

Economic Development Department
White Paper

Draft Security Interests (Jersey) Law 200-

June 2009

The Economic Development Department invites comments on the draft Security Interests (Jersey) Law 200-, a copy of which is attached to this Consultation Paper.

The closing date for responses is **Friday 31st July 2009**.

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It is the policy of Jersey Finance to make individual responses it receives available to the Economic Development Department upon request, unless a respondent specifically requests otherwise.

Public submissions - Please note that responses submitted to all States public consultations may be made public (sent to other interested parties on request, sent to the Scrutiny Office, quoted in a final published report, reported in the media, published on a States of Jersey website, listed on a consultation summary etc). If a respondent has a particular wish for confidentiality, such as where the response may concern an individual's private life, or matters of commercial confidentiality, please indicate this clearly when submitting a response.

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1. INTRODUCTION

1.1. The Economic Development Department invites comments on the draft Security Interests (Jersey) Law 200- (“**the draft Law**”), a copy of which is attached to this Consultation Paper. The draft Law would replace the existing Security Interests (Jersey) Law 1983 to provide a modern framework for creating security under Jersey law.

Improving the existing law

1.2. Intangible property in general and investment securities in particular are of huge importance as collateral in modern financing. Jersey is a leading offshore international finance centre, with £246 billion of funds under management in 2007, and its finance industry contributes 60% of the Island’s gross domestic product. However in the light of recent developments the legal framework to accommodate security interests in intangibles could be amended notably in the principal enactment, the Security Interests (Jersey) Law 1983 in the areas of security interests in unidentified future property or a global security over intangibles. For non-documentary intangibles (see paragraph 10) the method of creation by title transfer, could be improved and charges (hypothecation) permitted over movables. An agreement by which control of a deposit account or securities account is given to the creditor is not effective to create a security interest in all circumstances. A security interest cannot, it seems, be given to secure the indebtedness of a third party. Machinery for the registration of security interests could be created and for such interests as this is relevant such a development would provide a means of discovering their existence. Finally, the only default remedy is sale, and that requires a court order except where otherwise provided by the security agreement or in cases falling within Article 8(5) of the 1983 Law. This Law repeals the 1983 Law in its entirety.

Purpose of this Law

1.3. The central objective of this Law is to provide Jersey with a simplified, modern, efficient legal regime for the creation, perfection, priority, transfer and enforcement of consensual security interests in intangible movables (“collateral”) and their proceeds. It is designed to give Jersey one of the most up-to-date legal regimes in this field and thereby to enhance Jersey’s attractiveness both to local and to foreign investors. This Law will also cover, for the purposes of perfection and priority only, outright assignments of receivables, that is, assignments made otherwise than by way of security. The overriding aim is to facilitate the creation and protection of security interests and assignments with the minimum of formality and to lay down priority rules that meet the reasonable expectations of the business community. A number of provisions reflect in very simplified form the approach adopted by Article 9 of the American Uniform Commercial Code, which has long been in force in all 50 jurisdictions of the United States and has been transplanted into the Canadian Provinces and, more recently, into New Zealand. In addition much assistance has been derived from the English Law Commission’s report Company Security Interests so far as this relates to intangibles.

Principal features

1.4. The principal features of this Law are the following:

- A unified concept of security interest which accommodates not only security by possession and title transfer but also hypothecation (charge);
- The ability to ensure the creation of a security interest in present and future intangibles with the minimum of formality through a single agreement;
- Provision for a modern electronic filing system in which registrations may be effected and searches made on a computer-to-computer basis without human intervention, and which is based on notice-filing rather than transaction filing;
- Perfection by control, as an alternative to registration, for security interests in deposit accounts and investment securities;
- A set of priority rules, including protection against general insolvency creditors, which respond to the reasonable expectations of the market; and
- A range of efficient, easily exercisable default remedies, but with safeguards for the debtor.

1.5. No security over intangible movable property which is a security falling within the draft Law may be created except under the draft Law (Article 102(1)). However, nothing in the draft Law excludes its application to a security interest created under a foreign law (Article 102(2)) (see further paragraphs 16 and 17); indeed, if such a security interest is taken over property situated in Jersey it will not be recognised unless it conforms to Jersey law.

Structure

1.6. Apart from the definitions set out in Article 1 the draft Law covers eight main areas. Parts 1 to 3 lay down the conditions for the attachment and perfection of security interests and assignments of receivables, that is, assignments otherwise than by way of security. Part 4 deals with the priority of competing interests in collateral and the protection of purchasers. Part 5 is devoted to transfers of collateral by the debtor and Part 6 the protection of purchasers and others in a similar position. Part 7 sets out the rights of an assignee of receivables and Part 8 the methods of enforcement of security interests. Part 9 deals with the registration of security interests (including security assignments of receivables) and outright assignments of receivables. Registration is effected by filing of a financing statement containing prescribed particulars, and renewal, discharge or amendment of a financing statement by filing of a financing change statement. Finally, Schedule 2 contains transitional provisions.

2. SCOPE

Subject-matter covered by the draft Law

2.1 The draft Law applies to consensual security interests in intangible movable property (see paragraph 9 below) and intangible proceeds, and proceeds of proceeds, of such property, and in addition, for the purposes of perfection and priority only, the outright assignments of receivables. Outright assignments or re-assignments of other forms of intangible, such as loan debts, fall outside the draft Law, as do interests in land, which are subject to a distinctive legal regime. Security interests and assignments taking effect by operation of law are also outside the scope of the draft Law (Article 8). The draft Law is confined to security interests created after the draft Law comes into force.

“Security agreement; security interest”

2.2. A security agreement means an agreement that creates or makes provision for a security interest, and include an agreement that varies, renews or extends a security agreement and also writing that evidences a security agreement. A security interest is an interest in intangible movable property, being an interest that, under a security agreement, secures payment or performance of an obligation. The phrase “security interest” is thus a generic term covering all existing forms of security created or provided for by a security agreement, including mortgages, charges (hypothecations), pledges and contractual liens. Parties are free to adhere to existing terminology in their agreements but for the purposes of the draft Law the old labels are replaced by the single label “security interest”. To avoid doubt, Article 5 of the draft Law provides that a bank holding a deposit of money and a securities intermediary having an obligation to transfer securities or cash can take a security interest in its own obligation. But liens and other security interests created by operation of law fall outside the definition and are not regulated by the draft Law.

2.3. The concept of a floating charge, by which a debtor company is by the terms of the security agreement given power to dispose of its assets in the ordinary course of business free from the security interest, is not known to Jersey law, nor is it recognised as a distinct form of security under the draft Law. However, there is nothing to preclude a company, whether or not registered in Jersey, from creating a floating charge over property situated in a jurisdiction whose law provides for it. So a Jersey or foreign company could grant under, say, English law a floating charge over property situated in England. But once the property moves to Jersey the security interest attracts all the incidents of Jersey law (see paragraph 17 below).

“Intangible movable property”

2.4. Intangible movable property means movable property other than goods, documents of title to goods or money in the sense of currency (Article 1). Though physical money is excluded, other forms of cash, namely cheques, drafts and deposit accounts, are within the draft Law. Leases of land for not more than nine years, though constituting movable property within this definition, are expressly excluded from the draft Law by Article 9.

2.5. Intangible movables are of two kinds. The first consists of documentary intangibles, that is rights to money or securities embodied in an instrument which can be transferred by delivery of the instrument with any necessary endorsement and can thus be the subject of a possessory security interest.

Into this first category fall negotiable instruments and negotiable investment securities such as bearer bonds and bearer shares. The second kind comprises all other intangibles (“pure intangibles”) so far as not excluded by Article 8 or Article 9. Into this second category fall all types of financial asset and financial instrument, as well as policies of insurance, deposit accounts, receivables arising from the supply of goods and services, debts repayable under loan agreements or promissory notes and other contract rights, including contractual rights to the delivery of goods, but not the goods themselves.

2.6. For example, the draft Law covers a security interest in the rights of an investor under an unallocated gold or other precious metals account, where there has been no appropriation of the commodity to the contract and the investor has merely a contractual right to delivery, but a security interest in precious metals appropriated under an allocated account is an interest in tangible movables and is outside the scope of the draft Law. A financial instrument is a share, bond or other financial instrument that is normally dealt in and gives the right to acquire any such instrument, and for the purposes of the draft Law denotes a share, bond, etc., held directly from the issuer rather than through a securities intermediary. “Financial asset” includes, but has a wider meaning than, “financial instrument” and extends to any property held in a securities or commodities account with an intermediary and to commodities futures and options contracts. It should be noted that certificated registered securities, insurance policies and other written contracts, though evidenced by a document, are not documentary intangibles, because the document does not embody the right so as to enable it to be transferred by manual delivery.

“Proceeds”

2.7. The draft Law covers not only original collateral but proceeds (Articles 6, 25(b)). Proceeds are defined as any identifiable or traceable property deriving directly or indirectly from a dealing with collateral or its proceeds. This includes anything acquired in exchange for or in redemption of intangible movable property, including proceeds of sale, insurance proceeds and proceeds of proceeds. However, the draft Law applies only to those proceeds that are (a) intangible movable property, (b) derived directly or indirectly from intangible property, and (c) not excluded by Article 8. So if shares given in security are sold by the debtor against payment of a banker’s draft, the security interest attaches to the draft and any resulting proceeds. If the proceeds are then utilised to buy a car which is later sold, giving rise to a receivable, then although the draft Law does not apply to the security interest in the car it does apply to the later security interest in the proceeds of sale. Excluded are interest, dividends or other income, which are normally considered to belong to the debtor. It is, however, open to the parties to give security over these items as original collateral.

Classification of collateral

2.8. As pointed out above, the primary classification divides collateral into documentary intangibles and pure intangibles. The reason for this is that only documentary intangibles lend themselves to attachment and perfection by possession.

2.9. Documentary intangibles are themselves of two kinds, negotiable instruments and negotiable investment securities. Broadly the same rules

apply to each. However, negotiable instruments remain governed by negotiable instruments law, so that nothing in the draft Law affects the rights of a holder in due course (Article 43).

2.10. Pure intangibles are divided by the draft Law into three broad categories:

(i) Intangibles governed by the rules on control

Article 3 deals with the concept of control, discussed below in paragraphs 21 et seq. Three classes of intangible are susceptible to perfection by control, which carries with it priority. First, there are deposit accounts, in which a security interest can be perfected not only by registration but by control (Article 3(3)), carrying with it priority (Article 30). Then there are securities accounts held with an intermediary, which are treated by the draft Law in the same way as it treats deposit accounts. The method of perfection by control is in essence the same (Article 3(3), (4)), as are the priority rules (Article 30). Subject to the agreement between the parties a security interest in a securities account covers all securities from time to time credited to that account. Thirdly, there are non-negotiable investment securities, which are subject to special rules of control varying according to whether they are registered certificated securities or uncertificated securities held in a settlement system (Article 3(5), (6)).

(ii) Receivables

The primary reason for isolating receivables as a distinct category is that the perfection and priority rules of the draft Law govern not merely security interests in receivables but also outright assignments of them, e.g. by way of sale under factoring, invoice discounting or securitisation arrangements. The definition of “receivable” in Article 1 is restricted to monetary obligations arising from the supply of goods or services (other than insurance services) and the supply of energy. Receivables therefore do not include loans or loan participation agreements, and the definition also specifically excludes deposit accounts and rights to payment embodied in an instrument or an investment security. There are three reasons for treating receivables as so defined as a distinct category. First, they are not susceptible to control in the sense used in Article 3 of the draft Law and therefore must be treated separately from deposit accounts, securities accounts and investment securities. Secondly, for the reasons given in paragraph 49 the perfection and priority rules of the draft Law extend to the sale or other outright disposition of receivables, as typified by factoring and invoice discounting arrangements, but these reasons are not applicable to the sale of debts arising from loans. Thirdly, in order to maintain the free movement of receivables in the stream of trade Article 45 overrides contractual prohibitions against assignment, but the same policy reasons do not apply to no-assignment clauses in loan agreements or to the securitisation of loan obligations.

(iii) Other intangibles

This category embraces all other pure intangibles not excluded by Article 8 or Article 9. Into this residual category fall rights to repayment under loan agreements and other contract rights. Security interests in these can be

perfected only by registration and fall outside Part 7 dealing with assignments of receivables.

Territorial scope

2.11. The draft Law will apply if (a) the debtor is a company registered in Jersey or a Jersey individual, wherever the property given in security is situated, or (b) intangible movable property situated in Jersey and given in security by a company, whether or not registered in Jersey, or by an individual, whether or not a Jersey individual (Article 4(1)).

Impact on security interest created under a foreign law

2.12. The starting point is that, despite Article 4(1), the draft Law does not affect any right acquired in relation to intangible property under the law of a foreign jurisdiction while that property is situated within that jurisdiction (Article 4(2)). This reflects the widely adopted principle that a dealing in movable property is governed by the law of its situation (*lex situs, lex rei sitae*) at the time of the dealing. Moreover, if the security interest was not merely created but perfected under the foreign law while the property was situated in the foreign jurisdiction and the property is later moved to Jersey it enjoys temporary automatic perfection for 30 days (Article 11(2)), after which it will become unperfected if not perfected under the draft Law. However, if the security interest created under the foreign law was not perfected under that law then on removal of the property to Jersey the security interest does not enjoy any period of automatic perfection and becomes an unperfected interest immediately on removal to Jersey unless and until perfected under the draft Law. In either case an unperfected security interest is vulnerable to subordination to a subsequent security interest and to invalidity against a subsequent purchaser or the Viscount or a liquidator or administrator (see paragraph 32). A Jersey debtor giving security over property situated outside Jersey is deemed to have had capacity to give it under the law of Jersey (Article 103(2)). This re-enacts Article 12 of the Security Interests (Jersey) Law 1983.

2.13. Once the property in respect of which rights have been created under foreign law moves to Jersey it attracts all the incidents of the draft Law, so that, for example, as previously stated a foreign security interest created as a floating charge becomes re-characterised as a fixed security interest under the draft Law. This is made clear by Article 15, which provides that a security interest which is expressed as, or but for this draft Law would be, in the nature of a floating charge attaches to each item of collateral in accordance with the rules for attachment laid down in the draft Law and on attachment takes effect as a fixed security. In other words, the fact that a security interest is expressed as a floating charge does not by itself postpone attachment in the absence of agreement to that effect. Despite this the debtor is entitled to deal in the collateral from time to time if that is in accordance with the security agreement.

Exclusions

2.14. Under Article 9 various types of transaction are excluded because they:

- relate directly or indirectly to immovables, e.g. interests in land, rental and mortgage payments;
- do not in law constitute security, e.g. rights of set-off, assignments for the general benefit of creditors, sale and repurchase (“repo”) agreements, stock lending;
- do not serve a commercial financing purpose, e.g. an assignment of a single account in or towards discharge of a pre-existing indebtedness, an assignment of a right to damages in tort;
- envisage performance by the assignee, as on assignment of an unearned right to payment or an assignment as part of sale of a business;
- do not deprive the assignor of beneficial ownership, as on an assignment for collection;
- involve complex issues which require in-depth examination, e.g. security interests in software and other intellectual property;
- are excluded for policy reasons, e.g. the assignment of a claim to wages;
- are adequately covered by an existing registration, as in the case of supporting obligations (rights to payment under a guarantee or indemnity); or
- are governed by other law and another registration system, e.g. a mortgage of a ship or aircraft or share therein.

Other interests may be excluded by Order (Article 8(d)).

2.15. For the avoidance of doubt, Article 10 of the draft Law provides that contractual subordination agreements do not give rise to security interests, nor do turnover subordination trusts unless expressed to create or provide for a security interest.

Aspects of security

2.16. The draft Law deals with the attachment, perfection and priority of security interests, together with enforcement rights and transfers of security interests. Attachment denotes the creation of a security interest so as to be enforceable against a debtor. Perfection denotes the further step required to give the security interest protection against third parties, including a trustee or liquidator. Typically this involves an act which gives third parties notice of the existence of the interest, such as possession (in the case of a documentary intangible such as a negotiable security) or registration in a public register or which gives the secured creditor control over the intangible. Perfection does not guarantee priority, which is determined by priority rules.

The concept of control

2.17. An important feature of the draft Law is the concept of control of collateral. This provides in relation to pure intangibles the equivalent of what

is provided by possession as regards documentary intangibles. Control is an alternative to possession as an ingredient of attachment (Article 18(1)) and as a method of perfection (Article 23(2)), and in relation to investment securities and deposit accounts control confers priority as against a secured party who does not have control (Article 30(2)). In essence it consists of an arrangement by which the secured party is able to have recourse to the collateral without further assent or assistance from the debtor.

When a secured party has control

2.18 Article 3 sets out the conditions in which a secured party has control. Since a security interest in documentary intangibles attaches and is perfected by possession, Article 3 is confined to pure intangibles, and more specifically to such of these as are susceptible to control, namely deposit accounts, securities accounts and non-negotiable investment securities. The concept of control therefore has no application to receivables or other ordinary debts or contract rights, for the reason stated in paragraph 23. What constitutes control of collateral within the scope of Article 3 depends on the character of the intangible in question, but in every case control depends upon the relevant security agreement being in writing (Article 3(1)), "writing" being defined by Article 1 as modified in relation to control by Article 3(2).

Deposit account

2.19. Article 3 provides four methods of obtaining control of a deposit account. The first is where this is transferred into the name of the secured party with the written agreement of the debtor and the bank or other institution with which the deposit is held. The second is where the three parties agree that the bank or other institution will comply with the instructions of the secured party directing the disposition of funds in the account. This suffices to give control even if the debtor retains the right to direct the disposition of funds in the absence of a contrary direction from the secured party. The secured party's ability to intervene in the operation of the account suffices, whether or not it does so. The third method is by an assignment in writing by way of security signed by or on behalf of the debtor and written notice of the assignment to the bank or other institution with which the deposit account is held. The reason why this method of control is available in relation to deposit accounts but not in relation to receivables or ordinary debts is that the account debtor, being a financial institution, and as such likely to be regulated, can be expected to comply with the notice of assignment. The fourth method is where the secured party is the bank or other institution with which the deposit account is held, for in this case it is able to prevent or restrict the withdrawal of funds from the account.

Securities account with an intermediary

2.20. Where the collateral consists of a securities account held with an intermediary the methods of control are the same as for a deposit account except that control by assignment and notice of assignment is not an available method of control.

Certificated registered investment security

2.21 A secured party has control of a certificated registered investment security if registered as holder with the issuer or in possession of the

certificate and a written form of transfer signed by the debtor in favour of the secured party or in blank (as previously mentioned, if the investment security is a negotiable security mere possession of the certificate suffices without any transfer instrument).

Uncertificated registered investment security

2.22. Where the investment security is not represented by a certificate and is held in a settlement system, such as the CREST system operated by Euroclear UK & Ireland, any one of four methods of control is available. The first is where the operator of the system, on the instructions of the registered holder of the investment security, opens a sub-account in the holder's name but with a power of attorney to the secured party over the investment security. The second is where on the written instructions of the registered holder, the operator is permitted to effect a transfer of title only on the instructions of the secured party. The third is by entry of the secured party on the register maintained by or on behalf of the operator of the system (this is for cases where such a register, rather than that of the issuer itself, is the primary record of entitlement, as in the CREST system). The fourth is by entry of the secured party in the register maintained by or on behalf of the issuer.

3. ATTACHMENT AND PERFECTION

Attachment of security interest

3.1. Article 18 deals with the elements necessary for the attachment of a security interest – in other words, the formalities for the creation of the security interest so as to make it enforceable against the debtor. There are three requirements: the secured party must have furnished valuable consideration, which includes an antecedent debt or liability; the debtor must have rights in the collateral, though not necessarily full ownership; and either the secured party must have possession or control of the collateral or the security agreement must be in writing signed by or on behalf of the debtor and contain a description of the collateral sufficient to identify it (Article 18(1) (c) (ii)).

3.2. Where the secured party has possession there is no need for the security agreement to be in writing. Where the secured party has control then the agreement need not be signed, but control presupposes that the agreement is in writing (Article 3(1)).

3.3. If the secured creditor does not have either possession or control it is necessary that the debtor shall have signed a security agreement containing a description of the collateral sufficient to identify it. The identification requirements, set out in Article 18(2), are very flexible; for example, they enable security to be taken over all or any category of the debtor's present and future collateral. Moreover, a security interest in future collateral attaches when the collateral is acquired, without the need for a new act of transfer (see Article 19(2), (3)). It is not necessary that the future collateral be identified at the time of the security agreement; it suffices that after acquisition it is identifiable as falling within the scope of the security agreement. So a security interest over all the debtor's after-acquired investment property would be a sufficient description.

3.4. There is an automatic attachment in favour of a securities intermediary who credits its customer's securities account with securities bought for the customer by the intermediary to secure the price advanced by the intermediary on the customer's behalf. Such a security interest is given in order to provide the intermediary with an assurance that funds expended on its customer's behalf will be able to be recouped from the purchased securities if the customer fails to reimburse the intermediary. Similarly the securities intermediary in such a case has control of the collateral (see paragraphs 23-24, and its attached interest is automatically perfected at the same time ((see paragraph 33).

3.5. A security interest attaches in respect of a supporting obligation when it attaches to the collateral securing the principal obligation (Article 21). So if receivables for the payment of which a guarantee has been given are assigned by way of security then when the security interest attaches to the receivables it automatically attaches to the rights conferred by the guarantee.

Perfection of the security interest

3.6. The purpose of perfection is, first, to protect the secured creditor's priority against subsequent secured creditors and an outright acquirer for value and, secondly, to avoid invalidation on the debtor's insolvency. An unperfected security interest is subordinate to a subsequent perfected security interest; a person acquiring for value takes free of an unperfected security interest unless a party to the transaction creating or providing for it; and a security interest not perfected before the commencement of the

debtor's bankruptcy is void against the Viscount or a liquidator, or an administrator appointed by the court (Article 57(1)). Similar rules apply to an unperfected absolute assignment of a receivable (Articles 29(1) (b), (e) and (h) and 58(2)). See further paragraphs 49-51.

3.7. The first requirement for perfection is that the security interest has attached. The mode of perfection depends on the nature of the collateral. A security interest in any kind of collateral can be perfected by registration of a financing statement (see paragraph 60 as to financing statements) unless the security interest is in investment securities and has attached automatically under Article 18, in which case it is automatically perfected (Article 23(2)). A security interest in a documentary intangible may also be perfected by possession and a security interest in a deposit account, securities account or registered investment security may also be perfected by control. "Securities account" covers any account with an intermediary to which financial assets may be credited or debited, including a commodity futures account. A security interest in, or an assignment of, receivables requires to be perfected by registration. Notice to the debtor does not suffice.

3.8. A security interest in proceeds of collateral is a continuously perfected security interest if (a) the category of proceeds is described (e.g. "proceeds of the debtor's receivables"); (b) the proceeds are of a kind falling within the description of the original collateral, as where the original collateral consists of investment securities which are sold and the proceeds reinvested in other securities; or (c) the proceeds consist of a payment made in total or partial discharge or redemption of collateral or an insurance or other payment for the loss or reduction in value of the collateral or proceeds.

3.9. Where a security interest perfected in one way is later perfected in another way without an interval the security interest is continuously perfected (Article 24). The steps to perfection can be taken in any order, so that an intending secured creditor can register before the security agreement has been concluded and other ingredients of perfection fulfilled and perfection will go back to the time of registration. Security interests in proceeds and in negotiable instruments and negotiable securities returned to the debtor enjoy a period of temporary automatic perfection, on the expiry of which they need to be perfected in the ordinary way.

3.10. Article 11 provides for the temporary automatic perfection of a security interest created and perfected under the law of another jurisdiction over collateral then situated in that jurisdiction but subsequently removed to Jersey. If the security interest had not been perfected under the foreign law it may be perfected under the draft Law.

4. PRIORITIES

Basic priority rules

4.1. The priority rules in Part 4 apply alike to original collateral and proceeds. Article 29 lays down the basic priority rules. These are that a perfected security interest has priority over an unperfected security interest; where both interests are unperfected priority is determined by the order of attachment; and 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 took possession or control of the collateral; or
- the security interest was temporarily perfected under the draft Law.

4.2. It should be noted that as between two perfected interests the order of perfection is not determinative. If, for example, a financing statement is registered in advance of the conclusion of the security agreement and the debtor then grants a security interest to another party which is perfected first, then although that interest initially has priority it will be subordinated to the first interest once this has become perfected, for the priority of that interest goes back to the time of registration of the financing statement. This enables an intending financier to protect its position by registration in advance of entry into the security agreement. The basic idea is that a party on notice of a prospective security interest and nevertheless advancing funds on security takes its chance of subordination if the prospective interest later becomes an actual interest. Thus the filing of a financing statement by an intending financier alerts a future secured creditor to the fact that while it may be the first to perfect its interest its initial priority will be displaced if the earlier prospective interest later becomes an actual security interest.

Special priority rules

4.3. Under the special priority rules embodied in Article 30, the priority of competing security interests in investment securities and deposit accounts is determined by possession or control and, as between two interests perfected by control, by the order of control. Possession, of course, is restricted to negotiable investment securities. The special priority rules do not themselves cover negotiable instruments held by way of security; instead, protection is given under negotiable instruments law to a holder in due course (Article 43), which includes a pledgee who satisfies the requirements of such a holder. Conflicting security interests granted by an intermediary where neither party has control rank equally. In all other cases the general rules apply.

4.4. A special priority is given to purchase-money security interests and certain other interests. A purchase-money security interest is in essence a security interest taken to secure an advance of the purchase price of the collateral to the debtor. The reason for giving this priority is to prevent the first financier from using its security interest over future property to obtain a monopoly over the debtor's financing and a windfall addition to its security of an asset purchased with the second financier's money. However, the purchase-money security interest must be perfected within 30 days after attachment (Article 34).

Subordination agreements; transfers

4.5. Priorities may be varied by a subordination agreement between the holders of the competing interests (Article 32) but the senior creditor should

register the subordination (see paragraph 61). Transfer of a security interest perfected by registration may be registered by filing a financing change statement (Article 77(1)). Where the transferred security interest was not perfected by registration, a financing statement can be filed showing the transferee as the secured party (Article 78(1)). Registration of a transfer, or showing the transferee as the secured party, is not necessary to preserve the priority of the security interest, because a security interest that is transferred has the same priority as it had before transfer (Article 31).

4.6. Similar rules apply to a further assignment by the assignee of a receivable (Articles 77(2), 78(2)). In general, registration of a transfer under Articles 77 and 78 is permissive, its main purpose being to ensure that any notices which the draft Law requires to be given to the secured party are given to the assignee. But under other provisions a transfer of a debt by way of security must be perfected by registration, whether or not the transferred debt or intangible is itself secured (Article 23(3)), so that failure to register will result in subordination of the transferee's claim to the debt (and in consequence to any security interest transferred with the debt) to another transferee who registers first (Article 29(1) (a)). The same applies to the outright further assignment of a receivable by the original assignee (Articles 23(4), 29(1) (b)). By contrast there is no provision for registration of an outright assignment or further assignment of a debt or indeed of any intangible other than a receivable.

Future advances

4.7. A security interest has the same priority as regards all advances, whether existing or future advances, whether made pursuant to a contractual obligation or voluntarily (Article 33(3)) and whether made with or without notice of a subsequent security interest.

5. TRANSFER OF DEBTOR'S INTEREST IN COLLATERAL

5.1. The debtor may transfer its interest in the collateral despite a provision in the agreement prohibiting transfer, and any perfected security interest subject

to which the collateral is transferred has priority over any subsequent security interest granted by the transferee in the same collateral except where the transfer was with the secured party's consent or the secured party had or later acquires knowledge of it, in which case that priority is subject to qualifications (Articles 35 -40).

6. PERSONS TAKING FREE OF SECURITY INTEREST

Freedom from unperfected security interest

6.1. The priority rules previously discussed deal with competing security interests. Part 6 of the draft Law concerns parties whose interests not merely rank in priority to an earlier security interest but extinguish it altogether. One who acquires the collateral for value takes free of an unperfected security interest unless it was created or provided for by a transaction to which the person acquiring the collateral was a party (Article 41).

Protection of creditor receiving payment

6.2. A creditor receiving payment through a debtor-initiated payment takes free of any security interest, perfected or unperfected, in the funds paid, any intangible that was the source of payment and any negotiable instrument used to effect the payment (Article 42). The purpose of this rule is to ensure the efficacy of payments.

Preservation of rights of holder in due course

6.3. The rights of a holder in due course of a negotiable instrument are preserved (Article 43). Under negotiable instruments law such a holder takes free from any defect in the title of his transferor.

Protection of purchaser of investment security

6.4. The purchaser of an investment security takes free of a perfected security interest if taking control of the investment security and acquiring it without knowledge of the security interest. Where the purchaser acquires the investment security under a transaction entered into in the ordinary course of the transferor's business the purchaser takes free of the interest even if having knowledge of it unless the purchaser also knew that the transfer was in breach of the security agreement (Article 44). The rationale of this rule is that a purchaser in the ordinary course of the seller's business should be entitled to assume that the disposition to him was authorised.

7. ASSIGNMENTS OF RECEIVABLES

Application of draft Law to absolute assignments

7.1. Whilst most of the provisions of the draft Law deal with the grant of security interests, including the assignment of receivables by way of security, the rules governing perfection and priority also apply to the absolute assignment of receivables. One reason for including such assignments is that the common use of recourse provisions and warranties in receivables financing agreements, such as factoring agreements, produces effects very similar to those of secured transactions. Secondly, the existing rule of law by which priority among competing assignees goes to the first to give notice to the account debtor is cumbersome and, indeed, incompatible with the dominance of non-notification finance, where the purchaser of receivables does not wish to assume the burden of maintaining ledgers or the seller does not want to have its relationships with its customers disturbed or to pay the assignee for assuming the ledgering function. Thirdly, the existing priority rule presupposes that an intending assignee will make enquiry of the account debtor to see if it has received any prior notice of assignment, which may be feasible for the purchaser of a few specific receivables but is impracticable in the case of large-scale continuous receivables financing.

7.2. Registration provides a simple method of perfecting an outright assignment of receivables, and a single registration can cover not only existing but future assignments. Through registration the assignee can secure priority over subsequently registered assignments and unregistered assignments. Receivables are narrowly defined and do not, for example, extend to debts repayable under loan agreements, so that an outright assignment of loan debts, or indeed of any intangible falling outside the definition of a receivable, is not covered by the draft Law at all.

7.3. Only those provisions relating to perfection and priority apply to absolute assignments of receivables. Unlike a secured creditor a purchaser of accounts is entitled to collect and retain for its own benefit the full amount of the accounts regardless of the sum paid for their purchase, so that the provisions of the draft Law as to surplus and its distribution do not apply.

Overriding of restrictions on assignment

7.4. Part 7 of the draft Law deals with the assignment of receivables, Articles 45 and 47 of which (but not Article 46) apply not only to outright assignments but to assignments by way of security, which would ordinarily fall outside the definition of assignment. The effect of Article 45 is that where a contract contains a provision prohibiting or restricting assignment such a provision is ineffective against the assignee, so that the assignment is valid and simply exposes the assignor to a claim for damages for breach of contract. The purpose of this provision is to remove what would otherwise be a serious impediment to receivables financing. Where there is a continuous flow of receivables from assignor to assignee, as under a factoring agreement, it is impracticable for the assignee to check the individual contracts to see if these prohibit or restrict assignment. Moreover, the effect of a prohibition against assignment is that the supplier is deprived of the opportunity to obtain immediate funds and transfer the risk of non-payment. Prohibitions against assignment also create potentially serious obstacles to securitisation. So Article 45 reflects a policy embodied in Article 9-406(d) of the American Uniform Commercial Code and in several international conventions that freedom of commerce should be given priority over freedom of contract.

The account debtor's duty to pay

7.5. Article 46, which is concerned with the account debtor's duty to pay the assignee, is confined to absolute assignments, where in principle the assignee has the right to collect from the account debtor immediately the assigned accounts have become due. The assignee's right to collect accounts assigned by way of security is typically exercisable only on default by the assignor-debtor and is thus controlled by the default provisions relating to security interests generally and contained in Article 49.

7.6. The account debtor is obliged to pay the assignee only after receipt of notice in writing by or with the authority of the assignor identifying the account assigned and requiring the account debtor to pay the assignee. It is not sufficient that the notice informs the account debtor of the assignment, for he might not realise that the effect is to require him to pay the assignee instead of the assignor. Hence the provision that the notice require the account debtor to pay the assignee. Where the account debtor acquires knowledge of the assignment from another source or otherwise than by notice in writing it need not pay the assignee until receipt of the requisite notice but will not obtain a good discharge if paying the assignor, so that if the assignor fails to transfer the payment to the assignee the account debtor would be liable to make a second payment, to the assignee, on receipt of a written notice conforming to Article 46(1).

Defences and rights of set-off

7.7. Under Article 47 the account debtor is entitled to assert against the assignee (including an assignee by way of security) any defences he would have had against the assignor, whether arising before or after receipt of notice of assignment and is also entitled to assert against the assignee rights of set-off in respect of cross-claims arising before receipt of the notice of assignment or closely connected to the claim. But the account debtor cannot set off against the assignee's claim a cross-claim against the assignor which is not closely connected to the claim and does not arise until after the account debtor's receipt of the notice of assignment.

8. ENFORCEMENT OF SECURITY INTERESTS

Default remedies

8.1. Under the 1983 Act the creditor's only remedy for default is sale. Part 8 of the draft Law provides a range of default remedies, "default" covering not only failure to pay or perform under the security agreement but the occurrence of an event which by the terms of the security agreement gives the secured party the right to enforce the security (Article 1). The primary remedies are possession or control of the collateral; sale of the collateral; in the case of collateral of a kind reducible to money, its application to satisfaction of the debt; and the taking of the collateral in satisfaction of the debt by the creditor or, if there is more than one, by the senior creditor. Prior notice to interested parties is required, and if any of them whose interest would be adversely affected objects the creditor cannot take the collateral in satisfaction of the debt but must sell it (Article 61(1)).

8.2. In addition to these primary remedies Article 64 contains a set of provisions to facilitate the realization of collateral. Where the collateral is a receivable a secured party may instruct the account debtor to make payments to the secured party instead of to the debtor. Where the collateral is a deposit account the secured party may apply the balance in the account towards satisfaction of any debt or other obligation to the secured party or instruct the bank to pay that balance for that purpose. The secured party may in any event exercise any rights of the debtor in relation to the collateral, for example, the exercise of voting rights associated with shares given in security. Finally, the court is given extensive powers to make orders to facilitate realization of the collateral by the secured party, including an order for delivery of the collateral to the secured party or transfer into the secured party's name.

8.3. Any sale must be at a fair market value and on commercially reasonable terms and 14 days' prior notice must be given to interested parties. Any surplus resulting from sale must be applied in satisfaction of the claims of the holders of other interests that have been registered or of which notice has been given to the creditor, and any remaining amount must be paid to the debtor. The debtor can redeem the collateral at any time before sale or the taking of the collateral in satisfaction and also has a qualified right to reinstate the security agreement.

9. REGISTRATION

The registration system

9.1. The registration system will be wholly automated, so that registrations may be effected, searches made and search certificates issued on-line without the need for human intervention at the Registry end (Article 89). Experience with registration systems in the United States, Canada and New Zealand shows that a highly efficient system can be operated at low cost.

Notice-filing

9.2. The registration system will be based on the concept of notice-filing as opposed to transaction-filing. Notice-filing has three advantages:

(i) It does not involve the filing of a copy of the security agreement, which takes up Registry space, makes it difficult to record the precise time of registration and in any event does not convey information as to the debtor's current indebtedness. Instead, the creditor or intending creditor registers a financing statement stating that it has acquired or intends to acquire a security interest in an identified item of collateral or a given description of collateral. The function of the financing statement is to give notice to third parties of basic information, such as the existence of the security agreement, the identity of the parties and a description of the items or classes of collateral. On-line registration enables the system to record the precise time registration takes effect. A third party wishing to have more information, for example, the amount outstanding under the security agreement, should seek this from the secured creditor or the debtor. If the security interest is not over all the intangible movable property, or all the movable property, of the debtor, the secured party can be required by the debtor, a judgment creditor or another secured party to provide a copy of the security agreement, a statement in writing of the indebtedness and an itemised list of intangible movable property indicating which items are collateral under the security agreement (Article 95(1)).

(ii) A financing statement can be registered in advance of the giving of value or the making of the security agreement, and when all the elements of perfection are in place priority goes back to the date of registration of the financing statement.

(iii) It is not necessary to make a separate registration for each transaction. The financing statement can cover all transactions, present and future, relating to that item or description of collateral.

Assignments, transfers and subordinations

9.3. Assignments of receivables, whether absolute or by way of security, will also fall within the registration system, as will transfers of security interests and further assignments of receivables. Subordination arrangements may also be registered; indeed, it is prudent to do so, because otherwise a transferee of the subordinated security interest will not be bound by the subordination and can treat the transferred interest as continuing to be the senior interest (Article 32(3)).

Other aspects of registration

9.4. The contents of the financing statement are such as may be prescribed by the Minister by Order or in the absence of any such Order the data set out

in Article 70 of the draft Law. A discharge or amendment of a registration can be recorded by registering a financing change statement (Article 82) and the debtor can make a written demand for the secured party to register a financing statement where all of the secured obligations have been performed or in any of the other cases mentioned in Article 83. The public will be entitled to make searches of the register and obtain written reports setting out the information in the register relevant to those searches (Article 93). A printed search result purporting to be issued by or under the authority of the registrar will be admissible in evidence and constitutes proof of the registration and of the date, time and order of registration, in the absence of evidence to the contrary (Article 94).

Errors

9.5. Under Article 74 omissions, errors or irregularities in a registration will not invalidate it unless the omission, error or irregularity is seriously misleading.

Duration of registration

9.6. Registration lasts for the period, if any, specified in the financing statement or until discharge or removal of the registration or the expiry of 10 years beginning with the date of registration, whichever first occurs. But registration may be renewed (Articles 75-76).

Registration not constructive notice

9.7. Article 12 provides that registration of a financing statement or financing change statement is not to constitute constructive notice of the existence of the statement or its contents. This rule is necessary in order to prevent a creditor perfecting its security interest by control from being affected by a registration, given that perfection by control would give priority over a security interest previously perfected by registration. To protect the integrity of the registration system Article 12 also provides that a priority a creditor acquires by perfection is not to be affected by the creditor's actual knowledge of a prior (unperfected) interest. This avoids factual disputes as to whether a party did or did not have notice and enables a party to have confidence in the effectiveness of his registration.

10. EFFECT OF DEBTOR'S BANKRUPTCY

Protection of perfected security interest

10.1. In general, the debtor's bankruptcy invalidates only a security interest, or an assignment of a receivable, remaining unperfected at the time of the debtor's bankruptcy (Article 58). In general a perfected security interest or assignment is not affected by the debtor's bankruptcy. However, even a perfected security interest or assignment may be rendered void under the provisions of the Bankruptcy (Désastre) (Jersey) Law 1990 as a transaction at an undervalue or a preference. Moreover, Article 14(1) of that Law, dealing with security interests in movable property in which a bankrupt debtor and others hold an undivided share remains in force. Nothing else in that Law affects the operation of the draft Law (Article 57(1)).

10.2. The repeal of the Security Interests (Jersey) Law 1983 means that the enforcement of a security interest in movable property en désastre and the application of the proceeds of any realisation of that property by the secured party cease to be controlled by Article 6 of the 1983 Law and instead become governed by Part 8 of the draft Law. The effect is that instead of application to the Court by the Viscount for a vesting order and order for sale, any realisation will be effected by the secured party and the proceeds distributed as provided by Part 8, though the Court may on the application of the secured party make any of the orders specified in Article 64(3) for the purpose of facilitating realisation of the collateral.

11. COMMENCEMENT AND TRANSITIONAL PROVISIONS

Commencement

11.1. Only a few selected provisions of the draft Law, in particular the provisions of Part 9 relating to registration, come into force on a day to be appointed (Article 110(2)). The remaining provisions, including those relating to the attachment, perfection and priority of security interests and assignments of receivables, come into force on the day falling six months after the day appointed under Article 110(2) (Article 110(3)). The period between the two days is the transitional period (Schedule 2, paragraph 1).

11.2. During the transitional period a security interest may be created only under the 1983 Law and will be governed by that Law (Schedule 2, paragraph 2(a), (b)). However, a security interest effective under the 1983 Law may be registered under Part 9 of the draft Law at any time during the transitional period (Schedule 2, paragraph 2(c)).

11.3. On expiry of the transitional period an interest created and effective under the 1983 Law (whether before or during the transitional period) becomes governed by the draft Law as if created under the draft Law (Schedule 2, paragraph 3(1)). Where such a security interest is created by possession or control or is registered during the transitional period (all these being means of perfection under the draft Law) it becomes perfected under the draft Law on and from the expiry of the transitional period (Schedule 2, paragraph 3(2)). However, if two or more security interests are taken in the same collateral then without affecting the operation of paragraph 3(2) the interests are to be taken as perfected in the order in which they were created under the 1983 Law (Schedule 2, paragraph 3(3)). So although in general a security interest cannot be treated as perfected under the draft Law until the end of the transitional period, in the case of competing interests perfection will be deemed to have occurred in the order of creation and priority given

accordingly. The effect is to leave undisturbed the priority that existed before the end of the transitional period.

11.4. The provision dealing with outright assignments of receivables (Schedule 2, paragraph 4) is more limited. It lays down the general rule that the draft Law does not apply to such assignments effected before the expiry of the transitional period but permits registration during or after the transitional period (registration being the only mode of perfection for such assignments). The assignment is then considered to be registered on expiry of the transitional period or the date of registration if later, and from then on the draft Law applies to it. However, paragraph 4 of Schedule 2 does not deal with the order of perfection of competing assignments made before expiry of the transitional period.

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Jersey

SECURITY INTERESTS (JERSEY) LAW 200-

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Jersey

SECURITY INTERESTS (JERSEY) LAW 200-

A LAW to make provision about security interests in intangible movables and assignments of receivables.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION

1 Definitions

In this Law, unless the context otherwise requires –

“administration of the States” includes department of the States;

“advance” –

- (a) means the payment of money, the provision of credit, or the giving of valuable consideration; and
- (b) includes, to the extent that the agreement for that payment, provision or giving so provides, any liability of the relevant debtor to pay interest, credit costs, or other charges or costs in connection with an advance or in connection with the creation, attachment, perfection or enforcement of a security interest securing the advance;

“after-acquired property” means intangible movable property that is acquired by a debtor after a security agreement is made, being a security agreement to which the debtor is party;

“assign” means sell (or otherwise transfer for valuable consideration) otherwise than by way of security;

“assignee” in relation to a receivable means a person who is assigned the receivable;

“assignor” in relation to a receivable means a person who assigns the receivable;

“attach” is defined by virtue of Article 17;

“cash” means money, cheques, drafts, or deposit accounts;

“collateral” means intangible movable property that is subject to a security interest;

“control” has the meaning set out in Article 3;

“country” includes any state, territory, province, or other part of a country;

“Court” means the Royal Court;

“debtor” has the meaning set out in Article 2;

“default”, in relation to a security agreement, means –

- (a) the failure to pay or otherwise to perform the obligation secured under the security agreement when due; or
- (b) the occurrence of an event that, under the security agreement, gives the secured party the right to enforce the security;

“deposit account” means a current, deposit or other account maintained with a bank, or another institution that takes deposits, and evidencing a depositor’s right to the payment of money;

“documentary intangible” means a negotiable instrument or negotiable investment security;

“financial asset” means –

- (a) a financial instrument; or
- (b) an obligation of a person or a share, participation or other interest in a person or in property or an enterprise of a person that –
 - (i) is, or is of a type, dealt in or traded on financial markets, or
 - (ii) is recognized in any area in which it is issued or dealt in as a medium for investment;
- (c) any property which is held by an intermediary for another person in a securities account if the intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Law; or
- (d) a commodity futures contract, a commodity futures option or other similar contract;

“financial asset held with an intermediary” means the rights of an account holder resulting from a credit of the relevant financial asset to a securities account;

“financial instrument” means –

- (a) a share in a company or any other financial instrument equivalent to a share in a company;
- (b) a bond or other form of financial instrument giving rise to or acknowledging indebtedness which is, or is of a type, dealt in or traded on financial markets; or
- (c) any other financial instrument that is normally dealt in and gives the right to acquire any such share, bond, instrument or other security by subscription, purchase or exchange or which gives rise to a cash settlement (excluding an instrument of payment),

and includes a unit of a collective investment scheme within the meaning of the Collective Investments Funds (Jersey) Law 1988, a money market instrument, a unit of an interest in a security (not being a unit represented by a certificate), and any rights, privileges or benefits attached to or arising from any of the financial instruments included in this definition;

“financing change statement” means the data required or authorized by or under this Law to be entered in the register to renew, discharge, or otherwise amend a financing statement;

“financing statement” means the data required or authorized by or under this Law to be entered in the register to effect a registration;

“intangible movable property” means a documentary intangible or any other movable property that does not consist of goods, documents of title or money;

“intermediary” means a person who maintains for others, or both for others and on his or her own account, registers or accounts to which investment securities may be credited or debited, but does not include a person who –

- (a) acts as registrar or transfer agent for the issuer of investment securities;
- (b) records in his or her own books details of investment securities credited to investment securities accounts maintained by an intermediary in the names of other persons for whom he or she acts as manager or otherwise in a purely administrative capacity; or
- (c) maintains registers or accounts in the capacity of operator of a system for the holding and transfer of investment securities on records of the issuer or other records that constitute the primary record of entitlement to investment securities as against the issuer;

“investment security” means –

- (a) a share, bond, or other financial instrument or financial asset; or
- (b) an interest in any of those things,

but does not include money;

“land” means any corporeal hereditament, including a building, and land covered with water, and also includes any interest in land or water and servitudes or rights in, on or over land or water;

“Minister” means the Minister for Economic Development;

“money” means currency authorized as a medium of exchange by the law of Jersey or of any other country;

“negotiable instrument” means –

- (a) a bill of exchange or promissory note; or
- (b) any other writing that evidences a right to payment of money and is of a kind that, in the ordinary course of business, is transferred by delivery with any necessary endorsement;

“negotiable investment security” means an investment security that by law or usage is transferable by delivery or by delivery and endorsement;

“Order” means Order made under this Law;

“perfect” is defined by virtue of Article 22;

“perfected by control”, in relation to a security interest, means perfected by virtue of the secured party’s taking control of the collateral;

“perfected by possession”, in relation to a security interest, means perfected by virtue of the secured party’s taking possession of the collateral;

“perfected by registration”, in relation to a security interest, or an assignment of a receivable, means perfected by virtue of the registration of a financing statement in respect of the security interest or the assignment of the receivable, respectively;

“prescribed” means prescribed by Order;

“principal obligation” means an obligation arising in respect of a loan, a receivable, a negotiable instrument or an investment security, being an obligation that is not a supporting obligation;

“proceeds” –

- (a) means identifiable or traceable property, being property in which the debtor acquires an interest and that is derived directly or indirectly from a dealing with collateral or from a dealing with the proceeds of collateral;
- (b) includes a right to an insurance payment or other payment as indemnity or compensation for loss (or reduction in value) of collateral;
- (c) includes a right to an insurance payment or other payment as indemnity or compensation for loss (or reduction in value) of proceeds themselves; and
- (d) includes a payment made in total or partial discharge or redemption of intangible movable property or of an investment security,

but does not include interest, dividends or other income derived from collateral;

“purchase” means taking by sale, lease, discount, assignment, negotiation, mortgage, pledge, lien, issue, reissue, gift, or any other consensual transaction that creates an interest in intangible movable property;

“purchase money security interest” means –

- (a) a security interest taken in collateral by a seller to the extent that it secures the obligation to pay all or part of the collateral's purchase price; or
- (b) a security interest taken in collateral to the extent that it secures one or both of the following obligations –
 - (i) the obligation to repay all or part of valuable consideration given to the debtor for the purpose of enabling the debtor to acquire rights in the collateral,
 - (ii) any obligation to pay credit charges and interest;

“receivable” means a monetary obligation, whether or not earned by performance, arising from –

- (a) the supply of goods or services (other than insurance services); or
- (b) the supply of energy,

but does not include a deposit account or a right to payment embodied in an instrument or an investment security;

“register” means the register of security interests established under Part 9;

“to register” means –

- (a) in respect of a financing statement or a financing change statement, to enter in the register;
- (b) in respect of a security interest, to make the subject of a financing statement that is entered in the register or of a financing change statement that is entered in the register; or
- (c) in respect of an assignment of a receivable, to make the subject of a financing statement that is entered in the register or of a financing change statement that is entered in the register;

“registrar” means the registrar referred to in Article 69;

“secured party” means a person who holds a security interest for the person's own benefit or for the benefit of another person;

“securities account” means an account maintained by an intermediary, being an account to which investment securities may be credited or debited;

“security agreement” means an agreement that creates or makes provision for a security interest, and includes –

- (a) an agreement that varies, renews or extends a security agreement; and
- (b) writing that evidences a security agreement;

“security interest” means an interest in intangible movable property, being an interest that, under a security agreement, secures payment or performance of an obligation;

“settlement system” means a system for the holding and transfer of financial instruments on records of the issuer or other records that constitute the primary record of entitlement to financial instruments as against the issuer;

“supporting obligation” means a right to payment under a guarantee or indemnity supporting the payment or performance of an obligation (called the principal obligation) arising in respect of a loan, a receivable, a negotiable instrument or an investment security;

“temporarily perfected”, in relation to a security interest, means temporarily perfected in accordance with Article 11 or Part 3;

“valuable consideration” means consideration that is sufficient to support an onerous contract (that is, a contrat à titre onéreux) and includes an antecedent debt or liability;

“verification statement” means a statement served under Article 72(2);

“writing” includes –

- (a) the recording of words in a permanent and legible form;
- (b) the recording of words by electronic means in such a way that they can be retrieved and read; and
- (c) the display of words, by any form of electronic or other means of communication, that is subsequently recorded by electronic means in such a way that they can be retrieved and read.

2 Meaning of “debtor”

- (1) For the purposes of this Law, “debtor” means, in relation to a security interest, a person who owes payment or performance of an obligation secured under the relevant security agreement, whether or not that person owns or has other rights in the collateral.
- (2) In this Law, if that person and the person who owns or has other rights in the collateral are not the same person, “debtor” also includes –
 - (a) the person who owns or has other rights in the collateral, where the term “debtor” is used in a provision of this Law dealing with the collateral;
 - (b) the obligor, where the term “debtor” is used in a provision of this Law dealing with the obligation; or
 - (c) both the person who owns or has other rights in the collateral and the obligor (if the context so requires).

3 Meaning of “control”

- (1) A secured party has control of collateral in any of the circumstances set out in paragraphs (3) to (6), but only if the relevant security agreement is in writing.
- (2) For the purposes of this Article –
 - (a) something shall be taken to be in writing even if it is in oral form, as long as it has been recorded permanently; and
 - (b) any right of the debtor to substitute equivalent collateral or withdraw excess collateral does not of itself mean that an investment security is not under the control of the secured party.
- (3) A secured party has control of a deposit account if –

- (a) the deposit account is transferred into the name of the secured party and that is done with the written agreement of the debtor and the bank, or other institution, with which the deposit account is held;
 - (b) the debtor, the secured party and the bank or other institution have agreed in writing that the bank or other institution will comply with instructions from the secured party directing the disposition of funds in the account, even if the debtor retains the right to direct the disposition of funds in the account in the absence of a contrary direction from the secured party;
 - (c) the deposit account is assigned (by way of security) to the secured party by instrument in writing signed by or on behalf of the debtor and notice of the assignment is given in writing to the bank or other institution; or
 - (d) the secured party is the bank, or other institution, with which the deposit account is held.
- (4) A secured party has control of a securities account with an intermediary if –
- (a) the securities account is transferred into the name of the secured party and that is done with the written agreement of the debtor and the intermediary with whom the securities account is maintained;
 - (b) the debtor, the secured party and the intermediary have agreed in writing that the intermediary will comply with instructions from the secured party directing the disposition of securities in the account, even if the debtor retains the right to direct the disposition of securities in the account in the absence of a contrary direction from the secured party; or
 - (c) the secured party is the securities intermediary.
- (5) A secured party has control of an investment security (being an investment security that is represented by a certificate and is not a bearer security) if he or she is registered with the issuer of the security as holder of the security or is in possession of the certificate and a written form of transfer signed by or on behalf of the debtor in favour of the secured party or in blank.
- (6) A secured party has control of an investment security (being an investment security that is not represented by a certificate) that is held in a settlement system if –
- (a) the operator of the system, on the written instructions of the person who is registered in the system as holder, has credited the investment security to a sub-account in the holder's own name but the holder has given the secured party a power of attorney over the investment security;
 - (b) the operator of the system is, on the written instructions of the person who is registered in the system as holder, permitted to effect a transfer of title in the investment security only on the instructions of the secured party;

- (c) entry in a written register maintained by or on behalf of the operator of the system determines legal title and the secured party is entered in the register as the holder; or
- (d) entry in a written register maintained by or on behalf of the issuer of the security determines legal title and the secured party is entered in that register as the holder.

PART 2

SCOPE OF LAW

4 Application of Law

- (1) This Law applies (except as provided under Article 109 and Schedule 2) only to the following –
 - (a) a security interest created, after this Article comes into force, by a company registered in Jersey, or by a Jersey individual, over any of its or his or her intangible movable property, wherever the property is situated;
 - (b) an assignment, after this Article comes into force, of a receivable by a company registered in Jersey or by a Jersey individual;
 - (c) a security interest created, after this Article comes into force, by a company registered outside Jersey, or by an individual who is not a Jersey individual, over its or his or her intangible movable property situated in Jersey.
- (2) If the property referred to in paragraph (1)(a) is situated in a jurisdiction outside Jersey, this Law does not affect any right acquired in, or in relation to, the property in accordance with the law of that jurisdiction.
- (3) In this Article, “Jersey individual” means –
 - (a) in relation to an individual who has one or more places of business, an individual whose only or principal place of business is Jersey; or
 - (b) in relation to an individual who does not have a place of business, an individual whose only or principal residence is in Jersey.

5 Security interests in own obligation

To avoid doubt, it is hereby declared that for the purposes of this Law –

- (a) a bank or other institution owing an obligation to pay money to a depositor of a deposit held by the bank or institution; or
- (b) an intermediary owing an obligation to deliver or transfer securities or cash to the holder of an account with the intermediary,

may take a security interest in its own such obligation.

6 Security interest in proceeds

The fact that a security interest is a security interest in proceeds shall not prevent the application of this Law to that security interest, as long as the proceeds are intangible movable property.

7 Secured party with title to collateral

The fact that the secured party and not the debtor may hold title to collateral under a security agreement shall not affect the application of any provision of this Law relating to rights, obligations, and remedies, under or in respect of the agreement.

8 Interests excluded

This Law shall not apply to or in respect of, or affect, any of the following interests –

- (a) a security interest in any intellectual property;
- (b) a lien, charge, or other interest in intangible movables, created by any other enactment or by the operation of any rule of law;
- (c) any right of set-off, netting, or combination of accounts;
- (d) any interest prescribed by Order for the purposes of this Article.

9 Transactions excluded

This Law shall not apply to an interest created or provided for by any of the following transactions –

- (a) the creation or transfer of an interest in land;
- (b) a transfer of a right to payment that arises in connection with an interest in land, including a transfer of rental payments payable under a lease of or licence to occupy land, unless the right to payment is evidenced by an investment security;
- (c) a transfer of an unearned right to payment under a contract to a person who is to perform the transferor's obligations under the contract;
- (d) a transfer of present or future wages, salary, pay, commission, or any other compensation for labour or personal services of an employee;
- (e) an assignment for the general benefit of creditors of the person making the assignment;
- (f) a transfer of a right to damages in tort;
- (g) an assignment of receivables made solely to facilitate the collection of the receivables on behalf of the person making the assignment;
- (h) an assignment of a single receivable or negotiable instrument in whole or in partial satisfaction of a pre-existing indebtedness;
- (i) an assignment of receivables as part of a sale of a business, unless the seller remains in apparent control of the business after the sale;

- (j) an assignment (whether or not by way of security), mortgage, or assignment (by way of security) of a mortgage, of a ship or vessel, or of any share of a ship or vessel;
- (k) a transfer or other transaction by way of security in respect of a fishing quota or fishing entitlement;
- (l) a sale coupled with a repurchase;
- (m) stock lending or securities lending.

Cf Personal Property Security Act 1993 s 4 (Saskatchewan)

10 Subordination agreements

- (1) For the purposes of this Law, an agreement (“a subordination agreement”) among creditors of the same debtor, under which one creditor (“the junior creditor”) subordinates his or her rights as such a creditor to the rights of another of those creditors (“the senior creditor”) as such a creditor, does not create or provide for a security interest unless the agreement expressly provides that it does so.
- (2) For the purposes of this Law, where –
 - (a) a subordination agreement exists; and
 - (b) it, or a further agreement, provides that sums received by the junior creditor from the debtor shall –
 - (i) be transferred to the senior creditor, and
 - (ii) after being so received and before being so transferred, be held on trust for the senior creditor,

no security interest in favour of the senior creditor is created or provided for unless it is expressly created, or expressly provided for, by agreement.

11 Perfection under this Law if collateral moved to Jersey

- (1) This Article applies to a security interest created under the law of a jurisdiction other than Jersey in which the collateral is situated when the security interest attaches, being a security interest referred to in Article 4(1)(a).
- (2) If the security interest was perfected under the law of the other jurisdiction when the security interest attached and the collateral was then moved to Jersey –
 - (a) the security interest shall be temporarily perfected by virtue of this paragraph until the expiration of 30 days after the day on which the collateral is moved to Jersey; and
 - (b) the security interest may be perfected under Part 3.
- (3) If the security interest was not perfected under the law of the other jurisdiction when the security interest attached and the collateral was then moved to Jersey, the security interest may be perfected under Part 3.

Cf Personal Property Security Act 1993 s 5(5) (Saskatchewan)

12 Notice and knowledge

- (1) Registration of a financing statement or financing change statement shall not constitute constructive notice of the existence of the statement (or constructive notice of its contents) to any person, or constructive knowledge of the existence of the statement (or constructive knowledge of its contents) by any person.

Cf Personal Property Security Act 1993 s 47 (Saskatchewan)

- (2) Any priority under this Law of a perfected security interest, or perfected assignment of a receivable, over a security interest applies even if the first-mentioned security interest was acquired, or the assignment of the receivable was made, with actual knowledge of the last-mentioned security interest.
- (3) Any priority under this Law of a perfected security interest, or perfected assignment of a receivable, over an assignment of a receivable applies even if the security interest was acquired, or the first-mentioned assignment was made, with actual knowledge of the last-mentioned assignment of the receivable.

Cf Cape Town Convention Article 29

13 Law to bind the Crown and States

- (1) This Law applies to the States and any Minister, or administration, of the States.
- (2) Subject to this Article, this Law shall bind the Crown.
- (3) No contravention by the Crown of any provision of this Law shall make the Crown criminally liable.
- (4) However -
 - (a) the Court may, on the application of the Minister, declare unlawful any act or omission of the Crown that contravenes a provision of this Law; and
 - (b) the provisions of this Law apply in any event to persons in the public service of the Crown as they apply to other persons.
- (5) This Law does not apply to Her Majesty in her private capacity.

PART 3

ATTACHMENT AND PERFECTION

14 Security agreement

- (1) A security interest may be created by agreement.
- (2) For the avoidance of doubt, it is hereby stated that –
 - (a) a security interest in the nature of a hypothec may be created over intangible movable property; and

- (b) a security interest may be created by the parties to a security agreement to secure the obligation of a third party.
- (3) Except as otherwise provided by this Law or any other enactment or any rule of law, a security agreement shall be effective according to its terms between the parties to the agreement, against purchasers of the collateral, against creditors of the debtor and against third parties generally.

Cf Personal Property Security Act 1993 s 9(1) (Saskatchewan)

15 Floating charge

- (1) A security interest that is expressed as a floating charge or, but for this Article, would otherwise be in the nature of a floating charge –
 - (a) attaches to each item of the collateral in accordance with Articles 18 to 20, and at the time provided for in those Articles; and
 - (b) on attachment shall, despite that expression or nature, take effect as a fixed security interest in that collateral.
- (2) Nothing in paragraph (1) prevents the debtor from dealing from time to time in the collateral if that is in accordance with the security agreement.

16 Description of proceeds not required for enforceability against third parties

Except as otherwise provided in this Law, a security interest in proceeds shall be enforceable against a third party whether or not the security agreement contains a description of the proceeds.

Cf Personal Property Security Act 1993 s 10(5) (Saskatchewan)

17 Attachment

The effect of attachment is the creation of a security interest enforceable against a debtor.

18 Attachment: general rule

- (1) Except as provided in Articles 20 and 21, a security interest attaches to collateral under a security agreement at the time when the following conditions are all satisfied –
 - (a) valuable consideration has been given in respect of the security agreement;
 - (b) the debtor has rights in the collateral; and
 - (c) one or both of the following clauses are satisfied –
 - (i) the secured party has possession or control of the collateral,
 - (ii) the security agreement is in writing signed by or on behalf of the debtor and contains a description of the collateral that is sufficient to enable the collateral to be identified,

or at any such time as the parties determine by agreement, being a time after those conditions are all satisfied.

- (2) For the purposes of this Article, a description of collateral is sufficient to enable the collateral to be identified if the description is –
 - (a) a description of the collateral by item;
 - (b) a description of the collateral by type;
 - (c) a statement that the security agreement covers all present and future collateral; or
 - (d) a statement that the security agreement covers all present and future collateral except for specified items or types, and the collateral is not within those exceptions.

19 After-acquired property

- (1) A security agreement may provide for a security interest in after-acquired property.
- (2) Nothing in Article 18 prevents the attachment, without specific appropriation by the debtor, of a security interest to collateral that is after-acquired property.

Cf Personal Property Security Act 1993 s 13(1) (Saskatchewan)

- (3) Subject to any agreement to the contrary between the parties to a security agreement, the relevant security interest attaches to after-acquired property on the latter's acquisition by the debtor.
- (4) An assignment of a future receivable vests the receivable in the assignee on the acquisition of the receivable by the assignor without the need for specific appropriation by the assignor.

20 Investment securities: automatic attachment in favour of intermediary

- (1) A security interest in favour of an intermediary attaches to a person's investment securities held with the intermediary if –
 - (a) the person buys the investment securities through the intermediary in a transaction in which the person is under an obligation to pay the purchase price to the intermediary on or before the purchase; but
 - (b) the intermediary credits the investment securities to the buyer's securities account before the buyer pays the intermediary.
- (2) The security interest secures the buyer's obligation to pay for the investment securities.

21 Supporting obligations: attachment

A security interest attaches in respect of a supporting obligation when it attaches to the collateral securing the principal obligation.

22 Perfection: general

- (1) Except as otherwise provided in this Law, a security interest is perfected when both of the following conditions are satisfied –

- (a) the security interest has attached; and
 - (b) any further steps required under this Law for perfection have been completed.
- (2) For the purposes of this Article, the order in which those conditions are satisfied makes no difference.

Cf Personal Property Security Act 1993 ss 19, 24(1), 25 (Saskatchewan)

23 Perfection by possession, control or registration

- (1) Possession of collateral by the secured party, or on the secured party's behalf by a person other than the debtor, perfects a security interest in collateral that is a documentary intangible.
- (2) Control of collateral by the secured party, or on the secured party's behalf by a person other than the debtor, perfects a security interest in collateral of any of the kinds referred to in paragraphs (3) to (6) of Article 3.
- (3) Registration perfects a security interest in any type of collateral except investment securities to which a security interest has attached as referred to in Article 20.
- (4) Registration perfects an assignment of a receivable.
- (5) Subject to Article 24, perfection by possession, control or registration continues only while the possession, control or registration (respectively) is maintained.
- (6) Perfection of a security interest in a receivable, a negotiable instrument, or an investment security, that secures a principal obligation automatically perfects a security interest in any supporting obligation.

24 Continuity of perfection where later perfection in another way

A security interest is continuously perfected if –

- (a) the security interest is perfected in one way;
- (b) the security interest is subsequently perfected in another way; and
- (c) there is no intervening period during which the security interest is unperfected.

Example

Person A has perfected its security interest in person B's shares by taking possession of person B's share certificates.

Person A releases the share certificates to person B so that person B can sell the shares.

Person A's security interest in person B's shares, which remains perfected for 30 days after the share certificates were delivered to person B, is continuously perfected from the time that person A took possession of the share certificates.

Cf Personal Property Security Act 1993 s 23(1) (Saskatchewan)

25 Continuation of security interests in proceeds

Except as otherwise provided in this Law, a security interest in collateral that is dealt with or otherwise gives rise to proceeds –

- (a) continues in the collateral, unless the secured party expressly or impliedly authorized the dealing; and
- (b) extends to such of the proceeds as are capable, according to Part 2, of being the subject of a security interest to which this Law applies.

Cf Personal Property Security Act 1993 s 28(1) (Saskatchewan)

26 Continuous perfection of security interests in proceeds

A security interest in proceeds is a continuously perfected security interest in proceeds if –

- (a) the security interest in the original collateral is perfected by registration of a financing statement that contains a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind; or
- (b) the security interest in the original collateral is perfected by registration of a financing statement that contains a description of the original collateral, and the proceeds –
 - (i) are of a kind that is within the description of the original collateral,
 - (ii) are of a kind that is capable, according to Part 2, of being the subject of a security interest to which this Law applies and are acquired before the expiration of 30 days after the security interest in the original collateral attached to them,
 - (iii) consist of a payment made in total or partial discharge or redemption of collateral, or
 - (iv) consist of a right to an insurance payment or other payment as indemnity or compensation for loss (or reduction in value) of the collateral or proceeds of the collateral.

Cf Personal Property Security Act 1993 s 28(2) (Saskatchewan)

27 Temporary perfection of security interests in proceeds

A security interest in proceeds is temporarily perfected until the expiration of 30 days after the security interest in the original collateral attached to the proceeds, if –

- (a) the security interest in the original collateral is perfected; and
- (b) the security interest in the proceeds is not continuously perfected under Article 26.

Cf Personal Property Security Act 1993 s 28(3) (Saskatchewan)

28 Temporary perfection: negotiable instrument or investment security returned to debtor

A security interest in a negotiable instrument or an investment security is temporarily perfected until the expiration of 30 days after the secured party made the negotiable instrument or investment security available to the debtor, if –

- (a) the security interest was perfected by control;
- (b) the security interest was, immediately before the negotiable instrument or investment security was made available to the debtor, still perfected; and
- (c) the secured party gave control of the negotiable instrument or investment security to the debtor for sale, exchange, presentation, collection, renewal, or registration of a transfer.

Example

Person A has perfected its security interest in person B's shares by taking possession of person B's share certificates.

Person A releases the share certificates so that person B can sell the shares.

Person A's security interest in person B's shares is temporarily perfected for 30 days after the share certificates were made available to person B.

Cf Personal Property Security Act 1993 s 26(1) (Saskatchewan)

PART 4

PRIORITY IN GENERAL

29 Priority when Law provides no other way of determining priority

- (1) Where this Law provides no other way of determining priority the following rules apply –
 - (a) a perfected security interest has priority over an unperfected security interest in the same collateral;
 - (b) a perfected assignment of a receivable has priority over an unperfected assignment of the same receivable or an unperfected security interest in the same receivable;
 - (c) a perfected security interest in a receivable has priority over an unperfected assignment of the same receivable;
 - (d) except in the case set out in sub-paragraph (f), priority among perfected security interests in the same collateral (where perfection has been continuous) goes to the security interest in relation to which any of the following events first occurred –
 - (i) a financing statement was registered,
 - (ii) the secured party, or another person on the secured party's behalf, took possession or control of the collateral,
 - (iii) the security interest was temporarily perfected in accordance with this Law;

- (e) except in the case set out in sub-paragraph (f), priority among perfected assignments of receivables (where perfection has been continuous) goes to the assignment in relation to which a financing statement was first registered;
- (f) if collateral is a receivable and there are one or more perfected security interests in the receivable and one or more perfected assignments of the receivable, priority among all those security interests and assignments (where perfection has been continuous) goes to the security interest or assignment in relation to which any of the following events first occurred –
 - (i) a financing statement was registered,
 - (ii) the secured party, or another person on the secured party's behalf, took possession or control of the receivable as collateral,
 - (iii) the security interest was temporarily perfected in accordance with this Law;
- (g) priority among unperfected security interests in the same collateral is to be determined by the order of attachment of the security interests;
- (h) priority among unperfected assignments of the same receivable is to be determined by the order in which the assignments occurred;
- (i) if collateral is a receivable and sub-paragraph (f) does not apply, priority among one or more unperfected security interests in the receivable and one or more assignments of that receivable is to be determined by the order of events, where an event is either an attachment of a security interest or an assignment, as each case requires.

Cf Personal Property Security Act 1993 s 35(1) (Saskatchewan)

- (2) For the purposes of paragraph (1), a continuously perfected security interest or assignment of a receivable is to be treated at all times as perfected by the method by which it was originally perfected.

Cf Personal Property Security Act 1993 s 35(2) (Saskatchewan)

- (3) For the purposes of paragraph (1), the time of registration, possession or control, or perfection, of a security interest in original collateral is also the time of registration, possession or control, or perfection, of the security interest in its proceeds.

Cf Personal Property Security Act 1993 s 35(3) (Saskatchewan)

- (4) If there is a security interest in a receivable, a negotiable instrument, or an investment security, that is the subject of a principal obligation, a security interest in any supporting obligation, unless separately perfected, shall have the same priority as the first-mentioned security interest.

30 Special priority rules for investment securities and deposit accounts

- (1) This Article governs priority between conflicting security interests in the same investment securities or deposit accounts.

- (2) A security interest under which a secured party has possession or control of the relevant investment security, or control of the relevant deposit account, has priority over a security interest under which a secured party does not have that possession or control.
- (3) Conflicting security interests under which each secured party has possession or control of the investment security, or control of the deposit account, rank according to the order in which possession or control was acquired.
- (4) Conflicting security interests granted by an intermediary under which 2 or more secured parties do not have control rank equally.
- (5) In all other cases, priority among conflicting security interests in investment securities or deposit accounts is governed by Article 29.

31 Transfer does not affect priority

A security interest that is transferred has the same priority as it had immediately before the transfer.

Cf Personal Property Security Act 1993 s 23(2) (Saskatchewan)

32 Voluntary subordination

- (1) A secured party may, in a security agreement or otherwise, subordinate the secured party's security interest to any other interest.
- (2) An agreement to subordinate a security interest to another interest is effective according to its terms between the parties to the agreement.

Cf Personal Property Security Act 1993 s 40(1) (Saskatchewan)

- (3) However, a transferee of a subordinated security interest is not bound by the agreement to subordinate that interest unless, at the time of the transfer, a financing statement or financing change statement had been registered in respect of the subordination.

33 Future advances and priorities in relation to future advances

- (1) A security agreement may provide for future advances.
- (2) A security interest shall not be extinguished by payment of a current advance if the security agreement makes provision for future advances.
- (3) A security interest has the same priority in respect of all advances, whether or not they are future advances and whether or not they are made under an obligation.
- (4) In this Article, "future advance" means an advance (as defined in Article 1) secured by a security interest and occurring after the relevant security agreement has been made, whether or not the advance is paid, provided or given under an obligation.

34 Priority of purchase money security interest

A security interest in intangible movable property or its proceeds has priority over another security interest in the same collateral given by the same debtor if –

- (a) the first-mentioned security interest is a purchase money security interest and the other is not; and
- (b) the first-mentioned security interest is perfected not later than 30 days after the day on which it attached.

Example

Person A has a security interest in all of person B's present and after-acquired property.

Person C makes a loan to person B for the purchase of a patent.

Person C registers a financing statement in respect of the patent 5 days after person C's purchase money security interest attached to the patent.

Person C's purchase money security interest in person B's patent has priority over person A's security interest in person B's patent.

Cf Personal Property Security Act 1993 s 34(2)(b) (Saskatchewan)

PART 5

TRANSFERS OF COLLATERAL

35 Rights of debtor may be transferred

- (1) The rights of a debtor in collateral may be transferred consensually by the debtor or by the operation of any enactment or of any rule of law despite a provision in the relevant security agreement prohibiting transfer or declaring a transfer to be a default.
- (2) A transfer by the debtor does not prejudice the rights of the secured party under the agreement or otherwise, including the right to treat a prohibited transfer as an act of default.
- (3) In this Article, “transfer” includes a sale, the creation of a security interest, or a transfer under judgment enforcement proceedings.

Cf Personal Property Security Act 1993 s 33 (New Brunswick)

36 General priority of security interest in transferred collateral over security interests granted by transferee

- (1) If a debtor transfers to a party an interest in collateral that, at the time of the transfer, is subject to a perfected security interest in favour of another party, that security interest has priority over a later security interest granted by the transferee in the same collateral.
- (2) Paragraph (1) does not apply to the extent that the security interest granted by the transferee secures advances made, or contracted for –

- (a) more than 30 days after the time when the secured party has knowledge of the information required to register a financing change statement disclosing the transferee as the new debtor in respect of the security interest; and
- (b) before the secured party –
 - (i) registers such a financing change statement, or
 - (ii) takes possession or control of the collateral.
- (3) Paragraph (1) does not apply if the transferee acquires the debtor's interest in the collateral free of the perfected security interest.
- (4) In this Article, "secured party" means the person who has the perfected security interest referred to in paragraph (1).

Cf Personal Property Security Act 1993 s 35(8), (9) (New Brunswick)

37 Transfer of debtor's interest in collateral with consent

Despite Article 36, if a security interest is perfected by registration and the debtor transfers all or part of the debtor's interest in the collateral with the prior consent of the secured party, the security interest in the transferred collateral is subordinate to –

- (a) in any case, an interest, other than a security interest, in the collateral, arising in the period –
 - (i) starting 30 days after the transfer, and
 - (ii) ending (if at all) when the secured party –
 - (A) registers a financing change statement disclosing the transferee as the new debtor, or
 - (B) takes possession or control of the collateral;
- (b) in any case, a perfected security interest in the collateral, being a security interest that is registered or otherwise perfected during that period; or
- (c) in the case where, less than 30 days after the transfer, the first-mentioned secured party does not –
 - (i) register a financing change statement disclosing the transferee as the new debtor, or
 - (ii) take possession or control of the collateral,
 a perfected security interest in the collateral, being a security interest that is registered or otherwise perfected after the transfer and before the expiration of those 30 days.

Cf Personal Property Security Act 1993 s 51(1) (New Brunswick)

38 Transfer of debtor's interest but secured party has certain knowledge

- (1) Despite Article 36, paragraph (2) applies if a security interest is perfected by registration and –
 - (a) if all or part of the debtor's interest in the collateral is transferred, the secured party has knowledge of the information required to

- register a financing change statement disclosing the transferee as the new debtor; or
 - (b) if there has been a change in the debtor's name, the secured party has knowledge of the new name of the debtor.
 - (2) The security interest in the transferred collateral (if paragraph (1)(a) applies), or in the collateral (if paragraph (1)(b) applies), is subordinate to any of the following –
 - (a) in any case, an interest, other than a security interest, in the collateral, arising in the period –
 - (i) starting 30 days after the secured party has the relevant knowledge, and
 - (ii) ending (if at all) when the secured party –
 - (A) registers a financing change statement disclosing the transferee as the new debtor or disclosing the new name of the debtor (as the case requires), or
 - (B) takes possession or control of the collateral;
 - (b) in any case, a perfected security interest in the collateral, being a security interest that is registered or otherwise perfected during that period; or
 - (c) in the case where, during the 30 days after the secured party has the relevant knowledge, the first-mentioned secured party does not –
 - (i) register a financing change statement disclosing the transferee as the new debtor or disclosing the new name of the debtor (as the case requires), or
 - (ii) take possession or control of the collateral,
 a perfected security interest in the collateral, being a security interest that is registered or otherwise perfected during those 30 days.

Cf Personal Property Security Act 1993 s 51(2) (New Brunswick)

39 Transfer of debtor's interest in collateral without consent, but secured party later has knowledge

- (1) If –
 - (a) the debtor's interest in part or all of collateral that is subject to a security interest is transferred, when so subject, by the debtor without the consent, or knowledge, of the secured party; and
 - (b) there are one or more subsequent transfers of the collateral, without the consent, or knowledge, of the secured party, before the secured party acquires knowledge of the information required to register a financing change statement in respect of the most recent transfer (including knowledge of the name of the most recent transferee),

then in the application of Article 38(2)(a), the period of 30 days referred to there shall be taken to run from the time when the secured party acquired that knowledge.

- (2) The fact that the secured party has not registered a financing change statement with respect to any intermediate transferee does not affect the operation of paragraph (1).

Cf Personal Property Security Act 1993 s 51(4) (New Brunswick)

40 Prior security interest not subordinated

Articles 37 – 39 do not have the effect of subordinating a prior security interest that, under paragraph 3 of Schedule 2, is taken to be perfected by registration under this Law.

Cf Personal Property Security Act 1993 s 51(3) (New Brunswick)

PART 6

TAKING FREE

41 Taking collateral free of unperfected security interests

A person who acquires collateral for valuable consideration takes the collateral free of an unperfected security interest in the collateral, unless the unperfected security interest was created or provided for by a transaction to which the person was a party.

cf Personal Property Security Act 1993 s 20(3) (Saskatchewan)

42 Creditor who receives payment of debt takes free

- (1) A creditor who receives payment of a debt owing by a debtor through a debtor-initiated payment takes that payment free of any security interest in the following –
- (a) the funds paid;
 - (b) any intangible that was the source of the payment;
 - (c) any negotiable instrument used to effect the payment.
- (2) Paragraph (1) applies whether or not the creditor had knowledge of the security interest at the time of the payment.
- (3) Paragraph (1) does not apply if the creditor, in receiving payment as referred to in that paragraph, acts in collusion with the debtor to defeat the rights of the person who has the security interest referred to in that paragraph.
- (4) In paragraph (1), “debtor-initiated payment” means a payment made by the debtor through the use of –
- (a) a negotiable instrument;
 - (b) an electronic funds transfer; or
 - (c) a debit, a transfer order, an authorization, or a similar written payment mechanism executed by the debtor when the payment was made.

Example

Person A has a perfected security interest in person B's (a car dealer's) inventory (cars).

Person B sells some of the cars and deposits the cash proceeds into a cheque account.

Person B draws a cheque and pays person C (an unsecured creditor).

Person C's interest in the cheque has priority over person A's security interest in the cheque.

Cf Personal Property Security Act 1989, s 31(2), (3) (Saskatchewan)

43 Holder of negotiable instrument

Nothing in this Law affects the law in relation to the rights of a person who is a holder in due course of a negotiable instrument.

44 Purchaser of investment security takes free

- (1) A purchaser of an investment security takes the investment security free of any perfected security interest in the investment security if the purchaser –
 - (a) gave valuable consideration for the investment security;
 - (b) acquired the investment security without knowledge of the security interest; and
 - (c) took possession or control of the investment security.
- (2) For the purposes of paragraph (1), the purchaser of an investment security who acquired it under a transaction entered into in the ordinary course of the transferor's business has knowledge only if the purchaser acquired the interest with knowledge that the transaction is a breach of the security agreement to which the security interest relates.

Example

Person A has registered a financing statement in respect of all of person B's shares.

Person C also takes a security interest in all of person B's shares, but does not know about person A's security interest.

Person C perfects its security interest by taking possession of person B's share certificates.

Person C's security interest in person B's shares has priority over person A's security interest in the same shares.

Cf Personal Property Security Act 1989, s 31(4), (6) (Saskatchewan)

PART 7
ASSIGNMENTS OF RECEIVABLES

45 Effect of restriction on assignment (whether or not assignment is by way of security)

- (1) A term in a contract that prohibits or restricts the assignment of one or more receivables, in the case of assignment in breach of the prohibition or restriction –
 - (a) is binding on the assignor, but only to the extent of making the assignor liable in damages for the breach;
 - (b) is ineffective as against the assignee; and
 - (c) does not affect the validity of the assignment.
- (2) In this Article, “assignment” means assignment whether or not by way of security.

46 Debtor’s duty to assignee in case of assignment otherwise than by way of security

- (1) An account debtor under a receivable is bound by the assignment of the receivable, and has a duty to make payment to the assignee, only if –
 - (a) the account debtor has been given notice of the assignment in writing by or with the authority of the assignor; and
 - (b) the notice identifies the account assigned and requires the account debtor to pay the assignee.
- (2) Payment to the assignor of an assigned receivable discharges the account debtor under the receivable (to the extent of the payment) only if made without the account debtor’s knowledge of the assignment.
- (3) In this Article, “assignment” means assignment otherwise than by way of security.

47 Rights of assignee of receivable

- (1) The rights of an assignee of a receivable are subject to –
 - (a) the defences to the assigned claim, being defences that the relevant account debtor could have asserted against the assignor;
 - (b) the rights of set-off, being rights that the relevant account debtor could have asserted against the assignor in respect of claims against the assignor –
 - (i) accruing before the account debtor acquires knowledge of the assignment, or
 - (ii) closely connected with the assigned claim.
- (2) Paragraph (1)(a) does not apply if the account debtor has made an enforceable agreement not to assert defences to claims arising out of the relevant contract.

- (3) In this Article, “assignment” means assignment whether or not by way of security.

Example

Person A (a car dealer) assigns its receivables to person B who perfects its security interest in person A's receivables by registering a financing statement.

Person A sells a blue car to person C (a customer) on hire purchase.

Person C sells its red car to person A under an unrelated transaction.

Person C does not know about person B's security interest in person A's receivables (which include person C's debt owing to person A in respect of the purchase of the blue car).

Person C's right to set-off the debt owing by person A in respect of the sale of the red car against person C's debt to person A in respect of the purchase of the blue car has priority over person B's security interest in person C's debt to person A.

Cf Personal Property Security Act 1993 s 41(1), (2) (Saskatchewan)

PART 8

ENFORCEMENT OF SECURITY INTERESTS

48 Meaning of “surplus”

- (1) For the purposes of this Part, there is a surplus if –
- (a) a secured party has applied collateral under Article 59, and the value of the relevant receivable, investment security or negotiable instrument exceeds –
 - (i) the amount of the debt owed to the secured party by the debtor (where the collateral secures payment); or
 - (ii) the monetary value of the obligation owed to the secured party (where the collateral secures performance of a non-monetary obligation);
 - (b) a secured party has sold collateral under Article 49, and the net proceeds of the sale exceed –
 - (i) the amount of the debt owed to the secured party by the debtor (where the collateral secures payment); or
 - (ii) the monetary value of the obligation owed to the secured party (where the collateral secures performance of non-monetary obligation); or
 - (c) a secured party has acted in relation to collateral under Article 64(1) and any payments or balance by which as a result the secured party benefits exceed –
 - (i) the amount of the debt owed to the secured party by the debtor (where the collateral secures payment); or

- (ii) the monetary value of the obligation owed to the secured party (where the collateral secures performance of non-monetary obligation).
- (2) In paragraph (1)(b), “net proceeds”, in relation to a sale of collateral, means net proceeds of the sale after deducting the reasonable costs and expenses of the secured party of, and incidental to, taking possession or control of, holding, valuing, and preparing the sale of, and selling, the collateral.

49 Secured party may take and sell collateral

A secured party may take possession or control of, and sell collateral, when there is a default under the security agreement.

Cf 1997 No 85 s 7; Personal Property Security Act 1993 s 58(2)(a) (Saskatchewan)

50 Duty of secured party selling collateral to obtain best price

- (1) A secured party who exercises a power of sale of collateral under Article 49 owes a duty –
 - (a) to obtain fair market value for the collateral at the time of the sale;
 - (b) to act in other respects in a commercially reasonable manner in relation to the sale; and
 - (c) to enter any agreement for or in relation to the sale only on commercially reasonable terms.
- (2) The duty is owed to the following persons –
 - (a) the debtor;
 - (b) any person who has a security interest in the collateral in the following circumstances –
 - (i) a financing statement relating to the security interest has, not less than 21 days before the sale, been registered, and
 - (ii) the registration is effective at the time of the sale;
 - (c) any person who has an interest in the collateral and has, not less than 21 days before the sale, given the secured party notice of that interest.

Cf 1997 No 85 s 26(1)

51 Methods of sale of collateral

- (1) A secured party may effect a sale of collateral under Article 49 by auction, public tender, private sale, or another method.
- (2) A secured party may buy any collateral that the secured party sells under Article 49.

Cf (for (1) only) Personal Property Security Act 1993 s 59(3) (Saskatchewan)

52 Notice of sale of collateral

- (1) A secured party who sells collateral under Article 49 shall, not less than 14 days before selling the collateral, give notice to the following persons –
 - (a) the debtor;
 - (b) any person who, 21 days before the sale, has a registered security interest in the collateral;
 - (c) any person who has an interest in the collateral and has, not less than 21 days before the sale, given the secured party notice of that interest.
- (2) Paragraph (1) does not apply if –
 - (a) the collateral is a quoted investment, or any prescribed thing that has an objective value;
 - (b) the secured party believes on reasonable grounds that the collateral will decline substantially in value if it is not disposed of immediately after default; or
 - (c) for any other reason, the Court on an *ex parte* application is satisfied that a notice is not required;.

Cf ((1) and (2)(b) and (c)) Personal Property Security Act 1993 s 59(6), (16) (Saskatchewan)

53 Extinction of subordinate security interests on sale

If collateral is sold under Article 49, all security interests in the collateral and its proceeds that are subordinate to the security interest of the secured party who sold the collateral shall be extinguished on the sale of the collateral.

54 Secured party to give statement of account to debtor and others

If collateral is sold by a secured party under Article 49, the secured party shall, within the 14 days after the day on which the collateral is sold, give the persons listed in Article 52(1)(a) to (c) a statement of account in writing, showing –

- (a) the amount of the gross proceeds of sale;
- (b) the amount of the costs and expenses of, and incidental to, the sale; and
- (c) the balance owing by the secured party to the debtor, or by the debtor to the secured party, as the case may be.

Cf 1997 No 85 s 33

55 Distribution of surplus

- (1) If a secured party has applied collateral under Article 59, sold collateral under Article 49, or acted in relation to collateral under Article 64(1), the secured party shall pay the following persons the amount of any resulting surplus by satisfying the claims of those persons in the following order –
 - (a) first, any person who has registered a financing statement in the name of the debtor over the collateral (where the registration was

effective immediately before the application, sale or act, and the security interest relating to that registration was subordinate to the security interest of the secured party);

- (b) then any other person 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;
 - (c) finally the debtor.
- (2) A subordinate security interest to which paragraph (1)(a) refers shall be paid in the order of its priority as determined by Parts 4, 5 and 6.
 - (3) Paragraph (1) applies despite the extinction of a security interest under Article 53.

Cf Personal Property Security Act 1993 s 60(2) (Saskatchewan)

56 Surplus may be paid into court

- (1) The secured party may pay the surplus into court if there is a question as to who is entitled to receive payment under Article 55.
- (2) The surplus may then only be paid out on an application by a person entitled to the surplus.

Cf Personal Property Security Act 1993 s 60(4) (Saskatchewan)

- (3) That entitlement shall be determined in accordance with the order set out in Article 55.

57 Bankruptcy of debtor or assignor

- (1) Except as provided by Article 58 and paragraph (2), nothing in the law relating to bankruptcy (including the Bankruptcy (Désastre) (Jersey) Law 1990) affects the operation of this Law.
- (2) However, nothing in this Law affects the operation of Articles 14(1), 17, 17A or 17B of the Bankruptcy (Désastre) (Jersey) Law 1990.

58 Limited avoidance of security interest or assignment in case of bankruptcy

- (1) Unless perfected before the person becomes bankrupt, a security interest is void as against the Viscount (or a liquidator or an administrator) and the creditors in the case of the bankruptcy of the person who is the debtor in relation to the security interest or is the debtor in relation to collateral subject to the security interest.
- (2) Unless perfected before the person becomes bankrupt, an assignment of a receivable is void as against the Viscount (or a liquidator or an administrator) and the creditors in the case of the bankruptcy of the person who is the assignor.

59 Secured party may apply certain collateral in satisfaction of secured obligation

If the debtor is in default, a secured party with priority over all other secured parties may apply to the satisfaction of the obligation secured by the security interest –

- (a) a receivable;
 - (b) an investment security; or
 - (c) a negotiable instrument in the form of a debt obligation,
- taken as collateral under the relevant security agreement.

Cf Personal Property Security Act 1993 s 57(2)(c) (Saskatchewan)

60 Proposal of secured party to take collateral

- (1) If the debtor is in default, a secured party with priority over all other secured parties may take the collateral in satisfaction of the obligation secured by the security interest.

Cf Personal Property Security Act 1993 s 61(1) (Saskatchewan)

- (2) A secured party who takes collateral under paragraph (1) shall, not less than 14 days before taking the collateral, give notice to the following persons –
 - (a) the debtor;
 - (b) any person who, 21 days before the taking, has a registered security interest in the collateral;
 - (c) any person who has an interest in the collateral and has, not less than 21 days before the taking, given the secured party notice of that interest.

61 Objections to proposal

- (1) A secured party shall sell the collateral if –
 - (a) the debtor; or
 - (b) a person referred to in Article 60(2)(b) or (c) and whose interest in the collateral would be adversely affected by the secured party's taking of the collateral,

gives to the secured party a notice of objection to the taking.
- (2) However –
 - (a) to be valid, the notice must be given by a person within the 30 days after the day on which the person is served with notice under Article 60; and
 - (b) paragraph (1) is subject to Article 62.

Cf Personal Property Security Act 1993 s 61(2) (Saskatchewan)

- (3) Articles 50 – 56 shall apply to a sale required under this Article in the same way as they apply to a sale pursuant to the power of sale under Article 49.

62 Objector may be requested to prove interest

- (1) The secured party may request a person who objects, other than the debtor, to provide proof of the person's interest.
- (2) If the person does not provide proof within the 30 days after the day on which the secured party's request was served on the person, the secured party may proceed as if no objection had been received from the person.

Cf Personal Property Security Act 1993 s 61(5) (Saskatchewan)

63 Where no objection

If –

- (a) at the expiration of the last 30-day period applying under Article 61, no notice of objection is in fact given; or
- (b) in respect of every objection received, Article 62(2) applies so that the secured party is entitled to proceed as if no objection had been received and in fact chooses to do so,

then –

- (i) the secured party shall be taken to have irrevocably elected to take the collateral in satisfaction of the obligation secured by it;
- (ii) the secured party shall be entitled to hold or dispose of the collateral free from all rights and interests of the debtor and of any person referred to in Article 60(2)(b) or (c); and
- (iii) all security interests in the collateral that are subordinate to the security interest of the secured party shall be extinguished.

Cf Personal Property Security Act 1993 s 61(3) (Saskatchewan)

64 Facilitating realization of collateral

- (1) When there is a default under a security agreement, a secured party may, for the purpose of satisfying any obligation owed under the agreement and secured over collateral, do any of the following –
 - (a) if the collateral is a receivable, instruct the account debtor to make payments on the account to the secured party instead of to the debtor under the security agreement;
 - (b) if the collateral is a deposit account with a bank that is the secured party, apply the balance in the account towards settlement of any debt or other obligation owed to the secured party and secured over the account;
 - (c) if the collateral is a deposit account, but with a bank that is not the secured party, instruct a bank that holds the deposit account to pay the balance in the account towards settlement of any debt or other obligation owed to the secured party and secured over the account;
 - (d) in any case, take any proceeds to which the secured party is entitled;
 - (e) in any case, exercise any rights of the debtor in relation to the collateral;

- (f) in any case, instruct any person who has an obligation in relation to the collateral to carry out the obligation for the benefit of the secured party;
 - (g) in any case, apply any remedies provided for in the security agreement, but subject to the provisions of this Law.
- (2) The account debtor, bank, or other party shall comply with an instruction under paragraph (1).
 - (3) The Court may, on application by the secured party when there is a default under a security agreement, make any of the following orders if it appears to the Court reasonably necessary to do so in order to make it possible or practicable for the secured party to exercise his or her rights under this Part –
 - (a) an order for delivery of collateral to the secured party;
 - (b) an order transferring collateral into the name of the secured party;
 - (c) an order enforcing an instruction given under paragraph (1);
 - (d) any other order that appears to the Court necessary or desirable in the circumstances of the case.
 - (4) Nothing in this Article affects the operation of the other provisions of this Part.

65 Disposal of collateral to purchaser for value and in good faith

- (1) A purchaser, for value and in good faith, of collateral sold by a secured party takes the collateral free from the following interests –
 - (a) the interest of the debtor;
 - (b) any interest subordinate to that of the debtor;
 - (c) any interest subordinate to that of the secured party.
- (2) Paragraph (1) applies whether or not –
 - (a) there has been compliance with Article 60 in relation to the collateral;
 - (b) there has been compliance with Article 61 in relation to the collateral;
 - (c) Article 63 applies in relation to the collateral; or
 - (d) registrations relating to security interests that are subordinate to the security interest of the secured party selling the collateral have been removed from the register.

Cf Personal Property Security Act 1993 s 61(7) (Saskatchewan)

66 Entitled persons may redeem collateral

- (1) At any time before the secured party sells the collateral or is deemed to have taken the collateral in satisfaction of the obligation secured by it, a person who is listed in Article 52(1)(a) to (c) may, unless that person otherwise agrees in writing after the relevant default, redeem the collateral by –

- (a) tendering fulfilment of the obligations secured by the collateral; and
 - (b) paying a sum equal to the reasonable expenses of seizing, holding, processing, and preparing the collateral for sale, if those expenses have actually been incurred by the secured party, and any other reasonable expenses incurred by the secured party in enforcing the security agreement.
- (2) The debtor's right to redeem the collateral has priority over any other person's right to redeem the collateral.

Cf Personal Property Security Act 1993 s 62(1)(a) (Saskatchewan)

67 Debtor may reinstate security agreement

- (1) At any time before the secured party sells the collateral or is deemed to have taken the collateral in satisfaction of the obligation secured by it, the debtor may reinstate the security agreement by –
- (a) paying the sums actually in arrears;
 - (b) remedying any other default by reason of which the secured party intends to sell the collateral; and
 - (c) paying a sum equal to the reasonable expenses of seizing, holding, processing, and preparing the collateral for sale, if those expenses have actually been incurred by the secured party, and any other reasonable expenses incurred by the secured party in enforcing the security agreement.
- (2) Paragraph (1) shall apply –
- (a) subject to the relevant security agreement; and
 - (b) unless the debtor has otherwise agreed in writing after his or her default.

Cf Personal Property Security Act 1993 s 62(1)(b) (Saskatchewan)

68 Limit on reinstatement of security agreement

Unless otherwise agreed, the debtor is not entitled to reinstate a security agreement –

- (a) more than twice, if the security agreement provides for payment in full by the debtor not later than one year after the day on which valuable consideration was given by the secured party; or
- (b) more than twice in each year, if the security agreement provides for payment by the debtor during a period greater than one year after the day on which valuable consideration was given by the secured party.

Cf Personal Property Security Act 1993 s 62(2) (Saskatchewan)

PART 9

REGISTRATION

69 Appointment of registrar

- (1) The registrar of companies under the Companies (Jersey) Law 1991 shall be the registrar for the purposes of this Law.
- (2) The registrar shall –
 - (a) maintain a register of security interests, and of assignments of receivables, for the purposes of this Law;
 - (b) have such other functions as are prescribed by or under this Law.
- (3) A reference in the Companies (Jersey) Law 1991 to functions of the registrar under that Law shall include a reference to the functions of the registrar under this Law.

70 Contents of registration

- (1) Registration of a security interest or of an assignment of a receivable shall consist of such data, in such form, as the Minister prescribes by Order.
- (2) In the absence of any such Order, registration shall consist of –
 - (a) such details –
 - (i) in relation to a security interest, as are sufficient to identify the debtor and the secured party, and provide a description of the collateral that is sufficient in terms of Article 18 or 19 or
 - (ii) as are sufficient to identify the assignor and the assignee, in relation to an assignment of a receivable;
 - (b) a number that is given to those details by or under the authority of the registrar; and
 - (c) such other matter as reflects the content of any financing change statement that relates to the security interest or assignment of receivable.
- (3) Registration of a security interest or of an assignment of a receivable may contain such additional data, in such form, as the registrar permits.

71 Timing and other formalities

- (1) A financing statement may be registered before or after –
 - (a) the relevant security agreement is made;
 - (b) the relevant assignment of a receivable occurs; or
 - (c) the relevant security interest has attached.

Cf Personal Property Security Act 1993 s 43(5) (New Brunswick)

- (2) A financing statement or financing change statement may relate to one or more security agreements or assignments of receivables.

Cf Personal Property Security Act 1993 s 43(6) (New Brunswick)

- (3) The registrar may refuse to register a financing statement or a financing change statement, or may cause registration of it to be refused –
 - (a) if the data in it are not in such form as would enable the data to become an entry that meets the requirements of Article 70; or
 - (b) if the fee required by the registrar is not paid for its registration.

72 Registration

- (1) A financing statement or financing change statement is taken to be registered at the time when –
 - (a) a registration number, date and time have all been given to the statement in the register; and
 - (b) the statement and information relating to it are stored in durable form and readily capable of being searched and read.

Cf Personal Property Security Act 1993 s 43(4) (New Brunswick)

- (2) The registrar shall serve, or cause to be served, a statement, as soon as reasonably practicable after a financing statement or financing change statement has been registered.
- (3) The statement shall –
 - (a) give notice of the fact that the financing statement or financing change statement has been registered; and
 - (b) be served on the applicant for registration of the financing statement or financing change statement.

73 Applicant to pass on verification statement

The applicant for registration of a financing statement or financing change statement shall, not later than 30 days after the day on which the verification statement was served on the applicant, serve a copy of the verification statement on the person shown in the register as debtor in relation to the relevant security interest or on the person shown in the register as assignor of the relevant receivable, unless that person has in writing waived the right to receive it or that person is the applicant.

Cf Personal Property Security Act 1993 s 43(11) (New Brunswick)

74 Registration invalid only if seriously misleading

- (1) The validity of the registration of a financing statement or financing change statement is not affected by any defect, irregularity, omission, or error in the entry relating to the registration unless the defect, irregularity, omission, or error is seriously misleading.

Cf Personal Property Security Act 1993 s 43(7) (New Brunswick)

- (2) Without limiting the operation of paragraph (1) a registration is invalid if there is a seriously misleading defect, irregularity, omission, or error in –

- (a) in the case of a security interest, the name of a debtor required by or under Article 70 to be included in the entry relating to the registration (other than a debtor who does not own or have rights in the collateral);
- (b) in the case of a receivable, any name of the assignor, or assignee, required by or under Article 70 to be included in the entry relating to the registration; or
- (c) any number required by or under Article 70 to be included in the entry relating to the registration.

Cf Personal Property Security Act 1993 s 43(8) (New Brunswick)

- (3) In order to establish that a defect, irregularity, omission, or error is seriously misleading, it is not necessary to prove that any person has actually been misled by it.

Cf Personal Property Security Act 1993 s 43(9) (New Brunswick)

- (4) Failure to include a sufficient description of collateral in a financing statement or financing change statement shall not affect the validity of the registration of the statement to the extent that the statement relates to other collateral in respect of which a sufficient description has been included in the statement.

Cf Personal Property Security Act 1993 s 43(10) (New Brunswick)

75 Duration of registration

Except as otherwise provided in this Law or in an Order, the registration of a financing statement or financing change statement shall be effective until the first of the following events occurs –

- (a) the registration of the statement is discharged, or removed from the register;
- (b) any period of registration, being a period specified in the statement, expires;
- (c) the period of 10 years expires, being the 10 years that begin on the day on which and at the time at which the statement was registered.

Cf in part Personal Property Security Act 1993 s 44(1) (New Brunswick)

76 Renewal of registration

- (1) However, the registration of a financing statement or financing change statement may be renewed by registering a financing change statement in respect of the earlier registration at any time while the earlier registration is effective.
- (2) Except as otherwise provided in this Law or in an Order, renewal shall extend the period for which the earlier registration is effective so that it is instead effective until the first of the following events occurs –
 - (a) the registration of the later statement is discharged, or removed from the register;

- (b) any period of registration, being a period specified in the later statement, expires;
- (c) the period of 10 years expires, being the 10 years that begin on the day on which and at the time at which the later statement was registered.

Cf Personal Property Security Act 1993 s 44(2) (New Brunswick)

77 Registration reflecting transfer where perfection is by registration

- (1) A financing change statement may be registered if –
 - (a) all or part of a security interest that is perfected by registration has been transferred; or
 - (b) all or part of a receivable that has been the subject of an assignment that is perfected by registration has been further assigned.
- (2) If a security interest in part, but not all, of a collateral is transferred, the financing change statement that may be so registered shall include a description of the part of the collateral.

Cf Personal Property Security Act 1993 s 45(1), (2) (New Brunswick)

78 Registration reflecting transfer where perfection not by registration

- (1) If a secured party with a security interest that is not perfected by registration transfers the security interest, a financing statement may be registered in which the transferee is disclosed as the secured party.
- (2) If the assignee of a receivable subject to an assignment that is not perfected by registration assigns the receivable, a financing statement may be registered in which the new assignee is disclosed as the assignee.

Cf Personal Property Security Act 1993 s 45(3) (New Brunswick)

79 Registration of transfer may be made any time

A financing change statement or financing statement, as the case may be, relating to a transfer of a security interest or the further assignment of a receivable may be registered before or after the transfer or further assignment.

Cf Personal Property Security Act 1993 s 45(5) (New Brunswick)

80 Transferee becomes secured party or assignee

- (1) After the registration of a financing change statement disclosing the transfer of a security interest, the transferee of the security interest shall become, for the purposes of this Law, the secured party in respect of the security interest.

Cf Personal Property Security Act 1993 s 45(4) (New Brunswick)

- (2) After the registration of a financing change statement disclosing the further assignment of a receivable that has been the subject of an

assignment, the further assignee shall become, for the purposes of this Law, the assignee in respect of the receivable.

81 Registration to reflect subordination

If a security interest or assignment of a receivable has been subordinated to the interests of a person other than the secured party or assignee, a financing change statement may be registered in relation to the subordination at any time during the period when registration of the security interest or of the assignment of the receivable is in force.

Cf Personal Property Security Act 1993 s 45(6) (New Brunswick)

82 Voluntary amendment or discharge of registrations

- (1) A discharge of a registration or an amendment to a registration may be effected by registering a financing change statement at any time during the period when the first-mentioned registration is in force, whether or not the discharge, or the amendment, of the registration is specifically provided for in this Part.
- (2) Only the person named in the registration as secured party may register that statement in respect of a security interest, and only the person named in the registration as assignee may register that statement in respect of an assignment of a receivable.
- (3) A discharge or amendment so effected shall be effective from the time when the financing change statement is registered.

Cf Personal Property Security Act 1993 s 44(3), (4) (New Brunswick)

83 Demand for registration of financing change statement

- (1) The person named as debtor in the registration of the security interest, or any person with an interest in property that falls within a collateral description included in a registration, may serve a written demand to the effect specified in paragraph (2) on the person named as secured party in the registration if –
 - (a) all of the obligations under the security agreement to which the relevant financing statement relates have been performed;
 - (b) the person named as secured party in the registration has agreed to release part or all of the collateral described in the collateral description included in the financing statement;
 - (c) the collateral described in the collateral description included in the financing statement includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor;
 - (d) no security agreement exists between the parties, and the person treated in the financing statement as the secured party has not entered an agreement to give value, being an agreement that is to be secured by a security agreement; or
 - (e) the security interest is extinguished in accordance with this Law.

- (2) The demand is that the person named as secured party in the registration register a financing change statement within the 30 days after the day on which the demand is served –
 - (a) discharging the registration in a case referred to in paragraph (1)(a), (d) or (e);
 - (b) amending or discharging the registration so as to reflect the terms of the agreement in a case referred to in paragraph (1)(b); or
 - (c) amending the collateral description to exclude items or kinds of property that are not collateral under the agreement in a case referred to in paragraph (1)(c).

Cf Personal Property Security Act 1993 s 50(3), (4) (New Brunswick)

- (3) The person named as debtor in the registration of the assignment of a receivable may serve on the person named in the registration as assignee of the receivable a demand to the effect specified in paragraph (4) if –
 - (a) the debt has been discharged; or
 - (b) no assignment between the two persons in fact occurred.
- (4) The demand is that the person named as assignee in the registration register a financing change statement, within the 30 days after the day on which the demand is served, discharging the registration.

84 Articles 85 – 87 do not apply where security trust deed

Articles 85(1) and (2), 86 and 87 do not apply to the registration of a security interest provided for in a security trust deed if the registration in fact discloses that the security agreement providing for the security interest is a security trust deed.

Cf Personal Property Security Act 1993 s 50(8) (New Brunswick)

85 Procedure where no compliance with demand

- (1) A person serving a demand under Article 83 may apply to the registrar for the financing change statement referred to in that Article to be entered in the register (but not registered) if the party on whom the demand is served –
 - (a) fails to comply with the demand within the 30 days after the day when it is served; or
 - (b) fails, within the 30 days after the day when the demand is served, to serve on that person a copy of an order of the Court, being an order maintaining the registration.
- (2) If the registrar receives such an application, the registrar shall –
 - (a) enter the statement in the register; and
 - (b) take reasonable steps to serve on the party on whom the demand was served a notice stating that the financing change statement will be registered unless a copy of an order of the Court, being an order maintaining the registration, is served on the registrar within the 30 days after the day when the notice is served.

- (3) The registrar shall comply with paragraph (2)(b) as soon as reasonably practicable after entering the financing change statement in the register.

Cf Personal Property Security Act 1993 s 50(5) (New Brunswick)

86 Court order

- (1) If an order of the Court, being an order maintaining a registration, is served on the registrar within the 30 days after the day when the notice referred to in Article 85(2) is served, the relevant financing change statement shall not be registered and may be removed from the register by the registrar.
- (2) However, the relevant financing change statement shall be registered if a copy of an order of the Court, being an order maintaining the registration, is not served on the registrar within the 30 days after the day when the notice referred to in Article 85(2) is served.

87 Secured party may obtain court order

- (1) At any time before the financing change statement referred to in Article 83 is registered, the Court may, on application by the party on whom the demand is served under that Article, and if the Court is satisfied that none of the grounds for making a demand under that Article exist, order that the registration –
 - (a) be maintained unconditionally or on any condition, and (subject to Articles 75 and 76) for any period of time; or
 - (b) be amended or discharged.
- (2) The Court may make such other order as it thinks proper for the purpose of giving effect to an order under paragraph (1).
- (3) The registrar shall maintain, amend or discharge the registration of a financing statement in accordance with an order made under paragraph (1).
- (4) In the case of an order to amend or discharge a registration, the registrar shall comply with the order as soon as reasonably practicable after being served with the order.

Cf Personal Property Security Act 1993 s 50(7) (New Brunswick)

88 No fee for compliance with demand

A party on whom a demand is served under Article 83 shall not charge any fee for compliance with the demand, unless the party and the person serving the demand otherwise agree.

Cf Personal Property Security Act 1993 s 50(10) (New Brunswick)

89 Registration to be automated

- (1) A function that is required or permitted by or under this Law to be performed by or under the authority of the registrar in relation to the

register shall, to the extent that it does not require the exercise of discretion on the registrar's part, be carried out by an automated system.

- (2) The system shall –
 - (a) allow a person to apply directly on the system for automatic registration of a financing statement or financing change statement;
 - (b) allow fees to be paid, being fees referred to in Article 104;
 - (c) reject incomplete or informal applications;
 - (d) store financing statements and financing change statements in durable form as a register;
 - (e) store other data required or permitted by or under this Law to be stored in relation to the register;
 - (f) issue a verification statement under Article 72;
 - (g) allow a person to search the register directly;
 - (h) produce search reports; and
 - (i) allow a person to do such other things as are required or permitted by or under this Law to be done in relation to the register by the person.
- (3) Nothing in this Article prevents the imposition by the registrar of reasonable conditions on the use of the system.

90 Removal of data from register

- (1) Data in a registration may be removed from the register –
 - (a) when the registration is no longer effective;
 - (b) to the extent of a discharge or partial discharge of the registration;
or
 - (c) if the registrar is satisfied that the data are frivolous or vexatious.
- (2) The registrar shall, before he or she makes a decision under paragraph (1)(c), take reasonable steps to serve on the person named in the registration as secured party (in the case of a security interest) or assignee (in the case of the assignment of a receivable) notice to show cause, within the 30 days after the day when those steps are complete, why the data are not frivolous or vexatious.
- (3) If that person fails within those 30 days to show cause to the registrar's satisfaction why the data are not frivolous or vexatious, the registrar may, in the registrar's discretion, remove the data from the register.
- (4) If data are removed from the register under paragraph (1)(c), the Court may, on the application of the person, make an order directing that the data be restored to the register if it is satisfied that the data are neither frivolous nor vexatious.
- (5) The Court may make such other order as it thinks proper for the purpose of giving effect to an order made under paragraph (4).
- (6) The registrar shall restore the data to the register in accordance with an order made under paragraph (4) as soon as reasonably practicable after being served with the order.

Cf Personal Property Security Act 1993 s 46 (New Brunswick)

91 Restoration of registration

- (1) The registrar may restore a registration if it appears to the registrar that the registration has been incorrectly discharged, or removed from the register, because of an administrative or clerical error made by or under the authority of the registrar.
- (2) A registration so restored shall be regarded as having continued in force as if it had not been so discharged, or removed, from the register.

92 Correction of errors or omissions

The registrar may, with the consent of the person named in a registration as secured party (in the case of a security interest) or assignee (in the case of the assignment of a receivable), correct any administrative or clerical error, or an administrative or clerical omission, made by or under the authority of the registrar in the registration.

93 Access to register

- (1) The public shall be entitled to make searches of the register and to obtain written reports setting out the information in the register relevant to those searches.
- (2) The registrar shall make the register reasonably accessible to the public for the purposes of allowing the operation of the system referred to in Article 89, searches to be made and any other requirements of this Law to be met.

94 Printed search result as evidence

A printed search result that purports to be issued by or under the authority of the registrar shall be admissible as evidence and is, in the absence of evidence to the contrary, proof of the registration of any financing statement or financing change statement to which the search relates, including –

- (a) the date and time of registration of the statement; and
- (b) the order of registration of the statement as indicated by the registration number (if any), or date and time, set out in the printed search result.

Cf Personal Property Security Act 1993 s 48(3) (New Brunswick)

PART 10

MISCELLANEOUS

95 Secured party to provide information

- (1) The debtor in respect of a security interest, a judgment creditor of the debtor, a person with a security interest in intangible movable property of

the debtor, or a representative authorized by any of them, may require the secured party to send or make available to any specified person, at an address specified by the person making the requirement, any of the following –

- (a) a copy of a security agreement that creates or provides for a security interest held by the secured party in the intangible movable property of the debtor;
 - (b) a statement in writing of the amount of the indebtedness under the security agreement and of the terms of payment of the indebtedness;
 - (c) an itemized list of intangible movable property indicating which items are collateral under the security agreement.
- (2) A secured party shall comply with a requirement under paragraph (1) within the 30 days after the day when notice of the requirement is served on the secured party.
 - (3) Paragraph (1)(c) does not apply if the security interest is over all of the intangible movable property, or all of the movable property, of the debtor.
 - (4) Paragraph (1) does not apply if the thing required is, or is required to be, available, under any other enactment or rule of law, to the person who made the requirement.

Cf Personal Property Security Act 1993 s 18(2), (6) (Saskatchewan)

- (5) A person who fails to comply with this Article shall be guilty of an offence and liable to.....

96 Exemption from Article 95

- (1) The Court may, on application by a secured party, make an order exempting the secured party from compliance with a requirement made under Article 95 in whole or in part if the Court is satisfied that, in the circumstances, it would be unreasonable for the secured party to have to comply in whole or in part with the requirement.
- (2) The Court may, on application by a secured party, make an order extending the time for compliance with a requirement made under Article 95 if the Court is satisfied that, in the circumstances, it would be unreasonable for the secured party to have to comply with the requirement within the 30 days after the day on which he or she is served with notice of the requirement.

Cf Personal Property Security Act 1996, s 18(13) (Saskatchewan)

97 Costs of complying with Article 95

- (1) A secured party who is required under Article 95 to provide certain information may charge the person requiring the information reasonable costs for providing the information, unless the person who has required the information is the debtor.

- (2) A debtor who has required information under Article 95 is entitled to be supplied free of charge with the information.

98 Order for compliance

The Court may, on application by the person who made a requirement under Article 95, make an order that the secured party comply with the requirement if, without reasonable excuse, the secured party has failed to comply with the requirement.

Cf Personal Property Security Act 1993 s 18(8) (Saskatchewan)

99 Failure to comply with order

If a person fails to comply with that order, the Court may, on the application of the person who made the requirement under Article 95 –

- (a) make an order declaring that the security interest to which the requirement relates is to be treated as unperfected or discharged, and directing the registrar to remove from the register the registration of the security interest; and
- (b) make such other order as it thinks proper for the purpose of giving effect to that order.

Cf Personal Property Security Act 1993 s 18(12) (Saskatchewan)

100 Obligation to disclose successor

- (1) If a person makes a requirement under Article 95 and the person to whom the requirement was made no longer has an interest in the relevant obligation or collateral, the second person shall send or make available to the first person the name and address of the immediate successor in interest and the latest successor in interest, to the extent that those things are known to the second person.

Cf Personal Property Security Act 1993 s 18(9) (Saskatchewan)

- (2) A person who fails to comply with this Article shall be guilty of an offence and liable to.....

101 Loi (1880) sur la propriété foncière

For the avoidance of doubt, it is hereby declared that nothing in the Loi (1880) sur la propriété foncière shall affect the validity of a security interest.

102 Exclusive application of this Law

- (1) To avoid doubt, it is declared that no security interest (being an interest that is not excluded from the application of this Law) over intangible moveable property may be created under the law of Jersey except under this Law.

- (2) Nothing in this Article excludes the application of this Law to a security interest created under the law of a country or territory other than Jersey.

103 Capacity to give security under foreign law

- (1) In this Article –
 - (a) “foreign law” means any law other than the law of Jersey;
 - (b) “person” means a person having the capacity to create a security interest under this Law;
 - (c) “property” means all property, whether tangible or intangible, vested, contingent or future, and whether or not regarded by the law of Jersey as immeubles, and includes choses in action.
- (2) If at any time on or after 5th April 1983 (including any time after this Article comes into force) a person incorporated, resident or domiciled in Jersey or, being a limited liability partnership, registered under the Limited Liability Partnerships (Jersey) Law 1997, gives security governed by foreign law over property situated outside Jersey, the person giving the security shall (without prejudice to the person’s actual capacity, if any, at any time) be deemed to have had capacity to give it under the law of Jersey.

104 Fees

- (1) The registrar may require the payment to the registrar of fees for or in respect of –
 - (a) the performance of any duty, or the exercise of any power, of the registrar under this Law; or
 - (b) the use of, or access to, a system under Article 89.
- (2) Those fees shall be fees published by the Jersey Financial Services Commission in accordance with Article 15(5) of the Financial Services Commission (Jersey) Law 1998, and may include periodic fees in respect of registrations maintained on the register.

105 Rules of court

The power to make rules of court under the Royal Court (Jersey) Law 1948 shall include a power to make rules for the purposes of this Law and proceedings under this Law.

106 Orders

- (1) The Minister may make Orders, not inconsistent with this Law, for or with respect to any matter that by this Law is required or permitted to be prescribed by Order or that is necessary or convenient to be prescribed by Order for carrying out or giving effect to this Law and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any of the following –

- (a) procedures, requirements, and other matters, in respect of the register and its operation, including matters relating to access to it, its location, its suspension and the hours when it is to be accessible;
- (b) procedures, requirements, and other matters, in respect of registration (or entering in the register) under this Law, including the following –
 - (i) the description of collateral, including proceeds collateral, that is to be included in financing statements and financing change statements,
 - (ii) the description of receivables and their assignments that is to be included in financing statements and financing change statements,
 - (iii) a requirement to describe by serial number,
 - (iv) the form and content of financing statements, financing change statements, and other data authorized or required by or under this Law to be entered or registered in the register,
 - (v) the effectiveness, renewal, repetition, discharge, expiry, and amendment, of registration;
- (c) the data to be entered in the register to effect, renew, repeat, discharge, or amend, registration;
- (d) any other matters relating to registration under this Law;
- (e) procedures, requirements, and other matters, in respect of the form and use of verification statements to confirm a registration;
- (f) procedures, requirements, and other matters in respect of searching the register, including criteria on which a search may be conducted, the method of disclosure and the form and content of search results;
- (g) forms in general for the purposes of this Law;
- (h) procedures, requirements, and other matters in respect of notices for the purposes of this Law, including the matters in respect of which notices are required and the form of notices under this Law;
- (i) the functions of the registrar.

Cf Personal Property Security Act 1993 s 71 (New Brunswick)

- (2) An Order made under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the Order.

107 Regulations

- (1) The States may by Regulations amend Part 1, 2 or 4.
- (2) Regulations made under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States to be necessary or expedient for the purposes of the Regulations.

108 Amendments and repeals

The enactments specified in Schedule 1 shall be amended or repealed in the manner indicated in that Schedule.

109 Savings, and transitional and consequential provisions

- (1) Schedule 2 shall have effect..
- (2) The States may, by Regulations, make provision of a saving or transitional nature consequent on the enactment of this Law, and those Regulations may, but are not required to, amend Schedule 2.
- (3) A provision of Regulations made under this Article (or a provision of Schedule 2 as amended by Regulations made under this Article) may, if the Regulations (or Schedule 2 as so amended) so provide, come into force on the day on which this Article comes into force or on a later day.
- (4) To the extent to which any such provision comes into force on a date that is earlier than the date of its promulgation, the provision does not operate so as –
 - (a) to affect, in a manner prejudicial to any person (other than the States or an administration of the States), the rights of that person existing before the date of its promulgation; or
 - (b) to impose liabilities on any person (other than the States or an administration of the States) in respect of anything done or omitted to be done before the date of its promulgation.

110 Citation and commencement

- (1) This Law may be cited as the Security Interests (Jersey) Law 200-.
- (2) Part 1, Articles 4, 8, 9, 10, 12 and 13, Part 9, Articles 104 to 107, 109 and 110 and Schedule 2 shall come into force on such day as the States may by Act appoint.
- (3) Unless otherwise prescribed by the States by Act, the remaining provisions of this Law shall come into force on the day falling 6 months after the day appointed under paragraph (2).

SCHEDULE 1

(Article 108)

AMENDMENTS AND REPEALS

1 Securities Interests (Jersey) Law 1983 repealed

The Securities Interests (Jersey) Law 1983 shall be repealed.

2 Bankruptcy (Désastre) (Jersey) Law 1990 amended

Article 14(2) of the Bankruptcy (Désastre) (Jersey) Law 1990 shall be repealed.

DRAFT

SCHEDULE 2

(Article 109)

SAVINGS AND TRANSITIONAL PROVISIONS

1 Interpretation

In this Part, unless the context otherwise requires –

“1983 Law” means the Security Interests (Jersey) Law 1983;

“transitional period” means the period commencing on the day appointed under Article 110(2) and ending on the day on which Part 3 comes into force.

2 Registration and ancillary provisions in force during transitional period

During the transitional period –

- (a) a security interest in intangible movable property may only be created under the 1983 Law;
- (b) the 1983 Law (and any other rules of law concerning security interests, being rules not excluded by the 1983 Law) shall apply to any security interest created under it;
- (c) a security interest created at any time under the 1983 Law (including a time before the transitional period) may be registered under Part 9 of this Law if the security interest is in effect when so registered.

3 After the transitional period

- (1) On the expiry of the transitional period –
 - (a) this Law shall apply to any security interest that –
 - (i) is still in effect on that expiry, and
 - (ii) was created under the 1983 Law (whether before, or during, the transitional period),as if the security interest had been created under this Law; and
 - (b) such a security interest, if created by possession or control, or registered under this Law during the transitional period, shall be taken for the purposes of this Law to have been perfected by possession, control or registration (respectively) under this Law.
- (2) That perfection shall be taken to have occurred on the expiry of the transitional period.
- (3) If 2 or more security interests in the same collateral are taken to be perfected under sub-paragraph (1), then, without affecting the operation of sub-paragraph (2), the security interests shall be taken, on the expiry of the transitional period, to have been perfected in the order in which the security interests were created under the 1983 Law.

- (4) Without affecting the operation of sub-paragraph (2), the registrations of financing change statements under Part 9 shall be taken to operate, on the expiry of the transitional period, in the order of their registration.
- (5) Sub-paragraphs (1) to (4) have effect despite any provision in Part 9 as to when a registration takes effect.
- (6) If a security interest was created under the 1983 Law otherwise than by possession or control, and was not registered under this Law during the transitional period, it shall not be taken to have been perfected under this Law until it is in fact perfected under this Law.

4 Existing assignments of receivables

- (1) This Law shall not apply to an assignment of a receivable effected (otherwise than by way of security) before the expiry of the transitional period, except to the extent necessary to allow the assignment to be registered under this Law during or after the transitional period.
- (2) Such an assignment may be so registered and shall be taken to have been registered on the expiry of the transitional period, or when it was actually registered, whichever is the later time.
- (3) This Law shall apply to such an assignment from that time.