

GUIDE TO THE SECURITY INTERESTS (JERSEY) LAW 2012

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PREFACE

This Guide is a summary of the law and procedures relating Security Interests legislation in Jersey.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the Corporate Team, using the [contact information](#) provided at the end of this Guide.

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1. INTRODUCTION

The Security Interests (Jersey) Law 2012 (the **Law**) came into force in full on 2 January 2014. The Law supersedes the Security Interests (Jersey) Law 1983 (the **1983 Law**) and introduces a number of significant advantages, enhancing the regime for taking security over intangible movable property situate in Jersey. The security framework under the Law is now better suited to the broad range of complex cross border financing arrangements that are increasingly a feature of Jersey's financial services industry.

2. KEY FEATURES OF THE LAW

The key changes introduced by the Law can be summarised as follows:

- (a) Third party security is expressly provided for under the Law. This is an important change as the practice under the 1983 Law had been to require the grantor to provide a covenant to pay and/or a limited recourse guarantee in the security agreement in respect of the obligations of the principal debtor.
- (b) "Debenture-style" security can be taken over all present and future intangible movable property held by the grantor from time to time in a single security agreement.
- (c) Registration of security interests on the public security interests register (the **SIR**) maintained by the Registrar of Companies (the **Registrar**) by registering an on-line financing statement.
- (d) The Law provides for a much more simplified procedure for taking second ranking security over the collateral. This is essentially because the grantor can create more than one charge over the same collateral without the need for a transfer in possession, control or title.
- (e) Charges (hypothecs) are introduced as a new way in which security can be taken.
- (f) Enforcement powers and remedies available to secured parties are now more extensive.
- (g) The Law clarifies that a security interest will not be affected by the grantor's right to retain power to deal with the intangible property the subject of the security interest.

3. WHAT IS A SECURITY INTEREST?

The Law defines a security interest as an interest in intangible movable property created by way of a security agreement that secures payment or performance of an obligation.

4. PROPERTY THAT CAN BE SECURED

The Law permits security to be taken over:

- (a) one or more documentary intangibles situate in Jersey;
- (b) one or more directly held non-negotiable investment securities listed on a register maintained in Jersey by a Jersey company or by a Jersey individual;
- (c) deposit and securities accounts maintained in Jersey;
- (d) unregistered intellectual property rights created under Jersey law;
- (e) intangible property held on trust where the trust is subject to Jersey law;
- (f) intangible property situate in Jersey held on trust regardless of the law governing the trust;
- (g) rights under a contract governed by Jersey law whether or not the person owing the obligations is a Jersey organisation or Jersey individual;
- (h) rights under a contract governed by foreign law where the person owing the obligations is a Jersey organisation or Jersey individual;

- (i) partnership interests in any partnership established or incorporated under Jersey law; and
- (j) any other intangible movable property situate in Jersey.

Once intangible movable property becomes subject to a security interest, it is referred to as "collateral".

The Law also contains provisions which allow it to be updated in the future to include security over tangible movable property.

5. CREATION OF SECURITY

In order for a security interest to be valid and fall within the scope of the Law the following criteria must be satisfied:

- (a) the transaction must involve the creation of a proprietary interest in an asset in favour of the secured party;
- (b) the asset must be intangible property;
- (c) the proprietary interest must arise by agreement between the parties in writing; and
- (d) the proprietary interest must secure payment or performance of an obligation.

A security interest must attach and be perfected, as described in more detail below.

6. ATTACHMENT

Attachment is the process whereby the security interest becomes enforceable against the grantor of the security interest. Generally, a security interest is said to have attached when:

- (a) value has been given in respect of the security agreement;
- (b) the grantor has rights in the collateral or the power to grant rights to the collateral to a secured party; and
- (c) the secured party is in possession or control of the collateral and/or the security agreement is in writing, signed by the grantor and identifies the collateral the subject of the security interest.

The type of collateral which is the subject of the security interest being taken will determine the way in which the security is created. All security interests must be perfected to be enforceable against third parties. The security agreement should describe the collateral in sufficient detail for it to be properly identified so as to avoid any confusion as to what property it relates to.

7. PERFECTION

Generally, a security interest is said to be perfected when the interest has attached and the secured party has been perfected by:

- (a) possession of documentary intangibles such as negotiable instruments or bearer securities; and/or
- (b) control of the collateral such as bank accounts (including security accounts) and investment securities; and/or
- (c) registering an on-line financing statement on the SIR in its favour in respect of the collateral.

Perfection by possession, control or registration continues only while the relevant means of perfection is maintained.

Perfection by possession of the documentary intangibles is achieved simply by the secured party having possession of the instrument or relevant certificate representing the documentary intangibles.

Perfection by taking control of a bank account is achieved by:

- the bank account being transferred into the name of the secured party;
- the secured party also being the account bank;
- the account bank agreeing in writing to the instructions of the secured party; or
- the assignment of the bank account to the secured party.

Perfection by taking control of a securities or custody account is achieved by:

- the account being transferred into the name of the secured party;
- the secured party also being the intermediary; or
- the intermediary agreeing in writing to agree to the instructions of the secured party.

In relation to investment securities, perfection can be achieved by:

- the secured party being registered as the holder of such securities; or
- the secured party being in possession of the relevant instrument or certificate.

8. REGISTRATION

Registration on the SIR can perfect security over any type of collateral under the Law and is an essential step where the security interest cannot be perfected by possession or control. In practice, lenders will typically require a financing statement to be registered on the SIR in all circumstances, even where security can be perfected by way of possession or control alone.

Registration has a number of benefits as follows:

- (a) it provides protection where the relevant instrument or certificate that is in the possession of the secured party has been lost;
- (b) anyone carrying out a grantor search on the SIR will be aware that the security interest exists; and
- (c) it ensures continuity of the perfection of the security over the collateral where the collateral is transferred.

Registration relates only to collateral secured pursuant to a Jersey law governed security agreement. It is not necessary to register a security interest over assets in any other jurisdiction as such a security interest is not created under the Law.

The SIR is maintained by the Registrar and is available on-line for public inspection with a basic grantor search being free. Registering a security interest on the SIR involves completing and registering a financing statement with payment of the appropriate fee to the Registrar.

There may be circumstances where security can be perfected by possession or control alone and it is not appropriate or desirable to register the security interest. The SIR is an on-line, publicly searchable register and a grantor may not wish their name to appear on the SIR for reasons of confidentiality.

Security interests created under the 1983 Law are not required to be registered on the SIR. If, however, a security interest created under the 1983 Law is amended, the Law becomes applicable and a financing statement should be registered on the SIR. Security created under the Law can be amended by filing a financing change statement.

Assignments of receivables can also be perfected by registration under the Law.

9. ASSIGNMENT OF RECEIVABLES

Pursuant to the Law, a term in a contract that prohibits or restricts the assignment of one or more receivables is binding on the assignor but only to the extent that it makes the assignor liable in damages for the breach of contract. Such a term is ineffective against the assignee and does not affect the validity of the assignment in relation to a security interest created under the Law.

10. FINANCING STATEMENTS AND FINANCING CHANGE STATEMENTS

A financing statement or a financing change statement should contain the following information:

- (a) the identity of the grantor and the secured party;
- (b) details of the collateral being secured; and
- (c) the duration of registration.

Only the financing statement or financing change statement is registered on the SIR, rather than the security agreement itself.

Registration on the SIR will be effective for the period identified in the financing statement or financing change statement or, if no period is specified, for a default period of ten years from the date of registration. The maximum period of registration is 99 years.

A financing change statement can be registered, together with payment of the appropriate fee to the Registrar, where there is a change in the information included in the original financing statement (for example, if the security is being amended or discharged).

A financing statement or a financing change statement is deemed to be registered when the registration number, date and time have been assigned, the statement is stored and capable of being searched on the SIR and the Registrar has issued a verification statement. The verification statement will verify the date and time that the security interest was registered, which could be an important factor in relation to competing interests in the same collateral.

The registration of a financing statement or a financing change statement will be valid unless there is a seriously misleading defect, irregularity, omission or error. Failure to include a sufficient description of collateral in a financing statement or financing change statement does not affect the validity of the registration of the statement to the extent that the statement relates to other collateral in respect of which a sufficient description has been included in the statement.

If a security interest or assignment of a receivable has been subordinated to the interests of a person other than the secured party or assignee, a financing change statement may be registered in relation to the subordination at any time during the period when registration of the security interest or of the assignment of the receivable is in force.

11. PRIORITY OF SECURITY

Where there are multiple security interests in respect of the same property, the Law provides rules to determine the priority of the secured parties.

Generally, a perfected security interest will have priority over an unperfected security interest with ultimate priority going to the party who was first to register their security interest or take possession of the collateral.

Priority between unperfected security interests is determined by order of attachment, the first to attach gaining the higher priority.

The Law provides special rules of priority for financial collateral. These supersede the general rules of priority.

In relation to security for further advances, provided that the security agreement secures the obligations in respect of further advances, the priority of the original advance will not be lost in respect of further advances.

12. ENFORCEMENT

The Law has significantly broadened and enhanced the enforcement options available to a secured party. Under the 1983 Law, the only enforcement route open to a secured party was a power of sale in relation to the collateral.

The remedies available to a secured party under the Law still include a right of appropriation and sale, however, the following additional enforcement options have been introduced:

- (a) to take control or possession of the collateral;
- (b) to exercise the rights of the grantor in relation to the collateral (e.g. voting rights, the rights to receive dividends etc.); and
- (c) to instruct any other person to carry out its obligations for the benefit of the secured party.

Under the Law, parties have the ability to agree on any other remedy, provided that it does not conflict with the Law. Such additional remedies would be included in the security agreement.

A secured party becomes entitled to enforce and appropriate and sell the collateral where an event of default has occurred and 14 days' prior written notice of such default has been given to the grantor of the security and any other interested party. This notice period can be reduced in length or waived entirely with the consent of the grantor of the security.

The secured party is under an obligation to obtain an appropriate value for the collateral, account for any surplus obtained through the sale of the collateral and to provide a statement of account to the grantor following such sale.

A security interest must be registered if it is to be enforceable against anyone other than the grantor. A security interest that has not been registered will not be enforceable against the grantor's creditors, any liquidator, any receiver or the Viscount of the Royal Court of Jersey.

13. TRANSITIONAL PROVISIONS

Security interests over collateral created under the 1983 Law will continue to be valid and effective and will take priority over any security interests over the same collateral created pursuant to the Law. Where security under the 1983 Law is to be amended or, for example, if new collateral is to be added, the Law will then apply to that new collateral, rather than the 1983 Law.

For more specific advice on Security Interests legislation in Jersey, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).