria?	Yes, although security is commonly granted in favor of a security agent or trustee.

Can a company incorporated in Austria provide credit support for the acquisition of its or its holding companies' shares?	Pursuant to Section 66a of the Austrian Stock Corporation Act (AktG), Austrian stock corporations (Aktiengesellschaften) are prohibited from granting security for the purpose of acquiring their own shares or the shares of their direct or indirect parents by a third party (i.e., a person other than the company or its subsidiaries). Subject to certain limited exceptions, transactions violating this restriction may be invalid vis-à-vis the creditor and could result in the management of the relevant company being liable for any damages arising out of the violation. According to certain Austrian legal scholars, the abovementioned restrictions also apply in relation to limited liability companies (Gesellschaft mit beschränkter Haftung). Furthermore, the strict Austrian Capital Maintenance Rules (Section 82 et seq. of the Austrian Act on Limited Liability Companies (GmbHG) and Section 52 et seq. of the Austrian Stock Corporation Act (AktG)) prohibit Austrian companies from distributing funds to their shareholders (i.e., reclaim of the paid-up value of share capital), except for: (i) the net distributable profits, as evidenced in the annual financial statements of the respective company (Bilanzgewinn); (ii) consideration in arm's length transactions; or (iii) repayment of equity in the case of a decrease in share capital (formal procedure to be followed). Consideration paid to shareholders (or an affiliate of a shareholder) must be at arm's length. A transaction is not considered to be at arm's length if: (i) from an objective point of view, the value of the consideration is disproportionate to the value received by the company in the transaction; and (ii) this preferred treatment results from the fact that the party to the agreement is also a shareholder of the company. These restrictions also apply to loans granted to (direct or indirect) shareholders or security provided in favor of (direct or indirect) shareholders. Any transaction in violation of the above is considered null and void, might result in liability (including criminal liability) of the managing directors of the company, and will have negative tax consequences.
How strong in relative terms is credit support given by a company in Austria likely to be?	An Austrian stock corporation or limited liability company may not provide upstream or cross-stream credit support if it does not receive: (i) "adequate consideration" (compared to what the company would have received on an arm's length basis); or (ii) other general corporate benefits (betriebliche Rechtfertigung) by entering into the transaction. Limitation language should be included, stipulating that any intragroup obligation is limited to an amount in line with Austrian capital maintenance rules.
Is the enforcement regime in Austria relatively lender-friendly?	Broadly, yes. Enforcement can usually be achieved by a secured creditor out of court and reasonably expeditiously. A lender can enforce its security interests once the secured obligations are due and payable and remain unpaid by the relevant debtor once notice has been given. This would, for instance, be the case where an agreed event of default under the loan agreement occurs and the lenders accelerate the loan — subject to certain mandatory grace periods that apply under Austrian law — or once insolvency proceedings are commenced over the assets of a debtor. The insolvency administrator of an Austrian borrower and/or lender may — subject to certain conditions set forth in the Austrian Insolvency Code (Insolvenzordnung) being met — challenge any transfer of rights, assets or any payments made up to 10 years before an application for the commencement of insolvency proceedings has been filed. Although this is rarely an issue in practice, where credit support has been provided at or shortly after the granting of a new loan to a solvent company, the risk of challenges if the company becomes insolvent or files an application to open insolvency proceedings would need to be assessed on a case-by-case basis.

Belgium

Can a fund make a new loan to a borrower incorporated in Belgium without a banking license?	Yes, nonconsumer or business-to-business lending is not regulated in Belgium, unless combined with the taking of deposits or other repayable funds from the public, in which case a license as a credit institution is required, or if it is funded through crowdfunding, which may trigger a license as a crowdfunding service provider (crowdfunding or crowdlending platform). Certain conduct of business rules and information requirements may apply for lending to small and medium-sized enterprises, as detailed in the act of 21 December 2013 concerning various provisions on financing for small and medium-sized enterprises. No licensing requirements are triggered in that case.
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in Belgium?	Belgium levies, in principle, a 30% withholding tax on interest payments, subject to numerous reliefs/exemptions under both Belgian domestic law and Belgian double tax treaties. A withholding tax exemption applies for interest paid to Belgian companies and credit institutions established in the European Economic Area. Interest deduction limitation rules (e.g., 30% EBITDA rule) may apply at the level of the Belgian borrower with certain tax provisions specifically targeting payments to tax havens. Registration duties will be payable for certain types of security. Registration and mortgage duties for a real estate mortgage are set at 1.3% of the secured amount. For this reason, the amount secured by a mortgage will be limited and a significantly higher amount will be covered by a so-called mortgage mandate (which is a power of attorney to create additional mortgages). For a pledge on movable assets, the registration fee can range between EUR 25 and EUR 610 (depending on the secured amount).
Could loans from a fund that owns the borrower of that loan incorporated in Belgium be equitably subordinated?	No.
Can interest, loans and remuneration be agreed freely between a fund and a borrower in Belgium?	Yes, if there are certain restrictions regarding the following (i) default interest; (ii) capitalization of interest/payment in kind interest (with exceptions); and (iii) prepayment penalties/break costs.

Can a fund directly hold security granted by a security provider incorporated in Belgium?	Yes. Although not required, security is usually granted in favor of a security agent holding the security on behalf of all beneficiaries to facilitate future transfers and enforcement. For security on real estate, the security agent will hold the security using a parallel debt structure.
Can a company incorporated in Belgium provide credit support for the acquisition of its or its holding companies' shares?	Credit support for the acquisition of its holding companies' shares is (in principle) possible, but not for the acquisition of its own shares. Financial assistance rules prohibit a Belgian company to advance funds, make loans or provide security with a view to the acquisition of its shares by a third party. The rules on financial assistance only apply to the target company itself and, in principle, not to that target company's direct or indirect subsidiaries or any other affiliate of the target company. A whitewash procedure is technically possible, but in practice is rarely used.
How strong, in relative terms, is credit support given by a company in Belgium likely to be?	Strong. Credit support by a Belgian company must pass the corporate interest test. This condition is usually fulfilled for downstream credit support. Upstream and cross-stream credit support may require a more detailed analysis. To help such an analysis, guarantee limitations may have to be included in the documentation. In addition, the articles of association will need to permit the giving of a guarantee or security and can usually be amended to include this if they do not already do so.
Is the enforcement regime in Belgium relatively lender-friendly?	Yes. The lender generally has the right to enforce the security without prior court authorization and without a notice period (in case of security over shares or cash) or with a limited notice period of 10 days (reduced to three days in case of assets subject to rapid loss of value). The borrower and the lender may agree that the lender has the right to not only sell but also appropriate (i.e., acquire ownership over) the secured assets subject to an agreed valuation mechanism. The one exception is enforcing security on real estate, which is a cumbersome and lengthy process. In certain instances, the rights to enforce security or other rights may be suspended upon the occurrence of a bankruptcy or a judicial reorganization. After a bankruptcy, the rights to enforce security or other rights may be exercised by the trustee in bankruptcy.

France

Can a fund make a new loan to a borrower incorporated in France without a banking licence?	Yes, under certain conditions in limited cases. If these conditions are not met, an unlicensed fund may seek to utilize a bond-financing structure as an alternative. In principle, due to the French banking monopoly (monopole bancaire) regulation, only duly licensed credit institutions and certain other financial entities (including EU-passported institutions) may perform banking transactions in France on a regular basis and for financial gain. Exceptions to this requirement have been adopted to make this market more accessible to licensed investment funds. The financial entities now permitted to grant loans include the following: ▪ Certain existing French alternative investment funds, including (i) professional specialized investment funds (fonds professionels spécialisés or FPSs) and (ii) retail venture capital funds (fonds communs de placement dans l'innovation or FCPIs) ▪ EU alternative investment funds that are authorized to use the ELTIF label pursuant to the ELTIF Regulation (subject to applicable legal and regulatory provisions) ▪ Organismes de financement spécialisés (OFSs) that are allowed to grant loans subject to certain conditions, further detailed by two implementation decrees dated 19 November 2018 Authorized unmatured professional receivables may also be acquired from French credit institutions and certain financial entities by a similar non-French entity (subject to certain criteria being met) as an alternative to direct lending (especially for offshore and unlicensed funds). Unlicensed investment funds willing to operate in the French loan market outside of a direct-lending structure may seek to resort to sub-participation and fronting structures, but such structuring needs to be made in compliance with French banking monopoly requirements. For unlicensed investment funds granting direct loans in France to a French borrower entity, the more common and easiest option is to resort to a bond structure (which is not a regulated activity for French banking monopoly purposes). These bonds may be structured to fully reflect the terms of term-leveraged loans, provided they bear the fundamental characteristics of debt securities (for example, they must be transferable by delivery).
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in France?	No. Withholding tax generally applies to interest payments made by French-resident borrowers, unless the payment is made in a non-cooperative state or territory (NCST), in which case a 75% withholding tax may apply (subject to double tax treaty provisions). The list of NCSTs is updated on an annual basis by the French tax authorities. Since 1 December 2018, the relevant provisions of the French Tax Code have included a reference to the EU "black list" of non-cooperative tax jurisdictions. No stamp duty or registration taxes generally apply to lending activities. However, certain types of security — particularly those over real estate assets (e.g., mortgages) — may trigger security registration fees and notarial fees. Various interest limitation rules (thin capitalization rules, anti-hybrid rules, general interest deduction limitation rules, etc.) may restrict the tax deductibility of the interest payable by French corporate borrowers. Both the anti-hybrid rules and general interest deduction limitation rules were substantially modified by the Finance Act for 2019 and 2020, transposing into French law the EU/2016/1164 and EU/2017/952 directives (known as ATAD 1 and ATAD 2). In certain situations, non-deductible interest at the level of the borrower may be re-qualified as constructive dividends, subject to dividend withholding tax at a rate equivalent to the French standard corporate income tax (CIT) rate (28% for 2020 (75% in the case of an NCST)) and subject to double tax treaty provisions.

Could loans from a fund that owns the borrower of that loan incorporated in France be equitably subordinated?	No.
Can interest, fees and remuneration be agreed freely between a fund and a borrower in France?	Yes, although interest can only be compounded on a yearly basis
Can a fund directly hold security granted by a security provider incorporated in France?	Yes, although certain security interests cannot benefit non-licensed institutions (e.g., daily assignment, pledge over stocks, etc.). Security will typically be granted directly to the lenders, represented by a security agent, and it may be granted to the security agent, due to a French law reform dated October 2017.
Can a company incorporated in France provide credit support for the acquisition of its or its holding companies' shares?	No. Neither a société anonyme (SA) nor a société par actions simplifiee (SAS) (being the two most common corporate forms used in leveraged/acquisition finance structures) is able to provide a loan or credit support with a view to financing the acquisition of its own shares. Furthermore, it is generally accepted that this prohibition extends to loans or credit support provided with a view to financing the acquisition of the holding companies' shares of the relevant entity. This prohibition does not apply to a société a responsabilité limitée (SARL). However, the granting of a loan for the purpose of the direct or indirect acquisition of its own shares may, in any event, trigger corporate benefit issues, regardless of the form of corporation involved.
How strong, in relative terms, is credit support given by a company in France likely to be?	It is weak. French law generally limits the ability of a company to only provide credit support to the extent that it is able to show a direct financial benefit deriving from such action. This affects upstream credit support, though is also relevant to cross-stream credit support and (to a lesser extent) downstream credit support. Therefore, guarantee limitation language is frequently included in documentation. This issue is avoided to the extent that the loan is made available directly or indirectly through the on-lending of intercompany loans to a French company. In such cases, limitation language should be included in the relevant documentation, setting out that the payments to be made by the relevant company are limited to an amount in line with French capital maintenance rules.
Is the enforcement regime in France relatively lender-friendly?	No. Enforcement can usually be achieved by a secured creditor out of court (other than in the case of enforcement of contractual real estate mortgages (hypothèques conventionnelles)) and relatively expeditiously, unless challenged by a debtor, which can make the process considerably longer. However, a lender can only exercise rights of security enforcement after a payment default. Acceleration of the debt following another contractual default may be used to achieve a payment default, albeit subject to the general principles of French law. These include a requirement to act in good faith and to take reasonable steps to attempt to resolve the underlying default through means other than acceleration. Hardening periods, which are, in principle, relevant for up to 18 months following a transaction by a company, rarely present an issue in practice if credit support has been provided for a new loan made no later than the time of funding by a solvent company. If granted after funding, any mortgage or pledge will be set aside if granted during the suspect period, which could be as early as 18 months prior to the judgment opening the insolvency proceedings.

Germany

Can a fund make a new loan to a borrower incorporated in Germany without a banking licence?	Under German law, the granting of loans on a commercial basis to business entities (and consumers) requires a banking license under the German Banking Act (*Kreditwesengesetz* or KWG), a European passport or an exemption from German license rules. The license requirement arises not only when a loan is originated, but also when the term of an existing loan is extended or when the interest rate is changed as part of a loan restructuring. In relation to non-German funds, the German banking license requirement applies if the lender addresses itself to the German market via advertisements, internet offerings, personal visits, emails, cold calls or the use of intermediaries. In contrast, "passive services," i.e., where the lender is contacted by the borrower or the borrower's adviser or by an arranger in the course of a loan syndication, do not trigger a licensing requirement. This has enabled non-German loan originating funds to operate at least on a limited basis in Germany. For German funds, new legislation enacted in 2016 amended the KWG to exempt German alternative investment funds (AIFs) and their German fund managers (AIFMs) from the banking license requirement. European Union (EU) AIFMs and EU AIFs are also exempt. However, their counterparts from outside the European Economic Area must continue relying on the "passive services" exemption. Other alternatives include: (i) acquiring fully funded term loans that have been made available by a licensed person, (ii) using a licensed "fronting bank," or (iii) using an affiliate of the German borrower established in a jurisdiction that does not require a banking license as an intermediate borrower.
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in Germany?	No. Interest payments on commercial loans are not subject to withholding tax in Germany. As such, making a payment to a foreign lender does not cause any particular German tax problems, with two main exceptions: (i) if the loan is hybrid (e.g., convertible into equity), profit related or similar, or in the case of certain (registered) bonds, German withholding tax is levied (although double tax treaties with jurisdictions in which funds are often situated can, for example, after a refund/exemption of withholding tax, reduce the ultimate quantum of withholding tax); or (ii) in case of income from residents of a so-called non-cooperative jurisdiction from financial relationships (Finanzierungsbeziehungen), German withholding tax is levied as a result of the application of the German Tax Haven Defense Act (Steueroasen-Abwehrgesetz). If the loan is secured by German real estate, a foreign lender becomes subject to limited tax (beschränkte Steuerpflicht) in Germany in relation to its interest income (albeit subject to the terms of any favorable double tax treaty). The granting of security interests on real estate and the pledging of shares in a *Gesellschaft mit beschränkter Haftung* (GmbH) requires the payment of certain fees, particularly notarial fees calculated (in part) by reference to the nominal amount of the secured claim or, in the case of share pledges, the value of the collateral (if lower). From a borrower's perspective, if a lender is also a shareholder of the borrower or otherwise affiliated with the shareholder, other restrictions may need to be considered to avoid unfavorable tax treatment on the basis of disguised dividends or the German interest barrier rules.
Could loans from a fund that owns the borrower of that loan incorporated in Germany be equitably subordinated?	Yes. Subject to certain exceptions, loans granted by a shareholder holding more than 10% of the total equity of the borrowing company are subordinated to the repayment claims of any other creditor in the event of formal insolvency of that company. The same applies in the case of indirect shareholdings, provided the lender has control over the direct shareholder of the borrowing company, or where the lender and the direct shareholder are under the control of a common parent company. In these cases, security interests granted (up to 10 years prior to the insolvency filing) and principal/interest repaid/paid (up to one year prior to the insolvency filing) can be avoided or clawed back.

Can interest, fees and remuneration be agreed freely between a fund and a borrower in Germany?	Yes, unless such an amount violates usury/immoral lending limitations (which, in practice, very rarely present an issue). Certain restrictions also apply in relation to (i) the charging of interest on PIK interest (which can usually be addressed by appropriate drafting) and (ii) call protection provisions (e.g., make-whole premiums or money multiples) where the underlying loan has a floating interest rate (though this issue is often mitigated by using English or Luxembourg law to govern such provisions).
Can a fund directly hold security granted by a security provider incorporated in Germany?	Yes. Accessory security interests are customarily granted for the benefit of all creditors directly, whereas non-accessory security interests can only be held by the security agent. Parallel debt and future pledgee provisions support credit protections for incoming creditors after the execution of the agreement documenting accessory security interests.
Can a company incorporated in Germany provide credit support for the acquisition of its or its holding companies' shares?	Yes. Financial assistance is permitted to be given by a German limited liability company (GmbH), save as specified below and subject to satisfying maintenance of capital rules (see below). A restriction applies in the case of financial assistance (granting loans or collateral) by a German stock corporation (*Aktiengesellschaft*), as neither it nor any of its subsidiaries is permitted to grant such assistance. However, there are mitigants that are customary to eliminate such restrictions. In practice, this is rarely an issue, as stock corporations — compared to limited liability companies — are not often found in leveraged/acquisition finance structures.
How strong, in relative terms, is credit support given by a company in Germany likely to be?	It is relatively weak. While there are no limitations on downstream credit support, a company must not provide upstream/cross-stream credit support if doing so would cause its registered share capital (*Stammkapital*) to be (further) depleted. Therefore, limitation language is often included in documentation, limiting the credit support to an amount in line with German capital maintenance rules.
Is the enforcement regime in Germany relatively lender-friendly?	In most respects, yes, but it is not as lender-friendly as, for example, UK or Luxembourg. Enforcement over certain assets can be achieved by a secured creditor without court involvement, and reasonably expeditiously. However, the exact enforcement procedure varies according to the security instrument granted. For example, share pledge enforcements generally require a public auction process, which is time consuming. However, in most of the distressed situations, a consensual double-sided trusteeship is used to eventually enforce creditor rights in relation to shares. A lender can, in general, only exercise rights of security enforcement after a payment default. The acceleration of the debt following another contractual default may be used to achieve a payment default. Hardening periods, though principally relevant for up to 10 years following a suspect transaction by a company, rarely present an issue where a new loan is provided to a solvent company.

Italy

Can a fund make a new loan to a borrower incorporated in Italy without a banking licence?	Yes. Italian and EU alternative investment funds may grant loans to third parties for business purposes in Italy under certain conditions. However, in general, lending remains a reserved activity that can be carried out only by certain entities, including EU licensed banks, certain Italian (and, if part of a banking group, EU) licensed financial intermediaries and, in certain cases, insurance companies, Italian securitization vehicles and Italian and EU alternative investment funds that are licensed in Italy as credit funds. Funds can also acquire credit exposures to Italian entities by investing in notes issued by them (or, where preferable, in notes that securitize such exposures) outside of the above restrictions. Such instruments can have terms largely similar to those of loans typically made by credit funds.
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in Italy?	Collective investment schemes established in Italy are not subject to withholding taxation upon interest. Collective investment schemes established outside Italy may be subject to withholding tax at reduced rates if entitled to tax treaty benefits. However, no withholding tax applies to interest and other proceeds arising from medium- to long-term loans (being those having a tenor of over 18 months) granted by EU licensed banks, insurance companies and white-listed institutional investors subject to regulatory supervision. For bonds issued by Italian enterprises, no withholding tax applies where they are held by white-listed institutional investors and such securities are able to satisfy certain criteria. Stamp duties may be applicable to security documents. For real estate, these can be significant (2.5% on the secured amount). An optional 0.25% substitute tax on the entire amount of the financing can be paid in lieu of taxes assessed on each individual security document; however, this is only available for medium- to long-term loans granted by EU licensed credit institutions, collective investment schemes (established in the EU or in a white-listed EEA country), EU insurance companies and Italian securitization vehicles. The substitute tax is also available where lending takes place in the form of notes.
Could loans from a fund that owns the borrower of that loan incorporated in Italy be equitably subordinated?	Yes, if in the circumstances it would be deemed reasonable for a shareholder to provide equity to the borrower instead of debt or where there is an excessive imbalance between debt and equity. There are no clear guidelines as to what constitutes reasonableness in this context.
Can interest, fees and remuneration be agreed freely between a fund and a borrower in Italy?	No. Usury limits set by the Ministry of Economy and Finance (Ministero dell'Economia e delle Finanze) apply depending on the type of financing. All types of remuneration are counted to determine whether the loan is usurious. Capitalization of interest is also only allowed in limited circumstances, including, among others, where interest accrues on interest only in relation to periods of six months or longer and only upon an agreement that is made after such interest has fallen due.
Can a fund directly hold security granted by a security provider incorporated in Italy?	Yes; however, the Italian privilegio speciale security interest (akin to a floating charge) is only available to (i) banks making available loans with a tenor of over 18 months, and (ii) investors in notes. More generally, to benefit from most forms of security, each creditor must be individually identified as a security holder (which means notarial costs may become payable on syndication/transfer).

Can a company incorporated in Italy provide credit support for the acquisition of its or its holding companies' shares?	Generally, Italian entities are restricted from providing credit support for the debt used to finance the direct or indirect acquisition or subscription of their shares. However, Italian public limited companies (*società per azioni* (SpA)) are allowed to provide credit support for acquisition debt if it complies with certain whitewash procedures (largely untested as a result of the widespread use of the merger route, see below). To overcome such a prohibition (or, in relation to Italian SpAs, the need to follow the whitewash procedure), where the target is an Italian entity, a merger between an Italian newco borrower and Italian target is often used. Once completed (typically takes four to eight months), the Italian entity can provide credit support (subject to corporate benefit laws, see below).
How strong, in relative terms, is credit support given by a company in Italy likely to be?	Italian corporate law limits a company's ability to provide credit support to cases where it is able to show an effective benefit deriving from such action. This may take various forms, including a fee or being redirected some of the loan proceeds. To partially mitigate the issue, limitation language is also often included in the support documentation.
Is the enforcement regime in Italy relatively lender-friendly?	Italy is a debtor-friendly jurisdiction. Enforcement is usually under court direction and supervision, and can take several years (with real estate enforcements taking longer than non-real estate enforcements); the debtor is afforded ample opportunities to challenge the creditor's rights. However, the situation has improved over the last few years due to several reforms. In principle, a lender can exercise rights of acceleration and (depending on the cases, with or without a judgment) security enforcement following the occurrence of any breach that is so characterized contractually, though a judge could limit operation of such clauses or award damages for misuse of contractual protection. The law generally limits the appropriation of the debtor's assets outside of judicial procedures, the typical case being the pactum commissorium, an agreement whereby an asset becomes the property of the creditor if the debt is not repaid, which is in itself null and void. However, similar protection can be achieved through the pactum marcianum, which provides that the asset is evaluated and the debtor is entitled to receive back any equity remaining in it after repayment of the debt. Pactum marcianum has recently been introduced into Italian legislation in consumer mortgages but case law has always, and especially in recent times, upheld it in general. In addition, in recent years, a new form of pledge was implemented allowing companies to pledge all their existing and future acquired movable assets without requiring dispossession. If so specified in the pledge agreement, the secured creditor may be allowed to appropriate the pledged assets, if the agreement sets out the criteria for their valuation.

Luxembourg

Can a fund make a new loan to a borrower incorporated in Luxembourg without a banking licence?	Yes, provided that the fund qualifies as an alternative investment fund (AIF) within the meaning of the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on EU on Alternative Investment Fund Managers (AIFMD). Loan origination, participation and acquisition are permissible activities for Luxembourg-domiciled AIFs under the law dated 12 July 2013 on alternative investment fund managers ("**AIFM Law**"), and specific product laws and regulations governing the various fund vehicles designated for AIFs. This applies also to the 100% special purpose vehicle owned by the AIF. However, the alternative investment manager (AIFM) (or the AIF when self-managed) should ensure that it addresses all aspects and risks of such activity and should have proper organizational and governance structures, and the necessary expertise and experience in origination activity, combined with an appropriate technical and human resources focusing on credit and liquidity risk management, concentration and risk limitation, as well as clear policies regarding assets and investors. AIFMD 2 will restrict the conditions under which loan-originating funds are permitted when those fund are open ended. For vehicles that do not qualify as AIFs, such as a holding company, assuming that the loan (i) is granted to a limited circle of previously known persons, or (ii) it is the only loan granted by the fund/special purpose vehicle over its lifetime. The Commission de Surveillance du Secteur Financier (CSSF) considers that where loans are granted to a limited circle of previously determined persons, they are not granted to the public and, accordingly, the concerned lending activity does not require a banking license. Moreover, the CSSF considers that the credit activity is not directed at the public where (i) the nominal value of the loan amounts to at least EUR 3 million and (ii) the loans are granted exclusively to professionals within the meaning of the Luxembourg Consumer code. In all other cases, a license is required.
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in Luxembourg?	No. In principle, interest paid by a company incorporated in Luxembourg is not subject to withholding tax.
Could loans from a fund that owns the borrower of that loan incorporated in Luxembourg be equitably subordinated?	No.

Can interest, fees and remuneration be agreed freely between a fund and a borrower in Luxembourg?	Yes. However, Luxembourg courts may reduce default interest and other amounts to the extent they could constitute a penalty.
Can a fund directly hold security granted by a security provider incorporated in Luxembourg?	Yes. However, security is often granted in favor of a security agent or security trustee as authorized by the Luxembourg collateral law.
How strong, in relative terms, is credit support given by a company in Luxembourg likely to be?	It is strong. As is the case for every other transaction concluded by a Luxembourg company, the security must pass the corporate interest test. This condition is usually fulfilled for downstream credit support. Upstream and, to a certain extent, cross-stream credit support require a more detailed analysis. Guarantee limitation language may be included in the documentation to support the analysis. The granting of credit support must also be within the corporate objects of the company, it being understood that otherwise, such objects should be amended to include it.
Is the enforcement regime in Luxembourg relatively lender-friendly?	Yes. The enforcement process is very straightforward in Luxembourg, which is a creditor-friendly jurisdiction. Regarding pledges, the pledgee is notably allowed to appropriate the pledged assets without any further formality and without having to wait for the determination of the price of such assets. Luxembourg pledges can be enforced without the need to appoint any third party, apply to court or satisfy any other formality. Subject to the EU insolvency regulation, foreign laws relating to reorganization measures, liquidation proceedings, attachments or other measures or proceedings are not applicable to, and generally do not affect, the enforcement of pledge agreements granted by a Luxembourg company. Enforcement measures are very difficult to challenge in Luxembourg, except most notably, the following: - In cases of fraud - If the valuation of the pledged assets is challenged by the counterpart In relation to the second point above, even where the valuation is challenged, Luxembourg courts are reluctant to delay or block the enforcement of the pledge on this basis. Luxembourg courts are otherwise usually not involved in the enforcement process of the Luxembourg pledge agreements.

The Netherlands

Can a fund make a new loan to a borrower incorporated in The Netherlands without a banking license?	Yes. No license requirements apply provided that: (i) the fund itself is either funded via equity, or with debt provided by lenders that do not qualify as "the Public";* and (ii) the lending activity is only directed at professional market parties/borrowers (no consumer credit). *Under the Dutch Act on Financial Supervision, a license is required to conduct business of a credit institution and attract repayable funds from the public. "Credit institution," "repayable funds" and "public" are defined in European law (CRR). However, there is limited official European guidance regarding the key elements of these definitions. The Dutch government has stated that until such guidance is available at a European level, the former Dutch interpretation applies, allowing parties to attract repayable funds with a minimum amount of EUR 100,000 or its equivalent in another currency.
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in The Netherlands?	**Withholding tax (WHT) on interest** The Netherlands may only levy WHT on certain (deemed) payments of interest at a tax rate of 25.8% if the recipient of such payments is: (i) not an individual and (deemed to be) affiliated (gelieerde) with the Dutch company; and (ii) the situation is (deemed to be) abusive. If the fund and none of its participants have a "controller interest" in the borrower, there should be no interest WHT on payments to the fund. **WHT on dividend** There should be no dividend WHT on payments of interest or principal to the fund if the loan granted by the fund is: (i) entered into under arm's length terms (which is by definition the case if the fund and its participants are not affiliated with the borrower); and (ii) not requalified into equity for Dutch tax purposes. A requalification into equity may occur if the following cumulative conditions are met: (a) the loan is subordinated; (b) the interest is profit related; and (c) the loan has no maturity date or it has a maturity date of 50 years or more. **Other taxes and duties** No other Dutch turnover tax, transfer tax or taxes of a documentary nature, such as capital tax, stamp or registration tax, or duty, is payable in The Netherlands (only the "de minimum" registration fees for vesting certain types of security (e.g., mortgage) are payable).
Could loans from a fund that owns the borrower of that loan incorporated in The Netherlands be equitably subordinated?	No. Dutch law does not recognize the concept of equitably subordination as such.
Can interest, fees and remuneration be agreed freely between a fund and a borrower in The Netherlands?	Yes, assuming the terms remain reasonable. If a Dutch tax effect is envisaged, the terms need to be entered into at arm's length (e.g., the interest regarding remuneration should be considered at arm's length).

Can a fund directly hold security granted by a security provider incorporated in The Netherlands?	Yes, and security may also be held by a security agent using a parallel debt structure. Please note that the Dutch system of security interests is prescribed.
Can a company incorporated in The Netherlands provide credit support for the acquisition of its or its holding companies' shares?	Under Dutch law, there are no restrictions for a Dutch company providing security/guarantees to secure liabilities incurred in relation to the acquisition of its or its holding companies' shares, as long as the target is a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*). If the target is a public company with limited liability (*naamloze vennootschap met beperkte aansprakelijkheid*), the company is restricted from providing security/guarantees for debt used to acquire shares in its capital (and the direct or indirect subsidiaries are prohibited in the same way). To address this, there are various workarounds. For example, the public company with limited liability can be converted into a private company with limited liability, after which the restrictions will no longer apply.
How strong, in relative terms, is credit support given by a company in The Netherlands likely to be?	It is strong. It is very common for companies to grant credit support in The Netherlands in an efficient and effective manner (which is also one of the main reasons why Dutch funding structures, like the double Dutchco, are well-known structures within Europe). Directors must assess whether granting security and providing a guarantee is in the best corporate interest (*vennootschappelijk belang*) of the company and whether such acts fall within the scope of its objects clause (*doelomschrijving*). However, the granting of security rights and/or guarantees, which are determined not to be in the corporate interest of the company, or which conflict with the objectives of a company, does not affect the validity of the security rights/guarantees from a lender's perspective per se, but the granting of security transgressing the objects of a company may be avoided by that company if the fund knew or should have known that such transgression had occurred.
Is the enforcement regime in The Netherlands relatively lender-friendly?	Yes, the Netherlands is considered a very lender-friendly jurisdiction, where lenders can efficiently and effectively enforce their security rights. A security right can only be enforced by means of: (i) a public auction; or (ii) a private sale with the consent of the court. Enforcement by public auction takes between approximately two and six months. For enforcement by way of a private sale, the process requesting leave from the court will take approximately two to six weeks, although preparatory steps for the private sale, such as negotiations with potential bidders and preparing a valuation report, mean the process might take longer. A lender can generally only exercise rights of security enforcement after a payment default. Acceleration of the debt following another contractual default may be used to achieve a payment default provided that, in relation to the other contractual default, the security provider is in default (verzuim). Hardening periods may apply and voluntary legal acts may be challenged if they are generally prejudicial to the creditors of the security provider. For one year from the granting of initial security rights and guarantees, knowledge of a disadvantage is statutorily presumed present in the case of creation of security for claims that are not yet due and certain other circumstances. After that, acts may still be challenged, although the bankruptcy trustee or (prior to bankruptcy) creditor must prove that this disadvantage was known to the security provider and the security holder.

Poland

Can a fund provide a new loan to a borrower incorporated in Poland without a banking license?	Yes, provided that such loans are not made available to consumers, and they do not formally constitute credit loans, which are considered a "banking operation" under mandatory provisions of Polish law and may only be carried out solely by licensed banks. The financing is usually extended by means of a standard loan (pożyczka) or bond (obligacje). Alternatively, and subject to certain limitations, a fund may acquire a fully funded term loan, originally made available by a licensed bank. In practice, non-Polish private debt funds and their lending vehicles typically provide loans under English law-governed facility agreements. AIFs established in Poland as closed-end investment funds (FIZ) may extend loans up to an amount not higher than 50% of the value of the fund's assets, provided that to one entity does not exceed 20% of the value of the fund's assets. It is expected that the national legal framework in relation to loan-originating activities applicable to funds in Poland will be significantly amended in connection with the implementation of AIFMD II (Directive 2024/927/EU). Pursuant to AIFMD II, new measures should be applicable from 16 April 2026.
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in Poland?	No, though certain tax aspects need to be taken into account. Interest earned in the territory of Poland is subject to withholding tax of 20%, with an option to apply withholding tax preferences on the basis of EU directives or relevant double tax treaties (provided that the fund is treated as a taxpayer entitled to such benefits or a treaty-protected entity). The borrower paying the interest acts as the withholding tax remitter obliged to calculate and collect the tax. Before the application of any relief-at-source, the borrower should hold evidence demonstrating that it has ensured, with due care, that all conditions of applying the preference have been met (including that the recipient is the beneficial owner of interest and conducts actual business activity). Additional withholding tax restrictions apply to interest paid between related entities. In this case, the pay-and-refund mechanism may apply, under which the tax remitter (borrower) is obliged to withhold tax at the default tax rate (20%) if the interest amount in total exceeds PLN 2 million (approximately EUR 480,000), regardless of preferences that are provided by EU directives or double tax treaties (with the option to apply for a tax refund). The pay-and-refund mechanism does not need to be applied if a special tax opinion is obtained from the tax office or if the tax remitter files a special statement with the tax office. Certain forms of credit support may also entail registration fees or stamp duty, depending on their type.
Could loans from a fund that owns the borrower of that loan incorporated in Poland be equitably subordinated?	Polish law does not recognize equitable subordination. However, statutory subordination rules related to insolvency proceedings may apply and such loans may be treated on par with shareholder equity.
Can interest, fees and remuneration be agreed freely between a fund and a borrower in Poland?	Yes, subject to certain limited exceptions related to the (i) maximum amount of interest and (ii) capitalization of interest. Under mandatory provisions of Polish law, the maximum amount of interest resulting from a loan may not exceed twice the amount of statutory interest on an annual basis. As of the date of this guide, the maximum rate of interest equals 17.5% Similar rules apply to the maximum amount of default interest, which may not exceed twice the amount of statutory default interest on an annual basis. As of the date of this guide, the maximum rate of default interest is 21.5%. Additional fees or remuneration should reflect real services being provided to avoid recharacterization as hidden interest, beyond the maximum limits referred to above. Default interest may only be capitalized by a post-maturity agreement between the parties or following a lawsuit.
Can a fund directly hold security granted by a security provider incorporated in Poland?	Yes. Certain exceptions relating to the specific nature of security need to be taken into account (e.g., financial pledges that may be established in favor of financial institutions). While not mandatory, security is typically granted to a security agent who holds it on behalf of all beneficiaries, making future transfers and enforcement easier. A parallel debt structure is often seen on cross-border matters.
Can a company incorporated in Poland provide credit support for the acquisition of its or its holding companies' shares?	Yes, subject to financial assistance rules. Providing credit support for acquiring its own shares is generally permissible for limited liability companies (spółka z ograniczoną odpowiedzialnością). Polish financial assistance rules allow joint-stock companies (spółka akcyjna) to fund, including by means of making loans or providing security for the acquisition of its own shares by a third party, subject to a whitewash procedure (essentially by means of creating a reserve capital out of retained profits, if available). These rules may, in certain scenarios, not only apply to the target company itself but also to its subsidiaries.
How strong, in relative terms, is credit support given by a company in Poland likely to be?	It is strong. Upstream, downstream and cross-stream guarantees are fairly common, subject to corporate limitations that may require consent from specific corporate bodies. From a tax perspective, in a case where the financing arrangement is concluded between related parties, the remuneration should follow the general arm's length rule to comply with transfer pricing regulations. Notably, Polish transfer pricing regulations also contain a "safe harbor" rule for financing arrangements (i.e., loans, credits and bond issues) whose terms are in line with the decree of the Ministry of Finance (the decree is updated periodically). In case of such arrangements, transfer pricing documentation does not need to be prepared, and the terms should not be questioned by the tax authorities.
Is the enforcement regime in Poland relatively lender-friendly?	Generally, yes. A secured creditor can usually enforce security without obtaining a court order if the security agreement contains one of the statutory out-of-court enforcement methods (e.g., private sale, sale by public auction or appropriation). Generally, a secured claim (or its part) needs to be due and payable (with certain exceptions) and a notice period may sometimes be required. Enforcement of security over real estate is more cumbersome and lengthy, since judicial involvement is required. Security structures, including real estate (held either directly or indirectly by means of share security over companies holding real estate), should be thoroughly analyzed, as additional limitations may apply.

Spain

Can a fund make a new loan to a borrower incorporated in Spain without a banking license?	Yes (other than in relation to loans to consumers). Under Spanish law, lending activity funded from the taking of deposits or other repayable funds from the public, in each case in the EU, requires a banking license. If it is funded from another source, a banking license is not required.
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in Spain?	No. However, depending on the jurisdiction of incorporation of the fund, withholding tax may be an issue in Spain when it comes to Spanish-source interest payments. Assuming the fund is tax resident in the EU, no Spanish-source withholding tax on interest payments would apply. However, for funds that are tax resident outside the EU, relevant double tax treaty rates should be considered and, if none are applicable, Spanish-source withholding tax on interest payments will be levied by the borrower. With effect from 20 October 2019, new details were published to claim the above Spanish withholding tax exemption over EU interest payments. It is worth noting that in October 2019, the first Spanish court resolution was issued, interpreting the so-called "beneficial ownership" cases (also known as "the Danish cases"), which were resolved by the Court of Justice of the European Union in February 2019. The Spanish court confirmed that, even if the Spanish withholding tax exemption over interest payments does not imply a "beneficial ownership" requirement, a general principle of EU law should apply in cases of fraudulent or abusive conduct (e.g., when their main purpose is to benefit from the Spanish withholding tax exemption). The creation and transfer of particular security (real estate property mortgages and chattel mortgages) triggers stamp duty. The tax rate is calculated on the maximum secured amount and it currently varies from 0.5% to 1.5%, depending on where in Spain the asset is registered.
Could loans from a fund that owns the borrower of that loan incorporated in Spain be equitably subordinated?	Yes. A fund holding equity in a borrower can grant a loan to that borrower and, in principle, it would be considered debt. However, in the context of insolvency proceedings of the borrower, the insolvency rules will apply and, therefore, the loan may be considered equity if the fund holding equity qualifies as a "related party." Related parties include: (i) shareholders owning 10% or more of the share capital of the borrower (or 5% if it has securities or debt that is traded in a secondary official market); and (ii) companies within the insolvent company's group and their shareholders (if they meet the requirements referred to in (i) above). If the participation in the share capital of the borrower is the result of a debt-equity conversion that was contemplated in a restructuring agreement prior to the start of insolvency proceedings, or a settlement agreement within the insolvency proceedings, the claims held by the fund in relation to that restructuring agreement or settlement agreement would not be considered subordinated. On insolvency, subordinated creditors may not vote on a settlement agreement and their claims would only be satisfied after settlement of all post-insolvency claims, and all claims of secured and privileged creditors and ordinary or unsecured creditors. From a tax perspective, this recharacterization can only exist when: (i) the loan is structured as a profit participating loan (although a case-by-case analysis would be needed); or (ii) both the fund and the Spanish borrower are considered "related parties" under Spanish tax law, and it is deemed that the loan does not follow the arm length's principles (in particular, according to Spanish tax law, shareholders and the entity in which they participate are considered to be related parties if the shareholder owns at least 25% of the share capital of the entity).
Can interest, fees and remuneration be agreed freely between a fund and a borrower in Spain?	Yes, subject to certain limitations that include: (i) abusively high interest rates (determined on a case-by-case basis) that may be declared null and void if contrary to usury laws; and (ii) limitations on interest on loans to consumers or individuals. From a tax perspective, if the fund and the borrower are considered "related parties" under Spanish tax law, transactions between them should be valued at arm's length.

Can a fund directly hold security granted by a security provider incorporated in Spain?	Yes. However, only licensed banking or credit institutions can benefit from floating mortgages over real estate assets (which allow several obligations to be secured by a single mortgage). Security interests over financial collateral may only be granted in favor of eligible counterparties, such as banks, insurance companies, securitization funds, collective investment schemes, etc. In principle, a non-regulated special purpose vehicle would not be an eligible counterparty for these purposes. Security can be granted to each lender individually (or collectively to all lenders), but the role of the security agent/security trustee is not recognized under Spanish law. If security must be registered to be perfected (such as for real estate mortgages, chattel mortgages and registered pledges), any transfer of the debt must be notarized and registered with the relevant registry. Entities whose business is to grant loans to consumers, secured by a mortgage over residential property, are required to do the following: ▪ Register with the State Registry (*Registro Estatal*) or the corresponding Autonomous Registry (*Registro Autonómico*) in case of a Spanish entity. ▪ Take out a liability insurance policy or a bank guarantee to secure potential liabilities that the entities may incur vis-à-vis consumers for damages arising from their activity. Failure to comply with the obligations referred to above will give rise to sanctions of between EUR 100,001 and EUR 1 million.
Can a company incorporated in Spain provide credit support for the acquisition of its or its holding companies' shares?	No. A Spanish company cannot provide credit support for the acquisition of its or its holding companies' shares. Moreover, for limited liability companies (sociedades limitadas), the prohibition also extends to assistance for the acquisition of shares in other entities belonging to the same corporate group.
How strong, in relative terms, is credit support given by a company in Spain likely to be?	It is weak. A Spanish company is generally allowed to provide credit support to the extent that it can show that this results in corporate benefit for the company. If, in insolvency proceedings, the creditor cannot show that sufficient corporate benefit has been accrued by the company, the court may rescind the relevant credit support.
Is the enforcement regime in Spain relatively lender-friendly?	No. Enforcement of security is completed either through a notary (greater lender risk, though quicker) or the court, and it can take between eight and 18 months, unless challenged by a debtor, in which case the process can be considerably longer. Appropriation is not generally possible (other than under a financial collateral agreement). A lender can only exercise rights of acceleration and security enforcement after a payment default (in the case of mortgage enforcement proceedings, where the unpaid principal amount is equal to at least three monthly instalments) or material breach of another essential obligation. It is unclear whether this includes a financial covenant default or cross-default. The clawback risk applies during the two years preceding the declaration of insolvency if the transaction is considered detrimental to the insolvency estate and subject to certain exemptions, such as transactions made under normal conditions within the company's ordinary course of business. In the event that a restructuring agreement is negotiated before the start of insolvency proceedings, clawbacks may also apply to the transactions carried out during the two years preceding the date on which the existence of such negotiation was communicated to the court, except for restructuring agreements homologated by the court, and provided that insolvency proceedings start within 15 months (or 18 months if the court accepts an extension within the communication procedure) following such communication to the court. For transactions defrauding creditors, the clawback period is four years.

Sweden

Can a fund make a new loan to a borrower incorporated in Sweden without a banking licence?	Yes, other than in relation to loans to consumers. Under Swedish law, lending activity funded by taking deposits or other repayable funds from the public is restricted to being performed by regulated entities that hold a license in Sweden (either directly from the Swedish Financial Supervisory Authority (FSA) or through EU passporting rules). If it is funded from another source, a license is not required. However, if the lending activity is considered regular, the entity may be regarded as conducting a permanent financing business in Sweden. In such cases, the FSA must be notified. While the regulatory situation is not entirely clear, more incidental lending to Swedish borrowers does not usually require notification.
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in Sweden?	No. Sweden does not levy withholding tax on interest. However, the tax situation for each fund must be assessed on a case-by-case basis.
Could loans from a fund that owns the borrower of that loan incorporated in Sweden be equitably subordinated?	No. There is no concept of equitable subordination for any class of creditor under Swedish bankruptcy law.
Can interest, fees and remuneration be agreed freely between a fund and a borrower in Sweden?	Yes. Generally, there are no formal limits unless the loans are offered to consumers. For a commercial loan, the outer limits are when the loan interest rate is, in fact, usury (usury rates are criminally punishable in Sweden). Please note that default interest is payable at a statutory rate if it is not explicitly agreed in the loan agreement.
Can a fund directly hold security granted by a security provider incorporated in Sweden?	Yes. However, it is more common that the security is held by a security agent acting as a representative for the secured party. Please note that the concept of "trust" or "trustee" is not recognized in Sweden. To create a valid, binding and enforceable security interest under Swedish law, certain Swedish bearer instruments, such as share certificates, real property mortgage certificates and business mortgage certificates, will be handed over to the security agent in Sweden and at all times be retained by the security agent in Sweden or in any other jurisdiction where the security interest will be recognized.
Can a company incorporated in Sweden provide credit support for the acquisition of its or its holding companies' shares?	No, the Swedish Companies Act (aktiebolagslag 2005:551) prohibits Swedish limited liability companies from providing guarantees, security or other credit support for obligations of any person where such obligations are incurred for the purpose of acquiring shares in the company itself or in any other superior member (including sister entities) of the same Swedish group of companies.

How strong, in relative terms, is credit support given by a company in Sweden likely to be?	It is relatively weak in cases of upstream and cross-stream credit support. Pursuant to the Swedish Companies Act, a Swedish limited liability company may not provide a guarantee or security for the obligations of a shareholder or a company under the control of a shareholder unless an exemption applies. The guarantees and security given by the guarantors or security providers incorporated under the laws of Sweden will be limited in accordance with the applicable restrictions relating to prohibited loans, guarantees, and security and financial assistance, so that the guarantees and security provided only apply to the extent permitted and do not result in a breach of the Swedish Companies Act.
Is the enforcement regime in Sweden relatively lender-friendly?	Yes, it is generally lender-friendly but not as lender-friendly as the UK. Market practice in Sweden is that a lender becomes entitled to enforce security and claim under guarantees following an event of default/declared default (upon declaring all outstanding amounts due and payable) under the credit documentation. Swedish law does not specify that a breach constituting an event of default must be of a certain nature to accelerate. However, in practice, a technical default would rarely be used to accelerate debt or enforce security. The process for enforcement depends on the type of security being enforced. For example, mortgages in relation to real property, ships, aircrafts and businesses can only be enforced through certain public authorities and, in essence, require an execution order or the commencement of formal insolvency proceedings. Other types of security (e.g., shares, receivables, bank accounts, etc.) can generally be enforced by public or private sale. For example, share pledges usually give the pledgee the right to sell the security assets (e.g., pledged shares) by private or public sale, auction or in any other way, and on such terms as the pledgee, in its sole discretion, deems fit (including the right for the pledgee to purchase the asset itself, provided the pledgee accounts for any surplus value to the pledgor). Specific rules apply if the debtor is in bankruptcy or reconstruction. Under Swedish law, a secured creditor or pledgee is considered to have a duty of care in relation to the security and, therefore, may not enforce or realize the pledge or sell the security assets in a way that is unduly adverse to the pledgor. The secured creditor must, as a fiduciary duty, take into consideration and protect the interests of the relevant pledgor in connection with enforcement, including obtaining a fair market price for the security assets. Further, if the sales price exceeds the indebtedness for which the security was granted, any surplus must be distributed to the pledgor following the sale of the assets. There are special provisions in the case of bankruptcy and company reorganization proceedings, and these provisions override any contractual provisions in Swedish law security documents. In bankruptcy and company reorganization proceedings, transactions can (in certain circumstances and subject to a time limit) be challenged. In the majority of these situations, a claim for recovery can be made concerning actions that were made during the three or six months preceding the commencement of the relevant insolvency proceedings. In certain situations, longer time limits apply and, in others, there are no time limits. These include, among others, situations where the other party to an agreement or other arrangement is deemed to be a closely related party to the debtor, such as a subsidiary or parent company.

Switzerland

Can a fund make a new loan to a borrower incorporated in Switzerland without a banking licence?	Yes.
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in Switzerland?	Yes, because of the Swiss tax law rules commonly referred to as the "Swiss non-bank rules." Under Swiss domestic tax laws, payments by a Swiss borrower under a bilateral or syndicated financing arrangement are generally not subject to Swiss withholding tax, provided that the Swiss non-bank rules are complied with. These rules require that the following conditions be met: ▪ A lending syndicate for a financing arrangement with a Swiss obligor does not consist of more than 10 lenders that are not licensed banks (10 non-bank rule) ▪ A Swiss obligor does not, in aggregate, have more than 20 non-bank creditors as its lenders (20 non-bank rule) ▪ A Swiss obligor does not, in aggregate, have more than 100 non-bank creditors under financing arrangements that qualify as deposits within the meaning of the relevant rules A non-bank lender is a lender that is not licensed as a bank in accordance with the banking laws in force in its home jurisdiction. In the case of direct lending funds, there can be two issues. First, funds typically do not qualify as licensed banks. Therefore, they require (at least) one non-bank lender slot. Second, a fund could be transparent from a Swiss withholding tax perspective, and as a consequence, one non-bank lender slot may be required for each of the fund's investors that do not qualify as licensed banks. To have certainty on the Swiss withholding tax treatment of a fund, an advance tax ruling issued by the Swiss Federal Tax Administration would be required. A violation of the Swiss non-bank rules would trigger a 35% Swiss withholding tax on interest payments. A Swiss tax resident lender may reclaim the Swiss withholding tax if the interest income is duly declared in the profit and loss statement underlying the relevant lender's Swiss tax return. Non-Swiss tax resident lenders may claim a full or partial refund based on applicable double tax treaties, if any, and if the conditions of such a treaty are met.
Could loans from a fund that owns the borrower of that loan incorporated in Switzerland be equitably subordinated?	Yes. Under Swiss case law, a loan made to a corporation by a shareholder may qualify, in the corporation's bankruptcy, as so-called "hidden equity" if (i) an independent third party would not have made the loan on the same conditions, and (ii) only an equity contribution would have eliminated the corporation's over-indebtedness. The consequence of qualifying as hidden equity is not a formal conversion into equity but rather a compulsory subordination of the loan, meaning that the lender may not prove its claim as a general unsecured, unsubordinated creditor.
Can interest, fees and remuneration be agreed freely between a fund and a borrower in Switzerland?	Yes, subject to usury rules.

Can a fund directly hold security granted by a security provider incorporated in Switzerland?	Yes. Exceptions and potentially adverse consequences may apply in relation to Swiss real estate.
Can a company incorporated in Switzerland provide credit support for the acquisition of its or its holding companies' shares?	Swiss corporate law does not have any specific rules on financial assistance and does not provide for any "thin capitalization" or similar rules. However, there are several provisions protecting the nominal capital and the reserves of Swiss corporations. A Swiss corporation may not make any payment to its parent company unless such payment is made (i) as a formal dividend, (ii) in the course of a formal reduction of the relevant company's share capital, or (iii) on the basis of an agreement that is made on arm's length terms. The same applies to any payments to its sister companies. No restrictions apply to downstream payments to a wholly-owned subsidiary unless the subsidiary is in financial distress. It is the prevailing view in Switzerland that the granting of a guarantee or security interest to a third party (e.g., a lender under an acquisition facility agreement) for the obligations of a parent or sister company (upstream or cross-stream guarantee, or security interest), as well as certain other acts having a similar effect (e.g., an indemnity or the waiving of rights for the benefit of a parent or sister company), are subject to the same limitations as an actual payment. This ultimately means that the value of any upstream or cross-stream credit support is limited to the amount that the security provider could freely distribute to its shareholders as a dividend at the time the payment is demanded or the security interest is enforced. Payments under any upstream or cross-stream credit support may also have certain tax implications. For example, they may trigger Swiss withholding tax at a current rate of 35% if they do not meet the arm's length test for tax purposes (reclassification as constructive dividend). A Swiss tax-resident recipient may reclaim the Swiss withholding tax, provided that the dividend income is duly declared in the profit and loss statement underlying the relevant Swiss tax return. Non-Swiss tax resident recipients may claim a full or partial refund based on applicable double tax treaties. Swiss law does not provide for any whitewash or similar measures to avoid the consequences of an upstream or cross-stream guarantee or security. However, to mitigate the imperfections of such security interests from a Swiss law perspective, lenders will usually require that the corporate purpose clause contained in the articles of association of any Swiss security provider explicitly permits the granting of upstream or cross-stream security. Additionally, it is typically ensured that the credit documents and the relevant upstream or cross-stream transactions are properly approved by the competent corporate bodies, which includes an approval by the respective security provider's shareholders' meeting. Finally, the credit documents usually contain limitation language that addresses the free equity limitation.
How strong, in relative terms, is credit support given by a company in Switzerland likely to be?	If it is a direct security (i.e., security for its own obligations), the credit support will likely be strong. If it is an upstream or cross-stream security, the credit support will likely be rather weak.
Is the enforcement regime in Switzerland relatively lender-friendly?	Medium.

Türkiye

Can a fund make a new loan to a borrower incorporated in Türkiye without a banking licence?

Under Turkish law, extending a loan as a business requires a banking license. Intercompany loans are also allowed without a license if they satisfy certain conditions.

Turkish laws do not prohibit foreign lenders from extending loans to Turkish-resident borrowers per se. For a foreign fund not to be subject to licensing in Türkiye, it must take no action that creates the impression

that it is operating in Türkiye. It must not engage in any marketing, promotion or solicitation in Türkiye, or conduct any activity directed at Turkish residents, except on a reverse-inquiry basis where the Turkish resident client initiates the contact. Foreign funds must avoid any promotion, distribution, marketing or other solicitation of their services and products in Türkiye. There is no exact definition of "marketing, promotion and solicitation of these products" under Turkish law. However, "marketing, promotion and solicitation of these products" covers all initiatives to market products and services, including passive marketing. For instance, a foreign fund calling or emailing a client resident in Türkiye to provide information on its products or services without the client first asking for such information is considered marketing of its services and products in Türkiye, and the fund would be subject to licensing in Türkiye.

Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in Türkiye?

Yes. Taxes and transaction costs can present material issues when a fund lends directly to, or takes credit support from, a Turkish company, particularly if the lender does not qualify as a "foreign financial institution" under Turkish law.

Unlike loans from banks or other regulated financial institutions, loans extended by funds or other alternative lenders may not benefit from key tax exemptions. The following issues may arise:

- **Stamp tax:** Loan agreements executed with financial institution lenders are generally subject to stamp tax at a rate of 0.948%. The stamp tax due per agreement is limited to TRY 24,477,478.90 for 2025.
- **Withholding tax:** Interest payments to a non-resident lender that is not a financial institution are subject to 10% withholding tax. In contrast, interest paid to financial institutions can benefit from a 0% rate.
- **VAT:** Loans provided by non-resident entities that are financial institutions may trigger a reverse-charge VAT liability at a rate of 20%. Loans from financial institutions are generally VAT exempt.

To mitigate these tax exposures, the lender must qualify as a financial institution, which is not expressly defined under Turkish tax law, but is interpreted in practice as follows:

- The lender must be authorized to extend loans in accordance with the laws of its jurisdiction.
- It must be authorized to lend to third parties in the ordinary course of business (not just related parties).
- It must be able to provide documents substantiating its authorization, such as a permit, license or other regulatory authorization.

The Resource Utilization Support Fund (RUSF), which is a kind of levy on loans borrowed by borrowers that are resident in Türkiye from abroad, arises irrespective of the nature of the lender. The rate of the RUSF varies depending on the maturity, nature and currency of the loan. The RUSF in the amount of 0% to 3% applies over the principal amount of foreign currency-denominated loans borrowed from abroad. If the average maturity of the foreign currency-denominated loan is longer than three years, the RUSF rate would be 0%. In case of a Turkish lira loan, the RUSF would apply at a rate of 1% over the interest if the average maturity of the loan is less than one year. Otherwise, a 0% RUSF rate applies over Turkish lira loans borrowed from abroad.

In conclusion, while direct lending into Türkiye by funds is legally possible, the tax implications — particularly stamp tax, withholding tax and VAT — can be material unless the lender's regulatory status is carefully reviewed and documented in advance.

Could loans from a fund that owns the borrower of that loan incorporated in Türkiye be equitably subordinated?

Yes. While Turkish law does not specifically recognize contractual subordination, it is valid and enforceable between the parties to the contract where the subordination arises. However, it is not enforceable against third parties, such as in cases of bankruptcy administration.

Further, Turkish insolvency rules are directly applicable rules; they apply to the insolvent party's relationship with its creditors even if the agreements are governed by the laws of a jurisdiction other than Türkiye.

Accordingly, if the Turkish debtor becomes insolvent, the bankruptcy administration will not uphold the subordination arrangements, and the creditors of this debtor will be subject to the rankings provided in the Execution and Bankruptcy Law No. 2004 (EBC). Under Article 206 of the EBC, secured creditors have priority for collecting the proceeds of the sale of the secured assets of the bankrupt company, which, in principle, will be sold by the bankruptcy administration as soon as possible. Unsecured creditors will be paid in the following order:

i. Taxes and other government charges accrued in connection with the asset to be sold

ii. Employee or labor pension-related claims and alimonies

iii. Claims of third parties whose assets are managed by the company under a custody or guardianship

iv. Claims prioritized under various laws

v. Other unsecured claims

All the creditors in a category must be satisfied before creditors in the following category are paid. If the remaining liquidation proceeds are insufficient to cover the unsecured claims in any specific category, they will be distributed between the relevant creditors pro rata.

If there is any remaining sum from the liquidation of the assets, it will be shared pro rata (unless otherwise set forth under the articles of association) among the shareholders.

Nevertheless, subordination agreements between creditors and the insolvent party will continue to be enforceable between the parties. This means that any creditor that receives more than it should, pursuant to the subordination arrangements, must pay the excess amount to the other parties of the arrangement in accordance with the agreed subordination principles.

Can interest, fees and remuneration be agreed freely between a fund and a borrower in Türkiye?

Yes. The general rule is that interest and default interest rates can freely be determined between a fund and Turkish borrower (provided that the lender and the borrower are not related parties for transfer pricing purposes). However, a party should not take unfair advantage of the other party's situation when determining the rates. While interest may be compounded for periods of at least three months in the case of commercial transactions (i.e., loan transactions), default interest cannot be compounded.

Can a fund directly hold security granted by a security provider incorporated in Türkiye?

Yes.

Türkiye (cont'd)

Can a company incorporated in Türkiye provide credit support for the acquisition of its or its holding companies' shares?	First, a Turkish company (that is not a bank or another financial institution authorized to lend) cannot provide credit support to a Turkish-resident company unless both parties belong to the same group, and the credit support is provided and recorded in Turkish lira. In addition to this rule, whether a company can provide credit support for the acquisition of its own shares will mainly depend on the type of the credit support provider. Under the Turkish Commercial Code No. 6102, a joint-stock company (anonim şirket) must not provide any advance, loan or security to third parties in connection with the acquisition of its own shares. Otherwise, the transaction will be null and void. There are two exceptions to this financial assistance prohibition. First, credit and financial institutions (mainly banks) may provide assistance/financing to third parties as part of their ordinary course of business (i.e., extending cash or non-cash loans) for the acquisition of their own shares. Second, a company may provide advances, loans or securities to support the acquisition of its shares by its employees or its subsidiaries' employees as part of their stock options. If the joint-stock company is a public company or an affiliate (bağlı ortaklık) of a public company, as a rule, it cannot grant a security or guarantee to secure/guarantee the obligations of third parties, except in the following scenarios: ▪ If the security/guarantee is granted in the ordinary course of the security provider's/guarantor's business ▪ If the security/guarantee is granted to secure/guarantee the obligations of an affiliate, which is consolidated into the financial statements of the public company/affiliate ▪ If the security/guarantee is granted to secure/guarantee the obligations of a subsidiary (iştirak) in proportion to the public company's/affiliate's direct participation in such third party's share capital ▪ If the security/guarantee is granted by the affiliate to secure/guarantee the obligations of the public company ▪ If the security/guarantee is granted by the public company/affiliate to secure/guarantee the obligations of a group company that provides financing to such public company/affiliate and to the extent of the financing provided

How strong, in relative terms, is credit support given by a company in Türkiye likely to be?	It is strong to the extent that the restrictions specified above are observed.
Is the enforcement regime in Türkiye relatively lender-friendly?	No. It is borrower-friendly. Debtors have many procedural grounds to object to enforcement actions to be taken by creditors and can slow down the process.

UK

Can a fund make a new loan to a borrower incorporated in UK without a banking licence?	Yes, assuming that the loan is not made to a consumer. Caution is needed for debt securities, as certain activities in relation to these instruments may be within the scope of regulation (for example, dealing, advising or arranging).
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in UK?	Generally, no. The UK levies withholding tax on interest, subject to certain reliefs/exemptions. For unlisted debt with a term of more than 12 months, a non-UK non-bank lender will normally need to rely on a double taxation treaty to reduce or eliminate the withholding tax. Most funds will routinely locate their investment vehicle(s) in a favorable double taxation treaty jurisdiction in order to benefit from treaty relief. However, care is needed to ensure that the double taxation treaty claim is not challenged, e.g. due to pass-through arrangements or a lack of substance in the lender's territory. Stamp duty is normally not relevant but may apply on transfers of loans with certain equity-like features, e.g., conversion rights or excessive interest rates, or on enforcement of security over shares or real property. Only de minimis security registration fees apply in relation to the taking of security. From the borrower's perspective, tax relief may be denied for some or all of the interest on a loan if (broadly) it is from a connected person and the borrower could not have borrowed that debt from a third party at arm's length, or if the loan has certain equity-like features or is stapled to equity in the borrower. Following a series of UK Government reviews and consultations on the direct and indirect taxation of UK investment funds, with the aim of ensuring the UK regime remains an attractive option for investors, the UK Government: introduced, in 2022, the qualifying asset-holding company (QAHC) regime, which is designed to ensure that the UK is attractive as an asset-holding jurisdiction; and concluded that no changes needed to be made to the VAT treatment of fund management fees. However, from 6 April 2025, the capital gains tax rate for carried interest increased to 32%. Further reform is scheduled to take effect from 6 April 2026, with carried interest being brought within the income tax framework, i.e. at an individual's marginal income tax rate, but a 72.5% multiplier will be applied to qualifying carried interest to reduce the amount subject to the marginal income tax rate.
Could loans from a fund that owns the borrower of that loan incorporated in UK be equitably subordinated?	No. However, equity holdings that would cause a person making a loan to be "connected" to a credit support provider should be taken into account in relation to hardening periods.
Can interest, fees and remunerationbe agreed freely between a fund and a borrower in UK?	Yes. However, English law restricts default interest and other amounts to the extent they could constitute a penalty (which would render them unenforceable on the grounds that they do not represent a genuine pre-estimate of the loss of the aggrieved party, or are out of all proportion to the legitimate interests of the innocent party).

Can a fund directly hold security granted by a security provider incorporated in UK?	Yes, although security is commonly granted in favor of a security agent or trustee.
Can a company incorporated in UK provide credit support for the acquisition of its or its holding companies' shares?	Yes, financial assistance is permitted to be given by private companies, except as specified immediately below and subject to satisfying corporate benefit and maintenance of capital rules (see below). A restriction does apply, subject to certain limited exceptions, in the case of financial assistance by a company for the acquisition either of its own shares, if it is a public company, or of shares in its holding company, if that holding company is a public company. In practice, most companies involved in direct lending will be (or will be able to become) private companies.
How strong in relative terms is credit support given by a company in UK likely to be?	Strong. The company directors will need to satisfy themselves as to the corporate benefit of the transaction and to abide by the maintenance of capital rules. While this requires a case-by- case analysis, in practice solvent English companies with positive net assets often satisfy these requirements and can provide full guarantees and security. In addition, the articles of association will need to permit the giving of a guarantee/security and can usually be amended to include this if they do not already do so.
Is the enforcement regime in UK relatively lender-friendly?	Yes. Enforcement can usually be achieved by a secured creditor out of court and relatively expeditiously. In principle, a lender can exercise rights of acceleration and security enforcement after any event of default if the documents provide for this (in practice, a technical default would rarely be used to accelerate debt or enforce security). Hardening periods, in principle relevant for up to two years after a suspect transaction by a company, rarely present an issue in practice if credit support was provided for a new loan by a solvent company. Consideration may need to be given to whether the provisions of the National Investment and Security Act 2021 could be triggered when enforcing share security or security over a 'qualifying asset'.

Ukraine

Can a fund make a new loan to a borrower incorporated in Ukraine without a banking licence?	Yes – any legal entity established outside of Ukraine can lend to a Ukrainian borrower without a Ukrainian banking or other license if such entity has the capacity and authority so to lend under the laws of its jurisdiction of establishment and registration.
Do taxes or other charges usually present a material issue to a fund lending directly to, or taking credit support from, a company incorporated in Ukraine?	Yes. A foreign legal entity that carries on commercial activities through a permanent establishment (PE) in Ukraine is taxed on attributable profit with 18% corporate income tax in line with the Authorized OECD Approach (AOA). The AOA recommends the application of the transfer pricing rules for the purposes of ascertaining the profits "earned" by the PE. Effective from 23 May 2020, the PE is treated as an independent enterprise rendering/selling the same or similar services/goods on the same or similar terms. Foreign legal entities are taxed in Ukraine on a "net" basis in respect of the income derived from their commercial activities undertaken in Ukraine through a PE. Income derived by foreign legal entities from sources in Ukraine, other than through PEs, is taxed in Ukraine on a "gross" basis, being subject to withholding tax (WHT) at the time of remittance of such income to such foreign entities. The tax is withheld from the sums remitted, except for the income in the form of consideration for goods (works and services), which is generally not subject to WHT. Under a general rule, WHT applies at the rate of 15% to Ukrainian-sourced income (including interest on the loans) at the time of remittance to a non-resident, unless otherwise provided by an applicable double taxation treaty. A full exemption or reduced 5% rate may apply to interest paid to the foreign lender under a loan financed by the issuance of bonds (loan participation notes) in the international capital markets. Notarial certification of a mortgage agreement or a pledge agreement involves a state duty of 0.01% of the value of the collateral or a notarial fee of at least the same amount. Registration of encumbrances arising from a pledge agreement in the State Register of Encumbrances over Movable Property requires the payment of a state duty of approximately EUR 2.
Could loans from a fund that owns the borrower of that loan incorporated in Ukraine be equitably subordinated?	Outside of the borrower's liquidation or bankruptcy proceedings, yes. Satisfaction of claims during solvent or insolvent liquidation of a Ukrainian borrower is subject to prioritization in the order prescribed by the applicable legislation. An agreement on contractual subordination would not be honored by a liquidator or a bankruptcy trustee. However, normally, such an agreement would continue to bind the subordinated (junior) creditor vis-à-vis the senior creditor, so that the subordinated creditor would be contractually bound to release the funds received from the liquidated or bankrupt borrower to the senior creditor if the subordination agreement so requires. When prioritizing claims of insolvent entities, Ukrainian legislation differentiates between secured and unsecured creditors. Secured creditors are those whose claims are secured by a pledge or mortgage of the borrower's property, such claims have priority over the claims of all the other creditors and are satisfied at the cost of the collateral. The claims of unsecured creditors of a bankrupt Ukrainian company (other than a bank) are ranked as follows:
	1.a. salary payment claims; b. claims for compensation of damages caused to the State Budget of Ukraine by the enforcement of decisions of the European Court of Human Rights; c. claims arising from insurance agreements; e. costs for bankruptcy proceedings in the commercial court and for the work of liquidation commission; f. audit claims; g. claims arising under interim financing and/or new financing in preventive restructuring proceedings; 2. labour claims excluding claims specified in items 1.c. and 5.; 3. tax claims; 4. creditors' claims that are not secured by a pledge; 5. claims related to the repayment of employees' contributions to the share capital; and 6. other claims. Claims of equity holders are satisfied after the claims of all the other creditors of the bankrupt company.
Can interest, fees and remuneration be agreed freely between a fund and a borrower in Ukraine?	Interest, fees and remuneration under a loan agreement can be agreed freely by the parties thereto, subject only to the limitations established by the National Bank of Ukraine for the martial law period. While the martial law is in effect, the overall cost of borrowing (including interest and all fees and commissions payable by the borrower for the use of the loan) under a loan agreement between a foreign lender and a Ukrainian borrower may not exceed 12 per cent per annum (this applies to the loans disbursed after 20 June 2023).
Can a fund directly hold security granted by a security provider incorporated in Ukraine?	Yes, assuming that the fund has the legal personality. Security can be granted only to the creditor that legally owns the claim which is to be secured. One creditor may hold security on behalf of itself and a pool of creditors (e.g., under syndicated loans) pursuant to joint and several creditor and English law parallel debt arrangements. However, there is no established court practice in Ukraine in respect of parallel debt arrangements.
Can a company incorporated in Ukraine provide credit support for the acquisition of its or its holding companies' shares?	*Financial assistance while acquiring shares in a Ukrainian company* A Ukrainian joint-stock company or limited liability company is prohibited from: (i) lending to finance the acquisition of any securities issued by the company; and (ii) issuing a guarantee (suretyship) in respect of a third party's loan that finances the acquisition of shares issued by the company. A fair interpretation of the applicable legislation allows the argument that only operations on the formation or increase of the limited liability company's charter capital are subject to such restrictions. There are no limitations on the provision of financial assistance by a Ukrainian company to finance the acquisition of either shares or participatory interest in its parent company. *Financial assistance while acquiring shares in a foreign parent company* During the martial law in Ukraine, Ukrainian residents (other than banks) are generally prohibited from lending to foreign borrowers or paying cross-border under the guarantees (suretyships) that support foreign debtor's obligations.

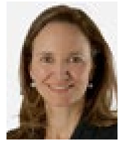
Ukraine (cont'd)

How strong in relative terms is credit support given by a company in Ukraine likely to be?	In contrast to certain other jurisdictions, Ukrainian law does not provide detailed rules on corporate benefit. However, there are various requirements relating to "fiduciary duties" of company officials. In particular, the Civil Code of Ukraine sets out that an official or a body acting on behalf of the company should act reasonably and in good faith and should not abuse its authority. Failure to comply with this rule could make the officials of the company liable for the damages incurred by the company because of their actions (or inactivity). In certain limited cases, the amount of the claimed damages may be reduced because of the application of caps on the employee's liability. In these cases, the amount of an official's liability would not exceed the employee's average monthly salary. Ukrainian corporate law also establishes rules for the execution of material and interested party transactions (including transactions involving the company's officials). The violation of the prescribed procedure for the execution of material and interested party transactions may result in liability for officials of a limited liability company or an additional liability company. Such transactions may also be declared invalid by the court. The Commercial Procedural Code of Ukraine also allows the "derivative action", whereby a shareholder or participant of a legal entity holding at least 5% of the company's share capital or assets can file a claim against the company's officials. The claim is filed in the interest of the company, which formally acts as a claimant in the course of the proceedings and exercises its procedural rights jointly with the shareholder or participant.

Is the enforcement regime in Ukraine relatively lender-friendly?	Generally, yes. Secured creditors may choose whether to use an out-of-court procedure or to apply to the court for enforcement of their security interest. In practice, a debtor's cooperation would be required to proceed with an out-of-court enforcement. The secured creditor may appropriate the pledged asset upon the debtor's default provided that: (i) the secured creditor has the collateral in its possession; and (ii) there are no objections from the debtor and/or other registered secured creditors to the transfer of the encumbered asset. If these conditions are not met, the secured creditor may either proceed through the sale of the encumbered asset to third parties (provided that the secured creditor has the collateral in its possession) or demand its transfer through court proceedings. The secured creditor may acquire the asset as a full repayment of the debt provided that there are no objections from the other registered secured creditors to the transfer or the claims of the objecting secured creditors have been settled. At the same time, Ukrainian insolvency legislation provides that the particular transactions (agreements) of a company (other than a bank) executed after the commencement of bankruptcy proceedings or during the three years preceding such proceedings may be declared invalid by the court on the grounds that entering into such transaction was not commercially justified. This includes transactions that caused losses to the company or creditors and where the company: (i) performed proprietary obligations before the due date; (ii) assumed obligations as a result of which it became insolvent or its performance of monetary obligations to other creditors in part or in full became impossible; (iii) disposed of its property for a price that was below market price and it did not have sufficient assets to discharge the creditors' claims either at the moment it undertook obligations or as a result of the transaction; (iv) made payment to a creditor on the day when the amount of the creditors' claims exceeded the value of assets (or similar); or (v) undertook security obligations to secure monetary claims. Note that, following the invasion of Ukraine by Russia and the introduction of martial law in Ukraine on 24 February 2022, repayment of loans by Ukrainian residents to foreign lenders is prohibited and payment of interest on such loans is restricted and is subject to compliance with certain conditions. Such prohibition and restrictions do not apply to loans of international financial institutions (IFC, EBRD, EIB and the others). Such regime will sustain for the duration of the martial law and may affect the ability of a foreign lender to enforce against the Ukrainian borrower and its assets in Ukraine.

Private Credit Team

Baker McKenzie is here to help you navigate your way through the private credit market; we offer commercially-focused advice, support and execution throughout the life cycle of a private credit transaction, enabling investors to execute complex transactions across all of the key European jurisdictions. We welcome you to reach out in case of any questions.



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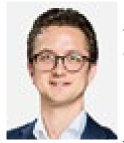

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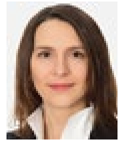

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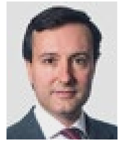

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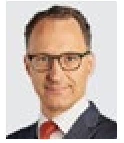

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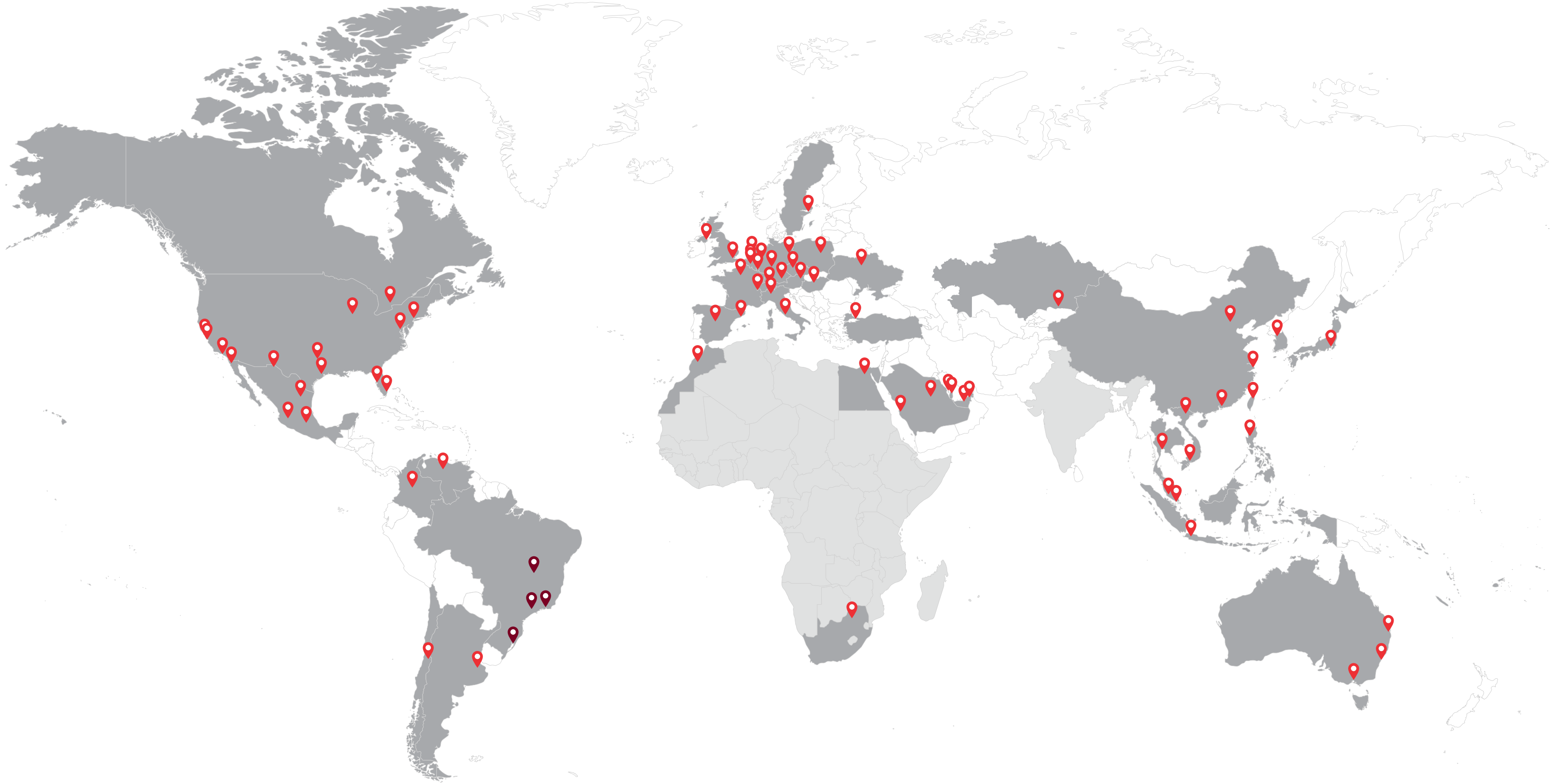
About Baker McKenzie

Our strength is our ability to adopt a new type of thinking and use cutting-edge legal technologies to help clients overcome the challenges of competing in today's new world economic order.

We enable our clients to thrive by seamlessly delivering technical expertise, and local market and cultural knowledge, through one team, across a global footprint.



- Baker McKenzie locations
- Baker McKenzie geographic initiatives
- In cooperation agreement*

*Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law.

Baker McKenzie facts

70+ offices in 40+ countries

12,700+ people
6,200+ lawyers and other fee earners

Breadth of global reach combined with the diversity of practices, industries and service lines

We have over seven decades of experience in advising our clients wherever they are in the world and whatever the volatility of the macroeconomic or political environment.

The values we live by

Inclusion, Diversity & Equity | Sustainability | Global Pro Bono

We are committed to serving our clients and communities by advancing inclusion and diversity, sustainability, and access to justice and opportunity.

We take bold action, set ambitious goals and align with leading corporate social responsibility initiatives.

Leading and closing complex deals - every day

We are a transactional powerhouse providing commercially-focused, end to end legal advice to maximize deal certainty and secure the intended value of transactions. Our 2,500 lawyers combine money market sophistication with local market excellence. We lead on major transactions with expertise spanning banking and finance, capital markets, corporate finance, restructuring, funds, M&A, private equity and projects. The combination of deep sector expertise, and our ability to work seamlessly across each of the countries where we operate, means we add unique value in shaping, negotiating and closing the deal.

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