

The Security Interests (Jersey) Law 2012: Changes to Jersey's security regime

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On 2 January 2014, the Security Interests (Jersey) Law 2012 (the **SIJL**) came into force in respect of Jersey law security over intangible movable property (e.g. shares/securities, bank accounts and custody assets). The SIJL replaces the Security Interests (Jersey) Law 1983 (the **1983 Law**) (which was in force for the last three decades) and introduces a number of important changes which modernise Jersey's security regime.

The SIJL is particularly relevant for banking and finance transactions (and share transfer property transactions) where there is Jersey collateral to be secured. This article summarises the main changes under the SIJL (particularly advantages for lenders) and the transitional provisions which apply to 1983 Law security.

| Main Changes

1. Creation vs perfection - The 1983 Law only had the concept of creation (as opposed to perfection) of security. This was generally done by the secured party having possession of the certificates of title (e.g. share certificates) or by the grantor assigning title to the collateral to the secured party (together with giving of written notice), in each case, pursuant to a Jersey security interest agreement (**SIA**).

Under the SIJL, security is still created under an SIA, but there is also the concept of perfection. It is only when security has been perfected under the SIJL that it becomes enforceable against third parties (e.g. creditors and insolvency officials). Security can be perfected under the SIJL by control and/or by registration. However, security perfected by control will have priority over security perfected by registration.

2. Control vs registration - Under the SIJL, security over certain types of specific collateral (shares/securities, bank accounts and securities accounts) can be perfected by control. The SIJL has a statutory definition of "control" which avoids some of the uncertainty under English law

as to the level of control required to have first ranking security. For example, a secured party can take control over shares by taking possession of the share certificates, and can take control over bank/securities accounts by written agreement with the grantor and the relevant account bank or custodian (although the SIJL provides for different control options). The SIJL helpfully provides that security will generally not be prejudiced by the grantor having a right to deal with the collateral (e.g. by giving account instructions to the relevant account bank or custodian).

Security over any type of collateral can be perfected by registration under the SIJL. For example, this includes security over (a) all present and future intangible movable property, (b) contract rights/book debts, or (c) specific collateral which has also been perfected by control (as explained above). Security which is not perfected by control must be perfected by registration.

3. Jersey Security Interests Register (**SIR**) - Under the SIJL, registration involves the filing of financing statements (or financing change statements) at the SIR. This is a new concept, as previously Jersey did not have a public register for security over intangible movable property, and Jersey is the first major offshore financial centre to introduce such a register. The SIR is an automated register (maintained by the Jersey registrar of companies) for which all the searches and registrations are done online. The SIR website and guidance notes can be accessed at <https://sir.jerseyfsc.org>.

4. Enforcement - The 1983 Law provided that, where the event of default was capable of remedy, the security could not be enforced until the secured party had given the grantor 14 days' written notice of default. This was not popular with lenders under the 1983 Law, particularly for security over custody assets/other collateral which could materially decline in value if not sold quickly.

Under the SIJL, it is possible for the grantor and the secured party to contract out of the 14 day notice period before enforcement, and this is market standard under the SIJL SIAs (although the secured party will still need to give the grantor written notice of default before enforcing). The SIJL also provides for wider enforcement remedies for the secured party, such as appropriation (in addition to sale) and taking other ancillary actions.

5. Jersey Security Interest Agreements (**SIAs**) - The SIAs under the SIJL should look similar to those under the 1983 Law, except they will reflect the control, registration and enforcement provisions explained above and may potentially cover a wider range of assets.

Market practice under the 1983 Law was for each SIA to create security over one type of collateral (e.g. shares, bank accounts or custody assets). A similar market practice has continued under the SIJL, except it is also possible under the SIJL to have a Jersey general security agreement creating security over all present and future intangible movable property (similar to an English law debenture). A general security agreement must be perfected by registration and will secure all assets from time to time such as securities, accounts and other

intangible movable property.

Transitional Provisions

The transitional provisions under the SIJL provide that security created under the 1983 Law will continue to be governed by the 1983 Law, unless the SIA is amended to add new collateral not contemplated under the original SIA. This means that, for the vast majority of historical transactions, there will be no need to amend the SIAs entered into under the 1983 Law, enter into SIJA SIAs, or register the security under the SIJL.

However, any Jersey law security over intangible movable property created after the SIJL came into force (2 January 2014) will be governed by the SIJL. Therefore it should be documented under a SIJL SIA and potentially registered at the SIR (depending on the type of collateral and the lender's registration policy).

Conclusion

Overall, the SIJL has a number of advantages over the 1983 Law, particularly in relation to registration and enforcement of security. The SIJL has been in development for a number of years and, so far, there seems to have been a smooth transition to the new regime and registration of security.

It is proposed to extend the scope of the SIJL in future to cover security over tangible movable property (e.g. inventory, equipment and consumer goods), which should open up new opportunities for lending against Jersey collateral. In the meantime, Jersey's security legislation has been modernised to reflect legal concepts from other jurisdictions such as the United Kingdom, New Zealand, Australia and Canada. It will be interesting to see how market practice develops under the SIJL and if other offshore financial centres follow suit with similar legislation.

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