Private Credit 2026

First Edition

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Brief overview of the private credit market

With a competitive tax system, stable political environment, and skilled workforce, Switzerland is home to a large number of corporations and important subsidiaries of many large international groups across a broad range of industries.

The corporate lending market in Switzerland is a well-developed and stable market with experienced participants. Whilst the larger part of the credit market is with traditional banking institutions, an uptick has been observed over the past few years in the market share of debt funds and other private credit providers, especially in the segment of leveraged loans, but to some extent also in other market segments. There is an expectation that this trend will continue, partly also as a result of the takeover of Credit Suisse by UBS, which is expected to result in a somewhat lower level of available liquidity and a certain shift in the strategic focus in terms of certain products and market segments, which in turn creates opportunities for debt funds and other private credit providers to increase their level of activity in the Swiss market.

Private credit lenders/vehicles

The type of private credit providers involved in a specific transaction depends, among other things, on the size of the relevant financings. Broadly speaking, the following can often be observed in the Swiss market:

(a) In large (range of CHF 250 million and more) and medium-sized (range of CHF 50–250 million) loans in Switzerland, it is primarily internationally active private debt funds that provide (typically syndicated) financing to groups of companies with a Swiss component, which may be (wholly or partially) owned by private equity funds. On occasion, private credit providers participate in syndicated financings arranged by bank lenders.

(b) Smaller private credits (in the range below CHF 50 million) are often extended by private debt funds (typically based abroad) to non-sponsored companies in Switzerland. On occasion, other professional investors such as Swiss pension funds or insurance companies grant loans directly to Swiss companies (or as part of a syndicated financing).

(c) Micro credits (in the range below CHF 5 million) are often extended by family offices and specialised marketplace lending/crowdlending platforms to Swiss-based small and medium-sized enterprises and individuals.

In terms of jurisdiction of incorporation of private credit lenders, it is frequently the case that the relevant lending entities are established abroad, such as in Luxembourg or Ireland. This is not always the case though and there are private credit providers that are established and managed out of Switzerland.

Regulatory considerations and developments

Switzerland offers a fairly liberal regulatory environment for private credit providers.

Most importantly, under Swiss financial market laws, solely providing loans to companies or individuals in Switzerland does not trigger a prior licensing or authorisation requirement, unless:

- the lender refinances itself by accepting deposits from the public or through multiple banks (with the latter scenario requiring refinancing transactions to exceed CHF 500 million), in which case a banking licence is required;
- the relevant loan qualifies as a consumer loan within the meaning of the Swiss Consumer Credit Act; or
- the loan is used to acquire Swiss real estate (which is not commercial real estate) or the loan is secured by residential real estate in Switzerland, in which case certain restrictions based on the Swiss Act on the Acquisition of Real Estate by Persons Abroad (so-called 'Lex Koller') may apply.

Private lending activities may be subject to Swiss anti-money laundering rules if the lender is based in Switzerland, in which case the relevant entity needs to become a member of a self-regulatory organisation.

Further, the rules of conduct, organisational, and registration requirements provided for in the Swiss Financial Services Act will generally not apply to the granting of loans, unless the loan is used to finance transactions with financial instruments.

In terms of regulatory developments, there have not recently been developments that are expected to have a material impact on the Swiss private credit market.

Tax considerations

Swiss withholding tax

One challenge that direct lenders face in Swiss transactions has to do with the Swiss tax law rules commonly referred to as the 'Swiss non-bank rules'; such rules are summarised below. It is important to note though that this is a challenge that can be addressed in practice and that it does not constitute a major roadblock. The issue can be summarised as follows:

Under Swiss domestic tax laws, interest payments by Swiss borrowers under a loan financing are, as a rule, not subject to Swiss withholding tax, if the Swiss non-bank rules are complied with. These rules are short for the tax law distinction between loan transactions on the one hand (which are not subject to Swiss withholding tax) and bond and bond-like transactions on the other hand (which are subject to withholding tax). Broadly speaking, these rules are triggered where:

(a) a syndicate on a particular loan financing consists of more than 10 non-bank lenders (the **10 non-bank rule**);

(b) a Swiss borrower/guarantor has, on an aggregate level, more than 20 non-bank financial creditors (the **20 non-bank rule**); or

(c) a Swiss borrower/guarantor has, on an aggregate level, more than 100 non-bank financial creditors, under financings that qualify as deposits (*Kundenguthaben*) within the meaning of the relevant rules (the **100 non-bank rule**).

A breach of the Swiss non-bank rules can result in the applicability of Swiss withholding tax (currently at a rate of 35 per cent). Such tax would have to be withheld by the Swiss borrower.

For purposes of the Swiss non-bank rules, the term 'bank' can, simplifying things somewhat, be thought of as a Swiss or a non-Swiss entity that is licensed as a bank and that conducts genuine banking activities.

Where a financing is provided by a non-bank lender, such as debt funds or similar non-bank lenders, the Swiss Federal Tax Administration may 'look through' such lender and look to, and count, the individual investors (behind such lender) when assessing the number of non-bank lenders under the specific financing. Thus, where a financing is provided by a non-bank lender, it is key to assess whether the relevant lender can be viewed as a single creditor for purposes of the Swiss non-bank rules or whether the Swiss Federal Tax Administration would look through such lender to the investors behind it (in which case this could cause a problem when it comes to complying with the 10 non-bank rule). Typically, where debt funds act as lenders, it is strongly recommendable to apply for a tax ruling confirming that the relevant lender counts as a single creditor for purposes of the Swiss non-bank rules. Whether or not such ruling can be obtained depends on the specifics of the particular lender, but it is fair to say that the likelihood of obtaining a positive tax ruling is fairly high for the majority of the typical setups. Also, even better, it is becoming increasingly possible to obtain a tax ruling confirming not only that a debt fund is a single creditor but that several affiliated lending compartments (or similar setups) can be aggregated into a single creditor for purposes of counting the relevant number of non-bank slots under a specific financing.

On a related note, it should be noted that a standard tax gross-up clause may, in light of a respective prohibition in the Swiss Withholding Tax Act, not be valid and enforceable in Switzerland, in particular where the reason for the withholding tax is a breach of any of the Swiss non-bank rules. To tackle this issue, there is, in practice, an attempt to achieve the same commercial result by means of a clause that provides for a recalculation of the applicable rate of interest, rather than the payment of a grossed-up amount, if a tax deduction is triggered. It is untested in courts whether such clauses, which are used widely in practice, are valid and enforceable.

Other tax considerations

A tax at source applies to payments secured by Swiss real estate when made to non-Swiss lenders, unless exempted under any applicable double taxation treaty.

No stamp or documentary taxes are payable in Switzerland in respect of the execution or delivery of loan and security documents as a condition to the legality, validity, enforceability or admissibility in evidence thereof in Switzerland. Notary fees and registration duties may be payable with respect to documents that are drawn up as public deeds or need to be filed with a registry (e.g. security on real estate).

Where participations in a loan are evidenced by debt recognitions or instruments that are taxable under the Swiss Stamp Tax Act, a transfer thereof made by securities dealers (as defined in the Swiss Stamp Tax Act) as a principal or intermediary are subject to Swiss federal turnover taxes.

Collateral support and subordination

Scope of security package

As is the case in other jurisdictions, the scope of a Swiss security package depends primarily on the specifics of the transaction and is, hence, determined on a case-by-case basis. It is not uncommon for a Swiss security package to comprise share pledges, receivables security assignments and bank account

pledges. Swiss security packages may also include security over intellectual property rights or over real estate assets and, on (rare) occasion, over tangible movable property.

Limitations on up- and cross-stream security and guarantees

It is the prevailing view under Swiss law that the provision of upstream guarantees (i.e. guarantees for obligations of direct or indirect shareholders of the guarantor) and cross-stream guarantees (i.e. guarantees for obligations of sister companies of the guarantor) is subject to a number of requirements and restrictions.

Essentially, it is held that these types of guarantees should be treated as the equivalent of a dividend distribution as far as formal and substantive requirements and limitations are concerned. The key practical implication of this is that upstream and cross-stream guarantees are limited to the amount that the guarantor could distribute to its shareholders as a dividend (measured at the time payment is demanded under the guarantee). In addition, payments under upstream or cross-stream guarantees may be subject to tax implications, including Swiss withholding tax implications.

The requirements and limitations applicable to upstream and cross-stream guarantees are also applicable to upstream and cross-stream security interests.

In terms of security over Swiss real estate, secured lenders should pay attention to restrictions that may affect residential real estate deriving from the Swiss Act on the Acquisition of Real Estate by Persons Abroad (so-called 'Lex Koller'). In addition, a tax at source may apply to interest payments secured by Swiss real estate when made to non-Swiss lenders (with exceptions under applicable double taxation treaties).

Further structuring considerations

Interest rate limitations

With double-digit yields not being unusual (especially on subordinated or mezzanine debt), it is important for lenders to consider applicable interest rate limitations when structuring transactions.

Generally speaking, there is no specific legislation or brightline test in Switzerland on the maximum rate of interest, except in the area of consumer loans and in certain cantons (such as the canton of Zurich). However, rates of interest are subject to the general Swiss law principles on usury and *boni mores*. As a result of such principles, there are limitations on the maximum permissible rate of interest and the respective rate depends on a number of factors and the specific circumstances. In our (untested) view, such factors include, among other things, the overall interest rate level applicable to the currency in which the loan is extended, as well as the term and risk profile of the loan.

While there is no clear test or numerical limit on the maximum permissible rate of interest, practitioners generally believe that the limit would be in the range of 16 to 18 per cent per year, which may include certain one-off fees (such as origination fees).

Payment-in-kind (PIK) facilities

With increasing competition from the bank lending market, private credit lenders are increasingly offering flexibility to borrowers in the form of PIK facilities. Private credit lenders will often add a PIK option in financings with large financial sponsors. Typically, the borrower's right to 'PIK' the margin only applies to a certain portion of the margin component. To compensate lenders for using the PIK feature, the interest rate margin will increase on the portion of the interest that is 'PIKed'.

There is a risk that certain PIK features may be held to be incompatible with Swiss public order and the prohibition of anatocism under Swiss law (i.e. the prohibition of capitalised interest being automatically added to the outstanding principal amount of the loan and bearing interest). Where Swiss borrowers are

involved, this risk is typically addressed by providing that the capitalisation of interest is at the option of the borrower.

Equitable subordination

Under Swiss law, the concept of equitable subordination is discussed mainly in relation to the risk of shareholder loans being, under certain circumstances, requalified as equity and subordinated in the bankruptcy of a Swiss corporate borrower.

In a recent decision, the Swiss Federal Supreme Court clarified equitable subordination risks in connection with shareholder loans. After re-confirming the inadmissibility of a re-characterisation of loans into equity in line with previous decisions, the court recognised (for the first time) the concept of equitable subordination on the basis of the abuse of rights doctrine. When discussing the relevant trigger, the court adopted a pure balance sheet perspective and held that only loans that are granted to an over-indebted entity are exposed to the risk of equitable subordination. Other more vague tests (such as a third-party test or a recovery test) were dismissed by the court.

Private credit transactions and the year ahead

Over the past year, syndicated credit markets have regained momentum, prompting Swiss private credit transactions to shift towards greater flexibility and creativity in structuring. Direct lending has become the financing tool of choice for a number of deals, especially in the segment of mid-market deals, with borrowers and sponsors valuing speed, certainty, and the ability to negotiate tailored terms outside traditional bank processes. We are seeing increased use of unitranche facilities combining senior and subordinated debt into a single tranche. Mergers and acquisition (M&A) activity and leveraged buyouts have been the main drivers of Swiss direct lending deals, as the bulk of loans are to sponsor-backed corporates.

While the European direct lending market remains less mature than the US direct lending market, it is possible that we see more lending activity involving large-caps borrowers with more and more insurance companies and other non-banks entering the Swiss private credit market.

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