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Switzerland
Lending & Secured Finance

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This country-specific Q&A provides an overview of lending & secured finance laws and regulations applicable in Switzerland.

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Switzerland: Lending & Secured Finance

1. Do foreign lenders (including non-bank foreign lenders) require a licence/regulatory approval to lend into your jurisdiction or take the benefit of security over assets located in your jurisdiction?

(Pure) lending activities in Switzerland are generally unregulated. This also applies to (pure) cross-border lending into Switzerland by foreign lenders (including non-bank lenders).

If a Swiss-based lender also accepts deposits from the public or refinances itself via a number of banks, it would generally qualify as a bank and be subject to licensing and other regulatory requirements under Swiss banking legislation.

A foreign bank or other regulated entity which provides financial services (including, but not limited to, lending to Swiss borrowers) on a strict cross-border basis does not generally require a license from the Swiss Financial Market Supervisory Authority (FINMA). If such foreign regulated entity establishes a permanent physical presence in Switzerland, e.g. through employees or physical infrastructure, the cross-border exemption no longer applies.

In addition, the Swiss Financial Services Act and its associated ordinances impose registration, organisational and conduct requirements on both Swiss and foreign financial services providers that grant loans to finance transactions in financial instruments on a professional basis either in Switzerland or to Swiss-based clients (similar to MiFID II in the EU). Certain exemptions apply to regulated financial institutions that target exclusively institutional or professional clients.

Finally, subject to certain exemptions, cantonal registration requirements apply to consumer credit which is subject to the Swiss Consumer Credit Act.

There is no general prohibition or restriction in Switzerland on the granting of guarantees or security interests in Swiss assets to foreign lenders. However, certain restrictions may apply depending on the type of collateral and the industry sector.

Most notably, the acquisition of Swiss residential real estate, including shares in Swiss residential real estate companies, by foreign investors or foreign-controlled Swiss companies is subject to restrictions, in particular, license requirements, under the Swiss Federal Act on the Acquisition of Immovable Property by Foreign Non-Residents (the so-called “lex Koller”). “Acquisition" for the purposes of lex Koller also includes secured real estate financings provided by foreign lenders if certain loan-to-value thresholds are exceeded, and the enforcement of security over shares in Swiss residential real estate companies, and potentially also over Swiss residential real estate itself, may also be restricted.

The financing, acquisition and sale of Swiss commercial real estate is, on the other hand, only subject to limited restrictions.

While Switzerland currently does not impose any other restrictions on foreign direct investment, in certain regulated sectors, such as banking & insurance, telecommunications, media, energy and aviation, shareholdings or controlling interests in companies active in such sectors may be subject to approval by the competent Swiss authority. This may also affect secured financings provided to such companies.

2. Are there any laws or regulations limiting the amount of interest that can be charged by lenders?

While, with certain exceptions outlined below, there are no specific laws or regulations in Switzerland which impose a fixed cap on the amount of interest that can be charged by lenders, transactions with disproportionately high interest rates (generally considered to be interest rates above 18% – 20% p.a.) may, depending on the circumstances, fall within the scope of the civil law offences of immorality or unfair advantage or the criminal offences of extortion or profiteering (usuary). In addition, default interest set at punitive levels may be requalified as a penalty and reduced by a Swiss court.

In the area of consumer credit, the Swiss Consumer Credit Act provides for a general maximum interest rate of 15% and the Consumer Credit Ordinance stipulates maximum interest rates per annum for cash loans and overdrafts (bank overdrafts and credit card balances) and authorises the Swiss Federal Department of Justice and Police (FDJP) to make annual adjustments to such maximum interest rates. As of 1 January 2026 (i.e. for

contracts concluded on or after 1 January 2026), the maximum interest rate for cash loans has been set by the FDJP at 10% per annum and the maximum interest rate for bank overdrafts and credit card balances at 12% per annum. An interest rate provision in a consumer credit agreement stipulating a higher interest rate is considered void in its entirety (i.e. the borrower is legally not required to pay any interest at all).

In respect of intra-group financings, parties should have regard to the maximum interest rates published annually by the Swiss Federal Tax Administration (FTA) as "safe harbour" interest rates for loans granted to Swiss companies by their shareholders or related parties (passive loans). As of 1 January 2026, a maximum interest rate of 1.5% (reduced from 1.75% in 2025) applies to operating loans denominated in Swiss francs above CHF 1 million for trading and manufacturing companies and 1.25% (reduced from 1.5% in 2025) for holding and asset management companies. Conversely, equity-financed loans in Swiss francs granted by Swiss companies to their shareholders or related parties (active loans) are, as of 1 January 2026, subject to a minimum interest rate of 0.75% (reduced from 1% in 2025). Different interest rates apply to foreign currency loans and debt-financed active loans and in the case of passive loans, thin capitalisation rules determining a Swiss company's maximum borrowing capacity also need to be considered. The interest rates published by the FTA constitute "safe harbour" interest rates which the FTA assumes are in line with the arm's length principle, whereas any deviating interest rates are subject to proof of arm's length.

Finally, Swiss law restricts the charging of compound/capitalised interest and an agreement in advance that interest under a loan will be automatically added to the loan principal and become subject to further interest may be considered void by a Swiss court. Provisions, particularly in Swiss law governed finance documents, relating to PIK interest/compound interest should, therefore, be structured carefully (e.g. to provide for an election by the obligor at the end of each interest period and the calculation of outstanding amounts).

3. Are there any laws or regulations relating to the disbursement of foreign currency loan proceeds into, or the repayment of principal, interest or fees in foreign currency from, your jurisdiction?

No, while the Swiss National Bank has the authority to implement measures on foreign source funds, foreign currency positions and minimum reserve requirements in exceptional circumstances, and with the exception of certain regulations applicable to Swiss banks and other financial institutions in this respect, there are no foreign exchange controls or restrictions applicable in Switzerland, neither are there any restrictions or prior authorisation requirements for the import or export of capital in a foreign currency, such as loan proceeds or the (re)payment/repatriation of principal, interest or fees to a foreign lender.

However, if a foreign lender wanted to enforce a claim or judgment expressed in a foreign currency in Swiss debt collection or bankruptcy proceedings against a Swiss borrower or Swiss guarantor, the relevant amount would first have to be converted into Swiss francs in accordance with the applicable rules.

4. Can security be taken over the following types of asset: i. real property (land), plant and machinery; ii. equipment; iii. inventory; iv. receivables; and v. shares in companies incorporated in your jurisdiction. If so, what is the procedure – and can such security be created under a foreign law governed document?

Whereas security can theoretically be taken over all of the above assets, it is usually not feasible to create a valid Swiss security interest over machinery, equipment or inventory as the strict (dis)possession requirement for a Swiss law right of pledge (*Faustpfandprinzip*) would necessitate physical possession and control of such assets to be transferred to the security agent/secured party. This also largely applies to a transfer for security purposes (*Sicherungsübereignung*).

In certain limited circumstances where the security provider stores tangible movable assets with a third party (e.g. a warehouse or other storage facility operator), it may be possible to create a valid security interest over such assets with the third party acting as pledgeholder.

A standard Swiss security package, therefore, does not usually include operational movable assets such as machinery, equipment or inventory, but often also includes security over bank accounts and valuable intellectual property rights.

Swiss conflict-of-laws rules generally allow the parties to a contract to choose the law to govern the contract. With certain exceptions, this also applies to the governing law of the security documents. However, such choice of law is typically not enforceable against third parties.

In addition, Swiss law differentiates between the agreement to incur a legal obligation (*Verpflichtungsgeschäft*) and the performance of such obligation (*Verfügungsgeschäft*). Whereas the agreement itself is purely contractual and thus governed by the law chosen by the parties, the performance / act of disposal may include rights in rem which may be governed by a different law. Rights in rem in both immovable and movable property are generally governed by the lex rei sitae (the law of the place where the property is located), however, in the case of movable property, the parties may instead submit the rights in rem in such movable property to the law chosen to govern the agreement. Again, such choice of law cannot be asserted against third parties.

A pledge or assignment of rights, claims and receivables is also governed by the law chosen by the parties. However, such choice of law cannot be asserted against third parties without their consent, including the debtors of such rights, claims and receivables, against whom only the law governing the right, claim or receivable can be asserted.

Therefore, in order to ensure that a valid and enforceable security interest over assets or claims located in Switzerland or governed by Swiss law is created, it is market practice to enter into Swiss law governed security documents subject to the jurisdiction of the competent Swiss courts.

The creation of a valid Swiss security interest, whether in the form of a right of pledge, security assignment or security transfer, requires a written security agreement, whereas "written" for the purposes of Swiss law necessitates either handwritten (wet-ink) or qualified electronic signatures.

(i) Security over immovable property (land/real estate)

Security over immovable property (land/real estate) can be created either by way of a land charge (*Grundpfandverschreibung*) or by way of a mortgage certificate (*Schuldbrief*). In addition, a mortgage certificate (*Schuldbrief*) can be (subsequently) pledged or transferred for security purposes.

A land charge (*Grundpfandverschreibung*) constitutes a mortgage which is entered into the land register against the relevant property for a maximum amount in favour of the secured party. It constitutes an accessory security interest which can secure any present, future or contingent claim.

A land charge is created by a mortgage agreement between the parties in the form of a public (notarised) deed which must be registered with the land register. The land register will then usually provide a confirmation in the form of a registry extract to the secured party. However, the entry of the land charge in the land register does not (in itself) constitute proof of, or establish, a claim and a land charge is not a negotiable instrument.

A mortgage certificate (*Schuldbrief*), on the other hand, establishes a personal claim against the debtor (which exists in parallel to the original/underlying claim), secured by a mortgage against the property. A mortgage certificate constitutes a non-accessory security interest and is a negotiable instrument.

A mortgage certificate is created by an agreement between the parties in the form of a public (notarised) deed and entry into the land register. A mortgage certificate can be issued as a paperless book-entry mortgage certificate (*Registerschuldbrief*) or in paper form (*Papierschuldbrief),* either as a bearer mortgage certificate (*Inhaberschuldbrief*) or a registered mortgage certificate in the name of the secured party (*Namenschuldbrief*).

The pledge or security transfer of a mortgage certificate requires a written pledge or security transfer agreement (which does not need to be notarised) and the transfer of the original paper mortgage certificate (including, in the case of a registered mortgage certificate (*Namenschuldbrief*), the relevant endorsement) to the secured party or, in the case of a book-entry mortgage certificate (*Registerschuldbrief*), the registration of the secured party in the land register, based on a written statement from the previous creditor.

In the case of a pledge or security transfer of a paper mortgage certificate (*Papierschuldbrief*), the new secured party can ask to be entered into the creditors' register of the land registry.

Whereas a pledge of a mortgage certificate only creates limited rights in rem in the mortgage certificate, in the case of a security transfer, legal title to the mortgage certificate is transferred to the secured party which means that the mortgage certificate will not fall in the bankruptcy estate of the security provider.

Notary and registration fees for the creation and registration of a land charge or mortgage certificate vary depending on the Swiss canton where the real estate is located and will often be calculated as a percentage of the secured claim.

As outlined under question 1 above, the so-called "lex Koller" restricts the acquisition, secured financing and

possibly enforcement of security of or over Swiss residential real estate by foreign, or foreign-controlled, lenders and interest payments to foreign lenders as well as the transfer of Swiss real estate may trigger certain tax liabilities (see question 9).

(ii) Security over machinery or equipment.

See above.

(iii) Security over inventory

See above.

(iv) Security over receivables

A standard Swiss security package usually includes intercompany, trade and insurance receivables and, in the case of an acquisition financing, may also include rights and claims under the SPA and/or other acquisition documents.

Security over rights, claims and receivables is usually granted by way of a security assignment but could also be granted by way of a pledge. A security assignment transfers legal title to the rights, claims and receivables to the security agent/secured party and is, therefore, beneficial in the case of bankruptcy of the security provider as the assigned rights, claims and receivables would not fall in the bankruptcy estate provided that they have come into existence prior to the bankruptcy.

Both a pledge and a security assignment require a written security agreement and may cover present and future rights, claims and receivables provided that they are sufficiently identified or identifiable. Notification of the debtors is not a perfection requirement for either security interest, however, until a debtor is notified of the creation of the security interest, they may continue to validly discharge their obligations to the security provider. In addition, in case the underlying agreement or applicable general terms and conditions exclude or restrict the assignability of the right, claim or receivable, such right, claim or receivable cannot be pledged or assigned without the consent of the debtor. It is, therefore, market practice in Switzerland to notify intercompany debtors and insurance companies at the time of creation of the security interest (and request their acknowledgement/consent), whereas trade debtors are usually only notified upon the occurrence of an event of default or upon it becoming necessary in the view of the security agent/secured party to protect the security interest, due to sensitivity on the part of the security provider. Finally, any original acknowledgements of debt (*Schuldscheine*), including any original insurance certificates, must be delivered to the security agent/secured party.

(v) Security over shares in Swiss companies

Security over shares in Swiss stock corporations (*Aktiengesellschaften*) or limited liability companies (*Gesellschaften mit beschränkter Haftung*), which constitute the most common forms of Swiss companies, is usually taken by way of a pledge rather than a security assignment (with transfer of legal title to the shares) in order to avoid the security agent/secured party becoming the formal shareholder of the company.

For the valid creation of the pledge, a written security agreement is required. There is no requirement for such agreement to be notarised. The share pledge agreement usually contains provisions dealing with the exercise of voting rights and rights to dividends.

If the shares (or quotas in the case of a limited liability company) are issued in certificated form, the delivery of the original share certificate(s) to the security agent/secured party, usually endorsed or assigned in blank, is required to perfect the security. In the case of uncertificated shares (in the form of *Wertrechte*), a written declaration of assignment, signed in blank by the pledgor, may be requested to facilitate private enforcement.

In addition, it is market practice for the pledge to be recorded in the company's share register and to ask for board resolutions approving in advance the entry into the share register of any future acquirer of the shares in the event of enforcement of the share pledge.

In case the articles of association of the Swiss company contain a share transfer restriction, i.e. make the transfer subject to approval by the company's board of directors, one would usually ask for such restriction to be removed in order to avoid delays or disputes in the enforcement process.

If the shares of a Swiss company are issued in the form of intermediated securities (*Bucheffekten*) within the meaning of the Swiss Federal Intermediated Securities Act (*Bucheffektengesetz*), special rules apply. In addition to the pledge agreement between the pledgor and the security agent/secured party, either (i) an account control agreement needs to be entered into between the pledgor and the account bank acting as custodian/intermediary of the pledged shares (to which the security agent/secured party is often also a party) providing for the account bank to exclusively carry out instructions from the security agent/secured party with respect to the intermediated securities, or (ii) the intermediated securities need to be transferred and credited to a

securities account in the name of the security agent/secured party upon the instruction of the pledgor.

(vi) Security over bank accounts

Security over Swiss bank accounts, or rather, claims in relation to such bank accounts, i.e. the claims of the account holder against the account bank for any amount standing to the credit of such bank account, can be taken in the form of a pledge or a security assignment, both of which require a written security agreement.

In the case of a security assignment, the security agent/secured party would become the legal owner of the bank account claims. While this would be beneficial in the case of bankruptcy of the security provider (as the bank account claims would not fall in the bankruptcy estate), it has become rather market standard in Switzerland to enter into a pledge agreement instead, inter alia, due to KYC/AML considerations on the part of the account bank.

The terms and conditions of the account bank usually provide for a general right of pledge and right of set-off in favour of the account bank. The pledge created in favour of the security agent/secured party, therefore, constitutes a second-ranking pledge which needs to be perfected by notification of the first-ranking pledgee, i.e. the account bank. While such perfection requirement does not strictly apply in the case of a security assignment, it is market practice to require a notification as well and, in both instances, to request the account bank to waive its rights of pledge and set-off. Until the account bank is notified of either security interest, it can continue to discharge its obligations to the account holder. Depending on the specific circumstances of the transaction and the requirements of the account bank, a tripartite agreement between the security provider, the security agent/secured party and the account bank may also be entered into.

(vii) Security over intellectual property rights

Security over intellectual property rights (commonly, patents, trademarks, designs and copyrights) is usually taken in the form of a pledge. Whereas a security assignment would also be possible, this would lead to a transfer of legal title to the IP rights to the secured party. While this would be beneficial in the case of bankruptcy of the security provider (as the IP rights would not fall in the bankruptcy estate), specific provision would need to be made, inter alia, regarding the maintenance, enforcement and defense of the transferred IP rights as well as any licensing agreements in respect thereof.

Both the creation of a pledge and a security assignment requires a written security agreement and, if it relates to a registered Swiss IP rights (i.e. patents, trademarks or designs), can be registered in the relevant register of the Swiss Federal Institute of Intellectual Property. While registration is generally not a perfection requirement (except for guarantee marks and collective marks), it serves as public notice to third parties, such as a licensee or potential acquirer.

Also, registration requirements in other jurisdictions should be assessed under the applicable local law.

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5. Can a company that is incorporated in your jurisdiction grant security over its future assets or for future obligations?

Yes (subject to certain exceptions, e.g. in the case of mortgages), provided that, at the time such future assets come into existence: (i) they are sufficiently identified or identifiable (based on objective criteria), (ii) the Swiss security provider is not insolvent (as, otherwise, such future assets would fall in the bankruptcy estate of the security provider), and (iii) certain action may need to be taken to perfect the security over such assets (such as the delivery of original share certificates or other original title documents or the service of notices).

While it is generally possible for a Swiss security provider to grant security for future obligations, such future secured obligations should be sufficiently specific and anticipatable by the Swiss security provider at the time it grants the security (e.g. increases to facilities or new facilities which are already provided for in the facilities agreement at the date of signing). In case of a substantive and/or unanticipated increase of the obligations of the Swiss security provider, it is market practice for the Swiss security provider to enter into a security confirmation (either included in the amendment agreement or by way of a separate short-form security confirmation agreement).

6. Can a single security agreement be used to take security over all of a company's assets or are separate agreements required in relation to each type of asset?

It is not possible in Switzerland to take a 'blanket' security interest over all, or substantially all, of a company's assets and the concept of floating charges does not exist under Swiss law.

Also, as noted under question 4 above, it is often not feasible to take Swiss law governed security over certain assets, such as machinery, equipment and inventory, due to the strict (dis)possession requirement in respect of a Swiss law right of pledge (*Faustpfandprinzip*).

While it would be theoretically possible to take security over all of a company's eligible assets in a single security agreement, the different assets would still need to be clearly identified and potentially listed, different charging provisions would need to be included due to the different types of security interest (e.g. right of pledge, security assignment or security transfer) and the different perfection requirements would need to be reflected, which could result in a rather complex and convoluted agreement. While not strictly required, it is, therefore, standard practice in Switzerland to have separate security agreements for the different types of assets.

7. Are there any notarisation or legalisation requirements in your jurisdiction? If so, what is the process for execution?

Except in respect of security over real estate (see question 4(a) above), there are no notarisation or legalisation requirements in Switzerland for the creation of security interests.

However, if a natural person provides a personal surety (*Bürgschaft*) in the context of a secured finance transaction, such surety agreement will need to be notarised and take the form of a public deed.

In addition, in case the articles of association of a Swiss company need to be amended in connection with such company participating in a secured financing, e.g. in order to remove a share transfer restriction or amend the purpose clause, the shareholders' meeting required for such amendment needs to be held in front of a public notary and the minutes, including the amended articles, be raised to a public deed.

8. Are there any security registration requirements in your jurisdiction?

There is no central charges register in Switzerland and security registration requirements only exist in respect of security over real estate (see question 4(a) above), aircraft and ships. If a valid security interest is to be created over aircraft or ships without transfer of physical possession to the secured party, such security interest has to be registered, in the case of aircraft, in the aircraft record of the Swiss Federal Office of Civil Aviation and, in the case of ships, in the public register maintained by the Swiss Maritime Navigation Office.

In addition, security over registered intellectual property rights can be registered in the relevant register at the Swiss Federal Institute of Intellectual Property. While registration is generally not a perfection requirement (except for guarantee marks and collective marks), it serves as public notice to third parties, such as a licensee or potential acquirer.

Finally, retention of title (*Eigentumsvorbehalt*) in respect of movable assets also requires registration in a public register at the competent debt collection office. However, this instrument is not very widely used in Switzerland and of limited relevance in secured lending transactions.

9. Are there any material costs that lenders should be aware of when structuring deals (for example, stamp duty on security, notarial fees, registration costs or any other charges or duties), either at the outset or upon enforcement? If so, what are the costs and what are the approaches lenders typically take in respect of such costs (e.g. upstamping)?

Swiss Non-Bank Rules and Interest Withholding Tax

If there is a Swiss borrower, the so-called “Swiss non-bank rules" need to be complied with in order to avoid Swiss interest withholding tax being levied on interest payments under the facilities agreement.

The Swiss non-bank rules limit the number of non-bank lenders under the facilities agreement (or, subject to receipt of a prior tax ruling, the “Swiss facility" or each separate facility under the facilities agreement) to a maximum of ten (the “10 non-bank rule") and the total number of non-bank creditors of the Swiss borrower (which may include intra-group lenders) to a maximum of twenty (the “20 non-bank rule"). A breach of the 10 non-bank rule and/or the 20 non-bank rule leads to a requalification, from a Swiss tax perspective, of the loan facilities as a “bond". If a Swiss borrower has more than 100 non-bank creditors in total, it will be considered as a bank (the “100 non-bank rule"). While, under Swiss law, interest payments under a loan are not subject to Swiss withholding tax, interest payments in respect of bonds and bank deposits are subject to Swiss interest withholding tax at a current rate of 35% (subject exemptions and reduction (down to zero) under applicable double taxation treaties).

If the financing is incurred by a non-Swiss borrower but is guaranteed and/or secured by a Swiss subsidiary of the borrower and proceeds from the facilities are on-lent to such Swiss subsidiary guarantor or another Swiss group company, this is usually not problematic provided that any guarantee and/or security provided by the Swiss subsidiary guarantor is limited to the Swiss company's freely distributable equity, i.e. the amount which it could distribute as dividends to its shareholders. However, an advance ruling from the Swiss tax authorities should be obtained to this effect. If the financing is granted to a non-Swiss borrower but is guaranteed and/or secured by the borrower's (direct or indirect) Swiss parent, such downstream guarantee and/or security is not limited, however, the proceeds from the facilities on-lent into Switzerland must not exceed certain thresholds (equity variant/offsetting variant) which must be confirmed by an advance tax ruling. Otherwise, the financing will be considered as a "Swiss financing" and be subject to the Swiss non-bank rules, or, in case of a violation thereof, Swiss interest withholding tax.

In the context of acquisition financings, it is worth noting that the use of proceeds from the facilities (incurred by a non-Swiss borrower) to directly fund the purchase price of the Swiss target would not itself be considered a harmful "use of proceeds in Switzerland" for Swiss withholding tax purposes.

Stamp duty

In Switzerland, generally, no stamp duty or other documentary taxes are levied on the execution of loan or security documents. However, notarial and registration fees may be payable in the case of documents which have to be drawn up as public deeds and/or filed with a registry, e.g. in the case of land charges or mortgage notes (see question 4(a) above).

Also, the transfer of certain securities, such as shares, notes or bonds evidencing or securing a loan may be subject to Swiss stamp duty if a Swiss bank or securities dealer is involved as a party or intermediary in the transaction (e.g. in the case of secondary trading of notes or loan participations which qualify as bonds or the enforcement of share security).

Real estate financing

As outlined in question 4(a) above, the creation of a land charge (*Grundpfandverschreibung*) or mortgage certificate (*Schuldbrief*) requires a notarial deed and registration in the land register, which triggers notarial and registration fees.

In addition, interest payable to foreign lenders on loans secured by Swiss real estate is subject to Swiss federal and cantonal real estate withholding tax. Based on applicable double taxation treaties, such tax may be considerably reduced (even to zero).

Also, some Swiss cantons apply a real estate transfer tax (which is usually payable by the buyer) and/or a special real estate capital gains tax payable by the seller on profits made from the disposal of the real estate.

10. Can a company guarantee or secure the obligations of another group company; are there limitations in this regard, including for example corporate benefit concerns?

Yes, a Swiss company can guarantee and/or secure the obligations of another group company.

However, the granting of a guarantee or security by a Swiss company for obligations of such company's direct or indirect shareholders (up-stream) or affiliates or subsidiaries of such direct or indirect shareholders (cross-stream) is – unless granted strictly on arm's length terms – limited under Swiss corporate law to such Swiss company's freely distributable equity at the time of enforcement of the guarantee or security, i.e. the amount which the Swiss company could distribute as dividends to its shareholders.

Standard limitation wording is included in the guarantee and security documents as, without such limitation, the guarantee/security would most likely be considered invalid by a Swiss court.

Also, the purpose clause in the articles of association of the Swiss subsidiary guarantor should expressly provide for the participation of the company in group financings and the provision of up-stream and cross-stream credit support. In addition to board resolutions which confirm that the proposed transaction is in the best interests and to the material benefit of the Swiss subsidiary guarantor, the approval of the company's shareholder of the distribution of assets in case of enforcement should be obtained. Certain other corporate action may need to be taken by the company at the time of enforcement of the guarantee or security and a corresponding obligation is usually included in the relevant Swiss guarantee or security agreement.

In addition, any payments under an up-stream or cross-stream guarantee and the proceeds from the enforcement of up-stream or cross-stream security, which are considered a deemed dividend distribution, are principally

subject to Swiss dividend withholding tax at a current rate of 35%. However, exemptions apply and the dividend withholding tax may be considerably reduced (sometimes to zero) under applicable double taxation treaties, whereas the remainder can often be discharged by notification rather than payment of the tax.

There are no such restrictions on down-stream guarantees or security granted by a Swiss parent company. However, see question 9 above for possible interest withholding tax implications.

In addition, third-party debt provided to a Swiss borrower which is guaranteed by a shareholder or related party may be reclassified as related party debt and become subject to the limitations under the Swiss thin capitalisation rules referred to under question 2 above.

11. Are there any restrictions against providing guarantees and/or security to support borrowings incurred for the purposes of acquiring directly or indirectly: (i) shares of the company; (ii) shares of any company which directly or indirectly owns shares in the company; or (iii) shares in a related company?

While there is no prohibition/restriction on financial assistance as such under Swiss law, the general guarantee and security limitations set out under question 10 above apply.

12. Can lenders in a syndicate (or, with respect to private credit deals, lenders in a club) appoint a trustee or agent to (i) hold security on the lenders's behalf, (ii) enforce the lenders' rights under the loan documentation and (iii) apply any enforcement proceeds to the claims of all lenders in the syndicate?

Yes. While there are no specific rules under Swiss law regarding agency or trust structures in secured finance transactions, such structures are recognised and widely used in practice.

In respect of Swiss law governed security interests, a distinction needs to be made between non-accessory security interests, such as a security assignment or security transfer, and accessory security interests, notably a right of pledge.

In the case of a non-accessory security interest, the security can be held, and enforced, by the security agent (or English law security trustee) acting in its own name but for the benefit of the (other) secured parties as fiduciary / indirect representative.

An accessory security interest on the other hand, such as a Swiss law right of pledge, is accessory to the secured obligations which also requires the beneficiaries of the security interest to be identical to the creditors of the secured obligations. The security agent, therefore, needs to be appointed and authorised by the other secured parties to enter into, hold and enforce the accessory security in their name and on their behalf as their direct representative. Such appointment and authorisation is usually included in the intercreditor agreement or, in its absence, the facilities agreement. The relevant Swiss security agreements are usually drafted in such a way that no amendments are required in case of a change to the secured parties.

In addition, the parallel debt concept, if already included in the finance documents, is often used in Switzerland as a “back-up” in the case of accessory security interests. As parallel debt structures remain untested in Switzerland, it is unclear whether the parallel debt concept would be upheld by a Swiss court, though practitioners generally take the view that it would.

While Swiss security agreements (both in the case of non-accessory and accessory security interests) typically provide for the available enforcement procedures under Swiss law, they would usually defer to the intercreditor agreement and/or the facilities agreement regarding enforcement triggers and the application / distribution of enforcement proceeds among the secured parties.

13. If your jurisdiction does not recognise the role of an agent or trustee, are there any other ways to achieve the same effect and avoid individual lenders having to enforce their security separately?

See question 12 above.

14. Do the courts in your jurisdiction generally give effect to the choice of other laws (in particular, English law) to govern the terms of any agreement entered into by a company incorporated in your jurisdiction?

Yes. In international matters, choice of law clauses – including a choice in favour of English law – are generally given effect by Swiss courts. The choice must be express

or "clearly implied", i.e. resulting with certainty either from the provisions of the contract or from the circumstances.

Such choice of law is, however, subject to the application of overriding mandatory provisions of Swiss law and to Swiss public policy. In addition, matters relating to the existence, organisation, authority and corporate power of a Swiss obligor are generally governed by Swiss law as the law of the place of incorporation.

In a secured financing context, a distinction must further be made between the law governing the contractual obligations of the parties and the law governing the creation, perfection, priority and enforcement of security interests. While the parties may choose a foreign law, including English law, to govern the contractual terms of a security document, the proprietary, perfection, priority and enforcement aspects in relation to the security interest may be subject to a special conflict-of-laws regime and, therefore, governed by a different law, depending on the type of collateral. See the considerations under question 4 above.

15. Do the courts in your jurisdiction generally enforce the judgments of courts in other jurisdictions (in particular, English and US courts) and is your country a member of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (i.e. the New York Arbitration Convention)?

Yes. Switzerland generally recognises and enforces final and binding foreign judgments, including judgments of English and U.S. courts, subject to the applicable treaty regime and, in the absence of such a treaty, the Swiss Private International Law Act (PILA). Switzerland is also a party to the 1958 New York Convention and generally recognises and enforces foreign arbitral awards subject to that Convention and the applicable provisions of Swiss law.

In relation to court judgments, recognition and enforcement are subject, in particular, to the requirements that (i) the foreign court had jurisdiction from a Swiss conflicts perspective, (ii) the judgment is final or no longer subject to ordinary appeal, and (iii) no ground for refusal applies. Recognition may, in particular, be refused where the defendant was not properly served or was denied the right to be heard, where recognition would be manifestly incompatible with Swiss public policy, or where the judgment is irreconcilable with an existing decision capable of recognition in Switzerland.

As regards English judgments, it should be noted that, following Brexit, the Lugano Convention does not generally govern new proceedings between Switzerland and the United Kingdom commenced after 31 December 2020. Instead, recognition and enforcement generally fall to be assessed under Swiss domestic law, save where another applicable treaty applies. Since 1 January 2025, the Hague Convention of 30 June 2005 on Choice of Court Agreements has been in force for Switzerland and may be relevant where the relevant finance documents contain a qualifying exclusive jurisdiction clause. No bilateral treaty regime of general relevance for the recognition and enforcement of ordinary civil and commercial judgments between Switzerland and the United States is presently applicable.

As regards foreign arbitral awards, Switzerland is a party to the New York Convention which provides the principal framework for recognition and enforcement of awards rendered abroad.

In practice, particular care should be taken with service of process in Switzerland. In cross-border cases involving common law jurisdictions, failure to comply with the Hague Service Convention or other applicable judicial assistance channels may jeopardise subsequent recognition and enforcement in Switzerland. Direct procedural acts carried out in Switzerland outside the permitted channels may also raise issues under Swiss law, including article 271 of the Swiss Criminal Code.

Separate considerations may apply to insolvency-related, administrative and criminal matters, which do not necessarily fall within the ordinary regime applicable to civil and commercial judgments.

16. What (briefly) is the insolvency process in your jurisdiction?

In Switzerland, there are two types of formal insolvency proceedings. Bankruptcy proceedings (*Konkursverfahren*) and composition proceedings (*Nachlassverfahren*), both of which ultimately result in the liquidation of the company, although a composition agreement with assignment of assets (*Nachlassvertrag mit Vermögensabtretung*) provides for greater flexibility regarding the realisation and liquidation of the insolvent company's assets. Special insolvency regimes exist for certain types of companies, such as banks, insurance companies and securities dealers.

A Swiss company can be placed into bankruptcy proceedings (*Konkursverfahren*) by the competent court either at the request of a creditor or at the request or

upon notification of the company itself.

A creditor may request the opening of bankruptcy proceedings if either (i) its claim against the company has not been paid but has been upheld in the course of debt enforcement proceedings, or (ii) the company has ceased payments, has committed certain acts to the detriment of its creditors, or certain events have occurred during composition proceedings.

The company itself may request the opening of bankruptcy proceedings by declaring to the court that it is insolvent or the court may open bankruptcy proceedings upon notification by the board of directors of the company (or its statutory auditors) that the company is over-indebted.

During bankruptcy proceedings, the company is represented exclusively by the bankruptcy administrator.

The opening of composition proceedings (*Nachlassverfahren*) is usually requested by the company itself upon being faced with financial difficulties but may also be requested by a creditor (who would be entitled to request the opening of bankruptcy proceedings) or the bankruptcy court instead of bankruptcy proceedings.

In composition proceedings, an administrator will also be appointed (at least, from the start of the definitive moratorium) and the court may, in addition, appoint a creditors' committee to supervise the administrator and the composition proceedings generally. During composition proceedings, the company may continue its business activities under the supervision and to the extent approved by the administrator and the court.

17. What impact does the insolvency process have on the ability of a lender to enforce its rights as a secured party over the security?

The opening of bankruptcy proceedings against a Swiss company results in the acceleration of all claims against such company, whether secured or unsecured (except for those secured by a mortgage on the company's real estate), and all such claims become due and payable. It also leads to the incapacity of the company to dispose of its assets as those assets, including (subject to certain exceptions) any assets pledged as security to its creditors, form part of the company's bankruptcy estate. Accordingly, private enforcement in respect of such pledged assets is no longer permitted and only official enforcement proceedings under the Swiss Debt Enforcement and Bankruptcy Act (DEBA) are possible.

The secured creditor must notify the bankruptcy administrator if it holds any such pledged assets of the debtor within 30 days of the publication of the creditors' call and deliver any such assets to the bankruptcy administrator. However, the secured creditor keeps its preferential rights in respect of the pledged assets and is satisfied first out of the net proceeds from the realisation of the pledged assets. Only if the proceeds from the sale of the pledged assets exceed the secured claims will the remainder be distributed among the unsecured creditors.

Mortgages on the insolvent debtor's real estate are only realised and proceeds from the sale of such real estate paid out to creditors, if their claims against the debtor are due. Claims that are not yet due are transferred to the acquirer of the property.

Security over intermediated securities (*Bucheffekten*) within the meaning of the Swiss Federal Act on Intermediated Securities (*Bucheffektengesetz*) benefits from a statutory exception and, also if created in the form of a pledge, may be enforced privately by the secured creditor even after the opening of bankruptcy proceedings.

Assets, including rights, claims or receivables that have been transferred or assigned for security purposes, i.e. legal title to which has passed to the secured creditor prior to the opening of bankruptcy proceedings against the Swiss debtor do not form part of the bankruptcy estate of the security provider and, as such, can be still be realised by the secured creditor by way of private enforcement. However, the secured creditor must hand over any surplus resulting from such private enforcement to the bankruptcy estate.

Future rights, claims or receivables which were purported to be assigned for security purposes but have only come into existence after the opening of bankruptcy proceedings against the assignor are considered not to be validly assigned and to fall within the bankruptcy estate of the assignor.

During composition proceedings (with assignment of assets), neither secured nor unsecured creditors of the Swiss debtor may commence or continue debt enforcement proceedings, again, with the exception of creditors whose claims are secured by real estate who are, however, precluded from foreclosing on the real estate, or by intermediated securities (*Bucheffekten*).

Once a composition agreement with assignment of assets has been approved and confirmed by the creditors and the court, secured creditors may realise the pledged assets by way of private enforcement pursuant to article

324 DEBA.

18. Please comment on transactions voidable upon insolvency.

Certain transactions carried out by a Swiss borrower, guarantor or security provider within a certain period prior to the opening of bankruptcy proceedings are voidable under the DEBA if they result in damage to the creditors of the Swiss obligor by removing assets from the bankruptcy estate (cf. articles 285 et seq. DEBA). Such transactions include:

(i) The disposal of assets against no or inadequate consideration within one year before the opening of bankruptcy proceedings (*Schenkungsanfechtung*).

(ii) The following acts carried out within one year before the opening of bankruptcy proceedings by an already over-indebted Swiss obligor (*Überschuldungsanfechtung*):

a. The granting of security for a previously unsecured claim;

b. the settlement of a monetary claim by means other than cash or other customary means of payment; and

c. the payment of a debt which is not yet due, in each case, provided that the beneficiary knew or should have known of the over-indebtedness of the Swiss obligor.

(iii) All acts carried out within five years before the opening of bankruptcy proceedings with the intention to disadvantage its creditors or to favour individual creditors to the detriment of others, provided that such intention was discernable to the beneficiary (*Absichtsanfechtung*).

Such transactions may be challenged in front of the competent court by the bankruptcy administrator or a legitimised creditor. If successfully challenged, the recipient of any payment or other asset may be obliged to return it to the bankruptcy estate and any debt thereby repaid is reinstated.

19. Is set off recognised on insolvency?

Yes, subject to distinction of the different categories of set-off rights and certain modifications and limitations, set-off is recognised on insolvency.

A distinction is being made between (i) claims of the Swiss company (that form part of the bankruptcy estate) and claims against the Swiss company (that will be satisfied with a dividend payment from the proceeds of the bankruptcy estate) which, in each case, have come into existence prior to the opening of bankruptcy proceedings, and (ii) claims of and against the bankruptcy estate which have come into existence only after the opening of bankruptcy proceedings with the consent of the bankruptcy administrator.

Set-off is only possible between claims of the same category. In addition, set-off of a claim of the first category is voidable if a debtor of the Swiss company acquired a claim against the Swiss company prior to the opening of bankruptcy proceedings but in awareness of the insolvency of the Swiss company in order to obtain an advantage for itself to the detriment of the bankruptcy estate. Similar principles apply upon the grant of a moratorium in composition proceedings.

20. Are there any statutory or third party interests (such as retention of title) that may take priority over a secured lender's security in the event of an insolvency?

As outlined under question 17 above, secured claims are satisfied directly out of the net proceeds of the realisation of the collateral of the insolvent Swiss company in the course of the bankruptcy proceedings.

However, if such proceeds are insufficient to satisfy the claims of a secured creditor, such creditor ranks as an unsecured, non-privileged creditor for the outstanding amount of its claims. Unsecured claims rank in three classes which substantially comprise, in the first class, certain employees' claims, in the second class, claims for various social security contributions, and, in the third class, all other claims which are treated on a pari passu basis. Claims in a lower-ranking class will not receive dividend payments until all claims in a higher-ranking class have been satisfied in full and any costs incurred by the bankruptcy administrator during the bankruptcy proceedings will be satisfied first.

As outlined above, secured creditors benefitting from security in the form of security assignments or security transfers with transfer of legal title, or security over intermediated securities (*Bucheffekten*) may still be able to privately enforce their security even after the opening of bankruptcy proceedings. Creditors whose claims are secured by real estate may also continue with debt enforcement but are precluded from foreclosing on the real estate.

Also, certain creditors, such as commercial landlords, may benefit from statutory retention rights in the form of

a special lien over inventory held on the leased premises in respect of outstanding rent claims. While retention of title arrangements in respect of other movable assets are possible in Switzerland, they are generally rather rare as they require registration in a public register at the competent debt collection office in order to protect against acquisition by a bona fide third party. If such registration and all other requirements have been complied with, retention of title arrangements would generally be effective in the event of an insolvency.

21. Are there any impending reforms in your jurisdiction which will make lending into your jurisdiction easier or harder for foreign lenders?

New Swiss FDI regime

On 19 December 2025, the Swiss Parliament adopted the Investment Screening Act (ISA) which is expected to enter into force in 2027 at the earliest.

The new foreign direct investment control regime will only be targeting investment (in the form of acquisition and control and subject to certain thresholds) in critical sectors, such as defense, energy, IT systems, public health, public transport, food distribution, telecommunications and systemically important banks and financial market infrastructures, by foreign state-controlled investors. The latter include foreign state administrations and agencies as well as companies and entities directly or indirectly controlled by a foreign state or acting on behalf of a foreign state, unless such state has been exempted.

The ISA provides for in-scope transactions to be cleared unless they are found to constitute a threat to public order or security, and an advance ruling may be obtained.

As with the existing sector-specific regulations, which will continue to apply, the ISA may also affect secured financings granted by foreign state-controlled lenders to Swiss companies subject to the Act.

22. What proportion of the lending provided to companies consists of traditional bank debt versus alternative credit providers (including credit funds) and/or capital markets, and do you see any trends emerging in your jurisdiction?

While there are no comprehensive statistics or other publicly available market data in this respect, traditional bank lending, often through relationship banks, undoubtedly still accounts for the largest proportion of corporate lending in Switzerland and continues to present a challenge for private credit providers, as do the Swiss non-bank rules considered under question 9 above.

The Swiss private credit market is, therefore, less mature and less active than other European and certainly the US private credit market. While private credit and, in particular, direct lending has become more popular and widespread in the last few years in Switzerland as well, especially for mid-market PE-backed corporates, over the past 12 to 18 months, bank lending has regained momentum in light of falling interest rates and more recent concerns about rising private credit defaults.

Nevertheless, there should still be opportunities for private credit providers in the Swiss corporate lending market, especially in product areas (such as trade finance or factoring) and client segments (such as SMEs / mid-cap and foreign-headquartered borrowers) in which the takeover of Credit Suisse by UBS has resulted in funding gaps which, so far, do not seem to have been filled by foreign banks to the extent expected.

The Swiss bond market is equally affected by the interest withholding tax levied on bonds and similar collective debt instruments issued by, or on behalf of, Swiss-resident issuers, making domestic bonds unattractive to many foreign investors. Following the failed attempt to abolish interest withholding tax on Swiss bonds in September 2022, and with no new proposals currently in the pipeline, the expectation is that domestic bond issuances, including high-yield bonds, will continue to play a less prominent role in debt financings in Switzerland than in other jurisdictions.

23. Please comment on external factors causing changes to the drafting of secured lending documentation and the structuring of such deals such as new law, regulation or other political factors

The Swiss market standard for secured lending transactions largely follows the LMA and, to a somewhat lesser extent, LSTA standard both in terms of documentation and structuring (subject to Swiss-specific considerations such as the Swiss non-bank rules) as well as international trends and developments, such as covenant-light or an increased focus on assignment provisions and consent requirements in the context of liability management transactions, lender-on-lender violence and cooperation agreements.

On a local level, as mentioned under the preceding question, the market consolidation caused by the

takeover of Credit Suisse by UBS has led to funding shortages in areas such as trade finance and factoring and for certain mid-cap and foreign-headquartered borrowers. To the extent foreign banks and private credit providers step in to meet such financing needs, this undoubtedly has an impact on the documentation and structuring of the transactions.

The elimination of bearer share certificates (except for listed companies) and the increase of shares issued in the form of intermediated securities as well as the introduction of book-entry mortgage certificates centrally held and administered by SIX SIS AG also cause changes to the drafting of the relevant security documentation.

The abolition of Swiss interest withholding tax (which was rejected by referendum in 2022 with no new legislative proposals currently in the pipeline) and a reform of the strict (dis)possession requirement for Swiss pledges (which is being regularly suggested and considered) would probably have the biggest (local) impact on the structuring and documentation of secured lending transactions in Switzerland.

Macroeconomic factors, such as inflationary pressures and the interest rate environment, of course also have an impact and an increase in global insolvencies regularly leads to a greater focus on enforcement provisions in Swiss security documents and the enforcement and insolvency process more generally.

In its report on banking stability, published on 10 April 2024 following the Credit Suisse crisis, the Swiss Federal Council proposed, *inter alia*, stricter capital requirements for systemically important banks (requiring them to fully back their participations in foreign subsidiaries), expanded liquidity provision from the Swiss National Bank supplemented by a statutory public liquidity backstop, as well as greater supervisory, early intervention and enforcement powers of FINMA. Following a consultation procedure, on 22 April 2026, the Federal Council adopted a draft bill on the revision of the Swiss Banking Act and amended the Capital Adequacy Ordinance. The draft bill is still subject to approval by the Swiss Parliament and is expected to enter into force at the beginning of 2027 at the earliest. It remains to be seen what impact these legislative changes will have on the lending activity of Swiss banks.

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