Global Comparison of High-Yield Bond Covenant Packages

<table>
<tr><th colspan="3">Guarantors</th></tr>
<tr><td colspan="2">Bondholder Protection</td><td>Strongest protection in the United States and Europe</td></tr>
<tr><td rowspan="3">DISTINGUISHING CHARACTERISTICS</td><td>UNITED STATES</td><td>Bonds are often guaranteed by all Restricted Subsidiaries, other than foreign subsidiaries (due largely to tax reasons) and immaterial subsidiaries.

Often, only Restricted Subsidiaries that guarantee other debt of the Issuer and/or incur debt are required to become guarantors.</td></tr>
<tr><td>EUROPE</td><td>As a starting position, comprehensive guarantor coverage (at least 80%+/as close as possible to 100% of EBITDA, revenue and assets) for “senior bonds” is common and desirable.

Guarantor coverage would ideally include all (material) domestic and foreign subsidiaries. In practice, however, corporate and insolvency laws of many European jurisdictions significantly limit the usefulness and enforceability of upstream guarantees, unless there is a clear, direct corporate benefit to the relevant subsidiary guarantor.</td></tr>
<tr><td>ASIA</td><td>Asian high-yield bonds issued by Issuers outside the PRC follow the U.S. or European guarantor models.

For high-yield bonds issued by PRC-based Issuers, bondholders outside of the PRC only receive subsidiary guarantees from non-PRC subsidiaries, which typically account for only a nominal proportion of the Issuer’s assets. As such, structural subordination is often a dominant characteristic of high-yield bonds involving Issuers with substantial assets or operations in the PRC.</td></tr>
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<table>
<tr><th colspan="3">Limitation on Indebtedness</th></tr>
<tr><td colspan="2">Bondholder Protection</td><td>Strongest protection in Asia and weaker similar protection in the United States and Europe</td></tr>
<tr><td rowspan="2">DISTINGUISHING CHARACTERISTICS</td><td>UNITED STATES</td><td>Fixed Charge Coverage Ratio (FCCR) is typically 2.0, but can range from 2.0 to 2.5. Typically, non-guarantor Restricted Subsidiaries are not permitted to incur Ratio Debt, thereby reducing structural subordination.

“Credit Facility” in the Credit Facility basket is defined very broadly to include debt securities and other types of debt in addition to commercial bank credit facilities.

Trend is for other dollar baskets, such as the Purchase Money Indebtedness basket and the General Indebtedness basket, to be capped at the greater of a fixed dollar amount or a growth component (e.g., percentage of Total Assets).

Issuers prefer to include the ability to later reclassify debt incurred under a basket as Ratio Debt if the FCCR could be met, thereby allowing the basket to be “refreshed.”</td></tr>
<tr><td>EUROPE</td><td>FCCR is typically 2.0, but can range from 2.0 to 2.5. Typically, non-guarantor Restricted Subsidiaries are not permitted to incur Ratio Debt, thereby reducing structural subordination.

Common to include additional “consolidated secured debt ratio” test (consolidated total debt/consolidated EBITDA) for incurrence of additional Ratio Debt secured by liens to get rating agencies and investors comfortable that Issuer will not increase its gearing excessively.

Especially for cyclical businesses with currently high EBITDA, consolidated secured debt ratio (rather than FCCR) can become principal limitation on ability to incur additional Ratio Debt. “Credit Facility” in the Credit Facility basket is defined very broadly to include debt securities and other types of debt in addition to commercial bank credit facilities.</td></tr>
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<tr><td rowspan="2">DISTINGUISHING CHARACTERISTICS</td><td></td><td>Issuers prefer to include ability to later reclassify debt incurred under a basket as Ratio Debt if ratio test could be met, allowing the relevant baskets to be “refreshed.”</td></tr>
<tr><td>ASIA</td><td>FCCR is between 2.0 and 3.5.[11]

For high-yield bonds issued by PRC-based Issuers, non-guarantor Restricted Subsidiaries are not allowed to incur debt under the FCCR. It is also common, under high-yield bonds issued by PRC-based Issuers, to limit the incurrence of debt by Restricted Subsidiaries to 10% to 15% of total assets, although this may exclude any debt issued in a public or private offering to institutional investors. Most high-yield bond offerings by PRC-based Issuers do not have a credit facility carve-out. With respect to Permitted Indebtedness, high-yield bonds issued by PRC-based Issuers limit the General Indebtedness basket (and other baskets) to a fixed dollar amount or percentage of total assets, although weaker bonds typically use the greater of a fixed dollar amount and a percentage of total assets, which can include certain intangible assets.

High-yield bonds issued by Indonesia-based Issuers sometimes include the concept of permitted priority indebtedness, in which structurally senior debt can be incurred by non-guarantors if (i) structurally and contractually senior debt is less than 15% of total assets and (ii) the applicable ratio test is satisfied.</td></tr>
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[11] Under high-yield bonds issued by PRC-based Issuers, the Fixed Charge Coverage Ratio typically is between 2.5 and 3.5. Under high-yield bonds issued by Indonesia-based issuers, the Fixed Charge Coverage Ratio typically is between 2.0 and 3.5.

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<tr><th colspan="3">Limitation on Restricted Payments</th></tr>
<tr><td colspan="2">Bondholder Protection</td><td>Strongest protection in Asia and weaker similar protection in the United States and Europe</td></tr>
<tr><td>DISTINGUISHING CHARACTERISTICS</td><td>UNITED STATES</td><td>Typical negotiated items:
In the context of calculating the Net Income Builder basket (or the Restricted Payments Builder basket), whether equity contributions and proceeds from equity issuances can be fair market value of non-cash consideration, or only cash.
Whether the equity that is issued to make an “equity claw” redemption of the bonds can also be counted toward the build-up of the General Restricted Payments basket.
Whether the “return on investments” component of the General Restricted Payments basket is calculated on each separate investment (whereby the basket cannot increase by more than the amount of the individual investment) or whether it is calculated on an aggregate basis among all investments (which is more Issuer-friendly).
Whether an Issuer can later reclassify a Restricted Payment made under a specific basket as a Restricted Payment made under the Net Income Builder basket once the Issuer is able to meet the FCCR condition.
Buyback of management stock subject to an annual cap with a rollover for unused amounts.
Dividends on Disqualified Stock incurred under the Limitation on Indebtedness covenant, as long as the dividends are included as fixed charges.
Whether unlimited Restricted Payments and Permitted Investments can be made subject only to leverage tests.
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Limitation on Restricted Payments		
Bondholder Protection		Strongest protection in Asia and weaker similar protection in the United States and Europe
DISTINGUISHING CHARACTERISTICS		• Size of the General Restricted Payments basket, Joint Venture Permitted Investment basket and General Permitted Investment basket.
	EUROPE	Typical negotiated items: • In the context of calculating the Net Income Builder basket, whether equity contributions and offering proceeds can be the fair market value of non-cash consideration, or only cash. • Whether proceeds from equity offerings that are used to make an "equity claw" redemption of the bonds can also be counted toward the build-up of the Net Income Builder basket. • Size of General Restricted Payments basket, Joint Venture Permitted Investment basket and General Permitted Investment basket.
	ASIA	High-yield bonds issued by PRC-based Issuers often include the General Restricted Payments basket as a component of the Net Income Builder basket, rather than as a separate carve-out, which forces the Issuer to comply with the FCCR test in order to use the General Restricted Payments basket.

Limitation on Liens		
Bondholder Protection		Strongest protection in Asia and weaker similar protection in the United States and Europe
DISTINGUISHING CHARACTERISTICS	UNITED STATES	Covenant generally triggered by liens securing debt, as opposed to the incurrence of liens for other purposes. Attention should be given to whether all Permitted Indebtedness under "Credit Facilities" may be secured by a Permitted Lien (including Ratio Debt) or only debt under the specific Credit Facility basket. Other negotiated points include (i) size of General Permitted Lien basket and (ii) whether there is a Secured Leverage Ratio Permitted Lien basket and, if so, the size of the ratio.
	EUROPE	Covenant generally triggered by liens securing debt, as opposed to the incurrence of liens for other purposes. Attention should be given to whether all permitted Ratio Debt and debt under "credit facilities" may be secured by a Permitted Lien or, if a secured deal, permitted collateral lien, or only debt under the specific Credit Facility basket. Other negotiated points include (i) size of General Permitted Lien basket and (ii) whether there is a Secured Leverage Ratio Permitted Lien basket and, if so, the size of the ratio.
	ASIA	Indebtedness permitted under the Limitation on Indebtedness covenant is typically permitted to be secured. Many high-yield bonds issued by PRC-based Issuers do not have a Credit Facility basket and thus no corresponding lien basket. Secured bonds issued by PRC-based Issuers often allow permitted *pari passu* debt with no ratio test, which effectively allows for unlimited dilution of the collateral.

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<tr><th colspan="3">Limitation on Asset Sales</th></tr>
<tr><td colspan="2">Bondholder Protection</td><td>Strongest protection in Asia and weaker similar protection in the United States and Europe</td></tr>
<tr><td rowspan="2">DISTINGUISHING CHARACTERISTICS</td><td>UNITED STATES</td><td>Covenant has become progressively weaker in the current market. Negotiated items typically include:
• Types of consideration that will count as cash toward the 75% cash consideration requirement.
• Type of debt that can be repaid with asset sale proceeds (debt structurally senior to the bonds or any unsubordinated debt).
• Transactions excluded from the definition of “Asset Sale,” including size of the dollar threshold exemption.
• For permitted uses of proceeds from Asset Sales, does any capital expenditure count or does it have to be a purchase of assets?
• Asset Sale proceeds generally need not be spent within 365 days (or other specified time period), as long as a binding contract is in place within such time period, and proceeds are, in fact, spent during a subsequent 180-day period.</td></tr>
<tr><td>EUROPE</td><td>Negotiated items typically include:
• Types of consideration that will count as cash toward the 75% cash consideration requirement.
• Type of debt that can be repaid with Asset Sale proceeds (debt structurally senior to the bonds or any unsubordinated debt).
• Transactions excluded from the definition of “Asset Sale,” including size of the dollar threshold exemption.
• Asset sale proceeds generally do not have to be spent within 365 days (or other specified time period), as long as a binding contract is in</td></tr>
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Limitation on Asset Sales		
Bondholder Protection		Strongest protection in Asia and weaker similar protection in the United States and Europe
		place within such time period, and the proceeds are, in fact, spent during a subsequent 180-day period.
	ASIA	Under high-yield bonds issued by PRC-based Issuers, the Asset Sale covenant often includes an additional requirement that the Issuer meet the Fixed Charge Coverage Ratio in connection with any sale of a Restricted Subsidiary, division or line of business. High-yield bonds issued by PRC-based Issuers often restrict Restricted Subsidiaries from entering into any sale-leasebacks. Some high-yield bonds issued by Indonesia-based Issuers also prevent Restricted Subsidiaries from entering into sale-leasebacks, but allow the parent to enter into sale-leasebacks in certain circumstances. Many high-yield bonds issued by Indonesia-based Issuers include an additional requirement that the Issuer be able to incur Ratio Debt for an asset disposition or sale of a Restricted Subsidiary, division or line of business.

Limitation on Transactions with Affiliates		
Bondholder Protection		Strongest protection in Asia and weaker similar protection in the United States and Europe
DISTINGUISHING CHARACTERISTICS	UNITED STATES	Trend not to require independent fairness opinions, relying instead on approval of independent directors. Broad exceptions to covenant, including permitted Restricted Payments and Permitted Investments.
	EUROPE	Negotiation items typically include appropriate threshold for fairness opinion. Broad exceptions to covenant, including permitted Restricted Payments (other than Permitted Investments).
	ASIA	Under high-yield bonds issued by Asia-based Issuers, the covenant is often extended to apply to 5% to 10% stockholders.

<table>
<tr><th colspan="3">Limitation on Merger, Consolidation and
Sale of Substantially All Assets</th></tr>
<tr><td colspan="2">Bondholder Protection</td><td>Strongest protection in Asia and weaker similar protection in the United States and Europe</td></tr>
<tr><td rowspan="3">DISTINGUISHING CHARACTERISTICS</td><td>UNITED STATES</td><td>Trend is to require that either the Issuer could incur $1.00 under the Fixed Charge Coverage Ratio on a pro forma basis, or the pro forma Fixed Charge Coverage Ratio is not worse or is better than prior to the transaction.

Requirement for leverage ratio condition is becoming less common for stronger credits.</td></tr>
<tr><td>EUROPE</td><td>Frequently negotiated item includes whether Issuer must be able to incur $1.00 under the Fixed Charge Coverage Ratio on a pro forma basis, or the pro forma Fixed Charge Coverage Ratio must be not worse or is better than prior to the transaction.

Typical requirement that successor company be incorporated in “pre-expansion” (i.e., pre-2003) EU country, Switzerland or United States (i.e., assuming Issuer is not organized in post-expansion EU country).</td></tr>
<tr><td>ASIA</td><td>In addition to the typical U.S. and European market requirements, high-yield bonds issued by PRC-based Issuers require that (i) the Issuer or the surviving entity have a consolidated net worth equal to or greater than the consolidated net worth of the Issuer prior to the transaction and (ii) no rating decline has occurred.

Many high-yield bonds issued by Indonesia-based Issuers also require the Issuer or the surviving entity to have a consolidated net worth equal to or greater than the consolidated net worth of the Issuer prior to the transaction. Certain high-yield bonds issued by Indonesia- based Issuers also require the surviving entity to be incorporated in Indonesia, Singapore or the United States.</td></tr>
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Change of Control		
Bondholder Protection		Strongest protection in the United States and weaker similar protection in Europe and Asia
DISTINGUISHING CHARACTERISTICS	UNITED STATES	Portability with double trigger (*i.e.,* Change of Control *plus* ratings decline) is typical only in stronger credit issuances and sponsor deals. Portability less common than in non-U.S. jurisdictions.
	EUROPE	Portability with double trigger (*i.e.*, Change of Control *plus* ratings downgrade or leverage test) is typical only in stronger credit issuances and sponsor deals.
	ASIA	Under high-yield bonds issued by PRC-based Issuers, double triggers are common (with the requirement that the rating downgrade event occur within six months of the Change of Control event). High-yield bonds issued by Indonesia-based Issuers may have single or double triggers.

Reporting Covenant		
Bondholder Protection		Strongest protection in the United States and weaker similar protection in Europe and Asia
DISTINGUISHING CHARACTERISTICS	UNITED STATES	Pubic Issuers are required to furnish all quarterly, annual or certain reports that would be required on Forms 10-Q, 10-K and 8-K, respectively. Private Issuers are required to furnish annual and quarterly reports containing information consistent with the offering memorandum and certain reports that would be required under Form 8-K. Trend to give extended cure periods to reporting defaults, sometimes with an increase in interest rate. Another trend is for the Issuer to agree to hold quarterly conference calls with investors to discuss financial results. Certain privately-held (*e.g.*, family-owned) Issuers only make reports available on password-protected investor relations website. This may become an issue in 2025, under Rule 15c2-11.
	EUROPE	The Issuer is required to deliver annual reports 120 days after year-end, quarterly reports 60 days after each of the first three fiscal quarters, and descriptions of certain material events promptly after they occur. First-time Issuers typically have 90 days for the first quarterly report. Frequently negotiated and increasing focus of investors is access to and required quality/scope of reports, in particular whether reports must be substantially similar in scope and content to (Rule 144A) offering memorandum or if lower standard applies. Certain privately-held (*e.g.*, family-owned) Issuers only make reports available on password-protected investor relations website.

Reporting Covenant		
Bondholder Protection		Strongest protection in the United States and weaker similar protection in Europe and Asia
	ASIA	High-yield bonds by Asia-based Issuers typically adopt the European requirements, although there is some case-by-case variation.

<table>
<tr><th colspan="3">Fall-Away Covenants</th></tr>
<tr><td colspan="2">Bondholder Protection</td><td>Equal protection in the United States, Europe and Asia</td></tr>
<tr><td rowspan="3">DISTINGUISHING CHARACTERISTICS</td><td>UNITED STATES</td><td>“Suspension” more typical than permanent “fall-away.”

The Change of Control and Limitation on Liens covenants are not fall-away covenants, as neither a Change of Control nor the creation of a lien for the benefit of other creditors can be later undone. Also, the Limitation on Lien covenant is a standard covenant in an investment-grade covenant package.</td></tr>
<tr><td>EUROPE</td><td>“Suspension” more typical than permanent “fall-away.”

The Change of Control and Limitation on Liens covenants are not fall-away covenants for the same reason as in the United States.</td></tr>
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