COLLAS CRILL

Collas Crill explains... Taking security over Guernsey contract rights

JULY 2020

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 certain **Guernsey contract rights**.

This guide looks at the key things you need to know about taking security over **Guernsey contract rights**. For example, if a borrower has provided an intra-group loan to its subsidiary company (and that loan is governed by Guernsey law) then the borrower can grant a security interest over its rights to the receivables (amounts) due on that loan (principal and/or interest).

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 **Guernsey contract rights**:

- Review the **Contract** to determine whether there are any terms that will restrict its ability to create a security interest over the **Guernsey contract rights** (e.g. any prohibition on the **security giver** assigning those rights) that may require the counterparty to give consent or waive any restriction.
- Agree a form of security notice and security acknowledgement with the other parties to the **Contract**.
- If the **security giver** is a Guernsey company, to ensure that 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 **Guernsey contract rights**.

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

A security interest over **Guernsey contract rights** 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.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

Under the **Law**, security may be granted over **Guernsey contract rights** by the **security giver** assigning its rights and title to certain **Guernsey contract rights** to the **security taker**.

Security deliverables

The **security giver** will normally be required by the security agreement to deliver the following documents to the **security taker**:

- a certified copy of the **Contract**;
- a security notice addressed to each other party to the **Contract** from the **security giver** and **security taker**; and
- a security acknowledgement addressed to the **security taker** from each other party to the **Contract**.

Where the **Contract** has terms that may adversely impact the **security taker's** security interest over the **Guernsey contract rights**, these will need to be amended, waived or disapplied. If this is done in the security acknowledgement (which would be usual practice unless any prior waiver or consent needs to be provided), 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.

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 **Guernsey contract rights** is determined by the order of creation of those security interests.

Enforcement

Remedy

If a security interest over **Guernsey contract rights** becomes enforceable, the **security taker** will use its power of sale and application under the Law to apply its rights in order to satisfy the secured obligations set out in the security agreement. For example, a **security taker** or its nominee may 'step into the shoes' of the receiver of certain receivables under an intra-group loan agreement to receive payments under such **Contract**.

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

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

The **Law** states that the power of the **security taker** to apply or otherwise act in relation to **Guernsey contract rights** 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

Contract - any contract entered into by the **security giver** which is governed by Guernsey law

Guernsey contract rights - all rights of the **security giver** under a **contract** (including any payment owed to, or claim or cause of action of, the **security giver**) over which the **security giver** creates a security interest

Law - The Security Interests (Guernsey) Law, 1993

Security giver - the person who creates a security interest over the **Guernsey contract rights**

Security taker - the person in whose favour a security interest is created over the **Guernsey contract rights**

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 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.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:

Wayne Atkinson

Partner (Advocate) | Guernsey

t: +44 (0) 1481 734225 | **e:** wayne.atkinson@collascrill.com

Simon Heggs

Group Partner | Guernsey

t: +44 (0) 1481 734825 | **e:** simon.heggs@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.