

PANORAMIC

ACQUISITION FINANCE

Switzerland



LEXOLOGY

Acquisition Finance

Contributing Editors

Alfred Y Xue, Daniel C Seale, Conray C Tseng, Jason R Bosworth, Peter J Sluka, Andrew Elken, Brian Rock and Clever Gallegos

Latham & Watkins LLP

Generated on: April 17, 2026

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2026 Law Business Research

Contents

Acquisition Finance

GENERAL STRUCTURING OF FINANCING

- Types of debt and junior capital
- Choice of law
- Restrictions on cross-border acquisitions and lending
- Certain funds
- Restrictions on use of proceeds
- Licensing requirements for financing
- Withholding tax on debt repayments
- Restrictions on interest
- Indemnities
- Assigning debt interests among lenders; syndication and distribution of debt
- Requirements to act as agent or trustee
- Debt buy-backs
- Exit consents

GUARANTEES AND COLLATERAL

- Related company guarantees
- Assistance by the target
- Types of security
- Requirements for perfecting a security interest
- Renewing a security interest
- Stakeholder consent for guarantees
- Granting collateral through an agent
- Creditor protection before collateral release
- Fraudulent transfer

DEBT COMMITMENT LETTERS AND ACQUISITION AGREEMENTS

- Types of documentation
- Level of commitment
- Conditions precedent for funding
- Flex provisions
- Securities demands
- Key terms for lenders
- Take-private transactions
- Public filing of commitment papers

ENFORCEMENT OF CLAIMS AND INSOLVENCY

- Restrictions on lenders' enforcement
- Debtor-in-possession financing
- Stays and adequate protection against creditors

Clawbacks
Ranking of creditors and voting on reorganisation
Intercreditor agreements on liens
Discounted securities in insolvencies
Liability of secured creditors after enforcement

UPDATE AND TRENDS

Proposals and developments

LAW STATED DATE

Correct on:

Contributors

Switzerland

Wenger Vieli Ltd



Micha Schilling

m.schilling@wengervieli.ch

Jill Blattmann

j.blattmann@wengervieli.ch

GENERAL STRUCTURING OF FINANCING

Types of debt and junior capital

What are the typical debt components of acquisition financing in your jurisdiction? Does acquisition financing typically include subordinated debt or just senior debt? Are the providers of such acquisition financing typically lead arrangers, commercial banks or private debt funds?

The debt components applied depend, among other things, on the leverage need and capacity of the borrower and the availability and cost of financing. The major debt component of acquisition financing in Switzerland are typically senior loans, which are granted as amortising or non-amortising, or both, senior term loans by a bank or private lender under bilateral credit agreements granted by a syndicate of banks under facilities agreement, depending on the volume of the transaction and other parameters such as refinancing needs and risk profile.

Junior debt, which may be structured to include several layers, including mezzanine and high-yield debt, are added to senior debt where higher leverage is required.

While banks still dominate the debt component of acquisition financing, private debt provided by funds is on the rise, albeit not yet at the pace seen in other jurisdictions such as the United Kingdom or the United States.

Law stated - 1 Januar 2026

Types of debt and junior capital

Are debt capital markets transactions (high-yield bonds) available to support acquisition financings in your jurisdiction? Are there restrictions applicable to such activities?

High-yield bonds are used in Switzerland but normally not applied as the primary source of acquisition financing, are used in Switzerland. Additionally, debt capital market is tapped for bridge-to-bond takeout financings.

For Swiss withholding tax reasons, such bonds are mostly issued outside Switzerland. As a result, restrictions applicable to high-yield offerings are not primarily driven by Swiss laws.

Law stated - 1 Januar 2026

Types of debt and junior capital

Are private debt funds or direct lenders active in your jurisdiction to support acquisition financings? Do they provide unitranche debt facilities to buyers? Are there restrictions applicable to such providers and activities?

Private debt funds and direct lenders are active in Switzerland. They also support acquisitions, and are increasing, particularly in the sponsor-led and mid-market segments, where private lenders are appreciated for their agility and flexibility as far as tailored terms

and covenants are concerned. Unitranche facilities are also increasingly seen in mid-cap and sponsor-led deals.

The main restriction relevant to financing by private debt funds is the Swiss withholding tax regime. Swiss withholding tax is levied on interest payments where the financing is granted by more than 10 non-bank lenders. Also, investors in investment funds may count as non-bank lenders if such fund is not treated as opaque from a Swiss tax perspective.

Furthermore, and outside the scope of consumer credits, there are no restrictions that particularly concern direct lending. This is also the case with respect to a lender registered abroad provided it has no business presence in Switzerland, particularly if it has no permanent infrastructure or personnel in Switzerland. Conduct and registration requirements under statutory law (such as the Financial Services Act) are generally not applicable to foreign lenders, except in the context of margin loans that lack relevance in acquisition financings.

Law stated - 1 Januar 2026

Types of debt and junior capital

Are private capital funds active in providing hybrid capital products (including debt-like preferred equity) in lieu of traditional subordinated or mezzanine debt? Are there restrictions applicable to such providers and activities?

Convertible loans and bonds are occasionally used to finance acquisitions in the Swiss venture capital market. Besides these, traditional subordinated or mezzanine debt dominate over hybrid capital products.

Law stated - 1 Januar 2026

Choice of law

What territory's law typically governs the transaction agreements? Will courts in your jurisdiction recognise a choice of foreign law or a judgment from a foreign jurisdiction?

There is, in principle, a free choice of law for transaction agreements. The law chosen is often that of a jurisdiction where one of the parties is located. In the case of equity or hybrid instruments, the law of incorporation of the target, which also provides for statutory rules of equity issue, is used – namely, Swiss law if the target is in Switzerland. Certain transaction documents, especially security documents, are governed by the law of the place where the relevant asset is located.

A choice of foreign law applicable to transaction documents is recognised in Switzerland, subject to certain limitations. These include:

- mandatory Swiss procedural rules;
- the principle that a choice of law does not automatically extend to non-contractual obligations;

- the requirement that the content of foreign law may need to be proven before a Swiss court; and
- the presence of some Swiss nexus (which is satisfied if a Swiss party is involved).

A final foreign judgment or arbitral award will be enforced by Swiss courts, subject to the applicable requirements under the Swiss Private International Law Act, the Lugano Convention and other relevant international treaties.

Law stated - 1 Januar 2026

Restrictions on cross-border acquisitions and lending

Does the legal and regulatory regime in your jurisdiction restrict acquisitions by foreign entities? Are there any restrictions on cross-border lending?

There is only a limited set of restrictions and overall there is non-discriminatory competition between foreign and domestic entities. That said, the Federal Act on the Acquisition of Real Estate by Persons Abroad (Lex Koller) imposes significant restrictions on the acquisition of non-commercial real estate in Switzerland by persons domiciled abroad or Swiss-domiciled entities controlled by persons abroad. This also captures scenarios where non-commercial real estate is owned by a Swiss company or forms part of a bundle of assets. Furthermore, specific rules may apply in certain regulated industries. In particular, statutory licensing and other requirements must be satisfied if a foreign entity acquires a controlling stake in a Swiss bank.

In 2025, the Swiss parliament approved the Investment Screening Act aimed at preventing the acquisition of domestic entities by state-owned foreign investors where such acquisition may endanger public order or security. It primarily addresses acquisitions in security-relevant sectors. This Act is not expected to enter into force before 2027 or 2028.

There are no restrictions regarding lending into Switzerland, at least provided that a foreign financial institution has no permanent infrastructure or employees in Switzerland. There are, however, exceptions such as in the case of consumer credits or in the case of financing of the acquisition of non-commercial real estate.

Law stated - 1 Januar 2026

Certain funds

Are there rules requiring certainty of financing for acquisitions of public companies? Have "certain funds" provisions become market practice in other transactions where not required?

Public takeovers

Statutory Swiss takeover law stipulates strict certain funds rules that a bidder must consider before launching a public tender offer, irrespective of whether the offer is voluntary or mandatory. Pursuant to the Swiss Takeover Ordinance (TOO), a review body must, prior to

publication of the offer, examine the financing of the offer and the availability of funds. This includes in particular:

- an assessment of the creditworthiness of the financing provider; and
- a review of contractual provisions that would allow lenders to refuse to provide the funds.

Such refusal rights should only be permissible if they:

- correspond to a condition of the offer;
- relate to a significant legal condition with respect to the offeror (in particular status, power, authority or change of control);
- relate to the validity of a significant legal transaction stipulated in the contract (in particular the provision of collateral);
- relate to a significant breach of contract by the offeror (in particular *pari passu*, negative pledge, merger or non-payment); or
- relate to a significant deterioration in the offeror's ability to pay.

In addition, the TOO requires the offer prospectus to contain key information regarding the financing of the offer, together with a confirmation from the review body that the bidder has taken the necessary measures to ensure that the required funds will be available on the settlement date. The confirmation regarding "necessary measures" must take the form of a positive assurance. The required funds are assessed by reference to the maximum number of equity securities to which the offer relates.

Other transactions

Outside public tender offers, Swiss law does not require "certain funds" in acquisition financing transactions. Nor is there a uniform market practice as regards the inclusion of certain funds provisions. However, such terms have become common in leveraged acquisition financings, in particular in competitive sponsor-led deals.

Where certain funds provisions are included in syndicated facility agreements, lenders usually retain broader rights to refuse funding than would be permissible in public takeovers. In negotiations of the finance documents, they seek to include a set of major defaults, major representations and, in some cases, major undertakings, the breach of which would justify a refusal to fund.

Law stated - 1 Januar 2026

Restrictions on use of proceeds

Are there any restrictions on the borrower's use of proceeds from loans or debt securities?

Restrictions on the borrower's use of proceed arise from regulations pertaining to anti-money laundering, anti-corruption and sanctions. Such laws or rules are typically addressed

in the relevant finance documents with increasing level of detail and also taking into account applicable foreign law in this area.

Law stated - 1 Januar 2026

Licensing requirements for financing

What are the licensing requirements for financial institutions to provide financing to a company organised in your jurisdiction? Are there licensing requirements for non-bank entities providing such financings? Are there any exceptions that permit non-bank entities to provide financings on a limited basis?

In Switzerland, the provision of acquisition financing is generally not a regulated activity from a licensing perspective. In particular, the granting of loans to a Swiss borrower does not in itself require a licence. A banking licence is required if a financing provider refinances itself by accepting deposits from the public or from other banks. Furthermore, under the Financial Services Act, the granting of financing qualifies as a financial service only if the loan is extended to finance transactions in financial instruments, as is the case for Lombard loans, but not for the acquisition of shares in an M&A context.

Subject to certain exemptions, Swiss licensing requirements are likewise not triggered where lending is conducted on a cross-border basis to a Swiss borrower, provided that the financial institution does not have a permanent presence in Switzerland using physical infrastructure and employees. Further exceptions apply to certain forms of financing not normally used to finance acquisitions.

Law stated - 1 Januar 2026

Withholding tax on debt repayments

Are principal or interest payments or other fees related to indebtedness subject to withholding tax? Is the borrower responsible for withholding tax? Must the borrower indemnify the lenders for such taxes? Are there structures that facilitate lending to borrowers by non-bank lenders and funds?

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, what is termed the 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 interests and, under certain circumstances, also to conversion discounts.

Broadly speaking, a loan breaches the 10/20 non-bank lender rules and qualifies as:

- a Swiss bond, where more than 10 lenders, that are not qualified banks, lend under an agreement (such as a facilities agreement) with identical terms with a total amount of at least 500,000 Swiss francs; or

- a Swiss debenture, where more than 20 lenders, that are not qualified banks, lend under credit agreements with variable terms each with a total amount of at least 500,000 Swiss francs.

If reclassified as a bond or debenture, interest payments become subject to 35% Swiss withholding tax. The borrower is liable for Swiss withholding tax and must remit such tax to the Federal Tax Authority 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. Against this background, protective provisions (including tax indemnities as a last resort) are standard in a facilities agreement involving Swiss borrowers.

Terms deviating from these statutory withholding tax obligations are not permitted. However, there are practices and contractual safeguards available to avoid negative withholding tax arising in the first place during the syndication process and in the event of a change of lenders. This is also the case for lending transactions with private debt fund depending mainly on whether the fund is seen as opaque from a tax perspective.

Law stated - 1 Januar 2026

Restrictions on interest

Are there usury laws or other rules limiting the amount of interest that can be charged?

Swiss law does not provide for a uniform statutory cap on interest rates applicable to acquisition financings or commercial loans generally. However, restrictions on excessive interest must be considered on the basis of consumer credit legislation, cantonal maximum interest rate rules and case law under federal law.

In addition, based on Swiss case law concerning federal law on usury and *boni mori*, and with reference to cantonal rules as well as a former intercantonal and international concordats on usury, practitioners tend to opine that, absent justified circumstances, an interest rate exceeding 18% per annum may be considered excessive.

Law stated - 1 Januar 2026

Indemnities

What kind of indemnities would customarily be provided by the borrower to lenders in connection with a financing?

In Swiss acquisition finance documents there is a range of indemnities covering risks in connection with the funding. These include indemnities for liabilities arising in connection with an event of default (including any investigation of an event of default by the lenders or the agent), as a result of failure to satisfy conditions precedent (such as completion of the acquisition) where lenders have already made arrangements to fund, tax indemnities, increased costs resulting from regulatory capital and liquidity requirements, resulting from incorrect information (including relating to the acquisition), and costs arising from illegality or market disruption – in each case subject to customary carve-outs for gross negligence and wilful misconduct.

Law stated - 1 Januar 2026

Assigning debt interests among lenders; syndication and distribution of debt

Can interests in debt be freely assigned, participated in or transferred among lenders? Are there restrictions to the syndication and distribution of acquisition-financing related debt?

In the case of assignment of interests in a lending commitment, transfers from one lender to another lender and sub-participations, parties to the facilities agreement must ensure that the 10/20 non-bank lender rules is not breached, which would have the effect that the lending transaction is qualified as a bond or debenture from a Swiss withholding tax perspective. Broadly, this happens when 10 lenders that are not qualified banks lend to a Swiss borrower under identical terms (such as under a facilities agreement) or 20 such non-bank lenders grant loans under separate agreements with differing terms.

If qualified as a bond or debenture, interest payments become subject to Swiss withholding tax. Therefore, in a facilities agreement, parties must ensure that any assignment, transfer or sub-participation is restricted, with the resulting effect that the critical number of non-bank lenders will not be exceeded.

In addition, Swiss banking secrecy, data protection and confidentiality obligations may require borrowers' consent or appropriate information undertakings in connection with transfers.

Law stated - 1 Januar 2026

Requirements to act as agent or trustee

Do rules in your jurisdiction govern whether an entity can act as an administrative agent, trustee or collateral agent? Are there licensing requirements to act in such capacities?

While Swiss law does not set out specific rules on whether an entity may act as an administrative or collateral agent, the concept of agency is recognised under Swiss law and the appointment of an administrative or collateral agent, or both, is commonly used in syndicated facilities governed by Swiss law or by foreign law where Swiss parties are involved.

Switzerland has no substantive trust law and therefore does not provide for the creation of trusts. Consequently, trusts cannot be established under Swiss law. However, in the context of cross-border financing governed by non-Swiss law, the appointment of an administrative or collateral trustee is recognised from a Swiss law perspective. The Swiss Private International Law Act (IPLA) incorporates key provisions of the Hague Convention on the Law Applicable to Trusts and on their Recognition (Hague Trust Convention), to which Switzerland is a party. Subject to the requirements of the IPLA and the Hague Trust Convention, foreign court decisions relating to trusts are recognised in Switzerland.

Law stated - 1 Januar 2026

Debt buy-backs

May a borrower or financial sponsor conduct a debt buy-back?

A debt buy-back is, in principle, possible under Swiss law, subject to the terms of the relevant finance documents, generally applicable mandatory corporate law and creditor protection rules in insolvency. Where the borrower repurchases its debt, the claims are extinguished by operation of law (confusion or merger). If the buy-back is not carried out by the borrower and depending on its structure, Swiss corporate law restrictions may arise where the transaction results in up- or cross-stream intra-group loans, which are impermissible if capital maintenance rules are breached. In such case, there may also be adverse withholding tax consequences.

That said, leveraged facility agreements commonly restrict debt buy-backs especially in light of provisions in the finance documents pertaining to their funding, information and voting rights, and transfer restrictions.

Law stated - 1 Januar 2026

Exit consents

Is it permissible in a buy-back to solicit a majority of lenders to agree to amend covenants in the outstanding debt agreements?

Soliciting lenders to consent to amend covenants or other terms of the facilities agreement is not specifically restricted under Swiss law. If the buy-back follows provisions of the finance documents governing the amendment and sacred rights of the lenders, and further provided that good-faith principles are respected, it is our view that it is permissible to solicit majority lenders to agree on an amendment in connection with a buy-back.

Law stated - 1 Januar 2026

GUARANTEES AND COLLATERAL

Related company guarantees

Are there restrictions on the provision of related company guarantees?

Are there any limitations on the ability of foreign-registered related companies to provide guarantees?

Corporate law restrictions apply on related company guarantees where the guarantor is a subsidiary or sister company in Switzerland. Furthermore, there Swiss withholding tax implications must be considered especially in the case of a related company guarantee where the guarantor is a direct or indirect shareholder incorporated in Switzerland. The ability of foreign-registered related companies to provide guarantees are not subject to specific Swiss law restrictions.

Guarantor is a subsidiary or a sister company incorporated in Switzerland

The provision of a guarantee by a Swiss company for the benefit of its direct or indirect shareholder (up-stream) or for a subsidiary of such shareholder (ie, a sister company of the guarantor, cross-stream) is subject to mandatory corporate law constraints. Such guarantees must be granted on arm's length terms, as the directors of a Swiss company are required to act in the best interest of the guarantor. If an up- or cross-stream guarantee is not granted on arm's length terms, payments under the guarantee may be regarded as the equivalent of a dividend distribution, which requires the availability of freely distributable reserves. In the absence of sufficient distributable reserves, the guarantor would effectively repay protected capital, which is prohibited under Swiss statutory law.

As there is no statutory safe harbour for determining arm's length conditions, and given the practical difficulty of assessing adequate compensation for a guarantee, precautionary measures are typically implemented to mitigate the risk of infringing laws on dividend distributions and capital maintenance. In particular:

- such guarantees must include limitation language restricting the guarantee payment to the amount of the guarantor's freely distributable reserves;
- the guarantee must be approved by the shareholders of the guarantor; and
- the articles of association of the guarantor should be amended if they do not yet expressly permit the granting of up- and cross-stream financial assistance, failing which directors may arguably have acted ultra vires in granting the guarantee.

Guarantor is a direct or indirect shareholder incorporated in Switzerland

By contrast, no particular restrictions apply to a down-stream guarantee granted by a parent to its wholly owned subsidiary (at least in the absence of financial distress of the subsidiary at the time the guarantee is granted).

Withholding tax considerations

Interest paid on debt of a non-Swiss borrower is normally not subject to Swiss withholding tax. However, such foreign debt arrangement 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 if the following conditions are met:

- the foreign debt is guaranteed by a direct or indirect Swiss parent company through a downstream guarantee;
- the proceeds from the from the debt in the form of a loan or bond are directly or indirectly on-lent to one or more Swiss group companies; and
- the amount on-lent to Swiss group companies exceeds the sum of the combined equity of all non-Swiss group companies directly or indirectly controlled by the Swiss parent company.

If these conditions are fulfilled and Swiss tax authorities take the view that there is a Swiss financing from a tax perspective, a Swiss withholding tax of 35% applies on interest payments.

Under long-standing administrative practice, guarantees provided by other Swiss affiliates of the foreign issuer – namely, up-stream or cross-stream guarantees, are considered as less

problematic, as the enforceability of such guarantees are limited to the guarantor's freely distributable reserves to comply with mandatory Swiss corporate law.

Law stated - 1 Januar 2026

Assistance by the target

Are there specific restrictions on the target's provision of guarantees or collateral or financial assistance in an acquisition of its shares? What steps may be taken to permit such actions?

There are no whitewashing procedures in Switzerland. However, where the target is a Swiss entity, any guarantee or collateral granted by the target in connection with the acquisition financing constitutes upstream financial assistance, as it secures obligations of its direct or indirect shareholder. Such guarantee or security is subject to Swiss corporate law restrictions.

As outlined in the response to the question on limitations on guarantees, upstream guarantees and collateral must be limited to the target's freely distributable reserves and granted on arm's length terms. In practice, further steps are taken, including ensuring that the target's articles of association expressly permit upstream financial assistance, obtaining approval from the board of directors and the shareholders, and including customary limitation language in the guarantee or security documentation.

Because these measures must be implemented before the guarantee or collateral becomes effective, the timing of the target's accession as guarantor or collateral provider is a key structuring consideration. If the guarantee or security over the target's assets is intended to be in place at closing, the buyer must ensure that the seller and the target cooperate in implementing the required corporate actions prior to closing. This requires an enhanced level of pre-closing cooperation and may raise deal certainty concerns, for example, where the incumbent board is unwilling to approve a guarantee or other collateral raising corporate benefit questions.

For these reasons, acquisition financings involving a guarantee or collateral from a Swiss target should ideally provide for a post-closing accession period during which the target joins the financing as guarantor and collateral provider following completion of the acquisition and implementation of the necessary corporate measures.

In addition, Swiss corporate law issues may arise where there are minority shareholdings in the target that is required to grant a guarantee or collateral. If it is not feasible or practicable to involve all minority shareholders in approving the upstream guarantee or collateral, appropriate work-arounds are available (at least in private M&A acquisitions), which should, however, be agreed with the lenders at an early stage.

Law stated - 1 Januar 2026

Types of security

What kinds of security are available? Are floating and fixed charges permitted? Can a blanket lien be granted on all assets of a company? What

are the typical exceptions to an all-assets grant? Are there limitations on security granted by a target to support its acquisition?

A typical security package in Switzerland consists of pledges or transfers for security purposes over certain assets, claims or securities – namely, shares, cash, intellectual property or real estate, as well as security assignments of receivables, including, inter alia, trade receivables, intercompany receivables, insurance receivables or other receivables under specific contracts.

The concept of a floating charge is not recognised under Swiss law, as each asset serving as collateral must be sufficiently specified. It also conflicts with the general principle that the security provider must transfer possession of certain (movable) assets to the secured parties. As the security provider would thereby be dispossessed of these assets, security interests over machinery, equipment, inventory or other movable assets are unless specific statutory regimes apply to certain movable assets impracticable in Switzerland.

Under Swiss law, it is not possible to create a single, universal security interest covering all categories of assets held by an entity. Security must instead be taken separately over each asset class, as Swiss law provides for different forms of security depending on the nature of the asset concerned. As a result, an “all assets” security package can only be achieved by creating individual security interests over each relevant asset class. While this may theoretically be documented in a single agreement, separate security agreements are more common in practice.

Law stated - 1 Januar 2026

Requirements for perfecting a security interest

Are there specific bodies of law governing the perfection of certain types of collateral? What kinds of notification or other steps must be taken to perfect a security interest against collateral? Do stamp duties or similar taxes apply to taking a perfected security interest?

The Swiss Civil Code governs in rem security interests such as pledges, while the Swiss Code of Obligations governs assignments, including assignments for security purposes. In the case of intermediated securities, the Swiss Act on Book-Entry Securities is relevant. Specific statutory provisions apply to the creation of security over certain high-value movable assets, such as ships, aircraft or rolling stock.

Under Swiss law, creation and perfection of a security interest generally coincide and are achieved upon valid creation of the security. In addition to a written agreement (including an undertaking to pledge or a declaration of assignment), this typically requires transfer of possession of the secured assets (eg, movable assets) or delivery of the relevant certificates (such as share certificates or mortgage certificates). Only in a few cases (notably in respect of real estate, aircraft or vessels) is registration with the competent authority required.

Notifications are not required under Swiss law to create a valid security interest but may constitute an additional perfection step in the case of security assignments of receivables or pledges of claims, in order to prevent the debtor from discharging its obligations to the detriment of the secured parties. In the case of a pledge over intellectual property, registration in the relevant IP register strengthens the pledge's effectiveness vis-à-vis third parties.

In the case of a security over real property and depending where in Switzerland the real property is located; stamp duties may become payable under certain cantonal and communal law.

Law stated - 1 Januar 2026

Renewing a security interest

Once a security interest is perfected, are there renewal procedures to keep the lien valid and recorded?

Renewals are not required in Switzerland.

Law stated - 1 Januar 2026

Stakeholder consent for guarantees

Are there "works council" or other similar consents required to approve the provision of guarantees or security by a company?

Works council consents are not required in Switzerland in connection with guarantees, collateral or finance transaction in general.

Law stated - 1 Januar 2026

Granting collateral through an agent

Can security be granted to an agent for the benefit of all lenders or must collateral be granted to lenders individually and then amendments executed upon any assignment?

Security interests governed by Swiss law may be granted to a security agent for the benefit of all lenders. The security agent will act either as a direct representative, in the name and for the account of the lenders, or as an indirect representative, in its own name but for the account of the lenders as beneficiaries. Direct representation is required in relation to security interests where Swiss law requires the secured creditor and the holder of the security interest to be identical. This applies to accessory security, such as pledges. The appointment of the security agent is typically documented in the finance documents to which all lenders are party, such as the facilities agreement or, where additional secured parties are involved, an intercreditor agreement.

As an alternative, and sometimes in addition, parallel debt structures are used – namely, an undertaking of a separate payment obligation in favour of the security agent to allow accessory security interests to be created for the security agent acting solely in its own name, which is helpful where the authorisation of a security agent by the secured parties (such as bondholders) cannot be documented. However, to our knowledge, parallel structures have not yet been tested before the court and therefore their enforceability in Switzerland cannot be confirmed with certainty.

Law stated - 1 Januar 2026

Creditor protection before collateral release

What protection is typically afforded to creditors before collateral can be released? Are there ways to structure around such protection?

Prior to full discharge of the secured obligations, a release may occur only with the consent of the creditors in accordance with the terms of the relevant finance documents. The consent of the secured creditors is likewise required if a release is to take place in the course of composition proceedings following the debtor's insolvency. However, it should be noted in this context, that security of an accessory nature, such as a Swiss pledge, depends on the existence of the secured claim. Once all secured claims have been satisfied in full, the security automatically ceases to exist.

Law stated - 1 Januar 2026

Fraudulent transfer

Describe the fraudulent transfer laws in your jurisdiction.

Creditors of a Swiss debtor may challenge certain transactions and the performance of obligations thereunder pursuant to the avoidance claims of the Swiss Debt Enforcement and Bankruptcy Act.

Additionally, a creditor may request the court to declare bankruptcy without prior debt enforcement proceedings against a debtor who has committed or attempted to commit fraudulent acts to the detriment of its creditors.

Furthermore, a debtor who reduces its assets to the detriment of creditors during bankruptcy proceedings or after the issuance of an unpaid debt certificate may become subject to criminal liability under the Swiss Criminal Code.

Law stated - 1 Januar 2026

DEBT COMMITMENT LETTERS AND ACQUISITION AGREEMENTS

Types of documentation

What documentation is typically used in your jurisdiction for acquisition financing? Are short-form or long-form debt commitment letters used and when is full documentation required? Are there market practices that require the use of particular types of documents or forms in your jurisdiction?

The documentation for an acquisition financing varies depending on the nature, size and complexity of the transaction structure. Leveraged and cross-border financings are most commonly based on facilities agreements broadly aligned with Loan Market Association standards, subject to adjustments reflecting Swiss law requirements and market practice. In smaller transactions, bilateral credit agreements with a bank or private lender are common. Junior and mezzanine debt arise more selectively and may require an intercreditor agreement to govern the relationship between the different lender groups. Particularly in

sponsor-led transactions, there is a broad set of documents, with security agreements being part of a comprehensive security package as well as other ancillary agreement.

Both short-form and long-form debt commitment papers are used in Swiss acquisition financings. Short-form documents are often seen in small to mid-sized domestic private M&A transactions and, in smaller deals, only highly confidential letters. In larger mid-sized to large transactions, long-form term sheets are standard.

In public takeover transactions, Swiss law requires enhanced certainty of funding. While this requirement does not prescribe a specific debt commitment format, long-form commitment letters are widely regarded as the minimum standard to evidence the availability of committed funds and to facilitate the review by the review body, with the facilities agreement being close to final form and usually executed prior to the offer.

Law stated - 1 Januar 2026

Level of commitment

What levels of commitment are given by parties in debt commitment letters and acquisition agreements in your jurisdiction? Fully underwritten, best efforts or other types of commitments?

The Swiss market knows both levels of commitments – namely, fully underwritten and best efforts. Debt commitment letters in Swiss acquisition financings commonly provide for fully committed financing, particularly in sponsor-led competitive transactions, but also in the case of larger strategic buyers with strong banking relationships. Commitments are therefore often provided on a fully underwritten basis, with the arranging bank or direct lenders assuming the syndication risk.

In public takeover transactions, Swiss law requires certain funds. The financing must therefore be fully committed.

Law stated - 1 Januar 2026

Conditions precedent for funding

What are the typical conditions precedent to funding contained in the commitment letter in your jurisdiction?

Conditions precedent to funding in Swiss debt commitment letters are typically aligned, on one hand, with the level of commitment of the lender and, on the other hand, with the conditions of the underlying acquisition. Depending on these parameters, common conditions precedent in private M&A transactions include, inter alia:

- due execution of the acquisition and finance documents;
- completion of the acquisition in accordance with the agreed transaction terms;
- satisfaction of conditions precedent under the transaction documents;
- in private equity deals, evidence of shareholder equity contributions;
-

the absence of a breach of major representations or major covenants and confirmation that no major default has occurred.

In certain funds transactions, including public takeovers, conditionality is more limited and excludes market flex, syndication and broad material adverse change conditions, with funding linked primarily to completion of the acquisition and specified documentary deliverables.

Law stated - 1 Januar 2026

Flex provisions

Are flex provisions used in commitment letters in your jurisdiction? Which provisions are usually subject to such flex?

Flex provisions are used in the Swiss market. Provisions subject to market may include margin levels, fees, financial covenant levels and headroom, the amortisation profile and allocation between facilities. The flexibility to amend these terms is generally subject to a necessity and good faith standard on the part of the arranger, and caps may be negotiated.

Law stated - 1 Januar 2026

Securities demands

Are securities demands a key feature in acquisition financing in your jurisdiction? Give details of the notable features of securities demands in your jurisdiction.

Securities demands are uncommon in Switzerland.

Law stated - 1 Januar 2026

Key terms for lenders

What are the key elements in the acquisition agreement that are relevant to the lenders in your jurisdiction? What liability protections are typically afforded to lenders in the acquisition agreement?

Lenders are not party to the acquisition agreement, but its terms are critical from a financing perspective and are therefore subject to detailed review. Lenders seek to avoid the risk of the closing not occurring without the possibility of an exit from their financing commitment. They therefore focus in particular on provisions linking completion of the acquisition to the obligation to fund, such as conditions to closing and material adverse change clauses.

In addition, other provisions, such as purchase price mechanics and the overall payment structure (in particular any deferred consideration), are relevant for lenders to understand at an early stage, notably when assessing financial covenant levels and headroom.

As lenders are not parties to the acquisition agreement, they have no direct contractual recourse under it. Their protection is instead reflected in the finance documents through

representations, undertakings and events of default, as well as liability waivers and indemnities in their favour.

Law stated - 1 Januar 2026

Take-private transactions

In the context of take-private transactions – what are the common issues relevant to acquisition financings in your jurisdiction?

The Swiss Takeover Board does not usually permit an acceptance threshold as high to allow the bidder to reach the level required for a squeeze-out of minority shareholders in order to achieve 100% control of the target. As a result, the bidder risks being left with a majority stake without having full ownership of the target.

In this case, the target remains a listed company and must therefore continue to comply with the corporate governance regime applicable to listed companies, as well as with applicable takeover law and listing rules. Accordingly, the target is subject to restrictions on extraordinary transactions and other significant measures, such as the granting of security, dividend distributions or changes to its share capital. In addition, the target may not take actions that could frustrate the offer or materially affect the company's value, subject to the fiduciary duties of the board.

Minority shareholders must be treated equally, and the bidder may not offer more favourable economic terms to selected shareholders outside the offer. These principles may limit structuring flexibility and post-offer arrangements until the squeeze-out has been implemented.

Law stated - 1 Januar 2026

Take-private transactions

What are the rules and procedures for "squeeze-outs" in your jurisdiction? Before a "squeeze-out", are there permissible restrictions on acts by the target? Is it possible to obtain security pending the completion of a "squeeze-out"?

Swiss law provides for two principal squeeze-out mechanisms in the context of public takeovers.

- First, under the Swiss Financial Market Infrastructure Act (FMIA), a bidder who, following a public tender offer, holds more than 98% of the voting rights in the target company may request cancellation of the remaining equity securities. The bidder must file a cancellation action with the competent court within three months after expiry of the additional acceptance period. Upon completion of the court-supervised procedure, the remaining shares are cancelled against payment of the offer consideration to the minority shareholders.
- Second, where the bidder holds at least 90% of the voting rights, a squeeze-out may be implemented under the Swiss Merger Act by way of a squeeze-out merger. This way, the target is merged into the bidder or an acquisition vehicle, and minority

shareholders receive cash or other consideration instead of shares, subject to compliance with the requirements of merger law, including shareholder approval and preparation of the merger documentation.

The FMIA squeeze-out is usually faster and procedurally more straightforward but requires the higher 98% threshold. The merger squeeze-out under the Merger Act is available at the lower 90% threshold but involves a more extensive corporate documentation and procedural process.

As the target remains a listed company prior to the squeeze-out, it cannot provide upstream guarantees or collateral securing the acquisition financing before completion, primarily due to corporate law restrictions, which would, inter alia, require unanimous shareholder approval of the financial assistance in favour of a single (majority) shareholder. This becomes feasible only once the bidder has acquired 100% ownership following completion of the squeeze-out procedure.

Law stated - 1 Januar 2026

Public filing of commitment papers

Are commitment letters and acquisition agreements publicly filed in your jurisdiction? At what point in the process are the commitment papers made public?

In private M&A transactions in Switzerland, commitment letters and acquisition agreements do not have to be publicly filed. Subject to customary disclosure requirements under the finance documents or in the context of regulatory approvals, they remain confidential. There may, however, be filing requirements with the commercial register in certain types of transactions, as well as registration requirements in respect of specific assets.

In principle, the same applies in public takeovers. Although there are disclosure requirements, the full transaction documentation is not typically published. Instead, key information regarding the financing and the terms of the offer must be disclosed in the offer prospectus.

Law stated - 1 Januar 2026

ENFORCEMENT OF CLAIMS AND INSOLVENCY

Restrictions on lenders' enforcement

What restrictions are there on the ability of lenders to enforce against collateral? Can lenders engage in self-help through foreclosure or the exercise of remedies under stock pledges or control agreements?

The ability of lenders to enforce a security interest granted by a Swiss obligor may be subject to corporate law limitations in the case of an up- or cross-stream security. The enforcement of such security must be limited to the security provider's freely distributable reserves in order to comply with the statutory prohibition of repayment of protected capital.

Swiss law permits secured creditors to enforce security outside formal enforcement proceedings by way of private enforcement, provided this has been agreed contractually in

advance. Private enforcement is generally more efficient in terms of timing and process. However, it remains subject to mandatory principles of Swiss law. In particular, the secured party must carry out the enforcement in a manner that protects the pledgor's interests, which requires maximising the proceeds in light of the prevailing circumstances.

The right to enforce privately no longer exists once bankruptcy or composition proceedings have been opened against the security provider. In this case, individual enforcement actions are stayed and realisation actions are conducted in accordance with the Swiss Debt Enforcement and Bankruptcy Act. However, the secured creditor's priority right will be upheld such that the secured creditors will be satisfied first out of the enforcement proceeds.

Law stated - 1 Januar 2026

Debtor-in-possession financing

Does your jurisdiction allow for debtor-in-possession (DIP) financing?

A dedicated rescue financing regime for distressed companies, such as DIP financing, is not known under Swiss law. However, composition proceedings are available for financially distressed Swiss entities as an alternative to bankruptcy. This procedure allows the debtor to seek a court-ordered moratorium to allow negotiations with creditors.

Composition proceedings are intended to facilitate the restructuring of a financially distressed company's debt and, unlike bankruptcy proceedings, are not primarily aimed at liquidation. Claims incurred during the moratorium may benefit from preferential treatment with the approval of a court-appointed administrator, provided that the rights of existing creditors are not jeopardised. Such post-moratorium claims are segregated from pre-existing indebtedness and satisfied in priority with pro rata distributions to creditors under a composition agreement or in liquidation. This priority is maintained even if the restructuring fails and bankruptcy proceedings are subsequently opened. Under the composition agreement, secured creditors are taken into account only to the extent that their claims are not satisfied through enforcement of the underlying collateral.

Law stated - 1 Januar 2026

Stays and adequate protection against creditors

During an insolvency proceeding is there a general stay enforceable against creditors? Is there a concept of adequate protection for existing lien holders who become subject to superior claims?

Yes, upon the opening of bankruptcy proceedings in Switzerland, individual enforcement actions by creditors are halted. Creditors may no longer pursue separate 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 enforcement of collateral granted by a third party to secure the obligations of the insolvent debtor.

During composition proceedings, enforcement actions are similarly restricted for as long as restructuring efforts are ongoing. Certain exceptions apply, in particular in respect of claims secured by real estate and what are termed first-class claims, such as wage claims.

Swiss insolvency law does not provide for a concept comparable to “adequate protection” for secured creditors. Protection is achieved through the preservation of existing security rights and the secured creditor’s preferential entitlement to the proceeds of collateral realisation.

Law stated - 1 Januar 2026

Clawbacks

In the course of an insolvency, describe preference periods or other reasons for which a court or other authority could claw back previous payments to lenders. What are the rules for such clawbacks and what period is covered?

The Swiss Debt Enforcement and Bankruptcy Act provides for claw-back actions in the form of avoidance actions. These allow certain transactions entered into prior to the opening of a bankruptcy proceeding, including payments or security granted to lenders, to be challenged and reversed.

The following circumstances may give rise to an avoidance action:

- within one year prior to the opening of bankruptcy proceedings, the debtor entered into a transaction without consideration or for manifestly inadequate consideration, resulting in a transfer at an undervalue;
- within one year prior to bankruptcy, the debtor granted security for obligations it was not previously obliged to secure, repaid liabilities before their due date, or satisfied debts by unusual means of payment, at a time when the debtor was over-indebted and the counterparty knew or should have known of such over-indebtedness; or
- within five years prior to bankruptcy, the debtor disposed of assets with the intent to prefer one creditor to the detriment of others, where such intent was, or should have been, recognisable to the preferred creditor.

Law stated - 1 Januar 2026

Ranking of creditors and voting on reorganisation

In an insolvency, are creditors ranked? What votes are required to approve a plan of reorganisation?

The Swiss Debt Enforcement and Bankruptcy Act establishes an order of priority among creditors, pursuant to which creditors are satisfied from the bankruptcy proceeds.

- Creditors holding security interests are paid first from the proceeds realised from the relevant collateral. Any unsecured portion of their claim (shortfall) participates in the bankruptcy as an unsecured claim.
-

Unsecured claims are divided into three classes. The first class primarily covers employee claims and certain pension fund claims. The second class includes specified social security and social insurance contributions as well as certain tax claims. All remaining unsecured claims, including unsecured lending exposures and shortfalls following enforcement of security, fall into the third class.

- Creditors within the same class share in the bankruptcy proceeds on a pari passu basis.

Swiss law also permits insolvent companies to initiate composition proceedings as an alternative to bankruptcy. This enables the debtor to enter into a composition agreement with its creditors and, for this purpose, to obtain a moratorium while negotiations are ongoing. For the composition agreement to be approved, it must be accepted 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 based on the claims subject to the composition agreement). Secured creditors are not entitled to vote, as they are not bound by the terms of the composition agreement. In addition to the required creditor majorities, the agreement must be confirmed by the composition court in order to become valid and binding.

Law stated - 1 Januar 2026

Intercreditor agreements on liens

Will courts recognise contractual agreements between creditors providing for lien subordination or otherwise addressing lien priorities?

Swiss courts recognise contractual arrangements between creditors regulating lien priorities or providing for subordination. Such arrangements are enforceable between the parties subject to certain limitations (such as when a claim of a subsidiary is subordinated in favour of a third-party claim against its direct or indirect parent).

While these arrangements also remain effective in insolvency, they do not alter the statutory ranking of claims vis-à-vis third parties. Priority is instead given effect through contractual turnover and distribution provisions among the relevant creditors.

Law stated - 1 Januar 2026

Discounted securities in insolvencies

How is the claim of an original issue discount (OID) or discount debt instrument treated in an insolvency proceeding in your jurisdiction?

OID or discounted debt instruments are not sufficiently common in Switzerland to have given rise to established market practice or case law. However, it may be expected that where debt is issued at a discount but repayable at its full nominal amount, the outstanding principal as defined in the finance agreement may be asserted in bankruptcy proceedings.

Law stated - 1 Januar 2026

Liability of secured creditors after enforcement

Discuss potential liabilities for a secured creditor that enforces against collateral.

A secured creditor enforcing collateral in Switzerland must act in a commercially reasonable manner. In particular, enforcement may not be conducted in a way that deliberately sacrifices value where a better price could reasonably be obtained. The creditor is required to seek an appropriate price in light of the prevailing circumstances. A failure to do so may give rise to damages claims by the security provider or, in insolvency, by the bankruptcy administration.

Self-appropriation of collateral is permissible only if expressly agreed in the security agreement and remains subject to strict limitations. The secured creditor may not appropriate the asset at an arbitrary value. Rather, the valuation must reflect market value and any surplus must be accounted for to the security provider.

Enforcement may also be subject to regulatory requirements depending on the nature of the asset. For example, the acquisition of certain real estate by foreign persons may require approval under the Federal Act on the Acquisition of Real Estate by Persons Abroad.

Law stated - 1 Januar 2026

UPDATE AND TRENDS

Proposals and developments

Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? If so, please give a reference to any written material, whether official or press reports. Are there any other current developments or trends that should be noted?

Leveraged finance in Switzerland enjoys a momentum due to rebounding M&A activity involving private equity but also larger strategic transactions. Syndicated facilities arranged by Swiss banks remain the dominant product. At the same time, debt funds and other private lenders are gaining ground in the Swiss market and expanding their role in acquisition financing. Their increased activity is partly driven by reforms following the takeover of Credit Suisse by UBS, with a continued focus on stronger supervision and the resolvability of Swiss systemic banks.

Legislative activities currently tend to focus on broader areas such as financial market regulation, sustainability and corporate governance rather than targeting financing structures as such. That said, regulatory development in related fields may indirectly affect acquisition financings. For example, ongoing reforms to bank capital and capital adequacy requirements likely influences pricing and risk appetite in leveraged transactions. Another example is the proposed Investment Screening Act, introducing approval requirements for acquisitions by foreign state-controlled investors in sensitive sectors which could impact deal timelines and conditions precedent.

Law stated - 1 Januar 2026

LAW STATED DATE

Correct on:

Please state the date on which the law stated here is accurate.

1 January 2026

Law stated - 1 Januar 2026