

Focus on: the benefits of registration under the Security Interests (Jersey) Law 2012

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Service area / [Banking and Finance](#)

Legal jurisdiction / [Jersey](#)

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A security interest under the Security Interests (Jersey) Law 2012 (the “**2012 Law**”) must ‘attach’ to the relevant collateral in order to be enforceable against the grantor of the security, and should also be ‘perfected’ for general validity in insolvency of the grantor.

Except as noted below, security interests over all types of collateral to which the 2012 Law applies can be perfected by registration. Registration can be carried out instead of or (more usually) in addition to another available method of perfection under the 2012 Law, being ‘control’ or ‘possession’ of the collateral. In the case of a security interest over the trust property of a trust, other than a ‘prescribed unit trust’ (which is essentially a unit trust whose trust property includes immovable, i.e. real, property), there is no place for registration for perfection. Additionally, registration does not perfect the security interest in favour of an intermediary over investment securities that arises when investment securities are bought through the intermediary and credited to the buyer’s account with the intermediary before payment. Perfection is automatic in those circumstances.

There are certain benefits to perfecting a security interest by way of registration (whether or not another perfection method is used). These benefits include the following:

Immediate perfection when the security agreement is executed

A registration can be made before the creation of the security interest to which it relates, and it is market practice in Jersey to pre-register such security. The effect of such pre-registration is that the security interest is immediately perfected when it attaches (on the relevant security agreement being signed and dated by the parties).

Registration of limited information only

Registration of a security interest is effected by registering a financing statement on the public, searchable, on-line register. Financing statements contain basic information as to the identity of parties, describe the relevant collateral and may indicate any subordination arrangement. There is no requirement to register a copy of the security agreement itself. This system of registration is characterised as ‘notice filing’, not ‘transaction filing’.

Proceeds and income rights

A security interest in ‘proceeds’ (intangible movable property derived from dealing in the collateral), or in income rights (e.g. dividends on shares or interest on debt securities, which are not proceeds), can only be perfected by registration.

After acquired-property

If the security agreement provides for a security interest in after-acquired property, registration perfects a security interest in that after-acquired property as soon as the grantor acquires it in the absence of any agreement to the contrary between the grantor and the secured party. In contrast, where such security interest is to be perfected only by control or possession, such perfection may only occur some time later once the secured party has obtained control or possession.

Priority

As a general statement, priority goes, in the absence of a secured party having possession or control, to the secured party who is first to register.

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Subordination

The transferee of a subordinated security interest is bound by the terms of a subordination agreement if at the time of transfer registration has been made in respect of the subordination.

Subordinated secured parties

Registration also gives certain advantages to subordinated secured parties. Such registration will: (a) require, unless this right is agreed in writing to be waived, a senior secured party to provide 21 days' written notice to that subordinated secured party before enforcement; (b) mean that a senior secured party's statutory duties on enforcement (including the duty to take all commercially reasonable steps to determine/obtain fair market value of/for the collateral) are also owed to the subordinated secured party; and (c) give priority, over the claims of any other person with an interest in the collateral, to the claim of that subordinated secured party to any surplus resulting from sale or appropriation on enforcement by a senior secured creditor.

Ease of proof

If the means of perfection changes (i.e. the secured party first relies on one method of control, and then on another) it may be easier, if required, to simply prove registration.

Bank accounts

If a deposit account is replaced or substituted, there may be a risk of questions being raised as to whether, and if so when, a secured party might have obtained control of the new account. These questions should not arise – at least in the context of perfection – where the security interest has been registered.

Lost certificates

Where the secured party has taken a security interest over certificated investment securities (i.e. shares in a Jersey company, units in a Jersey unit trust or debt securities issued by a Jersey borrower), taking possession of the certificates, and getting perfection in that way, but the certificate(s) have been subsequently lost, the secured party risks losing the perfected status of that security interest unless it has also been perfected by registration.

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