

## The Security Interests (Jersey) Law 2012 - Priority

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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 provisions on priority and ranking.

### Creation of security interests

The SIJL permits a secured party to take security by description and registration, without having to take title, possession or control. As a consequence, it is now much easier to create second ranking security over intangible movables. The SIJL therefore has to provide for more detailed rules on competing security in the same collateral than was necessary under the Security Interests (Jersey) Law 1983 (the **1983 Law**).

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.

Security interests are created under the SIJL by either:

- possession or control of certain prescribed categories of collateral, such as deposit accounts, securities (or custody) accounts and certificated investment securities as set out in article 3 of the SIJL. Possession and control constitute both attachment and perfection, so that registration at the Jersey Security Interests Register (the **SIR**) is not required for perfection
- attachment by, amongst other things, description of the collateral in a security agreement and perfection by registration of a financing statement in respect of the security at the SIR

### General rules on priority

The general rules on priority are:

- a perfected security interest has priority over an unperfected security interest in the same collateral
- subject to the below relating to deposit accounts, securities accounts and certificated investment securities, priority among perfected security interests in the same collateral is determined by the order in which they were perfected, whether by registration, possession or control or otherwise under the SIJL
- a security interest over deposit accounts, securities accounts or certificated investment securities which has been perfected by control generally has priority over another security interest over the same collateral which has been perfected only by registration
- priority among unperfected security interests in the same collateral is determined by the order in which they attached
- when a security interest is transferred, it maintains the same priority that it had immediately before the transfer
- a security agreement may provide that the secured obligations include further advances, so that the priority of the original security is maintained for such further advances

## Priority for control security

However, there are certain exceptions to the general rules on priority. In particular, special rules apply in respect of deposit accounts at an account bank, securities accounts at an intermediary (such as a custodian) and certificated investment securities, where security can attach and be perfected by control.

In summary:

- Deposit accounts
  - A security interest which has attached and been perfected by control under article 3(3)(a) of the SIJL (the deposit account is transferred into the name of the secured party with written agreement of the grantor and the account bank) has priority over all other security interests in the deposit account. In addition, this security interest also overrides the account bank's right of set-off
  - A security interest which has attached and been perfected by control under article 3(3)(d) of the SIJL (where the secured party is the same legal entity as the account bank) has priority over all other security interests in the deposit account other than as set out in the paragraph above
  - All other control security interests have priority over all other security interests in the deposit account other than as set out in the two paragraphs above (so that, as a general principle, security interests attached and perfected by control have priority over security interests perfected by registration)
- Securities accounts

- A security interest which has attached and been perfected by control under article 3(4)(a) of the SIJL (where the securities account is transferred into the name of the secured party with written agreement of the grantor and the intermediary) has priority over all other security interests in the securities account
- A security interest which has attached and been perfected by control under article 3(4)(c) of the SIJL (where the secured party is the same legal entity as the intermediary) has priority over all other security interests in the securities account other than as set out in the paragraph above
- All other control security interests have priority over all other security interests in the securities account other than as set out in the two paragraphs above (so that, as a general principle, control security interests have priority over security interests perfected by registration)
  - Certificated investment securities
- A security interest which has attached and been perfected by control (whether by the secured party having possession of the certificates of title or by being the registered holder) take priority over all other security interests in the investment securities

## Voluntary subordination

A secured party can agree with another secured party to subordinate its security interest. The agreement is effective without registration, but registration is recommended to ensure that a transferee of a subordinated security interest is bound by the subordination agreement. A practical matter is that the junior secured party will register the subordination, so care should be taken to ensure that it is contractually prohibited from amending or discharging the registration without the prior consent of the senior secured party.

## Purchase money security interests

A security interest that is a purchase money security interest (a **PMSI**) has priority over another security interest in the same collateral (but subject to the special rules applicable in respect of deposit accounts, securities accounts and certificated investment securities). A PMSI is defined as being a security interest taken in collateral (a) by a seller to secure the obligation to pay the purchase price of the collateral, or (b) by a financier to secure an obligation to repay money lent to the grantor for the purpose of an acquisition of the collateral. The rationale behind the PMSI is to avoid credit providers or suppliers which provide finance to debtors to acquire specific assets (such as inventory) still ranking after general credit providers who have taken security perfected by registration over all property (including after acquired property). In the absence of subordination agreements with all creditors, a credit provider or supplier might otherwise choose not to proceed.

Other briefing notes in this series cover the following topics:

- [attachment and perfection](#)
- [taking free of security](#)
- [enforcement](#)
- [registration](#)
- [transitional provisions](#)

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