

The Security Interests (Jersey) Law 2012 - Taking free of security

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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 circumstances in which an acquirer of collateral from the grantor will take free of any security interest.

Unperfected security

A person who acquires collateral for value takes the collateral free of an unperfected security interest in the collateral. The exception to this is where the unperfected security interest was created or provided for by a transaction to which the person was a party. This underlines the importance of perfection.

Obligor-initiated payment

A creditor who receives payment of a debt owing by an obligor through an obligor-initiated payment takes that payment free of any security interest in the funds paid or the bank account from which payment was made. This applies whether or not the creditor had knowledge of the security interest at the time of the payment, unless the creditor is acting in collusion with the obligor to defeat the rights of the secured party.

An "obligor-initiated payment" is defined as a payment made by the obligor through the use of a negotiable instrument, an electronic funds transfer, or a debit, transfer order, authorization or similar written payment mechanism executed by the obligor when the payment was made. (Technically, it would have been more accurate for this to be defined as a "grantor-initiated payment", but the safest approach is to assume that the draftsman intended to capture the grantor within the definition of obligor.)

Therefore, if a secured party permits the grantor to operate a bank account prior to an event of default, and the grantor gives instructions to the account bank to make a payment to a third party, such payment will be made free of the security interest unless the secured party can show some collusion on the part of the payee.

Investment securities

If a person gives value for a certificated investment security and takes possession of the certificate of title, that person takes the investment security free of any security interest in the investment security even if it knew of such security interest.

If a person gives value for a investment security held with an intermediary and the investment security held with the intermediary is transferred to a securities account held in the person's name with the same or another intermediary, that person takes the investment security free of any security interest in the investment security even if it knew of such security interest.

However, these provisions do not apply if, at the time when the person agrees to acquire the investment security, the person knows that the acquisition would be in breach of the security agreement that created the security interest.

Other briefing notes in this series cover the following topics:

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