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Lending and taking security in Guernsey: overview

Ben Morgan
Carey Olsen

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OVERVIEW OF THE LENDING MARKET

1. What have been the main trends and important developments in the lending market in your jurisdiction in the last 12 months?

Guernsey entities remain a popular choice as either issuers or investment holding vehicles and Guernsey is home to a large number of investment holding structures holding a variety of investments, including UK real estate. There have been a large number of refinancing and restructuring transactions in the past 12 to 18 months in relation to these structures.

The larger private equity funds still require leverage and those that have been active in the acquisition market are taking advantage of the credit that is available. Guernsey has seen an increase in capital call bridging facilities and a number of Guernsey domiciled debt funds have been established in order to meet some of the need for non-bank lending.

FORMS OF SECURITY OVER ASSETS

Real estate

2. What is considered real estate in your jurisdiction? What are the most common forms of security granted over it? How are they created and perfected (that is, made valid and enforceable)?

Real estate

Property in Guernsey is divided into movable property and immovable property. Immovable property is defined as that property which cannot be moved from one place to another and which follows or is associated with the land. Parcels of land are immovable, as well as all things incorporated in the earth such as houses and other buildings, trees, shrubs and other produce until harvested. Personal effects permanently attached to real estate also form part of that real estate. Other property classified as immovable include the:

- Usufruct of real estate.
- Servitudes of the land.
- Actions leading to a claim on immovable property.
- *Rentes foncières* (perpetual ground rents payable as a fixed annual sum and redeemable at the will of the debtor).
- All things that are situated outside the Bailiwick of Guernsey and that are classified as immovable according to the law of the land in which they are situated.

Common forms of security

Other than *rentes foncières*, security over real estate in Guernsey is taken as an *hypothèque* (that is, a security which arises by a legal act and which does not involve delivery of possession of the secured property) by way of *rente hypothèque* (that is, a loan over land secured by an annual specified payment of a fee in wheat, bushels, quarters or deners) securing a fixed annual sum or by way of an *hypothèque conventionnel* (bond). *Rentes hypothèque* are not common and the bond has become the dominant form of security over real estate.

A bond is a personal obligation to create a charge over the whole of the debtor's assets (but in practice focused on real estate) by acknowledging the indebtedness and (if appropriate) including a covenant to repay the sum with interest. The bond can be a:

- **General charge.** A general charge purports to charge all the real and personal property of the debtor, both present and future. It gives priority to the creditor over all other claimants to the real estate belonging to the debtor at the time of any enforcement proceedings against the debtor.
- **Specific charge.** This charges the specified real estate only or the specified real estate only and all personal property generally. It gives priority to the creditor over the real estate specified. However, the charge postpones the creditor's claim on any other property owned at the time of any enforcement proceedings in favour of other claims that would otherwise rank below the pursuing creditor's claim.

A charge over real estate in Guernsey does not confer any legal interest in the real estate owned by the debtor. The bond, must however, be registered (*see below, Formalities*). Registration of the bond puts any successor-in-title of the real estate owned by the debtor at the date of the registration on notice of the creditor's claim and the successor-in-title becomes a guarantor of the bond. This means that in any enforcement proceedings the successor-in-title is made party to the proceedings to either make good the value of the claim or surrender the real estate to the enforcement proceedings (*see Question 20, Security over immovable property*).

The liability of a successor-in-title as a bona fide purchaser for value is, however, subject to two distinct prescription periods commencing on the date on which the title to the real estate vested in him:

- The first, after a period of three years, limits his/her liability to the price he/she paid for the real estate.
- The second, after a period of twenty years, extinguishes his/her liability absolutely.

Further, a successor-in-title to real estate acquired by the debtor after the date of registration of a bond is not held to be on notice and is not subject to the rule that would otherwise make him a guarantor.

Finally, the bond is subject to a prescription period of six years from the date on which the claim falls due. After that period, the creditor cannot rely on the bond to enforce his/her claim. For an on-demand bond, the six years run from the date on which demand is made. However, for a bond in which periodic payments are payable with effect from the time of the advance, each payment interrupts the running of the prescription period.

Formalities

A bond must be:

- In writing.
- Consented to by the debtor before the Royal Court of Guernsey sitting as the Contract Court.

No document (other than a testamentary disposition) consented to before the Contract Court requires signing by the parties, though this is now more frequently required by a creditor.

Following ratification by the Contract Court, the bond is assessed for document duty and Contract Court and registration fees (*see Question 27*). Following payment of the document duty and fees, the bond is registered in the Greffe (the registry of the Royal Court), and is available for public inspection to anyone wishing to conduct a search against the debtor.

Tangible movable property

3. What is considered tangible movable property in your jurisdiction? What are the most common forms of security granted over it? How are they created and perfected?

Tangible movable property

Movable property is defined as those things which follow or are associated with the person, the body of which is capable of being moved from one place to another, whether of itself (for example, a horse), or whether it is incapable of changing place without an external force (for example, gold and other inanimate objects).

Common forms of security

Security over tangible movable property in Guernsey can generally only be taken by way of actual possession of the property in question under a pledge.

Separate regimes apply to the taking of security over Guernsey registered aircraft assets (taken by way of charge) and over Guernsey registered ships (taken by way of mortgage).

Formalities

For a pledge to constitute valid security, giving the lender priority in relation to the pledged assets, the following three conditions must be satisfied:

- The lender must have possession of the subject matter of the pledge (physical possession of the pledged property).
- The pledged goods must have been given to the pledgee on terms that the pledgee should have possession of such goods as security for the debt in question.
- The contract must be brought into existence by a notarial act rather than through a simple private agreement.

For a charge over Guernsey registered aircraft assets, the charge must be in writing and must be registered in the charges register maintained by the Aircraft Registrar under the Aviation Registry (Guernsey) Law, 2013 (as amended). It is also possible to register a notice of intention to make an application to register a charge over Guernsey registered aircraft assets.

For a mortgage over a Guernsey registered ship, the mortgage must be in the form prescribed by the registrar and must be registered in accordance with the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (as amended). It is also possible to register an intention to mortgage a Guernsey registered ship.

Financial instruments

4. What are the most common types of financial instrument over which security is granted in your jurisdiction? What are the most common forms of security granted over those instruments? How are they created and perfected?

Financial instruments

The types of financial instrument over which security is commonly taken under Guernsey law include:

- Shares issued by Guernsey companies.
- Limited partner interests in Guernsey limited partnerships.
- Units in Guernsey unit trusts.

Common forms of security

The following two methods are available for creating security over financial instruments such as shares and other securities (*Security Interests (Guernsey) Law 1993*(Security Interests Law)):

- **Security by way of possession.** This is where the secured party (or some person on his/her behalf other than the debtor or someone on the debtor's behalf) has possession under a security agreement of the certificates of title to those securities.
- **Security by way of title.** This can be used for any intangible movable property other than a lease of land or buildings.

Priority between security interests in the same collateral is determined by the order of creation of those security interests.

Formalities

For both security by way of possession and security by way of title, a security agreement is required. A security agreement must (*Security Interests Law*):

- Be in writing.
- Be dated.
- Identify and be signed by the debtor.
- Identify the secured party.
- Contain provisions concerning the collateral sufficient to enable its precise identification at any time.
- Specify the events that are to constitute events of default.
- Contain provisions regarding the obligation that is the subject of the security, sufficient to enable it to be identified.

Subject to the above, the security agreement can be in the form, and can contain or refer to matters, as agreed between the parties.

For security by way of possession, the secured party must have possession of the certificates of title to the securities pursuant to a security agreement.

For security by way of title, the secured party (or some person on his/her behalf other than the debtor or some person on behalf of the debtor) must have title to the securities pursuant to a security agreement, and where that title is acquired, by way of assignment, notice of the assignment must be given to the person from whom the assignor would have been entitled to claim the collateral.

The assignment of title to shares in a Guernsey company is perfected on registration of the secured party as the holder of those shares in the company's register of members.

Claims and receivables

5. What are the most common types of claims and receivables over which security is granted in your jurisdiction? What are the most common forms of security granted over claims and receivables? How are they created and perfected?

Claims and receivables

It is common in Guernsey for security to be taken over:

- Life assurance policies.
- Bank accounts.
- Other contract rights including those arising under custodian agreements.

Common forms of security

A security interest in a life assurance policy is created under the (Guernsey) Law 1993 (Security Interests Law) where the secured party (or some person other than the debtor or some person on behalf of the debtor) has possession under a security agreement of that policy.

A security interest in a bank account is created where all of the following apply (*Security Interests Law*):

- The bank that holds that account for its customer is the secured party.
- That bank has control of the account under a security agreement.
- The customer and the debtor are one and the same person.

A security interest is created whether or not the debtor or any other person has rights specified in the security agreement (to receive interest or otherwise) in relation to the account.

A security interest in any intangible movable property other than a lease of any land or buildings can also be created by way of title, usually by means of assignment (*Security Interests Law*) (see *Question 4, Common forms of security*).

Priority between security interests in the same collateral is determined by the order of creation of those security interests.

Formalities

See *Question 4, Formalities*.

Subject to the requirements of the Security Interests Law, the security agreement can be in the form and can contain or refer to the matters as agreed between the parties.

For security:

- By way of possession of a policy of life assurance, the secured party must have possession of the policy in question.
- Over a bank account, the bank that holds the account for its customer must have control of that account.
- In any claims or receivables, the secured party must acquire title to the claims or receivables and where that title is acquired by way of assignment, give notice of such assignment (see *Question 4, Formalities*).

There is no public register of security interests in Guernsey.

Cash deposits

6. What are the most common forms of security over cash deposits? How are they created and perfected?

Security over cash deposits is generally achieved by taking security over the bank account in which the cash is held. This can be done by way of assignment of third party bank accounts or where the bank holding the account is the secured party and the customer and the debtor are the same person, by the bank having control of the account pursuant to a security agreement.

Formalities

See *Question 4, Formalities* for the rules relating to the creation of security by way of assignment of a third party bank account.

See *Question 5, Formalities* for the rules relating to the creation of security in a bank account where the bank holding the account is the secured party and the customer and the debtor are the same person.

Intellectual property

7. What are the most common types of intellectual property over which security is granted in your jurisdiction? What are the most common forms of security granted over intellectual property? How are they created and perfected?

Intellectual property

There are a wide range of intellectual property rights for which protection is given under Guernsey law and over which security can be taken. Intellectual property registers that are maintained in Guernsey include:

- Trade marks.
- Designs.
- Plant variety rights.
- Patent and biotechnological inventions.

Copyright, database rights and performance rights also exist in Guernsey and can be taken as security.

ONLINE RESOURCES

Guernsey Legal Resources

W www.guernseylegalresources.gg

Description. Guernsey Legal Resources is a joint initiative of the Royal Court of Guernsey and the Law Officers of the Crown. The website provides a comprehensive collection and database of Guernsey's recent legal material as well as legislation and judgments from earlier years.

Common forms of security

Intellectual property is classed as intangible movable property. A security interest in any intangible movable property other than a lease of any land or buildings is created by way of title, usually by an assignment (*Security Interests (Guernsey) Law 1993 (Security Interests Law)*) (see *Question 4, Common forms of security*).

Formalities

See *Question 4, Formalities*.

Subject to the requirements of the Security Interests Law, the security agreement can be in the form and can contain or refer to the matters as agreed between the parties.

For security in any intellectual property by way of title where that title is acquired by way of assignment, the secured party must give notice of such assignment (see *Question 4, Formalities*).

Until an application to register an assignment of title of a Guernsey registered trade mark is made to the Registrar of Intellectual Property in Guernsey, the assignment is ineffective against a person acquiring a conflicting interest in or under the registered trade mark in ignorance of it (*Trade Mark (Bailiwick of Guernsey) Ordinance, 2006 (as amended)*).

Any person who acquires title to a registered patent by way of assignment is entitled against any other person who claims to have acquired that patent by virtue of an earlier assignment if, at the time of the later assignment (*Registered Patents and Biotechnological Inventions (Bailiwick of Guernsey) Ordinance, 2009 (as amended)*):

- The earlier assignment or event was not registered with the Registrar of Intellectual Property.
- The person claiming under the later transaction did not know of the earlier assignment.

For a secured party to ensure its priority in relation to patents and trade marks, the assignment of title through the security agreement must be registered with the Registrar of Intellectual Property in Guernsey.

Problem assets

8. Are there types of assets over which security cannot be granted or can only be granted with difficulty? Which assets are difficult or problematic when security is granted over them?

Future assets

Although real estate in Guernsey not yet owned by a debtor can be held and alienated without the consent of a creditor or to the prejudice of third parties, real estate falls into the hands of a creditor at the time of any enforcement proceedings. A bond generally states that it covers all real estate present and future belonging to the debtor. This is to ensure that the consent of the debtor given to the Contract Court is a full and informed consent of the extent of his/her pledge and the risk to the entire body of his/her assets in enforcement proceedings.

Security over tangible movable property must be taken by way of pledge. Security can be taken over future tangible movable property; however, the secured party must take possession of that future property.

Security can be taken over future intangible movable property provided that the security is taken under the Security Interests (Guernsey) Law 1993 (Security Interests Law) and provided that the security agreement, among other matters, contains provisions concerning the collateral sufficient to enable its precise identification at any time.

Fungible assets

The laws of Guernsey do not recognise security over real or movable property by way of floating charge. A floating charge is not valid and enforceable in relation to real property situated in Guernsey and is not held to be valid and enforceable by the Royal Court in relation to other property situated in Guernsey. This includes any bank accounts maintained in Guernsey or other movable property, whether tangible or intangible, which is situated in Guernsey. The question of where assets are situated (*lex situs*) is determined by the Royal Court in accordance with the principles of private international law. These are broadly similar to principles applied by the courts of England and Wales, but (for example) Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I) is not part of Guernsey law.

Any security interest taken over a fluctuating pool of assets under Guernsey law is likely to take effect as a floating charge and is of no effect.

Other assets

As the law of Guernsey does not recognise a lease of real property as creating any interest in real estate, it is not possible to take security in Guernsey over a lease, irrespective of the length of the term.

The laws of Guernsey do not recognise security over real or movable property by way of floating charge (see *above, Fungible assets*).

RELEASE OF SECURITY OVER ASSETS

9. How are common forms of security released? Are any formalities required?

Subject to the security agreement, on the discharge, payment or other performance of the secured obligation, the secured party must (*Security Interests (Guernsey) Law 1993 (Security Interests Law)*):

- Give the debtor a certificate of discharge.
- Transfer to the debtor one of the following (where applicable):
 - possession of the documents of title to the collateral;
 - control of the bank account;
 - title to any collateral assigned by way of security.

SPECIAL PURPOSE VEHICLES (SPVS) IN SECURED LENDING

10. Is it common in your jurisdiction to take security over the shares of an SPV set up to hold certain of the borrower's assets, rather than to take direct security over those assets?

If the SPV is incorporated in Guernsey then it is common to take security over the shares of the SPV irrespective of whether security is taken over the underlying assets or not.

Security over shares in a Guernsey company must be taken through either possession under a security agreement of the certificates of title to the shares of the SPV, or acquiring title to the shares of the SPV through assignment (*Security Interests (Guernsey) Law 1993 (Security Interests Law)*) (see Question 4, *Common forms of security*).

QUASI-SECURITY

11. What types of quasi-security structures are common in your jurisdiction? Is there a risk of such structures being recharacterised as a security interest?

Certain financing structures involving the sale and leaseback of securities, factoring, hire purchase, retention of title, negative pledges and other structures involving the transfer of ownership of securities are all common in Guernsey but are generally regulated by the laws of a jurisdiction other than Guernsey.

These structures should not be characterised as security in Guernsey if the applicable governing law would not characterise them in this way. However, as the applicable conflict of law rule in relation to recharacterisation is not entirely clear, the recharacterisation risk under the law of the place where the structure is located (*lex situs*) should also be considered. If Guernsey law is relevant because the eligible credit support is located in Guernsey, the English authorities would be considered as persuasive. Therefore, provided that the arrangement is not a sham, the Guernsey court respects the parties' intention as to the form of the transaction.

GUARANTEES

12. Are guarantees commonly used in your jurisdiction? How are they created?

Guarantees are commonly used in Guernsey.

A guarantee arises under an agreement between guarantor and lender under which the guarantor agrees to guarantee the performance of an obligation to pay by the principal debtor.

A guarantor can resist a call to pay the guaranteed amount under two customary law defences:

- **Droit de division.** This is a substantive defence that applies where there is more than one guarantor of a Guernsey guarantee. The guarantor has the right to defend an action for the recovery of the debt against the principal debtor on the basis that, unless the other guarantor(s) is joined, his/her liability is limited to his/her pro rata share of the guarantee.
- **Droit de discussion.** This allows the Guernsey guarantor a procedural defence in an action for the recovery of the guaranteed debt. The guarantor can claim that the creditor must first exhaust all his/her remedies or rights against the principal debtor before bringing his/her claim against the guarantor.

It is common for the lender to require the Guernsey guarantor to waive his/her rights under these two customary law defences.

RISK AREAS FOR LENDERS

13. Do any laws affect the validity of a loan, security or guarantee (or the terms on which they are made or agreed)?

Financial assistance

Financial assistance is lawful in Guernsey provided that the directors of the Guernsey company giving the financial assistance certify, among other things, that the Guernsey company will, immediately after giving the financial assistance, satisfy the solvency test prescribed by the Companies (Guernsey) Law 2008 (as amended) (Companies Law).

Corporate benefit

The directors of a Guernsey company providing a guarantee or security interest must ensure that any proposed transaction is in the best interests of the company as a whole. Guarantees and other security arrangements may be construed as not being in the best interests of a company (and not for the company's corporate benefit) if the granting company receives no commercial benefit from the underlying financing arrangements. In these circumstances:

- A Guernsey court may, in certain circumstances if the beneficiary of the guarantee or security interest is viewed as a constructive trustee, hold that the guarantee or applicable security interests be set aside as a breach by the directors of their fiduciary duty to act in the company's best interests.
- A shareholder, creditor or liquidator of the granting company can bring an action against the company to have the guarantee or applicable security interest set aside as a breach by the directors of their fiduciary duty to act in the company's best interests.

If the guarantee or security interest is upstream (that is, subsidiary to parent) or cross-stream (that is, to an affiliate), secured parties usually seek approval of the granting company's shareholders before entry into this type of transaction. This should avoid a shareholder subsequently challenging the validity of the transaction. However, this may not eliminate the risk of challenge by other parties, or if the company is insolvent or threatened by insolvency.

Loans to directors

A Guernsey company is not restricted by Guernsey law from making or guaranteeing a loan to its directors or to directors of a related company except if these restrictions appear in the articles of incorporation of that company.

A director of a Guernsey company must disclose to the board of directors of that company the nature and extent of his/her interest in the transaction.

This includes the making or guaranteeing of a loan by the company to that director.

A transaction entered into by a Guernsey company in which a director is interested is voidable by the company at any time within three months after the date the transaction is disclosed to the company's board of directors unless any of the following apply:

- The director's interest was disclosed to the board by the director immediately after he/she became aware of the fact that he/she was interested.
- The transaction is ratified by the members of the company.
- The company received fair value for the transaction.

If a transaction is entered into by the company in the ordinary course of its business and on usual terms and conditions then the company is presumed to receive fair value under the transaction.

Usury

There is no legislation that sets out rules as to usury which would apply to a corporate debtor.

Others

In certain circumstances, transactions can be set aside as preferences under the Companies Law.

14. Can a lender be liable under environmental laws for the actions of a borrower, security provider or guarantor?

There are no environmental laws that impose liability specifically on holders of security interests in land. However, there are circumstances in which secured parties could be exposed to liability, for breaches of Guernsey's planning control laws, as successor-in-title to the land following enforcement of the security.

STRUCTURING THE PRIORITY OF DEBTS

15. What methods of subordination are there?

Contractual subordination

Contractual subordination is both possible and common under Guernsey law and is usually achieved by entering into either:

- A subordination agreement, under which a creditor or a group of creditors agrees to rank behind other debts of a company.
- An inter-creditor agreement, under which the different classes of creditor agree the priority of their respective claims against the company.

An agreement between the company and any of its creditors as to the subordination of the debts due to that creditor to the debts due to the company's other creditors is recognised in the liquidation of a Guernsey company (*section 419(1)(c), Companies Law*).

Structural subordination

Structural subordination is possible and common under Guernsey law. A lender to a Guernsey subsidiary company will have structural priority over a lender to the Guernsey parent company of that subsidiary.

Inter-creditor arrangements

See above, *Contractual subordination*.

DEBT TRADING AND TRANSFER MECHANISMS

16. Is debt traded in your jurisdiction and what transfer mechanisms are used? How do buyers ensure that they obtain the benefit of the security and guarantees associated with the transferred debt?

The on-sale of a loan and the sale of one or more participations in a loan to a Guernsey company are relatively common. However, these arrangements are usually regulated by the laws of a foreign jurisdiction. Any sale or participation is usually regulated by the same law as that of the underlying loan agreement.

The following analysis applies if the governing law is Guernsey law.

On-sale

If a loan is sold, the incoming lender steps into the outgoing lender's shoes under a novation agreement that is entered into by the lenders and the borrower. The novation agreement provides that the outgoing lender is released from its obligations and liabilities under the loan agreement and the incoming lender assumes these obligations and liabilities, each from a specified effective date (usually the date of the execution of the novation agreement).

Any related security interests either:

- Be assigned to the incoming lender (if permitted by the security documents). Notice of the assignment must be given to all relevant persons, [##including] the person from whom the assignor [##(that is, the outgoing lender)] could have been entitled to claim the collateral secured.
- Be released with new security being granted in favour of the new lender.

Participation

In a participation structure, the lender of record in a loan arrangement is able to transfer the risk associated with a loan to a third party. Participations can be either:

- Funded (where the sub-participant reimburses the lender of record for its agreed participation in the loan (and any related costs, expenses and indemnity payments)).

- Risk based (where the sub-participant agrees only to reimburse the lender of record for a certain percentage of any monies not paid by the borrower under the loan agreement).

The security interests granted to the lender of record in any participated structure remain unaffected.

AGENT AND TRUST CONCEPTS

17. Is the agent concept (such as a facility agent under a syndicated loan) recognised in your jurisdiction?

The agent concept (such as a facility agent under a syndicated loan) is recognised in Guernsey.

18. Is the trust concept recognised in your jurisdiction?

The trust concept (such as a security trustee holding security on behalf of two or more creditors) is recognised in Guernsey.

ENFORCEMENT OF SECURITY INTERESTS AND BORROWER INSOLVENCY

19. What are the circumstances in which a lender can enforce its loan, guarantee or security interest? What requirements must the lender comply with?

The transaction documents in each secured lending transaction set out the basis on which the secured party can enforce its security. These provisions reflect the commercial agreement between the secured party and the debtor, and can provide for a remedy or a grace period.

Each security agreement must specify the events that are to constitute events of default (*Security Interests (Guernsey) Law 1993 (Security Interests Law)*).

A power of sale or application of the collateral will arise when an event of default occurs. However, this power cannot be exercised unless the secured party has served on the debtor a notice specifying the particular event of default complained of.

The security agreement can (but need not) provide that the power of sale or application is only exercised on the authority of an order of the Royal Court. In these circumstances, the Royal Court grants an order on being satisfied that the power of sale or application has arisen and has become enforceable under the Security Interests Law.

Methods of enforcement

20. How are the main types of security interest usually enforced? What requirements must a lender comply with?

Security over immovable property

The enforcement procedure of *saisie* is the means by which a judgment creditor (whether secured or unsecured) pursues monies due to

that creditor from a debtor owning real estate in Guernsey. The *saisie* procedure enables the creditor to have the debtor's real estate vested in him to his/her satisfaction and is substantially contained in the Saisie Procedure (Simplification) (Bailiwick) Order 1952, as amended.

The procedure involves three stages that can be completed within a minimum time frame of six months:

- **Preliminary vesting order (PVO).** Under a PVO a judgment creditor can evict, let or carry out repairs to the debtor's property. If there is a tenant then the judgment creditor could require that the rent paid by the tenant be paid to the creditor or that the judgment debtor in occupation pay a rent to the judgment creditor. These rights are exercisable only after notice in writing by Her Majesty's Sheriff of the PVO is served on the debtor.
- At this stage the creditor does not have any obligations to other creditors who may exist. The creditor can apply any rent he/she receives in reduction of his/her judgment debt but ownership of the real estate at this stage is still vested in the debtor who may sell its real estate, provided it can either:
 - repay the creditor and any other secured creditors out of the proceeds of the sale;
 - come up with an arrangement with the other creditors whereby they cancel or release their charges secured against the real estate.
- **Interim vesting order (IVO).** On the making of an IVO, the judgment creditor holds the real estate on trust for all creditors of the debtor. The judgment creditor opens a register and all persons who are owed money by the debtor and wish to participate in the *saisie* have the opportunity to enrol their names in that register together with the sums due to them. Those creditors who have enrolled are then marshalled in order of priority. The creditor with priority over all other enrolled claimants will be the first holder in date order of any registered claim (such as a bond) against the debtor's real estate. Subsequently, registered claims rank in order of the date of registration and other unsecured judgment creditors rank in order of the date of their judgment.
- **Final vesting order (FVO).** All creditors who appear on the marshalled list are summoned before the court before making the FVO. At this stage, each creditor is asked by the court in reverse order of priority to confirm whether the creditor wishes to take the property, subject to paying all those creditors who appear above that creditor in the list, or whether that creditor wishes to renounce its claim in its entirety. The first-registered creditor is therefore guaranteed either the:
 - payment of the debt due to that creditor and appearing on the marshalled list;
 - vesting of the real estate in that creditor free from all other debts.
- Following a vesting of the real estate under an FVO, the real estate is the property of that creditor. All other rights of the creditor against the debtor under the claim are extinguished, although the real estate may not, on re-sale, be equivalent to the total amount of the claim. The debtor is not entitled to any surplus, as the debtor has renounced its rights to its real estate in satisfaction of all claims registered in the *saisie* proceedings.

Security over intangible movable property

The rights of a secured creditor on the enforcement of the security interest over intangible movable property should be described in the transaction documents giving rise to the security interest.

The Security Interests (Guernsey) Law 1993 (Security Interests Law) allows for a power of sale or application of the collateral to arise when an event of default occurs, provided that a notice specifying the particular event of default complained of has been served on the debtor.

On a sale or application of the collateral, the secured party must take all reasonable steps to ensure that the sale or application is made within a reasonable time and for a price corresponding to the value on the open market at the time of the sale of the collateral being sold, or where there is no open market, the best price reasonably obtainable. The proceeds of the sale or application must be applied by the secured party in the following order:

- In payment of the costs and expenses of the sale.
- In discharge of any prior security interest.
- In discharge of all monies properly due in relation to the obligations secured by the security agreement.
- In payment, in due order of priority, of secured parties whose security interests were created after his/her own, and on whose behalf (as well as on his/her own behalf) he/she was, immediately before exercising his/her power of sale or application, holding possession of documents or exercising control of collateral (whether by himself or through some other person on his/her behalf).
- The balance (if any) in payment to either:
 - the debtor;
 - where the debtor has become insolvent or been subject to any other judicial arrangement consequent on insolvency, to HM Sheriff or other proper person.

Rescue, reorganisation and insolvency

21. Are company rescue or reorganisation procedures (outside of insolvency proceedings) available in your jurisdiction? How do they affect a lender's rights to enforce its loan, guarantee or security?

Administration

A Guernsey company can be made the subject of an administration order under the Companies Law for the purposes of achieving either:

- The survival of the company and the whole or any part of its undertaking as a going concern.
- A more advantageous realisation of the company's assets than would be effected on a winding-up.

An application for an administration order can be made by, among others:

- The company.
- The company directors.
- Any company member.
- Any company creditor (including any contingent or prospective creditor of the company).

The Royal Court can make an administration order if it is satisfied that the company does not satisfy or is unlikely to be able to satisfy the solvency test and if the making of the order would achieve one or more of the purposes described above.

During the period between the making of an application for an administration order and the making of that order and while that order is in force:

- No resolution can be passed or order made for the winding-up of the company.
- No proceedings can be commenced or continued against the company except with the leave of the Royal Court and subject to such terms and conditions it may impose.

Rights of set-off and secured interests (including security interests under the Security Interests Law) and rights of enforcement of secured interests are unaffected by an application for, or the granting of, an administration order.

Arrangements and reconstructions

Where a compromise or arrangement is proposed between a Guernsey company and its creditors, the Royal Court can order a meeting of the creditors to be summoned. The application for an order can be made by, among others:

- The company.
- Any company creditor.
- Any company member.

If a majority in number representing 75% of the creditors agree to the compromise or arrangement then the Royal Court can sanction the compromise or arrangement. If the sanction is given then the compromise or arrangement is binding on all creditors and the company, among others.

While a creditor can have an arrangement or compromise imposed on him, the sanctioning of the arrangement or compromise by the Royal Court does not affect the enforcement of security rights.

22. How does the start of insolvency procedures affect a lender's rights to enforce its loan, guarantee or security?

Insolvency procedures do not generally affect a secured creditor's right to enforce its security.

However, special considerations apply to security over shares in a Guernsey company. If the secured party or its nominee is not registered as the holder of the shares, the secured party's priority is preserved when any insolvency proceedings begin in Guernsey against the debtor. However, title to the shares may (if Guernsey law applies), vest in the relevant insolvency officer for the purposes of realisation of those shares.

Where a security interest is created in the shares of a Guernsey company (including registration of the secured party or its nominee as registered holder of the shares), the Royal Court has the power in *désastre* (see below) proceedings to:

- Vest the rights of the secured party in the arresting creditor.
- Direct that the shares and other collateral secured by the security agreement be sold or applied by HM Sheriff.

Désastre is a Guernsey procedure where either a company's or an individual's movable property is seized by HM Sheriff subsequent to a judgment against that party. The arresting creditor seeks the leave of the court to sell the movable property to satisfy the debt. At this stage the creditors prove in the *désastre* and a dividend is declared on the realisation of the movable property. A dividend on *désastre* does not absolve the remainder of the debt. In addition, there are no special powers to question the debtor or to discover where his/her movable property is.

23. What transactions involving loans, guarantees, or security interests can be made void if the borrower, guarantor or security provider becomes insolvent?

The Companies Law contains provisions that can affect the rights of a creditor of a Guernsey company on the insolvency of that company.

If a Guernsey company has given a preference to any person, the company liquidator can apply to the court for an order to restore the company to the position it would have been in had the preference not been given, at any time after the commencement of a period of six months (or two years where the person giving the preference is connected) immediately preceding the earlier of:

- The making of an application to compulsorily wind-up the company.
- The passing of a resolution for the voluntary winding-up of the company.

A Guernsey company gives a preference to a person if either:

- That person is one of the company's creditors or is a surety or guarantor for any of the company's debts or other liabilities.
- The company does anything, or permits anything to be done, which improves that person's position in the company's liquidation.

To grant an order the court must be of the opinion that the company was both:

- Unable to pay its debts at the time of the giving of the preference.
- Influenced in deciding to give the preference by a desire to improve the person receiving the preference's position in the company's liquidation.

24. In what order are creditors paid on the borrower's insolvency?

On a Guernsey company's winding-up, the company's assets are realised and applied in satisfaction of the company's debts and liabilities *pari passu* (that is, proportionally). Any surplus is then distributed (subject to the company's articles of incorporation) to the members of the company.

This general rule is subject to any rule of law as to preferential payments, any agreements between the company and any creditor as to subordination, and any agreement between the company and any creditor as to set-off.

The Preferred Debts (Guernsey) Law 1983 (as amended) ranks classes of debt that are paid in priority to all other debts in insolvency proceedings. These include:

- Any rents owing to a landlord by his/her tenant secured by goods subject to tacit hypothecation (*see Question 2, Common forms of security*).
- Tax payable to the Guernsey authorities on a Guernsey employee's wages.
- A proportion of an employee's wages.
- Holiday pay.
- Unpaid income tax.
- Unpaid social security contributions.
- The costs of the liquidator in a winding-up.

Creditors with security interests are entitled to enforce their security interest outside of the insolvency of the company, and therefore their claims are satisfied in priority to other claims.

If the secured party or its nominee is not registered as the holder of the collateral the secured party's priority will be preserved when any insolvency proceedings begin in Guernsey against the debtor. However, if Guernsey law applies, title to the collateral may vest in the relevant insolvency officer for the purposes of realisation of the collateral.

Where a security interest is created in the collateral (including registration of the secured party or its nominee as registered holder of the collateral), the Royal Court has the power in *désastre* proceedings (*see Question 22*) to vest the rights of the secured party in the arresting creditor and direct that the collateral secured by the security agreement is sold or applied by HM Sheriff in the following order:

- Payment of the costs and expenses of the sale.
- Discharge of any prior security interest.
- Discharge of all monies properly due to the secured party.
- Payment, in priority order, of any other secured parties.
- If any balance remains, payment to the debtor or other appropriate person in the event of the debtor's insolvency.

In relation to security over real estate, the first in time of registration prevails. Bonds registered on the same day have equal priority.

In relation to security over intangible movable property, priority between security interests in the same collateral is determined by the order of creation of those security interests (*Security Interests Law*).

CROSS-BORDER ISSUES ON LOANS

25. Are there restrictions on the making of loans by foreign lenders or granting security (over all forms of property) or guarantees to foreign lenders?

There are no restrictions on the making of loans by foreign lenders or granting security or guarantees to foreign lenders.

26. Are there exchange controls that restrict payments to a foreign lender under a security document, guarantee or loan agreement?

There is no exchange control legislation in Guernsey.

TAXES AND FEES ON LOANS, GUARANTEES AND SECURITY INTERESTS

27. Are taxes or fees paid on the granting and enforcement of a loan, guarantee or security interest?

Documentary taxes

Except for document duty of 0.5% of the amount secured by a bond or a guarantee over real estate, there are no stamp duties or similar taxes payable on the granting and enforcement of a loan, guarantee or security interest.

Registration fees

Court and registration fees are payable on the grant and registration of any document charging real estate and may be payable on the enforcement of any document in Guernsey.

Notaries' fees

Notarial fees are generally charged on a time-spent basis at a rate equal to the rate that the notary in question charges when acting as an Advocate of the Royal Court of Guernsey.

28. Are there strategies to minimise the costs of taxes and fees on the granting and enforcement of a loan, guarantee or security interest?

There is no mechanism through which the document duty of 0.5% of the amount secured by a bond or guarantee over real estate can be minimised.

REFORM

29. Are there any proposals for reform?

A number of reform initiatives have been announced, including in relation to insolvency law. The Guernsey Commerce and Employment Department has published a consultation paper to reform Guernsey's insolvency law regime.

There are currently no time frames for the issue of any draft legislation arising from the review.

Contributor Profiles



Ben Morgan

Carey Olsen

T +44 1481 741557

F +44 1481 739057

E ben.morgan@careyolsen.com

W careyolsen.com

Professional qualifications. England, Solicitor, 1992; Guernsey, Solicitor, 2003

Areas of practice. Corporate; finance; advising numerous UK law firms and financial institutions, particularly in relation to real estate finance and banking transactions.

Lending and taking security in Jersey: overview

Robin Smith, Robert Milner, Peter German and Kate Andrews
Carey Olsen

global.practicallaw.com/1-504-3621

OVERVIEW OF THE LENDING MARKET

1. What have been the main trends and important developments in the lending market in your jurisdiction in the last 12 months?

Market overview

2016 saw an increase in the provision of third-party financing to private equity funds. Instructions in relation to the financing and establishment of new corporate real estate structures remained consistent. These factors, combined with continued restructuring and refinancing, show the diverse nature of the market at present. There is significant work on both the origination and restructuring of loans.

Jersey is already home to a large number of investment holding structures holding UK real estate and 2016 saw an increase in instructions from Middle Eastern, South East Asian and Gulf Region clients using Jersey structures to invest into the UK. The use of Jersey companies in structures targeting or financing investments in other jurisdictions, such as Germany, France and North America, remains steady.

The peer-to-peer finance market, which has become more popular over the past few years, remained strong and steady during 2016.

The Jersey company remains a popular choice as either the issuer or investment holding vehicle and there continues to be a significant number of joint venture financing transactions, often with a Eurobond element.

Jersey security law

The Security Interests (Jersey) Law 2012 (SIJL 2012) has:

- Allowed security to be created in respect of all Jersey situs intangible movable assets of a company.
- Introduced a registration regime.
- Created a new regime for the assignment of receivables.

SIJL 2012 allows flexibility in relation to the methods of taking and perfecting security and affords secured creditors greater enforcement rights including appropriation and step-in.

It is now only possible to take security in accordance with the provisions of SIJL 2012. However, security interests created pursuant to the previous legislation, the Security Interests (Jersey) Law 1983 (SIJL 1983) continue to be governed by SIL 1983 security interests created before SIJL 2012 came into force. Therefore, there is a "dual" security regime in Jersey.

There is a requirement to replace existing SIJL 1983 security with SIJL 2012 security where new collateral is introduced that is not provided for in the existing security interest agreement, and it may also be necessary to replace such security with SIJL 2012 security where changes are made to the secured obligations (much depending on how large the additional obligations are, absolutely and relatively).

FORMS OF SECURITY OVER ASSETS

Real estate

2. What is considered real estate in your jurisdiction? What are the most common forms of security granted over it? How are they created and perfected (that is, made valid and enforceable)?

Real estate

Property is classed as either movable (*meubles*) or immovable (*immeubles*). Real estate is immovable property comprising land and everything attached to it.

The four main types of interest in real estate are:

- **Freehold.** The most common form of property ownership, where the property owner holds the land in perpetuity.
- **Flying freehold.** Individual parts of a property are sold for exclusive ownership (for example, flats).
- **Leases.** These are:
 - paper leases, which have a term of nine years or fewer and which are a private agreement between the landlord and the tenant; or
 - contract leases, which have a term of more than nine years and must be contracted before the Royal Court of Jersey to be legally valid and binding. These are publicly recorded.
- **Share transfer.** Share transfer structures were established as a method of dividing a property into multiple units or parts. Under these structures a Jersey holding company owns a property's freehold. That company's shares have various rights attached to them under the constitutional documents of the company. A particular numbered block of shares usually provides the shareholder with rights of exclusive use and occupation of a particular flat or unit at the property.

Common forms of security

There are two main forms of security for real estate:

- **Hypothecs.** A hypothec is a charge which can attach to freehold and flying freehold properties. Paper leases cannot be hypothecated, while contract leases can be hypothecated if the lease terms expressly permit it. Hypothecs can be specific (that is, over one property) or general (that is, attaching to all real estate that the borrower owns at the date of registration). There are two common types of hypothec:
 - **judicial hypothec.** This involves obtaining a judgment acknowledging a borrowing (in the form of, for example, a bond or promissory note). Once obtained, the acknowledgement must be registered in the public registry;
 - **conventional hypothec.** This where the terms of the borrowing to be secured must be set out in a contract between the lender and borrower. The contract is passed before the Royal Court of Jersey and registered in the public registry.
- **Share security.** In relation to share transfer properties, lenders require security in the shares of the company which owns the property. Such share security is created under the Security Interests (Jersey) Law 2012 (SIJL 2012) (see *Question 4*).

Other security a lender may consider taking in connection with loans secured against immovable property are:

- **Security interest over lease receivables.** If a property is subject to a lease, it is common for a lender to take security under SIJL 2012 over the lease receivables (for example, rents and deposits) as security for advances to the landlord (see *Question 5*).
- **Security interest over contract rights.** If the property has recently been developed or is in the course of development, a lender may require a security interest over the rights in the major building contracts (see *Question 5*).

Formalities

The formalities for creating the common forms of hypothec are as follows:

- **Judicial hypothec.** To create a judicial hypothec over Jersey real estate, a borrower will sign a billet (charge document) acknowledging indebtedness in a defined sum, which is typically the amount of the loan. The lender's lawyers then register the billet before the Royal Court of Jersey. The registration of this document creates the hypothec, which can be over all the real estate of the borrower or over a specific property described in the billet. The billet is merely an acknowledgement of indebtedness and does not set out the terms of the borrowing in full.
- **Conventional hypothec.** The terms of the borrowing are set out in the contract establishing the simple conventional hypothec, which must be registered before the Royal Court of Jersey and which is available for public inspection. This form of charge may therefore be unattractive for commercial or complex lending.

See *Question 4* for details of the creation of security over the shares of a Jersey registered company.

Tangible movable property

3. What is considered tangible movable property in your jurisdiction? What are the most common forms of security granted over it? How are they created and perfected?

Tangible movable property

Tangible movable property includes plant, machinery, cars, paintings, gold bullion and antiques.

Common forms of security

Other than in relation to ships, 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.

Formalities

The security is created by the delivery of the tangible movable property by or with the grantor's consent.

Financial instruments

4. What are the most common types of financial instrument over which security is granted in your jurisdiction? What are the most common forms of security granted over those instruments? How are they created and perfected?

Financial instruments

The financial instruments over which security is most commonly created in Jersey are:

- Shares.
- Units in a unit trust.
- Other debt securities.

A security interest can be created over any intangible movable property (other than a lease) which is situated in Jersey. This includes both directly held financial instruments (for example, shares in Jersey companies and unit trusts) and indirectly held financial instruments (for example, securities held in a securities account with a custodian in Jersey).

Common forms of security

Security over intangible movable property situated in Jersey is created under the Security Interests (Jersey) Law 2012 (SIJL 2012). 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. It does not matter to whom value is given or from whom the value arises.

- 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 SIJL 2012.
- 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. Even where there is no agreement in writing, there must still be a "security agreement".

Perfection of a security interest is necessary to provide priority and gives protection against third parties, which is particularly important in insolvency. The method of attachment and perfection will depend on the type of collateral secured. In relation to financial instruments, attachment and perfection are achieved in the following ways:

Control. In the case of:

- Certificated securities, attachment and perfection are achieved by the secured party either:
 - being registered as the holder of the securities; or
 - having possession of the certificate representing the securities.
- A securities account held with a custodian, attachment and perfection is achieved by:
 - the transfer of the account into the name of the secured party with written agreement of the grantor and custodian;
 - the custodian agreeing to comply with the instructions of the secured party directing the disposition of the securities; or
 - the custodian being the secured party.

Possession. In the case of negotiable instruments, attachment and perfection are achieved by the secured party having possession of the relevant instrument.

Registration. Security can also be perfected by registration, where a "financing statement" in respect of such security is registered at the Jersey registry maintained under SIJL 2012 (Security Interests Registry).

Security interests perfected by possession or control will have priority over security interests perfected by registration only (*see Question 23*). It is therefore advisable to perfect by possession or control where possible, but it is usual for a security interest to be perfected by registration also.

Formalities

A financing statement that is registered at the Security Interests Registry contains the details of, among other things, the:

- Secured party.
- Grantor.
- Collateral.
- Duration of registration.

A financing statement can be registered in advance. The secured party should obtain the grantor's prior consent to the registration and its contents.

Before a registration, a search of the registry should be made against the grantor to ensure that there are no other registrations in respect of the relevant collateral. A search should be made against both current and previous names (if any) used on or after 2 January 2014, unless it is possible to search against the relevant registered number of the grantor.

Lenders usually prefer not to take security by becoming the registered shareholder in a company or registered unitholder in a unit trust, to avoid consolidation issues and/or potential shareholder or unitholder liability (for example, environmental liability in relation to property owned by the company).

When taking security over shares or units in a unit trust, it is generally advisable to take signed blank transfer forms in relation to shares or units and ensure that a security power of attorney is given by the grantor in the terms of the security agreement. This ensures that the secured party can exercise and have full effect of the security without having to rely on the grantor's compliance.

Whenever security is being taken over shares in a Jersey private company or units in a Jersey unit trust, the secured party should check that both:

- The directors/trustees cannot refuse to register the secured party as a shareholder or unitholder if it is necessary.
- There are no pre-emption rights contained in the company's articles of association or the unit trust instrument which may prevent the sale, on enforcement of the security, of the securities to a third party or itself.

The requirement for registration under SIJL 2012 does not apply to a security interest over trust property where the grant of the security interest is by the trustees. The definition of trust excludes prescribed unit trusts, in relation to which the above registration requirements apply.

Claims and receivables

5. What are the most common types of claims and receivables over which security is granted in your jurisdiction? What are the most common forms of security granted over claims and receivables? How are they created and perfected?

Claims and receivables

Common types of claims and receivables 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.

Common forms of security

Typically, security in respect of contract rights and receivables is created by 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 acknowledgement 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).

Jersey law does not have a concept of a floating charge. However, in practice, a similar degree of flexibility can be achieved under the Security Interests (Jersey) Law 2012 (SIJL 2012). The attachment of a security interest to collateral is not affected by the security agreement providing an express right of the grantor to deal with the collateral

free from the security interest and without a duty to account for the proceeds or to replace the collateral. It is also possible to take "a floating charge style" security over all present and future intangible movable property held by the grantor from time to time.

SIJL 2012 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.

Cash deposits

6. What are the most common forms of security over cash deposits? How are they created and perfected?

The method of creating security in a deposit account under the Security Interests (Jersey) Law 2012 will depend on whether the account is with the secured party or a third party bank.

Security will be created by control (see Question 4, Common forms of security) by the:

- Account being transferred into the name of the secured party with the written agreement of the grantor and the account bank.
- Account bank agreeing in writing to act on the secured party's instructions directing disposition of funds in the account.
- Account being assigned to the secured party and written notice of such being given to the account bank.
- 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 acknowledgement 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.
- Its rights of set-off over the account.

Intellectual property

7. What are the most common types of intellectual property over which security is granted in your jurisdiction? What are the most common forms of security granted over intellectual property? How are they created and perfected?

Intellectual property

The most common types of intellectual property (IP) over which security is created are patents, trade marks, copyright and designs.

Common forms of security

The location of IP is determined under the principles of private international law applicable to intangible movable property, as applied by Jersey law. These principles are broadly similar to those accepted under English common law.

If IP is created under Jersey law and it is considered to be situated in Jersey, security should be taken under the Security Interests (Jersey) Law 2012.

Formalities

See Question 4, Formalities.

Problem assets

8. Are there types of assets over which security cannot be granted or can only be granted with difficulty? Which assets are difficult or problematic when security is granted over them?

The Security Interests (Jersey) Law 2012 (SIJL 2012) clarifies the type of assets over which security interests can be granted. Certain interests including liens and set-off rights are outside its scope. SIJL 2012 permits parties to agree that its provisions apply to intangible movable property situated anywhere in the world, though this agreement regulates only the relationship between the parties, and does not affect the rights of third parties.

SIJL 2012 clarifies the position as regards security in future assets and expressly permits the taking of security in after-acquired property. Provided that the security agreement is drafted correctly, the security interest attaches immediately on acquisition by the grantor of rights in the relevant collateral.

RELEASE OF SECURITY OVER ASSETS

9. How are common forms of security released? Are any formalities required?

Under the Security Interests (Jersey) Law 2012 (SIJL 2012)

Security is usually released by an instrument of release.

If security is created by possession or control, the arrangements by which this was achieved will need to be unwound including, for example, re-assignment to the grantor of the asset (if security has been taken by way of assignment) and/or release of control. In addition, the grantor will typically require the discharge of any financing statement. The release is recorded in the Jersey security interests register by the secured party registering a financing change statement. Under SIJL 2012, a grantor may serve a written demand on the secured party requiring it to do so.

Under SIJL 1983

Once the security obligations in the security agreement have been discharged, the grantor of the security can notify the secured party and request any of the following:

- Possession of certificates of title (if possessory security has been taken).
- Control of a secured account (if security has been taken over a bank account and the secured party is also the account bank).
- Title to the property that is subject to the security interest (if security has been taken by way of assignment).

The grantor of security can also require a certificate of discharge of security to be provided in the form set out in SIJL1983.

The security interest is terminated:

- On redelivery of the certificates of title (if possessory security is taken (except where security has also been taken by way of assignment)).

ONLINE RESOURCES

Jersey Legal Information Board

W www.jerseylaw.je

Description. Official website of the Jersey Legal Information Board. This is the repository of all laws and judgments for the Island of Jersey.

- When the account bank ceases to have control over the secured bank account (if security over a bank account is taken and the secured party is also the account bank).
- When the secured party ceases to have title to the property that is subject to the security interest (if security is taken by way of assignment, for example, title is re-assigned back to the grantor of the security).

SPECIAL PURPOSE VEHICLES (SPVS) IN SECURED LENDING

10. Is it common in your jurisdiction to take security over the shares of an SPV set up to hold certain of the borrower's assets, rather than to take direct security over those assets?

Jersey investment holding vehicles are often used to hold foreign located assets. In these structures, share security can be taken under a security agreement either:

- As the only security.
- Together with security under the appropriate foreign law over the foreign located assets.

In property finance transactions, secured parties often prefer to perfect the security interest by way of:

- Control by possession of the share certificates (as opposed to taking control by being registered in the register of members of the Jersey vehicle) as this avoids potential consolidation risks and shareholder liability risks, such as environmental liability.
- Description of the collateral in the security agreement and registration.

QUASI-SECURITY

11. What types of quasi-security structures are common in your jurisdiction? Is there a risk of such structures being recharacterised as a security interest?

There have recently been several sale and leaseback transactions involving Jersey commercial real estate, enabling business occupiers to extract capital value from their properties. Sale and leaseback structures of this nature are not used to, and are not considered to, create security under Jersey law, although they do provide a method of realising capital. If the sale and leaseback is designed to create a quasi-security arrangement, for example a sale and leaseback of a car to a finance provider, it may be considered to be a sham transaction and therefore voidable.

Factoring

Debt factoring is not common. In principle, Jersey law does not preclude a creditor from assigning to a third party his claim against his debtor.

There should be no obstacle to factoring where both:

- The debts are defined.
- There is an outright purchase of legal and beneficial ownership of debts reflected in the relationship between the assignor and assignee.

However, the assignment is at risk of being recharacterised as security rather than a sale and purchase, if the assignee of the debt is deemed not to have purchased the debt but to have both:

- Advanced the discounted amount to the assignor.
- Retained recourse to the assignor.

With the intention of promoting factoring in Jersey, the Security Interests (Jersey) Law 2012 (SIJL 2012) includes provisions that govern the perfection and priority of absolute assignments (being assignments not by way of security) of Jersey receivables such as certain types of book debts. Perfection of such assignments is by registration in the Security Interests Registry. SIJL 2012 also permits the creation of security interests over such receivables, with perfection also by registration.

Hire purchase

Hire purchase agreements can be used to create quasi-security. If the transaction is a proper hire purchase and there is no retention of title by the lessee (that is, the asset must be originally owned and leased by the lessor), there should be little risk that this could be recharacterised as security.

Retention of title

A fundamental principle of Jersey law is that a person should not appear to own property that he does not and give the appearance of false wealth. Jersey law only therefore permits security to be created over tangible movables through physical delivery (*see Question 3, Formalities*). Seeking to release capital tied up in physical movable property is not usually possible where there is retention of title.

GUARANTEES

12. Are guarantees commonly used in your jurisdiction? How are they created?

Guarantees are commonly used. They are usually created by written agreement.

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.

The Security Interests (Jersey) Law 2012 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.

RISK AREAS FOR LENDERS

13. Do any laws affect the validity of a loan, security or guarantee (or the terms on which they are made or agreed)?

Financial assistance

Jersey companies are not prohibited from giving financial assistance for the acquisition of their own shares. If financial assistance raises questions relating to corporate benefit (*see below, Corporate benefit*), or amounts to a distribution, the relevant statutory procedures must be complied with.

Corporate benefit

A Jersey company has unlimited corporate capacity (*Article 18, Companies (Jersey) Law 1991 (1991 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 no corporate benefit to the company.
- The transacting party knows or ought to know that there is no corporate benefit.

This risk is avoided if both:

- All the shareholders of the Jersey company authorise or ratify the particular transaction. A new statutory regime provides an alternative process under which shareholder authorisation or ratification can be given by ordinary resolution (or special resolution if the company's articles of association require).
- 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 discernable 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.

Loans to directors

Generally, subject to the relevant company's articles of association, Jersey law permits companies to make loans to their directors. Directors must consider an appropriate declaration of a potential conflict of interest in approving this transaction.

Usury

The government can regulate interest rates, but no relevant regulations are in force. Obligations to make payments that are regarded as penalties may not be enforceable.

Others

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 susceptible to challenge:

- As a transaction at an undervalue and attacked by the Viscount (that is, the Executive Officer of the Royal Court of Jersey) in a *désastre* under the Bankruptcy Désastre (Jersey) Law 1990 (Désastre Law).
- By a liquidator in a creditor's winding up under the 1991 Law.

This applies if the transaction was entered into during the five years preceding the commencement of the *désastre* or winding up (no time limit applies to transactions involving persons connected with or an associate of the insolvent debtor).

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 fall 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.
- The court is satisfied that both:
 - the company entered into the transaction in good faith for the purpose of carrying on its business;
 - at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would benefit the company.

14. Can a lender be liable under environmental laws for the actions of a borrower, security provider or guarantor?

A lender is not liable under environmental laws for advancing a loan or holding security.

However, a lender could be liable in two circumstances:

- If it took title to a property on a *dégrévement* (that is, a "disencumberment") (*see Question 20, Real estate*).
- Where the lender is entered on the register of members of a property holding company.

STRUCTURING THE PRIORITY OF DEBTS

15. What methods of subordination are there?

Contractual subordination

Close-out netting, set-off and contractual subordination provisions are generally enforceable under the Bankruptcy (Netting, Contractual Subordination and Non-Petition Provisions) (Jersey) Law 2005 (2005 Law)). Despite any enactment or rule of law to the contrary, a close-out netting provision, a set-off provision or a contractual subordination provision of an agreement is enforceable on the bankruptcy of a party to the agreement.

Any person dealing with the affairs of the bankrupt party or person must give effect to any close-out netting provision, set-off provision or contractual subordination provision of an agreement.

Structural subordination

Structural subordination can be used in multi-layered financings with Jersey companies. However, it is not common, since Jersey companies are typically used as holding companies in group structures.

Inter-creditor arrangements

It is not an issue for Jersey vehicles to enter into an inter-creditor agreement or other agreement regulating the rights and ranking of multiple funders (in relation to either debt or equity). The documents regulating these agreements are commonly governed by English law and are frequently used where a Jersey vehicle is utilised in relation to a debt or structured finance transaction.

DEBT TRADING AND TRANSFER MECHANISMS

16. Is debt traded in your jurisdiction and what transfer mechanisms are used? How do buyers ensure that they obtain the benefit of the security and guarantees associated with the transferred debt?

Debt is traded in Jersey, normally in the form of notes, bonds or convertible instruments. These are generally in registered form, and security under a security agreement can be granted over these instruments.

Debt securities can also be listed on the Channel Islands Securities Exchange Authority Limited (CISEAL). It is common to list debt securities on the CISEAL so that they are quoted Eurobonds for the purposes of section 882 of the UK Income Taxes Act 2007. There is usually a security or bond trustee to ensure that the noteholders obtain the benefit of the security and guarantees associated with the transferred debt.

AGENT AND TRUST CONCEPTS

17. Is the agent concept (such as a facility agent under a syndicated loan) recognised in your jurisdiction?

Jersey law recognises the concept of agency in accordance with its development under English law. Therefore, property held by an agent in Jersey in its capacity as agent for the principal does not form part of the agent's assets and estate against which the agent's creditors have recourse.

18. Is the trust concept recognised in your jurisdiction?

Trusts are recognised under Jersey law. In addition, security trustee structures are commonly used, particularly:

- Where there are syndicated lending arrangements.
- To create second-ranking security over intangible movable property.

ENFORCEMENT OF SECURITY INTERESTS AND BORROWER INSOLVENCY

19. What are the circumstances in which a lender can enforce its loan, guarantee or security interest? What requirements must the lender comply with?

Security agreements over intangible movable property

Under the Security Interests (Jersey) Law 2012. The power of enforcement under a security agreement is exercisable when:

- An event of default has occurred.
- The secured party has served a written notice on the grantor specifying the event of default. The procedure for enforcement is set out in *Question 20*.

Under the Security Interests (Jersey) Law 1983. The power of sale (the only type of enforcement under a security agreement created under that Law) arises after the occurrence of an event of default under the security agreement. The procedure for enforcement is set out in *Question 20*.

Real estate: hypothecs

A creditor can enforce its loan on a continuing default event as set out in the relevant loan agreement.

If a borrower cannot repay, a creditor can enforce its security by either (*see Question 20, Real estate*):

- Proceeding to a *dégrévement*.
- Instituting *désastre* proceedings.

Methods of enforcement

20. How are the main types of security interest usually enforced? What requirements must a lender comply with?

Security agreements over intangible movable property other than cash

Under the Security Interests (Jersey) Law 2012 (SIJL 2012). SIJL 2012 introduced expanded enforcement powers. The secured party can enforce by way of sale or appropriation of the collateral or proceeds. In addition, the secured party can take any of the following ancillary actions:

- Take control or possession of the collateral or proceeds.
- Exercise any of the rights of the grantor in relation to the collateral or proceeds.
- Instruct any person who has an obligation in relation to the collateral or proceeds to carry out the obligation for the benefit of the secured party (for example, directing the actions of an intermediary who holds a securities account for the grantor).
- Apply any remedy that the security agreement provides for as a remedy that is exercisable pursuant to the power of enforcement, to the extent that it does not conflict with SIJL 2012. Bespoke enforcement powers can therefore be included as appropriate to the collateral secured.

More than one enforcement option can be taken, and taking one or more of the enforcement options specified above does not preclude the exercise of other rights of the secured party.

The power of enforcement is exercisable once an event of default has occurred and written notice specifying the event of default has been served on the grantor by the secured party.

If enforcement is by way of sale or appropriation, the secured party must give the grantor 14 days prior written notice. Importantly, in contrast to SIJL 1983, the grantor can agree in writing (typically in the security agreement) to waive its right to notice of appropriation or sale.

The secured party is obliged on sale or appropriation, to give at least 14 days prior written notice to any person who, 21 days before the sale or appropriation, has a registered security interest in the collateral, or any person other than the grantor who has an interest in the collateral.

There are specific carve-outs from the obligation to give notice, to the extent, for example, that the security property is a quoted investment security.

Self-sale is now expressly permitted.

On appropriation or sale, the secured party must:

- Take all commercially reasonable steps to determine or, in the case of a sale, obtain the fair market value of the collateral, as at the time of the relevant appropriation or sale.
- Act in a commercially reasonable manner in relation to the appropriation or sale.
- Enter (in the case of a sale only) into any agreement for or in relation to the sale on commercially reasonable terms.

The duty of the secured party is owed to the grantor and also to any other person to whom the secured party was required to give notice of appropriation or sale.

If, in exercising its powers of enforcement, a secured party appropriates or sells collateral, it must, within the 14 days after the day on which the collateral is appropriated or sold, give a written statement of account setting out certain information in relation to that appropriation or sale to

- The grantor (subject to it having waived this requirement).
- Any person with a registered subordinate security interest.
- Any person claiming an interest in the collateral.

If, in exercising its powers of enforcement, a secured party appropriates or sells collateral, it must pay to certain specified persons the amount of any resulting surplus by satisfying the claims of those persons in the prescribed order or alternatively can pay any amount of resulting surplus into the Royal Court.

Under SIJL 1983. For security created under and governed by SIJL 1983, a power of sale is the only specified means of enforcement (other than in relation to cash or a negotiable instrument, which can be appropriated). A secured party's ability to enforce its security by a contractual mechanism is untested in the courts, but is often provided for in security agreements.

The power of sale can be exercised after the occurrence of a default event under the security agreement. The secured party must:

- Serve notice of default on the grantor.
- Require the grantor to remedy the default (if the grantor is capable of it).

If the grantor fails to remedy the default within 14 days after notice, the power of sale becomes exercisable.

The secured party must take all reasonable steps to ensure that the sale is made both:

- Within a reasonable time.
- For a price corresponding to the value on the open market at the time of sale of the collateral being sold.

Real estate

A secured creditor can enforce against Jersey real estate through either of the following. **Dégrévement.**

- The process is complicated and is carried out under the 1880 law on immovable property. It can only be commenced by a secured creditor and results in one creditor keeping the property.
- The creditor taking the property must pay off all earlier charges on the property. The creditor is not required to pay or return to the debtor any difference between the value of the property and the level of his claim or charge by which he has taken. If a secured creditor does not take the property when required to in accordance with the date of his charge, he loses his charge and becomes an unsecured creditor. **Désastre.**

Rescue, reorganisation and insolvency

21. Are company rescue or reorganisation procedures (outside of insolvency proceedings) available in your jurisdiction? How do they affect a lender's rights to enforce its loan, guarantee or security?

There is no equivalent to the English law concept of administration.

In unusual circumstances, the Courts of Jersey can permit an insolvent company (but not one that has been declared *en désastre* (see Question 20, *Real estate*) to be wound up if it is of the opinion that either it is:

- Just and equitable.
- Expedient in the public interest.

The application to the court on these grounds can be made by the Jersey company (or its directors or shareholders) and certain government and regulatory officials.

22. How does the start of insolvency procedures affect a lender's rights to enforce its loan, guarantee or security?

A creditor who has been declared *en désastre* (see Question 20, *Real estate*) must submit a proof of debt to the Viscount. The Viscount can admit or reject proofs of debt and decide whether any are privileged debts. The *Désastre* Law expressly states that the provisions of Article

6 of the Security Interests (Jersey) Law 1983 (SIJL 1983) (relating to the subsequent insolvency of a debtor) apply to any security interest to which any of the debtor's movable property is subject. In relation to immovable property, creditors who hold a charge registered against Jersey-located immovable property are entitled to a preference. The preference is determined in accordance with the date of creation of creditors' respective hypothecs.

Following the implementation of SIJL 2012, the *Désastre* Law has been amended to afford greater protection to a secured party with a security interest in the event of insolvency of the grantor so that:

- A secured party can, without the consent of the Viscount, and without an order of the court, exercise a power of enforcement under Part 7 of SIJL 2012 in relation to the relevant collateral.
- A transfer of shares made pursuant to a power of enforcement under Part 7 of SIJL 2012 will not be avoided even if not made to, or with the sanction of, the Viscount.

23. What transactions involving loans, guarantees, or security interests can be made void if the borrower, guarantor or security provider becomes insolvent?

The Viscount in a *désastre* or a liquidator in a creditors' winding-up under Jersey insolvency law can attack a creditor's right to enforce its security if, among other things, the company was or became insolvent, on a cash flow basis, when it entered into or as a result of the transaction.

Where this insolvency exists, there is a statutory look-back or "hardening" period of:

- Five years from the date the *désastre* or winding-up commenced (in the case of transactions at an undervalue).
- 12 months before the commencement of the *désastre* or winding-up (in the case of a preference (which can only apply to a guarantor, surety or creditors of the debtor)).

During these periods, the transaction may be vulnerable to attack as a transaction at an undervalue or as a preference. The burden of proof is reversed if the transaction was entered into with either:

- A person connected with the company.
- An associate of the company.

24. In what order are creditors paid on the borrower's insolvency?

Priority statutory creditors

The Viscount pays debts from the monies received by him from the realisation of the debtor's property in the following order (*Désastre Law*):

- The Viscount's fees, costs, charges, allowances and expenses.
- The debtor's employees for arrears of wages, for the period of six months before the declaration; holiday pay and bonuses
- Health insurance, social security, income tax, goods and services tax, rent arrears and parochial rates.
- All other debts proved in the *désastre*.

Priority secured creditors

Creditors who hold a judicial or conventional hypothec (charge) (*see Question 2, Common forms of security*) registered against real estate are entitled to a preference over the proceeds of sale of any property on which their charge is secured. The preference is determined by the date of creation of the hypothec.

Creditors who have a security interest in the debtor's property granted under the Security Interests (Jersey) Law 1983 (SIJL 1983) or SIJL 2012 are entitled to have the proceeds of a sale or other enforcement of the collateral applied in the manner provided by SIJL 1983 or SIJL 2012 (as appropriate).

Under SIJL 2012. If a secured party has sold or appropriated the collateral and the net value or proceeds of sale (as appropriate) of the collateral exceeds the amount of the debt owed to the secured party, the secured party must pay the amount of any resulting surplus in the following order:

- Any person who has a subordinate security interest in the collateral and has registered a financing statement over that security interest (where the registration remained effective immediately before the appropriation or sale).
- Any other person (other than the grantor) who has given the secured party notice that that person claims an interest in the collateral, and in respect of which the secured party is satisfied that that person has a legally enforceable interest in the collateral.
- The grantor.

Where two or more persons have subordinate security interests, they must be paid in the order of priority of those security interests as determined under SIJL 2012.

Alternatively, the secured party may discharge its obligation above with respect to any surplus by paying that amount into the Royal Court. The surplus may then only be paid out on the order of the court on application by a person entitled to the surplus.

Under SIJL 1983. SIJL 1983 provides that the secured party must apply the proceeds of sale in the following order:

- Payment of the costs and expenses of the sale.
- Discharge of any prior security interest.
- Discharge of all monies properly due in relation to the obligation secured by the security agreement.
- Payment, in due order of priority, of the secured parties whose security interests were created after those being enforced under the security agreement.
- In relation to the balance (if any remains), payment to the grantor or, if the grantor is bankrupt or is subject to any other judicial arrangement due to its insolvency, to the Viscount, receiver or other proper officer.

Money or monies in a bank account must be applied under the SIJL 1983 as if they were proceeds of sale.

If more than one creditor holds the same security interest (and each security interest is created under SIJL 1983) over the same asset, priority is determined by the date of creation of the security interest.

Priority of security interest rights

SIJL 2012 contains a clear set of priority rules that provide that control security has priority over registered security in the same asset. Further, the rules provide that:

- A perfected security interest has priority over an unperfected security interest in the same collateral.
- Where both interests are unperfected, priority is determined by the order of attachment.
- As a general rule as between two or more perfected security interests, priority goes to the security interest in relation to which any of the following events first occurred:
 - a financing statement was registered;
 - the secured party or its nominee took possession or control of the collateral; or
 - the security interest was temporarily perfected under SIJL 2012.

Transitional rules state that a continuing security interest (a security interest created under SIJL 1983) has priority over a security interest created under SIJL 2012 in the same collateral.

SIJL 2012 also provides special priority rules that apply to conflicting security interests in certificated investment securities, securities accounts and deposit accounts. For example, security over a deposit account that is perfected by control by the transfer of the account into the name of the secured party with the written agreement of the grantor and the bank or other institution with which the deposit account is held has priority over any security interest held by the account bank (but that latter security interest has priority over other types of security interest in such deposit account).

Purchase money security interests

SIJL 2012 makes provision for and gives priority to a "purchase money security interest" (PMSI). A PMSI is either a security interest in collateral taken by a seller to the extent that it secures:

- The purchase price of the collateral.
- Money/value advanced to the grantor for the purpose of, and actually used in, acquiring the collateral.

The rationale for the PMSI is to prevent a prior secured party who, for example, has a security interest in after-acquired property in obtaining a windfall (by virtue of additional assets being added to its prior security, which have been acquired as a direct result of the additional funding for that acquisition that have been provided by the second secured party).

Subject to certain exceptions, a PMSI therefore has priority over a non-PMSI. A PMSI must be perfected within 30 days of attachment. A PMSI must be created by agreement and does not simply arise by operation of law.

CROSS-BORDER ISSUES ON LOANS

25. Are there restrictions on the making of loans by foreign lenders or granting security (over all forms of property) or guarantees to foreign lenders?

There are no restrictions on the making of loans by foreign lenders. In addition, if a Jersey company gives security governed by foreign law over property that is situated outside Jersey, it is deemed to have had capacity to give the security.

26. Are there exchange controls that restrict payments to a foreign lender under a security document, guarantee or loan agreement?

There is no exchange control legislation or regulation, apart from through freezing funds of (or prohibiting new investments in) certain jurisdictions subject to international sanction.

TAXES AND FEES ON LOANS, GUARANTEES AND SECURITY INTERESTS

27. Are taxes or fees paid on the granting and enforcement of a loan, guarantee or security interest?

Documentary taxes

Stamp duty payable on registration of security. 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. It must be paid in full before the required charge document can be registered in the Jersey Public Registry.

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. LTT applies only in relation to residential property or those companies whose articles confer rights of occupation to their shareholders.

Stamp duty on transfers of real estate. Stamp duty and LTT are payable on sales of Jersey real estate.

Registration fees under the Security Interests (Jersey) Law 2012

Fees for the use of the Security Interests Register are set out in a Jersey Financial Services Commission notice of fees (see www.jerseyfsc.org/pdf/SIR_Fees_October_2013.pdf).

Notaries' fees

Not applicable.

Others

Income tax. Under the current "zero/ten" tax regime, 10% is generally applied to financial services entities (that is, banks, trust company businesses and fund administration businesses). 0% is generally applied to the remaining companies (which are not financial services entities or utility companies). Most companies used in financing transactions are taxed at the 0% rate.

A key exception to the 0% rate of tax is that income earned from land (for example, rental income) and any profits from the development of real estate, is liable to income tax at the standard rate (currently 20%).

Capital gains. There is no capital gains tax in Jersey. Capital gains are not ordinarily included in ordinary taxable income.

28. Are there strategies to minimise the costs of taxes and fees on the granting and enforcement of a loan, guarantee or security interest?

Strategies to minimise the cost of taxes and fees are not usually required given the low tax regime.

REFORM

29. Are there any proposals for reform?

See *Question 1, Proposals for reform of the Security Law*.

Contributor Profiles



Robin Smith, Partner

Carey Olsen

T +44 1 534 822 264

F +44 1 534 887 744

E robin.smith@careyolsen.com

W careyolsen.com

Professional qualifications. England and Wales, Solicitor, 2003; Royal Court of Jersey, Advocate, 2006

Areas of practice. Corporate; banking and finance; investment funds and private equity.

Recent transactions

- Advising The Royal Bank of Scotland International Limited (as lead lawyer) in relation to an up to EUR400 million multi-option subscription facility for an established private equity fund.
- Advising Citibank, NA, London in relation to an up to EUR250 million investor call bridge facility.
- Advising State Street Bank and Trust Company in relation to a US\$150 million revolving senior facility agreement.
- Advising KPMG as special liquidators of Irish Bank Resolution Corporation in relation to the sale of various tranches of its real estate loan book.



Robert Milner, Partner

Carey Olsen

T +44 1 534 822 336

F +44 1 534 887 744

E robert.milner@careyolsen.com

W careyolsen.com

Professional qualifications. Royal Court of Jersey, Advocate, 2003

Areas of practice. Real estate; finance; investment funds and private equity.

Recent transactions

- Acting on a number of refinancings of prime real estate-holding structures.
- Acting for sovereign wealth funds in establishing Jersey acquisition vehicles for UK-situated real estate.



Peter German, Partner

Carey Olsen

T +44 1 534 822 372

F +44 1 534 887 744

E peter.german@careyolsen.com

W careyolsen.com

Professional qualifications. New Zealand, 1994; England and Wales, 2007; Jersey (Advocate), 2009

Areas of practice. Banking and finance; corporate and commercial; restructuring and insolvency.

Recent transactions

- Acted for GE Capital Real Estate in its GB£130 million financing of Blackstone's GB£186 million acquisition of St Enoch Shopping Centre, Glasgow, from Ivanhoe Cambridge.
- Acted for Morgan Stanley in its GB£60 million financing of Blackstone's acquisition of 1 America Square, London.
- Acted for Oxford Properties in its GB£83 million acquisition of the Royal Exchange from IBRC and Alanis Capital.
- Acted for GE Capital Real Estate in its GB£72 million financing of Ares Real Estate Group's GB£115 million acquisition of 10 Fleet Place, London.

Professional associations/memberships. Peter is a Member of INSOL and was a member of the banking lawyers group that worked with the Government on the introduction of the Security Interests (Jersey) Law 2012.



Kate Andrews, Senior Associate

Carey Olsen

T +44 1 534 822 293

F +44 1 534 887 744

E kate.andrews@careyolsen.com

W careyolsen.com

Professional qualifications. England and Wales, Solicitor, 1993

Areas of practice. Banking and finance; corporate; restructuring and insolvency.

Recent transactions

- Acted for Deutsche Bank and the syndicate of lenders in connection with the senior secured financing for the acquisition by Warburg Pincus and General Atlantic of a 50% stake in Jersey holding company that integrated Santander's Asset Management businesses. The remaining 50% continues to be owned by Banco Santander.
- Advised Extra MSA Group on a GB£220 million private bond issue on a portfolio containing nine Motorway Service Area assets.
- Acted for GSO Capital Partners LP in connection with its debt and equity financing for the management buyout of the XLN Telecom group from ECI Partners LLP.
- Acted for Deutsche Bank in relation to financing the acquisition of a data centre.
- Advised on GB£90 million refinancing for Deutsche Bank AG in respect of a property in Holborn, London.
- Acts for Jersey's largest peer-to-peer lender.

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EMAIL: info.practicallaw@thomsonreuters.com

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CAREY OLSEN

VISIT: careyolsen.com

Guernsey

BEN MORGAN

CALL: +44 1481 741557

EMAIL: ben.morgan@careyolsen.com

Jersey

ROBIN SMITH

CALL: +44 1 534 822 264

EMAIL: robin.smith@careyolsen.com

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