



Meijburg Legal

Asset- based lending

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Leading advisors on ABL
transactions

A guide through the
European legal landscape



What is asset-based lending (ABL)?

ABL is a form of secured lending where a loan is granted primarily based on the value of certain types of the borrower's assets. A lender typically lends up to an agreed percentage of the value of the specific assets (called a borrowing base). Such assets can be trade receivables, inventory, plant and machinery or even real estate.

Although there is not always a requirement for an asset-based loan to be secured, the assets in the borrowing base often also serve as security for the loan. Further, as the loan is then secured by an asset, lending is considered less risky compared to unsecured lending (a loan that is not backed by an asset or assets) and, therefore, often results in a lower interest rate charged.

Regardless of the type of financing arrangements you need to set up or (re)negotiate, you require assistance in structuring and completing such financing arrangements.

Our integrated approach means we can help you with the entire process of an ABL transaction, from scoping to term sheet, from term sheet to closing. We have legal teams based in jurisdictions throughout Europe.

Our asset finance specialists have experience advising clients in transactions covering various sectors and asset types. We are ready to help borrowers and financial institutions navigate the dynamic market environment and our lawyers can bring our commercial and financial knowledge to every transaction to support the right financing choices for their businesses. In addition, with our debt advisory colleagues operating around the globe, we can offer advice and assistance that goes beyond legal advice and assistance. We are able to assist with:

- Advice on new ABL deals and refinancing of existing ABLs;
- Advice across the asset base: receivables, inventory, plant & machinery and real estate;
- Cross-boarder experience and advice on security;
- Drafting and negotiation agreements;
- Enforcement of security rights.

How does ABL work

Market conditions may limit access to external financing through traditional means and as a result companies seek innovative ways to grow their business or free up liquidity. Asset-based lending may offer these opportunities and although may appear complex and mechanical at first sight, but will be well understood by a company with good specific legal advice.



Asset level based financing



Determine borrowing base



Security package



Cross-border assets



Reporting and audit requirements



Advantages of ABL

- May be easier to obtain than 'traditional' bank loans.
- Often specialist financiers.
- Greater flexibility.
- Increase in working capital and cash flow.
- Usually fixed interest rates.
- Defaults leads to loss of assets, not the business.

ABL does not need to stand on its own. It can be paired with junior secured, mezzanine, term lending. We can assist you with creating a customized capital structure for growth, through numerous jurisdictions in Europe.

European jurisdictions are generally creditor friendly, but creating of security in each jurisdiction may differ. This brochure sets out some key points for creating security through out European countries.

Our teams are located in all of the major markets across Europe, making us easily accessible to clients, wherever deals are being done.

We are trusted to advise not only on high value finance transactions but can also assist with standard documentation and new ABL products.

Our presence in Europe

- The Netherlands
- Belgium
- Austria
- Spain
- Germany
- Italy
- France
- United Kingdom
- Poland



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Asset- based lending jurisdictions



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The Netherlands

1. Security

1.1 Creation of security rights in the Netherlands	
1.1.1	<p>What are the main forms of security in your jurisdiction?</p> <p>There are two main forms of security in the Netherlands: right of pledge (<i>pandrecht</i>) and right of mortgage (<i>hypothek</i>) (together the 'Security').</p> <p>A right of mortgage can be established on all registered (im)movable assets (buildings, land, planes and ships).</p> <p>A right of pledge can be established on all movable assets that are non-registered assets located in the Netherlands, receivables, shares and intellectual property rights.</p>
1.1.2	<p>How is the security documented and created?</p> <p>A right of mortgage can be established on all registered (im)movable assets (buildings, land, planes and ships).</p> <p>A right of pledge can be established on all movable assets that are non-registered assets located in the Netherlands, receivables, shares and intellectual property rights.</p> <p>A right of pledge can be established by a notarial deed of pledge or a written deed of pledge that is registered with the Dutch tax authorities. The deed of pledge should include a declaration of the pledgor (i) that he is authorized to pledge the relevant asset(s) and (ii) that either no other limited rights are established on the pledged asset(s) or what limited rights are established on the pledged asset(s). In addition the deed of pledge should include a clear description of the secured asset(s).</p> <p>Please note that a right of pledge on shares in the share capital of a company can only be established by a notarial deed of pledge, executed by a civil law notary. In addition the right of pledge should be registered in the shareholder's register of the company whose shares are being pledged.</p> <p>A right of mortgage can only be established by a notarial deed of mortgage, executed by a civil law notary. The right of mortgage should be registered in the relevant public registry.</p>
1.1.3	<p>Is the existence of the security dependent upon the existence of the debt?</p> <p>Yes, the Security depends on the existence of the claim under the agreement. Should the secured claim be fully paid, the Security will be automatically terminated.</p>
1.1.4	<p>Can you take charge over assets to be acquired in the future?</p> <p>Generally, a right of pledge can be established on all present and future movable assets, receivables and intellectual property rights. The right of pledge regarding future assets will only come into effect upon the moment the pledgor acquires the ownership of the assets. On a case to case basis it should be verified whether additional registration requirements apply, such as that a new list of assets should be registered with the Dutch tax authority periodically after the right of pledge has been established.</p> <p>Please note that an undisclosed pledge over future receivables only extends to the receivables that arise directly out of the legal relationship that exist at the time the right of pledge was established. In other cases a new or additional right of pledge might be required.</p> <p>A right of mortgage cannot be established on future registered assets.</p>

1. Security

1.2 Perfection and notarisation requirements	
1.2.1	<p>Does security require registration?</p> <p>Any deed of pledge that is not a notarial deed of pledge, executed by a civil law notary, should be registered with the Dutch tax authority. Without registration (in case of a non-possessory right of pledge) the right of pledge will not be enforceable.</p> <p>An executed notarial deed of mortgage needs to be registered with the Land Register immediate after the execution. It is standard practice that this is dealt with by the civil law notary.</p>
1.2.2	<p>Are there any notarisation requirements?</p> <p>For the establishment of a right of pledge on shares in the share capital of a company and for the establishment of a right of mortgage on a registered immovable asset, a notarial deed of pledge or mortgage is required which is executed by a civil law notary.</p>
1.2.3	<p>What are the consequences of not perfecting security?</p> <p>The pledgee or mortgagee cannot enforce its rights under the deed of pledge or notarial deed of mortgage.</p>
1.3 Enforcement	
1.3.1	<p>What is required to trigger a right to enforce security?</p> <p>The debtor under the agreement regarding the secured facilities should be in default in its performance of the secured obligations, which should be obligations to pay money under this agreement.</p>
1.3.2	<p>How can security be enforced?</p> <p>Right of pledge</p> <p>The sale of pledged assets takes place by way of public auction in accordance with local customs and applicable standard terms and conditions. However, it is possible to deviate from the public auction and sell the pledged assets in private. This requires prior approval from the preliminary relief judge (<i>voorzieningenrechter</i>). Deviating from the public auction is also possible by an agreement between the pledgor and pledgee after the right of pledge has become enforceable. In this case no prior approval from the preliminary relief judge is required.</p> <p>In respect of pledged receivables, the pledgee can enforce its rights by collecting the receivable. In respect of receivables that are not due and payable, but can be declared due and payable by termination, the pledgee has the right to do this.</p> <p>Enforcing rights of pledge with regard to financial collateral can be agreed in the financial collateral agreement. It is possible to enforce rights under the financial collateral agreement by selling the financial collateral on the capital market, whereby the pledgee can use the proceeds for its secured claim. The pledgee can appropriate the financial collateral and set-off its secured claims against the value of the financial collateral. It is also possible to set-off the secured claims against the financial collateral in cash.</p> <p>With respect to the enforcement of rights under a notarial deed of mortgage, the registered asset can only be sold by way of a public auction which should take place before a civil law notary. However, it is possible to deviate from the public auction and sell the registered asset in private. This requires prior approval from the preliminary relief judge and the relevant purchase agreement should be submitted with the preliminary relief judge as part of the request for a private sale.</p>

1. Security

1.3 Enforcement (continued)		
1.3.3	Can an obligor frustrate or block the enforcement of security?	In general no.
1.3.4	Do any local creditors have priority to secured lenders?	In principle, the pledgee or mortgagee have priority above all other creditors. However, in some cases during insolvency of the debtor, the Dutch tax authority or social security agencies might have priority.
1.3.5	Are there any withholding taxes or capital controls?	In general no.

1.4 Are the following available and/or recognized		
1.4.1	Are lender's agents available and/or recognised?	Yes
1.4.2	Are security trusts and security trustees available and/or recognised?	Yes
1.4.3	Is parallel debt available and/or recognised?	Yes

1.5 Powers of attorney		
1.5.1	Are powers of attorney recognised?	Yes

2. Guarantees

2.1	Drafting	
2.1.1	How are guarantees documented and created?	In writing and in general no statutory formalities apply.
2.2	Restrictions	
2.2.1	Are there any restrictions on the purposes for which corporates can grant guarantees?	<p>Public companies with limited liability (<i>naamloze vennootschappen</i>, “NV”) cannot give any guarantee nor security and accept any liability with a view to (<i>met het oog op</i>) the acquisition by any party of shares in the share capital of the NV or of any company of which the NV is a direct or indirect subsidiary.</p> <p>Entering into a guarantee or other security should be permitted by the objects clause in the relevant company’s articles of association and should be conducive to the company’s corporate objects (<i>doel</i>) and interest. In addition, a company should, directly or indirectly, derive benefits from the entering into of the guarantee which would not (i) endanger the company’s existence or impose an unreasonable burden on the company in relation to the benefits, or (ii) be prejudicial to the interest of any (present or future) creditor of the company. The relevant company, or in case of bankruptcy a bankruptcy trustee (<i>curator</i>), could contest the entering into of the guarantee if the before mentioned is not the case.</p> <p>A guarantee can be contested by a bankruptcy trustee or creditor of a company, if (i) the guarantee prejudiced creditors of the company, (ii) the company and the beneficiary know, or should have known that the guarantee would prejudice creditors of the company and (iii) there is no legal obligation to grant the guarantee.</p>

3. Corporate authority and capacity

3.1	Restrictions	
3.1.1	Are there any restrictions on the purposes for which corporates can grant security?	Please see the answer under question 2.2.1
3.1.2	Are there any restrictions on the purposes for which corporates can grant guarantees?	No. Note that, should a company have a works council, then granting securities or a guarantee is subject to an unconditional positive works council advice pursuant to the Dutch Works Council Act. Should this not be acquired by the company, then the works council is allowed to go against the company's decision in court.

4. Gross-up/withholding tax clauses

4.1 Clauses

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| 4.1.1 | Are clauses that provide for grossing up of payments where a withholding tax applies enforceable? | In general yes, one should always obtain tax advice prior to the entry into of any documentation. |
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Germany

1. Security

1.1 Creation of security rights in Germany	
1.1.1	<p>What are the main forms of security in your jurisdiction?</p> <p>There are two main forms of security in Germany: personal securities (Personalsicherheiten) and real securities (Realsicherheiten).</p> <p>The most important personal securities in connection with ABL transactions are the suretyship (Bürgschaft) and the guarantee (Garantie).</p> <p>With regard to real securities, the most important securities are real estate securities such as a mortgage (Hypothek) and land charge (Gundschild), security over tangible movable property such as a pledge (Pfandrecht), a transfer by way of security (Sicherungsübereignung) and security assignment (Sicherungsabtretung).</p> <p>German security rights are either of an accessory or non-accessory nature. For example, a pledge is an accessory (akzessorisch) security interest creating a direct legal link between the collateral and the secured claim. Thus, if the secured claim ceases to exist, the collateral will also cease to exist and cannot be transferred without the secured claim.</p>
1.1.2	<p>How is the security documented and created?</p> <p>Suretyship (accessory): The prerequisite for a suretyship is the effective conclusion of an agreement in written form between the guarantor and the secured party and the existence of a receivable to be secured.</p> <p>Guarantee (non-accessory): The prerequisite for an effective Guarantee is also the conclusion of a written contract between the guarantee and the guarantor. Unlike a suretyship, a guarantee is not dependent on the existence of a receivable to be secured. Suretyship and Guarantee do not require notarization.</p> <p>Mortgage (accessory): A mortgage is an encumbrance on the land of the guarantor providing the creditor with a right of realization. When the mortgage becomes due, the creditor may realize the property by way of compulsory enforcement and thus satisfy the debt owed to him or her on the basis of the secured claim.</p> <p>Land charge (non-accessory): A land charge is also an encumbrance on a property, which is very similar to the mortgage. However, the most important difference is that the land charge can be created without the existence of a receivable to be secured. Mortgages and land charges are created on real property. Both must be notarized. After notarization, the land charge and mortgage are registered in the land register.</p> <p>Pledge (accessory): A pledge gives the creditor a right <i>in rem</i> to satisfaction of a movable thing or a right. The pledge is also strictly accessory and requires a receivable to be secured. In general, a pledge does not require notarization or written form. However, this does not apply with regard to a right of pledge on shares in the share capital of a company. This can only be established by a notarial deed of pledge, executed by a civil law notary. Additionally, the right of pledge should be registered in the shareholders' register of the company whose shares are being pledged.</p> <p>Transfer by way of security (non-accessory): By transferring ownership by way of security, the guarantor secures a contractual obligation towards the creditor by transferring a movable item to the latter. If the debtor does not fulfill his contractual obligation, the creditor can satisfy his or her claim by realizing the collateral property.</p> <p>Security assignment (non-accessory): A security assignment is effected by the borrower assigning to the lender a claim to which he is entitled against a third party. The assignment is also called cession.</p> <p>Transfer by way of security and security assignment do not require notarization or written form. However, both securities are usually concluded in written form.</p>

1. Security

1.1 Creation of security rights in Germany (continued)		
1.1.3	<p>Is the existence of the security dependent upon the existence of the debt?</p>	<p>It depends on the type of security.</p> <p>With regard to the relationship between the claim to be secured and the security, a distinction must be made between accessory and non-accessory securities. The origin, scope and continued existence of accessory security interests are dependent on the secured receivable. The most important accessory securities are suretyship, mortgage and pledge.</p>
1.1.4	<p>Can you take charge over assets to be acquired in the future?</p>	<p>It is possible to grant security over future assets under German law provided these are clearly defined, so that it is possible to determine which items are covered (Bestimmtheitsgebot).</p> <p>Once insolvency proceedings have been opened against the security grantor, its assets from then on will not fall under "future assets" under any security agreement. This is because under German insolvency laws its authority to dispose over an asset ends with the opening of insolvency procedures.</p>
1.2 Perfection and notarisation requirements		
1.2.1	<p>Does security require registration?</p>	<p>An executed notarial deed of mortgage and land charge needs to be registered with the Land Register immediately after the execution. It is standard practice for this to be dealt with by the civil law notary.</p>
1.2.2	<p>Are there any notarisation requirements?</p>	<p>For the establishment of a right of pledge on shares in the share capital of a company and for the establishment of a right of mortgage and land charge on a registered immovable asset, a notarial deed of pledge, mortgage or land charge is required which is executed by a civil law notary.</p>
1.2.3	<p>What are the consequences of not perfecting security?</p>	<p>The pledgee or mortgagee cannot enforce its rights under the deed of pledge or notarial deed of mortgage or land charge.</p>
1.3 Enforcement		
1.3.1	<p>What is required to trigger a right to enforce security?</p>	<p>The applicable enforcement triggers vary depending on the type of the security. For example, a pledge can be enforced if the secured obligation (payment) has become due and payable (Pfandreife).</p> <p>A land charge (Grundschild) can be enforced, if the land charge has been terminated and declared due and payable on at least six months' written notice prior to enforcement.</p> <p>The circumstances in which a lender can realise a security under a loan are usually set out in the relevant loan agreement.</p>
1.3.2	<p>How can security be enforced?</p>	<p>Right of pledge</p> <p>As a general rule, prior to any enforcement, the lender must give the security grantor reasonable written notice of its intention to enforce. The available enforcement methods depend on both the type of security interests and on the type of asset which is being used as collateral. Enforcement can occur as follows:</p>

1. Security

1.3 Enforcement (continued)	
1.3.1	<p>How can security be enforced?</p> <p>Security over immovable property can be enforced by way of a forced sale (Zwangsvorsteigerung) and/or forced receivership (Zwangsvorwaltung). The latter involves the appointment of an administrator by the court who receives rents and profits in connection with the property.</p> <p>Security over movable assets that have been transferred for security purposes can be enforced either by way of public auction or private sale.</p> <p>Security over receivables is usually enforced by the security beneficiary collecting the receivables from the third-party debtor.</p>
1.3.3	<p>Can an obligor frustrate or block the enforcement of security?</p> <p>In general, no.</p>
1.3.4	<p>Do any local creditors have priority to secured lenders?</p> <p>The priorities in distributions among creditors will be determined by way of contractual agreement between the parties and the enforcement of security is governed by the order in which the respective security has been granted. First-ranking mortgages, land charges and pledges generally have priority over all other creditors.</p>
1.3.5	<p>Are there any withholding taxes or capital controls?</p> <p>In general, no.</p>
1.4 Are the following available and/or recognized	
1.4.1	<p>Are lender's agents available and/or recognised?</p> <p>Yes.</p>
1.4.2	<p>Are security trusts and security trustees available and/or recognised?</p> <p>Yes.</p>
1.4.3	<p>Is parallel debt available and/or recognised?</p> <p>Yes.</p>
1.5 Powers of attorney	
1.5.1	<p>Are powers of attorney recognised?</p> <p>Yes.</p>

2. Guarantees

2.1	Drafting	
2.1.1	How are guarantees documented and created?	<p>Guarantees are created by written agreement without further formalities. German law differentiates between a guarantee (Garantie) and a suretyship (Bürgschaft).</p> <p>A guarantee under German law is a personal security that is non-accessory in nature. A personal suretyship (Bürgschaft), unlike a guarantee (Garantie), is accessory in nature.</p>
2.2	Restrictions	
2.2.1	Are there any restrictions on the purposes for which corporates can grant guarantees?	<p>In general, no.</p> <p>However, there are banking supervisory issues to be taken into account since commercial lending business is qualified as licensable banking business and subject to prior authorization by the German Federal Financial Supervisory Authority (BaFin).</p> <p>Corporations need to ensure they do not venture into the realm of “guarantee business” which would require a license. The commercial operation of guarantee business or the operation of guarantee business on a scale requiring commercially organised business operations constitutes banking business and as such, requires a licence from BaFin.</p> <p>Furthermore, in the practice of group financing, it is common for subsidiaries in the legal form of a German GmbH or GmbH & Co. KG to provide security for loan liabilities of their parent companies (upstream collateral). To protect the managing directors of these subsidiaries from personal liability, a so-called limitation language should be included in the relevant guarantee. This has the effect that the collateral cannot be liquidated if this were to be regarded as a prohibited return of capital contributions.</p>

3. Corporate authority and capacity

3.1	Restrictions	
3.1.1	Are there any restrictions on the purposes for which corporates can grant security?	Please see the answer under question 2.2.1
3.1.2	Are there any restrictions on the purposes for which corporates can grant guarantees?	In general, no.

4. Gross-up/withholding tax clauses

4.1 Clauses

- | | | |
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| 4.1.1 | Are clauses that provide for grossing up of payments where a withholding tax applies enforceable? | In general, yes, one should always obtain tax advice prior to the entry into of any documentation. |
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Italy

1. Security

1.1 Creation of security rights in Italy	
1.1.1	<p>What are the main forms of security in your jurisdiction?</p> <p>There are two main (and most common) forms of security in Italy: right of pledge (<i>article 2784 Italian Civil Code</i>) and right of mortgage (<i>article 2808 Italian Civil Code</i>) (together the 'Security').</p> <p>A right of mortgage can be established on all registered (im)movable assets (buildings, land, planes and ships).</p> <p>A right of pledge can be established on all movable assets located in Italy, receivables, class of receivables, shares, units, and other rights on movable assets.</p> <p>The third less common form of security is the so-called special privilege (<i>privilegio speciale</i>) according to art. 46 of the Italian Banking Law upon which a loan or bond can be secured on movable assets that are non-registered assets and which are instrumental to the conduct of business of the borrower, or on receivables (present or also future receivables coming from the selling of the movable assets of the borrower).</p>
1.1.2	<p>How is the security documented and created?</p> <p>A right of mortgage can be established on all registered (im)movable assets (buildings, land, planes and ships).</p> <p>A right of pledge can be established on all movable assets located in Italy, receivables, shares, units and other rights on movable assets.</p> <p>A right of pledge can be generally established by a written deed of pledge although there are no specific content to be included within the deed of pledge. In any case, the deed of pledge should include a clear description of the secured asset(s).</p> <p>A right of pledge on shares in the share capital of a company can only be established by a way of transfer of the share or annotation (<i>girata o annotazione</i>) on the share. In addition the right of pledge should be registered in the shareholder's register of the company whose shares are being pledged.</p> <p>A right of pledge on units of limited liability companies (<i>quote di S.r.l.</i>) can only be established by way of a notarial deed executed by a civil law notary and registered in the shareholder's register of the company whose units are being pledged.</p> <p>A right of pledge on receivables requests the notification and acceptance of the debtor.</p> <p>A right of mortgage can only be established by a notarial deed of mortgage, executed by a civil law notary. The right of mortgage should be registered in the relevant public registry (such as Land Register, <i>conservatoria dei registri immobiliari</i>).</p> <p>A right of special privilege can only be established by way of a written notarial deed of privilege which specifies and describes the secured assets and the secured loan or bond and registered in the relevant special registry held by the competent court having jurisdiction with the registered office of the borrower and of the lender.</p>
1.1.3	<p>Is the existence of the security dependent upon the existence of the debt?</p> <p>Yes, the Security depends on the existence of the claim under the agreement. Should the secured claim be fully paid, the Security will be automatically terminated.</p>
1.1.4	<p>Can you take charge over assets to be acquired in the future?</p> <p>Generally, a right of pledge can be established on all present movable assets, receivables and other particular rights on movable assets. Only recently the Supreme Italian Court (Corte di Cassazione) has fully recognized the validity of the pledge on future assets. The right of pledge regarding future assets will only come into effect upon the moment the pledgor acquires the ownership of the assets.</p> <p>A right of mortgage cannot be established on future registered assets.</p>

1. Security

1.2 Perfection and notarisation requirements	
1.2.1	<p>Does security require registration?</p> <p>Any deed of pledge that is not a notarial deed of pledge, executed by a civil law notary, should be registered with the relevant registry as above described. Without registration (in case of a non-possessory right of pledge) the right of pledge will not be enforceable.</p> <p>An executed notarial deed of mortgage needs to be registered with the Land Register (<i>conservatoria dei registri immobiliari</i>) immediate after the execution. It is standard practice that this is dealt with by the civil law notary.</p>
1.2.2	<p>Are there any notarisation requirements?</p> <p>For the establishment of a right of pledge on units of a limited liability company and for the establishment of a right of mortgage on a registered immovable asset, a notarial deed of pledge or mortgage is required which is executed by a civil law notary.</p>
1.2.3	<p>What are the consequences of not perfecting security?</p> <p>The pledgee or mortgagee cannot enforce its rights under the deed of pledge or notarial deed of mortgage.</p>
1.3 Enforcement	
1.3.1	<p>What is required to trigger a right to enforce security?</p> <p>The debtor under the agreement regarding the secured facilities should be in default in its performance of the secured obligations, which should be obligations to pay money under this agreement.</p>
1.3.2	<p>How can security be enforced?</p> <p>Right of pledge</p> <p>The sale of pledged assets takes place by way of public auction or through a publicly authorized person if the pledged assets have a current value on the market or by way of a direct assignment upon specific judge approval.</p> <p>In respect of pledged receivables, the pledgee can enforce its rights by collecting the receivable or requesting to sell the receivable by way of public auction or through a publicly authorized person if the pledged receivables have a current value on the market or by way of a direct assignment upon specific judge approval.</p> <p>Enforcing rights of pledge with regard to financial collateral can be agreed in the financial collateral agreement. It is possible to enforce rights under the financial collateral agreement by selling the financial collateral on the capital market, whereby the pledgee can use the proceeds for its secured claim or by way of direct assignment of the financial collateral if so provided by the financial collateral agreement which should describe also the valuation criteria of the financial collateral. The pledgee can also set-off its secured claims against the value of the financial collateral if so provided by the financial collateral agreement. It is also possible to set-off the secured claims against the financial collateral in cash.</p> <p>With respect to the enforcement of rights under a notarial deed of mortgage, the registered asset can only be sold by way of a public auction (<i>vendita con incanto</i>) or through private and secret offers (<i>vendita senza incanto</i>) verified by the competent court.</p>

1. Security

1.3 Enforcement (continued)		
1.3.3	Can an obligor frustrate or block the enforcement of security?	In general no.
1.3.4	Do any local creditors have priority to secured lenders?	In principle, the pledgee or mortgagee have priority above all other creditors. However, in some cases during insolvency of the debtor, the Italian tax authority or social security Authorities might have priority.
1.3.5	Are there any withholding taxes or capital controls?	In general no.

1.4 Are the following available and/or recognized		
1.4.1	Are lender's agents available and/or recognised?	Yes.
1.4.2	Are security trusts and security trustees available and/or recognised?	Although there is no specific rule directly regulating the trust in Italy, there are many case law recognizing validity of the trust, even though its validity is somehow challenged in some others on a tax perspective (i.e.: risk of requalification of the transfer of the assets to the trustee as an indirect donation with the consequence of the applicable of the less favorable tax regime). We are glad to expand if you wish us to do so. In any case, there are many available fiduciary companies in Italy (so-called <i>società fiduciarie</i>) which manage the assets in light of a fiduciary mandate which differs from the trust insofar as the fiduciary companies provide asset management services, on behalf of clients, also through a fiduciary registration of the assets in their own name, whilst the client remain in any case the owner of the assets.
1.4.3	Is parallel debt available and/or recognised?	No.

1.5 Powers of attorney		
1.5.1	Are powers of attorney recognised?	Yes.

2. Guarantees

2.1 Drafting	
2.1.1	<p>How are guarantees documented and created?</p> <p>In writing and in general no statutory formalities apply (except for the formalities to be carried out with the competent Land Register or shareholders register or other register as the case maybe as above described at paragraph 1.1.2).</p>
2.2 Restrictions	
2.2.1	<p>Are there any restrictions on the purposes for which corporates can grant guarantees?</p> <p>In relation to joint stock companies (<i>società per azioni</i>), these companies can release guarantees or securities and accept any liability in relation to the acquisition of its own shares by any party only in case the transaction is approved by the extraordinary shareholders meeting and upon a preliminary report of the board of directors indicating the rationale of the transaction, that the transaction cannot impair the liquidity and/or solvency of the company, the price at which the third party acquires the shares and attesting whether or not the transaction is realized on market terms. In any case, the overall value of the guarantee or securities cannot exceed the value of distributable profits and reserves resulting from the last approved financial statement (<i>see art. 2358 Italian Civil Code</i>).</p> <p>In relation to any company and in general terms, entering into a guarantee or other security deed should be permitted by the objects clause in the relevant company's articles of association and should be coherent and conducive with regard to the company's corporate activity and interest. In addition company should, directly or indirectly, derive benefits from the entering into of the guarantee which would not (i) endanger the company's existence or impose an unreasonable burden on the company in relation to the benefits, or (ii) be prejudicial to the interest of any (present or future) creditor of the company. The relevant company, or in case of bankruptcy a liquidator (<i>curatela fallimentare</i>), could contest the entering into of the guarantee in case the entering into the guarantee deed could not be justifiable according to the activity and the ordinary course of business of the company.</p> <p>A guarantee can be contested by a bankruptcy liquidator (<i>curatela fallimentare</i>) or creditor of a company, if (i) the guarantee prejudiced creditors of the company, (ii) the company and the beneficiary know, or should have known that the guarantee would prejudice creditors of the company and (iii) there is no legal obligation to grant the guarantee.</p>

3. Corporate authority and capacity

3.1	Restrictions	
3.1.1	Are there any restrictions on the purposes for which corporates can grant security?	Please see the answer under question 2.2.1
3.1.2	Are there any restrictions on the purposes for which corporates can grant guarantees?	Please see the answer under question 2.2.1

4. Gross-up/withholding tax clauses

4.1 Clauses

- | | | |
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| 4.1.1 | Are clauses that provide for grossing up of payments where a withholding tax applies enforceable? | In general yes, one should always obtain tax advice prior to the entry into of any documentation. |
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Meijburg & Co
Tax & Legal

France

1. Security

Focus : recent reform of the regulation governing security law in France	
Context	<p>French security law was reformed in 2021 (<i>Ordinance No. 2021-1192 of 15 September 2021 reforming security law</i>), with the aim of simplifying, modernizing the current regulation and making it more effective, while ensuring a balance between the interests of creditors, on the one hand, and those of debtors and guarantors, on the other hand.</p> <p>The reform has amended the regulations governing both personal securities and “real” securities (i.e., asset based).</p>
Date of entry into force	In principle, 1 January 2022 (for securities agreement concluded after this date).
Main contributions of the reform on security law	<ul style="list-style-type: none">– Unification of the system of publicity of pledges by creating a single national register;– Abolition of most of the special pledges (commercial pledge, stock pledge, etc.); certain pledges have nevertheless been maintained: pledge of company shares, securities account pledge, pledge of a business, etc.;– Creation of two new securities : assignment of cash by way of security (“cash pledge” or “<i>gage-espèce</i>”) and assignment of a receivable by way of guarantee (“<i>cession de créance à titre de garantie</i>”);– Possibility of taking several pledges on the same property;– Possibility of constituting a mortgage on future property;– Possibility of constituting a pledge on an immovable property by destination.

1. Security

1.1 Creation of security rights in France	
1.1.1	<p>What are the main forms of security in your jurisdiction?</p> <p>There are two main forms of asset-based security in France: right of pledge (<i>gage</i> or <i>nantissement</i> [according to the nature of the asset: tangible or intangible]) and right of mortgage (<i>hypothèque</i>) (together the 'Security').</p> <p>A mortgage mainly relates to immovable assets and can be established on any real estate right (property, usufruct, surface rights, etc.), on any present or future real estate, and on any registered movable property (planes and ships).</p> <p>A right of pledge can be established on all tangible or intangible movable assets or set of movable assets, present or future, including notably receivables, shares, financial instruments accounts and intellectual property rights.</p>
1.1.2	<p>How is the security documented and created?</p> <p>➤ A right of pledge must be established by a written deed (private deed or notarised deed) containing in particular the designation of the secured debt, the quantity of the pledged assets as well as their kind or nature.</p> <p>Formalities to be completed to make the pledge enforceable may vary according to the assets pledged, e.g.:</p> <ul style="list-style-type: none">▪ A pledge of receivables becomes binding upon dating and signing the pledge by all concerned parties authorized in their capacity to sign. The pledge becomes enforceable once notified to the debtor. If the receivables are contingent, the deed must allow for their individualization and identification (or contain elements allowing it), such as the indication of the debtor, the place of payment, the amount of the receivables or their valuation and, if applicable, their maturity.▪ Regarding the pledge of financial instruments (securities), article L. 211-20 of the French Monetary and Financial Code provides that the pledge is constituted, both between the parties and with respect to the issuing company and third parties, by a single act: the declaration of pledge. The certificate of receipt of such declaration is provided by a document called "<i>attestation de nantissement</i>" and confirms the pledge making it a binding obligation. <p>➤ The mortgage can only be established by a notarised deed of mortgage (to the exception of a judicial mortgage), executed by notary public.</p> <p>The mortgage should be registered in the relevant public registry.</p>
1.1.3	<p>Is the existence of the security dependent upon the existence of the debt?</p> <p>Yes, the Security depends on the existence of a debt under the agreement. Should the secured debt be fully paid, the Security would be automatically terminated.</p>
1.1.4	<p>Can you take charge over assets to be acquired in the future?</p> <p>➤ Generally, a right of pledge can be established on all present and future movable assets, receivables and intellectual property rights. The right of pledge on future assets requires that these future assets be designated in the pledge. It is possible for a pledge to relate to a pool of future assets (e.g., stock of goods, car fleet, etc.) as long as the pool of assets is determinable (i.e., identifiable).</p> <p>➤ A mortgage can be established on future registered assets, but the notarised deed must specify the nature and location of each of the future mortgaged properties. A mortgage on a future immovable property can only be published and consequently can only be set up against third parties when the grantor has become the owner of the immovable property.</p>

1. Security

1.2 Perfection and notarisation requirements	
1.2.1	<p>Does security require registration?</p> <p>Non-possessory pledges, as well as share pledges, pledging of a business, preferential right of the seller of a business etc., must be published in the national register of movable securities (which will be available starting January 1st, 2023). On the other hand, the publication of the automobile pledge still has to be carried out in a special register.</p> <p>Mortgages must be registered at the land registry of the location of the mortgaged property.</p>
1.2.2	<p>Are there any notarisation requirements?</p> <p>For the constitution of a mortgage on a registered immovable asset, a deed of mortgage is required to be notarised by a notary public.</p>
1.2.3	<p>What are the consequences of not perfecting security?</p> <p>The pledgee or mortgagee cannot enforce its rights under the deed of pledge or notarised deed of mortgage.</p>

1.3 Enforcement	
1.3.1	<p>What is required to trigger a right to enforce security?</p> <p>The conditions triggering the right to enforce a security are set out under the agreement relating to the secured obligations. It usually is a failure to comply with the main obligations, i.e., payment default by the debtor.</p>
1.3.2	<p>How can security be enforced?</p> <ul style="list-style-type: none">➤ To enforce a security, the creditor / beneficiary has three options: (i) the enforced sale of the pledged property, (ii) its judicial allocation or (iii) the execution of a clause allowing the creditor to become the owner of the pledged property ("<i>pacte comissoire</i>").• Regarding an enforced sale: where the property has remained in the hands of the debtor, the creditor must first seize said property before being able to order the sale in court. The enforced sale is judicial in nature: the authorization of the court is required, and the parties cannot contractually exempt the creditor from this. The sale takes place by auction and the pledgee may bid for the goods.• Regarding judicial allocation: the creditor may have the court order that the pledged property be assigned to him as payment of his claim.• Regarding the specific clause called "<i>pacte comissoire</i>": the parties may contractually stipulate (either at the time of the pledge or later on) a clause according to which, provided that in the event of failure from the debtor to perform the secured obligation, the creditor will become the owner of the pledged property. <p>In the case of pledges on securities accounts, the creditor may request either full ownership or the transfer of their countervalue after the sale of the securities on the stock exchange. The enforcement of pledges on financial instruments not admitted to a trading platform is carried out either by public sale, by judicial allocation or by application of a clause ("<i>pacte comissoire</i>").</p> <ul style="list-style-type: none">➤ With regard to the realization of rights under a notarised mortgage deed, the creditor may have the mortgaged property sold by auction, or obtain judicial allocation of the property, or obtain conventional allocation by implementing a clause ("<i>pacte comissoire</i>") unless the property is the debtor's main residence.

1. Security

1.3 Enforcement (continued)		
1.3.3	Can an obligor frustrate or block the enforcement of security?	In general no.
1.3.4	Do any local creditors have priority to secured lenders?	In principle, the pledgee or mortgagee have priority above all other creditors. However, in some cases during insolvency of the debtor, the payment of salaries and legal costs is given priority, as is the payment of creditors who have made efforts during the amicable procedure ("new money" privilege).
1.3.5	Are there any withholding taxes or capital controls?	In general no (except when paid to a few jurisdictions listed by France as non-cooperative for tax matters).

1.4 Are the following available and/or recognized		
1.4.1	Are lender's agents available and/or recognised?	Yes.
1.4.2	Are security trusts and security trustees available and/or recognised?	Under French Law, there is no trust but a specific instrument named <i>Fiducie</i> which may be used as a security.
1.4.3	Is parallel debt available and/or recognised?	No.

1.5 Powers of attorney		
1.5.1	Are powers of attorney recognised?	Yes.

2. Guarantees

2.1	Drafting	
2.1.1	How are guarantees documented and created?	<p>In writing : private deed or notarised deed for the pledge ; a notarised deed is required for the mortgage.</p> <p>Depending on the nature of the assets pledged, specific formalities may be required.</p>
2.2	Restrictions	
2.2.1	Are there any restrictions on the purposes for which corporates can grant guarantees?	<p>A company may only grant a security for another person if it complies with (i) its corporate purpose and (ii) its corporate interest.</p> <p>In unlimited liability companies, compliance with the corporate purpose is a condition for the validity of the security vis-à-vis parties.</p> <p>With regards to limited liability companies, non-compliance with the corporate purpose is not in principle a ground for the nullity of the security, but it is a ground for the liability of the corporate officer.</p> <p>In both cases, the security is only valid if the security complies with the company's interest: the provision of the security must not impose on the company an unreasonable burden in relation to the benefits.</p> <p>The provision of security by one entity for the benefit of the loan taken out by another entity of the group to which it belongs must not (i) be without consideration or upset the balance between the respective commitments of the various companies concerned, (ii) nor exceed the financial possibilities of the company bearing the burden.</p> <p>With regard to the corporate interest, it must be noted that there is case law that deduces the corporate interest of the subsidiary from the group interest, but this case law has been criticized. Previous case law has given precedence to the social interest of the subsidiary over the interest of the group. It can therefore be accepted a priori that the interest of the parent company can be an element establishing the corporate interest of the subsidiary but cannot characterize compliance with the corporate interest by its mere finding.</p> <p>In any case, the legal representatives of the company must have full power and authority to enter into security agreements.</p> <p>A guarantee may be challenged by the judicial representative or liquidator of the company if the security was taken during the suspect period, i.e. the period from the date of suspension of payments until the opening of the insolvency proceedings.</p>

3. Corporate authority and capacity

3.1 Restrictions		
3.1.1	<p>Are there any restrictions on the purposes for which corporates can grant security?</p>	<p>Please see the answer under question 2.2.1.</p>
3.1.2	<p>Are there any restrictions on a corporate incorporated in your jurisdiction granting foreign law security or security over assets located in another jurisdiction?</p>	<p>No, there are not. While the security agreement put in place by a French corporate and relating to foreign assets could still be subject to French law, it should be looked at from a local law standpoint as well (i.e., the law of the country where the assets are located). Indeed, there might be legal requirements to be complied with locally, to ensure the validity and enforceability of the security relating to foreign assets.</p> <p>In particular, the granting of a security by a company incorporated in France must comply with the company's corporate purpose and social interests, even if the security affects assets located in another jurisdiction (please see the answer under question 2.2.1.).</p>

4. Gross-up/withholding tax clauses

4.1 Clauses

- | | | |
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| 4.1.1 | Are clauses that provide for grossing up of payments where a withholding tax applies enforceable? | In general yes: however, one should always obtain tax advice prior to the entry into of any documentation. |
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Meijburg & Co
Tax & Legal

Belgium

1. Security

1.1 Creation of security rights in Belgium		
1.1.1	<p>What are the main forms of security in your jurisdiction?</p>	<p>There are two main forms of security in Belgium: the pledge and the mortgage.</p> <p>A pledge can be established over a wide range of moveable assets, both material (e.g. inventory, equipment) and immaterial (e.g. shares, bank accounts and receivables). It provides the pledgee with the right to have the assets sold if the debtor defaults and to use the proceeds of the sale to repay the outstanding secured debt (or alternatively, in some cases the pledgee can appropriate the assets). Depending on the type of pledged asset, specific perfection requirements will apply, as set out in further detail below (section 1.2).</p> <p>A mortgage can be established on immoveable (real) property. It provides the mortgagee with the right to have the property sold in case the debtor defaults and to use the proceeds of sale to repay the outstanding secured debt.</p>
1.1.2	<p>How is the security documented and created?</p>	<p>In practice, the pledge must be agreed in writing. As a general rule, a pledge agreement can be drafted in the form of a private agreement (no notarisation or legalisation required). In addition, Belgian law provides for flexible rules with regard to delivery / transfer of possession over the pledged assets. In most cases no actual transfer of possession will take place, or possession will be deemed to have been transferred following completion of a registration or notification formality, whereby the pledgee can exercise control over the asset. However, a 'traditional' pledge with physical transfer of the asset to the pledgee or a third party pledgeholder is still possible as well.</p> <p>The creation and perfection of a mortgage requires notarised documents to be filed with the land registry and attracts a stamp duty of 1 per cent of the secured amount in addition to various fees. However, more sophisticated creditors accept an irrevocable mortgage mandate to secure part of the amount as opposed to an effective mortgage, where the secured amounts are substantial. Under such mortgage mandate, the owner of the property appoints a third party related to the creditor as its attorney with the power to create an effective mortgage upon the creditor's first demand. The advantage of an irrevocable mortgage mandate is that it does not trigger stamp duties other than nominal fees. The disadvantage, however, is that the irrevocable mortgage mandate does not create effective security. The mortgage will only be created (and thus take rank) when the mortgage mandate is exercised.</p>
1.1.3	<p>Is the existence of the security dependent upon the existence of the debt?</p>	<p>Yes, the security depends on the existence of a claim under the financing agreement. Once the secured claim has been fully paid, the security will effectively become without object. Nevertheless, under Belgian law, security interests can remain in place as long as there is a possibility for a further debt to come into existence under the secured financing agreement, even if no debt would be due and payable at any given time. In order to avoid any discussion, it is recommended that security be formally cancelled and released by the creditor following a full and final repayment of the secured debt.</p>
1.1.4	<p>Can you take charge over assets to be acquired in the future?</p>	<p>A pledge can, in principle, be established on future moveable assets to secure any obligation (present or future, determined or determinable, conditional or not, fixed or not). For example, a bank account pledge agreement can cover all present and future bank accounts held by the pledgor at a financial institution in Belgium or elsewhere. It should be noted that for a pledge over receivables, future receivables can be pledged under Belgian law provided that those receivables are determined or determinable when the pledge is created.</p> <p>A mortgage cannot be established over future immoveable assets.</p>

1. Security

1.2 Perfection and notarisation requirements	
1.2.1	<p>Does security require registration?</p> <p>For certain types of assets, a pledge needs to be registered (online) in the Belgian national pledge register in order to be enforceable vis-à-vis third parties. The moment of registration will determine the ranking of the pledge. Each registration will be valid for a renewable period of 10 years and may have to be updated, for example, if the pledge is transferred to a different pledgee pursuant to a transfer of the secured obligations. Registration in the Belgian national pledge register primarily targets physical business assets or personal assets (e.g. inventory, equipment, valuables,...).</p> <p>For certain types of assets, alternative perfection requirements apply (e.g. debtor notification for pledged receivables and bank accounts or registration in the company share register, in case of a pledge over registered shares).</p> <p>A mortgage requires notarised documents to be filed with the land registry and triggers a stamp duty of 1 per cent of the secured amount in addition to various fees.</p>
1.2.2	<p>Are there any notarisation requirements?</p> <p>A pledge can be established by way of private agreement and does not trigger any notarisation requirements.</p> <p>A mortgage is established by way of a notarial deed before a Belgian notary public.</p>
1.2.3	<p>What are the consequences of not perfecting security?</p> <p>In the absence of adequate perfection, the pledgee or mortgagee will not be able to enforce its priority rights under the pledge or mortgage against third parties in case of a <i>concursum creditorum</i>.</p>
1.3 Enforcement	
1.3.1	<p>What is required to trigger a right to enforce security?</p> <p>The trigger for enforcement of a security interest is typically included in the underlying financing agreement (event of default). Although in commercial transactions Belgian law does not provide for onerous pre-enforcement formalities (e.g. no prior court intervention required), the contractual documentation may still impose specific requirements (e.g. prior notification of the debtor, applicable grace period, formal approvals from creditors,...).</p> <p>A further caveat needs to be made for the scenario where the borrower (security provider) is subject to a procedure of judicial reorganisation, as certain enforcement proceedings will be suspended during a judicial reorganisation procedure.</p> <p>If the debtor defaults, the mortgagee has the right to have the property sold and use the proceeds of sale to repay the outstanding secured debt. Even in cases where no prior court intervention would be required to establish an executory title, enforcement still requires the intervention of a notary public. As such, the enforcement procedure for a mortgage is more onerous and time-consuming as compared to other assets.</p>

1. Security

1.3	Enforcement (continued)
1.3.2	<p>How can security be enforced? Pledge</p> <p>With respect to bank account pledge, the pledgee may instruct the bank where the pledged bank account is held to close such bank account and apply the closing balance of such bank account against the secured liabilities of the pledgor that are due and payable.</p> <p>Regarding receivables pledge, the secured creditor may collect payment of the principal amount of the pledged receivable and apply the same in or towards satisfaction of the secured obligation. Therefore, in principle, no other costs should be incurred in enforcing the pledge.</p> <p>Concerning a pledge over inventory and other business assets, both in the case of a simple pledge with physical dispossession and in the case of a business pledge registered with the Belgian national pledge register, the pledgee can enforce the pledge and sell the pledged assets in accordance with the terms of the pledge agreement, without requiring court authorization. The pledgee that wants to enforce will only need to give the pledgor prior written notice of its intention to enforce the pledge. After the notice period has expired, the pledgee can enforce either by public or private sale of the pledged assets. If expressly provided for in the pledge agreement, the pledgee will also be allowed to appropriate the pledged assets and become the owner thereof. Court involvement is also possible when needed. At every stage of the enforcement process, each party has the right to start court proceedings. It is also possible to cease the court after the enforcement has been terminated, e.g., with respect to whether the best way of enforcement was chosen or to control how the enforcement proceeds were applied.</p> <p>Mortgage</p> <p>As mentioned under section 1.3.1, enforcement of a mortgage (i.e. sale of the mortgaged immovable property) requires the assistance of a notary public, as well as (possibly) prior court intervention in order to obtain a so-called executory title to serve as a basis for enforcement proceedings. Enforcement typically takes the form of a public auction, but may also be done by way of a private sale. As a whole, the enforcement process relating to a mortgage is more formalistic in nature and takes longer than proceedings relating to moveable assets (in practice, it will likely a number of months at a minimum).</p>
1.3.3	<p>Can an obligor frustrate or block the enforcement of security?</p> <p>For those assets falling under the regime of the Belgian pledge law of 11 July 2013, there is a possibility for the pledgor (as well as for the pledgee and any interested third party) to request a court to rule on the enforcement proceedings. Pending the court ruling, enforcement proceedings will be suspended.</p>
1.3.4	<p>Do any local creditors have priority to secured lenders?</p> <p>As a general rule, the pledgee or mortgagee have priority above all other non-secured creditors. The 'nationality' of the pledgee/mortgagee does not provide a party with any specific priority. However, it should be noted that in some cases of debtor insolvency the Belgian tax authority (art. 422 Income Tax Code) or the National Social Security Office (ONSS) might still have a priority claim that will rank ahead of the claim of the pledgee / mortgagee.</p>
1.3.5	<p>Are there any withholding taxes or capital controls?</p> <p>Belgium does not impose capital controls.</p> <p>In terms of other taxes and costs, enforcement proceedings for most assets do not trigger additional charges. However, in case of the acquisition of an immovable property in the context of enforcement proceedings of a mortgage, the purchaser will be required to pay certain taxes and additional costs (e.g. registration tax, notary fee,...).</p>

1. Security

1.4 Are the following available and/or recognized		
1.4.1	Are lender's agents available and/or recognised?	Yes.
1.4.2	Are security trusts and security trustees available and/or recognised?	Yes.
1.4.3	Is parallel debt available and/or recognised?	Yes, although the practical need to apply the contractual "parallel debt" mechanism has diminished following the formal introduction of the legal concept of security agent in Belgian legislation.

1.5 Powers of attorney		
1.5.1	Are powers of attorney recognised?	Yes. Please note that a power of attorney used for the purpose of granting a mortgage will need to take the form of a notarial document itself.

2. Guarantees

2.1 Drafting

2.1.1	How are guarantees documented and created?	As a matter of Belgian law, commercial guarantees are not subject to specific legal requirements either in terms of format or substance and do not need to be registered. They are typically made in writing by way of private document.
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2.2 Restrictions

2.2.1	Are there any restrictions on the purposes for which corporates can grant guarantees?	As a general rule, Belgian law does not impose specific legal restrictions with regard to the granting of guarantees. However, legal restrictions can still apply on the basis of a Belgian company's articles of association, in particular in case the company's corporate purpose does not allow for guarantees to be provided for the benefit of third parties.
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3. Corporate authority and capacity

3.1	Restrictions
3.1.1	<p>Are there any restrictions on the purposes for which corporates can grant security?</p> <p>Similar as for the granting of guarantees, Belgian law does not impose general restrictions on the granting of security interests. However, restrictions may apply based on a company's articles of association, in particular in case the company's corporate purpose does not allow for security interest being granted (or only allows for security interests to be granted subject to certain conditions). In addition, Belgian law imposes specific conditions towards the granting of security in the context of financial assistance.</p>
3.1.2	<p>Are there any restrictions on a corporate incorporated in your jurisdiction granting foreign law security or security over assets located in another jurisdiction?</p> <p>Belgian law does not impose general limitations for foreign law security being granted by Belgian companies. In case of foreign law security, specific local law rules on the creation or perfection of security may obviously need to be taken into account.</p>

4. Gross-up/withholding tax clauses

4.1 Clauses

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| 4.1.1 | Are clauses that provide for grossing up of payments where a withholding tax applies enforceable? | Tax gross-up clauses are indeed in use in Belgian law contracts and/or vis-à-vis Belgian obligors. We recommend obtaining tax advice prior to entering into documentation. |
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Meijburg & Co
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Austria

1. Security

1.1 Creation of security rights in Belgium

1.1.1	What are the main forms of security in your jurisdiction?	<p>The most commonly used forms of security in Austria include guarantees, pledges, mortgages, security assignments and title retentions. To effectively furnish the relevant security, the security provider and the secured party typically enter into specific security documents (title) that – to the extent necessary for the relevant security instrument – must be combined with a perfection act (modus). To consider all the relevant means of security perfection (modus), the security instruments are typically created and/or documented under individual security agreements. Subject to the security instrument acts of perfection eg include register entries, the physical hand-over or the debtor notification. See below for more detail.</p>
1.1.2	How is the security documented and created?	<p>The documentation and creation of security interests depend on the security object:</p> <p>Land property. Security can be granted over real estate in the form of a mortgage to secure obligations up to a maximum amount under and in connection with the existing business relationship or a fixed amount plus interest and ancillary costs. A notary public must authenticate the mortgage agreement for registration purposes. To be perfected, the mortgage over real estate must be registered in the respective land register.</p> <p>Machinery and equipment. Security over machinery and equipment can be granted in the form of a pledge or security transfer of title. The security agreement requires no specific form. However, to perfect a pledge or security title transfer over movable property, delivery (ie, handover) of the respective asset to the secured party is usually required. Where such physical delivery is not feasible (as defined by case law), delivery of the asset via a declaration can be used to perfect the pledge or security title transfer (e.g., the Supreme Court held that a piece of machinery weighing 600kg to 800kg could be pledged without having to be physically delivered).</p> <p>Receivables. Security over receivables can be granted in the form of a pledge or a security assignment. Receivables (also future receivables) can be pledged under Austrian law if they are determined or at least determinable (ie, the pledgor and the legal cause from which they arise is clear). However, a pledge over such future receivables will arise only when they come into existence. To perfect the pledge or security assignment, the security provider must notify the respective third-party debtors of the pledge/security assignment and/or record the pledges or security assignments in its books and accounts.</p> <p>Financial instruments and cash. Where the Austrian Financial Security Act (<i>Finanzsicherheitengesetz</i>) applies, the financial security agreement must be evidenced in writing. Where the Austrian Financial Security Act does not apply, the general rules outlined below will apply, depending on the type of security.</p> <ul style="list-style-type: none">— In order to perfect a valid and enforceable security interest, certificated bonds in bearer form and certificated securities that are payable to order and already bear a blank endorsement must be effectively handed over to the secured party or its custodian. Certificated securities that are payable to order and do not bear a blank endorsement must be endorsed and handed over to the secured party or its custodian.— In case such securities are already stored with a third party (eg, a custodian – for instance, another credit institution), in order to create a pledge, the third party must be: (i) notified of the pledge by the pledgor and (ii) instructed by the pledgor to hold the securities for the benefit of the pledgee. <p>Intellectual property. Security can be granted over certain types of intellectual property (eg, patents, trademarks or utility models) in the form of a pledge. With respect to the perfection of a pledge of a trademark, Austrian trademark law allows the recording of pledges in the trademark register. However, it is unclear to what extent a right in rem is acquired thereby or whether an entry in the books of the owner of the pledged trademark right is also required.</p>

1. Security

1.1 Creation of security rights in Belgium (continued)	
1.1.3	<p>Is the existence of the security dependent upon the existence of the debt?</p> <p>Yes, the security depends on the existence of the claim under the agreement.</p>
1.1.4	<p>Can you take charge over assets to be acquired in the future?</p> <p>The pledge of future assets is possible subject to the type of asset. Future claims may be pledged if such claims are sufficiently determined, i.e. essentially the contractual relationship under which the claim will arise. As for physical objects, the parties may provide an obligation to pledge a future object. However, its perfection requires the act of a handover.</p>

1. Security

1.2 Perfection and notarisation requirements		
1.2.1	Does security require registration?	Yes, if a register for registration of the security is available, the registration with the register is required.
1.2.2	Are there any notarisation requirements?	For the establishment of a right of pledge on shares in shares of an Austrian limited liability company a notarial deed is required. In respect to mortgages, a notary public must authenticate the mortgage agreement for registration purposes.
1.2.3	What are the consequences of not perfecting security?	The pledgee or mortgagee cannot enforce its rights under the deed of pledge or notarial deed of mortgage as the required <i>modus</i> is not satisfied.
1.3 Enforcement		
1.3.1	What is required to trigger a right to enforce security?	The trigger for enforcing security is essentially non-payment of secured receivables when due, e.g. upon terminating the contractual relationship in a default event, particularly including: <ul style="list-style-type: none">— Misrepresentations;— Breaches of essential terms, including (financial) undertakings; and cross-default clauses.
1.3.2	How can security be enforced?	<p>Under Austrian law, secured parties may realize a pledge over movable and tangible assets by:</p> <ul style="list-style-type: none">— Conventional judicial enforcement; or— Out-of-court enforcement. <p>Unless the parties have agreed on out-of-court enforcement, pledges over intangible assets may be realized only by judicial enforcement. Mortgages must be realized via judicial administration or sale.</p> <p>As regards out-of-court enforcement, the most common procedure is the realization of a pledge by private sale or public auction. In general, a pledgee must notify the pledgor of a pledge's upcoming realization. With respect to the private sale of collateral, absent a stock exchange price, an appraisal of the fair market value of the collateral is mandatory.</p> <p>Specific rules apply to the realization of financial collateral within the scope of the Financial Security Act (e.g., no notification of the pledgor of the upcoming realization of the pledge is required).</p>
1.3.3	Can an obligor frustrate or block the enforcement of security?	Subject to the type of security and the way it is drafted, the enforcement may require assistance by the pledgor (e.g., if under a share pledge the pledgee is not granted the necessary powers of attorney for the enforcement event).
1.3.4	Do any local creditors have priority to secured lenders?	In principle, the pledgee or mortgagee have priority above all other creditors.
1.3.5	Are there any withholding taxes or capital controls?	In general, no.

1. Security

1.4 Are the following available and/or recognized	
1.4.1	Are lender's agents available and/or recognised? Yes.
1.4.2	Are security trusts and security trustees available and/or recognised? Yes.
1.4.3	Is parallel debt available and/or recognised? Yes.

1.5 Powers of attorney	
1.5.1	Are powers of attorney recognised? Yes.

2. Guarantees

2.1 Drafting

2.1.1	How are guarantees documented and created?	In writing and in general no statutory formalities apply.
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2.2 Restrictions

2.2.1	Are there any restrictions on the purposes for which corporates can grant guarantees?	Security may not be granted purposes that are deemed illegal under statutory law (e.g. claims resulting under criminal activities).
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3. Corporate authority and capacity

3.1	Restrictions	
3.1.1	Are there any restrictions on the purposes for which corporates can grant security?	In general, no.
3.1.2	Are there any restrictions on a corporate incorporated in your jurisdiction granting foreign law security or security over assets located in another jurisdiction?	In general, no.

4. Gross-up/withholding tax clauses

4.1 Clauses

4.1.1 Are clauses that provide for grossing up of payments where a withholding tax applies enforceable? Yes.



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Poland

1. Security

1.1 Creation of security rights in Belgium

1.1.1	<p>What are the main forms of security in your jurisdiction?</p> <p>With respect to Polish ABL market, the main forms of security would be (i) registered pledge (<i>zastaw rejestrowy</i>), (ii) financial pledge (<i>zastaw finansowy</i>) and (iii) mortgage (<i>hipoteka</i>).</p> <p>It is often the case, that suretyship (<i>poręczenie</i>) is granted as a personal security in connection with given transaction. Submission to enforcement (<i>poddanie się egzekucji</i>) is granted by the respective obligor(s), as well as an assignment agreement (with respect to receivables related to a given asset – for instance, receivables from lease agreement pertaining to a real property charged with mortgage) is entered into.</p> <p>Naturally, although not specifically provided for by Polish law, other types of security arrangements stemming from market practice (such as, subordination agreement, share retention deed, equity commitment letter, letter of comfort etc.) are also present – although, it should be noted, actual effectiveness of those in case of an enforcement scenario may substantially vary, depending on the exact wording and contemplated provisions of law applicable in the particular scenario (for instance, provisions of Polish bankruptcy law shall always take precedent over provisions of a subordination agreement (if any) pertaining to waterfall of payments in case of bankruptcy scenario – naturally, this should be taken into account in the process of drafting the agreement).</p> <p>It should also be mentioned that the financial pledge is available solely to limited catalogue of creditors (and limited types of assets). A mortgage may be established solely on real property (or, in certain circumstances, on mortgage claim secured over another property) and, depending on type of underlying asset, there may be also some limitations in relation to effective establishment of registered pledge – therefore, the actual structure of security needs to be evaluated on case-by-case basis, as in any other jurisdiction.</p>
1.1.2	<p>How is the security documented and created?</p> <p>In terms of security being documented – it occurs via the agreement, in almost all instances referred to above. Naturally, there are fundamental differences between these various types of security arrangements in terms of what such agreement should provide for, the form of such agreement and requirements for its perfection, as well as – to some extent – with respect to hardening periods.</p> <p>In this respect, it should be mentioned, that in case of submission to enforcement, the security is a unilateral statement – although it should be noted, it does not constitute a security per se, but is rather an enforcement title, effectively allowing to bypass regular court proceedings and go straight into enforcement (i.e., upon obtaining an enforcement clause (<i>klauzula wykonalności</i>), it constitutes a writ of execution (<i>tytuł wykonawczy</i>)). Also in case of mortgage – while from legal perspective, it is an agreement (setting aside certain specific subtypes, such as compulsory mortgage), it is essentially documented solely as a statement of a debtor, and in both these cases (submission to enforcement and a mortgage) form of notarial deed is a must.</p> <p>As to creation of security – naturally, there are various perfection requirements with respect to different types of security (depending also on underlying asset) although it should be noted, that, generally speaking:</p> <ul style="list-style-type: none">– Most of security referred to above is created upon an agreement being entered into (or statement made, respectively), although there may be further requirements to assure effectiveness of such security (such as, for instance, notification to the account bank in case of financial pledge over funds deposited on the bank account),– However, creation of mortgage and registered pledge is contingent upon entry into respective registers (therefore, security is created upon entry in the land and mortgage register book or pledge register, respectively),– On a side note, the above results in several considerations to be taken into account in terms of assuring agreed upon priority of registered pledges or mortgages (as, in market practice, usually several are established to secure different claims (related to one SFA) on the same asset or, for instance, mezzanine financing is to be secured by difference package of security etc.).

1. Security

1.1 Creation of security rights in Belgium (continued)	
1.1.3	<p>Is the existence of the security dependent upon the existence of the debt?</p> <p>Generally speaking, one is able to secure future receivables provided that the underlying arrangement creating such future receivables is already in place. Therefore – for instance – you may secure (future) IRS receivables arising from already entered into ISDA Master Agreement, in case though such agreement would not be entered into, and one would like to already establish e.g. a mortgage in its respect, it would not be feasible.</p>
1.1.4	<p>Can you take charge over assets to be acquired in the future?</p> <p>It depends on the asset and type of security. With respect to mortgage, one may only charge real property it already holds. With respect to a registered pledge, however, it is generally possible (although future assets should be described specifically enough, which may often be problematic in registry court's view or – as is usually the market practice – the pledge agreement is annexed (with contractual obligation of counterparties to do so) upon assets being actually acquired).</p> <p>It should also be mentioned that a Polish registered pledge over collection of movables and rights with variable composition is available, resembles in lot of respects to a UK floating charge (and thereby, allowing to charge future assets even without specific-enough description, provided these constitute an 'economic entirety' – in this respect, several considerations are important to assure effectiveness of security).</p>
1.2 Perfection and notarisation requirements	
1.2.1	<p>Does security require registration?</p> <p>Indeed, there is such requirement with respect to the registered pledge (which needs to be registered in a Pledge Register (Rejestr Zastawów)) and mortgage (which needs to be registered by the Land and Mortgage Registry Court (sąd wieczystoksięgowy) in a respective land and mortgage registered book (księga wieczysta) held for the charged property).</p> <p>Otherwise, generally there are no such obligations (although some quasi registration may be necessary in order to assure full effectiveness of given contemplated security – for instance, with respect to registered or financial pledge over shares in a LLC, it should be disclosed in the share book of the Company, and an amended shareholders' list should be filed with the registry court for the Company).</p>
1.2.2	<p>Are there any notarisation requirements?</p> <p>With respect to mortgage, it needs to be made in a form of notarial act. Such form is required also with respect to submission to enforcement.</p> <p>With respect to other security arrangements mentioned above, generally speaking, there is no obligation for notarisation (although, e.g. in case of (security) assignment agreement, notarisation is done in order to achieve effectiveness thereof vis à vis bankruptcy estate in case of bankruptcy scenario).</p>
1.2.3	<p>What are the consequences of not perfecting security?</p> <p>In case of registered pledge and a mortgage given, that – as per above point 1.1.2 – the security is created upon entry into respective register – lack of registration simply means, there is no security in place.</p> <p>In case of other security arrangements with perfection requirements (some examples of which have been made above), the result would be usually either 'partial' (meaning, that enforcement would be much more burdensome in practice or that it would be ineffective towards some third parties) or full ineffectiveness of such security.</p>

1. Security

1.3 Enforcement	
1.3.1	<p>What is required to trigger a right to enforce security?</p> <p>Naturally, there is a plethora of circumstances which may trigger such right, depending on the provisions of given credit agreement (or other agreement creating secured obligation, such as ISDA). Generally though, provided it is a credit agreement governed by Polish law, in most cases the underlying trigger would be payments being overdue and payable (or other major event of default) or 'loss of creditworthiness' of the borrower (so, effectively, MAE), subsequent termination of the agreement and – per Polish banking law – it is also required prior to termination (and subsequent enforcement) to summon for payment, allowing the borrower to present a plan for its recovery (which may or may not be accepted, at sole discretion of the Bank).</p> <p>On the side note, it should be mentioned that one cannot explicitly provide in the credit agreement, that declaration of bankruptcy of an obligor or filing a motion for such declaration results in termination of the agreement. Such provision would be null and void (although from drafting perspective, there are methods allowing to bypass this limitation, thereby giving comfort to creditors also in this respect).</p>
1.3.2	<p>How can security be enforced?</p> <p>In several instances (most notable, with respect to financial collaterals, such as financial pledge or with respect to registered pledge (depending however on the underlying asset and person of creditor)) out-of-court enforcement is possible – either via takeover, set-off, sale of assets, public auction etc. – depending, again, on the security and the underlying asset, as well as – of course – on provisions of security arrangement.</p> <p>In case of mortgage, it can be enforced only via regular enforcement proceedings (hence the importance of submission to enforcement without which, the mortgage creditor would have to first prove its claims before the common court, which may take years in current realities of Polish court system).</p>
1.3.3	<p>Can an obligor frustrate or block the enforcement of security?</p> <p>Naturally, in some cases it may occur that an obligor shall try to 'frustrate' or otherwise prolong the enforcement process, or deplete the underlying asset – as in virtually every jurisdiction. Therefore, mitigants in this respect should be taken into account already upon drafting of credit and security documentation, and several are available.</p>
1.3.4	<p>Do any local creditors have priority to secured lenders?</p> <p>The subject of priority of creditors in an enforcement scenario (or bankruptcy scenario) is rather complex in Polish law realities. Nevertheless, generally it should be noted that creditors secured in rem, provided the security has been duly perfected, have priority over asset underlying such security (setting aside costs which take mandatory precedence, such as portion of costs of the proceedings or overdue salaries of employees, depending on the underlying asset).</p>
1.3.5	<p>Are there any withholding taxes or capital controls?</p> <p>Generally, no.</p>

1. Security

1.4 Are the following available and/or recognized	
1.4.1	<p>Are lender's agents available and/or recognised?</p> <p>Yes (although stemming from contractual provisions, rather than any specific provisions of law).</p>
1.4.2	<p>Are security trusts and security trustees available and/or recognised?</p> <p>With respect to some types of security similar solutions are available (administrator with respect to the registered pledge and with respect to the mortgage).</p> <p>With respect to other security, it may be contractually arranged (for instance, in market practice it is often the case that the submission to enforcement is granted solely for the benefit of one creditor, with subsequent settlement obligations vis a vis other creditors).</p> <p>Generally speaking though, security agent is a position often used in Polish club ABL / structured finance transactions – with its powers partially stemming from provisions of senior facilities agreement, and partially from provisions of law (provided these have been weaved into the documentation), as per the first paragraph of this point 1.4.2).</p>
1.4.3	<p>Is parallel debt available and/or recognised?</p> <p>It cannot be established under Polish law, but there is pending judicial interpretation recognising parallel debt, and it is often used in market practice (in a such a way that, for instance, parallel debt is created in intercreditor agreements governed by the laws of England and Wales, while security is established under Polish law). In this respect, of course, in case of e.g. secondary syndication relation of contemplated assignment (or novation) vis a vis transfer of respective portion of security to a new lender needs to be taken into account, and there several considerations to be taken into account to assure so.</p>

1.5 Powers of attorney	
1.5.1	<p>Are powers of attorney recognised?</p> <p>Yes.</p>

2. Guarantees

2.1	Drafting	
2.1.1	How are guarantees documented and created?	Guarantee as a form of security is not present per se from a Polish law perspective. The term itself is nevertheless commonly used in credit documentation (given the fact, it stems from LMA standard) but from a Polish law perspective, it constitutes as a so called suretyship (<i>poręczenie</i>).
2.2	Restrictions	
2.2.1	Are there any restrictions on the purposes for which corporates can grant guarantees?	Generally, no. At the same time, naturally rules on protection of share capital needs to be taken into account.

3. Corporate authority and capacity

3.1	Restrictions	
3.1.1	Are there any restrictions on the purposes for which corporates can grant security?	Generally, no.
3.1.2	Are there any restrictions on a corporate incorporated in your jurisdiction granting foreign law security or security over assets located in another jurisdiction?	Generally, no.

4. Gross-up/withholding tax clauses

4.1 Clauses

4.1.1 Are clauses that provide for grossing up of payments where a withholding tax applies enforceable? Yes.



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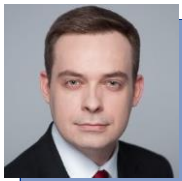
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