Standstill Periods in Intercreditor Agreements - What Factors Can Determine Their Length?

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Intercreditor agreements often include a provision which prevents the junior creditor from taking enforcement action against collateral upon default under the junior debt for a specified period of time after notice of the default has been given to the senior creditor – this is described as the "standstill period". The purpose of the standstill period is to give the senior creditor an exclusive period of time during which the senior creditor may assess its rights and, if the senior creditor determines that it will enforce its rights against the collateral, to so enforce such rights without interference from the junior creditor.

The length of the standstill period is usually negotiated, as the junior and senior creditors have competing interests. The junior creditor will usually favour a shorter standstill period, as it will be anxious to begin enforcement action upon default. However, the senior creditor will usually favour a longer standstill period, which will allow them more time to implement their own strategy for enforcement against the collateral. While the length of time of standstill periods vary, most are between 90 and 180 days. There are various factors specific to the circumstances of each transaction that can affect the length of time of the standstill period, including:

- the type and location of the collateral;
- the borrower's business;
- the amounts of the obligations owed to the junior and senior creditors under their respective credit facilities; and
- the relative bargaining power of the parties involved in negotiating the standstill period (i.e. the junior and senior creditors).

Regarding the collateral, its type must be considered; specifically, whether it is perishable or could otherwise quickly diminish in value and how liquid and readily marketable it is. Perishable and liquid collateral usually justify a shorter standstill period. The location of the collateral must also be considered. If the collateral is located in multiple jurisdictions, a longer standstill period could be justified. For example, in a situation where the borrower's collateral consists mainly of perishable inventory in a single warehouse which can easily be sold, the junior creditor can expect that the senior creditor will agree to a relatively shorter standstill period. However, if the collateral is mostly non-perishable equipment located in multiple jurisdictions, the senior creditor can expect that the junior creditor will agree to a relatively longer standstill period.