



Jersey

SECURITY INTERESTS (AMENDMENT OF LAW) (JERSEY) REGULATIONS 2013

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Made

16th July 2013

Coming into force

in accordance with Regulation 15(2)

THE STATES, in pursuance of Articles 93 and 95 of the Security Interests (Jersey) Law 2012¹, have made the following Regulations –

1 Interpretation

In these Regulations, “the Law” means the Security Interests (Jersey) Law 2012².

2 Article 1 amended

In Article 1 of the Law –

(a) the following definitions shall be inserted in appropriate alphabetical order –

“ ‘cash proceeds’ means proceeds in the form of money, cheques or drafts, or in the form of deposit accounts in banks or similar deposit-taking institutions;

‘continuing security interest’ means a security interest that –

(a) has been created in accordance with the Security Interests (Jersey) Law 1983³ on or after 5th April 1983 and before Part 3 comes into force; and

(b) is still in force when Part 3 comes into force;

‘individual’ includes members of any group of individuals acting together;

‘intellectual property’ includes any copyright, patent, trademark, design right and trade secret and any other intellectual property of any description;

‘knowledge’ has the same meaning as in the Supply of Goods and Services (Jersey) Law 2009⁴;

‘perfected by control’, in relation to a security interest, means perfected by virtue of the secured party’s taking control of the collateral;

‘perfected by possession’, in relation to a security interest in a documentary intangible, means perfected by virtue of the secured party’s taking possession of the relevant negotiable instrument or of the certificate embodying the right to the relevant negotiable security;”;

- (b) for the definitions of “financing change statement”, “financing statement”, “intangible movable property”, “perfected by registration”, “security interest” and “value” the following definitions shall be substituted –

“ ‘financing change statement’ means data transmitted to the registrar, in accordance with Article 62 and other provisions set out by or under this Law, in order to amend a financing statement or to discharge a registration;

‘financing statement’ means data transmitted to the registrar in accordance with Article 62 and other provisions set out by or under this Law (and, for the avoidance of doubt, includes a financing change statement where the context so requires);

‘intangible movable property’ and ‘intangible’ (as a noun) mean movable property other than goods, and include cash (being cash that is not money) and licences and quotas having commercial value, whether or not they are transferable;

‘perfected by registration’, in relation to a security interest or an assignment of a receivable, means perfected by virtue of the registration of a financing statement in respect of the security interest or the assignment of the receivable;

‘security interest’ has the meaning set out in Article 1A;

‘value’, in the phrase ‘for value’ and in references to the giving of value –

- (a) means something sufficient to support an onerous contract, that is, a *contrat à titre onéreux*; and
- (b) includes an antecedent debt or liability;”;

- (c) for the definition of “to register” the following definitions shall be substituted –

“ ‘to register’, in relation to a financing statement, means enter in the register;

‘registered’, in relation to a security interest or an assignment of a receivable (for example, in the expression ‘registered security interest’), refers to the fact that the security interest or assignment is the subject of a registered financing statement;

‘registration’, in relation to a security interest or an assignment of a receivable (for example, in the expression ‘registration of a security interest’), refers to the registration of a financing statement in respect of the security interest or assignment;”.

3 Article 1A inserted

After Article 1 of the Law the following Article shall be inserted –

“1A Meaning of ‘security interest’

- (1) In this Law, ‘security interest’ means an interest in intangible movable property, being an interest that, under a security agreement, secures payment or secures the performance of an obligation.
- (2) For the purposes of paragraph (1), the following do not matter –
 - (a) the form of the transaction that creates or provides for the security interest;
 - (b) the person who has title to the relevant collateral.
- (3) Without limiting paragraph (1), in this Law, ‘security interest’ includes the interest of a secured party under a transfer of title by way of security, under a mortgage, pledge, or contractual lien, or under any other encumbrance that is by way of security.”.

4 Article 3 amended

Article 3(6) of the Law shall be repealed.

5 Articles 4 and 4A substituted

For Article 4 of the Law the following Articles shall be substituted –

“4 Application of Law

This Law applies (subject to anything provided by or under Article 4A or 95 or by Schedule 2) only to the following –

- (a) a security interest created, after Part 3 comes into force, in any of the following –
 - (i) one or more documentary intangibles situated in Jersey,
 - (ii) one or more directly-held non-negotiable investment securities listed on a register maintained –
 - (A) in Jersey,
 - (B) by a Jersey company, or
 - (C) by a Jersey individual,
 - (iii) one or more securities accounts with an intermediary where the accounts are maintained in Jersey,
 - (iv) one or more deposit accounts maintained in Jersey,
 - (v) any intellectual property created under the law of Jersey other than intellectual property registered on a register of intellectual property in Jersey,

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- (vi) all or any rights, title and interest of any person in and to a security interest created under this Law or a continuing security interest (or all or any rights, title and interest of any person under or in relation to any security agreement relating to a security interest created under this Law or a continuing security interest) whether or not the grantor of the security interest or continuing security interest is a Jersey company or a Jersey individual,
 - (vii) all or any rights, title and interest of any person in and to any intangible movable property (whether or not such intangible movable property is situated in Jersey) where such intangible movable property is held on trust and the governing law of such trust is Jersey law,
 - (viii) all or any rights, title and interest of any person in and to any intangible movable property situated in Jersey where such intangible movable property is held on trust (whether or not the governing law of such trust is Jersey law),
 - (ix) any intangible movable property not referred to in any of sub-paragraphs (i) to (viii) where such intangible movable property consists of all or any rights, title and interest in and to any obligations owed under any contract, agreement, or instrument, that is governed by Jersey law (whether or not the person who owes such obligations is a Jersey company or a Jersey individual),
 - (x) any intangible movable property not referred to in any of sub-paragraphs (i) to (viii) where such intangible movable property consists of all or any rights, title and interest in and to any obligations owed under any contract, agreement, or instrument, that is governed by foreign law and the person who owes such obligations is a Jersey company or a Jersey individual,
 - (xi) all or any rights and interest of any partner in any partnership established or incorporated under Jersey law (where 'partnership' includes, without limitation, a partnership established under the customary law of Jersey, a limited partnership established under the Limited Partnerships (Jersey) Law 1994⁵, a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997⁶, an incorporated limited partnership established under the Incorporated Limited Partnerships (Jersey) Law 2011⁷ and a separate limited partnership established under the Separate Limited Partnerships (Jersey) Law 2011⁸),
 - (xii) any intangible movable property not referred to in any of sub-paragraphs (i) to (xi) where such intangible movable property is situated in Jersey;
- (b) an assignment, after Part 6 comes into force, of a receivable payable by a Jersey company or a Jersey individual;

- (c) an interest, or transaction, prescribed by Order for the purposes of this Article.

4A Exceptions to application of Law to certain security interests

Security interests may be prescribed to which, in all or any prescribed circumstances, any prescribed provision of this Law shall not apply or shall apply only to the extent prescribed.”.

6 Article 5 amended

Article 5(2) of the Law shall be repealed.

7 Article 6 substituted

For Article 6 of the Law the following Article shall be substituted –

“6 Security interests in own obligation

To avoid doubt, it is hereby declared that for the purposes of this Law –

- (a) a bank, or other deposit-taking institution, that has an obligation to pay money to a depositor in respect of a deposit account held by the depositor at the bank or institution may take a security interest from the depositor in the bank’s or institution’s own such obligation;
- (b) an intermediary that has an obligation to deliver or transfer securities, or money, cheques or drafts, to the holder of a securities account with the intermediary may take a security interest from the holder of the account in the intermediary’s own such obligation; and
- (c) a company incorporated with a share capital may take a security interest from any of its shareholders in its own shares.”.

8 Article 8 substituted

For Article 8 of the Law the following Article shall be substituted –

“8 Interests excluded

- (1) Except as provided by any Order made under Article 4(c), this Law shall not apply to or in respect of, or affect, any of the following interests –
 - (a) a lien, or other encumbrance or interest in movable property, created by any other enactment or by the operation of any rule of law;
 - (b) a lien created by the articles of association of a company;

- (c) any right of set-off, netting, or combination of accounts;
 - (d) any interest in a ship or aircraft, or any share in a ship or aircraft.
- (2) This Law shall not apply to or in respect of, or affect, any interest prescribed by Order for the purposes of this Article.”.

9 Article 9 amended

In Article 9 of the Law –

- (a) the existing text shall be numbered as paragraph (1);
- (b) in paragraph (1) (as so numbered) for the words “This Law shall not apply” the words “Except as provided by any Order made under Article 4(c), this Law shall not apply” shall be substituted;
- (c) for paragraph (1)(h) (as so numbered), the following sub-paragraph shall be substituted –
 - “(h) any –
 - (i) assignment,
 - (ii) mortgage, or
 - (iii) assignment, by way of security, of a mortgage, of a ship or aircraft or of any share of a ship or aircraft;”;
- (d) paragraph (1)(l) (as so numbered) shall be deleted;
- (e) after paragraph (1) (as so numbered), the following paragraph shall be added –

“(2) This Law shall not apply to an interest created or provided for by any transaction prescribed by Order for the purposes of this Article.”.

10 Article 12 substituted

For Article 12 of the Law the following Article shall be substituted –

“12 Exclusive application of this Law

No security interest to which Part 3 of this Law applies at any time may be created under the law of Jersey at that time except in accordance with this Law as in force at that time.”.

11 Article 29 amended

In Article 29 of the Law –

- (a) in paragraph (1)(d) for the words “except in the case set out in sub-paragraph (f)” the words “except in the cases set out in sub-paragraphs (f) and (j)” shall be substituted;
- (b) after paragraph (1)(i) the following sub-paragraph shall be added –

“ ;

(j) priority among security interests perfected by attachment is to be determined by the order of attachment of the security interests.”;

(c) after paragraph (2) the following paragraphs shall be added –

“(3) For the purposes of paragraph (1)(j), a security interest in after-acquired property, being a security interest that attaches as referred to in Article 19(2), shall be taken to have attached at the time of the making of the security agreement that provided for the security interest in the after-acquired property.

(4) For the purposes of this Article, the time of registration, possession, or perfection, in relation to a security interest in original collateral is also the time of registration, possession, or perfection, in relation to the same security interest in relation to proceeds.”.

12 Articles 30, 30A and 30B substituted

For Article 30 of the Law the following Articles shall be substituted –

“30 Special priority rules for certificated investment securities, securities accounts and deposit accounts

(1) This Article applies only to conflicting security interests in –

- (a) an investment security represented by a certificate (a ‘certificated investment security’);
- (b) a securities account; or
- (c) a deposit account.

(2) Despite paragraphs (3), (5) and (6), a security interest in a deposit account at a bank, or other deposit-taking institution, where the security interest is perfected by control in the circumstances referred to in Article 3(3)(a) has priority over a security interest held in the deposit account by the bank or other deposit-taking institution.

(3) Despite paragraphs (5) and (6), a security interest held by a bank or other deposit-taking institution in a deposit account maintained at the bank or other institution has priority over a security interest held by another secured party in the same deposit account.

(4) Despite paragraphs (5) to (8), a security interest in a securities account maintained by an intermediary, where the security interest is perfected by control in the circumstances referred to in Article 3(4)(a) has priority over a security interest held in the securities account by the intermediary.

(5) A security interest in respect of which a secured party has possession or control of a certificated investment security, control of a securities account or control of a deposit account has priority

over a security interest (in the same investment security or account) in respect of which a secured party does not have that possession or control.

- (6) Conflicting security interests under which each secured party has possession or control of a certificated investment security, control of a securities account or control of a deposit account rank according to the order in which possession or control was acquired.
- (7) Conflicting security interests granted by an intermediary in a securities account rank equally if under those security interests no secured party has control.
- (8) Despite paragraphs (5), (6) and (7), a security interest held by an intermediary in a securities account maintained with the intermediary has priority over a conflicting security interest held by another party.
- (9) In cases to which none of paragraphs (2) to (8) applies, priority between conflicting security interests in the same certificated investment security, the same securities account or the same deposit account is governed by Article 29.

30A Bank's right of set-off not affected

Nothing in this Part affects any right of set-off that a bank, or other deposit-taking institution, may have against a person that is a secured party in respect of a security interest in a deposit account maintained at the bank or other institution unless –

- (a) the security interest is perfected by control in the circumstances referred to in Article 3(3)(a); and
- (b) the set-off is based on a claim against a person that is the grantor or obligor in respect of the security interest.

30B Intermediary's right of set-off not affected

Nothing in this Part affects any right of set-off that an intermediary may have against a person that is a secured party in respect of a security interest in a securities account maintained by the intermediary unless –

- (a) the security interest is perfected by control in the circumstances referred to in Article 3(4)(a); and
- (b) the set-off is based on a claim against a person that is the grantor or obligor in respect of the security interest.”.

13 Articles 33 and 34 substituted

For Articles 33 and 34 of the Law the following Articles shall be substituted –

“33 Further advances and priorities in relation to further advances

- (1) A security agreement may provide that the obligations secured under it may include obligations as to further advances.
- (2) A security interest shall not be extinguished by repayment of a current advance if the security agreement makes provision as referred to in paragraph (1), unless the parties have agreed otherwise.
- (3) A security interest relating to obligations as to advances and further advances has the same priority in respect of all advances whether or not they are made under an obligation.
- (4) In this Article –
 - ‘advance’ –
 - (a) means the payment of money, the provision of credit, or the giving of other value; and
 - (b) includes, to the extent that the agreement for that payment, provision or giving so specifies, any liability of the debtor to pay interest, credit costs, or other charges or costs, in connection with that payment, provision or giving or in connection with the creation, attachment, perfection or enforcement of any security interest securing the advance;
 - ‘debtor’ means the person who is the debtor in relation to an advance;
 - ‘further advance’ means an advance that is –
 - (a) secured by a security agreement;
 - (b) described by the terms of that agreement to be so secured; and
 - (c) made after an initial advance secured by the agreement.

34 Priority of purchase money security interest in intangible movable property and proceeds

- (1) A security interest in collateral that is intangible movable property or its proceeds has priority over another security interest in the same collateral given by the same grantor if –
 - (a) the first-mentioned security interest is a purchase money security interest and the other is not; and
 - (b) the first-mentioned security interest is perfected not later than 30 days after the day on which it attached.
- (2) However, paragraph (1) does not apply in a case where Article 30 applies.”.

14 Schedule 2 substituted

For Schedule 2 to the Law the Schedule set out in the Schedule to these Regulations shall be substituted.

15 Citation and commencement

- (1) These Regulations may be cited as the Security Interests (Amendment of Law) (Jersey) Regulations 2013.
- (2) These Regulations shall come into force on the same day as Article 93 of the Law.

L.-M. HART

Assistant Greffier of the States

SCHEDULE

(Regulation 14)

“SCHEDULE 2

(Article 95)

1 Interpretation

In this Schedule –

‘any law’ includes customary law and any enactment;

‘before Part 6 comes into force’ includes a time before this Schedule is enacted or comes into force;

‘new-Law assignment’ means an assignment, after Part 6 comes into force, of a receivable payable by a Jersey company or a Jersey individual;

‘prior assignment’ means an assignment, before Part 6 comes into force, of a receivable payable by a Jersey company or a Jersey individual;

‘prior law’ means –

- (a) in paragraphs 2, 3 and 4, the provisions of the Security Interests (Jersey) Law 1983⁹ and of any law (other than this Law or any enactment made under this Law) that is capable of application to a continuing security interest, as those provisions are in force from time to time; or
- (b) in paragraph 6, the provisions of any law (other than this Law or any enactment made under this Law) that is capable of application to a prior assignment, as those provisions are in force from time to time.

2 Prior law applies to continuing security interest

The prior law (and not this Law) shall continue to apply to a continuing security interest.

3 Adding new collateral means a new security interest is created

(1) This paragraph applies if –

- (a) persons have entered into an agreement (‘agreement B’) and they are already parties to another agreement (‘agreement A’) that created a continuing security interest;
- (b) agreement B is entered into after Part 3 comes into force and purports to extend the continuing security interest to collateral to which the continuing security interest did not apply immediately before Part 3 came into force; and

(c) agreement A did not (immediately before the time when Part 3 came into force) provide for the extension of the continuing security interest to after-acquired property of a class within which the collateral referred to in clause (b) falls.

(2) If this paragraph applies –

- (a) the continuing security interest shall not be affected by agreement B;
- (b) the security interest to which the collateral referred to in subparagraph (1)(b) is subject shall not be the continuing security interest but a security interest created under this Law; and
- (c) the prior law (and not this Law) shall continue to apply to the continuing security interest.

4 Parties may agree otherwise in relation to themselves

- (1) Paragraphs 2 and 3 do not prevent the parties to a continuing security interest from agreeing that, in their relations with each other, this Law (and not the prior law) shall apply to the continuing security interest.
- (2) To the extent of such an agreement, and despite paragraphs 2 and 3, in the parties' relations with each other –
 - (a) this Law shall apply to the continuing security interest; and
 - (b) the prior law shall not apply to the continuing security interest.

5 Priority as between continuing security interests and certain security interests and assignments

- (1) A continuing security interest over collateral has priority over any security interest created under this Law in the same collateral, unless the secured party in respect of the continuing security interest otherwise agrees.
- (2) A continuing security interest over collateral that is a receivable has priority over a new-Law assignment of the same receivable, whether or not the assignment is perfected under this Law, unless the secured party in respect of the continuing security interest otherwise agrees.

6 Prior assignments of receivables

- (1) Except as provided in this paragraph, the prior law (and not this Law) shall apply to a prior assignment.
- (2) Paragraph (2) of Article 59 shall apply to a prior assignment on and from the day on which that paragraph and Part 6 are both in force, but a reference in that paragraph to perfection includes registration

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- of a financing statement in respect of a prior assignment as referred to in sub-paragraph (3).
- (3) After Part 8 comes into force, and whether or not Part 6 is in force, a financing statement may be registered under Part 8 in respect of a prior assignment.
- (4) Despite anything in Part 8, such registration shall take effect at the later of the following times –
- (a) when Part 6 comes into force;
 - (b) when the financing statement is actually registered,
- but shall not take effect if discharged before the later of those times.
- (5) Such registration does not affect the operation of sub-paragraph (1) in relation to a prior assignment, but sub-paragraph (6) shall apply to determine questions of priority that relate to the prior assignment.
- (6) As between 2 or more assignments of the same receivable –
- (a) the prior law (and not this Law) shall apply to determine questions of priority as between or among such assignments as are prior assignments, whether or not financing statements have been registered under this Law in respect of one or more of those assignments; and
 - (b) this Law shall apply to determine questions of priority as between any prior assignment and any new-Law assignment, according to –
 - (i) whether or not the assignments are perfected assignments, and
 - (ii) the times at which the registrations of financing statements in respect of them took effect.
- (7) A perfected security interest created under this Law over collateral that is a receivable has priority over a prior assignment of the same receivable, being an assignment that is not a perfected assignment at the time when the security interest is perfected.”

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- 1 *L.24/2012*
 - 2 *L.24/2012*
 - 3 *chapter 13.775*
 - 4 *chapter 05.800*
 - 5 *chapter 13.500*
 - 6 *chapter 13.475*
 - 7 *chapter 13.370*
 - 8 *chapter 13.780*
 - 9 *chapter 13.775*