

SCHEDULE 3

TABLES

Draft 3

TABLE 1: VALIDITY AND CREATION

	EXECUTION FORMALITIES			RESTRICTIONS		
	Writing	By Deed	Notarisation	Certainty in identifying the securities	Substitution Risk	Pledgee's liability
Austria	no, but preferred	no	no	no	yes	yes
Belgium	no, but preferred	no	no	yes no (with a special securities account)	yes	yes
Denmark	no, but preferred	no	no	yes (required for registration in the Danish Security Center)	yes	yes
England	no, but preferred	no	no	Yes no (for floating charge)	yes	yes
Finland	no, but preferred	no	no	no	yes	yes
France	no yes (with new pledge over account)	no	no	yes (old declaration of pledge) no (with new pledge over account)	yes no (with new pledge over account)	yes
Germany	no	no	normally no (except shares in a GmbH)	yes (important for pledges assignment by security)	yes	yes
Greece	No, but preferred	Yes (notarial deed)	yes	yes	yes	yes
Ireland	no	yes (certified deed of transfer)	no	no	yes	yes
Italy	yes	yes (notarial deed for shares)	no	yes (for regular/irregular pledge) no (with new floating lien)	yes (some advantage with new lien)	yes
Luxembourg	No, but preferred	no	no	no	yes	yes
Netherlands	no yes (certain types of asset)	yes (certain types of asset)	no	yes	yes	yes
Portugal	yes	no	no	yes	yes	yes
Spain	yes	no yes public notarial deed for shares	no	yes	yes	yes
Sweden	no	no	no	yes (to validate the pledge agreement)	yes	yes

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Comments on Table 1:

1. Formalities:

Formalities serve the following purposes: to prevent fraud; to mark the seriousness of transaction for the debtor; to improve collection of documentary taxes; to secure publicity via notarised public deeds and to mitigate false wealth objection. Certain formalities relate to the admissibility of the document as evidence, for example: judicial enforcement. In Spain for example, notarisation is an executive authenticated act not requiring further proof, having the presumptions of validity and being desirable to avoid delays in Court enforcement.

Disadvantages of formalities include their inconvenience and expense, and the fact that they are impracticable for frequently changing margin collateral.

In most of the civil jurisdictions, writing is a minimum for admissibility in evidence; however Spain always requires a public deed to ensure validity of the pledge against third parties.

2. Certainty in identifying the securities

The securities concerned must be specifically particularised and identified.

All jurisdictions have restrictions to a greater or lesser degree with respect to the pledge; however in some of the jurisdictions with pledges over accounts this will not be an obstacle, e.g. Italy, France and Belgium.

3. Substitution risk

The substitution of securities by the pledgor may affect or even destroy the pledge.

France appears to be flexible in this area, with the new pledge over account permitting transfers from or to an account, because it does not require release of the pledge. In France therefore substitution (outside insolvency) is of no effect. The other jurisdictions present substitution risk in different ways.

4. Pledgee's liability

There is a generic rule, codified in the Civil Code states, established by case law in England, whereby a pledgee must take reasonable care of the assets pledged and will be liable for losses arising from its failure. This may be relevant in those cases where there is a delay in realisation of the pledge and the pledgor complains that the pledgee should have sold securities before a fall in the market.

TABLE 2: PERFECTION

	Transfer to special account	Taking possession	Service of notice	Notarisation	Registration
Austria	no	yes	no	no	no
Belgium	no yes for dematerialised securities	yes no for special securities account	no yes with registered securities notice to Company	no	yes for registered shares in shareholder's register no for dematerialised and bearer shares
Denmark	no	yes (for physical bearer securities)	no	no	yes
England	no	no yes if a "pledge"	yes if securities are held through intermediaries	no	no yes for floating charge
Finland	no	yes	yes if securities are held through intermediary	no	no yes for securities in book-entry
France	yes	yes promissory notes and negotiable instruments no for new pledge over securities account	yes if securities are held through intermediary	no yes for tangible assets	yes for Societe Civile shares with Greffe
Germany	no	yes	yes for GmbH shares	no	no
Greece	no	yes	yes	yes	?
Ireland	no	yes	no	no	yes (in the Irish Companies Registration Office)
Italy	no yes for dematerialised securities	yes (regular pledge) no (irregular pledge)	no (however with shares notice to company if pledgee wants to exercise voting and dividends rights)	no	no yes (for dematerialised and registered securities)
Luxembourg	yes	no	no	no	yes in the depositary books
Netherlands	no	yes	yes	no	no yes for registered shares in shareholder's register
Portugal	no	yes	yes notation of pledge in official form for some shares	no – however: notarised signatures in collateral agreement for bearer securities	no yes nominative shares in company's ledger book
Spain	no	yes share certificates or documents of title	no – but for listed securities notice is necessary to Sociedad Rectova and CNMVs	yes	no yes unilateral declaration at the account register
Sweden	no (though when pledge is	yes	yes (to any third party in	no	no

	registered there is a sub-account called "pledged account" for pledged assets)		possession of the collateral)		yes dematerialised securities at the Securities Register Centre.
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Comments on Table 2

1. Transfer to a special account

Perfection for these new types of collateral will take place as soon as the security is registered in the special account or, if applicable, is filed in the register of pledges of the custodian (Italian case) or when the amount of the securities is credited to the pledged account (Belgian case).

2. Taking possession

In the case of pledges as possessory security, the pledgee must perfect its security by actually taking possession of the secured property, the principle being that a debtor not in possession of its property puts third parties on notice that its interest may be encumbered.

3. Service of notice

Particularly in relation to an assignment of a contract debt, the creditor will acquire an enhanced security interest by serving notice of the security on the contract debtor. It is usually necessary to comply with formalities, which limit flexibility. Acknowledgement and annotation requirements can be particularly burdensome considering the frequency of securities flows involved.

4. Notarisation

This may be a mandatory requirement and in any event it may be desirable for evidential purposes for the secured creditor to ensure that the security document is notarised by a notary.

5. Registration

Lack of registration in some cases may invalidate the pledge. For example, in Belgium, if registration is delayed more than 15 days after signing a security document over registered securities and is made within the pre-bankruptcy risk period, the pledge will be voidable.

TABLE 3: ENFORCEMENT

	PUBLIC SALE/PRIVATE SALE	FORMAL PROCEDURES
Austria	yes no in the case of securities with a market or exchange value and bank savings certificates	yes
Belgium	yes – civil pledge requires public auction both – commercial pledge can be public or private	no yes, only for sale of unlisted securities the procedures for 5 th May 1872 Law specially court authorisation, prior notice to debtor.
Denmark	yes public auction for dematerialised securities and for physical unlisted securities	yes provisions of the Danish Administration of Justice Act
England	no but obligation to obtain a fair value	no
Finland	yes both	no - following the General Pledge Agreement yes - if not following the above clause, the Commercial Code will apply
France	yes public sale for certain securities	no with the Law of 1996
Germany	yes both (private only if agreed after pledge becomes enforceable)	very rarely Civil Code rule is still mandatory
Greece	Yes Public auction Listed securities at the Stock Exchange	yes
Ireland	no	no
Italy	yes public auction	no with the irregular pledge/some degree with the regular pledge
Luxembourg	yes Public auction Possibility to sell at the Stock Exchange	no
Netherlands	yes public: for registered shares: may require compliance with Securities Act and Merger Code for bearer securities: pledgee can also sell shares at the Stock Exchange	no major formal procedures
Portugal	yes public auction or sale organised by Court	yes proceedings of forced sale
Spain	yes public auction before Public Notary	yes formal claim for debt, and enforcement before the notary or the court
Sweden	yes both	yes but may be varied by agreement

	Also on a Stock Exchange or other markets	
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Comments on Table 3

1. Public sale/private sale

In some jurisdictions, enforcement may be subject to the delay and formality of a court ordered public sale, as opposed to a private sale of the secured asset. This is generally for the protection of the debtor and can lead to delays in realising the assets. Private sales permit a rapid disposal of the asset without delays or court costs, but the pledgee is generally subject to a duty to conduct the sale reasonably and to obtain the best reasonable price. Those jurisdictions which permit only public sale give protection to the debtor. On the other hand countries such as Ireland does not need to have any public auction procedure in order to sell the collateral.

2. Formal procedures

Court procedures will inevitably lead to delays and costs and are normally intended to protect the debtor. Spain and Portugal (and exceptionally for the sale of unlisted securities in the Belgian case) present less flexible mechanisms, showing a strong attachment to protection of the debtor's position. In the case of Sweden there are formal procedures but they may varied by agreement. Other jurisdictions have a more flexible approach.

TABLE 4: INSOLVENCY

	Stay or moratorium preventing enforcement	Extortionate credit bargain	Preferences
Austria	yes	?	yes
Belgium	yes	no	yes
Denmark	yes	no	yes
England	yes	yes	yes
Finland	no	?	yes
France	yes	no	yes
Germany	no	yes	yes
Greece	No?	?	yes
Ireland	yes	?	yes
Italy	yes	no	yes
Luxembourg	no	?	yes
Netherlands	yes although application to securities uncertain	no	yes
Portugal	yes	no	yes
Spain	no	yes	yes
Sweden	no apart from some administrative delays yes for unlisted securities Immediate enforcement in some cases with the amended Swedish Bankruptcy Code (see page 5 of the Swedish Insolvency analysis)	?	yes

Comments on Table 4

1. Stay or moratorium preventing enforcement

It is often difficult to distinguish between traditional compositions and moratoria and corporate rehabilitation proceedings. We have noted those procedures that tend to prevent enforcement of pledges.

Moratoria are often limited in time, some are shorter (Austria with its preliminary procedure-five weeks- which stays the enforcement of security or Denmark with its suspension of payments –up to 12 months) others longer (Belgium and the Netherlands -three years- or the Italian amministrazione controllata - two years).

In some cases the court will determine the stay period of time such as in the case of the Irish examination protection period.

2. Extortionate credit bargain

A transaction requiring debtor to make grossly exorbitant payments will be invalid. England, Germany and Spain have this, but it is unlikely to be relevant in the financial markets.

3. Preferences

Rules relating to preferences are intended to prevent the debtor from the fraudulent or prejudicial concealment and transfer of assets prejudicing creditors.

TABLE 5: TRANSFER OF TITLE

Austria	Possible by case law though no statutory provision as to its establishment exists
Belgium	Possible for certain financial transactions
Denmark	Possible – there is no statutory provision forbidding it
England	Possible
Finland	Possible
France	Possible- several statutory provisions in French Law recognise it for security purposes
Germany	Possible
Greece	Not
Ireland	Possible
Italy	Not possible (its floating lien though got similar effect)
Luxembourg	No but transfer governed by a fiduciary agreement are protected
Netherlands	Not possible but case law has limited the effects of this restriction
Portugal	Not possible
Spain	Not possible but it can be built by contract
Sweden	Possible but not very common under Swedish Law

OTHER SECURITY INTEREST ASPECTS

	Sell/Lend/Use Re-pledge/Rehypothecation	Stamp Duty	Validity of future collateral	Collateral over fluctuate pool of assets
Austria	no	no	no	no
Belgium	No use Possibility of sell with fungible securities	no	?	?
Denmark	no use Yes rehypothecate to certain extent	no	yes but problems if e.g. pledgor creates a secondary pledge	yes but specifying at all times which assets are. Possibility with registered specific account
England				
Finland	No use Yes rehypothecate			
France				
Germany				
Greece	no	no	no	no
Ireland	no use	yes	yes for a fixed charge	yes but pool must be specifically designated or described
Italy				
Luxembourg	No use Yes rehypothecation/re-pledge prior pledgor's authorisation	no	yes	yes
Netherlands	no	no	Yes if sufficiently identifiable	yes
Portugal	no	yes	no	no
Spain	no	no	no	no
Sweden	no use yes re-pledge but subject to pledgor' rights	no	Yes but only perfected by delivery or registration	Pool: yes but subject to identification of the relevant pool of assets and pledgor's consent