

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

Insights - 12/01/2021

| 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:

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| Attachment

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

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- 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:

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A secured party will have control over:

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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:

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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](#)
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