

# Developments in intercreditor dynamics

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Over the past 10 to 15 years, lien subordination and tiering has moved from the periphery of the finance markets to the very heart of U.S.-based leveraged finance. Whereas the predominant means of distinguishing creditor priorities historically was “secured vs. unsecured” or “senior vs. subordinated”, companies considering a leveraged financing can now choose from a variety of intermediate and hybrid forms, seeking to match investor demand with the credit profile, asset base and other characteristics of the borrower/ issuer. While different forms of lien subordination are routinely discussed in short-hand form, as though each product would produce a predictable result, the truth has proved to be somewhat more complex. As the mix of collateral type and scope has met the interplay of general creditors’ rights with imperfectly understood or tested contract provisions in a contested court proceeding – sometimes in unexpected jurisdictions – market participants have come to better understand the limitations and uncertain advantages of different structures and protections. In addition, as the complexity of cross-border financings continues to increase, new issues will arise as others are settled. And, as is often the case where a lesson learned on one set of facts does not apply squarely to another, the agreed means of resolving one issue can often create a new one.

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