

Exemption from registration under the Security Interests (Jersey) Law 2012 for trusts

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The Security Interests (Jersey) Law 2012 (the **Law**) provides for registration as a means of perfecting security over intangible moveable property. The register of security interests is maintained by the registrar of companies and is a matter of public record.

There was initially concern expressed in the trust industry in Jersey as to what the registration requirement under the law meant for trustees and in particular as to whether trusts would need to be reflected on the register. Trusts are usually a private matter between the settlor and the trustee and not a matter of public record. However, a requirement to reflect trusts on the register of security interests would mean that their existence was made public.

This concern was recognised in the Security Interests (Registration and Miscellaneous Provisions) (Jersey) Order 2013 (the **Order**), which carves out most trusts (other than certain unit trusts) by providing an exemption from registration where a security interest is granted by the trustees of a trust over the trust property of that trust. In such circumstances, registration will not be required in order to perfect the security and as a matter of law neither the name of the trust nor the name of the trustee will need to be entered on the public register of security interests.

Certain unit trusts (referred to in the Order as "prescribed unit trusts") will however remain subject to the general provisions of the Law. This is in recognition of the fact that such entities are of a more commercial nature and the same sensitivities do not therefore apply. A unit trust will be a prescribed unit trust where:

1. it is a unit trust within the meaning of the Trusts (Jersey) Law 1984
2. express provision is made in the instrument by which the trust was created to the effect that the trustees of the trust may issue units in the trust
3. all of those units are registered in a register of holders of units in the trust in the name of one or

more legal persons (that is, a company or other person, or an association of persons, that is not an individual, registered or otherwise formed anywhere in the world)

4. none of those legal persons:

- a. is a foundation that has as an object the benefit of one or more individuals
- b. acts as trustee for the benefit of one or more individuals or
- c. acts as the nominee of one or more individuals

5. the trust property of the trust includes immovable property (whether or not that property is situated in Jersey)

6. the trust property of the trust is held directly by the trustees of the trust or indirectly by the trustees of the trust through one or more legal persons

7. the trustees of the trust have consent under Article 9 of the Control of Borrowing (Jersey) Order 1958 in relation to the issue of the units in the trust

Many lenders require security taken pursuant to the Law to be registered in the registry of security interests, whether to perfect the security or to give notice to third parties. However, as noted above, it will not be necessary for security granted by trustees of a trust (other than a prescribed unit trust) to be registered in order to perfect security and indeed registration of security granted by trustees of trusts (other than prescribed unit trusts) is not permitted.

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