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Common mistakes in Jersey security documents – and how to avoid them

MAY 2026

Jersey remains one of the leading offshore jurisdictions for cross-border lending transactions and central to many of these arrangements is a robust security package governed by Jersey law. Yet despite the sophistication of the transactions and the Security Interests (Jersey) Law 2012 (the **2012 Law**) having been in force for well over a decade, Jersey law security can suffer from errors which, if left uncorrected, can undermine the enforceability of that security and leave creditors materially exposed.

This article identifies the most common pitfalls we encounter in practice and offers practical guidance on how to avoid them.

Jersey and English law: It isn't the same

Perhaps the most frequent source of error arises from the assumption that Jersey law mirrors English law in all material respects.

Whilst Jersey's legal system can, and indeed in certain circumstances does, draw upon English jurisprudence, it is a distinct legal jurisdiction with its own statutory framework and customary law.

Jersey security is principally governed by the 2012 Law, which introduced a modern, codified framework for the creation, perfection, priority, and enforcement of security interests over Jersey intangible moveable property.

Any practitioner drafting Jersey security documents must work within the architecture of the 2012 Law rather than importing assumptions from another jurisdiction.

Inadequate description of collateral

The 2012 Law requires that a security interest can only attach to identifiable collateral. A surprisingly common mistake is the use of vague or generic descriptions of the secured assets.

Whilst the 2012 Law permits collateral to be described by item or type, the description must be sufficient to enable the collateral to be identified with reasonable certainty. Overly broad 'all assets' language, without further particularisation where appropriate, risks challenge and should be approached with care.

Best practice is to describe collateral as specifically as the transaction permits, cross-referencing schedules where the assets in question are capable of individual identification.

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Errors in security perfection and registration

The manner by which a security interest is perfected under the 2012 Law can be determined by the asset being secured and can also be impacted by the identity of the grantor of that security.

However, in most cases, registration of that security interest on the Jersey Security Interest Register perfects that security. Failure to register, or errors in the particulars submitted for registration, can result in a loss of priority or, in the worst case, render the security interest ineffective against third parties and a liquidator.

Common errors include incorrectly identifying the grantor or the secured party. Practitioners should implement robust filing procedures and diarise key deadlines to ensure timely and accurate registration.

Overlooking restrictions on enforcement

The 2012 Law provides secured parties with a range of enforcement remedies, including the power to appropriate and sell the collateral. However, these remedies are subject to statutory requirements as to the manner and notice of enforcement.

A security document that purports to confer enforcement rights inconsistent with the 2012 Law, or which fails to address the statutory procedures, may create confusion and delay at the point of enforcement—precisely when clarity is most needed.

It is advisable to ensure that enforcement provisions in the security document are drafted to operate in harmony with the statutory regime rather than in conflict with it.

Neglecting corporate authorisations and capacity

Jersey companies, limited partnerships and other entities are subject to their own constitutional requirements regarding the granting of security.

A failure to obtain proper board or partner authorisations, or to verify that the granting of security falls within the entity's corporate capacity and objects, can render the security document voidable.

Particular care should be taken with the likes of Jersey cell companies, which present bespoke capacity and structural considerations.

Conclusion

The consequences of poorly drafted security documents can be severe, ranging from the loss of priority to complete unenforceability.

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By engaging with the specific requirements of the 2012 Law at an early stage, ensuring precision in the description of collateral, maintaining rigorous perfection procedures and taking proper account of the grantor's constitutional position, practitioners can deliver security packages that are fit for purpose and resilient under scrutiny.

How Collas Crill can help

At Collas Crill we pride ourselves on making the complex simple. If you would like advice on this area of the law, please get in touch with your usual Collas Crill contact or any of the team listed on the right of this page.

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