

The Security Interests (Jersey) Law 2012 - Attachment and perfection

Insights - 12/01/2021

The Security Interests (Jersey) Law 2012 (the SIJL) came fully into force on 2 January 2014, changing the way in which security is created over Jersey intangible movables. This briefing note is one of a series relating to the SIJL, dealing with the methods of creation of security interests by attachment and perfection.

Attachment and perfection

The SIJL distinguishes between attachment, which is the creation of a security interest enforceable against the grantor, and perfection, which ensures that the security interest is binding upon third parties and insolvency officials.

Perfection is key to priority and enforceability. If a security interest is not perfected:

- it is void as against the Viscount (a Jersey court official) or liquidator on the insolvency of the grantor
- it will rank after all perfected security interests
- the ability to enforce the security interest against proceeds may be lost
- a person who acquires the collateral for value will take free of the security interest, unless such security interest was created or provided for by a transaction to which that person was a party

Attachment

Under the SIJL, the general rule is that a security interest attaches to collateral under a security agreement when:

- value is given in respect of the security agreement. In this context, value means money or

money's worth sufficient to support an onerous contract. Value need not be provided by the grantor of the security interest

- the grantor has proprietary rights in, or the power to grant such rights in, the collateral
- either:

- the secured party (or someone on its behalf other than the grantor) has possession or control of the collateral

- the security agreement contains a description of the collateral sufficient to enable it to be identified

Attachment by possession

The attachment of a security interest by possession is only relevant to documentary intangibles (namely negotiable instruments and negotiable investment securities). A secured party has a security interest by possession when it (or someone on its behalf other than the grantor) takes possession of the negotiable instrument or the certificate representing the negotiable investment security.

Attachment by control

Attachment of a security interest by way of control is only available in respect of certain prescribed categories of collateral. The most relevant are as follows:

- bank accounts at an account bank (defined in the SIJL as deposit accounts)
- custody accounts maintained by an intermediary, such as a custodian (defined in the SIJL as securities accounts)
- certificated investment securities

A secured party will have control over:

- a deposit account if (i) the account is transferred into the name of the secured party, (ii) the grantor, the secured party and the account bank agree in writing that the account bank will act on the secured party's instructions, (iii) title to the account is assigned to the secured party and notice of that assignment is given to the account bank, or (iv) the secured party is the account bank
- a securities or custody account if (i) the account is transferred into the name of the secured party, (ii) the grantor, the intermediary maintaining the account and the secured party agree in writing that the intermediary will act on the secured party's instructions, or (iii) the secured party is the intermediary

- certificated investment securities if (i) the secured party is the registered holder of the securities, or (ii) the secured party is in possession of the certificates of title to such investment securities

Attachment by description

The attachment of a security interest by way of description is applicable to all types of intangible movables, including those that can also be secured by possession or control. Security attaches when a security agreement in writing signed by or on behalf of the grantor contains a description of the collateral sufficient to enable it to be identified. The description may be to the specific item, or can identify collateral by type or by reference to all present and future intangible movable property.

Perfection

Perfection of security by way of possession or control will occur at the same time that the security attaches. An important point is that registration is not required for perfection in these circumstances.

All other security interests (subject to certain exclusions) are perfected by registration of a financing statement in the Jersey Security Interests Register (the SIR), accessible via the website of the Jersey Financial Services Commission at jerseyfsc.org/registry. Detailed guidelines for the use of the SIR are available via this website. Registration can be used to perfect a security interest in any type of collateral, but will be of particular importance in respect of collateral which cannot be secured by way of possession or control.

In order to perfect security by registration, a financing statement will need to be filed. This will set out, amongst other things, the name and details of the grantor and the secured party, a description of the collateral and the period of registration. Care should be taken in ensuring that the details in the financing statement are accurate. A financing statement which has a defect, irregularity, omission or error that is "seriously misleading" may be invalid. In particular, a secured party should obtain copies of official identification documents to ensure that the grantor's name is correctly inputted.

After-acquired property

The SIJL allows for a security interest to attach to intangible movable property upon acquisition by the grantor (defined in the SIJL as after-acquired property), without the need for any specific appropriation by the secured party. This requires the security agreement to provide expressly for a security interest in such after-acquired property, and the financing statement registered in the SIR to refer to after-acquired property in the description of collateral.

Right of use

Where the secured party permits a grantor to have some degree of authority to deal with the collateral prior to an event of default, there were concerns under the predecessor law to the SIJL that this could adversely affect the validity of the security.

The SIJL expressly provides that, if the security agreement so provides, a grantor can, without invalidating the security interest:

- substitute equivalent collateral or withdraw excess collateral
- deal with collateral without a duty to account for the proceeds or to replace the collateral

Proceeds

The SIJL allows a security interest in collateral to extend to proceeds, being defined as intangible movable property in the hands of the grantor derived directly or indirectly from a dealing in that collateral. A dealing would require some element of disposition or conversion of the original collateral; interest and dividends are not proceeds. The security interest would also continue in the original collateral in the hands of the acquirer (and subsequent acquirers) unless the secured party expressly or impliedly authorised the dealing. This is also subject to the provisions in the SIJL on third parties taking free of security in certain circumstances.

Other briefing notes in this series cover the following topics:

- [priority](#)
- [taking free of security](#)
- [enforcement](#)
- [registration](#)
- [transitional provisions](#)

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