



Jersey

SECURITY INTERESTS (REGISTRATION AND MISCELLANEOUS PROVISIONS) (JERSEY) ORDER 2013

Arrangement

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Made

27th September 2013

Coming into force

1st October 2013

THE CHIEF MINISTER, in pursuance of Articles 4A, 60(2)(b), 62(1) and 92 of the Security Interests (Jersey) Law 2012¹, orders as follows –

1 Interpretation

In this Order, unless the context otherwise requires –

“data entry requirements” means such requirements relating to the inputting of data on the SIR system by users as may be specified in this Order or by the registrar under Article 62(2) of the Law;

“Law” means the Security Interests (Jersey) Law 2012²;

“SIR” means the register referred to in Article 60(2)(a) of the Law;

“SIR system” means the automated system described in Article 79 of the Law and, for the purposes of this Order, includes the SIR.

2 Disapplication of registration provisions: security interests over certain trust property

(1) In all circumstances, Articles 21(1)(b) and (2), 22(4), 62 to 82 and 84 of the Law, and any other provision of the Law that requires, permits, or refers to, registration in relation to a security interest, shall not apply in relation to a security interest over the trust property of a trust (other than a prescribed unit trust) where the grant of the security interest is by the trustees of the trust.

(2) For the purposes of paragraph (1), a prescribed unit trust is a trust in respect of which the following requirements are satisfied –

(a) the trust is a unit trust within the meaning of the Trusts (Jersey) Law 1984³;

- (b) express provision is made in the instrument by which the trust was created to the effect that the trustees of the trust may issue units in the trust;
 - (c) all of those units are registered (in a register of holders of units in the trust) in the name of one or more legal persons;
 - (d) none of those legal persons –
 - (i) is a foundation that has as an object the benefit of one or more individuals,
 - (ii) acts as trustee for the benefit of one or more individuals, or
 - (iii) acts as the nominee of one or more individuals;
 - (e) the trust property of the trust includes immovable property (whether or not that property is situated in Jersey);
 - (f) the trust property of the trust is held directly by the trustees of the trust or indirectly by the trustees of the trust through one or more legal persons;
 - (g) the trustees of the trust have consent under Article 9 of the Control of Borrowing (Jersey) Order 1958⁴ in relation to the issue of the units in the trust.
- (3) For the purposes of paragraph (2), “legal person” means a company (or other person, or an association of persons, that is not an individual) registered or otherwise formed anywhere in the world.

3 Duration of registration

For the purposes of Article 67 of the Law, the maximum period that a financing statement or financing change statement may be registered shall be 99 years.

4 Registration of proceeds of collateral

For the purpose of Article 25(a) of the Law a financing statement does not contain a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind unless –

- (a) in the case where the proceeds are all present and after-acquired intangible movable property that is proceeds, it describes the proceeds as such; or
- (b) in the case where the proceeds are not those described in subparagraph (a), it describes the security by reference to specific items or types of proceeds that are secured.

5 Demand for registration of financing change statement

- (1) The SIR system may allow –
 - (a) a demand under Article 75(2) or (4) of the Law to be served; or
 - (b) an application under Article 76(1) of the Law to be made, by the system.

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- (2) Any term of an agreement entered into between a person named as grantor and a person named as a secured party, or a person named as assignor and a person named as assignee, in a financing statement or a financing change statement, which purports to prohibit or restrict the use of the SIR system by either party for the purposes of making a demand or application described in paragraph (1), shall be of no effect.
 - (3) For the purpose of satisfying himself or herself of the matters specified in Article 76(1)(a) and (b) of the Law the registrar shall take into consideration –
 - (a) whether the demand served under Article 75(2) or (3) of the Law was served by way of the SIR system; and
 - (b) if not, whether service has been effected by other means on all parties.
 - (4) If a person who is not the sole grantor of a security interest or sole assignor of a receivable serves a demand under Article 75 of the Law, that person shall as soon as practicable after serving such a demand give notice in writing to each other grantor or assignor to whom the financing statement or financing change statement relates of –
 - (a) the date on which the demand was served;
 - (b) the registration number of the financing statement or financing change statement to which the demand relates;
 - (c) the collateral or assignment of a receivable to which the demand relates;
 - (d) the grounds for the demand; and
 - (e) the nature of the demand.
 - (5) A person who has served a notice under paragraph (4) shall –
 - (a) in the case where the demand has been granted, give notice in writing as soon as practicable after it has been granted to each other grantor or assignor to whom the financing statement or financing change statement relates that it has been granted; or
 - (b) in the case where the demand has not been granted (whether by the registrar under Article 76 of the Law or following a decision of the Royal Court under Article 77 of the Law), give notice in writing as soon as practicable after it has not been granted to each other grantor or assignor to whom the financing statement or financing change statement relates that it has not been granted.
 - (6) Nothing in paragraph (5) shall affect the duty in Article 64(3) of the Law in respect of the service of any verification statement upon a grantor or assignor.

6 Data entry requirements, fees and notices on SIR system

- (1) The registrar shall place in a prominent position on the SIR system –
 - (a) a notice drawing attention to the limitation of liability of the registrar under Article 60(3) of the Law;

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- (b) any data entry requirements that are published by the registrar; and
 - (c) any fees that are published under Article 90(2) of the Law; and the methods by which payment of fees may be made,
- in a manner that will draw them to the attention of any user of the SIR system affected by them.
- (2) The registrar shall not be required to –
 - (a) verify the accuracy of any data contained in a financing statement or financing change statement; or
 - (b) verify that a person entering data onto the SIR system is entitled to make such an entry,except in so far as the registrar is required to do so under Part 8 of the Law.
 - (3) Data entry requirements shall not require a financing statement or financing change statement to be updated once it has been registered.

7 Searching the register

- (1) For the purpose of Article 83(2) the registrar shall ensure that the SIR system permits access for searching of the SIR by –
 - (a) any person, for the purpose of accessing any financing statements or financing change statements registered against that person;
 - (b) a grantor or secured party, for a purpose that relates to their security interest in respect of which a financing statement or financing change statement has been registered;
 - (c) an assignor or assignee, for a purpose that relates to their assignment of a receivable in respect of which a financing statement or financing change statement has been registered;
 - (d) any person, for the purpose of establishing –
 - (i) whether intangible property that is to be purchased or otherwise dealt with by the person is subject to a security interest or a prior assignment,
 - (ii) whether to provide credit to, or to obtain a guarantee, indemnity or security from, a person named in the search,
 - (iii) whether to provide credit to, or to obtain a guarantee, indemnity or security from, a person related to a person named in the search,
 - (iv) whether to invest in, with or through a person named in the search, or
 - (v) whether to invest in, with or through a person related to a person named in the search;
 - (e) a liquidator, receiver or administrator of a company, for a purpose that relates to the liquidation, receivership or administration of that company;
 - (f) the Viscount or other person appointed by a court in Jersey, for a purpose that relates to –

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- (i) the administration of the bankruptcy of a person named in the search, or
 - (ii) the enforcement of a court order or warrant;
 - (g) an executor or administrator of a deceased's estate, for a purpose that relates to the administration of the estate of the deceased named in the search;
 - (h) a police officer or employee of a police force or employee of a public sector body, for a purpose that relates to upholding law and order;
 - (i) the holder of a lien or security interest or a creditor, for a purpose that relates to the enforcement of the lien, the security interest or the creditor's rights, as the case may be;
 - (j) a person for the purpose of advising another person in connection with any of the purposes referred to in sub-paragraphs (a) to (i); or
 - (k) a person for the purpose of establishing whether to take legal action against a person named in the search.
- (2) Where the registrar reasonably believes that a person is searching the SIR or accessing the SIR system for a purpose that is inconsistent with any of the purposes described in paragraph (1), the registrar may prevent or restrict access to the system by that person.
 - (3) Nothing in this Article requires the registrar to satisfy himself or herself that a person is searching the register for a purpose described in paragraph (1).

8 Search criteria and search results

- (1) The registrar shall ensure that the SIR system permits a search of the register to be made if any of the following criteria are included in a search request –
 - (a) the financing statement or financing change statement registration number;
 - (b) the type of financing statement or financing change statement;
 - (c) the date of registration of the financing statement or financing change statement;
 - (d) the expiry date of the financing statement or financing change statement;
 - (e) the grantor's or assignor's name and, in the case of an individual, his or her date of birth, or in the case of any other person, that person's registered number (if any).
- (2) Where a person makes a request through the SIR system for a limited search result in respect of a financing statement or financing change statement contained in the SIR system, the registrar shall ensure that the limited search result generated by the SIR system contains the following information in respect of that financing statement or financing change statement –

- (a) the financing statement or financing change statement registration number;
 - (b) the type of financing statement or financing change statement;
 - (c) the date of registration of the financing statement or financing change statement;
 - (d) the expiry date of the financing statement or financing change statement;
 - (e) the grantor's or assignor's name and, in the case of an individual, his or her date of birth, or in the case of any other person, that person's registered number (if any).
- (3) Where a person makes a request through the SIR system for a full search result in respect of a financing statement or financing change statement contained in the SIR system, the registrar shall ensure that the SIR system enables the person searching to be provided with a full copy of the financing statement or financing change statement.

9 Verification statements and SIR system access codes

- (1) When a financing statement or financing change statement is registered the registrar shall assign and send to the secured party or the assignee of a receivable, as the case may be, a code enabling that person to access the financing statement or financing change statement in the register being –
- (a) in the case of a secured party, a “secured party PIN”; and
 - (b) in the case of an assignee of a receivable, an “assignee PIN”.
- (2) A verification statement shall contain –
- (a) the registration number given to the financing statement or financing change statement to which the verification statement relates; and
 - (b) a grantor or assignor unique access code (“grantor PIN” or “assignor PIN”) that is assigned to the grantor or assignor, as the case may be, to whom the financing statement or financing change statement relates.
- (3) A verification statement shall not contain any secured party PIN or any assignee PIN.
- (4) A secured party shall, if requested in writing to do so by the grantor named in a financing statement or financing change statement, as soon as practicable and without charge, provide to that grantor the registration number assigned to that financing statement or financing change statement and the grantor PIN.
- (5) The assignor of a receivable shall, if requested in writing to do so by the assignee named in a financing statement or financing change statement, as soon as practicable and without charge, provide to the assignee of the receivable the registration number assigned to that financing statement or financing change statement and the assignor PIN.

10 Power of registrar to disclose information

The registrar may disclose a secured party PIN, assignee PIN, grantor PIN, assignor PIN or the registration number given to the financing statement or financing change statement or any other information that may be required for the purpose of gaining access to the SIR or SIR system to any person who the registrar reasonably believes is entitled to such information.

11 Power of registrar to certify registered financing statement or financing change statement

The registrar may certify a copy of a registered financing statement or financing change statement as a true copy.

12 Registrar's power to suspend SIR system for repair or maintenance

- (1) The registrar may suspend the operation of the SIR system if he or she considers it expedient to do so for the purpose of maintaining or repairing the system.
- (2) Before suspending the operation of the SIR system the registrar shall publish a notice of the date, time and duration of the intended suspension in a manner that will enable it to be drawn to the attention of any user of the system.
- (3) The notice referred to in paragraph (2) shall be published at least 7 days before the proposed date of suspension and specify the proposed length of the suspension.
- (4) The notice requirement in paragraph (3) shall not apply where it is impractical in all the circumstances for the registrar to give such notice.
- (5) If the registrar considers that suspension of the SIR system is necessary he or she shall return the system to normal functioning as soon as reasonably practicable.

13 Registrar's power to restrict access to information on register

- (1) The registrar may restrict access to all or part of the data held on the SIR system to a person or generally if –
 - (a) a Court has ordered that access to the data is not permitted; or
 - (b) the registrar considers that access to the data should not be permitted.
- (2) When considering whether or not to permit access to data the registrar shall consider –
 - (a) whether it is necessary to withhold access to prevent a serious risk of harm to a person whose details are recorded in the data;
 - (b) whether the data is defamatory or a breach of copyright;
 - (c) whether the search is for a purpose described in Article 7(1);
 - (d) the interests of the person undertaking the search;

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- (e) the interests of the secured party or assignee in ensuring that notice of the security interest or assignment of a receivable is accessible; and
 - (f) whether in all the circumstances the public interest in protecting the privacy of an individual grantor's or assignor's information outweighs the public interest in providing access to the data.
- (3) The registrar may restrict or deny access to all, or a part, of the SIR system if, in the opinion of the registrar –
- (a) there is a fault affecting the system; or
 - (b) the integrity of the SIR system or the SIR is, may be, or may have been, compromised.
- (4) The registrar shall remove any data from the register if the Royal Court makes an Order requiring its removal.

14 Service of notices

- (1) This Article applies in respect of the giving or service of any notices or documents except as otherwise provided by or under the Law or as ordered by a Court, and in the absence of any agreement between the parties setting out arrangements for the service or giving of notices or documents.
- (2) Any notice or document required by or under the Law to be given to or served on any person may be given to or served on the person in question by any of the following means –
- (a) by delivering it to the person;
 - (b) by leaving it at the person's proper address;
 - (c) by sending it by post to the person at that address.
- (3) Any such notice or document –
- (a) may be given or served at the person's address for service appearing in the financing statement;
 - (b) in the case of a company, foundation or partnership incorporated or registered in the British Isles, may be given or served on its registered office;
 - (c) in the case of any other company, partnership, foundation, unincorporated association or any other entity, may be given to or served on a director, secretary, partner, council member or other similar officer or any person who purports to act in any such capacity, by whatever name called, or on the person having the control or management of the business, as the case may be.
- (4) For the purposes of this Article and of Article 7 of the Interpretation (Jersey) Law 1954⁵ in its application to this Article, the proper address of any person to or on whom a notice or document is to be given or served by post shall be the person's last known address or, where a notice is given to or served as described in paragraph (2)(b) or (2)(c), the last known address of the registered office (if there is one) or main business address of the company, foundation or a foundation's qualifying members, partnership, unincorporated association or other entity.

- (5) If an address for service is contained in a financing statement in respect of a person, that address shall also be treated for the purposes of this Article and Article 7 of the Interpretation (Jersey) Law 1954⁶ as the person's proper address.

15 Deemed service of notices etc. by registrar

- (1) This Article applies where a notice or document is required to be given or served upon a party by the registrar.
- (2) If the registrar serves the notice or document by sending it to the person by electronic transmission or other similar means of communication (whether or not the SIR system is used for such service), in the absence of proof to the contrary, the notice or document shall be deemed to have been given or served if –
- (a) the computer system used to transmit the notice or document –
- (i) has received an acknowledgement or receipt to the electronic mail address of the registrar or the SIR system, or
- (ii) has not generated a record that the notice or document has failed to be transmitted; or
- (b) the registrar proves that the notice or document was transmitted by computer system to the electronic mail address provided by the person on whom the notice or document is given or served.

16 Citation and commencement

This Order may be cited as the Security Interests (Registration and Miscellaneous Provisions) (Jersey) Order 2013 and shall come into force on 1st October 2013.

SENATOR I.J. GORST

Chief Minister

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- 1 L.24/2012*
 - 2 L.24/2012*
 - 3 chapter 13.875*
 - 4 chapter 24.150.50*
 - 5 chapter 15.360*
 - 6 chapter 15.360*