COVID-19 Advice: Post-Default Enforcement Against Equity Collateral

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PRACTICES Finance, Margin Lending and Structured Equity

The pledge of equity interests of a privately held company as collateral is a common occurrence in a wide variety of financing structures. What is not as common perhaps is for secured creditors to analyze, at the initial stages of a transaction, the road maps that may serve to mitigate any meaningful delays or diminution in the value of such collateral in a foreclosure scenario. When a secured party takes as collateral equity interests of privately held companies, the potential for a drawn out and difficult foreclosure process should be vetted at the structuring stage of a transaction. In connection with such vetting, the secured party should analyze the applicable provisions of Article 9 of the Uniform Commercial Code, as enacted pursuant to applicable state law (the "UCC"). In particular, the secured party should be aware of the parameters and uncertainties regarding the permitted scope of its conduct after a default but prior to a foreclosure with respect to such collateral, especially in light of the 2019 Novel Coronavirus ("COVID-19") pandemic and the resulting effects on general commercial activity and volatility in financial markets across the world.

Read the full article here.