Lending and Secured Finance Laws and Regulations Jersey (ICLG)

Briefing Summary: This chapter covers common issues in lending and secured finance laws and regulations in Jersey – including guarantees, collateral security, financial assistance, and syndicated lending.

Service Area: Banking and Finance

Location: Jersey

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Overview

1.1 What are the main trends/significant developments in the lending markets in your jurisdiction?

Globally, 2024 was marked by continued geo-political instability and an unprecedented number of elections with over 60 countries, representing nearly half the world's population, going to the ballot box. Despite these challenges, 2024 saw the global economy experience modest growth, with inflationary pressures retreating and central banks in the US, the EU and the UK all cutting interest rates to support growth. With a downward trend in interest rates, debt finance transactions rebounded in a number of markets in the second half of 2024. This was somewhat tempered in the UK as a consequence of the fiscal changes introduced by the UK October budget, raising concerns of continued sluggish growth. The year 2024 ended with further instability and the threat of a global trade war impacting the economic recovery.

Fund finance

In the fund finance market in 2024, there was an uptick in new money subscription finance transactions following the comparative lack of liquidity during 2023. The market also saw continued growth in the use of NAV facilities. In addition, there was increased focus on innovative solutions, such as preferred equity transactions and non-bank lenders entering or expanding their footprint in the fund finance market. There was also an increase in the number of funds looking to leverage their rated feeder vehicles as those gain in popularity.

Real estate finance

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In 2024, the UK commercial real estate market showed signs of a recovery, assisted by lower interest rates and greater certainty around asset valuations following a significant market correction with UK commercial real estate values estimated to have fallen by approximately 24% since June 2022. Market activity was driven in some respects by disposals by sponsors facing refinancing pressure and disposals by pension schemes seeking to reduce their exposure to commercial real estate. Other sponsors were in a more acquisitive mood, sensing the bottom of the market in many sectors. Activity was sector-specific, with most new money transactions involving acquisition or development finance for operational real estate, particularly build to rent and purpose-built student accommodation. The office market saw more nuanced performance, characterised by a flight to quality where demand concentrated on prime, sustainable office space, whilst secondary and tertiary offices continued to face challenges. This meant that our real estate finance practice continued to be very busy in 2024 advising sponsors and lenders on some very significant refinancings, acquisitions and disposals.

Acquisition finance

Although the uncertain economic outlook restricted M&A activity, we advised on a range of acquisition finance transactions in 2024. A notable portion of the activity in the leveraged finance market was driven by refinancing transactions as sponsors capitalised on lower interest rates to re-price their facilities and lower borrowing costs. As was the case in 2023, the volume of new money leveraged finance facilities remained subdued in 2024 with much of the ongoing follow-on private equity financing being funded through fund finance facilities rather than traditional leverage at portfolio company level.

Financial restructuring

The majority of restructurings in 2024 were consensual. For non-consensual deals, UK court processes were the most popular implementation tools, whether schemes of arrangements, restructuring plans or company voluntary arrangements. We have acted as the listing agent in respect of a number of security issuances arising from both consensual and nonconsensual restructurings and have a settled pathway with The International Stock Exchange ("**TISE**") to address a number of practical points which arise when effecting such listings. Jersey remained a popular jurisdiction for the establishment of new holding structures in debt for equity transactions with most involving the provision of new money. The use of Jersey purpose trusts continued to increase, as stakeholders sought innovative ways to hold assets pre and post restructuring.

1.2 What are some significant lending transactions that have taken place in your jurisdiction in recent years?

Due to the nature of the work, many transactions are highly confidential. Carey Olsen is active in over 30 global bank panels. As part of bank panel terms, we are unable to disclose the names of these banks.

Significant matters include:

- **RBS International** – advising RBS International in connection with a €1.455 billion ESG-linked financing for European investment firm Triton Partners. The facility structure is intended to be replicated across future Triton funds, providing a common set of strategic targets that will catalyse the delivery of Triton's overall sustainability goals and objectives.
- **Petrofac refinancing plan** – advising FTSE250 listed and Jersey incorporated company Petrofac Limited, a leading international services provider to the energy industry, on a proposed equity capital raise and refinancing plan comprising a US$275 million fully underwritten firm placing, and placing and open offer of new shares, a US$500 million bridge financing facility which was replaced by a public bond issuance of US$600 million 9.75% senior secured notes due 2026 (launched alongside the equity raise), a US$180 million new revolving credit facility, an AED185 million (US$50 million) new bilateral facility and an amendment of a US$50 million existing bilateral term loan facility. As part of the plan, a £300 million Covid Corporate Financing Facility was repaid on 1 December 2021.
- **Pizza Express restructuring** – advising the ad hoc group of creditors in relation to the debt and equity restructuring of Pizza Express, a leading international casual dining operator. The transaction was implemented by means of a restructuring plan under the UK Corporate Insolvency and Governance Act 2020.
- **Flint Group** – advising the committee of lenders on the recapitalisation of Flint Group, one of the largest global suppliers of the printing and packaging industry. The transaction was implemented consensually with 100% support from the first lien lenders (including the RCF lenders) and the second lien lenders, as well as the existing shareholders.
- **Vue International Group** – advising the ad hoc committee of senior secured lenders in relation to a comprehensive debt restructuring of European cinema operator, Vue International group (Vue). Vue is the largest privately owned cinema operator in Europe and operates across 227 sites in nine countries.
- **Deutsche Pfandbriefbank** – advising Deutsche Pfandbriefbank AG (pbb) in relation to a circa £117 million debt facility made available to Boreal IM (Boreal) to refinance a portfolio of UK logistics assets as part of Boreal's joint venture with Cadillac Fairview.
- **Survitec Group** – advising the Survitec Group, a global safety and survival solutions leader, in relation to new shareholder funding provided to the group and assisted with changes to their manager incentive programme.

Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

Yes, guarantees are commonly used by group companies. They are usually created by written agreement. Corporate benefit should be considered and this is covered in greater detail at question 2.2 below.

The Security Interests (Jersey) Law 2012 (the "**Security Interests Law**") expressly provides that a security interest can be created to secure the obligation of a third party, which simplifies documentation and removes the need to include a limited recourse guarantee in Jersey security agreements.

2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

A Jersey company has unlimited corporate capacity under the Companies (Jersey) Law 1991 (the "**Companies Law**").

When a company enters into a finance transaction, a transacting party should consider whether there is corporate benefit for the company. There is a risk that a company could seek to have the transaction set aside on the basis that the directors approving the transaction were acting outside their statutory duty to act in the best interests of the company. This can happen where:

- there is little or no corporate benefit to the company; and
- the transacting party knows or ought to know that there is little or no corporate benefit.

This risk can be avoided if both:

- all the shareholders of the Jersey company authorise or ratify the particular transaction; and
- the Jersey company can pay its debts as they fall due at the time of, and immediately following, the entry into the transaction.

If there is no discernible corporate benefit to entry into a finance transaction, there is also a risk that a transaction could be set aside on the company's bankruptcy.

2.3 Is lack of corporate power an issue?

Article 18(1) of the Companies Law removed the concept of external ultra vires, meaning that nothing in a company's Memorandum or Articles of Association can limit the power of a Jersey company. That being said, the Memorandum and Articles of Association should still be reviewed to ensure there are no limits on the authority of the directors to enter into the required documents.

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

As per the above, shareholder approval is advisable if there are corporate benefit concerns. A guarantee does not need to be registered in Jersey.

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

No, although the solvency of the company should be considered when entering into a guarantee. If a company enters into a transaction with a person for cause (similar to consideration under English law) the value of which, in money or equivalent, is significantly less than the value of the cause provided by that person, the transaction may be impugned as a transaction at an undervalue and challenged by (i) the Viscount of the Royal Court of Jersey (the insolvency officer of the Royal Court) (the "**Viscount**") in a désastre under the Bankruptcy (Désastre) (Jersey) Law 1990 (the "**Désastre Law**"), and (ii) by a liquidator in a creditors' winding up under the Companies Law.

A transaction may be challenged if it was entered into during the five years preceding the commencement of the désastre or winding up. However, a transaction is not vulnerable to attack as a transaction at an undervalue if either:

the relevant company:

- was able to pay its debts as they fell due at the time it entered into the transaction; and
- did not become insolvent on a cash-flow basis as a result of entering into the transaction; and/or

the court is satisfied that both:

- the company entered into the transaction in good faith for the purpose of carrying on its business; and
- at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would benefit the company.

In addition, the Royal Court may, on the application of the Viscount (in a désastre) or liquidator (in a creditors' winding up), set aside as a preference a transaction that that has the effect of putting a particular creditor, surety or guarantor into a better position than if the company had not done that thing or allowed that thing to be done.

An application can only be brought if (a) the transaction occurred during the 12 months preceding the date of commencement of the winding up or declaration of désastre, and (b) the company was insolvent (on a cash flow test) when the preference was given, or became insolvent as a result of giving the preference.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

If court proceedings are brought against a guarantor company, the enforceability of that company's obligations can be qualified if the following Jersey customary law rights of a surety are available to it:

- Droit de discussion – this is the right to require that recourse is made against the assets of the borrower and that those assets are exhausted before any claim is enforced against the guarantor.

- Droit de division – this is the right to require that liability of co-guarantors is divided or apportioned between them.

It is market practice for a lender to require a specific waiver of these rights.

Collateral Security

3.1 What types of collateral are available to secure lending obligations?

Common types of collateral that are secured are: real estate; shares; units in a unit trust; bank accounts; and contract rights.

3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

It is possible to take "a debenture-style" security under the Security Interests Law over all present and future intangible movable property held by the grantor in Jersey from time to time, although note that this would not include security over tangible movable property (broadly equivalent to English law chattels) or immovable property (real estate).

In addition, although Jersey law does not have a concept of a floating charge, a similar degree of flexibility can be achieved under the Security Interests Law as the security agreement may provide the grantor with an express right to deal in the collateral, without a duty to account for the proceeds or to replace the collateral, and without any such dealing invalidating the security interest or affecting the priority of the security.

The security would be taken by way of a security interest agreement entered into under the Security Interests Law. In order for a security interest to attach to collateral (on which the security becomes enforceable against the grantor), the following conditions must be satisfied:

- Value must have been given in respect of the security agreement. Value means something sufficient to support an onerous contract, and includes an antecedent debt or liability.
- The grantor must have rights, or the power to grant rights to a secured party, in the collateral. A trustee can therefore grant valid security under the Security Interests Law.
- The secured party has possession or control of the collateral and/or the security agreement is in writing and contains a description of the collateral that is sufficient for it to be identified.

Perfection of a security interest is necessary for the purposes of priority and in order for the security to be valid against third parties and not void against the Viscount or a liquidator, and third-party creditors, in an insolvency. The method of attachment and perfection will depend on the type of collateral secured. The three ways for the secured party to obtain perfection are:

- by possession of documentary intangibles such as negotiable instruments or bearer securities;
- by control of the collateral such as bank accounts, securities accounts and investment securities; and/or
- by registration of a financing statement on the Jersey Security Interests Register. Security that cannot be perfected by possession or control, for example over a right to repayment under a contract (e.g. an intra-group loan) or over other contractual rights, must be perfected by registration of a financing statement. As registration perfects any type of security interest, it is usual for a security interest that has been perfected by possession or control to be perfected by registration as well. Security interests perfected by possession or control will have priority over security interests perfected by registration only.

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

There are two main forms of security for real estate:

- **Hypothecs**. A hypothec is a right of security held by a creditor over the property of a debtor without possession of it, and is created either by agreement or by operation of law. A hypothec can attach only to immovable property; a hypothec can therefore encumber freehold and flying freehold property, and "contract leases" with a term of more than nine years (but only where the terms of the lease expressly permit hypothecation). "Paper leases" with a term of less than nine years cannot be hypothecated. Hypothecs can be specific (that is, over one property) or general (that is, attaching to all immovable property in Jersey owned by the debtor at the date of registration). There are two common types of hypothec:

1. Judicial hypothec. This type of hypothec is created by the registration of an acknowledgment document (a "**billet**") in the Jersey Public Registry. The instrument of debt or obligation (for example, a loan, a bond, promissory note or guarantee) is not itself registered, rather the billet simply acknowledges the source of the indebtedness; and
2. Conventional hypothec. This type of hypothec is created by the passing of a contract before the Royal Court, which contract sets out the terms of the borrowing and includes an express acceptance of the hypothec from the borrower. Once passed before court, the contract is registered in the Jersey Public Registry, and is available for public inspection.

- **Share security**. In relation to share transfer properties, lenders require security in the shares of the company that owns the property. Share security would be taken by way of a security interest agreement entered into under the Security Interests Law.

In relation to plant, machinery and equipment, the only method of creating security over tangible movables in Jersey is by way of pledge. To pledge property there must be actual physical (as opposed to constructive) delivery of the tangible movable property pledged into the creditor's possession.

There is a right of retention. As a matter of customary law (absent any Jersey judicial authority on this point) the creditor should have an implied right of sale when the grantor is in default and there is likely to be an express power of sale in the pledge document.

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Typically, security in respect of contract rights and receivables is created by way of a security interest agreement entered into under the Security Interests Law by way of description and registration. Although it is no longer necessary to give notice to the counterparty, there are usually advantages to doing so (for example, to obtain, by way of acknowledgment to the notice, a waiver of any conflicting provisions in the underlying contract and/or a confirmation that the counterparty will make payments directly to the secured party).

Common types of receivables secured in this way include:

- Rent payable under a lease agreement.
- A general partner's right to call for capital from the partners of a limited partnership.
- Debts and other rights to the payment of money.
- Rights under performance contracts.
- Bank accounts into which the receivables are paid and other cash deposited with banks.

The Security Interests Law also contains specific provisions in relation to outright assignments of receivables, which are defined as monetary entitlements arising from the supply of goods and services (other than insurance services) or the supply of energy.

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Yes, this is a common form of security taken in Jersey. The method will depend on whether the account is with the secured party or a third-party bank.

Security will be created by way of a security interest agreement under the Security Interests Law. Control would be obtained by:

- the account being transferred into the name of the secured party with the written agreement of the grantor and the account bank (although in practice this approach is not usually taken);
- the account bank agreeing in writing to act on the secured party's instructions directing disposition of funds in the account;
- the account being assigned to the secured party and written notice of such being given to the account bank; or
- the account bank being the secured party.

Typically, security over third-party bank accounts is taken by assignment. Although not necessary to perfect the security, it is usual to obtain an acknowledgment of the notice from the account bank, which will include, for example, a waiver of:

- any terms and conditions which may restrict or prohibit the creation of the security; and
- its rights of set-off over the account.

3.6 Can collateral security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Can such security validly be granted under a New York or English law-governed document? Briefly, what is the procedure?

Yes, security can be taken over shares in a Jersey company in a certificated format. Security would be taken by way of a security interest agreement under the Security Interests Law. Control would be obtained by the secured party either:

- being registered as the holder of the securities; or
- having possession of the certificate representing the securities.

Security cannot be validly granted over shares in a Jersey company under a New York or English law-governed document.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

Jersey law does not have a concept of a floating charge. Therefore, security over tangible movables such as inventory in Jersey would have to be taken by way of pledge. Please see question 3.3 above.

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

Yes, subject to corporate benefit and solvency considerations, a company can grant a security interest which secures both its primary obligations as a borrower and its secondary obligations as a guarantor.

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

There are registration fees associated with using the Jersey Security Interests Register. These are outlined on the Registry website:

- registration – £10 per year of registration up to a maximum fee of £200 if the registration will run longer than 20 years (there is no concept of infinite registration);
- discharge – no fee;
- amendment of registration – £10;
- extension of period of registration – same cost scheme as above;
- global change of multiple registrations (other than expiry date) – £135;
- search – £5 to view a financing statement; and

- filing a change demand – £30.

Stamp duty is payable when a lender registers security over real estate situated in Jersey. Stamp duty is calculated at the rate of 0.5% of the amount of debt secured over the property in favour of the lender, plus a court fee of £90.

Land transaction tax ("**LTT**") is payable when a lender takes security over a share transfer property situated in Jersey and is calculated at a rate of 0.5% of the amount of the debt to be secured, plus an administration fee of £90. LTT applies only in relation to residential property where the articles of the property-owning company confer rights of occupation on their shareholders.

There are no relevant notary fees.

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

For security which is created over intangible movable property under the Security Interests Law, the registration requirements do not involve a significant amount of time or expense.

For security that is registered over Jersey immovable property, the billet (the acknowledgment document creating a judicial hypothec) or the contract creating the charge (in the case of a simple conventional hypothec) must be registered with the Royal Court of Jersey, which can only take place on a Friday afternoon (subject to court holidays). The stamp duty must be paid at the time of registration. Once registered, the billet or contract (as the case may be) becomes a matter of public record.

3.11 Are any regulatory or similar consents required with respect to the creation of security?

Consent should be obtained from the grantor prior to the registration of the security interest on the Jersey Security Interests Register, pursuant to which the grantor consents to the registration and for any personal data to be publicly available.

While no regulatory consents are required in Jersey for the creation of security generally, there may be additional steps required on creation or enforcement of, or other exercise of rights under, security over regulated groups/entities.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

The definition of secured obligations/liabilities in the security agreement should provide for further advances to ensure that the priority of the original advance will not be lost in respect of further advances.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

No, there are not.

Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company that directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

The concept of financial assistance was abolished in Jersey in 2008. Jersey companies are not prohibited from giving financial assistance for the acquisition of: (a) their own shares; (b) shares of any company which directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary. If financial assistance raises questions relating to corporate benefit, or amounts to a distribution, the relevant statutory procedures must be complied with.

Syndicated Lending/Agency/Trustee/Transfers

5.1 Will your jurisdiction recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

Jersey law recognises the concept of agency and trust relationships and accordingly an agent or trustee would be able to enforce the loan documentation and collateral security and apply the proceeds in the manner set out in the loan agreement, intercreditor agreement or other relevant finance document.

5.2 If an agent or trustee is not recognised in your jurisdiction, is an alternative mechanism available to achieve the effect referred to above, which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

This is not applicable.

5.3 Assume a loan is made to a company organised under the laws of your jurisdiction and guaranteed by a guarantor organised under the laws of your jurisdiction. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

The transfer provisions will usually be set out in the loan agreement and guarantee, and these should be complied with. If there are no such transfer provisions, the benefit of the loan and the guarantee should be validly assigned to Lender B in order to ensure that the guarantee is enforceable by Lender B. For completeness, notice of the assignment should be given to the company and the guarantor. If the loan is not fully utilised and Lender A was under an obligation to make further advances, the loan would require to be novated as opposed to transferred. If the loan is not novated to Lender B, this could have implications on the enforceability of the guarantee.

Withholding, Stamp and Other Taxes; Notarial and Other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

No, there are not.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Foreign lenders do not receive tax incentives when compared to Jersey lenders. However, Jersey can generally ensure tax neutrality, and eliminate double taxation risk.

6.3 Will any income of a foreign lender become taxable in your jurisdiction solely because of a loan to, or guarantee and/or grant of, security from a company in your jurisdiction?

No, it will not.

6.4 Will there be any other significant costs that would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc?

Please see questions 3.9 and 3.10 above.

6.5 Are there any adverse consequences for a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for the purposes of this question.

No, there are not.

Judicial Enforcement

7.1 Will the courts in your jurisdiction recognise a governing law in a contract that is the law of another jurisdiction (a "**foreign governing law**")? Will courts in your jurisdiction enforce a contract that has a foreign governing law?

The courts in Jersey will recognise a foreign governing law provided it is a valid choice of law for the issue in question upon proof of the relevant provisions of the governing law.

7.2 Will the courts in your jurisdiction recognise and enforce a judgment given against a company in New York courts or English courts (a "foreign judgment") without re-examination of the merits of the case?

The enforcement of foreign judgments is governed by the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 (the "**Reciprocal Enforcement Law**"). If a final and conclusive judgment under which a sum of money is payable (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty) were obtained in a "Reciprocal Enforcement Court" having jurisdiction in a case against a company, such judgment would, on application to the Royal Court of Jersey, be registered without reconsidering its merits and would thereafter be enforceable.

A "Reciprocal Enforcement Court" for such purposes would include, in England and Wales, the Supreme Court of the United Kingdom, the Court of Appeal and the High Court of Justice. The creditor of such a judgment must apply to have it enforced in Jersey within six years from the date the decision is handed down, or the date of the judgment on the last appeal. Such registration will not require the consideration of the merits of a case.

As the Reciprocal Enforcement Law does not apply to a judgment of the New York courts, recognition of any such judgment would be governed by customary/common law. Subject to the principles of private international law – by which, for example, foreign judgments may be impeachable, as applied by Jersey law (which are broadly similar to the principles applied under the common law of England) – if a judgment of a New York court were obtained, the judgment creditor (being the claimant in the foreign proceedings) must begin a fresh action in the Royal Court of Jersey, relying on the unsatisfied foreign judgment as a cause of action. The matter will usually be determined summarily without a full trial. The judgment debtor (being the defendant in the foreign proceedings) can oppose the application for summary judgment and/or defend the claim, but there are only limited grounds on which enforcement will be refused, and a full factual enquiry is rarely necessary.

The grounds for refusing to enforce a foreign judgment (including that of a New York court) are substantially similar to the grounds on which registration of a judgment of an English court under the Reciprocal Enforcement Law can be set aside (e.g. the foreign court had no jurisdiction, or there were procedural inadequacies in obtaining the foreign judgment). If the court is satisfied that the New York judgment must be enforced, it will be entered in favour of the judgment creditor and be enforceable in Jersey as a domestic judgment.

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in your jurisdiction, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in your jurisdiction against the assets of the company?

Proceedings in respect of a debt for a liquidated sum can be commenced by way of a simple summons, which can be prepared and served within a few days. The summons must be served four clear days before the return date to which the company is summoned. If the company does not attend at the return date, judgment in default can be obtained (i.e. in as quickly as two weeks). If the company defends the claim, the Royal Court of Jersey will place the action on the pending list (effective immediately). An application for summary judgment can be brought at this time, which we expect could be heard and determined within four to six weeks. If the application for summary judgment is defended, and is unsuccessful, the matter would proceed to a trial and could take up to one year for it to be heard and a subsequent judgment to be issued. The length of time to effect enforcement depends on the process used. A monetary judgment is immediately enforceable by distraint against the judgment debtor's assets. The Viscount will take possession of and effect a sale of the debtor's assets and apply the proceeds in satisfaction of the judgment, subject to certain notification requirements. The timing of this process depends on the Viscount's availability and the number of assets to be dealt with. If the debtor owns property in Jersey, orders can be sought one month following the issue of a court judgment (provided it remains unsatisfied), for an "Acte Vicomte chargé d'écrire". The effect of this declaration is that if the judgment is not satisfied within a further two months, the debtor's property will be deemed to have been renounced. At that time a creditor can seek orders for "dégrèvement" (for immovable property) and "réalisation" (for movable property). The timing of either of these enforcement processes once commenced is difficult to ascertain as once orders are made, the sale and dealing of the assets is conducted by the Attournées. However, we generally understand that, from the making of an order, a dégrèvement process (including the hearing) may take approximately four to six weeks. Following the hearing, the creditor who elects to take the property, subject to claims of superior lenders, will be immediately entitled to the asset. The timeframe for a réalisation may take approximately two to three months depending on the liquidity of the assets. An application can also be made by a creditor of a company with a liquidated claim exceeding £3,000 that the assets of the company be declared en désastre, as it is unable to pay its debts as they fall due (please also see question 8.4). Such an application can be made quickly without notice to the debtor, usually on no more than 48 hours' notice to the court. If a declaration is made by the Royal Court of Jersey, and after a one-month period within which the debtor can object has expired, the Viscount will begin the process of collecting in the debtor's assets and distributing them to all creditors on the basis of a statutory waterfall. It is difficult to give an estimate to the Viscount's process, but typically a creditor can expect this to take no less than six months.

Once a foreign judgment (e.g. of the English courts) is registered under the