

## The Security Interests (Jersey) Law 2012 – Registration

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The Security Interests (Jersey) Law 2012 (the **SIJL**) came fully into force on 2 January 2014, changing the way in which security is created over Jersey intangible movables. This briefing note is one of a series relating to the SIJL, dealing with the new registration regime.

### Introduction of a register of security interests

There was no public register of security interests over intangible movables under the Security Interests (Jersey) Law 1983 (the **1983 Law**), either centrally or at the registered office of a Jersey company. The SIJL has introduced the Jersey Security Interests Register (the **SIR**), a centrally maintained, online register in Jersey, accessible to the public. However, under the transitional provisions, security interests created under the 1983 Law will continue as security interests under that law, without any obligation to register under the SIJL.

### Purpose of registration

Security interests are created under the SIJL by either:

- possession or control of certain prescribed categories of collateral, such as deposit accounts, securities (or custody) accounts and certificated investment securities
- description of the collateral in a security agreement and registration of a financing statement in respect of the security at the SIR

It follows that, if the collateral does not fall into one of the categories that can be secured by possession or control, the creation of a valid security interest will involve registration.

Registration perfects security created by description. If such security interest is not registered:

- it is void as against the Viscount (a Jersey court official) or liquidator on the insolvency of the grantor
- it will rank after all perfected security interests
- the ability to enforce the security interest against proceeds may be lost
- a person who acquires the collateral for value will take free of the security interest, unless such security interest was created or provided for by a transaction to which that person was a party
- the secured party may lose its right to receive notice of any enforcement by another secured party with a security interest in the same collateral

Registration will also potentially put any person who searches the SIR on actual notice of the security interest, although a registration is not constructive notice.

## **When to register**

There is no time limit for registering. Unlike in the UK, a registration in the 21 day period following the creation of the security interest is not backdated to be effective from the date of creation. Therefore, registration will need to be built into the completion mechanics to ensure timely perfection.

It will be possible for a prospective secured party to register a financing statement in respect of its security interest before a security agreement has been entered into. This will generally require grantor consent for data protection and confidentiality reasons.

There are some circumstances where registration is not required or permitted, as follows:

- possession or control security interests as described above
- continuing security interests under the 1983 Law
- where the grantor is a trustee of a trust acting in respect of the assets of that trust. This is a statutory exemption, and is intended, for policy reasons, to remove a registration requirement for private trusts. It is not applicable to trustees of Jersey property unit trusts (or JPUTs)

Given that the SIR is publicly searchable, certain clients may have confidentiality concerns, and they may have the bargaining power to get the secured party to agree that registration is not required; this is likely to be the case only where the only material collateral is capable of being secured by possession or control.

It is not necessary to make a separate registration for each transaction. A single financing

statement can cover all transactions, present and future, between the same parties and relating to a given description of collateral.

## **Process for registration**

The SIR is accessible via the website of the Jersey Financial Services Commission at [jerseyfsc.org/registry](https://jerseyfsc.org/registry). Detailed guidelines for the use of the SIR are available via this website.

The SIR will permit:

- online registration of financing statements and financing change statements in respect of security interests
- online searching of the SIR
- downloading and printing copies of financing statements
- the delivery of change demands by the grantor requiring the secured party to amend financing statements

## **Content of financing statement**

The financing statement must include:

- details of the grantor - name, address or registered office, and date of birth (if an individual) or registered number (if a body corporate)
- details of the secured party - name, address or registered office, and date of birth (if an individual) or registered number (if a body corporate)
- description of the collateral - this will either be all present and after-acquired property, or specific collateral following the definition of 'collateral' in the security agreement. There is the option of checking a drop-down box to include proceeds in the registration
- period of registration (see below)
- contact details for service of communications generated via the SIR

The security agreement itself is not registered, and details of its provisions do not appear on the SIR.

Care should be taken in ensuring that the details in the financing statement are accurate. A financing statement which has a defect, irregularity, omission or error that is "seriously misleading" may be invalid. In particular, a secured party should obtain copies of official identification documents to ensure that the grantor's name is correctly inputted. These would include passports, birth certificates or driving licences (for an individual) or certificates of

incorporation (for a body corporate). Notably, a subsequent change in the name of the grantor does not invalidate a registration.

Financing change statements will need to include any change to the information provided in the original financing statement, for example, if the original registration is subject to renewal or discharge.

A financing statement or financing change statement is taken to be registered at the time when a registration number, date and time are assigned by the SIR and the statement is stored and capable of being searched in the SIR. The date and time stamp may prove to be an important factor where there are competing security interests in the same collateral. A printed search report issued by the registrar will be admissible as evidence and will be (in the absence of evidence to the contrary) proof of the registration.

## **Verification statement**

On registration, a verification statement is automatically produced and delivered by email to the registering party. This sets out:

- the financing statement registration number
- the filing reference number
- grantor PIN (needed to serve a change demand)
- date and time of registration and expiry
- data entered in a financing statement

The email with the verification statement attached sent to the secured party will contain the secured party PIN. As this is required to file any financing change statements, it should not be disclosed to the grantor or any other party.

The secured party is required to deliver a copy of the verification statement to the grantor within 30 days; however, this may be waived by written agreement. The grantor can request that the secured party provide details of the grantor PIN at any stage.

## **Period of registration**

Registration will be effective for a default period of 10 years beginning on the date of registration, or, more commonly, for any period not exceeding 99 years specified in the financing statement or financing change statement (subject to renewal or discharge). A registration may be renewed by registering a financing change statement at any time while the registration is still effective.

## Searches of the SIR

Any person can search the SIR. It is possible to search the SIR against:

- a financing statement registration number
- a financing statement type
- registration and expiry date
- a grantor's name
- if the grantor is an individual, his or her date of birth
- if the grantor is a body corporate, its registered number

It is not possible to search against the names of secured parties or against collateral. However, details of these will be discoverable by ordering a copy of a specific financing statement after carrying out searches. Searches against a grantor's name should be by reference to official identification documents, and should cover all prior names. The name searches may be 'Begins With', 'Contains', 'Exact Match' or 'Advanced'. An 'Advanced' search is more flexible but can return a larger number of positive search results.

A search will not reveal:

- continuing security interests under the 1983 Law
- security interests created by possession or control
- security interests granted by acting in respect of the assets of that trust (see above)
- any temporarily perfected security, applicable in certain prescribed circumstances
- whether any security interest is a purchase money security interest

Therefore, enquiries will still need to be made of the grantor and any counterparty in respect of the collateral (if material).

## Fees

The applicable fees are set out on the SIR website. In summary, these are:

- registration - £8 per year of registration up to a maximum fee of £165
- discharge - no fee
- amendment of registration - £25 (if other than expiry date)

- extension of period of registration - apply fees for registration
- global change of multiple registrations (other than expiry date) - £110
- search - free to view search results (with limited data) and £4 to obtain copy financing statement
- filing of change demand - £25

Other briefing notes in this series cover the following topics:

- attachment and perfection
- priority
- taking free of security
- enforcement
- transitional provisions

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