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Legal 500: Lending and Secured Finance guide Jersey 2025

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Do foreign lenders (including non-bank foreign lenders) require a licence/regulatory approval to lend into your jurisdiction or take the benefit of security over assets located in your jurisdiction?

There are no licensing requirements in Jersey for foreign lenders lending to a Jersey company and that activity also does not require the lender to obtain any regulatory approval. If a lender carries on financial services business in or from within Jersey or is a Jersey company, it will be subject to the Proceeds of Crime (Jersey) Law 1999 and required to comply with the Money Laundering (Jersey) Order 2008. Under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, the lender will need to comply with the applicable notification and registration requirements and may therefore need to apply to be registered with the Jersey Financial Services Commission (the "**JFSC**") to be supervised in relation to its compliance with relevant anti-money laundering and counter-terrorism legislation. Whether or not a lender must apply to be registered with the JFSC to be supervised, it is required to comply with relevant anti-money laundering and counter-terrorism legislation.

Foreign lenders that take the benefit of security over assets in Jersey (either on a bilateral basis or under a foreign law governed security trust) are subject to the same licensing and regulatory regime as noted above, subject to one additional consideration. Additional steps may be required on the creation or enforcement of, or other exercise of rights under, security over regulated groups/entities.

Are there any laws or regulations limiting the amount of interest that can be charged by lenders?

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.

Are there any laws or regulations relating to the disbursement of foreign currency loan proceeds into, or the repayment of principal, interest or fees in foreign currency from, your jurisdiction?

There are no laws or regulations relating to: (a) the disbursement of foreign currency loan proceeds by a lender to a borrower in Jersey; or (b) the repayment of principal in foreign currency, provided that any such disbursement or repayment is permitted under the terms of the relevant finance documents.

There are also no laws or regulations relating to payment of interest or fees in a foreign currency. However, as noted in question two above:

- the government can regulate interest rates, but no relevant regulations are in force; and
- obligations to make payments that are regarded as penalties may not be enforceable.

Can security be taken over the following types of asset: i.) real property (land), plant and machinery; ii.) equipment; iii.) inventory; iv.) receivables; and v.) shares in companies incorporated in your jurisdiction. If so, what is the procedure – and can such security be created under a foreign law governed document?

Real property (land)

It is possible to take Jersey law governed security over real property, which is categorised as immovable property under Jersey law and comprises land and everything attached to it. It is not possible for valid security to be created under a foreign law governed security document, however.

There are two main forms of security over immovable property.

Hypothecs

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

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

Share security

In relation to share transfer properties, security is taken over the shares of the company that owns the property. Such share security is taken by way of a security interest agreement entered into under the Security Interests (Jersey) Law 20212 ("**SIL**").

Plant, machinery, equipment and inventory

Plant, machinery, equipment and inventory (i.e. trading stock) are tangible movable property. The only method of creating security over tangible movable property 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.

It is not possible to take valid security over tangible movable property located in Jersey under a foreign law governed security document.

Receivables

Security over intangible movable property is created under SIL. Please see question 6 below for further detail on the process for creating a security interest under SIL.

Typically, security in respect of contract rights and receivables is created by way of a Jersey law governed security interest agreement entered into under SIL by way of identification and registration.

Although it is no longer necessary to give notice to the counterparty in order to create the security interest over contract rights, there are usually advantages to doing so (for example, to obtain, by way of acknowledgment to the notice, a waiver of any conflicting provisions in the underlying contract and/or a confirmation that the counterparty will make payments directly to the secured party).

Common types of receivables secured in this way include:

- rent payable under a lease agreement;
- a general partner's right to call for capital from the partners of a limited partnership;
- debts and other rights to the payment of money; and
- rights under performance contracts.

It is also possible to take Jersey law governed security under SIL over bank accounts into which the receivables are paid and other cash deposited with banks. The method will depend on whether the account is held with the secured party or a third-party bank.

Security will be created by way of a security interest agreement under SIL. Control (in relation to which, please see further details at question six below) would be obtained by:

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

Typically, security over third-party bank accounts is taken by assignment by way of security and written notice of the assignment being given to the bank, or other institution, with which the deposit account is held. Although not necessary to perfect the security, it is usual to obtain an acknowledgment of the notice from the account bank, which will include, for example, a waiver of:

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

As a matter of Jersey law, it is not possible for security over Jersey-situs receivables to be validly created under a foreign law security document.

SIL 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, but that is a distinct subject and separate from the grant of a security interest.

Shares in companies incorporated in Jersey

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

- being registered as the holder of the securities; or
- having possession of the certificate representing the securities.
- Security cannot be validly granted over shares in a Jersey company under a foreign law security document.

Can a company that is incorporated in your jurisdiction grant security over its future assets or for future obligations?

SIL expressly permits the taking of security in future intangible movable property, which is referred to as after-acquired property in SIL. Security agreements are typically drafted so that the security interest attaches immediately on acquisition by the grantor of rights in the relevant collateral.

It is also possible for a company incorporated in Jersey to grant foreign security over its future assets situated in the relevant foreign jurisdiction.

A Jersey company can grant both Jersey and foreign law governed security in respect of its, or a third party's, future obligations.

Can a single security agreement be used to take security over all of a company's assets or are separate agreements required in relation to each type of asset?

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

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

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

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

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

- by possession of documentary intangibles such as negotiable instruments or bearer securities;
- by control of the collateral such as bank accounts, securities accounts and investment securities (e.g. shares); and/or
- by registration of a financing statement on the Jersey security interests register maintained under SIL. Security that cannot be perfected by possession or control, for example over a right to repayment under a contract (e.g. an intra-group loan) or over other contractual rights, must be perfected by registration of a financing statement. As registration perfects any type of security interest (subject to the exception referred to below), it is usual for a security interest that has been perfected by possession or control to be perfected by registration as well. Security interests perfected by possession or control will have priority over security interests perfected by registration only. The requirement for perfection by registration under SIL does not apply to a security interest over trust property where the grant of the security interest is by a trustee, so security granted by a nominee of a bare trust or a trustee of a family or a discretionary trust, for example, is not perfected by registering a financing statement. It is perfected by attachment (or possession/control where available). The definition of trust excludes a "prescribed unit trust", however, in relation to which the above registration requirements do apply, so establishing whether the grantor is a prescribed unit trust is essential. For practical purposes, a "prescribed unit trust" is ordinarily a Jersey property unit trust.

Are there any notarisation or legalisation requirements in your jurisdiction? If so, what is the process for execution?

There are no notarisation or legalisation requirements as a matter of Jersey law relating to the grant of Jersey security or a Jersey incorporated company's entry into foreign law security.

Are there any security registration requirements in your jurisdiction?

Foreign security

It is not necessary to register foreign security granted by a Jersey company.

Real estate

For security that is registered over Jersey immovable property: (a) the billet (the acknowledgment document creating a judicial hypothec) must be registered in the Jersey Public Registry; or (b) the contract creating the charge (in the case of a simple conventional hypothec) must be passed before the Royal Court of Jersey and thereafter registered in the Jersey Public Registry.

Intangible movable property (e.g. receivables, shares and bank accounts)

As noted at question six above, security that cannot be perfected by possession or control, for example over a right to repayment under a contract (e.g. an intra-group loan) or over other contractual rights, must be perfected by registration of a financing statement on the Jersey security interests register maintained under SIL. As registration perfects any type of security interest (subject to the exception referred to below), it is usual for a security interest that has been perfected by possession or control to be perfected by registration as well.

Security interests perfected by possession or control will have priority over security interests perfected by registration only. For that reason, if it is possible to perfect the collateral in question by possession or control, the security interest should not be perfected by registration alone.

The requirement for perfection by registration under SIL does not apply to a security interest granted by a trustee of a trust, unless that trust is a prescribed unit trust (please see question six above for further details in relation to this point).

Are there any material costs that lenders should be aware of when structuring deals (for example, stamp duty on security, notarial fees, registration costs or any other charges or duties), either at the outset or upon enforcement? If so, what are the costs and what are the approaches lenders typically take in respect of such costs (e.g. upstamping)?

Intangible movable property

For security which is created over intangible movable property under SIL, the registration requirements do not involve material costs.

There is currently no stamp duty payable in Jersey on a sale on enforcement of shares in a Jersey company or units in a Jersey unit trust. Whilst this is technically not a cost of enforcement, as any tax would be payable by the purchaser and not the secured party, it indirectly impacts a lender's recovery rate on enforcement and is therefore a matter of which lenders should be aware.

Real estate (immovable property)

Stamp duty is payable when a lender registers security over real estate situated in Jersey.

Stamp duty is calculated at the rate of 0.5% of the amount of debt secured over the property in favour of the lender, plus a court fee of £90.

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

Lenders require stamp duty and LTT payable in respect of security granted over Jersey real estate to be paid at closing.

Notary fees

There are no relevant notary fees in respect of Jersey security.

Can a company guarantee or secure the obligations of another group company; are there limitations in this regard, including for example corporate benefit concerns?

Yes, a Jersey company can guarantee or secure the obligations of another group company.

SIL expressly provides that a security interest can be created to secure the obligations of a third party, which simplifies documentation and removes the need to include a limited recourse guarantee in Jersey security agreements over Jersey-situs intangible movable property.

A Jersey company has unlimited corporate capacity under the Companies (Jersey) Law 1991 (the "**Companies Law**"). Article 18 of the Companies Law removed the concept of external ultra vires, meaning that nothing in a company's Memorandum or Articles of Association can limit the power of a Jersey company. That being said, the Memorandum and Articles of Association should still be reviewed to ensure there are no limits on the authority of the directors to enter the required documents.

When a Jersey company enters a finance transaction, a transacting party should consider whether there is corporate benefit for the Jersey company. There is a risk that a Jersey 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 Jersey company. This can happen where:

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

This risk can be avoided if both:

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

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

Are there any restrictions against providing guarantees and/or security to support borrowings incurred for the purposes of acquiring directly or indirectly: (i) shares of the company; (ii) shares of any company which directly or indirectly owns shares in the company; or (iii) shares in a related company?

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

Can lenders in a syndicate (or, with respect to private credit deals, lenders in a club) appoint a trustee or agent to (i) hold security on the lenders's behalf, (ii) enforce the lenders' rights under the loan documentation and (iii) apply any enforcement proceeds to the claims of all lenders in the syndicate?

Jersey law recognises the concept of agency and trust relationships and accordingly a trustee or agent would be able to: (i) hold security on the lenders' behalf; (ii) enforce the lenders' rights under the loan documentation and (iii) apply any enforcement proceeds to the claims of all lenders in the syndicate, in the manner set out in the facility agreement, intercreditor agreement or other relevant finance document.

If your jurisdiction does not recognise the role of an agent or trustee, are there any other ways to achieve the same effect and avoid individual lenders having to enforce their security separately?

Not applicable.

Do the courts in your jurisdiction generally give effect to the choice of other laws (in particular, English law) to govern the terms of any agreement entered into by a company incorporated in your jurisdiction?

The Jersey courts will generally give effect to an agreement governed by foreign law provided it is a valid choice of law for the issue in question upon proof of the relevant provisions of the governing law.

Do the courts in your jurisdiction generally enforce the judgments of courts in other jurisdictions (in particular, English and US courts) and is your country a member of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (i.e. the New York Arbitration Convention)?

Enforcement of judgments

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

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

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

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

Arbitral awards

Arbitration is rarely used as a method of commercial dispute resolution in Jersey in the context of secured lending transactions. However, domestic arbitral awards are enforceable in Jersey with leave of the court under the Arbitration (Jersey) Law 1998 (the "**Arbitration Law**").

In addition to the domestic procedure above, the Arbitration Law provides that a foreign arbitral award handed down in a country that is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "**New York Convention**") is enforceable as if it were a domestic arbitral award.
Further, other foreign awards from certain non-New York Convention states may also be enforceable under the Arbitration Law if the state in question is a signatory to the Geneva Convention on the Execution of Foreign Arbitral Awards 1927 in the same way as a domestic award or "by action".
Such awards must meet certain standards. They are recognised if the arbitration:

- was made pursuant to an agreement for arbitration that was valid under the law by which it is governed;
- was made by the tribunal provided for in the agreement or constituted in a manner agreed by the parties;
- was made in conformity with the relevant law governing arbitration;
- is final in the relevant jurisdiction;
- conforms to the definition of arbitration under Jersey law; and
- the enforcement of which would not be contrary to the law or public policy of Jersey.

Enforcement of foreign arbitral awards can be refused in limited circumstances as set out in the Arbitration Law.

What (briefly) is the insolvency process in your jurisdiction?

There are two principal processes which can be invoked to commence an insolvency process and ultimately lead to the dissolution of an insolvent Jersey company. The first is by means of an application for a declaration of en désastre under Article 3 of the Bankruptcy (Désastre) (Jersey) Law 1990 (the "**Désastre Law**"), and the second is by means of a creditors' winding up under the Companies Law.

Désastre

A declaration of désastre (strictly, a declaration that a person's property is en désastre) under the Désastre Law is granted by the court and is a formal declaration of bankruptcy. The purpose of the declaration is to collect in and liquidate the debtor's assets for the benefit of its creditors as appropriate, including settling claims.

The application may be made by a creditor of the company with a claim exceeding £3,000, or by the company itself.

A declaration will only be granted if the applicant can show that the company is insolvent on a cash flow basis, that is, unable to pay its debts as they fall due. While the test for the making of a declaration is on a cash-flow basis, the balance-sheet test can be considered by the Royal Court in an application by the debtor to have the declaration recalled. The Royal Court of Jersey has the inherent jurisdiction to recall a declaration if a debtor can show it can pay the debt in the full.

The effect of a declaration is that all of the property and powers of the company vest in the Viscount immediately upon the making of the declaration. The Viscount controls the procedure and is responsible for the realisation and distribution of the debtor's assets.

On realising all of the debtor's property, the Viscount must:

- supply all of the creditors with a report;
- prepare a set of accounts relating to the désastre, which will be made available to the court and the creditors;
- pay the final dividend due to the creditors; and
- pay any surplus (if any) to the company's shareholders.

The Viscount must notify the Registrar of Companies of the date the final dividend is paid. The company is dissolved with effect from the date of receipt by the Registrar of that notice.

Creditors' winding-up

The purpose of a creditors' winding-up is to wind up the company by collecting and realising the company's assets for the benefit of creditors as appropriate, including settling claims. From 1 March 2022 it has been possible for the process to be instigated by creditors.

There are two forms of creditors' winding up available: (a) a court ordered procedure (a "**court ordered creditors' winding up**") which is instigated by an eligible creditor of the company making an application for an order of the Royal Court to commence a creditors' winding up; and (b) a voluntary procedure which is instigated by a special resolution of the shareholders of the company. For the purposes of this question, we have focussed on a court ordered creditors' winding-up.

A creditors' winding-up procedure may only be invoked where a declaration has not been made under the Désastre Law, or where a declaration has been made and subsequently recalled. In consequence, an application for a désastre blocks a creditors' winding up.

Under a court ordered creditors' winding up, a creditor with a liquidated claim of £3,000 or more may apply to the court for an order to commence a creditors' winding up of a Jersey company. Such application can only be made where:

- the company is unable to pay its debts;
- the creditor has evidence of the company's cash flow insolvency; or
- the creditor has the consent of the company.

On a court ordered creditors' winding up, a liquidator is nominated by the applying creditor. The court may approve such a liquidator or appoint a different liquidator. Once the creditors' winding up has commenced, the liquidator will stand in the shoes of the directors and administer the winding up, gather assets, make appropriate disposals of assets, settle claims and distribute assets as appropriate.

After the affairs of the company are fully wound up, the liquidator must:

- make an account of how the creditors' winding up has been conducted; and
- present the account at a general meeting and a meeting of the creditors (giving at least 21 days' notice).

Within seven days of the meetings, the liquidator must make a return to the Registrar, which is registered by the Registrar. The company is deemed dissolved three months from the date of registration by the Registrar.

What impact does the insolvency process have on the ability of a lender to enforce its rights as a secured party over the security?

In principle, both a declaration of en désastre under the Désastre Law and the commencement of a creditors' winding up under the Companies Law instigate a moratorium. A creditor with a claim provable in a désastre cannot:

- seek any other remedy against the debtor;
- commence any action or legal proceedings to recover the debt; or
- except with the consent of the Viscount or by order of the court, continue any action or legal proceedings to recover the debt.

In addition, if the debtor is a company, a transfer of shares in the company which is not made to or with the sanction of the Viscount, or an alteration in the status of the company's members, is void.

However, an important exception applies in the case of secured creditors. The moratorium does not extend to title security or security in intangible movable property under SIL. Such security can therefore be enforced notwithstanding a declaration of désastre and, in the case of share security, a transfer of the shares made pursuant to the power of enforcement under SIL will not be avoided even if not made to or with the sanction of the Viscount.

A similar position applies after the commencement of a creditors' winding up. No action may be taken against the company except by leave of the court and subject to such terms as the court may impose. A transfer of shares not made to or with the sanction of the liquidator, and an alteration in the status of the company's members, is void. This is subject to the ability of secured creditors to rely on an equivalent exception to that available in a désastre. Creditors are also still able to apply for a declaration of désastre. If granted, this automatically terminates the creditors' winding up, and in this sense a désastre trumps a creditors' winding up.

Nevertheless, the powers to set aside transactions at an undervalue and preferences still apply (as to which please see question 18 below). Furthermore, a security interest created under SIL will be void against the Viscount or a liquidator and the company's creditors, if it is not perfected before the grantor becomes bankrupt.

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. Where the real estate owner has been declared en désastre, the collateral will fall into the désastre estate and the Viscount will take the collateral subject to the hypothec.

Please comment on transactions voidable upon insolvency.

The principal grounds for challenging pre-insolvency transactions are in respect of preferences and transactions at an undervalue.

Preference

A debtor gives a preference if it does anything or suffers anything to be done that has the effect of putting a creditor or surety of the debtor into a better position in a désastre or creditors' winding up than it would otherwise have been in.

The debtor must have been insolvent at the time the preference was given or become insolvent as result and, in deciding to give the preference, influenced by a desire to put the person into a better position than it would otherwise have been in. Where the preference was given to an associate of or a person connected with the debtor there is a rebuttable presumption that the company was so insolvent and was so influenced.

The look back period for a preference is 12 months from the declaration of désastre or the commencement of the creditors' winding up.

Transaction at an undervalue

A debtor enters into a transaction at an undervalue with a person if it makes a gift to that person or enters into a transaction with that person on terms for which there is no cause (similar to consideration), or for a cause the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the cause provided by the debtor.

A transaction can only be set aside as a transaction at an undervalue if the debtor was insolvent at the time it entered into the transaction or became insolvent as a result of the transaction. If the transaction was entered into with to an associate of or a person connected with the debtor there is a rebuttable presumption that the debtor was so insolvent.

It is a defence to show that the transaction was entered into in good faith for the purpose of carrying on the company's business and at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would be of benefit to the debtor.

The look back period for a transaction at an undervalue is 5 years from the declaration of désastre or the commencement of the creditors' winding-up.

Other transactions which may be impugned on the application of the Viscount or a liquidator include where a debtor has entered into extortionate credit transaction or an individual has made excessive pension contributions.

Unperfected security

If a security interest granted under SIL has not been perfected before the grantor becomes bankrupt, it is void as against the Viscount (in a désastre) or liquidator (in a creditors' winding up).

Is set off recognised on insolvency?

In the context of a désastre or a creditors' winding-up, where there have been mutual credits, mutual debts or other mutual dealings between the debtor and creditor, there will be a mandatory set-off. An account is taken between the parties, and the sum due from one party is set off against any sum due from the other party, and the balance of the account, and no more, may be claimed or paid on either side respectively.

The Bankruptcy (Netting, Contractual Subordination and Non-Petition Provisions) (Jersey) Law 2005 (the "**Netting Law**") also establishes a clear statutory framework applicable to, amongst other things, close-out netting and set-off provisions.

"Netting", as defined in the Netting Law, means the conversion, into one net claim or one net obligation, of all claims and obligations arising under an agreement, whilst a "close-out netting provision" is defined so as to include automatic termination of an agreement on the occurrence of a specified event, for example, insolvency. The Netting Law expressly confirms that close-out netting provisions such as the following are enforceable in accordance with their terms:

- close-out netting provisions of the type used in derivative transactions (including hedging transactions entered into based on standard ISDA documentation);
- transactions where one party's exposure to another party's insolvency is kept at manageable levels by operation of close-out netting provisions (for example, transactions between financial institutions where it is important for regulatory capital purposes to be able to report net exposure); and
- close-out netting provisions that enable financial institutions to report group account overdraft exposures of their customers on a net (as opposed to gross) basis.

Set-off is also broadly defined. A set-off provision means so much of an agreement, other than a close-out netting provision, as relates to the netting of amounts due from one party to any other party to that agreement. A set-off clause typically allows one party to set-off (or deduct) amounts owed by it to another party, to (or from) amounts owed to it by that other party.

The Netting Law removes any doubt that provisions of this type are enforceable in accordance with their terms both prior to and after the onset of insolvency.

Are there any statutory or third party interests (such as retention of title) that may take priority over a secured lender's security in the event of an insolvency?

Security granted over intangible movable property under SIL

Certain claims are treated as preferential. For security granted under SIL, in general terms:

- a secured party with a perfected security interest has priority over any other creditor; and
- amongst priority statutory creditors, unsecured creditors rank last, and, as between themselves, unsecured creditors rank pari passu.

Secured creditors: where there is a valid and perfected security interest in collateral granted pursuant to SIL, there are no statutorily preferred claims on that collateral that have priority over that of the secured party.

If the 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; and
- the grantor.

Priority statutory creditors: these rank behind secured creditors in whose favour a security interest has been granted pursuant to SIL, in the following order:

- the Viscount or liquidator, in payment of costs and expenses properly incurred;
- where the insolvent entity is a bank in default, payments to the Jersey Bank Depositors Compensation Board;
- employees, in payment of up to six months of arrears of salary and any outstanding holiday pay and bonuses (subject to prescribed limits);

- in payment of health insurance, social security, income tax, goods and services tax, rent arrears and parochial rates (the equivalent of UK local rates/council tax); and
- unsecured creditors (who, as between themselves, rank pari passu).

Immovable property

Creditors who hold a judicial or conventional hypothec registered against real estate are entitled to a preference over the proceeds of sale of any property on which their charge is secured. If there are a number of registered hypothecs, preference is determined by the date of creation. This is not subject to any other preference or clawback rights. Where the real estate owner has been declared en désastre, the collateral will fall into the désastre estate and the Viscount will take the collateral subject to the hypothec.

Are there any impending reforms in your jurisdiction which will make lending into your jurisdiction easier or harder for foreign lenders?

There is a working group that is currently considering improvements to be made to SIL to deal with practical issues that have arisen since SIL came into effect, but its final recommendations are yet to be published.

What proportion of the lending provided to companies consists of traditional bank debt versus alternative credit providers (including credit funds) and/or capital markets, and do you see any trends emerging in your jurisdiction?

Traditional bank debt and debt capital markets are well established methods of providing debt to Jersey companies. There has been a rapid expansion of private credit and alternative lenders over the last five to ten year period, however. Whilst exact figures are not available, our experience points to the growing presence of alternative credit providers and debt funds as lenders to Jersey companies across a wide range of product lines, including fund finance, real estate finance and leveraged finance. The ticket size of loans being written by alternative credit providers is also increasing.

Traditional bank debt also continues to be a material source of funding for Jersey companies.
We have also seen increasing use of back-leverage and CMBS financing over the last 12 months.

Please comment on external factors causing changes to the drafting of secured lending documentation and the structuring of such deals such as new law, regulation or other political factors

Jersey is a politically stable and tax neutral financial centre that has been at the forefront of the global finance industry for over 50 years. The Island enjoys economic stability, political independence, tax neutrality and sophisticated legal, regulatory and technological infrastructure. It has a global reputation founded on a robust legal framework and sound corporate governance practices.

In 2024, MONEYVAL (the Committee of Experts of the Council of Europe on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) published its Fifth Round Mutual Evaluation Report for Jersey. Jersey was ruled as "compliant" or "largely compliant" with 39 of 40 of the FATF recommendations for technical compliance.

Jersey therefore continues to be a very popular jurisdiction through which to structure secured lending transactions.

ESG

ESG-related debt products have become increasingly prevalent over the last five to six year period.

We often see ESG-related debt products as part of the transactions on which we work. Loans now frequently involve ESG-linked pricing structures.

IBOR reforms

The transition from IBORs to risk-free-rates has had a significant impact on the drafting of documents. The key characteristic of market practice in Jersey has been active transition to risk-free rates. As part of this process, there was significant activity amending the terms of existing finance documents to replace IBOR-based interest calculation provisions. The approach taken to new finance documents has been to include risk-free rates from the outset. Although there are no specific Jersey regulatory rules, all key interest rate benchmarks used in the loan and bond markets are also used for products that fall within the scope of UK, US and EU benchmark legislation, and therefore the risks posed to market participants by IBOR discontinuance is the same in Jersey as, for example, in the UK. There has, therefore, been a concerted effort to ensure an orderly transition to risk-free rates.

REITs

The real estate investment trust ("**REIT**") regime was introduced in the UK in 2007 in order to encourage investment in the UK real estate sector. Take-up beyond the largest property investment companies was relatively limited in the early years of the regime due to the state of the general economic climate and a perceived burden in complying with the REIT regulations.

Since the implementation of certain material enhancements to the regime in 2012, numbers of new and converting REITs have continued to rise steadily.

The REIT is now an important and popular structure utilised by various leading real estate companies.

In order to qualify as a REIT, there are a number of conditions that must be met, including that the REIT must be UK tax resident and (following April 2022) listed on a recognised stock exchange if less than 70% of the shares in the REIT are held by institutional investors.

As it is straightforward and common for Jersey companies to become UK tax resident and The International Stock Exchange (formerly known as the Channel Islands Securities Exchange) is a recognised stock exchange and has a streamlined process for listing a UK REIT, there are advantages to using a Jersey company as the REIT vehicle. Consequently, there continues to be an increasing number of Jersey REIT structures and financing transactions that involve Jersey REITs.

UK Capital Gains Tax (CGT) and Corporation Tax (CT) changes and their impact on JPUTs

Under the UK's Capital Gains Tax (CGT) and Corporation Tax (CT) regimes, we understand that non-UK investors are generally in-scope on any direct or indirect gains in relation to investments in UK property. However, certain exemptions are available which contribute to the continued popularity of JPUTs:

- Transparency election: JPUTs may elect to be treated as transparent for any gains subject to satisfaction of certain conditions. Investors in JPUTs making a transparency election will be taxed in their own hands on any gain made in respect of investments in UK property and therefore: (i) the status of exempt investors is preserved; and (ii) no double-tax will result as a consequence of investment through these vehicles.
- Exemption election: UK property-rich Jersey fund structures (including JPUTs) which are widely held and prepared to fulfil certain reporting requirements are able to elect to be treated as exempt. This means that not only the fund itself but also any underlying holding entities will be disregarded for CGT/CT purposes (in respect of UK property gains), and investors will be taxed in their own hands on any gain made on their interests in the fund.

JPUTs therefore continue to be an extremely popular vehicle through which to hold UK commercial real estate and we have seen a significant uptick in the establishment and use of JPUTs in high value financing transactions since the transparency election and exemption election regime came into force in April 2019.

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