

Examples of provisions in the PPS Bill that more closely reflect their international counterparts

1. Clause 85 of the Bill previously provided:

⁸⁵ Acquiring personal property free of unperfected security interest

- (1) The transferee acquires the transferee's interest free of the security interest if:
 - (a) the transferee acquires the transferee's interest by purchase or lease; and
 - (b) the security interest is unperfected immediately before the acquisition of the transferee's interest; and
 - (c) the transferee is not a party to the transaction that provides for the security interest; and
 - (d) the transferee acquires the transferee's interest for new value.
- (2) Paragraph (1)(c) does not apply in relation to personal property of a kind prescribed by the regulations for the purposes of this section.

2. Clause 43 of the Bill now provides:

43 Taking personal property free of unperfected security interest

Main rule

- (1) A buyer or lessee of personal property, for new value, takes the personal property free of an unperfected security interest in the property.

Exception

- (2) Subsection (1) does not apply if the unperfected security interest was created or provided for by a transaction to which the buyer or lessee is a party, unless the personal property concerned is of a kind prescribed by the regulations for the purposes of this subsection.

3. Clause 43 corresponds to section 52 of the Personal Property Securities Act (NZ), as follows:

Buyer or lessee of collateral takes collateral free of unperfected security interests

- 52** A buyer or lessee of collateral who acquires the collateral for value 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 buyer or lessee is a party.

4. The main differences between the Bill and the corresponding New Zealand provision are:

- the Bill includes a capacity to make regulations; and
 - the Bill includes the main rule in subsection (1) and the exception in subsection (2).
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5. The time of knowledge requirements in the ‘taking free provisions’ in the PPS Bill now operate so that the knowledge is tested at the time the person buys or leases the property and not when new value is provided.

6. Clause 88 of the Bill previously provided:

^88 Acquiring personal property free of security interest in personal, domestic or household property

- (1) The transferee acquires the transferee’s interest free of the security interest if:
- (a) the transferee acquires the transferee’s interest by purchase or lease; and
 - (b) at the time of acquiring the transferee’s interest, the transferee intends to use the personal property predominantly for personal, domestic or household purposes; and
 - (c) the market value (worked out at the time each part of the total new value is given) of the total new value given for the transferee’s interest is not more than:
 - (i) \$5,000; or
 - (ii) if a greater amount has been prescribed by regulations for the purposes of this section—that amount; and
 - (d) the property is not required nor allowed by the regulations to be described by serial number; and
 - (e) the transferee acquires the transferee’s interest for new value; and
 - (f) at the time new value is first given, the transferee has no knowledge of the security interest.

7. Clause 47 of the Bill now provides:

47 Taking personal, domestic or household property free of security interest

Main rule

- (1) A buyer or lessee of personal property, for new value, that the buyer or lessee intends (at the time of purchase or lease) to use predominantly for personal, domestic or household purposes takes the personal property free of a security interest in the property if the market value (worked out at the time each part of the total new value is given) of the total new value given for the personal property is not more than:
- (a) \$5,000; or
 - (b) if a greater amount has been prescribed by regulations for the purposes of this subsection—that amount.

Exceptions

- (2) Subsection (1) does not apply if:
- (a) the personal property is of a kind that the regulations provide may, or must, be described by serial number in a registration; or
 - (b) the buyer or lessee buys or leases the personal property with actual or constructive knowledge that the sale or lease constitutes a breach of the security agreement that provides for the security interest; or

8. For comparison purposes, the corresponding provisions in the PPSA (NZ) s54 and PPSA (Sask) s30(3) provide as follows:

54 Buyer or lessee of consumer goods of certain value takes goods free of security interest

- (1) A buyer or lessee of goods that are acquired as consumer goods takes the consumer goods free of any security interest, if—
- (a) the value of the consumer goods did not exceed \$2,000 at the time the security interest in the goods attached, or, if there is more than 1 security interest in

those goods, at the time the security interest with priority over all other security interests attached; and

- (b) the buyer or lessee—
 - (i) gave new value for the interest acquired; and
 - (ii) bought or leased the goods without knowledge of the security interest.

30 (3) A buyer or lessee of goods that are acquired as consumer goods or goods bought for farming uses takes free of a perfected or unperfected security interest in the goods if the buyer or lessee:

- (a) gave value for the interest acquired; and
- (b) bought or leased the goods without knowledge of the security interest.

9. The Bill now presents provisions as a main rule and an exception, rather than including both the main rule and the exception in the same provision. For example, clause 86 previously provided:

[^]86 Acquiring personal property free of security interest if serial number incorrect or missing

- (1) The transferee acquires the transferee's interest free of the security interest if:
 - (a) the transferee acquires the transferee's interest by purchase or lease; and
 - (b) the regulations provide that the property may, or must, be described by serial number; and
 - (c) the transferee does not hold the property:
 - (i) as inventory; or
 - (ii) on behalf of a person who would hold the property as inventory; and
 - (d) searching the register, immediately before the transferee's interest is acquired, by reference only to the serial number of the property would not disclose a registration that perfected the security interest; and
 - (e) at the time mentioned in section [^]96, the transferee has no actual knowledge that the acquisition constitutes a breach of the security agreement that provides for the security interest; and
 - (f) the transferee acquires the transferee's interest for new value.
- (2) Paragraph (1)(e) does not apply in relation to personal property of a kind prescribed by the regulations for the purposes of this section.

10. Clause 44 now provides:

44 Taking personal property free of security interest if serial number incorrect or missing

Main rule

- (1) A buyer or lessee of personal property, for new value, takes the personal property free of a security interest in the property if:
 - (a) the regulations provide that personal property of that kind may, or must, be described by serial number in a registration; and
 - (b) searching the register, immediately before the time of the sale or lease, by reference only to the serial number of the property, would not disclose a registration that perfected the security interest.

Exceptions

- (2) Subsection (1) does not apply if:

- (a) the buyer or lessee holds the personal property:
 - (i) as inventory; or
 - (ii) on behalf of a person who would hold the collateral as inventory; or
 - (b) at the time covered by subsection (3), the buyer or lessee has actual knowledge that the sale or lease constitutes a breach of the security agreement that provides for the security interest, unless the personal property is of a kind prescribed by the regulations for the purposes of this subsection.
- (3) The time covered by this subsection is:
- (a) if the personal property is bought or leased with the intention of using it predominantly for personal, domestic or household purposes—the time new value is first given for the sale or lease; or
 - (b) in any other case—the time of sale or of entry into agreement for the lease.

11. Clause 44 has also been improved by bringing the cross-reference in former section 86(1)(a) into the Bill at clause 44(3).

12. Clause 68 of the Bill has been rewritten to more closely reflect the drafting style employed in New Zealand and Canada. Clause 68 previously provided:

[^]68 Proceeds—when covered by security interest

Scope

- (1) This section applies to a security interest in collateral if the collateral gives rise to proceeds (by being dealt with or otherwise).

Continuation of security interest in collateral, and attachment to proceeds

- (2) The security interest:
- (a) continues in the collateral, subject to subsection (3); and
 - (b) whether or not the security interest continues in the collateral under paragraph (a)—attaches to the proceeds, unless the security agreement provides otherwise.

Security interest in collateral does not continue if secured party gives express or implied authority for transfer

- (3) However, the security interest does not continue in the collateral if:
- (a) a dealing includes the transfer of the collateral; and
 - (b) the transfer of the collateral gives rise to the proceeds; and
 - (c) the secured party gives express or implied authority for the transfer to be made free of the security interest.

13. The corresponding provision in the Bill, clause 32, now provides:

32 Proceeds—attachment

Continuation of security interest in collateral, and attachment to proceeds

- (1) Subject to this Act, if collateral gives rise to proceeds (by being dealt with or otherwise), the security interest:
- (a) continues in the collateral, unless the secured party expressly or impliedly authorised a dealing giving rise to the proceeds; and
 - (b) attaches to the proceeds, unless the security agreement provides otherwise.

14. For comparison purposes, the corresponding provisions in the PPSA (NZ) s45 and PPSA (Sask) s28(1) provide as follows:

45 Continuation of security interests in proceeds

- (1) Except as otherwise provided in this Act, 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 authorised the dealing; and
 - (b) extends to the proceeds.

28 Perfection re proceeds

- (1) Subject to this Act, where collateral is dealt with or otherwise gives rise to proceeds, the security interest:
 - (a) continues in the collateral unless the secured party expressly or impliedly authorizes the dealing; and
 - (b) extends to the proceeds;

15. Clauses 69 and 70 have also been rewritten to be rewritten to more closely reflect the drafting style employed in New Zealand and Canada. Clause 68 previously provided:

[^]69 Proceeds—perfection when covered by registered description etc.*Scope*

- (1) This section applies if:
 - (a) collateral gives rise to proceeds at a particular time (the *proceeds time*); and
 - (b) immediately before the proceeds time, a security interest that is perfected by registration is attached to the collateral; and
 - (c) the security interest attaches to the proceeds under section [^]68.

Security interest is perfected by registration

- (2) At the proceeds time, the security interest in the proceeds is perfected by the registration if:
 - (a) the registration contains a description of the proceeds that would be sufficient for registration of original collateral of the same class; or
 - (b) the proceeds are of a class that is covered by the registered description of the collateral.

Security interest is perfected otherwise

- (3) At the proceeds time, the security interest in the proceeds is perfected by force of this subsection if:
 - (a) the proceeds are in the form of currency; or
 - (b) the proceeds consist of a right to an insurance payment or any other payment as indemnity or compensation for loss or damage to the collateral or proceeds.

[^]70 Proceeds—perfection when not covered by registered description etc.*Scope*

- (1) This section applies if:
 - (a) collateral gives rise to proceeds at a particular time (the *proceeds time*); and
 - (b) immediately before the proceeds time, a perfected security interest is attached to the collateral; and
 - (c) the security interest attaches to the proceeds under section [^]68; and
 - (d) the security interest in the proceeds is not perfected under section [^]69.

Security interest is temporarily perfected for 5 business days

- (2) The security interest in the proceeds is temporarily perfected for the period starting at the proceeds time and ending at the end of 5 business days after the day the proceeds time occurs.

16. The corresponding provision in the Bill, clause 33(1) and (2), now provide:

33 Proceeds—perfection and temporary perfection

Perfection by reference to perfection of security interest in original collateral

- (1) A security interest in proceeds is perfected if the security interest in the original collateral is perfected by a registration that:
 - (a) describes the proceeds, if the description complies with any regulations made for the purposes of paragraph (d) of item 4 of the table in section 153 (financing statements with respect to security interests); or
 - (b) covers the original collateral, if the proceeds are of a kind that are within the description of the original collateral; or
 - (c) covers the original collateral, if the proceeds consist of currency, cheques or an ADI account, or a right to an insurance payment or any other payment as indemnity or compensation for loss or damage to the collateral or proceeds.

Temporary perfection in other situations

- (2) If a security interest in original collateral is perfected, but a security interest in the proceeds is not perfected under subsection (1), the security interest in the proceeds is temporarily perfected for the period starting at the time the security interest in the original collateral attaches to the proceeds and ending at the end of 5 business days afterwards.

17. For comparison purposes, the corresponding provisions in the PPSA (NZ) ss46 and 47 and PPSA (Sask) s28(2) and (3) provide as follows:

46 When security interest in proceeds is continuously perfected

A security interest in proceeds is a continuously perfected security interest in proceeds if the security interest in the original collateral is perfected by registration of a financing statement that:

- (a) contains a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind; or
- (b) contains a description of the original collateral, if:
 - (i) the proceeds are of a kind that are within the description of the original collateral; or
 - (ii) the proceeds are cash proceeds; or
 - (iii) the proceeds consist of a payment made in total or partial discharge or redemption of an intangible, a negotiable instrument, an investment security, or chattel paper; or
 - (iv) the proceeds consist of a right to an insurance payment or any other payment as indemnity or compensation for loss or damage to the collateral or proceeds.

Example: Person A has registered a financing statement in respect of person B's (a car dealer's) inventory (cars).

Person A's security interest in the cash proceeds received from the sale of those cars is continuously perfected.

47 Temporary perfection of security interests in proceeds in other cases

A security interest in proceeds is temporarily perfected until the expiration of 10 working 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 section @46.

Example: Person A has registered a financing statement in respect of person B's (a car dealer's) inventory (cars).

Person B sells the cars under hire purchase agreements (chattel paper).

Person A has a security interest in the hire purchase agreements as proceeds.

Person A's security interest in the hire purchase agreements is temporarily perfected for 10 working days after person A's security interest in the inventory attached to each agreement as proceeds.

28 Perfection re proceeds

- (2) A security interest in proceeds is a continuously perfected security interest if the interest in the original collateral is perfected by registration of a financing statement that:
 - (a) contains a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind;
 - (b) covers the original collateral, if the proceeds are of a kind that are within the description of the original collateral; or
 - (c) covers the original collateral, if the proceeds consist of money, cheques or deposit accounts in banks or similar institutions.
- (3) Where the security interest in the original collateral is perfected in a manner other than a manner described in subsection (2), the security interest in the proceeds is a continuously perfected security interest, but becomes unperfected on the expiration of 15 days after the security interest in the original collateral attaches to the proceeds unless the security interest in the proceeds is otherwise perfected by any of the methods and under the circumstances specified in this Act for original collateral of the same kind.