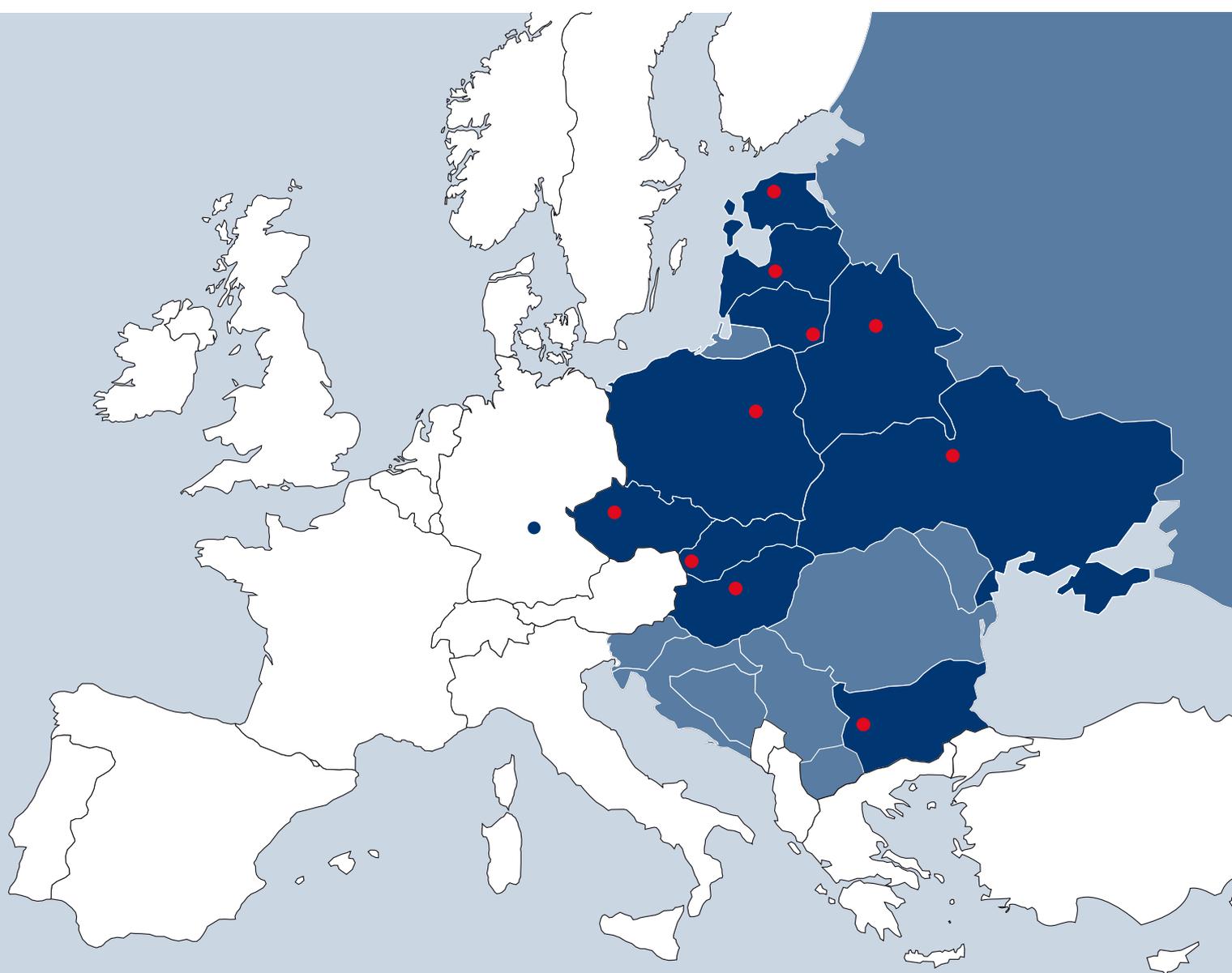


REAL ESTATE FINANCING SURVEY

Central- and Eastern Europe

2013



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Introduction

In 2011, growing demand for legal advice in connection with real estate financing in CEE countries persuaded us to publish a new survey on real estate financing, as a companion guide to the general bnt survey for investors, “Real Estate in Central and Eastern Europe”. This updated survey illustrates and explains the legal framework in various countries for the individual stages of real estate project development – from the loan agreement to project completion – with particular focus on the issue of the intrinsic value of collateral in critical situations, such as borrower insolvency. In this respect, it is particularly interesting and important for planners and decision-makers to note that the real estate lien (“Grundschuld”) – which somewhat enjoys the status of a “gold standard” in Germany – hardly lives up to its reputation in most CEE countries. The prudent course of action will often be to fall back on other forms of collateral, such as a security assignment of the property or an option to purchase an ownership interest in the real estate developer – which will often turn out to be more useful.

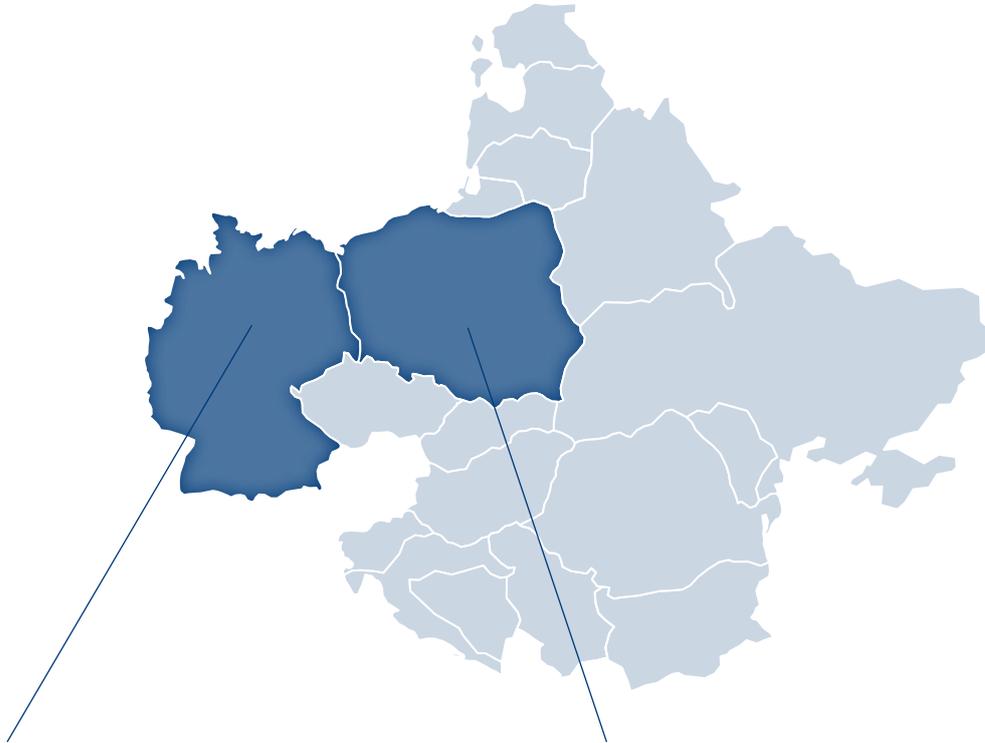
From our vantage point as active observers, we have noticed a sustained recovery of the real estate market in the CEE region, manifesting itself in e.g. increased demand for office and retail space in urban agglomerations and capital cities. Institutional investors in particular have shown renewed readiness to underwrite ventures in this sector. In addition, numerous CEE countries have launched fundamental reforms in business and commercial law which are bound to attract investors in the medium term. Even in regions that are held back by less promising macroeconomic circumstances, niches have been opening up and may successfully be conquered by investors. The updated survey is current as of press date, i.e., July 2013.

As a specialist in all legal matters to do with Central and Eastern Europe, bnt is at home in eleven CEE countries. We would be very happy to welcome you to our offices in any of them!

Very sincerely yours,

Dr. Csongor Buzády, LLM (bnt Budapest) / Martin Neupert (bnt Nuremberg)

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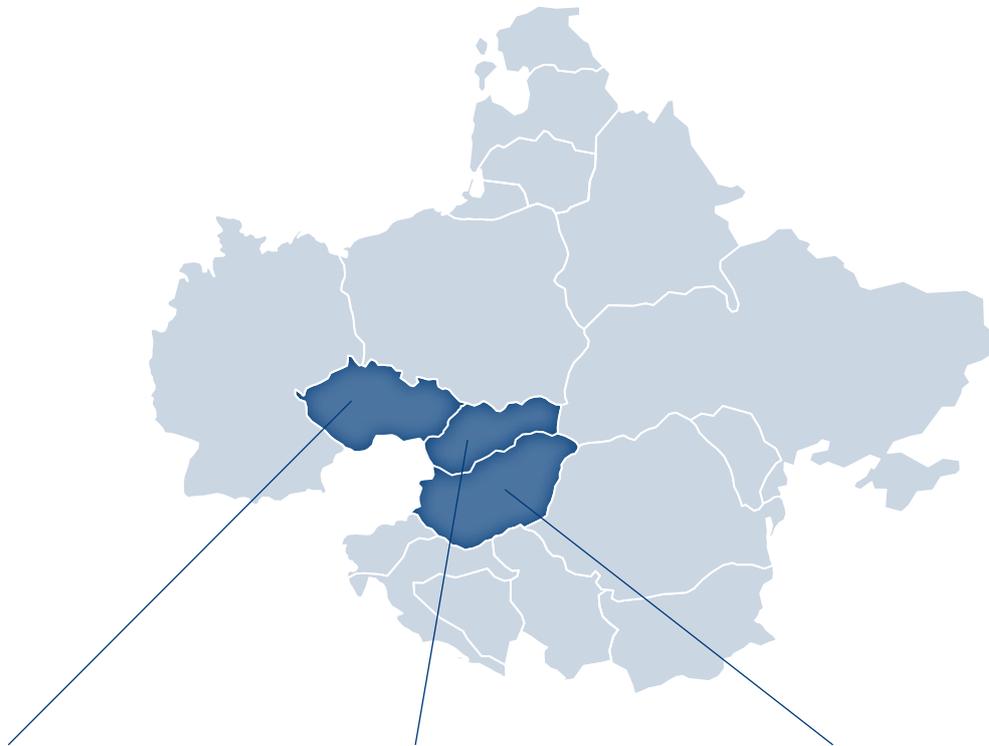
→ Germany:

- German banks generally grant loans for real estate financing in euro; however, loans in a foreign currency, e.g. in Swiss francs, may also be granted.
- No general restrictions affect loan agreements under German public law.
- Interest on a loan for financing the purchase of real estate depends, inter alia, on the basic rate of the European Central Bank, the amount, the term, quality of collateral, and solvency of the borrower. The current effective rate of interest offered by some lenders is below 4%.
- The parties may choose the governing law of the loan agreement at their discretion. However, the bank generally has the better bargaining position.

→ Poland:

- Polish banks usually grant loans in Polish currency (PLN), but loans in foreign currencies are also possible. Loans in EUR and CHF are particularly common.
- There are no public-law restrictions on granting loans.
- Loan interest varies, with rates currently from 5% to 7%, with an additional margin for the bank.
- Legal entities may choose the governing law of their contract at their discretion. However, leeway is small in negotiations with banks, and loan agreements are thus regularly made under Polish law.

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→ Czech Republic:

- Loans may be granted in any currency of the parties' choice.
- There is no prescribed statutory interest rate. Interest rates are usually determined based on the PRIBOR („Prague InterBank Offered Rate“).
- Most loans are secured by pledge – i.e., by creating a pledge title to real estate and/ or to the ownership interest in a SPV. Loans are earmarked for the given purpose. Drawdown of a loan for new projects is sometimes conditional upon conclusion of future leases or future sales agreements.
- There are no restrictions with respect to choice of governing law for a loan agreement.

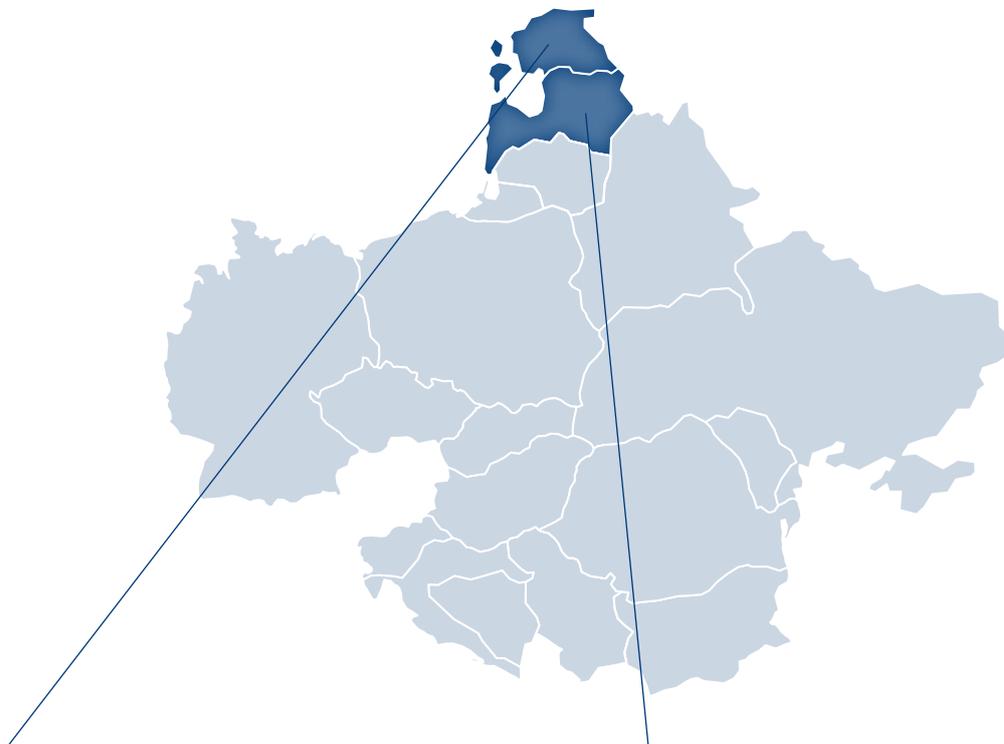
→ Slovakia:

- Loans are usually granted in EUR, though fx loans in USD, GBP, CZK, CHF are possible.
- Fx risks are borne by the borrower.
- Strong competition has led to favourable interest rates for borrowers.
- The actual interest rate depends on the type of loan + other factors.
- Foreign law may be chosen as the governing law if a foreign element is present but requires a written understanding among the parties and is rare in practice.

→ Hungary:

- The currency for loans may be freely chosen. Prior to the economic recession, loans denominated in CHF or EUR were widely used in Hungary, but their number has plummeted due to high depreciation of the Forint.
- Public-law restrictions apply primarily to consumer loan agreements made in foreign currency.
- The amount of interest is determined by the contractually agreed interest rate or by the basic interest rate of the Hungarian National Bank (MNB). The courts may mitigate excessive interest rates.
- The choice of governing law is at the discretion of the parties.

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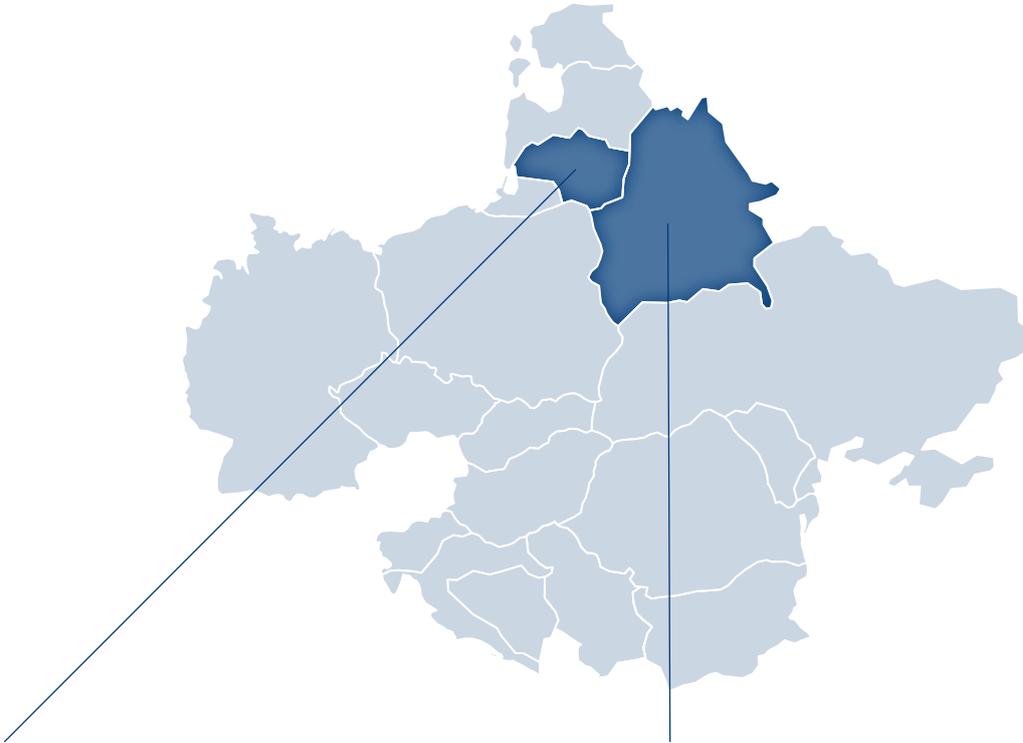
→ Estonia:

- As of 1 January 2011, the euro is the official currency in Estonia. Most loans are granted in EUR.
- Acquisition of real estate in Estonia is commonly financed by banks, who primarily secure their loans through mortgages on purchased property. Other typical forms of collateral include bank and other guarantees. Another possible form of collateral, which has however fallen into disuse, is the „commercial pledge“ – a pledge encumbering the entirety of movable assets of a business (Floating charge).

→ Latvia:

- The currency of loans may be chosen freely. Most loans in Latvia are contracted in Euros or U.S. dollars.
- Interest must be paid either as by the contractual arrangement, or in the amount of statutory interest rate of seven percentage points above the applicable base rate.
- The governing law is at the discretion of the parties (and is usually chosen by the lender).

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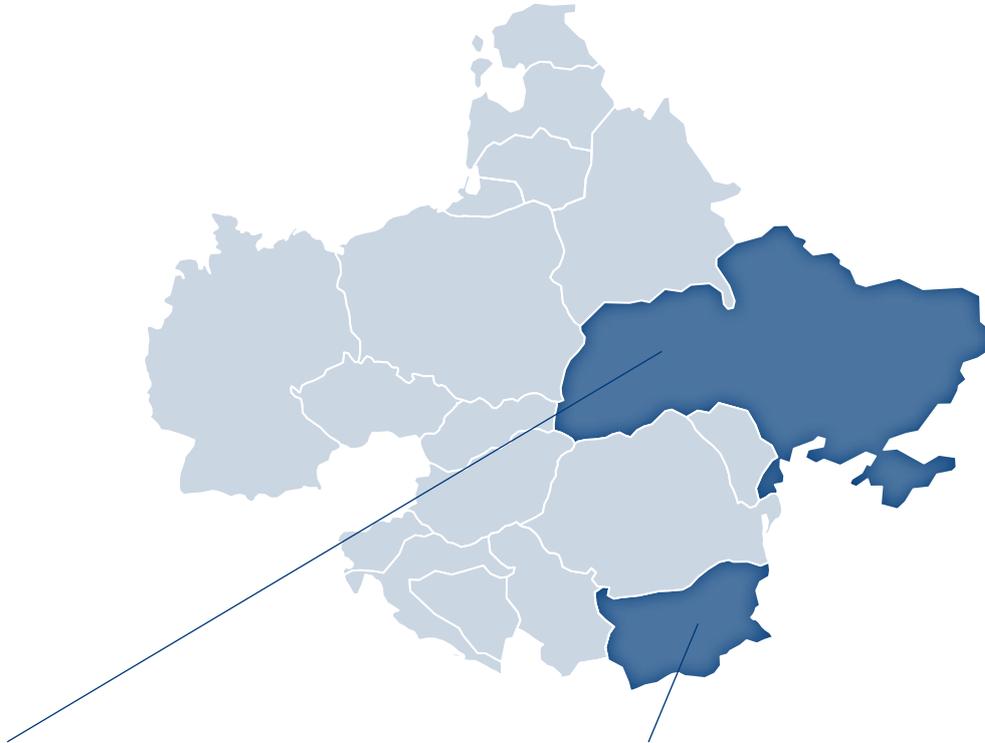


→ Lithuania:

- Loans in Lithuania may in principle be granted only in Litas or in Euros, unless no cash transaction is made (in which case the parties may agree on a different currency).
- Loan agreements with a legal entity must always be in writing. Agreements with a natural person must be in writing if the loan exceeds LTL 2 000 (ca. EUR 580).
- A loan agreement is deemed made as of the moment when money changes hands. For this reason, it is advisable to incorporate a provision in the agreement that specifies what amount the lender made available to the borrower and when.
- Loan agreements are always considered 'for consideration', unless the parties have agreed otherwise. The parties stipulate the amount of interest; if they do not do so, then the applicable interest rate is the average interest rate charged by commercial banks at the time of contracting and at the lender's place of residence or business.

→ Belarus:

- Loans may be granted both in domestic (Belarus rubles) and foreign currency (provided an official exchange rate has been set for converting that currency into Belarus rubles). Loans between two Belarus companies must be contracted in Belarus rubles.
- Depending on the terms of the loan agreement between a domestic entity and a foreign entity, the domestic entity may first need approval from the National Bank before the loan can be drawn down or, as the case may be, repaid.
- Loans are usually interest-bearing. The interest rate may be set in the loan agreement or derived from the basic rate of the National Bank.
- There are no upper or lower limits to loan interest, though approval by the National Bank may have to be obtained depending on the amount of interest.
- If a foreign entity grants an interest-free loan, then this qualifies as so-called gratuitous sponsorship, which is subject to special regulations and restrictions.
- Parties to a loan agreement are free in their choice of governing law. If they make no choice, then the law of the lender applies. Irrespective of choice of law, mandatory provisions of Belarus foreign exchange law must always be observed.

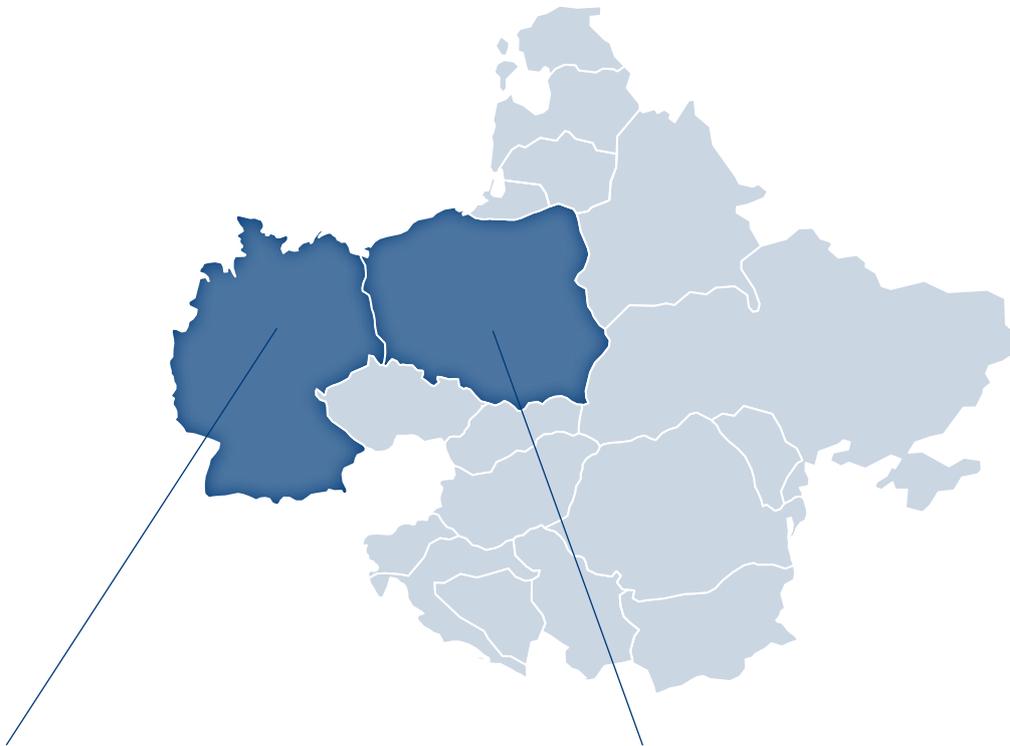


→ Ukraine:

- Domestic loans may only be granted in the national currency (hryvnya). Loans to nonresidents are granted in foreign currency such as EUR, USD.
- Loan agreements with a non-resident must be registered with the Ukrainian National Bank.
- Interest charged under loan agreements with non-residents depends on the term of the loan and is set as follows:
 - for loans of up to one year: max. 9.8 % p.a.;
 - for loans from one year to up to 3 years: max. 10 % p.a.;
 - for loans of more than 3 years: currently also capped at max. 10 % p.a.
- The governing law for a loan agreement may be freely chosen by the parties. However, due to mandatory public registration, requirements of Ukrainian law and the Ukrainian National Bank must be observed.

→ Bulgaria:

- Bulgarian banks finance real estate purchases in local currency (BGN) or in EUR.
- Interest rates are generally not fixed but floating. Their amount derives from the basic rate of the Bulgarian National Bank or the European Central Bank (depending on the currency, the amount, the term, quality of collateral, and the solvency of the borrower). However, additional, non-transparent factors may also play a role. Bulgarian banks tend to pass on bad-credit risks to their clients by keeping the right to unilaterally raise both the interest rate and the numerous fees which they charge borrowers. Thus, effective rates are generally two-digit numbers and in some cases even exceed the statutory interest rate for default interest.
- The parties may choose the governing law of the loan agreement at their discretion. However, the bank generally has the better bargaining position. For consumer contracts, the choice of law is partly restricted in favour of the consumer. The restriction does not apply if a foreign consumer approaches a Bulgarian bank in Bulgaria.

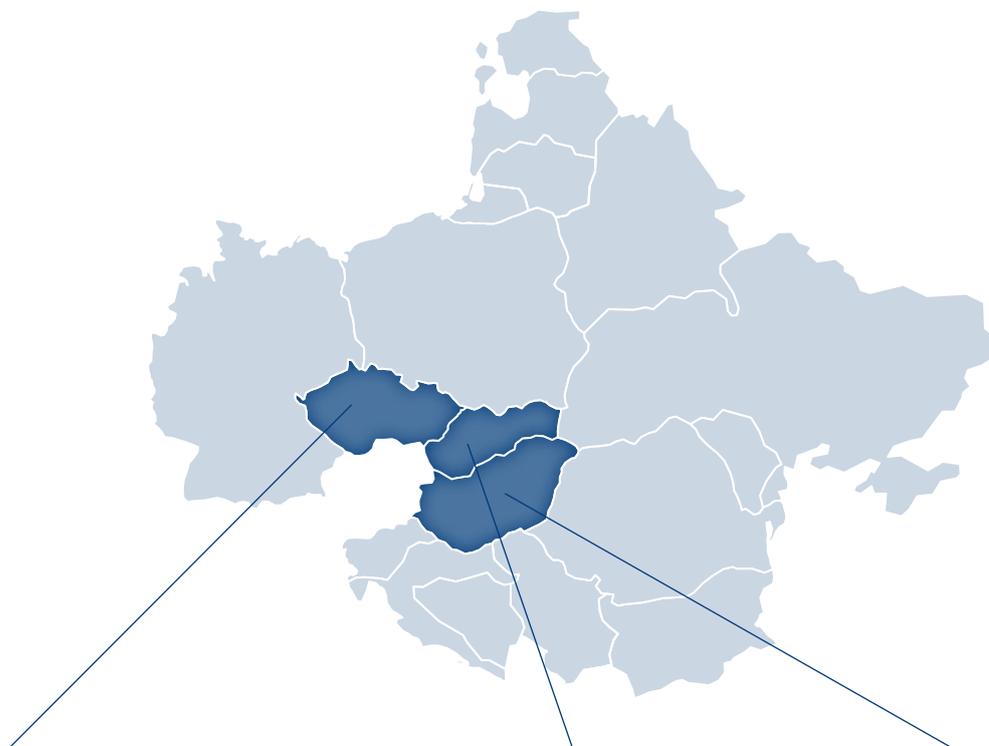


→ Germany:

- A mortgage entitles the mortgage creditor to foreclose on the encumbered property in order to settle secured claims. A mortgage depends on the existence of a secured claim.
- The typical form of mortgage is the ordinary mortgage (Verkehrshypothek) which may be a registered uncertified mortgage (Buchhypothek) or a certified mortgage (Briefhypothek). Transfer of a certified mortgage is also possible outside the land register.
- A consolidated mortgage is possible on several properties at the same time.
- A mortgage comes into existence upon mutual agreement between the parties and entry in the land register. For creation of a mortgage, the land owner's consent must be at least certified by a notary public. Mortgages may be transferred along with secured claims. Acquisition in good faith of a mortgage is possible.

→ Poland:

- Polish mortgage law saw a comprehensive amendment in February 2011. Since then, only one form of mortgage exists – the collateral mortgage. In other words, all mortgages are now designed as „elastic“, in the sense that they cover the receivable up to the agreed maximum amount, plus interest and fees, and may also extend to future monetary claims.
- One mortgage may secure several receivables with a large number of creditors, as long as it serves as collateral for a single business venture (e.g. in the case of a syndicated loan).
- The rank of an expired mortgage in the land register becomes freely available. Once it has been settled, the borrower may replace the receivable for which the mortgage served as collateral with a new claim, or may create a new mortgage. The secured claim may be replaced with a different claim by the same creditor; this does not require consent from other parties with a title in the same rank or a lower rank.
- For a mortgage to come into existence, a notarial deed is required (exception: mortgages for banks). The mortgage may be created on a contractual basis or by way of a unilateral representation. The mortgage takes effect upon entry in the land register.



→ **Czech Republic:**

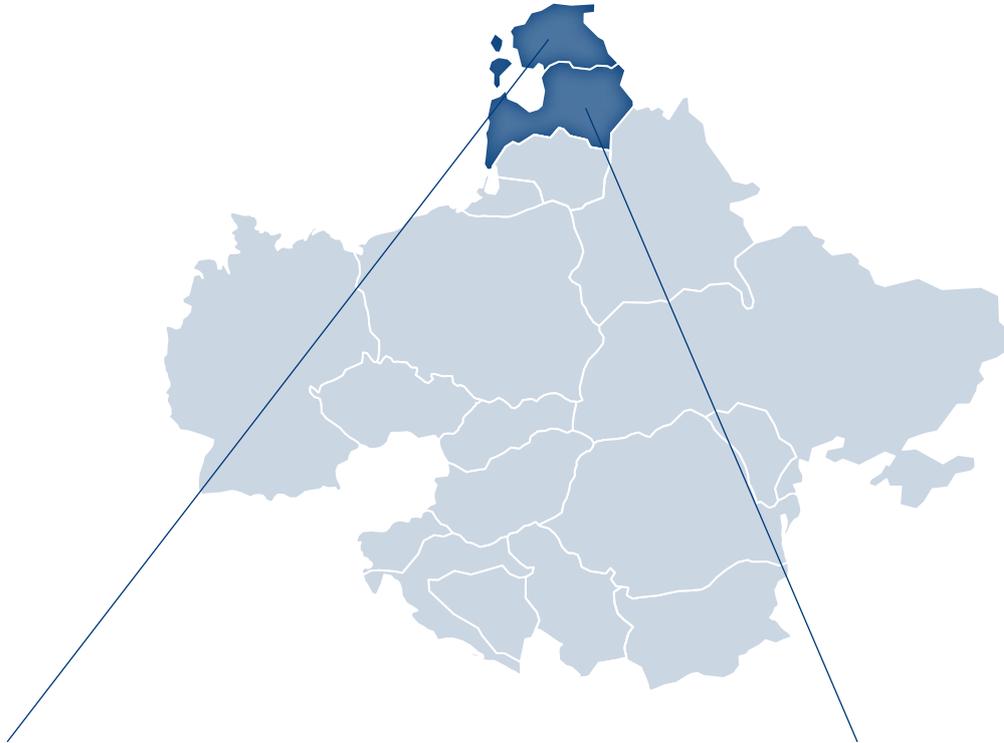
- Banks which do business in the Czech Republic offer a comprehensive range of types of mortgage.
- Mortgages are created by entry in the land register based on the parties' understanding in the pledge agreement.
- In practice, three agreements must be made: loan agreement, pledge agreement, and agreement on account administration.
- Pledge titles can also be created to a building under construction.
- Banks require a certain percentage of equity in the case of purchase or development of commercial properties.
- The pledgee may not negotiate or demand that a pledge be realized in the form of a discretionary sale. Any agreement on forfeiture of pledged assets is null and void. For sale of a pledge and satisfaction of the pledgee, a public executory title (such as e.g. a court order of foreclosure) must exist. / New Civil Code: the pledgee may satisfy its receivable in any way agreed with the pledger in writing, otherwise the pledgee has the right to satisfy its receivable from the proceeds of turning the pledge into cash at public auction.
- A given piece of real estate may be encumbered with several pledges to secure several liabilities at the same time.

→ **Slovakia:**

- Under Slovak law, mortgages are pledge titles to an apartment or residential building (i.e., property used for residential purposes).
- A pledge title may also be created over a building under construction. A building under construction can be entered in the land register if it has been completed to a degree that the purpose of the structure as to the first above-ground floor is sufficiently determinate; in that case, no decision on final acceptance and no assigned building number are necessary.
- For a mortgage to come validly into existence, it must be entered in the land register.
- The statutory period for entry in the land register is 30 days.

→ **Hungary:**

- All movable assets, real estate, rights, and receivables can be pledged. Hungarian law also recognizes a mortgage on the entirety of assets of a company without individual specification of mortgaged items (floating charge).
- Mortgages on real estate come into existence as of entry in the land register.
- For a pledge title to movable assets to become effective, it must be entered in the pledge register kept by the Chamber of Notaries.
- It is recommended (and in certain cases mandatory) that agreements be certified by a notary public.
- All encumbrances in rem are recorded in the land register.

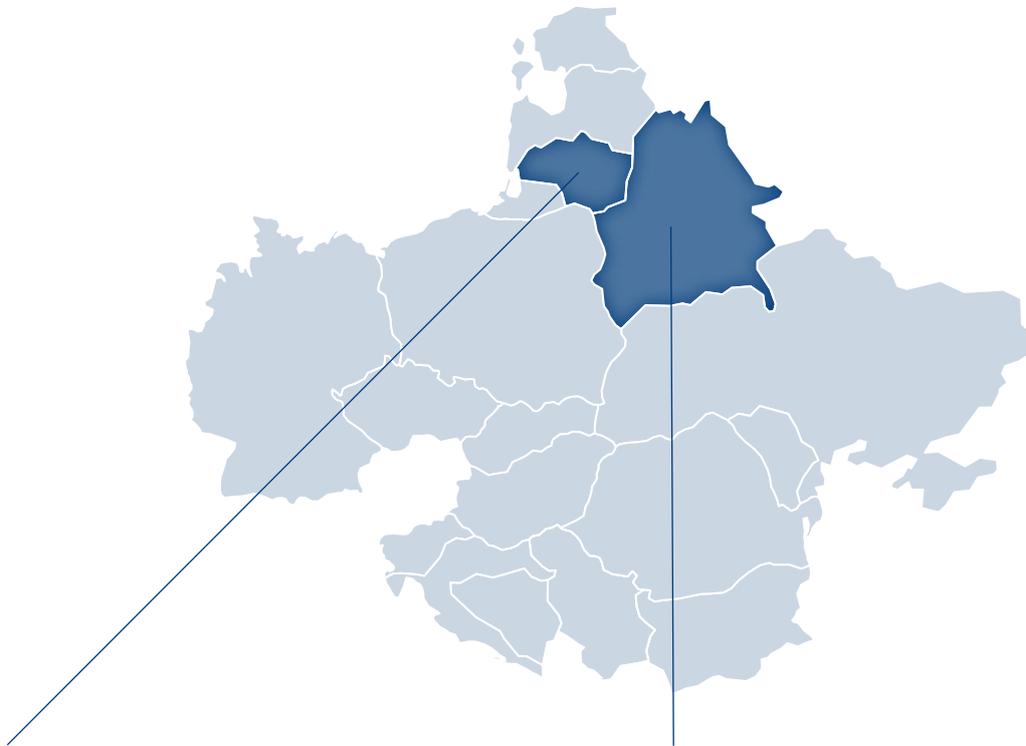


→ Estonia:

- The predominant form of security is mortgages, which come into existence, based upon a notarially certified agreement and at the request of the parties, by entry in the Land Register. A mortgage entitles its owner (the lender) to satisfy its secured receivables against the borrower from the revenues of a forced sale (or from forced administration) of the land plot encumbered by the mortgage.
- Estonian law does not differentiate between two forms of collateral, mortgage and „real estate lien“, but provides only mortgages as a tradable and flexible form of collateral (whereas the Estonian mortgage is not dependent upon the existence of the secured receivable, and in this respect rather resembles the German „Grundschild“ in terms of content).
- A land plot may be encumbered with several mortgages at the same time. Satisfaction of secured claims is then governed by the chronology of entries.
- Mortgages are not dependent on a to-be-secured claim and may thus be created irrespective of whether the given receivable exists. Likewise, a mortgage may be transferred separately from the underlying secured claim.
- If the borrower does not honour its obligations, then the mortgagee (lender) may file a request with the competent court for realization of the mortgage – in the form of a forced sale (auction) or forced administration.

→ Latvia:

- Whether or not a property is encumbered with a mortgage may be ascertained by checking the records in the land register. The law does not provide for issue of mortgage bonds.
- A mortgage comes into existence based upon the parties' agreement, upon entry in the land register. Only the motion for entry in the land register requires notarial certification.
- A motion for entry of a mortgage takes precedence even over a later preliminary injunction for securing a claim made in court.

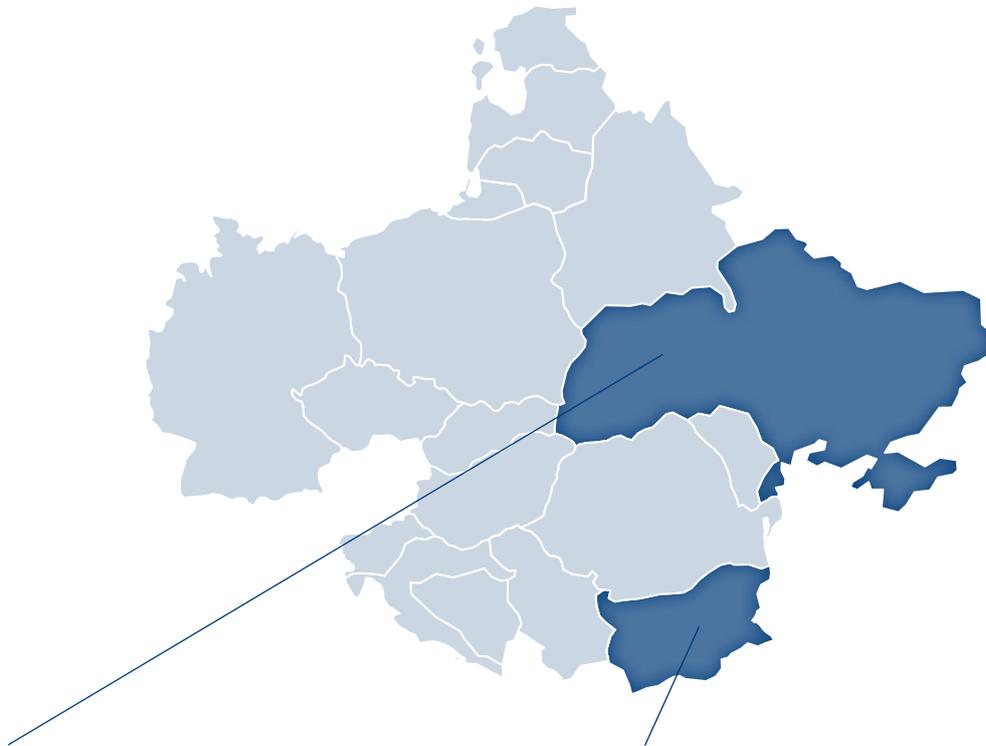


→ Lithuania:

- Mortgages come into existence based upon a contract or by way of a unilateral representation by the owner or in specific cases provided for by law or by way of a court order (court-imposed mortgage). Creation of a mortgage has to be notarized.
- A mortgage which comes into existence because of a contract is binding between the parties upon notarization of the agreement. In relation to third parties the mortgage does not have effect until it is registered in the public mortgage register. Compulsory mortgages come into effect with registration in the public mortgage register.

→ Belarus:

- “Mortgage” in the terms of Belarus law is a pledge on immovable property (i.e., real estate), including land plots.
- Types: contractual mortgage and legal mortgage.
- Mortgages always depend on the existence of the claim which they secure; i.e., they cease to exist as the claim expires.
- A mortgage agreement must always take written form. Notarial certification is only required if the underlying secured claim is also subject to notarial certification. Rights may be certified by way of a mortgage bond. Mortgage agreements, like all agreements on creation, transfer, or expiry of title to real estate, must be registered in a public register.
- Contractual mortgages come into existence upon being recorded in the public register. Legal mortgages come into existence if and when the prerequisites are met for which the law anticipates creation of a mortgage.
- The public register for mortgages (as well as other titles or transactions related to real estate) is the Unified State Register for Real Estate.
- Plots of land are only eligible as the subject of a mortgage together with the structures and facilities erected on them.



→ Ukraine:

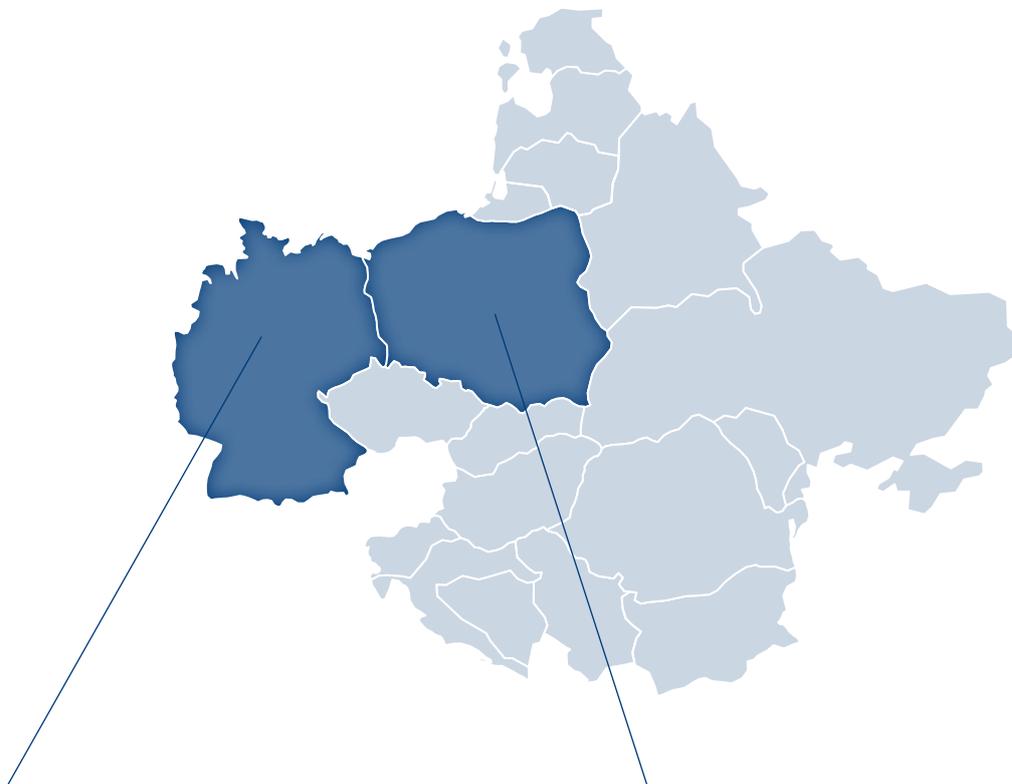
- In terms of the subject of a mortgage, Ukrainian law differentiates between mortgages on
 - land,
 - apartments,
 - buildings,
 - buildings under construction,
 - leasehold rights (for the purpose of mortgage law, treated the same as real estate).
- A mortgage comes into existence based upon a mortgage agreement, when the latter is certified by a notary.
- In the case of mortgages based upon a court decision, the mutual rights and obligations of borrower and lender come into existence when the court decision becomes final (non-appealable).
- Public registration of mortgages is by way of entry in the national mortgage register.

→ Bulgaria:

- A mortgage entitles the mortgage creditor to a procedural shortcut to foreclosure of the encumbered land in order to settle secured claims. The mortgage title is of accessory nature, i.e., its existence depends on the existence of the secured claim.
- The only mortgage known to Bulgarian law is the ordinary mortgage (ipoteka) which can only exist as a registered uncertified mortgage and not as a certified mortgage transferable outside the land register.
- A mortgage as collateral for the debt of a third party is possible, as is a consolidated mortgage on several properties at the same time.
- A mortgage comes into existence upon mutual agreement of the parties expressed in the form of a notarized contract. Entry of this contract into the land register has constitutive effect and determines the rank of priority of the mortgage.

Separate concept of Real estate liens (corresponding to “Grundschuld”)

Law and Taxes 2013



→ **Germany:**

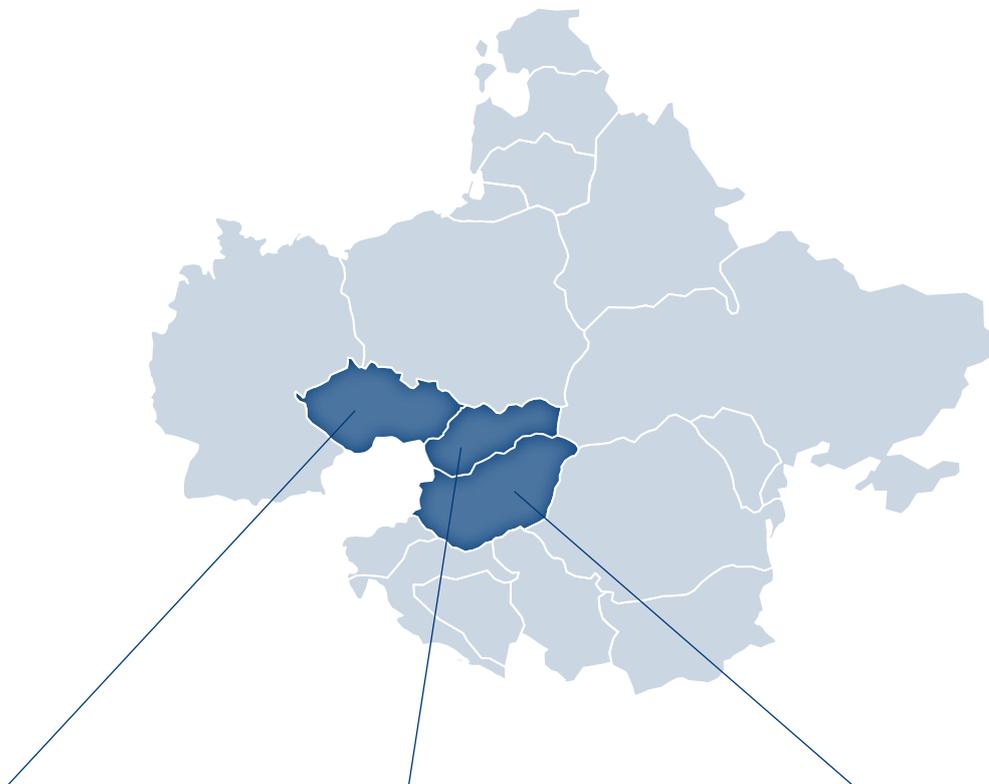
- In Germany, real estate liens under German law (i.e., Grundschulden) are usually preferred over mortgages for securing loan agreements for the purchase of real estate, as they are more flexible and, unlike mortgages, do not depend on the existence and amount of secured debt.
- The Secured debt is connected to the lien via a statement of collateral purpose (Sicherungsabrede). In this statement, the parties agree e.g. on the requirements for foreclosure or for deleting the lien from the land register.

→ **Poland:**

- Polish law does not recognize land charge, which is why collateral for loans regularly takes the form of a mortgage.

Separate concept of Real estate liens (corresponding to “Grundschuld”)

Law and Taxes 2013



→ Czech Republic:

- Czech law does not recognize a separate concept of real estate liens. / New Civil Code: Separate concepts are introduced, a so called “loose” lien may be attached to a different debt by an owner.

→ Slovakia:

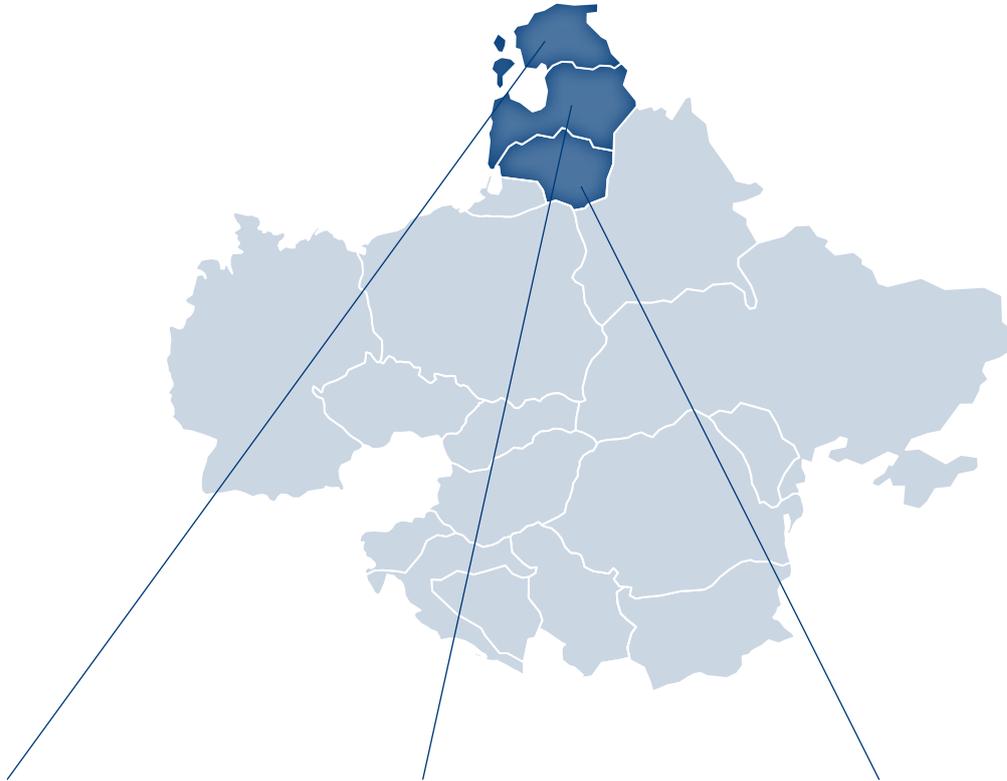
- There are pledge titles to other kinds of real estate which are fit to serve as pledges (land, structures other than residential structures).
- In Slovakia, the owner of a plot of land and the owner of a structure erected on the same plot need not necessarily be one and the same person.
- Creation of a pledge title requires written agreement.
- A pledge title to real estate comes into existence only upon entry in the land register.

→ Hungary:

- Real estate liens are non-accessory, transferable encumbrances. They are rarely used in practice, even though they represent a feasible alternative to loans.
- Entry of a real estate lien is governed by the general provisions of statutory law.

Separate concept of Real estate liens (corresponding to “Grundschuld”)

Law and Taxes 2013



→ **Estonia:**

- Entry of a real estate lien is a theoretical alternative to a mortgage, but not used as collateral in practice.

→ **Latvia:**

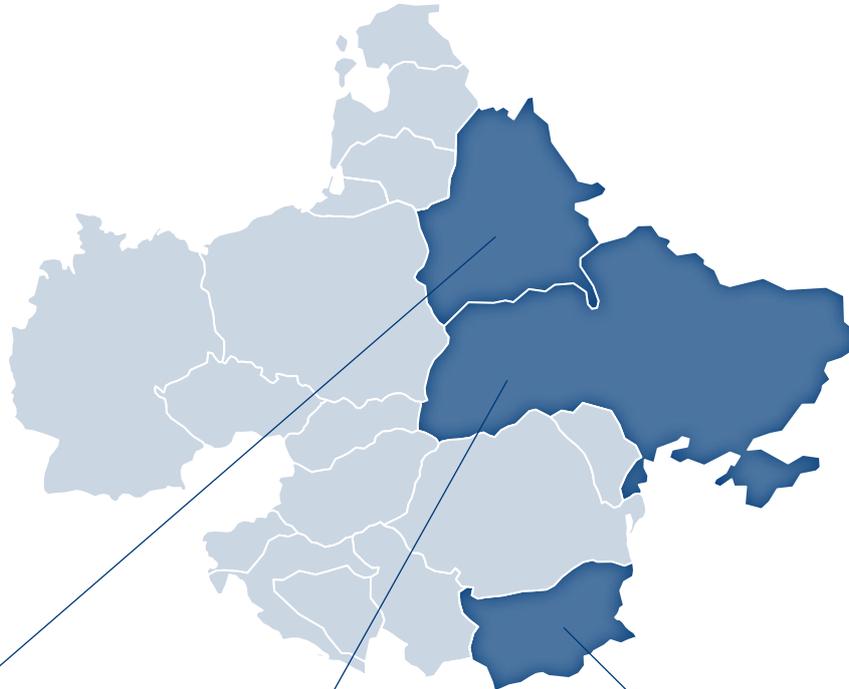
- Latvian law does not anticipate creation of real estate liens as a form of collateral.

→ **Lithuania:**

- Lithuanian law does not provide for real estate liens.

Separate concept of Real estate liens (corresponding to “Grundschuld”)

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→ **Belarus:**

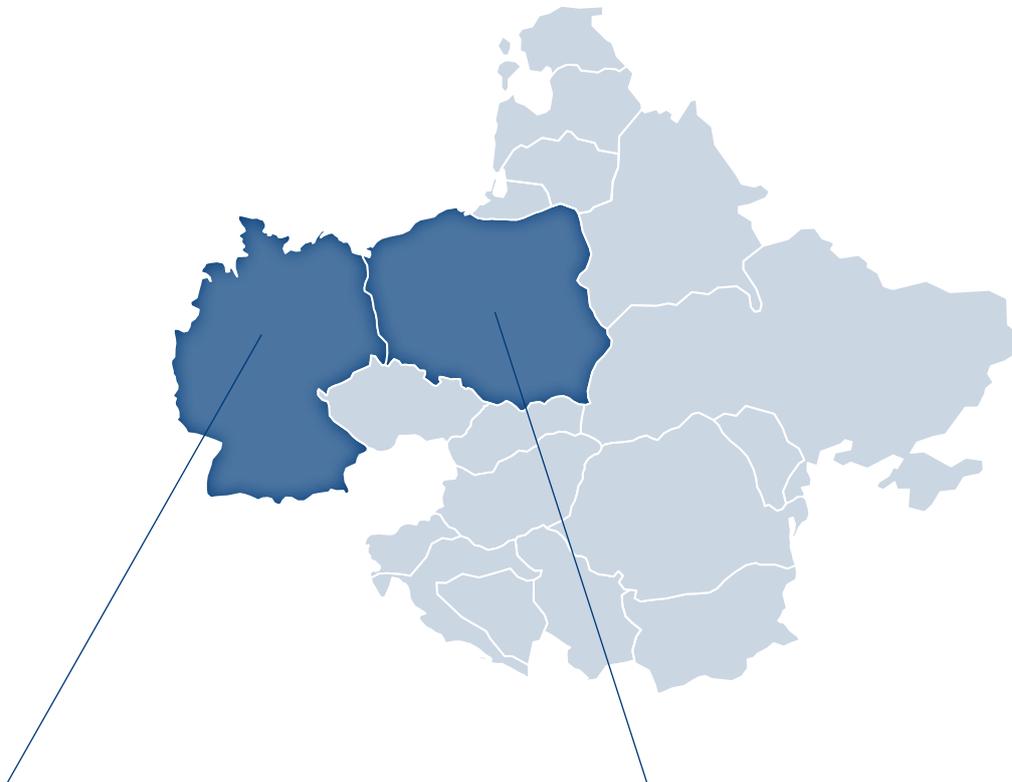
- Belarus law has no separate concept of real estate liens. Pledges on real estate primarily take the form of mortgages.

→ **Ukraine:**

- Real estate liens are treated as a form of mortgage and governed by the same statutory provisions.

→ **Bulgaria:**

- Current Bulgarian law does not recognize real estate liens as a separate legal instrument.

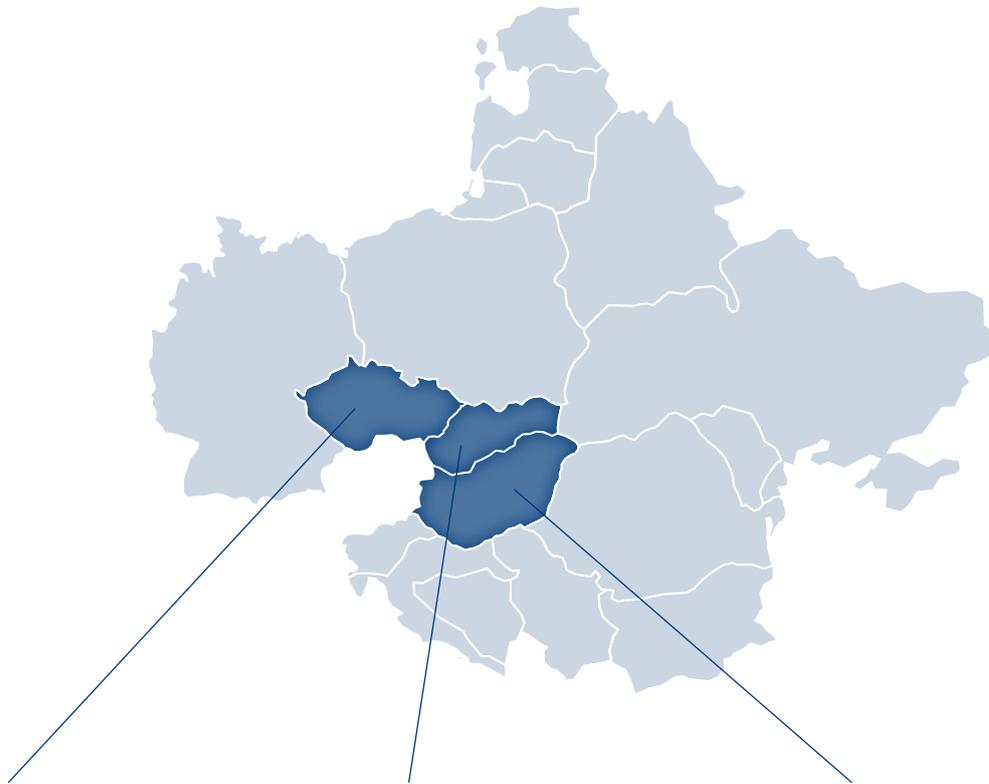


→ **Germany:**

- Call options on real estate can be agreed in personam, e.g. as a conditional sale agreement or a preliminary agreement; they need to be recorded by a notary public.
- A conditional transfer of real estate is not permissible, but the same effect can be achieved by a legal arrangement under the law of obligations (e.g. an agreement on future execution of the purchase agreement).
- Preemption rights in Germany exist in personam as well as in rem. A preemption right in rem has to be entered into the land register, is effective against anyone, and gives the person entitled the right to demand that the buyer surrender the property to them.

→ **Poland:**

- Purchase options are permissible but uncommon. More typical are preemption rights and buyback rights, which may be created on a contractual basis or which come into existence by law with respect to certain real estate for certain entities (the government, municipalities, the Agency for Agriculture).
- An unconditional purchase agreement whose subject matter is real estate under a statutory preemption right is null and void. In case of a contractual preemption right, such an agreement would merely trigger the obligation to indemnify the beneficiary of that right. For this reason, always verify this aspect before buying real estate.
- A contractual preemption right initially only binds the parties to the contract. It is binding vis-a-vis everyone if it is also entered in the land register.



→ **Czech Republic:**

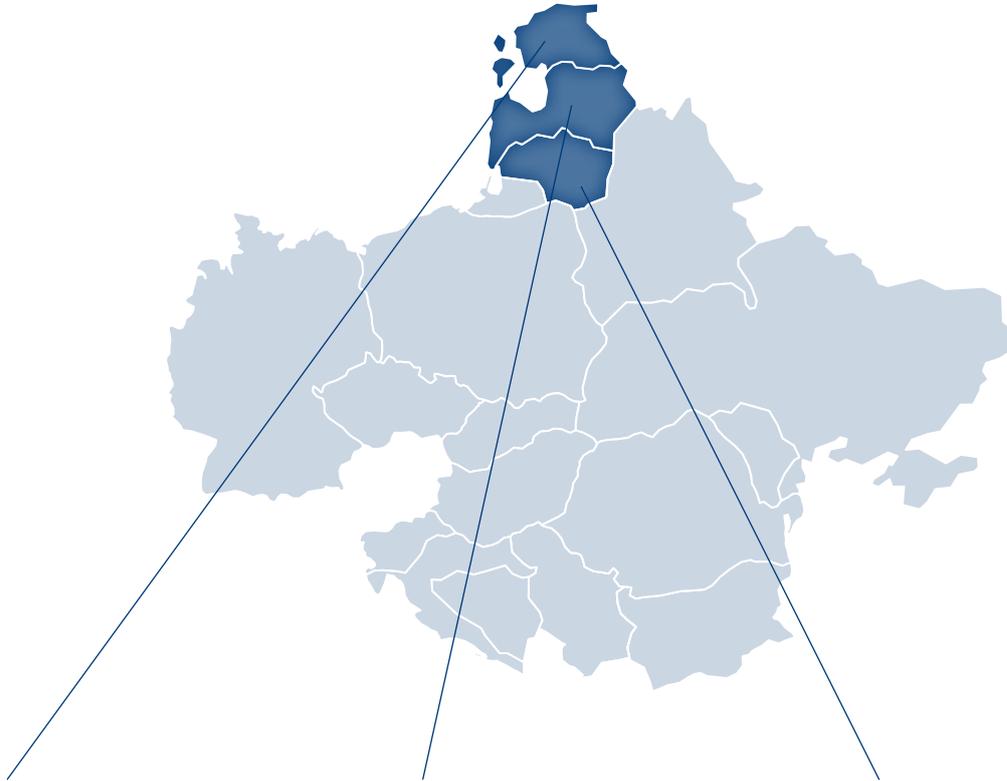
- Purchase options for real estate may be agreed but are not widespread. More typical are buyback rights and preemption rights.
- Preemption rights come into existence based upon written agreement.
- The obligation to purchase or sell real estate may also be agreed in a future agreement.

→ **Slovakia:**

- Entering into an agreement on a purchase option to real estate as a means of securing receivables of the lender is not permissible under Slovak law.
- However it is possible to enter into an agreement on transfer of ownership title to pledged property to the lender after the lender's claims have fallen due.
- Slovak law also recognizes "transfer of title to real estate as security", though it is little used in practice.

→ **Hungary:**

- A purchase option for real estate allows the lender to take over the encumbered real estate (setting off the amount of the loan against the purchase price) without foreclosure, and to then resell or use it without restriction.
- Purchase options have limited use because they can only be effectively created for a period of five years (and not at all for a residential property in which the borrower lives).
- A purchase option comes into existence upon conclusion of a written agreement which must set the purchase price and the subject matter of purchase. Such an agreement has binding power vis-à-vis third parties only upon entry in the land register.



→ **Estonia:**

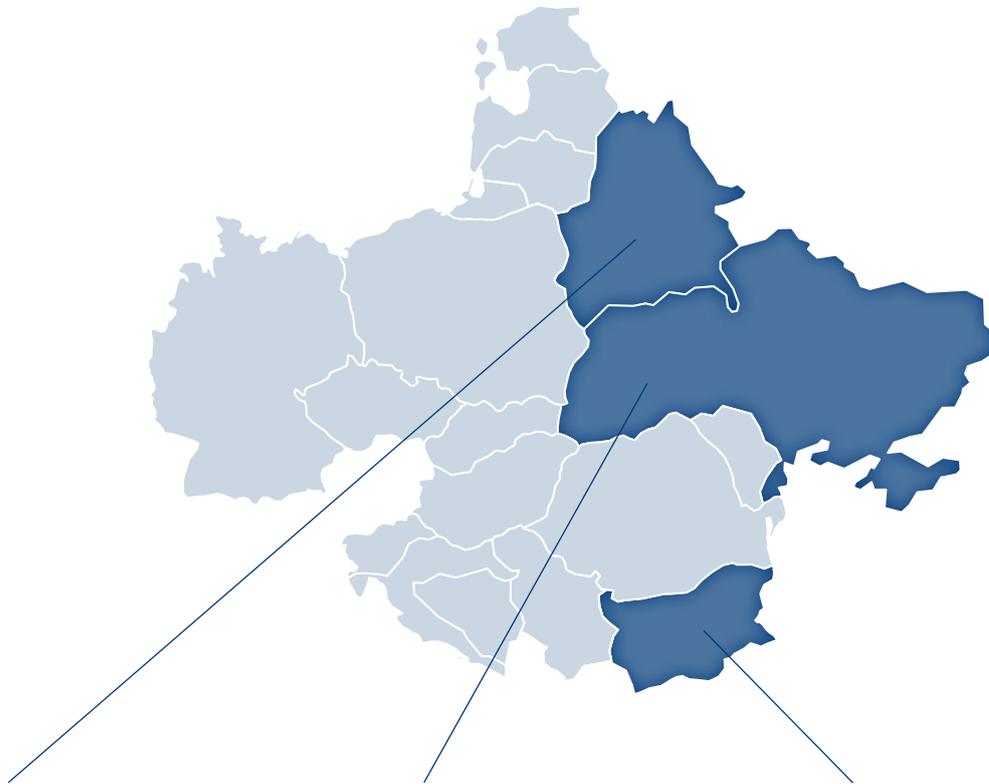
- A purchase option may be entered in the Land Register in the form of a preemption right (for the benefit of a specific person or for the benefit of whoever is the owner of the property at the given time). There also exists a statutory preemption right (e.g. in the case of a contemplated sale of co-owned real estate) which is not entered in the Land Register.
- In practice, purchase options are often created by entering into a real estate purchase agreement which sets the conditions under which transfer of title is possible (or compulsory).

→ **Latvia:**

- A contractual call option preserves the designated transferee's right to acquisition. Parties may agree on different contractual sanctions, if a contractual call option is breached.

→ **Lithuania:**

- Lithuanian law does not provide for real estate purchase options.



→ Belarus:

- The Republic of Belarus knows no special legal arrangement for purchase options.
- Instead, future agreements for sale of real estate are used in Belarus to emulate preemption rights.
- Under a future agreement, the parties agree to enter into an agreement for sale of real estate at a later point, on terms to be agreed in the future agreement.
- The future agreement must specify all material terms of the subsequent sale agreement.
- Public registration of a future agreement is not necessary, but the parties may request notarial certification.

→ Ukraine:

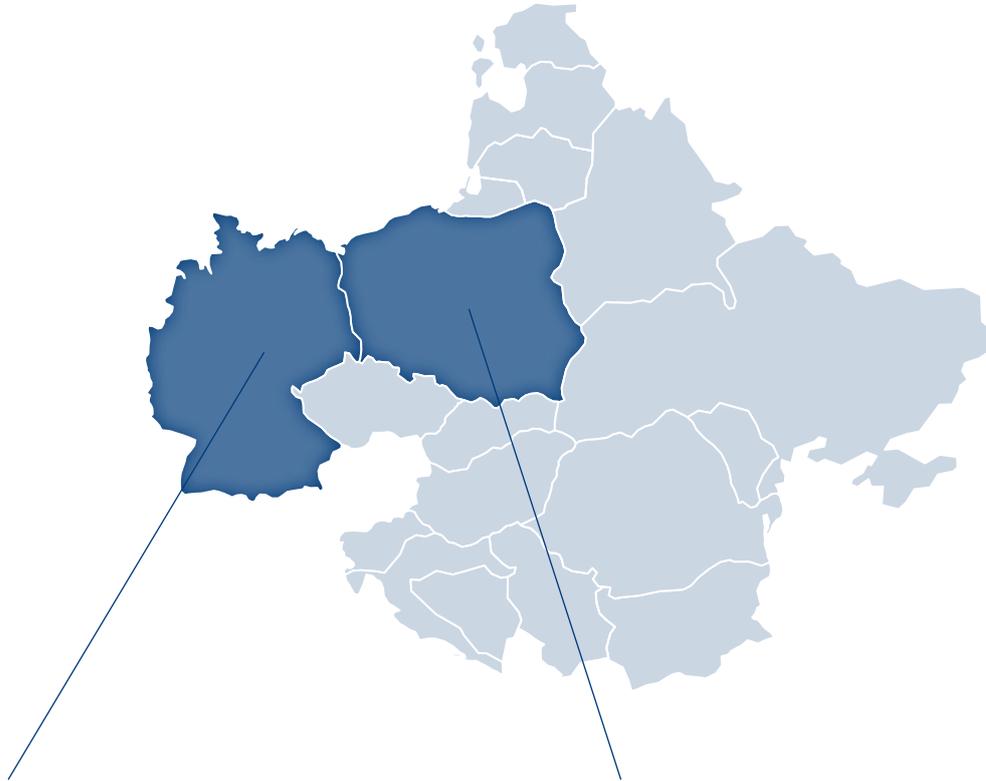
- The terms „purchase option“ and „call option“ are not recognized by Ukrainian law. Future purchase agreements may serve as an alternative. The purpose of these future agreements is to ensure that the agreement proper is made at a later point in time.
- A future agreement is subject to the same formal requirements as the main agreement.
- The fact that an agreement was made must be recorded by notarial certification and entry in the notarial register.

→ Bulgaria:

- Call options on real estate can be agreed in personam, e.g. as a conditional sale agreement or a preliminary agreement. In the latter case they do not need to be recorded in the form of a notarized contract; the written form is sufficient.
- A conditional transfer of real estate is not possible; likewise, there are restrictions on transfer of title by way of security and buy-back sales contracts.
- There are two forms of preemption right in Bulgaria – preemption rights established by law (e.g. the preemptive right of a co-owner), which generally expire if not exercised within three months from learning of an imminent transaction, and preemption rights established under the law of obligations (which, however, do not have effects in rem).

Encumbrance of ownership interest in businesses

Law and Taxes 2013



→ **Germany:**

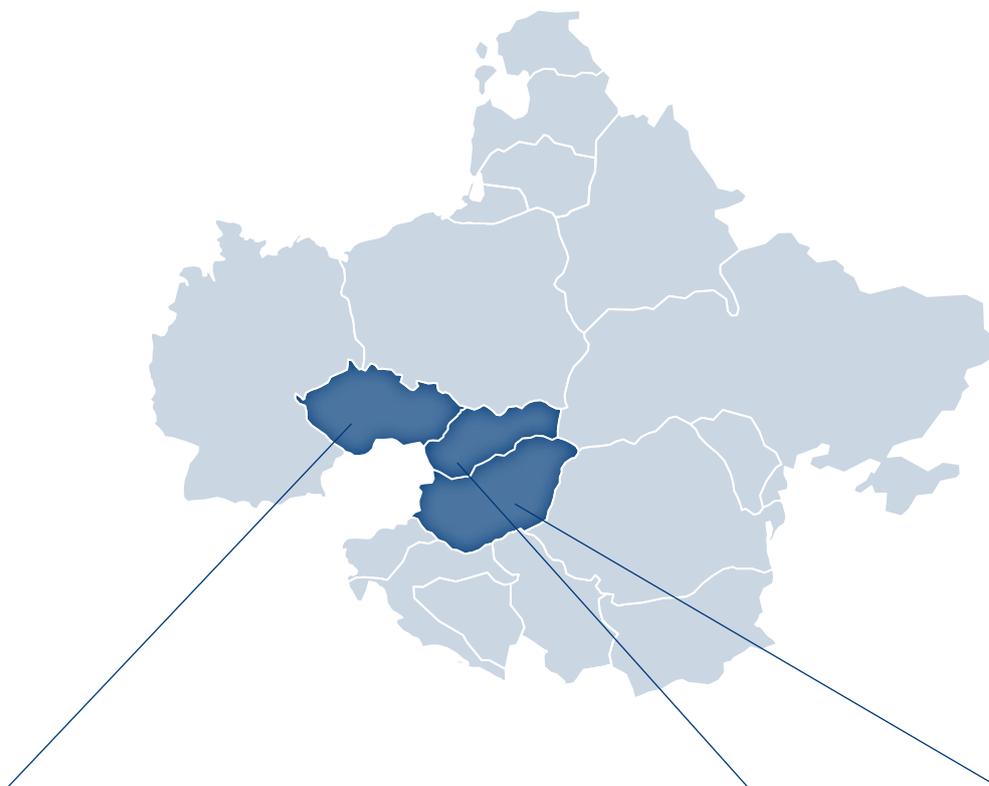
- Pledging company shares as a form of collateral is possible. Pledging ownership interest in a partnership is only possible if the other partners agree or if it is anticipated by the articles of partnership. Pledge of shares in a limited liability company under German law has to be registered by a notary public. Pledge of shares in foreign companies is a possible security instrument in Germany.
- A call option regarding purchase of company shares as a loan collateral is rather uncommon in Germany.

→ **Poland:**

- Pledging company shares in order to secure real estate loans is customary. A registered pledge title to company shares must be entered in the pledge register.
- Purchase options for company shares are rather uncommon.

Encumbrance of ownership interest in businesses

Law and Taxes 2013



→ Czech Republic:

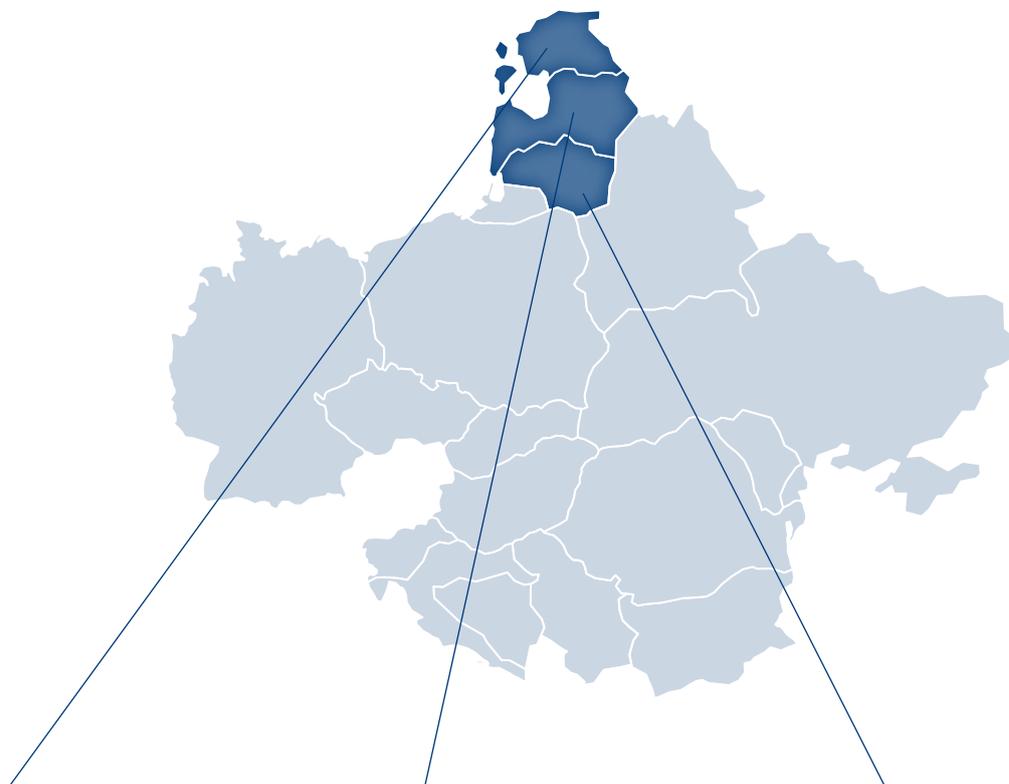
- Agreements on pledge of ownership interest must be in writing, with certified signatures. The pledge must be entered in the Commercial Register.
- If transfer of ownership interest requires approval of the general meeting, then approval is also required for putting the ownership interest under pledge.
- Transferability of ownership interest is not restricted by encumbrance with a pledge.
- The pledgee may sell the ownership interest under pledge in a discretionary transaction if the pledgor is in default with settlement of secured claims. If the pledgee is unable to sell the ownership interest, then it may exercise the shareholder's/partner's rights vested in the ownership interest. In that case, the pledgee may agree with the pledgor to accept the ownership interest to settle the debt in lieu of payment. / New Civil Code: If the receivable is payable, the pledgee is entitled to any money consideration connected with the ownership interest up to the amount of the secured receivable. If agreed, the pledgee acquires the ownership interest when it fails to turn the ownership interest into money, otherwise the pledgee may exercise the shareholder's/partner's rights vested in the ownership interest if it fails to turn the ownership interest into money. If the pledgee fails to turn the ownership interest into money it may also demand transfer to itself of the ownership interest.
- Shares are pledged by surrendering the original share certificates into the hands of the pledgee or a third party for safekeeping. This requires a note in the endorsement in the case of name shares or an entry in the securities records (usually kept by a securities broker) in the case of book-entry shares. The pledgee is not entitled to exercise shareholder's rights. / New Civil Code: The pledgee is entitled to exercise rights connected with the shares on terms agreed between pledgee and pledgor.

→ Slovakia:

- Ownership interest may be the subject of a pledge title, provided that the memorandum of association allows for transfer of ownership interest to third parties.
- Creation of a pledge title to ownership interest also requires approval by the general meeting – if the memorandum of association makes the transfer of ownership interest conditional upon such approval.
- The pledge title to ownership interest is based upon a written agreement and comes into existence upon its entry in the Commercial Register.

→ Hungary:

- Ownership interest in limited liability companies and shares may be pledged without restriction.
- A pledge title to ownership interest in a limited liability company may be registered in the Commercial Register. This is not a prerequisite to its validity, but increases security in commercial dealings.
- Shareholder rights remain with the shareholder even after putting shares under pledge.
- Transferrable ownership interest may be encumbered by a preemption right. This purchase option cannot be entered in the Commercial Register, and has no effect vis-à-vis third parties acting in good faith.



→ **Estonia:**

- Share certificates must, and ownership interest may be registered with the Estonian Central Register of Securities (ECRS). Pledging shares and ownership interest registered with the ECRS is also recorded by the ECRS.
- Where ownership interest is pledged but has not been registered with the ECRS, the pledge agreement must be certified by a notary public and the Commercial Register must be notified.
- Even after securities have been pledged, the rights vested in them (such as voting rights, rights to a payout of dividends) remain with the owner of the securities.

→ **Latvia:**

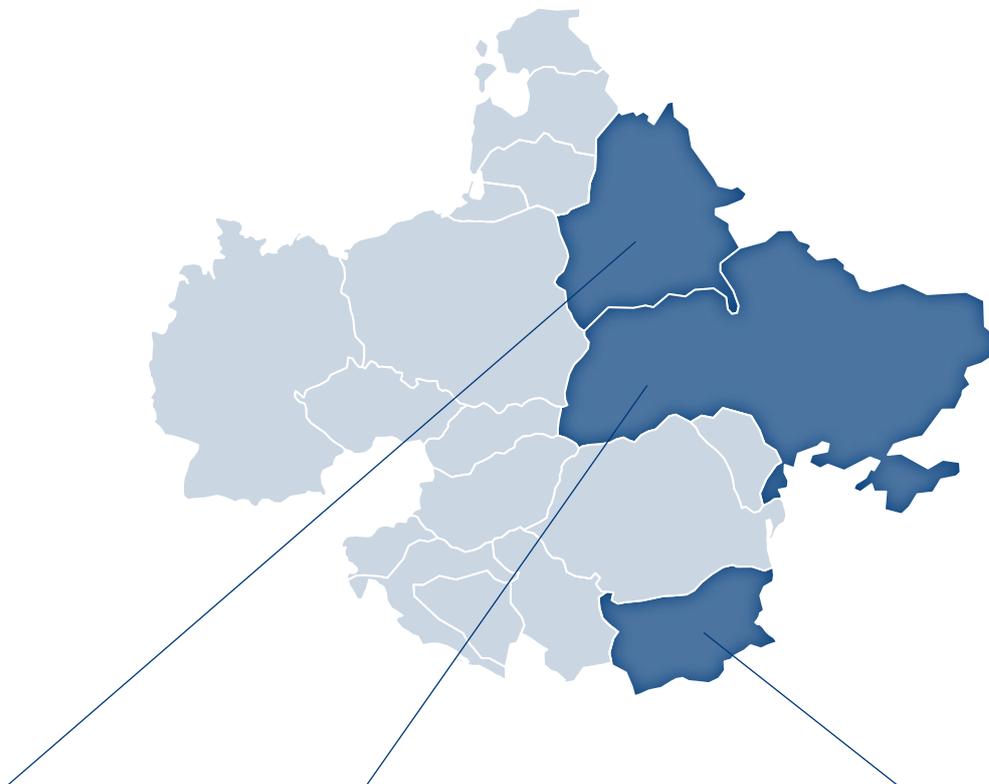
- Ownership interest may be pledged. If the pledge agreement is entered in the register of commercial pledges, then it is also effective vis-à-vis third parties; otherwise, it is only effective among the contractual parties. However, ownership interest may be acquired in good faith by third parties, free from the pledge title.
- The parties may come to a contractual agreement on a purchase option. However, this is not fit for entry in public registers, and thus does not bind third parties.

→ **Lithuania:**

- Ownership interest in a company may be pledged as collateral for real-estate financing. In that case, the pledged item is not physically surrendered to the pledgee.
- A pledge agreement must be certified by a notary public and entered in the mortgage Register.
- An encumbrance of shares must also be registered in the pledgor's securities account (in the case of book-entry shares) or in the shareholders' register (in the case of physical shares / share certificates).

Encumbrance of ownership interest in businesses

Law and Taxes 2013



→ **Belarus:**

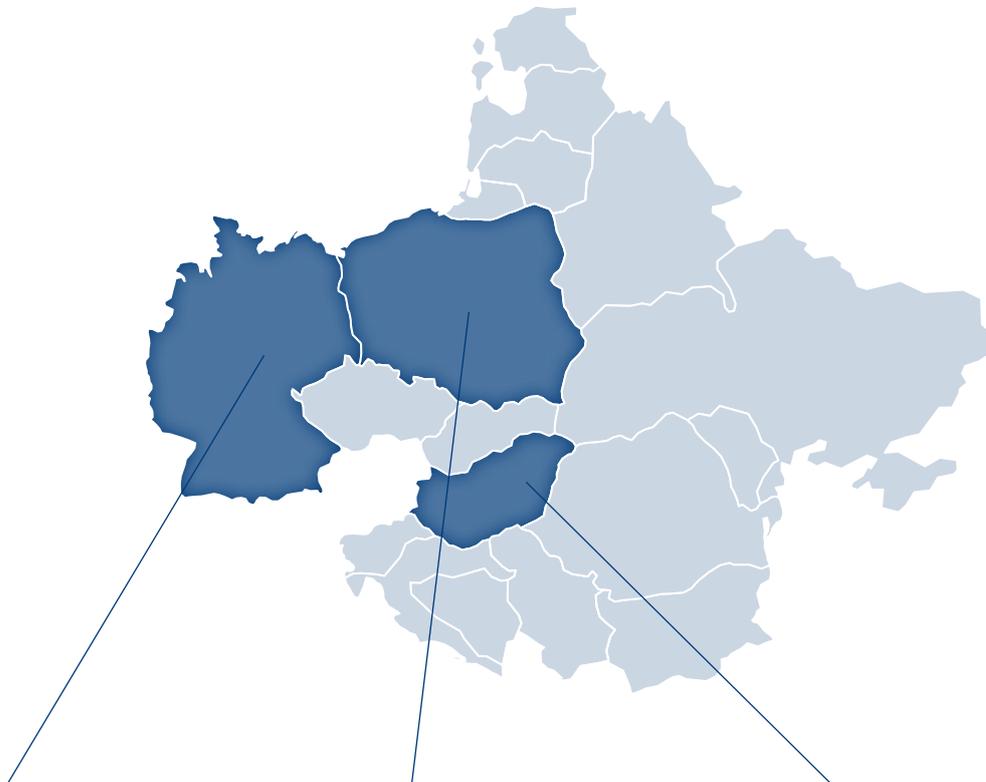
- Shareholders may pledge their share (or part thereof) for the benefit of another shareholder or of a third party, provided the company approves. The articles of association may prohibit a pledge for third parties.
- Encumbrance of ownership interest requires no public registration or notarial certification.
- Creating a pledge title to ownership interest in a limited liability company requires a court decision.

→ **Ukraine:**

- Current Ukrainian law does not explicitly provide for, or prohibit, pledging ownership interest. In practice, agreements on pledging ownership interest are made in noncertified written form; sometimes, the parties may request additional notarial certification. The pledgee may insist that the encumbrance be entered in the national register of encumbrances of movable assets.
- Enforcement of the assets of a company in order to settle the personal debt of a shareholder/partner is possible only to a limited degree: garnishment of a share in the capital stock of a company is possible only after all other assets which could be used to satisfy the creditor's claim have been exhausted.
- Alternatively, a future purchase agreement could be made. Since shareholders/partners customarily enjoy a prorated right of first refusal with respect to ownership interest, one must first obtain a waiver of their preemption right from all shareholders before entering into a future agreement.

→ **Bulgaria:**

- Pledging shares in a joint-stock corporation under Bulgarian law (AD) as security for a loan is generally possible. The form of pledge contract depends on the nature of the shares to be pledged. Pledging ownership interest in a limited liability company (OOD) or partnership interest in a limited or unlimited partnership is only possible if the remaining shareholders/partners agree. Such pledges are created upon entry in the public register of special pledges at the Ministry of Justice.
- Call options regarding company shares are not explicitly addressed by Bulgarian law. They are therefore fraught with difficulties, though they are in principle not forbidden, and are known in practice.



→ Germany:

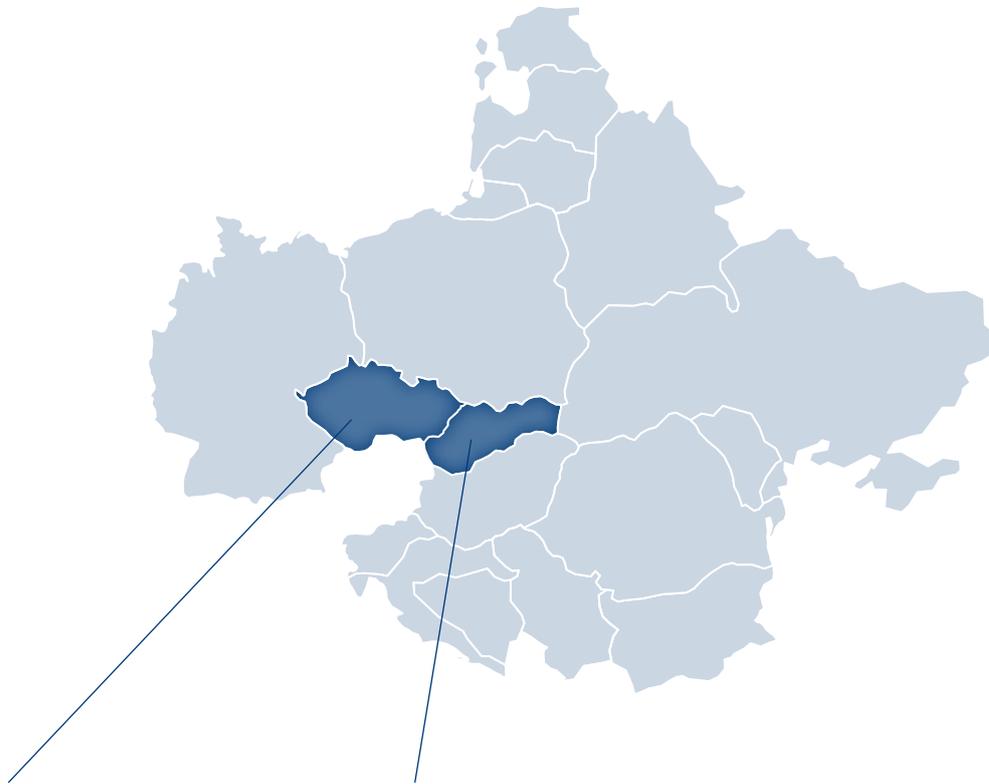
- Rental claims can be assigned as loan collateral even without consent of the tenant. Assignment of future rental revenues is common practice.
- Creating a pledge title to claims for rent is possible.

→ Poland:

- Claims for rent may be assigned to secure a loan, often in the form of a silent assignment.
- Pledging is an alternative to assignment.
- Anticipated assignments are not practiced. However, the anticipated consent of a tenant with later assignments of future claims for rent is a typical requirement in retail leases.
- Aside from the assignment – and in order to avoid attachment of account deposits – financing banks often require a power of attorney which authorizes them to dispose of the account for rent payments.

→ Hungary:

- Assignment of claims for rent as collateral is permissible and common practice. However, unless the tenant has been notified, claims for rent are a part of the insolvency estate.
- Claims for rent may also be pledged. The pledge need not be registered and is a title in rem.
- Anticipated assignment is possible.
- The balance of deposits in bank accounts may be pledged without restriction. Another common method is to authorize the lender to collect their claim directly by charging the account. It is advisable to formally notify the bank which administers the account.

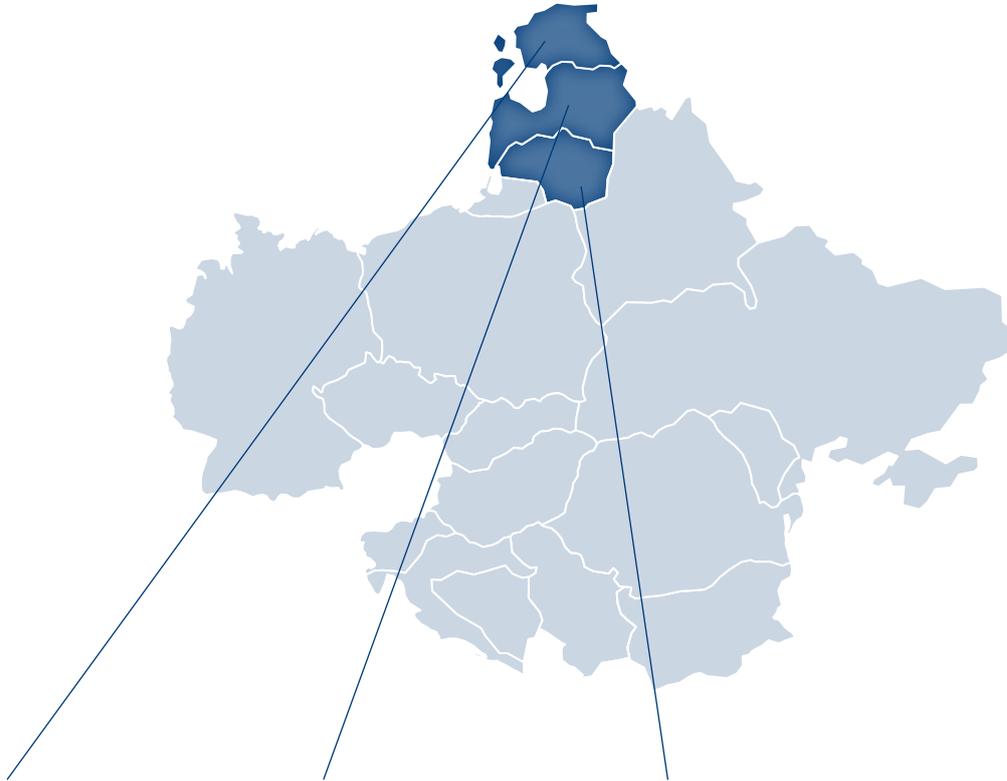


→ Czech Republic:

- Assignment of future claims for rent as a form of collateral must be agreed in writing; in doing so, the parties must take care to specify the claim with sufficient determinacy. The assignment of rent must not conflict with any agreements with debtors (i.e., those who owe the rent). Assignment of title by way of security is also common. / New Civil Code: An assignment does not have to be made in writing but it is advisable.
- Putting future claims for rent under pledge on the basis of a pledge agreement with the borrower is common practice.
- Pledge title to claims for rent (or claims for bank deposits) comes into existence based on the pledge agreement.

→ Slovakia:

- What is known as 'silent assignment' for the purpose of securing a loan requires written agreement between lender and borrower.
- An effective silent assignment presupposes that no agreement exists between the borrower and the garnishee which prohibits it.
- ‚Assignment of rent‘ (i.e., creation of a pledge title to claims for rent payments) based on a written agreement with the borrower is common practice.
- A pledge over claims for rent is created by way of entry in the Central Pledge Register at the Chamber of Notaries.
- Future receivables may be pledged.
- Such a pledge requires that the receivable can be unambiguously defined when the agreement was made.
- A pledge over future receivables requires registration with the Central Pledge Register at the Chamber of Notaries and comes into existence upon creation of the receivables.
- Creating a pledge title to claims related to bank deposits requires a written pledge agreement between lender and borrower; the pledge comes into existence by entry in the Central Pledge Register at the Chamber of Notaries.
- It is advisable to enter into a trilateral written understanding with the bank which administers the relevant bank account(s) to set the terms of the pledge and the options on the part of the lender to access the funds.



→ **Estonia:**

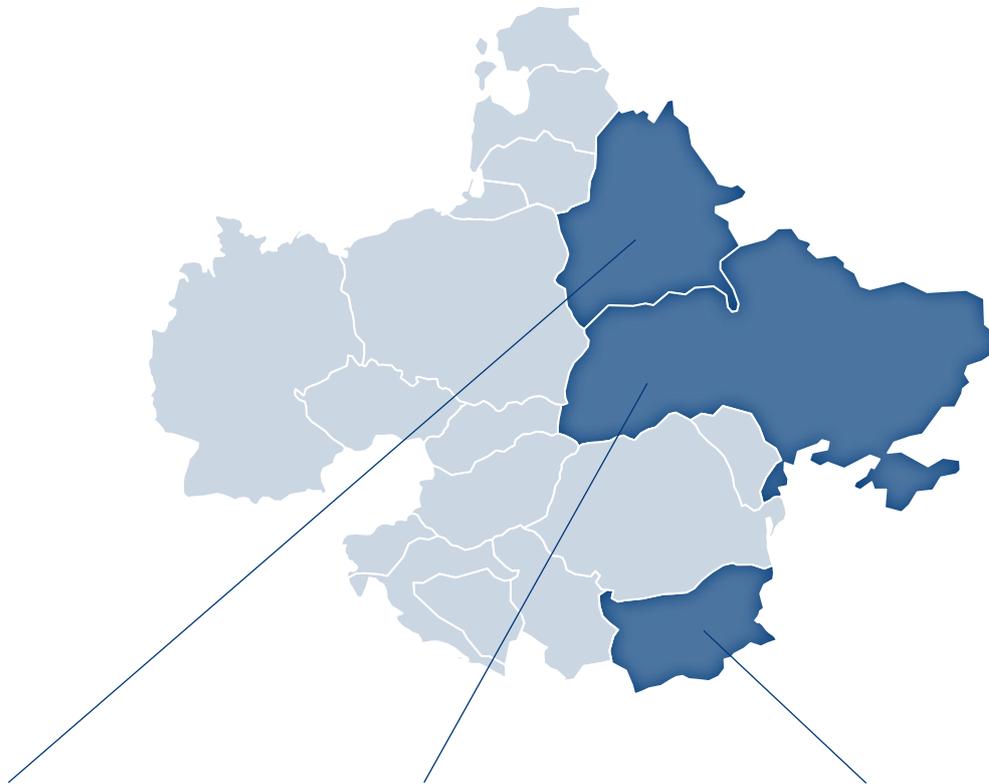
- Claims for rent may be assigned to the lender on a contractual basis.
- Banks may demand, as a condition in the loan agreement, that rent revenues derived from the financed property be transferred to a specific account.

→ **Latvia:**

- A (silent) assignment of rent as collateral is possible.
- Claims for rent may be pledged. The pledgee must notify the tenant of the pledge.
- Anticipated assignment is possible.
- Attachment of bank deposits is in principle possible.

→ **Lithuania:**

- Assignment of title by way of security is an increasingly popular form of collateral among credit institutions. In principle, all kinds of claim (including future receivables and conditional receivables) are fit for assignment.
- A third party who owes the underlying debt in principle need not be notified of the assignment, so that there is a risk of a borrower assigning a claim subject to a contractual prohibition of assignment or which has been assigned several times over or which does not (or no longer) exist(s). It is advisable to mitigate this risk by incorporating notification clauses in the assignment agreement.
- An assignment agreement is subject to the same formal requirements as the underlying obligation which gives rise to the assigned claim.
- Claims for rent may also be encumbered by a pledge for the benefit of the lender – in which case the mortgage bond must be certificated by a notary public and entered in the mortgage register.
- If the pledgor fails to honour obligations, then claims for rent pass to the pledgee, in the amount of the pledgee's claim.
- Attachment of bank accounts as a form of loan collateral is possible. To this end, creation of a pledge has to be certified by a notary public, and entered in the mortgage register.
- If the pledgor fails to honour obligations under a loan agreement then the pledgee attains the right to administer the pledgor's account, for as long as it takes to fully settle the pledgee's claim.



→ **Belarus:**

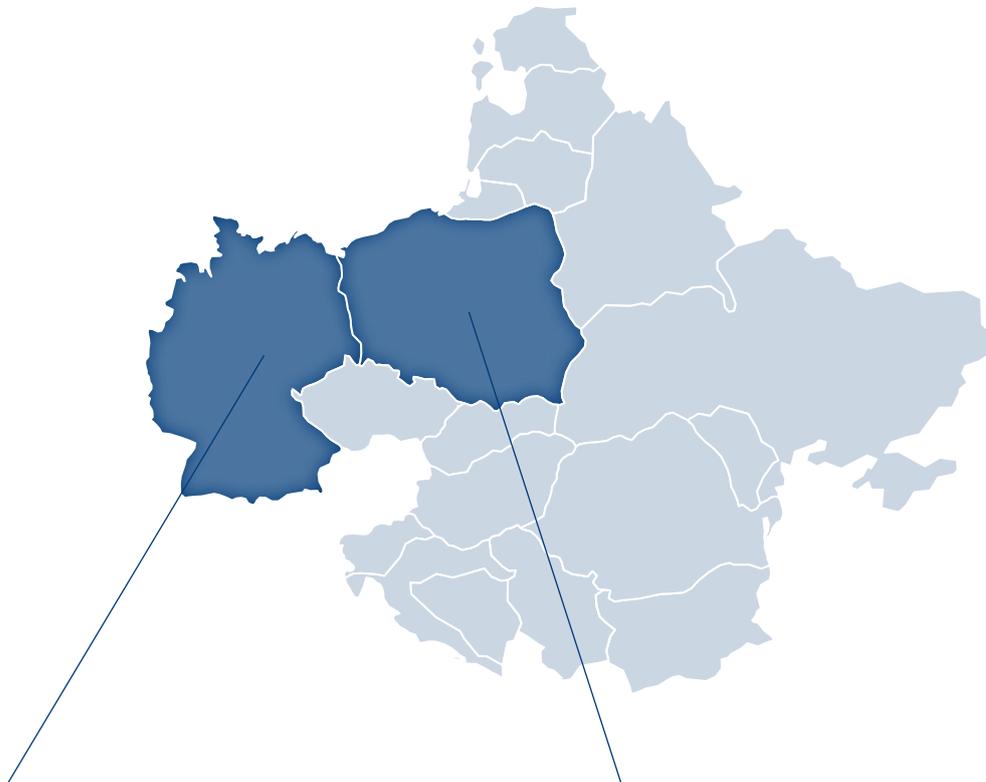
- Belarus law allows pledging of claims for rent.
- However, there is no specific regulation.
- That is why Belarus banks do not normally practice encumbrance of rent revenues.

→ **Ukraine:**

- (Silent) assignment or cession of rent by the landlord is permissible e.g. in the course of obtaining loan financing, based upon a separate assignment agreement. The tenant's approval is not required.
- Ukrainian pledge and mortgage law allow pledging of claims for rent. In this respect, one must keep in mind that pledging by the tenant requires consent of the property owner.
- Pledging bank accounts is only possible for deposit accounts (in which case, the pledge serves as collateral for a loan made available against the funds in the deposit account).

→ **Bulgaria:**

- Claims for rent may be assigned by way of security even without consent of the lessee.
- Pledging claims for rent is also possible.

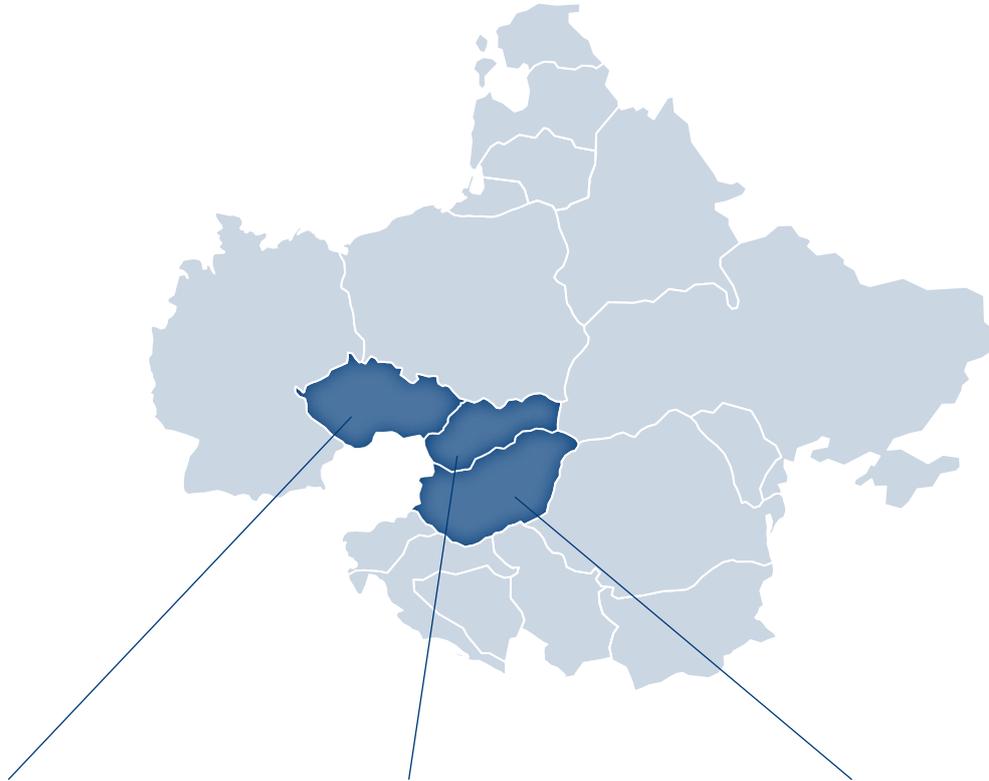


→ **Germany:**

- Securing a loan by mortgage or lien is one of the safest ways to secure a loan agreement, taking into consideration the type and location of property as well as the rank of the mortgage/lien in the land register. However, enforcing collateral (by realizing the pledge) is often a protracted affair.
- Corporate shares, receivables, and bank accounts can be realised faster, but the yield is less secure than when securing debt by mortgage or lien.
- To avoid time-consuming legal proceedings in the case of a debtor in distress, the debtor generally consents to immediate enforcement in a notarized deed. The notarized deed is in this case an executory title.

→ **Poland:**

- Claims secured by way of mortgage are satisfied preferentially in foreclosure proceedings. However, foreclosure of real estate can be a protracted affair, which is why alternatives that allow for discretionary realization of the collateral should be identified and used.
- Realization of collateral is in principle faster in the case of pledged company shares or bank accounts – but the prospect of (financial) success is often smaller.
- Settlement of a secured claim can be facilitated by having the owner of mortgaged property submit to a notarial deed on direct enforcement. In this respect, it is important to specify the amount, the prerequisites, and the decisive date when an executory title may be obtained.



→ **Czech Republic:**

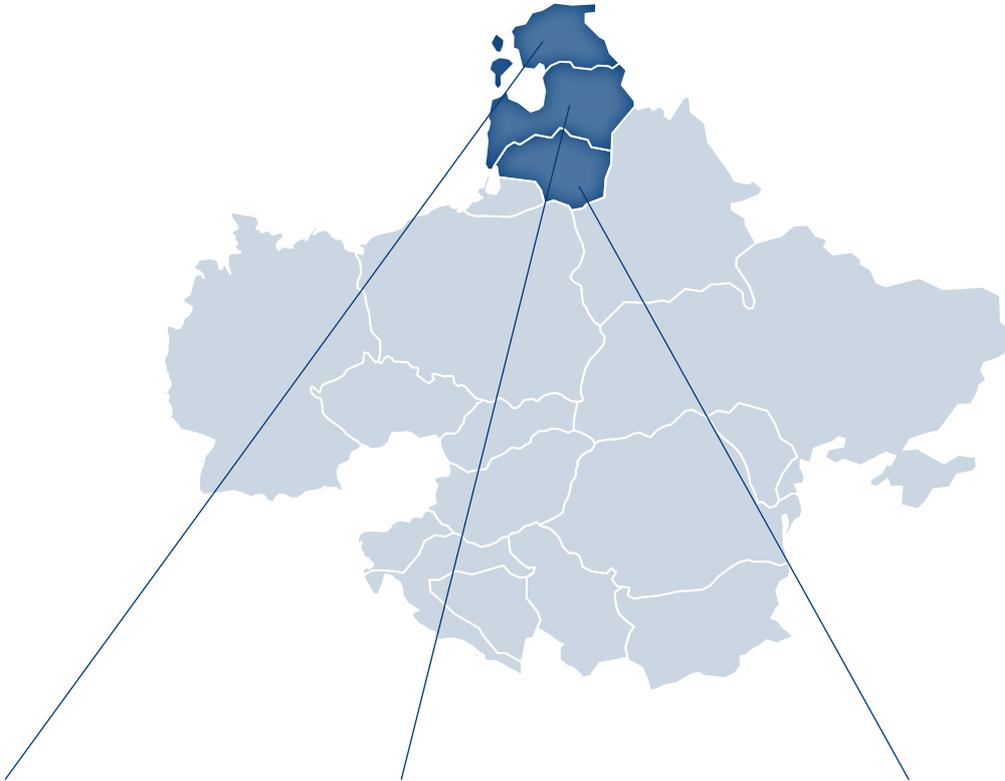
- If the value of the pledge deteriorates, then the pledgee may demand that it be replenished. Under a customary arrangement, failure to do so will usually trigger early maturity of the claim.
- The pledgee has a privileged position against the borrower in debt enforcement or insolvency proceedings.

→ **Slovakia:**

- From among the various forms of collateral permissible by law, creating a pledge title to secure the lender's claims is the preferable choice, in that the pledgee may invoke a preferential right to satisfaction of their claims in realizing the assets under pledge.

→ **Hungary:**

- Mortgages and pledges provide the lender with a preferential rank in enforcement proceedings.
- If the security agreement was made in the form of a notarial deed, direct foreclosure becomes possible.
- Under certain circumstances, the security agreement grants the lender a right to a discretionary sale of the collateral without prior foreclosure procedure and without having to commission a third party with a forced sale.
- Joint realization of the collateral in lieu of foreclosure is possible if the security agreement provides for this option.
- Unless the pledgee filed for foreclosure themselves, they must accede to foreclosure proceedings upon notifying the court-appointed debt enforcement officer.



→ **Estonia:**

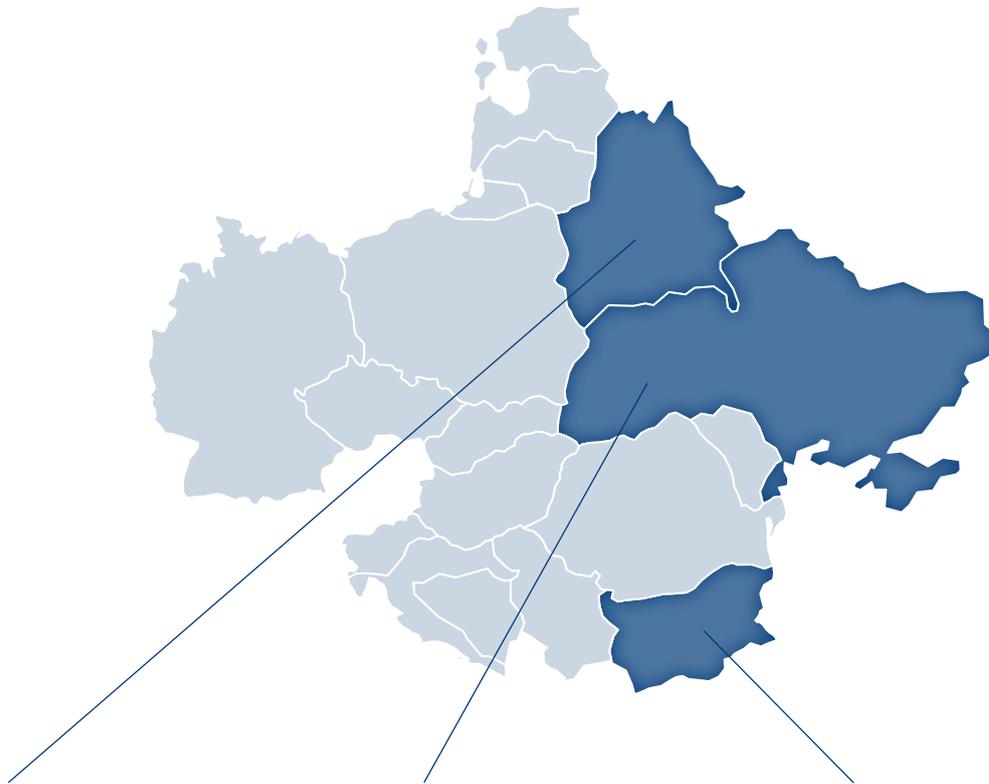
- In agreements certified by a notary public, direct enforcement in the event of breach of contract may in certain cases be agreed by the parties, in which case the lender may directly approach a court-appointed debt enforcement officer without having to obtain a court ruling first.
- Unless this direct enforcement option has been agreed, the creditor must, upon having sent unsuccessful dunning letters, file a claim in court, and in doing so must observe the agreed timelines. Enforcing a claim in court is time-consuming, and an out-of-court settlement is often the preferable alternative.
- Registered rights (mortgage, preemption right, pledged securities) are best exercised out of court.

→ **Latvia:**

- In order to attain the most effective enforcement options, lenders should require the borrower to submit to direct enforceability in a notarial deed or secure their claim by way of a commercial pledge or mortgage. In that case, executory title may be obtained within seven days – unless the encumbered real estate has been transferred to a third party. In the opposite case, it is very easy for the borrower to delay foreclosure. For this reason, it may be advisable to obtain a notarial deed, in spite of the concomitant costs in fees. Obtaining a preliminary injunction to secure claims may at times be fraught with problems. For lending banks, consent of the owner of the collateral with direct enforceability is an instrument which facilitates realization of collateral.
- Insolvency trustees and debt enforcement officers may ask the land register office to take measures to secure certain real estate, which then cannot be transferred by the owner (as of the moment when the request was filed).

→ **Lithuania:**

- Collateral comes into play if the borrower fails to honour contractual obligations vis-à-vis the lender. The most straightforward case is an assignment of claims, because no court or other institution needs to be involved (as is the case e.g. for mortgages or pledge titles).



→ **Belarus:**

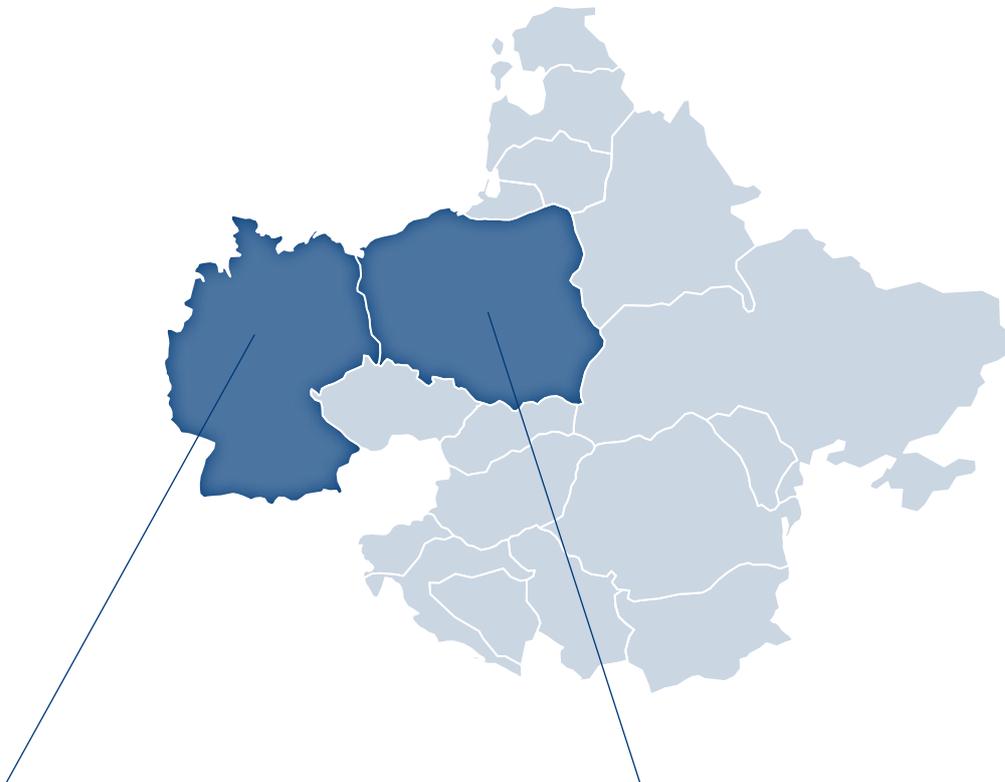
- If the borrower fails to repay the loan agreement in time, then the lender may charge default interest.
- The default interest rate is usually determined by the basic rate of the Belarus National Bank at the time the financial obligation was settled.
- As a rule, the loan agreement will impose additional liabilities, such as a contractual penalty for default and late repayment of principal or late payment of interest.
- If a loan is repayable in installments, the lender can demand accelerated repayment of the total outstanding amount together with loan interest.

→ **Ukraine:**

- Mortgages and pledges of funds kept with the lending bank have proven the most reliable forms of collateral. In addition, bank guarantees are also recognized as safe securities.

→ **Bulgaria:**

- Creating a mortgage over real estate is one of the safest and most popular ways to secure loan agreements. However, the effect of a mortgage entry in the land register is limited by law to 10 years. Mortgage creditors should therefore take care of renewal well in advance, in order not to forfeit their priority rights.
- Corporate shares, receivables, and bank accounts can be realized faster than a mortgage title.
- It is not possible to accelerate

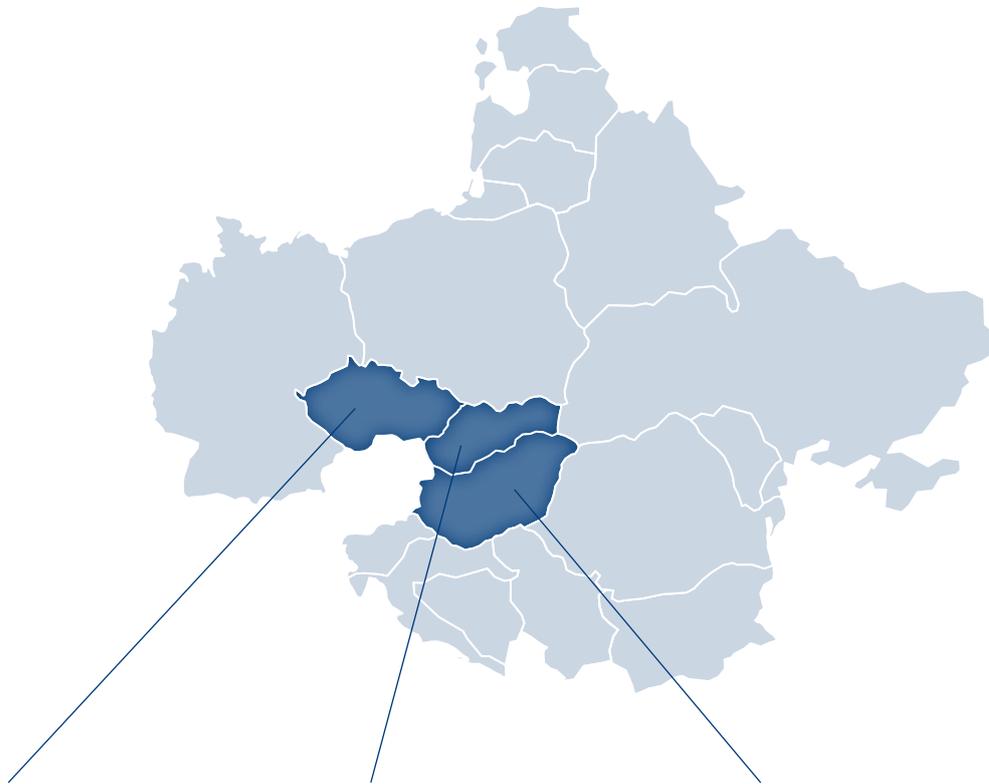


→ **Germany:**

- In case of insolvency, creditors secured by mortgage or lien have a preferential right to satisfaction from the encumbered property.
- Creditors secured by pledges, transfer of title by way of security, or assignment of receivables by way of security will be satisfied separately.
- As a protection against insolvency of the borrower, 'personal security', e.g. guarantees or letters of comfort, is also suitable.
- Insolvency claims have to be registered in due time with the insolvency administrator. This also applies to claims by creditors with a preferential right to satisfaction who could not realize their claims in total.

→ **Poland:**

- Rights in rem, i.e., mortgages and pledge titles to company shares, are the best form of collateral in the event of insolvency.
- Mortgage beneficiaries enjoy a privileged position in insolvency proceedings and are satisfied preferentially from the proceeds generated by realization of the property. These revenues are primarily paid out to the mortgage owner up to the amount of the secured claim; only thereafter is the remaining balance (if any) distributed among other creditors.
- A bank guarantee or a corporate guarantee granted by a solvent parent company may also provide a lender with fair protection.
- In any case, claims must be registered with the insolvency trustee, who enters them in the list of creditors, in order to preserve all rights.



→ Czech Republic:

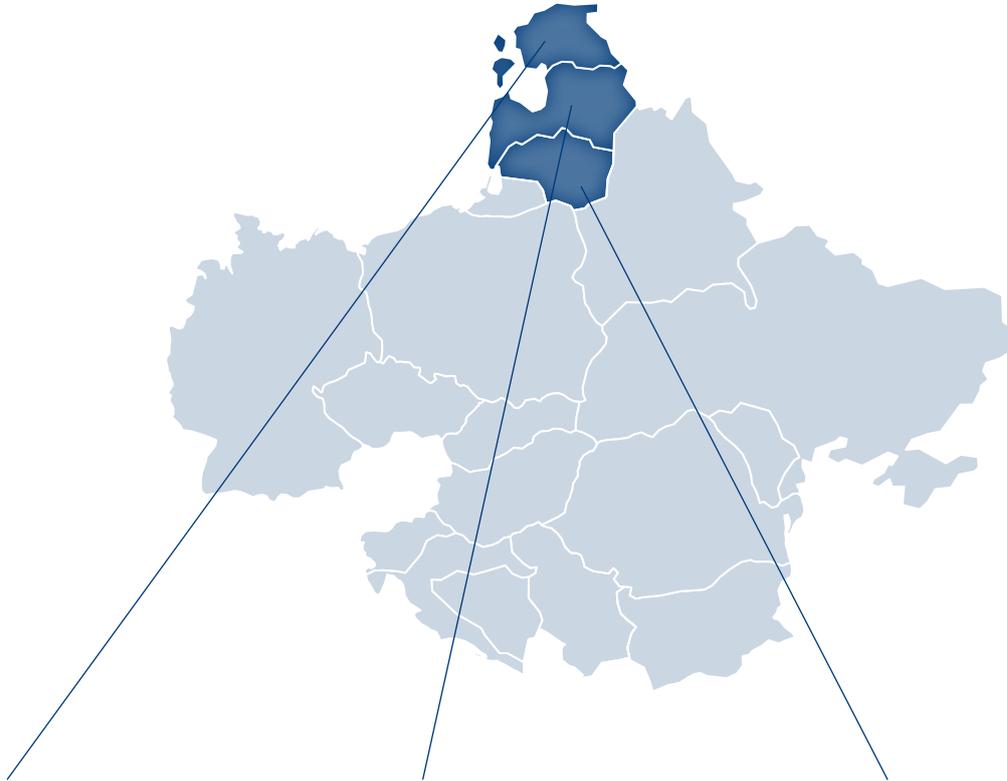
- Creditors secured e.g. by pledge title are privileged in insolvency proceedings and their claims are satisfied preferentially from revenues in forced sales (foreclosure, auction) of assets, rights, or receivables under pledge.
- The order in which preferential creditors' claims are settled is set by the moment in which their pledge title or collateral came into existence.
- Secured creditors are entitled to 100% of the revenues from realization of collateral (assets, rights, or receivables). Of this amount, costs of administration and enforcement may be deducted in a maximum amount of 9% of total revenues from realization.

→ Slovakia:

- In insolvency, the law privileges pledgees over creditors whose claims are not secured.
- Like other creditors, the pledgee must register their claims in bankruptcy/restructuring proceedings within the statutory period of 45 days from the date on which the bankruptcy/restructuring was announced in the Commercial Gazette. Failure to meet the deadline results in loss of privileges as a secured creditor.

→ Hungary:

- Mortgages and pledges have intrinsic value: the rights pertaining to them are privileged in the case of insolvency, and are satisfied separately and independently of unsecured claims, from the revenues generated by realizing the collateral (upon deduction of various costs of proceedings).
- A purchase option does not have intrinsic value, in that it cannot be exercised or set off after insolvency proceedings have commenced.
- Creditors whose claims are secured by pledge must register their claims in insolvency proceedings like other creditors, within the statutory period of 40 days from the date of public notice of the insolvency in the Commercial Gazette (cégközlöny).
- Commencement of insolvency proceedings is also published on the internet at <http://cegkozlon.hu/>.
- If insolvency is imminent, tenants should absolutely be notified in writing of any assignment of claims for rent prior to commencement of formal insolvency proceedings.



→ Estonia:

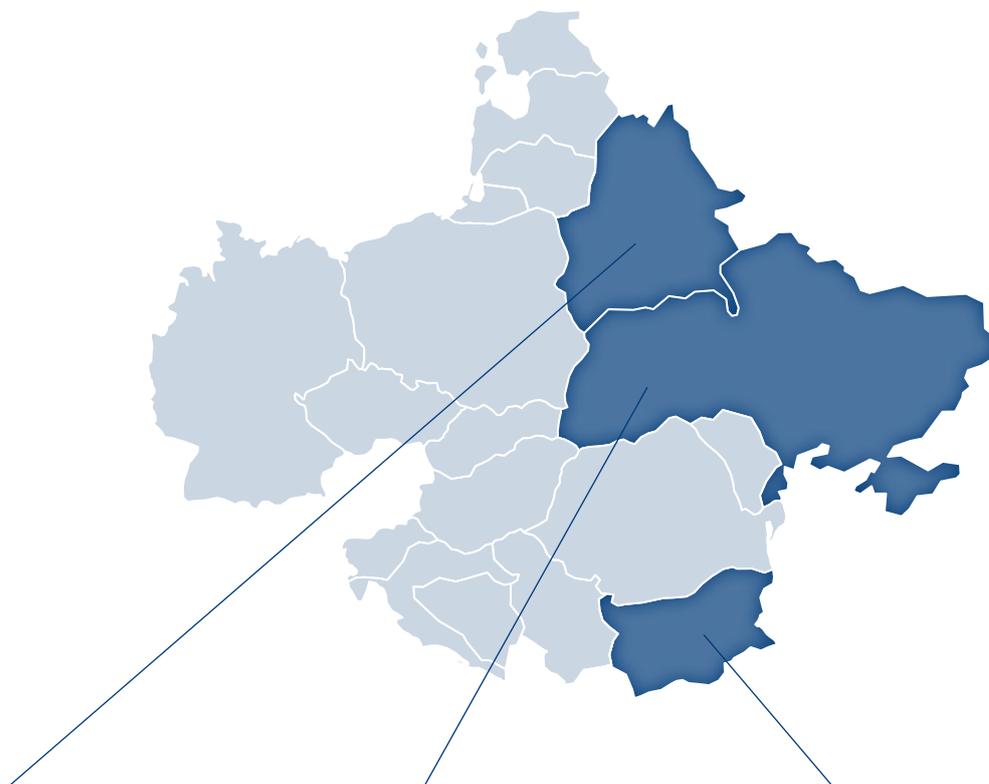
- Securities in rem, such as mortgages or pledges, are also the best form of collateral in the event of insolvency. Lenders also afford acceptable protection under a bank guarantee or corporate guarantee granted by a solvent parent company.
- If the borrower becomes insolvent, it is crucial that claims are registered in time, i.e., within two months from the date on which notice of insolvency was published. Insolvency notices are also posted on the internet at www.ametlikudteadaanded.ee, which should be checked regularly if insolvency is imminent.
- If real estate is sold off at auction in insolvency, then all rights and encumbrances below the first rank (based upon which realization of the real estate may be demanded) expire.

→ Latvia:

- The lender may require that items in their ownership be excluded from the estate; a transfer of title for security thus preserves value even in the event of insolvency. A commercial pledge or mortgage on land as collateral for a claim entitles preferential satisfaction of the claim from revenues generated by realizing the collateral. Other, unsecured creditors are satisfied proportionally up to the amount of their claim; however, they regularly receive only minuscule portions of revenues from realization of the insolvency estate, due to preferential settlement especially of tax debts.
- Claims vis-à-vis a borrower should be registered with the insolvency trustee within one month from public announcement of the commencement of insolvency proceedings.

→ Lithuania:

- If the borrower becomes insolvent and an assignment of claims has been agreed as collateral for the borrower's debt, then the assignee (i.e., the lender) merely has to notify the third-party debtor of the assignment, whereupon that debtor then has to settle its liability vis-à-vis the assignee (lender) rather than vis-à-vis the insolvent assignor.
- If a claim was secured by way of mortgage or pledge, then the lender may enforce its claim in insolvency proceedings. To this end, the lender must present the insolvency trustee with all documentary evidence of the claim. Such a claim enjoys priority over all other claims not secured by a right in rem and must be satisfied preferentially.



→ Belarus:

- Lenders may initiate insolvency proceedings against borrowers unable to repay their debts. The insolvency trustee, the creditors' meeting and the board of creditors are competent to protect the lender's interests.
- Claims under a loan agreement are satisfied in the fifth/last rank, along with those of other non-privileged creditors. If the payment obligation was secured by pledge, then claims are satisfied in the fourth/penultimate rank.
- Initiation of insolvency proceedings is announced by public notice, which sets a period (of no less than 2 months) for registration of creditors' claims.
- When granting a loan, the bank may take out insurance against loan default or late repayment, in which case any loss incurred is compensated by the insurer.

→ Ukraine:

- Claims secured by pledge are satisfied preferentially.

→ Bulgaria:

- In case of insolvency, creditors secured by mortgage or lien have a preferential right to satisfaction from the encumbered property.
- Creditors secured by transfer of title by way of security or assignment of receivables by way of security will be satisfied separately.
- As protection against insolvency of the borrower, 'personal security', e.g. guarantees or letters of comfort, is also suitable.
- Insolvency claims have to be registered in due time with the insolvency court. Unregistered claims expire.

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- **Loans**
- Loans may be granted both in domestic (Belarus rubles) and foreign currency (provided an official exchange rate has been set for converting that currency into Belarus rubles). Loans between two Belarus companies must be contracted in Belarus rubles.
 - Depending on the terms of the loan agreement between a domestic entity and a foreign entity, the domestic entity may first need approval from the National Bank before the loan can be drawn down or, as the case may be, repaid.
 - Loans are usually interest-bearing. The interest rate may be set in the loan agreement or derived from the basic rate of the National Bank.
 - There are no upper or lower limits to loan interest, though approval by the National Bank may have to be obtained depending on the amount of interest.
 - If a foreign entity grants an interest-free loan, then this qualifies as so-called gratuitous sponsorship, which is subject to special regulations and restrictions.
 - Parties to a loan agreement are free in their choice of governing law. If they make no choice, then the law of the lender applies. Irrespective of choice of law, mandatory provisions of Belarus foreign exchange law must always be observed.
- **Mortgages**
- “Mortgage” in the terms of Belarus law is a pledge on immovable property (i.e., real estate), including land plots.
 - Types: contractual mortgage and legal mortgage.
 - Mortgages always depend on the existence of the claim which they secure; i.e., they cease to exist as the claim expires.
 - A mortgage agreement must always take written form. Notarial certification is only required if the underlying secured claim is also subject to notarial certification. Rights may be certified by way of a mortgage bond. Mortgage agreements, like all agreements on creation, transfer, or expiry of title to real estate, must be registered in a public register.
 - Contractual mortgages come into existence upon being recorded in the public register. Legal mortgages come into existence if and when the prerequisites are met for which the law anticipates creation of a mortgage.
 - The public register for mortgages (as well as other titles or transactions related to real estate) is the Unified State Register for Real Estate.
 - Plots of land are only eligible as the subject of a mortgage together with the structures and facilities erected on them.
- **Separate concept of Real estate liens (“Grundschuld”)**
- Belarus law has no separate concept of real estate liens. Pledges on real estate primarily take the form of mortgages.
- **Real estate purchase option**
- The Republic of Belarus knows no special legal arrangement for purchase options.
 - Instead, future agreements for sale of real estate are used in Belarus to emulate preemption rights.
 - Under a future agreement, the parties agree to enter into an agreement for sale of real estate at a later point, on terms to be agreed in the future agreement.
 - The future agreement must specify all material terms of the subsequent sale agreement.
 - Public registration of a future agreement is not necessary, but the parties may request notarial certification.
- **Encumbrance of ownership interest in businesses**
- Shareholders may pledge their share (or part thereof) for the benefit of another shareholder or of a third party, provided the company approves. The articles of association may prohibit a pledge for third parties.
 - Encumbrance of ownership interest requires no public registration or notarial certification.

Law and Taxes 2013

- Creating a pledge title to ownership interest in a limited liability company requires a court decision.

→ Assignment of rent

- Belarus law allows pledging of claims for rent.
- However, there is no specific regulation.
- That is why Belarus banks do not normally practice encumbrance of rent revenues.

→ Enforcement of collateral

- If the borrower fails to repay the loan agreement in time, then the lender may charge default interest.
- The default interest rate is usually determined by the basic rate of the Belarus National Bank at the time the financial obligation was settled.
- As a rule, the loan agreement will impose additional liabilities, such as a contractual penalty for default and late repayment of principal or late payment of interest.
- If a loan is repayable in installments, the lender can demand accelerated repayment of the total outstanding amount together with loan interest.

→ Insolvency of the borrower

- Lenders may initiate insolvency proceedings against borrowers unable to repay their debts. The insolvency trustee, the creditors' meeting and the board of creditors are competent to protect the lender's interests.
- Claims under a loan agreement are satisfied in the fifth/last rank, along with those of other non-privileged creditors. If the payment obligation was secured by pledge, then claims are satisfied in the fourth/penultimate rank.
- Initiation of insolvency proceedings is announced by public notice, which sets a period (of no less than 2 months) for registration of creditors' claims.
- When granting a loan, the bank may take out insurance against loan default or late repayment, in which case any loss incurred is compensated by the insurer.

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- **Loans**
- Bulgarian banks finance real estate purchases in local currency (BGN) or in EUR.
 - Interest rates are generally not fixed but floating. Their amount derives from the basic rate of the Bulgarian National Bank or the European Central Bank (depending on the currency, the amount, the term, quality of collateral, and the solvency of the borrower). However, additional, non-transparent factors may also play a role. Bulgarian banks tend to pass on bad-credit risks to their clients by keeping the right to unilaterally raise both the interest rate and the numerous fees which they charge borrowers. Thus, effective rates are generally two-digit numbers and in some cases even exceed the statutory interest rate for default interest.
 - The parties may choose the governing law of the loan agreement at their discretion. However, the bank generally has the better bargaining position. For consumer contracts, the choice of law is partly restricted in favour of the consumer. The restriction does not apply if a foreign consumer approaches a Bulgarian bank in Bulgaria.
- **Mortgages**
- A mortgage entitles the mortgage creditor to a procedural shortcut to foreclosure of the encumbered land in order to settle secured claims. The mortgage title is of accessory nature, i.e., its existence depends on the existence of the secured claim.
 - The only mortgage known to Bulgarian law is the ordinary mortgage (ipoteka) which can only exist as a registered uncertified mortgage and not as a certified mortgage transferable outside the land register.
 - A mortgage as collateral for the debt of a third party is possible, as is a consolidated mortgage on several properties at the same time.
 - A mortgage comes into existence upon mutual agreement of the parties expressed in the form of a notarized contract. Entry of this contract into the land register has constitutive effect and determines the rank of priority of the mortgage.
- **Separate concept of Real estate liens (“Grundschuld”)**
- Current Bulgarian law does not recognize real estate liens as a separate legal instrument.
- **Real estate purchase option**
- Call options on real estate can be agreed in personam, e.g. as a conditional sale agreement or a preliminary agreement. In the latter case they do not need to be recorded in the form of a notarized contract; the written form is sufficient.
 - A conditional transfer of real estate is not possible; likewise, there are restrictions on transfer of title by way of security and buy-back sales contracts.
 - There are two forms of preemption right in Bulgaria – preemption rights established by law (e.g. the preemptive right of a co-owner), which generally expire if not exercised within three months from learning of an imminent transaction, and preemption rights established under the law of obligations (which, however, do not have effects in rem).
- **Encumbrance of ownership interest in businesses**
- Pledging shares in a joint-stock corporation under Bulgarian law (AD) as security for a loan is generally possible. The form of pledge contract depends on the nature of the shares to be pledged. Pledging ownership interest in a limited liability company (OOD) or partnership interest in a limited or unlimited partnership is only possible if the remaining shareholders/partners agree. Such pledges are created upon entry in the public register of special pledges at the Ministry of Justice.
 - Call options regarding company shares are not explicitly addressed by Bulgarian law. They are therefore fraught with difficulties, though they are in principle not forbidden, and are known in practice.

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- **Assignment of rent**
 - Claims for rent may be assigned by way of security even without consent of the lessee.
 - Pledging claims for rent is also possible.

- **Enforcement of collateral**
 - Creating a mortgage over real estate is one of the safest and most popular ways to secure loan agreements. However, the effect of a mortgage entry in the land register is limited by law to 10 years. Mortgage creditors should therefore take care of renewal well in advance, in order not to forfeit their priority rights.
 - Corporate shares, receivables, and bank accounts can be realized faster than a mortgage title.
 - It is not possible to accelerate

- **Insolvency of the borrower**
 - In case of insolvency, creditors secured by mortgage or lien have a preferential right to satisfaction from the encumbered property.
 - Creditors secured by transfer of title by way of security or assignment of receivables by way of security will be satisfied separately.
 - As protection against insolvency of the borrower, 'personal security', e.g. guarantees or letters of comfort, is also suitable.
 - Insolvency claims have to be registered in due time with the insolvency court. Unregistered claims expire.

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- **Loans**
 - Loans may be granted in any currency of the parties' choice.
 - There is no prescribed statutory interest rate. Interest rates are usually determined based on the PRIBOR („Prague InterBank Offered Rate“).
 - Most loans are secured by pledge – i.e., by creating a pledge title to real estate and/ or to the ownership interest in a SPV. Loans are earmarked for the given purpose. Drawdown of a loan for new projects is sometimes conditional upon conclusion of future leases or future sales agreements.
 - There are no restrictions with respect to choice of governing law for a loan agreement.

- **Mortgages**
 - Banks which do business in the Czech Republic offer a comprehensive range of types of mortgage.
 - Mortgages are created by entry in the land register based on the parties' understanding in the pledge agreement.
 - In practice, three agreements must be made: loan agreement, pledge agreement, and agreement on account administration.
 - Pledge titles can also be created to a building under construction.
 - Banks require a certain percentage of equity in the case of purchase or development of commercial properties.
 - The pledgee may not negotiate or demand that a pledge be realized in the form of a discretionary sale. Any agreement on forfeiture of pledged assets is null and void. For sale of a pledge and satisfaction of the pledgee, a public executory title (such as e.g. a court order of foreclosure) must exist. / New Civil Code: the pledgee may satisfy its receivable in any way agreed with the pledger in writing, otherwise the pledgee has the right to satisfy its receivable from the proceeds of turning the pledge into cash at public auction.
 - A given piece of real estate may be encumbered with several pledges to secure several liabilities at the same time.

- **Separate concept of Real estate liens (“Grundschuld”)**
 - Czech law does not recognize a separate concept of real estate liens. / New Civil Code: Separate concepts are introduced, a so called “loose” lien may be attached to a different debt by an owner.

- **Real estate purchase option**
 - Purchase options for real estate may be agreed but are not widespread. More typical are buyback rights and preemption rights.
 - Preemption rights come into existence based upon written agreement.
 - The obligation to purchase or sell real estate may also be agreed in a future agreement.

- **Encumbrance of ownership interest in businesses**
 - Agreements on pledge of ownership interest must be in writing, with certified signatures. The pledge must be entered in the Commercial Register.
 - If transfer of ownership interest requires approval of the general meeting, then approval is also required for putting the ownership interest under pledge.
 - Transferability of ownership interest is not restricted by encumbrance with a pledge.
 - The pledgee may sell the ownership interest under pledge in a discretionary transaction if the pledgor is in default with settlement of secured claims. If the pledgee is unable to sell the ownership interest, then it may exercise the shareholder's/partner's rights vested in the ownership interest. In that case, the pledgee may agree with the pledgor to accept the ownership interest to settle the debt in lieu of payment. / New Civil Code: If the receivable is payable, the pledgee is entitled to any money consideration connected with the ownership interest up to the amount of the secured receivable. If agreed, the pledgee acquires the ownership interest when it fails to turn the ownership interest into money, otherwise the pledgee may exercise the shareholder's/partner's rights vested in the ownership interest if it fails to turn the ownership interest into money. If the pledgee

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fails to turn the ownership interest into money it may also demand transfer to itself of the ownership interest.

- Shares are pledged by surrendering the original share certificates into the hands of the pledgee or a third party for safekeeping. This requires a note in the endorsement in the case of name shares or an entry in the securities records (usually kept by a securities broker) in the case of book-entry shares. The pledgee is not entitled to exercise shareholder's rights. / New Civil Code: The pledgee is entitled to exercise rights connected with the shares on terms agreed between pledgee and pledgor.

→ **Assignment of rent**

- Assignment of future claims for rent as a form of collateral must be agreed in writing; in doing so, the parties must take care to specify the claim with sufficient determinacy. The assignment of rent must not conflict with any agreements with debtors (i.e., those who owe the rent). Assignment of title by way of security is also common. / New Civil Code: An assignment does not have to be made in writing but it is advisable.
- Putting future claims for rent under pledge on the basis of a pledge agreement with the borrower is common practice.
- Pledge title to claims for rent (or claims for bank deposits) comes into existence based on the pledge agreement.

→ **Enforcement of collateral**

- If the value of the pledge deteriorates, then the pledgee may demand that it be replenished. Under a customary arrangement, failure to do so will usually trigger early maturity of the claim.
- The pledgee has a privileged position against the borrower in debt enforcement or insolvency proceedings.

→ **Insolvency of the borrower**

- Creditors secured e.g. by pledge title are privileged in insolvency proceedings and their claims are satisfied preferentially from revenues in forced sales (foreclosure, auction) of assets, rights, or receivables under pledge.
- The order in which preferential creditors' claims are settled is set by the moment in which their pledge title or collateral came into existence.
- Secured creditors are entitled to 100% of the revenues from realization of collateral (assets, rights, or receivables). Of this amount, costs of administration and enforcement may be deducted in a maximum amount of 9% of total revenues from realization.

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- **Loans**
 - As of 1 January 2011, the euro is the official currency in Estonia. Most loans are granted in EUR.
 - Acquisition of real estate in Estonia is commonly financed by banks, who primarily secure their loans through mortgages on purchased property. Other typical forms of collateral include bank and other guarantees. Another possible form of collateral, which has however fallen into disuse, is the „commercial pledge“ – a pledge encumbering the entirety of movable assets of a business (Floating charge).

- **Mortgages**
 - The predominant form of security is mortgages, which come into existence, based upon a notarially certified agreement and at the request of the parties, by entry in the Land Register. A mortgage entitles its owner (the lender) to satisfy its secured receivables against the borrower from the revenues of a forced sale (or from forced administration) of the land plot encumbered by the mortgage.
 - Estonian law does not differentiate between two forms of collateral, mortgage and „real estate lien“, but provides only mortgages as a tradable and flexible form of collateral (whereas the Estonian mortgage is not dependent upon the existence of the secured receivable, and in this respect rather resembles the German „Grundschuld“ in terms of content).
 - A land plot may be encumbered with several mortgages at the same time. Satisfaction of secured claims is then governed by the chronology of entries.
 - Mortgages are not dependent on a to-be-secured claim and may thus be created irrespective of whether the given receivable exists. Likewise, a mortgage may be transferred separately from the underlying secured claim.
 - If the borrower does not honour its obligations, then the mortgagee (lender) may file a request with the competent court for realization of the mortgage – in the form of a forced sale (auction) or forced administration.

- **Separate concept of Real estate liens (“Grundschuld”)**
 - Entry of a real estate lien is a theoretical alternative to a mortgage, but not used as collateral in practice.

- **Real estate purchase option**
 - A purchase option may be entered in the Land Register in the form of a preemption right (for the benefit of a specific person or for the benefit of whoever is the owner of the property at the given time). There also exists a statutory preemption right (e.g. in the case of a contemplated sale of co-owned real estate) which is not entered in the Land Register.
 - In practice, purchase options are often created by entering into a real estate purchase agreement which sets the conditions under which transfer of title is possible (or compulsory).

- **Encumbrance of ownership interest in businesses**
 - Share certificates must, and ownership interest may be registered with the Estonian Central Register of Securities (ECRS). Pledging shares and ownership interest registered with the ECRS is also recorded by the ECRS.
 - Where ownership interest is pledged but has not been registered with the ECRS, the pledge agreement must be certified by a notary public and the Commercial Register must be notified.
 - Even after securities have been pledged, the rights vested in them (such as voting rights, rights to a payout of dividends) remain with the owner of the securities.

- **Assignment of rent**
 - Claims for rent may be assigned to the lender on a contractual basis.
 - Banks may demand, as a condition in the loan agreement, that rent revenues derived from the financed property be transferred to a specific account.

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- **Enforcement of collateral**
- In agreements certified by a notary public, direct enforcement in the event of breach of contract may in certain cases be agreed by the parties, in which case the lender may directly approach a court-appointed debt enforcement officer without having to obtain a court ruling first.
 - Unless this direct enforcement option has been agreed, the creditor must, upon having sent unsuccessful dunning letters, file a claim in court, and in doing so must observe the agreed timelines. Enforcing a claim in court is time-consuming, and an out-of-court settlement is often the preferable alternative.
 - Registered rights (mortgage, preemption right, pledged securities) are best exercised out of court.
- **Insolvency of the borrower**
- Securities in rem, such as mortgages or pledges, are also the best form of collateral in the event of insolvency. Lenders also afford acceptable protection under a bank guarantee or corporate guarantee granted by a solvent parent company.
 - If the borrower becomes insolvent, it is crucial that claims are registered in time, i.e., within two months from the date on which notice of insolvency was published. Insolvency notices are also posted on the internet at www.ametlikudteadaanded.ee, which should be checked regularly if insolvency is imminent.
 - If real estate is sold off at auction in insolvency, then all rights and encumbrances below the first rank (based upon which realization of the real estate may be demanded) expire.

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- **Loans**
- German banks generally grant loans for real estate financing in euro; however, loans in a foreign currency, e.g. in Swiss francs, may also be granted.
 - No general restrictions affect loan agreements under German public law.
 - Interest on a loan for financing the purchase of real estate depends, inter alia, on the basic rate of the European Central Bank, the amount, the term, quality of collateral, and solvency of the borrower. The current effective rate of interest offered by some lenders is below 4%.
 - The parties may choose the governing law of the loan agreement at their discretion. However, the bank generally has the better bargaining position.
- **Mortgages**
- A mortgage entitles the mortgage creditor to foreclose on the encumbered property in order to settle secured claims. A mortgage depends on the existence of a secured claim.
 - The typical form of mortgage is the ordinary mortgage (Verkehrshypothek) which may be a registered uncertified mortgage (Buchhypothek) or a certified mortgage (Briefhypothek). Transfer of a certified mortgage is also possible outside the land register.
 - A consolidated mortgage is possible on several properties at the same time.
 - A mortgage comes into existence upon mutual agreement between the parties and entry in the land register. For creation of a mortgage, the land owner's consent must be at least certified by a notary public. Mortgages may be transferred along with secured claims. Acquisition in good faith of a mortgage is possible.
- **Separate concept of Real estate liens ("Grundschuld")**
- In Germany, real estate liens under German law (i.e., Grundschulden) are usually preferred over mortgages for securing loan agreements for the purchase of real estate, as they are more flexible and, unlike mortgages, do not depend on the existence and amount of secured debt.
 - The Secured debt is connected to the lien via a statement of collateral purpose (Sicherungsabrede). In this statement, the parties agree e.g. on the requirements for foreclosure or for deleting the lien from the land register.
- **Real estate purchase option**
- Call options on real estate can be agreed in personam, e.g. as a conditional sale agreement or a preliminary agreement; they need to be recorded by a notary public.
 - A conditional transfer of real estate is not permissible, but the same effect can be achieved by a legal arrangement under the law of obligations (e.g. an agreement on future execution of the purchase agreement).
 - Preemption rights in Germany exist in personam as well as in rem. A preemption right in rem has to be entered into the land register, is effective against anyone, and gives the person entitled the right to demand that the buyer surrender the property to them.
- **Encumbrance of ownership interest in businesses**
- Pledging company shares as a form of collateral is possible. Pledging ownership interest in a partnership is only possible if the other partners agree or if it is anticipated by the articles of partnership. Pledge of shares in a limited liability company under German law has to be registered by a notary public. Pledge of shares in foreign companies is a possible security instrument in Germany.
 - A call option regarding purchase of company shares as a loan collateral is rather uncommon in Germany.
- **Assignment of rent**
- Rental claims can be assigned as loan collateral even without consent of the tenant. Assignment of future rental revenues is common practice.
 - Creating a pledge title to claims for rent is possible.

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→ Enforcement of collateral

- Securing a loan by mortgage or lien is one of the safest ways to secure a loan agreement, taking into consideration the type and location of property as well as the rank of the mortgage/lien in the land register. However, enforcing collateral (by realizing the pledge) is often a protracted affair.
- Corporate shares, receivables, and bank accounts can be realised faster, but the yield is less secure than when securing debt by mortgage or lien.
- To avoid time-consuming legal proceedings in the case of a debtor in distress, the debtor generally consents to immediate enforcement in a notarized deed. The notarized deed is in this case an executory title.

→ Insolvency of the borrower

- In case of insolvency, creditors secured by mortgage or lien have a preferential right to satisfaction from the encumbered property.
- Creditors secured by pledges, transfer of title by way of security, or assignment of receivables by way of security will be satisfied separately.
- As a protection against insolvency of the borrower, „personal security“, e.g. guarantees or letters of comfort, is also suitable.
- Insolvency claims have to be registered in due time with the insolvency administrator. This also applies to claims by creditors with a preferential right to satisfaction who could not realize their claims in total.

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- **Loans**
 - The currency for loans may be freely chosen. Prior to the economic recession, loans denominated in CHF or EUR were widely used in Hungary, but their number has plummeted due to high depreciation of the Forint.
 - Public-law restrictions apply primarily to consumer loan agreements made in foreign currency.
 - The amount of interest is determined by the contractually agreed interest rate or by the basic interest rate of the Hungarian National Bank (MNB). The courts may mitigate excessive interest rates.
 - The choice of governing law is at the discretion of the parties.

- **Mortgages**
 - All movable assets, real estate, rights, and receivables can be pledged. Hungarian law also recognizes a mortgage on the entirety of assets of a company without individual specification of mortgaged items (floating charge).
 - Mortgages on real estate come into existence as of entry in the land register.
 - For a pledge title to movable assets to become effective, it must be entered in the pledge register kept by the Chamber of Notaries.
 - It is recommended (and in certain cases mandatory) that agreements be certified by a notary public.
 - All encumbrances in rem are recorded in the land register.

- **Separate concept of Real estate liens (“Grundschuld”)**
 - Real estate liens are non-accessory, transferable encumbrances. They are rarely used in practice, even though they represent a feasible alternative to loans.
 - Entry of a real estate lien is governed by the general provisions of statutory law.

- **Real estate purchase option**
 - A purchase option for real estate allows the lender to take over the encumbered real estate (setting off the amount of the loan against the purchase price) without foreclosure, and to then resell or use it without restriction.
 - Purchase options have limited use because they can only be effectively created for a period of five years (and not at all for a residential property in which the borrower lives).
 - A purchase option comes into existence upon conclusion of a written agreement which must set the purchase price and the subject matter of purchase. Such an agreement has binding power vis-à-vis third parties only upon entry in the land register.

- **Encumbrance of ownership interest in businesses**
 - Ownership interest in limited liability companies and shares may be pledged without restriction.
 - A pledge title to ownership interest in a limited liability company may be registered in the Commercial Register. This is not a prerequisite to its validity, but increases security in commercial dealings.
 - Shareholder rights remain with the shareholder even after putting shares under pledge.
 - Transferrable ownership interest may be encumbered by a preemption right. This purchase option cannot be entered in the Commercial Register, and has no effect vis-à-vis third parties acting in good faith.

- **Assignment of rent**
 - Assignment of claims for rent as collateral is permissible and common practice. However, unless the tenant has been notified, claims for rent are a part of the insolvency estate.
 - Claims for rent may also be pledged. The pledge need not be registered and is a title in rem.
 - Anticipated assignment is possible.
 - The balance of deposits in bank accounts may be pledged without restriction. Another common method is to authorize the lender to collect their claim directly by charging the account. It is advisable to formally notify the bank which administers the account.

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→ Enforcement of collateral

- Mortgages and pledges provide the lender with a preferential rank in enforcement proceedings.
- If the security agreement was made in the form of a notarial deed, direct foreclosure becomes possible.
- Under certain circumstances, the security agreement grants the lender a right to a discretionary sale of the collateral without prior foreclosure procedure and without having to commission a third party with a forced sale.
- Joint realization of the collateral in lieu of foreclosure is possible if the security agreement provides for this option.
- Unless the pledgee filed for foreclosure themselves, they must accede to foreclosure proceedings upon notifying the court-appointed debt enforcement officer.

→ Insolvency of the borrower

- Mortgages and pledges have intrinsic value: the rights pertaining to them are privileged in the case of insolvency, and are satisfied separately and independently of unsecured claims, from the revenues generated by realizing the collateral (upon deduction of various costs of proceedings).
- A purchase option does not have intrinsic value, in that it cannot be exercised or set off after insolvency proceedings have commenced.
- Creditors whose claims are secured by pledge must register their claims in insolvency proceedings like other creditors, within the statutory period of 40 days from the date of public notice of the insolvency in the Commercial Gazette (cégközlöny).
- Commencement of insolvency proceedings is also published on the internet at <http://cegkozlonny.hu/>.
- If insolvency is imminent, tenants should absolutely be notified in writing of any assignment of claims for rent prior to commencement of formal insolvency proceedings.

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- **Loans**
 - The currency of loans may be chosen freely. Most loans in Latvia are contracted in Euros or U.S. dollars.
 - Interest must be paid either as by the contractual arrangement, or in the amount of statutory interest rate of seven percentage points above the applicable base rate.
 - The governing law is at the discretion of the parties (and is usually chosen by the lender).
- **Mortgages**
 - Whether or not a property is encumbered with a mortgage may be ascertained by checking the records in the land register. The law does not provide for issue of mortgage bonds.
 - A mortgage comes into existence based upon the parties' agreement, upon entry in the land register. Only the motion for entry in the land register requires notarial certification.
 - A motion for entry of a mortgage takes precedence even over a later preliminary injunction for securing a claim made in court.
- **Separate concept of Real estate liens ("Grundschuld")**
 - Latvian law does not anticipate creation of real estate liens as a form of collateral.
- **Real estate purchase option**
 - A contractual call option preserves the designated transferee's right to acquisition. Parties may agree on different contractual sanctions, if a contractual call option is breached.
- **Encumbrance of ownership interest in businesses**
 - Ownership interest may be pledged. If the pledge agreement is entered in the register of commercial pledges, then it is also effective vis-à-vis third parties; otherwise, it is only effective among the contractual parties. However, ownership interest may be acquired in good faith by third parties, free from the pledge title.
 - The parties may come to a contractual agreement on a purchase option. However, this is not fit for entry in public registers, and thus does not bind third parties.
- **Assignment of rent**
 - A (silent) assignment of rent as collateral is possible.
 - Claims for rent may be pledged. The pledgee must notify the tenant of the pledge.
 - Anticipated assignment is possible.
 - Attachment of bank deposits is in principle possible.
- **Enforcement of collateral**
 - In order to attain the most effective enforcement options, lenders should require the borrower to submit to direct enforceability in a notarial deed or secure their claim by way of a commercial pledge or mortgage. In that case, executory title may be obtained within seven days – unless the encumbered real estate has been transferred to a third party. In the opposite case, it is very easy for the borrower to delay foreclosure. For this reason, it may be advisable to obtain a notarial deed, in spite of the concomitant costs in fees. Obtaining a preliminary injunction to secure claims may at times be fraught with problems. For lending banks, consent of the owner of the collateral with direct enforceability is an instrument which facilitates realization of collateral.
 - Insolvency trustees and debt enforcement officers may ask the land register office to take measures to secure certain real estate, which then cannot be transferred by the owner (as of the moment when the request was filed).
- **Insolvency of the borrower**
 - The lender may require that items in their ownership be excluded from the estate; a transfer of title for security thus preserves value even in the event of insolvency. A commercial pledge or mortgage on land as collateral for a claim entitles preferential satisfaction of the claim from revenues generated by realizing the collateral. Other,

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unsecured creditors are satisfied proportionally up to the amount of their claim; however, they regularly receive only minuscule portions of revenues from realization of the insolvency estate, due to preferential settlement especially of tax debts.

- Claims vis-à-vis a borrower should be registered with the insolvency trustee within one month from public announcement of the commencement of insolvency proceedings.

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- **Loans**
 - Loans in Lithuania may in principle be granted only in Litas or in Euros, unless no cash transaction is made (in which case the parties may agree on a different currency).
 - Loan agreements with a legal entity must always be in writing. Agreements with a natural person must be in writing if the loan exceeds LTL 2 000 (ca. EUR 580).
 - A loan agreement is deemed made as of the moment when money changes hands. For this reason, it is advisable to incorporate a provision in the agreement that specifies what amount the lender made available to the borrower and when.
 - Loan agreements are always considered ‚for consideration‘, unless the parties have agreed otherwise. The parties stipulate the amount of interest; if they do not do so, then the applicable interest rate is the average interest rate charged by commercial banks at the time of contracting and at the lender’s place of residence or business.

- **Mortgages**
 - Mortgages come into existence based upon a contract or by way of a unilateral representation by the owner or in specific cases provided for by law or by way of a court order (court-imposed mortgage). Creation of a mortgage has to be notarized.
 - A mortgage which comes into existence because of a contract is binding between the parties upon notarization of the agreement. In relation to third parties the mortgage does not have effect until it is registered in the public mortgage register. Compulsory mortgages come into effect with registration in the public mortgage register.

- **Separate concept of Real estate liens (“Grundschuld”)**
 - Lithuanian law does not provide for real estate liens.

- **Real estate purchase option**
 - Lithuanian law does not provide for real estate purchase options.

- **Encumbrance of ownership interest in businesses**
 - Ownership interest in a company may be pledged as collateral for real-estate financing. In that case, the pledged item is not physically surrendered to the pledgee.
 - A pledge agreement must be certified by a notary public and entered in the mortgage Register.
 - An encumbrance of shares must also be registered in the pledgor’s securities account (in the case of book-entry shares) or in the shareholders’ register (in the case of physical shares / share certificates).

- **Assignment of rent**
 - Assignment of title by way of security is an increasingly popular form of collateral among credit institutions. In principle, all kinds of claim (including future receivables and conditional receivables) are fit for assignment.
 - A third party who owes the underlying debt in principle need not be notified of the assignment, so that there is a risk of a borrower assigning a claim subject to a contractual prohibition of assignment or which has been assigned several times over or which does not (or no longer) exist(s). It is advisable to mitigate this risk by incorporating notification clauses in the assignment agreement.
 - An assignment agreement is subject to the same formal requirements as the underlying obligation which gives rise to the assigned claim.
 - Claims for rent may also be encumbered by a pledge for the benefit of the lender – in which case the mortgage bond must be certificated by a notary public and entered in the mortgage register.
 - If the pledgor fails to honour obligations, then claims for rent pass to the pledgee, in the amount of the pledgee’s claim.

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→ Enforcement of collateral

- Collateral comes into play if the borrower fails to honour contractual obligations vis-à-vis the lender. The most straightforward case is an assignment of claims, because no court or other institution needs to be involved (as is the case e.g. for mortgages or pledge titles).

→ Insolvency of the borrower

- If the borrower becomes insolvent and an assignment of claims has been agreed as collateral for the borrower's debt, then the assignee (i.e., the lender) merely has to notify the third-party debtor of the assignment, whereupon that debtor then has to settle its liability vis-à-vis the assignee (lender) rather than vis-à-vis the insolvent assignor.
- If a claim was secured by way of mortgage or pledge, then the lender may enforce its claim in insolvency proceedings. To this end, the lender must present the insolvency trustee with all documentary evidence of the claim. Such a claim enjoys priority over all other claims not secured by a right in rem and must be satisfied preferentially.

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- **Loans**
 - Polish banks usually grant loans in Polish currency (PLN), but loans in foreign currencies are also possible. Loans in EUR and CHF are particularly common.
 - There are no public-law restrictions on granting loans.
 - Loan interest varies, with rates currently from 5% to 7%, with an additional margin for the bank.
 - Legal entities may choose the governing law of their contract at their discretion. However, leeway is small in negotiations with banks, and loan agreements are thus regularly made under Polish law.

- **Mortgages**
 - Polish mortgage law saw a comprehensive amendment in February 2011. Since then, only one form of mortgage exists – the collateral mortgage. In other words, all mortgages are now designed as „elastic“, in the sense that they cover the receivable up to the agreed maximum amount, plus interest and fees, and may also extend to future monetary claims.
 - One mortgage may secure several receivables with a large number of creditors, as long as it serves as collateral for a single business venture (e.g. in the case of a syndicated loan).
 - The rank of an expired mortgage in the land register becomes freely available. Once it has been settled, the borrower may replace the receivable for which the mortgage served as collateral with a new claim, or may create a new mortgage. The secured claim may be replaced with a different claim by the same creditor; this does not require consent from other parties with a title in the same rank or a lower rank.
 - For a mortgage to come into existence, a notarial deed is required (exception: mortgages for banks). The mortgage may be created on a contractual basis or by way of a unilateral representation. The mortgage takes effect upon entry in the land register.

- **Separate concept of Real estate liens (“Grundschuld”)**
 - Polish law does not recognize land charge, which is why collateral for loans regularly takes the form of a mortgage.

- **Real estate purchase option**
 - Purchase options are permissible but uncommon. More typical are preemption rights and buyback rights, which may be created on a contractual basis or which come into existence by law with respect to certain real estate for certain entities (the government, municipalities, the Agency for Agriculture).
 - An unconditional purchase agreement whose subject matter is real estate under a statutory preemption right is null and void. In case of a contractual preemption right, such an agreement would merely trigger the obligation to indemnify the beneficiary of that right. For this reason, always verify this aspect before buying real estate.
 - A contractual preemption right initially only binds the parties to the contract. It is binding vis-a-vis everyone if it is also entered in the land register.

- **Encumbrance of ownership interest in businesses**
 - Pledging company shares in order to secure real estate loans is customary. A registered pledge title to company shares must be entered in the pledge register.
 - Purchase options for company shares are rather uncommon.

- **Assignment of rent**
 - Claims for rent may be assigned to secure a loan, often in the form of a silent assignment.
 - Pledging is an alternative to assignment.
 - Anticipated assignments are not practiced. However, the anticipated consent of a tenant with later assignments of future claims for rent is a typical requirement in retail leases.
 - Aside from the assignment – and in order to avoid attachment of account deposits – financing banks often require a power of attorney which authorizes them to dispose of the account for rent payments.

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→ Enforcement of collateral

- Claims secured by way of mortgage are satisfied preferentially in foreclosure proceedings. However, foreclosure of real estate can be a protracted affair, which is why alternatives that allow for discretionary realization of the collateral should be identified and used.
- Realization of collateral is in principle faster in the case of pledged company shares or bank accounts – but the prospect of (financial) success is often smaller.
- Settlement of a secured claim can be facilitated by having the owner of mortgaged property submit to a notarial deed on direct enforcement. In this respect, it is important to specify the amount, the prerequisites, and the decisive date when an executory title may be obtained.

→ Insolvency of the borrower

- Rights in rem, i.e., mortgages and pledge titles to company shares, are the best form of collateral in the event of insolvency.
- Mortgage beneficiaries enjoy a privileged position in insolvency proceedings and are satisfied preferentially from the proceeds generated by realization of the property. These revenues are primarily paid out to the mortgage owner up to the amount of the secured claim; only thereafter is the remaining balance (if any) distributed among other creditors.
- A bank guarantee or a corporate guarantee granted by a solvent parent company may also provide a lender with fair protection.
- In any case, claims must be registered with the insolvency trustee, who enters them in the list of creditors, in order to preserve all rights.

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- **Loans**
 - Loans are usually granted in EUR, though fx loans in USD, GBP, CZK, CHF are possible.
 - Fx risks are borne by the borrower.
 - Strong competition has led to favourable interest rates for borrowers.
 - The actual interest rate depends on the type of loan + other factors.
 - Foreign law may be chosen as the governing law if a foreign element is present but requires a written understanding among the parties and is rare in practice.

- **Mortgages**
 - Under Slovak law, mortgages are pledge titles to an apartment or residential building (i.e., property used for residential purposes).
 - A pledge title may also be created over a building under construction. A building under construction can be entered in the land register if it has been completed to a degree that the purpose of the structure as to the first above-ground floor is sufficiently determinate; in that case, no decision on final acceptance and no assigned building number are necessary.
 - For a mortgage to come validly into existence, it must be entered in the land register.
 - The statutory period for entry in the land register is 30 days.

- **Separate concept of Real estate liens (“Grundschuld”)**
 - There are pledge titles to other kinds of real estate which are fit to serve as pledges (land, structures other than residential structures).
 - In Slovakia, the owner of a plot of land and the owner of a structure erected on the same plot need not necessarily be one and the same person.
 - Creation of a pledge title requires written agreement.
 - A pledge title to real estate comes into existence only upon entry in the land register.

- **Real estate purchase option**
 - Entering into an agreement on a purchase option to real estate as a means of securing receivables of the lender is not permissible under Slovak law.
 - However it is possible to enter into an agreement on transfer of ownership title to pledged property to the lender after the lender’s claims have fallen due.
 - Slovak law also recognizes “transfer of title to real estate as security”, though it is little used in practice.

- **Encumbrance of ownership interest in businesses**
 - Ownership interest may be the subject of a pledge title, provided that the memorandum of association allows for transfer of ownership interest to third parties.
 - Creation of a pledge title to ownership interest also requires approval by the general meeting – if the memorandum of association makes the transfer of ownership interest conditional upon such approval.
 - The pledge title to ownership interest is based upon a written agreement and comes into existence upon its entry in the Commercial Register.

- **Assignment of rent**
 - What is known as ‘silent assignment’ for the purpose of securing a loan requires written agreement between lender and borrower.
 - An effective silent assignment presupposes that no agreement exists between the borrower and the garnishee which prohibits it.
 - ‘Assignment of rent’ (i.e., creation of a pledge title to claims for rent payments) based on a written agreement with the borrower is common practice.
 - A pledge over claims for rent is created by way of entry in the Central Pledge Register at the Chamber of Notaries.
 - Future receivables may be pledged.
 - Such a pledge requires that the receivable can be unambiguously defined when the agreement was made.

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- A pledge over future receivables requires registration with the Central Pledge Register at the Chamber of Notaries and comes into existence upon creation of the receivables.
- Creating a pledge title to claims related to bank deposits requires a written pledge agreement between lender and borrower; the pledge comes into existence by entry in the Central Pledge Register at the Chamber of Notaries.
- It is advisable to enter into a trilateral written understanding with the bank which administers the relevant bank account(s) to set the terms of the pledge and the options on the part of the lender to access the funds.

→ **Enforcement of collateral**

- From among the various forms of collateral permissible by law, creating a pledge title to secure the lender's claims is the preferable choice, in that the pledgee may invoke a preferential right to satisfaction of their claims in realizing the assets under pledge.

→ **Insolvency of the borrower**

- In insolvency, the law privileges pledgees over creditors whose claims are not secured.
- Like other creditors, the pledgee must register their claims in bankruptcy/restructuring proceedings within the statutory period of 45 days from the date on which the bankruptcy/restructuring was announced in the Commercial Gazette. Failure to meet the deadline results in loss of privileges as a secured creditor.

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- **Loans**
- Domestic loans may only be granted in the national currency (hryvnya). Loans to nonresidents are granted in foreign currency such as EUR, USD.
 - Loan agreements with a non-resident must be registered with the Ukrainian National Bank.
 - Interest charged under loan agreements with non-residents depends on the term of the loan and is set as follows:
 - for loans of up to one year: max. 9.8 % p.a.;
 - for loans from one year to up to 3 years: max. 10 % p.a.;
 - for loans of more than 3 years: currently also capped at max. 10 % p.a.
 - The governing law for a loan agreement may be freely chosen by the parties. However, due to mandatory public registration, requirements of Ukrainian law and the Ukrainian National Bank must be observed.
- **Mortgages**
- In terms of the subject of a mortgage, Ukrainian law differentiates between mortgages on
 - land,
 - apartments,
 - buildings,
 - buildings under construction,
 - leasehold rights (for the purpose of mortgage law, treated the same as real estate).
 - A mortgage comes into existence based upon a mortgage agreement, when the latter is certified by a notary.
 - In the case of mortgages based upon a court decision, the mutual rights and obligations of borrower and lender come into existence when the court decision becomes final (non-appealable).
 - Public registration of mortgages is by way of entry in the national mortgage register.
- **Separate concept of Real estate liens (“Grundschuld”)**
- Real estate liens are treated as a form of mortgage and governed by the same statutory provisions.
- **Real estate purchase option**
- The terms „purchase option“ and „call option“ are not recognized by Ukrainian law. Future purchase agreements may serve as an alternative. The purpose of these future agreements is to ensure that the agreement proper is made at a later point in time.
 - A future agreement is subject to the same formal requirements as the main agreement.
 - The fact that an agreement was made must be recorded by notarial certification and entry in the notarial register.
- **Encumbrance of ownership interest in businesses**
- Current Ukrainian law does not explicitly provide for, or prohibit, pledging ownership interest. In practice, agreements on pledging ownership interest are made in noncertified written form; sometimes, the parties may request additional notarial certification. The pledgee may insist that the encumbrance be entered in the national register of encumbrances of movable assets.
 - Enforcement of the assets of a company in order to settle the personal debt of a shareholder/partner is possible only to a limited degree: garnishment of a share in the capital stock of a company is possible only after all other assets which could be used to satisfy the creditor’s claim have been exhausted.
 - Alternatively, a future purchase agreement could be made. Since shareholders/partners customarily enjoy a prorated right of first refusal with respect to ownership interest, one must first obtain a waiver of their preemption right from all shareholders before entering into a future agreement.

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- **Assignment of rent**
- (Silent) assignment or cession of rent by the landlord is permissible e.g. in the course of obtaining loan financing, based upon a separate assignment agreement. The tenant's approval is not required.
 - Ukrainian pledge and mortgage law allow pledging of claims for rent. In this respect, one must keep in mind that pledging by the tenant requires consent of the property owner.
 - Pledging bank accounts is only possible for deposit accounts (in which case, the pledge serves as collateral for a loan made available against the funds in the deposit account).
- **Enforcement of collateral**
- Mortgages and pledges of funds kept with the lending bank have proven the most reliable forms of collateral. In addition, bank guarantees are also recognized as safe securities.
- **Insolvency of the borrower**
- Claims secured by pledge are satisfied preferentially.

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