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Collas Crill explains...Taking security over a Guernsey bank account

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This is part of a series of guides in which we examine areas of Guernsey law that frequently arise in practice. Further guides will be released weekly; click here to subscribe to receive these by email.

Where a company borrows money or participates in a group financing, the lender's security package will frequently involve taking security over such company's Guernsey bank account.

This guide outlines the key things you need to know about giving and taking security over a Guernsey bank account.

Words in bold text are defined at the end of this guide.

Preliminary steps

A **security taker** should take the following preliminary steps before taking security over a **secured account**:

- Review the terms and conditions for the **secured account** to determine whether there are any terms that will adversely impact on its security interest over the **secured account** (eg any prohibition on the creation of security, right of set off or combination or lien) that need to be dis-applied or waived.
- Agree a form of security notice and security acknowledgement with the **account bank** (some Guernsey **account banks** have their own forms of notice and acknowledgement which they require to be used).

(*the above two steps are applicable where the **security taker** is taking security over a third-party bank account by assignment*)

- If the **security giver** is a Guernsey company, to make sure there is no publicly filed evidence that the **security giver** is insolvent or subject to any insolvency or similar proceedings, carry out:
  - a company search at the Guernsey Companies Registry; and
  - a litigation search at the Greffe (the registry office of the Guernsey courts).

Security basics

The **Law** sets out a statutory framework for creating security interests over Guernsey intangible movable assets, like a **secured account**.

Under the **Law**, a security interest is any interest in a **secured account** created under a security agreement which secures the payment or performance of an obligation.

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A security interest over a **secured account** may only be created by a security agreement between the **security giver** and **security taker**. Under the **Law**, such security agreement must specify events of default.

Under the **Law**, security may be granted over a Guernsey bank account by:

- **control:** where the **security taker** is the **account bank**, the **security taker** has control of the account pursuant to the security agreement and the bank's customer and the **security giver** are the same person; and/or
- **assignment:** the **security giver** assigning its rights and title to the bank account (which is held with a third-party bank) to the **security taker**.

It is industry practice for lenders to take security over a variety of bank accounts (i.e. blocked accounts and unblocked accounts), often with the terms governing how the accounts are to be dealt with being set out in an English or Guernsey law facility agreement.

Security deliverables

Where the **security giver** is assigning its rights and title to a bank account held with a third-party bank, the **security giver** will be required by the security agreement to arrange the following deliverables:

- a security notice addressed to the third-party **account bank** from the **security giver** and **security taker**; and
- a security acknowledgement addressed to the **security taker** from the third party **account bank**.

Under the Law, providing notice to the **account bank** in these circumstances is required to create the security interest by assignment.

Where the **account bank's** terms and conditions of the **secured account** include terms that may adversely impact the **security taker's** security interest over the **secured account**, these will normally be disapplied or waived in the security acknowledgement (unless any prior waiver or consent of the **account bank** needs to be provided). Therefore, it is vital that each of the security notice and security acknowledgment are agreed in advance and signed on the same day as the security agreement. Any delay between the execution of the security agreement and the notice would create a technical breach of the account terms and conditions.

Registration

There is no public register of security interests in Guernsey.

Priority

Subject to any agreement of a secured party for the postponement of its rights, priority between security interests in the same bank account is determined by the order of creation of those security interests.

Enforcement

Remedy

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If a security interest over a **secured account** becomes enforceable, the **security taker** will use its power of application under the Law to apply the account balance in the **secured account** directly against the secured obligations set out in the security agreement.

Process

The **Law** allows the **security taker** to enforce its security interest if:

- an event of default under the security agreement occurs; and
- it gives a notice to the **security giver** specifying the event of default.

There is no specified timeframe under the Law in which notice needs to be given prior to an enforcement.

Insolvency of security giver

The **Law** states that the power of the **security taker** to apply the account balance of or otherwise act in relation to a **secured account** is not affected by:

- the **security giver** becoming insolvent; or
- its property becoming subject to insolvency proceedings in Guernsey or elsewhere.

In addition, if the **security giver** goes into administration, there is a specific exemption from having to obtain the leave of the Guernsey court for the enforcement of any rights in respect of security interests.

Neither administration nor liquidation creates an automatic moratorium over the enforcement of a security interest under the Law.

Terms used

Account bank - the Guernsey bank or other deposit taking institution at which the **secured account** is held.

Law - The Security Interests (Guernsey) Law, 1993.

Secured account - a Guernsey bank account of the **security giver** over which it creates a security interest.

Security giver - the person who creates a security interest over a **secured account**.

Security taker - the person in whose favour a security interest is created over a **secured account**.

About Collas Crill

We are a leading offshore law firm. We are easy to do business with and give practical advice to overcome tough challenges. Through our network of offices, we practise British Virgin Islands, Cayman Islands, Guernsey

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and Jersey law.

About this guide

This guide gives a general overview of this topic. It is not legal advice and you may not rely on it. If you would like legal advice on this topic, please get in touch with one of the authors or your usual Collas Crill contacts.

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