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Taking security guide

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Introduction

In our interconnected global economy, banking and finance transactions are becoming increasingly complex and regulatory frameworks are constantly evolving.

The act of taking security, that is, the creation and enforcement of proprietary rights to secure the payment of a monetary liability, requires creditors to continually keep abreast of relevant regulations and their developments. Cross-border transactions, in particular, demand careful consideration of the choice of law and security package structuring in order to manage risk.

Dentons' Taking Security Guide offers you a clear, practical Q&A style overview of the requirements and regulations on taking security in more than 30 countries across the globe. For each country, we provide you with an outline of:

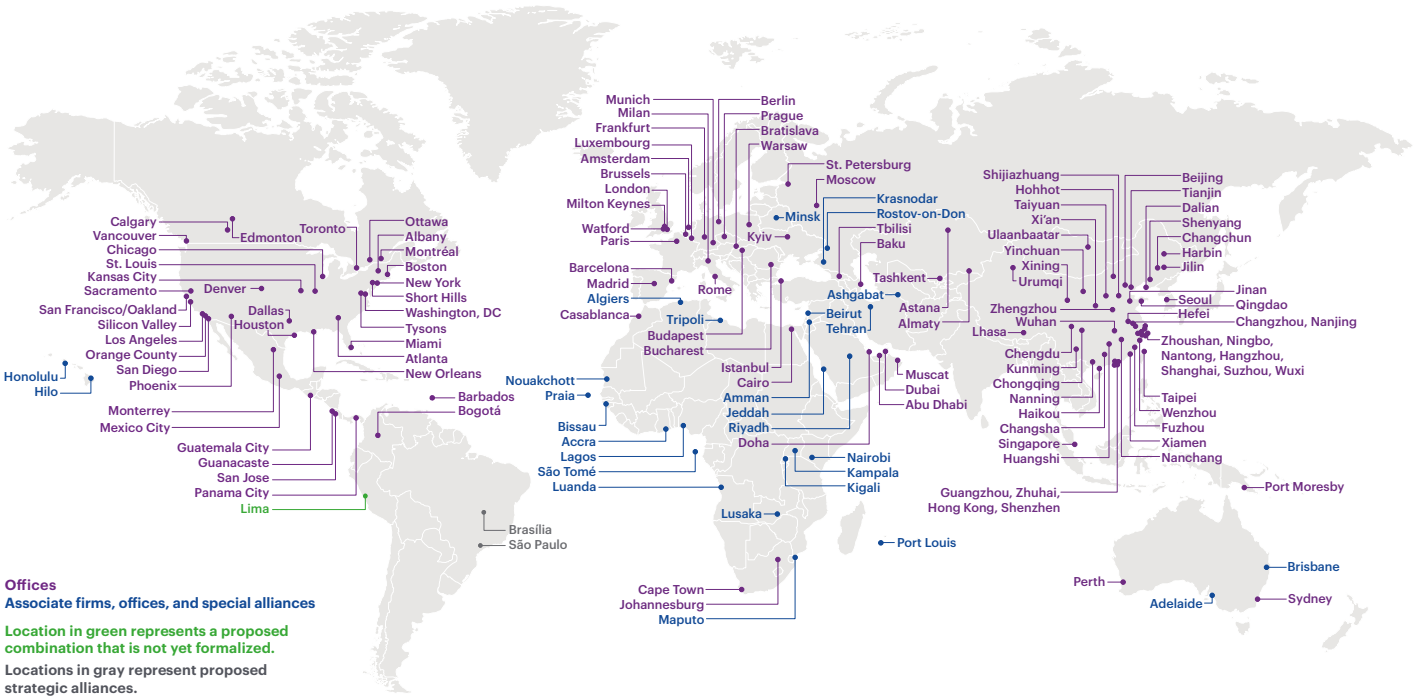
- The types of obligations that can be secured
- The types of security that can be taken
- Specific requirements relating to guarantees
- Financial assistance restrictions
- Applicable fees and taxes
- Enforcement rights

The Guide allows you to:

- Keep abreast of local regulatory positions and developments
- Compare your security position or options across multiple jurisdictions
- Connect with Dentons' banking and finance experts in more than 30 countries

This Guide is intended to be an overview only and it does not serve as legal advice on taking security in the jurisdictions covered. If you have queries regarding a specific country, we encourage you to contact our local lawyers noted at the end of each section. If you have any general questions about the Guide or taking security, please contact our Global Banking and Finance Group leaders at AskBankingFinance@dentons.com.

Dentons locations



Chambers ranked lawyers
485+

US$32,400,000
value of pro bono and volunteeer work

147+
locations

60+
countries

70+
Languages spoken

Total number of lawyers
7,700+

Banking & Finance lawyers world-wide
900+

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Kenya

Kenya

Obligations	
1. What are the types of obligations that may be secured?	Under Kenyan Law virtually all obligations can be secured. For instance, present obligations and future or contingent obligations can be secured. Similarly, jointly held or severally held obligations can be secured. Obligations owed by a principal debtor and those accruing by virtue of guarantee or surety can be secured.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Generally, yes, a company would be able to provide upstream and downstream guarantees for its affiliates. Foreign companies are not treated differently in this regard. It is however important to point out that where the guarantee being issued is for the purpose of financial assistance, it may face some statutory restriction as the statutory definition of financial assistance includes the issuance of guarantees.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	A corporate guarantor must demonstrate the corporate benefit received by providing a guarantee. Corporate benefit is confirmed by showing that the guarantee is/was incidental to the carrying on of the company's business or its affiliate company's business and that it was made in the company's commercial interest or is in the best interests of the business of the company. Corporate benefit is not required in the case of personal guarantees such as those given by directors or individual shareholders of a company.

4. Are any government consents or filings required in connection with the delivery of a guarantee?	There are no government consents or filings required in connection with the delivery of a guarantee. A Kenyan law guarantee will however need to be stamped with stamp duty in order to be capable of being presented as evidence before a Kenyan court.
5. Are there any solvency or net worth limitations/ restrictions?	There are no statutory limitations or restrictions on solvency or net worth. However, there is a possibility that under its corporate constitution documents, (the memorandum and the articles of association) a company may have internal net worth limitations and restrictions.
Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over any type of personal property, for instance; 1. Immovable property (land and buildings) 2. Movable property e.g. vehicles and machinery, inventory 3. Cash and cash equivalents 4. Receivables under a contract 5. Interests such as trade names, license rights and royalties and intellectual property rights
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Security must be tailored to a specific asset. For example, where a security agreement is based on land as the underlying asset and requires a charge over the land, the form of security document is prescribed by law.

8. Can security be taken over real estate?	Yes, security can be taken over real estate. Typically, long-term interests in land such as leasehold proprietary interest of more than 21 years and freehold proprietary interest can be charged in favor of a financier. Such security is registrable against the title to the property. Rental receivables from real estate can also be assigned as a form of security. Real estate can also be used as security in the form of an equitable charge where the title documents are deposited with the financier to secure a loan without the security being registered against the title to the land.
9. Can cash collateral be taken? How?	Yes, cash deposits can be used as security. This is usually in an instance where the cash deposits are held in an account held by the financier extending the financing to the borrower. The cash may also be placed with a third party (other than the financier) as security.
10. Are pledges of shares permitted?	Yes, pledges of shares are permitted. Pledges of shares are completed by the delivery of the share certificates representing the shares and depositing of pre-executed share transfer forms with the pledgee. For listed companies, pledges of shares can be registered with the Central Depository and Settlement Corporation (CDSC). Once a pledge is registered, the CDSC will mark the shares as pledged and it will only allow a transfer of the shares once the pledgee discharges the pledge.
11. Are stamp or other duties imposed?	Yes, there is a requirement under the Stamp Duty Act for the payment of stamp duty on security agreements. The rate of stamp duty is dependent on the form of security being created.
12. Must documents be executed in front of a notary?	Documents do not have to be executed before a notary public unless the documents are executed outside Kenya.

13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes, security agreements may generally be invalidated by fraud. The realization of a security over land may also be defeated where the land being used as security forms part of matrimonial property and the requisite spousal consent was not obtained at the point of creation of the security.
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Yes, the Companies Act 2015 prohibits financial assistance in certain cases. Financial assistance is defined under the Companies Act 2015, to mean a gift, guarantee, security, indemnity, release or waiver, loan, novation, assignment of rights under a loan. Financial assistance is prohibited in the following instances: • If the company giving the financial assistance is a private company, and it is a subsidiary of a public company, then it will be prohibited from giving financial assistance for the purpose of the acquisition of shares in its public holding company or from reducing or discharging any related liability; and • If the company giving financial assistance is a public company, and it is a subsidiary of a private company, it will be prohibited from giving financial assistance for the purpose of the acquisition of shares in the private holding company or discharging any related liability.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	The provisions on financial assistance can be overcome where the company to receive the financial assistance is converted from a public company to a private company as there is no prohibition on financial assistance for the acquisition of shares in a private company.

Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Yes, all security agreements are subject to the payment of stamp duty pursuant to the Stamp Duty Act. The rate of stamp duty is dependent on the form of security being taken. For instance, the stamp duty on a first legal charge or debenture is one percent of the value of the security while a collateral charge is subject to stamp duty at the rate of 0.05 percent of the value of the security. A guarantee is subject to a nominal stamp duty of US$2. Failure to pay the applicable stamp duty will affect the enforceability of the security. The Stamp Duty Act however sets out certain transactions which are exempt from the requirement to pay the stamp duty. For example, a transfer of property between spouses or between a holding company and its subsidiary is exempt from stamp duty. There are no other ways of legally deferring, minimizing or eliminating stamp duty on security documents unless the entity liable to make the payment is exempted from paying stamp duty.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	There are fees incurred on the verification of the security (especially if it is land) and verification of the corporate identity of the entity granting the security at the Companies Registry. The costs of undertaking a search at the Companies Registry is approximately US$6 per search while at the Lands Registry it is approximately US$5 per search. The cost of registration of a security agreement at the Companies Registry is approximately US$140 per registration, while the cost of registration of a security agreement at the Lands Registry is approximately US$10. There will be additional costs incurred to carry out post-registration searches both of registries to ensure that the interest was registered correctly. Stamp duty is also payable as discussed above.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Yes, withholding tax is payable on interest earned in Kenya even where it is payable to a foreign entity.

Enforcement

19. What is the bankruptcy/insolvency process?	The primary insolvency procedures for incorporated bodies are; liquidation, administration and company voluntary arrangement, each of these will be considered below: **Administration:** Administration is a process where a debtor is placed under external management for the benefit of both the creditors as a whole and the company itself. It commences through the appointment of an Administrator, who may be appointed by court order on application by the company, its directors or its creditors, by the company's directors or by the holder of a qualifying floating charge. The preliminary processes to be taken by the Administrator are: • Announce his or her appointment to the company, to the public and to the creditors. • Give notice requiring the company to provide them with its statement of affairs. • Make a statement setting out his proposal to achieve his objectives. This proposal and an invitation to the first creditors meeting must be sent to every creditor of the company of whose claim and address he/she is aware. This should be done not later than sixty days after the commencement of the administration. After the initial creditors meeting, there may be further creditors meetings if requested by creditors holding at least ten percent of the company's debt or if it is ordered by the court. If the administration does not result in the recovery of the company, it may lead to liquidation. **Company Voluntary Arrangement (CVA)** A CVA is voluntary agreement between the company and its creditors for a composition in satisfaction of its debts or scheme for arranging its financial affairs. The process of the CVA is as follows:

	Step 1: Proposal A proposal for a voluntary arrangement may be made either by the directors, by the administrator if the company is under administration, or by the liquidator if the company is under liquidation. Step 2: Conduct meetings of the company and its creditors. The main purpose of a meeting comprising the company and its creditors is to decide whether to approve the proposal or the proposal with modifications. Step 3: Approved proposal to take effect as voluntary arrangement. A directors' proposal (with or without modifications) takes effect as a voluntary arrangement by the company on the day after the date on which it is approved by the Court by order or on such later date as may be specified in the order. Once approved, the CVA binds both members and creditors of the company. **Liquidation:** Liquidation is ascertaining the liabilities of a company and apportioning assets of the company towards the discharge of those liabilities and the subsequent dissolution of a company. Liquidation may either be undertaken by virtue of a court order or may be voluntary i.e. by the members and creditors of a company. Voluntary liquidation commences with the passage of a resolution to liquidate the company. Where the voluntary liquidation is a member's liquidation, then the members will—after the passage of the resolution—appoint a liquidator. Upon appointment of the liquidator, powers of the directors cease except as sanctioned by the general meeting or the liquidator. Where the voluntary liquidation was driven by creditors: A creditors meeting will be convened not later than 14 days after the resolution of the company to liquidate for the presentation of the company's financial position.

	In this meeting the creditors may appoint a liquidator. If they however fail to nominate one, the liquidator will be nominated by the company. During the meeting, the creditors may also appoint a liquidation committee of not more than five persons. Once the liquidator is appointed (whether by members or by creditors); There has to be a general company meeting at the end of each year for presentation of the liquidator's acts, dealings and the conduct of the liquidation. There should be a final meeting prior to the dissolution where the liquidator shall present a statement of account of the liquidation (i.e. conduct of the liquidation and disposal of the company's property). This statement should include a certificate by the liquidator that to the best of the liquidator's knowledge and belief, the statement is correct. The company's property in the voluntary liquidation is to be applied in satisfaction of the company's liabilities equally and without preference; and Subject to that application, and unless the company's articles provide otherwise, the remaining property is to be distributed among the members according to their rights and interests in the company. Where the liquidation is by virtue of a court order, the following process is followed: 1. An application is made to court for liquidation, the application to court can be made by: the company or its directors, a creditor or creditors (including any contingent or prospective creditor(s)); contributory(ies) of the company; a provisional liquidator, or an administrator of a company; or if the company is in voluntary liquidation, the liquidator. 2. Upon the making of a liquidation order by the court, the Official Receiver becomes the liquidator of the company and continues in office until some other person is appointed in the creditors and contributories meeting. 3. After ascertaining the debts, the liquidator shall distribute the assets of the company available for the payment of creditors in accordance with the Second Schedule of the Insolvency Act. 4. Thereafter, once the liquidation is complete, the liquidator will convene a final meeting for consideration of his report and subsequent release.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	Please see the answer above.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Courts in Kenya generally recognize foreign judgements only from a pre-selected list of countries as stated under the Foreign Judgements (Reciprocal Enforcement) Act, Chapter 43. Where the judgement is from a country that is recognized under this Act, the Court will not re-examine the merits of the case. The Foreign Judgements (Reciprocal Enforcement) Act, Chapter 43, also clearly sets out the nature of proceedings which can be enforced under its ambit; for instance, bankruptcy and insolvency proceedings are specifically excluded.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Yes. Courts in Kenya will apply the choice of law clauses in foreign agreements unless such application will be contrary to public policy.

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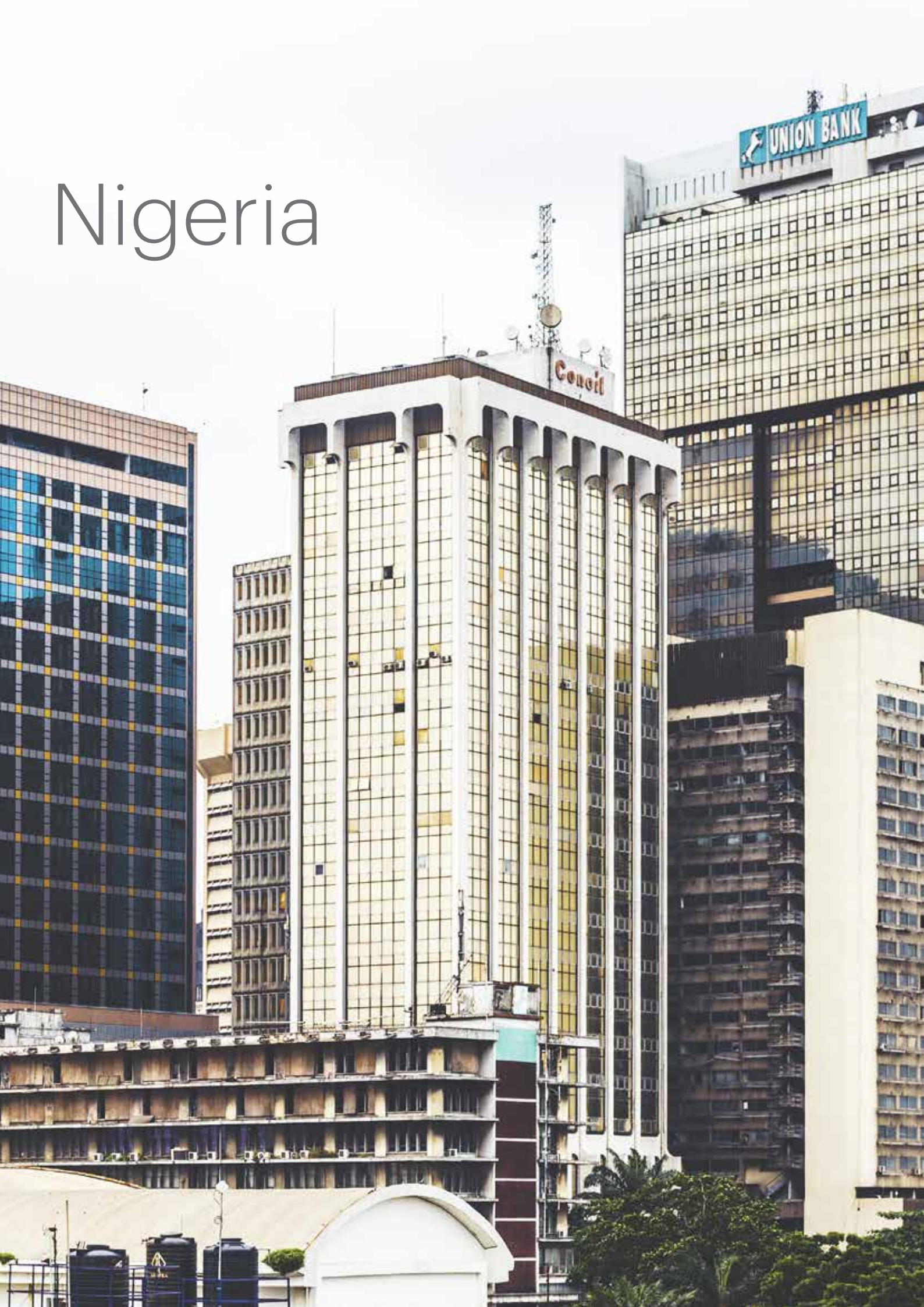

Nigeria

Obligations	
1. What are the types of obligations that may be secured?	There is no limitation on the type of obligations that may be secured under Nigerian law. Generally, any financial obligation (whether for credit or trade debt) may be secured, regardless of whether or not they are present or future, actual or contingent, or owed jointly or severally or in any other capacity. Non-financial obligations may also be secured; for example, performance of contractual obligations may be secured under a performance bond.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes. A subsidiary can provide upstream guarantees for its parent companies' liabilities, and a parent company can provide downstream guarantees for its subsidiaries and affiliates; in each case where the constitutional documents of the relevant company permits it to do so. Such a guarantee may however be voidable where it is determined to be an unlawful financial assistance. Under Nigerian companies law, a Nigerian company and its Nigerian subsidiaries are prohibited from providing financial assistance directly or indirectly for the purpose of acquiring shares in that company. The term "financial assistance" is broadly defined and includes a guarantee. This is discussed more under paragraph 15 below. **Are foreign affiliates treated differently?** There are no Nigerian laws restricting the ability of a Nigerian company to provide upstream and downstream guarantees for its foreign parent or subsidiary respectively.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	While Nigerian law requires that the directors of a company (who are responsible for the business and management of the company) act in good faith and in the best interest of the company/guarantor there are no statutory requirements that a guarantor receive direct benefit from a loan to provide a corporate guarantee. Upstream and downstream guarantees are quite common in securing project finance transactions; it is typically the case that the guarantor always has an indirect interest in the liabilities of the guaranteed company.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No, government consents or filings are not statutorily required. Where however the guarantee is secured against certain regulated assets (e.g. lands, petroleum concessions etc.), government consent would be required to enforce such secured guarantees and vest legal title in the obligee.
5. Are there any solvency or net worth limitations/ restrictions?	Generally, a bankrupt person lacks the legal and contractual capacity to stand as a guarantor. Likewise, an insolvent company or a company winding up are legally incapable of creating new legal obligations as would be required of a guarantor. Such obligation created could be discharged by a liquidator as a fraudulent preference.
Security/Collateral	
6. Over what type of personal property can security be granted?	Security may be granted over any chattels or choses in action of value to an obligee.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Nigerian law permits general security agreements. Some assets are however only necessarily subject to a particular type of security by their nature. (e.g. goodwill of a company would necessarily only be subject to a floating charge and not—for instance—a mortgage).

8. Can security be taken over real estate?	Yes, security can be taken over real estate. Such security may be created by way of a pledge, mortgage, or a charge. A charge entitles the chargee to retain legal ownership and possession of the real estate until the secured amount is repaid. Where the chargor defaults in redeeming the charge, the chargor will however not be entitled to sell the charged real estate unless the agreement otherwise provides. A chargee is entitled to bring a legal action for recovery of the secured amount upon the chargor's default. A mortgage over a real estate is required to be perfected in order to create a legal secured interest in favour of the mortgagee. The perfection of a mortgage over a real estate will require the stamping of the mortgage document, obtaining the consent of the Governor of the state in which the land is located and registering the mortgage at the lands registry. The remedies available to the creditor must be clearly set out in the mortgage/charge document and typically include a power of sale, appointment of a Receiver or foreclosure. The consent of the Governor must be obtained where the security is to be enforced by way of a sale, lease or other means of disposition of the real estate. The consent of the State Governor where the land is situated is generally required to alienate an interest in land. However, a charge over real estate by an equitable charge (which may be created by consensus of the parties or operation of law) does require the consent of the Governor for the creation of a charge over real estate, as a charge does not involve the transfer of either proprietary or possessory right/ interest in land. The Governor's consent will however be required at the time of enforcement of a charge. The documents creating the charge must be stamped as a prerequisite for admissibility and enforcement in court. Thereafter registration is required at the Lands Registry in the State where the subject land is located. A mortgage or charge over the real estate of a company is required to be registered in such company's corporate file at the companies' registry (within 90 days from the date the security was created), and the lands registry of the state in which the land is located.
9. Can cash collateral be taken? How?	Yes, cash collateral may be taken. This is usually by way of a pledge and/or charge over a bank account balance or monies in the possession of a obligee. Cash collaterals are also very common in cash backed guarantees.

10. Are pledges of shares permitted?	Yes, pledges of shares are permitted under Nigerian law.
11. Are stamp or other duties imposed?	Stamp duties and registration charges are required to be paid on any instrument executed in Nigeria or relating, wheresoever executed to any property situated or to anything done or to be done in Nigeria. Stamping is required to be done within 30 days of the execution of such instrument or within 30 days of such instrument being brought into Nigeria. Any instrument not duly stamped is inadmissible in civil proceedings in court. Stamp duties chargeable may be a nominal amount or calculated at an *ad valorem* rate on the secured amount, depending on the nature of the transaction as assessed by the Stamp Duties Commissioner. Stamp Duties rate can range from 0.375 percent to 1.5 percent depending on the nature of the security. In the case of mortgage over real estate, an ad valorem fee is payable for obtaining the consent of the Governor; such fee is charged at a rate of 8% to 13% of the secured amount, depending on the State where the land is situated. In practice, stamping can be concluded in less than five working days.
12. Must documents be executed in front of a notary?	There is no requirement for a security document to be executed in the presence of a notary. However certain documents emanating from a foreign jurisdiction may require notarization for presumption of regularity.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes. Under the Bankruptcy Act 1992 which is applied to companies under the Companies and Allied Matters Act 1990 (CAMA), any security created by a company within the three months' period prior to when winding up proceedings are commenced against the company, or of when the company's shareholders pass a resolution for the voluntary winding up of the company, shall be deemed a fraudulent preference of the company's creditors and be invalid accordingly. Such secured assets can be clawed back by a liquidator.

Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Yes. Under the CAMA, it is unlawful for a company or any of its subsidiaries to give financial assistance directly or indirectly for the acquisition of its shares before or at the same time as such acquisition takes place, unless such assistance is permitted under the CAMA. Furthermore, where a person has acquired shares in a company and any liability has been incurred thereby for the purpose of the acquisition, it would be unlawful for the company to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred in the acquisition of its shares. Financial assistance includes a gift, guarantee, security or indemnity, loan, any form of credit and any financial assistance given by a company, the net assets of which are thereby reduced to a material extent or which has no net assets.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	Yes, the legal restrictions on financial assistance do not apply to funds provided to: (i) trustees under a scheme, to acquire fully paid up shares of the company to be held for the benefit of employees of the company, including any director holding a salaried employment or office in the company; (ii) employees (not directors) by way of loans for the purchase of fully paid up shares of the company or any transaction authorized by law. The prohibition also does not apply in cases of loans made by a company which lends money in the ordinary course of its business. Transactions structured under any of the above exemptions are more unassailable.

Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Yes, please see our response in question 12 above. In practice, where two or more security documents are to be stamped based on a percentage of the loan amount, the Commissioner for Stamp Duties may at his discretion, (where all the documents are in respect of the same transaction), assess the principal security document at such percentage, while a nominal flat fee will be paid on each of the other documents. Stamp duty is typically assessed and paid on the principal security document i.e. the Composite Security Document at the rate of 0.375 percent of the amount sought to be registered, while counterpart documents are often stamped at a nominal flat fee of 50 Nigerian Naira per copy. Also, in order to minimize or reduce the cost of stamping and registration of the security documents, it is not uncommon for lenders and borrowers to agree to "understamp" and secure a sum less than the full aggregate of the lenders' exposure; the security documents can then be "upstamped" in the event of default or before enforcement.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	The fees and taxes payable for the perfection and enforcement of security are dependent on the nature of the security giver's industry of operation. These include: 1. Consent fees for obtaining the Governor's consent for perfection of security over real estate is eight percent to thirteen percent of the security amount or value of the secured real estate (where a valuation is conducted). 2. Registration fee at lands registry is a percentage of the value of the secured amount and varies from State to State. 3. Stamp Duties is the same as stated in 11 above. 4. Registration fees payable to the companies' registry is one percent of the secured amount. 5. Industry specific fees and charges may be payable for the perfection of the security where the applicable laws and regulations so require. For instance, registration fees are payable to the Shippers Registry for the registration of security over a ship; while consent fees are payable for obtaining the consent of the Minister of Petroleum Resources where the security involves the transfer of interest in an oil and gas asset. The fees and taxes payable for the enforcement of security include court fees/charges (where enforcement is through the courts, consent fees, stamp duties and registration fees where applicable.

18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Yes. Withholding tax is payable at the rate of 10 percent. However, where the interest is being withheld from a loan from a country with Double Tax Treaty with Nigeria, withholding tax is charged at 7.5 percent.
Enforcement	
19. What is the bankruptcy/insolvency process?	Generally, Nigeria does not have a specific insolvency legislation detailing bankruptcy or insolvency procedures and processes like the US Chapter 11 (relating to reorganisation under the Bankruptcy Code) and the Canadian Companies Creditor Arrangement Act. Under Nigerian law, bankruptcy/insolvency processes are largely undertaken by winding up. A creditor may petition a court to wind up the affairs of a company where (i) the debt owed to the creditor is unpaid, (ii) the creditor has provided the company with a written demand to pay the outstanding debt, (iii) the Company fails or neglects to pay or secure the payment of the debt three weeks from the date on which the creditor had made the written demand. The winding up petition is to be made to the Federal High Court. A petition for the winding up of the company can also made by the debtor/guarantor company itself (*where a special resolution has been passed by the Company for its activities to be wound up by the court*), an official receiver or a contributory. The court, upon entertaining the petition reserves the authority to dismiss the petition, adjourn the hearing conditionally or unconditionally, make an interim order, or any order that the court deems fit to make. Where the court allows the petition, it will then appoint an official receiver or liquidator, and a statement of the company's affairs will be submitted to the official receiver/liquidator which will show the particulars of the company's assets, debts/liabilities, the names, residences and occupations of its creditors, the securities held by the creditors, the dates when the securities were given, the list of members and the list of charges and any other information as required. Upon the commencement of winding up by the court, the court may order that the property of the company be vested on the appointed liquidator. The board of directors of the company shall cease to function upon the appointment of a liquidator.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	Security may be enforced by the entity in favor of the obligee to whom the security is granted. Such obligee may act directly or may appoint and act through a security agent or security trustee (this is mostly common where the obligee/lender does not reside or operate in Nigeria). Generally, where a security agreement empowers a person (e.g. an agent or trustee) to enforce the security created under the Agreement, such agent or trustee may enforce the security as provided under the contract.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Generally, Nigerian courts will recognize and enforce foreign judgments without further review of the merits, where such judgements and orders qualify for enforcement under Nigerian law. The Foreign Judgment (Reciprocal Enforcement) Act, 1961 provides the grounds and administrative processes under which a foreign judgment can be registered and enforced in Nigeria. For a foreign judgment to be recognized and enforced in Nigeria, such judgment must: i. Have been given by a court of competent jurisdiction; ii. Be a judgment of a superior court of the country of the original court; iii. Be for a specified amount of money, where it is a money judgement; iv. Neither be for a tax nor penalty; v. Be final and conclusive between the parties thereto; and vi. Must not have been obtained by fraud.

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Yes. Nigerian law and courts recognize parties' choice of foreign law as stipulated in their contracts. Nigerian courts will, as a general rule, give effect to the parties' choice of a foreign governing law and will, accordingly, apply such law in the determination of any claims that come within their jurisdiction. This is however subject to whether such foreign law is genuine, bona fide, legal and reasonable. Notwithstanding the above, where the security asset is necessarily governed or regulated by Nigerian laws, Nigerian courts are inclined to apply the laws of the land which regulates such assets. Assets typically regulated under local laws include shares in Nigerian company, land in Nigeria, upstream petroleum assets, etc.

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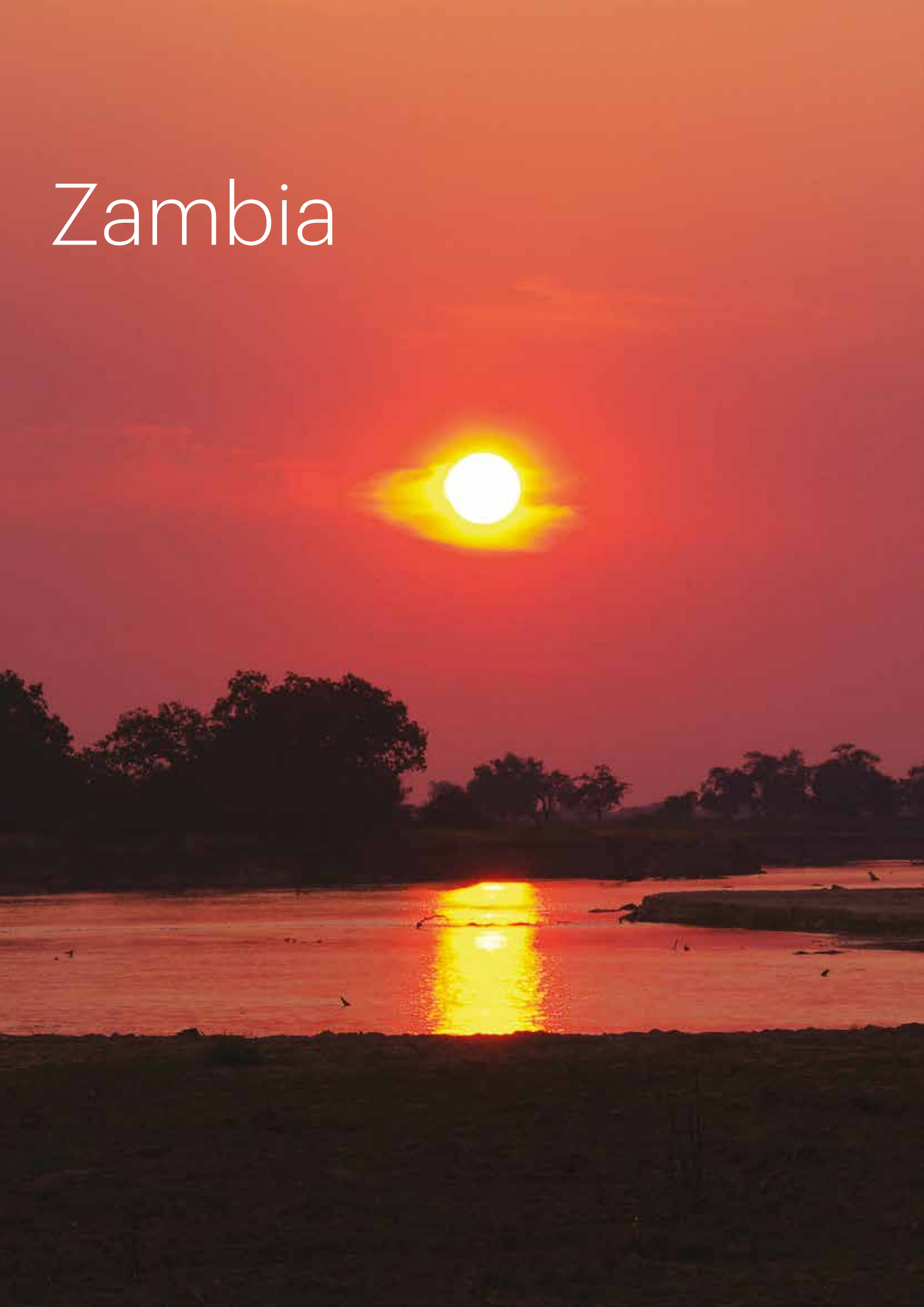
Zambia



Zambia

Obligations	
1. What are the types of obligations that may be secured?	Generally, any obligations arising from or in connection with a loan agreement, whether relating to a principal debtor or guarantor. The obligations that may be secured include those which are present, future or contingent.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes, a company can provide upstream and downstream guarantees for its affiliates, whether local or foreign.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	Yes, a court may on an application by a receiver or liquidator declare a guarantee or third-party security void where it can be shown that: (a) there was no commercial benefit for the company in providing the guarantee; or (b) the provision of the guarantee was ultra vires and the beneficiary of the guarantee was aware or ought to have been aware of the restrictions placed on the company. There are principally two ways of getting around the problem. One way is to make the issuing of the third-party security a substantive object of the company by the members of the company passing a special resolution directing the third party security to be given. This way there is no possibility of the third-party security being deemed ultra vires. If no special resolution was passed in issuing the third-party security, the other and more practical way of proving commercial benefit is by showing the substance of the commercial benefit. It is normally accepted that parent companies do benefit from providing third party security to their subsidiaries and vice versa, having regard to their direct or indirect shareholdings in such subsidiaries, unless the subsidiaries are insolvent and likewise subsidiaries usually benefit from supporting the parent, unless the parent is on the brink of insolvency, having regard to the financial and other assistance they derive from the parent in times of need.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No government consents or filings are required in connection with the delivery of a guarantee. However, sovereign guarantees require prior vetting by the Attorney General and are only to be signed by the Minister of Finance or another authorized delegate.

5. Are there any solvency or net worth limitations/ restrictions?	The validity of certain security interests may be affected by the solvency position of the security provider, the motivation and timing of granting the security as well as whether the security provider has received valuable consideration. These issues may be analyzed under the two headings below. **Preferences** Every charge or guarantee made, whether before or after a winding up petition has been presented against a company, with a view of giving a particular creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, will, if the company is wound up in respect of a winding up petition presented before, or within six months after the granting of such charge or guarantee, be deemed fraudulent and void as against the liquidator. However, this position of the law will not affect the rights of any person obtaining security in good faith and for valuable consideration. **Void floating charges** Floating charges that are created within 12 months before the commencement of the winding-up will be deemed invalid unless it can be proved that the company was solvent immediately after the creation of the charge. Similarly, this legal position does not affect the rights of any person who provided consideration for the charge although the amounts to be recovered are not to exceed the consideration furnished to the company together with any interest thereon at the rate fixed by the terms of the charge. There are no net worth limitations or restrictions. It should be noted however, that the constitutional documents of a guarantor may contain limits on the amounts which can be guaranteed. In the case of sovereign guarantees, the total contingent liability in relation to all sovereign guarantees at any one time is to be within certain prescribed thresholds.

Security/Collateral	
6. Over what type of personal property can security be granted?	Any type of property, although it must be noted that pension benefits cannot be used as security. The newly enacted Movable Property Act No. 3 of 2016 ("MP Act") has widened the nature of interests that qualify as security interests (and therefore registerable) to include: • a retention of a title in movable property; • a right under a financial or operating lease; • a right of a transferee of accounts receivable; and • a right of the commercial consignor even if it does not secure payment or other performance of an obligation
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	General security agreements are permitted, and these would normally take the form of floating charges capturing all assets of the company from time to time.
8. Can security be taken over real estate?	Yes, security over real estate is usually created by way of a mortgage although it is conceptually possible to also create a fixed charge over real estate. Security over real estate is generally registerable at the Lands and Deeds Registry as well as at the Companies Registry (if the security provider is a company).
9. Can cash collateral be taken? How?	Yes. Security over cash collateral is usually created by way of an account charge or an assignment (which operates as a mortgage). If cash is held by the lender or the borrower, the security would take the form of a charge. Where the cash is held by a third-party bank, the security can either take the form of a charge or an assignment. Charges are usually perfected by registration at the Companies Registry while assignments are perfected by registration at the Companies Registry and notification of the account bank.

10. Are pledges of shares permitted?	Yes, security over shares would take the form of charges. Where the chargor is a Zambian company, the perfection of a share charge in respect of shares held in another Zambian company (the target) is achieved by registering the charge at the Companies Registry. It is also standard practice to have the chargee's interest noted in the target's share register as well as for the chargor to deliver the original share certificates to the chargee. Where the chargor is an individual or a foreign company, perfection of a share charge would be achieved by ensuring that the target notes the chargee's interest in its share register. The original share certificates would also be delivered to the chargee. Although not mandatory, it is also common for such share charges to be registered at the Companies Registry.
11. Are stamp or other duties imposed?	No stamp or other similar duties are payable. However, there are registration fees payable whenever security interests are being registered with a public registry.
12. Must documents be executed in front of a notary?	In order for documents executed outside Zambia to be enforceable within Zambia, they must undergo the following authentication procedure: • Execution before a Notary Public in the place of execution who should verify the signature and seal of the parties; and • Presentation to the consular office in Zambia which has to issue a certificate of authentication confirming the authority of the Notary Public (this is not a requirement for a document executed in Ireland or the United Kingdom). The above requirements do not apply to documents that are executed in Zambia.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes. Please refer to our response to question 4 above on preferences and void floating charges.
Financial Assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	A company or any of its subsidiaries are generally prohibited from giving financial assistance for the purposes of enabling a person to acquire shares in that company. What constitutes financial assistance is broad and may encompass a loan, a gift, a guarantee, an indemnity or an assignment of rights.

15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	The restrictions on financial assistance are relaxed in the context of private companies. To this end, the Companies Act provides for a 'whitewash' procedure which can be undertaken to address the restrictions. The 'whitewash' procedure takes the form of statutory declarations given by all the directors of each of the companies giving the assistance (to the effect that the company is solvent immediately following the giving of the assistance and will remain so for 12 months following the date of the declaration). In addition, confirmation of the director's opinion by the auditors of the company (in form of an auditors' report) and shareholders' approval by way of special resolution are required. The directors' report and statutory declaration should be given not less than seven (7) days before the date of the resolution. The timing of the directors' statutory declaration is important as the 'whitewash' procedure must be carried out before the assistance is formally given.
Fees/ Taxes - Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	No stamp duties or similar charges are payable.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Registration of a security document at the Companies Registry is 1% of the amount being borrowed but cannot exceed K4,166.00 (approx US$416.6) Registration of a security interest at the Collateral Registry costs K100 (approx US$10) Registration of a security document at the Lands and Deeds Registry or the Agricultural Charges Registry (in the case of charges on agricultural commodities) is one percent of the amount being borrowed but cannot exceed K4,000.00 (approx. US$400). Corporate and encumbrance searches at the Companies Registry costs K83 (approx. US$8.3). Documents do not need to be notarized in Zambia.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Yes, withholding tax is chargeable at the rate of 15 percent on all interest payments to a foreign lender. Unless the tax authorities were to characterize the payments as interest, there should be withholding tax on amounts paid under a guarantee or from enforcement proceeds.

Enforcement

19. What is the bankruptcy/insolvency process?	**Acts of insolvency** Insolvency process under the Companies Act generally implies a winding up of a company arising from an act of insolvency. In Zambia, insolvency arises when a company is unable to pay its debts, and this is deemed to be the case if: • It fails to settle a debt 21 days after demand from a creditor. • It fails to settle debts as they fall due; or • It suspends business for a period exceeding 12 months. **Insolvency processes** An act of insolvency will generally be preceded by a winding up (whether by the court or as a result of a decision by the creditors). Winding up or liquidation is a collective insolvency process leading to the dissolution of a company. The objective of a liquidator is to gather in and realize assets of the company and pay creditors in the order set down by the statutory scheme.

	1. Winding up by Court This where the Court orders that the company be wound up, and this will be based on a petition presented by any of the following: • The company • Any creditor, including a contingent or prospective creditor, of the company • A member • Any person who is the personal representative of a deceased member • The trustee in bankruptcy of a bankrupt member • Any liquidator of the company appointed in a voluntary liquidation • The Registrar of Companies. After the commencement of a winding-up by the court, any attachment, sequestration, distress or execution put in force against the estate or effects of the company are void. Furthermore, when a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except by leave of the court.

	2. Creditor's Winding up This basically follows a voluntary winding up, but where no declaration of solvency has been made. The company has to inform the creditors and basically is largely controlled by the creditors of the company. For example, both the company and the creditors, at their respective meetings, have the power to nominate a liquidator. If different persons are nominated, the choice of the creditors prevails and in the event that the creditors make no nomination, the person nominated by the company shall be liquidator. **Potential insolvency processes** The following potential insolvency processes are provided for under the Companies Act: • Scheme of Arrangement • Amalgamation • Reconstruction • Members voluntary winding up The above are deemed potential insolvency processes, as they do not technically amount to formal acts of insolvency unless and until they precede a failure by the company to pay its debts as they fall due amounting to acts of insolvency.

	Scheme of Arrangement A scheme of arrangement (Scheme) is a compromise or arrangement between a company and its creditors (or any class of them). However, a Scheme will amount to an Act of Insolvency if the creditors do not agree to it or if it has not become binding following the steps outlined below, unless the Company acquires an ability to pay the debts post the Scheme's failure but before insolvency proceedings Pursuant to the Companies Act; a Scheme, therefore, becomes legally binding on the creditors when an extraordinary resolution agreeing to any compromise or arrangement is passed at a meeting of those creditors present and voting in person or by proxy. A Scheme becomes legally binding on a company when: • The Court subsequently makes an order sanctioning the Scheme approved by the creditors; and • The order is delivered to the Patents and Companies Registration Agency for registration. **Amalgamation** This involves an application being made to the Court, for the approval of an arrangement or compromise and it is shown to the Court that: • The arrangement or compromise has been proposed for the purposes of or in connection with a scheme for the amalgamation of two or more companies; and • The Scheme involves the transfer of the whole or part of the undertaking or property of a company from one company to another;

	Reconstruction of a company A reconstruction is not defined under the Companies Act. However, case law defines a reconstruction as a situation where the undertaking of a company is sold to another company with substantially the same shareholders as the first company. Therefore, substantially the same business shall be carried on by substantially the same persons. **Members voluntary winding up** Generally, a company may be wound-up voluntarily if the members so resolve by way of a special resolution (that is, a 75 percent majority vote). Upon the passing of a resolution for voluntary winding-up, the company is expected within seven days thereafter to lodge a copy of the resolution with the Registrar, and the Registrar must within seven days after the lodgement cause notice thereof to be published in the Government Gazette If the company fails to lodge a copy of the resolution with the Registrar in the prescribed time, the company, and each officer in default, could be guilty of an offence and may be liable on conviction to a fine. **Protection of secured creditors' rights** It is worth noting that in all the insolvency and potential insolvency processes described above, the superiority of the secured creditors in relation to the secured assets is preserved, and the claims of the unsecured creditors would generally rank behind. In practice, most secured creditors would realize their security by appointing a receiver. Receivers are typically appointed by creditors under the terms of a security agreement. Receivers take control of assets subject to security with duty to realise assets and pay appointer (after deducting own remuneration/expenses and paying prior-ranking creditors).

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	There are no restrictions on the type of parties that may exercise the remedies, but it is usual for the entity to whom the debt is owed to appoint a receiver to enforce their rights under a security instrument. However, liquidators and receivers are required to be accredited as such by the Companies Registrar for them to legally perform their duties. Administrative agents and trustees are recognized.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Foreign judgments are enforceable in Zambian under two main avenues. **Common law** The first being the common law which requires re-litigation of the matter with the judgement as the cause of action. **Foreign Judgments Act** The second avenue is via the Foreign Judgments (Reciprocal Enforcement) Act Chapter 76 of the Laws of Zambia which permits enforcement by mere registration. This avenue only applies to judgments from countries that have reciprocal arrangements with Zambia. **Arbitration – an alternative** Not many countries have reciprocal arrangements with Zambia, and the usual practice in lieu of such arrangements is for parties to submit their disputes to arbitration under the auspices of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the New York Convention). This is because arbitral awards are enforced by the Zambian courts, if rendered by all arbitral institutions rendering an award under the auspices of the New York Convention.

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Yes, a Zambian court would generally respect the intention of the parties in relation to the choice of law adopted. However, the law which governs a contract is not determinative of all issues which arise in relation to that contract. For instance: a. It may not be relevant to the determination of proprietary issues (such as those relating to security). It is mainly for this reason that agreements creating security interests over assets located in Zambia would be governed by Zambian law. b. Rules of Zambian or foreign law which are mandatory (which includes public policy rules) in a jurisdiction which is connected with the contract or in the jurisdiction where the issue is decided may be applied regardless of the provisions of the contract. c. In insolvency proceedings, the law governing those proceedings may override the law governing the contract.

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Asia Pacific

China

China

Obligations	
1. What are the types of obligations that may be secured?	All obligations which arise out of or in connection with a loan agreement can be secured. The secured obligations include those which: (a) Are present or future (b) Are actual or contingent (c) Are joint or several
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Generally speaking, a company can provide upstream and downstream guarantees for its affiliates. However, when a PRC company provides guarantee for a foreign company's repayment obligation of a bond, downstream guarantee is allowed while upstream guarantee is not. According to the PRC law, if a company guarantees liabilities of one of its shareholders or actual controller, the guarantee must be approved by affirmative votes of more than half of the shareholders at a shareholder meeting excluding the shareholder whose liabilities are guaranteed. Generally, foreign affiliates are treated the same as domestic affiliates.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	No, there are no corporate benefit rules under the PRC law.

4. Are any government consents or filings required in connection with the delivery of a guarantee?	Government consent or filing is required when: • A PRC individual or company provides guarantee for a loan granted by a foreign creditor to a foreign borrower. • A foreign individual or company provides guarantee for a loan granted by a PRC creditor to a PRC borrower. • The guarantee is provided by a PRC state-owned company for debt of its affiliates (depending on where the company locates and other details of specific cases).
5. Are there any solvency or net worth limitations/ restrictions?	A company's articles of association may stipulate the maximum amount for which the company can guarantee. If the guarantor is a PRC listed company, approval by a shareholders meeting is required if: • The guarantee/security is given when the aggregate amount of the external guarantee given by the listed company and its controlling subsidiary companies has exceeded 50 percent of the listed company's latest audited net assets. • The guarantee/security is given to secure the obligation of a debtor whose asset to liability ratio exceeds 70 percent. • The guarantee is to secure an amount exceeding 10 percent of the latest audited net assets of the guarantor. • The guarantee is to secure obligation of any shareholder or actual controller of the guarantor or their affiliated parties.

Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over the following personal property: • Machinery • Raw materials, manufactured and semi-manufactured goods • Aircraft, including aircraft under construction • Ships, including ships under construction • Vehicles • Any other movable property which are not prohibited from being pledged by the PRC law
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	A company can grant a floating security over its personal assets such as the manufacturing facilities, raw materials, semi-manufactured goods and products it has already owned or is going to own. When the security is taken over real estate, the mortgage agreement shall be tailored to the real estate. The security agreement on floating security is required to be registered with relevant authorities.
8. Can security be taken over real estate?	Yes. • Real estate can be mortgaged in favor of a lender or creditor. • Mortgage over real estate is legally created when such mortgage is registered with relevant authorities. • Mortgage cannot be taken over some categories of real estate, including but not limited to: • The real estate of schools, kindergartens, hospitals and other institutions and social groups which are used for public benefit • The real estate that the ownership of which is unclear or controversial • The real estate that is legally seized.

9. Can cash collateral be taken? How?	Yes. Cash can be pledged if it is deposited in a bank account. Cash in the bank account must be ascertained and identified at the time of the creation of the pledge.
10. Are pledges of shares permitted?	Yes. Security over shares can be taken by way of pledge. Pledge of shares of a company is legally created when such pledge is registered with relevant authorities. Before conducting the registration described in the above paragraph, pledge of shares of a foreign invested company shall be approved by the authority which has originally approved the establishment of that company. Pledge of shares of a company may be restricted by articles of association of the company.
11. Are stamp or other duties imposed?	No, but there may be registration fees and other costs.
12. Must documents be executed in front of a notary?	Generally, security documents are not required to be executed in front of a notary, except that: • When a non-PRC party is involved in a security document, that security document may be required to be notarized. • In practice, local authorities for real estate registration in some cities may require notarization of the mortgage agreement of real estate.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes. If within one year before the court accepts the debtor's bankruptcy petition, a debtor provides assets-based security for debts not secured by assets, the debtor's bankrupt administrator is entitled to request the court to invalidate the aforesaid transaction and to retrieve the relevant assets back into the debtor's assets pool for subsequent distribution. A security agreement may be revoked by reason of fraud.

Financial Assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Financial assistance There is no general prohibition on financial assistance, except that: 1. A listed company shall not provide financial assistance to purchaser of its shares. 2. However, certain rules shall be duly complied with when a company provides financial assistance for purchase of: (a) A listed company's shares (b) Equity interest in a state-owned enterprise (c) Overseas company's assets or shares Upstream guarantees Please see our answer to Question 2 above.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	There is no customary mean for overcoming the limitations mentioned in our answer to Question 14 above.
Fees/Taxes- Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	For the documents listed in this question, stamp duties will only arise in respect of loan agreement. Security document and other credit–support documents per se are not subject to stamp duties. There is no customary or legal way for deferring, minimizing or eliminating such stamp duties.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Notarization fee may incur in certain cases. Please see our answer to Question 12. The fee standard for notarization varies by cities, loan amount/ values of assets involved. Registration fee is charged differently in different cities and for different registration matters. For example, the registration for a mortgage of use right of land may be charged at around RMB 500 in some cities, while the registration for pledge of shares is free of charge in most cities. The enforcement of security may incur court fees, evaluation fees, auction fees and other related costs.

18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Yes. Withholding tax is payable on the income received by a foreign lender from loans extended by it to a PRC borrower. Such income may include: a. Interest received by the lender on the loans b. The proceeds of a claim under a guarantee or of enforcing security which constitutes payment of interest.
Enforcement	
19. What is the bankruptcy/insolvency process?	A bankruptcy proceeding can be commenced by a bankruptcy petition to a PRC court. The petition may be filed either by the bankrupt debtor or by its creditor. Once the court accepts a bankruptcy petition in relation to a bankrupt debtor, both secured creditors and unsecured creditors will need to declare their claims to the administrator appointed by the court for such claims to be registered. All creditors can then participate in the distribution of the assets of the bankrupt debtor. The secured creditor's rights rank behind any outstanding salaries, pensions for the disabled, basic pension insurance, basic medical insurance or other compensation incurred before 27 August 2006 (the date on which the PRC Bankruptcy Law was adopted and promulgated) and payable to the employees of the bankrupt debtor according to relevant laws and regulations. These employee's claims, if incurred after 27 August 2006, will rank behind the secured creditor's secured obligations. In addition, if the security is created after incurring overdue tax payment, the tax payment shall rank ahead of the security. Secured creditors do not have the right to vote on the adoption of settlement agreements or on adopting plans to distribute the debtor's property, unless they have waived their rights to priority in payment.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	Generally, the entity to whom the security is granted can enforce the security. The administrative agent who acts for a syndicate of lenders in administering the loan facility with the borrower under a loan agreement is recognized under the PRC law. It is usual for a syndicate of lenders to appoint an administrative agent to act for and on behalf of the syndicate. Trustees are not generally used in the syndicated lending in China.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	A PRC court will only recognize and enforce a foreign court judgment if: • A bilateral judicial assistance treaty exists between China and the country of the foreign court. • Both countries have joined an international convention on recognising and enforcing foreign court judgments or written orders. • Precedents of reciprocity exist.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	The Parties choice of foreign law may be valid when: • Either one or both of the Parties are foreign entities. • The habitual residence of either party or both parties is located in the foreign jurisdiction. • The subject matter is located in the foreign jurisdiction. • The whole or the part of important legal facts happen in the foreign jurisdiction. The choice of foreign governing law in an agreement shall not violate the public interest of the PRC. If the PRC law has mandatory rules on a specific matter, parties to the agreement on that matter cannot choose foreign laws, and the PRC law shall apply. If the concerned parties of an agreement select foreign applicable laws as governing law, they may be required by the PRC court to provide such relevant laws. Where the foreign laws are unable to be ascertained or have no relevant provisions, the court will rule in accordance with the PRC law.

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Obligations	
1. What are the types of obligations that may be secured?	Any debt or obligation owing by a person against another person.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Generally, a company incorporated in Singapore can provide a guarantee to secure the obligations of any of its holding companies or subsidiaries (including those incorporated outside Singapore).
3. Must a guarantor receive a corporate benefit to provide a guarantee?	As the directors of a Singapore company have a fiduciary duty to act in good faith in the best interests of the company, the directors have to be satisfied that there is corporate benefit to the company in giving a guarantee. It is ultimately a question of fact whether there is any corporate benefit to the company providing the guarantee, and this would depend on the facts of the case at hand.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No Singapore regulatory consents or filings are required in connection with the delivery of a guarantee (which creates no security over assets).
5. Are there any solvency or net worth limitations/ restrictions?	The guarantor in question must be solvent when granting the guarantee in question and must not become insolvent as a result of the giving of the guarantee.

Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be created over all personal property (tangible and intangible) under Singapore law.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Under Singapore law, a debenture creating first fixed and floating charges can be taken over all the assets of a company, save for: a. Security over real property for which a legal mortgage is generally made by an instrument of charge in the approved form and lodged with the Singapore Land Authority; and b. Security over scripless shares which can only be taken in the manner described below. For security over personal property, it is usual to grant separate charges or assignments over the relevant assets, but this is not mandatory.
8. Can security be taken over real estate?	Security can be taken over real estate under Singapore law. This is usually effected by way of a legal mortgage and has to be executed in the form prescribed by, and registered with, the Singapore Land Authority. An equitable mortgage will be granted if the formalities required to be satisfied to create a legal mortgage have not been fully met or the mortgagor's interest in the real estate being mortgaged is itself an equitable interest or the parties have entered into an agreement to create a legal mortgage in the future over the real estate in question.
9. Can cash collateral be taken? How?	Under Singapore law, security can be granted over cash collateral. This is usually effected by way of a fixed charge over the cash collateral. A floating charge can also be created over the cash collateral if the parties agree that the chargor is permitted to make withdrawals or otherwise deal with the cash collateral.

10. Are pledges of shares permitted?	Security can be taken over shares of a Singapore private company by way of a legal mortgage (if the legal title interest in the shares are to be transferred to the mortgagee at the onset) or an equitable mortgage (if there is no change in the legal interest to the shares). Under Singapore law, no security interest may be created in securities listed on the Singapore Exchange Securities Trading Limited except for any statutory security by way of an assignment or charge as prescribed under section 81SS of the Securities and Futures Act (Chapter 289) of Singapore (the Singapore Securities and Futures Act) or any common law assignment or fixed charge in accordance with section 81SU of the **Singapore Securities and Futures Act** and the Securities and Futures (Central Depository System) Regulations 2015 of Singapore.
11. Are stamp or other duties imposed?	Under Singapore law, stamp duty is payable if the security is created over real property or shares, stocks or other securities. Stamp duty up to a maximum of S$500 is payable on the original security document. The stamp duty is payable within 14 days of execution in Singapore or (if executed outside Singapore) 30 days of receipt of the relevant security document into Singapore.
12. Must documents be executed in front of a notary?	For the purposes of taking security in Singapore, execution of the security documents in front of a notary is not required. However, for enforcement purposes, notarized documents may have certain evidentiary benefits. Under section 59(1)(f) of the Evidence Act (Chapter 97) of Singapore (the Singapore Evidence Act), the courts will take judicial notice of the seals of notaries public. In addition, under section 87 of the Singapore Evidence Act, the courts will presume that every document purporting to be a power of attorney and to have been executed and authenticated by a notary public, was so executed and authenticated.

13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	The Companies Act (Chapter 50) of Singapore (the Singapore Companies Act) and the Bankruptcy Act (Chapter 20) of Singapore (the Singapore Bankruptcy Act) contain avoidance provisions which permit the unwinding of certain transactions in the event of winding up, judicial management or bankruptcy and provide for the clawback of assets transferred by the transactions or a reversal of their effects. For example, the security transaction can be set aside as a transaction at an undervalue if it took place within the period of five years ending on the day of the making of the winding up application or judicial management application, and it was given when a company was insolvent or became insolvent as a result of the transaction. A security transaction can also be set aside as an unfair preference if the security was given when a company was insolvent or became insolvent as a result of the same within the period of six months ending on the day of the making of the winding up application or if the security was given to an associate of a company as defined in section 101 of the Singapore Bankruptcy Act, within the period of two years ending on the day of the making of the winding up application. An associate of a company in such context will include any director or other officer of that company. A floating charge which has been granted within six months of the commencement of the winding up may also be set aside as invalid (except to the extent of the amount of any cash paid to the company at the time of, or subsequent to, the creation of and in consideration for the charge) unless the company was solvent immediately after the grant of the charge. In addition to the foregoing, if a company creates a charge which is required to be registered under the Singapore Companies Act but fails to do, the charge will be void as against a liquidator or a creditor of the company. Security transactions may also be set aside on the grounds of fraud.

Financial Assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	If a company is a public company or a subsidiary of a public company and that company gives a guarantee or security for the purpose of or in connection with the acquisition or proposed acquisition of its own shares or the shares of its holding company or ultimate holding company, the provision of the guarantee or security will constitute the giving of financial assistance which is prohibited under the Singapore Companies Act, unless the procedures and requirements for the giving of such financial assistance under the Singapore Companies Act have been complied with.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	As mentioned above, the grant of the security will not be prohibited under the Singapore Companies Act if the "whitewash" procedures prescribed under the Singapore Companies Act have been complied with.
Fees/Taxes- Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	As mentioned above, stamp duty up to a maximum of S$500 is payable under Singapore law for any security created over real property or shares, stocks or other securities. The stamp duty is payable within 14 days of execution in Singapore or (if executed outside Singapore) 30 days of receipt of the relevant security document into Singapore. As such, payment of stamp duty can be deferred by not bringing the original security document into Singapore.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Nominal search fees are payable for carrying out the cause book, insolvency and bankruptcy searches at the Registries of the Supreme Court and the State Courts of Singapore, the insolvency and bankruptcy searches at the Insolvency Office of Singapore, and the company searches at the Accounting and Corporate Regulatory Authority of Singapore (the ACRA). Nominal registration fees are also payable to the ACRA in connection with the registration of a security under the Singapore Companies Act. Where security is taken over real property, nominal fees are payable to various governmental authorities in Singapore in connection with title searches and legal requisitions conducted against the real property for due diligence purposes. In addition, nominal fees are also payable to the Singapore Land Authority for the lodgement of instruments.

18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Generally, any interest, commission, fee or other payment in connection with any loan or indebtedness is subject to withholding tax in Singapore if it is derived in Singapore (or deemed to be derived in Singapore) but paid to a non-Singapore tax resident. There are, however, exceptions to the general rule, for example, loans obtained for acquiring immovable property overseas or where the borrower is a bank or finance company or a certain approved entity qualifying for withholding tax exemption on interest in Singapore. Withholding tax is generally applicable on guarantee fees paid to a non-resident person. However, an exception applies where the guarantee is provided by a non-resident person who is not incorporated, formed or registered in Singapore, and the provision of the guarantee is not effectively connected with its permanent establishment in Singapore or a business carried on in Singapore by the non-resident person.
Enforcement	
19. What is the bankruptcy/insolvency process?	The winding up process can proceed by way of a winding up by the Singapore courts or a creditors' voluntary winding up. A winding up by the courts typically begins with the service of a statutory demand followed by an application to the courts for a winding up order. After the winding up order has been made, a liquidator may be appointed. The liquidator or the courts will then fix a deadline for the proof of debts. Secured creditors need not prove their debts and may realize their security. Once the secured creditors have been paid out of the company's assets that comprise the security, the remaining assets will be distributed in accordance with the provisions of the Singapore Companies Act. Where the directors cannot make a statutory declaration of solvency, a creditors' voluntary winding up begins with the shareholders passing a special resolution. A meeting of creditors will be called immediately after the general meeting whereat the special resolution was passed. Bankruptcy proceedings against an individual under Singapore law are usually commenced with the service of a statutory demand followed by an application to the courts for a bankruptcy order. Once the bankruptcy order has been granted, the assets of the individual subject to the bankruptcy proceedings will vest in the Official Assignee of Singapore. As with the winding up process, secured creditors need not prove their debts and may realize their security. Following the proof of debts, the remaining assets will be distributed in accordance with the provisions of the Singapore Bankruptcy Act.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	The secured creditor under the security in question can enforce that security. If the security is held by a security agent or trustee, the security agent or trustee can enforce the security on behalf of the secured parties.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	A final conclusive and unsatisfied judgment of a superior court of a country gazetted under the Reciprocal Enforcement of Commonwealth Judgments Act (Chapter 264) of Singapore (the RECJA) or the Reciprocal Enforcement of Foreign Judgments Act (Chapter 265) of Singapore (the REFJA) obtained against a judgment debtor will be enforceable without re-examination of the merits of the case by registration at the High Court of Singapore for the purpose of enforcement, subject to the provisions of the RECJA or REFJA, as the case may be. Hong Kong is currently the only country gazetted under the REFJA. Otherwise, a foreign judgment will not be immediately enforceable in Singapore, and it will be necessary to bring an action to enforce the judgment debt against the judgment debtor in a competent court in Singapore and to obtain a judgment for enforcement.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Generally, if the choice of governing law has been made by the parties in good faith and not with a view to avoiding the provisions or effect of, or the consequences of the application of, any other applicable law and is not contrary to public policy, the Singapore courts will give effect to such choice of law. Notwithstanding this, matters of procedure including questions of set off and counterclaim, interest chargeable on judgment debts, priorities, measure of damages and time bar on actions are as a general rule governed by Singapore law to the exclusion of the expressed governing law.

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Australia

Australia

Obligations	
1. What are the types of obligations that may be secured?	Australian law is very flexible as to what obligations can be secured, provided the drafting of the security document is sufficiently precise. Secured obligations can include those which: (a) are present, future, actual or contingent, capped or uncapped, quantified or unquantified; (b) arise in favor of future creditors under future transactions with future debtors; and (c) are direct and personal, joint or several or those of a principal debtor or a guarantor or surety.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	This is possible. However, the guarantee may be unenforceable in some circumstances, including where: (a) the giving of the guarantee involved a breach of directors' duties by the guarantor company's directors or (b) an event of default occurs, and the guarantee is set aside during the voluntary administration of the winding up of the guarantor. Regarding (a), please see our answer to question 3 below. Regarding (b), when a company has entered into either of the insolvency procedures known as voluntary administration or liquidation, the main grounds upon which a guarantee may be challenged are that the guarantee is an uncommercial transaction or a voidable unfair preference. **Uncommercial transactions.** A liquidator of an insolvent company can apply to court to have any transaction (including a guarantee) set aside if: (a) it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, having regard to: the benefit and detriment to the company of entering into the transaction; the respective benefits to other parties to the transaction of entering into it; and any other relevant matter; (b) the company was insolvent when it entered into the transaction or as a result of it; and (c) the transaction was entered into in the two years immediately before the company became insolvent. **Unfair preference.** Similar rules apply where the company has entered into a transaction that results in a creditor receiving more from the company in respect of an unsecured debt than if the transaction were set aside and the creditor were to prove for the debt in a winding up of the company. Only transactions entered into in the six months before the onset of insolvency (or four years if the parties are connected or ten years if it involved a deliberate attempt to interfere with the rights of credits on the company's winding up) are vulnerable to a challenge on this basis.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	Yes. A director of an Australian company has a duty to exercise their powers in good faith and in the best interests of the company and for a proper purpose. This includes a duty to act in a way he or she rationally believes is in the best interests of the company. If a beneficiary of a guarantee knows, or ought to know, that the guarantor's directors are breaching this duty in approving a guarantee (e.g. because the guarantor will receive insufficient corporate benefit), the beneficiary may not be able to enforce that guarantee. If a borrower is a subsidiary of the guarantor, the corporate benefit will usually be clear. In other situations, the benefit may be less obvious—especially if the lenders are taking a guarantee from a subsidiary of the borrower. Well-drafted board minutes setting out the perceived benefits of the guarantee transaction (sometimes coupled with a shareholder resolution approving the guarantee) may help to minimize the risk of a successful challenge.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	Not under the general law. However, in appropriate cases, parties should check that consent is not required under a potentially applicable sanctions regime.
5. Are there any solvency or net worth limitations/ restrictions?	As to solvency, please see part (b) of our answer to question 2 above. There are no net worth limitations or restrictions on guarantees given by corporate guarantors.
Security/ Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over personal property which is tangible or intangible. Tangible personal property includes: goods, machinery, equipment, hard and soft commodities, ships, aircraft and other vehicles and major plants, such as gas turbines. Intangible personal property includes shares and other securities, intellectual property and statutory, contractual, equitable or other rights to the payment of money, the performance of obligations or the possession or use of tangible assets owned by others.

7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	A company can grant a general security agreement over all of its present and after-acquired property. Historically, this would have typically been documented as a fixed and/or floating charge although this is no longer a relevant distinction since new rules about the creation and nature of security interests were introduced by the Personal Property Securities Act 2009 (Cth). Additional tailored security over specific high value, long-term assets (such as land, aircraft, major contracts or intellectual property) by way of a mortgage or specific security agreement is also typically taken. This is because the Australian priority rules tend to favor a creditor who holds and has fully perfected and registered a tailored, specific security. (For a summary of the nature of a mortgage or charge, please see the answer to question 8 below.)
8. Can security be taken over real estate?	Yes. Real estate can either be mortgaged or charged in favor of a lender or other creditor. Under a common-law mortgage, title to the mortgaged asset is transferred to the lender, subject to an obligation to retransfer when the secured obligations are discharged. Under a charge, the charged asset is appropriated to the discharge of the secured obligations without a transfer of title to the charged asset to the chargee. Most Australian real estate is registered under the Torrens system, and mortgages and other major dealings with real estate are governed by Australian state or territory legislation and must be registered with the appropriate titles office in each Australian state or territory. Under the provisions of the various real property Acts, a registered mortgage of Torrens land is more in the nature of a charge than a common-law mortgage, taking effect under the relevant state or territory's real property legislation as a security but not operating as a transfer of the land. An Australian law charge is broadly similar in concept to an English law charge, and a US civil law pledge or security agreement.

9. Can cash collateral be taken? How?	Yes. Cash placed with a third-party bank can either be assigned (mortgaged) or charged in favor of a lender. Where the cash is in an account with the lender that is an authorized deposit taking institution under the Banking Act 1959 (Cth) the security interest will automatically be perfected by control. Cash placed with a lender can also be subject to express and implied rights of set-off.
10. Are pledges of shares permitted?	A company can grant a specific security agreement over marketable securities, including shares. Historically, this would have typically been documented as an equitable mortgage (rather than a legal mortgage or charge).
11. Are stamp or other duties imposed?	No stamp duty (or similar fee or charge) is payable on the creation of a security interest. On a transfer of real estate or shares, stamp duty is generally payable by the purchaser or transferee.
12. Must documents be executed in front of a notary?	Not under Australian domestic law. If the security provider or secured assets are situated outside Australia, it is prudent to seek advice on notarization requirements under local law. For various reasons, most Australian law security is created by deed. This involves slightly more complex execution procedures than are required for execution of a simple contract, but notarization is not required.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Please see our answer to question 2 above regarding voidable uncommercial transactions and unfair preferences. **Void circulating security interests** Another basis under Australian insolvency law for setting aside the grant of security applies to circulating security interests (being a floating charge or other security interest over a circulating asset). Between unconnected parties, a circulating security interest is invalid other than to secure new money advanced to the grantor if: (a) the grantor was insolvent at the time of, or as a result of, granting the security interest; and (b) the circulating security interest was granted within six months of the onset of insolvency. (Different rules apply between connected parties.)

	Vesting of PPSA security interests if not registered within time With some exceptions, if a security interest that is registered both later than 20 Business Days after the security agreement came into force and within six months of the onset of insolvency, it will vest in the grantor upon insolvency. **Unfair loans** A loan to a company is unfair if: (a) the interest or charges on the loan were extortionate (either initially or because of a variation) having regard to the risk to the lender, the value of any security, the amount, term and payment schedule of the loan and any other relevant matter; (b) the company was insolvent when it entered into the transaction or as a result of it; and (c) the transaction was entered into at any time before the company's entry into an insolvency procedure. **Unreasonable director-related transactions** A transaction of a company is an unreasonable director-related transaction if the transaction is: (a) a transaction made by the company to a director of the company or their close associate and a reasonable person in the company's circumstances would not have entered into the transaction having regard to: the benefit and detriment to the company of entering into the transaction; the respective benefits to other parties to the transaction of entering into it; and any other relevant matter; (b) the company was insolvent when it entered into the transaction or as a result of it; and (c) the transaction was entered into in the four years immediately before the company's entry into an insolvency procedure.
Financial Assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	An Australian company is not permitted to financially assist a person to acquire shares in the company or a holding company of the company. Financial assistance includes giving guarantees or security for any acquisition funding. Regarding upstream guarantees, please see our answer to question 2 above.

15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	Yes, an Australian company may financially assist a person to acquire shares if the giving of the assistance does not materially prejudice the interests of the company or its shareholders; or the company's ability to pay its creditors; and where the company has followed a "whitewash process" under the Corporations Act 2001 (Cth). This involves passing a resolution at a general meeting of the company, which approves the giving of financial assistance by way of a special resolution of the shareholders (excluding any shareholder acquiring the shares or their associates); or a general resolution of all ordinary shareholders. If immediately after the acquisition the company will be a subsidiary of a listed domestic company, then the giving of the financial assistance must be approved by a special resolution passed at a general meeting of that company. In addition, the financial assistance must be approved by a special resolution passed at a general meeting of the company that will be the holding company, if immediately after the acquisition the company will have a holding company that is both a domestic company but not listed; and is not itself a subsidiary of a domestic company. Notice of all shareholders' resolutions must be lodged with the Australian Securities and Investments Commission (ASIC). In addition, at least 14 days before the provision of the financial assistance, the Company must lodge a notice with ASIC (in the prescribed form) stating that the financial assistance has been approved. In limited circumstances, a company may be entitled to financially assist a person under section 260C of the Corporations Act 2001 (Cth) without shareholder approval where the financial assistance is given in the ordinary course of commercial dealing.

Fees/Taxes - Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	As noted in response to question 11, no stamp duty (or similar fee or charge) is payable on the creation of a security interest. This is also true of guarantees and similar credit support. However, assignments of loans and securities may have stamp duty implications in certain jurisdictions unless an exemption is available.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	As the following examples demonstrate, registration fees tend to be nominal. Search fees are even lower. Examples: (a) a fee of approximately A$125 per registration is payable to register a security interest granted by a company on the Personal Property Securities Register with no stated end time (with a reduced fee if the registration specifies an end time); and (b) the maximum fee for registering a mortgage at the New South Wales Land Registry in New South Wales is approximately A$136 per mortgage (with similar fees applying in each other Australian State and Territory). Notarization is not required under Australian domestic law. Most Australian law security can be enforced on a self-help basis (i.e. without the need to go to court) and without paying any fees.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	The common circumstances where an interest withholding tax liability arises is when interest (including amounts in the nature of, or in substitution for, interest) is paid: • By a person who is either a resident of Australia (other than off-shore resident); or • An on-shore non-resident; to a person who is either: • Not an Australian resident for tax purposes (other than an on-shore non-resident) or; • An off-shore resident, unless an exemption is available.

	Common exemptions employed in the Australian market include financing arrangements which are structured as either (i) a syndicated loan to more than two lenders or (ii) a debenture. In both cases the borrower or issuer will be required to satisfy a "public offer test" whereby the financing is privately offered to a minimum number of institutions or publicly to the market generally.
19. What is the bankruptcy/insolvency process?	The most commonly used compulsory insolvency procedure for companies is voluntary administration. A company in administration is protected by a statutory moratorium. Among other things, under this moratorium, a lender may not start or continue legal proceedings against the company or enforce security granted by the company while the administration continues. The moratorium does not apply to certain types of cash collateral arrangements, or to contractual set-off rights. However, if the administration does not facilitate a turnaround of the insolvent company, and the administration becomes a liquidation, contractual set-off rights will be replaced by a mandatory, statutory set-off. In a liquidation, any of the company's assets are disposed to meets its liabilities, however it is not unusual for there to be secured parties who will have a claim to those assets prior to the liquidator. Liquidation is not a turnaround procedure, and there is no moratorium on enforcing security in a liquidation. A Deed of Company Arrangement (DOCA) is a binding agreement between a company that is insolvent and its creditors, which governs the way in which the company's affairs will be dealt with. The aim is to maximise the possibility that the company, or its business, continues as a going concern, or to provide a better return for creditors than an immediate liquidation of the company. The process is for the company to appoint a voluntary administrator, who will then liaise with the directors of the company to put together a proposal for the way in which the company will establish a fund to pay an amount to creditors. The proposal is put as a draft DOCA. If the majority of the creditors of the company vote in favour of the proposal, the company must sign the deed within 15 business days of the creditors' meeting (unless the court allows a longer time). If this doesn't happen, the company will automatically go into liquidation, with the voluntary administrator becoming the liquidator.

	The DOCA binds all unsecured creditors, even if they did not vote in favour of the proposal or voted against it. It also binds owners of property, those who lease property to the company and secured creditors, if they voted in favour of the DOCA. The DOCA can, on agreement, be varied or terminated at a later stage. The DOCA does not prevent a creditor who holds a personal guarantee from the company's director or another person taking action under the personal guarantee.
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	In addition to the entity to whom the security is granted (usually the mortgagee or chargee), security documents usually allow the mortgagee or chargee to appoint a receiver to enforce the security. As the receiver is the agent of the entity who grants the security, though subject to the direction of the mortgagee or chargee, the receiver can give good title to the mortgaged or charged assets to a third party purchaser even if the security document has not transferred title to those assets to the mortgagee or chargee. The holder of fixed and floating charges over the whole, or substantially the whole, of the assets of a company can, in appropriate circumstances, appoint an administrator, who (among other things) may also enforce security. An agent can enforce a facility agreement or other contracts lenders have authorized it to administer. Security trustees can hold and enforce security on behalf of the lenders who are beneficiaries from time to time of a security trust.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Broadly, and subject to exceptions, the Australian courts will enforce a final judgment for the payment of money without reexamining the merits of the case if that judgment has been issued by an appropriate court of the United Kingdom or certain other prescribed foreign jurisdictions.

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Yes, as long as the agreement is a contract rather than a security document. However, if all elements relevant to the situation on the date of agreement was made (other than the choice of law) are located in another country, an Australian court will give effect to any provisions of the law of that other country which cannot be derogated from by agreement under that law. Further, the Australian courts: (a) may give effect to any overriding mandatory provisions of the law of the place of performance of an agreement, if those provisions make that performance unlawful; and (b) will consider the law of the place of performance of the agreement in relation to how the agreement is to be performed and the steps to be taken in the event of defective performance. For a security document, the law which an Australian court applies to determine the validity and effects of that document will depend on the type of asset subject to that security agreement.

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Central Asia

Kazakhstan

Kazakhstan

Obligations	
1. What are the types of obligations that may be secured?	In general, any types of obligations may be secured, including all present and future debts, interest, compensation of damages, fines, fees, etc.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	A company can provide guarantees including guarantees to its parent company and its subsidiaries. A guarantee can be granted in favor of domestic or a foreign entity. Foreign affiliates are not treated differently.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	Under Kazakhstan laws there is no explicit requirement for a guarantor to receive a corporate benefit to provide a guarantee. Please note however that directors and officers of a company must act in the best interests of the company and in certain cases may be found liable for losses of such company caused by their activities.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	The delivery of a guarantee is not subject per se to any government consents or filings. However, an arbitration clause incorporated into the guarantee may trigger a state consent for such arbitration clause if and when the guarantee is executed between a Kazakhstan natural person or Kazakhstan legal entity on the one side and a Kazakhstan state body, state enterprise, or enterprises in which Kazakhstan owns 50 percent or more capital on the other side.
5. Are there any solvency or net worth limitations/ restrictions?	No solvency or net worth limitations/restrictions are explicitly provided by the law. It is possible however that the constitutive documents of a guarantor may contain limitations on the amount of the guarantee to be issued and/or require a special corporate approval.

Security/Collateral	
6. Over what type of personal property can security be granted?	With certain limitations as set forth below, security can be granted over all types of personal property. Under Kazakhstan law security cannot be granted over: • Res extra commercium (e.g., certain types of guns, explosive materials, etc.) and • Rights which are "inextricably" linked to the identity of the creditor (e.g., the right to receive alimony payments). Additionally, Clause 301(3) of the Civil Code envisages that pledges of certain types of property may be prohibited or limited by operation of law (e.g., participatory interests in state-owned entities, certain land use rights—pledge of land use rights is prohibited with respect to public land, lands provided for purposes of defence and national security, forest fund, water fund etc., and "personal property," against which execution would not be permitted). Since different legal regimes apply to different types of property, it is not practicable to describe here all limitations that may apply when the parties intend to use such property as a subject of the security.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	General security agreements are not explicitly prohibited by Kazakhstan law. However, in most of the cases, the security agreements will be tailored to a specific asset.
8. Can security be taken over real estate?	Yes. The respective security agreement (e.g., mortgage agreement) will be subject to a mandatory state registration.
9. Can cash collateral be taken? How?	Yes. Generally, cash collateral is taken as security by means of a pledge agreement over a bank account. This pledge agreement is usually a tripartite agreement between the pledgor, the pledgee and the account bank. Although the state registration of this agreement is optional, it is nonetheless recommended because a registered pledge shall generally have a priority over an unregistered pledge.
10. Are pledges of shares permitted?	Yes, pledge of shares or participation interest is possible under Kazakhstan law.

11. Are stamp or other duties imposed?	No stamp duties or other forms of a transaction tax exist as such. However, the registration charges will apply if a security agreement is submitted by the parties for mandatory or optional state registration. The state registration charges are relatively small.
12. Must documents be executed in front of a notary?	No. However, the parties to a security agreement may and often choose to execute it in front of a notary (especially with respect to a mortgage of immovable property).
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Taking a security is not subject to any specific risks of claw-back and/or fraudulent transactions as compared to other types of transactions under Kazakhstan law. The Bankruptcy Law provides that legal actions (i.e. transactions) undertaken prior to the initiation of a bankruptcy case can be challenged by an administrator in line with the provisions of the Bankruptcy Law and the Civil Code. The general claw back (hardening) period is three years prior to the initiation of a bankruptcy case. A transaction may be invalidated based on a court decision only. As a result of finding a transaction invalid, the parties are restored into their previous position (i.e. they would have to return what they obtained by virtue of invalid transaction). The Civil Code provides for a number of grounds when a transaction may be invalidated. These include (without limitation) transactions made in breach of the requirements of the law in respect of the form, content and participants of a transaction; without obtaining of a required approval; as a result of mistake of significant importance, deception, or threat of either party; in contradiction with the objectives of a company's activities as provided in the law or its constitutional documents, etc. The Bankruptcy Law envisages additional grounds for the invalidation of transactions committed within three years before commencement of a bankruptcy / rehabilitation case. Such additional grounds for challenging legal actions of a debtor within the bankruptcy proceedings include: a. The price (or other terms) of a transaction is significantly unfavorable for a company compared to price (or respective terms) in similar transactions, provided that such transaction results in financial losses to the company.

	b. A transaction is not in line with the company's objectives or has been entered into ultra vires. c. The property is transferred (including for temporary use) for free or for a price which is substantially lower than what is charged for similar property in commensurate economic circumstances or without any cause to the detriment of the company's creditors. d. A transaction has resulted in the satisfaction of some creditors' claims in preference to other creditors' claims and is committed within six months prior to the initiation of a bankruptcy case. e. Gift contracts, except for those entered into in the ordinary course of business, are substantially different from transactions that were entered into a year ahead of the initiation of a bankruptcy case.
Financial Assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	There are no formal restrictions on 'financial assistance' or 'upstream guarantees' for general corporates in Kazakhstan. Such restrictions, however, may be established in the constituent documents of such corporates. The financial organizations and/or organizations with a specific license may be limited (though not necessarily) in their capacity to provide financial assistance and/or upstream guarantees due to the provisions of the laws which govern the activities of such organizations.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	No.
Fees/Taxes - Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	No stamp duties exist as such. Registration charges will arise on pledge or mortgage agreements. No charges arise in relation to guarantees.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	The exact amount of fees and taxes payable for registration, notarization or enforcement of a security will vary depending on the exact type and value of such security. In most of the cases, the amount of all fees and taxes will be nominal and adequate.

18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Debt financing is ordinarily tax-free on the principal of the loan and subject to a 15 percent withholding tax on the interest derived from the lending (any payments related to a loan excluding principal amount are recognised as interest under Kazakhstan law). Where the lender is a foreign resident, the rate of this withholding tax may be reduced based on an applicable double tax treaty. Similar to the above, all amounts paid under a guarantee, or from the enforcement proceeds which correspond to interest under the loan, shall become subject to the withholding tax in Kazakhstan.
Enforcement	
19. What is the bankruptcy/insolvency process?	Bankruptcy proceedings are conducted by a bankruptcy manager (appointed by the committee for insolvent debtors' affairs) and supervised by court. These proceedings may be initiated by either the creditors, or the state authorities or the debtor itself.
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	All creditors may generally act in enforcement. If the collateral is sold at an auction, then a third party nominated by a creditor shall conduct such auction. Kazakhstan law establishes specific foreclosure rules with respect to certain types of securities (e.g., subsoil use rights, shares in subsoil users, strategic assets, etc.).
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	On 31 October 2015, a new Civil Procedure Code was adopted in Kazakhstan. Article 501.1 of the Code provides that decisions, awards, settlement agreements, and writs issued by foreign courts, as well as arbitral awards issued by foreign arbitrage, are recognized and enforced by Kazakhstan courts only if the recognition and enforcement of such acts are: (i) envisaged by (a) Kazakhstan Law and/or (b) an international treaty, which has been ratified by Kazakhstan, or (ii) based on the principle of reciprocity. The principle of "reciprocity" is usually dictated by the existence of a bilateral treaty between Kazakhstan and another foreign state with respect to the reciprocal recognition and enforcement of court decisions. The latter is due to the fact that "reciprocity" is a broad and vague concept, the "application parameters" of which cannot be easily determined. In other words, in the absence of a respective treaty, it is very unlikely that a Kazakhstan court would recognize and enforce a foreign court decision based on reciprocity. Kazakhstan and the UK or any member of the EU or the USA have not concluded a bilateral treaty under which this country would agree to recognize and enforce decisions issued by courts of the other country.

	We believe, therefore, that any decision rendered by an English or EU or US court would not be recognized and enforced in Kazakhstan. At the same time, Kazakhstan has acceded to the New York Convention. This has been done by means of Decree No. 2485 "On accession of the Republic of Kazakhstan to the 1958 Convention on Recognition and Enforcement of Foreign Arbitral Awards" issued by the Kazakhstan President on 4 October 1995 (the Presidential Decree 2485). Accordingly, a foreign arbitral award obtained in a state which is a party to the New York Convention should, in principle, be recognized and enforced by a Kazakhstan court, subject to (i) the terms of the New York Convention and (ii) compliance with (a) the rules of civil procedure of Kazakhstan and (b) the provisions of the Kazakhstan Law "On Arbitration" dated 8 April 2016 (the New Arbitration Law) on recognition and enforcement of arbitral awards. Having said the above, we note that Article 501.1 of the Civil Procedure Code specifically requires ratification of an international treaty in order for such treaty to become applicable to recognition and enforcement of foreign arbitral awards (while the previous version of the civil procedure code, which was effective until 31 December 2015, did not refer to any particular condition (including ratification) for an international treaty to be binding on Kazakhstan). Technically, Presidential Decree 2485 is not a ratification act but rather an accession act. The point that is not apparent is whether the accession by Kazakhstan to the New York Convention by means of Presidential Decree 2485 amounts to ratification. If Kazakhstan accedes to an international treaty but does not ratify it, then the said treaty shall still apply in Kazakhstan but to the extent that, and as long as, it does not contravtene the local laws.

Having reviewed the applicable laws from a historical perspective and based inter alia on the conclusion of Resolution No.2 of the Constitutional Court of the Republic of Kazakhstan "On official interpretation of subparagraph 7 of Article 54 of the Constitution of the Republic of Kazakhstan" dated 18 May 2006), we are of the view that the New York Convention should be treated as being ratified by Kazakhstan.

Notwithstanding the aforementioned, we note that the number of cases related to the enforcement of foreign arbitral awards in Kazakhstan has been small, and, as a consequence, Kazakhstan courts have limited experience in this regard. On a separate note, under Article 501.3 of the Civil Procedure Code, there is a three-year statute of limitations on the enforcement of arbitration awards in Kazakhstan.

The New Arbitration Law came into effect on 20 April 2016 and repealed the Kazakhstan Law "On Local Arbitration Court" dated 28 December 2004 and the Kazakhstan Law "On International Arbitration" dated 28 December 2004. The following restrictions and limitations as set forth by the New Arbitration Law are of particular importance (together, the Arbitration Restrictions).

	• No Jurisdiction Rule. Article 8.8 of the New Arbitration Law envisages that an arbitration court shall not have jurisdiction over the disputes which: (1) affect the interests of juveniles, (2) affect interests of fully or partially incapacitated persons, (3) relate to rehabilitation or bankruptcy, (4) are between the entities which have status of natural monopolists and the consumers of their services, (5) are between state bodies, and (6) are between quasi-state sector entities. Article 3.1.31 of the Budget Code of the Republic of Kazakhstan dated 4 December 2008, as amended, provides a very broad definition for the term "quasi-state sector entities." In particular, this term includes state enterprises, limited liability partnerships, joint stock companies, including national management holdings, national holdings, national companies, whose founder, participant or shareholder is the state, as well as subsidiaries, dependent entities and other legal entities affiliated with them in accordance with laws of the Republic of Kazakhstan. • No Jurisdiction Rule. Article 8.8 of the New Arbitration Law envisages that an arbitration court shall not have jurisdiction over the disputes which: (1) affect the interests of juveniles, (2) affect interests of fully or partially incapacitated persons, (3) relate to rehabilitation or bankruptcy, (4) are between the entities which have status of natural monopolists and the consumers of their services, (5) are between state bodies, and (6) are between quasi-state sector entities. Article 3.1.31 of the Budget Code of the Republic of Kazakhstan dated 4 December 2008, as amended, provides a very broad definition for the term "quasi-state sector entities." In particular, this term includes state enterprises, limited liability partnerships, joint stock companies, including national management holdings, national holdings, national companies, whose founder, participant or shareholder is the state, as well as subsidiaries, dependent entities and other legal entities affiliated with them in accordance with laws of the Republic of Kazakhstan. • Prior Consent Rule. Article 8.10 of the New Arbitration Law provides that an arbitral court is not entitled to consider a dispute between Kazakh natural persons and/or Kazakh legal entities, on the one side, and the state bodies, state enterprises as well as legal entities in which 50 percent or more of the voting shares (participatory interest) are directly or indirectly owned by the state (together the "State-Owned Entities"), on another side, without consent of a relevant competent body obtained by a State-Owned Entity prior to the entry into an arbitration agreement.

	• No Jurisdiction Rule. Article 8.8 of the New Arbitration Law envisages that an arbitration court shall not have jurisdiction over the disputes which: (1) affect the interests of juveniles, (2) affect interests of fully or partially incapacitated persons, (3) relate to rehabilitation or bankruptcy, (4) are between the entities which have status of natural monopolists and the consumers of their services, (5) are between state bodies, and (6) are between quasi-state sector entities. Article 3.1.31 of the Budget Code of the Republic of Kazakhstan dated 4 December 2008, as amended, provides a very broad definition for the term "quasi-state sector entities." In particular, this term includes state enterprises, limited liability partnerships, joint stock companies, including national management holdings, national holdings, national companies, whose founder, participant or shareholder is the state, as well as subsidiaries, dependent entities and other legal entities affiliated with them in accordance with laws of the Republic of Kazakhstan. • Prior Consent Rule. Article 8.10 of the New Arbitration Law provides that an arbitral court is not entitled to consider a dispute between Kazakh natural persons and/or Kazakh legal entities, on the one side, and the state bodies, state enterprises as well as legal entities in which 50 percent or more of the voting shares (participatory interest) are directly or indirectly owned by the state (together the "State-Owned Entities"), on another side, without consent of a relevant competent body obtained by a State-Owned Entity prior to the entry into an arbitration agreement. • Choice of Law Limitation. According to Article 44.1 of the New Arbitration Law, in considering a dispute involving a State-Owned Entity, an arbitration court shall apply Kazakhstan Law as the substantive law unless otherwise is set forth by international treaties ratified by Kazakhstan.

	The provisions of the New Arbitration Law do not clearly differentiate between domestic and outside (foreign) arbitrations. Accordingly, and taking into account that the said Law has not been tested yet, it is not apparent whether and to what extent the Arbitration Restrictions shall apply to an outside (foreign) arbitration which involves a Kazakh counterparty. Nonetheless, based on the reasonable interpretation of the Preamble and Article 57 of the New Arbitration Law, one may argue that the Possibility to Revoke Arbitration Agreement and the Choice of Law Limitation shall apply only to the activities of domestic arbitration courts (i.e., arbitrations with a seat in Kazakhstan), whereas the No Jurisdiction Rule and the Prior Consent Rule shall apply equally to the activities of both domestic and outside (foreign) arbitration (i.e., arbitration with a seat outside Kazakhstan). It remains to be seen, however, how the Kazakhstan courts would actually interpret the Arbitration Restrictions in question. In addition to the above, please note that Kazakhstan Civil Procedure Code grants the Kazakhstan court mandatory exclusive jurisdiction over inter alia: (i) claims relating to rights on immovable property located in Kazakhstan; (ii) claims against transportation carriers in Kazakhstan arising under transportation contracts; (iii) claims for compensation of damages inflicted by breach of jurisdictional immunity of the Republic of Kazakhstan and its property by a foreign state; (iv) special proceedings (proceedings in which a party challenges the lawfulness of the actions or resolutions of the state bodies/officers); and (v) certain special action proceedings (proceedings in which a claimant requests a declaration of a certain legal status or legal fact). In such circumstances, the Kazakhstan court may not recognize the jurisdiction of an arbitral tribunal or of a foreign court, even where the contracting parties have an otherwise valid agreement to confer jurisdiction to one of the same.

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	As a general rule, if one of the parties to an agreement is a non-resident of Kazakhstan, then the choice of foreign law to govern such agreement shall be recognized and enforceable in Kazakhstan. However, please note that Article 1090.1 of the Civil Code sets out certain circumstances in which a court may apply Kazakhstan Law in lieu of the foreign law chosen by the contracting parties to govern an agreement, including where the application of foreign law "would contradict principles of jurisprudence and order of the Republic of Kazakhstan (the public order of the Republic of Kazakhstan)." Moreover, the same Article further provides that where the application of imperative norms under Kazakhstan Law has particular importance for ensuring the rights and interests of the parties that are protected by law, such norms shall apply irrespective of the underlying governing law. Although we do not believe that these concepts are intended to apply to ordinary commercial transactions, they are neither well-defined nor adequately tested under Kazakhstan law and could potentially be applied by a court or arbitral tribunal in their discretion notwithstanding the agreement of the parties under the respective agreement.

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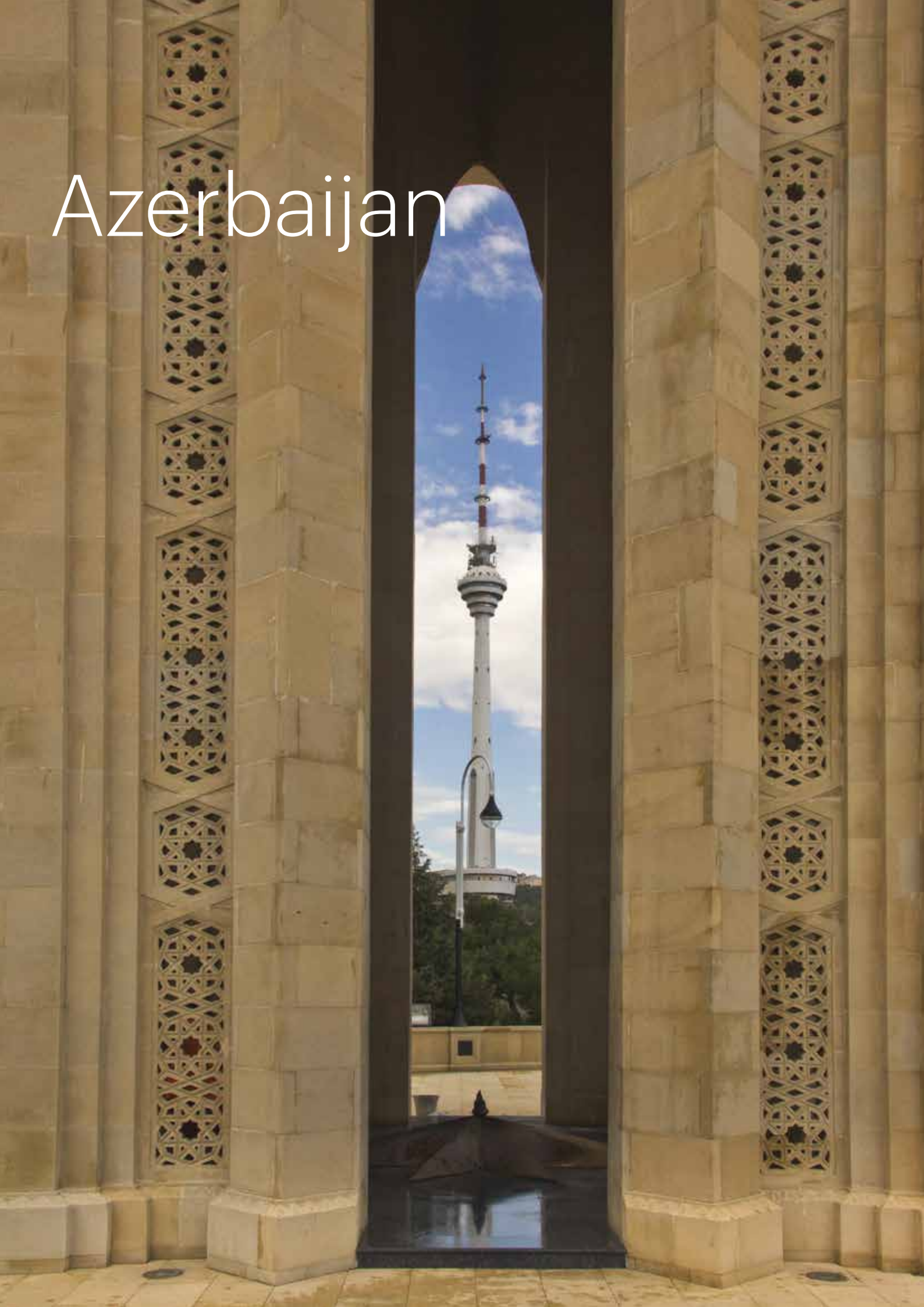
Azerbaijan



Azerbaijan

Obligations	
1. What are the types of obligations that may be secured?	Under the Civil Code of 1999 and the Law on Mortgages, any future or current obligations may be secured including those which typically arise under or in connection with a loan agreement, whether present or future, actual or contingent or owed jointly or severally or in any other capacity.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	No formal restrictions as such exist in Azerbaijan. However, the granting of any form of credit support for another party's obligations (whether a suretyship, guarantee, pledge or other security) risks challenge within the 90-day hardening period if the security giver enters insolvency proceedings. (There is also a separate one-year related-party transaction rule, which would apply, inter alia, to a person who owns or otherwise controls at least 25% of the shares of the debtor.) This is due to the lack of a carve-out in the Bankruptcy and Insolvency Law for such transactions. Following recent legal reforms, the definition of a related party has been significantly expanded. Additionally, where the value of a related party transaction is equal to or exceeds 5 percent of the relevant company's total assets, such transaction shall be entered into based on the opinion of an independent auditor engaged and a resolution of the general meeting of its disinterested shareholders, adopted by a simple majority. If the value of the related party transaction is less than 5 percent of the company's total assets, it must be approved by either the general meeting of shareholders, the supervisory board or the management board of the company, in accordance with the charter of the company. A transaction entered into in violation of the above-mentioned rules may be challenged by the company and/or its shareholders in the courts.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	No.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No, unless it is a state guarantee which is subject to approval of different state bodies such as Cabinet of Minister, Ministry of Finance and etc.
5. Are there any solvency or net worth limitations/ restrictions?	In respect of legal entities and entrepreneurs (subject to the Bankruptcy and Insolvency Law), there is a risk that the guarantee may be found invalid in insolvency proceedings of the security giver within the 90-day (or one-year as the case may be) hardening period (see discussion above). There is also a risk of any guarantee being deemed a suspect transaction, subject to the Bankruptcy and Insolvency Law (see above). Furthermore, related-party security will invariably involve a higher degree of risk.

Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over personal property which is tangible or intangible. Tangible personal property includes: goods, machinery, equipment, hard and soft commodities, ships, aircraft and other vehicles. Intangible personal property includes shares and other securities, intellectual property, and statutory, contractual, equitable or other rights to the payment of money, the performance of obligations or the possession or use of tangible assets owned by others.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	There is no specific form for a security agreement other than that it be in writing. However, the law requires that certain information be included into the security agreement. Some of the security agreements related to the encumbrance over immovable property and registered movable property must be notarized.
8. Can security be taken over real estate?	A mortgage is created by entering into a notarized and publicly registered agreement or by issuing a mortgage certificate. A mortgage agreement over immovable property must be notarized with a public notary located in the same locale as the collateral. The notarized mortgage agreement must then be registered with the relevant office of the State Registry Service of Immovable Property under the State Committee on Property Issues (the 'Register'). Please note that foreign entities may freely acquire title to real property (e.g., buildings, premises and structures firmly connected to land) on the same basis as Azerbaijani entities, although foreign entities and individuals may not own land plots. Azerbaijani subsidiaries of foreign entities may generally acquire either real property or land without limitation. If a foreign entity acquired ownership over land due to foreclosure it has to be disposed of within one year.
9. Can cash collateral be taken? How?	A pledge of cash is perfected by entering into a written pledge of cash, to which the account bank may also be a party.

10. Are pledges of shares permitted?	A pledge over shares (participatory interests) in the charter capital of Azerbaijani legal entities must be registered. Depending on whether or not a pledge agreement contained an extrajudicial enforcement clause and was notarized, the agreement on the pledge of shares can be enforced by a court decision or by a notarial writ. In both cases, the pledged shares must be sold through a public auction. The pledge of shares is subject to registration with the Financial Markets Supervisory Chamber Public Legal Entity (the "FMSC").
11. Are stamp or other duties imposed?	Fixed state and notarial duties and charges apply for the notarization of a mortgage agreements and its registration, if the security is subject to registration with the relevant state authorities. A separate fee may be payable to banks for guarantees. The rates of state and notary duties are fixed by law and cannot be modified, though these are usually nominal.
12. Must documents be executed in front of a notary?	A mortgage agreement must always be notarized. Furthermore, if a lender wants to enforce without applying to a court (by a notarial writ (extrajudicial enforcement),) the relevant pledge agreement must be notarized.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes. See, e.g., 'Enforcement' below. Security may also be clawed back if taken fraudulently or otherwise in violation of law (see, e.g., 'Guarantees,' above).
Financial Assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	No formal restrictions as such exist in Azerbaijan. However, the granting of any form of financial assistance for another party's obligations (whether a suretyship, guarantee, pledge or other security) risks challenge within the 90-day hardening period if the security giver enters insolvency proceedings. (There is also a separate one-year related-party transaction rule, which would apply, inter alia, to a person who owns or otherwise controls at least 25 percent of the shares of the debtor.) This is due to the lack of a carve-out in the Bankruptcy and Insolvency Law for such transactions.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	Given the absence of statutory carve-out in the Bankruptcy and Insolvency Law there are no reliable means of whitewashing against this risk.

Fees/Taxes - Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Please see our response to "Security/Collateral" above. There is no legal way for elimination or minimizing of said notary and registration fees.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Notary fees range from AZN 30 to AZN 200, depending on the physical location, type and value of the secured property. The fees for the registration of the property may vary depending upon the type of the property. For example, the fee for the registration of a mortgage over immovable property is AZN 60-80. The fee for the enforcement of the security upon default of the debtor depends upon the method of foreclosure (judicial, extra-judicial or via open market sale). In an extra-judicial proceeding the court bailiff will charge for its services depending upon the type and location of the security (usually in the amount of up to 7 percent of the value of the property). In a judicial proceeding the fee for the application to the court of first instance is from AZN 20 to AZN 30, depending on the amount of the claim. No taxes arise for the notarization, registration or enforcement of security.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	In general, a withholding tax applies to non-residents who do not have a permanent establishment in Azerbaijan, but who receive income from Azerbaijani sources. If a non-resident has a registered office in Azerbaijan, no withholding tax will apply (other than in the event of the payment of dividends or interest, where the withholding will anyway apply, except with regard to interest payable to Azerbaijani permanent establishments of non-resident banks or financial leasing companies). Dividends paid by an Azerbaijan resident enterprize are subject to a 10 percent withholding tax at the source. Interest paid by an Azerbaijan resident or the permanent establishment of a non-resident is also subject to a withholding tax at the source of 10 percent.

Enforcement	
19. What is the bankruptcy/insolvency process?	Bankruptcy proceedings are judicial proceedings conducted by the court and supervised by the bankruptcy administrator (who is appointed by the court). They may be initiated by creditors or authorized state executive authorities, as well as by the debtor himself. The process of involuntary bankruptcy includes the following steps: 1) submission of a claim to the court; 2) publication of notification to the creditors; 3) appointment of the administrator of the property; 4) meeting of the creditors; 5) registration of claims and the evaluation of the remaining assets of the company; 6) sale of assets via an open auction; 7) distribution of assets in accordance with the order of priority; 8) reporting to the court and creditors; and 9) final decision of the court on completion of bankruptcy proceeding.
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	Upon the declaration of bankruptcy, foreclosure proceedings are automatically suspended by operation of law. We note that the debtor cannot dispose of any part of its property for the purpose of carrying out economic activity or satisfying its obligations, or for any other purposes from the institution of insolvency proceedings. Such decisions may be made by the debtor only with the permission of the court, the administrator of the property or the temporary administrator of the property. The administrator who is appointed at the time of the insolvency proceeding of the company has the right to apply to a court and request a restriction over the transfer or encumbrance of the rights of the debtor over its property if such transfer or encumbrance had occurred (i) when the debtor was insolvent; (ii) ninety (90) days before the bankruptcy was initiated; or (iii) during the year proceeding the filing of the bankruptcy, if the creditor or a guarantor is a related party of the debtor.

21. Would a court recognize a foreign judgment without reexamining the merits of a case?	In the absence of a bilateral treaty on the mutual recognition of court judgements, the enforcement of a foreign court judgement in Azerbaijan is subject to the exclusive discretion of the Supreme Court of Azerbaijan on the basis of reciprocity. Please note also that, though Azerbaijan has not entered into specific agreements on the enforcement of judgements of foreign courts, it has entered into a number of agreements on legal assistance in civil matters (such as Turkey, Iran, the UAE and Bulgaria, as well as the CIS countries), which facilitate the obtaining of evidence and service of process. Some of these agreements also include provisions on the recognition and enforcement of decisions of foreign courts. We understand that, notwithstanding the legal possibility for the enforcement of a foreign judgement in Azerbaijan through the procedures outlined below, as a practical matter, foreign court judgements are rarely enforced in the absence of an underlying treaty obligation. When issuing a decision, the Supreme Court will take into account the existence of international and/or bilateral treaties and may also consider the fact whether similar judgements and awards of Azerbaijani courts are recognised by the relevant country (i.e., apply the principle of reciprocity). There are a number of grounds under which the Supreme Court may refuse the recognition of a foreign court or arbitral award and inter alia where the local Azerbaijani courts have exclusive jurisdiction in certain matters and such cases cannot, therefore, be arbitrated or tried in foreign courts. These include: • actions concerning property rights over immovable property, including the lease or pledge of such property, if the property in question is located in Azerbaijan; • actions regarding the recognition of a patent, trademark or other right, if such right is registered, or application for registration has been filed, in Azerbaijan; • actions against carriers arising out of contracts for the carriage of freight.

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Generally, Azerbaijani law allows parties to choose the law that would govern their relationships if there exists a so-called foreign element, which is traditionally considered to be present if there is a fact, an event or a transaction in the legal relationship that it is connected with a foreign legal system so closely as to justify application of such a foreign legal system. Common examples deemed to establish the existence of a foreign element are: (i) where one of the parties to a legal relationship is a foreigner, a foreign legal entity, or a foreign state; (ii) where a property that is the subject of the legal relationship is located in a foreign country; and/or (iii) where events as a result of which the civil relationship in question was created, altered, or terminated, took place in a foreign country (e.g. execution and/or performance of a contract, occurrence of an insurance event, injury, etc.). Having said this, please note that even if the foreign element were to exist and therefore the choice of foreign law would be a valid choice of law, the applicability of such foreign law would be limited to certain contractual matters, such as issues concerning the validity, interpretation, and termination of a contract; the determination of the rights and responsibilities of the parties to a contract; the performance of, failure to perform, or improper performance of obligations under a contract; as well as the assignment of rights and obligations under a contract. Also mandatory norms of Azerbaijani law will apply regardless of the contractual provisions with respect to the governing law. Finally, provisions of the foreign law will not be applicable in Azerbaijan if they contradict the Constitution or any piece of legislation adopted through a referendum.

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Europe

Belgium

Belgium

Obligations	
1. What are the types of obligations that may be secured?	All kinds of obligations, present and future, can be secured, for example loan obligations, investments, projects, export obligations. Future obligation must be sufficiently determined or determinable.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Upstream and downstream guarantees can be provided upon certain legal requirements taking into account the precedent case law of the French Cour de Cassation in the Rozenblum matter[1] and provided it is within the scope of the corporate object and purpose of the legal entity. The Belgian law applies to all companies registered in Belgium, and whether or not the shareholders are based in a foreign country should not make any difference.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	Indeed, the guarantor must have a corporate benefit and the scope of the guarantee should be subject to limitations which will differ depending on whether the guarantor is a legal entity who has employees or is simply a holding company.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No.
5. Are there any solvency or net worth limitations/ restrictions?	Belgian law does not impose a guarantee limitation by operation of law (as is the case in other European jurisdictions), but only the corporate benefit may impact on the ability of a Belgian company to enter into a fully fletched up/cross-stream guarantee which on its turn may lead to the inclusion of a guarantee limitation in order for the Belgian company to get comfort in providing financial solidarity to the group of companies to which it forms part of. If limitation language is required, case law and legal doctrine consider a limitation between 75 and 95% of net assets to be a reasonable limitation, which will largely take out director's liability issues in this respect.

1 Cass.crim., 4 février 1985, Rozenblum, Rev.Sociétés, janvier –mars 2000, p.25 et.s.

Security/Collateral	
6. Over what type of personal property can security be granted?	Receivables, cash / deposit accounts, inventory / equipment, ships and planes, commodities, intellectual property, insurance, shares, real estate, businesses and agricultural exploitation. Under certain conditions future assets can be secured. [Retention of title and transfer of receivables are two other options that are available to the security taker.]
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	As from the moment the new law on securities dated 11 July 2013[2] comes into force,all securities have to be tailor made to a specific asset and registered in a central register. Currently one still has a floating charge, but this is only to the benefit of a credit institution.
8. Can security be taken over real estate?	A mortgage can be taken over real estate.
9. Can cash collateral be taken? How?	Yes, by a bank account pledge agreement if allowed under the terms and conditions of the credit institution. Often credit institutions are reluctant to waive their priority rights on the proceeds of the bank account.
10. Are pledges of shares permitted?	Yes.
11. Are stamp or other duties imposed?	Registration duties and inscription fees apply.
12. Must documents be executed in front of a notary?	A mortgage needs to be executed by a notary public.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	• In case of insolvency proceeding if what was paid under a specific transaction materially exceeds the value received by the consideration there is a look back period of six months as from the date of the insolvency judgement. The directors have to file in insolvency one month of the company not being able to pay its debts.
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Belgian law does not impose a legal restriction, but only the corporate benefit may impact on the ability of a Belgian company to enter into a fully fletched up/ cross-stream guarantee which in its turn may lead to the inclusion of a guarantee limitation in order for the Belgian company to get comfort in providing financial solidarity to the group of companies to which it forms part of.

1 Cass.crim., 4 février 1985, Rozenblum, Rev.Sociétés, janvier –mars 2000, p.25 et.s.

15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	If limitation language is required, case law and legal doctrine consider a limitation between 75 and 95% of net assets to be a reasonable limitation, which will largely take out directors' liability issues in this respect.
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	If the security documentation is signed outside Belgium, no stamp duties are required.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Fees for searches differ depending on the search carried out. Due to the fact that the central registration database is not in place yet, one physically has to go and check the registries with the different authorities. The fees for searches are relatively low. Once the central database is in place, new registration duties will come into force. Enforcement of mortgages and the costs related to it will depend on the value of the property. In case a court judgement is rendered, a registration duty of three percent on the monetary amount is due.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Withholding tax may be due on interest paid by a Belgian company to a foreign credit institution, but this can be reduced to zero in case of a double tax treaty. Legal advice needs to be sought on a case by case basis.
Enforcement	
19. What is the bankruptcy/insolvency process?	Upon the appointment of a trustee or an insolvency practitioner security holders are no longer able to enforce their claim. From the moment of the bankruptcy, all outstanding claims become immediately due and payable and the creditor has to file his claim in the bankrupt estate. We currently have no categories of creditors' committees as this exists in other countries. A new draft insolvency law is being prepared and will provide changes in this regard.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	Belgian legislation accepts facility agents and trustees for collateral provided under the Belgian Law on financial collateral arrangements of 15 December 15, 2004 implementing the Directive 2002/47 EC of 6 June 2002 on financial collateral arrangements and they enjoy the same rights as the initial collateral taker. Under the new security law this right will be extended to other sorts of securities.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	The proceedings for recognizing or enforcing foreign judgements in Belgium differ depending on whether or not the foreign judgement is issued by an EU Member State or by a non-EU Member State. Non- EU judgements must either be recognized or declared enforceable by a Belgian court, prior to being recognized and becoming enforceable in Belgium. Belgian courts will not review the foreign judgements on its substance. It can however refuse the foreign judgement on the basis of violation of rights of debtors or public policy rules (Private International Law of 16 July 2004, referred to as the PIL Code). If the judgement is rendered by an EU Member State, recognition and enforcement of such judgement (in commercial or civil matters) will be done in accordance with the revised Council Regulation (EC) N° 1215/2012 dated 12 December 2012 on the jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. A final court decision issued by an EU Member State is recognized and immediately enforceable in another EU-Member State, with no prior exequatur being required.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Yes, subject to certain restrictions regarding the law applicable to the effectiveness of the pledge vis a vis third parties and the debtor of the collateralized assets.

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Czech Republic

Czech Republic

Obligations	
1. What are the types of obligations that may be secured?	Under Czech law all types of debts arising under the loan agreement can be secured, whether such debts are, in particular: • Present or future • Actual or contingent • Pecuniary or non-pecuniary • Owed jointly or severally • Of a principal debtor or a guarantor or • Secured partially or as a whole. The secured debts must be specified with sufficient certainty (i.e., by certain amount or an amount must be determinable during the existence of the security). Additionally, the pledge may be established also to secure the future debts. If the debts are secured by a financial or bank guarantee, such guarantee must always be issued with respect to a certain amount.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes. A company can provide upstream and downstream guarantees for its affiliates subject to applicable limitation arising under respectable corporate governance rules without different treatment in case the foreign affiliates are involved.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	The directors of the company providing a guarantee are generally obligated to act on behalf of the company in the interest of the company and with due managerial care (péče řádného hospodáře). Consideration for a guarantee isn't unusual. If the directors fail such obligations and expose the company to the threat of bankruptcy, the director can be held liable. Also, any conflict of interest in transactions, whether existing or potential, must be reported to the general meeting, and, if general meeting or the supervisory body deem the conflict of interest relevant, they can prohibit the respective transaction. In addition, under Czech law any influential person (vlivná osoba) guarantees the creditors the satisfaction of the debts of the company if the company failed to repay the debts as a result of influence of the parent company. The law regulates the real influence of such influential person which can be made directly by a natural person, parent company or intermediary (in chaining structures). The influential person is liable for compensation of any damage caused by its influence, including damage caused to the shareholders. These rules do not apply if the influential person and the company form a group (koncern) and the damage is planned to be remedied by any advantage.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	Not under general law.
5. Are there any solvency or net worth limitations/ restrictions?	According to the Czech Civil Code, a person who may be sued in the Czech Republic and who has sufficient property is presumed to be an eligible surety (guarantor). However, this is a relatively new provision, and there are no other legal or academic sources or case law dealing with the specific meaning of "sufficient property".

Security/ Collateral	
6. Over what type of personal property can security be granted?	Recently introduced market practice provides for guarantee limitations that aim to avoid balance sheet insolvency of a guarantor. The security can be granted over any property, which is: a. Tangible (in particular: goods, equipment, commodities, plant and machinery, vehicles, ships, aircrafts, gas turbines, shares and negotiable instruments) or b. Intangible (in particular: intellectual property, receivables and statutory, contractual, equitable or other rights to the payment of money, the performance of obligations).
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Security agreements must be tailored to a specific asset or group of assets. However, if the assets are a part of the enterprise (závod or podnik), the security may be established over the whole enterprise which includes all assets comprising it as a collective asset (hromadná věc).

8. Can security be taken over real estate?	Yes, the security may be taken over real estate property (nemovité věci). The most frequently used instrument involves (i) creation of a mortgage over real estate property (zástavní právo k nemovitostem) and (ii) security transfer of a title (zajišťovací převod práva), when the real estate property is transferred to the creditor as security (the creditor becomes the owner) and after the satisfaction of the secured debts, the title is reversed to the original owner (automatically or by fiduciary transfer, if agreed). In addition, the quasi-security as (i) a negative pledge (zákaz zřízení zástavního práva) and (ii) a ban of transferring or encumbering (zákaz zcizení a zatížení) can be established. If the real estate property is subject to registration into the Real Estate Cadastre (katastr nemovitostí), the mortgage comes into existence upon the registration in the Real Estate Cadastre. Real estate property includes: • Land plots • Underground structures with a specific purpose (such as subways and wine cellars) • Rights *in rem* attached to the real estate specified under the points above • Other rights defined by the law as real estate (such as a right to build) and • Objects that are declared by statute as not being a part of land provided that these objects cannot be removed without their substance being destroyed. Since Czech civil law reform in January 2014 a concept of *superficies solo cedit* (buildings belong to land) has been reintroduced into Czech law.

	Therefore, land includes: • Areas under and above the surface of the land • Buildings and other facilities erected on the land (except for temporary structures) • Items and objects embedded in the land and attached to walls erected on the land • Underground structures that are not deemed real estate even if they extend to another land plot • Fixtures (fix-mounted goods, machinery and equipment), unless a reservation (výhrada) concerning the fixture is recorded in the Real Estate Cadastre, provided that they are owned by the same person. Please note that as a residue of old Czech civil law, some of these appurtenances have not merged with the land if they were owned by different persons or individually burdened by security. Such appurtenances are eligible for separate mortgage.
9. Can cash collateral be taken? How?	Yes. Either in form of pledges over bank account or, in certain type of transactions the cash deposits can be used as financial collateral. Providing financial collateral, including restrictions for providers, is regulated by the Financial Collateral Act (Act. No. 408/2010 Coll.), which implemented Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements.

10. Are pledges of shares permitted?	Yes. The regime of such pledges depends on type of the company in which the share is pledged. a. The pledge of shares (akcie) as securities issued by a joint-stock company (akciová společnost) also differs depending on their form. If the shares are issued in certified form (listinné akcie), the shares are pledged by marking the security endorsement (rubopis) and handing over to the pledgee. The shares in book entry form (zaknihované akcie) are pledged by recording the pledge on the owner's account (účet vlastníka) in the securities register. b. The pledge of ownership interest (podíl) in a limited liability company (společnost s ručením omezeným) is effective from registration into the Commercial Register (obchodní rejstřík) maintained by the respective court. If the ownership interest is issued in certified form (kmenový list) the ownership interest is pledged as shares in certified form.
11. Are stamp or other duties imposed?	No stamp or other duties are imposed for the execution of loans, guarantees or security agreements except for fees charged by notaries for the execution of notary deeds and administrative fees for registration of security into the public registers (veřejné rejstříky).
12. Must documents be executed in front of a notary?	The form of the security agreements depends on the type of assets. The security agreements may be executed in (i) a simple form with plain signatures; (ii) simple form with signatures verified by the Notary; or (ii) a form of a notarial deed made by the Notary. In order to be valid and enforceable, the following security must be executed: a. With signature verified by the Notary (or by advocates authorized to verify signatures): (i) Mortgage over real estate property (ii) Pledge over ownership interest (iii) Pledge over trademarks b. Solely in a form of a notarial deed issued by the Notary: (i) Pledge over collective assets (ii) Pledge over enterprise

	(iii) Real estate property which is not subject to registration into the Real Estate Cadastre c. Optionally in a form of a notarial deed issued by the Notary (if the parties have agreed to create the pledge via registration in the Pledge Register (Rejstřík zástav)): (i) Pledge over receivables under agreements or bank accounts (ii) Pledge over movable assets (movité věci). The form of a notarial deed is required for pledge of assets to be registered into the Pledge Register. Czech law requires the registration only for the movable assets and the enterprise; however, the pledge over receivables may be registered into the Pledge Registry if the security agreement is executed in the form of a notarial deed. No other assets may be registered into the Pledge Register.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes, such transactions are subject to hardening periods that vary from one (in case of transaction between unrelated parties) to five years (in case of fraudulent transactions).
Financial Assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Under Czech law financial assistance is considered as (i) advance payments; (ii) loans; (iii) security; (iv) guarantees; and (v) other instruments provided by a company to acquire the share in such company or secure the debt under a loan provided for the purchase of the share. The financial assistance is prohibited if it would cause the bankruptcy (úpadek) of the providing company. The upstream guarantee is generally permitted; however, an expert valuation may be required for the transfer pricing requirements.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	The financial assistance is admissible subject to whitewash procedure, which differs depending on the type of the company providing the financial assistance. In case of a joint-stock company, the whitewash criteria are rather strict and include a requirement to create the reserve funds. For a limited liability company, the whitewash procedure is generally less stringent.

Fees/Taxes- Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	No stamp or other duties are imposed for the execution of loans, guarantees or security agreements except for fees charged by notaries for the execution of notary deeds and administrative fees for registration into the public registers.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	The registration of pledge or mortgage into the public registers is subject to the following administrative fees: • For the registration of mortgage of the real estate property into the Real Estate Cadastre, the administrative fee of CZK 1,000 (approx. €38) • For the registration of pledge of ownership interest into the Commercial Register, the administrative fee of CZK 2,000 (approx. €76) • The registration of pledge of trademarks into the Trademarks Registry (Rejstřík ochranných známek), the administrative fee of CZK 600 (approx. €23) • The registration of pledge or negative pledge into the Pledge Register the administrative fee of CZK 600 (approx. €23). If the pledge agreement is made by the Notary in the form of a notarial deed (see above), notary fees are determined either on the basis of the fixed amount for the respective act or calculated as a percentage from the value of the secured debts up to a maximum amount of CZK 65,000 excl. VAT (approx. €2,400).

18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Generally no. But the application of withholding tax will depend on bilateral double taxation treaties.
Enforcement	
19. What is the bankruptcy/insolvency process?	Under the Czech Insolvency Act (Act. No. 182/2006 Coll.), the company may be the subject of insolvency proceedings if it is actually insolvent or, in some cases, where insolvency is imminent. Such situations may lead to the opening of insolvency proceedings, if the company (i) is not able to pay debts falling due and (ii) has liabilities exceeding its assets. If the company meets one of the insolvency tests above, it has a statutory obligation to file a petition for insolvency without undue delay or face civil liability to creditors, and any creditor of the company is entitled to file a petition for insolvency in respect of the company which they consider to be insolvent. Any petition for insolvency should be published by the insolvency court in the Insolvency Register (insolvenční rejstřík) (accessible online by the public) within two hours from the filing of a petition. It is also possible to obtain a certificate of the company stating that it has not been declared bankrupt issued by the Insolvency Register. The Czech Insolvency Act provides two fundamental methods to resolve insolvency: (i) bankruptcy liquidation (konkurs) and (ii) reorganization (reorganizace). From the moment of the publication of respective petition in the public register, any security may be enforced only in accordance with the Czech Insolvency Act. The direct enforcement against the pledgor is impossible once the petition is filed.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	Generally, the person entitled to act on behalf of the creditor is also entitled to act in enforcement. In the court's decision on insolvency, the Czech insolvency court must, among other things, appoint the insolvency trustee. The role of the insolvency trustee is mainly to dispose with the property of the debtor and, if the debtor is recognized by the court as insolvent, liquidate the assets of the debtor in bankruptcy and satisfy its creditors.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Czech courts, subject to rules provided in the Czech Act on Private International Law (Act No. 91/2012 Coll.), recognize and enforce any final judgment issued by a court of any state in the European Union under the Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Regulation Brussels I) or under the international treaties. In case of the recognition and enforcement of the arbitration awards, any award made following an arbitration conducted in any country which has acceded to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), will be recognized in the Czech Republic, subject to the provisions and exceptions set out in the Czech Arbitration Act (Act No. 216/1994 Coll.).
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Yes, the court will apply foreign law in accordance with the choice of governed law by the parties. However, if the relevant elements of the agreement connected to another jurisdiction, Czech court will give effect to the law of that jurisdiction.

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England and Wales

England and Wales

Obligations	
1. What are the types of obligations that may be secured?	English law is very flexible as to what obligations can be secured provided the drafting of the security document is sufficiently precise. Secured obligations can include those which: (a) are present, future, actual or contingent, capped or uncapped, quantified or unquantified; (b) arise in favor of future creditors under future transactions with future debtors; and (c) are direct and personal, joint or several or those of a principal debtor or a guarantor or surety.

Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	This is possible. However, the guarantee may be unenforceable in some circumstances if: (a) the giving of the guarantee involved a breach of directors' duties by the guarantor company's directors or (b) the guarantee is liable to be set aside in insolvency proceedings of the guarantor under the Insolvency Act 1986. Regarding (a), please see our answer to question 3 below. Regarding (b), when a company has entered into either of the insolvency procedures known as administration or liquidation, the main insolvency law grounds on which a guarantee it has given may be challenged are that the guarantee is either a transaction at an undervalue or a voidable preference. **Transaction at an undervalue.** A liquidator or administrator of an insolvent company can apply to court to have any transaction (not just a guarantee) unwound if: (a) the company received no consideration or significantly less consideration than it gave; (b) the company was insolvent when it entered into the transaction or as a result of it; and (c) the transaction was entered into in the two years immediately before the company's entry into an insolvency procedure. In a lending transaction, this is most likely to be relevant where the insolvent company has granted a guarantee. However, a court will not set aside a transaction meeting conditions (a) – (c) above if satisfied it was entered into in good faith and there were reasonable grounds for believing it would benefit the company. **Preference.** Similar rules apply where the company has entered into a transaction that gives a creditor a preference over other creditors, and where the company "was influenced by a desire" to prefer that creditor. Only transactions entered into in the six months before the onset of insolvency (or two years if the parties are connected) are vulnerable to a challenge on this basis.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	Yes. A director of an English company must act in a way he or she considers is likely to promote the company's success. If a beneficiary of a guarantee knows, or ought to know, that the guarantor's directors are breaching this duty in approving a guarantee (e.g. because the guarantor will receive insufficient corporate benefit), the beneficiary may not be able to enforce that guarantee. If a borrower is a subsidiary of the guarantor, the corporate benefit will usually be clear. In other situations, the benefit may be less obvious – especially if the lenders are taking an upstream guarantee. Well-drafted board minutes setting out the perceived benefits of the guarantee transaction (sometimes coupled with a shareholder resolution approving the guarantee) may often help minimize the risk of a successful challenge.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	Not under the general law. However, in appropriate cases, parties should check that consent is not required under a potentially applicable sanctions regime.
5. Are there any solvency or net worth limitations/ restrictions?	As to solvency, please see part (b) of our answer to question 2 above. As to net worth, please see the answer to question 14 below regarding the need for a company to maintain its capital.
Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over personal property which is tangible or intangible. Tangible personal property includes: goods, machinery, equipment, hard and soft commodities, ships, aircraft and other vehicles and major plant, such as gas turbines. Intangible personal property includes shares and other securities, intellectual property, and statutory, contractual, equitable or other rights to the payment of money, the performance of obligations or the possession or use of tangible assets owned by others.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	A company can grant general security over all of its assets as they fluctuate from time to time under a floating charge. Additional tailored security over specific high value, long-term assets (such as land, aircraft, major contracts or intellectual property) by way of a mortgage or fixed charge tends also to be taken. This is because the English priority rules tend to favor a creditor who holds and has fully perfected and registered such tailored, specific security. (For a summary of the nature of a mortgage or charge, please see the answer to question 8 below.)

8. Can security be taken over real estate?	Yes. Real estate can either be mortgaged or charged in favor of a lender or other creditor. Under a mortgage, title to the mortgaged asset is transferred to the lender, subject to an obligation to retransfer when the secured obligations are discharged. Under a charge, the charged asset is appropriated to the discharge of the secured obligations without a transfer of title to the charged asset to the chargee. An English law charge is broadly similar in concept to a US or civil law pledge or a US law security agreement.
9. Can cash collateral be taken? How?	Yes. Cash placed with a third party bank can be either assigned (mortgaged) or charged in favor of a lender. Where the cash is in an account with the lender, it should be charged in favor of the lender and not assigned. Cash placed with a lender can also be subject to express and implied rights of set-off. Pursuant to the Financial Collateral Arrangements (No 2) Regulations 2003, it is also possible to take security over cash under a title transfer financial arrangement. Broadly, this involves an outright transfer of title to cash by the security provider to the security taker, coupled with an obligation on the security taker to make an outright transfer of equivalent cash back to the security provider when the secured obligations have been discharged. These title transfer obligations are coupled with netting arrangements. Mortgages and charges of cash are the most common form of cash collateral used in lending transactions. Title transfer financial collateral arrangements tend not to be used in lending transactions, but are commonly used in connection with certain derivatives and capital markets transactions.
10. Are pledges of shares permitted?	Security over shares can be taken by way of mortgage or charge.
11. Are stamp or other duties imposed?	No stamp duty (or similar fee or charge) is payable on the creation of a security interest. On a transfer of shares, stamp duty is generally payable by the purchaser. However, any transfer of shares to a lender or its nominee when taking security, or in preparation to enforcing security over shares, will be free of stamp duty.
12. Must documents be executed in front of a notary?	Not under English domestic law. If the security provider or secured assets are situated outside England and Wales, it is prudent to seek advice on notarization requirements under local law. For various reasons, most English law security is created by deed. This involves slightly more complex execution procedures than are required for execution of a simple contract, but notarization is not required.

13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Please see our answer to question 2 above regarding transactions at an undervalue and voidable preferences. **Void floating charges** The other main basis under English insolvency law for setting aside the grant of security applies to floating charges. Between unconnected parties, a floating charge is invalid other than to secure new money advanced to the chargor if: (a) the chargor was insolvent at the time of granting the charge, or as a result of giving it; and (b) the charge was granted within one year of the onset of insolvency. (Different rules apply between connected parties.)
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	A public company or its subsidiaries (whether those subsidiaries are public or private companies) cannot provide "financial assistance" in relation to the acquisition of that public company. Financial assistance includes giving guarantees or security for any acquisition funding. The above prohibition does not apply where the target company is a private company. However, where a private company is acquired using debt funding, the lender still needs to consider a company's obligation to maintain its capital (as do the directors of the target company). The directors of the company need to reach a view that any guarantee or security to be granted by the company for the acquisition debt will not be enforced, so that no provision needs to be made in the company's accounts. Lenders will want to see board minutes stating that this is the view of the directors. Regarding upstream guarantees, please see our answer to question 2 above.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	Yes, re-registering any target company that is a public company as a private company – there being no prohibition on financial assistance for the acquisition of shares in a private company.
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	As noted in response to question 11, no stamp duty (or similar fee or charge) is payable on the creation of a security interest. This is also true of guarantees and similar credit support.

17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	As the following examples demonstrate, registration fees tend to be nominal. Search fees are even lower. Examples: (a) a fee of GB£23 is payable to register security granted by a company at Companies House (or GB£15 for security registered electronically); (b) the maximum fee for registering a mortgage at the Land Registry is GB£250 per property (a sliding scale applies depending on the amount secured or the value of the property). Notarization is not required under English domestic law. Most English law security can be enforced on a self-help basis (i.e. without the need to go to court) and without paying any fees.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	There is no UK withholding tax on indemnity payments. However, withholding tax is payable on interest payments. It is unclear whether payments under guarantees will be treated as indemnity payments or payments of interest for this purpose and the answer will depend on the particular facts of each transaction.

Enforcement	
19. What is the bankruptcy/insolvency process?	The most commonly used compulsory insolvency procedure for companies is administration. A company in administration is protected by a statutory moratorium. Among other things, under this moratorium, a lender may not start or continue legal proceedings against the company or enforce security granted by the company. The moratorium does not apply to certain types of cash collateral arrangement, nor to contractual set-off rights. However, if the administration does not facilitate a turnaround of the insolvent company, and the administration becomes a liquidation, contractual set-off rights will be replaced by a mandatory, statutory set-off. In a liquidation, the company's assets are disposed of to meets its liabilities. This is not a turnaround procedure, and there is no moratorium on enforcing security in a liquidation. Company voluntary arrangements (CVAs) are a statutory insolvency procedure by which a company can restructure its debts. A CVA is an agreement between a company and its unsecured creditors (and sometimes other creditors). It usually involves the creditors compromising their claims against the company. No court approval of the agreement is required. The directors, an administrator or a liquidator can propose a CVA. To take effect, the CVA must be approved by a majority of the creditors together holding more than three-quarters by value. The CVA must also be approved by a majority in value of the company's shareholders. Once approved, the CVA binds all creditors who were entitled to vote. It does not bind secured or preferential creditors, unless they have consented. Although a CVA is an insolvency procedure, the insolvent company's directors continue to run the company, unlike in an administration or a liquidation. There is no automatic moratorium on enforcement against a company during a CVA. However, most "small companies" (defined by turnover, asset value and number of employees) can apply to court for a 28-day moratorium at the start of a CVA. CVAs can also take place while a company is in administration under the shelter of the administration moratorium.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	In addition to the entity to whom the security is granted (usually the mortgagee or chargee), security documents usually allow the mortgagee or chargee to appoint a receiver to enforce the security. As the receiver is the agent of the entity who grants the security, though subject to the direction of the mortgagee or chargee, the receiver can give good title to the mortgaged or charged assets to a third party purchaser even if the security document has not transferred title to those assets to the mortgagee or chargee. The holder of fixed and floating charges over all or substantially all of the assets of a company can, in appropriate circumstances, appoint an administrator, who (among other things) may also enforce security. An agent can enforce a facility agreement—or other contracts—lenders have authorized it to administer. Security trustees can hold and enforce security on behalf of the lenders who are beneficiaries from time to time of a security trust. Broadly, and subject to exceptions, the English courts will enforce a final judgment for the payment of money without reexamining the merits of the case if that judgment has been issued by an appropriate court of any state in the European Union or the European Free Trade Area (i.e. Iceland, Norway and Liechenstein), the Commonwealth or Switzerland.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Broadly, and subject to exceptions, the English courts will enforce a final judgment for the payment of money without reexamining the merits of the case if that judgment has been issued by an appropriate court of any state in the European Union or the European Free Trade Area (i.e. Iceland, Norway and Liechenstein), the Commonwealth or Switzerland.

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Broadly yes, subject to exceptions, as long as the agreement is a contract rather than a security document and is not (for example) a contract of carriage, employment or insurance. However, if all elements relevant to the situation on the date of agreement was made (other than the choice of law) are located in another country, an English court will give effect to any provisions of the law of that other country which cannot be derogated from by agreement under that law. Further, the English courts: (a) may give effect to any overriding mandatory provisions of the law of the place of performance of an agreement, if those provisions make that performance unlawful; and (b) will consider the law of the place of performance of the agreement in relation to how the agreement is to be performed and the steps to be taken in the event of defective performance. An English court may also refuse to apply any provision of the chosen foreign law that would be manifestly incompatible with the public policy of England and Wales. For a security document, the law which an English court applies to determine the validity and effects of that document will depend on the type of asset subject to that security agreement.

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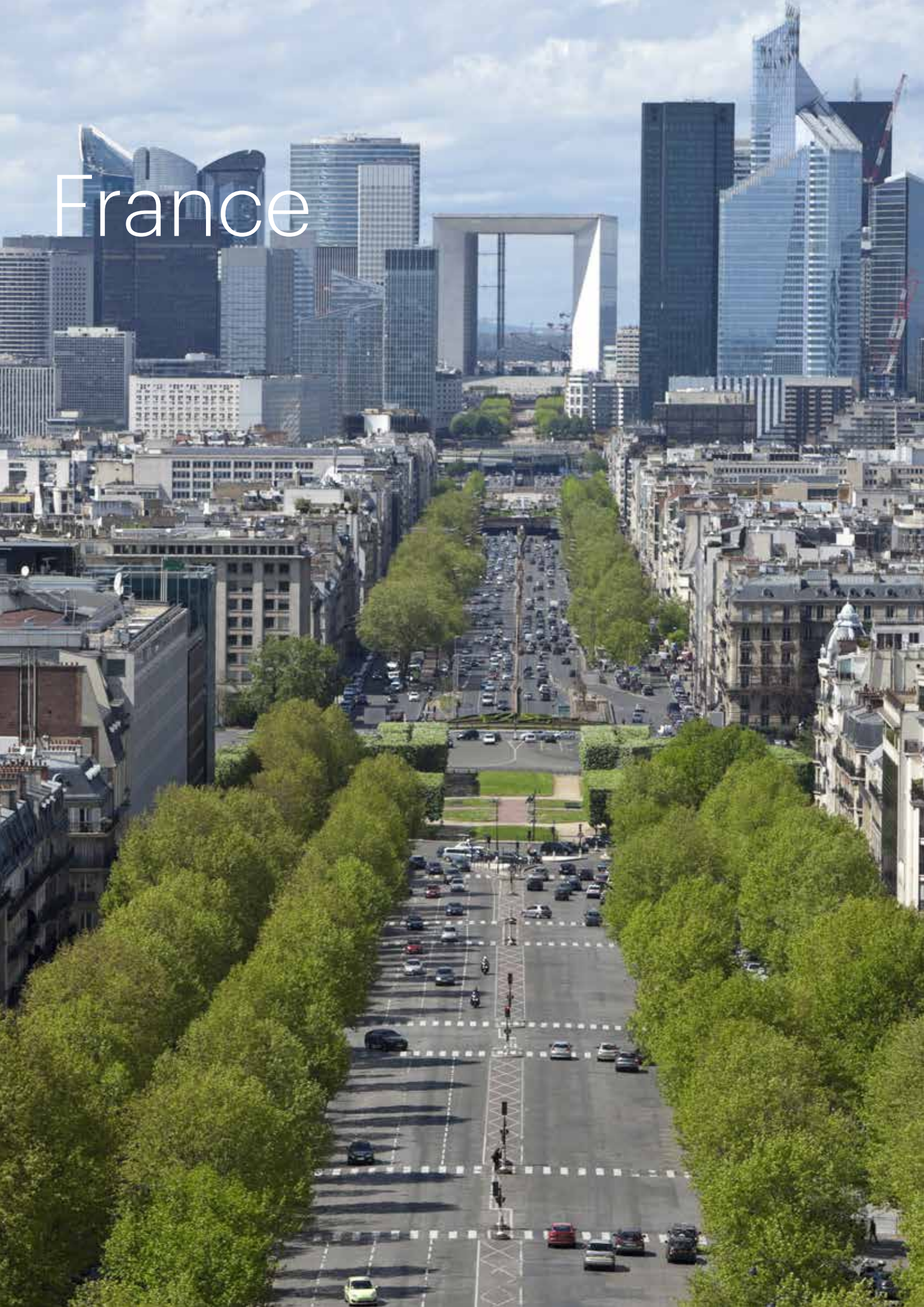

France

Obligations	
1. What are the types of obligations that may be secured?	Only payment obligations may be secured under French law. In most cases both present and future obligations may be secured to the extent that such obligations are identifiable. Depending on the type of security used, the type of obligations that may be secured may be limited. For example, under a security assignment of receivables (cession Dailly) governed by articles L313-23 et seq of the Monetary and Financial Code only the obligations of a company or a natural person acting in the exercise of its professional activity arising out of a financing to the benefit of a credit institution may be secured. It is not possible under French law to secure any and all actual and future debts of a company, without limitation (principal of specialty of the secured obligation).

Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Guarantees are available in most circumstances (e.g. downstream (parent to subsidiary), upstream (subsidiary to parent) and cross-stream (between sister companies within a group). However, when the guarantor is a French company, the rules relating to corporate benefit (a), the prohibition of misuse of corporate assets (b) and statutory object clause need to be considered (c). Regarding (a) and (b) please see our answer to question 3 below. Regarding (c), the guarantee should be granted for a purpose within the object clause of the company. In most cases, this condition is easily met in a group of companies. Even if not expressly specified in the company status, the guarantee granted by a company is considered lawful by case laws when there is a community of interest between the company and the guaranteed debtor. Furthermore, if a guarantee is being provided in the context of an acquisition, the financial assistance prohibition would apply (please see our answer to question 14). The above rules only apply to guarantee (whether governed by French law or not) granted by French company and would not apply to French law guarantee granted by a foreign company.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	If the guarantor is a French company, the guarantor company must receive real and adequate benefit. The absence of benefit renders the guarantee unenforceable and criminal sanctions may be imposed on directors for misuse of the company's assets (i.e. the use by the managers or directors of a French company of its assets or its credit, in a manner contrary to the company's interest while acting in bad faith). The company's corporate interest is clearly distinct from that of its shareholders and is aimed at protecting the company as a separate and autonomous entity from its creditors and its employees. This concept significantly limits the extent to which a French company can guarantee loans made to its parents or sister company since the benefit derived by the guarantor from the global transaction is often indirect and may be difficult to demonstrate. French case law has defined the conditions which need to be satisfied if an infringement is to be avoided, but whether or not such conditions are satisfied in a given case is a matter of facts. French courts have set out the following criteria that, if satisfied, would save the transaction from being held to be a misuse of the company's assets: • The companies involved must form part of a genuine group operating under a common strategy aimed at a common objective. • The guarantor must receive a fair compensation (this may be a non-monetary and/or a future compensation). • The financial support by the guarantor should not exceed its financial capabilities.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No governmental consents or filings are required.

5. Are there any solvency or net worth limitations/ restrictions?	With respect to net worth limitations, please see our answer to question 3 regarding corporate interest, accordingly, loan documentation will usually contain limitation clauses such as: the amount made available, directly or indirectly, to the guarantor, and/or a percentage of the net assets of the guarantor. With respect to solvency restrictions, please see our answer to question 13.
Security/ Collateral	
6. Over what type of personal property can security be granted?	In principle, a French company can grant security over any type of assets it owns. Depending on the type of assets subject to the security different legal regimes can apply.[1]
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	French law does not recognize general security agreement; security has to be taken on a piecemeal basis over the specific asset. Each type of asset is subject to a different set of statutory provisions governing the creation and perfection of security over that asset. Although floating charge concept is not recognized, security can be taken over a business as a going concern (excluding inventory, freehold land, buildings, receivables and contract rights).

8. Can security be taken over real estate?	Yes. The most common forms of security over real estate are: contractual mortgage *(hypothèque conventionnelle) and lender's lien (privilège de prêteur de deniers).* The mortgage is the security interest commonly taken over a real estate asset (lands, buildings, fixtures and fittings). This allows the mortgagor to retain occupation of the lands and the buildings. A mortgage will guarantee the repayment of the principal amount secured, payment of the interest at the contractual rate and additional expenses, usually valued at an amount corresponding to 15% (on average) of the amount secured. The mortgage includes certain insurance indemnities by way of subrogation *in rem*. The establishment of a mortgage by contract requires the following steps: (i) execution of a notarial deed (contract executed in France before a French notary) establishing the mortgage pursuant to article 2416 of the French Civil Code and (ii) registration of the mortgage with the Land Registry *(Service de la publicité foncière)* to make the mortgage enforceable against third parties. Mortgages rank according to their date and time of registration. *Lender's lien is governed by article 2374-2 of the Civil Code; it secures liabilities incurred in connection with the financing of the acquisition of a property. A lender's lien, like a mortgage, must be made effective by a notarial deed and registered with the Land Registry within two months from the sale. The advantage of a lender's lien over a mortgage is that the cost of a lender's lien is lower than that of a mortgage since the Land Registry tax called taxe de publicité foncière is not due, which can represent a significant cost saving when the amount secured is significant.*
9. Can cash collateral be taken? How?	Yes, cash collateral agreement (gage-espèce) can be taken. There may be several ways to create a cash collateral (e.g. by way of a pledge over a blocked bank account or by way of a cash deposit by way of security). The most efficient way to create a cash collateral is probably by way of a cash deposit by way of security pursuant to which the debtor deposits a sum with the creditor. If the debtor defaults, the creditor can set off all sums owned by the debtor against the creditor's obligation to return the deposited cash to the debtor.

10. Are pledges of shares permitted?	Yes. The method for taking security over shares varies, depending on the type of company issuing the shares. If the French companies are incorporated in the form of société anonyme or société par actions simplifiée, security is granted over the financial securities account on which the shares are credited. If the French companies are incorporated in another form, the security is granted over the shares issued by such companies. Registration of the pledge with the relevant public registry is necessary to make the pledge enforceable against third parties.
11. Are stamp or other duties imposed?	Depending on the type of securities, stamp duties may or may not be imposed (securities requiring a registration will require the payment of stamp duties, please see our answer to question 17).
12. Must documents be executed in front of a notary?	Any security taken over a real estate asset will require a notarized security agreement. A mortgage must be created by deed and executed before a notary or under an agreement deposited with a notary to ensure validity and perfection of the mortgage. The deed must be registered with the Land Registry. Lender's privilege created by deed for the benefit of a lender funding the purchase of an immovable property must also be executed before a notary.

13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	The initial judgment of an insolvency proceeding determines the date de cessation des paiements, i.e. the date as of which the debtor is deemed to have ceased to pay its debts. The date of suspension of payments may be deemed to have occurred up to eighteen months before the date of such judgment. The period between the date of suspension of payments and the date of the initial judgment is called the hardening period (période suspecte). In rehabilitation or liquidation proceedings, certain transactions, payments and transfers can be challenged by the administrator, the creditor's representative, the liquidator or the Public Prosecutor if they were entered into the hardening period. Certain acts of the debtor may be cancelled under two main situations as follows: a. Article L.632-1 of the French Commercial Code provides for the automatic cancellation of certain acts of the debtor during the hardening period. The operation of Article L.632-1 is automatic, i.e, the judge has no discretion and would cancel the relevant acts when the conditions for its applicability are met, irrespective of the intention of the parties. Article L.632-1.I.6° provides, among other things, that any security interest granted to secure debts which arose prior to the granting of such security interest are null, when effected since the date of suspension of payments; and b. Article L.632-2 of the French Commercial Code provides that any payment made or any action for valuable consideration (acte à titre onéreux) taken during the hardening period by the debtor may be cancelled by the court if the party that dealt with the debtor had the knowledge that it was already insolvent. Contrary to cancellation under Article L.632-1, cancellation under Article L.632-2 is not automatic, and the court has the discretion to take into consideration all circumstances of the case. In addition, pursuant to Article L.650-1 of the French Commercial Code, if any procedure of safeguard (sauvegarde), judicial rehabilitation (redressement judiciaire), and or judicial liquidation (liquidation judiciaire) is opened, creditors may be held liable for damages suffered by debtors in cases of fraud, characterized interference (immixtion) in the management of the debtor or if the guarantees taken in consideration of the financings are disproportionate to such financings, unless the financings granted constitute by themselves a misconduct. If the liability of a creditor is established, the guarantees taken in consideration of such financings may be considered as null and void or decreased by the court.

Financial Assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Yes, Article L. 225-216 of the French Commercial Code prohibits a target company from advancing monies or granting loans or any security in connection with the subscription or purchase of its own shares by a third party. This prohibition applies to joint stock companies (eg Sociétés Anonymes, Sociétés par Actions Simplifiées) and does not apply to partnerships or civil real estate companies (eg Sociétés en Nom Collectif, Sociétés Civiles, Sociétés Civiles Immobilières) and to Société à responsabilité limitée. However, if a target was transformed into one of these companies shortly prior to its acquisition and subsequently issue a guarantee or granted security in respect of facilities used for the acquisition or subscription of its own shares, there would be a risk that this would be deemed a fraudulent transaction of the sole purpose was to circumvent the prohibition. The prohibition of financial assistance is subject to criminal and civil sanctions, which could result in the rescission of the transaction and/or a fine amounting to €150.000 in accordance with article L. 242-24 of the French Commercial Code. As a consequence, a French limited liability company will not be able to provide a valid guarantee or security over its assets to secure the repayment of a loan (in whole or in part) granted to finance a third party's subscription or acquisition of the guarantor's shares or the related transaction costs. Subject to certain exceptions, loans or guarantees granted by (i) a société anonyme to any of its directors which are not legal persons, permanent representatives of directors which are legal persons, general managers and assistant general managers; (ii) a société par actions simplifiée to its president or any of its officers; (iii) a Société à responsabilité limitée to any of its managers or members which are not legal persons, and to legal agents of members that are legal entities are strictly forbidden. The prohibition also applies to the spouse and relative in the ascending and descending line of the persons referred to above, as well as to any intermediary. Any such loans or guarantees are null and void. Concerning upstream guarantees please see our answers to questions 2 and 3 above.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	There are no lawful and reliable means of overcoming any limitations with respect to financial assistance or corporate interest.

Fees/Taxes - Withholding/ Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Regarding stamp duties, please see our answers to questions 11 and 17. There are no ways for legally deferring, minimizing or eliminating these charges.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Minor fees are paid for searches with the trade and companies registry. With respect to notaries' fees, mortgages and lenders' liens are subject to notaries' fees (a percentage of the registered amount, as determined in Ministerial Decree dated 26 February 2016), plus VAT at a rate of 20 percent. With respect to registration fees, please see below few examples (this list is not exhaustive): • Mortgage: A fee amounting to 0.70 percent of the secured debt amount must be paid to the land publicity services (Article 844, French General Tax Code), with an additional 0.05 percent payable to the relevant land registry (Articles 880, French General Tax Code and Article 293, Annex III, French General Tax Code). • Lender's lien: Only the land registry fee must be paid (that is, 0.05 percent of the secured debt amount). • Non-possessory pledges: for debts amounting to less than €7,800: €13.38; between €7,800 and €20,800: €25,24; between €20,800 and €41,600:€69,70, greater than €41,600: €72.70; • Pledges on shares: for debts amounting to less than €20,800: €26.71; between €20,800 and €41,600: €97,85, greater than €41,600: €143,80. Regarding enforcement costs, please see below few examples: • Judicial costs if the security is enforced by judicial attribution or sale before a judge. • Costs of the expert valuing the pledged asset if necessary. • Registration taxes with respect to judicial attribution of the pledged asset to the secured creditor.

18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Payments of interest and other amounts paid under a loan or a guarantee will not be subject to withholding tax set forth under Article 125 A, III of the French Tax Code unless such payments are made outside France in a non-cooperating state or territory within the meaning of Article 238-0 A of the French Tax Code. In this case, a 75 percent mandatory withholding tax will be due (subject to exemptions and to the more favorable provisions of any applicable double tax treaty).
Enforcement	
19. What is the bankruptcy/insolvency process?	French insolvency law provides for three main types of insolvency proceedings: (i) safeguard proceedings (sauvegarde) (safeguard proceedings can also be an accelerated safeguard or a financial accelerated safeguard), (ii) rehabilitation proceedings (redressement judiciaire), and (iii) liquidation proceedings (liquidation judiciaire).[2] Safeguard proceedings allow companies that, though still solvent, face difficulties that they cannot overcome, to be restructured at a preventive stage under the court's supervision. If the company becomes insolvent after the opening of safeguard proceedings, the court orders the proceedings to be replaced by rehabilitation or liquidation proceedings. Rehabilitation proceedings are appropriate if the company is insolvent, but has not ceased operating, and its rehabilitation seems possible. Liquidation is the appropriate remedy when the company is insolvent and its rehabilitation appears obviously impossible. From the date of the initial judgment opening insolvency proceedings, the debtor is prohibited from paying debts which arose prior to such date, subject to specified exceptions which essentially cover the set-off of connected debts and payments authorized by the bankruptcy judge or made to recover assets the recovery of which is required for the continuity of the business. During this period, individual proceedings against the debtor are interrupted or prohibited as from the date of the initial judgment. As a result of the above, contractual provisions such as those customarily contained in credit facility agreements that would accelerate the payment of the debtor's obligations upon the occurrence of certain insolvency events are not enforceable in France from the date of the initial judgment. From the date of the initial judgment opening insolvency proceedings, the creditor must file a declaration in respect of its claims with the receiver.

20. In case of safeguard proceedings or rehabilitation proceedings, the situation of the creditor will depend on the outcome of the observation period (a maximum 6 months' period (renewable once (and exceptionally, twice)) beginning with the initial judgment and during which the business of the debtor continues and certain steps are taken for its recovery):	• Either a safeguard plan (plan de sauvegarde) or a rehabilitation plan (plan de redressement) is adopted and will rule the fate of the creditor who will be paid according to such plan. The creditor may have to grant the debtor extended terms of payment and/or agree to a write-off of the debts. Assets will remain frozen and enforcement prohibited. As a result, creditors will not be able to enforce their security interest while the plan is in effect, provided that the debtor complies with its terms. • Or a judicial liquidation is pronounced and the creditor will regain its rights against the debtor: in such case, the court will appoint a liquidator in charge of selling the assets of the debtor and settling the relevant debts in accordance with their ranking. If the court adopts a plan for the sale of the business (plan de cession), the proceeds of the sale will be allocated to the repayment of the creditors according to the ranking of the claims. The court can order the opening of immediate compulsory liquidation proceedings without opening rehabilitation proceedings when the entities are obviously incapable of being rehabilitated. In this case, there is no observation period. Liquidation proceedings last until no more proceeds can be expected from the sale of the company's business or assets. After two years from the judgment ordering liquidation, any creditor can request that the court order the liquidator to close the liquidation.
21. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	All creditors (whether secured or unsecured) of the debtor may act in enforcement. The agent concept is recognized in France. Article 2328-1 of the French Civil Code provides that "any security over an asset can be agreed upon, registered, administered and enforced on behalf of the secured creditors by a person designated by them in the agreement which creates, or record, the secured liabilities." However, the agent cannot be assimilated to a trust mechanism as the secured creditors themselves remain the direct and only beneficiaries of the security interest. Please note that for practical reasons (the agent has to be designated in each agreement making secured obligations) this mechanism is not very used. Please note that it is expected that this legal regime will be modernized within next few months.

22. Would a court recognize a foreign judgment without reexamining the merits of a case?	Enforceability in France of judgments rendered in EU member states is governed by the Recast Brussels Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The Regulation provides that a judgment given in a Member State shall be recognized in the other Member States without reexamining the merits of such judgments (however, pursuant to Articles 45 and 46 of the Recast Brussels Regulation, any interested party can apply for a refusal of recognition and enforcement on some restricted grounds, including if it would be manifestly contrary to public policy in the enforcing state; where the judgment was given in default, if the defendant was not properly served with the proceedings in sufficient time to arrange for his defense; or if the judgment is irreconcilable with a judgment given between the same parties in the enforcing state).; and that a judgment given in a Member State and enforceable in that State shall be enforced in another Member State without any declaration of enforceability being required. In the case of Iceland, Switzerland and Norway, the 2007 Lugano Convention applies (which mirrors the Brussels Regulation). For other countries, in the absence of a treaty for the reciprocal recognition and enforcement of judgments, a judgment rendered by a foreign court would not directly be recognized or enforceable in France. A party in favor of who such judgment was rendered could initiate enforcement proceeding (exequatur) in France before the relevant civil court that has exclusive jurisdiction over such matter.

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Germany

Germany

Obligations	
1. What are the types of obligations that may be secured?	German law is quite flexible as to what obligations can be secured provided the drafting of the security document is sufficiently precise. Secured obligations can include those which: (a) are present, future, actual or contingent; (b) arise in favour of future creditors under future transactions with future debtors; and (c) are direct and personal, joint or several or those of a principal debtor or a guarantor or surety.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes, this is possible. There are strict capital maintenance rules in place for limited liability companies and stock corporations granting upstream guarantees. There are no restrictions with regard to downstream guarantees. With regard to limited liability companies, this can be dealt with by including relevant limitation language into the documentation. A breach does not lead to voidance of the guarantee but does only potentially lead to personal and criminal liability of the managing directors of the limited liability company. With regard to stock corporations, the rules are strict. No upstream or cross stream guarantees are permitted. Such guarantees would be void. It is to be noted that such restrictions do not apply if the relevant guarantor is also a direct or indirect borrower of the facilities.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	No.

4. Are any government consents or filings required in connection with the delivery of a guarantee?	No.
5 Are there any solvency or net worth limitations/ restrictions?	Yes, please see under question 2 above.
Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over personal property which is tangible or intangible. Tangible personal property includes: goods, machinery, equipment, hard and soft commodities, ships, aircraft and other vehicles and major plants, such as gas turbines. Intangible personal property includes shares and other securities, intellectual property, and contractual other rights to the payment of money, the performance of obligations or the possession or use of tangible assets owned by others.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Security agreements need to be tailored for each specific asset, although e.g. all receivables may be included in one agreement; all bank accounts may be included in one agreement; and all moveable assets may be included in one agreement.
8. Can security be taken over real estate?	Yes. Real estate can either be mortgaged or charged in favor of a lender or other creditor. The land charge (Grundschuld) is mostly used as it is abstract from the underlying claim.
9. Can cash collateral be taken? How?	Yes. Cash in a bank account can be pledged in favor of the lender (or lenders).
10. Are pledges of shares permitted?	Yes.
11. Are stamp or other duties imposed?	No stamp duty (or similar fee or charge) is payable on the creation of a security interest. In case shares in a limited liability company are to be pledged, notary fees are payable. A land charge has to be notarized and registered with the land register which does cost notarial fees plus fees for the registration—both of which are to be calculated based on the land charge amount.
12. Must documents be executed in front of a notary?	Only land charges and pledges over shares in a limited liability company have to be notarized.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes, normal reasons and time limits for insolvency avoidance apply.

Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Please see our answer to question 2 above.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	N/A
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Please see our answer to question 11. It is not possible to minimize or eliminate these with sufficient comfort for the secured party.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Searches in the commercial register as to the existence of a company and in the land register with regard to property cost a relatively small amount. Notary costs and registration costs for the relevant land register are subject to the value of the company or amount of the land charge and would have to be checked on a case by case basis.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	It depends on the jurisdiction of the Lender and whether there are any double taxation treaties in place.
Enforcement	
19. What is the bankruptcy/insolvency process?	In very brief terms: Third parties or the company itself may apply for insolvency at the competent court if any of the insolvency reasons ((i) inability to pay its debt as they fall due, (ii) threatened inability to pay and (iii) over indebtedness) apply. The court will decide to open the process if the company has enough assets to pay the fees for the process and appoint an insolvency administrator. The insolvency administrator will either try to help the company to recover or liquidate the company.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	Any party who has a right or claim against the company may enforce (either directly without an enforceable judgement or with a judgement, depending on the type of claim). It is possible that, e.g. a Security Agent acts on behalf of the lenders.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Yes, but except as limited by (i) German public policy (ordre public) or mandatory German provisions of German law applicable irrespective of the choice of non-German law and (ii) laws limiting the rights of creditors generally, such as bankruptcy, insolvency, creditor or debtor preference or similar laws.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Generally, a German court is bound ex officio to apply German conflict of laws rules as well as foreign law applicable under such conflict of laws rules, with certain limitations applicable to this principle in the case of summary proceedings. However, the court will rely on the parties to present and submit evidence of the facts which may lead to the application of foreign law. Furthermore, the court will not apply foreign law by itself but will rely on the parties to present foreign law to the court and to establish its validity. If statements of one party regarding foreign law are disputed by the other party, or if the German court is not sufficiently familiar with applicable foreign law it will, in addition to any evidence submitted by the parties, take evidence of the foreign law by way of all appropriate means available, usually by way of an expert opinion.

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Hungary

Hungary

Obligations	
1. What are the types of obligations that may be secured?	According to Hungarian law, only pecuniary claims, or claims the value of which can be determined as a pecuniary value, can be secured by the usual types of security interests (mortgages, charges, pledges, security assignments as well as suretyships and guarantees). In addition, there is one—internationally rather atypical—security interest, namely, the call option right, which, however, can be granted to secure other, non-pecuniary claims, as well.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes. We are not aware of any specific treatment for foreign affiliates.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	Basically, no. However, please note the following related risks, that if the guarantor becomes subject to liquidation proceedings: (1) Challenging right Any creditor or the liquidator may challenge the guarantee agreement based on the reasoning that the guarantee had been provided without any consideration/benefit for the guarantor. (Please see below for the hardening periods related to such challenging right.) (2) Wrongful trading If the guarantee was provided when the guarantor was on the verge of insolvency, the executive officer of the guarantor may be held liable in a subsequent liquidation proceeding according to the below provisions. Any creditor or the liquidator may request the competent court to order that the persons who have been the executive officers of the guarantor in the three-year period preceding the commencement of the liquidation did not take the interest of the creditors into account when fulfilling their management obligations following the time when the "threat of insolvency" of the guarantor incurred. Such court order may be made if the result of the above omission of the executive officers is that it: – Decreases the value of the guarantor's assets; or – Impedes the full satisfaction of the creditors' claims. "Shadow-directors" (i.e., persons actually having considerable influence on the decisions of the guarantor) are also deemed to be executive officers of the guarantor for the purpose of the above liability regime.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No, if the affected parties are privately (i.e., non-government) owned entities.
5. Are there any solvency or net worth limitations/ restrictions?	Basically, no. As to the risks related to a subsequent liquidation of the guarantor, please see the question above relating to the corporate benefit.

Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over real estate, fixed charges, membership interest in a limited liability company (a.k.a. quotas), shares in a company limited by shares, rights and claims arising from a certain legal relationship. Security can also be granted over an ownership ratio in an asset, if the asset is not solely owned by the security provider.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	• The general 'floating charge' type of security interest ceased to exist in Hungary since the new Civil Code entered into force as of March 15, 2014. • Charges registered with the collateral registry (hitelbiztosítéki nyilvántartás) can be established over a group of assets owned by the chargor from time to time (excluding real properties, membership interests and other assets registered with other public registries). • Otherwise, security agreements must be tailored to a specific asset or more specific assets, e.g., real property(ies), fixed asset(s), an inventory or claims arising from time to time from specific agreements, etc.
8. Can security be taken over real estate?	Yes.
9. Can cash collateral be taken? How?	Yes, in the form of security deposit (óvadék). In this case, the cash collateral is to be handed over to the beneficiary until the end of the security period. Please note that a security deposit can also be established over the bank account collateral of the security provider, in which case, such accounts are to be blocked in favor of the beneficiary of the deposit.
10. Are pledges of shares permitted?	Yes.
11. Are stamp or other duties imposed?	Yes. Certain security interests (excluding security deposits) are to be registered with the relevant public registries, which has certain stamp duty implications (depending on registry: land registry, corporate registry, notarial registry of liens, trademark registry and ship/aircraft registries have different requirements in this respect).

12. Must documents be executed in front of a notary?	No. Please note, however, that: • A public notary is to be involved upon the first step of the registration of certain security interests with the collateral registry (hitelbiztosítéki nyilvántartás). • Pledge agreements incorporated in a notarial deed and duly including certain details of the payment obligation of the borrower may entitle the beneficiary(ies) of the pledge for a "direct enforcement" of the secured claim. Such details include, amongst others: (i) the subject, the amount and the legal title of the payment obligation of the borrower; and (ii) the method of payment and the maturity date of such payment obligation. The "direct enforcement" means that the enforcement of the pledge may be based on the notarial deed itself and the beneficiary(ies) do not need to start a separate litigation proceeding for such enforcement.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes. • Should the security provider be subject to liquidation proceedings (see below), the Hungarian Bankruptcy Act sets forth certain hardening periods for transactions previously entered into by the security provider, such as: • Five years for the intentional defrauding of creditors • Two years for transactions without any consideration or that are undervalued • 90 days for the unlawful preference of a creditor. • If the above hardening periods have not yet lapsed, any creditor or the liquidator may, within 90 days of becoming aware of, but not later than one year following the commencement date of the liquidation proceedings, request that the competent court set aside the given transaction. • In addition, there is an additional hardening period of 60 days relating to services provided by the debtor beyond its ordinary course of business and resulting in the unlawful preference of a creditor. If the hardening period has not yet passed, the liquidator may, within 90 days of becoming aware, but not later than one year following the commencement date of the liquidation proceedings, reclaim the relevant payment or service provided by the debtor.

Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	No, since the entry into force of the new Civil Code as of March 15, 2014, there are no such restrictions, save for public companies limited by shares, in case of which certain limitations still remained.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	No.
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Yes. • Stamp duty is payable with respect to the registration of certain security interests (membership interest pledges, real estate mortgages, receivables pledges, pledges over fixed assets and pledges over inventory). Generally, such registration fees cannot be considered as significant. • If the security agreements are incorporated in a notarial deed, a notarial fee is to be paid to the public notary. This fee may be relatively significant in the case of large, complex financing matters. • The above stamp duties cannot be eliminated, since the registration is a pre-condition for the affected security interests to be duly established. The notarial fee can be eliminated, since the notarization of the security agreements is not mandatory, however, it is advisable for the lenders (please see above).
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Please see above.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	No.

Enforcement	
19. What is the bankruptcy/insolvency process?	There are two types of such proceedings currently available in Hungary: (1) Bankruptcy proceedings (csődeljárás), in which the debtor having financial difficulties attempts to reach a settlement with its creditors on the restructuring of its debts, and the debtor and its shareholders remain in possession with the debtor's operations supervised by a court-appointed trustee (vagyonfelügyelő) and ultimately, by the court; and (2) Liquidation proceedings (felszámolási eljárás), in which the debtor is declared insolvent, typically resulting in the involuntary winding-up and liquidation of its assets. The debtor and its shareholders lose control over the assets and the entire proceeding which is managed by a court-appointed liquidator (felszámoló), with the court exercising statutory supervision. Hungarian law currently does not provide for any formal, out-of-court proceedings for the financial restructuring of the debtor which would allow the debtor and/or its shareholder to remain in control during the negotiations between the debtor and its creditors, that would grant certain statutory guarantees for the creditors at the same time (e.g., court supervision).
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	• The given security document regulates which entity may act in enforcement. • There are no restrictions on the type of parties that may exercise remedies. • Please note that the new Civil Code of Hungary has introduced the "security agency" concept, the absence of which had caused ambiguities in the case of syndicated loans before. However, since the new Civil Code entered into force as of March 15, 2014, there have not yet been any judicial practice in this respect.

21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Yes, it would. I. Recognition of judgments obtained in an EU Country: Foreign judgment shall not be subject to review on its merits. Regulation No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters regulates the recognition of foreign judgements. Based on Article 52 of Section 4, under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State addressed. II. Recognition of judgments obtained outside of the EU: In case there is a bilateral agreement on the recognition and enforcement of foreign judgments between Hungary and the non-EU country; such agreement/convention should settle the recognition and enforcement of judgments. Please note that, Law-Decree No. 13 of 1979 on International Private Law applies to matters which are not regulated by international conventions. Pursuant to Section 74 of the aforementioned Law-Decree, a foreign decision cannot be subject to review on its merits. This is supported by the consistently enforced civil law principle of révision au fond, according to which a foreign judgment under no circumstances may be subject to review on the merits.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Yes.

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Italy

Obligations	
1. What are the types of obligations that may be secured?	All present obligations and future obligations, to the extent that the secured obligations are clearly identified in the security document.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes, subject to compliance with the corporate benefit principles provided for under Italian law in relation to group of companies. In this respect, it should be taken into consideration that each company belonging to a group must have a personal specific and economic interest in guaranteeing the obligations of another company being a member of the same group, and such interest must be coordinated by the economic interest of the group as a whole. Any evaluation on the existence of such interest for the subsidiary should be made on a case-by-case basis. In the event that no corporate benefit results from the granting of the guarantee, civil and criminal liabilities may arise against the director/s of the guarantor resolving for the issuance of the relevant guarantee. The same general requirements shall apply also to foreign companies being members of an Italian group, subject to any further requirements applicable to them under the relevant foreign laws.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	Yes - such evidence, being a business decision to be evaluated by the directors of the guarantor on a case-by-case basis, shall in any case result from the corporate documentation approving for the entry into and execution of the entire transaction.

4. Are any government consents or filings required in connection with the delivery of a guarantee?	No.
5. Are there any solvency or net worth limitations/ restrictions?	Yes - since an Italian company must have a corporate benefit in granting a guarantee, that transaction should not have a negative impact on the company's net worth, e.g. by reducing it below zero, as such circumstance may lead to an insolvency status of the Italian company. In order to mitigate this risk, a limitation language relating to the Italian company aimed at reducing the relevant guaranteed amounts in order to comply with the corporate benefit rules applicable under Italian law should be inserted. Note also that, in the event that the Italian guarantor is or becomes insolvent, in addition to the civil and criminal liabilities which may arise against the director/s of the Italian company in connection with a breach of corporate benefit rules, the relevant guarantee may be declared ineffective by (x) any of the company's creditors or (y) by the bankruptcy receiver in the event of opening a bankruptcy proceeding against the company. Cap is a requirement for the validity of the guarantee in case it secures future obligations.
Security/Collateral	
6. Over what type of personal property can security be granted?	- Moveable assets (mobili), including shares of Italian joint stock companies (società per azioni); - Universality of moveable assets (universalità di mobili) including going concern (azienda); - Receivables, save for strictly personal receivables (crediti strettamente personali); - Immoveable assets; - Registered moveable assets (beni mobili registrati), including ships and aircrafts; - Immaterial assets, including without limitation quotas of Italian limited liability companies (società a responsabilità limitata) and IP rights.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Every security interest granted must be documented separately. The relevant security agreement shall indicate, among other things, the collateral.

8. Can security be taken over real estate?	Yes - the most common form of security over immovable real estate (land and buildings) is mortgage (ipoteca). A mortgage is created by written notarial deed and must be registered with the competent local Land Registry to be perfected against third parties.
9. Can cash collateral be taken? How?	Yes - the most common form of cash collateral is a pledge over cash deposited with a bank in a current account. The pledge must be granted by a written deed bearing a certain data at law (data certa) and will be enforceable with priority against third parties when: (i) Notice of the pledge has been given to the debtor by a court bailiff or by means of another document bearing a certain date at law (data certa); or (ii) The debtor has accepted the pledge by means of a document bearing a certain date at law (data certa). There are no registration requirements.
10. Are pledges of shares permitted?	Yes, subject to (a) execution of a share pledge agreement in writing bearing date certain at law (data certa), (b) endorsement of the pledge on the share certificates representing the pledged shares certified by a Notary, and (c) dispossession (spossessamento) of the share certificates owned by the pledgor by way of delivery of the same to the secured creditor.
11. Are stamp or other duties imposed?	Yes - security documents executed in Italy are usually subject to: (a) Stamp duty at the rate of €16 per four pages; (b) Registration tax in an amount comprised between €200.00, if the grantor is also the debtor of the secured obligations, and 0.5 percent of the secured amount (or the collateral value, if lower, in the event that the same is money or securities/ shares), if the grantor of the security is a third party, and (c) With respect to mortgages granted over land and buildings: (i) Mortgage tax is payable at 2 percent of the secured amount; and (ii) Cadastral tax is payable at 1 percent of the secured amount

12. Must documents be executed in front of a notary?	Only security documents whose evidence shall be filed in public registers (including without limitation mortgages, pledges over quotas of Società a responsabilità limitata and special liens) must be executed before a Public Notary.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes - in the event of opening of a bankruptcy proceeding against the chargor, the relevant security document may be requested to be clawed-back by the appointed receiver if, among other things, the same has been entered into within the applicable claw-back period (periodo di revocatoria), being one year or six months preceding the date of the relevant bankruptcy declaration under the Italian Bankruptcy Law.
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Yes - as a general principle, an Italian company shall not directly nor indirectly grant loans nor guarantees/ security interests for the acquisition or subscription of its own shares, to the extent in breach of the procedure provided for under the Italian Civil Code (see row before).
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	Financial assistance limitations in connection with security granted over assets of a target company in leverage transactions may be safe harbored in the event that the relevant transaction is authorized by the company's extraordinary shareholders meeting subject to prior issuance of a transaction legal and financial report by the company's directors and filing of it at the company's registered office no later than 30 days before the scheduled date of the shareholders' meeting. In any case, it should be taken into account that the secured amounts by the target company in compliance with the procedure abovementioned shall not exceed in any case the available profits (utili) and reserves (riserve) (net of the amounts allocated for the acquisition of treasury shares (azioni proprie) if any) resulting from the latest approved financial statements.

Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	As a general rule, (a) stamp duties equal to €16.00 for each four pages of the document, (b) a registration tax in an amount comprised between €200.00 and 3 percent of the secured amount (or the collateral value in the event that the same is money or securities/ shares) shall apply to each finance document, including without limitation loan agreements and the relevant guarantee /security documentation, and (c) with respect to security granted over lands and buildings or other finance documents relating to such assets, mortgage tax and cadastral tax are payable. From a legal perspective and in general Italian market practice, the financial burden arising from the tax / duties costs abovementioned may be excluded and/or reduced as follows: - In the event that the document is executed outside the territory of Italy or is executed by way of exchange of commercial correspondence, the stamp duties and registration tax are due only in case of use (caso d'uso); or - As an alternative to the above, in the event that the transaction meets certain requirements set out by the applicable laws and the parties thereto opted to do so and, a catch-all lump-sum substitutive tax in an amount equal to 0.25 percent of the facility amount shall apply and no additional tax or duties will arise in connection with the finance documentation.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	In addition to stamp duties and registration taxes (if applicable – see row above), notarial fees may arise, and the relevant amount depends on the amount of the transaction, the complexity of the relevant documentation and the duration of the transaction negotiation process. As to enforcement, a consolidated tax in connection with judicial proceedings (contributo unificato) shall apply in an amount comprised between €43 and €1,686 (in relation to civil proceedings) or between €30 and €1,500 (in relation to tax proceedings) depending on the value of the dispute.

18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Yes - in principle the Italian outbound withholding tax on financial revenues would be applicable with limited regard to the "accrued interest" amount at a rate equal to 26 percent, unless a case of reduction (e.g. double taxation convention) or exemption (e.g. interest/royalties directive, interest from medium and long-term credit operations carried out by (i) qualifying credit institutions and insurance companies established in an EU Member State and (ii) qualifying undertakings for collective investment (organismi di investimento collettivo del risparmio, OICR) established in an EU Member State or an EEA country included in the Italian white list) applies.
Enforcement	
19. What is the bankruptcy/insolvency process?	The bankruptcy processes under Italian law are fallimento and liquidazione coatta amministrativa, as applicable, depending on the subjective requirements of the debtor. Furthermore, according to Italian law, insolvency proceedings are bankruptcy (fallimento), bankruptcy agreement (concordato fallimentare), extraordinary administration proceedings (amministrazione straordinaria delle grandi imprese in crisi) and pre-bankruptcy agreements (concordato preventivo), while pre-insolvency proceedings are recovery plans (piani attenstati di risanamento) and debt restructuring agreements (accordi di ristrutturazione dei debiti).

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	As a general mandatory principle, enforcement remedies in connection with security interests may be exercised only by entities (x) being secured creditors or (y) appointed as authorized representatives (mandatario con rappresentanza) in the name and on behalf of the secured creditors for the purposes of exercising, among other things, enforcement rights also before Italian Courts. In the light of the above: - So far, there is no Italian case law which has recognized the effectiveness and validity of a security interest created under Italian Law in favor of a single entity acting as trustee for the creditors to be secured and holding the security interest in such capacity; and - Under Italian law, an intercreditor agreement or similar arrangement aimed at (x) appointing an Administrative Agent / Trustee acting as such in connection with Italian security documents, and/or (y) authorizing the enforcement of an Italian security by a secured creditor subject to prior approval of specific majorities provided for therein, may not be valid and enforceable vis-à-vis third parties and/or the receiver of a bankruptcy proceeding.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Yes. In particular a foreign judgment is recognized (a) with automatic effects if the judgment is rendered in an EU Member State; or (b) subject to a formal judicial review of its compliance with certain mandatory principles under Italian law (delibazione), in the event that the foreign judgment (x) is rendered in a State other than an EU Member State and (y) is challenged before an Italian Court. As far as awards rendered by Arbitrational Courts are concerned, their recognition is subject to the provisions of the New York Convention signed on 10 June 1958 (however limited to the contracting States). The Italian Civil Procedure Code, enacting the Convention, provides for a mere formal judicial review of the award in order to be recognized. The same review shall apply also with regard to awards issued in a State other than New York Convention contracting state.

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	As a general assumption, a court ruling on the merit of the case applies the foreign law chosen by the parties to the extent that the foreign law-governed agreement is not in violation of the Italian law public policy principles (ordine pubblico internazionale). However, Italian courts are required to apply the Italian procedural laws with regard to enforcement proceedings.

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Luxembourg

Luxembourg

Obligations	
1. What are the types of obligations that may be secured?	The law of 5 August 2005 on financial collateral arrangements as amended (the Collateral Law) is very flexible as to which obligations can be secured i.e. all financial obligations that give a right to cash settlement and/or delivery of financial instruments or to assets underlying such financial instruments including those which: (a) are present or future, actual or contingent or prospective obligations, without it being necessary to specify them; (b) obligations owed to the collateral taker by a person other than the collateral provider; or (c) obligations of a specified class or kind arising from time to time. Guarantees (suretyships and first demand guarantees) must be issued with respect to a specified debt or a certain amount. For suretyship there is some uncertainty as to the enforceability of "all monies" suretyship. For first demand guarantees, the secured obligations shall be a fixed amount.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes, both of these guarantees can be provided. Foreign affiliates are not treated differently. Upstream guarantees are in principle limited to a certain amount (90/95%) of the Luxembourg guarantor's own funds, plus the amount of any receivable arising from any intra-group loans owed to such Luxembourg guarantor. It is a market practice, as we consider that these guarantees are not necessarily in the corporate interest of the company and could trigger a liability risk for the directors of the guarantor. That is the reason why we usually include a "limitation language" in the guarantee section of the finance documents in order to theoretically avoid having the Luxembourg guarantor automatically involved in a bankruptcy situation as soon as the guarantee is called/entered into. Downstream guarantees, as they are considered being taken in the corporate interest of the company, are in principle not limited.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	Yes, the directors of the guarantor must assess the corporate interest of their company to enter into the guarantee.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No.
5. Are there any solvency or net worth limitations/ restrictions?	No, except as provided in section 2 above.
Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over immovable and movable properties. Immovable property is: • Mortgages, which can be legal, contractual or judicial. Mortgages cannot be granted over future assets because of the obligation to specifically identify the secured real property for registration and recording purposes, • Pledging real estate as security (antichrèse), • Seller's lien, to secure the payment of the sale price of a property, • Lender's lien, granted to the person or entity that lent the money to finance the acquisition of a property. With regard to movable property, pledges can be granted over most categories of assets, including shares and negotiable instruments, receivables and income, cash deposits, bonds, intangible and future assets, and fungible goods, such as agricultural products. Intellectual property (IP) rights are normally subject to security rights in the form of the general civil law pledge. To be enforceable against third parties, pledges over registered IP rights must be registered with the Benelux Office for Intellectual Property, with the Intellectual Property Department of the Luxembourg Ministry of Economy or with the European Patent Office. Pledges over unregistered IP rights (such as copyrights) are created by private agreement and perfected through notification to the Debtor. Aircrafts and ships are qualified movable property. However, (i) the law of 9 December 2008

	carrying adaptations and modifications of the law of 29 March 1978 concerning the recognition of the rights on aircrafts for certain categories of aeronautical goods; (ii) the coordinated law of 11 June 1998 of the law of 14 July 1966 on the registration of boats for inland navigation and fluvial mortgage, amended by the law of 23 September 1997; and (iii) the law of 9 November 1990 to establish a Luxembourg maritime register provide for specific kinds of mortgages that may be granted over such assets, even though mortgages are usually restricted to immovable property. Movable assets may also be secured by the transfer of ownership as security, where the asset directly becomes the property of the lender or where the ownership rights in the asset are transferred to the lender through a fiduciary contract. Security interests such as pledges and transfer of ownership as a security granted on financial instruments and claims are governed by the Collateral Law. Pledges over an operational business ("fonds de commerce") are subject to specific requirements set out in the Grand-Ducal Decree of 27 May 1937, as amended, and can only be granted to authorized credit institutions and breweries.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Security agreements must be tailored to a specific asset or group of assets.
8. Can security be taken over real estate?	Yes. Common forms of security granted over real estate are the mortgage and the pledge. Mortgage: Contractual mortgages must be formalized in a notarial deed. The lender must register the mortgage with the Administration Registry (Administration de l'Enregistrement et des Domaines). To be enforceable against third parties, the original notarial deed must be registered at the Mortgage Registry (Bureau de conservation des hypothèques) of the judicial district where the property is located. Registration is valid for 10 years. Before this period expires, it must be renewed to continue to be valid for another ten years. Mortgages cannot be granted over future assets because of the obligation to identify specifically the secured real property for registration and recording purposes. Real Estate pledge: Real estate pledges (antichrèse) must be in writing. The security is perfected by the transfer of possession to the secured party. Real estate pledges are registered with the Administration Registry and at the Mortgage Registry.

9. Can cash collateral be taken? How?	Yes. Pledges are the most common form of securities granted over bank accounts (balances of bank accounts). Pledges over bank accounts are governed by the Collateral Law. Pledges over bank accounts (balances of bank accounts) are enforceable against third parties as well as towards the account bank once the account bank has been notified of and confirmed its acknowledgment of the pledge. As pledges are validly created by private deed, and as there is no compulsory registration, no registration/notary fees are due, and there is no waiting time. Pledges over a bank account (balances of bank accounts) incur a renunciation by the account bank of its contractual first ranking privilege as well as the account bank's undertaking to block the account in the event of total or partial non-performance of the secured obligations. It is common practice to attach the following to such a pledge agreement: • A notice of pledge for the attention of the account bank; • An acknowledgment notice to be signed by the account bank; and • A blocking notice to be signed by the account bank and sent to the account holder in the event of partial or total non-performance of the secured obligations. It is also common practice to agree specific forms with the account bank, to the extent possible, to comply with its internal policy.
10. Are pledges of shares permitted?	Yes.
11. Are stamp or other duties imposed?	No stamp duty (or similar fee or charge) is payable on the creation of a pledge.
12. No stamp duty (or similar fee or charge) is payable on the creation of a pledge.	No, only mortgages have to be executed in such way.

13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Contracts may be affected by insolvency procedures if they were concluded during the suspect period (période suspecte) or during the ten days preceding the suspect period. The suspect period generally starts from the moment the company stopped paying its debts (cessation de payements), though the exact date is fixed by the court (a maximum of six months before the start of the insolvency procedures). If a security is provided by a Luxembourg company during the suspect period, the security will be void if it was newly provided, or extended, for pre-existing debts. Mortgages and pledges on going business concerns are deemed to be void, if both: • Registration took place during the suspect period or during the preceding ten days; and • The date of the creation of the security and the date of the registration are separated by more than 15 days. As a noteworthy exception, financial collateral arrangements that fall within the scope of the Collateral Law are enforceable, even in insolvency situations. The Collateral Law provides for the following rules: • Financial collateral arrangements, netting contracts and the methods of evaluation and execution agreed between the parties in conformity with the Collateral Law are valid and enforceable against third parties, auditors, administrators, liquidators and other similar entities regardless of the existence of re-organization measures, winding up proceedings or the existence of any national or international insolvency situations. • Any termination, valuation, execution and close-out netting arrangements effected as a method of implementation or as a conservatory measure are deemed to have occurred prior to any such proceedings. • The Luxembourg provisions relating to pledges, as well as national and foreign provisions relating to re-organization measures, liquidation proceedings and

	• other insolvency situations are not applicable to financial collateral arrangements or to netting contracts and do not impede the execution of such contracts and their resulting obligations. • Netting agreements and financial collateral arrangements concluded on the day of the commencement of winding-up proceedings or re-organization measures but prior to the order commencing such procedures are valid and enforceable against third parties, auditors, liquidators, administrators or other such entities. • Pursuant to the foregoing provisions, the Collateral Law expressly recognizes the validity and enforceability of all financial collateral arrangements covered by it, even if entered into during the pre-bankruptcy suspect period. This offers greater certainty to financial market participants and removes inequalities that previously existed between different forms of security arrangements in Luxembourg. • The aim of the Collateral Law is to render financial collateral arrangements unchallengeable. However, this does not mean that there will not be any sanctions in the event the parties to such arrangement enter into it for fraudulent reasons. In the case of fraudulent behavior those responsible can always be sanctioned pursuant to the rules on civil responsibility.
Fianancial Assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	In addition to our answer to question 2 above, the obligations of each guarantor incorporated in Luxembourg shall not extend to cover any amount the guaranteeing of which would be in breach of the financial assistance provisions as defined in article 49-6 of the amended Luxembourg Law of 10 August 1915 on Commercial Companies (the Luxembourg Law on Commercial Companies) or constitute a misuse of corporate assets as defined under article 171-1 of the Luxembourg Law on Commercial Companies.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	No.

Fees/Taxes - Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation?	Taxes vary depending on the nature of the security. **Mortgage** The following fees apply: • A registration fee of 0.24 percent on the total amount of the secured debt. • A tax of 0.05 percent on the total amount of the secured debt, for first registration and renewal (every 10 years). • Notary fees are calculated on a sliding scale, based on the value of the mortgaged property. **Pledge** • Pledge on any type of assets could be created under the private seal and therefore no registration or notary fees apply. • For Pledge on general business: a fee of 0.24 percent on the total amount of the secured debt, or a fixed duty of €12. The fixed duty may be available if the underlying credit agreement has a sufficient connection with a foreign jurisdiction. A tax of 0.05 percent on the total amount of the secured debt, for first registration and renewal. Please note that a draft of bill provides for an amendment of the registration duty rules which might have an impact on the application of the 0.24 percent registration duty as from 2017.
17. Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Costs can be minimized by taking security over shares, claims and financial instruments under the Collateral Law, as the costs of taking security over such assets are minimal. Security over such assets also offer a high degree of certainty to financial markets participants because the Collateral Law is bankruptcy remote and aims to protect such interests, even if the agreement was entered into during the pre-bankruptcy suspect period.
18. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Please refer to question 16 above.

19. Will withholding tax be payable on interest owed to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	A 15 percent withholding tax may apply on interest payments if (a) the loan receivables are reclassified as equity and the interest is consequently reclassified as a dividend for Luxembourg tax purposes; (b) the loan receivables are constitutive of silent partnership arrangements (Bailleur de fonds); (c) the intra-group interest on the loan receivables is not at arm's length and reclassified as hidden dividend; (d) the interest on the receivables is profit sharing or due on certain instruments carrying a fixed interest and an interest contingent on profit distributions by the paying entity. A 10 percent withholding tax applies, under the 23 December 2005 Law as amended, on certain income (interest) from savings paid or secured by Luxembourg paying agents to a Luxembourg individual resident only. With a retroactive effect as of 1 January 2016, the 23 July 2016 Law recently amended the 23 December 2005 Law by repealing the law implementing the EU Savings Directive. Consequently, the scope of the 10 percent withholding tax is now limited to payments made by Luxembourg paying agents to a Luxembourg resident individual and no longer to Residual Entities. The rate of 10 percent should be increased to 20 percent as from 1 January 2017.
Enforcement	
20. What is the bankruptcy/insolvency process?	Under the laws of the Grand Duchy of Luxembourg (Luxembourg) several types of insolvency proceedings are available for commercial companies bearing the form of a private limited liability company, a public limited liability company or a partnership limited by a debtor: • bankruptcy (faillite): regulated under articles 437 to 592 of the Luxembourg Commercial Code (Code de Commerce) (the "LCC") is the most common type of insolvency proceeding. It applies to a debtor which is (i) unable to pay its debts as they fall due, which characterizes a state of cessation of payments, and (ii) has lost its creditworthiness; • controlled management (gestion contrôlée): regulated by the Luxembourg Grand Ducal Decree of 24 May 1935 (the Decree). It can be applied for by a debtor which is facing financial difficulties and is considered by the Luxembourg district court sitting in commercial matters to have real prospects of either (i) reorganizing and restructuring its debts and business or (ii) realizing its assets in the best interest of creditors;

	• suspension of payments (sursis de paiement): regulated under articles 593 ff. of the LCC. This procedure applies to a debtor who is unable to face its financial obligations due to unexpected events but after examination of its balance sheet, has enough assets to pay all its debts or can bring back to balance its assets and liabilities. It is rarely used in practice and will not be discussed in detail. It is not to be confused with (i) the suspension of payments provided by the Luxembourg Act of 5 April 1993 on the financial sector, as amended applicable to credit institutions and other establishments managing funds for third parties, and (ii) the suspension of payments provided by the Luxembourg Act of 6 December 1991 on the insurance sector, applicable to insurance undertakings; and • composition with creditors (concordat préventif de faillite): regulated by the Luxembourg Act of 14 April 1886. Its purpose is to obtain a restructuring of the debtor's liabilities. There are no specific criteria for opening such proceedings. The only conditions are that the debtor should file an application before the courts with all documents supporting the request, justifying its state and having obtained the consent from the majority of its creditors representing 3/4 of the claims. This procedure is hardly ever used due to the sacrifices it requires from creditors and will not be treated in detail.
21. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	Security trustees or security agents may be used in Luxembourg. According to the Collateral Law, security interests may be granted to a fiduciary or trustee acting on behalf of the beneficiaries.
22. Would a court recognize a foreign judgment without reexamining the merits of a case?	A valid judgment obtained within the territorial jurisdiction of any state which is a member of the European Union or the European Economic Area will be enforceable in Luxembourg in accordance with and subject to applicable enforcement proceedings as provided for in the Brussels Regulation (recast). Final and conclusive judgments of the courts of a state which is not a member of the European Union or the European Economic Area, will be recognized and enforced in Luxembourg, in accordance with and subject to applicable enforcement proceedings as provided for in Article 678 of the New Luxembourg Code of Civil Procedure.

	Recognition and/or enforcement of foreign judgments or orders in Luxembourg may be subject to specific conditions of recognition and/or enforcement, either under the Brussels Regulation (recast) (unless enforcement may be sought pursuant to Regulation 805/2004) or under common Luxembourg private international law or under The Hague Convention (as applicable).
23. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Parties to a contractual relationship may choose to submit their contract to a foreign law in accordance with the Rome Convention on the law applicable to contractual obligations. A Luxembourg court could thus decide to apply the law chosen by the parties to the security arrangement relating to movable assets, rather than the lex rei sitae. The choice of law provisions will be recognized and given effect to by the courts of the Grand Duchy of Luxembourg in accordance with but also subject to the provisions of the Rome Convention, unless such choice of law is meant to circumvent rules of public order or mandatory nature of the law that would have otherwise applied in the absence of such choice of law provisions.

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The Netherlands

The Netherlands

Obligations	
1. What are the types of obligations that may be secured?	Dutch *in rem* security rights are granted in the form of a right of mortgage (*hypotheek*) or a right of pledge (*pandrecht*). The parties' choice for a mortgage or a pledge is dictated by statute. Rights of mortgage and pledge can secure present and future monetary payment obligations of the security provider or third parties, in each case if they are sufficiently identifiable. In respect of a mortgage, the maximum total amount of the obligations secured by the mortgage must be stated in the deed of mortgage. The parties to the deed are free to determine this amount. It is not uncommon to calculate the maximum amount of the mortgage by taking the principal amount of the debt plus a margin for interest and costs.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Any financing structure, whereby a Dutch company (or another Dutch legal entity) grants upstream-, cross-, or downstream security (in the form of a guarantee or otherwise) for a (domestic or foreign) company, other than a 100% subsidiary, could trigger Dutch law corporate benefit/ultra vires issues. If and to the extent that the company does not derive sufficient corporate benefit from granting the security and/or the transaction(s) in relation to which the security was granted, such security may be capable of being subsequently avoided by the company—or, as the case may be, by its bankruptcy trustee—under Dutch law corporate benefit/ultra vires rules.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	See above.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No.

5. Are there any solvency or net worth limitations/ restrictions?	The main decisive factor is "actual corporate benefit". Dutch case law is not very helpful and precise on this point but merely provides that: (i) "all circumstances of the case" should be taken into account in deciding whether there is sufficient actual corporate benefit for a company to enter into a transaction; and (ii) it is, in principle, for the management of a Dutch company to decide whether the company will derive sufficient actual corporate benefit from the transaction, and a Dutch court will only interfere if it considers that management could not reasonably have come to its conclusion that sufficient benefit existed. Factors that can be relevant in concluding that sufficient corporate benefit exist include the fact that funds secured or guaranteed by the company were lent on to it or somehow invested in it, that the transaction benefited the group to which the company belongs, and that cross security or guarantees were also given by other group companies, so that the burden was effectively shared. In addition, the financial position of the company may be relevant. This is a factual and economic analysis of the business of the company and its status from a financial point of view. Relevant factors for such analysis are, for instance: (1) the risk level involved with the transaction in relation to the financial status of the company, (2) possible rights of recourse and/or effective (partial) recovery of any possible loss and (3) whether the company will (in)directly profit from the transaction business wise (which will fall out positively from a financial perspective as well).
Security/Collateral	
6. Over what type of personal property can security be granted?	By means of a mortgage: real property, registered ships and aircrafts. By means of a pledge: typically, moveable property (inventory, stock, (moveable) machinery), shares, other securities, rights (receivables) under agreements, bank accounts, intellectual property and unregistered ships and aircrafts.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	General security is not a Dutch law concept, as specific requirements apply for the creation of mortgages and pledges over the various types of assets as mentioned above. These specific requirements do apply in addition to some general requirements for creating mortgages and pledges.

	The first general requirement is that both the mortgage and the pledge generally require the execution of a deed. Although it is possible to combine some of the security rights in one document, legal practice is that each type is included in a separate deed. In the case of a mortgage and a pledge on registered shares this must be a notarial deed. The right of pledge on most other assets can be effected by means of a private deed. Pledges on these assets can be combined in one document. The second general requirement is that there must be a valid obligation to create the security right. Usually, this obligation is included in the loan agreement. The third requirement is that the person giving the security right must have authority to dispose of the property on which the security is to be created, which means that it must be the owner or proprietor of the assets to be secured. The fourth requirement is that such assets must be sufficiently identifiable. Fifthly, at the time of foreclosure of a security right, the corresponding secured obligations must be capable of being identified. Lastly, the assets must be transferable. A point of attention is that agreements (and applicable general conditions) may provide that the rights under the agreement cannot be transferred. As a result of which they cannot be encumbered either.
8. Can security be taken over real estate?	Yes, by means of a mortgage. The (notarial) deed of mortgage needs to be registered with the Dutch land register.
9. Can cash collateral be taken? How?	Cash administered in a bank account can be encumbered by means of a disclosed pledge over receivables of the pledgor vis-à-vis the relevant account bank. This assumes that such receivables are capable of being pledged: any applicable account bank agreements (and applicable general conditions do not provide that the receivables cannot be transferred or pledged (see above).
10. Are pledges of shares permitted?	Yes. If it concerns registered shares, security is created by means of a disclosed pledge, which needs to be registered in the company's shareholders register (although this is not a requirement for the valid creation of the pledge). If it concerns bearer shares, the pledge does not need to be registered, but it is required that the pledgee takes possession of the shares. Securities (e.g. dematerialized shares) which are deposited with a custodian and included in a Dutch giro system are pledged by mere registration of the right of pledge by the custodian by means of a book entry in the name of the pledgee. The pledgee will generally require proof of the book entry in the form of an acknowledgement by the custodian. Often, a private deed, containing additional provisions, is executed.

11. Are stamp or other duties imposed?	No.
12. Must documents be executed in front of a notary?	Yes, see above in case of pledges of shares and mortgages.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	An insolvency practitioner in the bankruptcy of a Dutch company, or one of the creditors outside of bankruptcy, could try to challenge the validity of the security rights on the basis of fraudulent conveyance. A legal act performed by a Dutch company (such as the granting of security) that is prejudicial to the interest of its creditors can be contested by a creditor or the insolvency practitioner in bankruptcy based upon fraudulent conveyance (*action pauliana*) if (i) the transaction is entered into without a legal obligation to do so, (ii) the transaction is prejudicial to the interests of the other creditors and (iii) both the company and the counterparty to the transaction were aware or should have been aware that the transaction was prejudicial to the other creditors. With respect to certain specified transactions (which include the granting of security), this awareness is deemed to exist, subject to evidence to the contrary, if the transaction was entered into within a year of the date it is contested or, in the case of a bankruptcy, before the date of the bankruptcy.
Financial Assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Pursuant to Dutch statute, a Dutch public limited company (N.V.) is not permitted to give security or a guarantee to allow third parties to subscribe to, or acquire shares in, its capital. This prohibition on providing support for the subscription or acquisition of shares in the capital of the N.V. also applies to the N.V.'s Dutch and foreign subsidiaries. There are no whitewash procedures in the Netherlands. This means that guarantees and security interests that have been granted in violation of the above prohibition may be held void or subject to avoidance. For Dutch private companies with limited liability (B.V.) the prohibitions on financial assistance were abolished on 1 October 2012, when the Act on the flexibilization of Dutch private company law became effective. As a result, no specific rules apply for financial assistance provided by B.V.'s. However, as set out above, a transaction must be within the corporate objects and must be for the corporate benefit of the company, also when it relates to providing financial assistance.

15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	Loans can be provided by the N.V. and its subsidiaries with board approval for the subscription for and acquisition of the shares in its capital when: (i) the granting of the loan, including the interest received by the company and the security provided to the company, are in line with fair market conditions, (ii) the company's equity (total assets minus liabilities), reduced with the amount of the granted loan, is not less than the paid and called up share capital plus the reserves which must be maintained pursuant to law or the articles of incorporation; (iii) the creditworthiness (solvency) of the third party or, if it concerns an agreement between more than two parties, of each involved party, has been carefully examined, and (iv) where the loan is granted for the purpose of a subscription for shares within the framework of an increase of the issued share capital of the company or for the purpose of obtaining shares in the company's capital, the price for which the shares are taken or acquired must be fair. According to the prevailing opinion, the prohibition for N.V.'s does not extend to the acquisition of shares in a foreign parent company of a Dutch N.V. But this has not been confirmed in case law of the Dutch Supreme Court. What does follow from case law is that it is permitted for a target company in the form of a Dutch N.V. and its subsidiaries to give security and a guarantee for facilities that are used to finance a dividend distribution, also if the proceeds of such distribution are used by the (new) shareholder of the Dutch N.V. to pay part of the purchase price. In this manner, it is possible to achieve a debt-pushdown of the acquisition debt to the level of the relevant Dutch N.V. up to the amount of its distributable reserves. The target group can then grant security for that part of the acquisition debt.
Fees/Taxes - Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	No, but see below.

17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	No stamp duty or other documentary taxes are payable in connection with the granting of Dutch security or its enforcement, except for: (i) limited registration costs for the registration of the security documents with the tax authorities (in case of certain pledges) and the Land Register (in case of mortgages), (ii) court fees payable in connection with the enforcement of the security documents in the Dutch courts and (iii) civil law notaries' fees in the event of enforcement of a mortgage by way of a public sale. Notaries' fees are payable if the security is granted by the execution of a notarial deed. As set out above, this is required for the creation of a right of mortgage and for a pledge of registered shares.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	In general, the Netherlands does not impose any withholding tax on (i) interest payable on loans made to domestic or foreign lenders, or (ii) amounts paid under a guarantee or proceeds of enforcing security. Although, interest on long-term subordinated profit-sharing loans may be treated as a dividend under Dutch tax law. If so, a withholding tax at a rate of 15% may apply.
Enforcement	
19. What is the bankruptcy/insolvency process?	For Dutch legal entities, there are two insolvency procedures in the Netherlands: suspension of payment (*surséance van betaling*) and bankruptcy (*faillissement*).
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	The enforceability of rights of mortgage and pledge is in principle not affected by a suspension of payment or bankruptcy of the mortgagor or pledgor. The competent Dutch court may, however, order a cooling-off period, during which all creditors (including mortgagees and pledgees) are prevented from taking any enforcement action with regard to their collateral. A cooling-off period can be ordered for two months, with one possible extension of a further two months. Further, if the insolvency practitioner has demanded that the secured lender enforces on its collateral within a certain (reasonable) timeframe, and the secured lender does not do so, the insolvency practitioner may sell the collateral him- or herself. The secured lender would then have to share in (all) the costs of the bankruptcy (which may well be substantial). The trust concept is not known in The Netherlands. However, trusts created under the laws of another jurisdiction may be recognized under the Dutch Civil Code, which enacts The Hague Convention on the Law Applicable to Trusts and on their Recognition 1985.

	As the concept of trusts is not known, it is not possible to grant mortgages or pledges to a security trustee. Under Dutch law, security can only be granted to the creditor of the secured claims. A number of solutions have been developed, so that mortgages and pledges can be granted to a security agent, including the creation of a parallel debt owing to the security agent equal to the aggregate debt owing to the lenders. In principle, this also allows the (other) creditors to transfer their loan participations without affecting the mortgages and pledges.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	A foreign judgement would be recognized and enforced by Dutch courts without re-examination of the merits of the case, subject to and in accordance with Regulation (EU) No 1215/2012 of The European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), as amended from time to time. We note that, for instance, both the Netherlands, other Member States of the European Union) and England are (at this point) party to this European Regulation. The enforcement of foreign judgments by Dutch courts in the Netherlands would be subject to the rules of civil procedure, as applied by those Dutch courts. Dutch courts may decline jurisdiction brought before them if concurrent proceedings are being brought elsewhere. Proceedings may be stayed even where it is clear that the court first addressed does not have jurisdiction, until that court has declined jurisdiction. In the absence of an applicable treaty between the relevant foreign country and the Netherlands, a judgement rendered by such foreign court will not be enforced by Dutch courts. In order to obtain a judgement which is enforceable in the Netherlands, the claim must be re-litigated before a competent Dutch court. If and to the extent that the Dutch court finds that the jurisdiction of the relevant foreign court has been based on grounds which are internationally acceptable, that proper service of process has been given and that further proper legal procedures (*behoorlijke rechtspleging*) have been observed, the Dutch court would, in principle, give binding effect to the final judgement of the foreign court unless such judgement contravenes principles of Dutch public policy.

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Contracts between a party residing in the Netherlands and a party residing in the European Union and/or the United Kingdom are governed by the Rome I Regulation (593/2008/EC). A choice of foreign law in accordance with the regulation would be upheld as a valid choice of law by Dutch courts and applied by those courts in proceedings in relation to such rights and obligations as the governing law thereof, except: (i) to the extent that any term of the relevant foreign law governed agreements or any provision of English applicable to the Transaction Documents is manifestly incompatible with the public policy (*openbare orde*) of the Netherlands or the European Union, (ii) that mandatory provisions of Dutch law may be given effect if, and insofar as, under Dutch law those provisions must be applied irrespective of the chosen law (*voorrangsregels*) and (iii) that the law of the country where the performance of the agreement takes place may be regarded by a Dutch court.

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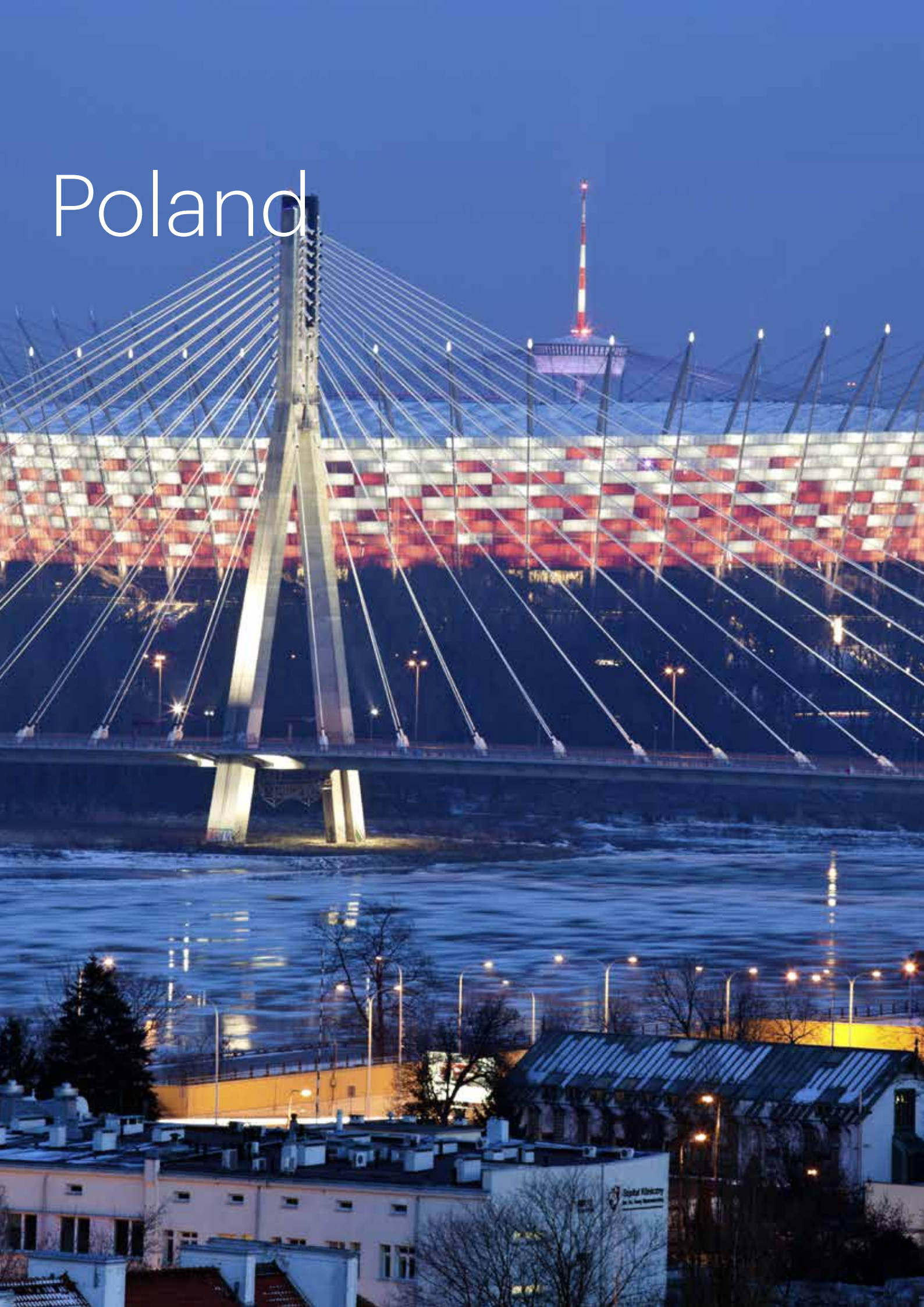

Poland

Obligations	
1. What are the types of obligations that may be secured?	All claims that typically arise under or in connection with a loan agreement, whether present or future, actual or contingent or owed jointly or severally can be subject to security interests under Polish law. Some security interests, such as registered pledges, may only secure pecuniary claims.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes, a company can provide upstream and downstream guarantees for its affiliates, including the foreign affiliates.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	Yes, this is advisable as the members of the Management Board of Polish companies are required to act in the company's best interest.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No.
5. Are there any solvency or net worth limitations/ restrictions?	An entity may be declared bankrupt if it is insolvent. Subject to certain exceptions, an entity is deemed insolvent if the value of its pecuniary liabilities (excluding any future or contingent liabilities and intra-group loans) exceeds the total value of its assets for a period exceeding 24 months.
Security/ Collateral	
6. Over what type of personal property can security be granted?	Security can be established over tangible (either movable assets or real properties) and intangible assets. Tangible personal property includes: goods, machinery, equipment, hard and soft commodities, ships, aircraft and other vehicles and major plant, such as gas turbines. Intangible personal property includes shares and other securities, intellectual property and receivables.

7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Security agreements must be tailored to a specific asset or group of assets. For instance: • Mortgage may be established only over the (i) real properties, (ii) perpetual usufruct of the real estate, (iii) cooperative title to premises (spółdzielcze własnościowe prawo do lokalu), and (iv) claim secured with a mortgage. • Registered pledges may be established over all other tangible or intangible assets, other than claims secured by mortgage or mortgaged claims and ships which may be subject to maritime mortgage. • Financial pledges may only be established over funds, credit receivables and financial instruments.
8. Can security be taken over real estate?	Yes, by means of a mortgage. A mortgage is created after it is registered in the land and mortgage register maintained for the encumbered real property.
9. Can cash collateral be taken? How?	Yes, the cash collateral is taken by means of: financial and registered pledges over bank accounts, power of attorney to bank accounts authorizing the creditor to issue blockade instructions. The cash may also fall within the scope of a general asset pledge. Additionally, the Polish Banking Law provides for a specific cash collateral instrument which may be established only in favor of banks. This instrument is given by way of a security deposit agreement pursuant to which ownership title to a specific amount of cash is transferred to the bank for the purpose of security.
10. Are pledges of shares permitted?	Yes. Registered and civil pledges over shares in limited liability companies and joint-stock companies may be established for the benefit of all kinds of creditors. Financial pledges over shares may be established only for the benefit of a limited class of creditors, e.g. financial institutions.
11. Are stamp or other duties imposed?	No stamp duties are imposed except for a stamp duty for a power of attorney of a person submitting application for registration of security at court. Establishment of certain kinds of security requires also notarial fees and/or registration fees (please see our answer to the question below).

12. Must documents be executed in front of a notary?	Form of a notarial deed is solely required for establishment of mortgage and making a declaration on submission to enforcement. Submission to enforcement is a Polish instrument which is not a typical security interest. The aim of submission to enforcement is to allow a creditor for a quicker enforcement procedure (without having to file a suit against the debtor). This instrument is extremely popular in Poland. Some documents require signatures certified by a notary (e.g. civil pledges over shares). Some other documents, such as assignment agreements and financial pledge agreements, may require notarial certification of date.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes, such risk may arise in accordance with the following rules: **Restructuring Law** Pursuant to the Restructuring Law there are limitations which apply specifically to the reorganization procedure (postępowanie sanacyjne), pursuant to which establishment of a security interest within one year before the day of submission of a motion for the opening of the reorganization proceedings is ineffective if: (i) such security interests have not been established directly in connection with receipt of a service by a debtor or (ii) the value of such security interest exceeds the half of the value of the received consideration. Within such period, establishment of the security interests without consideration is also ineffective. The above does not apply to the security interests established in order to secure the term financial transactions, as well as financial instruments loan and financial instruments sale with sale-back obligation before the day of opening of the reorganization proceedings.

	Bankruptcy Law Security and payment of an unmatured debt are also ineffective if provided by the bankrupt within six months before the day of submission of a petition for bankruptcy. However, the person who received that payment or security may petition to acknowledge them to be effective, if he was not aware of the existence of grounds for declaration of bankruptcy at the time when they were provided. At the request of the receiver, the judge in charge of bankruptcy proceedings shall determine that a mortgage, pledge, registered pledge or marine pledge established on the bankrupt's assets is ineffective with respect to the bankruptcy estate, if the bankrupt was not a personal debtor of the secured creditor, and the security was established within one year before the day of submission of a petition for bankruptcy, and the bankrupt did not receive any benefit in association with the establishment of that security. **Polish Civil Code** Civil Code provides the general protection of creditors against fraudulent actions of a debtor. According to this regulation, upon fulfilment of the specified conditions, actions of a debtor detrimental to its creditors may be challenged by those creditors and may be found ineffective towards them. The above applies if the debtor is aware of the creditors' detriment. Action carried out to the creditors' detriment may not be declared ineffective after the lapse of five years from the date of such action.
Financial Assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	**Financial assistance** Polish joint stock companies may grant loans, provide collaterals, make advance payments, and/or otherwise finance the acquisition of their own shares, provided that certain specific requirements are met. The financial assistance must be provided on arms-length terms and the acquisition of shares has to be at fair value. Any agreement executed in violation of the financial assistance rules, would be deemed null and void. Consequently, to the extent that the funds transferred to its parent company would be used to pay for the acquisition of shares in a joint stock company (e.g. should such funds be used to repay financing obtained in order to finance the acquisition of shares in the joint stock company in question), entering into such a arrangement should be carried out in compliance with the above requirements.

	Upstream guarantees There are no legal restrictions on upstream guarantees.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	Indirectly, by changing the legal form of the company from joint stock company into a limited liability company. Additionally, Polish Commercial Companies Code provides for a specific whitewash procedure the completion of which allows joint stock company to legally grant financial assistance. This procedure is rarely used in practice and involves the following conditions: • Financing must be granted on arm's length terms, after due verification of the debtor's solvency. • The shares are acquired for a just remuneration. • The financing is made from the funds from special reserve capital created for this purpose. • The financing has been specifically authorized by the general shareholders meeting, on the basis of a written report of the management board, evidencing the corporate benefit of the transaction (such report must be publicly announced and filed with the corporate registry).
Fees/Taxes - Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Generally, loan agreements are subject to two percent tax on civil law transactions (TCLT) in Poland payable by the borrower. However, there are several exemptions from TCLT applicable to loans (e.g. exemption applicable to loans granted by foreign entities granting loans and credits). Therefore, in practice two percent TCLT is usually avoided in case of loans. TCLT is also paid by a borrower upon the establishment of the mortgage on the real estate: • To secure existing debt (specified amount) – TCLT of 0.1% of the amount of the secured debt is paid. • To secure a debt of an undetermined amount - TCLT amounting to PLN 19 is paid. Usually this type of mortgage is established. Therefore, TCLT burden is immaterial.

17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	**Notarial fees:** Establishment of security in front of a notary is subject to 23 percent VAT tax and the notary fees. The notary fees for establishment of a mortgage and submission to enforcement depend on the value of the secured claim (max. PLN 10,000 + 23 percent VAT). Some of the security documents may require a special form (signatures certified by notary or date certified by notary). The notarial fee for the certification of signatures is related to the value of the secured claim and number of signatures placed under the document. The notarial fee for the certification of date is insignificant. The court fee for application for registration of mortgages or registered pledges is PLN 200. If an application is filed by the attorney, a stamp duty in the amount of PLN 17 is due per each attorney included in the power of attorney submitted to the court. **Fee for searches:** Official certificates from the land and mortgage register, the register of pledges and the register of treasury pledges are subject to court fees in minor amounts. It is possible to conduct a public search in the commercial companies register for free. However, a full excerpt is also subject to minor court fee. **Fees for legalization or apostille:** Subject to any bilateral treaties and exceptions under the EU law, all documents issued by the officials of a foreign country need to be legalized or furnished with an apostille clause in order to be used in front of a Polish court or authority. **Fees for sworn translations:** All the documents filed with the Polish courts or authorities need to be either bilingual and include Polish language version or be furnished with a sworn translation into Polish made by a sworn translator certified in Poland. **Fees at enforcement** Court enforcement is subject to court fees and fees of the bailiff (komornik). The cost of the out-of-court enforcement vary depending on the type of security interest.

18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Generally, in Poland interest paid to a foreign lender is subject to 20 percent withholding tax unless relevant double tax treaty provides otherwise or the conditions set out in the Polish regulations implementing Interest-Royalties Directive regime are met. However, under most double tax treaties, interest paid by Polish borrowers to foreign banks in respect of bank loan is not subject to withholding tax in Poland (this needs to be confirmed on a case-by-case basis depending on the country of tax residency of a foreign bank). Applicability of Polish withholding tax to amounts paid under a guarantee or from enforcement proceeds should be analyzed on a case-by-case basis.
Enforcement	
19. What is the bankruptcy/insolvency process?	Since the beginning of 2016, a major amendment to the Bankruptcy Law and a new Restructuring Law came into force. The practice is now establishing. **Restructuring Law** provides for the certain types of proceedings which are initiated by the company threatened by insolvency and aim at leading such company out of the financial problems. The proceedings available under the Restructuring Law differ in the scope of protection of the debtors and the level of interference in the company's business: • **Proceedings to approve composition** – provides the lowest protection of the debtors and the lowest level of interference in the business of the company. This is an out of court procedure, so the collection of the votes regarding the approval of the composition is performed without the court's participation. However, after the majority of the creditors vote for the composition, such composition has to be subsequently filed with and approved by the court.

	• **Expedite composition** – a fast-track procedure providing for a lower protection of the debtor than in ordinary composition proceedings but at the same time a higher level of protection of the debtors than in the proceeding to approve composition. In these proceedings a court supervisor is appointed, who files the debtor's restructuring proposals with the court. The court then immediately sets the date for the creditors meeting, on which they can vote on the approval of the composition, which has to be subsequently approved by court. During this procedure, the court may deprive the company of the management over its business and hand it over to an appointed supervisor. • **Composition** – slower procedure with a higher level of protection of the debtors. The most similar procedure to the composition bankruptcy known before the major changes in Bankruptcy law took place. Provides for a lower level of interference in the company's business. In this procedure the court may also appoint a court supervisor or deprive the company of the management over its business and hand it to the supervisor. • **Recovery proceedings** (postępowanie sanacyjne) – the highest level of interference in the company's business, including the right to amend and terminate the contracts and appointment of a trustee (zarządca). **Bankruptcy proceedings** are being carried out on the basis of the amended Bankruptcy Law. Such proceedings can be initiated by a company voluntarily if it is unable to pay its debts when due, or by its creditors. These proceedings are being carried out in case a company is insolvent. This procedure is aimed at the maximum protection of the creditors and enforcement of their rights. The bankruptcy receiver (syndyk) is liquidating the assets (preferably the collection of assets as an ongoing concern) and distributes the sales proceeds to creditors. These proceedings do not focus on considering ways to lead the insolvent company out of the financial trouble but to divide its assets and split it among the creditors. No enforcement proceedings are possible outside a single bankruptcy proceeding. Upon the declaration of bankruptcy pending foreclosures (enforcement proceedings) are first stayed and then discontinued. Secured creditors may be then satisfied in the course of the bankruptcy proceedings and in general enjoy a privileged position over other non-secured creditors.

	Secured creditors enjoy priority of satisfaction from the sale proceeds over "regular" unsecured creditors (save for the "privileged" claims such as specified employees' wages etc.). In case of mortgages, creditors are satisfied according to the rank of their mortgage, i.e. lower ranks will not receive anything until the higher ranks are fully repaid. It is similar in case of pledges (including registered pledges). The funds received from the liquidation of the bankruptcy estate are primarily used to cover the costs of the bankruptcy proceedings, which can effectively diminish the sums eventually received by the creditors as an effect of the liquidation. Similarly, the sale proceeds of the assets subject to the mortgage or pledge, are diminished by the costs of liquidation of the asset (uncapped) and other costs of the bankruptcy proceedings (in the amount reflecting the proportion between the value of the asset and the overall value of the bankruptcy estate, capped at 10 percent of the sale proceeds).
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	As to the principle, only the bailiff (komornik) may carry out enforcement proceedings on the basis of a judgment of the court. Administrative agents may be appointed in facility agreements. Security agents may act in enforcement in out of court enforcement, pursuant to relevant security documents.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	The court will not examine the merits of the case unless it establishes that the judgment is against the public policy.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	The court will apply the law which has been chosen by the parties.

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Romania

Romania

Obligations	
1. What are the types of obligations that may be secured?	All obligations that typically arise under or in connection with a loan agreement, whether present or future, actual or contingent or owed jointly or severally or in any other capacity can be secured by a security interest. Only obligations that may be expressed in money can be secured.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	While not expressly regulated, downstream guarantees are common in practice; upstream guarantees are expressly prohibited by law, being under certain conditions qualifies as criminal offences. In case of foreign affiliates, the issue should be appreciated based on the applicable law, i.e. Romanian law for Romanian companies – the solution should be the same in case the company granting security is a Romanian company, irrespective of the nationality of the company receiving security.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	A Romanian company may exercise only such rights and undertake only such obligations as correspond to, or aim to accomplish, its authorized scope of business and, therefore, such rights and obligations must be in the company's commercial interest (such as seeking benefits for the Romanian company in question). Obtaining the prior written approval of the Romanian company's responsible corporate body (e.g., the general meeting of shareholders or sole associate) for a transaction may not validate a transaction entered into by a Romanian company in the absence of such corporate benefit.

4. Are any government consents or filings required in connection with the delivery of a guarantee?	The concept of delivery is not regulated under Romanian law. Governmental consents are not required for common security. Specific formalities have to be fulfilled for achieving opposability and preference, such as registrations with public registries (and for specific secured assets, with private registries) and notifications. In case of immovable mortgages, for validity purposes, the agreement must be authenticated by a public notary and in certain cases registration with land registry may represent a validity condition. In appropriate cases, parties should check that consent is not required under a potentially applicable sanctions regime.
5. Are there any solvency or net worth limitations/ restrictions?	In case of joint stock companies, the directorate or the management board may grant security over the assets of the company, with a value higher than 50 percent of the accounting value of the company's assets, only with the prior approval of the extraordinary meeting of shareholders. Also in case of joint stock companies, the manager may, for himself, transfer or acquire assets having a value which exceeds 10 percent of the net asset value only with the prior approval of the extraordinary meeting of shareholders.
Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over assets which are tangible or intangible, movable or immovable. Tangible property may include: goods, live stocks, machinery, equipment, hard and soft commodities, ships, aircraft and other vehicles and major plants, such as gas turbines. Intangible property may include: bank accounts, ownership titles, shares and other securities, intellectual property, contractual, equitable or other rights to the payment of money, the performance of obligations or the possession or use of tangible assets owned by others.

7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Although theoretically possible, movable mortgages over the totality of the assets of a company are not used in practice because the express request of the law that mortgaged assets must be sufficiently accurately described as to allow their identification. As a consequence, in practice mortgages are constituted over specific classes of assets such as trade receivables, tax receivables, accounts, tangible assets, intangible assets, shares, intellectual property rights, etc.
8. Can security be taken over real estate?	Yes, real estate can form the object of a mortgage created in the form of an authentic deed. The mortgage agreement may be enforced pursuant to specific provisions applicable to real estate mortgages.
9. Can cash collateral be taken? How?	Yes, a common security is the mortgage over a (blocked) bank account comprising a certain amount of money. Other options may fall under the notion of financial collateral as provided by Government Ordinance no. 9/ 2004 regarding financial collateral arrangements, transposing Directive 2002/47/EC on financial collateral arrangements, for which specific conditions must be observed (e.g. the parties must be public institutions, financial institutions and similar).
10. Are pledges of shares permitted?	Pledges over shares in both stock companies and limited liability companies are permitted. Taking and enforcing mortgages over shares in limited liability companies is more restrictive considering the personal character of such companies. However, in practice they are commonly used, and solutions may be agreed to limit the legal restrictions.
11. Are stamp or other duties imposed?	While there are no stamp or other duties imposed for creation of security interests, notarial fees are payable in connection to the constitution of a real estate mortgage, as such document must be in authentic form. Such fees are proportional with the secured amount. Registration fees are applicable in connection to public registries.
12. Must documents be executed in front of a notary?	Real estate mortgages must be concluded in authentic form before a public notary.

13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	In case of insolvency, the judicial administrator may request the annulment of the insolvent company's fraudulent deeds or operations, detrimental to its creditors, performed within the hardening period of two years prior to the opening of the insolvency procedure. Fraudulent deeds are subject to nullity sanctions and as a consequence "restitutio in integrum" principle is applicable.
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	As a general rule, a joint stock company may not grant loans or security for the acquisition of its own shares by a third party. Although debated by part of the practice, it is generally considered that financial assistance restrictions should not be applicable in case of limited liability companies. With respect to upstream guarantees, please see Question 2 above.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	With respect to financial assistance - while re-registering any target company that is a joint stock company as a limited liability company is used in practice, there are also opinions that financial assistance is prohibited also in case of limited liability companies. With respect to upstream guarantees, in light of the legal prohibitive regime of upstream guarantees, whitewashing this issue is debatable in practice and should be discussed on a case-by-case basis, if at all.
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Please see our answer on Question 11 above. Such duties and fees are imposed by law and payment thereof may not be avoided.

17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Fees are payable for the registration of both movable and immovable mortgages with the public registries for opposability purposes. In particular, the fees for movable security are notional, while for immovable mortgages the fees depend on the secured amount. Notary fees are payable in relation to immovable mortgages that must be in authentic form and depend on the secured amount. Land registry excerpts are obtained for a nominal fee. Specific fees are paid to the bailiff for enforcement, proportional to the amounts realized through enforcement.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Such withholding taxes may be imposed in case no double taxation treaty exists between the respective jurisdictions. A specific tax analysis should be conducted in each case.
Enforcement	
19. What is the bankruptcy/insolvency process?	Law 85/2014 regarding insolvency and insolvency prevention proceedings ("Insolvency Law") defines insolvency as a situation where the debtor is unable to pay debts that are due, liquid and certain. Insolvency (i) is presumed when the debtor does not pay its debt to a creditor within 60 days from the due date; and (ii) is imminent when it is evidenced that the debtor will not be able to pay its debts on the due date with the funds available on such date. A minimum threshold for receivables of RON 40,000 (approx. €9,000) is established for filing an insolvency request. In case of a debtor's insolvency, upon notification from the special administrator, the creditor must submit its claims against the debtor and be part in the procedure. Considering the collective character of the insolvency, no claim may be raised or enforced against the insolvent party outside the insolvency procedure. Any insolvency request from a creditor, and any legal steps undertaken under an insolvency proceeding, is made public in the Insolvency Bulletin, general information being available to third parties as well. Following opening of an insolvency proceeding against the insolvent company, some of the most important consequences may be summarized as follows:

	• With respect to judicial claims against the insolvent company, proceedings against the insolvent company's assets are suspended and may be pursued only within the insolvency proceeding. Similarly, any interest or penalties cease to be calculated with respect to the insolvent company's obligations. As an exception to this principle, claims against co-debtors and third party guarantors are not suspended. • With respect to preferential claims (claims that benefit from a privilege, mortgage or other similar security), the creditor may request immediate enforcement of the assets encumbered with a preference cause, in case the value of such asset exceeds the value of the secured receivables, but only to the extent such asset is not essential for fulfillment of the reorganization plan. • With respect to an insolvent company's bank accounts, a single insolvency bank account is opened while all amounts in bank accounts are transferred by the banks into such insolvency account. In case of mortgaged bank accounts or cash collateral security, such amounts are immediately distributed on the creditors request, for payment of receivables due. • With respect to set-off, the insolvency procedure does not affect the right of the creditor to invoke set-off against the insolvent company to the extent the conditions of legal set-off are fulfilled on the opening date of the insolvency proceeding. • With respect to contracts, any clauses that provide termination, claims becoming due and payable, or other similar consequences in case of insolvency of the company, are considered null and void. In order to increase value of the debtor's assets, the judicial administrator may terminate any contract to the extent such contract has not been fully or substantially performed. In case of termination, the creditor has a claim for damages against the debtor. Furthermore, the judicial administrator may modify contractual clauses (including credit agreements) with the prior agreement of the parties, in order to secure the equivalence of future contract performance – any claims for hardship reasons must be submitted to the insolvency judge. • The judicial administrator may request the annulment of the insolvent company's fraudulent deeds or operations, detrimental to its creditors, performed within the hardening period of two years prior to opening of the insolvency procedure.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	In addition to the entity to whom the security is granted (usually the mortgagee), movable security documents usually allow the mortgagee to appoint a security agent (itself a secured creditor) to hold and enforce the security in the name and on behalf of the other beneficiaries. Because of its limitations under Romanian law, trust is not used in practice for taking security.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	As a principle, the Romanian courts will enforce a final judgment for the payment of money without reexamining the merits of the case if that judgment has been issued by an appropriate court of any state in the European Union or the European Free Trade Area (i.e. Iceland, Norway and Liechtenstein), in accordance with EU legislation directly applicable.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Free choice of law is recognized by Romanian courts in accordance with Rome I Convention, directly applicable in Romania. Limitations may arise in case of infringements of mandatory public order international private law.

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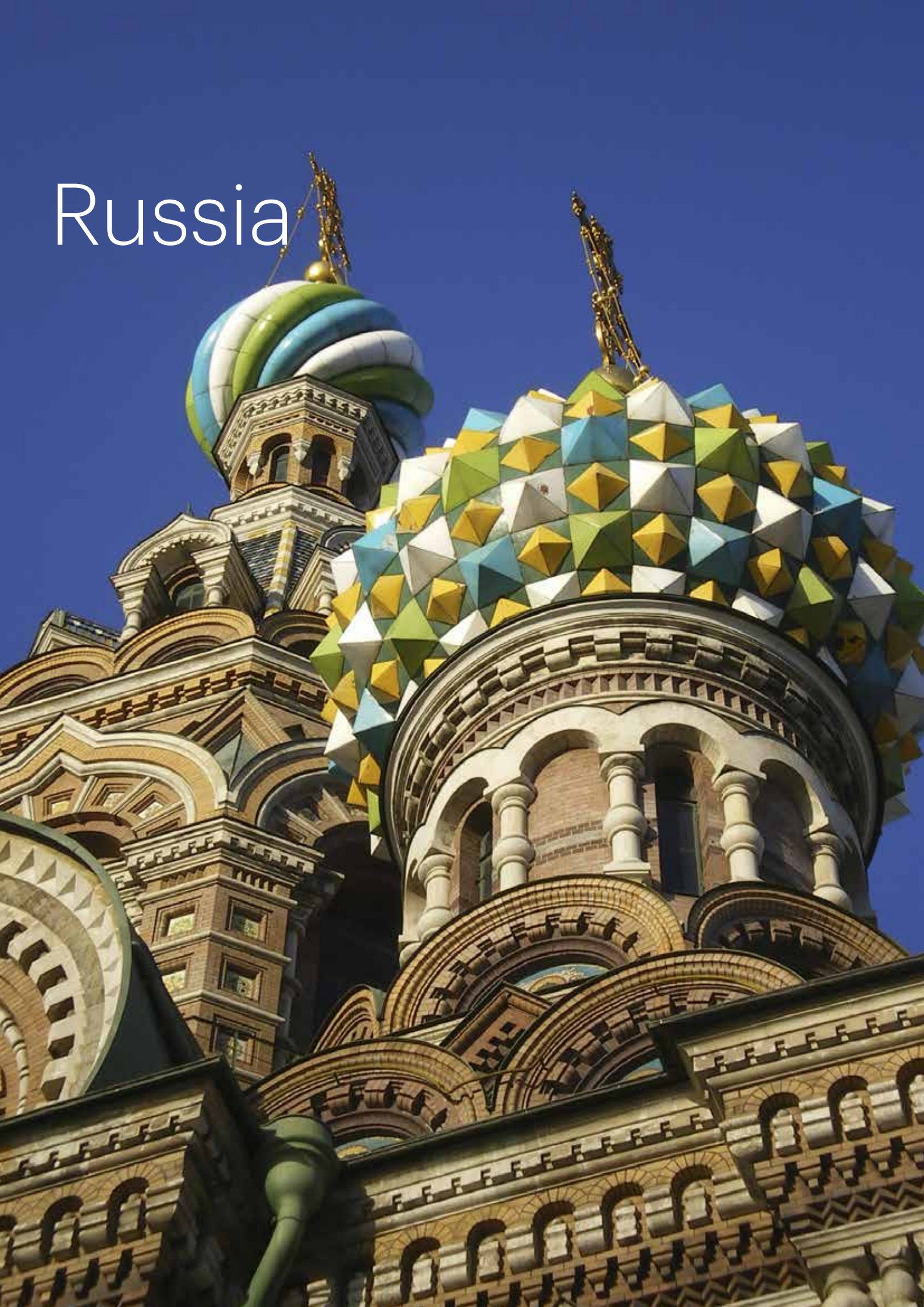
Russia



Russia

Obligations	
1. What are the types of obligations that may be secured?	Generally, any monetary obligations can be secured, including general contractual payment obligations, principal repayment obligations under loans, surety and/or guarantee obligations, interest and default interest payments, obligations to reimburse fees and expenses and the like, provided that the secured obligations are sufficiently identified and described in the relevant security document. It is now expressly allowed to secure 'all debt' of a debtor to a creditor up to a specified monetary amount. Securing future obligations is also permitted.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	No formal restrictions on such guarantees exist in Russia's corporate laws or Civil Code. However, granting any form of credit support for another person's obligations (whether by way of a suretyship, guarantee, pledge or other security) risks challenge within a thee-year 'hardening' period if the security giver enters insolvency proceedings. (There is also a separate one-year undervalued transaction rule.) This is due to the lack of a clear carve-out for intra-group transactions in Russia's Bankruptcy Law, even when there is a material benefit to the security giver and irrespective of whether the support is given on a downstream, cross-stream or upstream basis.[1] However, it remains uncertain whether the test on interested parties (as relevant to the rule) will be confined solely to transaction counterparties (as per the statute), or whether it will be applied to any and all parties benefiting from the security, i.e., borrowers (as per the expanded judicial doctrine of the Red October case). Lenders should take advice on a case by case basis. Foreign affiliates are not treated differently; however, the insolvency of foreign legal entities will naturally be regulated by the applicable foreign insolvency law.

1. See Open Joint-Stock Company Metallurgical Plant Red October, RF VAS Decree No. BAC-9876/11 of 3 July 2012. The Russian High Commercial Court has endeavoured to limit the effect of this case by issuance of RF VAS Decrees 59 and 60 of 30 July 2013, and it appears that the Supreme Court has also taken the position (though not in a manner which is binding on the lower courts) that companies in one group are deemed to have benefit in providing security for each other.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	Yes. Although Russian law does not expressly prescribe this, this rule is confirmed by court practice. The main reason why a guarantor should receive a corporate benefit is in order to minimize the risk that a transaction will be contested in the case that a guarantor enters insolvency proceedings. Among other requirements, the corporate benefit should be actual and should be sufficiently described in the guarantee.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No. Russian law treats guarantees as purely contractual, so no government consents or filings are required (unless it is a state guarantee, which, as we understand, is beyond the scope of this questionnaire). However, some de-leveraging transactions and some sales or transfers of collateral on foreclosure may be subject to filings and consents under Russian antimonopoly and other laws.
5. Are there any solvency or net worth limitations/ restrictions?	Generally Russian law creates no statutory financial limits other than in respect to borrowing by banks. That said, insolvency considerations should be checked. Also, thin capitalization rules may apply in related-party transactions, and financial limits on borrowing and/or giving security may be imposed under existing financing documentation.
Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over any type of personal property with certain exceptions listed in Russian law, for example, assets withdrawn from circulation. Special attention should be paid to the property of married individuals. If the property is jointly owned by spouses (and as a general rule all property acquired during marriage will be considered as jointly-owned property), it is recommended to secure the other spouse's consent for any security provided with respect to such property. In certain cases, such consent is mandatory.

7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Secured obligations must be sufficiently identified and described in the security document. Russian law on pledges/mortgages requires in the pledge/mortgage instrument the inclusion of information on the nature, size and tenor of the secured obligation. The conditions relating to secured obligations can be identified by simple reference to the contract creating the underlying secured obligation. However, it is now expressly allowed to secure 'all debt' of a debtor to a creditor up to a specified monetary amount.
8. Can security be taken over real estate?	Yes, including a mortgage over real property (land and/or buildings) and/or real property rights (e.g., lease rights), subject to the limitations noted in the first question of this Security/Collateral section.

9. Can cash collateral be taken? How?	Russian law provides for two types of security related to monetary funds: 1) Pledge of rights under a bank account agreement (the Pledge) 2) Security payment The Pledge can be created only with respect to the rights over a special type of bank account called a 'pledge account.' (In other words, one cannot create a pledge over any type of account – the account must be specifically opened as a 'pledge account.') In order to create the Pledge, a pledgor must enter into an agreement with a licensed Russian bank, where the pledge account will be opened. Once the pledge account is opened, the pledgor and the pledgee enter into a Pledge agreement. The Pledge gives the pledgee the right to control the pledge account, including the right to restrict the operations of such account upon the occurrence of certain circumstances envisaged in the Pledge agreement. One party (party A) may secure the performance of its monetary obligations under a certain contract (including under derivatives and real estate and construction transactions) (the Contract) by transferring a certain amount of money to the ownership of the other party (party B) as a security payment. The parties may agree to provide a security payment within the Contract or in a standalone document. Upon the occurrence of certain circumstances envisaged in the security payment agreement, the amount of the security payment shall be used by party B to discharge party A's secured obligations or returned to party A. If party A's obligations under the Contract envisage transfer of shares, bonds, other securities or other in-kind goods, then the same kind of shares, bonds, other securities or other in-kind goods may be provided by party A to party B as a security payment.
10. Are pledges of shares permitted?	Yes, in both the borrower and holding company(ies).
11. Are stamp or other duties imposed?	There are generally no stamp duties or charges on a loan or guarantee. If mortgage/pledge documentation is subject to notary certification (or such certification is sought, e.g., to ease extrajudicial enforcement via a bailiff on the basis of a notarial executive endorsement later on), then notary's fees must be paid. There are also (relatively nominal) charges for state registration of mortgages and the registration of notification of movable property pledges by Russian notaries.

12. Must documents be executed in front of a notary?	The documents must be executed in front of a notary, if such requirement is provided by law or if it is so agreed between the parties. In accordance with Russian law, an agreement on pledge of 'participation interest' (share) in the charter capital of a limited liability company (LLC) must always be signed before a notary. Moreover, if a pledge or mortgage agreement which expressly includes the option of extrajudicial enforcement (i.e., creditor's self-help) is executed in front of a notary, the pledgee may benefit from extrajudicial enforcement via a bailiff only on the basis of a notarial executive endorsement. For this reason, pledgees will usually seek notarial certification of the pledge agreement from the outset, to be certain that the notarial executive endorsement will be issued (which will not be possible if the pledge has not been notarized from the outset).

13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes. Collateral given by an insolvent debtor can be challenged during a so-called 'hardening' period (ranging from 1 month to 3 years) as a 'suspect' or 'preferential' transaction (including in intragroup security arrangements, as mentioned above). If a security transaction is successfully challenged, a lender may lose secured creditor status. Also in insolvency proceedings, a creditor secured by collateral is entitled to up to 70% (if secured obligations arise from a non-bank loan) or 80% (if secured obligations arise from a bank loan) of the proceeds from the sale of collateral. The remaining part is divided among super-priority creditors. A bankruptcy court can invalidate security as a 'preferential' or 'suspect' transaction at the request of the bankruptcy manager. The bankruptcy manager may conclude that the transaction was 'suspect' or 'preferential' either as instructed by the creditors' committee, or on its own initiative. A bankruptcy manager will always have the right to initiate an action requesting that the court void the following types of transactions: • Transactions of the debtor with an interested party, if as a result of their performance creditors or the debtor have suffered or may suffer losses. • Transactions between the debtor and a specific creditor or other entity concluded or performed after a court's acceptance of bankruptcy proceedings regarding the debtor. • Transactions concluded or performed within six months preceding the filing of a suit seeking recognition of the debtor as bankrupt, if the transactions entail preferential satisfaction of the demands of specific creditors before other creditors. Over the financial recovery period during bankruptcy proceedings, the debtor is not entitled, without the consent of the bankruptcy manager, to perform transactions that: (i) increase the debtor's accounts payable by more than five percent of the amount of creditors' demands, or (ii) are associated with the possible alienation, directly or indirectly, of the debtor's property. Otherwise, entities involved in the bankruptcy case may sue to have such transactions judicially invalidated. Note, also, that in certain cases Russian bankruptcy law can penalize creditors in claw-backs by statutorily subordinating their claims.

Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Russian law contains no express prohibitions on financial assistance or upstream guarantees; however, please see the discussion above re insolvency risks for intragroup security arrangements.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	Given the absence of express statutory carve-outs in Russia's Bankruptcy Law, and considering Russian court practice, there are no 100 percent reliable means of whitewashing with regard to this risk. However, certain steps can probably be taken to mitigate risks which may be discussed with counsel.
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	There are generally no stamp duties or charges on a loan or guarantee. If mortgage/pledge documentation is subject to notary certification (or such certification is sought, e.g., to ease extrajudicial enforcement via a bailiff on the basis of a notarial executive endorsement later on), then notary's fees must be paid. There are also (relatively nominal) charges for state registration of mortgages and registration of notification of movable property pledges by Russian notaries.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Notary's fees may be as high as RUB 500,000 (approximately €7,000 at current exchange rates) per pledge/mortgage document (depending on the type of security and value of the collateral). Registration fees are generally rather nominal. The fee for registration of a commercial mortgage is RUB 4,000 (approximately €55 at current exchange rates).
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Interest payable to a foreign lender will usually be subject to a 20 percent withholding tax on the amount of interest, which may be reduced or eliminated by an applicable tax treaty (subject to certain conditions).

Enforcement	
19. What is the bankruptcy/insolvency process?	Bankruptcy proceedings are judicial proceedings conducted by a court and supervised by a court-appointed bankruptcy manager. Bankruptcy proceedings under current Russian bankruptcy law encompass (i) declaration of bankruptcy and winding-up, or (ii) settlement with creditors, or (iii) financial rehabilitation for restoration of the debtor's solvency. Secured claims are generally satisfied in non-bankruptcy enforcement following (i) claims for compensation for harm to life or health (tort), and (ii) certain employee remuneration, severance payments and author's emoluments. In a bankruptcy enforcement, secured claims are generally satisfied after (i) court expenses; (ii) the administrator's remuneration; (iii) current maintenance and utility payments of the debtor; (iv) claims of creditors arising after the court's acceptance of the bankruptcy petition and prior to the declaration of the debtor as insolvent, as well as claims of creditors arising during the bankruptcy proceedings; (v) outstanding wages arising after the court's acceptance of the bankruptcy petition and employee remuneration during the bankruptcy proceedings; (vi) other expenses with respect to the bankruptcy proceedings; (vii) compensation for harm to life or health (if they arose prior to creation of the security) and punitive damages (tort); and (viii) certain employee remuneration, severance payments and author's emoluments (but only if they arose prior to creation of the security). Notably, in Russia, tax claims do not prime security. For certain types of organizations (notably, credit institutions), Russian law envisions special liquidation and bankruptcy procedures, where priority in satisfaction of claims may be different from that described above.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	All creditors may act. The law sets forth no restrictions. Proceedings may be initiated by creditors or authorized state executive authorities, as well as by the debtor himself. Russian law does not recognise the concept of a trust. However, Russian law recognizes the concept of a security agent in B2B transactions—known as a pledge manager (upravlyayschiy zalogom). Secured creditors may enter into a pledge management agreement with another secured creditor or any other third party in order to authorize that person to enter into a pledge agreement with the pledgor for and on behalf of the secured creditors and to perform all rights and obligations of a pledgee under the pledge agreement. Secured creditors retain ownership of any property and/or proceeds received by the pledge manager (including in foreclosure) on a shared basis in proportion to the amount of their claim.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	A judgment rendered by the court of another country will not necessarily be recognized and enforced in the Russian Federation in the absence of a special bilateral or multilateral treaty on the mutual recognition and enforcement of judicial decisions in force in the Russian Federation. There are no such treaties between, for example, the Russian Federation and the UK or the Russian Federation and the USA. However, where actual reciprocity and comity can be proven (i.e., the judgment creditor can prove that the other country recognizes and enforces Russian court decisions), Russian courts can recognize and enforce without re-examination foreign judgments in the absence of such treaties in force. In practice, there is an extremely limited number of decisions which have been successfully enforced without re-examination in Russia. Based on the above, it is preferable to refer disputes to international arbitration, which can be more successfully enforced in Russia, given that Russia has accepted obligations under the 1958 New York Convention.

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	A Russian court would give effect to the chosen foreign law as the governing law of an agreement, insofar as the application of a specific provision of that foreign law is not deemed contrary to public order in the Russian Federation. Apart from this, we are not aware of any legal or procedural issues that would preclude Russian courts from upholding the choice of foreign law as governing law. It is, however, open to doubt whether Russian courts would in practice be capable of effectively applying the laws of a foreign jurisdiction. Furthermore, it is difficult to predict with certainty a Russian court's approach when called upon to enforce of a foreign agreement. Enforcing the provisions may, in practice, require that Russian courts be educated on the proper effect and operations of such provisions and the relation, if any, of Russian legal norms to such provisions. While we do not consider such formulations invalid as a technical legal matter, it is possible that Russian officials will need to have the practical application of a given provision explained to them. Pursuant to article 1191 of the Civil Code, if a Russian court is unable to establish the content of the governing foreign law rules within a reasonable time, it may apply Russian law despite the parties' choice of law.

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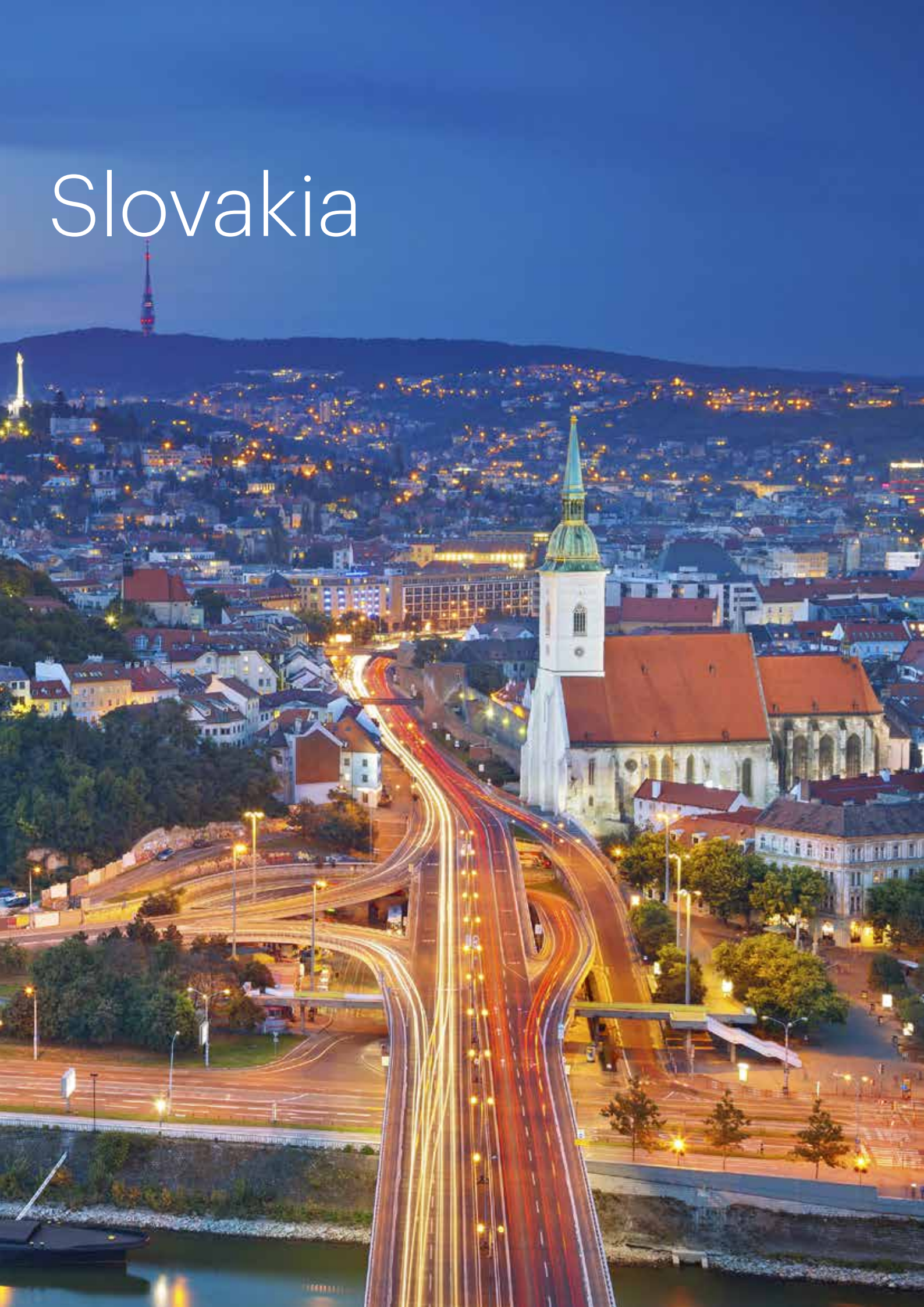

Slovakia

Obligations	
1. What are the types of obligations that may be secured?	Under Slovak law any obligations can be secured, provided that they are sufficiently defined. Secured obligations can include those which: (a) are present, future, actual or contingent; (b) arise in favor of future creditors under future transactions with future debtors; and (c) are direct and personal, joint or several or those of a principal debtor or a guarantor or surety.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	No restrictions apply to downstream guarantees. In case of upstream guarantees, there has to be adequate consideration granted to the guarantor in return for providing the upstream guarantee. The consideration may or may not be pecuniary, but must be "adequate." Further restrictions may apply in case of guarantees (other than a downstream guarantee of a parent company for liabilities of its subsidiary) for liabilities of an entity which has certain "personal interconnections" with the guarantor (e.g. if a person is a member of corporate bodies of both the guarantor and a debtor). There is no difference in treatment of foreign affiliates against local affiliates.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	No, but a guarantor providing an upstream guarantee may only do so if it receives adequate consideration in return for providing the upstream guarantee. The consideration may or may not be pecuniary, but must be "adequate."
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No.
5. Are there any solvency or net worth limitations/ restrictions?	Yes, please see the answer to the second question above.

Security/ Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over any property that is transferable.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	It depends on how the general security agreement would be drafted. It is possible to draft a single ("general") security agreement that would cover all assets, but these assets would have to be specified separately by their class (immovables, movables, receivables, bank account receivables, intellectual property rights, securities, etc.). Such agreement would have to contain specific provisions relating to each class of assets. However, the common and vastly prevailing practice is that security agreements are tailored for each class of assets, because different perfection (and registration) requirements apply to different classes of assets, and so it does not create any advantage to have a single security document.
8. Can security be taken over real estate?	Yes.
9. Can cash collateral be taken? How?	Yes. Funds are deposited into a bank account and such bank account is then pledged to the creditor (with disposal rights of the pledgor to the cash collateral being blocked).
10. Are pledges of shares permitted?	Yes.
11. Are stamp or other duties imposed?	No. However, a perfection requirement for each pledge is registration in the applicable public registry, and this registration is subject to a fee. In case of some classes of assets, the legalization of signatures of the parties on the security document is required, which is subject to a notarial fee. These fees are relatively small and capped.
12. Must documents be executed in front of a notary?	Depending on the relevant class of asset that is being pledged. From the usual security package taken in a transaction, only pledge agreements relating to shares in private limited liability companies have to be notarized.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes, normal reasons and time limits for insolvency avoidance apply.

Financial Assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	For restrictions on upstream guarantees, please see the answer to the second question above. With regard to financial assistance restrictions, these apply to companies having the legal form of a joint-stock company (akciová spoločnosť or a.s.).
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	No.
Fees/Taxes - Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	No.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	A perfection requirement for each pledge is registration in the applicable public registry, and this registration is subject to a fee. In case of some classes of assets the legalization of signatures of the parties on the security document is required, which is subject to a notarial fee. These fees are relatively small and capped. There are no special fees associated with enforcement of security interests, other than fees similar to those specified above required to register the change of ownership of the collateral after completion of the enforcement.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	This depends on the jurisdiction of the lender and whether there are any double taxation avoidance treaties in place. If there is a double taxation avoidance treaty in place, the answer depends on the provisions of such treaty. In the absence of such treaty, withholding tax on interest would apply at the rate of 19 percent.
Enforcement	
19. What is the bankruptcy/insolvency process?	There are two types of insolvency procedures: (a) bankruptcy (konkurz), which is a liquidation-type procedure and (b) restructuring (reštrukturalizácia), which is a salvation-type procedure.

	A debtor must apply for its bankruptcy within 30 days after it became or could have become aware of its overindebtedness. No obligation of the debtor to file for bankruptcy exist in case of its inability to pay debts. In such case the creditors have the right to make such filing. A debtor may apply for its restructuring if it is unable to pay its debts, overindebted, or if its inability to pay debts or overindebtedness is threatened. Creditors may apply for restructuring of a debtor only with the debtor's consent. In bankruptcy, the bankruptcy trustee takes over the management of the insolvency estate and is in charge of selling the debtor's assets and collectively satisfying the creditors. In restructuring, the debtor remains in possession of its business but certain acts are subject to approval by the restructuring trustee. The restructuring results in a restructuring plan that has to win support of a certain majority of the creditors. Failing that, the creditors can at any time convert restructuring into bankruptcy. Security over the debtor's assets gives the secured creditor preference over unsecured creditors in both types of insolvency procedures.
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	In case of individual enforcement of security (i.e. outside bankruptcy proceedings), the creditor that is the holder of the security is enforcing. Enforcement of security by a secured creditor does not require a court judgment. In syndicated loans, usually one creditor is appointed as the security agent who is a joint and several creditor of the borrower entitled to claim the whole amount of the loan (also for other creditors), and in such case this security agent would enforce the security.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Yes, subject to the usual limitations pursuant to the Brussels I bis Regulation (in case of judgment of a court of another EU member state) or pursuant to the Slovak private international law rules (in case of judgment of a court of a third country).

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Generally, a Slovak court is bound ex officio to apply Slovak conflict of laws rules as well as foreign substantive law applicable under such conflict of laws rules. However, the court will rely on the parties to present and submit evidence of the facts which may lead to the application of foreign law. Furthermore, the court will not apply foreign law by itself but will rely on the parties to present foreign law to the court and to establish its validity. If statements of one party regarding foreign law are disputed by the other party, or if the Slovak court is not sufficiently familiar with applicable foreign law, it will, in addition to any evidence submitted by the parties, take evidence of the foreign law by way of all appropriate means available, usually by way of an expert opinion. Application of foreign law is subject to public policy restrictions and other usual restrictions under the Rome I and Rome II Regulations; and restrictions under Slovak private conflict of laws rules.

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Spain

Spain

Obligations	
1. What are the types of obligations that may be secured?	According to Spanish regulations, all kind of obligations can be secured by means of the guarantees listed herein, current and future, with pecuniary obligations the most common as non fulfillment of the same is easier to prove. In general terms under Spanish law, any security must secure one or several obligations (principal obligation) to which they are ancillary and which must be clearly identified in any security document. Therefore, the guarantee or security follows the underlying obligation in such a way that nullity of the principal obligation entails nullity of the security, and fulfilment of the principal obligation entails cancellation of the security.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Under Spanish law a company may provide upstream and downstream guarantees for its affiliates for any of its group companies as long as: (i) The guarantee does not breach financial assistance limitations (ii) The guarantee is duly approved by the shareholders in case the liability exceeds 25 percent of the assets of the company. (iii) In private limited liability companies (sociedades limitadas), the shareholder's approval specifically stating the corporate benefit must be obtained before carrying out certain transactions, such as up-stream guarantees.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	In private limited liability companies (sociedades limitadas), the shareholder's approval specifically stating the corporate benefit, must be obtained before carrying out certain transactions, such as up-stream guarantees. In public limited liability companies (sociedades anónimas), the shareholder's approval, specifically stating the corporate benefit, is usually obtained before carrying out certain transactions, although it is not mandatory. Nevertheless, directors of a Spanish company have a duty of care towards the company and must act faithfully and loyally towards it.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	Personal and corporate guarantees can be granted by either private or public (notarial) document indistinctively, without prejudice of the advantages against third parties of the public document. No other authority consents or filings are required in order to deliver a guarantee.
5. Are there any solvency or net worth limitations/ restrictions?	No, but directors' liability may result in case of insolvency of the company due to an enforcement of a guarantee.
Security/Collateral	
6. Over what type of personal property can security be granted?	(i) Real-estate (ii) Shares (iii) Cash (iv) Receivables/Credit rights (v) Stock/raw materials (vi) Moveable assets (aircraft, ships machinery, etc.) (vii) Mercantile establishments (viii) Intellectual and industrial property
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Security agreements must be tailored to a specific asset.
8. Can security be taken over real estate?	Yes, by means of an in rem right of mortgage.
9. Can cash collateral be taken? How?	Yes, by means of an in rem right of pledge granted over the relevant cash (e.g. balance in a bank account).

10. Are pledges of shares permitted?	Yes, by means of an *in rem* right of pledge. Yes.
11. Are stamp or other duties imposed?	Any security subject to registration with a public registry (mortgages and non-possessory pledges), are subject to registration fees calculated depending on the amount of the secured obligation, the number of registries involved and the number of assets involved. Any security subject to registration with a public registry and created by means of a notarial public deed (escritura pública), will also trigger stamp duty. The stamp duty is a rate calculated over the maximum secured amount and it varies from one region to another, being 0.5 percent the lowest and 1.5 percent the highest. The non-possessory pledge and the mortgage over ships are the only security subject to registration with a Public Registry that can be granted by means of an ordinary notarial deed (póliza) and, therefore, they are the only security that would not trigger stamp duty.
12. Must documents be executed in front of a notary?	All security documents must be executed before a Spanish public notary.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	The Spanish Insolvency Law provides for the possibility of annulment of acts detrimental to the estate of the insolvent carried out during the two (2) years preceding the declaration of insolvency, as well as for the possibility of setting aside transactions based on general legal grounds such as transactions carried out in fraud of creditors.

Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Yes. Up-stream guarantees see question 2 above. Financial assistance: (i) The regulation of Financial Assistance under Spanish law, differs depending on the specific type of company. (ii) In the case of public limited liability companies (sociedades anónimas), the law prohibits this type of company from advancing funds, granting loans, extending guarantees or security, or providing any type of financial assistance to a third party for the purchase of its shares or those of its dominant company. (iii) In the case of private limited liability companies (sociedades limitadas), this kind of company is prohibited from advancing funds, granting credits or loans, giving guarantees or security or providing financing for the acquisition of its participations or the shares or participations of a company within the group to which the former company belong. (iv) The concept of financial assistance is construed in broad terms as the regulation is ambiguous.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	No.
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Loans and credit-support documentation are not subject to stamp duties or other specific charges. In case the loans or credits were secured by mortgages, stamp duty would be levied from 0.5 percent to 1.5 percent of the secured amount, depending on the region (Comunidad Autónoma) where the mortgage asset is registered or has to be registered. With respect to security documents, please see question 11 above and 17 below.

17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	(i) Notary fees: Public notaries calculate their fees according to the rules established by the Royal Decree 1426/1989 of November 17. In the case of security, this Royal Decree states that notary fees have to be calculated according to the total secured amount. In addition, if the secured liability exceeds €6,010,121.04, the applicable percentage will be subject to negotiation between the counterparties and the public notary. (ii) Registry and Tax fees: It is compulsory to file certain security with public registries for effectiveness and perfection, such as the property registry (Registro de la Propiedad) or the Moveable Assetss Registry (Registro de Bienes Muebles) (e.g., non-possesory pledges). Security requiring entry in public registries triggers in addition to notary fees: stamp duty tax (Actos Jurídicos Documentados) and registry fees. Registry fees would be approx. 0.02 percent of the secured liability; but this may significantly vary dependingJurídicoson the number of assets and whether these assets are located in different regions or places as well as on the number of competent public registries involved. Nevertheless, there is a maximum fee amount of €2,000. The stamp duty tax varies from 0.5 percent to 1.5 percent of the secured amount, depending on the region (Comunidad Autónoma) where the registry where the mortgage asset is registered or has to be registered. (iii) Other fees: servicing fees, searches and enforcement fees, depend on and vary according to the kind of assets, number of assets, number of registries involved, kind of registries, etc.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Under Spanish Non-Resident Income Tax (NRIT), interests are subject to 19 percent withholding tax, except if they are paid to EU tax residents. In that case they would be NRIT exempt. Capital repayments are not subject to Spanish taxation, but eventual capital gains derived from enforcement procedures would be subject to 19 percent NRIT. However, capital gains obtained by EU tax residents from the alienation of movable property, would be NRIT exempt. Certain exceptions apply for the capital gains derived from the transfer of shares. Losses derived from enforcement procedures would trigger to NRIT. Double Taxation Treaties should be checked out to confirm whether lower taxation for interests or capital gains is provided.

Enforcement	
19. What is the bankruptcy/insolvency process?	According to Spanish law, any debtor who is unable to generally meet its obligations on a regular basis as they fall due must initiate the insolvency proceedings. The main goal of these insolvency proceedings are: (i) to enter into a composition agreement with the creditors in which the debt is restructured by means of a stay and/or a write-off of the credits, or (ii) alternatively, to liquidate the debtor's assets in order to allocate the proceeds obtained to pay the creditors, following certain creditors' ranking rules.
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	Only those who are beneficiaries of a security granted by the debtor may act as the enforcing party. Please note that Spanish law does not recognize the concept of a trust and, therefore, security trust structures may not be recognized by Spanish courts. On these grounds, from a Spanish legal safety standpoint, the most secure option is always to grant any Spanish security interest in favor of each and every existing beneficiary and not only in favor of the security trustee.

21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Foreign judgments may be recognized without reexamining the merits of a case, depending on the foreign court issuing the judgments. (i) Spanish courts will recognize and enforce (i) judgments issued by the courts of member states of the European Union, including Denmark, in accordance with, and subject to, the provisions of Council Regulation (EU) No 1215/2012 of the European Parliament and the Council, of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments on Civil and Commercial Matters (recast); or, (ii) when a European Enforcement Order Certificate, in connection with the relevant court judgment, has been issued, in accordance with and subject to, the limitations set forth in Regulation (EC) 805/2004 from the European Parliament and the Council, dated 21 April 2004, creating a European enforcement order for uncontested claims. (ii) Outside member states of the European Union, a specific analysis of the treaties entered into between Spain and any relevant country is required. If no treaty exists, general rules will apply: any judgment obtained outside Spain will be recognized in Spain, in accordance with articles 951 to 958 of the Civil Procedural Act of 1881 (Ley de Enjuiciamiento Civil) in connection with the Law of Civil Procedure. Pursuant to these articles, (as interpreted by the Spanish Supreme Court), in the absence of any treaty providing for the reciprocal recognition and enforcement of judgments, and in the absence of proof that similar Spanish judgments are not recognized and enforced in the relevant country rendering the judgment, such judgment will be recognized and enforced in Spain, provided that it meets certain requirements.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Parties choice of law will be applied by the Spanish courts, according to European Regulation (EC) No 593/2008 (law applicable to contractual obligations) and European Regulation (EC) No 864/2007 (law applicable to non-contractual obligations). However, foreign law must be proven before the Spanish Court by the parties on the proceedings.

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Turkey

Turkey

Obligations	
1. What are the types of obligations that may be secured?	Current and future obligations can be secured.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	There are no restrictions to provide downstream guarantees. Please refer to our explanations under the sections "Financial Assistance" and "Upstream guarantees / security – Group company requirements."
3. Must a guarantor receive a corporate benefit to provide a guarantee?	Under Turkish laws there is no "corporate benefit" concept to make a transaction valid and binding upon a company. However, members of the board of directors of a company have a contractual (mandate) liability to act with reasonable care and loyalty while carrying out their duty. In case of any breach, board members can be held liable towards the company, its shareholders and its creditors for breach of contract. Please also refer to our explanations under the section "Financial Assistance" and "Upstream guarantees / security – Group company requirements."
4. Are any government consents or filings required in connection with the delivery of a guarantee?	According to Decree No 32. guarantees granted by Turkish residents (individuals who reside in Turkey or entities which are incorporated in Turkey) in favor of foreign entities must be notified (for information purposes) to the Undersecretariat of Treasury of Turkey within 30 days after the execution of such guarantees. Failure to notify does not invalidate the guarantee.

	Formal validity requirements relating to personal guarantees According to the Turkish Code of Obligations No: 6098, guarantees provided by individuals (i.e. personal guarantees) must comply with the following formal validity requirements: • The personal guarantee must be written and the maximum guaranteed amount and the date of the guarantee must be included in the written agreement • The guarantor must write the maximum guaranteed amount, date of guarantee, the type of guarantee (if it is joint and several) with his/her own handwriting. (usually completed in the execution block).
5. Are there any solvency or net worth limitations/ restrictions?	If a company is declared bankrupt by the competent Turkish court, all of the assets, rights and receivables owned by the bankrupt company are deemed to be included in the bankruptcy estate which is administered by the bankruptcy administrator. The transactions concerning such assets are invalid against the creditors. In addition the company cannot enter into transactions which may diminish the assets of the bankruptcy estate.

Security/Collateral	
6. Over what type of personal property can security be granted?	The most common securities are as follows: • Mortgage (security over real estate) • Commercial enterprise pledge (security over the equipment and machinery of a commercial enterprise) • Bank account pledge (cash collateral) • Assignment of receivables (security over receivables) • Share pledge (security over shares) • Pledge of equipment/movables is also possible but the beneficiary must hold the possession of the assets so it is rarely used.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	General security agreements are not recognized. The security must be tied to a specific debt and a specific asset.
8. Can security be taken over real estate?	Yes. The security over real estate can be taken by entering into a mortgage deed before the title deed registry.
9. Can cash collateral be taken? How?	Yes, bank account pledge agreements are executed between the pledgor and the pledgee as cash collateral. Although consent/notification from the account bank is not required by law for validity, a notification from the account bank is recommended in order to ensure certain obligations of the account bank, such as restricting withdrawals and to confirm that no prior ranking pledge, assignment or counterclaims exist.
10. Are pledges of shares permitted?	Yes. In order to perfect share pledge, a pledge agreement must be entered into between pledgor and pledgee (usually the company is also made party to the agreement) and the share certificates representing the pledged shares (if issued) must be delivered to the pledgee. Moreover, the pledge should be recorded in the share ledger of the company.

11. Are stamp or other duties imposed?	According to Stamp Tax Law (Law No.488) security agreements are exempt from stamp tax. With regard to duties, if the security agreement is executed before a notary or the title deed registry, or registered with the trade registry (i.e. commercial enterprise pledge) or the title deed registry (i.e. mortgage), the notary and relevant registry charges apply.
12. Must documents be executed in front of a notary?	**Mortgage agreement** must be executed and registered before title deed registry. **Commercial enterprise pledge agreement** must be executed ex officio by a Turkish notary public located in the same district where the commercial enterprise subject to the pledge is registered. In addition, to be perfected, the commercial enterprise pledge agreement must be registered with the trade registry where the commercial enterprise subject to the pledge is registered within 10 days from its execution. If the share pledge is established over the shares of **a limited liability company**, the share pledge must be notarized as well. Although it is not a mandatory requirement, assignments of receivables agreements are, in practice, notarized.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	According to Bankruptcy and Insolvency Law No.2004, unless the borrower had undertaken to grant security in advance, security granted by a defaulted borrower one year before the declaration of its bankruptcy or insolvency or sequestration of its assets may be challenged before courts and deemed void. The creditors of the debtor may initiate a lawsuit for cancellation of grant of such security.

Financial Assistance

14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	**Financial assistance** TCC prohibits a target company from advancing funds, making loans or providing security or guarantees to a third party in relation to the acquisition of its shares. The methods set out under the TCC to grant interests to third parties are not exhaustively listed and any direct or indirect attempt to facilitate such interests may breach this prohibition. If the target company conducts any act in violation of this prohibition, the relevant transaction shall be deemed void. The exceptions to this prohibition are: (i) transactions which fall under the scope of activities of banks or financial institutions; and (ii) advances, loans and security provided to the company's employees or parent or subsidiary's employees in order to acquire the shares of the company which shall comply provided that the requirements related to preservation of legal reserves are complied with. **Upstream guarantees/security – Group companies requirements** TCC also provides that a parent company must not abuse its control over its subsidiaries in any way which would result in such subsidiaries incurring losses. This includes requiring a subsidiary to give guarantees or grant security. Although abuse of control by the parent company does not render the transaction void, the parent company is obliged to compensate any losses of the subsidiary within the same financial year or provide a method for compensation within the same financial year. If the parent company fails to compensate, the shareholders and creditors of the subsidiary are entitled to commence proceedings against the parent company and the members of directors of the parent company for compensation of losses. TCC provides that no compensation shall be awarded if it is proved that the transaction which caused the loss had been entered into by independent members of board of directors of such company acting in good faith and with duty of care.

	If a parent company holds (directly or indirectly) 100 percent of the shares or voting rights of its subsidiary, it is entitled to instruct the subsidiary to conduct transactions in line with the specified and concrete policies of the group, irrespective of whether such transaction is to the subsidiary's detriment and causes losses. Nonetheless, the parent company is not entitled to impose instructions which (i) explicitly exceed the subsidiary's ability to pay, (ii) jeopardize the subsidiary's the existence or (iii) result in losses of material assets of the subsidiary.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	There is no whitewash procedure, but there are few potential structures to avoid financial assistance. • **Limited liability companies:** There are no restrictions under the TCC in relation to financial assistance provided by a limited liability company. • **Upstream merger:** The target company could be merged with the acquisition vehicle following completion of the share acquisition. • **Separate tranches:** As the restriction relates to the acquisition facility itself, it may be possible to structure the transaction so that other facilities are guaranteed or secured by the target company..
Fees/Taxes – Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	The loan agreements, security agreements, guarantees and subordination agreements are exempt from stamp tax.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Mortgage agreements and commercial enterprise pledge agreements and other notarized documents are subject to fees and charges applied by title deed registry and relevant notary. The fees vary depending on the secured amount and the agreement (number of pages etc.). Enforcement costs depend on the type of the enforcement proposed.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	No withholding tax is payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds.

Enforcement

19. What is the bankruptcy/insolvency process?	Bankruptcy proceedings are different depending on the bankruptcy procedure applied. There are two types of bankruptcy proceedings regulated under Turkish Law: "bankruptcy through proceeding" and "direct bankruptcy." **Bankruptcy through proceeding** In the bankruptcy through proceeding method, the creditor initiates a bankruptcy proceeding against the debtor at the relevant execution office. The amount of debt is not important in this method. One could apply to this proceeding even for TRY 1. If the debt is not paid within its term upon this proceeding, the creditor may file a bankruptcy lawsuit at the Commercial Court of First Instance for a bankruptcy decision to be rendered for the debtor. If the debt is not paid despite the depository injunction of the Court, a bankruptcy decision will be rendered. Thereafter, the receivables of the creditors will be paid upon bankruptcy dissolution to be carried out by the bankruptcy administrator. During the course of these proceedings, the Commercial Court will assess the financial condition of the debtor by appointing experts to examine the company's records and produce expert reports and determine whether the debtor is indeed bankrupt. Although the court has the discretion whether or not to rely on the expert reports, the court will usually render its decision in accordance with the expert reports. Other creditors of the debtor can apply to the Commercial Court to cancel the bankruptcy request of the creditor, on the basis that there are no legal grounds for the debtor's bankruptcy. The creditors can also apply to the court during the judgment process before the bankruptcy decision is granted. **Direct bankruptcy** In the direct bankruptcy method, the creditor or the debtor itself demands that a bankruptcy decision be rendered by applying directly to the Commercial Court of First Instance without initiating a bankruptcy proceeding at the relevant execution office. In order to apply for the direct bankruptcy without proceedings by the debtor, the debtor must be unable to perform a substantial part of its due and payable debts due to constant lack in payment instruments, half of the debtor's assets must be attached, and the remaining half must not be valuable enough to pay off the debts that will become due and payable within one year, or if the debtor is a corporation, it must have more passive assets than active assets (i.e. it must be heavily in debt).

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	The creditors / security holders and their duly appointed attorneys or representatives may act in enforcement. There is no specific concept of administrative agents or security trustees under Turkish law. However, agents and trustees are often used in syndicated loan transactions in Turkey. In practice, the loan agreements include parallel debt concept to make sure enforcement of the security trustee (agent) structure. Please note that parallel debt concept is not tested before the Turkish courts.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Yes, however there are certain recognition and enforcement requirements. Under the International Private and Procedural Law of the Republic (Law No. 5718) (PIL), a judgment of a court established in a country other than the Republic may not be enforced in Turkish courts unless: (i) There is in effect a treaty between such country and the Republic providing for the reciprocal enforcement of judgments; or (ii) There is de facto reciprocity in the field of enforcement of judgments between such country which provides for the enforcement of judgments and the Turkish courts; or (iii) There is a provision in the laws of such country which provides for the enforcement of judgments of the Turkish courts (de lege / legal reciprocity). In addition, the courts of the Republic of Turkey will only enforce a judgment obtained in a court other than the Republic of Turkey if either: (a) (i) the person against whom the enforcement is sought does not raise objections in the Turkish courts to the effect that he was not duly summoned or represented at court or that the judgment was rendered in his absence in violation of the laws of the foreign country (ii) the judgment has not been rendered by a court that considers itself having jurisdiction, although the court is not related to the case in question or the parties;

	(b) the judgment in question was rendered with respect to a matter which is not within the exclusive jurisdiction of the courts of the Republic of Turkey; (c) the judgment is not clearly against any public policy rules of the Republic of Turkey; and (d) the foreign judgment is final and binding and there is no further recourse for appeal under the laws of the country where the judgment has been rendered.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	According to PIL, parties to a contract with foreign element may freely choose the governing law of their contract. However, Turkish courts will only enforce a judgment of a foreign court if the judgment is not clearly against the public policy rules of the Republic and where the person against whom enforcement is sought does not raise objections in the Turkish courts to the effect that he was not duly summoned to or represented at the foreign court or that the judgment was rendered in his absence in violation of the laws of the foreign country. In addition, pursuant to article 6 of the International Private and Procedural Law (Law No. 5718), in circumstances where a foreign law applies and in cases which fall within the scope of the directly applicable rules of Turkey in terms of arrangement purpose and application area, such rules apply. Security over assets located in Turkey should be subject to the laws of Turkey.

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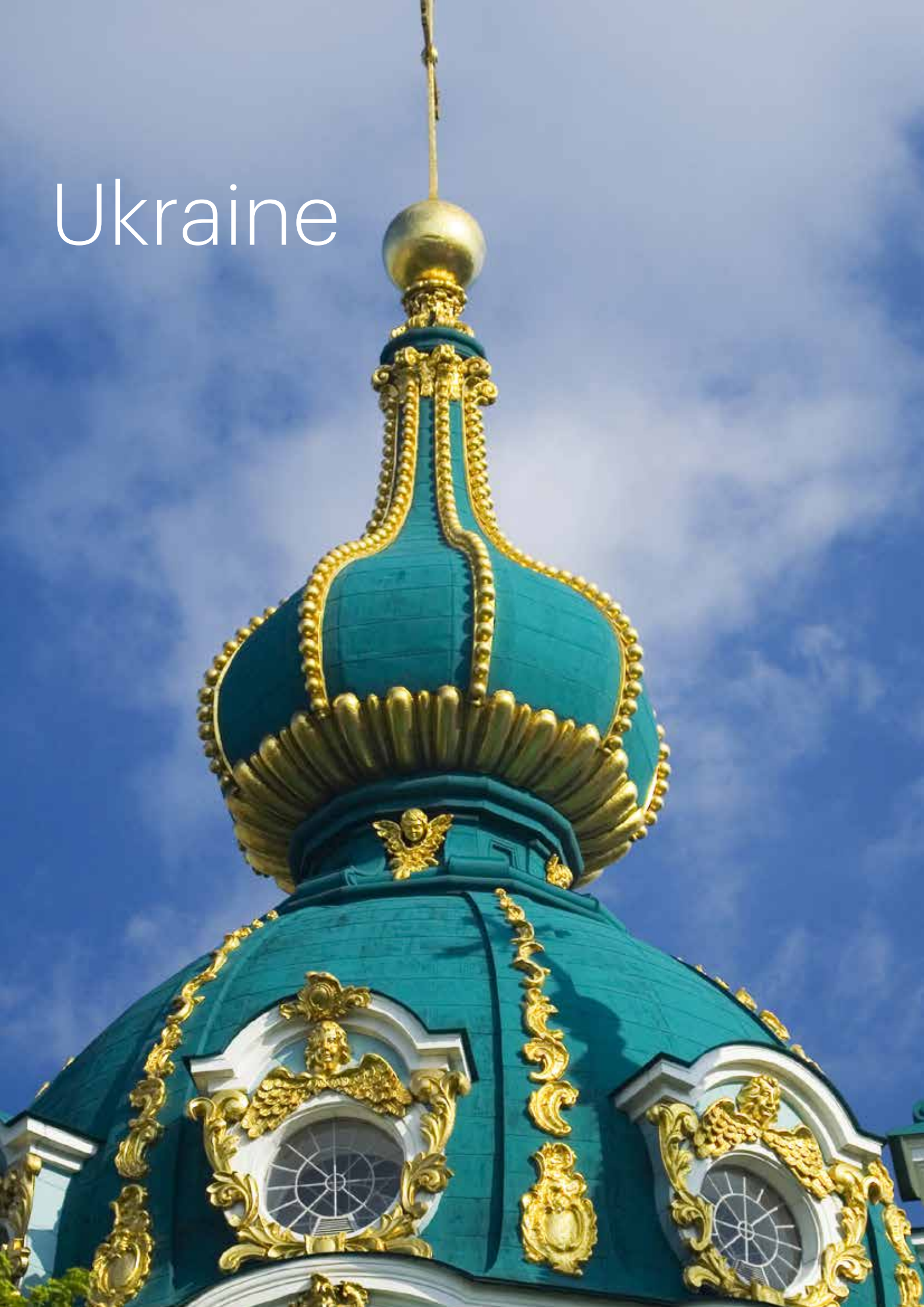

Ukraine

Obligations	
1. What are the types of obligations that may be secured?	Generally, any actual existing or future contractual obligation not contradicting Ukrainian laws (subject to certain exceptions). In respect of future obligations: • to secure with mortgage (over immovable property), future obligations stemming from a valid and effective underlying agreement; • to secure with pledge (over movable property), parties must indicate the maximum amount of the secured future obligation. Under Ukrainian laws it is an obligation of an actual creditor, which may be secured (i.e., a person having monetary claims to the borrower). Therefore, "parallel debt" and "trust" structures are normally qualified in Ukrainian legal opinions.

Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Ukrainian laws do not distinguish between upstream and downstream guarantees/sureties. Please note that under Ukrainian laws, guarantees are financial services, and as such could be provided by financial institutions only (depending on the terms of their respective licenses). Corporates provide suretyships. The Civil Code of Ukraine provides that the suretyship would terminate if the principal obligation secured by such suretyship is amended without the consent of a surety, which caused increase of surety's liability. Under the Civil Code a suretyship will terminate upon expiry of a 6-month period from the maturity of the primary obligation secured by such suretyship unless (i) a principal makes claim to a surety within such 6-month term, or (ii) suretyship contains a specific longer term of the suretyship. Ukrainian laws do not provide for specific treatment of foreign affiliates. If a suretyship is granted by a Ukrainian resident to secure the obligations of non-resident obligor, individual license of the National Bank of Ukraine will be required for Ukrainian surety to effectuate the payment.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	No.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No. But cross-border payments under a suretyship by Ukrainian surety may require individual license of the National Bank of Ukraine. Such a license cannot be obtained in advance. There is no guarantee that the Ukrainian obligor would in fact receive such license – in particular, due to ambiguity of applicable regulations.

5. Are there any solvency or net worth limitations/ restrictions?	There is a general requirement for all joint stock companies (JSCs) on the corporate approvals for transactions depending on their value: • Transactions with a value exceeding 10 percent of the net assets of a JSC based on its balance statement for the previous year shall be approved by the Supervisory Board of that JSC. • Transactions exceeding 25 percent of the net assets of the JSC shall be approved by the General Shareholders Meeting of that JSC. Corporate documents of obligors may provide for other restrictions.

Security/Collateral	
6. Over what type of personal property can security be granted?	Under general rule, security can be granted over movable property (pledge) and immovable property (mortgage). **Pledges** under Ukrainian laws could be granted in respect of any movable property not excluded from civil circulation, which under Ukrainian laws is capable of being enforced, including: • Tangible assets • Goods in circulation/processing • Shares/stock and participation interest • Property rights (claims under contracts etc.) Certain objects may not be taken as a security: e.g. claims of personal nature, monuments of cultural heritage, state property not subject to privatization etc. **Mortgages** could be granted over: • Land • Real estate objects • Unfinished constructions • Lease and other property rights related to immovables (superficies, emphyteusis) Mortgage over agricultural land and any rights related thereto could be established in favor of banks only. In addition, Ukrainian laws do not allow foreign residents to own agricultural land in Ukraine. Foreign residents are permitted to own non-agricultural land in Ukraine only in case there is a real estate property located on such a land plot and that real estate property is owned by the non-resident. Such limitations may affect mortgages taken by non-residents.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	The collateral needs to be described in a way allowing identification of that specific collateral.
8. Can security be taken over real estate?	Yes, please see item 6 above.

9. Can cash collateral be taken? How?	Pledge of currency valuables (including cash) requires individual license of the National Bank of Ukraine. Normally, to create a security over funds without obtaining individual license, the parties enter into a pledge of property rights with respect to bank accounts and a direct debiting arrangement entitling an account bank to write-off funds upon a payment demand of the pledgee. According to the laws of Ukraine, enforcement over the property rights shall be performed by means of assignment of such property rights by the pledgor. Ukrainian regulation in respect of opening and maintenance of bank accounts does not provide for a procedure for implementation of such assignment of rights and in practice such assignment may not be implemented. De facto enforcement of such pledges is usually arranged via direct debit of such an account by the pledgee (right to write off contractually provided in the pledge agreement or bank account agreement in favor of the pledgee). Ukrainian regulations provide for direct debit procedure in respect of funds in Ukrainian currency. But it remains unclear whether it would be possible to use direct debit procedure to foreign currency funds. It also remains doubtful as to whether conversion from one currency into another would be possible without an application for purchase of foreign currency from the account holder (pledgor). There also may be difficulties and restrictions for foreign pledgee to use direct debit rights against funds in Ukrainian currency. Ukrainian currency control rules strictly govern the regime of UAH accounts of non-residents with Ukrainian banks. Foreign pledgee may be unable to credit such UAH proceeds to its UAH account and/or convert or repatriate the funds due to specificity of the account regime.

10. Are pledges of shares permitted?	Yes. As a practical matter, share pledge is usually complemented with a respective blocking arrangement.
11. Are stamp or other duties imposed?	No stamp duties as such exist. However, for lenders there are insignificant charges for registration of the encumbrances created under security documents with respective encumbrance registers.
12. Must documents be executed in front of a notary?	Under Ukrainian laws notarial form is required for (1) all mortgages, and (2) pledges over space objects and transport vehicles subject to mandatory registration. Other pledge agreements as well as suretyships may also be notarized, but such a requirement is not mandatory.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes. Security may also be clawed back due to bankruptcy/ insolvency proceedings (for more detail please see item 19 below), or if taken fraudulently or otherwise in violation of law (e.g., executed absent requisite corporate approvals).
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	According to Art 23 of the Law of Ukraine on Joint Stock Companies, a JSC is prohibited from granting a loan to finance a purchase of securities issued by such JSC. JSC is also prohibited from issuing a suretyship for a loan granted by a 3rd person to finance a purchase of shares issued by that JSC. No similar restriction exists with regard to other forms of companies. But there is a general rule that charter capital of a company shall not be formed out of borrowed funds (Art 13 of the Companies Law, Art 86 pf the Commercial Code). Although, in practice there is no mechanics for tracking down compliance with / violations of such a rule.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	N/A

Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	No stamp duties as such exist. However, for lenders there are insignificant charges for registration of the encumbrances created under security documents with respective encumbrance registers.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Notary fees would be charged upon notarization of a document (please see item 12 above) and such fees are, as a rule, negotiable with private notary. The following fees may be payable in the course of enforcement of the security: (a) Fee for registration of an enforcement commencement (b) Notary fee for enforcement via notarial writ (c) Court fee (in case of enforcement of security through court): i. For a civil court (when the defendant is an individual) 1.5 percent of the amount of claim but not less than 1 minimal salary (in 2016 – UAH 1,378 (approx. €460)). ii. For a commercial court (when the defendant is a legal entity) same as above capped at 150 minimal salaries (in 2016 – UAH 206,700 (approx. €6,900)). (d) Enforcement fee payable to the State Enforcement Service of Ukraine for enforcement proceedings (currently payable by the debtor; after 5 October 2016 the fee would be partially payable in advance by the creditor to start the enforcement proceedings subject to further reimbursement of the amount paid at debtor's cost). Starting from 5 October 2016 the fee rates will be: i. Enforcement of property related enforcement documents – 2 percent of the debt but no more than 10 minimal salaries ii. Enforcement of non-property related enforcement documents: (i) for individual debtors – 1 minimal salary and (ii) for corporate debtors – 2 minimal salaries. The amount of a minimal salary is approved by the State Budget of Ukraine for each year.

18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Interest payments under cross-border loans are deemed to be income sourced from Ukraine and, therefore, are subject to 15% Ukrainian withholding tax, unless otherwise prescribed by applicable international double tax treaty to which Ukraine is a party. As to the taxation of amounts paid under a guarantee or from enforcement proceeds, this issue is not clearly regulated in Ukrainian tax law and may depend on the position of Ukrainian tax authorities in each particular case.
Enforcement	
19. What is the bankruptcy/insolvency process?	Generally, the basic stages of bankruptcy proceedings can be briefly summarized as follows: (a) Filing an application with the relevant commercial court (by a creditor or a debtor) (b) Court hearing re initiation of bankruptcy, introduction of moratorium, management over debtor's property etc. (c) Filing claims by all creditors, approval of register of creditors' claims, formation of creditors' committee (d) Introduction of rehabilitation or liquidation procedure, or approval of a settlement agreement (e) Termination of proceeding upon consummation of either rehabilitation or liquidation procedure Both liquidation and re-organization (should the rehabilitation plan so provide) are possible. General hardening period constitutes one year.
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	Upon obtaining enforcement documents (court order, notary writ etc.) a creditor may commence enforcement proceedings. The right to take enforcement action may be limited by insolvency law where the borrower is subject to insolvency proceedings. The security trustee concept is not recognized as such under Ukrainian domestic legislation, and this issue is thus commonly addressed by the use of 'joint and several creditors' rights. It is common to see a cross-border English-law parallel-debt structure used to overcome these uncertainties, though the structure remains untested in Ukrainian courts.

21. Would a court recognize a foreign judgment without reexamining the merits of a case?	A foreign judgement may be recognized and enforced in Ukraine on the basis of a respective international treaty ratified by the Ukrainian parliament or, in absence of such treaty, on the grounds of a reciprocity principle. A Ukrainian court is required to presume that such a principle exists, unless proved otherwise. A reciprocity principle is not a widely-used concept in Ukraine; however, we are aware of practice when Ukrainian courts allowed the enforcement of foreign court judgments on the reciprocity basis. When considering the application for enforcement of a foreign court judgment a Ukrainian court should not reexamine its merits / assess its correctness.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	In accordance with the Law of Ukraine "On International Private Law," in case of applying the laws of a foreign country, a court shall establish the meaning of its provisions in accordance with official interpretation, practice of application and theory of the respective foreign country. In order to establish the meaning of the foreign law provisions, the court may submit a respective request to the Ministry of Justice of Ukraine or other competent bodies in Ukraine or abroad or to involve experts. If the meaning of the foreign law provisions is not established within a reasonable term in spite of the foregoing actions, Ukrainian law shall be applicable. A Ukrainian court, irrespectively of the governing law of the respective agreements, may apply mandatory provisions of the laws of Ukraine which have a strong connection to the respective legal relationships. A Ukrainian court shall take into account the purposes and character of such mandatory provisions and consequences of their application or non-application.

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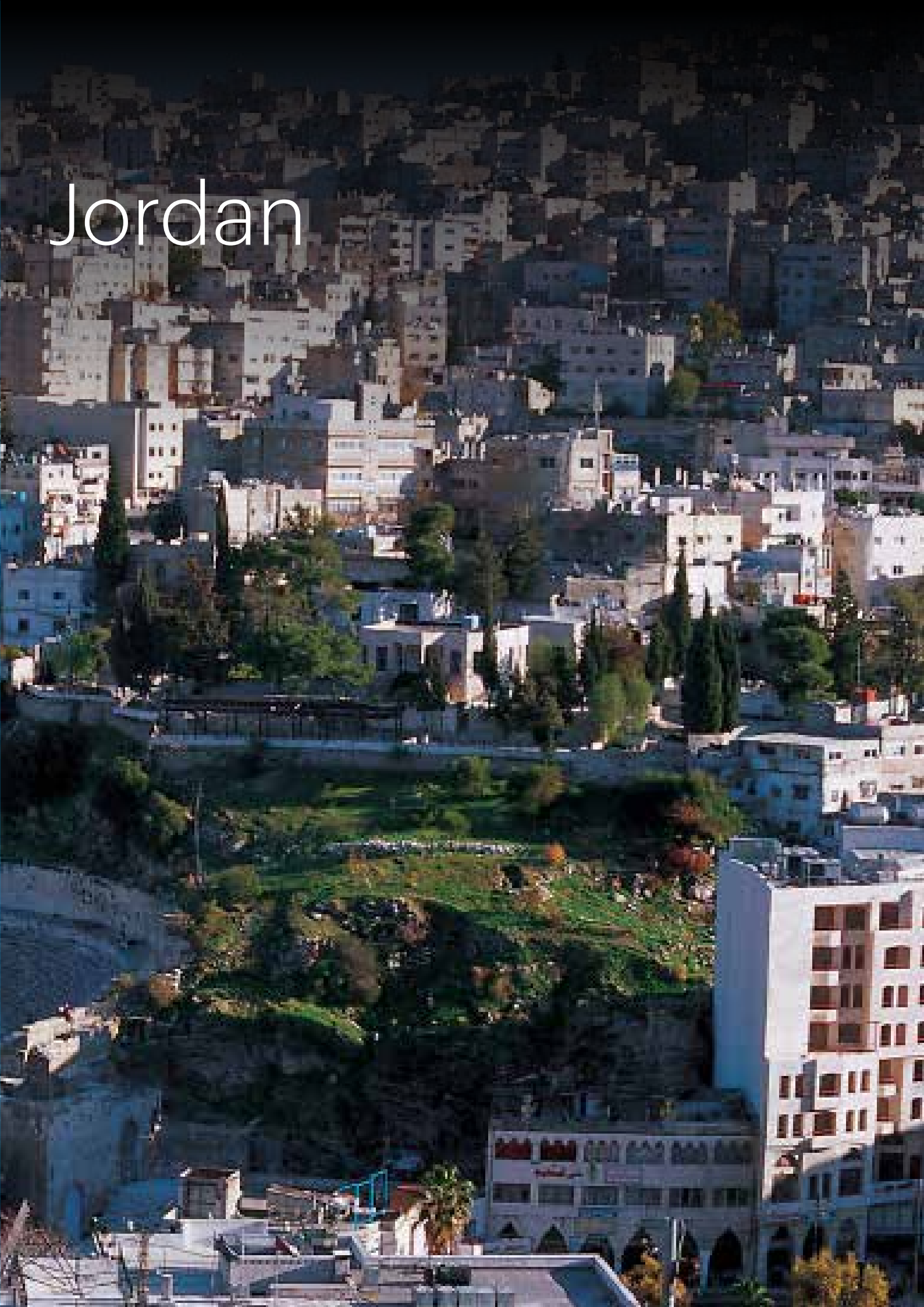
Middle East

Jordan



Jordan

Obligations	
1. What are the types of obligations that may be secured?	Generally, all contractual obligations may be secured.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Generally, yes, provided the company's articles and memorandum of association permits the company to guarantee others. However, in respect of downstream guarantees, please note that this is permissible to the extent that this does not result in the indebtedness of the shareholder to the company.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	No.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	If the guarantor is a government body, then government consents will be required in connection with the delivery of a guarantee.
5. Are there any solvency or net worth limitations/ restrictions?	Generally, no. This depends on whether the guarantor is a natural or corporate person. If a natural person having full capacity under the law, no such limitations or restrictions exist. However, if the guarantor is a corporate person, then this depends on what is prescribed in its articles and memorandum of association.
Security/Collateral	
6. Over what type of personal property can security be granted?	In general, security can be granted over all types of personal property against the title deed with the Royal Oman Police.

7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	General security agreements are generally permitted. This depends on the arrangements between the parties.
8. Can security be taken over real estate?	Yes.
9. Can cash collateral be taken? How?	Yes, in principle, the Law on the Mortgage of Movable Property No. 1 of 2012 regulates the placement of mortgages on movable property, however, the mechanism for carrying out such process has not yet been put in place by the competent authority, the Companies Control Department, and as such, this process has not yet been carried out in Jordan to date.
10. Are pledges of shares permitted?	Yes, however, the articles and memorandum of association of the company must not restrict this specifically.
11. Are stamp or other duties imposed?	Yes. (Please see below for further details).
12. Must documents be executed in front of a notary?	Generally, yes. This depends on the nature of the security.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes, generally, there is a risk of clawback and fraudulent transactions in the taking of security.
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Generally, no, noting the restrictions that may be included in the articles and memorandum of association of the company.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	N/A. Please see above.
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Stamp duties are payable in respect of such documentation before the competent authority to which such documents are being presented for official use. There are accepted ways to minimize the imposed stamp duties, however such methods are subject to the review and discretion of the competent authority and may be challenged.

17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Stamp duties are payable at 0.3% of the contract value. Notarization fees are payable and vary depending on the entity before which such notarization is taking place. The same is true of registration fees. In respect of enforcement before the Execution Department, such fees amount to 3% of the contract value with a maximum of 1,200 Jordanian Dinars. However, such amount will differ in the event that such enforcement takes place before the competent courts.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Yes, withholding tax would be payable at a rate of 10%.

Enforcement	
19. What is the bankruptcy/insolvency process?	The Jordanian Commercial Code sets out the relevant provisions which regulate the process of bankruptcy/ insolvency and the priority of rankings. Preliminarily, bankruptcy/insolvency must be determined by way of a court decision which follows from a case filed by the bankrupt/insolvent person or by the lender(s). Please note that the court may carry out all necessary procedures to protect the creditors rights. The court decision determining the bankruptcy/insolvency must be published, and the said decision will stipulate the date that the bankrupt/insolvent person stopped paying the due payments/obligations, noting that such decision may be challenged. The competent court will appoint a delegated judge for the purposes of supervising and monitoring the process as well as appointing a bankruptcy/insolvency trustee(s). Such bankruptcy/insolvency trustee(s) will receive all the property in the bankrupt/insolvent person's possession, and will review and examine all claims and related evidences, and shall provide the court with a report in this regard. The said report is subject to challenge before the court. If the lender(s) are secured by a mortgage or lien against any moveable or immoveable property, then the lenders will be able to recover their entitlements from such property, noting the following priority rankings: • Amounts due to the company's employees • Amounts due to the Public Treasury and the municipalities • Rents due to the owner of any properties leased to thecompany • Other amounts due in accordance with the order of their priority in accordance with the laws in force Please also note that the lenders may also establish a committee (Reconciliation Committee) with the intention of coming to a settlement with the bankrupt/insolvent person. However, such settlement will not affect the rights of secured parties.
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	Please see above.

21. Would a court recognize a foreign judgment without reexamining the merits of a case?	A judgment or an arbitral award obtained in a foreign jurisdiction ('Foreign Judgment') should be enforced by Jordanian courts without a re-examination of the merits of the case except in the following cases in accordance with Article 7 of the Enforcement of Foreign Judgments Law No. 8 of 1952 which provides that: 1. The court may dismiss an application for enforcing a Foreign Judgement in the following circumstances: A. If the court which issued the judgment did not have jurisdiction; B. If the defendant had not carried on any business within the jurisdiction of the court which issued the judgment, or if he was not a resident within the jurisdiction and did not willingly appear before the court or did not accept its jurisdiction; C. If the defendant was not notified to appear before the court that issued the judgment and did not appear before the court despite residing or holding his activities in the jurisdiction of the court; D. If the judgment has been obtained by fraud; E. If the defendant convinces the court that the court judgment is not final; F. If the judgment relates to claims which are not heard before the courts in the Hashemite Kingdom of Jordan, as it contravenes with Jordanian public policy or public morals; or 2. The Court can reject a statement submitted to it requesting the execution of a court order issued by a court of any country whose laws do not enforce judgments of courts in the Hashemite Kingdom of Jordan.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Yes, a foreign law would be a valid choice of law and will be recognized and given effect by Jordanian courts and applied by Jordanian courts in any action in courts to enforce any such document, to the extent that the provisions of the contract do not contravene Jordanian law mandatory provisions.

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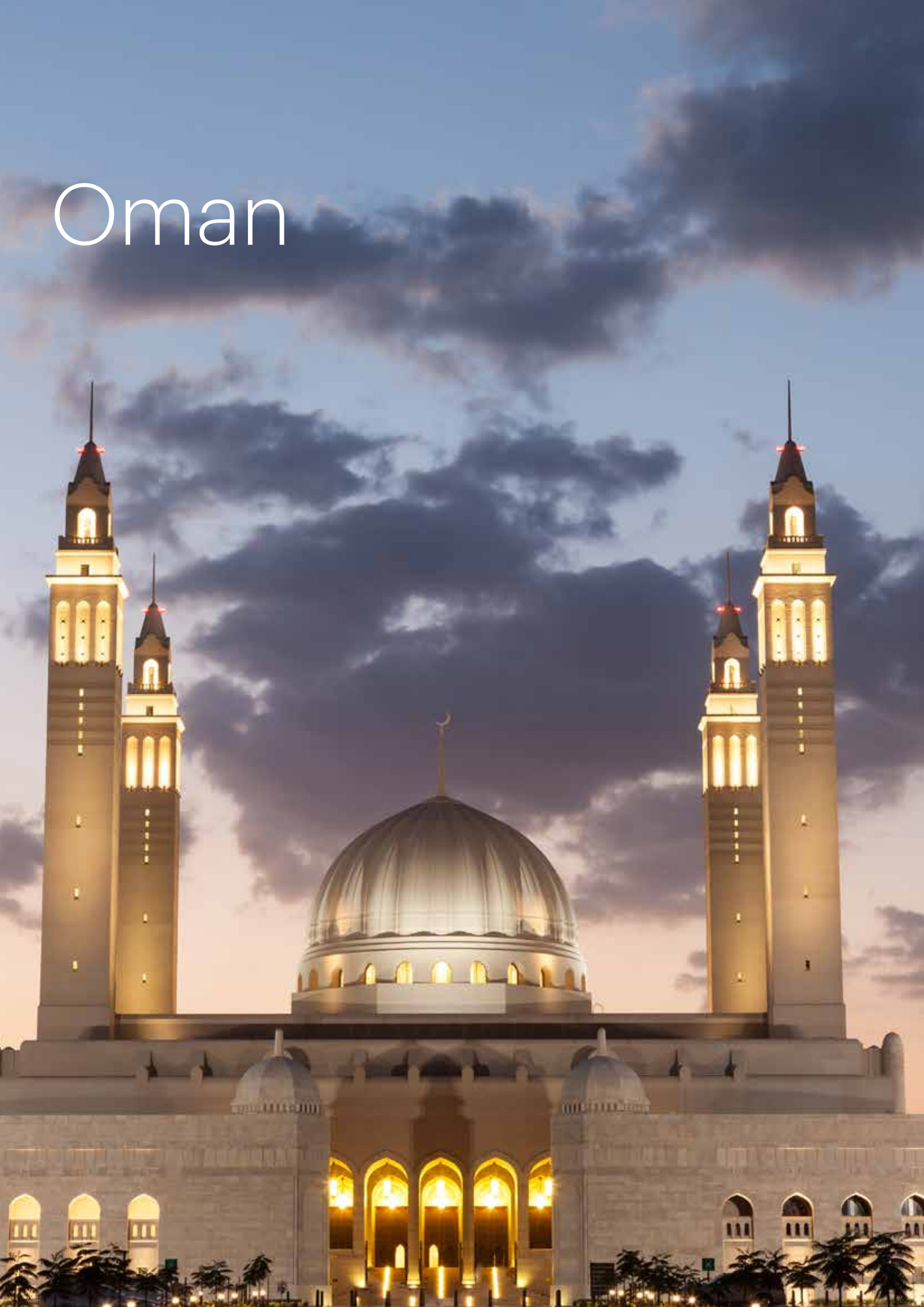
Oman



Oman

Obligations	
1. What are the types of obligations that may be secured?	The types of obligation that may be secured are not prescribed by law, but generally debt obligations are secured, and the provisions of the Law of Commerce, promulgated by Sultani Decree 55/1990, as amended (the Law of Commerce) relating to charges are drafted in a manner that assume that a debt is secured.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Both corporate / personal guarantees and bank guarantees are recognized in the Law of Commerce. A company may provide upstream and downstream guarantees provided the provisions of the Commercial Companies Law, promulgated by Sultani Decree 4/1974 (the Commercial Companies Law) in relation to guaranteeing the debts of third parties (which generally require approval by unanimous resolution of the partners, in the case of a limited liability company or a resolution passed at a general shareholders' meeting in the case of a joint stock company) are complied with.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	No but generally shareholder / partner approval is required (please see above).
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No, unless the company operates in a regulated industry where certain consents may be required (for example from the Authority for Electricity Regulation for licensed companies operating in the power and water sector).
5. Are there any solvency or net worth limitations/ restrictions?	No, but if the company has been insolvent there will be a look back period pursuant to which a court or interested party may challenge the granting of a guarantee.

Security/Collateral	
6. Over what type of personal property can security be granted?	Book IV of the Civil Transactions Law, promulgated by Sultani Decree 29/2013 (the Civil Code) and the Law of Commerce specify two types of charges: charges by way of security (mortgages) and possessory charges (pledges). Security can be granted over the following: a) Moveable assets such as machinery, equipment, motor vehicles, ships and aircraft b) Nominate instruments such as shares c) The commercial concern of a company, which, where not defined in the mortgage document, applies to the trade name, right of lease, right to contact clients and right of sale. There are registration requirements at the relevant ministry (in some cases registration needs to be renewed every five years) and further perfection requirements depending on the type of asset, for example, vehicles must also have security registered against the title deed with the Royal Oman Police.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Under Oman law, the charged assets must be in existence and identifiable at the time the charge is taken and clearly specified in the security agreement. There is no concept of a floating charge in Oman.
8. Can security be taken over real estate?	Security may be taken over the following categories of real estate by way of legal mortgage registered at the Ministry of Housing: a) Freehold Interest: a legal mortgage may be granted over a freehold interest in land by the owner of such interest. b) Usufruct Interest: Usufruct is a land right fixed as to time which allows the usufructory the right to use the land and exploit it (including mortgaging) without infringing the ownership of the land. Please note that under Oman law, no security can be granted over a leasehold interest in land.

9. Can cash collateral be taken? How?	There are no specific statutory provisions dealing with creating a security interest over cash held in bank accounts in Oman. There is no established procedure in this regard, and as far as we are aware, no court decision enforcing a charge over a bank account. Where the account is blocked / frozen it could be mortgaged by way of commercial mortgage, but it is unclear whether an account with a fluctuating balance can be effectively mortgaged. A pledge over an account could be created but what is required to demonstrate possession is not clearly established.
10. Are pledges of shares permitted?	Under Oman law it is possible for the owner of shares in a joint stock company to pledge those shares by way of security. It is not possible to pledge the shares of a limited liability company. Security granted over shares must be perfected by registration at the Muscat Clearing and Depository Company SAOC (MCDC). The registration procedures of the MCDC are not prescribed by law but are made by decision of the board of directors of the MCDC. Therefore, the requirements for registration of a pledge over shares and the applicable fee are subject to change at any time.
11. Are stamp or other duties imposed?	Certain types of security can be registered and registration fees apply. The amount of the registration fee varies depending on the relevant ministry or government authority and these fees are subject to change.
12. Must documents be executed in front of a notary?	Commercial mortgages and legal mortgages must be executed in front of a notary (in practice this may be a Ministry of Commerce and Industry or Ministry of Housing official, as appropriate). An attestation fee is payable. Any power of attorney required under a security document must be executed in front of a notary.

13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Article 609 of the Law of Commerce provides that any grant of security by a company in the period between the date of cessation of payments (which is stipulated by the court) and the date of judgment declaring bankruptcy may not be relied upon as against third party creditors. The date of cessation of payments means the date on which the insolvent party is deemed to have ceased making payments or the date it is deemed to have ceased being able to make payments and shall not be more than two years prior to the date of the judgment declaring bankruptcy. All security must be enforced through the courts and therefore it would be open to a court to determine whether there is a fraudulent transaction in the taking of security and accordingly whether to recognize and enforce the security interest.
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	No, however note the shareholder approval that may be required pursuant to the Commercial Companies Law mentioned above.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	Not applicable.
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Please see above in relation to registration fees.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Please see above in relation to registration fees and notarization fees. Any security interest must be enforced through the Oman courts, and this will involve court fees.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	There is a withholding tax levy on certain income accrued in Oman, (for example, royalty payments), but currently this is not applicable to interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds.

Enforcement	
19. What is the bankruptcy/insolvency process?	The bankruptcy process is outlined in Book 5 of the Law of Commerce. A declaration of bankruptcy is made by the court upon application by either a creditor, the debtor itself or the court of its own accord. The court will determine the date of cessation of payments. There are no out of court insolvency procedures in Oman. Following a declaration of bankruptcy, the court will appoint an administrator in bankruptcy to whom the assets of the bankrupt are relinquished. The administrator in bankruptcy is to collect and realize the assets of the bankrupt for distribution of the proceeds to the creditors. Note that priority is repayment of debt owed to the government (which is not subject to any limit) and to employees of a commercial company (but up to a certain limit).
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	There are no self-help remedies available to creditors. A creditor would need to seek permission from the judicially appointed administrator in bankruptcy to enforce its security (which must be done through the courts) and liquidate the assets (which is usually by way of court supervised public auction). This permission is usually given unless it is possible to pay the secured creditor from the existing funds of the insolvent party, and it is in the best interests of the general body of creditors for the administrator in bankruptcy to maintain the assets. The administrator in bankruptcy also has the right to sell the assets subject to the chargee's charge, but will retain the proceeds of such sale for the benefit of the chargee. In the event of any disagreement between the judicially appointed administrator in bankruptcy and the chargee (for example, as to price), the matter could be referred by either one of them to the judge in insolvency appointed to that particular insolvency case.

21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Foreign judgments are only enforceable in Oman either on the basis of treaty obligations or pursuant to Oman Civil and Commercial Procedure Code, promulgated by Sultani Decree 29/2002 (the Civil and Commercial Procedure Code). As to the former, the only treaties of note are the AGCC Protocol (members of the AGCC are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates) and the Riyadh Arab Convention. The Civil and Commercial Procedure Code sets out rules of enforcement for foreign judgments (and foreign arbitral awards) in Oman and provides that a foreign judgment is enforceable in Oman without re-examining the merits of a case if all of the following are met: a) Reciprocity exists, and if so in the same terms. b) The foreign judgment was rendered by a competent court. c) The judgment is final according to the law of the foreign country concerned. d) The judgment was not obtained by fraud. e) The parties were duly summoned and represented in the proceedings. f) The judgment did not contravene any law applicable in Oman or any Oman court judgment or public order in Oman. Foreign arbitral awards are enforceable in Oman pursuant to treaty obligations; or the Civil and Commercial Procedure Code; or the Law of Arbitration in Civil and Commercial Disputes, promulgated by Sultani Decree 47/1997 (the Law of Arbitration). In terms of treaty obligations, perhaps of most note, other than the AGCC Protocol and the Riyadh Arab Convention mentioned above, is that Oman has acceded to the New York Convention of 1958. The ratification included a reservation that the convention will only apply in relation to awards made in the territory of another convention state.

	The only grounds for non-enforcement of a foreign arbitral award issued by a contracting state of the New York Convention would be the restrictive grounds set out in Article V of the New York Convention. In accordance with the Civil and Commercial Procedure Code, the courts possess an inherent jurisdiction to enforce foreign awards. Arbitral awards are assimilated to judgments, and their enforceability in Oman depends on the court being satisfied that the following conditions are satisfied (reading "judgment" as "award"): a) That the parties to the action in which the foreign judgment was rendered were summoned to appear and were validly represented b) That the judgment or order contained nothing involving a violation of any law in force in Oman c) That it does not conflict with a judgment or order previously rendered by a court in the Sultanate, and includes nothing which offends morals or public order d) That the matter in which the award is rendered is competent to be arbitrated under Oman law e) That the award is enforceable in the country in which it is issued. Enforcement of foreign arbitral awards in Oman is also directly available under the provisions of the Law of Arbitration where the award in question has been rendered: a) In Oman b) Or in an international commercial arbitration in which the Law of Arbitration applies.

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Article 28 of the Civil Code provides that a foreign law will be recognized by the Oman courts only if it does not contradict Islamic Shari'ah, public order and morality in Oman. In our experience the courts will accept a foreign choice of law provision as evidence of the parties' agreement to such choice of law. However, the courts are not bound by precedent, and we cannot therefore confirm that this would be applied by the courts in the future. If a provision of a foreign law chosen by the parties is found to be contradictory to mandatory provisions of Oman law or public order in Oman, then it will be unlikely that the foreign law would be applied and enforced. Where provisions of a foreign law differ from Oman law, and are sought to be relied upon, they would be required to be specifically pleaded and proved as evidence of fact before the courts.

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Qatar

Qatar

Obligations	
1. What are the types of obligations that may be secured?	All obligations that typically arise under or in connection with a loan agreement, whether present or future, actual or contingent or owed jointly or severally or in any other capacity. There is a requirement that guarantees and pledges are issued with respect to a specified debt or a certain amount, and so there is some uncertainty as to the enforceability of "all monies" guarantees and pledges.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes, a company can provide upstream and downstream guarantees for its affiliates, including where the relevant affiliate is located overseas.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	Yes, this is recommended.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No,
5. Are there any solvency or net worth limitations/ restrictions?	No, although there may be limits on the amount which can be guaranteed in the guarantor's constitutional documents.

Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over: 1. Plant and machinery, tools and trading stock (inventory) 2. vehicles, aircraft and ships 3. Shares and negotiable instruments 4. Receivables and income[1] 5. Cash deposits 6. Contract rights, goodwill, trade names, insurances, intellectual property and licence rights. [1]In practice, this is achieved by assignment of rights, which is not categorised as "security" under Qatar law, but is used as a security equivalent.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Security agreements must be tailored to a specific, identifiable asset or group of assets.
8. Can security be taken over real estate?	Yes. Security can be taken over the following categories of real estate and real estate interests: 1. Freehold 2. Leasehold interests in land[2] 3. Buildings and structures 4. Right of usufruct (right to use) or a right of musataha (right to develop) The appropriate form of security is a mortgage, and the mortgagee must be duly licensed by the Qatar Central Bank. The mortgage must be registered with the Qatar Ministry of Justice. [2]As an assignment of receivables.
9. Can cash collateral be taken? How?	Yes, provided that security is taken over a fixed sum, and is most commonly in the form of an account pledge and assignment. There is no certainty around whether security over an account with a fluctuating balance is effective. Perfection of the account pledge and assignment is through the "possession" of the funds by the account bank, as well as by notification of and consent by the account bank.

10. Are pledges of shares permitted?	Yes.
11. Are stamp or other duties imposed?	No, but there may be registration fees and other costs (see below for details).
12. Must documents be executed in front of a notary?	Yes, if documents need to be filed at a public authority or used in court proceedings. The following security documents need to be notarized and then registered with the relevant registration authority in Qatar, in order to be valid and enforceable: 1. Land mortgages 2. Commercial mortgages, i.e. mortgages of moveable assets 3. Share pledges 4. Vehicle and aircraft mortgages Guarantees and other types of security documents do not need to be notarized, but parties may decide to do so if they anticipate future court proceedings (as notarization tends to give a document more weight in evidence).
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes. Under Qatar law, enforcement of obligations may be invalidated by reason of fraud.
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	N/A[3] [3]As far as we know, this is not covered under Qatar Law. Could you please let us know who completed this questionnaire for the UAE as our answers should have been similar (as such, we would like to confer with them on this point).
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	There is no statutory "whitewash" regime of the type seen in other jurisdictions that would give shareholders an opportunity to approve financial assistance in certain circumstances.
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	No, but there may be registration fees and other costs.

17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Notarization fees are generally nominal. Notaries require documents submitted for notarisation to be in the Arabic language, so translation costs may also apply. Registration fees for security vary between the different registration authorities and can change from time to time. They will generally be calculated as a percentage of the secured amount, subject to a cap. For land mortgages, the fees are 0.025% of the mortgage value. For commercial mortgages the registration fee is between nominal value and 0.025%. Enforcement of security will incur court fees, public auction fees and related costs.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	It is likely that withholding tax would be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds, but we do not advise on Qatar tax matters.

Enforcement	
19. What is the bankruptcy/insolvency process?	A person may declare themselves bankrupt; likewise, a person can be declared bankrupt at the request of one of his creditors, done through the creditor declaring the bankruptcy of the debtor under the normal procedures of filing a lawsuit, or through an order of petition if the declaration is required with urgency. In addition to this, the court may, on its own initiative and without any application, declare a person bankrupt. The process by which a person is declared bankrupt involves a report being submitted to the court registry indicating grounds of the failure to pay the commercial debt. The report must also be accompanied by the following documents: 1. The person's principle commercial books and records 2. A copy of the latest balance sheet (showing most recent profit/loss) 3. A statement of personal expenses 4. A detailed statement of property/movables and their value on the date of the failure to pay 5. The names and domiciles of creditors/debtors (including the rights of the creditors/debtors, the value of the debt and the security guaranteeing them) 6. Statement of protest for non-payment made against the trader during the two years previous to the submission of the bankruptcy application Any bankruptcy judgment reached by the courts will be executed immediately. Once this judgment is executed, it will declare that certain transactions undertaken by the bankrupted person during the two-year period (or less) immediately prior to the payments not being made, to be non-binding on the creditor. The court will then assess the value of the security held by the person and make the relevant arrangements to see the creditor can be repaid their debt.
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	A creditor may only issue a declaration of the bankruptcy of their debtor through the courts. Moreover, only through court proceedings can security be assessed and a method devised to repay the debt. The law states that the courts will come to and execute a judgment on bankruptcy with immediacy, but the assessment of security and repayment methods may be a longer process.

21. Would a court recognize a foreign judgment without reexamining the merits of a case?	In the absence of a treaty or convention for the reciprocal enforcement of judgments between Qatar and another state, Qatari courts would enforce a judgment obtained in that other state subject to provisions of Articles 379 and 380 of Law No 13 of 1990 (the Civil Procedure Law), unofficial translations of which are set out below. Article 379 of the Civil Procedure Law: Judgments and orders pronounced in a foreign country may be ordered to be executed in Qatar upon the conditions determined in that country for the execution of Qatari judgments and orders. Article 380 of the Civil Procedure Law: An order for execution of a foreign judgment or order will not be made unless and until the following have been ascertained: 1. That the judgment or order was rendered by a court of competent jurisdiction 2. That the parties to the action were duly served with notice and represented at the hearings 3. That the judgment or order is capable of enforcement in conformity with the laws of the jurisdiction in which it was rendered 4. That the judgment or order is not contrary to public policy or morality in Qatar Therefore, Qatari courts may call for textual evidence on the law of the other state concerning the conditions that would be applicable there for the execution of Qatari judgments. The Qatari courts may only execute the foreign judgment on these conditions. If the textual evidence showed that the foreign court in question would re-examine the merits of a case on which Qatari courts had already passed judgment, then Qatari would similarly re-examine the merits of the foreign judgment. In any case, the foreign judgment would be admissible as evidence in proceedings in Qatar

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	It is possible for contracting parties to choose a governing law other than Qatari law.

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Saudi Arabia

Saudi Arabia

Obligations	
1. What are the types of obligations that may be secured?	All present obligations that typically arise under or in connection with a loan agreement are enforceable under Saudi law generally. In the event any obligation proves to be illegal or unenforceable under Saudi law, security securing that obligation, or a guarantee guaranteeing that obligation, would in respect of those underlying or unenforceable obligations, also be unenforceable.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes, a company can provide upstream and downstream guarantees for its affiliates, including where the relevant affiliate is located overseas.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	No.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No.
5. Are there any solvency or net worth limitations/ restrictions?	No, although there may be limits on the amount which can be guaranteed in the guarantor's constitutional documents.
Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over movables and immovables, generally.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Security agreements must be tailored to a specific asset or group of assets.

8. Can security be taken over real estate?	Yes - there is no established procedure in Saudi Arabia for the registration of liens or other encumbrances relating to property other than in respect of real property, aircrafts and ships. However, since the early 1980s the public notaries in Saudi Arabia have refused to record mortgages on real property other than in limited circumstances where governmental funds are financing the real estate development. New mortgage law has been enacted for the purpose of registering mortgages over real estate but the registration system has not been established yet.
9. Can cash collateral be taken? How?	Yes. Security is usually taken over a blocked account with a fixed sum, and is most commonly in the form of an account pledge. There is some uncertainty around whether security over an account with a fluctuating balance is effective. Also, it is not possible to take security over future assets in Saudi Arabia. Perfection of the account pledge is through the "possession" of the funds by the account bank, as well as by notification of and consent by the account bank.

10. Are pledges of shares permitted?	Yes - in accordance with the Commercial Mortgage Regulations to affect a pledge over shares (i) the pledgor and pledgee need to enter into a pledge agreement (ii) record the pledge in the certificate of ownership of the share certificate and (iii) record the pledge in the record of the entity issuing the share certificate. Perfection of the pledge occurs when possession of the share certificate is transferred to the pledgee. Security interests over joint stock companies pledged shares (which are evidenced by share certificates and electronic records) are created as described above and perfected by transfer of possession of the share certificate or depositary receipt (in case of electronic records) to the pledgee. Perfection of a share pledge vis-à-vis third parties for listed joint stock companies in Saudi Arabia is customarily provided by way of evidence of the block of shares on the Saudi Arabian stock exchange (Tadawul). Whilst the Commercial Mortgage Regulations do provide for the theoretical pledging of limited liability company (LLC) shares, there is no tested practical way to affect the security over the shares of an LLC since there is no instrument evidencing such shares. Banks in Saudi, however, employ a mechanism, the "Synthetic Share Pledge", that seeks to affect a pledge over the shares of an LLC by the pledgors creating share certificates which note the pledge. The pledgors will also pass a shareholders' resolution containing language that their shares are encumbered by a pledge to the lenders and that any sale or further encumbrances of the shares without the banks' written consent would be invalid.
11. Are stamp or other duties imposed?	No.
12. Must documents be executed in front of a notary?	No.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes.
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	No.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	N/A

Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	No.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	None
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	5 percent withholding tax on interest payments will apply.
Enforcement	
19. What is the bankruptcy/insolvency process?	The insolvency regime in Saudi Arabia remains untested, and the relevant legislative provisions are unclear in places. There is also very little in the way of precedent on bankruptcy and liquidation issues in the Saudi courts.
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	There is no concept of self-help or extra-judicial enforcement under Saudi law. Secured creditors will need to prove for the debt in court, and then obtain a court order in order to enforce security (other than in the case of an account pledge, where the account bank/ pledgee may be able to exercise its rights of set-off). Once the court has issued a final judgment, the security can only be enforced by a sale of the secured asset in a public auction. The court process can be lengthy, ranging from eighteen months up to several years.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	No – Saudi courts will most likely deny enforcement on the ground of public policy.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	No – Saudi courts will most likely disregard the choice of foreign law and apply Saudi law instead.

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UAE

United Arab Emirates (UAE)

This guide is in the process of being revised to take into account Federal Law No. 9 of 2016 and Federal Law No. 20 of 2016.

Obligations	
1. What are the types of obligations that may be secured?	All obligations that typically arise under or in connection with a loan agreement, whether present or future, actual or contingent, owed jointly or severally or in any other capacity. There is a requirement that guarantees are issued with respect to a specified debt or a certain amount, thus there is some uncertainty as to the enforceability of "all monies" guarantees.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes, a company can provide upstream and downstream guarantees for its affiliates, including where the relevant affiliate is located overseas.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	Yes, this is advisable.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No.
5. Are there any solvency or net worth limitations/ restrictions?	No, although there may be limits on the amount which can be guaranteed in the guarantor's constitutional documents. Please note that any demand under a guarantee which was granted in a commercial context should be made within six months of the guaranteed debt falling due. This applies to "commercial" guarantees, where the guaranteed debt is deemed to be commercial, or where the guarantor is a trader with an interest in guaranteeing the debt.

Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over: 1. Plant and machinery, tools and trading stock (inventory) 2. Vehicles, aircraft and ships 3. Shares and negotiable instruments 4. Receivables and income 5. Cash deposits 6. Contract rights, goodwill, trade names, insurances, intellectual property and license rights
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Security agreements must be tailored to a specific asset or group of assets.
8. Can security be taken over real estate?	Yes. Security can be taken over the following categories of real estate and real estate interests: 1. "Freehold" land 2. Leasehold interests in land 3. Buildings and structures 4. Right of usufruct (right to use) or a right of musataha (right to develop) 5. Off-plan purchase contracts The appropriate form of security is a mortgage, and the mortgagee must be duly licensed by the UAE Central Bank. The mortgage must be registered with the lands department in the relevant Emirate. The procedure and requirements for taking security over real estate need to be considered on a case-by-case basis. This is because the property and mortgage laws are not identical in the different Emirates. In addition, the lands departments in some Emirates have not yet implemented a system for registering real estate interests as a matter of practice.

9. Can cash collateral be taken? How?	Yes. Security is usually taken over a blocked account with a fixed sum and is most commonly in the form of an account pledge and assignment (and sometimes as part of a commercial mortgage). There is some uncertainty around whether security over an account with a fluctuating balance is effective. Also, it is not possible to take security over future assets in the UAE. Perfection of the account pledge and assignment is through the "possession" of the funds by the account bank, as well as by notification of and consent by the account bank.
10. Are pledges of shares permitted?	Yes. The UAE companies law provides for pledges of shares in a joint stock company (JSC - both public and private) and, recently, in a limited liability company (LLC). For a JSC perfection of the pledge is achieved by making an annotation in the company's share register, as well as on the relevant share certificates, and by delivery of the share certificates to the pledgee. Additionally, for a listed company the pledge must be registered with the relevant stock exchange. For both JSCs and LLCs the pledge must be registered in the Commercial Register at the department of economic development in the relevant Emirate. Some enforcement risk arises for pledges over shares in LLCs, both in terms of ability to perfect the security and practical challenges to enforcement. For example, LLCs are not able to issue negotiable share certificates, which would impede perfection through possession. Also, statutory pre-emption rights would apply to any proposed transfer.
11. Are stamp or other duties imposed?	No, but there may be registration fees and other costs. (See below for details.)

12. Must documents be executed in front of a notary?	Yes, if documents need to be filed at a public authority or used in court proceedings. The following security documents need to be notarized and then registered with the relevant registration authority in the relevant Emirate in order to be valid and enforceable: 1. Land mortgages 2. Commercial mortgages, i.e. mortgages of moveable assets. These must be notarized and registered in the Commercial Register at the department of economic development in the relevant Emirate. Registration expires after five years, unless renewed. 3. Share pledges 4. Vehicle and aircraft mortgages Guarantees and other types of security documents do not need to be notarized, but parties may decide to do so if they anticipate future court proceedings (as notarization tends to give a document more weight in evidence).
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes. Under UAE law, enforcement of obligations may be invalidated by reason of fraud. Please see below regarding claw-back in the context of insolvency.
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	**Financial assistance** There is a restriction generally on joint stock companies (or any of their subsidiaries) providing financial assistance to their shareholders to enable their shareholders to hold any shares, bonds or sukuk issued by them (or any of their subsidiaries). The prohibition is broad, and financial aid is defined to include advancing loans, giving gifts or donations, and granting any security or guarantee. This prohibition does not apply to the acquisition of shares in LLCs. **Upstream guarantees** There are no legal restrictions on upstream guarantees.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	There is no statutory "whitewash" regime of the type seen in other jurisdictions that would give shareholders an opportunity to approve financial assistance in certain circumstances.

Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	No, but there may be registration fees and other costs. (See below for details.)
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Notarization fees are generally 0.25% of the secured amount, up to a maximum of AED10,000. Notaries require documents submitted for notarization to be in the Arabic language, so translation costs may also apply. Registration fees for security vary between the different Emirates and the different registration authorities, and can change from time to time. They will generally be calculated as a percentage of the secured amount, subject to a cap. For land mortgages, the fees can range from 0.25% to 2% of the secured amount, and are usually capped at AED1 million to AED1.5 million. For commercial mortgages, for example in Dubai, the registration fee is AED [3,500] at the time of publication. Enforcement of security will incur court fees, public auction fees and related costs.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	No.

Enforcement	
19. What is the bankruptcy/insolvency process?	The insolvency regime in the UAE remains untested, and the relevant legislative provisions are unclear in places.. There is also very little in the way of precedent on bankruptcy and liquidation issues in the UAE courts. Bankruptcy proceedings can be initiated by a company voluntarily if it is unable to pay its debts when due, or by its creditors or a court. Secured assets will be ring-fenced from the unsecured creditors of the company, and the claims of secured creditors will have priority over unsecured claims (subject to statutory and mandatory claims preferred by law, such as unpaid employee entitlements and certain tax claims). Once a court has issued a bankruptcy judgment, it will declare a period in which certain transactions previously undertaken by the company are not binding on its creditors, and may be challenged and declared unenforceable. The relevant period will start on a date of up to two years beforehand on which the company is deemed to have ceased payments. This will apply to the following types of transactions in the relevant period: 1. Payments of term debt before the due date 2. Payment of immediate debts other than in the form agreed 3. A mortgage or charge to secure a prior debt A disposal during the relevant period can be judged unenforceable vis a vis creditors if it is harmful to them and if the counterparty was aware at the time that the company was insolvent. Such disposals could include certain types of security. The above does not apply to UAE state entities, which may be exempt from bankruptcy procedures or subject to a separate insolvency regime.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	There is no concept of self-help or extra-judicial enforcement under UAE law. Secured creditors will need to prove for the debt in court, and then obtain a court order in order to enforce security (other than in the case of an account pledge, where the account bank/pledgee may be able to exercise its rights of set-off). Once the court has issued a final judgment, the security can only be enforced by a sale of the secured asset in a public auction. The court process can be lengthy, ranging from six months up to several years. For land mortgages in both Dubai and Abu Dhabi, an expedited enforcement procedure is available. For example, in Dubai the mortgagee must give the mortgagor 30 days written notice through the notary public before commencing execution proceedings. If the mortgagor fails to pay during the 30 day period, the execution judge can order an attachment against the mortgaged property so that it can be sold by a public auction at the Dubai Lands Department, without requiring a court judgment on the merits of the case.
21. Would a court recognize a foreign judgment without reexamining the merits of a case?	In the absence of a treaty or convention (such as the Riyadh Convention or the Gulf Cooperation Council Convention to which the UAE is a signatory), a foreign judgment will not be enforced in the UAE if the UAE courts have jurisdiction over the subject matter of that judgment. This is regardless of whether an agreement contractually provides for foreign courts to have jurisdiction to issue judgments on any relevant dispute.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	While it is possible for contracting parties to choose a governing law other than the UAE, the UAE courts will routinely not adopt a choice of foreign law.

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Obligations	
1. What are the types of obligations that may be secured?	Obligations of payment or other performance arising from any form of agreement by contract may be secured, whether now existing or thereafter acquired.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Both upstream and cross-stream guarantees are widely used, but the risk of any such guarantee being unwound as a result of a fraudulent conveyance is higher than with a downstream guarantee; see Item 13 hereof. Typically, US guarantees of these types include express language called a "savings clause" to limit the amount of the guarantee to the maximum amount that would be unavoidable or unenforceable under the US bankruptcy code or state fraudulent transfer law, but such a clause is not an assurance of mitigation of risk. In addition to the forgoing, the Dodd-Frank Act restricts the enforceability of a guarantee of swap obligations by entities that are not "eligible contract participants" under the Commodity Exchange Act. There are generally no restrictions on the ability of a parent company to provide downstream guarantees of the obligations of its subsidiaries, as the parent is deemed to have received adequate consideration by virtue of its ownership of such subsidiary. Under the US Internal Revenue Code, a US parent company whose debts are guaranteed by a direct or indirect subsidiary that is a "controlled foreign corporation" may be deemed to have received a dividend equal to an amount up to the amount of the loan obligations being guaranteed (or secured), and such dividend is taxable. It is customary to forgo guaranties from those entities, and domestic subsidiaries whose sole assets are the equity of controlled foreign corporations, and to limit the pledge of voting equity in such entities and domestic subsidiaries to 65%.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	Yes; value must be received by a guarantor.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	Not typically.
5. Are there any solvency or net worth limitations/ restrictions?	See Items 2 and 13 hereof.
Security/Collateral	
6. Over what type of personal property can security be granted?	Generally, collateral can include any personal property, including accounts, chattel paper, promissory notes, payment intangibles, securities, vehicles (including aircraft and ships), commercial tort claims, intellectual property and fixtures (goods that have become so related to particular real property that an interest in them arises under real property law), and proceeds and products of the foregoing. A lender that wishes to obtain a security interest in property acquired by the grantor after closing should expressly include a reference to after-acquired assets in the applicable security document.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Security can be granted over all or certain of a party's assets; however, additional documentation and filings may be required to ensure a security interest is properly created and/or perfected in certain assets such as real property (see Item 8 hereof), copyrights, aircraft and related assets, motor vehicles, railroad rolling stock and related assets and vessels and related assets. Please note it is not permissible to describe the collateral in a security agreement in super generic terms such as "all personal property," but the lender can identify the assets specifically or by category, for example.

8. Can security be taken over real estate?	Yes. The form of the security instrument pursuant to which a lender receives a lien on real estate varies by state, but a mortgage is the most common type of document. Other examples of the form of security instrument include a deed to secure debt and a deed of trust. If the applicable document is a deed of trust, a trustee (typically the title insurance company providing the title policy for the security instrument, described below) will be appointed to act as trustee for the lender. Each state will have different means of foreclosing on the real property assets and different formatting formalities (size of font and spacing, for example) as well. The security instrument will be recorded in the county or parish in which the real property is located in order to establish the lender's priority position. Typically, a lender will obtain title insurance to, among other things, confirm that priority position and obtain confirmations such as proper zoning of the real property, priority with respect to future advances and taxation of the real estate. Please note that some states, however, allow certain liens such as mechanics' or construction liens to prime a lien granted pursuant to a security instrument.
9. Can cash collateral be taken? How?	Yes, a security interest in cash collateral can be obtained pursuant to a security agreement. The primary form of security granted over cash is through a security interest in "deposit accounts," which include any demand, time, savings, passbook or similar account maintained with a bank, but a secured party may receive a lien on money as well. Such liens can be obtained pursuant to a general security agreement or a separate security document. There are three typical means to obtain control over a deposit account: (a) pursuant to an agreement among the grantor, the secured party and the depository institution at which the deposit account is maintained, pursuant to which the parties agree that the depository institution will comply with the instructions of the secured party regarding funds in the deposit account without further consent of the grantor; (b) the secured party is also the depository institution at which the deposit account is maintained; and (c) the secured party becomes the bank's customer with respect to the account. Control pursuant to clause (a) is the most comment means of obtaining control by a secured party. A lien on money is perfected through possession by the secured party.

10. Are pledges of shares permitted?	Yes. A security interest in stock or other equity interests can be granted under a security agreement covering all collateral being provided by the grantor or through a separate pledge agreement.
11. Are stamp or other duties imposed?	See Item 16 hereof.
12. Must documents be executed in front of a notary?	Generally, notarization is only required of documents creating liens on real property, fixtures if such lien is obtained pursuant to a real property security instrument) and sea-worthy vessels. These requirements as to real property and fixtures determined at the state and local level; see Item 8 hereof. Virtually all jurisdictions will require an executed and notarized security instrument with a legal description of the encumbered land at a minimum. A security interest in a sea-worthy vessel is governed by federal law. Some states require that a security interest in fixtures be perfected pursuant to a fixture filing separate from the security instrument, but other states provide that fixtures are perfected pursuant to the recording of the security instrument.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes. **Fraudulent Conveyance:** A security interest in an obligor's assets, and a guarantee of the obligations of another, are subject to the fraudulent conveyance provisions of the United States Bankruptcy Code and state uniform fraudulent transfer/uniform fraudulent conveyance law. Security interests and guarantees can be set aside as a fraudulent conveyance if (a) the obligor received less than "reasonably equivalent value" and (b) one of the following circumstances existed: (i) such obligor was insolvent, or became insolvent, as a result of the granting of the security interest or incurrence of the obligation; (ii) such obligor was engaged in, or about to engage in, a transaction that would leave it with "unreasonably small capital"; or (iii) such obligor intended to incur, or believed it would incur, debts it could not repay. A transaction can be found to be a fraudulent conveyance even if there was no fraudulent intent. This issue primarily arises in connection with the grant of security, or provision of guaranties, by subsidiaries; see Item 2 hereof as well.

	Preferential transfer: If an insolvent grantor grants or perfects a security interest in favor of a lender to secure existing indebtedness within 90 days (or in the case of insiders, within one year) of bankruptcy of the grantor, the lender risks that security interest being set aside by a bankruptcy court as a preferential transfer. The situations in which a preference attack is most likely to be relevant are where: (a) perfection occurs more than 30 days after the creation of the security interest and bankruptcy occurs within 90 days (or in the case of insiders, within one year) of perfection; (b) a security interest in assets only attaches after the grantor obtains rights in those assets, which risks the occurrence of a bankruptcy within 90 days (or in the case of insiders, within one year) of the grantor obtaining rights in the after-acquired assets, and (c) the grantor subsequently grants a security interest over assets that were not subject to the security interest initially granted to the lender, which starts a new 90-day (or in the case of insiders, one year) preference period to the extent the new security interest secures the lender's existing debt. **Substantive consolidation:** Generally, a creditor claim at the parent company level is structurally subordinated to a creditor claim at the subsidiary borrower level. In bankruptcy, however, the separate identities of the parent company and its borrower subsidiary may be disregarded under the doctrine of substantive consolidation, so that their assets and liabilities are combined. In practice, in a bankruptcy proceeding, these issues tend to be negotiated and compromised between the lenders. **Liens on assets acquired after a bankruptcy filing:** Generally, assets acquired by an obligor after institution of a bankruptcy proceeding are not subject to a pre-petition security interest; however, if the pre-petition security agreement granted the secured party a security interest on the proceeds, products, offspring or profits of property owned by such obligor prior to such institution, the secured party's lien will extend to such proceeds, products, etc., as provided in the applicable security agreement and relevant non-bankruptcy law. For further discussion of bankruptcy, see Item 19 hereof.

Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	**Financial assistance:** "Financial assistance" laws such as the UK's Companies Act 2006 are not typically seen in the United States. **Upstream guarantees:** See Items 2 and 13 hereof.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	**Financial assistance:** Not applicable (See Item 14 hereof). **Upstream guarantees:** See Items 2 and 13 hereof.
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	**Federal:** Generally, there are no federal stamp duties or similar charges. **State and local considerations:** Certain states do impose documentary stamp taxes or other charges. For example, the state of Florida requires payment of a documentary stamp tax of $0.35 per $100 to be paid with respect to any note executed or delivered in that state; subject to the immediately succeeding sentence, the tax is capped at $2,450. If a secured party is obtaining a mortgage or a security interest filed in the state of Florida, however, the tax is not capped. **United States federal income tax:** please see Item 2 hereof.

17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	**Taxes:** In addition to the stamp duties and other charges generally described in Item 16 hereof, some states impose taxes in connection with the filing of mortgages or liens in their jurisdictions. These fees more commonly apply to the filing of real property security instruments, but at least one state (Tennessee) charges a recording tax of $0.115 cents for each $100 of debt incurred (minus a debt exemption of $2,000) in connection with the filing of a Uniform Commercial Code financing statement. These taxes can be considerable: for example, New York's mortgage recording tax is $0.75 for each $100 of debt secured, and there is no cap. **Lien search and UCC-1 financing statement filing fees:** Fees at rates that vary by jurisdiction are required to be paid for (a) lien searches with respect to the assets of a grantor of a security interest to a secured party and (b) the filing of UCC-1 financing statements to perfect a secured party's lien on a grantor's assets. For the most part, filing and search fees are not material on a per filing/search basis. **Notaries' Fees:** Notarization of documents is an immaterial cost in the United States; the process of becoming a notary public is relatively easy, and many borrowers and most financial institutions and law firms have notaries on site to provide the services needed. See Item 12. **Enforcement:** Generally, taxes in addition to those described in Item 16 hereof, this Item 17 above and Item 18 hereof will not be imposed in connection with enforcement of an obligation, but litigation and judgment filing fees and charges may apply – they are typically not material, however.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	A non-US lender may be subject to significant tax obligations in respect of the interest to be paid by the US borrower to such lender, whether in the ordinary course or in connection with the enforcement of remedies (including by demanding payment under a guaranty), but many countries have tax treaties with the United States that reduce or eliminate the tax to be paid. Credit agreements typically contain extensive provisions regarding the tax forms and certifications to be provided by non-US lenders to borrowers in respect of such taxes. The Foreign Account Tax Compliance Act (FATCA) imposes a significant tax on non-US lenders that do not comply with FATCA's applicable reporting requirements. See Item 17 hereof regarding enforcement as well.

Enforcement

19. What is the bankruptcy/insolvency process?	The two primary types of bankruptcy relief in the United States are reorganization and liquidation. **Reorganization:** Chapter 11 of the United States Bankruptcy Code allows a debtor to continue operating its business while either: (a) formulating a plan of reorganization with its creditors or (b) liquidating and winding up the business. A debtor may choose to liquidate under Chapter 11 rather than Chapter 7 (discussed below) because the debtor can remain in control of the business under the Chapter 11 process, with the exclusive right to propose a plan of reorganization for the first 120 days (extendable up to 18 months). Chapter 11 cases may commence by either voluntary petition filed by the debtor or, under certain circumstances, involuntary petition filed by creditors. **Liquidation:** Chapter 7 of the United States Bankruptcy Code concerns the orderly liquidation of all of the debtor's property. In a corporate Chapter 7 case, the proceeds are distributed to creditors without continuing the debtor's business. Chapter 7 cases may commence by either voluntary petition filed by the debtor or, under certain circumstances, involuntary petition filed by creditors. The commencement of insolvency proceedings results in an automatic stay of the many actions against the debtor and its property typically available to a creditor under its loan documents, including: (a) commencement or continuation of a judicial action; (b) any act to create, perfect or enforce a lien against the debtor's property or take possession of such property; and (c) exercise of any setoff rights. A creditor may petition the bankruptcy court for relief from the automatic stay, particularly if the creditor is not receiving adequate protection in connection with the debtor's use of the creditor's collateral, for example. Adequate protection may take the form of cash payments or additional or replacement liens on the assets of the debtor. Facts and circumstances will dictate the amount and type of adequate protection a creditor may receive. The bankruptcy court could elect to terminate or modify the automatic stay with respect to a creditor under certain circumstances, including for cause or if the debtor does not have any equity in the property at issue subject to the automatic stay. The bankruptcy trustee has broad powers under the United States bankruptcy code, including the ability to bring the fraudulent conveyance and preferential transfer actions described in Item 13 hereof.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	Agent: Loan transactions with multiple lenders typically use an agented structure, pursuant to which an administrative agent will be appointed to administer the transaction and obtain the security interest from the borrower for the benefit of the secured parties; its responsibilities will include acting as the depository for the lenders' pro rata portion of a loan and distributing the proceeds to the borrower, settling loan payments and sending notices to the other parties as required by the loan documents. Generally, the administrative agent will have the power to make certain decisions, depending on the strength of the agent's position and/ or the negotiating power of the borrower, but most material decisions require the consent of the majority lenders or all of the lenders. Some transactions have an administrative agent and a collateral agent, but the agents are the same person typically. Enforcement: Generally, a secured party may accelerate a loan, make a demand for payment from the borrower or any guarantor of the loan and exercise its secured creditor remedies if an "event of default" under the relevant loan documents occurs. A secured party (or an agent on its behalf) seeking to enforce the loan, guarantees of the loan or its security interests, must comply with applicable law. The Uniform Commercial Code (the UCC), generally discussed throughout the US part of the guide, was created as a means of instituting uniformity among the states as to matters such as secured transactions, negotiable instruments and letters of credit. All 50 states have adopted the UCC in some form, but each state has non-uniform provisions. The UCC requires a secured party to act in a commercially reasonable manner and restricts the ability of the secured party to, under certain circumstances, exercise rights granted prior to an event of default under the loan documents. Real estate law may apply as well, and any rights and remedies of a creditor will be limited by the terms of the loan documents. Many provisions that protect the debtor cannot be waived pre-default under the UCC; for example, the debtor may not waive its general right to receive notice of the disposition of the collateral prior to a default. As described in Item 19 hereof, the filing of a bankruptcy petition will result in imposition of an automatic stay that stops secured parties from exercising various rights and remedies against the debtor and its property.

21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Because the United States is not a signatory to any convention or treaty for the recognition of foreign judgments, and there is no federal statutory provision regulating the matter, the recognition and enforcement of foreign judgments is regulated by each state. More than thirty states have adopted the Uniform Foreign Money Judgments Recognition Act (the Money Judgment Act). Under this approach, a foreign judgment will be recognized by a US court if the judgment is final, conclusive and enforceable where rendered. But, even if the judgment complies with said requisites, a foreign judgment will not be recognized by a US court if the foreign court did not have personal jurisdiction over the defendant, if the judgment was not impartial, or if the procedures violated fundamental notions of decency and fairness. The Money Judgment Act also includes a list of discretionary grounds for non-recognition. Although not part of the Money Judgment Act, a minority of states provide a reciprocity requirement, whether as a discretionary basis for non-recognition or as a mandatory ground for non-recognition.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	The UCC provides that the parties to an international transaction (i.e., a transaction in which there is a reasonable relation to a country other than the United States) may choose the law of the state, or of another state or country. In federal court, notice is required if one of the parties intends to raise an issue of foreign law. This requirement has also been adopted by the states through similar rules. In practice, US courts apply domestic choice of law rules in determining whether to enforce a choice of foreign law provision. In addition, while choice of foreign law provisions are enforceable, many US courts are reluctant to apply foreign law. Some judges have dismissed cases on grounds of forum non conveniens.

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Canada

Obligations	
1. What are the types of obligations that may be secured?	Direct and indirect liabilities and obligations of a debtor or guarantor, including without limitation, debt financings, leasing obligations of a debtor and obligations of a guarantor created pursuant to a guarantee. **Québec:** All obligations and liabilities listed above, present and future, may be secured under the Civil Code of Québec (the CCQ).
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes, a company can give financial assistance to any person for any purpose, which would include its affiliates, whether upstream or downstream. Foreign affiliates that are being guaranteed are not treated differently. However, certain disclosure or consent requirements may apply to a corporation providing a guarantee as discussed further below. **Québec:** Yes, under corporate laws applicable in the province of Québec, corporations incorporated under the laws of Québec can provide both upstream and downstream guarantees. Foreign affiliates whose obligations are being guaranteed by a corporation incorporated under laws of Québec are not treated differently. Note that the enforcement of guarantees may be subject to certain limitations including in the event that a guarantee covers future or indeterminate debts, or in the event that the guarantee has been issued for an indeterminate period, the guarantor may terminate his obligations arising under the guarantee, after three (3) years, provided the debt has not become payable, by giving the borrower and the lender sufficient notice in compliance with art. 2362 of the CCQ.

3. Must a guarantor receive a corporate benefit to provide a guarantee?	There is no consideration or benefit requirement under the BCA for a corporation to guarantee the obligations of another person. **Québec:** Under corporate laws applicable in the province of Québec, guarantors governed by such corporate laws are not required to receive a corporate benefit in order to provide a guarantee.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No, certain kinds of businesses may be subject to legislative or contractual obligations with governmental entities which may restrict the ability of an entity to provide guarantees. Examples may include (but are not limited to) capitalization requirements on insurance companies or businesses requiring licenses which have attached to them restrictions on the provision of guarantees. **Québec:** There are no government consents or filings required in connection with delivering a guarantee in Québec.
5. Are there any solvency or net worth limitations/ restrictions?	No, subject to the scenarios listed above. The solvency or net worth of a potential guarantor is generally only relevant to business decisions of lenders rather than being legally relevant in terms of the ability of a company to grant a guarantee. **Québec:** No, the solvency or net worth is not relevant with respect to providing a guarantee. For further related information, please see the bankruptcy/insolvency process question under the Enforcement section.

Security/Collateral	
6. Over what type of personal property can security be granted?	Personal property over which security may be granted includes: goods (i.e. tangible personal property), chattel paper, investment property, a document of title, an instrument, money or an intangible. **Québec:** The CCQ allows for a hypothec to be granted on all types of personal property, with certain exemptions. In addition, by their nature, certain debts claims, demands, shares, permits, licences and other rights, may be, by the effect of the law not assignable and as such, may not be hypothecated or may require the consent of a third party to be assigned or hypothecated.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	General security agreements which charge 'all present and after-acquired real and personal property' are permitted and very common. In certain circumstances, lenders may also choose to proceed on the basis of a more specific security agreement, whereunder the lender's security interest is limited to specific collateral of a debtor, as described thereunder. **Québec:** Insofar as the grantor is a person, partnership or trustee operating an enterprise, general security agreements (which are referred to in Québec as a hypothec on a universality of property) are permitted. Security agreements tailored to a specific asset may be entered into as well.
8. Can security be taken over real estate?	A 'fixed charge on land' may be secured by registering a crystallized interest over specific land on title to such lands at the applicable Land Titles Office (LTO) (usually in the form of a mortgage agreement granted by the debtor or mortgagor in favour of the lender or mortgagee). **Québec:** Yes, real property (immovable property) may be hypothecated pursuant to an "immovable hypothec". Immovable hypothecs must, on pain of absolute nullity, be granted by notarial act "en minute" (a hypothec received before a notary) and must be registered at the land registry office in the land registration division where the immovable is located.

9. Can cash collateral be taken? How?	Yes. The PPSA (Personal Property Security Act) prescribes that a security interest in "money" may be perfected by the secured party (or a person on its behalf) taking possession of such money. Alternatively, a security interest in an account that holds cash collateral may be taken by way of a general security agreement, cash collateral agreement or a blocked account agreement, whereunder the secured party is granted a security interest in such account. **Québec:** Yes, cash collateral can be taken as security in Québec. There are, however, specific rules regarding hypothecs on "monetary claims" outlined in the CCQ. Monetary claims are defined as any claim requiring the debtor to reimburse, return or restore an amount of money or make any other payment in respect of an amount of money, except: 1. A claim represented by a negotiable instrument; 2. A claim that is a security or security entitlement within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements; and 3. A claim resulting from the delivery of certain and determinate currency whose repayment, in accordance with the parties' manifest intention, must be made by restitution of the same currency. A creditor can obtain, under certain conditions, a hypothec with delivery on a monetary claim without having to publish the hypothec at the Register of Personal and Movable Real Rights (the RPMRR). A creditor obtains control of a monetary claim that the grantor of the hypothec has against a third person if: 1. The claim relates to the credit balance of a financial account maintained by the third person for the grantor, or the claim relates to an amount of money transferred by the grantor to the third person to secure the performance of an obligation towards the creditor; and

	2. The creditor has entered into an agreement, called a control agreement, with the third person and the grantor, under which the third person agrees to comply with the creditor's instructions, without the additional consent of the grantor, as regards the credit balance or the amount of money. A creditor also obtains control of a monetary claim relating to the credit balance of a financial account if the creditor becomes the account holder. Hypothecs on monetary claims without delivery can still be created as well, provided, inter alia, that the debtor of said hypothecated claims is notified in accordance with the provisions of the CCQ.
10. Are pledges of shares permitted?	Yes. It is very common to take pledges of shares/ securities in a corporation as security. It is recommended that any security interest in shares is perfected by "control" which gives the secured party super priority over any other secured party's security interest in the same collateral, whether or not such competing security interest is perfected by registration prior to obtaining "control" over such shares. Usually a securities pledge agreement is taken by the lender granting a security interest in such shares and depending on the form of representation of the shares, certain additional steps must be taken to perfect such security interest by "control." For example, for shares that are certificated, in order to perfect a security interest by "control:" (a) a lender (or another person on its behalf) must take possession of the original share certificate; and such share certificate must be endorsed in favor of the lender, usually by way of an undated originally executed 'securities transfer power of attorney;' or (b) the share certificate is registered in the name of the lender as holder. **Québec:** Yes, pledges of shares are permitted under the CCQ. As shares are considered incorporeal movable established by a title in bearer form, share certificates must therefore be maintained in Québec in order to ensure the validity of the movable hypothec charging said shares (art. 3102 and 3105 of the CCQ).
11. Are stamp or other duties imposed?	No, stamp duties or other duties regarding the granting of security do not exist. **Québec:** No, stamp duties or other duties regarding the granting of a hypothec in Québec do not exist.

12. Must documents be executed in front of a notary?	For the most part, security documents need not be executed in front of a notary. **Québec:** In general, security documents do not need to be executed before a notary. There are, however, two exceptions, where security documents must be executed before a notary in order to be valid: 1. A hypothec charging immovable property (i.e. real estate); and 2. A hypothec granted in favour of a hypothecary representative for all present and future creditors of those obligations (i.e. hypothec granted in favour of an administrative agent or collateral agent under a syndicated loan).

13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes. If a court deems a conveyance of real or personal property to be fraudulent in accordance with the Fraudulent Preferences Act or the Fraudulent Conveyances Act, such conveyance may become void or voidable thereby causing a risk of claw-back. Additionally, in certain prescribed circumstances under the PPSA, purchasers who purchase collateral for value, in good faith and who take possession of such collateral from a secured party, may acquire such collateral free from any security interest in such collateral. Also, there are certain statutory super priorities under applicable Canadian laws that may take priority over a secured party's interests over the same collateral, regardless of order of registration. For example, under the Income Tax Act (Canada), there is a deemed statutory trust in respect of withholding taxes by the Canada Revenue Agency that would take priority over a secured party's interest in the same property. **Québec:** Yes. Under certain circumstances, juridical acts may not be set up against a person who suffers prejudice when said acts are made by the debtor in fraud of his rights. It should be noted that, under the CCQ, an onerous contract or a payment made in performance of such a contract is deemed to be made with fraudulent intent if the other contracting party or the creditor knew the debtor to be insolvent or knew that the debtor, by the juridical act, was rendering himself or was seeking to render himself insolvent. Such contract may not be set up against the person suffering injury therefrom. Finally, in order for a juridical act to be declared unopposable, legal action must be brought within one (1) year from the date the person suffering injury from said juridical act as knowledge of the prejudice.
Financial Assistance	

14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	Yes. Most provincial corporate statutes require that shareholders of a corporation proposing to give "financial assistance" to another party that is: (a) a shareholder or director of a corporation or affiliate of the corporation (b) an associate of a shareholder or director of the corporation (or affiliate of same); or, (c) any other person for the purpose of or in connection with a purchase of a share issued or to be issued by the corporation or an affiliated corporation of the corporation, must disclose the financial assistance (with various exceptions noted below) to its shareholders. "financial assistance" is defined as financial assistance by means of a loan, guarantee or otherwise. A corporation is not required to disclose to its shareholders, financial assistance that it gives (a) to any person in the ordinary course of business if the lending of money is part of the ordinary business of the corporation; (b) to any person on account of expenditures incurred or to be incurred on behalf of the corporation; (c) to a holding body corporate if the corporation is a wholly owned subsidiary of the holding body corporate; (d) to a subsidiary body corporate of the corporation; (e) to employees of the corporation or any of its affiliates; (i) to enable them to purchase or erect or to assist them in purchasing or erecting living accommodation for their own occupation' or (ii) in accordance with a plan for the purchase of shares of the corporation or any of its affiliates to be held by a trustee; or (f) to any person if all the shareholders have consented to giving the financial assistance.

15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	Where a corporation is guaranteeing the obligations of another party, unless the guaranteed party clearly falls within one of the enumerated exceptions, we recommend obtaining a shareholders' resolution consenting to the guarantee or evidence that notice of such financial assistance was given to the shareholders in compliance with the applicable corporate statute. **Québec:** Not applicable in Québec.
Fees/Taxes – Withholding/Stamp/Other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	No. There are no stamp fees or similar charges payable in respect of the granting of security. **Québec:** No. There are no such duties. However, notary fees will apply if the hypothec needs to be received before a notary.

17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	As part of our due diligence, we would typically perform corporate registry searches, security searches, Bank Act, court searches, bankruptcy and insolvency searches and LTO searches in each of the applicable jurisdictions in which the borrower has assets or operates business. The fee for such searches vary depending on the type of search performed and other factors. Each registration at the PPR (personal property registry) varies between CA$3 - CA$15, depending on the length of registration. Registration at the LTO for mortgages and other security interests in land are significantly greater and are largely dependent on the type of instrument being registered. The cost of registering a mortgage will depend on the principal amount secured by the mortgage or the value of the land. Generally speaking, the bigger the principal amount of the mortgage and the greater the value of the land, the greater the registration fees will be. Fees for enforcement are highly variable and depend on the processes followed. **Québec:** There are fees payable for searches (we would typically conduct searches in corporate registries, at the RPMRR, for Bank Act security, in the court records and bankruptcy and insolvency records in each of the applicable jurisdictions). The fees for such searches will vary depending on the type of search performed. The cost for registration of a hypothec at the RPMRR varies depending on the duration and the method of registration (paper vs. electronic), but typically costs CA$37. The cost for registration of a hypothec at the land registry office is CA$126. Any applicable fees charged by a notary in connection with a financing will be included as part of the legal fees payable by the Borrower.

18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Interest paid by a resident in Canada to a non-resident, arm's length foreign lender, is generally not subject to withholding tax under the Income Tax Act (Canada). However, subject to Canada's tax treaties, where interest is paid or an amount is paid or credited in lieu of interest to a non-resident, non-arm's length foreign lender that amount is subject to withholding tax of 25 percent of the amount paid. Guarantees and enforcement proceeds paid to non-resident foreign lenders in respect of or in lieu of interest are subject to the same withholding tax obligations. **Québec:** Other than what is mentioned above, there are no additional withholding taxes in Québec.
Enforcement	
19. What is the bankruptcy/insolvency process?	There are various processes which may be followed given particular circumstances. Creditors can petition a debtor into bankruptcy or a debtor can assign themselves. Bankruptcy proceedings are governed by the Federal Bankruptcy and Insolvency Act (Canada) (the BIA). Debtors may also attempt to restructure their affairs under the BIA or the Companies Creditors Arrangement Act (Canada). Finally, secured creditors may appoint a receiver privately if provided for in an agreement with the debtor or may seek appointment of a court-appointed receiver pursuant to the BIA and/or one or more applicable provincial statutes. Various pieces of provincial legislation have an impact on these processes, for instance many rights of landlords are provincially governed. The impact of the PPSA and Civil Enforcement Act (Alberta) (the CEA), among other statutes, must also be considered. Some items to note: Under the BIA, S. 244 prescribes that a Notice of Intention to Enforce Security is issued when a secured creditor intends to enforce security on all or substantially all of the a) inventory, b) accounts receivable, or c) other property of an insolvent person that is used in relation to a business of the insolvent person. However, often creditors are unsure if all of these criteria are met and therefore they are often advised to provide the notice as a precaution. Once the notice is sent, the secured creditor may not enforce its security for a period of 10 days after sending the notice, unless the insolvent person consents to an earlier enforcement or a court orders otherwise.

	In addition, if a farmer is the subject of a Notice of Intention to Enforce Security, in certain cases he or she may apply for mediation under the Farm Debt Mediation Act (Canada) (the FMDA). Under the FMDA, every secured creditor must, at least 15 business days prior to taking steps to enforce its security, give the farmer written notice of the creditor's intention to do so and advise the farmer of the right to make an application under section 5 of the FMDA. Section 5 of the FMDA stipulates that an insolvent famer may apply for a stay of proceedings and mediation between the farmer and all the farmer's creditors. Such stay is in place for 30 days, renewable up to three times for 30 days each for a total of 120 days. • If one of the foregoing notices is not given: • Under the BIA the effect is unknown as the BIA does not specify the consequences, however there is a risk that all steps taken by a creditor will be held invalid and damages could be awarded to the debtor. • Under the FDMA, s. 22 states that any act done by a creditor is null and void, and a farmer affected by such an act may seek appropriate remedies against the creditor in a court of competent jurisdiction. **Québec:** Enforcement of hypothecary rights under Québec law, must comply with specific rules. Under the CCQ, the creditor possesses four (4) hypothecary recourses: 1. The creditor can sell the property himself (sale by the creditor); 2. The creditor can have the property sold in a judicial (court-approved) sale (sale under judicial authority); 3. The creditor can take possession of the property in order to manage it himself (taking possession or purposes of administration);

	4. The creditor can take the property himself as payment of the debtor's obligation (taking in payment). Note that the exercise of this hypothecary recourses will extinguish the debtor's obligation. As a general rule, under art. 2757 CCQ, in order to exercise any of the above-mentioned rights, the creditor must first file a prior notice at the applicable registry office, along with evidence that it has been served on the debtor and, where applicable, the grantor and any other person against whom he intends to exercise its right. Said prior notice must provide for disclosure of any default of the debtor and must allow the debtor to cure said default. The notice period is 20 days, if the hypothecary right being exercised concerns movables, and 60 days if it concerns immovables. The prior notice must also indicate: 1. The amount owed; 2. The nature of the hypothecary sought; 3. A description of the charged property; and 4. A demand to surrender it within the applicable period prescribed by law and specified in the notice; It is only once the said period has expired and where the debtor has not surrendered the charged property that the creditor may exercise its hypothecary recourses. Where enforcement of security occurs in the context of the bankruptcy/insolvency, the provision of the BIA or CCAA will apply as noted above. Hypothecary creditors are generally able to exercise recourses independently of BIA proceedings, so long as a stay of proceedings precluding recourses is in place. Since a recent Supreme Court of Canada decision, some practitioners consider that a 20 or 60-day prior notice must be sent prior to exercising recourses such as appointment of a receiver. Some authors and case law suggest otherwise.

20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are Administrative Agents/Trustees recognized?	Under the CEA, Civil Enforcement Agencies are given the exclusive right to carry out seizures, sales and distributions under the right of "distress." "Distress" is defined broadly and includes right of a secured party to enforce a security interest under the PPSA. Upon enforcement of personal property security certain notices will be required, including 20 days' notice to the debtor and to any other subordinate secured creditor advising of redemption rights of the debtor and other secured parties (tendering fulfillment of all obligations secured including reasonable costs) and advising of reinstatement rights of the debtor only (paying sums actually in arrears exclusive of any acceleration clause plus reasonable costs) – the debtor has a right to reinstate the security agreement twice per year. Where the security is insufficient to satisfy the debtor's obligations, often a secured creditor will commence a lawsuit for the deficiencies, although in certain circumstances creditors must elect between enforcement against their security or suing for the total amount of indebtedness. Where a secured creditor wants to realize on real property security, as a mortgagee, a lawsuit or 'foreclosure action' will need to be brought. Generally. a mortgagee would be restricted to recovery of the land specifically mortgaged, unless the mortgage is given by a corporation, the mortgage is a high ratio insured mortgage and often where a mortgage is a collateral mortgage (e.g. multiple credit facilities secured by a single mortgage), provided that the mortgage in question was merely additional collateral security for loans. Administrative Agents and Trustees named as secured parties under a security agreement are recognized as parties that are authorized to commence enforcement proceedings pursuant to applicable laws as described above and as outlined under the underlying security agreement and empowering documents they are party to on behalf of the constituents or interested parties they represent. It is common practice for collateral or administrative agents to be named as the secured party under security agreements on behalf of lenders under a syndicated financing. **Québec:** Under Québec law, there are no restrictions as to which types of parties may act in enforcement. Administrative Agents and Trustees named in the applicable hypothec are able to act in enforcement.

21. Would a court recognize a foreign judgment without reexamining the merits of a case?	A Canadian court would recognize a judgment based upon a final and conclusive in personam foreign judgment as valid and enforceable without reconsideration of the merits, provided that: (i) Action to enforce the foreign judgment must be commenced in the Canadian court within any applicable limitation period; (ii) The Canadian court has discretion to stay or decline to hear an action on the foreign judgment if the foreign judgment is under appeal, or there is another subsisting judgment in any jurisdiction relating to the same cause of action as the foreign judgment; (iii) The Canadian court will render judgment only in Canadian dollars; (iv) An action in the Canadian court on the foreign judgment may be affected by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally; and (v) The court exercising jurisdiction in such foreign jurisdiction had jurisdiction over the subject as recognized under the laws of the applicable province for purposes of enforcement of foreign judgements. Any foreign judgment, including those obtained in a reciprocating jurisdiction, are subject to the following defenses: (i) By fraud or in a manner contrary to the principles of natural justice; (ii) The foreign judgment is for a claim which under the laws of the applicable Province and the federal laws of Canada applicable therein (collectively, Provincial law) would be characterized as based on a foreign revenue, expropriatory, penal or other public law; iii) The foreign judgment is contrary to public policy under Provincial law, or to an order made by the Attorney General of Canada under the Foreign Extraterritorial Measures Act (Canada) or by the Competition Tribunal under the Competition Act (Canada) in respect of certain judgments referred to in these statutes; and

	(iv) The foreign judgment has been satisfied or is void or voidable under the laws of the foreign jurisdiction. **Québec:** Under the laws of Québec, a final, conclusive and enforceable judgment *in personam* awarding a sum of money rendered by a foreign court of competent jurisdiction would be recognized and enforced by motion brought before a Québec court if the judgment is neither subject to ordinary remedy (such as appeal and judicial review) nor impeachable as void or voidable under the applicable foreign entity's law. However, there are many exceptions to this rule including, without limitation: (i) The foreign court rendering such judgment does not have jurisdiction over the judgment debtor, as determined under the provisions of the CCQ; (ii) Such judgment is not final and enforceable at the place it was rendered; (iii) Such judgment was rendered in contravention of the fundamental principles of procedure; (iv) There were proceedings pending in the Province of Québec or judgment was rendered in the Province of Québec or in another jurisdiction meeting the necessary conditions for recognition in the Province of Québec between the same parties, based on the same facts and having the same object; (v) The outcome of such judgment is manifestly inconsistent with public order as understood in international relations, as that term is applied by a court of competent jurisdiction in the Province of Québec; (vi) Such judgment enforces obligations arising from the taxation laws of a foreign country, unless there is reciprocity, or arising from other laws of a public nature, such as penal or expropriation laws; (vii) The motion to enforce such judgment is not commenced in the Province of Québec within the applicable prescription period after the date of such judgment; or (viii) The foreign judgment is contrary to an order made by the Attorney General of Canada under the Foreign Extraterritorial Measures Act (Canada) or by the Competition Tribunal under the Competition Act (Canada) in respect of certain judgments (as defined therein).

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	In any proceeding in a court of competent jurisdiction for the enforcement of foreign law governed documents to which the local adjudicating parties are a party, the Canadian court would apply the laws of the foreign jurisdiction in accordance with the parties' choice of the law in such foreign law governed documents to all issues that under the laws of the applicable Province are to be determined in accordance with the chosen law of the contract, provided that: (a) The parties' choice of law is bona fide and legal and there is no reason for avoiding the choice of law on the grounds of public policy under laws of the applicable Province; and (b) In any such proceeding, and notwithstanding the parties' choice of law, the Canadian court: (i) Will not take judicial notice of the provisions of the foreign law, but will apply such provisions if they are pleaded and proven by expert testimony; (ii) Will apply Provincial law that under Provincial law would be characterized as procedural and will not apply any foreign law that under Provincial law would be characterized as procedural; (iii) Will apply provisions of Provincial law that have overriding effect; (iv) Will not apply any foreign law if such application would be characterized under Provincial law as a direct or indirect enforcement of a foreign revenue, expropriatory, penal or other public law, or if its application would be contrary to public policy under Provincial law; and (v) Will not enforce the performance of any obligation that is illegal under the laws of any jurisdiction in which the obligation is to be performed.

	Québec: The court would indeed apply the applicable foreign law in accordance with the parties' choice of foreign law, provided however that: (i) The provisions of the applicable foreign law will not be applied if such application would be manifestly inconsistent with public order as understood in public relations, as that term is applied by a Québec court; (ii) The provisions of the applicable foreign law of a fiscal, expropriatory or penal nature will not be applied; (iii) In matters of procedure, Québec laws will be applied; (iv) Those rules of law in force in Québec applicable by reason of their particular object will be applied; (v) The internal laws of the province of Québec or of another jurisdiction may be applied to matters dealing with the validity, publication or its effects, ranking, priority or enforcement of any security referred to therein. Please note that the courts of the province of Québec have discretion to hear or declare to hear any before them.

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Mexico

Mexico

Obligations	
1. What are the types of obligations that may be secured?	Obligations of any nature, whether present or future, determined or determinable, may be secured under Mexican law. In general terms, performance of any obligations may be secured through security interests over real estate properties, contractual rights, licenses, concessions and permits, personal property and/or intellectual property rights.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes. Mexican law allows companies to provide upstream and downstream guarantees for their affiliates, without limitation, provided the provision of such guarantees is contemplated as part of the guarantor's corporate purpose. There is no different treatment for foreign affiliates.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	As a general rule, a guarantor does not need to receive any kind of benefit when providing a guarantee; however, adequate consideration and arm's length terms and conditions may be relevant for tax and insolvency purposes, particularly if the company providing the guarantee is a subsidiary or affiliate of the company whose obligations are being secured.

4. Are any government consents or filings required in connection with the delivery of a guarantee?	As a general rule, no government consent is required; however, depending on the type of guarantee, certain filings are necessary for such guarantee to be perfected and the priority established. For instance, perfection of mortgages requires their registration at the corresponding public registry of property (Registro Público de la Propiedad). Non-possessory pledges, on the other hand, shall be registered at the Sole Registry of Security Interests over Personal Property (Registro Único de Garantías Mobiliarias) (RUG). The RUG is a special section of the Public Registry of Commerce for the registration of security interests over non-real estate property, including tangible and non-tangible assets and rights. Moreover, security interests over concessions, licenses and similar rights, as well as regulated assets (i.e. gas pipelines, power plants, aircrafts), normally require prior governmental approvals or at least notice.
5. Are there any solvency or net worth limitations/ restrictions?	There are no net worth limitations or restrictions under Mexican law when granting a guarantee, however, a company who has already been declared insolvent by a competent court, in terms of the Mexican bankruptcy statute (Ley de Concursos Mercantiles), may only grant guarantees that are directly related to its the ordinary operation of its business, with prior approval of the judicially appointed conciliator in the process described in response to question 19 below. In addition, if a guarantee is granted after a debtor has been judicially declared insolvent, or during the claw-back period mentioned in response to question 13 below, such action may be considered fraudulent, and the issuer will have the burden of proving that the guarantee was provided in good faith.
Security/Collateral	
6. Over what type of personal property can security be granted?	As a general rule, Mexican law allows any type of personal or real estate property or rights to be granted as collateral to the extent that property or right is permitted to be transferred.

7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	As a general rule, security agreements should be tailored to a specific asset. As an exception, Mexican law contemplates the possibility of creating floating liens through (a) non-possessory pledges over all of the personal property used by the pledgor in its main activities, and (b) special mortgages, known as 'industrial mortgages', which Mexican banks may obtain over the real estate property of a certain business being financed by them, as well as its concessions or licences, all personal property utilised by the enterprise in its operations, and the cash and accounts receivable generated therefrom.
8. Can security be taken over real estate?	Mexican law allows security interests over real estate properties, mainly in the formed of mortgages formalized in a public deed granted before a notary public, and then registered in the Public Registry of Property of the location of the property.
9. Can cash collateral be taken? How?	Yes. Mexican law allows taking cash collateral through security deposits or pledges over cash amounts.
10. Are pledges of shares permitted?	Yes. In some instances, pledges over shares or equity interests may require the prior approval of the issuing company, as well as waivers or consents by the other shareholders or members of the company. Likewise, security interests over publicly traded shares are specifically regulated and subject to registration at a specific registry.
11. Are stamp or other duties imposed?	There are no stamp or other duties imposed. The main costs associated to security interests in Mexico are notarial and registration fees.
12. Must documents be executed in front of a notary?	Not all security documents are required by law to be executed in front of a notary, however, in most situations it is advisable to do so. Liens over real estate properties do need to be executed in the form of a public deed in front of a notary public, and registered at the corresponding Public Registry of Property. Pledges (whether traditional or non-possessory) are not required to be executed in front of a notary, however, if executed before a notary public the document is granted a higher evidentiary value, and the date of execution is considered irrefutably established, which is important in case there are competing liens.

13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Under Mexico's bankruptcy statute, the Commercial Insolvency Law (Ley de Concursos Mercantiles), the issuance of an insolvency resolution entails the acknowledgement and effectiveness of a general retroactive claw-back of 270 calendar days (or 540 days for transactions with affiliates, the company's directors or senior officers, or their relatives) from the issuance of such insolvency resolution; the conciliator appointed in the procedure or any creditor acknowledged by the district judge may request the court to set a longer claw-back period in justified circumstances, which shall in no event exceed three years. Certain transfers of assets and other acts unjustifiably and adversely affecting the debtor's financial position (which may include security interests over the insolvent company's assets) that occurred during this period may be considered fraudulent and in prejudice of creditors and their rights.
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	No, there are no legal restrictions in this regard, but please refer to our response to questions number 2 and 3.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	Please refer to our previous response.
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	There are no stamp duties or similar charges with respect to loans, security and/or other credit-support documentation. The main costs associated to security interests in Mexico are notarial and registration fees. Please refer to our following answer for more information in this regard.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Registration fees and notarial fees are the main costs associated with the execution and perfection of security documents, and they vary from state to state. Notarial fees are subject to maximum levels established by state governments; however, notaries are normally allowed to grant discounts, which are often obtained for large transactions. Likewise, certain states allow the reductions in registration fees if the security interest relates to a transaction or projects that proves to be beneficial to the state.

18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Under Mexican law, withholding tax is payable over the income obtained by foreign lenders, regardless if such income derives from interest, amounts paid under a guarantee, or enforcement proceeds. The withholding tax rates ranges from zero to 35 percent, depending on the amount received, the characteristics of the financing, the characteristics of the lender or creditor, and the applicability of a double taxation treaty, among others.
Enforcement	
19. What is the bankruptcy/insolvency process?	The Commercial Insolvency Law provides for a judicial process where a person or entity whose insolvency has been declared by a competent court, may negotiate an agreement with its creditors aimed at a financial reorganization or liquidation of its assets in order to pay its obligations. The insolvency declaration of insolvency may be requested by either the debtor, its creditors or the district attorney. The judicial process is comprised of two stages: (i) conciliation and (ii) liquidation. If the debtor is declared insolvent, then the conciliation stage follows. The purpose of this stage is to keep the business of the company running in terms satisfactory to the acknowledged creditors, which are recognized as such by the court. If the debtor and its creditors do not reach an agreement, then the liquidation process begins. At this stage the debtor is no longer able to run its business and its management is assumed by a judicially appointed trustee (síndico). The trustee shall then liquidate all of the company's assets and use the proceeds to pay its debts according to the priority and preference established by applicable law. Secured creditors shall receive payment before the rest of the creditors provided that the relevant security agreements have been duly executed and registered at the corresponding registries.
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	Mexican law allows creditors, in general, to act in the enforcement of their security interest and rights. Administrative agents or trustees are recognized, as long as they have been granted the necessary authority to represent their principals, in accordance with Mexican law.

21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Under Mexican law, a local court would recognize a foreign judgment provided that (i) such judgment was obtained in compliance with the legal requirements of the jurisdiction of the court rendering such judgment and in compliance with all legal requirements of the relevant document, (ii) such judgment was not given as a consequence of the exercise of an in rem action, (iii) the court rendering the judgment was the competent court to solve the issue, (iv) the defendant was personally notified, (v) such judgment is final in the jurisdiction where obtained, (vi) the action upon which the final judgment is rendered is not the subject matter of a lawsuit among the same parties pending before a Mexican court, (vii) such judgment does not contravene Mexican law, and (viii) the courts of such jurisdiction recognize the principles of reciprocity in connection with the enforcement of Mexican judgments in such jurisdiction.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Mexican law allows for a court to apply foreign law in accordance with the parties' choice of law, except if (i) fundamental principles of Mexican law were willfully evaded, and (ii) the application of such foreign law contravenes Mexican law conflicts of law principles. Please note that, under Mexican law, security interests over real estate or personal properties in Mexico shall be governed by Mexican law.

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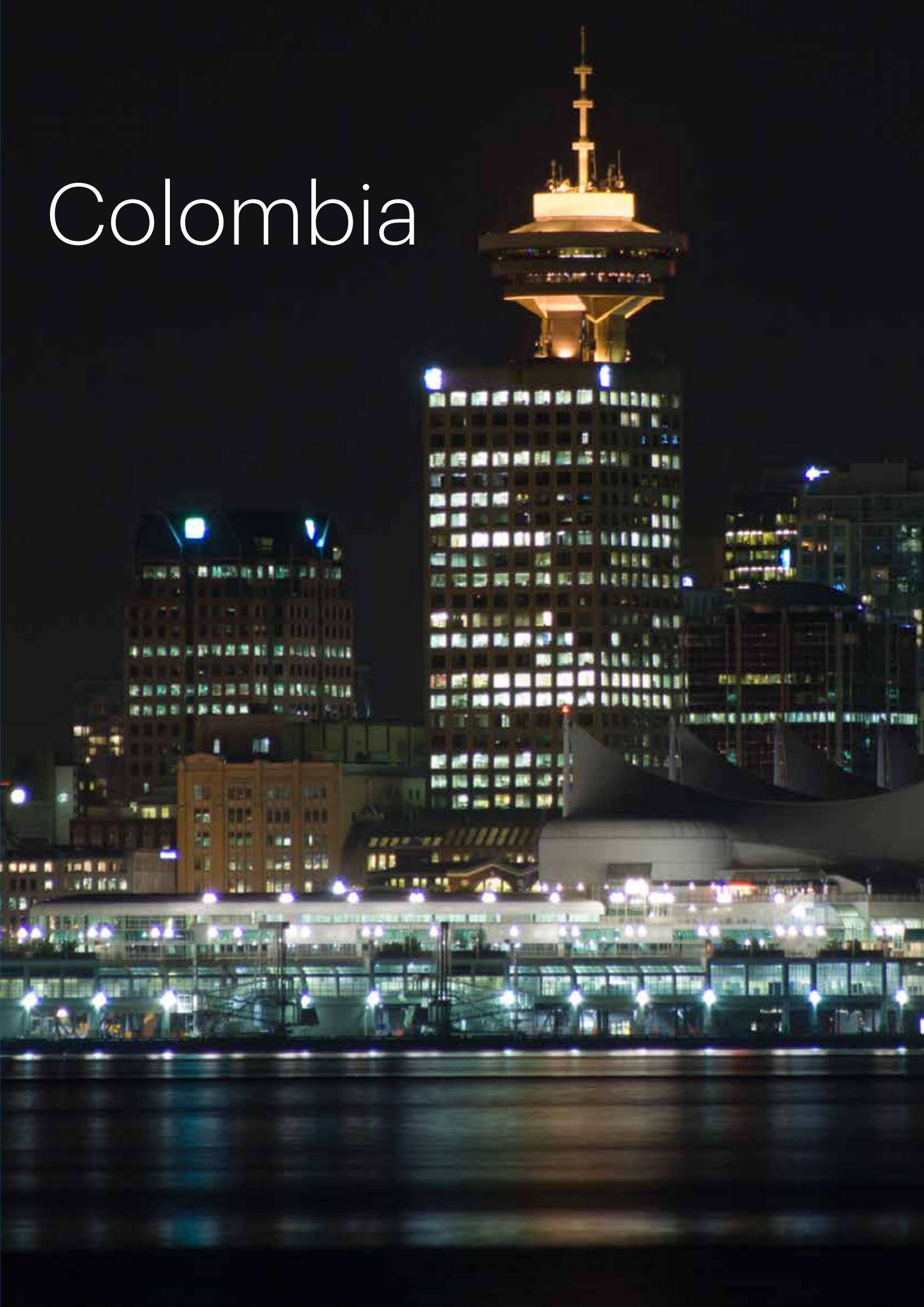

Colombia

Obligations	
1. What are the types of obligations that may be secured?	Under Colombian law, security can be granted to secure obligations of any nature, whether present or future, determined or determinable.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes, companies may provide upstream and downstream guarantees for their affiliates provided their corporate purpose expressly allows this. Except in the case of simplified stock corporations (sociedades por acciones simplificadas), which may guarantee third parties obligations regardless of whether their corporate purpose expressly provide for it, as long as such corporate purpose does not limit or prohibit the ability to guarantee third parties obligations. Guarantees to foreign affiliates are not treated differently, except that certain Colombian branches (that perform activities of exploration and exploitation of oil, natural gas, coal, ferronickel or uranium or services inherent to the hydrocarbon sector with exclusive dedication and have a special foreign exchange regime) of foreign companies, are not allowed to guarantee their parent company's obligations or third party's obligations. The parent company, however, can guarantee its obligations with the assets belonging to the branch.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	It is not necessary under Colombian law for the guarantor to receive a corporate benefit to provide a guarantee.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	In general terms, no. Notwithstanding, entities in which the Colombian Government has a participation of at least 50 percent in the entity's capital or entities that handle public resources must request a prior approval to the Government for granting guarantees.
5. Are there any solvency or net worth limitations/ restrictions?	There are no solvency or net worth requirements for granting a guarantee.

Security/Collateral	
6. Over what type of personal property can security be granted?	Colombian law allows guarantees to be granted over any type of movable property including tangible or intangible assets, rights, obligations, present or future assets, going concerns (commercial establishments), intellectual property, etc., subject to an economic valuation by the parties ("Movable Guarantees"), through pledges, guarantee trust agreements, conditional assignments, accounts control agreements, etc. Also, guarantees may be granted over immovable property through mortgages or guarantee trusts; by means of a public deed.
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	General security agreements are permitted e.g. pledges of all present and future assets of the debtor, or commercial establishment pledge agreements. When the guarantee includes assets such as IP rights or vehicles, the assets should be fully identified with their respective registry number.
8. Can security be taken over real estate?	Security can be taken over real estate, mainly through mortgages or guarantee trusts. Guarantee agreements over real estate must be executed by means of pubic deeds duly registered with the Land Registry (Oficina de Registro de Instrumentos Públicos) corresponding to the location of the immovable property (the "Land Registry").
9. Can cash collateral be taken? How?	Yes. Colombian law provides for accounts control agreements; i.e. agreements between a bank, the guarantor and the guaranteed party whereby the bank accepts to follow the instructions of the guaranteed party with respect to the funds deposited in the bank account, usually at the occurrence of an event of default. In addition, Colombian law provides for guarantee trust agreements; i.e. agreements between a trust company duly authorized by the Colombian Finance Superintendence (Superintendencia Financiera de Colombia) to act as trustee and the settlor (guarantor) over cash, receivables or economic rights which ownership is transferred to a trust (patrimonio autónomo or fideicomiso) managed by the trustee. Usually the beneficiary (guaranteed party) is also a party, although this is not required by law.

10. Are pledges of shares permitted?	Yes. For share pledges to be perfected they must be registered in the company's stock-ledger and in the Movable Guarantees Registry (Registro de Garantías Mobiliarias) managed by the Confederation of Mercantile Chambers of Colombia (Confederación de Cámaras de Comercio – Confecámaras) (the Registry).
11. Are stamp or other duties imposed?	Depending on the type of guarantee there may be stamp tax. Notwithstanding, the current rate for stamp tax is 0 percent. In addition: 1. Movable Guarantees must be registered by the guaranteed party with the Registry. Registration fee is approximately US$15. Guarantees over intellectual property rights must be registered with the Superintendence of Industry and Commerce. The registration fee is approx. $10. 2. Guarantees over immovable property require the payment of notarial rights, registration tax for the Governship and registration fees with the Land Registry, as follows: Mortgages: - Notarial Rights: 0.3 percent (plus 16 percent VAT over such notarial rights) of the guaranteed obligations. - Registration tax for the Governorship: 1 percent of the guaranteed obligations. - Registration with the Land Registry: 0.5 percent of the guaranteed obligations. Guarantee Trust Agreements: - Notarial Rights: 0.3 percent (plus 16 percent VAT over such notarial rights) of the guaranteed obligations. - Registration tax for the Governorship: 1 percent of the trustee fees. - Registration with the Land Registry: 0.5 percent of the official valuation of the immovable property (avalúo catastral). Depending on where the properties are located, additional taxes or costs may be charged by the local authorities.

12. Must documents be executed in front of a notary?	Movable Guarantees need not be executed in front of a notary public. Guarantees over immovable property must be executed by means of a public deed, in front of a notary public.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	In the case of insolvency of the guarantor, it is possible to request to the insolvency judge the revocation or "simulation" of the extinction of obligations, payments in kind and in general any act that involves the creation or cancelation of liens that imply detriment to its patrimony, performed during the 18 months prior to the initiation of the insolvency proceeding, if it appears that the acquirer acted in bad faith.
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	In general terms, we do not see a prohibition for 'financial assistance,' understood as assistance given by a company for the purchase of its own shares or of shares of its holding companies. There is a specific prohibition in the financial industry for credit institutions and insurance companies to lend funds, directly or indirectly, for the acquisition of their shares or the shares of any financial institution or insurance company, except if such acquisition is referred to issued shares or within a privatization proceeding, and the loan is guaranteed with assets with a known commercial value equal to or exceeding 125 percent of the loan amount. Regarding upstream guarantees please refer to our answer to question 2. Also, financial institutions cannot grant mortgages or pledges that affect the free disposition of their assets, except if the guarantee secures the payment of the price pending for the acquisition of the asset or if so required by the Central Bank (Banco de la República), the Fund for Guarantees of Financial Institutions (Fondo de Garantías de Instituciones Financieras) or rediscount financial entities in order to perform operations with said entities.
15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	See the exceptions mentioned in answer to question 14.

Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Depending on the type of guarantee there may be stamp tax. The instruments that evidence the existence, creation, modification or extinction of external credits (i.e. credits granted by a foreign creditor to a Colombian resident) are exempt from stamp tax. Some local credits are exempt from stamp tax. Notwithstanding, the current rate for stamp tax is 0 percent. Please refer to our answer to question 11.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Regarding notaries and registration fees please refer to our answer to question 11. A search in the Registry may be performed on-line provided the name or tax identification number of the guarantor is known. There are no search fees. A search in the Land Registry may be performed in the Land Registry's offices if the registration number of the immovable property is known. There would be an official cost of approx. US$4 in order to obtain a certificate with the results. The enforcement and termination of guarantees over intellectual property entail a fee of approx. $10. Enforcement of a Movable Guarantee requires obtaining an enforcement certificate, which value is of approx. US$3.
18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	As a general rule, there is withholding tax applicable to interest payments on foreign indebtedness by Colombian residents (i.e. 14 percent generally for loans with a term of one year or more and 33 percent for loans with a term of less than one year). Exceptions or different rates are established in trade treaties with other countries.

Enforcement	
19. What is the bankruptcy/insolvency process?	Law 1116 of 2006 (Law 1116) contains the insolvency regime for companies not exempted from it or companies that do not have a special insolvency regime, such as financial companies (for which taking of assets and liquidation regime is contained in Decree 663 of 1993 and Decree 2555 of 2010) or non-commercial and individuals' insolvency regime contained in Law 1380. The insolvency regime contained in Law 1116 provides for (i) reorganization and (ii) liquidation processes. Reorganization proceedings aim to protect creditors while preserving the company as an economic unit and source of employment. Thus, reorganization proceedings are designed to help the insolvent company or merchant (the Debtor) reach an agreement with its creditors regarding the payment of defaulted obligations. The process follows these steps: 1. filing of the request for admission to the reorganization proceeding, 2. admission of the request and initiation of the proceeding, 3. presentation of the draft calculation and order of payment of credits, 4. objections to the draft calculation and order of payment of credits, 5. presentation and vote of the restructuring agreement. Liquidation proceedings are designed to enable the dissolution of the Debtor in an orderly fashion. In order to do so, a liquidator will be appointed and charged with the sale of all the Debtor's assets and payment of all its debts, subject always to the order of payment stated in the law. In liquidation proceedings, secured creditors are entitled to request the exclusion of the assets given as security from the liquidation estate, and to be paid directly with the proceeds of their sale, provided that the guarantee agreements have been registered in the relevant registry.
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	The guaranteed creditor may act in enforcement. Administrative agents, collateral agents and trustees acting on behalf of the guaranteed parties are also recognized. In general, the creditor or any duly empowered agent or representative, directly or through an attorney in case the remedies are exercised through a judicial proceeding, are also recognized to act in enforcement.

21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Colombian law provides for enforcement of foreign judicial decisions by Colombian courts without examination of the merits of the case provided that either diplomatic (by treaty) or legislative (by statute) reciprocity exists between the courts of Colombia and the courts of the relevant non-Colombian jurisdiction, and provided that certain additional requirements contained in Colombian law (article 606 of the General Procedure Code) have been met: (i) the foreign judgment is not related to in rem rights vested in assets that were located in Colombia at the moment of initiation of the proceeding where the decision was rendered; (ii) the foreign judgment does not conflict with the public order laws of Colombia, excluding procedural laws; (iii) the foreign judgment is final under the laws of the country in which it was obtained and is in full force and effect (res judicata), and a duly authenticated copy of such judgment has been presented to the relevant Colombian court; (iv) the matter that was adjudicated is not of the exclusive jurisdiction of Colombian courts; (v) no proceedings are pending in Colombia with respect to the same cause of action, and no final judgment has been rendered by a Colombian court over the same subject matter; and (vi) in the proceedings commenced before the court which issued the foreign judgment, the defendant was served in accordance with the law of such jurisdiction and the proceedings were conducted in a manner that allowed the defendant to present its case. Thus, court proceedings over assets located in Colombia must be initiated before Colombian judges.

22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Colombian choice of law rules indicate that contractual obligations to be performed in Colombia should be governed by Colombian law. Colombian law is silent regarding obligations performed outside Colombia. In this regard, Colombian courts would enforce choice of law provisions concerning obligations to be performed outside of Colombian territory. Whether Colombian courts will give effect to a contractual agreement whereby a law other than Colombian law will be applied to an obligation performed in Colombian territory is still a matter of controversy, although no authority has indicated that it is not possible. Contracts that are subject to international arbitration clauses can be governed by any law chosen by the parties. According to Law 1563 of 2012 there is international arbitration if: (i) the parties have their domiciles at the moment of the execution of the agreement in different States or (ii) the place of performance of a substantial part of the obligations under the agreement or the place with a closer relationship with the purpose of the controversy is abroad the State where the parties have their domiciles or (iii) the controversy affects the interests of international commerce. The international court would apply the rules determined by the parties.

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Costa Rica

Costa Rica

Obligations	
1. What are the types of obligations that may be secured?	Under Costa Rican law, security may be granted to secure obligations of any nature, whether present or future, determined or determinable, on one or more specific movable property or generic groups of movable property, and on rights in rem or contractual rights.
Guarantees	
2. Can a company provide upstream and downstream guarantees for its affiliates? Are foreign affiliates treated differently?	Yes, a company may provide both upstream and downstream guarantees for its affiliates, provided its corporate purpose expressly allows this. No, foreign affiliates are not treated differently.
3. Must a guarantor receive a corporate benefit to provide a guarantee?	Yes, unless the corporate purpose expressly allows the guarantor not receiving a benefit to provide a guarantee.
4. Are any government consents or filings required in connection with the delivery of a guarantee?	No. Authorization, consents license, nor approval or any other order of, and no notice to, nor registration or filing with any court or other governmental authority or agency of the Republic of Costa Rica is required in connection with the delivery of a guarantee.
5. Are there any solvency or net worth limitations/ restrictions?	No. Costa Rican law has no solvency or net worth limitations/restrictions, except when the company stipulates such restriction in its bylaws.

Security/Collateral	
6. Over what type of personal property can security be granted?	Security can be granted over any type of movable property including: tangible or intangible assets, rights, obligations, present or future assets, going concerns (commercial establishments), intellectual property, etc., subject to an economic valuation by the parties through "contracts, agreements, and clauses used to guarantee obligations over moveable assets, including (but not limited to) sale-leasebacks, guarantee trusts over moveable goods, floating pledges, factoring, financial leasing, agricultural, commercial, or industrial pledges."
7. Are general security agreements permitted or must security agreements be tailored to a specific asset?	Yes, general security agreements are permitted; however, it is usual that security agreements are tailored to a specific asset. We would expect, with the approval of the Law on Secured Transactions over Moveable Assets, that general security agreements will be largely accepted.
8. Can security be taken over real estate?	Yes, securities can be taken over real estate by mortgage, mortgage bonds and security trust agreements.
9. Can cash collateral be taken? How?	Yes, through account control agreements, assignment agreements and security trust agreements.
10. Are pledges of shares permitted?	Yes, pledges of shares are permitted provided that an annotation in both the company's share register book and in the share's or stock's titles or certificate is included. For the pledge's perfection purposes, the share certificates must be either delivered to the pledgee or the guarantee must be filed in the Mobile Guarantee Registry.
11. Are stamp or other duties imposed?	Yes, there is a stamp tax imposed for loan agreements at a rate of $0.05 for each $100 of the Loan Agreement's face value. Additionally, there are registration fees and other costs (please see below.)
12. Must documents be executed in front of a notary?	No, except for mortgages, mortgage bonds, transfer of properties into a security trust agreement, or pledges over circulating vehicles.
13. Is there ever a risk of claw-back and/or fraudulent transactions in the taking of security?	Yes. Under Costa Rican law, enforcement of obligations may be invalidated by reason of fraud.
Financial assistance	
14. Are there legal restrictions on 'financial assistance' or 'upstream guarantees' that must be considered?	No, there are no legal restrictions on "financial assistance" or "upstream guarantees."

15. Are there lawful and reliable means of overcoming any limitations (e.g., whitewash)?	There is no statutory "whitewash" regime of the type seen in other jurisdictions that would give shareholders an opportunity to approve financial assistance in certain circumstances.
Fees/Taxes - withholding/stamp/other	
16. Do stamp duties or similar charges arise in respect of loan, security and/or other credit-support (e.g. guarantee) documentation? Are there customary and accepted ways for legally deferring, minimizing or eliminating them?	Yes, there is a stamp tax imposed for loan agreements at a rate of $0.05 for each $100 of the Loan Agreement's face value. In Costa Rica, Stamp taxes must be paid at the moment the contract is signed (by any of the parties). However, if all the parties sign the contract abroad, the stamp taxes must be paid before the contract is presented before a Costa Rican governmental authority: (including Court, Arbitration Center, Tax Administration, etc.) Moreover, if the agreement is signed abroad, the "taxable event" takes place when the agreement is filed before any public office in Costa Rica. If the document does not include all the required Stamp Taxes, or if these taxes are not fully paid, the document is useless and lacks legal effect—for as long as the corresponding fine has not been paid—on which to base any right or action whatsoever. In this instance, please note that there is an assessed fine of ten times the amount originally due in Stamp Taxes, or, in the event of partial payment, ten times the amount not paid.
17. What fees (excluding legal fees) and taxes are payable (e.g. for searches, notaries and registration, as well as enforcement)?	Please see above regarding stamp tax. Depending on the type of guarantee, there could be the following fees: • Mobile Guarantees: registration fee of approximately US$50. • Mortgages: registration duties and stamps between 0.4% and 0.8% of the secured obligation's amount. • Transfer of Properties into Guarantee Trust Agreements: Transfer tax: 1.5% percent of whichever is highest: the fiscal or contractual value. Registration duties and stamps: 0.5%.

18. Will withholding tax be payable on interest owing to a foreign lender or in respect of amounts paid under a guarantee or from enforcement proceeds?	Yes, according to article 59 of the Income Tax Law. The amount of any interest, fees and other financing costs (excluding principal) that Costa Rican corporations pay to either non-domiciled lenders or financial institutions - as a result of the repayment of any loan - are subject to a withholding Tax of: (i) 0% when the lender is a multilateral or bilateral development bank, or is a nonprofit organization; (ii) 5.5% provided that the borrower is a local bank subject to supervision and inspection in Costa Rica, and that the lender is a bank or an international financial institution not organized under the laws of Costa Rica and is subject to supervision and inspection in its respective jurisdiction; and (iii) 15% applicable to any lender that is not organized under the laws of Costa Rica and does not meet the above requirements.
Enforcement	
19. What is the bankruptcy/insolvency process?	Under Costa Rican law, the Civil Code establishes that, for the insolvency of a company or a person to produce all the effects attributed to it by the law, it is necessary that the insolvency be judicially declared and that one or more of the creditors, who find that the debtor's assets are insufficient to cover its debts, must request the declaration of the insolvency proceedings. During the bankruptcy procedure, the ranking of claims goes as follows: - Child support - Labor claims - Tax claims - Secured Creditors - Claims on the Estate Secured Creditors, who are enforcing a mortgage or a pledge that has an auction date, will not be forced into a bankruptcy procedure (article 767 Civil Proceedings Code).
20. Who may act in enforcement? (Are there restrictions on the type of parties that may exercise remedies?) Are administrative agents/ trustees recognized?	The guaranteed creditor may act in enforcement. Such as a duly appointed company representative or special or general judicial power holder of the person or company. Yes, Administrative Agents/Trustees are recognized.

21. Would a court recognize a foreign judgment without reexamining the merits of a case?	Yes, subject to the issuance of a writ of exequatur by the Supreme Court of the Republic of Costa Rica, any final judgment entered against a party for any payment of money in connection with the Credit Agreement, in any foreign court or arbitration center—and appellate courts from any thereof—would be recognized, and be conclusive and enforceable in the courts of the Republic of Costa Rica without re-trial or reconsideration of the merits of a case, provided that: • The foreign judgment is duly legalized/apostilled. • The service of process in the lawsuit was duly served on the defendant, and the defendant was duly represented—or declared in contempt of a court order, under the laws of the country where the judgment was rendered—and that the defendant was duly notified of the judgment. • There is no pending proceeding or final judgment issued by the Courts of Costa Rica pertaining to the same matter. • The judgment is final in the foreign jurisdiction. • The judgment is not contrary to the public order within the meaning of Costa Rican laws, and • The judgment is not of exclusive jurisdiction of the Courts of Costa Rica; this is not the case in relation to the Credit Agreement.
22. In a court proceeding for the enforcement of a foreign agreement, would a court apply the applicable foreign law in accordance with the parties' choice of such law?	Yes.

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