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Private Credit 2026

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Introduction

Stelios G Saffos, Dan Seale, Peter Sluka and Alfred Xue
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INTRODUCTION

Contributed by: Stelios G Saffos, Dan Seale, Peter Sluka and Alfred Xue, **Latham & Watkins LLP**

Latham & Watkins LLP is ranked in Band 1 in the USA by Chambers and advises sophisticated global direct lenders and private capital providers on hundreds of front-end transactions each year, including first and second-lien, unitranche and mezzanine loans, and preferred equity and other junior capital transactions. Latham advises on more lender mandates in EMEA and the US than any other firm. Latham advises across a range of deal sizes stretching from the middle market through the largest and most complicated unitranche transactions with multibillion-dollar deal sizes. Latham's lawyers regularly design and implement multi-tiered capital structures and solutions for clients and handle subordination, security and intercreditor issues, as well as restructurings, equity co-investments, and tax and regulatory matters. Latham's direct lending and private debt practice draws on a long history of innovation. With more than 200 lawyers in the US and close to 400 globally, the firm advises the most active lenders, funds, credit platforms and investment managers, as well as borrowers, on the full range of transactions.

Contributing Editors

Stelios G Saffos is global chair of Latham & Watkins' Capital Markets and Public Company Representation practices and global chair of the Hybrid Capital practice. He advises leading private equity sponsors, asset managers, financial institutions and companies on investments and financings at all levels of the corporate structure. Stelios has represented sponsors, issuers, direct lenders and underwriters across industries in 1,000+ transactions, including 650+ private credit and hybrid capital transactions, 270+ high-yield offerings, and 225+ IPO and other public equity offerings.

Dan Seale is global chair of Latham & Watkins' Banking & Private Credit practice and represents clients in complex leveraged finance transactions, with a particular focus on acquisition financings. Having advised on hundreds of transactions over more than two decades, Dan draws on his broad exposure to the global financial markets and its key participants to advise banks, private credit funds and borrowers on large-cap syndicated loans, middle-market loans, unitranche loans, asset-based loans (including FILO and back-leverage financings) and other private credit transactions.

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Navigating Opportunities and Challenges in the Global Private Credit Market

Looking back on 2025 and looking forward into 2026, the rapidly growing private credit market has emerged as a formidable force in the global financial landscape, offering a compelling alternative to traditional syndicated bank lending and other public market products including high-yield bonds. This Chambers 2026 Private Credit guide provides an overview of trends and developments in the private credit market in the most active jurisdictions, including the United States, the UK and beyond.

A Global Perspective on Private Credit

Private credit lending to public and private companies has grown exponentially over the last decade. The global private credit market now stands at approximately USD2 trillion – ten times its size in 2009 – with dry powder reaching record levels of USD450–550 billion. Projections from leading analysts suggest global private credit assets under management could approach USD3 trillion by 2028 (and some observers believing that it might have already reached USD3 trillion if dry powder is included). After slower initial development, market watchers are now predicting that Europe's private credit growth rate may potentially outpace the continued growth of the United States, with European assets potentially growing by USD800–900 billion over the same period.

The market's expansion is not confined to any single region but continues as a global phenomenon. In the United States, private credit is an established asset class and has become a staple of corporate finance, offering flexible and tailored solutions to borrowers. Traditional sponsors and corporate borrowers have also looked to private credit to finance a wider range of asset classes, from real estate and infrastructure to technology and healthcare. In infrastructure, private credit is being used to fund large-scale projects such as renewable energy developments and, increasingly, infrastructure related to artificial intelligence (AI), including data centres and power grid upgrades.

In Europe, the market expansion varies by country and has been one of the areas of opportunity for US asset managers expanding abroad, with some markets outperforming others with robust growth and growing private credit penetration. In emerging markets, private credit is beginning to play a pivotal role in bridging the financing gap for mid-sized enterprises. We see this global trend continuing as established asset managers seek increased opportunities in emerging markets and as the leading asset managers continue to exceed their fundraising targets.

Key Themes and Trends

The guide examines several themes and trends that have emerged as both causes and effects of evolving market conditions.

Market consolidation and strategic partnerships

The private credit market continues to evolve through a wave of consolidation, with larger firms acquiring smaller players to enhance their market presence and scale. Strategic partnerships between banks and private credit funds have also become increasingly common, allowing both parties to leverage their respective strengths. This "co-opetition" model enables banks to reduce their risk while maintaining client relationships and provides private credit funds with access to a broader range of investment opportunities. Looking further into 2026, market participants are cautiously optimistic, with a focus on discipline, governance, strong underwriting and better deal structures.

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Regulatory developments

As the private credit market matures, it may face increased scrutiny from regulators even as public market options become more competitive. In the United States, the Office of the Comptroller of the Currency and FDIC issued a joint statement in December 2025 rescinding the 2013 Leveraged Lending Guidance. This could allow banks greater flexibility to underwrite risk and compete more directly with private credit across leverage levels. Additionally, new guidelines from the National Association of Insurance Commissioners that took effect on 1 January 2025 reclassified certain sections of insurers' financial statements, providing better insight into their private credit activities and increasing transparency regarding "ratings inflation" concerns in privately rated placements. Against that changing competitive backdrop and as private credit continues to expand its LP base, there have been calls for closer regulatory scrutiny of private credit funds and its suitability for certain investors.

In the UK, the Bank of England announced in early December 2025 its intention to stress-test the private markets to reveal any risks and their interconnectedness with the broader UK financial system, amid concerns that the resilience of private markets to a severe downturn has not yet been tested, and Governor Andrew Bailey highlighted the need for continued vigilance. These regulatory developments underscore the case for private credit providers to enhance their compliance and reporting frameworks to mitigate potential risks.

Innovative financing structures and the rise of AI infrastructure

Private credit providers are continually innovating to meet the evolving needs of borrowers. The surge in AI-related investments has become a major theme, with private credit playing an increasingly crucial role in funding the upfront costs of purchasing graphics processing units (GPUs), building data centres and upgrading power grids. Increasing demand for private credit in 2026 is likely to be no different from 2025, and we expect that the pace of AI-related infrastructure spending will only accelerate. BlackRock estimates that AI investments through to 2030 will require significant upfront spending on computing, data centres and energy infrastructure. JPMorgan reports that US data centre-related bond issuances reached USD15.1 billion in 2025, and estimates that around USD150 billion will be needed in 2026–27 to convert short-term construction loans into long-term financing for nearly 20 gigawatts of data centre capacity. Private credit stands to benefit from that strong demand.

Portfolio challenges

Private credit has historically had low default rates even through multiple credit cycles, and the product has shown remarkable resilience. That said, private credit loans from the very active 2021 vintage are likely set to mature in 2028, encouraging early refinancing and, where required, restructuring, and we expect to see significant refinancing activity if those transactions are not paid off via exit events.

The immediate post-Covid vintage might present particular challenges, with leverage levels consistent with the high valuations of the time and significant borrower bargaining power. With those credits in mind, direct lenders are increasingly proactive about engaging with borrowers about potential problems and developing solutions before the problems materialise, including through proactive amendments, negotiating with sponsors for additional equity injections and managing liquidity through PIK flexibility.

Junior and hybrid capital

Junior and hybrid capital solutions provided by private credit, structured equity funds and private equity have emerged as a crucial financing tool for sponsor-backed and non-sponsored companies alike. These capital providers are increasingly offering junior and hybrid capital solutions that blend debt and equity elements, enabling sponsors to monetise assets effectively, de-lever debt capital structures, and provide more dry powder for acquisitions, while providing investors with downside-protected returns.

For the right issuers, the availability of non-cash pay instruments (which is a customary feature of junior and hybrid capital solutions) allows for greater flexibility to conserve cash as businesses ramp up, and remains an attractive option for some sponsors and creditors alike.

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Continuation funds

Additionally, in a market that has seen subdued M&A levels, sponsors have been holding assets for longer periods, leading to a rise in the use of continuation funds. Direct lenders are increasingly supporting the financing of such vehicles, particularly in the middle market. Market participants expect limited partners to continue backing continuation funds when valuations are independently validated and general partner economics are clearly aligned. Direct lenders are also pitching pre-IPO junior, equity-like debt solutions to help sponsors de-lever prior to a listing, responding to expectations of an uptick in IPOs in 2026.

UK and European trends and developments

The UK and European private credit markets are experiencing their own set of trends. Pricing in European private credit has continued to tighten, with median spreads on senior and unitranche loans declining.

New regulations in Europe have widened the scope of assets in which individuals can invest, accelerating a drive towards retail and private wealth investors alongside open-ended funds. Insurance balance sheets and wealth investors are set to play a larger role in private credit fundraising, while strategies such as NAV financing, asset-backed lending and significant risk transfers (SRTs) are converging with the asset class.

Terms, covenants and documentation

The growth of private credit was driven by lenders acting as principal investors and negotiating for tighter terms, covenants and documentation, coupled with strong returns. As the market has evolved and matured, and competition intensified, these terms have been adjusting to reflect increased competition both from new entrants and from public market debt products. To close deals in 2025, private credit lenders evolved from just having the capacity to deploy large quantities of dry powder, and the best private credit lenders have focused on being able to deliver greater capabilities across a wider spectrum of deals and also marketed their ability to deliver certainty of terms and funding. Private credit agreements continue to feature bespoke terms tailored to the borrower's specific needs and the lender's risk appetite, but private credit providers are now able to provide greater flexibility on terms, metrics, covenants and PIK options.

Looking further into 2026, market participants expect increasing discipline, underwriting and diligence. The most sophisticated and established private credit providers are likely to continue to place greater emphasis on the quality of underwriting and documentation, with sole underwriters or tighter club deals remaining a focus and preference over larger, more aggressive deals that resemble broadly syndicated transactions.

Conclusion

2025 showed that private credit is resilient, defying some gloomy predictions and sensationalist headlines, but the private credit market endured and continued to grow.

If 2026 proceeds as predicted, with an increase in M&A activity, strong IPO markets, and continued strong refinancing and recapitalisation activity, we expect to see private credit continue to deliver steady returns for investors and retain a low default rate.

We hope that this 2026 edition of the Private Credit guide can help market participants better navigate the opportunities and challenges that lie ahead.

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UK: Law & Practice and Trends & Developments

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UK

Law and Practice

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1. Private Credit Overview

1.1 Private Credit Market

Continued Growth

In 2025, private credit continued to represent a key sector of the UK leveraged finance market, especially in sponsor-backed leveraged finance and sectors that are underserved by banks. Private credit funds are now regularly involved in large-cap transactions due to continuing demand for flexible financing and sponsors' need for alternative capital sources given the tightening of the syndicated market and greater geopolitical risk.

Dual-Track

Dual-track processes, which explore both syndicated and direct lending, are becoming common in the large-cap space and, increasingly, the mid-market. This strategy creates competitive tension between banks and private credit funds, with sponsors benefiting from greater flexibility and better pricing.

Sector Focus

Private credit is active across various sectors, particularly in technology, industrials, consumer goods and financial services.

Path Ahead

Looking ahead, market participants are expected to innovate in capital structure management and risk strategies. Despite the syndicated markets having a strong 2025, private credit lenders have been focusing on opportunities where sponsors require a more bespoke structure or deeper leverage. With M&A activity on the rise, 2026 is expected to be a strong year for private credit.

1.2 Interaction With Public Markets

Private credit lenders maintained their competitive edge in the upper mid-market by reducing margins and accommodating higher leverage levels, retaining roles in many prominent deals. This adaptability is further evidenced by their ability to offer financing solutions across the capital structure, including junior and hybrid capital instruments, effectively addressing borrowers' needs in the face of rising capital costs and liquidity demands.

Private credit lenders have also leveraged their competitive advantage in transactions involving large sterling tranches, which are more challenging in the syndicated loan market due to their relative illiquidity. However, the resurgence of the syndicated loan market has led some private credit lenders to refocus on mid-market strategies, where they continue to provide value and maintain market presence.

In the lower mid-market, ongoing bank disintermediation is driving a notable trend of collaboration between banks and asset managers. This collaboration allows for innovative financing solutions and the sharing of expertise, benefiting borrowers seeking more tailored and flexible funding options.

While there have been certain refinancings of private credit debt with public debt market products, private credit transactions have remained prevalent – especially where there are sterling tranches or bespoke transaction structures.

1.3 Acquisition Finance

Despite the reopening of the syndicated market, private credit has been actively used for headline acqui-

sition financing transactions in Europe for the last few years.

A notable development is the increasing collaboration between private credit lenders and banks. Despite competing for market share, both parties are finding common ground and working together on deals. One significant feature is the use of holding company ("Holdco") financings, where private credit lenders provide financing at the Holdco level while banks syndicate a loan or bond at the operating company ("Opco") level. This synergy allows both private credit lenders and banks to leverage their strengths, offering more comprehensive financing solutions to meet the diverse needs of borrowers.

1.4 Challenges

Pricing remains a key pressure point in private credit transactions, given the competition from the syndicated market.

In the European large-cap syndicated loan market, covenant-lite structures have become standard, especially in sponsor-led transactions. Private credit financings, which traditionally include maintenance covenants, are now shifting towards covenant-lite structures, particularly in unitranche and senior direct lending, as private credit funds increase their presence in the large-cap leveraged finance market. This shift highlights private capital providers' growing influence and adaptability, as they innovate to meet borrowers' needs and compete in the large-cap market.

1.5 Sponsored/Non-Sponsored Debt

Private credit lenders are increasingly providing debt to both sponsor-backed and public companies. For non-sponsor-backed companies and public companies needing event-based funding, private credit offers certainty of funding and terms, unlike the high-yield and syndicated markets. Private credit funds are also typically more flexible when it comes to underwriting deals, which is highly valued by companies navigating complex financial situations. Features like the payment-in-kind (PIK) toggle allow deferred interest payments, adding financial flexibility. Private credit transactions also maintain higher confidentiality, which is crucial for sensitive transitions like public-to-private deals.

Operationally, private credit deals offer streamlined interactions, with borrowers typically dealing with a single lender, or a small group of lenders, for consents and amendments. This contrasts with the complex process of negotiating with large syndicates in the syndicated loan market, simplifying financing management and enhancing adaptability to changing business needs.

1.6 Recurring Revenue Deals and Late-Stage Lending

While earnings before interest, taxes, depreciation and amortisation (EBITDA)-positive businesses continue to be the primary focus for private credit lenders, there is growing interest in the recurring revenue market within the UK and Europe. Private credit funds are increasingly allocating capital to pre-EBITDA businesses. These funds are able to offer flexible financing structures tailored to the unique needs of these businesses, accommodating their growth trajectories and cash flow patterns.

These businesses, often in sectors like technology and subscription-based services, generate predictable and stable cash flows through recurring revenue models. This financial predictability is appealing to private credit lenders, who can assess the potential for future profitability and growth, providing financing solutions that support these businesses as they scale.

1.7 Deal Sizes, Fund Sizes and Fundraising

Typical Deal Sizes

Jumbo deals

Over GBP1 billion, provided by a "club" of private credit lenders, with major funds holding "anchor" portions (GBP500 to GBP750 million).

Mid-cap

GBP150 million and above, provided by a single private credit lender or "club" deals, with each holding GBP150 to GBP250 million portions.

Typical Fund Sizes

Private credit funds manage substantial capital, with sizes varying by strategy, market conditions and fundraising success. Established lenders have flagship funds of more than USD10 billion, with mid-market or specialist funds ranging from USD2 to USD5 billion.

Challenges in Fundraising for Private Credit Providers

One-stop shop

Capital allocators prefer a one-stop shop approach with a pan-European focus, allowing consolidated investment across the capital structure for a streamlined strategy.

Saturation

The upper mid-market is saturated, increasing competition. Interest is shifting to the less competitive lower mid-market, offering more opportunities and potential returns.

Challenges for newcomers

Capital concentration around established funds poses challenges for new entrants. Established funds with proven track records and resources require newcomers to differentiate themselves through innovative strategies or a niche focus.

Default risk

Private credit market participants report low default rates despite macro challenges. However, lenders must monitor and manage default risks, as they impact capital access.

1.8 Impending Regulation and Reform

The level of regulatory scrutiny in private credit markets increased in 2025. The government ran an inquiry into the growth of private markets in the UK, which published a detailed report and recommendations in January 2026. Recommendations include that the UK financial services regulators should continue to monitor developments in the private credit markets closely. The Bank of England launched a system-wide exploratory scenario exercise at the end of 2025, which will explore how private credit markets might respond to a severe downturn, and any wider financial stability implications. As private credit funds broaden their capital sources to include high net worth individuals and family offices, they may face increased regulatory scrutiny, despite not being deposit-taking institutions, as the private credit market continues to mature.

2. Regulatory Environment

2.1 Licensing and Regulatory Approval

Lenders must have an appropriate licence to carry out regulated activities in the UK. Whether lending requires a licence depends on the nature of the loan and the borrower's sophistication:

- no licence is needed for cash loans over GBP25,000 for "business use"; and
- preferred equity/bonds/convertible instruments can be issued to lenders if the lender is a "professional client" under UK Financial Conduct Authority (FCA) regulations.

Corporate lending alone does not generally require UK authorisation but is subject to UK AML requirements, necessitating FCA registration. Offshore entities lending to UK borrowers are typically exempt.

Lenders can generally take security over a UK borrower's assets unless this involves mortgages or property rights over residential real estate.

2.2 Regulators of Private Credit Funds

The FCA is the primary regulator for private credit funds in the UK.

2.3 Restrictions on Foreign Investments

UK-based private credit managers must adhere to UK sanctions regimes under the Sanctions and Anti-Money Laundering Act 2018, which is the legal basis for imposing, updating and lifting sanctions.

HM Treasury, through the Office of Financial Sanctions Implementation, enforces financial sanctions, including asset freezes on designated persons and restrictions on investment and financial services.

Foreign investment in UK private credit funds is only allowed if it does not come from sources on the UK financial sanctions lists or violate UK sanctions.

2.4 Compliance and Reporting Requirements

UK FCA-regulated private credit funds must comply with various regulatory and reporting requirements. Generally, the UK regulatory regime requires:

- compliance with rules for senior managers and material risk takers;
- compliance policies for risk management, market abuse, conduct and staff training;
- maintenance of regulatory capital; and
- reporting on FCA metrics related to regulatory compliance.

UK-regulated lenders or those registered with the FCA for AML purposes have ongoing AML reporting obligations.

The FCA remains focused on valuation practices, conflicts of interest management, and risk management. It published findings from a review of valuation practices in March 2025, identifying various areas for improvement.

2.5 Club Lending and Antitrust

Private credit providers can offer sole underwrites or participate in club deals for large transactions on competitive terms. Forming such clubs has not encountered any regulatory barriers.

3. Structuring and Documentation

3.1 Common Structures

Structures

Common structures include:

- unitranche (term + delayed draw facility) by private credit lenders, with a super senior revolving facility from a bank;
- Holdco facility by private credit lenders, with traditional syndicated structures at Opco level (eg, syndicated loans or high-yield bonds);
- subordinated debt by private credit lenders alongside senior secured financing (syndicated loans or high-yield bonds); and
- preferred equity.

Revolving and Delayed Draw Facilities

Private credit lenders often provide a delayed draw/acquisition-capex facility, a term loan available post-closing (eg, three years) for bolt-on acquisitions. They do not typically provide revolving credit facilities (RCFs) or ancillary facilities. For tight acquisition timelines, private credit lenders may offer a hollow tranche revolving facility for a limited period (eg, 90 days), functioning like a term facility, expected to be replaced by an RCF. Unplaced commitments by the timeline's end are cancelled or treated as term facility commitments. Many direct lenders collaborate with RCF providers to leverage intercreditor synergies for sponsors.

3.2 Key Documentation

Typical documentation for private credit transactions includes the following.

- A facilities agreement, which covers commercial terms, representations, undertakings, events of default, transfers, amendments and loan mechanics.
- An intercreditor agreement, which governs rights between creditor classes. Unlike evergreen intercreditor agreements which are typical in syndicated markets, private credit intercreditor agreements are specific to debt classes and terms between unitranche and super senior RCF lenders. In Holdco facilities, private credit lenders are not typically party to Opco-level intercreditor agreements but enter a subordination agreement for shareholder debt.
- A fee letter, which documents agreed fees and payment terms.

First-Out-Last-Out (FOLO) Transactions

The rise of collaborative structures like unitranche and super senior debt has reduced FOLO transactions. When used, FOLO transactions are documented under a single credit facility, with a side agreement dividing the loan into first-out and last-out tranches. The higher-risk last-out tranche offers a higher margin, aligning with different lenders' risk preferences.

3.3 Restrictions on Foreign Direct Lenders

In England, foreign lenders do not typically need authorisation to make loans unless engaging in "regulated activities" related to "specified investments" under the Financial Services and Markets Act 2000 (FSMA). "Regulated activities" that require authorisation under Section 19 of the FSMA include accepting deposits, dealing in investments as principal or agent, arranging deals, managing and advising on invest-

ments and dealing with insurance contracts. There are also "change in control" requirements for investing in entities in "regulated activities".

Under Section 21 of the FSMA, only authorised persons can communicate an invitation or inducement to engage in an "investment activity" (a "financial promotion") in the course of business. Unauthorised persons can communicate a "financial promotion" if approved by an authorised person.

Corporate lending is not a regulated activity in the UK, unlike lending to individuals or certain partnerships, which may fall under the UK consumer credit regime. Corporate lending is subject to UK AML requirements.

The UK does not differentiate between the regulatory treatment of term and RCF loans and has no general restrictions on the sale, transfer or sub-participation of loans.

3.4 Use of Proceeds and Acquisition Financings

There are no restrictions on using private credit for take-privates and acquisition financing and no restrictions on a borrower's use of proceeds under English law.

3.5 Debt Buyback

Debt buybacks by borrowers are permitted under English law and facility agreements will typically include provisions governing this. There are usually three options.

- Open order transactions – The borrower notifies the lenders of the total amount of the loans it intends to acquire and the price offered. If the offer is oversubscribed, offers from the lenders are accepted on a pro rata basis.
- Solicitation transactions – The borrower solicits offers from lenders to purchase its debt, selecting the lowest offers first and, where offers are at the same price, purchasing the debt on a pro rata basis.
- Bilateral transactions – This involves a direct negotiation between the borrower and a single lender. The parties are free to agree the terms. This option is often used when the buyer and seller have a pre-existing relationship or when confidentiality and discretion are important.

Private credit lenders will often require that the open order process is completed first before there is a solicitation or bilateral process.

3.6 Recent Legal and Commercial Developments

Similar to the broadly syndicated market, private credit lenders are focused on limiting the "trap doors"/loopholes in covenants that might allow for sponsors/borrowers to undertake liability management exercises (ie, uptiering transactions or dropdown/asset-stripping transactions). This has led to the development of a few "blockers" – ie, contractual protections to prevent the borrower group/sponsor from undertaking these transactions.

Key "blockers" that are now included in private credit transactions are as follows.

- preventing key assets being transferred to unrestricted subsidiaries, which could use them as collateral for new, senior debt;
- ensuring key assets remain with guarantors, limiting transfers to non-guarantor restricted subsidiaries by imposing caps;
- capping the aggregate value of assets moved to unrestricted subsidiaries;
- stopping majority lenders from subordinating existing lenders' security/introducing priming debt without unanimous consent; and
- preventing automatic release of a subsidiary guarantor's guarantee if it becomes non-wholly owned through permitted transactions.

It is expected that such blockers may continue to develop given the proliferation of liability management transactions, particularly where there are instances of so-called lender-on-lender violence.

3.7 Junior and Hybrid Capital

In the current high interest rate environment, many sound businesses face increased debt service and reduced senior debt capacity. Junior and hybrid capital solutions help alleviate these pressures. Junior capital, which typically includes subordinated debt or

mezzanine financing, supplements senior debt with flexible terms, such as interest deferral or PIK interest, aiding cash flow management. Hybrid capital solutions, including convertible debt or preferred equity, offer tailored financing with potential capital appreciation and reduced cash outflows.

Preferred equity is attractive in high interest rate or financial distress situations as it offers fixed dividends, priority in liquidation and greater security than common equity as well as higher returns than debt. Preferred equity does not impose the same repayment obligations as debt, preserving cash flow and reducing strain. It allows companies to raise capital without diluting common equity holders' control, as it usually lacks voting rights.

In high interest rate environments, it offers favourable terms compared to debt costs, and it aids recapitalisation or restructuring in financial distress situations.

Common Junior/Hybrid Debt Structures

The common junior/hybrid debt structures are as follows:

- Holdco facility by private credit lenders with traditional Opco-level structures (eg, syndicated loans or high-yield bonds);
- junior/second lien facility by private credit lenders with senior financing from syndicated loans or high-yield bonds; and
- preferred equity.

Private credit lenders may also take equity shares (eg, common equity or warrants) along with providing debt.

Security Package

Typically, enforcement for Holdco instruments is above the Holdco borrower, with security over shares and receivables granted by its immediate shareholder. Alternatively, enforcement may be below the Holdco borrower, with a holding company covenant to prevent leakage, involving a share and receivables pledge over the entity below and an account pledge from the Holdco borrower.

3.8 Payment in Kind/Amortisation

In private credit transactions, PIK facilities are common, especially at the Holdco level, offering a "pay-if-you-want" option. Borrowers can choose to pay interest in cash or capitalise it, with discounts for cash payments, enhancing cash flow flexibility during periods of financial constraint.

Senior-level facilities are usually cash-pay, with an option to PIK interest for a set number of periods, applying a premium for deferred payments to compensate for increased risk.

Amortisation is not typically required, with lenders preferring bullet repayment at maturity. For incremental facilities, loan documents often require that additional debt should not be amortising unless existing lenders receive the same terms.

3.9 Call Protection

Call protection is a key feature in private credit loans. Lenders will typically require a prepayment premium ("make-whole") to compensate for the interest income lost due to early repayment. The structure of call protection varies and lenders also agree to a declining premium schedule (eg, NC1, 101). The exact prepayment fee terms are a matter of commercial negotiation.

4. Tax Considerations

4.1 Withholding Tax

While principal and fee payments are not subject to UK withholding tax, interest payments are generally subject to withholding tax of 20% under the current law (proposed to rise to 22% from 6 April 2027).

Double Tax Treaty Exemption

Private credit lenders often rely on an exemption under a double tax treaty (DTT) if no domestic exemption is available. The conditions of the DTT and tax authority requirements must be analysed to ensure compliance. For example, the benefit of a DTT can generally only be claimed by persons that are "residents" of one or both of the contracting states. A person is usually a "resident" of a contracting state if they are "liable to tax" in it by reason of domicile, residence, etc (Article

4 (1) of the OECD model tax convention). If a private credit lender is lending through a tax transparent lending vehicle – ie, where the partners or members of the entity are directly responsible for tax arising on the income or gains of the entity, the vehicle itself is not "liable to tax" in that contracting state for the purposes of that treaty and, therefore, will not be a "resident" of that contracting state for those purposes. The application of the DTT to the vehicle would generally be denied.

Beneficial owners of the interest received by the tax transparent lending vehicle should seek relief instead. The UK's double tax treaty passport (DTTP) scheme allows expedited authorisation for non-UK lenders to receive UK source interest in line with the DTT rate of withholding tax. To obtain a DTTP, the lender must provide a tax residence certificate from its home jurisdiction tax authority and seek confirmation from HMRC as to its entitlement to treaty benefits.

Tax transparent lending vehicles can only use the DTTP scheme if all constituent beneficial owners of the income qualify for the same DTT benefits under the same DTT. If they do not, the DTTP is not applicable and each beneficial owner will need to make a long-form certificated treaty relief claim.

Not all DTTs offer complete exemption from withholding tax and DTTP access can be complex, so other exemptions like the qualifying private placement (QPP) exemption should be considered.

Domestic Exemptions

QPP

Conditions relating to the lender, borrower and terms of the debt (eg, a debt term under 50 years and at least GBP10 million (can comprise a placement of several debt securities)) will need to be satisfied. The lender (or its partners on its behalf) must make several confirmations, including residence in a "qualifying territory" with a DTT with the UK that includes a non-discrimination clause and the borrower must not be connected to the lender. The latter requires careful consideration if the private credit lender is participating in a loan by the main fund's lending vehicle.

Sovereign immunity

This public international law principle exempts certain foreign government entities from withholding tax on income earned in another country.

Corporate-to-corporate

This domestic exemption is available if the private credit lender is lending through a UK tax-resident company or a UK permanent establishment.

4.2 Other Taxes, Duties, Charges or Tax Considerations

For private credit lenders using tax transparent vehicles, a key consideration is that, under the Loan Market Association (LMA) definition of "qualifying lender", these vehicles are not considered "qualifying lenders" because they are not "beneficially entitled" to the interest. However, their ultimate partners or members are. The definition must therefore be amended to reflect this. If a lender is not a "qualifying lender", it cannot benefit from change in law protection in respect of the gross-up.

4.3 Tax Concerns for Foreign Lenders

Certain lending vehicles, particularly tax transparent vehicles, may not qualify for a DTTP. In these cases, a long-form certificated withholding tax treaty relief claim for each beneficial owner of the interest income is required, which can be time-consuming. If an interest payment is due before completion, the QPP exemption might be used as an alternative or short-term back-stop until HMRC grants treaty relief.

The QPP exemption is theoretically administratively simple, requiring only a QPP certificate from the lender to the borrower. However, there is some market uncertainty around the interpretation of the regulations. If the QPP exemption is not viable as a back-stop, it may be possible to include an interest deferral mechanism in the facilities agreement allowing the borrower to defer payments until HMRC issues a gross payment direction.

5. Guarantees and Security

5.1 Assets and Forms of Security

Under English law, taking security is a relatively straightforward process, allowing security over a wide range of asset classes through charges, mortgages or pledges. Commonly secured assets in sponsor-backed private credit financings include shares, bank accounts and intercompany receivables, with a floating charge often granted over other company assets.

The security package's scope depends on the transaction's nature, guided by "agreed security principles". For instance, loans to groups with valuable intellectual property or real estate may secure these assets to enhance the lender's position.

Loan agreements typically require material subsidiaries to provide security and guarantees similar to those of the borrower. The material subsidiary definition is negotiable but generally includes entities representing a certain percentage of the group's EBITDA or assets, which is typically 5%. Holding companies of material subsidiaries are usually expected to provide share security over the material subsidiaries' shares and any intercompany receivables they owe.

In leveraged financings, a charge is commonly granted by a chargor in favour of the lender (the "chargee"), allocating specific assets to satisfy debt obligations. Charges can be fixed, attaching immediately to defined assets with the chargee exercising control, or floating, covering a fluctuating pool of assets and "crystallising" into a fixed charge upon certain events.

Importantly, the title and possession of the asset remain with the chargor, unlike mortgages or assignments by way of security, which transfer the security provider's title conditionally on release of the security or discharge of secured obligations. Pledges, creating possessory security, are rare in leveraged financings.

Perfection of security interests is crucial for validity and priority over other creditors. Perfection steps depend on the secured asset and the nature of the security interest but are generally straightforward and not costly. They include the following.

- Registration – All charges by an English company or limited liability partnership must be registered at Companies House within 21 days. For certain assets, registration at specific UK asset registries, like the Land Registry for real estate, is necessary.
- Notice – Providing notice of the security interest to third-party debtors or account banks is essential, as the notice timing often determines the security's priority.

For security over English real estate, specific procedural steps and regulatory conditions must be met. An overseas entity granting security over a qualifying estate in England and Wales must be registered in the register of overseas entities at UK Companies House and comply with the requirements under the Economic Crime (Transparency and Enforcement) Act 2022 to register a mortgage at the Land Registry.

Once validly created and perfected, security under English law does not typically require ongoing maintenance. However, risks exist, such as a fixed charge being re-characterised as a floating charge if the chargee does not exercise control.

5.2 Floating Charges and/or Similar Security Interests

Floating charges over all current and future assets of an English company are commonly granted. Private credit lenders typically require a robust security package with "fixed" security over several asset classes and "floating" security over all or substantially all assets.

5.3 Downstream, Upstream and Cross-Stream Guarantees

Downstream, upstream and cross-stream guarantees may be provided by English companies, subject to having the necessary power, capacity and corporate benefit.

For upstream and cross-stream guarantees, directors must assess the corporate benefit of granting these guarantees and the guarantors' financial standing. They will often seek shareholder approval to ensure alignment with company interests.

In private credit deals, term and revolving facilities and ancillary facilities under the RCF, typically share a common security and guarantee package. This can include permitted secured hedging if hedge counterparties join the intercreditor agreement.

A notable feature of many private credit deals is the super senior ranking of the RCF and certain permitted hedging. This arrangement allows RCF lenders and hedge counterparties to receive security enforcement proceeds before term lenders. This is a hallmark of the UK and European private credit markets. This structure is crucial for attracting RCF lenders, as most private credit funds are not equipped to offer revolving loans and associated clearing facilities.

5.4 Restrictions on the Target

Under the Companies Act 2006 (the "CA06"), public limited companies and their subsidiaries (public limited company or otherwise) are restricted from providing financial assistance for acquiring or refinancing the acquisition of shares in that public limited company, whether listed or unlisted. This includes guarantees, security, indemnities and any other assistance from a target company or its UK subsidiaries. Additionally, a UK public company cannot offer financial assistance for acquiring shares in its UK limited parent company.

Since this prohibition does not apply to private limited companies, lenders financing acquisitions of public limited companies typically require relevant public companies in the target group to re-register as private companies after the acquisition is completed and before providing any financial assistance.

5.5 Other Restrictions

Third-Party Consents

Third-party consents are necessary when there are restrictions on charging or assigning assets such as contractual rights, receivables or leasehold property. For small and medium-sized enterprises, the Business Contract Terms (Assignment of Receivables) Regulations 2018 facilitate access to financing by allowing the assignment of receivables governed by English law to finance providers and nullifying any terms that restrict these assignments in business contracts.

National Security and Investment Act

The National Security and Investment Act 2021 (NSIA) grants the UK government extensive powers to scrutinise acquisitions that may pose national security risks. The NSIA impacts secured creditors taking or enforcing security over certain assets within the scope of the NSIA regime. A mandatory notification requirement is triggered for share security involving legal title transfer or the acquisition of voting rights above defined thresholds in an entity carrying out activities in certain specified sectors subject to the mandatory notification regime under the NSIA. Without prior government clearance, these changes of control are void. The government can also issue a call-in notice if it reasonably suspects a change of control may pose a risk to national security.

Hardening Periods

English law includes several hardening periods before insolvency.

- Transactions at an undervalue – two years.
- Preferences (preferential treatment to one creditor) – six months, extending to two years for connected parties.
- Floating charges for insufficient value – 12 months, extending to two years for connected parties.
- Transactions defrauding creditors (ie, transactions entered into at an undervalue with the intention of putting assets beyond the reach of creditors) – no time limit. Claims against such transactions can be brought by any "victim" and not just administrators or liquidators.

5.6 Release of Typical Forms of Security

The principle of equity of redemption gives security providers the right to recover a secured asset upon satisfaction of the debt. The terms for releasing security are usually outlined in the security agreement or the intercreditor agreement, with the release of security documented in a deed of release executed by the security taker.

Upon release, the relevant registers, such as Companies House or the Land Registry, are also updated to note the release of the relevant security. These filings are generally straightforward and not costly.

5.7 Rules Governing the Priority of Competing Security Interests and/or Claims

Under English law, multiple security interests are allowed and parties can contractually agree on the order and priority of subordination. Besides contractual subordination, deal structures often involve structural subordination, where a parent company's creditors are subordinated to its subsidiaries' creditors. This occurs because assets and cash flows of a subsidiary are typically applied to satisfy their creditors first, leaving parent company creditors with structurally subordinated claims, with claims only on residual value after subsidiaries' creditors are paid. Case law supports both contractual and turnover subordination agreements, as neither violate the pari passu rule or anti-deprivation principle.

The priority of competing security interests under English law is complex. Generally, security interests rank by creation order, with exceptions:

- legal security interests (acquired for value without notice of prior equitable interests) take priority over equitable interests;
- notice to the debtor/contractual counterparty determines priority in successive purported assignments of the same debt or other chose in action;
- required registration at asset registries (eg, the Land Registry), usually determines priority among competing interests by registration order, but Companies House registration does not directly affect priority; and
- subsequent fixed charges have priority over earlier floating charges unless the subsequent fixed charge-holder knows the earlier floating charge includes a negative pledge.

5.8 Priming Liens and/or Claims

Methods to Structure Around Priming Liens

Facilities agreements typically restrict incurring debt or granting guarantees or security that rank ahead of the lender's debt. This will also typically extend to incremental facility provisions, which only permit the incurrence of pari passu debt. Any amendments to these restrictions in the facilities agreement or priority provisions in the intercreditor agreement will also be all-lender consent items. Junior creditors and super senior revolving lenders are usually stayed from enforcing remedies until senior creditors are repaid.

Subordination

Creditors of shareholder loans to the borrowing group are generally expected to become party to the intercreditor agreement as subordinated creditors. Group company creditors providing intercompany loans are also party to the intercreditor agreement, subordinating their claims to senior creditors. Parties may negotiate minimum debt thresholds for these accessions.

Anti-Layering

Private credit lenders typically require an anti-layering provision to prevent additional debt layers that could subordinate existing creditors' claims. These anti-layering provisions restrict borrowers from incurring new debt that ranks senior to existing obligations, maintaining the hierarchy of claims and protecting senior lenders' interests.

"No Short Circuit Clause"

Private credit lenders typically require a "no short circuit clause" to prevent junior creditors from bypassing the priority structure to receive payments or enforce claims ahead of senior creditors. This ensures junior creditors cannot undermine the agreed order of payment priority, such as by accessing collateral or receiving payments before senior creditors are fully satisfied.

5.9 Cash Pooling and Hedging/Cash Management Obligations

Cash pooling and other transactions in the ordinary course of banking operations are not usually restricted under the debt or security covenants in private credit transactions (similar to the treatment of these arrangements in broadly syndicated loans).

Any permitted secured hedging (where such hedge counterparties have acceded to the intercreditor agreement) will usually share the security and guarantee package. There may also be an agreed amount of hedging that will rank super senior.

5.10 Appointment of Collateral Agent

Security is typically granted by security providers to a security trustee (or security agent) who holds the

security interests on trust for the benefit of the secured creditors. This allows the holder of the security (ie, the security trustee or security agent) to remain the same and any associated hardening periods will not restart where there are any changes to the lenders.

6. Enforcement

6.1 Enforcement of Collateral by Non-Bank Secured Lenders

In private credit transactions, a "single point of enforcement" is common, typically involving a share charge over the shares in a key holding company. This allows the secured lender to appoint a fixed charge receiver (FCR) over the shares or an administrator over the parent company to dispose of the shares of the holding company (and operating group subsidiaries). Enforcement of the share pledge takes control of the group away from the sponsor in order to deliver a going concern sale of the operating group.

Asset level security is increasingly rare and usually limited to subsidiary level bank accounts and intellectual property.

Enforcement typically involves an insolvency office-holder, being either:

- an FCR appointed out of court under the security document; or
- an administrator appointed out of court if lenders have a "qualifying floating charge" over most assets, or by court application.

An FCR, appointed by lenders that hold a fixed charge over specified debtor assets, has enforcement powers under the security document, such as taking custody or managing or selling assets to satisfy secured debt.

An administrator has broader legal duties to all creditors. Administration is a more public process and triggers a moratorium.

With adequate planning and some board or management co-operation, enforcement sales can often be pre-packaged, minimising the taint of insolvency.

6.2 Foreign Law and Jurisdiction

Choice of Foreign Law

Contracting parties can choose the governing law and jurisdiction for any contractual disputes. The choice of law may mirror the jurisdiction. If the governing law differs from the jurisdiction hearing the dispute, the foreign court may require expert evidence on the relevant law.

However, English courts will not uphold a choice of law for contractual obligations if to do so would be inconsistent with or overridden by Regulation (EC) No 593/2008 (Rome I) or for non-contractual obligations if it conflicts with Regulation (EC) No 864/2007 (Rome II), both as amended by the UK's post-Brexit The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc) (EU Exit) Regulations 2019.

Submission to a Foreign Jurisdiction

Usually, when parties agree to submit disputes to a foreign court's exclusive jurisdiction, a party cannot bring proceedings in England and Wales in breach of that agreement. If parties choose non-exclusive jurisdiction, this allows disputes to be heard in the jurisdiction specified in the clause, or the parties may be entitled to take disputes to other jurisdictions. If a claim is filed in England and challenged for jurisdiction, the English court will decide if it is competent to determine the dispute.

Waiver of Immunity

The enforcement of a waiver of immunity clause depends on its wording. The courts of England and Wales take a restrictive approach to state immunity under the State Immunity Act 1978 (SIA), which confers general immunity from English court jurisdiction on foreign states with certain exceptions. These exceptions include where the state agrees to submit to the jurisdiction or to submit a dispute to arbitration and the relevant court proceedings relate to that arbitration. The SIA also provides immunity from execution, with exceptions including for written consent to execution or commercial transactions involving property used for commercial purposes.

6.3 Foreign Court Judgments

Foreign Judgments

The enforcement of foreign judgments in the UK depends on the applicable legal regime, which varies according to the jurisdiction of the originating judgment.

The courts of England and Wales do not generally retry the merits of a recognised foreign judgment or arbitral award. However, a party must first bring a claim or application in England and Wales for recognition, after which the judgment or award becomes domestically enforceable. The recognition application process is typically straightforward, but parties can argue against recognition.

Recognition may be refused based on statutory grounds or under common law. Grounds for refusal include:

- fraud in procuring the foreign judgment;
- contradiction with the public policy of England and Wales;
- judgments related to taxes, or fines/penalties, or otherwise based on foreign laws considered penal or revenue-related by English courts;
- violation of natural justice principles;
- improper service of proceedings on the judgment subject; and
- lack of jurisdiction by the foreign court.

Hague 2019

On 1 July 2025, the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ("Hague 2019") came into force in England and Wales. Hague 2019 applies to the recognition and enforcement of judgments in civil and commercial matters from contracting states. Where it applies, Hague 2019 requires the English courts to recognise and enforce judgments from other contracting states (subject to limited grounds for refusal).

The Civil Jurisdiction and Judgments Act 1982 has been amended to facilitate Hague 2019 coming into force. The amendments include a requirement that the party seeking recognition or enforcement of a judgment under Hague 2019 apply to register the judgment in England and Wales. If the judgment complies with the requirements of the Convention, enforcement is mandatory subject to limited grounds for refusal. The party against whom enforcement is sought is not entitled to make submissions on the application to register the judgment. However, either party may apply to challenge a registration decision before it is enforced.

Arbitral Awards

For arbitral awards, specific Conventions or Statutes, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, dictate enforcement requirements. Any irregularities in meeting these requirements can be challenged during the recognition application process in England and Wales.

6.4 A Foreign Private Credit Lender's Ability to Enforce Its Rights

A foreign private credit lender's ability to enforce its rights under a loan or security agreement is no different to the ability of a non-foreign private credit lender to enforce their rights under a loan or security agreement.

6.5 Timing and Cost of Enforcement

The appointment of either an administrator or a receiver can be relatively quick remedies provided that the secured lender observes all contractual and statutory requirements. As a private remedy, the appointment of a receiver can be made on the same day as demand is made of the debtor.

6.6 Practical Considerations/Limitations on Enforcement

Enforcements involve a "change of control", necessitating diligence and structuring similar to M&A deals, including regulatory approvals, material contract reviews and tax planning.

Understanding the intercreditor position of any other creditor classes is crucial. In UK mid-market direct lending, unitranche lenders typically control enforcement, but it is important to consider any super senior RCF or working capital facilities.

Effective enforcement often requires management support. Early thought should be given to manage-

ment engagement, incentives or alternative teams. If any directors are unco-operative:

- lenders may remind them in writing of their personal duties, which, under English law shift towards creditors when insolvency, liquidation or administration is probable; and
- in extreme cases, lenders could use voting rights under share security documents to remove unco-operative directors.

Receivers, administrators or security agents will require indemnification and possibly up-front cost coverage and separate legal counsel.

Insolvency is assessed on a company-by-company basis, so both English and non-English subsidiaries must be carefully managed, with filing obligations monitored according to jurisdiction.

7. Bankruptcy and Insolvency

7.1 Impact of Insolvency Processes

Administration

The purpose of administration is threefold:

- rescuing the company as a going concern;
- achieving a better result for creditors as a whole than in an immediate liquidation (if the first objective is not reasonably practicable to achieve); or
- realising property for secured or preferential creditors (if the first two objectives are not reasonably practicable to achieve).

An administrator can generally be appointed out of court by the debtor company, its directors or a holder of a "qualifying floating charge".

Administrators have broad powers to conduct the business of the company and, subject to satisfying the requirements under the Insolvency Act 1986 (the "IA86"), dispose of its property, including assets under a floating charge. While an administrator is in office, most of the powers of the board of directors are suspended.

A statutory moratorium prevents enforcement of security or guarantees over the company's property without the administrator's consent or leave of the court. The same requirements for consent or permission apply to instituting or continuing legal processes. The moratorium does not extend to security arising under a "financial collateral arrangement" (generally, a charge over cash or financial instruments such as shares, bonds or tradeable capital market debt instruments and credit claims) under the Financial Collateral Arrangements (No 2) Regulations 2003 (FCAR).

Fixed Charge Receivership

An FCR may be appointed pursuant to the Law of Property Act 1925 over assets secured by a fixed charge or more commonly following a default under the terms of a security document that augments the statutory powers.

A receivership may run parallel to liquidation or administration, but an administrator may require a receiver to vacate unless appointed under a "financial collateral arrangement" under the FCAR.

The receiver's primary duty is to realise assets for the appointor, taking reasonable care to obtain the best price, in contrast to an administrator, who acts in the interests of all of a company's creditors and has different statutory objectives. The receiver is entitled to a statutory indemnity for liabilities from asset realisations and may receive a contractual indemnity from their appointor.

Liquidation/Winding-Up

Liquidation involves dissolving a company by realising and distributing assets to its creditors and members according to statutory priority under the IA86. A winding-up takes two forms:

- court-ordered compulsory liquidation; and
- members' or creditors' voluntary liquidation.

In a members' voluntary liquidation, the company's directors swear a statutory declaration as to the company's solvency over the following 12 months. In a creditors' voluntary liquidation, the primary ground is the company's insolvency and inability to pay its debts.

Liquidators can bring or defend legal proceedings on the company's behalf, conduct the company's necessary business, sell company property, execute documents and challenge antecedent transactions.

Pre-Pack Sales

Pre-pack sales involve selling a company's business or assets to a third party or a lender owned vehicle immediately upon entering administration or receivership, with the sale arranged before the administrator's or receiver's appointment. Alternatively, a secured lender may appoint a receiver for the same purpose.

Pre-pack sales are frequently used to implement restructurings through share and/or asset sales in conjunction with a security enforcement.

A lender may "credit bid" its outstanding debt as consideration for the sale of the company/its assets to a lender-owned vehicle. Upon the sale, the debt/existing security is typically released by the security trustee under the terms of the intercreditor agreement. This can be more complicated in capital structures with various classes of secured and unsecured debt, but is typically reasonably straightforward in a direct lending context, where there is often only one secured creditor (or creditor class) with clear priority on who can give enforcement instructions and more limited value protections in the intercreditor agreement.

The advantages of a pre-pack sale include:

- minimised business disruption, especially in receivership;
- pre-selection of a receiver or administrator and pre-agreed sale terms for a quicker, more economical process compared to a sale during trading administration;
- a faster realisation of cash for secured creditors, potentially yielding better returns due to reduced trading disruption;
- effective security enforcement implementation, triggering the release clause in an intercreditor agreement, enabling business transfer and leaving behind "out-of-the-money" creditors;
- directors benefiting from independent approval of credit bids by the administrator/receiver, reducing liability and minimising challenges from disgruntled creditors;
- limiting adverse publicity, media speculation and potential damage to the business' goodwill; and
- potential preservation of employment.

Recent updates to the pre-pack administration legal framework impose greater scrutiny on connected party transactions. However, this should not unduly impact secured creditors.

7.2 Waterfall of Payments

The general priority on insolvency is as follows (in descending order of priority).

- Holders of fixed charge security (but only to the extent the value of the secured assets covers that indebtedness) and parties with a proprietary interest in assets in the possession (but not under the full legal and beneficial ownership) of the debtor (but only with respect to the assets in which they have a proprietary interest).
- Expenses of the insolvent estate (there are statutory provisions setting out the order of priority in which expenses are paid), in certain circumstances, specific moratorium debts may rank ahead of expenses.
- Ordinary and secondary preferential creditors:
  - (a) ordinary preferential debts include (but are not limited to) debts owed by the insolvent company in relation to:
    - (i) contributions to occupational and state pension schemes;
    - (ii) certain wages and salaries of employees for work done in the four months before the insolvency date;
    - (iii) holiday pay due to any employee whose contract has been terminated, whether the termination takes place before or after the date of insolvency; and
    - (iv) certain bank and building society deposits eligible for compensation; and
  - (b) Secondary preferential debts rank for payment after the discharge of ordinary preferential debts and include claims by HMRC in respect of certain taxes (including VAT, PAYE income tax and employee NI contributions) which are held by the company on behalf of employees

and customers as well as certain bank and building deposits that are not ordinary preferential debts.

- Holders of floating charge security, according to the priority of their security. This would include any security interest that was stated to be a fixed charge in the document that created it but which, on proper interpretation by the court, was rendered a floating charge. However, before distributing asset realisations to the holders of floating charges, the "prescribed part" (a ring-fenced fund of up to GBP800,000 for the benefit of unsecured creditors) must, subject to certain exceptions, be set aside for distribution to unsecured creditors.
- Debts and liabilities:
  (a) provable debts of unsecured creditors and (to the extent of any unsecured shortfall) secured creditors, in each case including accrued and unpaid interest on those debts up to the date of commencement of the relevant insolvency proceedings;
  (b) interest on the company's unsubordinated debts in respect of any period after the commencement of liquidation or after the commencement of an administration which has been converted into a distributing administration; and
  (c) non-provable liabilities, being liabilities that do not fall within any of the categories above and therefore are only recovered in the (unusual) event that all categories above are fully paid (this does not include currency conversion claims).
- Shareholders: if, after the repayment of all unsecured creditors in full, any remaining funds exist, these will be distributed to the shareholders of the insolvent company.

7.3 Length of Insolvency Process and Recoveries

In general terms, the longer an insolvency process takes the greater the losses incurred by creditors. A pre-pack enforcement executed at the holding company level will typically protect the wider operating group from the taint of insolvency and preserve value in its operating subsidiaries. Trading administrations will require funding either from the business itself or from the group's creditors while the business is marketed. Depending on the group in question, this is usually for a limited period while the insolvency officeholder explores disposal opportunities.

7.4 Rescue or Reorganisation Procedures Other Than Insolvency

See **7.9 Dissenting Lenders and Non-Consensual Restructurings** for descriptions of schemes of arrangement and restructuring plans.

7.5 Risk Areas for Lenders

See **7.6 Transactions Voidable Upon Insolvency** for descriptions of antecedent transactions that may be challenged by an insolvency officeholder of the borrower/guarantor. English law does not contain a concept of lender liability for deepening the insolvency of a borrower through further lending. Liability may arise if a lender acts as a shadow director of the borrower (ie, a person in line with whose directions or instructions the directors of a company are accustomed to act) but this threshold is a high one and requires a lender to act outside of its usual lending capacity.

7.6 Transactions Voidable Upon Insolvency

Under English insolvency law, certain transactions can be challenged if a company enters administration or liquidation within a specific period after entering into the transaction.

Transactions at an Undervalue

A liquidator or administrator can apply for a court order to set aside a transaction at an undervalue.

The transaction can be challenged within a period of two years from its entry if at the time of the transaction or as a result of it, the company was unable to pay its debts (as defined in Section 123 of the IA86) unless a beneficiary of the transaction was a connected person, in which case there is a presumption of insolvency and the connected person must demonstrate that the company was not unable to pay its debts at the time of the transaction or became unable to do so as a result of the transaction.

A transaction may be set aside as a transaction at an undervalue if the company made a gift to a person, received no consideration or received significantly less value than the company gave. However, a court

will not make an order if it is satisfied that the company entered into the transaction in good faith and for the purpose of carrying on its business and that, at the time it did so, there were reasonable grounds for believing the transaction would be beneficial.

If the court determines that the transaction was a transaction at an undervalue, the court will make such order as it sees fit to restore the company to the position it would have been in had it not entered into the transaction.

Preferences

A liquidator or administrator can apply to the court for an order to set aside a preference.

A transaction will only be a preference if, at the time of the transaction or as a result of the transaction, the company was or became unable to pay its debts (as defined in Section 123 of the IA86). The transaction can be challenged if the company enters into insolvency within a period of six months (if the beneficiary of the security or the guarantee is not a connected person) or two years (if the beneficiary is a connected person, except where such beneficiary is a connected person by reason only of being the company's employee) from the date the company grants the preference. A transaction will constitute a preference if it has the effect of putting a company's creditor (or a surety or guarantor for any of the company's debts or liabilities) in a better position than it would otherwise have been in the company's insolvent liquidation without the transaction. However, a court will not make an order unless the company was influenced by a desire to prefer the recipient.

If, however, the beneficiary of the transaction was a connected person it is presumed that the company desired to prefer that person unless the contrary is shown.

If the court determines that the transaction was a preference, it will make such order as it sees fit to restore the company to the position it would have been in had it not entered into the transaction.

Transactions Defrauding Creditors

A transaction may be set aside by the court as a transaction defrauding creditors if the transaction was at an undervalue and the court is satisfied that it was made for the substantial purpose of putting assets beyond the reach of a person who is making, or may make, a claim against the company, or of otherwise prejudicing the interests of a person in relation to the claim which that person is making or may make. Any "victim" of the transaction (with the leave of the court if the company is in liquidation or administration) may bring a claim under this provision, which is not limited to liquidators or administrators. There is no statutory time limit to initiate the challenge (subject to the normal statutory limitation periods) and the company does not need to be insolvent at the time of, or as a result of, the transaction.

If the court determines that the transaction was a transaction defrauding creditors, the court may make such order as it sees fit to restore the position to what it would have been if the transaction had not been entered into and to protect the interests of the "victims" of the transaction.

7.7 Set-Off Rights

Set-off of mutual debts in insolvency (liquidation and administration) is mandatory and self-executing.

7.8 Out-of-Court v In-Court Enforcement

See **7.1 Impact of Insolvency Processes** for a description of pre-pack sales. Consensual restructurings and semi-consensual restructurings (involving some type of enforcement action) are typically effected outside of court unless a statutory creditor compromise is required (see **7.9 Dissenting Lenders and Non-Consensual Restructurings**).

7.9 Dissenting Lenders and Non-Consensual Restructurings

Scheme of Arrangement

Although not an insolvency proceeding, under Part 26 of the CA06 the English courts have jurisdiction to sanction a scheme of arrangement that effects a compromise of a company's liabilities between a company and its creditors (or any class of its creditors). An English company or, provided certain conditions are met to engage the jurisdiction of the English court, a

foreign company may propose a scheme with respect to its financial liabilities.

Before the court considers the sanction of a scheme of arrangement, affected creditors will vote on the proposed compromise or arrangement in respect of their claims in a single class or in a number of classes, depending on the rights of such creditors that will be affected by the proposed scheme and any new rights that such creditors are given under the scheme.

This compromise can be proposed by the debtor company, any creditor of the company or any liquidator or administrator appointed to the company. If a majority in number representing 75% or more by value of those creditors present and voting at the meeting(s) of each class of creditors vote in favour of the proposed scheme, irrespective of the terms and approval thresholds contained in the finance documents, then that scheme will (subject to the sanction of the court) be binding on all affected creditors, including those affected creditors who did not participate in the vote and those who voted against the scheme.

The scheme then needs to be sanctioned by the court at a sanction hearing where the court will review the fairness of the scheme and consider whether it is reasonable. The court has discretion as to whether to sanction the scheme as approved, make an order conditional upon modifications being made or refuse to sanction the scheme. Once sanctioned, the scheme of arrangement binds all affected stakeholders whose rights will be as set out in the scheme of arrangement, which will be effective (in line with its terms) upon delivery of the court's order sanctioning the scheme of arrangement to the Registrar of Companies.

Unlike an administration proceeding, the commencement of a scheme of arrangement does not automatically trigger a moratorium of claims or proceedings.

Restructuring Plan

Like a scheme of arrangement, a restructuring plan is a procedure under Part 26A of the CA06 which allows the English courts to effect a compromise of a company's liabilities between a company and its creditors (or any class of its creditors), but with the added possibility of a "cross-class cram-down". While generally available to the same domestic and foreign companies as schemes of arrangement, a company seeking to enter into a restructuring plan process must show that:

- it has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern; and
- a compromise or arrangement has been proposed between the company and its creditors (or any class of them) for the purpose of eliminating, reducing or preventing, or mitigating the effect of, any of those financial difficulties.

A restructuring plan may be proposed by the debtor company, any creditor of the company or any liquidator or administrator appointed to the company. Affected creditors will vote on the proposed compromise or arrangement in respect of their claims in a single class or in a number of classes depending on the rights of such creditors which will be affected by the proposed restructuring plan and any new rights that such creditors are given under the restructuring plan.

A restructuring plan will be deemed to be approved if at least 75% in value of the creditors and/or members (if applicable) present and voting at the meeting of at least one class of creditors vote in favour of the proposed compromise. There is no requirement for the approving creditors to constitute a majority in number of those creditors present and voting, and there is crucially no requirement for each and every voting class to approve of the plan, provided that the court is satisfied that:

- none of the members of a dissenting class would be any worse off if the restructuring plan were to be sanctioned than they would be in the event of the "relevant alternative"; and
- the restructuring plan was approved by at least one class of creditors who would receive a payment or have a genuine economic interest in the company in the event of the "relevant alternative".

The "relevant alternative" for the purposes of this assessment is whatever the court considers would be most likely to occur in relation to the company if

the restructuring plan were not sanctioned. By virtue of these mechanisms, the restructuring plan process provides for the possibility of a "cross-class cram-down", meaning the courts may sanction a restructuring plan even if one or more classes of affected creditors do not vote in favour of the restructuring plan, effectively allowing the vote of one class of stakeholders to bind other classes.

Following approval of the restructuring plan at the creditor meeting(s), the restructuring plan needs to be sanctioned by the court at a sanction hearing where the court will review whether the applicable statutory conditions have been met and will also consider whether the restructuring plan proposes a fair allocation between creditor classes of the benefits preserved or generated by the restructuring. The court has discretion as to whether to sanction the restructuring plan as approved, make an order conditional upon modifications being made or refuse to sanction the restructuring plan.

Once sanctioned, the restructuring plan binds all affected stakeholders whose rights will be as set out in the restructuring plan, which will be effective (in line with its terms) upon delivery of the court's order sanctioning the restructuring plan to the Registrar of Companies or, where the company is an overseas company, publication of the court's order in the Gazette. As with a scheme of arrangement, the commencement of a restructuring plan process does not automatically trigger a moratorium of claims or proceedings.

7.10 Expedited Restructurings

See **7.1 Impact of Insolvency Processes** for a description of pre-pack sales.

Trends and Developments

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Latham & Watkins advises sophisticated global direct lenders and private capital providers on hundreds of front-end transactions each year, including first and second lien, unitranche and mezzanine loans, and preferred equity and other junior capital transactions. Latham advises more lender mandates in the EMEA region and the United States than any other firm. The firm advises across a range of deal sizes stretching from the mid-market through the largest and most complicated unitranche transactions with multi-billion dollar deal sizes. Latham lawyers regularly design and implement multi-tiered capital structures and capital solutions for clients and handle subordination, security, and intercreditor issues, as well as restructurings, equity co-investments, and tax and regulatory matters. Latham's direct lending and private debt practice draws on a long history of innovation and experience. With more than 200 lawyers in the US and close to 400 globally, the firm advises the most active lenders, funds, credit platforms and investment managers as well as borrowers, on the full range of transactions, from the mid-market to large-cap.

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Private Credit Growth in the UK and Europe

The private credit market has grown rapidly in recent years and continues to evolve into a mainstream source of financing driving the global leveraged finance market. The European private credit market reached approximately EUR450 billion in assets under management by the end of 2025, with European private credit fundraising hitting a record USD65 billion in the first nine months of 2025 alone – approximately 35% of all global private debt fundraising during this period. Europe now accounts for roughly one quarter of all global private credit raised since 2008, representing one of the fastest-growing markets. Whereas bank lending in Europe still accounts for approximately 70–76% of corporate credit – compared with just 21–25% in the United States – non-bank lending market share in Europe and the UK currently stands at only around 12%. This figure, contrasted with 75% non-bank lending share in the US, indicates substantial room for continued growth, and industry projections suggest that the European private credit market could exceed EUR800 billion by the end of the decade.

Despite the market's geographic breadth, the UK, and specifically London, remains a principal hub for European leveraged finance and private credit origination and structuring, with a deep ecosystem of sponsors, lenders, advisers and intermediaries. In practice, a significant proportion of cross-border deals continue to be documented using English-law forms, helping to standardise terms and market practice across jurisdictions. Against that backdrop, the trends below are particularly relevant for UK borrowers and UK-based managers operating across Europe.

Several interrelated forces are driving this growth. The aftermath of the global financial crisis saw banks retreat from middle-market lending due to stricter capital and regulatory requirements creating an opportunity for direct lenders and alternative credit providers to fill the gap. Simultaneously, heightened regulatory pressure, policy-led investment in infrastructure and defence, and the emergence of diversified capital sources and innovative fund structures are propelling European private credit into a new phase of maturity and expansion. This article examines several key trends shaping the European and UK private credit market in 2026 and beyond.

Increased US fund manager expansion

The UK and European private credit market is attracting considerable attention from US-based fund managers seeking to diversify away from an increasingly competitive domestic market. As the US direct lending market has matured and deal flow has consolidated around a smaller cluster of larger managers, many participants are turning to the UK and Europe for growth opportunities. Several mainstream US fund managers have cited a "substantial origination opportunity" in Europe over the coming years, driven by ramped-up infrastructure and defence spending across the continent.

Major US allocators, including various US state-run pension and retirement asset managers, are building out European private debt allocations. These US allocators point to Europe's more diverse credit markets as an attractive feature, with less concentrated exposure to the technology sector and a proliferation of smaller, specialist fund managers that fit with many allocators' push for strategy diversification. Addition-

ally, European transactions typically price wider than their US counterparts and often benefit from tighter documentation, primarily driven by a less syndicated market with fewer players and higher barriers to entry.

Growth of asset-based and structured financing

Private credit in the UK and Europe is rapidly expanding beyond its traditional direct lending roots into diverse forms of lending, including an ever-widening range of asset-backed finance (ABF) and structured credit solutions. Investors are increasingly gravitating towards ABF for compelling economic reasons. Asset diversification, high asset quality and the often self-liquidating nature of underlying assets ensure that ABF transactions are fundamentally decoupled from the corporate credit cycle and therefore better performing during economic downturns. Higher barriers to entry compared to traditional corporate lending – due to the complexity of these structures – also contribute to higher spreads. In the long term, ABF is expected to challenge, or even overtake, traditional LBOs as a source of deal flow for private credit funds as banks struggle to meet demand and cater for the flexibility required by borrowers to manage complex financing structures.

A particularly significant driver of structured finance growth has been the explosive demand for digital infrastructure, particularly data centres powering artificial intelligence workloads. Financing for AI data centres and related projects has grown substantially in recent years with further supply from the sector expected to be pivotal for credit markets in 2026. JPMorgan reports that US data centre-related bond issuance reached USD15.1 billion in 2025, surpassing the total for 2024. They estimate that around USD150 billion will be needed in 2026–2027 to convert short-term construction loans into long-term financing for nearly 20 GW of data centre capacity. In the UK, government forecasts suggest that reaching as much as 6.3 GW by the end of the decade may not be enough to meet demand, even as the spend on new data centre capacity is set to rise to GPB10 billion a year. The scale of investment in AI infrastructure is such that even the largest technology companies are looking to external capital providers to support their AI capital expenditure with private credit being a critical part of the equation.

With the convergence of public and private markets and the ability of private credit funds to find cheaper sources of capital, private credit has now become an attractive option for large, investment-grade financings. Similar to the growth story of private credit more generally, investment-grade institutions are becoming increasingly aware of the benefits of private credit in their capital structure. The ability to create customised financing solutions – along with underwriting flexibility, execution certainty and confidentiality – makes private credit a compelling option, notwithstanding the slight premium in cost. As banks continue to shift their role from holders of corporate debt to arrangers and facilitators, the market for investment-grade private credit will continue to grow.

Intensifying regulatory scrutiny and policy-led investment

Regulatory developments are shaping the future of UK and European private credit. EU member states must prepare for new laws under the AIFMD 2.0 directive by April 2026, placing new obligations on alternative investment funds that originate loans and increasing transparency requirements. In the UK, the Financial Conduct Authority and Prudential Regulation Authority have indicated their intentions to better understand risks and exposures related to the financial system and private capital, which may lay the foundations for further regulatory interventions.

At the same time, policy-led investment in infrastructure, energy transition and defence is creating substantial new demand for flexible capital solutions, particularly in Germany and France. European policymakers are pursuing capital markets reforms designed to revive and simplify EU securitisation, opening additional opportunities for private credit deployment in areas such as ABF and significant risk transfer. The combination of regulatory pressure on banks and strategic policy priorities is expected to accelerate the shift from bank lending to private credit over the coming years, further embedding private credit at the core of corporate finance across the continent.

Increased competition between private credit and syndicated bank markets

As European private credit matures, the boundaries between private credit and the broadly syndi-

cated loan (BSL) market are becoming increasingly blurred. Direct lending has now cemented its place in the sponsor financing playbook, and private equity sponsors are routinely running dual-track financing processes, having parallel conversations with private credit lenders and underwriting banks for loan and/or high-yield financing.

A borrower may now be able to choose between high-yield bonds, leveraged loans and/or private debt – all competing to underwrite the same risk. The sizeable dry powder accumulated by direct lenders has resulted in both markets often competing to underwrite the same exposures.

As the M&A pipeline in 2026 looks to build, both broadly syndicated financing and private capital financing will remain highly relevant in the leveraged finance landscape. Some situations will inevitably favour one form of lending over another, whether due to sectoral, geographic, or currency constraints. However, many situations (indeed those involving businesses with more complex capital needs) will require both forms of financing simultaneously, for example by way of multi-tranche senior secured debt, senior bank debt plus private junior debt, and/or equity capital or hybrid-style financings.

Convergence of documentary terms

As has been the trend for several years, the gap between documentary terms of loans provided by private credit funds and those financed by the broadly syndicated loan market has narrowed considerably. Historically, convergence has typically been seen on top-tier, large cap deals. However, the trend towards documentary term convergence is also becoming more evident in the mid-market space where private equity sponsors are increasingly likely to run dual track processes, creating increased competition in a space that has historically been serviced by private credit funds and smaller bank clubs.

In the leveraged finance market, private credit has increasingly accepted "covenant-lite" structures (with no financial maintenance covenants) and high-yield-style covenant packages, albeit with tighter controls around debt incurrence and value leakage. Private credit funds' acceptance of these features is now commonplace, in particular for strong borrowers in robust defensive sectors. There is now tighter alignment between syndicated pricing and private credit pricing, including as to arrangement fees. Private credit interest rate spreads, while still higher, no longer reflect the more substantial premia seen in past years.

That said, as private credit funds hold risk to maturity and typically do not operate an originate-to-distribute model like traditional arranger banks, documentation remains more lender-friendly in certain respects. Key differences continue to revolve around debt incurrence capacity, dividend and other leakage regimes, call protection and prepayment requirements, as well as the imposition of tighter controls around sponsors' ability to run liability management exercises. Private credit funds' closer attention to downside risk is offset by the flexibility offered to sponsors and companies through creative capital solutions, and the ability to offer "payment in kind" (PIK) interest structures.

Impact of diversified capital sources

The influx of diversified capital sources – including insurance and retail capital – is reshaping the UK and European private credit landscape, fuelling an expansion in investment strategies and enabling certain managers to scale to levels unprecedented outside the banking system. Private credit, with its ability to provide assets with long-duration, low volatility and stable yield, naturally attracts insurance capital. Many private credit managers have expanded their deployment capability by bringing in more insurance capital through insurance company ownership, partnership or management arrangements.

The retail investor base is another expanding source of capital. Through structures like evergreen funds and European Long-Term Investment Funds (ELTIFs), individual investors' access to private credit is growing. The implementation of "ELTIF 2.0", which broadened the list of eligible assets, has led to a surge in new approvals for private credit ELTIFs, with European semi-liquid funds now managing over EUR20 billion. This diversification of capital sources is expected to continue, providing private credit managers with a more stable and diversified investor base to drive continued growth and innovation.

Growth of junior and hybrid capital

The growth of junior and hybrid capital has become a notable feature of the European private credit market, particularly in an environment where the difficult private equity exit market is piling pressure on sponsors to return capital to investors. Hybrid capital structures have emerged as critical solutions for private equity sponsors, generating returns comparable to upper-quartile private equity with superior downside protection.

The newer cohort of hybrid funds tend to focus on highly structured financing, combining contractual cashflows – often fixed-rate – with warrants or preferred equity. Some funds use a blend of senior debt plus equity to produce a similar overall return profile in the mid-teens. This contractual cashflow element offers an attractive feature for allocators concerned about relatively low distributions in buyout funds, while warrants or holdco preferred equity offer the potential for equity upside. The seven largest junior capital funds in the market are targeting over USD50 billion between them – 30% more than the fundraising total for junior debt funds in 2023 and 2024 combined – indicating robust demand for this segment. The increase in capital allocated to junior and hybrid products reflects a broader rebalancing across private credit. Structures include 45–50% preferred equity stakes, minority common positions, secured debt with equity warrants, preferred equity with participation rights and PIK/OID instruments. Sponsors and private credit funds are deploying sophisticated capital structures across Europe that reconcile balance sheet reduction with the need to preserve upside incentives for stakeholders. For investors, the shift from focusing on absolute returns to prioritising risk-adjusted performance has favoured the downside protection offered by hybrid capital.

Recent trends in liability management exercises

Liability management exercises (LMEs) have become increasingly prevalent in European private credit and leveraged loan markets, as stressed borrowers and their sponsors seek to restructure debt without formal insolvency proceedings. While headline default rates in private credit have remained below 2% for several years, once selective defaults and LMEs are taken into account, the "true" default rate approaches 5%. The increasing use of payment-in-kind facilities and LMEs suggests that more borrowers are struggling with interest burdens.

LMEs involve a range of techniques, including debt exchanges, tender offers, transferring assets to secure new financing and other modifications to existing debt agreements – almost always to the disadvantage of lenders with minority positions. While LMEs have played a large role in the US debt market for over a decade, they have had less traction in Europe and the UK. However, this has begun to change in recent years, with deals involving companies such as Victoria, Hunkemöller, Selecta and Hurtigruten illustrating how swiftly US-style techniques are being adapted to local legal frameworks. Market participants expect further growth in LME-related activity and associated litigation as the credit cycle matures and more borrowers seek creative solutions to address their capital structures.

The UK and European private credit market is poised to continue its rapid growth, with opportunities arising from regulatory change, competitive dynamics and innovation in fund structures and capital sources. With increasing demand for flexible, customised financing, coupled with a broader range of lending strategies, private credit will play a central role in the leveraged finance market and beyond for years to come.

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Private Credit 2026

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USA: Law & Practice and Trends & Developments

Stelios G Saffos, Dan Seale, Peter Sluka and Alfred Xue
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Law and Practice

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1. Private Credit Overview

1.1 Private Credit Market

The private credit market had previously flourished in times of the broadly syndicated market dislocation but over the last two years, banks have been strongly returning to the syndicated market, resulting in stiffening competition for private credit lenders. In the past 12 months, with fears of inflation easing globally, combined with the interest rate reduction cycle, M&A and IPO activity growth gained significant momentum, and given the repeated success of the private credit market in providing private equity sponsors with speed, innovative financing solutions and execution certainty, the private credit market was able to capitalise on this increased activity in 2025.

With this exponential growth of private credit, traditional sponsors and corporate borrowers have also looked to private credit to finance a wide range of asset classes, from real estate and infrastructure to technology and healthcare. In the real estate sector, for example, private credit is playing a crucial role in financing development projects and acquisitions, particularly in light of tightening bank lending standards. In infrastructure, private credit is being used to fund large-scale projects, such as renewable energy developments, that require significant capital investment. There is also a rise in private credit financing in the technology space, with its rapid pace of innovation and growth, where borrowers are tapping private credit keen to support companies with scalable business models and strong growth potential.

Private credit has also been leading the development of financing structures for large-scale AI-related infrastructure. innovating to support the capital needs of evolving technologies.

1.2 Interaction With Public Markets

Public debt markets have become increasingly competitive with the private credit market over the course of 2025 and 2024, marking a shift from 2023 when the vast majority of acquisition financings were provided by private credit lenders. With falling interest rates tightening credit spreads, the broadly syndicated market roared back over the last couple of years to recapture the market share that investment banks had ceded to private credit lenders, in particular through refinancings.

Public debt markets will also benefit from deregulation and other changes relating to the leveraged lending guidelines, and 2026 may well see participants in public debt markets competing aggressively with the private credit markets.

Despite this competitive landscape, banks have increasingly been involved in a number of key partnerships with private credit players, showing the undeniable strength of the private credit market and signalling the evolving relationship between the public and private debt markets.

1.3 Acquisition Finance

Private debt continued to play a major role in acquisition financings in the United States in 2025 as private credit lenders stepped up with committed financings in the form of “jumbo” unitranche debt facilities to support some of the largest acquisition financings on tight timelines. To meet the demand for rising deal sizes, private equity sponsors have increasingly been building larger clubs of private debt lenders rather than relying on a single underwriter or small number of underwriters.

Even with the resurgence of public debt markets, private debt has continued to thrive in the acquisition financing space given the strong adaptability and evolving capabilities of the largest funds.

1.4 Challenges

The main challenge for the expansion of private credit has been the re-emergence of the broadly syndicated market against the backdrop of tightening credit spreads, which in turn heightened competitive pressure from investment banks in the syndicated space. Private credit lenders have also become more cautious and conservative following the erosion of deal protections stemming from the fast growth of the private credit market. Particularly following the Pluralsight drop-down of assets, private credit lenders have sharpened their focus on liability management issues to ensure that such erosion of terms does not become commonplace in the market.

1.5 Sponsored/Non-Sponsored Debt

Private credit providers are focused primarily on private equity sponsors and their portfolio companies. At the same time, private credit solutions also support emerging growth companies and non-investment-grade corporate borrowers (including public borrowers). By contrast, private credit providers are not particularly active in the investment-grade space. As such, yields are often insufficient to satisfy a private credit provider's investment strategy.

1.6 Recurring Revenue Deals and Late-Stage Lending

"Recurring revenue" deals are still a relatively new innovation allowing lenders to finance growth-stage companies that have low or negative EBITDA. Amid the increasing interest rate environment in the back half of 2022 and throughout 2023, the number of recurring revenue deals coming to market had slowed dramatically. This past year saw the re-emergence of these transactions in the context of new take-private acquisitions (including Vista's closing in Q1 of EngageSmart) as well as in the private M&A markets.

1.7 Deal Sizes, Fund Sizes and Fundraising

Overall transaction sizing has continued to further converge between private credit transactions and syndicated matters. Private credit continues to see a greater number of "jumbo" deals at market.

The private credit asset class continues to attract investor interest. In the last 12 months, traditional banks have pushed further into the private credit space via partnerships and also an internal focus on private credit solutions. Additionally, the continued enthusiasm for private credit has spurred a wave of consolidation (including BlackRock's acquisition of HPS Investment Partners).

1.8 Impending Regulation and Reform

On 5 December 2025, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation issued a joint interagency statement rescinding the March 2013 Interagency Guidance on Leveraged Lending as well as the accompanying FAQs for implementing such Guidance. Instead, the agencies expect institutions to manage leveraged lending exposures consistent with general principles for safe and sound lending. This has the potential to allow lenders to make their own determinations of risk appetite, which will give private credit lenders greater flexibility to underwrite a broader range of loans and to each develop an institution-specific definition of what is a "leveraged loan". In turn, this may let some private credit with more competitive mandates be better able to compete at deeper leverage levels that would have been restricted under the prior supervisory constraints.

2. Regulatory Environment

2.1 Licensing and Regulatory Approval

While no US federal regulatory framework applies to non-bank lenders that are engaged in commercial lending in the United States, a few US states require non-bank lenders to obtain a licence before engaging in commercial lending activities (ie, lending activities between corporate lenders and corporate or institutional borrowers for business or commercial purposes) under certain circumstances. The commercial lending licensing requirements of some of these states are generally triggered only when a commercial loan is secured by real property located in the state. In our experience, California is the state most often

implicated in the commercial lending context due to the broad scope of California's commercial lender licensing requirement. The US states that may impose commercial lending licensing requirements (unless an exemption from such licensing requirements applies) generally include California, Florida, Nevada, North Dakota, South Dakota and Vermont.

While New York has a commercial lending licensing requirement, such requirement only applies to business and commercial loans in the principal amount of USD50,000 or less that also meet other specified conditions.

2.2 Regulators of Private Credit Funds

Certain US state banking regulators are the primary regulators for private credit activity in the United States.

2.3 Restrictions on Foreign Investments

Special rules may apply depending on the industry and asset, but typical areas of regulatory approval for acquisitions (or financings thereof) include US antitrust regulations, foreign direct investment laws applicable to the industry and asset (for example CFIUS approvals), along with customary sanctions, anti-money laundering and KYC rules that apply to lenders generally.

2.4 Compliance and Reporting Requirements

Private credit providers may have specific reporting requirements to their investors and to regulators depending on the vehicle utilised. As an example, business development companies arranged by private credit providers may implicate specific disclosure and reporting requirements.

2.5 Club Lending and Antitrust

Private credit providers are able to provide sole underwrites or club deals for multibillion-dollar transactions on terms that are competitive. To this point, this approach of forming clubs to facilitate larger transactions has not encountered any regulatory impediment.

3. Structuring and Documentation

3.1 Common Structures

In recent years, we have seen the size of private credit transactions continue to grow while the dry powder available for deployment by such direct lenders has simultaneously increased.

- *Increasingly shorter process:* The timeline for transactions in the private credit space is consistently shrinking. In recent times, sponsors have increasingly elected to equity backstop new acquisitions and skip a commitment letter process and instead move directly into the credit agreement negotiation. Of course, this type of process would not be possible in the syndicated market.
- *Delayed-draw term loans:* Private credit providers are well positioned to make delayed-draw facilities readily available. In instances where a sponsor is looking to implement a "growth by acquisition" strategy, this ability can make a private credit solution more attractive than a syndicated option, which may not include an accompanying delayed-draw component. It is less typical for syndicated solutions to offer sizeable delayed-draw components.
- *Portability:* Private credit lenders are typically closely engaged with the sponsor and well positioned to move quickly on amendment transactions. In 2025, with the increase in M&A activity, we also saw an uptick in the number of amendments and refinancings which included the addition of portability (ie, a "permitted change of control") allowing the opco to trade hands without triggering an event of default.
- *PIK:* Sponsors are often seeking PIK options in private credit transactions to allow the sponsor increased flexibility in managing liquidity.
- *Financial covenants:* Financial covenants in private credit transactions are increasingly looking more like those financial covenants included in syndicated transactions. In other words, where private credit lenders had previously sought financial maintenance covenants applicable to the full facilities, recent private credit transactions mirror syndicated documentation in providing for a springing financial covenant only applicable to the revolver and

only triggered when the revolver is drawn above a certain threshold.

3.2 Key Documentation

Many middle-market and larger private credit transactions are being structured as unitranche deals with a payment waterfall included directly in the credit agreement itself. This removes the need for a separate agreement among lenders. Still, where a capital structure includes an unsecured mezzanine debt component, the senior secured facility and the mezzanine debt facility will be bound together by a subordination agreement designed to restrict payments on the mezzanine debt (for the benefit of the senior secured facility).

3.3 Restrictions on Foreign Direct Lenders

Foreign lenders may be subject to certain limitations that prevent them from leading deals or serving in the agency function.

3.4 Use of Proceeds and Acquisition Financings

Using proceeds to acquire (or carry) margin stock is subject to certain limitations and restrictions. This applies if the direct or indirect security for the acquisition financing consists of securities that are traded on an exchange in the United States, or "margin stock". Such restrictions, often referred to as the "margin regulations", limit the amount of loans that can be collateralised by such securities. The US margin regulations can also be implicated by the existence of arrangements that constitute indirect security over margin stock, such as through negative pledge provisions or other arrangements that limit a borrower's right to sell, pledge or otherwise dispose of margin stock. In addition, borrowers and issuers are restricted from using proceeds in violation of applicable laws, including anti-money laundering, sanctions and anti-corruption laws, and such restrictions are usually included in the financing agreement.

As a market convention, the use of proceeds for an acquisition financing is often limited by contract to the financing of the acquisition (including purchase price adjustments), the refinancing of existing indebtedness and, to a limited extent, for initial working capital. Acquisition financings rarely also permit additional special dividends, but earnouts and appraisal rights are often funded with proceeds of acquisition financings.

3.5 Debt Buyback

Generally speaking, borrowers, and their sponsors, are contractually permitted to buy back term loans (but not revolving debt). The extent to which such purchases may be conducted is often limited to 25–30% of total outstanding term loans.

Loan documentation (in both the syndicated and private credit market) has developed since the great financial crisis to permit non-pro-rata debt buybacks. All except the most lower-middle-market loan documentation will include customary provisions permitting Dutch auction buybacks offered to all lenders. Many sponsors also insist on the ability to buy loans from lenders via "open market repurchases", which may not expressly need to be offered to all lenders.

Any analysis should be undertaken on a case-by-case basis.

3.6 Recent Legal and Commercial Developments

Recent developments include:

- *Liability management transactions:* Certain liability management exercises have impacted private credit transactions (eg, Pluralsight) and increased the focus of private credit lenders on capacity for investments in non-loan parties and in liability management protections more generally. At this point, private credit lenders are increasingly assessing not only the presence of liability management protections but also the flavour of such protections included in debt documents.
- *Portability:* While M&A and capital markets activity is on the upswing, the prior trough in deal activity prompted an increasing number of sponsors to seek portability in the form of "permitted change of control" provisions.

3.7 Junior and Hybrid Capital

The primary product for private credit providers remains the "unitranche" facility. However, private equity sponsors have also turned to private credit

lenders for a variety of creative hybrid financing packages including holdco facilities, mezzanine debt and junior capital positions to provide additional liquidity to support acquisitions in the United States without sacrificing leverage levels. Private equity sponsors in the United States have been increasingly taking advantage of debt-like, non-convertible preferred equity in order to supplement the liquidity of the operating company within the corporate structure, with such preferred equity allowing sponsors to incur additional leverage without the burden of cash interest payments (as these products often have a payment-in-kind feature).

3.8 Payment in Kind/Amortisation

Increasingly, private credit transactions are including paid-in-kind (PIK) components.

- *Availability of PIK option:* In the context of a typical private credit transaction with an opco (as opposed to holdco debt), a PIK option is limited to the first two or three years following the closing date. In other words, after year two (or, in some cases, year three), all payments of interest must be made fully in cash.
- *Amount of PIK:* When available, a PIK option will allow for some portion of the "applicable margin" due on a term loan facility to be paid in kind. The amount of "applicable margin" that may be paid in kind is typically capped at 50%, though this is a negotiated point. Moreover, where a term loan facility includes a pricing step-down (or series of step-downs), private credit providers may expect a "minimum cash pay" construct which prevents the amount of cash margin paid from dipping below a certain level (eg, 2.50% minimum cash pay).
- *PIK premium:* Where a PIK option is available, private credit providers expect to be paid a premium when the PIK option is exercised. This premium may be hardwired at 50 bps such that any usage of the PIK option produces a 50 bps premium. Alternatively, some formulations will allow the borrower to use only a portion of the PIK option and only pay a portion of the PIK premium (eg, only convert half of the allowable 50% of the margin into PIK (ie, 25% PIK) and only pay half of the premium (ie, 25 bps).
- *Amortisation:* Private credit transactions that include a PIK option often include some level of amortisation holiday. A common formulation would be to forgo amortisation in any quarter in which a PIK election is made. That said, there are some private credit deals in the market without any amortisation at all for the life of the loan.

3.9 Call Protection

Private credit providers continue to seek broader call protection than that typically offered in the syndicated market. But while private credit providers continue to seek 103/102/101 or 102/101 "hard call" formulations, these protections have been diluted by various carve-outs not historically included in "hard call" formulations.

- *Exclusions:* Recent private credit transactions generally include some combination of the following exclusions: (i) internally generated cash, (ii) a qualified initial public offering (IPO), (iii) sale of all or substantially all of the applicable borrower's assets, (iv) change of control, (v) dividend recapitalisations and/or (vi) some sort of "transformative transaction" or "enterprise transformative event" (typically defined as (a) an acquisition or disposition of significant size, (b) a transaction that is not permitted by the existing debt documents and/or (c) a transaction that if consummated would not leave the borrower sufficient flexibility under the existing debt documents). Of course, many transactions will include some subset of this list, and there is certainly room for negotiation regarding underlying definitions such as "internally generated cash" and "transformative transaction".
- *Step-downs:* In a traditional 102/101 "hard call" formulation, any prepayment made in year one (if not eligible for an exclusion/carve-out) would be accompanied by a 2.00% premium. In the most recent matters, sponsors have sought interim step-downs such that the prepayment premium would decline by 25 bps per quarter (ie, a prepayment in the third full fiscal quarter following the closing date would only garner a 1.50% premium).

4. Tax Considerations

4.1 Withholding Tax

Payments by US issuers or borrowers to US holders or lenders are generally not subject to withholding taxes under federal law. Backup withholding may apply to payments to US holders or lenders if they do not furnish a valid IRS Form W-9, as discussed in **4.2 Other Taxes, Duties, Charges or Tax Considerations**.

4.2 Other Taxes, Duties, Charges or Tax Considerations

The US federal government generally imposes a 30% withholding tax on interest paid to non-US lenders on a debt obligation of a US person (and certain non-US persons engaged in trade or business in the United States). For this purpose, payments with respect to any original issue discount, if not considered less than de minimis, are also treated as interest income and subject to such withholding tax.

If a lender is qualified for the benefits of an applicable double taxation treaty between the United States and the lender's country of residence, the withholding tax may be reduced or eliminated.

Alternatively, a non-US lender may qualify for exemption under the "portfolio interest exemption" (PIE). To qualify, the lender must not (i) be a controlled foreign corporation related to the borrower, (ii) be a bank receiving interest on an extension of credit entered into in the ordinary course of its trade or business or (iii) own (directly, indirectly or by attribution) equity representing 10% or more of the borrower's total combined voting power of all voting stock (or, if the borrower is a partnership, 10% or more of its capital or profits interest). The PIE is only available for debt in "registered form" for US federal income tax purposes, and does not apply to certain contingent interest, such as interest determined by reference to any receipts, sales, cash flow, income or profits of, or the fluctuation in value of property owned by, or dividends, distributions or similar payments by, the borrower or a related person.

To claim an exemption or reduction under an applicable double taxation treaty or the PIE, the beneficial owner of interest must generally submit a completed IRS Form W-8BEN-E (or, if an individual, IRS Form W-8BEN). A non-US lender that is an intermediary and is not the beneficial owner of interest must generally submit a completed IRS Form W-8IMY, accompanied by documents from beneficial owners or other attachments.

If interest paid to a non-US lender is effectively connected with such lender's trade or business in the United States, such interest will not be subject to US federal withholding if such lender submits a completed IRS Form W-8ECI, but will generally be subject to net income tax in the United States and, for foreign corporations, branch profits taxes.

Other exemptions may be available for foreign governments or governmental entities assuming they provide the applicable completed IRS Form W-8EXP.

Withholding taxes may also apply upon: (i) payment to a US person that does not demonstrate an exemption by providing an applicable completed IRS Form W-9, (ii) payment of US source interest and certain other amounts to entities treated as "Foreign Financial Institutions" or certain "Non-Financial Foreign Entities" not eligible for an exemption from FATCA withholding tax, and (iii) payment of various fees (such as letter of credit fees), modifications to debt obligations, and various adjustments on debt obligations convertible into stock.

Payments under a guarantee are generally similarly treated, with the source of payments for US federal income tax purposes generally determined based on residence of the borrower. If the lender is receiving security proceeds, such transaction may generally be treated as a payment on the loan. Under certain circumstances, the lender may be treated as the owner of the foreclosed property, resulting in adverse tax consequences (especially cases of US real property held by a foreign lender).

4.3 Tax Concerns for Foreign Lenders

Continuous and regular lending to US borrowers may result in the US government considering the lender as engaged in US trade or business, requiring the lender to file a US tax return and pay income taxes on income attributable to such trade or business. Any activities

considered secondary trading are generally exempted from such rules, irrespective of continuity or regularity. As such, foreign lenders should take care to limit the extent and scope of their origination activities. If foreign lenders that are engaged in extensive origination activity are also qualified for the benefits of a double taxation treaty and do not have a permanent establishment in the United States, the foreign lenders may be protected under the rules of such treaty. Relatedly, payments of various fees under US financing transactions may subject foreign lenders to US withholding tax and/or US income taxes depending on the characterisation of the fee income as well as the eligibility of the fee recipient for treaty relief.

5. Guarantees and Security

5.1 Assets and Forms of Security

As is the case with syndicated loans, private credit lenders typically take a security interest in substantially all of the property and assets of the company group. These assets can be broadly divided into real property interests and personal property interests. Where real property constitutes collateral, a lender takes a valid security interest by execution of a mortgage, deed of trust, or similar security interest under applicable state law where the real property is located. The creation and enforcement of a security interest in real property is governed by the law of the state where the real property is located, so engagement of counsel in such jurisdiction is important to ensure that necessary local law requirements are adhered to. Security interests in personal property are governed by Article 9 (Secured Transactions) of the Uniform Commercial Code (UCC) of the applicable jurisdiction. To create a valid security interest in personal property, including equipment, inventory, deposit accounts, investment property, instruments, intangibles, receivables, and shares in companies (as well as the other categories of collateral governed by Article 9), (a) a security provider (the grantor) must execute or authenticate a written or electronic security agreement that provides an adequate description of the collateral, (b) the grantor must have rights in the collateral or the power to transfer such rights, and (c) value must be given. Although the last two requirements are mandatory, an oral security agreement may be sufficient if the secured party is in possession or control of the collateral; however, the absence of a written and signed security agreement would be rare in a commercial transaction. The security agreement is typically selected to be governed by the same law as the law of the state that governs the loan agreement, even though the assets intended to be covered by such security agreement may be located outside of such state. The UCC is state statutory law, and each state of the United States has enacted its own version of it. Although a variety of relatively minor differences exist, Article 9 is substantially uniform across each state. Therefore, little concern typically arises about a debtor in one state granting a security interest under a security agreement governed by the law of a different state. The parties in commercial financings commonly choose the law of a single state (for example, New York law) to govern both the loan agreement and the security agreement, even if some or all of the debtors (or their assets) are located in another jurisdiction. Although parties are generally free to choose what law governs the creation or "attachment" of the security interest, the choice-of-law rules governing perfection, including where to file a UCC-1 financing statement, and priority are mandatory.

A security interest in personal property is said to have "attached" when it becomes enforceable against the debtor. A secured party will also want to "perfect" such security interest so that it is also enforceable against third parties, such as other voluntary or involuntary lienholders and against a trustee in bankruptcy proceedings.

A security interest in most types of personal property collateral governed by the UCC may be perfected by filing a notice filing under the UCC (referred to as a UCC-1 financing statement) at the secretary of state of the "location" of the debtor, although important exceptions apply. A UCC-1 is ineffective to perfect in deposit accounts, money or letter-of-credit rights as original collateral. Perfection in some assets is governed by US federal law (which pre-empts state law such as the UCC), including registered copyrights, aircraft and related assets, most ships and other vessels, rail cars and other rolling stock. Therefore, perfection in such assets requires compliance with the perfection scheme established by the applicable federal statute.

Security interests in vehicles and other assets subject to certificates of title must be perfected by applicable state law certificate of title statutes. Security interests in real estate and other assets excluded from the scope of Article 9 (such as insurance, as original collateral) require compliance with applicable state law governing such assets.

For debtors that are "registered organizations" (which term includes most domestic corporations, limited liability companies and limited partnerships), the UCC-1 financing statement must be filed in the jurisdiction in which the grantor was formed or incorporated. Special rules apply to other types of organisations, including non-US entities, natural persons and other special types of debtors.

In addition to perfection by filing a UCC-1 financing statement, a secured party may perfect its security interest in certain assets by taking possession and/or "control" of such assets. Goods, instruments, tangible negotiable documents, certificated securities and tangible chattel paper are examples of collateral that may be perfected by possession. Obtaining "control" of assets such as deposit accounts, investment property (including share certificates), letter-of-credit rights and electronic chattel paper perfects a security interest and may provide additional protections or priority to the secured party over perfection by filing. Certain collateral such as accounts (ie, receivables that are not evidenced by an instrument or chattel paper) and general intangibles (a residual category describing intangible collateral that does not fall into another UCC category) may only be perfected by the filing of a UCC-1 financing statement. Article 12 of the UCC, which at time of writing has been enacted in the majority (including the state of New York with an effective date of 3 June 2026) of, but not all, US states, will permit perfection by control of digital assets, such as cryptocurrencies and NFTs, as well as certain electronic accounts and payment intangibles that exist in controllable form. In certain circumstances, a security interest may be perfected automatically without any further action, but in commercial transactions, relying on such exceptions is unusual, and at a minimum a financing statement would be filed. A secured party may perfect its security interest by multiple methods (eg, by filing as well as by possession and/or control), and in the case of important assets such as certificated equity interests, a secured party will typically prefer to use every method of perfection available.

Perfection by possession and/or control is generally preferable to perfection by filing of a UCC-1 financing statement alone, as this entitles the secured party to higher priority, may protect the secured party from third parties acquiring better rights in the collateral, and as a practical matter may facilitate enforcement on the asset in the case of a foreclosure.

The security agreement is signed at closing, contemporaneously with the loan agreement. UCC-1 financing statements and intellectual property filings made with the US Copyright Office (in the case of copyrights) and the United States Patent and Trademark Office (in the case of patents and trade marks) are typically filed at closing. Physical share certificates are usually delivered to the secured party at closing, although in the case of an acquisition these are sometimes permitted to be delivered shortly after closing. Real estate mortgages and control agreements with third parties (for example, deposit account control agreements entered into with a third-party depositary bank), if they are part of the collateral package at all, are often post-closing items to be delivered within a few months of closing. It should be noted that security interest in collateral that is perfected beyond 30 days of the loan closing may be avoided as a preference transfer by a bankruptcy trustee in the event that a grantor goes into insolvency proceedings within 90 days (or one year if the lender is an "insider") of such perfection. If a preference action is successful, the lender will need to return such collateral or proceeds thereof to the grantor's estate. A lender should conduct routine collateral audit post-closing to identify any gaps in perfection before the borrower group gets into potential financial distress.

5.2 Floating Charges and/or Similar Security Interests

US law does not categorise grants of security as being "fixed" or "floating", nor do those terms have legal meaning under US law, but by analogy such grants are permitted and common. Under New York law and in the United States more generally, grants of security over personal property security routinely cover both

presently owned and after-acquired assets. Certain personal property collateral is excluded from Article 9 of the UCC, and thus obtaining a valid security interest over those assets is more difficult. The primary methods of perfection in personal property are the filing of a UCC-1 financing statement, filings with the US Copyright Office with respect to registered copyrights (and filings with the United States Patent and Trademark Office with respect to patents and trade marks are typical, although current law suggests that only a UCC-1 filing is sufficient for perfection in such assets), and delivery of physical share certificates and debt instruments to the secured party. Other methods of perfection by "control", for instance, by control agreements with respect to deposit accounts or securities accounts, are negotiated deal points. Security interests in real property, where negotiated to be part of the collateral package, typically take the form of a security instrument such as a mortgage, a deed of trust, a trust indenture or a security deed (ie, a deed to secure debt), depending on the jurisdiction in which the property is located, with a mortgage being the typical security instrument used in New York.

A blanket lien on all assets, including future assets, is possible, but is often limited by market convention to have customary exclusions. Typically, private credit transactions are supported by "all asset" or "blanket" liens (subject to agreed exceptions) over the assets of the target and its subsidiaries and an equity pledge by a holding company in the top-tier operating company.

Although collateral exclusions are negotiated on a deal-by-deal basis, common exceptions to an all-asset grant include assets for which a grant of security is subject to legal restrictions or consequences, such as margin stock or "intent-to-use" trade marks; assets for which a grant or perfection is determined to be overly costly, such as mortgages for real property located in a "flood zone" or assets subject to certificate of title statutes; and assets for which a grant of security would violate or impair other contractual relationships of the debtor, such as security interests in purchase money, or capital lease assets, or assets subject to securitisation financings. Often, general exclusions exist for any assets in which the grant of security would violate any laws or regulations, would require third-party (including governmental) consents or for which the burden or cost of granting a security interest outweighs the benefits afforded thereby. Exceptions may also apply to the requirement to perfect security interests in certain collateral, particularly if the relevant perfection action is costly or time-consuming. Although these exceptions are common, the business context of any particular deal will dictate which exclusions are acceptable.

5.3 Downstream, Upstream and Cross-Stream Guarantees

US companies are generally permitted to guarantee and secure the obligations of another group member, via upstream, downstream or cross-stream guarantees, subject to certain considerations and limitations.

To be enforceable, the guarantee needs to comply with certain general principles such as receipt and sufficiency of consideration and, in some states, be in writing and duly executed by the guarantor to comply with the statute of frauds. However, showing direct corporate benefit to the guarantor is not necessary to determine sufficiency of consideration where such intercorporate guarantee benefits the group as a whole. Generally, the United States does not have any restrictions on "financial assistance" that would prohibit providing guarantees or security to support borrowings to finance the acquisition of a target company. In insolvency proceedings, corporate benefit consideration is relevant to determine whether such guarantee can be challenged as a fraudulent transfer under the US Bankruptcy Code. Under fraudulent transfer analysis, a transfer of an interest in property of the debtor may be avoidable if (a) it is made with actual intent to defraud or deprive creditors of value or (b)(i) it is made when the debtor is insolvent or renders the debtor insolvent and (ii) the debtor receives less than its reasonably equivalent value.

The company and the lenders will need to be comfortable with the solvency of the guarantors and security providers, requiring solvency representations to this effect. In addition, the estates of an entity subject to a Chapter 11 bankruptcy proceeding would have the right to pursue any claims of the debtor, including claims for breach of fiduciary duty claims against directors and officers, such as for approving of fraudu-

lent transfers (to the extent available under applicable law).

In the case of upstream guarantees or other credit support from foreign subsidiaries in support of the indebtedness of a US debtor, deemed dividends may apply under US federal tax law. Since 2018, tax law reform has reduced the impact of upstream guarantees and other credit support from non-US subsidiaries.

Notwithstanding the positive tax reform opening the door to more non-US credit support, as a general matter and except on rare occasions where it is critical from a credit perspective, non-US upstream guarantees and credit support are often excluded outright from the guarantee and collateral package of US debt financings, primarily on cost and complexity grounds.

5.4 Restrictions on the Target

Generally, the United States does not have any restrictions on "financial assistance" that would prohibit providing guarantees or security to support borrowings to finance the acquisition of a target company. However, there may be regulatory issues to consider when the guarantee or security provider is a specialised or regulated entity.

5.5 Other Restrictions

The United States is a flexible jurisdiction from the perspective of financial assistance by the target, and no whitewash is necessary. Generally, no governmental approval is required for providing guarantees or security, although exceptions exist for highly regulated entities. US law does not have a concept of "hardening", but transfers, including creation or perfection of a security interest, on account of an antecedent (pre-existing) debt made within the 90 days prior to a bankruptcy filing when the debtor was insolvent, are avoidable if they permit the creditor to receive more than they would in a hypothetical liquidation under Chapter 7 of the US Bankruptcy Code. The 90-day period is extended to one year for insiders. There are a variety of statutory defences and safe harbours to preference claims.

US law generally does not recognise retention of title transactions and instead will recharacterise such an arrangement as merely the reservation of a security interest. Article 9 of the UCC broadly overrides restrictions on assignment under contracts or applicable law that would prohibit or restrict the creation of a security interest in such asset. The extent of the override depends on several factors, including the type of asset in question and whether the restriction is on the sale of the asset or only the creation of a security interest in it.

5.6 Release of Typical Forms of Security

The primary method of lien release is an agreement or acknowledgment by the secured party, together with terminations of financing statements or other filings made in public records. The security agreement or loan agreement typically contains provisions setting forth the circumstances when the security interest in collateral will be released, including upon payment in full of all outstanding obligations. To the extent that a sale or disposition of collateral is permitted under the credit agreement, it is common to provide a corresponding release of lien in such collateral. Although the lien release provisions may be drafted to occur automatically upon such repayment or disposition, it is market practice to include an agreement from the lender (or its agent) to expressly release and terminate the applicable liens, such as in a loan payoff letter (in the case of a loan repayment) or a lien release instrument (in the case of a disposition). In connection with the release, physical collateral of share certificates and promissory notes that were delivered to the lender will be returned to the debtor. In addition, the lender will (i) file (or authorise the filing of) UCC-3 termination statements with respect to all UCC-1 financing statements filed against the debtor and termination of the security interest filings made at the US Copyright Office and the United States Patent and Trademark Office, and (ii) provide notice of lien release to applicable third parties that have entered into control arrangements with the lender. If other perfection methods were undertaken in connection with such collateral (such as real estate mortgages or entry into control agreements with third parties), additional termination agreements or instruments may also be required.

5.7 Rules Governing the Priority of Competing Security Interests and/or Claims

In the United States, borrowers often incur multiple financings with different lenders, each secured by a valid and enforceable security interest in a common pool of collateral. The UCC provides statutory rules to determine priority of competing liens in personal property collateral. Among secured creditors, a perfected security interest has priority over an unperfected one. Among creditors with perfected liens, a security interest perfected by control or possession generally has priority over a security interest perfected only by a UCC-1 financing statement filing, and among creditors that perfect only by UCC-1 filing, the first in time to file generally has priority. The most notable exception to the first-in-time rule is the priority given under the UCC to creditors secured by a purchase money security interest (PMSI) so long as the PMSI lender complies with the filing (and, in case of inventory, notification) requirements within the period set forth under the UCC.

The statutory rules of priority under the UCC can be altered contractually by the lenders, typically in an intercreditor agreement entered into by the different lenders (or their agents) and acknowledged by the grantors. Intercreditor agreements are generally held to be enforceable in accordance with their terms by the bankruptcy court under Section 510 (a) of the US Bankruptcy Code. Intercreditor agreements establish lenders' relative priorities in common collateral, whether as first lien/second lien, pari passu (or equal) lien, or split lien (ie, first lien in one pool of collateral and second lien in the rest), including enforcement or exercise of remedies with respect to the collateral upon default under the financing agreements and order of payment from proceeds of the collateral, including under 363 sale or other collateral liquidations in case of bankruptcy of the borrower group.

5.8 Priming Liens and/or Claims

Liens arising by operation of US state or federal law are wide-ranging. Liens may arise in connection with unpaid taxes, judgments, goods in possession of bailees, shippers or service providers, landlords, depositary institutions providing financial services to their customers, and numerous federal statutes applicable to agricultural products, to name a few. In many cases, the general rules of Article 9 of the UCC establish lien priority as among competing interests, but in some cases, either the UCC expressly defers to another statutory priority scheme or, in the case of federal law or international treaties, the UCC priority rules are pre-empted. Parties are generally permitted to contractually alter their priority in collateral, and thus a party with a priming statutory lien may voluntarily agree to subordinate its lien to that of a secured lender, but in many cases a secured lender avoiding a priming statutory lien is not feasible. Liens arising by operation of law are often applicable solely to specific assets and/or secure only specific obligations, so with routine diligence lenders may be comfortable that the impact of any such actual or hypothetical liens is negligible in the context of the overall transaction or otherwise draft covenants to mitigate the risk.

5.9 Cash Pooling and Hedging/Cash Management Obligations

Under the UCC, deposit accounts as original collateral may only be perfected by "control", the most common method in secured lending transactions being a deposit account control agreement entered into between the debtor, the secured party and the depositary bank. A UCC-1 financing statement is ineffective to perfect in deposit accounts as original collateral. Because of this, it is common for private credit transactions to either exempt deposit accounts from the perfection requirement or, in some cases, partially or entirely exclude deposit accounts from the collateral. A depositary bank has an automatically perfected lien under the UCC over the deposit accounts of its customer and a secured lender wishing to obtain priority over such lien will need to obtain the depositary's agreement to subordinate its interest. However, this is moot in lending transactions where deposit accounts either are not required to be perfected or are excluded from the collateral.

It is common for secured hedges and cash management obligations to be secured by the same collateral that secures private credit transactions. Most often, these interests are secured under the same collateral documentation as the bank loans and such obligations are secured on a pari passu basis.

5.10 Appointment of Collateral Agent

In financings provided by multiple lenders in the United States, such lenders typically appoint a collateral agent under the credit agreement to hold security interest in collateral granted by debtors on behalf of such lenders. There is no US law requirement that security interest be granted directly to each lender individually, nor is there any requirement that the collateral agent be licensed or regulated in the taking or holding of collateral. If a loan is assigned by a lender (assignor) to a new lender (assignee), typically pursuant to an assumption and assumption agreement attached as an exhibit to the credit agreement, the assignee will purchase and assume all of the assignor's rights and obligations under the credit documents, including all rights of the assignor as a secured party in the collateral. No additional steps to re-grant or re-perfect liens would be needed.

6. Enforcement

6.1 Enforcement of Collateral by Non-Bank Secured Lenders

Remedies are available for lenders with a valid security interest immediately upon the occurrence of a default or an event of default on the secured obligations, subject to any contractual agreements to the contrary and application of the "automatic stay" in the event that the grantor is subject to a bankruptcy proceeding. The definitive documentation under private credit transactions usually rigorously defines what constitutes a "default" or "event of default" (or like term) after which the secured party may exercise remedies against the collateral. Although creditors that are secured parties generally have the option of judicial enforcement, out-of-court "self-help" options are available under the UCC, which are cheaper, faster, and therefore much more common than resorting to judicial remedies. Among other self-help remedies, a secured party may commence collection activities with respect to deposit accounts, receivables or other rights to payment, repossess and/or sell collateral, and exercise rights of set-off. Any exercise of remedies or enforcement by a secured party is required to not result in a breach of the peace and in general must be commercially reasonable. The UCC also requires various notices in connection with the exercise of certain remedies such as sales of collateral or retention of collateral in full satisfaction of the debt, but market practice has also imposed various contractual limits (usually contained in the applicable collateral agreement) on the enforcement of security without additional notices or grace periods.

Private credit transactions commonly include an equity pledge of the borrower and its subsidiaries, and if an out-of-court foreclosure sale is contemplated, a sale of some or all of the equity of the company group is an attractive option. Prior to or in connection with such enforcement, the secured party may wish to exercise voting or other rights inuring to the holders of such equity interests, including replacing the board of directors or other governing body of the borrower, but any such voting or proxy rights must be specifically negotiated in the security agreement and may be subject to limitations under the borrower's organisational documents.

Even so, secured lenders may not have an opportunity to exercise self-help remedies before the debtor seeks the protection of the US Bankruptcy Code. Alternatively, lenders and a debtor may reach a consensual out-of-court agreement whereby the debtor will peacefully transfer collateral to the lender in exchange for consideration such as releases and/or residual equity, etc.

6.2 Foreign Law and Jurisdiction

The United States comprises multiple states' jurisdictions, and any agreement must specify the state law that will govern (as opposed to federal law). Typically, the law of the state of New York is chosen as the governing law for sophisticated debt financing transactions in the United States, particularly for acquisition financings. This is the most common governing law for private debt unitranche deals, broadly syndicated deals and capital markets transactions, including bond financings. It is also common for New York law to govern acquisition financings of non-US acquisitions. While the laws of California and Illinois were historically used for lower-middle-market transactions, the overwhelming majority of sophisticated debt documents are governed by New York law in current practice.

Subject to limitations and qualifications, courts in New York generally permit parties to choose the substantive laws of another jurisdiction to govern a contract, including the substantive laws of other states and/or jurisdictions outside the United States. A few other states permit the choice of their law to govern a contract even in the absence of any contacts if the contract satisfies certain dollar thresholds. However, some US states may not respect this choice of law if litigated in such US states in the absence of a reasonable relationship to the chosen governing law.

6.3 Foreign Court Judgments

The United States is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which has been incorporated as Chapter 2 of the Federal Arbitration Act, 9 USC. § 200 et seq. The United States is not a party to any treaties for reciprocal recognition of foreign judgments; hence, foreign judgments are enforced pursuant to applicable state statutes, which generally follow the Uniform Foreign Money-Judgments Recognition Act, the Uniform Foreign-Country Money Judgments Recognition Act, or common law principles of international comity. Final and binding money judgments that are enforceable in the country where they were rendered are generally enforceable.

Subject again to limitations and qualifications, courts in the state of New York generally recognise both (a) judgments from other states in the United States, under Article 54 of the New York Civil Practice Law and Rules, and (b) some international money judgments from outside the United States, under Article 53 of the New York Civil Practice Law and Rules. In the latter case, there are fraud and public policy exceptions, and New York courts will reject a foreign country judgment rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law, or where the foreign court did not have personal jurisdiction over the defendant, or where it did not have jurisdiction over the subject matter.

6.4 A Foreign Private Credit Lender's Ability to Enforce Its Rights

Special rules may apply depending on the specific industry and asset in question, but typical areas of regulatory approval for acquisitions (or financings thereof) include US antitrust regulations, foreign direct investment laws applicable to such industry and asset (for example, Committee on Foreign Investment in the United States (CFIUS) approvals), along with customary sanctions and anti-money laundering and know-your-customer (KYC) rules that apply to lenders and persons acting in the US market generally.

Cross-border lending is generally common, subject mainly to customary sanctions, anti-money laundering and KYC rules that apply to lenders generally.

6.5 Timing and Cost of Enforcement

Enforcement can take many forms and therefore it is difficult to generalise. In the case of a foreclosure sale, among other requirements, notices must be sent to debtors and other parties with an interest in the collateral, in most cases at least ten days prior to such sale. In the case of a public sale, the secured party will also need to publish public notice in appropriate newspapers and periodicals. However, every aspect of the foreclosure process must be commercially reasonable and, especially where the collateral is of high value, unique and/or complex, a commercially reasonable process may take much longer than ten days. In the most likely case of enforcement on the equity interests of a borrower and its subsidiaries, a commercially reasonable enforcement process in the form of a public sale may take around six to eight weeks (although this can be significantly faster or slower depending on the facts). Typical costs include attorney costs in conducting the enforcement process, costs for advertising in periodicals or other publications (in the case of a public sale), and possibly hiring professional advisers in connection with finding potential buyers.

6.6 Practical Considerations/Limitations on Enforcement

For personal property, secured creditors generally must proceed in a commercially reasonable manner or risk losing their deficiency and potentially being liable for damages. This vague standard is generally left to courts to resolve, and an antagonistic debtor or holder of a competing interest may raise any number of plausible arguments that a foreclosing secured creditor's enforcement process was commercially unreasonable in one way or another. A secured lender pursuing a

public sale of collateral may, for instance, decide to run a slower sale process, hire a professional sell-side adviser, and/or spend more time and resources advertising or finding potential bidders in an effort to pre-empt challenges of commercial unreasonableness. In developing a commercially reasonable process, it is generally advisable for the secured party to consider what steps it would take if it were selling its own assets.

7. Bankruptcy and Insolvency

7.1 Impact of Insolvency Processes

The filing of a bankruptcy case under the US Bankruptcy Code will result in an automatic stay that prevents lenders (and all creditors) from enforcing any security without prior relief from the bankruptcy court or otherwise taking an affirmative action against property of the debtors' estate (including terminating contracts, etc). Relief from the stay is available upon application and a showing of cause, including based on the lack of adequate protection of a lender's interests in its collateral. Lack of "adequate protection" means a lack of security to protect against the diminution in value of the secured lender's collateral during the bankruptcy case (eg, from the debtor's use/dissipation of such collateral). Any property acquired after the date of the filing of a bankruptcy petition is not subject to a secured party's after-acquired property provisions of its security agreement and the security interest will not attach to such property, though lenders will frequently receive liens on after-acquired property as adequate protection.

Secured lenders may be "under-secured" or "over-secured" in a Chapter 11 bankruptcy. An over-secured creditor (ie, where the value of the creditor's collateral exceeds the amount of its debt) is entitled to interest, fees and related charges as part of its allowed secured claim in a bankruptcy case, whereas an under-secured creditor (ie, where the value of the creditor's collateral does not exceed the amount of its debt) is not.

Given the requirement that adequate protection is a condition to a priming debtor-in-possession (DIP) financing, this is a central area of focus during most bankruptcy proceedings in which substantially all of the assets of a Chapter 11 debtor are otherwise encumbered by senior secured debt and insufficient collateral is available for junior DIP financing. Also, given the difficulty in demonstrating adequate protection, a non-consensual priming DIP financing is rare.

7.2 Waterfall of Payments

Creditors in a bankruptcy proceeding are ranked.

Under the absolute priority rule, secured parties are generally paid before unsecured creditors, including administrative claims that arise during a bankruptcy proceeding. Secured parties are classed into each group of similarly situated creditors and depending on their relative priority in the assets, comprising collateral they receive and the proceeds of collateral when realised. Among unsecured creditors, post-petition administrative and priority claims listed in statute (eg, taxes) will be paid first before other unsecured claims, and a Chapter 11 debtor may not be able to reorganise under the US Bankruptcy Code if such administrative and priority claims are not paid in full (or unless the creditors holding such claims agree otherwise). The aforementioned claims are then followed by other general unsecured or under-secured claims. Notwithstanding the foregoing, certain unsecured creditors often are paid in a bankruptcy through "critical vendor" orders, 503 (b)(9) claims (which require payment for goods delivered in the 20 days preceding a bankruptcy filing), and assumption of executory contracts in a plan or sale (which requires the cure of any pre-petition default). Customers are often paid through "customer program" orders and employees are generally paid, aside from certain types of claims (eg, severance claims).

7.3 Length of Insolvency Process and Recoveries

The length of an insolvency proceeding depends heavily on the type of bankruptcy (pre-arranged, pre-packaged, freefall or 363 sale case) and how much litigation is involved.

7.4 Rescue or Reorganisation Procedures Other Than Insolvency

See **7.8 Out-of-Court v In-Court Enforcement** regarding out-of-court restructurings.

7.5 Risk Areas for Lenders

A secured party seeking to enforce a loan, guarantees of the loan, and/or a security interest securing such obligations must comply with any legal requirements under applicable law, primarily Article 9 of the UCC for personal property and applicable real property law for real property, and any enforceable terms of the underlying loan documentation. The UCC provides debtors with various protections that cannot be waived by the debtor prior to default (eg, the right to receive pre-foreclosure notice and the right to have any sale of the collateral conducted in a commercially reasonable manner). There are also overarching doctrines of good faith and fair dealing imposed by state law.

A secured party that fails to comply with the requirements of the UCC risks losing some or all of its deficiency claim and could be liable for damages. Also, a secured party that takes control of a company through enforcement of an equity pledge (for instance, by replacing the company's board of directors or other governing body) prior to actually foreclosing on the shares may have its appointed directors, etc owe fiduciary duties to the company (and, depending on applicable law, potentially other constituencies in interest in the company).

Generally, a lender is not liable under environmental laws for actions of a borrower or other security provider. A lender whose only relationship to a contaminated site is that it has loaned to the owner or has taken a security interest in the land will not be primarily or secondarily liable under environmental laws for the actions of the owner. However, if a lender exercises management over the property beyond that of a traditional lender, then there may be some risk of liability. Similarly, if a lender forecloses on a contaminated property to enforce its security interest and becomes the owner thereof, there is a risk that it may thereby subject itself to liability.

In bankruptcy, some claims, such as certain environmental liabilities, will run with the asset even after a bankruptcy. Creditors should therefore take care in these contexts to avoid accepting unwanted liabilities.

Another risk area is industries that are heavily regulated and/or which may require regulatory or third-party approval prior to a change of control (including by exercise of remedies by lenders).

7.6 Transactions Voidable Upon Insolvency

The primary focus in the case of avoidance actions would be on preferences and fraudulent transfers, and the primary beneficiaries of any avoidance action are unsecured creditors (except as may be set forth in a DIP financing order). Notably, preferences and fraudulent transfers can be brought both under applicable state law as well as under the US Bankruptcy Code, and the requirements of each vary (including the length of the statute of limitations).

First, transfers on account of an antecedent debt (debt that precedes the transfer) made within the 90 days prior to the bankruptcy filing when the debtor was insolvent are avoidable as preferences if they permit the creditor to receive more than it would in a hypothetical liquidation under Chapter 7 of the US Bankruptcy Code. The look-back period for insiders is one year as opposed to 90 days. There are a variety of statutory defences and safe harbours to preference claims.

Second, transfers of an interest in property of the debtor may be avoidable if (a) they are made with actual intent to defraud or deprive creditors of value, or (b)(i) they are made when the debtor is insolvent or render the debtor insolvent, and (ii) the debtor receives less than their reasonably equivalent value.

In addition to preference and fraudulent transfer claims, a debtor in possession or any Chapter 11 estate has the right to pursue any claims of the debtor, including claims for breach of fiduciary duty against directors and officers, such as for approving fraudulent transfers (to the extent available under applicable law).

Proceeds of avoidance actions are generally unencumbered assets available for unsecured creditors. As a matter of practice, an unsecured creditors' committee will seek to prevent a post-petition DIP lender, especially one that is a pre-petition secured creditor, from obtaining DIP liens over avoidance actions, and bankruptcy judges will often side with the creditors' committee on this point (although there are many

examples of proceeds of avoidance actions securing DIP financings).

7.7 Set-Off Rights

Section 553 of the US Bankruptcy Code preserves set-off rights with respect to mutual debts.

7.8 Out-of-Court v In-Court Enforcement

Out-of-court restructurings are the most common restructurings in private credit. While they take many forms, the most common is when the lenders "take the keys" and the private equity sponsor(s) receive a mutual release. As part of such restructurings, the lenders often exchange some quantum of their debt for the equity of the borrower or the holding company that owns the borrower. It is also commonplace for the lenders to provide new funding to the company to defray the cost of the restructuring and provide go-forward liquidity.

Bankruptcies in private credit usually occur when (a) the buyer of a distressed company prefers to purchase in bankruptcy because of the court ordering the sale to be "free and clear" of all liens and other encumbrances, (b) there are burdensome leases or other contracts that the lenders or the buyer wishes the company to reject, or (c) there is litigation that the lenders or the buyer wish to leave behind.

7.9 Dissenting Lenders and Non-Consensual Restructurings

Out of court, dissenting lenders' rights are typically limited to so-called "sacred rights" in the credit agreement. The scope of sacred rights is credit agreement-specific and is currently being litigated in several high-profile cases.

In bankruptcies, dissenting lenders can vote to reject a bankruptcy plan, and if such dissenting lenders constitute at least half of the creditors in that class, or hold more than one-third of the claims in that class, then the bankruptcy plan will need to be approved under the US Bankruptcy Code's "cram-down" procedures. If dissenting lenders constitute a smaller amount of such class, they still have rights to object under the "best interests of creditors" test, which requires that a creditor receive at least the recovery it would receive in a liquidation.

7.10 Expedited Restructurings

Pre-arranged and pre-packaged plans are available in the United States. A true pre-packaged plan, in which votes are solicited and received pre-filing, is the most expedited type of bankruptcy and there are precedents for such bankruptcies lasting a very short time (less than one week). A pre-arranged case can be somewhat faster than a "freefall" bankruptcy, but is not as fast as a pre-packaged case.

Trends and Developments

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Private Credit Grows Stronger and More Mature

The global private credit market continues to grow exponentially; the size of the funded private credit market stands at approximately USD2 trillion today (which is ten times the size of the same market in 2009), according to McKinsey & Company data. Relatedly, private credit dry powder has reached record levels of USD450–550 billion. The need to put that money to work is driving competition for assets in key industries, including infrastructure to drive the artificial intelligence (AI) boom. Sources of private credit are growing, with a notable trend in the insurance industry, while fund structures and documentation are evolving, with a rise in retail and semi-liquid vehicles. And of course, the relentless quest to find high-quality assets and investments means that certainty and speed of execution make all the difference in capitalising on increasingly narrow windows of opportunities.

In 2025, we saw incredible deal flow in private credit – including the blockbuster USD23.7 billion acquisition of Walgreens Boots Alliance by Sycamore Partners – building off the close of 2024 when our firm advised on six billion-dollar-plus transactions in the space of two weeks. Deal flow in 2025 included more jumbo unitranche facilities executed on short timelines, multiple acquisition financings backed by jumbo unitranche, and complicated and highly structured hybrid instruments. Reflecting on our own deals as a significant portion of the market as a whole, we outline the contours of the private credit market and the factors that we expect will drive private credit usage in 2026.

New Insurance Guidelines Underpin Private Credit Evolution

Partnerships with insurance companies have become a major force in private credit markets, providing significant scale, stability, and expertise in structuring deals. Insurance companies now allocate about a quarter of their bond portfolios to private credit and are expected to continue increasing their investments in this area. This influx of insurance capital reflects the higher returns private credit bonds offer as compared to public bonds, the ability to match cash flows with insurers' financial obligations, and the development of partnerships between managers and insurers that enable large-scale deal origination.

Two main factors are driving this trend. First, public and private markets have blended to the point that private credit now offers an attractive option for large, investment-grade financings. These deals are often done privately to avoid affecting public markets while ensuring speed and certainty. Second, banks are shifting from being purely competition for direct lenders to acting as facilitators and partners, which has expanded market-based lending. With more capital raised by funds, they have been able to build teams to execute on a greater number of strategies with different return hurdles. This in turn has led to more flexibility for borrowers, including those that are public companies or not sponsor-backed.

Regulatory changes have shed more light on the scale of insurers' private credit investments. Effective from

1 January 2025, new guidelines from the National Association of Insurance Commissioners reclassified certain sections of insurers' financial statements, providing better insight into their private credit activities.

From a portfolio perspective, insurers are diversifying their investments beyond traditional direct lending into areas such as asset-backed finance, including financing for equipment, data centres and specialised receivables. Private capital is appealing because it fills funding gaps with structured, amortising risk that can be customised. This approach aligns with insurers' financial goals and capital efficiency requirements, while partnerships with managers allow insurers to access origination without developing all capabilities internally.

For borrowers and sponsors, the message is clear: insurance capital, often through integrated credit and insurance platforms, can provide long-term scale, competitive pricing and flexible structuring across various credit ratings, from investment-grade corporate solutions to complex asset-backed securities. For legal advisers, the focus is shifting towards creating customised covenant packages, preparing for private letter ratings, engaging with regulatory bodies, and developing terms that align issuers' goals with insurers' financial constraints.

From Dry Powder to Power Moves: How Retail/Semi-Liquid Vehicles Are Impacting Private Credit

Recent data shows that about USD465 billion is available in private credit funds, with about half of this amount deployed through direct lending. This abundant capital is increasing competition in terms of pricing, deal structures and speed of execution. Investors are poised to deploy funds quickly as market conditions improve, creating a favourable environment for new investments and co-investments.

In the corporate world, investment-grade private credit is becoming more common, as seen in recent large transactions that focus on managing market impact and maintaining financial flexibility. This trend is expanding the use of private credit beyond highly leveraged, ratings-sensitive situations.

Significant innovation has occurred in retail and semi-liquid credit products – through new reliable structures that are attractive to private credit. By mid-2025, semi-liquid credit funds had reached about USD230 billion, driven by investors seeking floating-rate income and diversified private investments.

For legal advisers, the shift towards retail credit products raises important considerations under investment regulations, marketing rules and international distribution limits. Such vehicles also require careful attention to how they are structured, valued and disclosed.

Competition from broader public syndicated markets is squeezing margins on certain loans and encouraging refinancing between public and private markets. This competition increases the need for well-structured agreements and flexibility in loan terms. That said, refinancing of private transactions with broadly syndicated loans does permit funds to show improvements in distributions to paid-in (DPI), which is always a good thing for private funds.

And as described above, insurance companies continue to play a key role in investment-grade private credit, supported by new regulatory definitions and private rating systems.

Smart Money: Private Credit's Role in the AI Infrastructure Boom

The surge in AI-related investments has become a major theme in private credit markets. At the same time, the market is bifurcating and starting to clearly focus on which industries are AI-exposed and which companies are clear AI winners.

For digital infrastructure, viewed as an early AI-advantaged industry, as companies shift their financing needs from their own balance sheets to large, project-based investments, private credit is playing an increasingly crucial role. Private credit providers are funding the upfront costs of financing the purchase of graphics processing units, building data centres and upgrading power grids. Many asset managers anticipate that AI investments through to 2030 will require significant upfront spending on computing, data centre and energy infrastructure. This demand has spurred increased borrowing and more activity

in both public and private markets, with private credit and infrastructure debt being key components of the financing strategy.

In terms of real assets, the need for financing is clear. JPMorgan reports that US data centre-related bond issuance reached USD15.1 billion in 2025, surpassing the total for 2024. They estimate that around USD150 billion will be needed in 2026–2027 to convert short-term construction loans into long-term financing for nearly 20 gigawatts of data centre capacity. Given that only USD53 billion was issued in the past decade, a wider range of investors and additional debt options, such as corporate loans and private capital, will be necessary to meet this demand, likely leading to higher costs to attract more investors.

In terms of legal structuring, certain patterns are emerging: combining construction and permanent financing with milestones for leasing, splitting assets to optimise collateral and tax considerations, providing strong support for project completion, co-ordinating between different lenders, and including power-related agreements in financings. Strong documentation is important, as defaults and breaches of agreements are more common among smaller borrowers, favouring experienced lenders with the ability to manage distressed loans and enforce strong agreements.

Away from infrastructure, within the AI industry, developers are increasingly borrowing to cover the gap between immediate spending and future revenues. This situation is expected to create more opportunities for private credit providers to provide funding to the right AI developers.

With no end to the AI surge in sight, the industry's capital demands mean private credit will continue to grow as a long-term partner in developing data centres and energy infrastructure. Successful players will combine smart asset-backed financing with clear exit strategies, effective risk management related to power, and careful design of agreements that align with the AI investment cycle.

Challenges in Private Credit

Private credit is becoming more competitive and transparent as banks reassert their influence and investors look for opportunities between private and public markets. Interest rates on loans have decreased significantly, with typical direct lending rates now facing competition from broadly syndicated loans, which puts pressure on returns. In recent years, refinancing has become a two-way street, with private loans often being refinanced into public loans where previously only the converse was true, giving borrowers more negotiating power. In some ways, refinancing into public loans benefits private credit as it gives funds opportunities to return capital and improve DPI statistics, so this challenge may be a mixed blessing for some private credit funds.

In this environment, managing financial obligations is becoming standard practice in sponsor finance. A significant portion of prior-vintage private credit loans are set to mature in 2028, and borrowers will be incentivised to prioritise early refinancing and restructuring to avoid last-minute issues. Some of these vintages have loan agreements that are more flexible, allowing for looser terms and creative financial arrangements to manage debt maturities and covenant stress more effectively. However, the success of these strategies still depends on careful loan assessment and effective management of troubled loans, and smart borrowers will also have to be mindful of maintaining strong relationships with their private credit partners.

Increased scrutiny from investors and regulators, especially from insurance companies that are major sources of capital for private credit, may also impact the market. New regulations have provided more transparency regarding private credit activities. While there are concerns about potential risks in certain areas, these are not expected to pose a systemic threat to insurers. With this increased scrutiny, we see insurers realising the importance of choosing the right managers to partner with, and the value of maintaining strong documentation and of active and ongoing monitoring.

Finally, new trends are creating opportunities in the market. Financing for data centres and related projects is growing rapidly, requiring diverse financial solutions where private credit works alongside other funding sources. Investment vehicles that are accessible to retail investors are also expanding, which could

increase market volatility during economic stress. Ultimately, lenders and investors that combine partnerships with long-term capital, flexible financing and back leverage with strong loan terms, proactive refinancing plans, and effective management strategies are more likely to succeed.

Conclusion

For borrowers and sponsors, the practical lesson of the moment is to approach private credit as a strategic, multi-year capital partnership rather than as consisting of single transactions – one that can integrate construction and term financing, align with ratings and capital constraints, and optimise flexibility across public and private options. For investors and managers, durable positive outcomes will hinge on sector specialisation, documentation enforceability, proactive portfolio management, and readiness to navigate refinancings and amendments as maturities approach. If 2025 proved that scale and speed matter, 2026 may test who can pair those advantages with discipline in a highly kinetic market.

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