

# Guernsey security

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Security interests over Guernsey sited assets are taken under the Security Interests (Guernsey) Law, 1993 (the **Security Interests Law**). A security interest may be taken over any intangible moveable property, other than a lease.

For the avoidance of doubt, the Security Interests Law, expressly declares that a company incorporated in Guernsey is not to be considered as lacking capacity, or ever having lacked capacity, to give security governed by foreign law over property situated outside Guernsey, by reason only that the law of Guernsey does not permit security to be given by that method or in the circumstances permitted by that foreign law.

A foreign law security agreement is not effective however, to charge Guernsey sited assets (or assets governed by or subject to Guernsey law, for example, policies of life assurance).

## Security agreements

Security taken under the Security Interests Law must be evidenced by a security agreement which may be in such form, and may contain such provisions as may be agreed between the parties provided that it must:

- be in writing
- be dated
- identify the debtor and the secured party
- identify the property in question (or contain provisions enabling its precise identification at any time)
- contain provisions regarding the obligation, payment or performance of the debtor which is to be secured
- specify the events which will constitute a default by the debtor, and
- be signed by the debtor.

Security agreements that are stated to cover 'all assets' without being more precise are unlikely to meet the requirements of the Security Interests Law.

## Charging of certain choses

In relation to charges and assignment by way of security, the Security Interests Law introduces the expression 'security interest', which is defined as an 'interest in intangible movable property that secures payment or performance of an obligation'. A security interest may be created:

- in shares and similar securities by a deposit of the relevant certificates of title with the secured party or his agent
- in policies of life assurance, by a similar deposit of the policy, and
- in a bank account, where the bank which holds that account for its customer is the secured party and that bank has control of the account pursuant to a security agreement and its customer and the debtor are one and the same person whether or not the debtor or any other person has rights specified in the security agreement (to receive interest or otherwise) in respect of the account.

The Security Interests Law does not define what is meant by 'control of the account', and for that reason 'control' must be addressed in the relevant security documentation.

In each case, deposit or control must be pursuant to the security agreement, which must comply with the requirements laid down by the Security Interests Law.

In a situation where the debtor is not a customer at the bank where the account is held, a security interest in a bank account must be created by way of an assignment.

### **Assignments by way of security**

The Security Interests Law further provides that:

- a security interest in any intangible movable property (other than a lease) may be created where the secured party or his agent has title to the property pursuant to a security agreement, either in the case of bearer certificates or negotiable instruments, by delivery with any necessary endorsement, or
- by assignment in all other cases.

A negotiable instrument, as defined in the Security Interests Law, is limited to include only a bill, note or cheque within the meaning of the Bills of Exchange (Guernsey) Law, 1958 or a certificate of deposit. Negotiable instruments falling outside this definition must therefore be assigned in accordance with the provisions of the Security Interests Law in order to create a security interest, notwithstanding that for other purposes they may be transferable by delivery, with any necessary endorsement, and without notice to the person whose obligation has been transferred.

Assignment is the only way in which intangible movable property (other than shares and similar securities, policies of life assurance, bank accounts, bearer certificates and negotiable instruments) may be made subject to a security interest. A security interest in shares and similarly securities, policies of life assurance and bank accounts may also be created by means of an assignment in a situation where the intention is not to pass title to these assets to a secured party by means of deposit of title or otherwise.

### **Perfection of security**

As assignment by way of security will only be valid if express notice of the assignment is given to the person whom the assignor would have been entitled to claim the collateral.

That person must thereupon give an acknowledgement to the assignee of:

- any dispute concerning the assignment being made by the assignor or persons claiming through him, or
- any other opposing or conflicting claims concerning the property assigned of which he is aware.

The forms of notice and acknowledgment are usually found appended to the back of the security agreement.

### **Priority**

Subject to any agreement by a secured party for the postponement of his rights, priority between security interests is determined by the order of creation of the security interests in question.

### **Termination of security interest**

Upon the discharge, payment or performance of the secured obligation, the secured party is obliged by the Security Interests Law to return the certificates of title or the policies of assurance, or to release control of the bank account or to reassign the property, as the case may be, to the debtor.

This obligation is however subject to any other rights or interests of which the secured party has notice.

The secured party must also provide the debtor with a certificate of discharge in the statutory form which is set out at schedule 1 to the Security Interests Law, or, if the agreement is such that only part of the secured property is to be realised upon partial discharge of the secured obligation, a certificate relating to that part of the property must be provided.

Failure to comply with the foregoing requirements renders the secured party liable, amongst other things, to pay damages.

## Default by debtor and enforcement

Where the debtor defaults, the Security Interest Law provides the mechanism for enforcement of security, exercisable by the secured party subject to the relevant criteria being met. Security in Guernsey is enforced by means of a statutory power of sale. The Security Interests Law regulates when such power becomes exercisable, its means of exercise and the order in which the proceeds of sale must be applied.

For further information, please read our guide regarding [The enforcement of Guernsey security](#).

## Rights of third parties

The Security Interests Law provides that the rights of:

- (a) a holder in due course of a negotiable instrument (other than a certificate of deposit)
- (b) a transferee of a certificate of deposit taken in good faith and for value and without notice of a security interest
- (c) a bona fide purchaser of shares and similar securities bought without notice of a security interest, and
- (d) the owner of the property or any interest therein at the time and over which the debtor created or purported to create a secret interest,

are to be determined without regard to the Security Interests Law.

Generally speaking, therefore, upon negotiation or transfer and upon the giving of any necessary notice or upon any registration in the company's books which may be required to perfect the transferees' legal title, the rights of the person referred to in (a) or (c) above in the property in question will not be subject to the rights of the debtor or secured party, notwithstanding that the negotiation, transfer or sale may have been made in breach of the security agreement in question.

The position of holders of negotiable instruments falling outside the restricted definition used in the Security Interests Law (see above) is not specifically dealt with.

The rights of the persons referred to at (d) above will be determined upon the principle, and the established exceptions thereto, that a person cannot confer on another a better title than his own, including by way of security.

## Regulatory consent

The consent of the Guernsey regulator, the Guernsey Financial Services Commission (the **GFSC**) may be required in certain instances where security over shares is taken in a company supervised by the GFSC.

## Contacts

For further information, please get in touch with your usual Maurant contact or, alternatively, a list of contacts can be found [here](#).

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