
CHAMBERS GLOBAL PRACTICE GUIDES

Debt Finance 2026

Definitive global law guides offering
comparative analysis from top-ranked lawyers

Switzerland: Law and Practice

Micha Schilling, Martin Peyer and Jill Blattmann
Wenger Vieli Ltd



SWITZERLAND



Law and Practice

Contributed by:

Micha Schilling, Martin Peyer and Jill Blattmann
Wenger Vieli Ltd

Contents

1. Market p.4

- 1.1 Debt Finance Market Performance p.4
- 1.2 Market Players p.4
- 1.3 Geopolitical Considerations p.5

2. Types of Transactions p.6

- 2.1 Debt Finance Transactions p.6

3. Structure p.6

- 3.1 Debt Finance Transaction Structure p.6

4. Documentation p.8

- 4.1 Transaction Documentation p.8
- 4.2 Impact of Types of Investors p.8
- 4.3 Jurisdiction-Specific Terms p.9

5. Guarantees and Security p.9

- 5.1 Guarantee and Security Packages p.9
- 5.2 Key Considerations for Security and Guarantees p.11

6. Intercreditor Issues p.12

- 6.1 Role of Intercreditor Arrangements p.12
- 6.2 Contractual v Legal Subordination p.12

7. Enforcement p.13

- 7.1 Process for Enforcement of Security p.13
- 7.2 Enforcement of Foreign Judgments p.14

8. Lenders' Rights in Insolvency p.15

- 8.1 Rescue and Reorganisation Procedures p.15
- 8.2 Main Insolvency Law Considerations p.16

9. Tax and Regulatory Considerations p.17

- 9.1 Tax Considerations p.17
- 9.2 Regulatory Considerations p.18

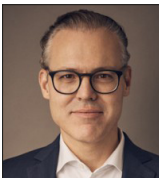
10. Jurisdiction-Specific or Cross-Border Issues p.18

- 10.1 Additional Issues to Highlight p.18

Wenger Vieli Ltd advises companies and individual clients on matters of domestic and international law and taxation. With more than 90 legal and tax professionals, its wealth of experience and expertise across all areas of commercial law allows it to deliver precisely what its clients need. Although its offices in Zurich and Zug are deeply rooted in the heart of Europe, it operates internationally. Whether working with companies or individual clients in Switzerland or overseas, its team speaks the right language. The lawyers advise Swiss and international compa-

nies, sponsors and financial institutions on finance transactions from both a legal and tax perspective and have extensive experience in a broad range of finance transactions, including syndicated lending, investment-grade and leveraged acquisition finance, project finance, asset-backed finance and financial restructurings. The team also advises on the legal and tax aspects of treasury structures and includes senior practitioners with significant experience in complex group financing arrangements.

Authors



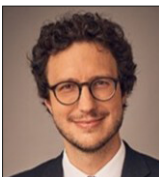
Micha Schilling is a counsel at Wenger Vieli and a member of its financial services practice group. He advises international and domestic companies, investors and financial institutions on a broad range of debt

finance and in particular on finance transactions including syndicated lending, leveraged and acquisition finance, project and infrastructure finance, and financial restructurings. Prior to joining Wenger Vieli, Micha worked at another leading Swiss law firm as well as at a major Swiss bank.



Jill Blattmann is a senior associate at Wenger Vieli and a member of its financial services practice group. She practises in the areas of national and international tax law for legal entities.

She mainly advises on company acquisitions and mergers, including debt financing, and in particular on finance transactions, as well as financial restructuring.



Martin Peyer is a partner at Wenger Vieli and heads the firm's financial services practice group. His practice focuses on banking and finance as well as regulatory matters. He represents both lenders and

borrowers in complex financings, including syndicated debt financing, venture capital transactions and project finance.

Wenger Vieli Ltd

Dufourstrasse 56
8008 Zurich
Switzerland

Tel: +41 58 958 58 58
Email: mail@wengervieli.ch
Web: www.wengervieli.ch



1. Market

1.1 Debt Finance Market Performance

The Swiss debt finance market proved relatively resilient in 2025 and overall performed better than in 2024, even if activity remained selective rather than particularly strong across all segments of the market. The macroeconomic environment became more supportive as the year progressed. Switzerland's GDP grew by around 1.4% in 2025, while inflation eased further and remained very low by international standards at close to 0.2% on average. At the same time, the Swiss National Bank reduced its policy rate in two steps from 0.5% to 0%. This fed through into lower borrowing costs and improved financing conditions, especially for refinancings, acquisition financings and debt capital markets transactions. That said, the mood in the market remained cautious. Geopolitical uncertainties, including renewed trade tensions and tariff measures affecting Swiss exports, continued to weigh on sentiment, alongside modest growth and the strength of the Swiss franc.

From a transactional perspective, the pick-up in M&A activity was an important driver. Deal activity increased to just over 500 transactions, with an overall deal volume of approximately USD166.8 billion in 2025, which in terms of deal volume is a significant rise compared with 2024. This translated into higher demand for acquisition financing. In practice, however, much of this activity was linked to larger, strategically motivated transactions. Sponsor-led leveraged buyouts, by contrast, did not return to pre-2022 levels. In terms of sectors, strategic transactions were particularly visible in industrial and manufacturing businesses, pharmaceuticals and healthcare, as well as in technology-related sectors and financial services. This reflects the underlying structure of the Swiss economy and continued to generate demand across both bilateral and syndicated financing formats.

The Swiss bond market also saw solid activity, with issuance on SIX Swiss Exchange remaining steady and a consistent pipeline of new bond listings (558 in 2025) and higher overall volumes (CHF124 billion in 2025) compared with the previous year. Domestic issuers continued to play a central role, although the market remained open to international borrowers

with strong credit profiles. Execution conditions were generally favourable, supported by sustained demand from institutional investors in a low-inflation, low-rate environment.

There is ongoing focus on sustainability-linked and other ESG-related financings. In practice, sustainability-linked loans in particular are increasingly used to tie pricing to ESG performance indicators, and are now a frequent feature in finance transactions involving larger corporations. Green loans remain relevant for more targeted, use-of-proceeds financings. ESG considerations have therefore become an integral part of the Swiss lending market, even if their practical impact still varies significantly depending on the borrower and the sector.

1.2 Market Players

The merger of Credit Suisse into UBS, completed on 1 July 2024, represents a structural shift in the Swiss banking landscape. Prior to the merger, both institutions were key players in domestic and international debt finance markets. Their combination has resulted in a more concentrated market, altered competitive dynamics and increased regulatory attention. In response, a number of international banks have sought to expand their lending activities in Switzerland, although their presence has so far remained more limited than initially expected. At the same time, private debt funds have become more relevant, particularly in transactions originating in the United States with a Swiss borrower or target. While private lending has gained traction in Switzerland, its role in larger-volume financings remains less pronounced than in some other jurisdictions.

That said, Swiss banks remain the central players in the country's debt finance market, reflecting Switzerland's long-standing position as a stable and well-developed financial centre. UBS, as the only remaining global player, is active across the full spectrum, from acting as arranger and agent in leveraged financings with a strong Swiss nexus to participating in broader syndicates of international banks in larger cross-border transactions.

A significant portion of financing activity consists of lending transactions with domestic banks, often

involving a borrower's relationship or "house" bank. In sponsor-led transactions and mid-sized strategic acquisitions, it is also common to see purely Swiss syndicates, typically comprising larger Swiss banks alongside cantonal banks. These syndicates are usually led by one of the major institutions, such as UBS or Zürcher Kantonalbank.

In the Swiss bond market, European and North American issuers account for a significant portion of new issuances on SIX Swiss Exchange. Swiss issuers, however, continue to dominate the outstanding volume, representing more than two-thirds of all corporate bonds. Corporate bond issuance remains particularly strong in the banking sector, followed by issuers in the chemical and pharmaceutical industries, as well as other service-oriented sectors.

1.3 Geopolitical Considerations

Geopolitical developments have not disrupted the Swiss debt finance market as such, but they have clearly influenced how transactions are approached in practice. Uncertainty in the broader international backdrop has been felt in the market, which has become more cautious and, in many cases, more selective.

The Swiss National Bank reduced its policy rate to 0%, thus decreasing borrowing costs in 2025. However, the higher-rate environment internationally still affects pricing, leverage and risk appetite, particularly in cross-border and leveraged transactions. The strength of the Swiss franc remains an additional factor, especially for export-oriented borrowers, as it puts pressure on margins and is therefore closely reflected in credit analysis and financial modelling.

Trade tariffs became a more concrete issue for the Swiss market in 2025. The most visible example was the US tariff action against Swiss goods. From 7 August 2025, Swiss imports into the United States were subject to a 39% tariff, before this was reduced to a 15% ceiling on 14 November 2025. Combined with the strong Swiss franc, this created additional pressure on exporters and on investment decisions. From a financing perspective, this was not just a macro consideration. It affected credit analysis for export-driven borrowers, particularly those with significant

US exposure. Lenders focused more closely on margin pressure, pricing power, customer concentration and downside scenarios, which in turn influenced financial and other covenants and, in some cases, deal timelines.

The war in Ukraine affects the Swiss market in a limited way through sanctions and compliance considerations. Switzerland has maintained and updated its sanctions regime against Russia, and regulatory focus on sanctions compliance remains high. In practice, this has led to somewhat more front-loaded due diligence, particularly in relation to beneficial ownership, source of funds, sanctions exposure and supply chain links. Financing documentation reflects this with more detailed sanctions representations, undertakings and use-of-proceeds provisions where appropriate. These developments also tie in with broader regulatory trends in Switzerland, including the strengthening of the anti-money laundering framework and Parliament's adoption in September 2025 of a federal beneficial ownership regime and revised anti-money laundering rules.

The ongoing conflict in the Middle East has added another layer of uncertainty. This remained relevant throughout 2025, and has become more pronounced with the recent escalation involving Iran and the resulting volatility in energy and oil prices. For Swiss debt finance, the impact is primarily indirect. Lenders tend to take a more cautious view, with greater emphasis on downside scenarios and, in certain sectors, closer scrutiny of exposure to energy costs, transport and global supply chains.

Looking ahead, some of these effects are likely to persist. Global interest rate levels and specific tariff measures may change, but the more disciplined approach to sanctions analysis, anti-money laundering compliance, beneficial ownership transparency and supply chain review is unlikely to reverse. More broadly, the current geopolitical environment, including ongoing tensions involving Iran, suggests that finance parties will continue to assess closely how geopolitical risk affects the global financial situation and the borrower's business and, ultimately, the structure and pricing of Swiss debt finance transactions.

2. Types of Transactions

2.1 Debt Finance Transactions

The Swiss debt finance market is strong and mirrors the structure of the Swiss economy, with a broad base of corporates, multinational groups and financial institutions. In practice, the market covers a range of transaction types, most notably corporate lending, acquisition finance, asset-based and structured finance, real estate finance and, to a lesser extent, project finance. In addition, bond issuances also play a significant role, given the presence of one of the main European stock exchanges.

Corporate lending continues to be the backbone of the market. This typically takes the form of revolving credit facilities, term loans and working capital lines provided by Swiss and international banks. Much of this business remains relationship-driven and is often conducted on a bilateral basis, particularly for domestic corporates and mid-cap borrowers. Larger and investment-grade borrowers, by contrast, prefer to access the syndicated loan market, usually through club deals or syndicated facilities.

Acquisition finance is another key segment. The Swiss market sees both strategic and sponsor-driven transactions, although in recent years strategic deals have been more prominent than large leveraged buyouts. Financings are generally structured as senior secured facilities and may be paired with bridge financings intended for a subsequent capital markets take-out. In sponsor-backed transactions, private debt solutions have become more prevalent, reflecting the increasing presence of direct lenders in the European market.

Asset-based and structured finance transactions are also well established, although they occupy a more niche segment of the financing market. Switzerland is recognised as a venue for securitisation and other structured products, particularly in relation to trade receivables and lease portfolios, although these are mostly cross-border transactions.

Project finance exists as a less dominant feature of the domestic market. This is due to the limited number of large-scale infrastructure projects in Switzerland. Where it does arise, it is mainly in the energy

or infrastructure sectors, and Swiss lenders are more active in international project financings than in purely domestic transactions.

Bond issuances, particularly Swiss bonds listed on SIX Swiss Exchange, are a well-established funding tool, especially for larger corporates. However, their role is somewhat constrained by the Swiss withholding tax regime, which levies a 35% withholding tax on interest payments to Swiss and foreign investors, making Swiss bonds less attractive despite the right to fully reclaim the tax. As a result, Swiss issuers tend to look to international capital markets where appropriate.

3. Structure

3.1 Debt Finance Transaction Structure

The main structures used for high-volume debt finance transactions in Switzerland are bank loan facilities and debt securities – ie, bonds in various forms placed on the capital market. Private lending provided by debt funds is on the rise in Switzerland, while the volume of such credits remains significantly below the level of bank facilities agreements and bonds. However, there is a tendency for such volumes to increase, especially in cross-border deals.

Most Common Forms of Bank Loan Facilities

The most common forms of bank loan facilities in Switzerland are bilateral and syndicated facility agreements used in corporate, acquisition, project and asset-based financings. The market is characterised by a strong role for relationship banking, with bilateral facilities prevalent for domestic corporates and mid-cap borrowers, while larger transactions are typically structured as club deals or syndicated facilities.

Facilities are structured in a range of forms, the most common being:

- term loan facilities, including both amortising term loans and bullet or minimally amortising facilities (often seen in leveraged and acquisition finance transactions, including Term Loan B-style structures); and

- revolving credit facilities, normally used for general corporate purposes, working capital and liquidity management, and sometimes including ancillary lines such as overdrafts, swinglines or short-term utilisations.

In addition, Swiss financings may include guarantee facilities, reflecting the importance of bank guarantees and similar instruments in the Swiss market, particularly for industrial and export-oriented businesses. Depending on the transaction, facilities may also include bridge financings, in particular in acquisition contexts where a subsequent capital markets take-out is envisaged, as well as capex or delayed draw term facilities.

Most Common Forms of Debt Securities

Larger corporations and especially listed companies obtain debt finance on the capital markets through the issuance of bonds, in particular senior unsecured bonds that are used for corporate purposes. In connection with acquisition financings, it is more customary to see non-Swiss high-yield notes alongside large facility loans. Outside of private placements, which are a less dominant source for high-volume debt finance, bonds are listed and made available for trading on SIX Swiss Exchange or on stock exchanges abroad, frequently using an affiliate in another jurisdiction as issuer.

Beyond standard senior bonds, the market sees a range of other instruments, including covered bonds, hybrid bonds and more specialised structures, which are used in specific contexts, for example by financial institutions or where issuers are seeking to optimise their capital structure.

Syndicated Bank Loans Versus Debt Securities

The main advantage of syndicated facilities over debt securities lies in their flexibility, speed and certainty of funds availability, which is particularly important in leveraged financing. Bank lending can be arranged and executed within relatively short timeframes and, where provided on an underwritten basis, offer a high degree of execution certainty. By contrast, bond issuances are subject to disclosure requirements, including the preparation of a prospectus (unless an exception applies), as well as applicable listing rules, which

can make the process more time-consuming and raise transaction costs. This distinction becomes particularly relevant in transactions where timing and deal certainty are critical.

In addition, capital markets transactions are exposed to market volatility, which can affect pricing and, ultimately, execution certainty. This is especially relevant in acquisition financing, where market windows may open and close quickly and where adverse developments can delay or even prevent a transaction from being completed as planned. As a result, bond financings tend to be less suitable for time-sensitive transactions. Instead, they are more commonly used for general corporate purposes or refinancing, where execution can be timed more flexibly. In that sense, capital markets funding complements rather than replaces bank financing.

Bank facilities, on the other hand, are often relationship-driven and allow for a greater degree of flexibility in structuring. Terms can be tailored more closely to the borrower's specific needs, including in relation to covenants, drawdown mechanics and permitted uses. Another important aspect is confidentiality, as bank financings do not require the same level of public disclosure as capital markets transactions. This can be a relevant factor, particularly in competitive or sensitive transaction contexts.

Furthermore, Swiss withholding tax of 35% is levied on interest payments on bonds, which represents a drawback of the Swiss debt capital market that is otherwise strong, stable and transparent and benefits from a pragmatic and relatively easy-to-navigate regulatory framework. For this reason, Swiss companies frequently issue bonds through affiliates abroad. In contrast, withholding tax on interest payments can generally be avoided in the case of facilities granted by a syndicate of banks.

An advantage of bond financing is the potential access to substantial volumes of capital at lower financing costs than under bank loan facilities. This is also driven by bonds typically carrying fixed interest rates, in contrast to bank facilities, which customarily adjust margins continuously based on financial covenants. Covenants, in turn, tend to be lighter for bonds than

for bank facilities, giving issuers greater operational flexibility and a lower risk of default. Finally, the longer maturities that are prevalent with bonds and the absence of amortisation can reduce refinancing risk.

Relevant Investors

In the case of bank loans, large Swiss commercial banks remain the core lenders in Swiss financing transactions, reflecting the strength of the domestic banking market and long-standing relationships with Swiss borrowers. In mid-sized sponsor-led leveraged financings, the lender group customarily includes larger and regional Swiss banks alongside a limited number of banks from neighbouring jurisdictions. Larger financings mostly involve a more international syndicate, but still include a Swiss anchor bank.

Syndicates may also include private debt funds, although this requires careful structuring from a Swiss withholding tax perspective. Under Swiss tax rules, a facility can be treated as a bond if it involves too many non-bank lenders (please see **9.1 Tax Considerations**). Where funds are involved, it must therefore be confirmed that they are not treated as transparent for Swiss tax purposes, as this could result in each underlying investor being counted as a non-bank. In practice, this limits the number of participating funds or requires confirmation, by way of a tax ruling, that each fund is treated as a single non-bank.

In bond financings, the main investor base is mostly made up of institutional investors such as asset managers, insurance companies and pension funds, as well as sovereign wealth funds, hedge funds and other investment funds. In some cases, high net worth investors also participate with a larger ticket.

4. Documentation

4.1 Transaction Documentation

In high-volume lending transactions, the main document is usually a facilities agreement which, if governed by Swiss law, is broadly based on Loan Market Association (LMA) standards, with certain adjustments to reflect local law requirements. In cross-border transactions, LMA-style or, where US lenders are involved, Loan Syndications and Trading Asso-

ciation-style documentation may be used; however, in each case with the Swiss terms required depending on whether a Swiss borrower or Swiss guarantor is involved. The structure of the facilities agreement otherwise depends on the type and purpose of the financing, as well as the borrower's credit profile. In the case of smaller volumes and bilateral lending transactions, as well as in certain special forms of lending transactions, banks frequently use their own standard agreements, such as framework agreements, that may cover various kinds of facilities or other over-the-counter instruments.

In debt capital markets transactions, the core document is the prospectus, which must generally be prepared in connection with a public offer and/or listing of bonds on a Swiss stock exchange, subject to certain exemptions depending on the type of offering and the securities. The form of the prospectus depends on whether the bonds are issued on a stand-alone basis or under a programme. In public or listed Swiss bond transactions, the terms of the bonds are set out in the prospectus, whereas in private placements they are often documented in a note purchase agreement. Depending on the structure, additional documents may include a paying agency agreement or similar arrangements.

In addition to the loan and bond documents referred to above, typical documents include security agreements, intercreditor agreements where multiple creditor groups are involved, and ancillary agreements governing specific products made available under revolving facilities. Furthermore, corporate approvals are required, including board resolutions and, depending on the structure of the security or guarantees, shareholder resolutions. Legal opinions are also a standard feature of both loan and capital markets transactions.

4.2 Impact of Types of Investors

The main factor that influences the terms of a bank loan facility is the preferences of the investors and their respective bargaining power. If the borrower is in a strong position and the bank is keen to carry out the transaction, the terms of bank loan facilities become more borrower-friendly and tend to have fewer representations and less strict covenants.

Legal and regulatory considerations are typically not the driver for differences in the terms of bank loan facilities in Switzerland. One important exemption is tax-related. Breaching the so-called 10/20 non-bank lender rule may lead to up to 35% of Swiss withholding tax on interest to be paid by Swiss borrowers if more than 10 or 20 non-bank lenders are involved in a financing. Consequently, the terms of such bank loan facilities usually contain language to avoid negative tax consequences and, for example, limit the possibility to assign or transfer the loan to a non-bank lender (please see **9.1 Tax Considerations**).

4.3 Jurisdiction-Specific Terms

Switzerland is very open to cross-border lending and, consequently, only few jurisdiction-specific terms exist in cross-border loan documentations.

The main such Swiss-specific elements include provisions relating to the so-called 10/20 non-bank lender rule to prevent Swiss withholding tax from becoming due on interest payments by Swiss borrowers or Swiss guarantors, and provisions relating to upstream loans, guarantees or other securities to address restrictions under mandatory Swiss corporate law.

5. Guarantees and Security

5.1 Guarantee and Security Packages Typical Guarantee and Security Packages

Debt financing in Switzerland is generally guaranteed by a first-demand independent guarantee included in the relevant finance documents. A typical security package would consist of shares or other securities, intellectual property, real property, bank accounts, trade receivables, intercompany receivables and/or insurance receivables. Security over these assets is created either in the form of a pledge or by way of a transfer of title or assignment for security purposes.

Formalities and Requirements to Establish a Valid Security Interest

As a general principle, both a pledge and a security transfer or assignment require a written agreement including an undertaking to pledge, transfer or assign. In this regard, it is important to note that the asset or

receivable to be used as security must be specified or at least determinable based on this agreement.

Beyond that, the establishment of a valid security interest and any perfection requirements depend on the asset used as collateral, as described below.

Receivables

Security over receivables can be created by way of either a pledge or an assignment. In both cases, a key prerequisite is that the receivables are assignable. This requires that their assignability is neither prohibited by applicable law nor excluded by contract or by the personal nature of the receivable. If assignability is restricted under an underlying contract, it is customary to require the assignor to obtain a waiver of such restriction from the debtor.

The steps necessary to create a pledge or assignment of receivables are as follows.

- A valid security agreement must be entered into in written form, which includes a declaration of assignment by the assignor.
- Any existing written acknowledgements of debt representing the pledged or assigned receivables must be delivered to the pledgee or assignee.

Strictly speaking, notification of the debtor is not required to perfect a pledge or assignment, except where a waiver of a contractual restriction on assignability must be obtained or in the case of a second-ranking pledge over receivables. Prior to a notice of assignment, however, a debtor may validly discharge its obligation in good faith by paying the assignor, without incurring liability to the assignee.

Bank accounts

Security over cash accounts may be created by way of either a pledge or a security assignment. In the case of a pledge over a cash account, the account bank should always be notified. Swiss banks' general terms and conditions customarily provide for a first-ranking security interest over the account in favour of the bank. As a result, a third-party creditor will only obtain a second-ranking security interest, unless the bank agrees to waive its priority rights. As a prerequisite

for the creation of such second-ranking security, the first-ranking pledgee (ie, the bank) must be notified.

Shares and intermediated securities

The prevailing method of creating security over shares in Switzerland is by way of a pledge, although security assignment or a transfer of title are alternative forms. Swiss law does not require companies to issue share certificates. Consequently, shares in Swiss stock corporations may exist in either certificated or uncertificated form, which determines how a share pledge is to be perfected.

- Where shares are represented by certificates, perfection of the pledge requires delivery of the original certificates to the pledgee, endorsed in blank.
- Uncertificated shares require an assignment in writing.

The Federal Intermediated Security Act (FISA) lays out rules regarding how intermediated securities are granted. Under the FISA, a security interest over intermediated security can be effected by either transferring or crediting such securities to the securities account of the secured party or an account control agreement – ie, an agreement between the security provider and the custodian (ie, account bank) pursuant to which the custodian agrees with respect to the relevant intermediated securities to carry out instructions from the secured party.

Intellectual property

Intellectual property is usually pledged, which requires a written pledge agreement sufficiently specifying the IP to be pledged. For this purpose, annexes listing the IP are used. With respect to IP in the form of trade marks and patents, it is possible to register a pledge with the Swiss Intellectual Property Institute, WIPO or any available registration system in another country. While not strictly required for perfection, such registration has the effect that third parties are not protected by good faith if they infringe the pledged IP right.

Movable assets, including machinery, equipment and inventory

Under Swiss law, it is possible to create security over movable assets such as machinery and equipment by way of a pledge or security transfer of title. However,

taking security over such assets is impractical and therefore rarely used in Swiss financing transactions because the perfection of the pledge or security transfer requires the transfer of physical possession to the pledgee. The security interest is only validly established once the pledgor relinquishes possession and is no longer able to exercise independent control over the assets. As a result, the pledgor cannot continue to use the machinery or equipment or have access to the inventory if such security is granted.

An exception applies to certain types of movable assets governed by specific statutory regimes. In particular, security over aircraft, ships and railway rolling stock is perfected by registration in the relevant public register, which replaces the requirement of transfer of possession.

Real estate

Collateral over real property to secure lending obligations is possible under Swiss law as either a security transfer of mortgage certificates (*Schuldbriefe*) or a land charge (*Grundpfandverschreibung*).

Mortgage certificates

Mortgage certificates are financial instruments embodying a personal claim against the debtor, secured by a pledge over real property. They may be issued as bearer or registered certificates, or in paperless form. Rather than creating a pledge, mortgage certificates are transferred by way of security transfer. In practice, a security transfer of legal title is clearly preferred, as it ensures that in case of bankruptcy of the debtor, the mortgage certificates are segregated from the bankrupt estate.

To establish a real property security based on mortgage certificates, such certificates – if not already issued – must first be created, which requires a notarial deed. Thereafter, the parties enter into a written security transfer or pledge agreement and effect the transfer of legal title by either handing over the paper certificates to the secured party or, in case of paperless certificates, delivering a notification of pledge to the competent land register.

Land charge

A land charge comes into existence upon registration in the land register. Unlike mortgage certificates, neither the land charge nor the secured claim is represented by a negotiable instrument. Furthermore, the creation of a land charge always requires a notarial deed. In the absence of a transferable instrument such as a mortgage certificate and due to the notarisation requirement, land charges are normally only used in connection with pure mortgage lending.

5.2 Key Considerations for Security and Guarantees

Agency and Trust Concepts

Due to the accessory nature of a pledge, the pledgee must be the creditor of the secured claim. However, in the case of syndicated facilities and other financing transactions involving multiple secured parties, it would be impractical for each creditor to enter into a security agreement in order to be secured for its own portion of the aggregate secured claims. Therefore, it is standard practice to appoint one of the finance parties as security agent. This is customarily a major lender or the borrower's relationship bank. In this role, the security agent holds the security both for its own claims and, at the same time, as a direct representative acting in the name and for the account of all secured parties.

Where security is created by way of assignment or transfer for security purposes (ie, as a non-accessory security interest), such security may likewise be granted to and held by an authorised agent acting in its own name and for its own account, while indirectly representing the interests of the other secured parties.

The Swiss legal system does not know the concept of a trust and therefore trusts cannot be established in Switzerland. That said, in cross-border financing structures governed by foreign law, the function of an administrative or collateral trustee is recognised from a Swiss law perspective. The Swiss Private International Law Act (PILA) incorporates key elements of the Hague Convention on the Law Applicable to Trusts and on their Recognition (Hague Trust Convention), to which Switzerland is a party. Provided that the requirements of the PILA and the Hague Trust Convention are met, foreign trust arrangements, as well

as related judicial decisions, are recognised and may be enforced in Switzerland.

Parallel Debt

Parallel debt structures are also used in Swiss financing transactions. These involve the creation of an independent claim of the security agent in an amount corresponding to the aggregate of all obligations to be secured under the relevant financing arrangement. Such structures are particularly relevant where security is granted in the form of a pledge and the secured parties are noteholders, who normally do not enter into agreements or execute documents appointing a security agent or trustee as their direct representative.

While parallel debt structures have not yet been tested before Swiss courts, it is generally accepted among practitioners and in Swiss legal writing that security granted in respect of such parallel debt is valid and enforceable.

Restrictions on Upstream and Cross-Stream Security

To avoid limitations arising from Swiss capital maintenance rules and corporate benefit considerations, guarantees or security are ideally granted downstream by a parent company that fully controls the borrower or issuer. However, since this may be not feasible or may be impracticable for structural reasons, it is common for facilities to be secured subsidiaries, particularly in acquisition financings where such upstream security serves ring-fencing purposes.

That said, upstream guarantees and security are subject to restrictions under mandatory Swiss corporate law. They are generally permissible without limitation if granted on arm's length terms. In practice, however, it is often difficult to demonstrate that upstream guarantees or security meet the arm's length standard, in particular due to the challenges in determining an appropriate guarantee fee. Where the arm's length test is not met, upstream guarantees or security are treated the same as dividend distributions. As such, they are only permissible if the guarantor or security provider has sufficient freely distributable reserves and if the shareholders approve such distribution at the time the relevant security or guarantee is granted.

Against this background, upstream guarantees and security granted by a Swiss company should only be granted if:

- the relevant guarantee or security agreement contains limitation language restricting enforcement to freely distributable reserves at the time of enforcement; and
- a shareholder resolution approving the upstream guarantee or security and the potential distribution of assets it entails has been duly passed.

The same principles apply where a Swiss company provides security for an affiliate of its shareholder that is not itself a subsidiary of the security provider (ie, a sister company). Such cross-stream security is subject to the same restrictions as in case of an upstream security.

Financial Assistance and Corporate Benefit

In addition to the upstream and cross-stream limitations described above, the granting of security for obligations of a shareholder or a sister company also raises the question of whether such security is (at least indirectly) in the best interests of the security provider. This must be confirmed by the board of directors and such confirmation ideally recorded in a board resolution to mitigate liability risks arising from a breach of fiduciary duty. However, the corporate benefit analysis is often complex and to further protect directors from acting ultra vires and incurring personal liability, it has become standard practice to ensure that the articles of association of the Swiss company expressly permit the granting of upstream or cross-stream financial assistance, even where such assistance primarily benefits the group rather than the Swiss company directly.

6. Intercreditor Issues

6.1 Role of Intercreditor Arrangements

Intercreditor arrangements are used where different groups of creditors participate in the financing of a Swiss entity or group. This is typically the case where there are multiple layers of debt, such as senior debt and one or more layers of junior debt (eg, subordinated or mezzanine debt), or where the intention is to

ensure that two groups of creditors rank *pari passu*. To achieve such structuring between creditor groups, intercreditor agreements include subordination undertakings to ensure the priority of senior creditors (mostly lenders under bank facilities or bondholders) over junior creditors, as well as a priority regime within the junior creditor group.

In addition, intercreditor agreements play a key role in the co-ordination and administration of security interests where multiple creditor groups are involved. In the context of contractual ranking, they set out mechanisms for the distribution of enforcement proceeds based on a waterfall structure. This is of particular importance in Switzerland in relation to security interests created by way of an assignment of receivables or a transfer of title. Unlike a pledge, such security cannot be divided into different ranking levels, as ownership cannot be split. The sharing of proceeds must therefore be implemented contractually. This is usually achieved by requiring senior secured parties to share enforcement proceeds with junior secured parties once the senior claims have been satisfied in full. The intercreditor agreement thus serves as the contractual framework for such arrangements.

Finally, in the case where a security agent structure is required to accommodate multiple groups of secured parties, the intercreditor agreement is best suited to provide for the terms of appointment of a security agent (please see 'Agency and Trust Concepts' in 5.2 **Key Considerations for Security and Guarantees**).

6.2 Contractual v Legal Subordination

Contractual Subordination

Subordination can be achieved contractually between the subordinated creditor and the debtor in the following forms:

- As an ordinary subordination with the effect that claims of the creditor are subordinated in favour of the claims of a senior creditor. Such subordination would also be effective in case of insolvency where bankruptcy proceeds (or the remainder thereof after satisfying higher-ranking classes according to statutory law) are applied to satisfy the senior creditor.

- As a qualified subordination (*Rangrücktritt*) according to Article 725b paragraph 4 of the Swiss Code of Obligations, whereby a creditor agrees that its claims shall rank behind those of all other creditors of the same debtor and that all payments by the debtor to the subordinated creditor shall be deferred until the subordination is lifted. This arrangement is normally used as a restructuring measure to address situations of over-indebtedness where liabilities of the debtor are no longer covered by its assets based on a stand-alone balance sheet view. In this context, the subordinated claims are treated as economic equity, and the subordination and payment deferral may only be lifted once an auditor confirms that doing so would not result in over-indebtedness. Against this background, this type of subordination is usually agreed where the subordinated creditor is a shareholder of the debtor, and frequently at the request of senior creditors in order to avoid a default under the finance documents.

Structural Subordination

Outside the context of a contractual arrangement, a creditor of a holding company may become structurally subordinated where a loan is granted to a Swiss subsidiary of that holding company. This is because distributions from a Swiss subsidiary to its parent must be made out of distributable equity, which is reduced by liabilities owed to the subsidiary's own lenders. Following a controversial Swiss Supreme Court decision, the availability of a subsidiary's distributable equity potentially also limits the granting of upstream loans to a shareholder. Upstream loans may be treated as de facto distributions unless granted on arm's length terms. However, in light of that decision, there remains a degree of uncertainty as to what constitute arm's length conditions in practice, and the applicable standards are regarded as relatively stringent. As a result of these limitations on distributions, which may be further reinforced by covenants under finance agreements, creditors at subsidiary level are structurally in a position that is senior to creditors of the holding company.

Equitable Subordination

Equitable subordination is recognised in Switzerland, but only within a narrow and clearly defined frame-

work. In a recent decision, the Swiss Federal Supreme Court reaffirmed its established position that shareholder loans generally cannot be recharacterised as equity but, for the first time, also held that equitable subordination in favour of all other creditors may arise where a shareholder loan is granted or maintained at a time when the borrower is over-indebted – ie, where liabilities exceed assets on a stand-alone balance sheet basis.

By adopting this view, the Swiss Federal Supreme Court expressly rejected broader and less predictable approaches previously discussed in legal doctrine, such as the third-party test or the recovery test, which focused on market conditions or restructuring prospects. As a result, the Court's ruling reduces legal uncertainty, particularly in the context of shareholder rescue financing. Shareholders are now better able to assess and manage the risks associated with providing funding to financially distressed subsidiaries, which may facilitate such financing, especially in start-up and private equity contexts.

7. Enforcement

7.1 Process for Enforcement of Security

The process of enforcement depends on the type of security interest and the enforcement provisions agreed in the relevant security documents.

Security Assignment or Transfer of Title Versus Pledge

In the case of a security assignment or a security transfer of receivables or other assets, there is, strictly speaking, no enforcement required, as the secured party already holds title to the relevant receivables or assets. A security assignment agreed prior to the debtor's bankruptcy will be recognised upon the opening of bankruptcy proceedings, with the effect that the relevant claims or assets do not form part of the bankruptcy estate (*Konkursmasse*). Where the debtor is the assignor or transferor of the receivables or assets, certain circumstances may, however, give rise to clawback claims (please see 'Clawback Risks' in 8.2 Main Insolvency Law Considerations).

In the case of a pledge, enforcement may take place either by way of private realisation or through formal debt enforcement proceedings in accordance with the Swiss Debt Enforcement and Bankruptcy Act (DEBA).

Private Realisation

The parties to a security agreement may agree on private realisation (*Privatverwertung*), which may, subject to certain conditions, include appropriation (*Selbsteintritt*) of the security. Such method of enforcement must generally be agreed in advance – ie, in the security agreement. Where this is the case, the secured party or the security agent may proceed with enforcement either by selling the secured assets to third parties or by way of appropriation.

The sale of assets may take place by private sale or public auction. Appropriation (self-sale) is only permissible where an objective value can be attributed to the secured asset. It is therefore commonly used in the context of pledges over liquid assets, such as bank accounts, with the effect that the cash standing to the credit of the account may be applied to satisfy the secured claims. In other cases, where no objective value can be attributed to the secured assets, appropriation is not permissible and enforcement must be carried out through a sale process involving third parties.

It may not be possible to complete a sale process immediately upon the occurrence of an enforcement event, which gives rise to the question among practitioners whether interim appropriation by the pledgee should be permissible pending completion of the sale. Swiss legal literature supports such an approach, provided that, once the sale has taken place, the pledgee can demonstrate to the pledgor that the assets were realised at an objective arm's length value. This is consistent with the pledgee's general obligation under Swiss law not to jeopardise the interests of the pledgor and to realise the pledged assets at the best possible value in a private realisation.

DEBA Proceeding

As an alternative to private realisation, or where private realisation has not been agreed in the pledge agreement, enforcement of pledges may be carried out in accordance with the DEBA. The DEBA provides

the debtor with a right to demand recourse against the collateral only (*beneficium excussionis realis*) meaning that if enforcement is initiated for a claim secured by a pledge, the creditor must limit the enforcement to the realisation of the pledged assets. The parties may, however, agree in the security agreement that the debtor waives this right. Such a waiver allows the secured party to bypass enforcement limited to the realisation of the pledge and instead proceed directly with enforcement through bankruptcy.

7.2 Enforcement of Foreign Judgments

The PILA governs the recognition and enforcement of foreign judgments, unless the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (“Lugano Convention”) or other applicable international treaties apply. In addition, Switzerland has ratified the Hague Convention on Choice of Court Agreements, with effect as of 1 January 2025. This convention facilitates the recognition and enforcement of foreign judgments based on exclusive jurisdiction clauses in favour of courts in countries that are not parties to the Lugano Convention, such as the United Kingdom.

Under the PILA, a foreign judgment will be recognised if it is final and no longer subject to appeal, if it has been rendered by a competent court, and if proper service has been effected in accordance with applicable procedural rules. In addition, fundamental procedural principles (in particular, the right to be heard) must have been respected, no proceedings concerning the same matter may be pending in Switzerland, and the judgment must not be incompatible with Swiss public policy.

A foreign judgment recognised in accordance with the above may be declared enforceable in Switzerland upon application by a party before the competent Swiss court, ie, at the defendant's domicile or at the place where the relevant assets are located. Such application requires the submission of a certified copy of the judgment, confirmation from the foreign court that the judgment is final and not subject to appeal, and evidence that due process has been observed.

The procedure under the Lugano Convention is broadly similar, with one notable difference. In enforcement

proceedings under the PILA, the opposing party may be heard on certain aspects of the case, whereas the Lugano Convention generally precludes any review of the merits at the enforcement stage. Both the Lugano Convention and the PILA provide for interim measures to secure enforcement while proceedings for a declaration of enforceability are pending.

As regards arbitral awards, such awards must be recognised in Switzerland as a prerequisite to enforcement according to the PILA, which refers to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards. By virtue of such reference in the PILA, the New York Convention applies irrespective of whether the award was rendered in a state that is party thereto.

8. Lenders' Rights in Insolvency

8.1 Rescue and Reorganisation Procedures Composition Proceeding

As a rescue and reorganisation procedure, the DEBA provides for a composition proceeding (*Nachlassverfahren*) with the primary objective of facilitating the restructuring of a financially distressed company's debt, as opposed to bankruptcy proceedings, which result in the liquidation of the debtor. They allow for the realisation or liquidation of assets in a flexible manner and for a comprehensive restructuring of liabilities.

Composition proceedings are normally initiated by the debtor. In addition, creditors who would otherwise be entitled to request the opening of bankruptcy proceedings, as well as the competent court, may initiate composition proceedings as an alternative to bankruptcy. After an application has been filed, the court will grant a provisional moratorium (*provisorische Nachlassstundung*) and may appoint a provisional administrator (*provisorischer Sachwalter*) to assess whether a restructuring is feasible. If the court concludes that there is reasonable prospect of a successful restructuring or of reaching a composition agreement, it will grant a definitive moratorium (definitive *Nachlassstundung*) and appoint an administrator (*Sachwalter*).

A debtor may use the moratorium to achieve a restructuring without court approval, provided that an agreement is reached with each creditor covering the necessary concessions. If not all creditors are prepared to make such concessions, a composition agreement may be pursued, which may provide for one or both of the following:

- a debt rescheduling, which implies a modification of the terms of financing agreements; or
- a partial payment of claims, which requires a partial waiver of claims by creditors.

Both arrangements must be approved by the requisite quorum of creditors – ie, either by a majority of creditors representing two-thirds of the total claims or by one-quarter of the creditors representing three-quarters of the total claims (in each case calculated based on the claims subject to the composition agreement). In addition to these creditor majorities, the agreement must be confirmed by the composition court. Once confirmed, the agreement takes effect and is binding on all affected creditors, irrespective of their participation in the proceedings or their approval of the agreement. Accordingly, even dissenting creditors may be bound through a cram-down.

Effect on Lenders' Right to Enforce a Loan, Guarantee or Security

The effects of composition proceedings on lenders' rights to enforce loans, guarantees or security are as follows:

- Claims incurred during the moratorium may benefit from preferential treatment, subject to the approval of the court-appointed administrator, provided, however, that the rights of existing creditors are not prejudiced.
- The right to enforce privately ceases once composition proceedings have been initiated against the security provider. Individual enforcement actions are stayed and realisation of assets is carried out in accordance with the DEBA. However, the priority rights of secured creditors are preserved, such that secured creditors are satisfied first out of the enforcement proceeds.
- Unlike unsecured creditors, secured creditors are not bound by the terms of the composition agree-

ment and are therefore not entitled to vote on its approval. However, the interests of the secured creditors are taken into account in the composition agreement at least to the extent that their claims would not be satisfied through enforcement of the underlying collateral.

As a result, although enforcement is subject to procedural limitations during composition proceedings, secured creditors generally remain protected by their priority rights and are less affected by the restructuring measures than unsecured creditors.

8.2 Main Insolvency Law Considerations

Enforcement of a Loan or Guarantee in Insolvency

Upon the opening of bankruptcy proceedings over a borrower, a lender's claim becomes due and payable. Such claim comprises the principal amount of the loan, together with any interest accrued up to the opening of the bankruptcy proceedings, as well as any enforcement costs. The lender's claim is treated as a claim against the bankruptcy estate and must be asserted as part of the collective insolvency process. Accordingly, following the opening of the bankruptcy proceedings, it is no longer possible to enforce individual claims outside this process.

The same principles apply, in essence, to guarantee claims against an insolvent guarantor. Such claims, irrespective of whether the guarantee has been called, may be filed in the bankruptcy proceedings.

Enforcement of Security Against an Insolvent Security Provider

Enforcement of pledged assets

The opening of bankruptcy proceedings terminates the pledgor's right to dispose of its assets and, in this respect, also suspends any private enforcement proceedings agreed in a pledge agreement. Thus, in the event of bankruptcy, creditors may no longer pursue individual enforcement actions against the debtor or its assets but must instead file their claims with the bankruptcy administration, which is responsible for the realisation of the debtor's assets. However, this does not apply to the enforcement of security provided by a third party to secure the obligations of the insolvent debtor. Furthermore, the priority rights of

secured creditors remain preserved, such that they are satisfied first out of the enforcement proceeds.

Enforcement of assigned claims

Upon an assignment, the assignee acquires legal title to the receivables. Therefore, where the assignment has been effected prior to the opening of bankruptcy proceedings, the relevant claims do not form part of the bankruptcy estate. The assignee is therefore entitled to satisfy its claims outside the bankruptcy proceedings and without being subject to any limitation arising from the insolvency. However, this does not apply to future claims assigned prior to bankruptcy to the extent that such claims only come into existence after the opening of the bankruptcy proceedings, in which case they will form part of the bankruptcy estate.

Clawback Risks

The DEBA provides for a clawback in the form of avoidance actions, pursuant to which certain transactions entered into prior to the opening of bankruptcy proceedings, including payments made or security granted to lenders, may be challenged and reversed. Avoidance actions may arise in the following circumstances:

- within one year prior to the opening of bankruptcy proceedings, the debtor entered into a transaction without consideration or for manifestly inadequate consideration;
- within one year prior to the opening of bankruptcy proceedings, the debtor granted security for obligations it was not previously obliged to secure, repaid debts by means other than cash or other than customary means of repayment, or discharged liabilities prior to their contractual maturity, in each case at a time when the debtor was over-indebted and the counterparty knew or ought to have known of such over-indebtedness; or
- within five years prior to the opening of bankruptcy proceedings, the debtor disposed of assets with the intent to prejudice its creditors or to prefer one creditor over others, in each case in a manner which was or ought to have been recognisable by the favoured creditor.

Order of Payment

The DEBA sets out a statutory ranking of creditors, which determines the distribution of bankruptcy proceeds, as set out below.

Secured claims

Creditors holding claims secured by a pledge are satisfied with priority from the proceeds realised upon enforcement of the relevant collateral. Any unsecured portion of their claims (shortfall) participates in the bankruptcy proceedings as an unsecured claim.

Unsecured claims

Unsecured claims are divided into three classes, with creditors within the same class participating in the bankruptcy proceedings on a *pari passu* basis:

- the first class primarily comprises employee claims and certain pension fund claims;
- the second class includes specified social security and social insurance contributions and related claims, as well as protected bank customer deposits under the Swiss Banking Act; and
- the third class comprises all other unsecured claims, including unsecured lending exposures and any shortfall arising following the enforcement of security.

9. Tax and Regulatory Considerations

9.1 Tax Considerations

Swiss Withholding Tax

Swiss loans/bonds

In general, interest on loans is not subject to Swiss withholding tax, in contrast to interest on Swiss bonds (and, to some extent, on bonds from foreign group companies guaranteed by a Swiss parent company). However, a requalification of loans granted to a Swiss borrower may occur if the so-called 10/20 non-bank lender rule is not observed.

The 10/20 non-bank lender rule determines when a loan is treated as a bond (*Anleihensobligation*) or debenture (*Kassenobligation*), in which case it triggers 35% Swiss withholding tax on interest, and, under certain circumstances, also to conversion discounts on convertible loans if a certain threshold is exceeded.

However, financing options with grandfathering are still possible.

Furthermore, certain foreign debt arrangement (including a downstream guarantee with on-lending to Swiss group companies exceeding the sum of the combined equity of all non-Swiss group companies) may be seen by Swiss tax authorities as a circumvention of statutory Swiss withholding tax laws and be treated as a *de facto* “Swiss financing” for Swiss withholding tax purposes. Any upstream or cross-stream guarantees by Swiss group companies are considered as less problematic.

Interest rates

Interest on loans exceeding the “safe haven rates” annually published by Swiss tax authorities might be considered as a deemed dividend distribution and therefore subject to Swiss withholding tax if the arm’s length comparison cannot be demonstrated.

Hidden equity

Hidden equity refers to financing from related parties that is formally structured as debt but is, economically, considered equity for Swiss tax purposes. Furthermore, third-party debt granted to a Swiss borrower but guaranteed by a related party may be also requalified as related-party debt. If reclassified as hidden equity, the corresponding interest is not deductible for corporate income taxes and subject to Swiss withholding tax.

Liability of Swiss withholding tax

The borrower or dividend paying company is liable for Swiss withholding tax and must remit such tax to the Swiss tax authorities by deduction of the Swiss withholding tax from the taxable amount upon payment with the effect that the Swiss withholding tax is passed on to the lenders or dividend-receiving company.

Swiss Stamp Duty

The transfer of taxable securities (eg, Swiss or foreign shares or Swiss bonds) is subject to Swiss stamp duty if a Swiss bank or Swiss securities dealer (eg, a Swiss company whose assets consist of more than CHF10 million in taxable securities) is involved as an intermediary or contracting party.

9.2 Regulatory Considerations

Generally, providing debt financings in Switzerland does not trigger a licensing requirement for the lender provided that the lender does not also take deposits from the public. There is, however, an exemption to this general rule. If the lender obtains a substantial amount of refinancing from several banks that do not have a significant stake in the lender in order to finance an unspecified number of persons or companies with which the lender does not form an economic unit, a banking licence is required to carry out debt financing activities.

Although, in most cases, no licence from the Swiss Financial Market Supervisory Authority (FINMA) is required for providing debt financing, Swiss-based lenders may fall into the scope of the anti-money laundering regulation if they act on a professional basis. Furthermore, lenders are required to obtain an authorisation under the Swiss Consumer Credit Act if they are granting consumer credits.

Since Switzerland is very open to cross-border lending, only a few regulatory considerations apply for foreign lenders as long as they do not maintain a permanent physical presence in Switzerland. One notable exemption is the Financial Services Act, which entered into force in 2020. Under this legislation, the granting of loans to finance transactions with financial instruments is deemed a financial service and subject to the rules of conduct and organisational requirements set out in the Financial Services Act. Regulated foreign financial institutions, however, are exempted from most of the rules set out therein if they provide their services exclusively to institutional and professional clients in Switzerland.

10. Jurisdiction-Specific or Cross-Border Issues

10.1 Additional Issues to Highlight

There are no further major issues to highlight in cross-border finance transactions from a Swiss perspective.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Rob.Thomson@chambers.com