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Introduction

This briefing document summarises the key issues in taking and enforcing security in the European jurisdictions where Taylor Wessing has offices as well as the other main European jurisdictions and is a general guide.

The information in this briefing document is as stated at 30 October 2015. Let us know if you would like further copies of this briefing document. If you have any queries, please contact any of the named individuals on the back page, as this overview does not replace the specialist legal advice that Taylor Wessing provides to stakeholders in businesses in Europe and around the world.
Austria

Introduction

- There is no concept of security trustee.
- The different types of securities are mainly governed by Austrian Civil Law.

Overview of security interests

<table>
<thead>
<tr>
<th>Asset type</th>
<th>What forms of security can be granted</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real Estate</td>
<td>Mortgages need to be registered in the Land Register. Therefore the pledge agreement must be submitted and notarised.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If the debtor, the creditor as well as the legal grounds are fixed, but not the amount of the claim, it is possible to register a maximum amount mortgage.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>To secure a claim it is also possible to be granted mortgages on several real estates (Simultanhypothek).</td>
<td></td>
</tr>
<tr>
<td>Shares</td>
<td>Mortgages</td>
<td>Shares can only be transferred by notarial deed, but can be pledged informally. An informal notification to the company is required.</td>
</tr>
<tr>
<td>Receivables and contractual rights</td>
<td>Pledge / transfer of title by way of security</td>
<td>An informal agreement combined with the information of the third party debtor or a book entry in the books of account (Buchvermerk) is necessary.</td>
</tr>
<tr>
<td>Bank accounts</td>
<td>Pledge / assignment by way of security</td>
<td>An informal agreement combined with the details of the bank as third party debtor.</td>
</tr>
<tr>
<td>Plant and machinery and other movable assets</td>
<td>Pledge</td>
<td>In principle, a physical transfer for all movable property is necessary. Only in the case that a physical transfer is not possible, a transfer by symbolic delivery (Übergabe durch Zeichen) is sufficient.</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Pledge / transfer of title by way of security / transfer of retention of title</td>
<td>If a financing institution grants a seller a credit, the goods will be delivered from the seller to the buyer under retention of title while the financing institution is transferred the purchase price claim and granted retention of title.</td>
</tr>
<tr>
<td>Business / goodwill</td>
<td>Assignment by way of security</td>
<td>The escrow (Übertragungsurkunde) must be signed in certified form by the assigner and in uncertified form by the assignee.</td>
</tr>
<tr>
<td></td>
<td>Not possible, no floating charge</td>
<td></td>
</tr>
</tbody>
</table>
In principle, the right to separation from the bankrupt estate is unaffected by the opening of insolvency proceedings. Claims for segregation of property can only be asserted vis-à-vis the insolvency administrator.

Secured creditors (e.g. pledgees and creditors of reserved ownership) with a right to separate satisfaction shall prevail over the insolvency claims and the claims against the estate. Generally the secured creditors can enforce their rights during insolvency proceedings. The proceeds of realization will form a special bankruptcy estate in the event of bankruptcy. From the special bankruptcy estate, the special bankruptcy estate costs will be covered first (e.g. cost of the special administration of the insolvency administrator), and after that the secured creditors will be satisfied according to their rank. The excess of the proceeds of realization flows into the insolvency assets.

Insolvency

The priority of claims of creditors on insolvency are as follows:

- Secured creditors holding pledges, reserved ownerships, assignments by way of security or retention of rights (Zurückbehaltungsrecht)
- The costs of the insolvency proceedings (court costs and remuneration of the insolvency administrator)
- Debts that are incurred by the insolvency receiver
- Unsecured creditors
Belgium

Introduction

- Contrary to England and Wales and some other jurisdictions, the concept of trust does not exist in Belgium. It is not possible to grant rights of mortgage or pledge to a security trustee. However, Belgium has adopted new legislation on the creation and enforcement of security interests on moveable assets. It was foreseen that this new legislation would enter into force by 31 December 2014 at the latest, but the entry into force has been postponed until 1 January 2017 due to the absence of the national pledge register. One of the most important changes indeed involves the implementation of the possibility to create a pledge in the name of a security trustee on behalf of a third party beneficiary.

- Another important change, introduced by this new Act, is the possibility for parties to create a pledge on movable assets by concluding an agreement. The pledge becomes enforceable against third parties, either by filing with a new national pledge register or dispossession of the pledged assets, which is the current procedure. Under the new act, the enforcement of the pledge is simplified. If an event of default occurs, the Act provides that the pledgee has the right to enforce the pledge without prior court authorisation.

- Upstream guarantees, subject to the prohibition of financial assistance, can be given by Belgian companies as long as they meet the corporate interest of the guarantor and are not disproportionate to its financial means.

Overview of security interests

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<th>What forms of security can be granted</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Real estate</td>
<td>Mortgage</td>
<td>Notarial deed of mortgage and registration is required. Registration duties and notary fees are calculated on the amount of secured debt due.</td>
</tr>
<tr>
<td>Shares</td>
<td>Share pledge</td>
<td>If registered shares, a statement of the pledge or notification should be entered in the share register. The articles of association must be checked.</td>
</tr>
<tr>
<td>Bank accounts, receivables, and contractual rights.</td>
<td>Receivables pledge</td>
<td>Pledge is enforceable and effective against third parties as soon as it is entered into but needs to be notified in order to be enforceable against the underlying debtor.</td>
</tr>
<tr>
<td>Plant and machinery</td>
<td>Pledge with a mortgage over real property</td>
<td>If secured by means of a mortgage, a registration in the relevant mortgage register will be required.</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Pledge</td>
<td>A filing must be made with the appropriate intellectual property office(s).</td>
</tr>
<tr>
<td>Business / goodwill</td>
<td>Business pledge</td>
<td>Similar to floating charge. Can only be granted to secure loans (rather than third party obligations) in favour of EU licensed banks. It must be registered in the relevant mortgage register to be enforceable against third parties.</td>
</tr>
</tbody>
</table>
In Belgium, two types of insolvency proceedings exist, namely bankruptcy and judicial reorganisation.

Bankruptcy proceedings aim at the winding-up of the company. The management or board of directors is dispossessed and the liquidator appointed by the court takes over all powers, under the control of a supervisory judge and the commercial court. Upon the opening of the bankruptcy proceedings all claims against the debtor are halted. Enforcement is suspended and interest calculation is stopped. The bankruptcy liquidator realises the assets of the debtor and distributes the proceeds taking into account the privileges and securities of the creditors. The opening of bankruptcy proceedings triggers a concursus creditorum. Proceeds are distributed according to the legal rank of the creditors. Creditors of a same rank are treated on a pari passu basis. Creditors having a right in rem can be entitled, under certain circumstances, to enforce their rights directly, not being subject to the bankruptcy proceedings and even without the intervention of the liquidator. That is however rarely their wish. In general, creditors prefer that the liquidator undertakes all necessary actions and then pays off these creditors taking into account their rights in rem. Creditors of the estate (i.e. having debts that arose after the opening of the bankruptcy) are paid out of the estate, prior to creditors in the estate.

Judicial reorganisation, which is a debtor-in-possession proceeding, aims at saving an enterprise, or at least its viable activities, avoiding the stigma of bankruptcy. There exist three types of judicial reorganisation, namely an amicable settlement, a collective agreement or the transfer of undertakings. When opening the reorganisation proceedings the court orders a suspension of the debt (and enforcement of security) existing at the time of the opening of the proceedings, for a first period of maximum six months. New debt, arising after the opening of the reorganisation proceedings, be it through new contracts or through existing contracts, for new services or deliveries, is not suspended and immediately payable by the debtor.

Insolvency
The priority of claims of creditors in bankruptcy proceedings are as follows:

- Costs and indebtedness incurred by the bankruptcy liquidator during the insolvency proceedings including the bankruptcy liquidator’s fees
- Secured creditors
- Creditors benefiting from a general privilege (employees, Treasury and social security)
- Unsecured creditors
Czech Republic

Introduction

- Upstream and cross-stream guarantees are newly regulated by the New Civil Code (effective as of 2014) as “financial guarantees.”
- Mortgage / pledge is the most popular form of security. However, with the New Civil Code (effective as of 2014), the instrument of security transfer of rights has been substantially changed and may now be used more frequently than before. A security transfer of a right is a conditional assignment of other rights, such as property rights, to a creditor. If the secured debt is not paid, the transfer of the right becomes unconditional.

Overview of security interests

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<tr>
<th>Asset type</th>
<th>What forms of security can be granted</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real estate</td>
<td>Mortgage, Security transfer of a right</td>
<td>A mortgage is created as of its entry in the land register. In the case of real estate not registered in the land register, the mortgage is created by entry in the pledge register and the contract has to be in the form of a notarial deed.</td>
</tr>
<tr>
<td>Shares</td>
<td>Pledge, Security transfer of a right</td>
<td>In a limited liability company, a pledge of shares is created upon its entry in the commercial register. The contract has to be in written form; approval by General Meeting might be necessary (depending on the law/conditions stipulated in the Articles of Association); if this is the case, the approval has to be in the form of a notarial deed.</td>
</tr>
<tr>
<td>Receivables and contractual rights</td>
<td>Pledge, Security transfer of a right</td>
<td>The contract generally has to be in written form. The pledge is created as of the effectiveness of the contract, unless the parties decide to enter the pledge in the pledge register (optional). In that case, the pledge is created as at the entry in the pledge register and the contract has to be in the form of a notarial deed.</td>
</tr>
<tr>
<td>Bank accounts</td>
<td>Pledge, Security transfer of a right</td>
<td>Similar as for receivables</td>
</tr>
<tr>
<td>Moveable property (including plant and machinery)</td>
<td>Pledge, Security transfer of a right</td>
<td>The pledge is created as at the hand-over to the secured creditor. The hand-over can be substituted with a sign labeling the moveable property as pledged. In these cases, the contract does not have to be in written form. The contract has to be in the form of a notarial deed if the pledge will be created as of the entry in the pledge register.</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Pledge, Security transfer of a right</td>
<td>The pledge is created as of its entry in the relevant register (Patent and Utility Model Database, Industrial Design Database, Trademark Database)</td>
</tr>
<tr>
<td>Business + goodwill</td>
<td>Pledge, Security transfer of a right</td>
<td>A pledge of business is similar to a floating charge. In this case, the entry in the pledge register and a contract in the form of a notarial deed are mandatory.</td>
</tr>
</tbody>
</table>
According to Czech law, a secured creditor is a creditor whose claim is secured by property belonging to the property of the estate, by virtue of a pledge, lien, retention right, restriction on transferability of real estate, security transfer of a right or a security transfer of a claim, or an analogous right established under foreign law.

Secured creditors have the right to have their claim satisfied by the proceeds from the realisation of chose in action, rights, receivables, or other assets which secure the claims. The insolvency administrator is bound by the instructions from the secured creditor pertaining to the realisation.

Proceeds from the enforcement are accounted for to the secured creditor with the approval of the insolvency court. The amount will be reduced by up to 5% for the costs of enforcement, by up to 4% for the costs of management of the security, and by the insolvency administrator’s remuneration.

Insolvency
The priority of claims of creditors in cases of insolvency is as follows:

- **Secured creditors (subject to the costs of insolvency proceedings)**
  - Priority claims in the following order: remuneration and out-of-pocket expenses of the insolvency administrator, claims arising from the suppliers’ agreements which could not have been terminated after the imposition of the moratorium, claims arising from credit financing, costs related to the maintenance and management of the property, employee claims arising after the bankruptcy decision, statutory maintenance claims for damages to health

- **Other priority claims (e.g. other employee claims, taxes and fees)**

- **Unsecured creditors**
England and Wales

Introduction

- The security trustee concept is recognised.
- Main forms of security are fixed and floating charges. To be a fixed charge, the charge must establish control over the asset concerned. Security can be taken over any asset (present or future) as long as it is identifiable but strict controls must be in place to maintain fixed charge status, otherwise the security will be re-characterised as floating security. There are filing requirements.
- Upstream guarantees secured by fixed and / or floating charges can be granted by third parties subject to compliance with corporate benefit rules.

Overview of security interests

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</tr>
</thead>
<tbody>
<tr>
<td>Real estate</td>
<td>Legal mortgage</td>
<td>A legal mortgage must be registered at the Land Registry as well as at Companies House in order to be valid against third parties</td>
</tr>
<tr>
<td>Shares</td>
<td>Legal or equitable mortgage</td>
<td>An equitable mortgage is often more desirable as legal title is not transferred. Normally with an equitable mortgage, a share certificate and undated stock transfer form is provided to the lender</td>
</tr>
<tr>
<td>Bank accounts, receivables, and contractual rights</td>
<td>Fixed or floating charge</td>
<td>Charge will require registration at Companies House. Normally a lender will take a fixed security interest by way of assignment of the receivable itself and the account, but the financier must have sufficient control to maintain the fixed charge</td>
</tr>
<tr>
<td>Plant and machinery</td>
<td>Fixed or floating charge</td>
<td>Charge to be registered at Companies House. To be a fixed charge, control needs to be exercised by the lender. It is not necessary for the lender to take possession. The asset can be marked with a plaque or other notice to further evidence the security interest</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Mortgage or Fixed or floating charge</td>
<td>Registration at a specific intellectual property registry required for fixed security</td>
</tr>
<tr>
<td>Business / goodwill</td>
<td>Fixed or floating charge</td>
<td>Security over the business as a going concern is normally taken by way of floating charge (see below)</td>
</tr>
</tbody>
</table>
A “debenture” usually refers to an instrument creating fixed and/or floating charges over all, or substantially all, of the assets of the company.

A floating chargeholder may appoint an administrator on an event of default in the underlying loan as long as the floating charge covers all or substantially all of the assets of the company. The court has relatively little involvement in the procedure.

In the absence of agreement between chargeholders, the order of priority between competing fixed charges and competing floating charges is determined based on which was created first (as long as it was registered at Companies House within 21 days of creation).

Outside insolvency, security can be enforced without court assistance although there are restrictions during a moratorium arising on the appointment of an administrator or (for small companies only) where a company voluntary arrangement is being proposed.

### Insolvency

The priority of claims of creditors in insolvency are as follows:

- Holders of mortgages and fixed charges (the costs of realisation are paid from this subject to agreement with the fixed chargeholder)
- The costs of the insolvency procedure (which require creditor or court approval before being paid) followed by preferential creditors (some employee claims a “Prescribed Part” payable to unsecured creditors (this is a maximum of £600,000 of the net floating charge realisations calculated on a sliding scale which must be set aside for the unsecured creditors)
- Floating chargeholders
- Unsecured creditors for the balance of their claims
France

Introduction

- The French civil code provides a form of security agent mechanism. Any security can be agreed upon, registered, administered and enforced on behalf of a number of secured creditors by a single person (agent de sûretés) designated by them in the agreement which creates or records the secured liabilities.

- France has not ratified the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition, so that the concept of ‘trust’ is not generally recognised under French law. Nevertheless, a concept of ‘trust’ is defined in the French tax code for tax purposes. French Supreme Court held in the ‘Belvedère’ case that a trustee appointed under a trust governed by foreign law could be validly regarded as a creditor in safeguard proceedings opened in France.

- French corporations may provide upstream and cross-stream guarantees for the financial obligations of other group companies, subject to compliance with the rules relating to corporate benefit, statutory object clause and the prohibition of misuse of corporate assets.

Overview of security interests

<table>
<thead>
<tr>
<th>Assets</th>
<th>Security right</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real estate</td>
<td>Mortgage</td>
<td>The mortgage must be executed in front of a (French) notary public, who is responsible for title search and for the proper registration of the mortgage with the land registry.</td>
</tr>
<tr>
<td>All asset types including real estate</td>
<td>Security trust (‘fiducie sûreté’)</td>
<td>Under a ‘fiducie sûreté’, a settlor transfers an existing (or future) property right (or security) to a trustee to secure a claim of its creditor (beneficiary). The trustee will hold the property separate from its individual property and will act in accordance with the mandate defined in the trust agreement.</td>
</tr>
<tr>
<td>Shares</td>
<td>Pledge</td>
<td>Shares in SARLs (limited liability companies under French law) and certain other companies are not classified as financial securities and security is taken through a pledge over the shares themselves.</td>
</tr>
<tr>
<td>Securities account pledge</td>
<td></td>
<td>This security interest is available only with respect to securities issued by a SA or SAS, which have taken the form of entries into paper or electronic accounts. The pledge is created through the execution and delivery by the pledgor of a statement of pledge.</td>
</tr>
<tr>
<td>Receivables</td>
<td>Pledge</td>
<td>Security may be granted over any (existing or future) receivable through the execution of a pledge agreement in writing between the pledgor and the secured creditor, indicating the secured obligations and properly identifying the relevant receivables and corresponding third-party debtor.</td>
</tr>
<tr>
<td>“Daily” assignment</td>
<td></td>
<td>A company can assign outright (and thereby fully transfer full title to) its present and future receivables arising out of the carrying of a contract or a number of contracts to a credit institution.</td>
</tr>
<tr>
<td>Bank accounts</td>
<td>Pledge</td>
<td>This security interest is a variant of a pledge over receivables.</td>
</tr>
</tbody>
</table>
Beside the public sale and the judicial foreclosure of the assets, French law provides for a third type of enforcement proceedings: The ‘pacte commissoire’, meaning the possibility for the parties to agree on the contractual attribution of the pledged asset(s) to the secured creditor in case of payment default by the debtor. (Please note that the pact commissoire is not applicable in case of a stock and of business activity pledge).

**Insolvency**

The pre-insolvency proceedings are the special mediation (mandat ad-hoc), conciliation (conciliation) and the safeguard proceedings (procédure de sauvegarde) which can only be initiated by the management of the debtor company provided that it passes the ‘cash-flow test’ (defined as the debtor’s inability to pay its debts as they fall due with its immediately available assets, taking into account available credit lines and moratoria). The latter is often compared to the US Chapter 11 proceeding since the debtor company already enjoys a stay of payments and proceedings. Expedited safeguard (sauvegarde financière accélérée) is opened, at the debtor’s request, provided that a conciliation procedure is pending in which at least a two-third majority in value of financial creditors (and bondholders) are likely to approve the restructuring proposal. The procedure has effects in relation to financial creditors (and bondholders) excluding trade creditors.

The insolvency proceedings are the rehabilitation proceedings (redressement judiciaire) and the liquidation procedure (liquidation judiciaire) during which the debtor company enjoys a stay of payments and proceedings.

In the framework of a safeguard or a reorganisation plan, the plan must take into account the subordination agreements entered into prior to the commencement of the proceedings.

In the framework of a sale plan or liquidation proceedings, the rank of a creditor’s claim is determined by law. Apart from employee-related claims, priorities in liquidation proceedings are as follows:

<table>
<thead>
<tr>
<th>Assets</th>
<th>Security right</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plant and machinery</td>
<td>Pledge</td>
<td>A number of strict and rather onerous requirements apply in order to create this type of security.</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Pledge</td>
<td>Intellectual property rights can be pledged independently from a pledge over ongoing business (see below).</td>
</tr>
<tr>
<td>Business activity/Goodwill</td>
<td>Pledge over ongoing business</td>
<td>This security interest covers: (i) Leasehold rights, (ii) some fixed assets, (iii) trade name and goodwill; and, as the case may be (iv) intellectual property rights.</td>
</tr>
</tbody>
</table>

**Assets**

- **Plant and machinery**: Pledge
- **Intellectual property**: Pledge
- **Business activity/Goodwill**: Pledge over ongoing business

**Comments**

- A number of strict and rather onerous requirements apply in order to create this type of security.
- Intellectual property rights can be pledged independently from a pledge over ongoing business (see below).
- This security interest covers: (i) Leasehold rights, (ii) some fixed assets, (iii) trade name and goodwill; and, as the case may be (iv) intellectual property rights.
Taking and enforcing security in Europe

Germany

Introduction

▶ A sole chargee may act as trustee on behalf of itself and other lenders with regard to most forms of security interest (accessory security, such as pledges, must be dealt with differently).
▶ Upstream and cross-stream guarantees and security are subject to the rules on capital maintenance.
▶ There are notarisation requirements with regard to some security interests. Apart from the register on mortgages and land charges, registers of existing security do not exist.

Overview of security interests

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<tr>
<th>Asset type</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Real estate</td>
<td>Mortgages or land charges</td>
<td>The land charge is preferred to a mortgage because it creates abstract security.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Both security interests can only be granted by notarial deed and need to be registered in the Land Register</td>
</tr>
<tr>
<td>Shares</td>
<td>Pledge</td>
<td>GmbH shares can only be pledged by notarial deed</td>
</tr>
<tr>
<td>Receivables and contractual rights</td>
<td>Assignment by way of security / pledge</td>
<td>Assignments are more common and do not need to be notified</td>
</tr>
<tr>
<td>Bank accounts</td>
<td>Pledge</td>
<td>Require notice to the bank. Restrictions on payments or transfers can be imposed by lender</td>
</tr>
<tr>
<td>Moveable property (including plant and machinery)</td>
<td>Pledge / transfer of title by way of security</td>
<td>Pledges are considered inappropriate as they would require the lender to take possession. Security transfers must identify the asset concerned</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Pledge</td>
<td>Registration is not compulsory but recommended. Enforcement of the pledge takes place by public auction</td>
</tr>
<tr>
<td>Business / goodwill</td>
<td>Not possible – no concept of floating charge</td>
<td></td>
</tr>
</tbody>
</table>
Specific rules apply to the enforcement of mortgages and land charges.

Upon insolvency, assets not belonging to the insolvent’s estate can be separated and recovered by their owners (Aussonderungsrecht).

The secured creditors (including pledgees and creditors secured by a transfer of title by way of security or assignments by way of security) have a right to preferential satisfaction out of the proceeds of the sale of the security granted (Absonderungsrecht).

If the insolvency administrator enforces security on moveable assets (other than pledges) and distributes the proceeds to the creditor, he can deduct 4% of the proceeds for the ascertainment of the security and 5% of the proceeds for the enforcement procedure. If the actual costs deviate substantially, these rates would be adjusted.

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### Insolvency

The priority of claims of creditors on insolvency are as follows:

1. **Secured creditors (subject to insolvency administrator’s fee share)**
2. **The costs of the insolvency proceedings (e.g. court costs, insolvency administrator’s fees)**
3. **Debts that are incurred by the insolvency administrator**
4. **Employees’ salaries in an amount of up to 2 ¼ months’ salary per employee in case of an agreed “social plan” (Sozialplan)**
5. **Unsecured creditors**
Hungary

Introduction

- The concept of security trustees exists in Hungary. In such case only the security trustee is registered in the corresponding register and only he may exercise the rights arising from the security contract.
- Upstream and cross-stream guarantees are not explicitly regulated under Hungarian law, however, they are widespread in practice. The compulsory rules of the Hungarian Civil Code on capital maintenance have to be taken into consideration.
- There are no requirements for notarisation of security contracts. Mortgages come into existence by registration in special registers (e.g. land registry) or the security register maintained by the chamber of notaries.

Overview of security interests

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</thead>
<tbody>
<tr>
<td>Real estate</td>
<td>Mortgage</td>
<td>Mortgage is the only way of securing claims with real estates. It shall be registered in the Land Registry.</td>
</tr>
<tr>
<td>Shares</td>
<td>mortgage / pledge</td>
<td>Securities established on dematerialised shares of public limited companies have to be indicated in the securities account. Shares of private limited companies can be pledged only with a mortgage which has to be registered in the company register.</td>
</tr>
<tr>
<td>Plant and machinery</td>
<td>mortgage / pledge / floating charge</td>
<td>Both mortgage and pledge have to be registered in a notarial register. Floating charges can be established covering all or part of the assets of the pledger. Mortgages on plant as part of the real estate shall be registered in the Land Registry.</td>
</tr>
<tr>
<td>Bank accounts</td>
<td>mortgage / deposit / floating charge</td>
<td>No registration is required by establishment of deposit, which, however, has to be indicated on all bank account statements. If bank accounts are subject to a mortgage, no direct enforcement is allowed. Floating charges may also be established.</td>
</tr>
<tr>
<td>Receivables and contractual rights</td>
<td>mortgage</td>
<td>Registration in the notarial register is required.</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Mortgage</td>
<td>Registration in the corresponding register, such as patent, trademark, design register is necessary.</td>
</tr>
<tr>
<td>Business / goodwill</td>
<td>floating charge</td>
<td>A business as a going concern can be subject to a floating charge.</td>
</tr>
</tbody>
</table>
Enforcement of securities is admissible upon the choice of the creditor either in a court enforcement procedure or in out-of-court procedures. In the latter case the creditor may sell the subject of the security, may obtain title thereon, or may enforce the claim or right if that was subject of the security. Lex commissoria shall be applied except for the enforcement of deposits. In case of several securities established on the same asset the one established first prevails in the course of the enforcement.

Creditors secured by mortgages and pledges have a right to preferential satisfaction out of the proceeds of the sale of the security granted, subject to the deduction of the receiver’s cost lump sum.

Security holders enjoy priority in the insolvency procedure if they have their claims registered within 40 days of the commencement of the liquidation procedure, commencement of the liquidation procedure is published in the Company Gazette which is available on the internet for free.

Creditors holding a deposit may seek satisfaction directly from the asset insolvency practitioner’s fees.

Creditors holding a mortgage or pledge and creditors holding a floating charge (the latter up to 50% of the proceeds of the sale).

Costs of the insolvency procedure.

The remaining part of the claim of a creditor holding a floating charge.

Alimony, life annuity, compensation for non-pecuniary damage, etc.proceeds of the sale).

Claims of private persons as well as claims of SME.

Tax claims, social security claims, etc.

Non-secured claims; further secured claims which were only announced after the expiry of the 40 days deadline.

Insolvency

The priority of claims of creditors in the insolvency procedure is as follows:
Ireland

Introduction

- The security trustee and agent concepts are recognised in Ireland.
- The customary forms of security are fixed and floating charges and security assignments and there are statutory filing requirements to ensure that security is valid and enforceable.
- A fixed charge is taken over a specified asset. The level of control that the chargor retains in the secured asset must be limited to avoid the fixed charge being re-characterised as a floating charge. A floating charge is generally taken over assets that the charger wishes to be free to use in the ordinary course of its business.
- There is no general prohibition on the granting of guarantees (whether upstream or otherwise) by an Irish company. However, the directors of an Irish company have a duty to act in what they consider to be the best interests of the company they direct.

Overview of security interests

<table>
<thead>
<tr>
<th>Asset type</th>
<th>What forms of security can be granted</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real Estate</td>
<td>Fixed or floating charge</td>
<td>Land is divided into registered land and unregistered land and the form and procedure for registration differ in each case.</td>
</tr>
<tr>
<td>Shares</td>
<td>Legal or equitable mortgage; or pledge of bearer shares</td>
<td>Ancillary documentation should generally be sought in connection with any security over shares. This may include share transfer forms and the original share certificates.</td>
</tr>
<tr>
<td>Plant and Machinery</td>
<td>Fixed or floating charge</td>
<td>Security over movable plant and machinery is typically created by a fixed or floating charge. Registration should be made at the CRO.</td>
</tr>
<tr>
<td>Bank accounts, receivables and contractual rights</td>
<td>Fixed or floating charge or security assignment</td>
<td>Where a fixed charge or assignment has been created by a company, a section 1001 notice in relation to book debts should also be filed with the Revenue Commissioners, under section 1001(3) of the Taxes Consolidation Act 1997.</td>
</tr>
<tr>
<td>Intellectual Property</td>
<td>Legal mortgage, equitable mortgage or fixed or floating charge (depending on the nature of intellectual property)</td>
<td>For a security assignment, in order to create a legal as opposed to equitable security interest, a notice of the assignment of the bank account must be served on the account-holding bank informing them that the account has been assigned.</td>
</tr>
<tr>
<td>Business / goodwill</td>
<td>Fixed or floating charge</td>
<td>Registration at a specific intellectual property registry may also be required.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Security over the business as a going concern is usually taken by way of floating charge.</td>
</tr>
</tbody>
</table>

Ireland
Insolvency

The priority of claims of creditors on insolvency are as follows:

- Any claim under section 19(2) of the Social Welfare (Consolidation) Act 2005, that is any sum deducted by an employer from the remuneration of an employee in respect of an employment contribution due by the employer and unpaid by the employer does not form part of the assets of a limited company in a winding-up. A sum equal to that deducted must be paid into the Social Insurance Fund ahead of all preferential debts (super preferential claim).
- Remuneration, costs and expenses of an examiner that had been sanctioned by the court under section 554 of the Companies Act 2014.
- Secured creditors holding mortgages or fixed security rank in order of their registration.
- Expenses certified by an examiner under section 529 of the Companies Act 2014.
- Costs and expenses of winding up (including liquidator’s legal costs).
- Liquidator’s remuneration.
- Preferential creditors (such as rates and taxes, wages and salaries).
- Floating charges (which have not crystallised prior to the date of the winding up of the Company) rank in order of their registration.
- Unsecured creditors.
- Deferred or subordinated creditors.

Within each ranking, all claims in one category receive full payment before any remaining proceeds are distributed to creditors in the following category. When proceeds are insufficient to meet claims of one category in full, payments for that category are pro-rated.

It is possible for the secured creditors to agree among themselves the order of application of the proceeds of the enforcement of their security so far as their secured claims are concerned.
Italy

Introduction

- There is no concept of a security trustee. The secured creditors must be parties to the security documents or represented by a security agent acting in the name of, and on behalf of, the secured creditors on the basis of an appropriate power of attorney.
- An Italian company can provide upstream guarantees, subject to compliance with corporate benefit rules (which, although, very often prevent the company to grant such upstream guarantees).
- In case of transactions relating to medium-long term credit facility agreements made by certain banks and financial institutions, the relevant parties may opt for the application of a 0.25% substitute tax (imposta sostitutiva).
- Syndication may involve significant indirect tax costs, especially in case of loans secured by a mortgage.

Overview of security interests

<table>
<thead>
<tr>
<th>Asset type</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Real estate</td>
<td>Mortgage</td>
<td>The mortgage is created by registration of a notarial deed (bearing certified date) with the local property registration office and ranks from the date of such registration. The registration is effective for a twenty year period and, afterwards, ceases to be effective unless it is renewed.</td>
</tr>
<tr>
<td>Shares</td>
<td>Pledge</td>
<td>The pledge – constituted by means of a written agreement – may be perfected by means of two different processes: (i) annotation of the pledge over the certificates representing the shares; or (ii) endorsement by way of security of the shares. In both cases, the shareholders’ register shall be duly annotated. In case of dematerialized shares, the pledge is created by means of a specific annotation on the relevant deposit account. The pledge of listed shares in favour of banks and other financial institutions may also be carried out according to Legislative Decree No. 170 of 2004, implementing the EU Financial Collateral Directive (“170 Decree”), granting specific rules on financial collaterals.</td>
</tr>
<tr>
<td>Quotas (for companies which do not issue shares, e.g., società a responsabilità limitata)</td>
<td>Pledge</td>
<td>Pledge over quotas may be constituted by means of a notarial deed. The pledge becomes perfected with the registration of the deed of pledge with the Companies Register. The quotaholders’ register (where adopted) shall be annotated by a director of the relevant company recording the constitution of the pledge.</td>
</tr>
</tbody>
</table>
Taking and enforcing security in Europe

Insolvency proceedings are administered by the court for the benefit of all creditors. Please note that the Italian insolvency law also provides for certain pre-bankruptcy, out-of-court procedures.

**Insolvency**

Under the Italian insolvency law, in case of insolvency, claims rank as follows (and, therefore, are repaid in the following priority):

- Costs and expenses relating to the insolvency procedure (including certain debts and credit facilities with “super priority status” – prededucibili – expressly authorized by the court)
- Any person or entity which has a general lien (e.g., employees and state tax) or special lien
- Debts that are incurred by the insolvency administrator
- Secured creditors (being understood that any proceeds deriving from the sale of the assets subject to security will be primarily allocated in repayment of the relevant secured creditors)
- Unsecured creditors

- There is no concept of non-court appointed receivership and no concept of a secured creditor being able to appoint a person who will realise the secured assets with a view to repaying the secured debt or selling the business as a whole.
- Any creditor, whether secured or unsecured, may file a petition with the relevant insolvency court in order to be admitted to the insolvency procedure.

### Insolvency Law

Under the Italian insolvency law, claims rank as follows (and, therefore, are repaid in the following priority):

<table>
<thead>
<tr>
<th>Asset type</th>
<th>What forms of security can be granted</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receivables and contractual rights</td>
<td>Pledge / Assignment by way of security</td>
<td>Both pledges and assignments of receivables shall be: (i) constituted by means of a written deed (in certain specific cases a notarial deed is required); and (ii) effective vis-à-vis the pledged/assigned debtor only upon receipt of the relevant notice or, alternatively, acceptance of the pledge/assignment issued by the same debtor (both the notice and the acceptance shall bear certified date). Receivables may also be pledged/assigned in favour of banks and other financial institutions, in accordance with the rules set under 170 Decree. Assignments of receivables involving any public entities as assigned debtor are subject to a stricter regime, including additional formalities (i.e., notarial deed and, in certain cases, consent from the relevant public entity).</td>
</tr>
<tr>
<td>Bank accounts</td>
<td>Pledge</td>
<td>The constitution of a pledge over credit balance of a bank account requires the same formalities needed in order to create a pledge over receivables. This type of security, if constituted in favour of banks and other financial institutions, can be regulated by the provisions set forth under 170 Decree.</td>
</tr>
<tr>
<td>Plant and machinery</td>
<td>Special lien (privilegio speciale)</td>
<td>Special liens may be granted only if the relevant security interest is granted to secure loans lasting more than 18 months. This security can be granted only in favour of banks duly licensed in Italy, and is constituted through a notarized deed. Since 2013, also medium long term bonds may be secured by a special lien.</td>
</tr>
<tr>
<td>Mortgage</td>
<td>Mortgage taken over real property automatically extends to plant and fixed machinery.</td>
<td></td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Pledge</td>
<td>The pledge over intellectual property shall be registered with the relevant public office (i.e., Ufficio italiano brevetti e marchi).</td>
</tr>
<tr>
<td>Business / goodwill</td>
<td>Not possible – No concept of floating charge</td>
<td></td>
</tr>
</tbody>
</table>
Netherlands

Introduction

► Dutch law does not provide for the concept of trust similar to the English law trust. It is however possible to grant rights of mortgage or pledge to a security trustee provided that a parallel debt structure has been created. Parallel to the debt owed to all lenders, a debt is created in favour of the security trustee which is at any time equal to the aggregate debt owing to the lenders. Security is only created in favour of the security trustee to secure the parallel debt and any enforcement proceeds will be applied in repayment of the debt owed to the lenders. This parallel debt structure allows the lenders to transfer their loan participations without affecting the rights of a mortgage and pledge.

► In principle, Dutch law does not prohibit the granting of upstream guarantees by Dutch companies provided that this is permitted by the company’s Articles of Association.

► Dutch law does not provide for a floating charge or for one security right over the overall assets of an entity. In general each type of asset requires its own mechanism for creating security of such assets. With regard to certain assets (such as moveable assets and receivables) it is possible to create a security right over generally described assets.

► With regard to movable assets and receivables, it is also possible to create a right of pledge with regard to future assets. The asset will be charged with the right of pledge ipso jure at the moment the asset is created or acquired. The possibility to create a right of pledge over future receivables is limited to receivables that will arise from existing legal relationships. As a right of pledge can be created over generally described assets, it is current practice for professional lenders to repledge all receivables of their debtors in a collective deed of pledge on a daily basis, using a power of attorney issued by the pledgers in a master deed of pledge for that purpose.

► Enforcement of security (other than financial collateral) is generally by public auction although private sales are possible with the consent of the court. A pledge can also be enforced by private sale if the pledger consents at the time of enforcement. Financial collateral can be sold, appropriated or set off (if cash) in accordance with the EU Financial Collateral rules.

► All creditors rank pari passu, unless they have a certain preference such as a right of mortgage, a right of pledge or preferential rights. Mortgagees and pledgees are in principle entitled to recover their claim by enforcing their security rights independently, notwithstanding the insolvency of the grantor of the security.
Overview of security interests

<table>
<thead>
<tr>
<th>Asset type</th>
<th>What forms of security can be granted</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real estate</td>
<td>Mortgage</td>
<td>Notarial deed of mortgage and registration with the land registry (Kadaster)</td>
</tr>
<tr>
<td>Shares</td>
<td>Pledge</td>
<td>Pledge on registered shares requires execution of notarial deed of pledge.</td>
</tr>
<tr>
<td>Bank accounts, Receivables</td>
<td>Disclosed or undisclosed pledge</td>
<td>A disclosed pledge is created by private deed and notice thereof to the debtors. An undisclosed pledge is created either by a notarial deed or a private deed, that needs to be registered with the Dutch tax authorities (for date stamping only).</td>
</tr>
<tr>
<td>Contractual Rights</td>
<td>Possessory pledge or non-possessory pledge</td>
<td>Possessory pledges are generally considered impractical. Non-possessory pledges require a notarial or private deed of pledge. If created by private deed, registration with tax authorities is required (for date stamping only).</td>
</tr>
<tr>
<td>Movable property</td>
<td>Pledge</td>
<td>Notarial or private deed of pledge. If created by private deed, registration with the Dutch tax authorities is required (for date stamping only). Registration of the security with relevant IP registers binds third parties</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Not possible</td>
<td>No concept of floating charge</td>
</tr>
</tbody>
</table>

Insolvency

The priority of claims of creditors in insolvency are as follows:

- Secured Creditors (subject to certain exceptions)
- Estate claims (including but not limited to post-bankruptcy claims by tax authorities and claims by the National Institute for Social Insurance and costs of bankruptcy proceedings)
- Preferential pre-bankruptcy claims including bankruptcy filing costs, pre-bankruptcy claims by tax authorities and claims of employees and/or the National Institute for Social Insurance
- Non-preferential or common pre-bankruptcy claims

For certain tax claims, the tax authorities have special preferential rights of recourse to assets owned by third parties that are located on the debtor’s premises and used for the operation of its business, such as machinery, equipment and furniture but not trading stock and not where the third parties have real ownership of the assets in question. Generally, whilst ownership rights under operational leases qualify as real ownership, rights under finance leases do not.
### Poland

**Introduction**
- The general forms of security are pledges and mortgages.
- Several necessary requirements and other issues need to be observed in order to ensure a valid and enforceable security.
- The principal registers of existing securities constitute the land and mortgage register and the register of registered pledges. Some securities need to meet notarisation requirements (e.g. mortgage – notarial deed, or regular pledge over shares – written form with signatures certified by the notary public).

### Overview of security interests

<table>
<thead>
<tr>
<th>Asset type</th>
<th>What forms of security can be granted</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real estate</td>
<td>Mortgage</td>
<td>The mortgage must be executed in the form of a notarial deed by a Polish notary public and entered into the land and mortgage register for it to be effective.</td>
</tr>
<tr>
<td>Shares</td>
<td>Ordinary pledge, registered pledge and financial pledge</td>
<td>Ordinary pledge needs to be established in writing with signatures certified by the notary public. In addition the notification of the company and application of an updated shareholder’s list as regards the establishment of the pledge to the commercial register is required. The registered pledge, which is very common, needs to be established in writing and requires the entry into the register of registered pledges. Notification of the company is also required. Financial pledge requires simple written form and is usually established until the moment of entry of the registered pledge into the Register of Pledges.</td>
</tr>
<tr>
<td>Bank accounts</td>
<td>Ordinary pledge, registered pledge and financial pledge</td>
<td>The establishment of the registered pledge over receivables from the bank account requires conclusion of a registered pledge agreement in writing and the entry in the register of registered pledges. Notification of the bank is required. Financial pledge requires simple written form and is usually established until the moment of entry of the registered pledge into the Register of Pledges.</td>
</tr>
<tr>
<td>Plant, machinery and other movable assets</td>
<td>Ordinary pledge and registered pledge</td>
<td>Requirements: (i) conclusion of a registered pledge agreement in writing (ii) entry in the register of registered pledges.</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Ordinary pledge and registered pledge</td>
<td>Only in relation to the transferable intellectual property rights admissible. Requirements: (i) conclusion of a registered pledge agreement in writing (ii) entry in the register of registered pledges. Particular case requires consideration of restrictions resulting from copyright law and industrial property law</td>
</tr>
<tr>
<td>Business / goodwill</td>
<td>Not possible</td>
<td></td>
</tr>
</tbody>
</table>
The coordination and supervision of the insolvency proceedings are performed by the court in order to guarantee and protect the interests of all participants, including the creditors. The court trustee is appointed to manage the affairs of the insolvent subject.

The principle of optimality – the bankruptcy proceedings should be conducted in a manner which provides for the maximum satisfaction of the creditors’ claims and when rational – for the preservation of the debtor’s enterprise.

The bankruptcy proceedings may be initiated only upon a petition filed by the debtor or its creditors.

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**Insolvency**

The priority of claims subject to satisfaction from the bankruptcy estate funds are in principle as follows:

1. Secured creditors (except for 1/10 of bankruptcy proceedings costs).

2. Other costs of bankruptcy proceedings, alimony payments and disease-related pensions, workers’ compensation for a period following the declaration of bankruptcy.

3. Amounts resulting from employment relationships, alimony payments, disease-related pensions, workers’ compensation for a period preceding the declaration of bankruptcy.

4. Taxes and other public levies.

5. Other claims with the interest due for the year preceding the bankruptcy date.

6. Other interest.
## Slovakia

### Introduction

Slovak laws currently in force recognize several types of securities. The legal regulation is contained primarily in the Slovak Civil Code and Slovak Commercial Code. The most common types of securities and their features are described in the table below:

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
<th>What can serve as a collateral</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Charge</strong></td>
<td>Most popular security. Right of a secured party to enforce its right against collateral, should the debtor default on the obligation.</td>
<td>Any property, asset, claim/right, enterprise, share, apartment, business premises, etc.</td>
</tr>
<tr>
<td></td>
<td>Can be established as a possessory (pledge) or non-possessory right registered in the on-line notarial registry (equitable charge). A floating charge is admissible.</td>
<td></td>
</tr>
<tr>
<td><strong>Lien (also: mechanic’s lien)</strong></td>
<td>Right to retain a tangible asset which is lawfully in the physical possession of the creditor. Used mostly in real estate lease relations.</td>
<td>Tangible assets only</td>
</tr>
<tr>
<td><strong>Debt acknowledgement in the form of a notarial deed</strong></td>
<td>Acknowledgement of a debt in a form of notarial deed constitutes a directly enforceable executory title; in practice, this instrument is frequently used and sometimes used instead or in combination with establishment of liens/charges.</td>
<td>Receivable</td>
</tr>
<tr>
<td><strong>Liquidated damages (“contractual penalty”)</strong></td>
<td>Financial penalty for a breach of a contractual obligation; in case of insolvency liquidated damages are deemed subordinated to all other claims.</td>
<td></td>
</tr>
<tr>
<td><strong>Mortgages</strong></td>
<td>Temporary transfer of the ownership of a property, subject to an obligation to retransfer the ownership upon the performance of the debtor’s obligation.</td>
<td>Any asset or property</td>
</tr>
<tr>
<td><strong>Guaranty</strong></td>
<td>Obligation of the guarantor to perform in lieu of the debtor upon the debtor’s default</td>
<td></td>
</tr>
<tr>
<td><strong>Assignment of a receivable</strong></td>
<td>Assignment of a receivable owed to the debtor</td>
<td>Receivable</td>
</tr>
</tbody>
</table>
Types of assets that can be used as security

<table>
<thead>
<tr>
<th>Asset type</th>
<th>What forms of security can be granted</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real Estate</td>
<td>Charge, Mortgage</td>
<td>Must be created in a written form (or in a form of a notarial deed or by way of a court/administrative decision). For perfection a registration with the Land Registry is needed.</td>
</tr>
<tr>
<td>Shares</td>
<td>Charge, Mortgage</td>
<td>May be subject to a consent of a Shareholders’ meeting; may be established by a written contract and the signatures must be verified by a public notary; both mortgage and charge must be registered with the Commercial Register; the transfer of a majority shareholding is subject to an approval of the Tax Authority</td>
</tr>
<tr>
<td>Receivables</td>
<td>Charge, Mortgage, Assignment of a receivable</td>
<td>Written contract is necessary to establish a security; a charge must be registered with the Notarial Central Registry of Charges</td>
</tr>
<tr>
<td>Plant and machinery</td>
<td>Charge, Mortgage</td>
<td>The establishment requires a written form, a charge must be registered with the Notarial Central Registry of Charges</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Charge, Mortgage</td>
<td>Both mortgage and charge must be established by a written contract; the perfection requires the registration of the security with the Register kept by the Industrial Property Office of the Slovak Republic</td>
</tr>
<tr>
<td>Securities</td>
<td>Charge, Mortgage</td>
<td>Can be established by a written contract and perfected by way of registration of the security with a special registry kept by the Central Securities Depository</td>
</tr>
<tr>
<td>Other movables</td>
<td>Charge, Mortgage, Lien</td>
<td>Can be established by a written contract (mortgage, charge) and perfected by the registration with the Notarial Central Registry of Charges or by the transfer of the physical possession (lien)</td>
</tr>
</tbody>
</table>

Bankruptcy proceedings

In the bankruptcy proceedings, the insolvency trustee prepares a list of assets of the debtor, which create the bankruptcy estate. The estate consists of two parts: the general estate, the proceeds from which are used to discharge the debts of unsecured creditors, and the separate estate represented by assets, in which secured creditors hold a security interest. The separate estate is liquidated and the proceeds used towards the satisfaction of the secured creditors’ claims.

The priority of claims of creditors in bankruptcy is as follows:

**Separate Estate:**
- Estate Claims against the Separate Estate (e.g. remuneration of the insolvency receiver, procedural costs, employees’ claims and taxes & custom duties incurred after the date of the declaration of bankruptcy)
- Secured creditors
- Subordinated claims (claims connected with a subordination obligation)

**General Estate:**
- Estate Claims against the General Estate (e.g. remuneration of the insolvency receiver, procedural costs, employees’ claims and taxes & custom duties incurred after the date of the declaration of bankruptcy)
- Unsecured creditors
- Contractual penalties and affiliated persons’ claims (despite the existence of a security, these claims shall be deemed unsecured for insolvency purposes)

Affiliated persons of a legal person are generally, (i.) statutory body, managerial employees, proxies, supervisory board of the legal person, (ii.) natural person or other legal person who has a qualified participation (min. 5%) in the legal person as well as their statutory body, managerial employees, proxies, supervisory board and their so-called close persons (close persons to natural persons) and (iii.) other legal person in which either the legal person or any of the aforementioned person holds a qualified participation (min. 5%). Affiliation can be constituted through any unbroken chain of 5% or higher participation between any given number of legal persons.

The regime of subordination applies to all claims (including the forms of security pertaining to such claims) that belong or once belonged to a creditor who is or who once (during the existence of the claim) was an affiliated person.
Spain

Introduction

» Spanish law does not recognise the concept of a security trustee holding security on behalf of a syndicate of lenders. There are, however, means to construct security arrangements in such a way as to allow a member of the banking syndicate to take the security and enforce it in the name and on behalf of all the members of the syndicate.

» It is possible for a Spanish company to grant upstream guarantees.

» The concept of floating charge is not recognised. No security can be granted over goodwill.

» In general terms, specially or generally privileged creditors are not subject to restructuring arrangements, except if they give their express support by voting in favour of such arrangement. However, the Spanish Insolvency Act was amended in 2014 to introduce a cram down mechanism under which the effects of a refinancing agreement (whether a formal court restructuring or an out-of-court refinancing) may be extended to non-participating or dissenting financial creditors if certain requirements are met.

Overview of security interests

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<tr>
<th>Asset type</th>
<th>What forms of security can be granted</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real estate</td>
<td>Mortgage</td>
<td>Must be notarised and registered at the Land Registry. Attracts stamp duty, the amount of which varies by region.</td>
</tr>
<tr>
<td>Shares</td>
<td>Pledge</td>
<td>Must be notarised. Permits the pledge of existing issued shares only. Extension to future shares will require a pledge update.</td>
</tr>
<tr>
<td>Receivables and contractual rights</td>
<td>Pledge</td>
<td>Must be notarised. Written notice to the third party debtor is advisable but not a requirement for perfection of the pledge (except if the security interest is governed by local Catalonian law, in which case written notice to debtor is required).</td>
</tr>
<tr>
<td>Bank accounts</td>
<td>Pledge</td>
<td>Must be notarised. Written notice to the account holding bank is advisable but not a requirement for perfection of the pledge (except if the security interest is governed by local Catalonian law, in which case written notice to debtor is required).</td>
</tr>
<tr>
<td>Plant and machinery</td>
<td>Chattel mortgage</td>
<td>Must be notarised and registered at the registry of moveable property. Attracts stamp duty, the amount of which varies by region.</td>
</tr>
<tr>
<td>Intellectual property</td>
<td>Chattel mortgage</td>
<td>Must be notarised and registered at the registry of moveable property. Attracts stamp duty, the amount of which varies by region.</td>
</tr>
<tr>
<td>Business / goodwill</td>
<td>No security can be granted</td>
<td></td>
</tr>
</tbody>
</table>
Security interests as a whole can be “separated” and “reserved” for the benefit of a certain creditor. The secured creditor, while preserving its full claim against the rest of the assets of the debtor, will have a privileged right enforceable against the relevant asset.

Enforcement of a mortgage is regulated by a procedure culminating in a public auction of the property, with the proceeds of the sale applied towards the satisfaction of the liability.

If secured obligations are not satisfied out of the proceeds of enforcement, the secured creditors will rank as common creditors of the insolvent estate in respect of the remaining unpaid amounts.

If the security interest is created under a financial collateral arrangement (i.e. at least one of the parties is a financial institution), the secured creditors may enforce this security interest immediately by means of direct sale, appropriation or set-off of credits. In respect of insolvency proceedings, a moratorium on enforcement can apply (except for financial collateral arrangements, which will not be limited, restricted or affected in any way by the commencement of insolvency proceedings).

Insolvency

According to the Spanish Insolvency Act 2003, as amended (the “Insolvency Act”) the ranking of claims of creditors on an insolvency are as follows:

<table>
<thead>
<tr>
<th>Special priority claims: claims of secured creditors (i.e. benefiting from in rem security over specific assets), to the extent of the realisation value of the charged assets. Therefore any such claim will rank as an ordinary claim as regards any portion of it which has not been settled after realisation of the relevant asset</th>
</tr>
</thead>
<tbody>
<tr>
<td>General priority claims: certain claims in respect of salary, tax, social security, tort and other situations</td>
</tr>
<tr>
<td>Contemplated by statute as priority claims</td>
</tr>
<tr>
<td>Ordinary claims</td>
</tr>
<tr>
<td>Subordinated claims, including: (i) claims that have been belatedly reported into the proceedings; (ii) claims that are contractually subordinated to all claims against the debtor; (iii) profit participating loans; (iv) accrued interest of any type (whether ordinary or default interest), to the extent it is not secured in which case it would be treated as a priority claim in the above terms; (v) fines and other penalties imposed by public authorities; (vi) claims where the relevant creditor and the debtor are “related parties”, as defined under the Insolvency Act; (vii) certain claims where the creditor has acted in bad faith as defined under the Insolvency Act</td>
</tr>
</tbody>
</table>
About us

Taylor Wessing is a leading international law firm with a single-minded approach: to help its clients succeed by thinking innovatively about their business issues.

Taylor Wessing has around 1200 lawyers working across 28 offices in Europe, the Middle East, the US and Asia, offering an integrated service across the full range of practice areas, with core strengths in real estate, finance, corporate, IP and private wealth. The firm also has particular expertise in advising clients in North America, Brazil and India.

At Taylor Wessing we are proud of our reputation as a forward-thinking firm. We have a clear focus on supporting the fast growing industries of tomorrow and are particularly active in real estate and infrastructure; technology, communications and brands; life sciences and healthcare; financial institutions and services; and energy and environment.

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