

Advantages of the Security Interests (Jersey) Law 2012

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Jersey entities (eg companies, trusts and limited partnerships) are often established as holding bodies for corporate or real estate structures, investment funds and special purpose vehicles. When lending to structures including Jersey entities, secured parties usually take Jersey law security over the shares/securities and other Jersey situs intangible assets of the Jersey entities, which will be governed by the 1983 Law or the SIJL depending on when the security was created.

Under the transitional provisions of the SIJL, any Jersey law security agreements entered into before 2 January 2014 will generally continue to be governed by the 1983 Law (as long as new collateral is not added to the security agreement and the secured obligations are not substantially increased or fundamentally changed). This ensures grandfathering of 1983 Law security interests. Therefore enforcement of any pre-2014 Jersey law security agreements will continue to be governed by the 1983 Law and there is no requirement for any pre-2014 security interests to be perfected by registration on the Jersey Security Interests Register (which only applies to SIJL security interests).

On the other hand, any Jersey law security agreements entered into from 2 January 2014 onwards will be governed by the SIJL. The following table compares / contrasts the 1983 Law to the SIJL and summarises the main changes between them. As will be clear from the following table, there are a number of advantages to lenders in taking SIJL security (even where there is already 1983 Law security in place), particularly in relation to registration and enforcement.



Security interest agreement complying with the 1983 Law, as well as:
(a) possession of certificates of title to collateral
(b) assignment of title to collateral and giving of notice or
(c) control of bank accounts

No concepts

Security interest agreement complying with the SIJL, as well as:
(a) attachment by (1) control of collateral or (2) description/identification of collateral
(b) perfection by (1) control (according to the statutory definition) of collateral and/or (2) public registration on the Jersey Security Interests Register

Attachment makes security enforceable against the grantor,

whereas perfection

of attachment or perfection (only creation).

makes security enforceable against third parties/during insolvency and ensures priority.

Third party security (ie security granted in support of the obligations of a third party) is not expressly contemplated under the 1983 Law. This issue was usually dealt with by including a limited recourse guarantee or covenant to pay in the security interest agreement.

Wider enforcement remedies, including:

- (a) power of appropriation
- (b) power of sale
- (c) ancillary actions, such as taking possession or control of collateral or exercising contractual rights

No 14 day notice period before enforcement of security (assuming this is contracted out of).

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