

Security Enforcement on Real Estate Transactions

Here we rank key European jurisdictions in order of the ease of enforcement of customary security in real estate transactions based wholly in that jurisdiction:*

Luxembourg

Luxembourg is considered a creditor-friendly jurisdiction. As taking security over real estate can be expensive, emphasis is placed on relying on the law on financial collateral from August 2005 ("Financial Collateral Law") and therefore it is more common to take security over assets that fall within the scope of the Financial Collateral Law, such as shares, giving secured creditors the benefit of appropriation as an enforcement method.

Netherlands

The Netherlands is generally considered a creditor-friendly jurisdiction, as secured creditors generally have the ability to independently exercise their security rights even if the debtor is insolvent (*i.e.* the secured creditors enjoy the full benefit of their security rights throughout the debtor's insolvency), without further judicial intervention. In addition, inspired by the US chapter 11, a bill is in consultation phase in the Netherlands for a composition to take place outside of insolvency and is currently expected to come into force in 2019.

England and Wales

England is seen as an attractive restructuring and insolvency jurisdiction for both creditors and debtors. English corporate and insolvency law is well-established and tested. It is considered creditor-friendly due to the wide-ranging and effective protections given to secured creditors (*i.e.* various enforcement methods and comprehensive security package), but also debtor-friendly (due to the flexibility of the various restructuring and insolvency procedures, such as schemes of arrangement and company voluntary arrangements).

Ireland

Ireland is, broadly speaking, a creditor-friendly jurisdiction as the full suite of debt enforcement entitlements is available to debt holders of a comprehensive security package. Irish corporate and insolvency law is well-established and tested; particularly the use of receivership by a secured creditor to realise secured assets. Share pledge enforcement (generally by a receiver) remains a popular route for creditors to enforce, even if the underlying real assets are located outside of Ireland.

Finland

Finland is considered to be a more creditor-friendly jurisdiction (than debtor-friendly) for secured creditors. The legislative framework gives the debtors the scope to pursue restructuring processes; however, the process requires cooperation between the debtors and creditors. But secured creditors benefitting from fixed charge security continue to be entitled to enforce their rights throughout a Finnish bankruptcy process (*i.e.* security enforcement can be pursued as normal), subject to a temporary hiatus in certain circumstances.

Sweden

Sweden was historically considered a creditor-friendly jurisdiction; however, as with most of the changes seen to the legislative framework in Europe, a number of debtor-friendly procedures have been implemented that allow company restructurings and are aimed at ensuring that the business is able to recover. However, creditor protections remain in place, which creates a balance between creditor and debtor objectives.

Czech Republic

Major changes to the Czech legal system came into effect on 1 January 2014 following a complete overhaul of Czech private law, including the adoption of a new Civil Code (Act No. 89/2012 Coll.). The Civil Code introduces a wide range of fundamental changes to Czech law, incorporating both novel and well-established concepts from a number of continental legal systems, which are aimed at creating a greater balance between creditor and debtor rights.

Poland

Historically, Poland had been viewed as a creditor-friendly jurisdiction. However, a new law on restructuring in 2016 has resulted in significant reform to Polish insolvency law. It introduced new restructuring procedures, allowing the restructuring of a debtor's undertaking and preventing its bankruptcy. The changes are considered as an overhaul of the laws in this area with helping businesses survive financial stress or distress and reach a resolution with creditors.

Germany

Overall, Germany is viewed as a creditor-friendly jurisdiction, with the intention to collectively satisfy the debtor's creditors. The German insolvency laws were subject to reform in recent years, with a view to strengthening creditors' rights, such as extending pre-insolvency restructurings and imposing civil liabilities for directors in certain instances. One of the reasons behind the reforms was to dissuade creditors from so-called 'forum shopping' (*i.e.* opting to use the more creditor-friendly options available under the laws of another jurisdiction).

France

The French insolvency law was amended substantially in 2005 in an effort to promote preventive reorganisations. The main change was the introduction of the safeguard process. Despite these changes, France remains a debtor-friendly jurisdiction. Consequently, non-domestic lenders often require the borrower group to interpose two Luxembourg companies into its holding structure, to enable enforcement of rights over shares in a Luxembourg vehicle, outside the jurisdiction of the French regime (*i.e.* 'the double luxco' structure).

Spain

There have been substantial changes in Spanish insolvency laws over the last ten years. Main changes have focused on the removal of certain obstacles that affect the success of refinancing processes. However, the process still carries uncertainty and cost (notably the uncertainties associated with notarial enforcement and the timing, costs and freezing effect of insolvency proceedings in Spain). Accordingly, the preferred enforcement route is still through a holding company structure in a creditor-friendly jurisdiction.

Italy

There has been significant reform to the Italian bankruptcy regime over the last ten years aimed at re-addressing the balance between debtors and creditors. However, enforcement time and cost (particularly where contested by the debtor) is still a very significant factor for creditors. Italy is also considered debtor-friendly given the ease with which debtors can obtain moratoriums and start restructuring arrangements. Further reform is proposed, but Italy remains a debtor-friendly jurisdiction where enforcement can be very time-consuming and expensive.

*Note: the above does not take into account enforcement of security outside the jurisdictions, e.g., interposing SPVs in creditor-friendly jurisdictions in the HoldCo structure.

Ease of Enforcement

High

Low

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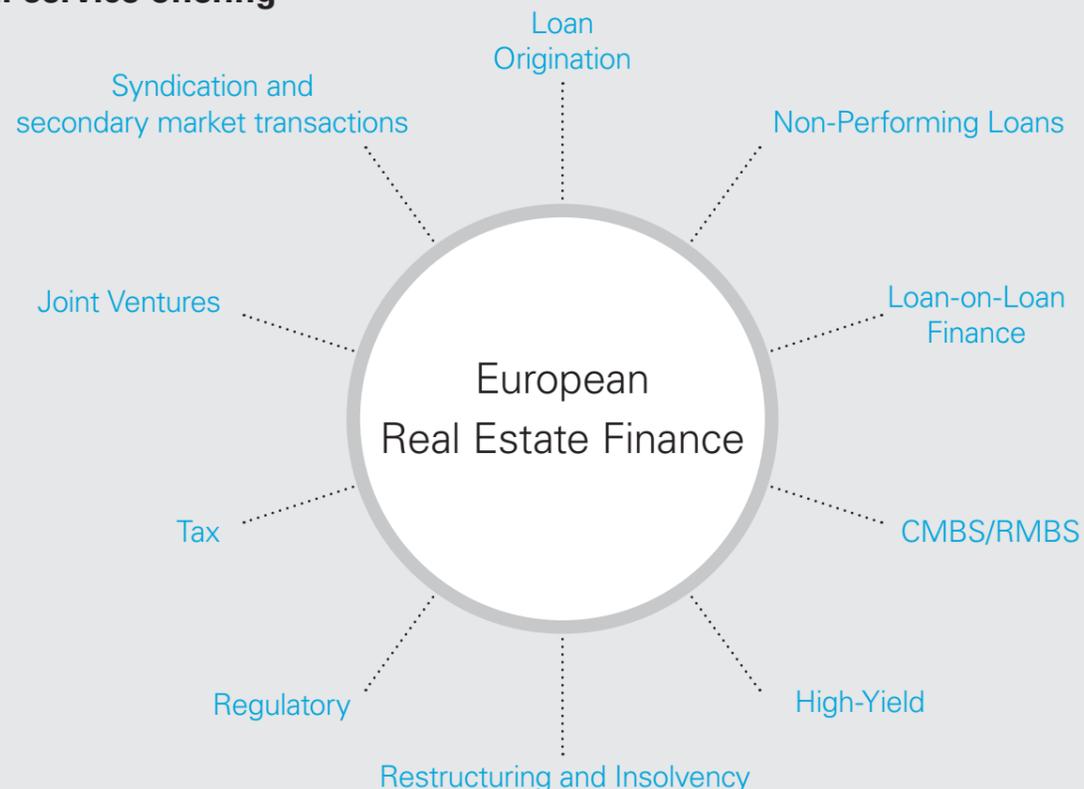
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Our approach

- Team has a strong track record of building enduring relationships
- Partner-led real estate finance teams with strong experience
- We are well-versed in working on all forms of real estate finance transactions (including loan origination, syndications, NPL acquisitions, loan on loan transactions and CMBS/RMBS)
- Strong experience as leading lender counsel, as well as dedicated borrower counsel, enabling us to see both sides of every issue
- We have experience in all sectors of real estate investment and development involving offices, retail, logistics, hotels and high-end real estate developments

Full-service offering



“One-stop Shop” service across Europe, delivered by “your dedicated team”

- We are a truly global law firm
- We have 16 offices in 13 countries across Europe
- We are one of the only firms able to offer our clients fully fledged real estate and finance teams in and across Europe
- As you would expect from a full-service international law firm, we have expertise in all areas, including Tax, Regulatory, Employment, Benefits and Pensions, Intellectual Property, Information Technology and Antitrust
- We are consistently praised for our ability to offer innovative legal as well as practical commercial solutions on even the most complex of transactions