

The Security Interests (Jersey) Law 1983 and the Security Interests (Jersey) Law 2012 – a comparison

This matrix has been prepared to provide a comparison of the Security Interests (Jersey) Law 1983 and the Security Interests (Jersey) Law 2012 as at its date of publication. It is for general information only and is not intended to, and does not, constitute legal, financial or other advice upon which you may act or rely and does not constitute an offer to provide such advice

	1983 Law	2012 Law
Collateral that can be secured	<p>Jersey intangible movable property (other than a lease), including:</p> <ul style="list-style-type: none"> • securities (such as shares, bonds and units of a unit trust scheme) • bank accounts • contract rights, and • other intangible movable property that is capable of assignment <p>In practice some forms of collateral (eg Jersey securities accounts) were difficult to secure due to limitations in the methods of creating security</p>	<p>A wider pool of collateral can be secured effectively, including securities accounts. Further examples of this are set out below</p> <p>In addition the parties can agree that, in their relations with each other, the 2012 Law shall apply to a security agreement between them that relates to intangible movable property situated outside Jersey</p>
Is 'all asset' security possible?	No	Yes, to the extent that a security agreement can create security over all present and future intangible movable property held by the grantor from time to time
Security over shares	Security was terminated if the secured party ceased to have possession of the share certificates (unless the secured party held title to the shares)	<p>Security is not terminated if the secured party ceases to have possession of the share certificates, but</p> <ul style="list-style-type: none"> • the security would cease to be perfected unless the secured party has registered its security interest, and • priority may be lost if another secured party obtains possession of the share certificates
Security over deposit accounts	<p>The secured party was required to have title to the account or (if the secured party and account bank were the same person) control of the account</p> <p>The secured party may not have had effective security over the account while the grantor was able to operate the account</p>	<p>Various methods of perfecting security are available</p> <p>The secured party will continue to have security over the account even if the grantor is permitted to deal with the account</p> <p>It is possible to take security over securities accounts</p>
Security over inter-company loans and contract rights	<p>Security could only be created by the secured party taking an assignment</p> <p>The secured party may not have had perfected security over the collateral while the grantor was permitted to deal with the collateral</p>	<p>Various methods of perfecting security are available</p> <p>The secured party will continue to have security over the collateral even if the grantor is permitted to deal with the collateral</p>

	1983 Law	2012 Law
Security over limited partnership interests	Security could only be created by the secured party having title to the collateral thereby becoming a limited partner. In practice this was unattractive	Various methods of perfecting security are available, which negate the need for the secured party to become a limited partner
Security over loans to be contributed by a limited partner	Security could only be created by the secured party taking an assignment of the right to demand the advance of the loan and requiring payment into an account of the secured party, which involved the giving of notice of the assignment to the limited partner The secured party may not have had perfected security over the collateral while the grantor was permitted to deal with the collateral	Various methods of perfecting security are available The secured party will continue to have security over the collateral even if the grantor is permitted to deal with the collateral
Security over after-acquired property	While it was possible for a security agreement to be drafted so as to apply to property acquired after the original security agreement was entered into, the security interest in such property would not be created until it was in the possession of the secured party (eg in the case of share certificates) or until title was transferred to the secured party	A security interest in after-acquired property will attach in such property once the grantor acquires rights in it
Requirements for creation of security	The security agreement had to comply with the specified requirements of the 1983 Law, together with one of the following: <ul style="list-style-type: none"> • possession of certificates of title to shares • control of bank accounts, and • assignment of title to collateral and the giving of notice 	The security interest must be created by agreement and the security interest must have attached and be perfected Attachment will result from complying with the specified requirements of the 2012 Law together with (where relevant) the secured party having possession or control of collateral Perfection of security in original or after-acquired collateral will result from registration or (where relevant) the secured party having possession or control of the collateral
Registration of security	No system of registration	A system of registration exists. Registration is not required for all types of collateral, though registration confers certain benefits on a secured party Registration is via an online register which can be searched
Third party security	It was not clear whether third party security was possible. In practice a guarantee or covenant to pay combined with a suitable limited recourse provision was usually included in a security agreement to resolve the issue	Permitted by the 2012 Law. A covenant to pay is still usually included in security agreements
Company taking security over its own shares	It was not clear whether such security was possible	Permitted by the 2012 Law
Grantor dealing with the collateral	If the grantor were permitted to deal with the collateral it might, depending on the circumstances, have resulted in: <ul style="list-style-type: none"> • no security interest being created over the collateral, or • any existing security interest being terminated 	The 2012 Law enables a secured party to permit a grantor to deal with collateral without compromising the attachment of its security interest. If a secured party authorises, expressly or impliedly, collateral to be dealt with, the security interest in that particular collateral will be extinguished if, however, the dealing gives rise to proceeds, the security interest would extend to such proceeds if they are intangible movable property

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Sale of collateral to a purchaser for value contrary to the security agreement	It was not clear what would be the result if a purchaser in good faith for value acquired collateral the subject of a security interest. It is generally considered unlikely that a secured party would have a security interest in proceeds of sale of collateral disposed of in breach of the terms of a security agreement	Subject to certain requirements, a security interest extends to proceeds that are intangible property. A security interest in proceeds has the same priority as the security interest in the original collateral A purchaser in good faith for value takes free of an unperfected security interest If a person purchases an investment security and takes possession of the certificate relating to it, such a person will take the investment security free of any security interest (including a perfected security interest) even if the purchaser knows of the security interest unless the purchaser knows that the disposition is in breach of the security agreement
Second and subsequent ranking security	While it was possible to create second and subsequent ranking security, there were a number of areas of uncertainty surrounding it and the process for creating it was cumbersome	Under the 2012 Law it is much more straightforward to create second and subsequent ranking security and to regulate priority
Enforcement and default remedies	The only method of enforcement contemplated by the 1983 Law was a statutory power of sale	The 2012 Law gives the secured party a wider range of enforcement remedies. In addition to a statutory power of sale, the secured party may appropriate the collateral. A secured party can also take certain ancillary actions, such as taking control or possession of the collateral, exercising the rights of the grantor in relation to the collateral or applying any other enforcement remedy provided for in the security agreement that does not conflict with the 2012 Law
Power of secured party to sell collateral to itself	There was considerable doubt as to whether a secured party could sell collateral to itself	The 2012 Law permits a secured party to appropriate the collateral and to sell the collateral to itself
Obligations of secured party on exercising the power of sale	The secured party was required to take all reasonable steps to ensure that a sale was made: <ul style="list-style-type: none"> • within a reasonable time, and • for a price corresponding to the value on the open market at the time of sale of the collateral 	The secured party must: <ul style="list-style-type: none"> • take all commercially reasonable steps to obtain fair market value for the collateral, as at the time of sale • act in other respects in a commercially reasonable manner in relation to the sale, and • enter into any agreement for or in relation to the sale only on commercially reasonable terms
Right of redemption	No statutory right of redemption	The grantor, other persons with a registered security interest in the collateral and other persons who have notified the secured party of their interest in the collateral have a right of redemption. This right cannot be waived
Right of reinstatement	No right of reinstatement	A grantor can reinstate a security agreement by paying arrears, remedying any default and paying the secured party's costs of enforcement. This right can be waived

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Effect of grantor's bankruptcy	If the grantor retained title to collateral, it would vest in the Viscount on a bankruptcy. The Viscount would then be obliged to pay the proceeds of sale of the collateral in the same order as if the sale were conducted by the secured party. If the secured party had title to the collateral, the grantor's bankruptcy did not affect the statutory power of the secured party to sell the collateral	Under the 2012 Law, if the grantor becomes bankrupt or the grantor or its property is subjected, whether in Jersey or elsewhere, to any other judicial arrangement or insolvency proceeding, it does not affect the power of the secured party to appropriate, sell or otherwise act in relation to the collateral

Contacts

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