

● THE NEW SECURITY INTERESTS (JERSEY) LAW

The Security Interests (Jersey) Law 1983, governing the creation of security over intangible movables, is due to be replaced in 2012 and will offer secured parties new flexible methods of creation of security to enhance their position.

The existing 1983 Law allows a security interest to be created by possession of the certificates of title (where relevant) and/or assignment of title with giving of notice. The new law will allow security to be created as follows:

- (a) in the case of a bank account, (i) the account being transferred into the name of the secured party, (ii) the account bank agreeing to act on the secured party's instructions, (iii) title to the account being assigned to the secured party or (iv) the secured party being the account bank;
- (b) in the case of a custody or securities account, (i) the account being transferred into the name of the secured party, (ii) the intermediary maintaining the account agreeing to act on the secured party's instructions or (iii) the secured party being the intermediary;
- (c) in the case of an investment security, the secured party either being registered as the holder or taking possession of the certificate representing such investment security; or
- (d) in the case of a negotiable instrument or negotiable investment security, the secured party taking possession of the instrument or relevant certificate; and
- (e) description of the collateral without title transfer, provided that the security interest is registered (see below).

REGISTRATION OF SECURITY INTERESTS

The new law will introduce a centrally-maintained Jersey register of security interests open to the public. Registration will be a necessary step for perfection where security is taken by the collateral being identified in the security agreement rather than by possession or control.

SECURITY OVER AFTER-ACQUIRED COLLATERAL

The English concept of a floating charge has not been recognised in Jersey. The new law will introduce a security interest to attach to all intangible movables acquired from time to time by the debtor.

THIRD PARTY SECURITY

The existing Law is unclear as to the validity of third party security leading to the industry practice of requiring a third party security provider to enter into a guarantee or covenant to pay in respect of the primary debtor's obligations. The new Law makes it clear that third party security is permitted.

LEVEL OF CONTROL OF GRANTOR

Where a grantor is given the right to deal with secured collateral, the existing law is unclear as to whether such right affects the validity of security. The new law clarifies that the grantor may retain the right to deal with the secured collateral without affecting validity of security.

WIDER POWERS OF ENFORCEMENT

The existing Law only provides a secured party with the power of sale. The new Law permits a power of appropriation and clarifies that a secured party may take ancillary actions in support of enforcement.

REMOVAL OF THE 14 DAY NOTICE PERIOD

The existing Law provides that, upon an event of default occurring, a 14 day notice period is provided to the grantor in default and that the power of sale only becomes exercisable if the default is not capable of remedy at the expiry of the 14 day period. The new law allows this period to be excluded by agreement.

TRANSITIONAL SECURITY INTERESTS CREATED UNDER THE OLD LAW

Notwithstanding that the new Law will be in force, an existing security interest will continue to be effective as a valid security interest under the old Law. However, if there is an amendment to the old security interest (such as securing new obligations or adding new collateral), it will be deemed to be a security interest created under, and subject to, the new Law.

It is therefore important for the secured lender to be aware of the consequences of any such amendments, given that it should (a) make sure that any amendments to the security agreement include any provisions necessary to take advantage of the new Law and (b) check whether, depending on the nature of the collateral, any registration of the security is necessary in order to ensure continued perfection.

WHAT SHOULD A SECURED LENDER BE DOING NOW?

- Review existing standard security documents for any necessary changes to require a borrower to enter into a security agreement under the new Law.
- Review the categories of collateral held under existing security agreements to assess the impact of them becoming subject to the new Law.

- In light of the wider range of intangible movables that can be secured without the need for assignment of title (such as book debts), considering whether there are additional financing opportunities in Jersey or additional collateral over which security could be taken.
- Considering whether the registration of any security created in favour of the secured lender can be avoided, if commercially acceptable, where the client objects to registration.

WHAT ABOUT TANGIBLE MOVABLES?

Like the existing law, the new law will focus on intangible movables. However, the new law has provisions to enable it to be updated and extend to tangible movables.

FOR MORE INFORMATION, PLEASE CONTACT:



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