

## TAKING SECURITY OVER SHARES, BANK ACCOUNTS AND RECEIVABLES OF JERSEY COMPANIES



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**Introduction** This briefing note intends to provide an overview of the process by which security can be taken over certain movable property touching or concerning Jersey. More detailed guidance or advice is available on request.

The principal law which governs the taking of security over movable property in Jersey is the Security Interests (Jersey) Law 2012 (the **Law**).

### What assets does the Law apply to?

The Law permits security interests to be taken over:

- Shares and or Units in an entity incorporated in Jersey;
- Shares and or Units held in a securities account situated in Jersey;
- Jersey based bank accounts;
- Intellectual property created under Jersey law or vested in a Jersey person (but not registered IP);
- Contract rights pursuant to a Jersey law governed contract;
- Contract rights pursuant to a foreign law governed contract which are enforceable against a person or incorporated entity in Jersey;
- Interests in Jersey law governed partnerships;
- Intangible trust property of a Jersey law governed trust; and
- Intangible trust property that is situate in Jersey (even if the trust in question is not governed by Jersey law).

In essence, when security is to be taken over any intangible movable assets situated in Jersey or in the securities of a company incorporated under the laws of Jersey or other entity, such security should be taken in accordance with the requirements of the Law.

### How is security over the assets taken?

To be valid under the Law, the security interest must be 'attached' to the secured asset. Attachment is the process by which a security interest becomes enforceable against the grantor. Provided the grantor has sufficient authority / rights to grant security over the assets to be secured and value has been given in respect of such arrangement, attachment can be achieved by one or more of the following conditions being satisfied:

- Control - i.e. the secured party (or someone acting on its behalf) has control or a right to take control of the secured asset (e.g. the secured party has control of a Jersey based bank account); or
- Possession - i.e. the secured party (or someone acting on its behalf) has physical possession of the secured asset or physical possession of the certificate of title representing such share/unit; or
- An adequate description of the secured assets is contained in a written agreement between the grantor and the secured party to enable the secured assets to be identified.

Once a security is attached to the asset it becomes enforceable against the grantor of the secured assets. However, in order for the security interest to be enforceable against third parties (and also to gain priority protection), the interest must be 'perfected'. How the security interest is perfected, ultimately depends on the nature of the secured asset, but typically if the secured party has either control and or possession of the secured asset perfection is considered to have occurred without any further steps being required. Where it is not possible to have possession and or control, the security interest can only be perfected by registering the interest on the Jersey Security Interest Register. Registration can also be undertaken (in respect of a Jersey law security interest agreement granted under the Law) even if the secured party has control and/or possession of the secured asset.

The information on the register will need to detail:

- The identity of the parties
- The secured assets subject to the security interest
- How long the registration is to last - if none is mentioned the registration will lapse after 10 years but can be renewed

### What about after acquired assets?

It is possible to draft the security documents to

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provide that the security may include obligations in respect of further advances. The priority position of the security for further advances is the same as the original advance.

### What about further advances?

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### Enforcement

The Law permits a secured party upon the occurrence of an event of default (which will typically be defined in the security agreement) and a written notice of this event having been served on the grantor to:

- appropriate the secured assets or proceeds from the secured assets;
- take control or possession of the secured assets or proceeds from those secured assets;
- exercise any rights that the grantor may have in relation to the secured assets or proceeds (such as exercise voting rights and or receive dividends);
- instruct any person who has an obligation in relation to the secured assets or proceeds from those secured assets to carry out that obligation for the benefit of the secured party; or
- pursue any other remedy agreed between the parties provided that it does not conflict with the Law.

If, on enforcement, the secured party wishes to appropriate and or sell the secured assets, it must give the grantor at least 14 days prior written notice. However, it is possible in the security agreement for the grantor to agree to waive its right to receive that notice.

If the secured party decides to sell and or appropriate the secured assets it is obliged under the Law to take all commercially reasonable steps to determine the fair market value of the secured assets. After the secured assets have been sold and or appropriated, the secured party must provide a statement of account to the grantor and any other specified interested parties.

### Is enforcement hampered by insolvency?

If the grantor is declared bankrupt and or becomes subject to another form of insolvency process in Jersey or elsewhere that will not affect the enforcement powers of the secured party against the secured assets. However, a security interest can still be challenged by the Viscount (the court appointed bankruptcy administrator) and or a liquidator if they regard the arrangement to be a preference and or a transaction at an undervalue.

However if the security interest is perfected prior to the grantor's bankruptcy / insolvency proceedings beginning, it will not be deemed void.

### Contact:

This briefing is only intended to give a summary of the subject matter. It does not constitute legal advice. If you would like legal advice or further information, please contact us using the contact details below.

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