

An overview of the Security Interests (Jersey) Law 2012

Last reviewed: January 2017

Introduction

Taking security over shares, bank accounts, rights under contracts and other types of intangible property in Jersey is governed by the Security Interests (Jersey) Law 2012 (the **Law**) which came into force on 2 January 2014. The Law provides Jersey with a modern, efficient regime for the creation and enforcement of security interests in intangible property.

The principal changes introduced by the new Law are that it provides for:

- taking security in present and after-acquired intangible property, proceeds and book debts;
- securing obligations as to further advances;
- third party security;
- a grantor to be able to retain power to deal with collateral without prejudicing the security interest;
- registration of security interests; and
- wider enforcement powers.

Methods of creation of a security interest

The Law provides for the creation of security interests by written agreement by:

- control of registered securities, bank accounts and securities accounts;
- possession of negotiable instruments or bearer securities; or
- registration in respect of any type of collateral.

A secured party can take control:

- of a registered security, by being registered as the holder of it or taking possession of the certificate of title to it;
- of a deposit account, by (a) the account being transferred into the name of the secured party, (b) the account bank agreeing in writing to act on the secured party's instructions, (c) the account being assigned to the secured party or (d) the secured party being the account bank; and
- of a securities account, by the same methods as a secured party can take control of a deposit account, except by assignment.

Present and after-acquired property

The Law permits a security interest to be created in a grantor's present and after-acquired intangible property in one agreement.

Proceeds

If certain conditions are met, the Law provides that, if collateral is sold, the secured party will have a security interest in the proceeds of sale and any intangible property acquired with such proceeds.

Book debts

The Law contains provisions that facilitate receivables financing and taking security over book debts.

Further advances

The Law provides that obligations as to further advances may be secured under the terms of a security agreement. Where this is done, a security interest will not be extinguished by repayment of a current advance and it will have the same priority in respect of all advances.

Third party security

The Law expressly provides that a security agreement may secure the obligations of a third party.

Grantor's ability to deal with collateral

The Law provides that a security interest in collateral is not affected if the grantor retains, in the absence of a contrary direction from the secured party, the right to deal with the collateral free from the security interest.

Registration

The Law provides for the creation of an internet based register of security interests that will be open to public inspection. Under the Law, where security cannot be taken by possession or control, a security interest must be registered (unless it is granted by a trustee) if it is to be enforceable against anyone other than the grantor. Subject to one exception, it is not permissible to register a security interest granted by a trustee.

Powers of enforcement

The enforcement remedies under the Law are a power of appropriation or sale, a power to take possession or control of collateral, a power to exercise the grantor's rights in relation to collateral and a power to instruct any person who has an obligation in relation to collateral to carry out the obligation for the benefit of the secured party. A security agreement may also provide for other enforcement powers that are not in conflict with the Law. The Law permits the grantor to waive its entitlement to receive notice of appropriation or sale.

Security interests created under the Security Interests (Jersey) Law 1983

The Law's transitional provisions provide that security interests created under the Security Interests (Jersey) Law 1983 (the **1983 Law**) will continue to be valid and governed by the 1983 Law and will have priority over security interests created in the same collateral under the Law (unless otherwise agreed).

If a security agreement created under the 1983 Law is amended or the obligations which it secures are varied, it may result in the Law applying to the security agreement. A secured party should take legal advice prior to amending a security agreement created under the 1983 Law or varying the secured obligations to establish whether it will result in the Law applying to the security agreement. If it will, the security agreement should be amended to make it compliant with the Law or a new security agreement complying with the Law should be taken instead.

About us

Mourant Ozannes has an international reputation as one of the leading Jersey banking and finance practices. We act for lenders, borrowers, arrangers, issuers, managers, trustees and other finance parties, and advise 19 out of the world's top 20 banks (Bankers Almanac, 2012).

Contacts



John Rainer
Partner, Mourant Ozannes
Jersey
+44 1534 676 679
john.rainer@mourant.com

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. © 2018 MOURANT OZANNES ALL RIGHTS RESERVED