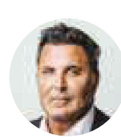
How is legal architecture developing for private debt?




Guest comment by **Joseph Glatt** and **Anastasia Peterson**

As private credit becomes systemically important, legal considerations must keep pace with the asset class's growth

Private credit is no longer a niche – it's a pillar of global finance. With more than $1.6 trillion in assets and a growing role across corporate and structured finance, the asset class has become a foundational capital source for companies, sponsors and institutions.

But scale alone doesn't define success. As private credit matures, legal and structural sophistication must keep pace with commercial ambition. Deal sizes are increasing, investor profiles are broadening and capital structures are becoming more complex. Legal strategy is emerging as a differentiator, not a constraint.

Leading managers are embedding legal strategy early in the investment lifecycle. Governance rights are being calibrated with fiduciary boundaries in mind. Covenant structures are adapting to more bespoke capital stacks. And scalable compliance frameworks are becoming integral to platform growth.

Legal architecture as strategy

The flexibility that defines private credit remains central. But in today's market of higher rates, tighter liquidity and closer regulatory attention, flexibility must rest on durable legal frameworks that protect value, promote transparency and anticipate stress.

Three themes are shaping legal evolution across the market:

- **Clarifying governance roles:** as lenders obtain board rights or enhanced oversight mechanisms, legal teams are ensuring those rights are well defined. Crucially, they preserve sponsor autonomy, while protecting lender downside exposure, without crossing fiduciary lines.
- **Strengthening enforcement and covenant architecture:** key provisions such as waterfalls, sacred rights and cure mechanics are being designed for real-world enforceability. Managers are negotiating tailored covenant packages, especially in capital stacks with layered debt, preferred equity or hybrid instruments.
- **Structuring at the asset and portfolio level:** as NAV-based facilities, structured equity and asset-backed leverage become prevalent, legal documentation must define collateral rights, valuation mechanics and intercreditor enforcement.

Where the market is heading

The firms best positioned for long-term leadership are treating legal infrastructure as core to platform strategy rather than an execution function. Here are the top trends:

1 Valuation discipline and disclosure integrity

Private credit's growth into longer-duration, less liquid exposures has sharpened the focus on valuation transparency. Managers are leveraging independent third-party valuation agents, adopting enhanced mark-to-model methodologies and providing greater transparency to LPs. Valuation discipline and disclosure integrity are moving to the forefront, especially for vehicles backed by insurance capital or offering recurring liquidity.

The importance of robust valuation goes beyond regulatory optics. It underpins confidence in fund performance, supports growing interest in secondary trading of private credit assets and creates infrastructure for opportunistic portfolio sales or loan-level transfers. Legal teams are ensuring that valuation policies are documented, defensible and auditable, without impairing the flexibility that makes private credit compelling.

2 Smart governance without overreach

Lenders are being thoughtful in structuring rights to information and oversight, particularly in downside scenarios. Many lenders are increasingly requesting customised reporting from borrowers and issuers that tie into key performance indicators and metrics analysed by lenders at the time of underwrite. The trend is moving towards defined roles, giving lenders appropriate visibility without tipping into unintended fiduciary obligations. This balance allows sponsors to operate with discretion, while ensuring that lenders have the tools to act responsibly amid challenges.

3 Custom intercreditor agreements and legal documents

Private credit has expanded into hybrid and multitiered structures. These span senior debt, holdco PIK, preferred equity and synthetic instruments, and require a new playbook for intercreditor mechanics.

Standard templates aren't enough. Leading managers are negotiating bespoke turnover provisions, forbearance rights and enforcement protocols reflecting the complexity of their capital stacks to ensure predictability and alignment across stakeholders. As private credit funds increasingly participate in financing structures offering opportunities for enhanced return, such as through convertible instruments, intercreditor arrangements will grow in importance.

Private credit lenders also continue to focus on structural protections within their financing documents – negotiating seniority, covenant packages and collateral aspects of their financings.

The private credit funds most likely to perform across the cycle will take a sophisticated approach to covenant protections, optimising private credit's trademark flexibility and downside scenario protection.

4 Convergence with public market norms

Meanwhile, a shift towards institutional grade governance is occurring. Managers are aligning with public market norms on conflict mitigation, ESG integration and reporting.

This isn't about surrendering private market advantage, it's about meeting the expectations of sovereigns, pension systems and large corporates as private credit becomes their long-term capital partner.

Private asset-based finance has become a focus in the convergence of credit markets, particularly in the context of private credit portfolio companies and infrastructure. Both private credit managers and public fixed-income managers specialising in structured products have established themselves as key participants in this landscape.

Today, asset-backed lending, including real estate and infrastructure debt, represents approximately 40 percent of private credit assets under management.

5 Proactive regulatory readiness

As private credit platforms expand globally, they are navigating an increasingly fragmented regulatory landscape, especially in Asia and Europe. Leading firms are investing in documentation templates, jurisdictional mapping and harmonised operational protocols. It's critical for private credit firms to invest in regulatory preparedness amid increased regulatory scrutiny, particularly in developed markets.

By April 2026, EU member states are required to implement the AIFMD 2.0 directive, which introduces additional requirements for alternative investment funds engaging in loan origination. Meanwhile, US and UK regulators have signalled interest in exposures associated with private capital.

Regulatory readiness is now a strategic imperative. Regardless of geography, managers are investing in scalable documentation, jurisdictional mapping and operational protocols, anticipating oversight. ■

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