

Belgium

- As the concept of trust does not exist, it is not possible to grant rights of mortgage or pledge to a security trustee but security can be granted in favour of a syndicate member on behalf of a bank syndicate using other methods including agency and parallel debt structures.
- Upstream guarantees, if carefully structured and subject to corporate benefit rules and the prohibition on financial assistance, can be given by Belgian companies.

Asset type	What forms of security can be granted	Comments
Real estate	Mortgage	Notarial deed of mortgage and registration is required. Registration duties and notary fees are calculated on the amount of secured debt due.
Shares	Shares pledge	If registered, a statement of the pledge or notification should be entered in the share register
Bank accounts, receivables, and contractual rights.	Receivables pledge	Pledge is enforceable and effective against third parties as soon as it is entered into but needs to be notified in order to be enforceable against the underlying debtor
Plant and machinery	Pledge with a mortgage over real property	If secured by means of a mortgage, a registration in the relevant mortgage register will be required
Intellectual property	Pledge	A filing must be made with the appropriate intellectual property office(s)
Business /goodwill	Business pledge	Similar to floating charge. Can only be granted to secure loans (rather than third party obligations) in favour of EU licensed banks. It must be registered in the relevant mortgage register to be enforceable against third parties

When granting a court order for the commencement of insolvency proceedings, the insolvency court appoints an insolvency practitioner. In the case of a judicial reorganisation, a judge is appointed as well as, in certain circumstances, (i) a corporate mediator ("ondernemingsbemiddelaar"/"médiateur d'entreprise") for advice on decisions necessary to stabilise the company and help it recover or (ii) a court representative ("gerechtsmadatais"/"mandataire de justice") to monitor and assist a company in financial difficulties.

The priority of claims of creditors in insolvency are as follows:

- Costs and indebtedness incurred by the insolvency practitioner during the insolvency proceedings including the insolvency practitioner's fees
- Secured creditors
- Creditors benefiting from a general privilege (employees, Treasury and social security)
- Unsecured creditors

England and Wales

- The security trustee concept is recognised.
- Main forms of security are fixed and floating charges. To be a fixed charge, the chargee must establish control over the asset concerned otherwise the security will be re-characterised as floating security. There are filing requirements.
- Upstream guarantees secured by fixed and/or floating charges can be granted by third parties subject to corporate benefit rules.

Asset Type	What forms of security can be granted	Comments
Real estate	Legal mortgage	A legal mortgage must be registered at the Land Registry as well as Companies House in order to be valid against third parties.
Shares	Legal or equitable mortgage	An equitable mortgage is often more desirable as legal title is not transferred. Normally with an equitable mortgage, a share certificate and undated stock transfer form is provided to the lender.
Bank accounts/ receivables and contractual rights	Fixed or floating charge	Charge will require registration at Companies House. Normally a lender will take a fixed security interest by way of assignment of the receivable itself and the account but the financier must have sufficient control to maintain the fixed charge.
Plant and machinery	Fixed or floating charge	Charge to be registered at Companies House. To be a fixed charge, control needs to be exercised by the lender. It is not necessary for the lender to take possession. The asset can be marked with a plaque or other notice to further evidence the security interest.
Intellectual property	Mortgage or Fixed or floating charge	Registration at a specific intellectual property registry required for fixed security.
Business / goodwill	Fixed or floating charge	Security over the business as a going concern is normally taken by way of floating charge (see below).

A floating chargeholder may appoint an administrator on an event of default in the underlying loan as long as the floating charge covers substantially all of the assets of the company. The court has relatively little involvement in the procedure.

Security can generally be enforced without court assistance although there are restrictions if the company is in administration or (for small companies only) where a company voluntary arrangement is being proposed.

The priority of claims of creditors in insolvency are as follows:

- Holders of mortgages and fixed charges (the costs of realisation are paid from this subject to agreement with the fixed chargeholder)
- The costs of the insolvency procedure (which require creditor or court approval before being paid) followed by preferential creditors (employee claims currently subject to a maximum of just under £1,000 each and certain pension scheme contributions but generally these are at a modest level)
- "Prescribed Part" payable to unsecured creditors (this is a maximum of £600,000 of the net floating charge realisations which must be set aside for the unsecured creditors)
- Floating chargeholders
- Unsecured creditors for the balance of their claims

France

- The concept of security trustee is recognised under French law which now also has a similar concept, the "fiducie". Although not a French law concept, a parallel debt structure can sometimes be used to grant security in favour of a syndicate member on behalf of a bank syndicate.
- Subject to the guarantee fulfilling strict legal conditions, limited upstream guarantees are possible.
- Direct enforcement of security interests without court assistance can often be agreed by way of pacte commissaire, subject to satisfaction of a number of conditions (such as prior notice and a grace period) where a default occurs.

Asset Type	What forms of security can be granted	Comments /
Real estate	Mortgage	The mortgage must be prepared by and executed in front of and registered by a French notary.
All asset types including real estate	Trust ("fiducie")	Can be used for both present and future assets. No notarisation required unless assets include real estate but registration is (fixed low cost except for real estate where it is a percentage of value).
Shares	Pledge (different rules if SA/SAS or SARL/SCI)	No notarisation is required. Only pledges of SCI or SARL shares need registration (fixed low cost).
Receivables	Pledge – security assignment under the Daily law	With a Daily assignment (only in favour of EU credit institutions and cannot secure 3rd party obligations) or a pledge, no notarisation or notification to third party debtors is required. Receivables can be present or future.
Bank accounts	Pledge	Over credit balances on an account
Plant and machinery	Pledge	Possession is not required but registration is (fixed low cost).
Intellectual property	Pledge	No notarisation required but registration is (with the national register for intellectual property rights)
Business / goodwill	Pledge	A pledge of business as a going concern can attach to the company's operational assets (other than real estate). Registration required (fixed low cost).

Insolvency proceedings are supervised and coordinated by the court for the benefit of all parties. A judicial administrator is appointed to assist the insolvent entity and a specially appointed receiver acts for the creditors

Ranking depends on whether the company is in judicial recovery or liquidation. The priority of claims of creditors on a liquidation are as follows:

- Daily assignment followed by secured creditors with rights to retain movable assets
- Certain super preferential claims held by employees for wages
- Certain post-filing creditors followed by judicial fees and preferential rights
- Preferred creditors in relation to a conciliation (work out)
- Other secured creditors
- Other post filing creditors
- Unsecured creditors

Germany

- A sole chargee may act as trustee on behalf of itself and other lenders for most forms of security interest (accessory security, such as pledges, must be dealt with differently).
- Upstream and cross-stream guarantees and security are subject to the rules on "Maintenance of Capital".
- There are notarisation requirements with regard to some security interests. Apart from the register on mortgages and land charges, registers of existing security do not exist.

Asset Type	What forms of security can be granted	Comments
Real estate	Mortgages or land charges	The land charge is preferred to a mortgage because it creates abstract security. Both security interests can only be granted by notarial deed and need to be registered in the Land Register.
Shares	Pledge	GmbH shares can only be pledged by notarial deed.
Receivables and contractual rights	Assignment by way of security/pledge	Assignments are more common and do not need to be notified
Bank accounts	Pledge	Require notice to the bank. Restrictions on payments or transfers can be imposed by lender.
Moveable property (including plant and machinery)	Pledge/transfer of title by way of security	Pledges are considered inappropriate as they would require the lender to take possession. Security transfers must identify the asset concerned
Intellectual property	Pledge	Registration is not compulsory but recommended. Enforcement of the pledge takes place by public auction.
Business / goodwill	Not possible	No concept of floating charge.

Specific rules apply to the enforcement of mortgages and land charges.

If the insolvency receiver enforces security on moveable assets (other than pledges) and distributes the proceeds to the creditor, it can deduct 4% of the proceeds for the ascertainment of the security and 5% of the proceeds for the enforcement procedure. If the actual costs deviate substantially, these rates would be adjusted.

The priority of claims of creditors on insolvency are as follows:

- Secured creditors (subject to insolvency receiver cost)
- The costs of the insolvency proceedings (e.g. court costs)
- Debts that are incurred by the insolvency receiver
- Employees' salaries in an amount of up to 2 ½ months' salary per employee in case of an agreed "social plan" (Sozialplan)
- Unsecured creditors

Ireland

- The security trustee concept is recognised.
- The customary forms of security are mortgages, assignments and charges. There are broadly similar concepts of taking security (i.e. fixed and floating charges) as in England.
- There is no general prohibition on the granting of guarantees (whether upstream or otherwise) by an Irish company.
- There are a number of formalities and other issues that must be observed to ensure that the security is valid and enforceable. These are similar to the formalities required in England (i.e. filing within 21 days of the creation of charge).

Asset Type	What forms of security can be granted	Comments
Real estate	Mortgage or charge	Land is divided into "registered land" and "unregistered land" where the place of registration and the form and procedure for registration differ in each case.
Shares	Legal mortgage/ Equitable mortgage/ Pledge of bearer shares.	Broadly similar principles as in England.
Plant and machinery	Legal charge	Involves the transfer of title to such assets to the creditor, subject to the equity of redemption. Accordingly, mortgages or assignments can be used to create security over assets.
Bank accounts, receivables and contractual rights	Fixed or floating charge	Broadly similar principles as in England.
Intellectual property	Legal charge	Broadly similar principles as in England.
Business / goodwill	Debenture	Broadly similar principles as in England.

Ireland is generally a creditor-friendly jurisdiction that gives secured creditors priority over other creditors and allows them to realise their security outside the normal liquidation process.

Enforcement methods will depend upon the nature of the security package. The relevant security documentation will normally permit the chargeholder on the occurrence of an "event of default" to appoint a receiver to realise the security.

The priority of claims of creditors on insolvency are as follows:

- Secured creditors holding mortgages or fixed security
- Expenses of winding up (including liquidators' costs and remuneration)
- Preferential creditors (including for example sums owed to Irish tax authorities)
- Floating charge out of the proceeds of sale of the assets that are subject to the floating charge
- Unsecured creditors

Italy

- There is no concept of security trustee. The secured creditors must be party to the security documents or represented by a security agent acting in the name of, and on behalf of, the secured creditors on the basis of a power of attorney.
- An Italian company can provide upstream guarantees, subject to compliance with corporate benefit rules.
- Syndication may involve significant indirect tax costs, especially in case of loans secured by a mortgage.

Asset Type	What forms of security can be granted	Comments
Real estate	Mortgage	The mortgage is created by registration of a notarial deed with the local real property registration office.
Shares	Pledge	Registered shares should be pledged with an endorsement by way of security on the certificates and authenticated by the public notary and, upon request, delivered to the pledgee. The shareholder's register should also be annotated. A pledge of dematerialised shares is created by means of a specific annotation on the depositary ledger.
Quota (where companies do not issue shares)	Pledge	The quota pledge must be notified and registered with the Companies Register and on any Quotaholders' register.
Receivables and contractual rights	Pledged or assigned by way of security	The pledge must be by notarial deed, registered and is subject to stamp taxes whereas an assignment can be by letter and escapes stamp taxes. Future rights/receivables assignable if identifiable. Notice to the debtor required including future debts on creation.
Bank accounts	Pledge	Security is created over credit balance in the bank account using the same formalities as needed to create a pledge over receivables. If the amount fluctuates, one needs to make further notifications with the bank (usually monthly or quarterly)
Plant and machinery	Special lien (privilegio speciale) or mortgage	Special liens may be granted if they secure loans of more than 18 months granted by banks licensed to carry on business in Italy and must be notified and registered. Mortgage taken over real property automatically extends to plant and fixed machinery.
Intellectual property	Pledge	No possession of assets charged by the pledge is required.
Business/goodwill	Not possible	No concept of floating charge

Insolvency proceedings are administered by the court for the benefit of all creditors and enforcement of security without court assistance is not possible.

Any creditor, whether secured or unsecured, must file a petition with the relevant insolvency court in order to be admitted to the insolvency procedure.

Save in case of regulated entities that may be subject to special provisions, the priority of claims of creditors on an insolvency are as follows:

- Costs and expenses relating to the insolvency procedure
- Any person or entity which has a general lien (e.g. employees and state taxes) or special lien
- Secured creditors
- Unsecured creditors

Netherlands

- As the concept of trust is not recognised it is not possible to grant rights of mortgage or pledge to a security trustee but security can be granted in favour of a syndicate member on behalf of a bank syndicate using other methods including parallel debt structures.
- In principle, Dutch law does not prohibit the granting of upstream guarantees by Dutch companies provided that this is permitted by the company's Articles of Association.

Asset Type	What forms of security can be granted	Comments
Real estate	Mortgage	Notarial deed of mortgage and registration with the land registry (Kadaster).
Shares	Pledge	Pledge on registered shares requires execution of notarial deed of pledge. Articles of Association should be checked.
Receivables and contractual rights	Disclosed or undisclosed pledge	A disclosed pledge is created by private deed and notice thereof to the debtors. An undisclosed pledge is created either by a notarial deed or a private deed which is then registered with the Dutch tax authorities (for date stamping purposes only).
Bank accounts	Disclosed pledge	Execution of a deed of pledge and notification to the bank.
Plant and machinery and other movable assets	Possessory pledge or non-possessory pledge	Requires a notarial or private deed of pledge. Possessory pledges are generally considered impractical. If created by private deed, registration with tax authorities is required (for date stamping only).
Intellectual property	Pledge	Notarial or private deed of pledge. If created by private deed, registration with the Dutch tax authorities is required (for date stamping only). Registration of the security with relevant IP registers binds third parties.
Business / goodwill	Not possible	No concept of floating charge.

The concept of a floating charge is not recognised. Each class of assets must be identified and separate security documents are required for each asset class.

Enforcement of security (other than financial collateral) is generally by public auction although private sales are possible with the consent of the court or the pledgor at the time of enforcement.

Financial collateral can be sold, appropriated or set off (if cash) in accordance with the EU Financial Collateral rules.

Mortgages and pledges are in principle entitled to enforce their security rights outside the insolvency of the grantor of the security.

The priority of claims of creditors in insolvency are as follows:

- Tax claims and claims for the payment of social security premiums.
- Secured Creditors (subject to certain exceptions)
- Estate claims and costs i.e. claims for costs incurred after bankruptcy and costs of bankruptcy proceedings
- Preferential claims including bankruptcy filing costs, claims by tax authorities and claims by the National Institute for Social Insurance.
- Non-preferential or common claims

The tax authorities have special preferential rights of recourse to certain assets owned by third parties that are located on the debtor's premises and used for the operation of its business, such as machinery, equipment and furniture but not trading stock but not where the third parties have real ownership of the assets in question.

Spain

- Spanish law does not recognise the concept of a security trustee holding security on behalf of a syndicate of lenders but techniques have been developed to enable security to be granted in favour of a syndicate member on behalf of a bank syndicate.
- It is possible for a Spanish company to grant upstream guarantees.

Asset Type	What forms of security can be granted	Comments
Real estate	Mortgage	Must be notarised and registered at the Land Registry. Attracts stamp duty, the amount of which varies by region.
Shares	Pledge	Must be notarised. Permits the pledge of existing issued shares only. Extension to future shares will require a pledge update.
Receivables and contractual rights	Pledge	Must be notarised. Written notice to the third party debtor is advisable but not a requirement for perfection of the pledge.
Bank accounts	Pledge	Must be notarised. Written notice to the account holding bank is advisable but not a requirement for perfection of the pledge.
Plant and machinery	Chattel mortgage	Must be notarised and registered at the registry of moveable property. Attracts stamp duty, the amount of which varies by region.
Intellectual property	Chattel mortgage	Must be notarised and registered at the registry of moveable property. Attracts stamp duty, the amount of which varies by region.
Business / goodwill	Not possible	No concept of floating charge

Security interests as a whole can be "separated" and "reserved" for the benefit of a certain creditor. The secured creditor, while preserving its full claim against the rest of the assets of the debtor, will have a privileged right enforceable against the relevant asset

Enforcement of a mortgage is regulated and must be by way of public auction

A moratorium on enforcement can apply during insolvency proceedings

The ranking of claims of creditors on an insolvency are as follows:

- Special priority claims: claims of secured creditors (i.e. benefiting from in rem security over specific assets), to the extent of the realisation value of the charged assets. Therefore any such claim will rank as an ordinary claim as regards any portion of it which has not been settled after realisation of the relevant asset
- General priority claims: certain claims in respect of salary, tax, social security, tort and other situations contemplated by statute as priority claims
- Ordinary claims
- Subordinated claims, including: (i) claims that have been belatedly reported into the proceedings; (ii) claims that are contractually subordinated to all claims against the debtor; (iii) accrued interest of any type (whether ordinary or default interest), to the extent it is not secured in which case it would be treated as a priority claim in the above terms; (iv) fines and other penalties imposed by public authorities; (v) claims where the relevant creditor and the debtor are "related parties", as defined under the Insolvency Act; (vi) certain claims where the creditor has acted in bad faith as defined under the Insolvency Act.