

The Security Interests (Jersey) Law 2012 – Transitional provisions

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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 transitional provisions that apply to pre-existing security created under the Security Interests (Jersey) Law 1983 (the 1983 Law).

Continuing security interests under the 1983 Law

Under the transitional provisions, a security interest under the 1983 Law which was still in effect when the SIJL came into force will continue to be effective under the 1983 Law, rather than the SIJL. Further, the continuing security interest will have priority over any security interest under the SIJL in the same collateral unless otherwise agreed between the secured parties. This ensures continuing grandfathering for security interests created under the 1983 Law.

Amendment to the collateral

However, if new collateral is added to a continuing security interest under the 1983 Law, it may become a security interest subject to the SIJL. This will be the case if:

- parties who entered into a security agreement that created a continuing security interest then enter into another agreement which purports to extend the continuing security interest to new collateral
- the agreement that created the continuing security interest did not envisage the new collateral as forming part of the original collateral

Generally speaking, an amendment of the underlying secured obligations, as opposed to the collateral, does not give rise to a continuing security interest becoming subject to the SIJL.

However, care should be taken if the amendment is so fundamental that it changes the nature of the secured obligations, as there may be an argument that entirely new security has been created such that it would be necessary to re-paper the security under a SIJL security agreement. Where the secured obligations are all monies from time to time owed by the grantor to the secured party, this is not a concern.

Impact of amendment

If it is proposed that collateral is amended, it is necessary to consider which law will apply to the security interest. If the SIJL applies by virtue of the transitional provisions, the contractual provisions of the relevant security agreement should be reviewed to check for compliance with the SIJL. In particular, the agreement should be checked to ensure that it:

- provides for valid attachment and perfection in a manner consistent with the SIJL
- includes waivers under the SIJL for such things as the obligation to give the grantor 14 days' notice of an appropriation or sale, or to provide a grantor with copies of any verification statement following a registration
- allows the full range of enforcement powers and ancillary actions permitted under the SIJL

Voluntary conversion to SIJL security

It may be that a secured party with a continuing security interest under the 1983 Law wishes to convert such security interest voluntarily to a SIJL security interest, to take advantage of the more flexible enforcement provisions. The power to do this may depend upon the drafting of the further assurance clause in the original security agreement. Further, the grantor may be unwilling to meet the cost of this, arguing that valid security already exists.

The transitional provisions allow the parties to a continuing security interest to agree that, in their relations with each other, the SIJL (and not the 1983 Law) shall apply to a continuing security interest. This effectively means that, as a contractual matter between the grantor and the secured party, the provisions of the SIJL may apply. However, third parties and insolvency officials may not be bound by such agreement. The better alternative is to enter into a SIJL security agreement in addition to the 1983 Law security agreement.

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