

STATES OF JERSEY



DRAFT SECURITY INTERESTS (AMENDMENT OF LAW) (No. 2) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 15th August 2013
by the Chief Minister**

STATES GREFFE



Jersey

DRAFT SECURITY INTERESTS (AMENDMENT OF LAW) (No. 2) (JERSEY) REGULATIONS 201-

REPORT

Background

The Security Interests (Jersey) Law 2012 (“the Law”), which replaces the existing law governing security interests in intangible movable property, was adopted by the States on 19th July 2011, received Royal Assent on 10th July 2012 and was registered by the Royal Court on 27th July 2012. The Security Interests (Amendment of Law) (Jersey) Regulations 2013, which amend the 2012 Law, were approved by the States on 16th July 2013. The 2012 Law is due to come into force in a two-stage process on 1st October 2013 and 2nd January 2014. The Draft Security Interests (Amendment of Law) (No. 2) (Jersey) Regulations 201- (“the draft Regulations”) amend the manner in which various transitional provisions and clauses in relation to further advances will operate under the 2012 Law.

Consultation

Through consultation with a number of banking lawyers on the working group and the Government adviser, Professor Sir Roy Goode Q.C., a world leading expert on securities law, it was identified that both of these amendments were required to ensure that both the transitional provisions and clauses in relation to further advances were clear when the 2012 Law comes into force.

The Draft Regulations

Regulation 2 amends the definition of “continuing security interest” in Article 1 of the Law. The effect of the amendment deals with the matters concerning transitional provisions for previous Security Interests entered into under the 1983 Law, and particularly the applicability of those provisions to ‘after acquired property’ under a security agreement.

Regulation 3 amends Article 33 of the 2012 Law so as to substitute the definition “further advance”. The definition is revised to remove any inference that a security interest agreement must contain particulars of the further amounts secured by it. This allows for advances that were not contemplated at the time of the initial advance to be included within the definition of further advance.

Regulation 4 makes a minor amendment to a cross-reference in Schedule 1 to the Law, in consequence of the definition “continuing security interest” being moved to Article 1 of the 2012 Law.

Regulation 5 makes a minor amendment to Schedule 2 to the 2012 Law, which deals with transitional provisions for previous Security Interests entered into under the 1983

Law, and is consequential to the amendment of the definition of “continuing security interest”.

This is to make it clear that where a security agreement governed by the Security Interests (Jersey) Law 1983 is amended to extend to further collateral after the coming into force of Part 3 of the 2012 Law, the further collateral will be governed by the 2012 Law.

Regulation 6 provides for these Regulations to come into force on the same day as Article 93 of the 2012 Law.

Financial and manpower implications

There are no financial or manpower implications for the States of Jersey arising from the adoption of the draft Regulations.

Re-issue Note

This Project is re-issued because the departmental Report included within the original publication was not the correct version.

Explanatory Note

These Regulations amend the Security Interests (Jersey) Law 2012.

Regulation 1 defines “Law” as the Security Interests (Jersey) Law 2012, as used throughout the Regulations. In this note “2012 Law” means the Security Interests (Jersey) Law 2012.

Regulation 2 amends the definition of “continuing security interest” in Article 1 of the 2012 Law. The effect of the amendment is that the Security Interests (Jersey) Law 1983 (“1983 Law”) will continue to apply to security interests that exist in consequence of an agreement entered into before the coming into force of Part 3 of the 2012 Law but which are not created (within the meaning of the 1983 Law) until after the coming into force of the 2012 Law.

Regulation 3 amends Article 33 of the 2012 Law so as to substitute the definition “further advance”. The definition (as substituted by the Security Interests (Amendment of Law) (Jersey) Regulations 2013, R&O.102/2013) is revised to remove any inference that a security interest agreement must contain particulars of the further amounts secured by it.

Regulation 4 makes a minor amendment to a cross reference in Schedule 1 to the 2012 Law, in consequence of the definition “continuing security interest” being moved to Article 1 of that Law.

Regulation 5 makes a minor amendment to Schedule 2 to the 2012 Law, which makes savings provisions in respect of security interests that are in existence prior to the coming into force of that Law. Paragraph 3(1) of that Schedule now makes clear that if parties entered into an agreement that created a continuing security interest but which does not provide for the continuing security interest to include after-acquired property (as defined in Article 19 of the 2012 Law), and those parties enter into a subsequent agreement that purports to extend the continuing security interest to collateral to which the continuing security interest did not apply, then the original agreement will not be affected by the subsequent agreement. The 1983 Law will continue to apply in respect of the continuing security interest and the collateral that falls outside the scope of the original agreement is a security interest in respect of which the 2012 Law will apply.

Regulation 6 provides for these Regulations to come into force on the same day as Article 93 of the 2012 Law.



Jersey

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 93 and 95 of the Security Interests (Jersey) Law 2012¹, have made the following Regulations –

1 Interpretation

In these Regulations, the “Law” means the Security Interests (Jersey) Law 2012².

2 Article 1 of Law amended

In Article 1 of the Law, for the definition “continuing security interest” there shall be substituted the following definition –

- “ ‘continuing security interest’ means a security interest that –
- (a) exists consequent to a security agreement entered into before the coming into force of Part 3 of this Law which is still in force when Part 3 of this Law comes into force; and
 - (b) is created in accordance with the Security Interests (Jersey) Law 1983³ at any time on or after 5th April 1983;”.

3 Article 33 of Law amended

In Article 33(4) of the Law for the definition “further advance” there shall be substituted the following definition –

- “ ‘further advance’ means an advance that is –
- (a) secured by a security agreement; and
 - (b) made after the initial advance secured by the security agreement.”.

4 Schedule 1 to Law amended

In paragraph 1 of Schedule 1 to the Law, in inserted Article 1A(2) of the Security Interests (Jersey) Law 1983⁴, for the word “Schedule” there shall be substituted the word “Law”.

5 Schedule 2 to Law amended

In Schedule 2 to the Law, in paragraph 3(1)(c) for the words “extension of the continuing security interest to” there shall be substituted the words “continuing security interest to include”.

6 Citation and commencement

These Regulations may be cited as the Security Interests (Amendment of Law) (No. 2) (Jersey) Regulations 201- and shall come into force on the same day as Article 93 of the Law.

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- ¹ *L.24/2012*
² *L.24/2012*
³ *chapter 13.775*
⁴ *chapter 13.775*