



Jersey

SECURITY INTERESTS (JERSEY) LAW 1983

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SECURITY INTERESTS (JERSEY) LAW 1983

Arrangement

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Jersey

SECURITY INTERESTS (JERSEY) LAW 1983

A LAW to make provision for the creation of security interests in respect of certain intangible movable property and with regard to the capacity of persons to give security over certain property under the law of another jurisdiction and for connected purposes

Commencement [[see endnotes](#)]

1 Interpretation

(1) In this Law, unless the context otherwise requires –

“bearer certificate” means a certificate of title to securities by the delivery of which (with or without endorsement) the title to the securities is transferable;

“certificate of deposit” means a document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognizes an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable;

“certificate of title to securities” means any document of title whereby a person recognizes the title of another to securities issued or to be issued by the first-mentioned person, and in the case of any such document with coupons (whether attached or on separate coupon sheets) includes any coupons which have not been detached;

“collateral” means property that is subject to a security interest and includes initial, substituted and additional property which is so subject from time to time;¹

“Court” means the Inferior Number of the Royal Court;

“debtor” means a person who causes or permits a security interest to be created in property in which the person has an interest and includes the person’s successors and assigns;

“lease” means a lease, underlease or other tenancy, assignment operating as a lease or underlease of a corporeal hereditament, or an agreement for such lease, underlease, tenancy or assignment;

“movable property” means all property, wherever situated, whether tangible or intangible, vested, contingent, or future, which is not regarded by the law of Jersey as *immeubles* and includes choses in action;

“negotiable instrument” means a bill, note or cheque within the meaning of the Bills of Exchange Act 1882 of the United Kingdom or a certificate of deposit;

“obligation” includes a debt and also includes a contingent obligation and a guarantee of payment or performance of an obligation;

“policy of life assurance” or “policy” means any instrument by which the payment of moneys by or out of the funds of an assurance company, on the happening of any contingency depending on the duration of human life, is assured or secured; and “assurance company” means any corporation, society or company carrying on the business of assuring lives or survivorships, either alone or in conjunction with any other object or objects;

“secured party” means a person who has a security interest and includes the person’s successors and assigns;

“securities” means shares, stock, debentures, debenture stock, loan stock, bonds, units of a unit trust scheme, or other shares of the investments subject to the trusts of such a scheme, but does not include negotiable instruments;

“security agreement” means an agreement that makes provision for a security interest under the provisions of this Law;

“security interest” means an interest in intangible movable property that secures payment or performance of an obligation under the provisions of this Law.

- (2) Unless the context otherwise requires, where this Law refers to any enactment, the reference is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.
- (3) In paragraph (2) “enactment” includes the Bills of Exchange Act 1882 of the United Kingdom.

1A Application of this Law²

- (1) This Law shall apply only to a continuing security interest in relation to which Schedule 2 to the Security Interests (Jersey) Law 2012³ provides that the prior law applies.
- (2) In this Article, “continuing security interest” and “prior law” shall have the same meanings as in that Law.

2 Creation of security interest

- (1) For the purposes of this Law a security interest may be created only in intangible movable property other than a lease.
- (2) A security interest may be created in accordance with any one or more of the methods of creation referred to in this Article.
- (3) A security interest in securities is created where the secured party (or some person on the secured party's behalf other than the debtor or some person on behalf of the debtor) has possession pursuant to a security agreement of the certificates of title to such securities.
- (4) A security interest in a policy of life assurance is created where the secured party (or some person on the secured party's behalf other than the debtor or some person on behalf of the debtor) has possession pursuant to a security agreement of the policy.
- (5) A security interest in moneys held in a bank account is created where the bank which holds such account for its customer is the secured party and has control of such account pursuant to a security agreement and its customer and the debtor are one and the same person.
- (6) A security interest in any intangible movable property other than a lease is created where the secured party (or some person on the secured party's behalf other than the debtor or some person on behalf of the debtor) –
 - (a) has pursuant to a security agreement title to the collateral; and
 - (b) has complied with the requirements of paragraph (8) as to the giving of notice.
- (7) The reference to title in paragraph (6) is a reference to title acquired –
 - (a) in the case of a bearer certificate or a negotiable instrument, by delivery with any necessary endorsement; and
 - (b) in any other case, by assignment of the collateral (with or without a proviso or condition for reassignment).
- (8) Express notice in writing shall be given by or on behalf of the secured party to the person from whom the assignor would have been entitled to claim the collateral.
- (9) Paragraph (8) does not apply in the case of a bearer certificate or a negotiable instrument.
- (10) References in this Article to a security agreement are references to a security agreement which complies with the requirements of Article 3.

3 Security agreement

- (1) For the purposes of this Law a security agreement shall –
 - (a) be in writing;
 - (b) be dated;
 - (c) identify and be signed by the debtor;
 - (d) identify the secured party;

- (e) contain provisions regarding the collateral sufficient to enable it to be identified;
 - (f) specify the events which are to constitute events of default; and
 - (g) contain provisions regarding the obligation payment or performance of which is to be secured sufficient to enable it to be identified.⁴
- (2) Subject to paragraph (1), a security agreement may be in such form and contain or refer to such matters as shall be agreed between the parties to such agreement.

4 Time of creation of security interest

A security interest may be created before or after the obligation to which it relates comes into existence.

5 Priority between security interests in same collateral

- (1) Priority between security interests in the same collateral shall be determined by the order of creation of security interests relating to the same collateral.
- (2) Nothing in this Article shall prevent the postponement by a secured party of the secured party's rights.

6 Effect of subsequent bankruptcy of debtor

- (1) Upon the debtor becoming bankrupt, where the secured party (or some person on the secured party's behalf other than the debtor or some person on behalf of the debtor) does not have title to the collateral –
 - (a) to the extent that the collateral is sufficient, the amount due to a secured party in respect of a security interest created under Article 2(3), (4) or (5) shall be paid in priority to all other claims; and
 - (b) nothing in this Law shall affect the vesting in the Viscount or other body or person, under the law relating to bankruptcy, of the title of the debtor to the collateral.⁵
- (2) Where the secured party (or some person on the secured party's behalf other than the debtor or some person on behalf of the debtor) has title to the collateral the provisions of this Article other than paragraph (1) shall apply.
- (3) Subject to the provisions of this Article and without prejudice to the provisions of Article 8, the debtor becoming bankrupt or the debtor or the debtor's property being subjected, whether in Jersey or elsewhere, to any other judicial arrangement or proceeding consequent upon insolvency shall not affect the power of a secured party to realize or otherwise deal with the collateral in the same manner as the secured party would have been entitled to realize or deal with it if the debtor had not become bankrupt or the debtor or the debtor's property had not been subjected to any such judicial arrangement or proceeding.

- (4) Where the movable property of the debtor has been declared *en désastre* –
 - (a) the Viscount may apply to the Court for an order vesting in the Viscount the rights of the secured party to the collateral and directing that it be sold;
 - (b) the proceeds of such sale of the collateral shall be applied by the Viscount in the order referred to in Article 8(6)(b); and
 - (c) subject to sub-paragraph (b), the Court may make an order directing such vesting and sale upon such terms and subject to such conditions as the Court may think fit.

7 Cancellation or partial discharge of security interest

- (1) After discharge, payment or other performance of the obligation payment or performance of which is secured, the debtor may notify the secured party that the debtor requires –
 - (a) subject to the rights of other secured parties –
 - (i) possession of the documents relevant for the purposes of Article 2(3) or (4),
 - (ii) control of the account relevant for the purposes of Article 2(5),
 - (iii) title to the collateral relevant for the purposes of Article 2(6), as the case may be; and
 - (b) a duly completed certificate of discharge of the security interest.
- (2) Where it is agreed to release part of the collateral upon payment or performance of certain of the obligations referred to in the security agreement, payment or performance of which is secured, then after payment or performance of such obligations the debtor may notify the secured party that the debtor requires a duly completed certificate of discharge as to the part of the collateral released from the security interest.
- (3) Where the secured party has refused or neglected to comply with a requirement made by the debtor under paragraph (1) or (2) for a period of 7 days after the date on which a notice in writing of such requirement was given to or served on the secured party, the debtor may apply to the Court for an order under paragraph (4).
- (4) Where an application is made under paragraph (3) the Court may –
 - (a) make an order requiring the secured party to comply with the requirement made by the debtor to such extent, within such time and subject to such damages and penalties as the Court shall specify in the order; or
 - (b) make such other order as it shall think fit.
- (5) In this Article “certificate of discharge” means a certificate of discharge in the form given in the Schedule and “documents relevant for the purposes of Article 2(3) or (4)” means a certificate of title to securities or a policy, as the case may be.

8 Power of sale

- (1) An event of default occurs upon the happening of an event which under the provisions of the security agreement is an event of default.
- (2) A power of sale of the collateral arises after an event of default occurs.
- (3) A power of sale under this Article or any provision of a security agreement shall not be exercisable unless the secured party has served on the debtor a notice –
 - (a) specifying the particular event of default complained of; and
 - (b) if the default is capable of remedy, requiring the debtor to remedy it, and the debtor fails to remedy the default, if it is capable of remedy, within 14 days after receiving such notice.
- (4) Subject to paragraph (5) and subject to any provision of the security agreement to the contrary, a power of sale under this Article shall be exercised only on the authority of an order of the Court, which –
 - (a) shall grant such order upon being satisfied that a power of sale has arisen and has become enforceable under this Law;
 - (b) subject to paragraph (6), may grant such order either unconditionally or upon such conditions as the Court may think fit; and
 - (c) may grant an order directing the debtor to do such acts and things as to the Court may seem requisite for the effective execution of the power of sale.
- (5) Unless otherwise provided in the security agreement, paragraph (4) shall not apply in respect of collateral which is money or is represented by a negotiable instrument or moneys held in a bank account.
- (6) Upon a sale under this Article the secured party shall –
 - (a) take all reasonable steps to ensure that the sale is made –
 - (i) within a reasonable time, and
 - (ii) for a price corresponding to the value on the open market at the time of sale of the collateral being sold;
 - (b) apply the proceeds of sale in the following order –
 - (i) in payment of the costs and expenses of such sale,
 - (ii) in discharge of any prior security interest,
 - (iii) in discharge of all moneys properly due in respect of the obligation secured by the security agreement,
 - (iv) in payment, in due order of priority, of secured parties whose security interests were created after the secured party's security interest was created, if paragraph (8) applies to such subsequent security interests,
 - (v) as to the balance (if any remains) in payment to the debtor, or in the event that the debtor has become bankrupt or been subjected to any other judicial arrangement consequent upon insolvency, to the Viscount, receiver or other proper officer.

- (7) For the purposes of this Article moneys derived from collateral of the kind referred to in paragraph (5) shall be applied as if such moneys were proceeds of sale under paragraph (6).
- (8) This paragraph applies to the security interest of any secured party on whose behalf (as well as on his or her own behalf) the secured party exercising the power of sale was, immediately before the exercise of such power, holding possession of or exercising control of documents or collateral (whether by himself or herself or through some person on his or her behalf) for the purposes of Article 2.

9 Termination of security interest

- (1) Subject to paragraph (3), a security interest created under Article 2(3) or (4) terminates when the secured party (or some person on the secured party's behalf not being the debtor or some person on behalf of the debtor) ceases to have possession pursuant to the security agreement of the documents relevant for the purposes of Article 2(3) or (4).
- (2) In paragraph (1) "documents relevant for the purposes of Article 2(3) or (4)" means a certificate of title to securities or a policy, as the case may be.
- (3) Paragraph (1) shall not apply where the secured party has a security interest in the same collateral under Article 2(6).
- (4) A security interest created under Article 2(5) terminates when the bank being the secured party ceases to have control pursuant to the security agreement of the account relevant for the purposes of Article 2(5).
- (5) A security interest created under Article 2(6) terminates when the secured party ceases to have pursuant to the security agreement title to the collateral relevant for the purposes of Article 2(6).

10 Service of notices

- (1) This Article shall have effect in relation to any notice or other document required or authorized by or under this Law to be given to or served on any person.
- (2) Any such document may be given to or served on the person in question –
 - (a) by delivering it to the person;
 - (b) by leaving it at the person's proper address; or
 - (c) by sending it by post to the person at that address.
- (3) Any such document may –
 - (a) in the case of a company, be given to or served on the secretary, clerk or other similar officer of the company or any person who purports to act in any such capacity, by whatever name called;
 - (b) in the case of a partnership, be given to or served on a partner or a person having the control or management of the partnership business.

- (4) For the purposes of this Article and Article 7 of the Interpretation (Jersey) Law 1954⁶ in its application to this Article, the proper address of any person to or on whom a document is to be given or served shall be the person's last known address, except that—
- (a) in the case of a company or its secretary, clerk or other officer or person referred to in paragraph (3)(a), it shall be the address of the registered or principal office of the company;
 - (b) in the case of a partnership or a person having the control or management of the partnership business, it shall be that of the principal office of the partnership,
- and for the purposes of this paragraph the principal office of a company registered outside Jersey or of a partnership carrying on business outside Jersey shall be their principal office within Jersey.
- (5) If the person to be given or served with any document mentioned in paragraph (1) has specified an address within Jersey other than the person's proper address within the meaning of paragraph (4) as the one at which the person or someone on the person's behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this Article and Article 7 of the Interpretation (Jersey) Law 1954 as the person's proper address.

11 Saving provisions

- (1) The rights of —
- (a) a holder in due course of a negotiable instrument other than a certificate of deposit;
 - (b) a *bona fide* purchaser of securities without notice of a security interest affecting such securities;
 - (c) a person who has taken a certificate of deposit in good faith and for value without notice of a security interest affecting such certificate of deposit,
- are to be determined without regard to this Law.
- (2) Nothing in this Law shall affect a lien or a right of set-off.⁷

12 Security given under foreign law⁸

- (1) In this Article —
- (a) “foreign law” means any law other than the law of Jersey;
 - (b) “person” means a person having the capacity to create a security interest under this Law;
 - (c) “property” means all property, whether tangible or intangible, vested, contingent or future whether or not regarded by the law of Jersey as *immeubles* and includes choses in action.
- (2) Despite anything in Article 1A, if after the commencement of this Law and before the date on which Part 3 of the Security Interests (Jersey) Law 2012 comes into force a person incorporated, resident or domiciled in Jersey or,

being a limited liability partnership, registered under the Limited Liability Partnerships (Jersey) Law 1997⁹ gives security governed by foreign law over property situated outside Jersey the person giving the security shall (without prejudice to the person's existing capacity, if any) be deemed to have had capacity to give it under the law of Jersey.¹⁰

13 Loi (1880) sur la propriété foncière

Nothing in the Loi (1880) sur la propriété foncière¹¹ shall affect the validity of a security interest.

14 Exclusive application

For the avoidance of doubt it is declared that after the commencement of this Law and before the date on which Part 3 of the Security Interests (Jersey) Law 2012 comes into force no security over intangible movable property may be created under the law of Jersey except under the provisions of this Law.¹²

15 Rules of Court

The power to make Rules of Court under the Royal Court (Jersey) Law 1948¹³ shall include a power to make Rules for the purposes of this Law and proceedings thereunder.

16 Citation

This Law may be cited as the Security Interests (Jersey) Law 1983.

SCHEDULE

(Article 7)

SECURITY INTERESTS (JERSEY) LAW 1983**CERTIFICATE OF DISCHARGE**

I, A.B. of (insert name and address of secured party) hereby certify that the security interest created or provided by C.D. of (insert name and address of debtor) under a security agreement dated the _____ day of _____, 20____, is wholly discharged (or) is discharged in part as follows (here state the description of the part of the collateral in respect of which the security interest is discharged).

Dated:

.....

Signature of secured party

ENDNOTES

Table of Legislation History

| Legislation | Year and Number | Commencement |
|--------------------------------------------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Security Interests (Jersey) Law 1983 | L.4/1983 | 5 April 1983 |
| Security Interests (Amendment) (Jersey) Law 1985 | L.9/1985 | 1 March 1985 |
| Limited Liability Partnerships (Jersey) Law 1997 | L.3/1997 | 9 September 1998 (R&O.9233) |
| Security Interests (Jersey) Law 2012 | L.24/2012 | 2 January 2014 (R&O.104/2013) (as amended by R&O.128/2013) |
| Limited Liability Partnerships (Jersey) Law 2017 | L.2/2017 | 1 August 2018. The amendment was without effect. Equivalent amendment made to Security Interests (Jersey) Law 2012 under Law Revision (Jersey) Law 2003 revisions powers. |

Table of Renumbered Provisions

| Original | Current |
|-----------|------------------------------------------|
| 1(2), (3) | spent, omitted from this revised edition |
| 6(1) | repealed by L.9/1985 |
| (2) | 6(1) |
| (3) | (2) |
| (4) | (3) |
| (5) | (4) |

Table of Endnote References

| | |
|-----------------------------|---------------------------------------------|
| ¹ Article 1(1) | definition “collateral” amended by L.9/1985 |
| ² Article 1A | inserted by L.24/2012 |
| ³ | chapter 13.776 |
| ⁴ Article 3(1) | amended by L.9/1985 |
| ⁵ Article 6(1) | amended by L.9/1985 |
| ⁶ | chapter 15.360 |
| ⁷ Article 11(2) | amended by L.9/1985 |
| ⁸ Article 12 | substituted by L.9/1985 |
| ⁹ | chapter 13.475 |
| ¹⁰ Article 12(2) | amended by L.3/1997, L.24/2012 |

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- ¹¹ *chapter 18.495*
¹² *Article 14* *amended by L.24/2012*
¹³ *chapter 07.770*